2002/10/30 - PL. ÚS 39/01: SUGAR QUOTAS II

HEADNOTES

Although the right to own property and the freedom to conduct business are classified by the Charter of Fundamental Rights and Freedoms and perceived as rights of different categories, the first as fundamental, in contrast to the second as economic and social, nonetheless they are closely related to each other. The freedom to conduct business is even usually described as a freedom derived from the right to property. This opinion can be considered only partially correct. Conducting business and other economic activity are certainly primarily activities aimed at creating property values necessary to secure the necessities of life. Their everyday result is property (in a modern economy, money) which is protected by the fundamental right to property. Moreover, the ownership of property (capital) is a prerequisite for beginning business and continuing it. In addition, of course, conducting business is a way of personal and group self-realization. The property right even, if it is not to be a self-serving concept, itself leads to the exercise of other fundamental and other rights.

CZECH REPUBLIC

CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court decided on a petition from a group of deputies to annul § 13 of Act no. 256/2000 Coll., on the State Agricultural Intervention Fund and Amending Certain Other Acts (the State Agricultural Intervention Fund Act), and § 4 para. 3, § 5 para. 3, § 7 and § 13 of government directive no. 114/2001 Coll., on setting sugar production quotas for the quota years 2001/2002 to 2004/2005, with the participation of the Chamber of Deputies and the Senate of the Parliament of the Czech Republic and the government of the Czech Republic as parties to the proceedings and the ombudsman as a secondary party to the proceedings, as follows:

The provisions of § 4 para. 3, § 5 para. 3, § 7 and § 13 of government directive no. 114/2001 Coll., on setting sugar production quotas for the quota years 2001/2002 to 2004/2005, are annulled as of the day this judgment is published in the Collection of Laws.

The petition to annul § 13 of Act no. 256/2000 Coll., on the State Agricultural Intervention Fund and Amending Certain Other Acts (the State Agricultural Intervention Fund Act), is denied.

REASONING

I.

In its petition, submitted under Art. 87 para. 1 let. a) and b) of the Constitution of the Czech Republic (the "Constitution") and § 64 para. 1 let. b) and para. 2 let. b) of Act no. 182/1993 Coll., on the Constitutional Court, the group of deputies claims that Act no. 256/2000 Coll., on the State Agricultural Intervention Fund and Amending Certain Other Acts (the State Agricultural Intervention Fund Act), forbid the manufacture of agricultural goods. They find its provisions to be inconsistent with the freedom to conduct business under Art. 26 of the Charter of Fundamental Rights and Freedoms (the "Charter"). Under the Charter, the right to conduct business, like the conduct of certain professions and activities, may only be limited by statute, or conditions set for them; however, a complete ban is not possible. According to the petitioner, the penalty levy of 115% of the minimum or regulated price of an agricultural product imposed for exceeding an individual production quota (§ 13 of the Agricultural Intervention Fund Act) represents such a ban. This is a penalty that is applied to conduct not expressly forbidden by law. Regulation through production quotas led to the creation of a preferred category of "strategic" sugar producers, without other producers being able to influence the selection. When this differentiation is connected with the freedom to conduct business, an inequality arises under Art. 1 and Art. 3 para.1 of the Charter. This inequality is reflected in the payment-free allocation of production quotas among current producers, and only a small reserve remains for allocation among other potential producers. According to the group of deputies, one may omit those producers, owners of facilities, who renovated them at great expense in the period before the Act went into effect and did not produce sugar in the reference period. Those who purchased facilities are in a similar position. Discrimination between entrepreneurs with an assigned production quota and entrepreneurs without one creates discrimination in property rights. Under Art. 11 of the Charter this has the same statutory content and protection. The aforementioned owners of production facilities are de facto legally forbidden to produce the commodity in question by a decision of the state, and without compensation. Their property rights are devalued by the application of production quotas, whereby they are given different content and their protection is reduced. The group of deputies points out that the government has previously tried to regulate sugar production by directive no. 51/2000 Coll., which provides measures and state participation in the creation of conditions to ensure and maintain production of sugar beet and sugar and stabilization of the sugar market. Although the Constitutional Court annulled this regulation by judgment no. 96/2001 Coll., it was nevertheless in effect from 14 March 2000 to 12 March 2001. In that period it created unfavorable conditions for any new applicants for beginning production and subsequently for allocation of a quota under government directive no. 114/2001 Coll.

The group of deputies acknowledges that the legislature, in issuing ordinary laws, is supposed to take into account the general interest in regulating relationships in sectors of the economy, but on the other hand it is supposed to consider the public interest. Of course, any intervention must observe a balance between the general interest and individual rights. There must be proportionality between the means used and the aims

pursued. Otherwise, as the Constitutional Court already emphasized in its judgment of 15 February 1994, file no. Pl. ÚS 35/93 (promulgated under no. 49/1994 Coll.), the regulation in question comes into conflict with Art. 4 para. 4 of the Charter. According to the group of deputies, regulation of agricultural production is in the public interest, and not only in connection with the preparations for entry into the European Union. However, the State Agricultural Intervention Fund Act restricts the freedom to conduct business in agriculture through production quotas in a disproportionately general manner, as it does not specify a range of agricultural products which can be subject to regulation. Thus, it empowers the State Agricultural Intervention Fund (the "Fund") to interfere in producers' rights without more detailed statutory delimitation. This creates a danger of abuse. The group of deputies reads the statutory reference to international treaties (§ 1 para. 2) as a reference to European Community regulations, in particular EC Council Directive no. 2038/1999. The regulation of sugar production which they create applies for only a limited period, whereas the State Agricultural Intervention Fund presumes the repeated, and thereby unlimited application of quotas.

The group of deputies concludes that there is a denial of judicial review (Art. 36 of the Charter) in the express restriction (§ 5 para. 5 of the Agricultural Intervention Fund Act) of application of the Administrative Procedure Code only to applications for subsidies and not to other decision making, including decision making on the allocation of quotas or imposition of penalty levies.

The group of deputies points out, that if the Fund specifies a reserve level which is published in the Ministry of Agriculture Bulletin, this must be considered unconstitutional sub-statutory delegation for the creation of law (§ 4 para. 3 of government directive no. 114/2001 Coll.). It also considers unconstitutional the authorization of the Ministry of Finance to set the minimum price of sugar. In both cases it relies on Constitutional Court judgment no. 96/2001 Coll., under which the legislature may not delegate to the executive branch an area of regulation of relationships designated for statutory regulation, and thereby actually resign from its legislative duty; no more can the executive branch assume this right itself. Therefore, both provisions are inconsistent with Art. 79 of the Constitution, the first also with § 12 para. 3 and the second with § 12 para. 4 of the Agricultural Intervention Fund Act.

The contested government directive also does not delineate any quality characteristics of the sugar to which production quotas are applied. The footnote reference to decree no. 334/1997 Coll., which implements § 18 let. a), d), j) and k) of Act no. 110/1997 Coll., on Foodstuffs and Tobacco Products and Amending and Supplementing Certain Related Acts, for natural sweeteners, honey, non-chocolate sweets, cocoa powder or cocoa-sugar mixture, chocolate and chocolate sweets, as amended by decree no. 94/2000 Coll. cannot be considered such delineation. The Constitutional Court has ruled that the purpose of footnotes is only to clarify regulations and that they have no legal significance. The description of the system of production quotas, being incomplete, does not meet statutory requirements.

In the expansion of the petition, which the Constitutional Court permitted, the group of deputies also requests the annulment of § 7 of government directive no. 114/2001 Coll. The petitioner cites as grounds the inadequate statutory authorization for delegating the

allocation of sugar production quotas and reserves from the government to the Fund, without the State Agriculture Intervention Fund Act giving express authorization for it. Clear authorization is only contained in § 4, 7 and 16 of government directive no. 114/2001 Coll. The petitioner considers the Fund's authorization to make use of the quota system inadequate under § 1 para. 2. let. d) of the Agricultural Intervention Fund Act. On the contrary, in relation to production quotas, various areas of jurisdiction are entrusted to the government [§ 3 para. 3 let. a), § 12 of the Agricultural Intervention Fund Act]. The provisions of § 4, 6 and 7 of government directive no. 114/2001 Coll. are unconstitutional, as they establish illegal delegation of the exercise of state power. Moreover, the status of a state administration body is expressly given to the Fund only for decision making about subsidies (§ 5 of the Agricultural Intervention Fund Act). The group of deputies proposed annulment of § 13 of government directive no. 114/2001 Coll. due to its inconsistency with Art. 79 of the Constitution, as the government delegated its statutory duty to another body when it authorized the Ministry of Finance to set a minimum price for sugar introduced into the market in the Czech Republic, which violated § 12 para. 4 of the Agricultural Intervention Fund Act.

II.

The Chamber of Deputies and the Senate, as parties to the proceedings, submitted position statements concerning the petition of the group of deputies, (§ 69 of Act no. 182/1993 Coll., as amended by later regulations). Statements concerning the petition were also submitted by the government of the Czech Republic, the Ministry of Agriculture, the State Agricultural Intervention Fund and the ombudsman.

III.

The procedural requirements for proceedings before the Constitutional Court have been met.

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IV.

The Plenum of the Constitutional Court has twice addressed the issue of agricultural production quotas in its judgments on petitions for the annulment of legal regulations.

In judgment no. 96/2001 Coll. (file no. Pl. ÚS 45/2000 of 14 February 2001), it granted the petition of Cukrovar V., s.r.o. to annul government directive no. 51/2000 Coll. In the Constitutional Court's opinion, the government did not issue the directive for implementation of and within the bounds of Act no. 252/1997 Coll., on Agriculture, as it is required to do by Art. 78 of the Constitution. The introductory provisions of the Act (§ 1 to 2) do not presume restrictions on doing business in agriculture (Art. 26 and 41 of the Charter) in the form of production quotas. The Constitutional Court did so with the

knowledge that the Parliament of the Czech Republic had, in the meantime, passed Act no. 256/2000 Coll., which allows production quotas, but the reviewed government directive had not been passed in order to implement that.

In its judgment no. 410/2001 Coll. (file no. Pl. ÚS 5/01 of 16 October 2001) the Constitutional Court decided on a petition from a group of deputies to annul government directive no. 445/2000 Coll., on setting milk production quotas for the years 2001 to 2005. It partially granted the petition, and annulled § 4 para. 2 of the directive due to inadequate statutory authorization to restrict the allocation of production quotes from the reserve to agriculture operators, farmers doing business in ecological cattle farming and § 14 para. 2 due to unconstitutionality and the illegality of delegating decision making on the amount of the reserve to the Ministry (Minister) of Agriculture. However, the Constitutional Court did not find milk production quotas themselves to be unconstitutional or illegal. In the judgment's reasoning of the Constitutional Court found penalty levies under § 13 of Act no. 256/2000 Coll. to be constitutional, but it emphasized that the group of deputies described it as unconstitutional in the reasoning of its petition, but did not propose that it be annulled (nor, in view of the size of the group of deputies, could it have successfully done so).

In these proceedings, the Constitutional Court will evaluate a legal regulation which is similar to a regulation which it already considered. The arguments of the present group of deputies are similar. Of course, they do not request the annulment of the entire implementing government directive, but only selected provisions. In addition, annulment of provisions of the Agricultural Intervention Fund Act is proposed. Therefore, the Constitutional Court should rely on its earlier evaluation, unless it finds a fundamental distinction or changes its legal opinion. The evaluation of the adjudicated matter will therefore relate to the reasoning of judgment no. 410/2001 Coll.

The purpose of applying production quotas is to limit non-monopoly production to a desired volume. The motivation for it is an attempt to stabilize prices in the markets without implementing price regulation or imposing a contractual obligation on customers. Market forces do not lead to market stabilization if they are crippled by massive state subsidies and protectionism. The basis of the regulation is a national (state) production quota, which is allocated among current producers according to a certain key. These producers are then banned from manufacture (purchase, processing) of production over the quota, or they are discouraged from it by penalty levies. New quotas are not allocated at all, or only a little, and existing ones may be reduced. The use of quotas in a modern democratic state with a market economy is rare. In western Europe they are applied in agriculture and part of the food industry which is affected by customs protectionism and extensive subsidizing, which is caused by both political recognition of the general interest in its prosperity and by the activities of farmers and agricultural businesses, as strong interest groups. Within the European Community (European Union) common agricultural policy, this is used today only for dairy products and sugar. The aims and effects of a ban on cultivating land or spreading cultivation cultures, for example of wine, are similar to those of production quotas.

A key issue in the adjudicated matter, as in the matter decided by judgment no. 410/2001 Coll., is the constitutional permissibility of a restriction on the amount of agricultural production implemented by a penalty levy for overproduction. The evaluation in light of

fundamental (constitutional) legal principles and fundamental human rights necessarily slides toward a separate search for answers to individual questions, as indicated by the petition from the group of deputies and the cited judgment.

In its case law, the Constitutional Court refuses to tear the fundamental principles of a state governed by the rule of law, such as equality (Art. 1 of the Charter) and the proportionality of legal regulation (Art. 4 of the Charter) away from individual human rights and freedoms, such as, here, the fundamental right to property (Art. 11 of the Charter) and freedom to conduct business (Art. 26 of the Charter). It found violation of fundamental principles to be grounds for its intervention only if they were not respected in the regulation of the exercise of fundamental rights and freedoms.

Although the affected fundamental rights are classified by the Charter and perceived as rights of different categories (the first as fundamental, in contrast to the second as economic and social), nonetheless they are closely related to each other. The freedom to conduct business is even usually described as a freedom derived from the right to property. This opinion can be considered only partially correct. Conducting business and other economic activity are certainly primarily activities aimed at creating property values necessary to secure the necessities of life. Their everyday result is property (in a modern economy, money) which is protected at the constitutional and international European level by the right to property. Moreover, the ownership of property (capital) is a prerequisite for beginning business and continuing it. In addition, of course, conducting business is a way of personal and group self-realization. The property right even, if it is not to be a self-serving concept, itself leads to the exercise of other fundamental and other rights.

V.

In evaluating the system of sugar production quotas as a regulation which affects the freedom to do business we can begin with the evaluation in judgment no. 410/2001 Coll. Under Art. 26 para. 1 of the Charter everyone has the right to free choice of profession and training for it, as well as the right to do business and conduct other economic activity. Under paragraph 2, a statute may provide conditions and restrictions for the exercise of certain professions or activities. The Constitutional Court also emphasized that neither the constitutional order nor international treaties on human rights and fundamental freedoms forbid the legislature to limit the amount of production, distribution, or consumption of values. Therefore, the legislature may (within the bounds given by constitutionally guaranteed fundamental principles, human rights and freedoms) in its discretion, implement price or quantity regulation of production in a particular sector of the economy, delineate or influence the kind and number of entities active in it, or limit contractual freedom in bringing production to the market or in the purchase of raw materials and production facilities. It found the claim of the group of deputies, that restrictions may be only qualification and similar prerequisites, to be a disproportionately narrow interpretation of this provision. Moreover, it is evident from Art. 41 para. 1 of the Charter that economic, social and cultural rights, which include the freedom to do business, can be exercised only within the limits of the law. The Constitutional Court did not find a free market free of all regulation to be a value of constitutional importance. It pointed to the limits on the freedom to do business in the European Union, where a market

economy is directly declared to be a constitutional principle in the establishment agreement. It also rejected the opinion that every restriction of the freedom to conduct business can only be implemented by statute. For practical reasons, the Constitution permits sub-statutory regulations to be passed for the implementation of statutes, if the rules they provide are within the bounds of the statutes. The Constitutional Court pointed out that production quotas are applied in the agriculture sector of the democratic states of western Europe, and in the European Union countries according to a common model, and they were not found to be incompatible with world-wide or European international, or, in state systems, with a domestic constitutional standard of human rights.

World-wide international pacts on human rights are silent on the subject of the freedom to conduct business as a fundamental right. Nor does the European post-war standard of the Convention for the Protection of Human Rights and Fundamental Freedoms, with its protocols, recognize it. Its derivation from the guarantee of property rights and personal freedom is a disproportionately broad interpretation, which finds no basis in the case law of the European Court of Human Rights. In any case, the Court never considered similar legal regulation of economic activities in this branch. It is only the Charter of Fundamental Rights of the European Union which recognizes freedom to conduct business (economic activity), but it assumes that it will be restricted by European and national laws. Moreover, the Charter did not acquire the character of an international treaty; it is only a political declaration. Thus, only the Constitutional Court is qualified to delineate the concept of the Czech guarantee of the freedom to conduct business under Art.26 of the Charter.

Current foreign models tend to confirm the Constitutional Court's restricted concept of the freedom to do business as a right which the legislature may restrict fairly widely.

In Germany the Constitutional Court does not reject references to the free choice of profession (Art. 12 of the Grundgesetz) in connection with the manner of regulation the exercise of a profession; nevertheless it recognizes a wide range given for regulation by the legislature. It takes a stricter stance, in light of which Czech legislative practice would probably frequently not hold up, only with regard to many restrictions and entitlements connected with entry to a field. Of course, the German Constitutional court did not concern itself with regulation of agricultural or other production through production quotas or similar measures, as they are regulated by the primary and directly applicable law of the European Community.

A concept of the constitutionally expressed freedom to do business on which the group of deputies could rely, might be sought in the case law of the Supreme Court of the United States until the 1930s. Its concept of contractual freedom and the right to property basically did not permit any economic-political measures. Of course, since the time of the Great Depression the Supreme Court stopped interfering against non-discriminatory political intervention in relationships in individual economic sectors.

In judgment no. 410/2001 Coll., the Constitutional Court already stated, peripherally, that a penalty levy under § 13 of the Agricultural Intervention Fund Act in the amount of 115% of the minimum or regulated price is a necessary component of the production quota system. It is a proportionate penalty for production exceeding an individual quota. It may be added that a possible, substantially less effective penalty for overproduction is mere refusal of public subsidy.

In response to the objection from the group of deputies that production of sugar over the production quota is not forbidden, we can say that the legal framework does not expressly forbid many activities, but nevertheless makes them disadvantageous and thus discourages people from them. We can point to the fees imposed on operation of lottery machines or consumption taxes. Disadvantaging a certain activity is a routine legal instrument, especially when a direct ban implemented by administrative or criminal sanctions (fines, a ban on the practice of a profession or a prison sentence) would be excessive. In the cited judgment, the Constitutional Court stated that if a ban on over-production is possible, that of course means that there is room to disadvantage it. Finally, we can state that even the standard formulation of provisions on the elements of crimes ("Anyone who … will be punished …") in the Criminal Code does not literally ban crimes. However, there is no doubt that they are banned. Thus, the reference to unconstitutionality of a penalty levy without an express ban of the activity which is discouraged by the penalty levy, can be rejected.

VI.

In judgment no. 410/2001 Coll. the Constitutional Court recapitulated the European and domestic concept of the fundamental right to property. It rejected the position that limiting production is an uncompensated expropriation which is not justified by the public interest. It stated that the petitioner is not denied ownership of milk produced above the production quota. The penalty levy supporting the production quota system of course makes it less easy or even impossible to sell the overproduction. The Constitutional Court emphasized that an entitlement to achieve a certain price on the market is not, however, a fundamental right. It pointed out that the production quota system is a form of control on the use of property, which is implemented due to the public interest. The Constitutional Court emphasized that the restrictive means used should be proportionate to the aims pursued. It accepted that there is a public interest in stabilizing the market for milk and found the instruments used to be proportionate. It pointed out, that other measures regulating the conduct of business or other economic activity also have fundamental effects on its profitability. It rejected the opinion that the production quota system makes entry into sectors completely impossible, pointing out the possibility of acquiring them through purchase or allocation from the reserve. The Constitutional Court did not feel called upon to evaluate whether the production quota system is an optimal or economically most advantageous solution. It pointed out that the production quota system is supposed to prevent overproduction which is caused by extensive state agricultural subsidies. The Constitutional Court emphasized that applying a production quota system (restricting the amount of production) pursues the public interest in discouraging investment in branches with overproduction. In its arguments, the Constitutional Court pointed out that the European Court of Justice (a body of the EC) also did not find a similar Community measure – a ban on planting vineyards – to be a violation of the European standard of ownership under Art.1 of the Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms.

The arguments used in judgment no. 410/2001 Coll. at a general level also apply for evaluating the sugar production quota system under of government directive no. 114/2001 Coll. In the present matter, the group of deputies does not emphasize, in contrast to the preceding petition, denial of ownership of sugar produced above the limit. With regard to the Constitutional Court's rejection, in the cited judgment, of arguments about the denial of ownership to the milk produced, we can only add that in sectors where the volume of production is regulated by production quota systems, production exceeding the limits occurs only to a minimal extent, as sales are made basically impossible by the imposition of a penalty levy.

The present objection of the group of deputies is only a reference to discrimination between those owners of sugar refinery facilities who obtain a production quota and can produce without actual restrictions and those who do not have one at their disposal and for whom production is made impossible as a result of the application of a penalty levy. Therefore, the issue of inequality in property must be addressed in connection with the issue of general equality in the application of the sugar production quota system.

Therefore, one can refer to the case law of the European Court of Justice only peripherally, and in the form of further development of the Constitutional Court's arguments in judgment no. 410/2001 Coll. In its verdict on the complaint Metallurgiki Halyps v. the Commission (258/81), the European Court of Justice emphasized that Community restrictions on steel production in the public interest, although they can endanger the profitability of an enterprise, do not represent any violation of the right to own property. We can also emphasize, that the European Court of Human Rights never evaluated the general legal provisions of the member states of the Council of Europe, which regulated the volume of economic production in view of their compatibility with the European standard of the fundamental right to own property.

A limited application of production quota systems, particularly in agriculture, is usual in the European Union and in some other developed countries with a social market economy. The current case law of the constitutional and supreme courts of European Union member states and other democratic countries governed by the rule of law does not indicated that restricting production for reasons of stabilizing market prices at a certain level, if fairly imposed on all existing producers, would be considered incompatible with the national standard of property. Of course, this statement does not rule out political criticism of them, which is strong. The use of this form of managing the economy is rare. Of course, there is no reason for the Constitutional Court to interpret Art. 11 of the Charter otherwise. It cannot be overlooked that one of the main motivations for introducing a production quota system for some agricultural and food products was the creation of a framework which is applied in the European Union. Radical intervention by the Constitutional Court against production quota systems would be a step toward a conception of domestically guaranteed fundamental rights which would not hold up after the Czech Republic's entry into the European Union, which is being prepared.

It must be emphasized that it is not appropriate to compare the sugar (milk) production quota system, or a penalty levy for overproduction which implements it, with price regulation to the benefit of purchasers, if it is connected with a contractual obligation or forced preservation of existing contractual relationships. In judgment no. 231/2000 Coll.

(file no. Pl. ÚS 3/2000 of 21 June 2000), the Constitutional Court declared regulation of apartment rent under decree no. 176/1993 Coll., on rent from apartments and compensation for services provided with the use of an apartment, as amended by later regulations, to be incompatible with the fundamental right to property, with reference to the fact that the rent paid now does not make it possible for apartment owners even to maintain them, and thus their ownership is devalued. In the case of agricultural production quotas, no one is forced to produce in a manner so that he would have to pay the penalty levy. On the contrary, the purpose of the penalty levy is to discourage producers from socially undesirable overproduction. Therefore, the penalty levy can be better compared to taxes and fees whose purpose is to raise the price of particular goods or services and to lower their consumption (consumption taxes on alcoholic beverages, cigarettes or hydrocarbon fuels, or payments for the operation of lottery game machines). Relying on constitutional and international guarantees of property ownership in these cases, where, after the implementation or increase of these taxes, part of the facilities used will not be able to be used as before and will lose value, because demand will fall after price increases, would certainly be considered unjustified. Evaluation of agricultural regulation can not take the opposite direction, even if it is socially based and the legal evaluation of agricultural overproduction it leads to is not as strict.

It must also be pointed out that the decrease in the usability of production facilities – as well as in their price – is not considerable, if the production restrictions introduced do not force existing producers to reduce their present production. This also applies generally to the sugar production quotas under evaluation.

VII.

In judgment no. 410/2001 Coll., the Constitutional Court rejected the opinion that the differing legal positions of those producers who receive a quota and those who do not apply for one represents unconstitutional discrimination. Differentiation is a matter of choice. The requirement for a quota application is administrative registration of producers.

The Constitutional Court also did not agree with the claim of unconstitutional inequality between existing and new producers. It pointed out that the disadvantaging of new entrepreneurs (who must purchase quotas from existing producers or rely on the uncertain hope that they will be allocated to them from the reserve, while they are, of course, competing with existing producers) is an inseparable part of any restriction of the amount of production. The aim of disadvantaging entry to a sector is the interest in making undesirable expansion of production capacity impossible.

Of course, one can not rule out discrimination between producers who apply for a quota and receive it in the full amount and producers to whom it is denied or allocated only partially. The Agricultural Intervention Fund Act § 12 para. 6 requires that the manner of initial allocation of production quotas among applicants be governed by the principle of equality and an objective calculation method. The government must keep in mind this general instruction, which is no more than a reflection of the principle of equality under

Art. 1 of the Charter and Art. 1 of the Constitution, when determining the method of initial allocation of quotas within individual production quota systems with regard to the features and special characteristics of the production of commodities, the manufacture of which is subject to restriction. Therefore, the Constitutional Court can evaluate the key used in the original allocation of quotas.

In judgment no. 410/2001 Coll., the Constitutional Court recognized the one year reference period, together with generally specified component regulations, as proportionate. It also acknowledged that even a thoroughly detailed key, which keeps in mind the regular causes of fluctuations in the volume of production, can not take all circumstances into account. Therefore, in individual circumstances, injustice may occur which, however, does not reach a level of constitutional gravity. In view of possible abuse, it took a restrained position toward alleviating severity on the basis of administrative discretion.

The government presumes that individual production quotas for sugar production will be determined on the basis of the volume of three of the most successful (in terms of amount) production seasons of the last five (§ 7 para. 1 of government directive no. 114/2001 Coll.), and if production did not take place for more than three seasons, based on the seasons when production did take place. In this regard we can not ignore the circumstance which the group of deputies points out. The position of individual sugar refinery operators was influenced by the legal framework of government directive no. 51/2000 Coll. before it was annulled by the Constitutional Court. It was annulled due to lack of statutory foundation. One can state additionally that the legal framework's anticipated differentiation between strategic and non-strategic sugar refineries, including an exhaustive enumeration directly in the text of the former, whose operators enjoy immediate direct allocation of a production quota, can justifiably be considered a suspect qualification (following the methods of the United States Supreme Court). It is an arbitrary and difficult to justify differentiation between individual sugar refinery operators. However, we must here deny the claim of the group of deputies that the current legal framework also introduces such differentiation.

The method of calculating individual production quotas only mitigates undesirable effects under the former legal framework, which are both unconstitutional for formal reasons and factually discriminatory, by not deriving the decisive average annual quota from the volume of production from all five seasons, which must be reported in the application under § 5 para. 3 of government directive no.114/2001 Coll., but presumes that some sugar refineries were not in operation during all the seasons, and takes into account the three seasons with the highest production, or those seasons when production took place, if production took place in three or fewer seasons.

It is clear, of course, that this does not remove the inequality. It results just from the fact that certain producers could, on the basis of a measure which is unconstitutional for formal reasons and factually discriminatory, increase production, because they were protected from the competition, which did not have a production quota and thus could not produce without the burden of a penalty levy. Through the present formally correct legal framework, the government preserves for the future the undesirable condition which it caused by its previous formally and materially unconstitutional framework.

We also can not ignore the circumstance to which the group of deputies points in passing in the already rejected argument on discrimination between existing and new producers. The regulation of the price of sugar implemented by government directive no. 114/2001 Coll. does not in any way take into account cases where one sugar factor was operated in the past by a different entity than it is today. It does not take into consideration the production of a factory which was transferred during the decisive period. However, sales of enterprises and factories and company mergers can not be ruled out.

The key selected for allocation individual production quotas thus finds itself in conflict with the statutory requirement of an objection method of calculation (§ 12 para. 6 of the Agricultural Intervention Fund Act), and, in particular, with the constitutional requirement of equality under Art. 1 of the Charter, which at the same time establishes a constitutionally impermissible different statutory concept of ownership of production facilities under Art. 11 para.1 of the Charter and unjustifiable differentiation between individual enterprises which enjoy the same (i.e. equally governed) freedom to conduct business under Art. 26 of the Charter.

Of course, it would be difficult to consider unconstitutional, in and of itself, the obligation of applicants to state in their production application the amount of the sugar production in the sugar production seasons 1996/97 to 2000/01 under § 5 para. 3 of government directive no. 114/2001 Coll.

VIII.

In judgment no. 410/2001 Coll., the Constitutional Court found that the introduction of milk production quotas is justified because it serves the public interest. This interest is a guarantee of a minimum price in an environment where state subsidies contribute to increases in production which demand would not cause. State interventions in agriculture are motivated by its social, economic and ecological characteristics. The Constitutional Court recognized that production quota systems for agricultural products exist in the European Union and rejected the proposition that a domestic standard of human rights would require a pure market economy, free of state intervention. It responded with restraint to the demand that it subject to strict inspection, with regard to its necessity and true need, the legal framework under which the state intervenes in the economy. It emphasized that the Parliament of the Czech Republic, as the political body which bears political responsibility toward voters for recognizing problems in the economy and for selecting instruments to solve them, has jurisdiction to select economic policy.

The United States Supreme Court took a similar view of the priority role of political bodies in creating production quota systems for the cultivation of wheat in the case Wickard v. Filburn [317 U.S 111 (1942)]. Its decision is an example of judicial restraint.

With these arguments, which can also basically be applied to the evaluation of sugar production quotas, the Constitutional Court signed on to the approach taken by, for example, the United States Supreme Court since the 1930s, when it ended the practice of describing economic and social regulations as incompatible with an absolute contractual freedom and right to property and recognized that the general formation of economic

policy, including restrictions on doing business, is primarily a matter for political bodies. In evaluating the legal framework it is sufficient to apply the rational basis test, a routine verification of whether the measure introduced can lead to the goal pursued. The production quota system pursues restriction of production which is distorted by state subsidy policy. This also applies in the case of measures which are necessary only for preparations for entry into the European Union, where such conditions exist.

An inclination to strict evaluation of the production quota system would force the Constitutional Court to evaluate the necessity and usefulness of the state policy of subsidizing and giving privileges to agriculture. In that case, the Constitutional Court would have to incline toward some economic-political doctrine, in this case to liberalism. However, such a step does not correspond to the relative political neutrality of the Charter and of the Constitution.

IX.

Consideration of the justifiability and proportionality of applying a sugar production quota system cannot be done without comparison with the model uniformly applied in the European Union, especially with regard to the Czech Republic's preparation for entry into it. Restriction of the amount of sugar production has a long tradition in the European Community. It was first introduced as a response to overproduction in the 1960s. By this common measure, exceptionally strict even in agriculture, the European Community responded to overproduction which, of course, was caused partly by the common agricultural policy and intervention by member states including subsidies, appropriations, and market intervention, and partly by the intensification and concentration of sugar refining, which led to the closing of sugar refineries. The basis of the legal framework is EC Council directives on the single market rules, passed for a period of several years. Related to them are the European Commission implementing directives. For the 2001/2002 to 2005/2006 seasons, the basic regulation is EC Council directive no. 1260/2001 on common organization of markets in the sugar sector. It was passed as part of a partial reform of the common agricultural policy. Its aim is to reduce its fiscal burden and restrict overproduction. It includes a reduction in sugar production quotas.

The directive determines national quotas for individual member states. For purposes of the production quotas, the sugar produced is divided into groups. Sugar A and sugar B may be produced, even through they too are burdened by penalty levies. With sugar A they are a negligible 2% of the intervention price. The production of sugar B is burdened by a more marked penalty levy, which can certainly influence production, in the amount of 30-37.5% of the intervention price. Sugar B production does not enjoy the same support and protection as sugar A production, but in contrast it is not affected by the fate of overproduction. That is labeled as sugar C. Sugar C may be produced, but may not be sold in the EC market. Thus, the only legal use of sugar C is export. Any failure to export is punished by a penalty levy. The amount and method of determining the penalty levy is regulated by the permanent implementing Commission directive no. 2670/81 such that sugar C the production of which has been documented but which lacks documentation of export to third countries is burdened by a penalty levy equal to the highest customs burden on imports from third countries. This customs burden is high, because the EC's

unified external trade policy, in conjunction with the common agricultural policy, despite the liberalization steps of the WTO (the World Trade Organisation), remains protectionist. Just as import of sugar to the Community is generally not worth it, neither is overproduction of sugar. In addition, the different approach to sugar A, B and C is reflected in the opposing subsidy and intervention policy. The production, processing, storage, sale and export of sugar C, compared to sugars A and B, does not enjoy any intervention for maintaining a desirable high intervention price, or subsidies for ensuring sufficient income for farmers and processors.

In the Czech Republic, the uniform model of penalizing overproduction in the amount of 115% of the minimum price (equivalent to the intervention price) is used for sugar. The model for this method of determining the penalty levy for overproduction was the framework of milk production quotas in the Community under Council directive no. 3950/92. Imposing fees on sugar overproduction in the EC is, in its results, comparable with measures applied today in the Czech republic, even if the manner of penalizing overproduction is not the same. For example, the Czech Republic today, unlike Poland, does not implement a comparable production quota system, but the EC aim to restrict sugar production on protectionist grounds is pursued and the results are comparable. Sugar production over the set quotas is not worth it, and therefore is not done.

If the Czech Republic enters the European Union in the next few years, then, unless there is fundamental reform of the common agricultural policy in the area of sugar, the community standard with comparable effects will gradually (in view of a number of anticipated transition periods) be applied to it as well. In the present months negotiations on entry are begin completed. One of the most difficult chapters in the negotiations is no. 7 “Agriculture”. So far, none of the candidate countries has entered into a preliminary agreement on the manner and budget of incorporating its agriculture into the common agriculture market and introducing the common agriculture policy. The main dispute concerns the amount of direct subsidies to farmers in the candidate countries. Of course, agreement is also lacking with agricultural commodities whose production is restricted by production quotas. The candidate countries want their agriculture to be able, without sanctions, to produce more than the European Community and current member states want to allow.

In the case of sugar production, the difference in the Czech Republic is not a multiple, but neither is it negligible. The Czech Republic wants 505 thousand tons of a national sugar production quota, which corresponds to the present aggregate production quota and reserve under government directive no.114/2001. The European Community is offering 441 thousand tons for sugar A and ca. 4 thousand tons for sugar B. Agriculture is undoubtedly politically sensitive both in Western and Eastern Europe. Sugar production in the Czech Republic and elsewhere shows not insignificant seasonal deviations (in thousands of tons: in 1996/7, 610; in 1997/8, 532; in 1998/9, 470; in 1999/2000, 395; in 2000/1, 434; in 2001/2, 491). Yet, in the last two seasons, production was already dampened by production quota systems. Excess sugar is produced in the Czech Republic. The volume of exported sugar consistently exceeds the volume of imported sugar (including sugar in foods and beverages). Yet, sugar imports into the Czech Republic are restricted by import duties and quotas; in contrast, export is supported.

The sugar production quota system now existing in the Czech Republic, despite its special features, is not incommensurable with the EC system. Pressure from the EC for the reduction of sugar production in the Czech Republic continues, which provides a reason for introducing and applying Czech sugar production quotas.

Therefore, we must reject the opinion that every sugar production quota system based on the State Agricultural Intervention Fund Act and ensured by penalty levies under § 13 of that Act is an unusual provision in terms of international and European comparison.

In addition, on the basis of provisions common to all production quota systems in Czech agriculture, a milk production quota system is established; here the penalty levy is determined and imposed the same way as in the European Community. Therefore, there is no reason to annul § 13 of the Act.

X.

In its judgment no. 410/2001 Coll., the Constitutional Court did not permit further sub-statutory delegation, under which, according to the adjudicated directive's provisions on publication, the amounts of the reserve for subsequent years in the Bulletin of the Ministry of Agriculture shall be set by the Ministry (minister). The present situation is similar. The provisions of § 4 para. 3 of government directive no.114/2001 Coll. authorize the Fund to determine the amount of reserve for allocation. The Constitutional Court's opinion can not be opposite. The amount of reserve for allocation is an requirement of the production quota system under § 12 para. 3 a 4 of the Agricultural Intervention Fund Act, which the government is to create by directive.

The claim of some parties to the proceedings that the Ministry of Finance has jurisdiction to determine the minimum price of sugar on the basis of Act no. 526/1990 Coll., as amended by later regulations, is incorrect. It overlooks the express provision of § 12 para. 4 of the Agricultural Intervention Fund Act. This jurisdictional norm is unambiguously a lex specialis for general price regulations. Jurisdiction to determine the minimum price belongs to the government, which is to do so by directive. A reference to the unsuitability of such a method of setting a price by a directive applied for a period of several years is groundless. The effort to transfer jurisdiction to a different body, which uses a legally problematic form of price setting, is only the result of unwillingness to observe the recommendation of § 12 para. 5 of the Agricultural Intervention Fund Act that directives on production quota systems be "generally" passed for a one year period.

Evaluation of the Fund's jurisdiction is not unambiguous, in light of the Agricultural Intervention Fund Act. Although it does not authorize the Fund to allocate quotas, it provides that it shall make use of the production quota system [§ 1 para. 2 let. d)], through which it implements measures and introduces market regulations for stabilizing the market in agricultural and food products (§ 1 para. 2). The authorization to allocate production quotas arises at least from the context of the Act and general provisions on the Fund's activities. The provision of § 7 of government directive no. 114/2001 Coll., which is proposed to be annulled on the basis of the claimed lack of jurisdiction, appears

unconstitutional primarily due to preservation of unjustifiable differentiation between individual producers.

XI.

The group of deputies casts doubt on the model where the government can, by directive, introduce production quota systems in a scope which markedly exceeds their use in the European Union. We can confirm that the State Agricultural Intervention Fund Act does not specify in detail the agricultural and food products whose production can be restricted by production quota systems. The extent of room for applying serious restrictions, such as production quotas, reaches the very limit of acceptability in terms of the constitutional principles of the separation of powers. The reference to commitments arising from negotiations on accession to the European Union under § 12 para. 3 of the Agricultural Intervention Fund Act is merely a legally indistinct restriction. Comparison with other countries also testifies to an excessive inclination toward regulation by sub-statutory regulations. For example, Poland, which also seeks to join the European Union, introduces production quota systems for agricultural production and does so through a special law (Ustawa o regulacji rynku cukru from 2001). However, the group of deputies does not propose annulment of the relevant provisions of the Agricultural Intervention Fund Act on the substantive jurisdiction of the Act (the range of economic sectors subject to regulation).

XII.

In contrast to government directive no.445/2000 Coll., which specifies the qualitative elements of cow's milk, government directive no. 114/2001 Coll. refers, in a footnote, to a different legal regulation. We can not share the position of the group of deputies on the absence of a definition of sugar, as this legal regulation specifies, in a constitutionally fully acceptable manner (Ministry of Agriculture decree no. 334/1997 Coll., issued on the basis and within the limits of Act no. 110/1997 Coll.), the qualitative elements of sugar, naturally sugar produced in volumes determined by production quotas.

We can not agree with the position that § 5 para. 5 of the Agricultural Intervention Fund Act rules out application of the Administrative Procedure Code for the Fund's decision making on quotas because it limits its use only to deciding on applications for support under § 1 para. 2. The group of deputies overlooks the systemic placement of this provision, which is applied only to the provision of support. The exclusion of the Administrative Procedure Code in and of itself in no way makes room for administrative discretion and the impossibility of judicial review derived from it. The Constitutional Court has already stated that in cases of unclear interpretation, administrative and judicial bodies should select an interpretation which ensures greater respect for the fundamental rights and freedoms, which also include the right to proper administrative proceedings and a fair trial.

As already stated, in drafting government directive no. 114/2001 Coll., the government overlooked the statutory recommendation to issue a directive for one year. Of course, it is not important whether a production quota system can be introduced by government directive repeatedly or not without the intervention of the legislature.

Nor does the group of deputies ask the Constitutional Court to annul those provisions of the Agricultural Intervention Fund Act or of government directive no. 114/2001 Coll., which, according to the group, establish an unacceptable form of defining sugar, ruling out judicial review, or inadequate time limits for the application of production quota systems. Even if the Constitutional Court recognized these objections, it could not make a decision within that scope.

XIII.

For the cited reasons, the Plenum of the Constitutional Court decided, under § 70 para. 1 of Act no. 182/1993 Coll., as amended by Act no. 48/2002 Coll., to annul § 4 para. 3, § 5 para. 3, § 7 and § 13 of government directive no. 114/2001 Coll.: § 4 para. 3 for inconsistency with Art. 78 of the Constitution; § 7 for inconsistency with Art. 1 of the Charter, Art. 11 para. 1 of the Charter and Art. 26 para. 1 and 2 of the Charter as well as § 12 para. 6 of the Agricultural Intervention Fund Act; § 13 for inconsistency with Art. 79 para. 3 of the Constitution as well as with § 12 para. 4 of the Agricultural Intervention Fund Act.

Although § 5 para. 3 of government directive no. 114/2001 Coll., in and of itself, is not necessarily inconsistent with the Constitutional Act or statues, the Constitutional Court annulled it as well, because it is closely related to the other cited provisions. A number of other provisions of government directive no. 114/2001 Coll. could meet this fate, but they were not proposed to be annulled, and the Constitutional Court is bound by the petition in its decision making.

The petition to annul § 13 of the Agricultural Intervention Fund Act was, for reasons cited in the reasoning of the judgment, denied under § 70 para. 2 of Act no. 182/1993 Coll.

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

Brno, 30 October, 2002

Dissenting Opinion

of judges JUDr. P. H. and JUDr. V. J. to the verdict in Constitutional Court judgment file no. Pl. ÚS 39/01, which denies the petition from a group of deputies to annul § 13 of Act no. 256/2000 Coll., on the State Agricultural Intervention Fund and Amending Certain Other Acts (the State Agricultural Intervention Fund Act).

This dissenting opinion, submitted to the verdict in Constitutional Court judgment file no. Pl. ÚS 39/01, which denies the petition from a group of deputies to § 13 of the State Agricultural Fund, is based on these reasons:

In its judgment in the matter of setting the value of a point in health insurance (file no. Pl. ÚS 24/99) the Constitutional Court expressed the constitutional law qualification of price regulation in a restrictive manner: "A necessary component of a democratic state governed by the rule of law is protection of the freedom of contract, which is a derivative of the constitutional protection of property rights under Art. 11 para. 1 of the Charter (whose basic component is ius disponendi). Therefore, price regulation is an exceptional measure, and acceptable only under quite limited conditions."

In its judgment file no. Pl. ÚS 3/2000, the Constitutional Court repeatedly addressed the issue of price regulation, this time in connection with evaluation of the constitutionality of legal regulation of rent. In doing so, it relied, in particular, on Art. 1 para. 2 of Protocol no. 1 to the Convention on the Protection of Human Rights and Fundamental Freedoms, which provides states the right to pass such laws as they consider necessary to regulate the use of property in accordance with the general interest, and from the case law of the European Court of Human Rights. According to this, such laws are especially necessary and usual in the field of housing, which, in modern societies, is becoming a central issue of social and economic policy; for this purpose legislation must have a wide scope for consideration (evaluation) ("margin of appreciation"), both in determining whether a public interest authorizing the application of regulatory measures exists, and also concerning the selection of detailed rules for implementing such measures. As the European Court for Human Rights emphasized in the case James et al., state intervention must observe the principle of "fair balance" between the demands of the society's public interest and the demands for protection of an individual's fundamental rights. There must be a reasonable (justified) proportionality between the means used and the aims pursued.

Thus, in this matter the Constitutional Court accepted possible price regulation of rent, but on condition of applying the principle of proportionality (for a comprehensive discussion of all components of the principle of proportionality see Constitutional Court judgments file nos. Pl. ÚS 4/94, Pl. ÚS 15/96, and Pl. ÚS 16/98). Although the Constitutional Court acknowledged the presence of the first component, i.e. suitability of the means used in relation to the aim pursued, it found a failure to observe the principle of necessity, i.e. subsidiarity of the means used in relation to other possible means, in terms of the fundamental right restricted thereby (in the given matter, the right to property): "In order for the owners of rental buildings to be able to meet their previously stated obligations and in order for the right of the individual to proper housing under Art. 11 of the International Covenant on Economic and Social Rights to also be realistically

considered, the route could have been chosen, for example, which was previously taken by the legislature of the first republic, which, in § 9 para. 4 of Act no. 32/1934 Coll., as amended by later regulations, permitted rent to be raised for reasons of payment of expenses incurred for occasional or exceptionally necessary repairs and renovations of a building." On the basis of this argument, the Constitutional Court concluded that there was violation of Art. 4 para. 3 a 4 of the Charter, in connection with Art. 11 para. 1 of the Charter.

From a general viewpoint, in the judgment in question the Constitutional Court also formulated another criterion for evaluation the constitutionality of price regulation: "Price regulation, if it is not to exceed the bounds of constitutionality, clearly may not reduce the price so much that the price, in view of all documented and necessarily incurred expenses, would eliminate the possibility at least of reimbursing them, because in that case it would actually imply a denial of the purpose and all functions of ownership." Insofar as the Constitutional Court decided on the issue of sugar production quotas, while evaluating the constitutionality of government directive no. 51/2000 Coll., in judgment file no. Pl. ÚS 45/2000 it restricted its arguments only to the question of observing safeguard contained in Art. 78 of the Constitution, and in another judgment, in the matter under file no. Pl. ÚS 5/01, as a result of the lack of an appropriate petition, the unconstitutionality of § 13 of the State Agricultural Fund was not evaluated.

The system of milk production quotas under Act no. 256/2000 Coll. and government directive no. 445/200Coll. is based on a penalizing price regulation under § 13 of the cited Act, applicable to that part of production by which the producer exceeds the set quotas. From a general perspective the Act on Prices considers acceptable reasons for introducing price regulation to be the endangering of a market through the effects of restriction of economic competition or an extraordinary market situation (§ 1 para. 6 Act no. 526/1990 Coll., on Prices, as amended by later regulations). In this regard it also fully corresponds to the paradigms of democratic economic thought (see P. A. Samuelson, W. Nordhaus, Ekonomie, Praha 1991). The Act on the State Agricultural Intervention Fund, insofar as it establishes the possibility of price regulation in agriculture, is a lex specialis to the Act on Prices. In terms of the Constitutional Court's case law thus far, the reasoning contained in the majority vote did not observe all safeguards which arise from the principle of proportionality. It did not analyze, in particular, the fulfillment of the condition of subsidiarity to possible alternative means permitting the aim pursued to be achieved, as the Constitutional Court did, for example, in the matter under file no. Pl. ÚS 3/2000. In the matter under file no. III. ÚS 31/97, the Constitutional Court applied European Community law as an interpretative tool for domestic law when it stated that it takes as its starting point the same values and principles on which the constitutional order of the Czech Republic is based, and thus represents the expression of European standards of democratic legal thought.

In judgment no. Pl. ÚS 5/01 the Constitutional Court, on condition of observing constitutional safeguard, recognized the possibility of price regulation in the system of freedom of ownership and a market economy. However, the price regulation contained in § 13 of the State Agricultural Fund Act enshrines a markedly more intensive penalty system, and thus represents a markedly more serious interference with the right to property than does the comparable European framework, which is given by EC Council directive no.

1260/2001. The foregoing indicates that there are multiple alternative means of price regulation, and the Czech legislature, without giving grounds for its steps in a transparent way, did not accept the requirement of subsidiarity, according to which, if the purpose sought by the legislature can be achieved by alternative normative means, then the constitutional one is that which limits a given constitutionally protected right to the smallest degree. In the opinion of the author of this dissenting opinion this, i.e. violation of the principle of proportionality, is grounds for annulment of § 13 of the Act on the State Intervention Fund due to conflict with Art. 11 Of the Charter of Fundamental Rights and Freedoms and with Art. 1 of the Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms.

Brno, 30 October, 2001

Dissenting Opinion

of judges JUDr. E. W., JUDr. V. Č. and JUDr. E. Z. to the part of the verdict in Constitutional Court judgment file no. Pl. ÚS 39/01, which denies the petition of the group of deputies to annul § 13 of Act no. 256/2000 Coll., on the State Agricultural Intervention Fund and Amending Certain Other Acts (the State Agricultural Intervention Fund Act)

We dissent from the part of the verdict of the abovementioned judgment which denies the petition to annul § 13 of the Agricultural Intervention Fund Act.

We grant that the quota system is, by its nature and effect, an instrument different from simple price regulation, which is related to necessary interference with the content of contractual relationships.

The Constitutional Court already ruled, in judgment file no. Pl. ÚS 5/01, that the penalty levy, in the amount set, derived from the minimum price of milk for production in an amount exceeding an individual production quota under § 13 of Act no. 256/2000 Coll., in and of itself, is a necessary instrument which the state must have at its disposal in implementing any – including quantitative – regulation of economic life.

Nonetheless, we believe that the chosen method, and in particular the degree of penalizing production over the level of an allocated quota or without an allocated quota under § 13 violates the principle of proportionality, especially in comparative perspective with the legal framework implemented in European law (EC Council directive no. 1260/2001). If the main argument for preserving the production quota system and penalizing instances of exceeding them is the fact that a similar system is applied in European Community law, then we consider it necessary for the legal framework in the CR to preserve the same degree and intensity of intervention in ownership rights.

In view of this, we also can not accept the opinion that a radical intervention by the Constitutional Court would represent, in the case at hand, a step toward a concept of domestically guaranteed fundamental rights which would not stand after the entry of the CR into the European Union. The approximation of Czech law is supposed to be conducted

in such a manner so that the same principles which are applied in European law are preserved. This also applies in the case of preserving the proportionality of the legal framework, i.e. aligning both the purposes and the means which are used. In any case, the commitment to approximation and reception of European law itself is built on the principle of approaching and gradual aligning, not creation of stricter regimes which interfere to a greater degree in individuals' fundamental rights and freedoms. Moreover, in such a case, we consider the reference to the European framework to be, at a minimum, not earnest, and, for example, also politically counter-productive.

The reference to the regulation of production quotas in European law in and of itself demonstrates that the legislature had a different, more commensurate alternative.

The failure to observe the principle of proportionality in the given matter is all the more serious because the legislature left the selection of commodities for which a quota system is established up to bodies of the executive branch. In my opinion, the legislature thereby abandoned its jurisdiction, which it unjustifiably left to the executive branch. A situation where the system of penalty levies is directly tied to a system of quotas for one or another product, where this is justified by the public interest in stabilization of a given market sector, also corresponds to the postulate of proportionality. However, in the current legislative state, a uniform and blanket system of penalty levies can be applied to any commodity for which the executive branch imposes quotas. The system applied in EC law is likewise not reflected in this aspect of the legal framework.

The principle of proportionality was derived as a public law principle by the Court of Justice of the European Communities from the principle of a state governed by the rule of law for the purpose of protecting persons from intervention by EC state bodies and national public bodies. The EC Court (decision no. 4/73 Nold v. Commission /1974/) based this primarily on German and French case law, whose development can be described as a judicial response to the increase in power held by administrative bodies and as a means of moderating administrative discretion (T. Tridimas, The General Principles of EC Law, Oxford University Press, 2000).

In interpreting the principle of proportionality, and taken comprehensively, above all the principle of a stated governed by the rule of law, the Constitutional Court of the CR cannot overlook the European dimension of these principles, if its case law is also to perform an integrative role.

In view of the abovementioned facts, we believe that there were grounds for the Constitutional Court to also annul § 13 of Act no. 256/2000 Coll., as proposed by the petitioner, due to conflict with Art. 1 para. 1 of the Constitution and Art. 11 of the Charter of Fundamental Rights and Freedoms.

In Brno, 30 October, 2002