2010/10/06 - PL. ÚS 39/08: ORGANIZATION OF JUDICIARY

HEADNOTES
1. Although the rules of procedure of the Chamber of Deputies do not recognize a comprehensive amending proposal as an institution of regulatory law, it can be the basis for discussion. However, that does not mean that a subject with the right of legislative initiative ceases to be the "master of the bill," because it is still his legislative initiative. Therefore, only it has the authority of disposal with the bill, and can withdraw it without anything further, until the end of debate in the second reading in which his legislative initiative is discussed on the basis of the comprehensive amending proposal ((§ 64 in connection with § 86 par. 6 of Act no. 90/1995 Coll., on the Rules of Procedure of the Chamber of Deputies), and, with the consent of the Chamber of Deputies, even in the third reading.

2. The Constitutional Court concluded that an immanent feature of the office of a judge is its continuous nature. Therefore, membership in the consulting bodies of a ministry, the government, and both chambers of Parliament, just like performing the tasks of these various components of the state power, is inconsistent with the principle of the separation of powers. Therefore, the assignment of judges to fulfill tasks in other branches of state power is in conflict with Art. 82 par. 3 of the Constitution, and, in view of the fact that the Constitutional Court has already expressed this legal opinion (judgment Pl. ÚS 7/02), also with Art. 89 par. 2 of the Constitution.

3. It is not possible to construct a duality in the legal position of the chairman of a court as an official of state administration, on one hand, and a judge, on the other hand. Therefore, the means for protection of court officials must be comparable with the means for protection of a judge. This must apply not only to the manner of recalling court officials, but also temporary removal of them from office.

4. The use of the singular or plural in a legal regulation does not by itself definitely determine how many persons it may affect. In case of appointment of the Supreme Court´s vice-chairmen under Art. 62 letter f) of the Constitution of the Czech Republic, both the legislature, just like the appointing body, are limited in terms of the rules of the separation of powers and the need to ensure the independent exercise of the judiciary. Therefore, it is not admissible, in the framework of statutory regulation of the vice-chairmen appointment to create a room for the interference from the side of executive power. The provision § 102 par. 1 of the Act on Courts and Judges does not create sufficient guarantees for the independence of judicial branch in relation to the executive power, as it creates conditions for such possible interference in the independence of the judicial branch

5. The statutory framework must not create conditions for threatening of constitutionally required independence and impartiality of judges. Possible unconstitutional situations in such a serious sphere need to be eliminated in

advance. The problem is the very possibility of repeat appointment, which can lead court officials to act in a way that would meet the requirements for their repeat appointment, or can lead to their individual actions, including their decision making, to be seen and assessed that way by the outside world.

6. Therefore, this provision was annulled as unconstitutional, because, as a manifestation of arbitrariness by the legislature, it interferes in the principles of a law-based state under Art. 1 par. 1 of the Constitution. At the same time, given the circumstances of the case, it is a violation of the right to access to public office on equal terms under Art. 21 par. 4 of the Charter. In view of the circumstances of the case, this is also an impermissible covert form of an individual legal act directed against a particular person, and therefore an attempt to interfere in the independence of the judicial branch.

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE REPUBLIC

On 6 October 2010, the Plenum of the Constitutional Court, consisting of Stanislav Balík, František Duchoň, Vlasta Formánková, Vojen Güttler, Pavel Holländer, Ivana Janů, Vladimír Kůrka, Dagmar Lastovecká, Jiří Mucha, Jan Musil, Jiří Nykodým, Pavel Rychetský, Miloslav Výborný and Eliška Wagnerová, ruled in the matter of a petition from a group of senators of the Senate of the Parliament of the Czech Republic, represented by Senator Mgr. Soňa Paukrtová, seeking the annulment of points 1, 2, 3, 29, 30, 31, 32, 33, 34, 35, 36, 38, 41, 42 and 49 of Art. I, points 4, 5, 6, 7, 8, 9, 10 and 11 of Art. II, points 2 and 3 of Art. III, as well as Art. IV of Act no. 314/2008 Coll., which amends Act no. 6/2002 Coll., on Courts, Judges, Trainee Judges, and the State Administration of Courts and Amending Certain Other Acts (the “Act on Courts and Judges”), as amended by later regulations, Act no. 150/2002 Coll., the Administrative Procedure Code, as amended by later regulations, Act no. 7/2002 Coll., on Proceedings in Matters concerning the Courts and State Prosecutors, as amended by later regulations, Act no. 349/1999 Coll., on the Public Defender of Rights, as amended by later regulations, Act no. 283/1993 Coll., on the State Prosecutor’s Office, as amended by later regulations, Act no. 200/1990 Coll., on Offences, as amended by later regulations, and Act no. 85/1996 Coll., on Advocacy, as amended by later regulations, and seeking the annulment of the words “to the Ministry or” in § 68 par. 1 and in § 68 par. 2 let. b) and seeking the annulment of § 100a of Act no. 6/2002 Coll., on Courts and Judges, as amended by Act no. 314/2008 Coll., in eventum the annulment of: in Act no. 6/2002 Coll., on Courts, Judges, Trainee Judges, and the State Administration of Courts and Amending Certain Other Acts (the “Act on Courts and Judges”), as amended by Act no. 151/2002 Coll., Act no. 228/2002 Coll., the Constitutional Court judgment promulgated as no. 349/2002 Coll., Act no. 192/2003 Coll., Act no. 441/2003 Coll., Act no. 626/2004 Coll., Act no. 349/2005 Coll., Act no. 413/2005 Coll., Act no. 79/2006 Coll., Act no. 221/2006 Coll., Act no. 233/2006 Coll., Act no. 264/2006 Coll., Act no. 267/2006 Coll., Act no. 342/2006 Coll., the Constitutional Court

judgment promulgated as no. 397/2006 Coll., Act no. 184/2008 Coll. and Act no. 314/2008 Coll., the words “vice chairmen” in § 15 par. 1, the words “vice chairmen” in § 15 par. 2, the words “vice chairmen” in § 23 par. 1, § 102, § 103 par. 1 and 2, § 104 par. 1 and 2, § 105 par. 1 and 2, § 105a, § 108 par. 2, the words “vice chairmen of the Supreme Court” in § 119 par. 2, the words “vice chairmen” in § 121 par. 2, the words “vice chairmen” in § 168, further, in Act no. 314/2008 Coll. in Art. II points 4, 5, 6, 7, 8, 9, 10 and 11, further, § 13 par. 3 and § 13a in Act no. 150/2002 Coll., the Administrative Procedure Code, as amended by Act no. 314/2008 Coll., and in connection therewith Art. IV in Act no. 314/2008 Coll., further, the words “to the Ministry or” in § 68 par. 1 and in § 68 par. 2 let. b) of Act no. 6/2002 Coll., as amended by Act no. 314/2008 Coll., and seeking the annulment of § 100a of that Act, in eventum the annulment of the words “vice chairmen” in § 15 par. 1, § 23 par. 1 and in § 102 par. 2, the words “vice chairmen” in § 15 par. 2 and in § 121 par. 2, the words “the vice chairman” in § 102 par. 1 and in § 168, and the words “vice chairmen of the Supreme Court” in § 119 par. 2, further the words “to the Ministry or” in § 68 par. 1 and in § 68 par. 2 let. b), further § 100a, § 102 par. 2, § 103 par. 2, § 104 par. 2, § 105 par. 2, § 105a, § 108 par. 2 of Act no. 6/2002 Coll., as amended by Act no. 314/2008 Coll.; further § 13 par. 3 and § 13a of Act no. 150/2002 Coll., the Administrative Procedure Code, as amended by Act no. 314/2008 Coll., and points 4, 5, 6, 7, 8, 9, 10 and 11 of Art. II in Part One of Act no. 314/2008 Coll., with the participation of the Chamber of Deputies of the Parliament of the Czech Republic and the Senate of the Parliament of the Czech Republic as parties to the proceeding, as follows:

I. The words “to the Ministry or” in § 68 par. 1, the words “to the Ministry or” in § 68 par. 2 let. b), and § 100a par. 1 let. b) of Act no. 6/2002 Coll., on Courts, Judges, Trainee Judges, and the State Administration of Courts and Amending Certain Other Acts (the “Act on Courts and Judges”), as amended by Act no. 314/2008 Coll., which amends Act no. 6/2002 Coll., on Courts, Judges, Trainee Judges, and the State Administration of Courts and Amending Certain Other Acts (the “Act on Courts and Judges”), as amended by later regulations, Act no. 150/2002 Coll., the Administrative Procedure Code, as amended by later regulations, Act no. 7/2002 Coll., on Proceedings in Matters concerning the Courts and State Prosecutors, as amended by later regulations, Act no. 349/1999 Coll., on the Public Defendor of Rights, as amended by later regulations, Act no. 283/1993 Coll., on the State Prosecutor’s Office, as amended by later regulations, Act no. 200/1990 Coll., on Offences, as amended by later regulations, and Act no. 85/1996 Coll., on Advocacy, as amended by later regulations, are annulled as of the day this judgment is promulgated in the Collection of Laws.

II. The words “and the vice chairman” In § 102 par. 1 of Act no. 6/2002 Coll., on Courts, Judges, Trainee Judges, and the State Administration of Courts and Amending Certain Other Acts (the “Act on Courts and Judges”), as amended by Act no. 314/2008 Coll., which amends Act no. 6/2002 Coll., on Courts, Judges, Trainee Judges, and the State Administration of Courts and Amending Certain Other Acts (the “Act on Courts and Judges”), as amended by later regulations, Act no. 150/2002 Coll., the Administrative Procedure Code, as amended by later regulations, Act no. 7/2002 Coll., on Proceedings in Matters concerning the Courts and State Prosecutors, as amended by later regulations, Act no.

349/1999 Coll., on the Public Defender of Rights, as amended by later regulations, Act no. 283/1993 Coll., on the State Prosecutor's Office, as amended by later regulations, Act no. 200/1990 Coll., on Offences, as amended by later regulations, and Act no. 85/1996 Coll., on Advocacy, as amended by later regulations, are annulled as of 1 October 2011.

III. Point 11 Art. II of Act no. 314/2008 Coll., which amends Act no. 6/2002 Coll., on Courts, Judges, Trainee Judges, and the State Administration of Courts and Amending Certain Other Acts (the "Act on Courts and Judges"), as amended by later regulations, Act no. 150/2002 Coll., the Administrative Procedure Code, as amended by later regulations, Act no. 7/2002 Coll., on Proceedings in Matters concerning the Courts and State Prosecutors, as amended by later regulations, Act no. 349/1999 Coll., on the Public Defender of Rights, as amended by later regulations, Act no. 283/1993 Coll., on the State Prosecutor's Office, as amended by later regulations, Act no. 200/1990 Coll., on Offences, as amended by later regulations, and Act no. 85/1996 Coll., on Advocacy, as amended by later regulations is annulled as of 1 October 2011.

IV. The provision of § 105a of Act no. 6/2002 Coll., on Courts, Judges, Trainee Judges, and the State Administration of Courts and Amending Certain Other Acts (the "Act on Courts and Judges"), as amended by Act no. 314/2008 Coll., which amends Act no. 6/2002 Coll., on Courts, Judges, Trainee Judges, and the State Administration of Courts and Amending Certain Other Acts (the "Act on Courts and Judges"), as amended by later regulations, Act no. 150/2002 Coll., the Administrative Procedure Code, as amended by later regulations, Act no. 7/2002 Coll., on Proceedings in Matters concerning the Courts and State Prosecutors, as amended by later regulations, Act no. 349/1999 Coll., on the Public Ombudsman, as amended by later regulations, Act no. 283/1993 Coll., on the State Prosecutor's Office, as amended by later regulations, Act no. 200/1990 Coll., on Offences, as amended by later regulations, and Act no. 85/1996 Coll., on Advocacy, as amended by later regulations, and § 13a of Act no. 150/2002 Coll., the Administrative Procedure Code, as amended by later regulations, are annulled as of the day this decision is promulgated in the Collection of Laws.

V. The rest of the petition is denied.

REASONING

I.

Recapitulation of the Petition

1. A group of senators from the Senate of the Parliament of the Czech Republic (the "petitioner" filed a petition to open proceedings under § 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"), in which it seeks "annulment of parts of Act no. 314/2008 Coll., which amends Act no. 6/2002 Coll., Act no. 6/2002 Coll., on Courts, Judges, Trainee Judges, and the State Administration of Courts and Amending Certain Other Acts (the "Act on Courts and Judges"), as amended by later regulations, Act no. 150/2002 Coll., the Administrative

Procedure Code, as amended by later regulations, Act no. 7/2002 Coll., on Proceedings in Matters concerning the Courts and State Prosecutors, as amended by later regulations, Act no. 349/1999 Coll., on the Public Defender of Rights, as amended by later regulations, Act no. 283/1993 Coll., on the State Prosecutor's Office, as amended by later regulations, Act no. 200/1990 Coll., on Offences, as amended by later regulations, and Act no. 85/1996 Coll., on Advocacy, as amended by later regulations, and seeking the annulment of the words "to the Ministry or" in § 68 par. 1 and in § 68 par. 2 let. b) and seeking the annulment of § 100a of Act no. 6/2002 Coll., on Courts and Judges, as amended by Act no. 314/2008 Coll., in eventum the annulment of certain provisions of Act no. 6/2002 Coll., on Courts, Judges, Trainee Judges, and the State Administration of Courts and Amending Certain Other Acts (the "Act on Courts and Judges"), as amended by Act no. 151/2002 Coll., Act no. 228/2002 Coll., Constitutional Court judgment promulgated as no. 349/2002 Coll., Act no. 192/2003 Coll., Act no. 441/2003 Coll., Act no. 626/2004 Coll., Act no. 349/2005 Coll., Act no. 413/2005 Coll., Act no. 79/2006 Coll., Act no. 221/2006 Coll., Act no. 233/2006 Coll., Act no. 264/2006 Coll., Act no. 267/2006 Coll., Act no. 342/2006 Coll., Constitutional Court judgment promulgated as no. 397/2006 Coll., Act no. 184/2008 Coll. and Act no. 314/2008 Coll., as well as certain provisions of Act no. 150/2002 Coll., the Administrative Procedure Code, as amended by Act no. 192/2003 Coll., Act no. 22/2004 Coll., Act no. 237/2004 Coll., Act no. 436/2004 Coll., Act no. 555/2004 Coll., Act no. 127/2005 Coll., Act no. 350/2005 Coll., Act no. 357/2005 Coll., Act no. 413/2005 Coll., Act no. 79/2006 Coll., Act no. 112/2006 Coll., Act no. 159/2006 Coll., Act no. 165/2006 Coll., Act no. 189/2006 Coll., Act no. 267/2006 Coll. and Act no. 314/2008 Coll., and certain provisions of Act no. 314/2008 Coll.".

2. In view of the formulation of the heading of the petition, the structure of the reasoning, and the closing requested judgment (which does not match the heading), we must state that the petition really consists of several variously combined and variously justified petitions, in which the petitioner always seeks the annulment of a certain part of the provisions of the abovementioned legal regulations, and in the event that the Constitutional Court does not agree with the arguments presented and not grant the petition as thus justified, it proposes another formulation of the proposed judgment as an alternative. Therefore it was necessary, in the interests of clarity, to dissect the petition, according to the variations of the proposed judgment, into individual claims of unconstitutionality, and take a position on them one at a time. In terms of its case law [judgment file no. Pl. ÚS 16/93 of 24 May 1994 (N 25/1 SbNU 189; 131/1994 Coll.)] the Constitutional Court took as determinative the alternatives for the proposed judgment in the petition, because the heading and reasoning do not always correspond to it. Generally, in summary, we can state that the petitioner:

a) Primarily sought annulment of those parts of Act no. 314/2008 Coll., the adoption of which, in its opinion, violates the procedural rules of the legislative process through a comprehensive amending proposal. That proposal is joined with a proposal for the annulment of selected parts of § 68 par. 1, § 68 par. 2 let. b) and § 100a of the Act on Courts and Judges with different arguments, because those provisions were not affected by the processing of the government bill through an amending proposal.

b) In the event that the Constitutional Court does not agree with its arguments, the petitioner proposes the annulment of the same parts of Act no. 314/2008 Coll., but on the grounds of their substantive law inconsistency with constitutional regulations. In that case it would then be necessary to annul the appropriate the provisions stated below in the statutes that Act no. 314/2008 Coll. amended. This alternative proposed judgment is also joined to the proposal for the annulment of selected parts of § 68 par. 1, § 68 par. 2 let. b) and § 100a of the Act on Courts and Judges.

c) Finally, in the event that the Constitutional Court did not grant this proposal either, the petitioner presents for annulment certain provisions of the Act on Courts and Judges and the Administrative Procedure Code, amended by Act no. 314/2008 Coll., or certain individual provisions of Act no. 314/2008 Coll. with reasoning that is no longer based on the claimed unconstitutionality of using a comprehensive amending proposal. In that event as well, the petition seeks the annulment of selected parts of § 68 par. 1, § 68 par. 2 let. b) and § 100a of the Act on Courts and Judges.

In view of the formulation of the petition's reasoning and its division into three alternative proposed judgments, the Constitutional Court decided to first review the issue of the process of adoption of Act no. 314/2008 Coll. and subsequently the petitioner's objections based on the alleged inconsistency of individual amended provisions of the Act on Courts and Judges, the Administrative Procedure Code, and individual provisions of Act no. 314/2008 Coll. with the constitutional order.

II.
The text of the Contested Provisions and the Petitioner's Arguments
3. The petitioner contests the individual parts of Act no. 314/2008 Coll. on procedural grounds, and in that case its petition is directed against the amending statute, Act no. 314/2008 Coll., as corresponds to the Constitutional Court's settled case law. The alternatives contest the content of the amendment, and here the petition is directed against the amended Act on Courts and Judges and the Administrative Procedure Code [see the alternative proposed judgments in 2b) and 2c)], or against Art. II and Art. IV of Act no. 314/2008 Coll., which stand alone and are not amending provisions.

II.a
Unconstitutionality of the Institution of a Comprehensive Amending Proposal
4. The petitioner first asks the Constitutional Court to annul points 1, 2, 3, 29, 30, 31, 32, 33, 34, 35, 36, 38, 41, 42 and 49 of Art. I, points 4, 5, 6, 7, 8, 9, 10 and 11 of Art. II (transitional provisions for the implementation of a term of office in the Act on Courts and Judges), points 2 and 3 of Art III (implementing a term of office for the chairman and vice chairman of the Supreme Administrative Court and the possibility of repeat appointment), as well as Art. IV of Act no. 314/2008 Coll. (transitional provisions for the implementation of a term of office in the Administrative Procedure Code). It is not necessary to introduce the contested provisions in this case. As a whole they are part of the "comprehensive amending proposal" the use of which (regardless of its content) the petitioner considers to be unconstitutional. Also unconstitutional according to the petitioner is the very process of adoption of this part of Act no. 314/2008 Coll., which affects the

abovementioned points in Art. I, Art. II, Art. III and Art. IV. In that case, this part of the petition would be resolved by the Constitutional Court concluding that the cited parts of Act no. 314/2008 Coll. were not adopted in a constitutionally prescribed manner. Although the petitioner proposes annulling the statute on the grounds of failure to observe procedure, nevertheless it proposes annulling only some of the measures adopted in that manner (see 12 and 13).

5. In the event that the Constitutional Court evaluates the basic proposal [see 2a)] differently, and concludes that the arguments presented thereto are – as the petitioner states – more of a substantive law nature, the alternative proposal is to annul all provisions in Act no. 6/2002 Coll. and in Act no. 150/2002 Coll. that are amended by those provisions of Act no. 314/2008 Coll. that exceeded the scope of the government's original legislative initiative. Therefore, the following are proposed to be annulled in the Act on Courts and Judges
- in § 15 par. 1, the words "vice chairmen,"
- in § 15 par. 2 the words "vice chairmen,"
- in § 23 par. 1 the words "vice chairmen,"
- as a whole, § 102, § 103 par. 1 and 2, § 104 par. 1 and 2, § 105 par. 1 and 2, § 105a, § 108 par. 2,
- in § 119 par. 2 the words "vice chairmen of the Supreme Court,"
- in § 121 par. 2 the words "vice chairmen,"
- in § 168 the words "vice chairmen."

Further proposed for annulment in this connection are, in Act no. 314/2008 Coll. in Art. II, points 4, 5, 6, 7, 8, 9, 10 and 11, and in Act no. 150/2002 Coll., the Administrative Procedure Code, § 13 par. 3 and § 13a, and in connection therewith, Art. IV in Act no. 314/2008 Coll.

6. This second alternative [see 2b)] is, as already stated, identical in scope with the alternative in 2a), and differs only in the starting point for the arguments. Whereas the first case proposes annulling selected points of Act no. 314/2008 Coll., i.e. amendments to the abovementioned statutes that go beyond the scope of the government's original legislative initiative, the second alternative proposed judgment proposes annulling individual provisions of these amended statutes in the scope in which they were amended by Act no. 314/2008 Coll. In this case the petitioner did not develop its arguments in more detail, but only stated that exceeding the scope of the government's original legislative initiative could be considered (if not procedurally) to be violation of the constitutional order from a substantive law standpoint. Thus, in terms of arguments, this alternative proposed judgment is identical with the previous alternative of objections, directed against the constitutionality of comprehensive amending proposals. Thus, this case concerns the constitutionality of the abovementioned provisions of the Act on Courts and Judges, points 4, 5, 6, 7, 8, 9, 10 and 11 of Art. II and Art. IV of Act no. 314/2008 Coll., § 13 and § 13a in Act no. 150/2002 Coll., the Administrative Procedure Code.

7. The constitutionally defective procedural errors during processing of Chamber of Deputies publication no. 425 that the petitioner presented to the Constitutional Court consist in the manner of adoption of Act no. 314/2008 Coll. through a "comprehensive amending proposal." The petitioner added that Art. 41 of the Constitution of the Czech Republic (the "Constitution") lists the subjects for

legislative initiative, and in other provisions constructs the foundations of the legislative process, to which additional layers of so-called “regulatory” law are added, in the form of the statutory framework or autonomous resolutions of the chambers of parliament, parliamentary customs, and settled practice. It emphasized that the Constitutional Court provides protection above all to the express wording of provisions [see judgment no. 331/2005 Coll. – judgment file no. Pl. ÚS 23/04 of 14 July 2005 (N 137/38 SbNU 9)], but not only to that [cf. e.g., judgments no. 476/2002 Coll. – judgment file no. Pl. ÚS 5/02 of 2 October 2002 (N 117/28 SbNU 25) and no. 37/2007 Coll. – judgment file no. Pl. ÚS 77/06 of 15 February 2007 (N 30/44 SbNU 349]. The significance of the individual levels of rules for the legislative process comes not only from the relevant level of legal force, but also from the degree of detail in the regulation: the more concise the regulation at a higher level of legal force, the more significant is the regulation at the lower level.

8. The petitioner further stated that the right of legislative initiative means not only the right to propose a bill, but also the right to have it discussed. The important point is that the right to submit amending proposals is an accessory the right of legislative initiative. However, in its opinion these amending proposals may not take the form of a “disguised legislative initiative.” Here it pointed out that the Constitutional Court had already identified and prohibited so-called “riders” (judgment no. 37/2007 Coll.), and, in the petitioner’s opinion, comprehensive amending proposals are a related institution, because their essence is to replace the entire text of a bill with a complete new text, usually prepared by the appropriate parliamentary committee, although under the Constitution a committee does not have legislative initiative. Thus, the parliamentary chamber in fact stops discussing a duly submitted bill, without having approved or rejected it. Yet, from this point on, amending proposals from deputies are to be formulated in relation to this new “bill,” although the deputies might have prepared them, in good faith, and after consultation with outside subjects, to the original bill. As with the “riders,” comprehensive amending proposals lack proper preparation and justification, and the government has no opportunity to respond to them, because it discussed a different draft (the original), the rights of the parliamentary minority may be infringed, there is increased risk of adopting an act that is inconsistent with the requirements of understandable, clear, and foreseeable law, because it is prepared to particular deadlines within Parliament. Thus, the process of adopting important laws through comprehensive amending proposals is inconsistent with the “right to good legislation,” and the principle of providing a hearing to all sides, which were stated in Constitutional Court judgment no. 37/2007 Coll.

9. Another objection in this regard is that comprehensive amending proposals, which “by-pass” the first parliamentary reading and distort the second reading, also affect the deeper levels of parliamentary procedure, which are neutral only in the sense of impartiality, but not absence of values; on the contrary, they are meant to permit informing the public about the decision-making process, hearing the affected interests, weighing various implications, including constitutional ones, whereby they promote the values of transparent, careful, informed and inclusive government.

10. According to the petitioner, a comprehensive amending proposal is also inconsistent with the Act on the Rules of Procedure of the Chamber of Deputies, because it is not aimed at deleting, expanding, or amending certain parts of the original bill [cf. § 63 par. 1 point 5 let. a)], but at completely replacing it, without, for example, containing a background report (written justification), without which it is difficult for senators (and not only them) to distinguish the intent of the legislature. At the same time, it does not permit one to evaluate the "close" relationship between individual amending proposals and the original text to be amended. Only individual amending proposals can correctly amend the components of the legislative intent of a bill's proponent in relation to the same subject matter.

11. For all the cited reasons, the petitioner considers the institution of a comprehensive amending proposal to be inconsistent, at a minimum, with Art. 1 par. 1, Art. 41 and Art. 44 of the Constitution.

12. Nevertheless, the petitioner does not seek annulment of Act no. 314/2008 Coll. as a whole, because, for one thing, it considers it appropriate to minimize derogative intervention by the Constitutional Court, and for another it recognizes the different method of preparing and discussing the original and newly added parts of a statute that are combined in a single comprehensive amending proposal. Therefore, it takes into account not only the form, but also the content of an amending proposal, a procedure that differs somewhat from so-called "riders", which can be relatively easily technically separated from the rest of a statute. In this regard, one can distinguish provisions that were duly submitted by the government as part of the government bill from provisions that were introduced into a bill by the constitutional law committee of the Chamber of Deputies. The former are processed in a standard manner and provided with a background report; the latter are supported only by a few sentences of explanation spoken at meetings of the two parliamentary chambers, which do not indicate what variations of the regulation were considered. The petitioner does not consider it important that the text supplemented by the constitutional law committee most likely originated at the Ministry of Justice, and that Minister of Justice J. Pospíšil supported the comprehensive amending proposal. According to the petitioner, that may be even worse, because the prescribed procedures were consciously violated. The legislative initiative belongs to the government, not to ministries. Generally, just as bureaucrats can circumvent a minister and put forth their own ideas of what laws should be like through direct conversations with deputies, a minister can also circumvent the (coalition) government, where he did not, or might not, succeed in putting forth his ideas. Both situations conflict with the government's position as the collegiate supreme body of the executive branch, which implements its program, to a considerable extent, with the help of its legislative initiative. Thus, "tunneling" around a bill can be seen as interference in the separation of powers. The petitioner also pointed to the preponderance of expertise that permits the government to prepare statutes taking into account various aspects of good quality law-making, i.e. material, formal, and organizational aspects (The Legislative Rules of the Government, the Government Legislative Council, comment proceedings). Ignoring them lowers the probability that a formally correct statute will be created, which is intensified by comprehensive amending proposals, which, by their nature, further dampen broader discussion and deliberation.

13. In this connection, the petitioner pointed out that the petition also affects one of the three fundamental branches of state power, on exceptionally sensitive and complicated issues (the appointment and recall of court officials, introducing terms of office, changing the situation at the Supreme Court, etc.). Therefore, the lack of justification, both in the background report and in all the readings during parliamentary debate, is unacceptable, which makes all the more evident the need to declare the process of adopting the amendment of the Act on Courts and Judges through a comprehensive amending proposal to be inconsistent with the principle of a rule of law state and a democratic legislative process (Art. 1 par. 1 and Art. 2 par. 3 of the Constitution) and with the "right to good laws" or the principle of giving all sides an opportunity to be heard. In this case, according to the petitioner, one is forced to doubt whether this particular course for the legislative process was not chosen precisely in an effort to omit an uncomfortable discussion with the judicial community, which is also inconsistent with the definition of democracy as government by discussion, not only between politicians, but especially between those governing and the governed. Therefore, the petitioner proposed annulling those parts of the constitutionally unacceptable form of a comprehensive amending proposal (see Publication no. 425/1. Chamber of Deputies. 5th electoral term. 2008), that were not properly submitted by the government and transparently discussed by the Chamber of Deputies, so not those parts n of Act no. 314/2008 Coll., that were part of the original government bill (Publication no. 425/0. Chamber of Deputies. 5th electoral term. 2008).

14. The petitioner believes it is possible that the Constitutional Court will consider the abovementioned arguments to be substantive law ones. In that case, it presented another alternative proposed judgment (see above, 5), formulated so that it would be possible to annul the consequences of amendment by Act no. 314/2008 Coll., as they manifested themselves in the Act on Courts and Judges and in the Administrative Procedure Code as the amended regulations, or in Art. II and Art. IV of Act no. 314/2008 Coll. (transitional provisions for the amendment of the cited statutes). The petitioner did not provide further justification for this proposal. We can only conclude from the petitioner's justification that, in contrast to the procedural nature of the objections in the first alternative proposed judgment, in the second alternative it proposes removing the consequences of amendment from a substantive law point of view. In other words, in this case the Constitutional Court is asked to consider the violation of procedure to be violation of the content of the constitutional order.

15. Thus, we can state, in summary, that the first two alternative proposed judgments consider the fundamental problem to be the unconstitutionality of using a comprehensive amending proposal. The first alternative is directed against selected parts of Act no. 314/2008 Coll., which amends Act no. 6/2002 Coll., on Courts, Judges, Trainee Judges, and the State Administration of Courts and Amending Certain other Acts (the Act on Courts and Judges), as amended by later regulations, Act no. 150/2002 Coll., the Administrative Procedure Code, as amended by later regulations, Act no. 7/2002 Coll., on Proceedings in Matters concerning Judges and State Prosecutors, as amended by later regulations, Act no. 349/1999 Coll., on the Public Ombudsman, as amended by later regulations, Act no. 283/1993 Coll., on the State Prosecutor's Office, as amended by later

regulations, Act no. 200/1990 Coll., on Offences, as amended by later regulations, a Act no. 85/1996 Coll., on Advocacy, as amended by later regulations. The second alternative proposed judgment is not directed against the amendment, i.e. Act no. 314/2008 Coll., but, in the same scope, against precisely designated provisions of the Act on Courts and Judges, the Administrative Procedure Code and Art. IV of Act no. 314/2008 Coll., although only with the note that this is done only in case the Constitutional Court concludes that the arguments in the first alternative proposed judgment are more of a substantive law nature, i.e., that inconsistency in content is also established by defective procedure through the use of a comprehensive amending proposal.

II.b
Unconstitutionality of § 68 par. 1, § 68 par. 2 let. b) and § 100a of the Act on Courts and Judges
16. The petitioner tied both alternative proposed judgments described above to another proposal, the proposal to annul selected parts of § 68 par. 1, § 68 par. 2 let. b) and § 100a of the Act on Courts and Judges. Regardless of the evaluation of the effects of adopting a statute through a comprehensive amending proposal, from a procedural or substantive law viewpoint, the petitioner seeks the annulment of assignment of judges to the Ministry of Justice and annulment of the possibility of submitting a proposal to open a disciplinary proceeding as grounds for temporarily removing a court chairman or vice chairman from office. These provisions were also part of the amending statute, Act no. 314/2008 Coll. (points 4, 5 and 28), but they had already been contained in the original text of the government bill (publication no. 425/0), so they are not affected by the defects that the petitioner connects with the use of a comprehensive amending proposal (publication no. 425/1). The petitioner included them in the third alternative proposed judgment, which is not based on arguments that the use of a comprehensive amending proposal is unconstitutional, but on arguments that the individual solutions chosen are unconstitutional. Therefore, the Constitutional Court will address them in a separate part of its decision. These contested provisions of the Act on Courts and Judges, including the contested parts (text marked in bold) read:
"§ 68
(1) A judge assigned to hold office at a particular court under § 67 or transferred to another court under § 71 and 72 can, with his consent, be temporarily assigned to another court for a period of no more than three years, in the interests of proper conduct of the judiciary, or, in the interest of utilizing his experience, to the Ministry or the Judicial Academy.
(2) Temporary assignment shall be decided by
b) the Minister of Justice, after discussion with the chairman of the court to which the judge is assigned under § 67 or transferred under § 71 and 72, in cases of temporary assignment of the judge to the Ministry or the Justice Academy."
"§ 100a
(1) The Minister of Justice may temporarily remove from office the chairman or vice chairman of a court
a) under conditions provided in § 100 par. 1 let. a) and c),
b) if he is subject to a disciplinary proceeding for such disciplinary violation for which the disciplinary complaint proposes imposing the disciplinary measure of recalling the judge from office or recalling a court chairman or vice chairman from

office, such removal being for a period until the disciplinary proceeding is terminated with legal effect.
(2) During the period of temporary removal from office under paragraph 1, the court chairman or vice chairman is not entitled to an increase in salary coefficient related to his office under a special regulation 6a). If the office of the court chairman or vice chairman was not terminated, the court chairman or vice chairman shall be paid the remaining part of his salary, if he would otherwise be entitled to it; this does not apply if the judge was convicted with legal effect of a crime.
(3) The provision of § 99 par. 2 applies analogously."

17. The petitioner's arguments are based on the claim that assigning judges to the Ministry of Justice is constitutionally disputable, because judges are primarily supposed to decide cases. Likewise, the level of a judge's pay is a material component of judicial independence, which, however, is necessary when deciding disputes about the law, not in the exercise of conceptual activities at the ministry, which also groundlessly burdens the state budget and establishes unequal compensation among ministry employees. It is intensified by extending the period of assignment for up to three years. The contested provisions are inconsistent with the principles of separation of powers and the independence of courts and judges, and can cast doubt on the independence of the judges thus assigned, who form personal connections at the Ministry or identify with implementation of Ministry policies, which they may come into conflict with in their judicial activities. Here the petitioner added to its arguments that, in view of the authority of the Minister of Justice to appoint and nominate judges, judge-interns will be well known to him, and generally compatible with him, so there is an inviting opportunity to choose court chairmen from their ranks. Because the chairmen nominate their vice chairmen, the ministry could, through "inconspicuous" personnel policy control the entire judiciary.

18. In the proposal to annul § 100a of the Act on Courts and Judges, the petitioner considers the most questionable point to be the authority of the Ministry of Justice to temporarily remove a judge from the office of court chairman or vice chairman, if recall from court office was proposed in a disciplinary proceeding against him. This is an instrument that can be abused, especially when the minister is himself the disciplinary plaintiff who proposed the penalty in question. He is only somewhat limited in this, by a fairly vague formulation of the factual elements. The minister, as the disciplinary plaintiff, creates the conditions for the minister, as the representative of the central state body administering the courts, to temporarily remove a court official from office. The same minister will at the same time have to ensure the temporary management of the court, which can thus change considerable until there is a verdict from the disciplinary court, reinstating the judge. This interferes in the independence of judges and courts and the separation of powers, and opens the possibility of arbitrariness and chance in the conduct of state administration of the judiciary.

19. However, according to the petitioner, the serious constitutional defect of § 100a of the Act on Courts and Judges lies not in the individual grounds for temporary removal from office, but in insufficient legal protection in comparison with the temporary removal from office of a judge, where it is possible to file

objections with the disciplinary court (see § 100 par. 4 of the same Act). Thus, in all cases governed by § 100a irreversible facts can occur during the temporary removal from office through interference by the executive body. However, limiting the temporary removal from office only to a court official indicates that this is not supposed to involve offences of grave importance, so the risk of the office being held by an inappropriate person becomes less visible in comparison with the threat to independence. Therefore, the petitioner finds sufficient the possibility of temporary removal from office of court chairman or vice chairman as a result of suspension of the office of judge, and thereby also the office of a court official (an accessory to the judicial office), and therefore proposes annulment of the entire provision of § 100a. If the legislature is not of that opinion, it should provide for the temporary removal from office only of a court chairman or vice chairman in a manner that is comparable, as regards legal protection, with the suspension of the office of judge. However, as the Constitutional Court cannot add a new provision to a statute, it is appropriate to annul the entire § 100a.

II.c
Unconstitutionality of an Indefinite Number of Vice chairmen of the Supreme Court
20. In the third alternative proposed judgment the petitioner also presented, with detailed justification, proposals to annul individual provisions of the abovementioned statues, stating that it did not connect them to the issue of applying a comprehensive amending proposal. This alternative is substantially the same as the second alternative. Specifically, in this case the petitioner contests these provisions and particular sections of them. In the Act on Courts and Judges, it contests as unconstitutional the fact that the amendment of the Act on Courts and Judges introduced an indefinite number of vice chairmen of the Supreme Court, expressed in the words "of vice chairmen" in § 15 par. 1, § 23 par. 1 and in § 102 par. 2, the words "vice chairmen" § 15 par. 2 and in § 121 par. 2, the words "vice chairmen in § 102 par. 1 and in § 168 and the words "vice chairmen of the Supreme Court" in § 119 par. 2 in the Act on Courts and Judges. Those provisions read:
"§ 15
(1) The Supreme Court consists of the chairman of the court, vice chairmen of the court, chairmen of grand panels, chairmen of panels, and other judges.
(2) The decision-making activity of the Supreme Court is performed by judges. The chairman and vice chairmen of the Supreme Court, in addition to the decision-making activity, also perform state administration of the Supreme Court in the scope provided by this Act. The chairmen of grand panels, in addition to the decision-making activity, also organize and direct the activity of the grand panels. The chairmen of panels, in addition to decision-making activity, also organize and direct the activity of the panels.
§ 23 par. 1
(1) The plenum of the Supreme Court consists of the chairmen, vice chairmen, chairmen of grand panels, chairmen of panels, and other judges of the Supreme Court.
§ 102 par. 1 and 2
(1) The chairman and vice chairmen of the Supreme Court are appointed from the ranks of judges by the President of the Republic.
(2) the term of office of the chairman and vice chairmen of the Supreme Court is 10 years.

§ 119 par. 2
Bodies of state administration of courts
(2) the bodies of state administration of courts are the chairman and vice chairmen of the Supreme Court, the chairman and vice chairman of the Supreme Administrative Court, and the chairmen and vice chairmen of high, regional, and district courts.
§ 121 par. 2
(2) The vice chairmen of the Supreme Court and vice chairmen of high courts perform state administration of these courts in the scope determined by their chairmen.
§ 168
The chairman of the Supreme Court handles complaints that contain complaints of delays in proceedings, inappropriate conduct or violation of the dignity of a proceeding by a vice chairman of a court, chairman of a panel, judge, judge's assistant, and other employees of the Supreme Court or by the chairman of a high court.".

21. The petitioner objects that this change is tied to an alleged inconsistency between the Act (the singular "vice chairman") and Art. 62 let. f) of the Constitution (the plural "vice chairmen"). In the petitioner's opinion, there was no inconsistency here, because the Act on Courts and Judges, based on authorization in Art. 91 par. 2 of the Constitution, regulated the organization structure of the Supreme Court so that, for substantive reasons, it only provided justification for one vice chairman position, which is anyway traditional in this country. In the period from 1918 to 1952 a court of final appeal typically had a chairman with one deputy. In the following period there was a chairman and several deputies who were deputies by virtue of holding the office of chairmen of grand panels ("expert vice chairmen"); this continued basically until 1988. It was disrupted at the level of the federal Supreme Court by the re-establishment (addition) of the position of vice chairman in response to the federalization of Czechoslovakia as of 1 January 1970. After 1988 there was a return to a situation similar to the first period, i.e. the offices of chairman and vice chairman. The combination of several vice chairmen and chairmen of grand panels thus departs from tradition and would have to be thoroughly justified: however, it is not justified at all. Moreover, this change led to stopping the proceeding in the matter of a petition from the President of the Republic, file no. Pl. ÚS 17/07 (a resolution not published in the Collection of Decisions, but available at http://nalus.usoud.cz) directed precisely at this inconsistency.

22. According to the petitioner, the legislature could certainly regulate the organizational structure of the Supreme Court differently, but it must do so in a way that is constitutionally correct. Here, however, there is no justification for the need for additional vice chairmen of the Supreme Court, but what is mainly overlooked is the fact that the relationship between statutes and the Constitution is based on making general provisions specific, not on mechanically adopting them, which, in this case, also has significant constitutional consequences. The legislature chose an indefinite wording because – unlike the Act on the Constitutional Court – it did not set the exact number of vice chairmen. Whereas with other general courts the number of vice chairmen is limited by the court chairman's proposal, here this is left to the discretion of the appointing body, i.e.

the President. This opened up the possibility for the executive branch, personified by the president, to interfere quite inappropriately and arbitrarily in the situation at the Supreme Court. The President is responsible for the activities of the Supreme Court, and is now given authority to appoint an indefinite number of vice chairmen, whereby he can change the position of the chairwoman of the Supreme Court, the Court's management model, burden the Court's budget with financial and other substantive claims from the new vice chairmen, etc. He can create career expectations among the Supreme Court judges, which may not be without an effect on their decision making.

23. Therefore, according to the petitioner, this legal framework is inconsistent with the principles of a democratic, rule of law state as regards the requirements that laws be certain and that laws clearly define the authority of a state body, as contained in Art. 1 par. 1 and Art. 2 par. 3 of the Constitution and Art. 2 par. 2 of the Charter of Fundamental Rights and Freedoms (the "Charter"). It also pointed to Constitutional Court judgments, e.g. no. 88/2008 Coll. – judgment file no. Pl. ÚS 24/07 of 31 January 2008 (N 26/48 SbNU 303), and no. 198/2003 Coll. – judgment file no. Pl. ÚS 11/02 of 11 June 2003 (N 87/30 SbNU 309). Setting and indefinite number of vice chairmen of the Constitutional Court is also inconsistent with the constitutionally enshrined prohibition on arbitrariness and chance (Art. 1, Art. 2 par. 3 of the Constitution and Art. 2 par. 2 of the Charter), and ultimately can also weaken the separation of powers.

II.d
Unconstitutionality of Introducing a Term of Office for the Chairmen and Vice-Chairmen of Courts

24. The petitioner also considered unconstitutional the introduction of terms of office for chairmen and vice chairmen of courts in § 102 par. 2, § 103 par. 2, § 104 par. 2, § 105 par. 2, and § 108 par. 2 of the Act on Courts and Judges. Those provisions read:
"§ 102 par. 2
(2) The term of office of the chairman and vice chairmen of the Supreme Court is 10 years.
§ 103 par. 2
(2) The term of office of the chairman and vice chairman of a high court is 7 years.
§ 104 par. 2
(2) The term of office of the chairman and vice chairman of a regional court is 7 years.
§ 105 par. 2
(2) The term of office of the chairman and vice chairman of a district court is 7 years.
§ 108 par. 2
(2) The office of chairman or vice chairman of a court under § 102 to 105 also ends upon expiration of the term of office.".

25. As regards the introduction of terms of office for chairmen and vice chairmen of courts, as the petitioner expressly states, it has a "feeling" that an important aim and purpose of the contested Act is to circumvent the case law of the Constitutional Court in the matter of the independence of courts [in particular,

judgment file no. Pl. ÚS 7/02 of 18 June 2002 (N 78/26 SbNU 273; 349/2002 Coll.) and judgment file no. Pl. ÚS 18/06 of 11 July 2006 (N 130/42 SbNU 13; 397/2006 Coll.)] and to limit the principle of an independent judiciary that is expressly stated in Art. 81 and 82 of the Constitution and Art. 36 of the Charter. Here it pointed to the conclusions in judgment file no. Pl. ÚS 7/02 (no. 349/2002 Coll.), justifying annulment of the then effective § 106 par. 1 of the Act on Courts and Judges, among other things by reference to the career progression of a judge and the possibility of being recalled from office only for reasons provided by law and through a disciplinary proceeding, which observes the independence of the judiciary, the principle of undisturbed exercise of a personal, independent, judicial mandate, and the separation of powers, although it is otherwise up to the legislature how to govern the exercise of court administration. The petitioner then summarized the conclusions of the Constitutional Court in judgment file no. Pl. ÚS 18/06 regarding the possibility of recalling the chairman of the Supreme Court, in which it stated that the office of court chairman, as well as the chairman of the Supreme Court, is inseparable from the office of a judge, because it is not possible to construct a duality in the legal status of the chairman of a court as a state administration official on the one hand, and a judge on the other hand; however, a statue may provide exceptions to the rule that a judge is not subject to recall from office, in particular on grounds of disciplinary liability. Thus, the legal regulation of recalling chairmen and vice chairmen of courts must also respect the constitutional principles of separation of powers, judicial independence, etc. Thus, one cannot establish any model for the recall of court unless it reflects constitutional values.

26. On that basis, the petitioner concludes that the contested legal framework basically circumvents this binding legal opinion of the Constitutional Court, because, instead of the model of recalling a court official, it introduces a new model of naming a court official for a definite period, with unlimited discretion on the part of the executive branch to name the same person to the same office repeatedly. It argues in more detail based on a concern about “management burnout” of officials who have been in office for perhaps twenty years or more. In this regard it points to a statistical study prepared by the documentation and analysis department of the Supreme Administrative Court, which indicates that as of 30 April 2008 there were 12 such officials, out of a total of 271. The statistics indicate that over 68 % of all court officials, i.e. more than two thirds, do not hold office for more than ten years, and one third of them were appointed in the last five years. The highest number of judicial officials (almost two thirds) is in an age group around or just under 50 years. Therefore, it is a question whether such a marginal share of judicial officials serving for a long period could be sufficient grounds for such serious legislative interference. It must be pointed out that these officials were not recalled by previous ministers, even at a time when that was very easy to do (in view of the lack of relevant Constitutional Court case law at the time). The petitioner also stated that what may be tolerated in the decision-making of a collegiate body that includes judicial representation should not be tolerated in the decision-making of political bodies in the executive branch.

27. The petitioner also argues on the basis of the specific agenda that court officials are responsible for. The legislature is not supposed to tailor the demands on court officials to administrative needs, but is supposed to derive from the necessary guarantees of the independence of judges and judicial officials the

volume and nature of the tasks that they can perform. A court official is a judge, a single person, whose consciousness cannot, under ordinary circumstances, be divided. Therefore, it is necessary, in the interest of judicial independence, to also accord certain attributes of independence to a court official, and that is why he should, if the situation arises be removed from office only by the decision of an independent and impartial body. The Act accepts a disciplinary proceeding as a path toward recalling court officials, only to immediately devalue it by specifying another reason when the office terminates, expiration of the term of office, which, according to the petitioner, can also be considered to violate Art. 89 par. 2 of the Constitution. Therefore, the petitioner emphasized that if repeat appointment with a virtually empty set of criteria is permitted simultaneously, this creates a risk of influencing the behavior of judges who wish to stay in office and are nearing the end of their term of office. The petitioner is aware that the Constitutional Court cannot force the legislature to establish a judicial representation body. However, it can clearly define what limitations the lack of such a body has in the creation of the judicial power. The petitioner supported these conclusions with examples from other countries with a model of judicial self-government or with an executive model like that of the Czech Republic (Austria, Germany), where, however, appointments are for an indefinite period of time. It also pointed out that in Anglo-American countries executive appointment of a court official for an indefinite period is the rule; moreover, Anglo-American theory does not at all distinguish between the position of a judge and that of a court official.

II.e
Unconstitutionality of Repeat Appointment of Court Officials
28. The petitioner made another claim of unconstitutionality concerning introduction of the possibility of repeat appointment of the chairmen and vice chairmen of courts. That provision reads:
"§ 105a
The court chairman and vice chairman under § 102 to 105 may be appointed to office repeatedly if
(a) during the period of holding office as chairman or vice chairman he was not found liable for a disciplinary offense committed during the exercise of that office, or
(b) during the period of holding office he was not convicted with legal effect of a crime.".

29. The petitioner justified the proposal on the grounds that, in its opinion, the possibility of repeat appointment of the chairman or vice chairman of a court is inconsistent with the independence of courts and judges. This is especially true in view of how the criteria for repeat appointment are, or are not, formulated; it is evident from them that aspects that are no expressed in the Act will necessarily dominate. Because the role of those who appoint court officials is held by (political) executive bodies, and not, e.g., a body that also includes judicial representation, this creates an area of uncertainty regarding how a court official, who is also a judge, will act in the effort to obtain a repeat appointment. This uncertainty can certainly be seen as conflicting with the requirements of the European Court of Human Rights, that a judge not only be independent and impartial, but also be seen to be so. The sensitivity of this issue is further intensified by preserving judicial internships at the Ministry of Justice, which are

newly extended for a period of up to three years (see the arguments in II.b). The Minister of Justice could appoint, or nominate for appointment, judges who have been working long-term outside the courts, who identified with the ministry, or even with a particular minister, whom they served as civil servants. Some of the statements by the Minister of Justice about internships as criteria for a "career as an official" make these concerns current. Thus, similarly to the Constitutional Court's judgment on electoral reform, this involves – among other things – the cumulative negative effect of individual provisions of the Act.

30. The petitioner sees another problem of repeat appointment in the transfer of some appointment authority from the Minister of Justice to the President of the Republic, who is not in any way equipped to follow the activities of judicial officials, so he will either limit himself to approving the minister's nomination, or, within his discretion, apply criteria that are more political. In comparison, in other European countries there is no doubt that the possibility of repeat appointment of a court official applies only where the deciding authority is held by a body that represents the courts, not an executive body; moreover, we find this institution only in the former communist countries, not in western Europe.

II.f
Unconstitutionality of Transition Provisions for the Introduction of a Term of Office for Chairmen and Vice Chairmen of High, Regional, and District courts

31. In this part of the petition the petitioner contests independent transitional provisions for the introduction of a term of office for chairmen and vice chairmen of high, regional, and district courts in points 4, 5, 6, 7, 8, 9, 10 and 11 of Art. II in Part One of Act no. 314/2008 Coll. The contested provisions of Art. II, points 4, 5, 6, 7, 8, 9, 10 and 11 of Act no. 314/2008 Coll. read:
"Art. II
Transitional Provisions
4. The term of office of chairmen and vice chairmen of high, regional, and district courts who were appointed to their office in 1989 and earlier terminates 1 year after the day that this Act goes into effect.
5. The term of office of chairmen and vice chairmen of high, regional, and district courts who were appointed to their office in 1990, terminates 2 years after the day that this Act goes into effect.
6. The term of office of chairmen and vice chairmen of high, regional, and district courts who were appointed to their office in 1991 to 1994, terminates 3 year after the day that this Act goes into effect.
7. The term of office of chairmen and vice chairmen of high, regional, and district courts who were appointed to their office in 1995 to 1998, terminates 4 years after the day that this Act goes into effect.
8. The term of office of chairmen and vice chairmen of high, regional, and district courts who were appointed to their office in 1999 and 2000, terminates 5 years after the day that this Act goes into effect.
9. The term of office of chairmen and vice chairmen of high, regional, and district courts who were appointed to their office in 2001 and 2002, terminates 6 years after the day that this Act goes into effect.
10. The term of office of chairmen and vice chairmen of high, regional, and district courts who were appointed to their office in 2003 to 2007 and in 2008

before the day that this Act goes into effect, terminates 7 years after the day that this Act goes into effect.
11. The term of office of the chairman and vice chairman of the Supreme Court terminates 5 years after the day that this Act goes into effect.”.

32. The petitioner sees the transitional provisions for the introduction of a term of office for chairmen and vice chairmen of high, regional, and district courts as unconstitutional because they set the end of the term of office for individual current court officials, for a period shorter than the entire term of office that the Act newly provides for these officials. This regulation interferes in the independence of the judicial branch, and is a clear case of false retroactivity, which is undesirable because it tramples on the legitimate expectations of these officials. In the event that the Constitutional Court does not grant the proposal to annul the terms of office, the petitioner stated that perhaps a constitutional alternative would be to complete the full term of office provided by the Act, calculated from the date the Act goes into effect, without the possibility of shortening this term of office arbitrarily in the transitional provisions of the Act. It emphasized this using the example of the chairwoman of the Supreme Court, whose office is to expire in five years, while that of the chairman of the Supreme Administrative Court, appointed less than a year later, would expire in ten years. The petitioner considers this to be an example of legislative arbitrariness in the form of a violation of the principle of formal justice (legal equality), decision-making by the legislature in individual matters, and a violation of the right to equal access to public office under Art. 21 par. 4 of the Charter.

II.g
Unconstitutionality of Transitional Provisions for the Introduction of a Term of Office for the Chairman and Vice Chairman of the Supreme Administrative Court
33. For similar reasons as in II.d and II.e the petitioner seeks annulment of the amended provisions of § 13 par. 3 and § 13a of Act no. 150/2002 Coll., the Administrative Procedure Code, as amended by Act no. 314/2008 Coll. (there Art. III, points 2 and 3), which also introduces a term of office for the chairman and vice chairman of the Supreme Administrative Court and the possibility of repeat appointment of them. In this case the petitioner does not contest the transitional provision of Art. IV of Act no. 314/2008 Coll., which provides that the term of office of the chairman and vice chairman of the Supreme Administrative Court terminates 10 years after the day that that Act goes into effect. The contested provisions read:
§ 13 par. 3
“(3) The term of office of the chairman and vice chairman of the Supreme Administrative Court is 10 years.”.
“§ 13a
The chairman or vice chairman of the Supreme Administrative Court may be appointed to office repeatedly if
(a) during the period of holding office as chairman or vice chairman he was not found liable for a disciplinary offense committed during the exercise of that office, or
(b) during the period of holding office he was not convicted with legal effect of a crime.”.

III.

Statements from the Parties to the Proceeding

34. Upon being called to do so by the Constitutional Court, both parties to the proceeding submitted statements. The statement on behalf of the Chamber of Deputies of the Parliament of the Czech Republic was made on 12 July 2007 by its Chairman, Ing. Miloslav Vlček, who, regardless of the fact that the petitioner contests one of the fundamental procedural steps in the legislative process, did not in fact take a position on the petition. He merely stated that the bill was approved in the constitutionally prescribed manner at a parliamentary session on 23 June 2008, in vote no. 242; out of 155 deputies present, 109 were in favor of the bill, and 8 against. After being passed by the Senate the bill was signed by the president and duly promulgated.

35. The Senate Chairman, MUDr. Přemysl Sobotka, made an extensive statement on its behalf, where he first recapitulated the contents of the bill. He provided more details about the discussion of the bill in the Senate, where the Minister of Justice, J. Pospíšil, supported both the original government bill and the amended text that came from the Chamber of Deputies. The report from Senator J. Rippelová contained a fundamental objection concerning the manner of discussing the bill in the Chamber of Deputies in the form of a comprehensive amending proposal. There was lively discussion of the bill in the constitutional law committee of the Senate, with the abundant participation of guests (e.g. JUDr. Josef Baxa, Chairman of the Supreme Administrative Court, JUDr. Iva Brožová, Chairwoman of the Supreme Court, representatives of the Judges Union of the Czech Republic, and others). The Senate Permanent committee for the Constitution of the Czech Republic and Parliamentary Procedure also consider the bill, reaching conclusions on which, according to the Chairman of the Senate, the petitioner partly bases its arguments. On 16 July 2008 the bill was discussed by the Senate. Out of 54 senators present, 35 senators were in favor, and 12 were against. The Chairman of the Senate also provided more information on the content of the discussion on the bill, and pointed out the problem of the complicated proposal to annul it, which mixes aspects of procedural and substantive unconstitutionality (see point II.a and point II.b). He also pointed out that the procedural concept of unconstitutionality, transformed in the middle alternative (designated here as II.b) of the proposed judgment into a “substantive law expression,” would, in the event of annulment, lead to undesirable and meaningless gaps in the statutory text, as well as to the overlooking of Art. IV of Act no. 314/2008 Coll. in the last alternative proposal. The Chairman of the senate left the decision up to the Constitutional Court.

IV.

Formal Prerequisites for Reviewing the Petition and the Constitutionality of the Legislative Procedure

36. The Constitutional Court concluded that the petition was submitted under § 64 par. 1 let. b) of the Act on the Constitutional Court, by a group of 21 senators, and is formally consistent with the requirements of the Act on the Constitutional Court. In proceedings on annulling a legal regulation, it is the Constitutional Court’s duty to first review whether the legal regulation concerned was approved within the

bounds of Constitutionally provided competence and in a constitutionally prescribed manner (§ 68 par. 2 of the Act on the Constitutional Court).

37. First it was necessary to review the requirements of a proceeding under § 66 and 67 of the Act on the Constitutional Court. The Act on Courts and Judges was amended in the meantime, by Act no. 7/2009 Coll., which amends Act no. 99/1963 Coll., the Civil Procedure Code, as amended by later regulations, and other related Acts, and by Act no. 41/2009 Coll., Amending Certain Acts in Connection with the Adoption of the Criminal Code; however, these statutes did not affect the provision the constitutionality of which is the subject of this proceeding. Likewise, the petition is not affected by amendments of the Act on Courts and Judges implemented by Acts no. 217/2009 Coll. (affecting § 42) and no. 227/2009 Coll. (§ 175a). The same is true of the amendment of the Administrative Procedure Code by Act no. 7/2009 Coll. (§ 41, 45, 49 and 55) and no. 320/2009 Coll. (§ 89 par. 5) and by Constitutional Act no. 195/2009 Coll. (annulled).

38. The fundamental question, in terms of meeting the requirements of legislative procedure, was the alternative proposed judgment in the petition cited above in II.a. If the Constitutional Court reached the same conclusion as the petitioner, there would be no further need to continue the proceeding, and the petition would be resolved here by annulling Act no. 314/2008 Coll. The same would apply for the second alternative proposed judgment (also in II.a) in the event that this manner of making an amendment were deemed to be not violation of the constitutionally prescribed manner of adoption, but as a substantive conflict with the constitutional order. Regarding these arguments of the petitioner, the Constitutional Court states that in this part both proposals, in the form of the first and second alternative proposed judgments, are unjustified.

39. Regarding the extensive arguments presented by the petitioner in II.a (points 4 to 14), the Constitutional Court states that it has already several times handled a petition seeking the annulment of a statute, the basis of which was a comprehensive amending proposal or an amending proposal [in particular judgment no. 88/2008 Coll. (see above), and, e.g., judgment no. 257/2008 Coll. – judgment file no. Pl. ÚS 56/05 of 27 March 2008 (N 60/48 SbNU 873), no. 163/2009 Coll. – judgment file no. Pl. ÚS 42/08 of 21 April 2009, and most recently, no. 9/2010 Coll. – judgment file no. Pl. ÚS 17/09 of 1 December 2009]. It never concluded that this practice was inconsistent with the constitutional laws of parliamentary law [and it expressly stated, e.g. in judgment no. 160/2008 Coll. – judgment file no. Pl. ÚS 25/07 of 13 March 2008 (N 56/48 SbNU 791), that the adoption and promulgation of the contested Act no. 181/2007 Coll., on the Institute for the Study of Totalitarian Regimes and on the Archive of the Security Services, and Amending Certain Acts, took place in the prescribed manner (similarly, judgment no. 163/2009)]. In contrast, in judgment III. ÚS 455/08 of 10 March 2009 the Constitutional Court took guidance in interpreting a legal regulation precisely the part that had been inserted in it as part of a comprehensive amending proposal. Likewise, in judgment no. 37/2007 Coll. (see above), in this regard the Constitutional Court only pointed out, with reference to an opinion given in the specialized literature (Kysela, J.: Tvorba práva v ČR: truchlohra se šťastným koncem?, [Formation of the Law in the CR: Tragedy with a Happy Ending?] Právní zpravodaj [Legal Reporter] no. 7/2006), that with comprehensive amending

proposals the government should insist on its right to respond to a bill under Art. 44 of the Constitution, because this is in fact a disguised new legislative initiative. In this case, however, it is evident that the proposal was initiated by the government, which authorized the Minister of Justice to represent it during the discussion of the bill amending the Act on Courts and Judges. It is not the job or the competence of the Constitutional Court to review every detail and step in the adoption of statutes, if it does not conflict with the constitutional rules of the legislative process (see judgment no. 331/2005 Coll. – see above). It likewise did not find this in the case of the comprehensive amending proposal that the Senate used in its discussion [judgment no. 207/2003 Coll. – judgment file no. Pl. ÚS 14/02 of 4 June 2003 (N 82/30 SbNU 263 Coll.)]. The objection concerning the use of a comprehensive amending proposal in judgment no. 88/2008 Coll. (see above) was applied only as a dissenting opinion. Likewise, the fact that this part of the petition lacks a justification that meets the requirements of § 86 par. 3 of the Act on the Rules of Procedure of the Chamber of Deputies does not in and of itself make a statute thus discussed and approved unconstitutional. The petitioner does, in this part, point to current problems in the legislative process, but they do not reach the level of being unconstitutional.

40. So-called “comprehensive amending proposals” have been part of regulatory law in the Czech Republic for some time. Laws, including constitutional ones, are passed based on such proposals. So far, the Constitutional Court has had no reason to cast doubt on this procedure, either in a case when it came at the initiative of a certain committee in the Chamber of Deputies in discussing government bills (the usual case), or in a case where it actually came from the government, which sought thereby to eliminate the adverse effects of deputies’ bills [see judgment no. 257/2008 Coll. (see above) in connection with the amendment of the Commercial Code implemented by Act no. 216/2005 Coll., and Syllová, J. and collective of authors: Parlament České republiky [The Parliament of the Czech Republic] 2nd ed. Prague 2008, p. 237]. The rules of procedure of the Chamber of Deputies do not recognize a comprehensive amending proposal. However, this is one of the institutions of parliamentary practice that is within the bounds of the constitutional order, when a bill is discussed on the basis of the legislative initiative of a bill sponsor authorized under Art. 41 par. 2 of the Constitution (here, publication no. 425/0), but the basis for discussion is precisely a comprehensive amending proposal (here, publication no. 425/1) from the appropriate chamber committee (here it was the constitutional law committee). However, that does not mean that a subject with the right of legislative initiative ceases to be the “master of the bill,” because it is still his legislative initiative. Therefore, only it has the authority of disposal with the bill (even though in the form of a comprehensive amending proposal), and can withdraw it without anything further, until the end of debate in the second reading in which his legislative initiative is discussed on the basis of the comprehensive amending proposal (§ 64 in connection with § 86 par. 6 of Act no. 90/1995 Coll., on the Rules of Procedure of the Chamber of Deputies), and, with the consent of the Chamber of Deputies, even in the third reading.

41. Therefore, the comprehensive amending proposal in the form of publication no. 425/1 was still only an amending proposal under § 63 par. 1 point 5 let. a) of the rules of procedure of the Chamber of Deputies. Therefore, as the sponsor of the bill, the government also had the opportunity to proceed under § 63 par. 2 of the

rules of procedure and propose suspension of the matter under discussion, or if rejected, to withdraw it under § 64 of the rules of procedure. In this case the government did not take these steps; on the contrary, its representative supported the bill in discussion in the Chamber of Deputies and defended it in the Senate. The fact that the minister representing the government declared during the second reading of the bill, on 18 June 2008, that he could “state on behalf of the Ministry of Justice, that we agree with this additions,” changes nothing about the fact that this concerned a government bill and the position of the government representative. Therefore, the Constitutional Court does not consider this procedure to generally violate the rules for the constitutionally prescribed process of passing laws, nor to be substantively inconsistent with the constitutional order in the specific case of approval of publication no. 425/0 in the Chamber of Deputies. A different procedure would in the end mean that the Constitutional Court, just as in the case of “riders” (judgment no. 37/2007 Coll. – see above), would establish pro futuro an obligation ex offo to review every petition under Art. 87 par. 1 let. a) of the Constitution also in terms of whether the reviewed statute was not adopted on the basis of a comprehensive amending proposal (the first alternative proposed judgment – in 4) and whether, in that case, the regulatory rights of the sponsor of the bill were preserved, perhaps ad hoc (the second alternative proposed judgment – in 5), whether it contains a sufficiently long justification. This procedure does not represent such unconstitutional interference. Here the Constitutional Court points out that two key components of the constitutional order were approved on the basis of a comprehensive amending proposal – the Charter, in 1991, and the Constitution, in 1992.

42. Therefore, this part of the petition was denied as unjustified. In addition, for the sake of completeness, the Constitutional Court must state that when an objection of unconstitutional procedure in approving statutes is raised, the principle cited by the petitioner, minimizing interference, is applied so that in such a case no decision is made concerning the content of the statute [cf. judgments no. 30/1998 Coll. – judgment file no. Pl. ÚS 33/97 of 17 December 1997 (N 163/9 SbNU 399), no. 476/2002 Coll. – judgment file no. Pl. ÚS 5/02 of 2 October 2002 (N 117/28 SbNU 25) and no. 283/2005 Coll. – judgment file no. Pl. ÚS 13/05 of 22 June 2005 (N 127/37 SbNU 593) and resolution file no. Pl. ÚS 5/98 of 22 April 1999 (U 32/14 SbNU 309)]. So the combination of proposed judgments in II.a in the form that the bill would be partly constitutional or would not be partly unconstitutional is not at all possible. Therefore, the Constitutional Court cannot, in such a case, choose what it will or will not review, because that is a matter to be decided in the chambers of Parliament. Here the Constitutional Court (see judgment no. 331/2005 Coll. – see above) must limit itself to observing the constitutional rules of the legislative process and to evaluating the results of Parliamentary decisions when they have been observed. If the rules of procedure of the parliamentary chamber preserve the status of a bill’s proponent as the master of the bill, there is generally no room for the Constitutional Court to intervene. Therefore, it cannot be the task of the Constitutional Court, under § 68 par. 2 of the Act on the Constitutional Court, to obligatorily submit every bill to the abovementioned review, which would go beyond the limits of procedural and would mean substantive review. Here too the rule applies that when implementing its policies the government must watch out for its rights. Therefore, it is also not correct, e.g., for such actions by the

former government to be subsequently questioned in the following electoral period.

43. Therefore, this part of the petition was denied as unjustified, from the standpoint of both levels of argument, i.e. procedural and substantive, as they were presented by the petitioner (in II.a).

V.
Evaluation of the Constitutionality of Individual Provisions Affected by the Petition
44. On that basis, the Constitutional Court reviewed the remaining part of the petition in points II.b to II.g, both in terms of the contested provision itself and in terms of the arguments connected to it. Therefore, it took as its basis the third proposed judgment in the petition, as in this case it is not important that the petitioner did not, in the complicated alternatives, also propose annulment of the transitional provision of Art. IV of Act no. 314/2008 Coll., because if this proposal were granted (introducing a term of office for the chairman of the Supreme Administrative Court) it would on the one hand by itself cease to make sense, and on the other hand it does not suffer the defects criticized in the other contested provisions, as the problem with Art. IV of Act no. 314/2008 Coll. lay only in the process of its adoption (the comprehensive amending proposal).

45. The Constitutional Court states generally, that in its position, it can review only the contested provisions of the Act on Courts and Judges and of Act no. 314/2008 Coll., not the set of all legal arrangements for the status of judges and court officials on one side and the bodies of the legislative branch, or, in particular, the executive branch (the President, the government, the Ministry of Justice, the Ministry of Finance), on the other side. The role of the Constitutional Court is to review the contested provisions, not to develop deliberations de lege ferenda and seek appropriate legislative solutions where the constitutional order gives that discretion to the legislature. Therefore, there are other possible solutions on the basis of judicial self-administration, but the Constitution does not require such solutions, and it is not possible to evaluate a contested legal framework from that point of view, nor to contest it on that basis. Likewise, it was not possible to go back to the historical context of court administration in connection with the federal organization (the non-existence of a federal ministry of justice in the Czechoslovak Federation, in contrast to most federations, and therefore also the different position of the Supreme Court, outside the reach of the ministries of justice of the two republics). Finally, we must emphasize that the petitioner bases its arguments on the functioning of the “negative cumulative effect” (point 29) of individual provisions in the amendment of the Act on Courts and Judges. It sees the interconnectedness of the individual amended regulations as interference in the independence of judges. In this connection, the Constitutional Court must point out that its doctrine [in particular, judgments no. 64/2001 Coll. – judgment file no. Pl. ÚS 42/2000 of 24 January 2001 (N 16/21 SbNU 113), no. 349/2002 Coll. (see above) and no. 318/2009 Coll. – judgment file no. Pl. ÚS 27/09 of 10 September 2009] can strengthen the reasoning of the petitioner’s position in those areas where all the constitutional defects raised by it are currently found. In the event that doubt is cast on the weight of the individual objections in some of the contested provisions, then their effect on other provisions also declines, and they may then pass a test of constitutionality. Finally, the Constitutional Court must emphasize that it had to

limit itself to objections directed against specific provisions of the Act on Courts and Judges, without being able to apply its conclusions to other frameworks introduced into the Act after the promulgation of judgment file no. Pl. ÚS 7/02 (no. 349/2002 Coll.) – see above.

V.a
Constitutionality of Assigning a Judge to the Ministry of Justice under § 68 par. 1, § 68 par. 2 let. b) of the Act on Courts and Judges

46. As the first two questions, the Constitutional Court reviewed the justification of the petition for the annulment of the words "the ministry or" in § 68 par. 1 and in § 68 par. 2 let. b) of the Act on Courts and Judges, and also § 100a of the Act on Courts and Judges (point II.b). These provisions are part of Act no. 314/2008 Coll. (see its points 4, 5 and 28), although they were already in the original text of the government bill, not in the comprehensive amending proposal, so they are not subject to the criticisms raised in the alternative proposed judgments in point II.a. On this point, the Constitutional Court concluded that the petition is justified only in part. It was guided by the following deliberations.

47. Proposal II.b has two independent parts. The first part proposes annulling the possibility of assigning a judge to the Ministry of Justice in the interest of utilizing his experience; the assignment is decided by the Minister of Justice with the consent of the judge, and after discussion with the chairman of the court to which the judge is assigned under § 67 or transferred § 71 and 72 of the Act on Courts and Judges. For purposes of evaluating the constitutional aspect of the matter, it is of fundamental importance here that judgment file no. Pl. ÚS 7/02 (no. 349/2002 Coll.) annulled the words "the Ministry or" in § 68 par. 1 of the Act on Courts and Judges, in the wording in effect at the time, as unconstitutional, due to conflict with Art. 82 par. 3 of the Constitution. Act no. 192/2003 Coll. in point 11, returned the annulled words "the Ministry or" back into § 68 par. 1, as well as (in point 20) into § 99 par. 1 let. c), where this provision had also been annulled by the cited judgment. The Constitutional Court notes that § 68 par. 4 of the Act on Courts and Judges likewise expects the assignment of judges to the Ministry of Justice. However, that provision was not contested, either in the proceeding in file no. Pl. ÚS 7/02, or in the present matter. In the cited judgment (no. 349/2002 Coll.) the Constitutional Court concluded that an immanent feature of the office of a judge is its continuous nature. Therefore, membership in the consulting bodies of a ministry, the government, and both chambers of Parliament, just like performing the tasks of these various components of the state power, is inconsistent with the principle of the separation of powers, not to mention the fact that personal and extra-judicial ties, which arise during such activity, unavoidably increase the probability of possible conflicts of interest, and, and thus render impartiality, in the form of judicial lack of bias, subject to doubt. In the current wording of the Act on Courts and Judges this unconstitutional situation was further underscored by the fact that the period of assignment was now extended to up to three years, in contrast to the possibility of assignment for a period of up to one year in the annulled § 68 par. 1 of the Act on Courts and Judges, as in effect until 1 July 2003, when that provision was annulled by judgment no. 349/2002 Coll. The requirement of continuous exercise of judicial office is cast in doubt even more thereby, and, on the contrary, the objection of connection with the executive branch becomes

even more serious. Moreover, this must be seen in connection with the fact that the process of preparation, selection, and assignment of judges in the Czech Republic, compared with states with a developed judicial self-administration, is in the hands of the executive branch, in particular the Ministry of Justice. The Constitutional Court is aware that this practice is also possible in other countries (France, Sweden, Germany, Italy, Poland, Slovakia, Austria), but to review this issue it is necessary to look at the specific context in the Czech Republic and the role of the Ministry of Justice in the preparation of judges for office and their career progression, just as to the length of transfer and the activities of transferred judges at other state bodies in other countries. Therefore, the Constitutional Court maintains its legal opinion in judgment Pl. ÚS 7/02 (č. 349/2002 Coll.) and continues to consider assignment of judges to fulfill tasks in other branches of state power to be in conflict with Art. 82 par. 3 of the Constitution, and, in view of the fact that the Constitutional Court has already expressed this legal opinion (judgment Pl. ÚS 7/02), also with Art. 89 par. 2 of the Constitution; in this regard it also agrees with the petitioner's reminder about the requirement to preserve the "external" or objective independence of a judge, who should appear thus not only to the parties to a proceeding, but also to the public.

48. It is impossible not to see that in this regard § 99 par. 3 of the Act on Courts and Judges provides that, during a period of temporary removal from office for purposes of assignment to the Ministry of Justice, a judge is entitled to the pay and other benefits connected with holding the office of judge under a special regulation, which is Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Exercise of Office of State Representatives and Certain state Bodies and Judges, and Member of the European Parliament, as amended by later regulations, not under the Labor Code. In its case law, the Constitutional Court has several times emphasized the reasons why it is necessary to provide judges protection from withdrawal of pay or other benefits connected with holding judicial office [most recently in proceedings conducted as file no. Pl. ÚS 24/07 – judgment of 31 January 2008 (N 26/48 SbNU 303; 88/2008 Coll.), file no. Pl. ÚS 1/08 – judgment of 20 May 2008 (N 91/49 SbNU 273; 251/2008 Coll.), file no. Pl. ÚS 2/08 – judgment of 23 April 2008 (N 73/49 SbNU 85; 166/2008 Coll.) and file no. Pl. ÚS 13/08 – judgment of 2 March 2010 (104/2010 Coll.)]. In this case, however, these reasons cannot apply, because the judicial power cannot be exercised in a body of central state administration, so an inequality necessarily arises in the remuneration of the employees of such a body on the basis of § 110 of the Labor Code and the judges assigned on the basis of Act no. 236/1995 Coll., although in that case they are not performing judicial roles and, moreover, are temporary removed from the exercise of the judicial office under § 99 par. 1 let. c) of the Act on Courts and Judges.

49. Annulment of the words "the ministry or" in § 68 par. 2 let. b) of the Act on Courts and Judges is only a consequence of their annulment in § 68 par 1. As already stated, assigning a judge to the Ministry of Justice is also regulated in § 68 par. 4 and § 99 par. 1 let. c) of the Act on Courts and Judges. These provisions were not contested by the petitioner, but after annulling the abovementioned provisions they become pointless, because the hypothesis in them "if he was temporarily assigned to the ministry" can no longer be met, as a result of

annulment of the words “the ministry or” in § 68 par. 1 of the Act on Courts and Judges.

V.b
Constitutionality of Temporary Removal from Office (§ 100a of the Act on Courts and Judges)

50. The second part of proposal II.b contests the authority of the Minister of Justice to temporarily remove a judge from the office of chairman or vice chairman of a court on the grounds that a disciplinary proceeding has been opened against him under § 100a of the Act on Courts and Judges (see the petitioner’s arguments under 18 and 19). Regarding this, the Constitutional Court states that under § 8 par. 3 let. b) of Act no. 7/2002 Coll., on Proceedings in Matters Concerning Judges, Public Prosecutors, and Court Executors on Proceedings in Matters Concerning Judges, Public Prosecutors, and Court Executors, as amended by later regulations, a proposal to open a disciplinary proceeding on the disciplinary liability of a chairman or vice chairman of a court may be filed by the Minister of Justice against any chairman or vice chairman of a court. In connection with this provision, Act no. 314/2008 Coll. inserted into the Act on Courts and Judges § 100a, which expands the scope for discretion of the Minister of Justice when deciding to temporarily remove a judge from office by adding the possibility of temporarily removal from the office of chairman or vice chairman. The petitioner asks that this provision be annulled in its entirety, although its arguments, per their content, are aimed only against the grounds for possible (not mandatory) removal from the office of a chairman or vice chairman of a court under § 100a par. 1 let. b) of the Act on Courts and Judges.

51. Under this provision the Minister of Justice may temporarily remove from office a chairman or vice chairman of a court if he is subject to a disciplinary proceeding for a disciplinary transgression, for which the disciplinary complaint proposes imposing the disciplinary measure of recall from the office of a judge or recall from the office of chairman or vice chairman of a court; the removal is for the period until the disciplinary proceeding is completed with legal effect. It is this reason that the petitioner expressly contests and against which it exclusively directs its arguments, without mentioning in the proposal another possible reason under § 100a par. 1 let. a) of the Act on Courts and Judges. This other possible reason involves a situation which is also anticipated by the cited act, i.e. a situation under § 100 par. 1 let. a), where the chairman or vice chairman of a court is subject to criminal prosecution, or a situation under § 100 par. 1 let. c), that is, if proceedings were opened against him on grounds stated in § 91 of the Act on Courts and Judges concerning his lack of competence to hold the office of judge; the period is until that proceeding is completed with legal effect. However, the petitioner does not state any reasons for annulling this part of the contested § 100a of the Act on Courts and Judges.

52. Because it is proposed to annul § 100a of the Act on Courts and Judges as a whole, the Constitutional Court nevertheless considers it necessary to state, regarding this part of the contested provision, that these cases involve situations that the Minister of Justice cannot himself bring about or induce through his actions. Criminal prosecution results from a decision by a body active in criminal

proceedings, together with the preliminary consent of the President (§ 76 par. 1 of the Act on Courts and Judges). The provision of § 91 of the Act on Courts and Judges involves situations that also arise from reasons other than possible arbitrary actions by the Minister of Justice, and their application includes an opportunity for the judge affected to protect himself. The provision of § 91 of the Act on Courts and Judges involves primarily a situation where a judge is not competent to hold judicial office, when long-term ill health does not permit it. It also involves situations where a judge was convicted with legal effect of a crime, and the conviction was not grounds for the termination of the judicial office under § 94 let. c), if the nature of the crime of which the judge was convicted casts doubt on the credibility of his continuing in judicial office, or, in the 5 years before a petition to open proceedings on the competence of the judge to hold office, the judge was found guilty of a disciplinary offense at least three times, if that fact casts doubt on the credibility of his continuing in office (the "three strikes – you're out" principle). Therefore, the Constitutional Court denied this part of the petition as unjustified, as it did not find violation of the constitutional order in the legal framework itself, which, however, does not rule out the possibility that such violation could happen as a result of arbitrary application or misuse of the provision in a particular proceeding.

53. Thus, the petitioner in fact directs this part of the petition only against § 100a par. 1 let. b) of the amended Act on Courts and Judges. In view of this, the Constitutional Court focused on reviewing whether this authority of the Minister of Justice can be considered an instrument that can be misused against the independent exercise of the judicial power, in particular if the minister is a plaintiff in a disciplinary proceeding who himself proposes the appropriate penalty under § 8 par. 3 let. b) of Act no. 7/2002 Coll., on Proceedings in Matters Concerning Judges, Public Prosecutors, and Court Executors , as amended by later regulations. Therefore, it was necessary to review whether the regulation itself is unconstitutional, or whether it is not yet unconstitutional but can, in a particular case, lead to unconstitutional interference in the independence of courts, or whether, at an abstract level, it does not allow a constitutionally conforming interpretation.

54. Here the petitioner, first of all, objects to a rather vague formulation of the elements of disciplinary offence. However, in this regard we must emphasize that it did not propose annulment of the appropriate provision of § 87 par. 2 and § 88 par. 2 of the Act on Courts and Judges, without at least mentioning these provisions. Thus, the petitioner did not itself provide more detail on its objections. Therefore the Constitutional Court considers it necessary to state that the elements of disciplinary offence by an official under § 87 par. 2 of the Act on Courts and Judges, i.e., "culpable violation of duties connected to the office," must be interpreted in connection with the definition of the duties of court officials, as required by Art. 91 par. 2 of the Constitution, and that it can be evaluated primarily in connection with a particular case.

55. In support of its claim the petitioner further stated that the Minister, as the disciplinary plaintiff, sets the requirements for himself, as the representative of the central bodies of state administration of the courts, to temporarily remove a court official from his office. The same Minister will also have to arrange the

interim administration of the court, which can thus change considerably until the time that the disciplinary court issues a not guilty verdict. This interferes in the independence of judges and courts, and the separation of powers, and opens up the possibility of arbitrariness and chance in the state administration of the judiciary. The petitioner sees the fundamental institutional defect of the contested § 100a of the Act on Courts and Judges not in the individual reasons for temporary removal from office (see point 56), but in the inadequate legal protection, in comparison with the temporary removal from office of a judge, when it is possible to file objections with the disciplinary court (cr. § 100 par. 4 of the Act). Thus, in all the cases governed by § 100a, irreversible facts can arise during temporary removal from office, through the interference by an executive branch body. Yet, limiting temporary removal only to the office of a court official indicates that this is not meant to involve gravely serious offences, so the risk that the office will be held by an unsuitable person becomes less distinct in comparison with the threat to independence. Therefore, the petitioner considers sufficient the possibility of temporarily removing from office the chairman or vice chairman of a court as a result of expiration suspension of the office of judge, and thereby also of a court official (an accessory function to the judicial office), and therefore proposes annulling the entire § 100a of the Act on Courts and Judges. If the legislature is not of the same opinion, it should regulate the temporary removal from the office of a chairman or vice chairman of a court in a manner that is comparable, as regards legal protection, with the protection afforded a judge from temporary removal from office.

56. In this regard the Constitutional Court agreed with that part of the petitioner’s objections that is directed against the missing remedy against temporary removal from the office of chairman or vice chairman of a court. Here the Constitutional Court holds the opinion that was explained in detail in judgment file no. Pl. 18/06 (no. 397/2006 Coll. – see above), and under which it is not possible to construct a duality in the legal position of the chairman of a court as an official of state administration, on one hand, and a judge, on the other hand. This is still one and the same person, in whom the actions of both offices are joined. This must apply not only to the manner of recalling court officials, but also temporary removal of them from office. Such a framework must also respect the constitutional principles of the separation of powers and the independence of the judicial branch, i.e., in this case the chairman or vice chairman of a court must have an opportunity to appeal for protection from interference in his public, constitutionally guaranteed, subjective right, but also protection from interference by the executive branch in the judicial branch in the manner permitted by § 100a par. 1 let. b) of the Act on Courts and Judges, all the more so that the exercise of such interference is within the discretion of the Minister of Justice, both in terms of filing a petition for a disciplinary proceeding before the supreme Administrative Court, and in terms of temporary removal from office. Therefore, the means for protection of court officials must be comparable with the means for protection of a judge. Until that happens, § 100a par. 1 let. b) of the Act on Courts and Judges, seen in the context of the other provisions, is inconsistent with the constitutional principle of the separation of powers and the independence of the judicial branch from interference by the executive branch.

V.c
Constitutionality of an Indefinite Number of Vice Chairmen of the Supreme Court

57. The petitioner also contests (in II.c) the indefinite number of vice chairmen of the Supreme Court expressed in the words "vice chairmen" in § 15 par. 1, § 23 par. 1, and § 102 par. 2, the words "vice chairmen" in § 15 par. 2 and § 121 par. 2, the words "vice chairmen" in § 102 par. 1 and § 168, and the words "vice chairmen of the Supreme Court" in § 119 par. 2 in the Act on Courts and Judges. Thus, the amended wording of the Act on Courts and Judges basically replaces the singular term "vice chairman" with the term "vice chairmen" in various grammatical cases. The petitioner points out (in detail, in 22n.), that this change is not provided justification, except for the claimed conflict with Art. 62 let. f) of the Constitution, which uses the plural, while the Act on Courts and Judges uses the singular. According to the petitioner, an unconstitutional situation arises because with other general courts the chairman of the court, by his proposal, limits the number of vice chairmen, but with the Supreme Court this is left to the discretion of the appointing body, i.e. the president. This opened up space for the executive branch for quite inappropriate and arbitrary interference into the situation on the Supreme Court. This is underscored by the fact that the president is not responsible for the activities of the Supreme Court; however, he is now given the authority to appoint an indefinite number of vice chairmen, whereby he can change the position of the chairman of the Supreme Court and the management model for the court, burden the court's budget with the financial and other material entitlements of the new vice chairmen, and, moreover, this situation can raise career expectations among the regular judges of the Supreme Court, which need not be free of effects on their decision making.

58. In the Constitutional Court's opinion, the use of the singular or plural in a legal regulation does not by itself definitely determine how many persons it may affect, if that is not evident from the nature of the matter (cf. also Art. 40 par. 4 of the Legislative Rules of the Government). Therefore, even the express use of the plural in the Constitution, without anything further, would not rule out the existence of only one vice chairman, or require the appointment of a higher number of vice chairmen. The same applies for the use of the plural in an ordinary statute. In this case, however, the insertion of the plural into the cited provisions of the Act on Courts and Judges must be seen as the intent of the legislature, which is meant to enable the president to appoint a higher number of vice chairmen of the Supreme Court. The legislature thereby used the authorization given to it by Art. 91 par. 2 of the Constitution, under which it is within the competence of the regular legislature to specify the organization of the courts, and at the same time it thereby removed external differences in the text of Art. 62 let. f) of the Constitution and the text of the Act on Courts and Judges before the adoption of Act no. 314/2008 Coll. Therefore, in this regard the Constitutional Court could not agree with the petitioner's objections about the inconsistency between the Act on Courts and Judges and the Constitution. Of course, just as until now the appointment of only one vice chairman was not inconsistent with the Constitution, so such a situation will not be inconsistent with it even after amendment of the Act on Courts and Judges.

59. However, the foregoing does not mean that the legislature, just like the appointing body, i.e. the President, has free discretion. When ruling on the position and role of the judicial branch, the Constitutional Court has emphasized several times that one cannot emphasize only a linguistic interpretation. The position of the President in relation to the judicial branch (including his powers of appointment) must be interpreted in terms of the rules of the separation of powers and the need to ensure the independent exercise of the judiciary. Therefore, the President must respect the fundamental constitutional bases for the regulation of the position, organization, and functioning of the court system as a whole, not only from the point of view of Art. 62 let. f) and Art. 91 par. 2 of the Constitution. Therefore, in this regard, there is a question as to whether the legislature did not have a constitutional obligation to also set a definite number of vice chairmen (as, e.g., in § 1 of the Act on the Constitutional Court). That would of course mean that the President cannot appoint only one vice chairman, even if the statute permits appointing a greater number. The actual number of vice chairmen of the Supreme Court cannot determine whether the judicial branch is independent. However, it may have an effect on that, in view of the factual circumstances surrounding an appointment. In particular, however, the issue is whether, as in the case of authorizing the chairmen of other courts, it was not necessary to tie the appointment of vice chairmen to a proposal by the chairman of the Supreme Court. The danger to the principle of an independent judicial branch would be reduced in a situation where § 70 of the Act on Courts and Judges could be understood as consent, not only with appointment to hold the office of judge, but also with appointment to an office (here, vice chairman) at the Supreme Court. However, that is not the case, so in this regard the chairman of the Supreme Court is in a different position that that held by the chairmen of high, regional, and district courts when managing the activities of their courts under § 103 to 105 of the Act on Courts and Judges.

60. Thus, the contested provision is not inconsistent with the constitutional order because, under the Constitution, the Supreme Court could not have more than one vice chairman, but because this process creates room for interference in the functioning of this court, as the highest court, by the executive branch, without the presence of any balancing as is the case in § 70 of the Act on Courts and Judges. In that case it is the task of the Constitutional Court to remove in advance the very possibility that such problems could arise, even though it is possible that in practice, on the basis of the Constitutional Court’s existing case law [cf. judgment file no. Pl. ÚS 17/06 of 12 December 2006 (N 222/43 SbNU 457), file no. Pl. ÚS 18/06 (see above), and especially judgment file no. Pl. ÚS 87/06 of 12 September 2007 (N 139/46 SbNU 313)] no problem will arise in this regard. This is all the more valid because in comparison with the chairmen of other courts the position of the chairman of the Supreme Court is unusual, because the Ministry of Justice conducts the management of the Supreme Court through the chairman (§ 120 par. 2 of the Act on Courts and Judges), not directly, and because the vice chairmen of the Supreme Court perform state administration of the Supreme Court in a scope determined in advance (§ 121 par. 2 of the Act). Further, in view of the possible number of vice chairmen of the Supreme Court, it is necessary to emphasize that there are also chairmen of the collegiums of the Supreme Court, appointed by its chairmen (§ 18 and § 102 par. 3 of the Act on Courts and Judges). Therefore, in future, the indefinite number of vice chairmen can create a situation

where the performance of judicial activity by the Supreme Court could be interfered with on the basis of this provision. It is all the more significant that there is no body of judicial self-government in the Czech Republic comparable with foreign models, that makes decisions in personnel matters in the judiciary, and that the chairman of the Supreme Court here is not in the same position as in the case of appointing a judge to the Supreme Court. However, in terms of the maxim of minimizing interference, the Constitutional Court concluded that it is not necessary to annul all the provisions contested by the petition that contain the plural of the term "vice chairman of the Supreme Court," but that it is possible to limit its intervention to the legal basis for appointment contained in § 102 par. 1 of the Act on Courts and Judges. It was guided by these reasons.

61. In this regard, the Constitutional Court is aware that its previous case law [in particular judgment file no. Pl. ÚS 87/06 of 12 September 2007 (N 139/46 SbNU 313)] addresses the requirement of preserving the guarantees of judicial independence only partially, when it determines constitutional limits for designating a judge who can be named as a vice chairman. In the Constitutional Court's opinion, it follows from the position of a vice chairman of the Supreme Court, as well from the content of his office, that he must first become a judge of that court, in order to be able to perform state administration of it. Therefore, the Constitutional Court ruled out the possibility that the President's authority to appointment vice chairmen of the Supreme Court would include, and as a result replace, any stage of the process of appointing a judge, i.e. including the phase of a judge being assigned to the Supreme Court by the Minister of Justice, after the prior consent of the chairman of the Supreme Court, because this is an authority in relation to the officials of the Supreme Court. Therefore, the Constitutional Court state the legal opinion that the authority of the President to appointment a vice chairman of the Supreme Court does not include, and thus also does not replace, any stage in the process of appointing a judge of this court, because that could lead to circumvention of the competence of other state bodies (the Minister of Justice, the chairman of the Supreme Court). However, because, in contrast to the appointment process for vice chairmen of other courts (§ 103 par. 1, § 104 par. 1, § 105 par. 1), in the case of appointment to the Supreme Court § 102 par. 1 of the Act on Courts and Judges does not contain sufficient guarantees of the independence of the judicial branch, in terms of participation of the council of judges of the Supreme Court, or, especially, in terms of the chairman of the court, it was necessary to annul that part of the cited provision that creates the conditions for such possible interference in the independence of the judicial branch. It is the task of the Constitutional Court to remove that possibility. Because the possible threats lie not in the number of vice chairmen itself (it is not up to the Constitutional Court to specify it either), but in the listed defects in the process of appointing vice chairmen to the Supreme Court, as enshrined in § 102 par. 1 of the Act on Courts and Judges, the Constitutional Court limited itself to annulling that part of the provision. The petitioner did only ask for annulment of the words "vice chairmen." However, because that would lead to a confusing wording of § 102 par. 1 of the Act on Courts and Judges, it was decided to annul the words "and the vice chairmen." It will be the task of the legislature to regulate (until such time as bodies of judicial self-administration are created that are not merely advisory) the process of appointing vice chairmen of the Supreme Court in such a manner that the independence of the judicial branch in this area cannot be

cast in doubt or interfered with. For that, the Constitutional Court used its ability to postpone the effectiveness of a judgment, and, under § 58 par. 1 of the Act on the Constitutional Court, did so, by postponing it for approximately one year after promulgation of the judgment in the Collection of Laws. At the same time, we must respect the President's sole discretion appointment authority, which means that appointment could be contingent on consent only if a constitutional regulation entrusted that authority to some body. Thus, the constitutional principle of an independent judiciary does not permit limiting this constitutional prerogative of the president through an ordinary statute requiring the consent of another state body. It is necessary to take into account the fact that including the President's appointment authority among the powers in his sole discretion is not guided by the legislature's attempt to strengthen the president's role, but to strengthen the independence of the judiciary by removing from the appointment process (and even more so the recall process) – see judgment file no. Pl. ÚS 18/06 and the government's participation in the recall of the chairwoman of the Supreme Court – political influence in the form of decision making by the government, which, moreover, is responsible for such decisions to Parliament under Art. 63 par. 4 and Art. 68 par. 1 of the Constitution. The Constitutional Court emphasizes that it does not consider the literal copying of the wording in the Constitution in Art. 62 let. f) – the plural used with the vice chairmen of the Supreme Court – into an ordinary statute to be sufficiently certain. Without casting doubt on the President's sole discretion in his appointment authority regarding vice chairmen of the Constitutional Court, this does not mean that the President has the authority to determine their number. This defect can be removed by, e.g. setting the number of vice chairmen of the Supreme Court by statute, under Art. 91 par. 2 of the Constitution, or by a framework analogous with the appointment of vice chairmen in district, regional, and high courts.

V.d
Constitutionality of Introducing a Term of Office for Chairmen and Vice Chairmen of Courts

62. The petitioner also contested the introduction of terms of office for chairmen and vice chairmen of district, regional and high courts and the Supreme Court in § 102 par. 2, § 103 par. 2, § 104 par. 2, § 105 par. 2, § 108 par. 2 of the Act on Courts and Judges. The petitioner's arguments (for detail see points 25 to 27) is based on the fact that it "has a feeling" that this is an attempt to circumvent the case law the case law of the Constitutional Court (in particular judgments file no. Pl. ÚS 7/02 and file no. Pl. ÚS 18/06 – both, see above) and to limit the principle of the independence of the judiciary expressly stated in Art. 81 and 82 of the Constitution and Art. 36 of the Charter. The Petitioner stated, among other things, that what could be tolerated in a collegiate decision-making body that includes judges should not be tolerated in the decision making of the political bodies of the executive branch. Therefore, in the interest of judicial independence, it is necessary to accord certain attributes of independence to a court official who may be removed from office only by the decision of an independent and impartial body. The Act accepts disciplinary proceedings as a means of appeal for court officials, only to immediately devaluate it by setting further reasons when an office terminates, which, according to the petitioner, can also be considered to violate Art. 89 par. 2 of the Constitution. It emphasized that if repeat appointment with a virtually empty set of criteria is currently allowed, that creates the risk of influencing the

behavior of judges who want to continue in office and who are approaching the end of their term of office.

63. The Constitutional Court, did not agree with these arguments, and denied this part of the petition as unjustified. The petitioner's arguments are based on a different legal situation and so nor consistently distinguish between removal from office due to a disciplinary offence (penalty) and the termination of an office due to the passage of time. Unlike an indefinite appointment of a judge in Art. 93 par. 1, the Constitution does not provide such a condition for holding the office of chairman or vice chairman of a court, and with the exception of the courts of final appeal, does not even expressly mention such offices. Thus, insofar as the legislature decided to introduce a term of office, this can be subject to the review of the Constitutional Court only in terms of possible interference in other constitutionally enshrined principles of organization and activities of the courts, because the very principle of time-limited performance of certain offices is not in itself inconsistent with the principle of separation of powers (rather, it is a concrete instance of it), particularly if it does not directly concern the exercise of the judicial function itself. Therefore, the time limit on the performance of state administration of courts (even by a judge) need not be unconstitutional. It should be emphasized, however, that appointment for a limited period of time must be (as in other cases) indirectly proportional to the increased requirements for early recall from a temporary office. The shorter the term of office, the greater requirements must be placed on the possibility of early removal from office. However, the Constitutional Court has dealt with this aspect of the matter in another context (points 53 to 56). In the Constitutional Court’s opinion, the proportionality of setting the length of a term of office corresponds to the fact that, in the case of chairmen and vice chairmen, court officials are appointed to office by the executive branch, not by a vote by the judicial self-government of (in such cases in other countries the term of office is shorter).

64. Another constitutional safeguard is the period for which the appointment is made. In this respect the specified term of office of 10 years chairmen and vice chairmen of Supreme Courts and 7 years for chairmen and vice chairmen of other courts is comparable to that of officials of other bodies or institutions (the Banking Council of the Czech National Bank, 6 years; the president and vice president of the Supreme Audit Office, 9 years) to whom the Constitution guarantees an independent status. The term of office also exceeds the term of the appointing authority, so the executive branch does not in this way create “its own” set of officials. Thus, the petitioner's arguments are directed to questions of the possibility of recalling a court official [in particular, judgment file no. Pl. ÚS 18/06 (no. 397/2006 Coll.) - see above], not to the issue of the constitutionality of setting a fixed term of office. Likewise, this case, unlike the case of assignment of judge to the Ministry of Justice under § 68 par. 1, § 68 par. 2 let. b) of the Act on Courts and Judges (in V.a) does not involve violation of Art. 89, par. 2 of the Constitution, because the Constitutional Court has not yet addressed the merits of the introduction of a term of office for court officials. Arguments based on the practice of other countries, states, especially from Anglo-Saxon law, cannot be relevant here, in view of the requirements for appointment, and in view of the usual age of persons appointed as judges or court officials. It is also not the task of the Constitutional Court to review whether there is a problem "managerial burnout" or

not, or how many officials there are, and how long they have or have not been in in office.

V.e
Constitutionality of the possibility of repeat appointment of chairmen and vice chairmen of courts

65. In this point, the Constitutional Court agreed with the proposal in point II.e, i.e. the challenge to the possibility of repeat appointment of chairmen and vice chairmen of courts in § 105a of the Act on Courts and Judges, which the petitioner considers to be interference in the independence of judges and courts in view of the formulation of the criteria for repeat appointment (more detail in points 29 and 30). The arguments that the petitioner presents here consist of the inadequate framework for the criteria for repeat appointment. Of course, these criteria, provided in the contested § 105a of the Act on Courts and Judges, i.e. holding the office of chairman or vice chairman without having committed a disciplinary offence, and without having been convicted with legal effect of a crime, cannot by themselves be considered a threat to the independence of the judicial branch. In this regard, they cannot be criticized in terms of protection of constitutionality, because in this regard a decision is not the result of the free discretion of the executive branch, which could be a possible instrument of interference. In the Constitutional Court's opinion, the problem is the very possibility of repeat appointment, which can lead court officials to act in a way that would meet the requirements for their repeat appointment, or can lead to their individual actions, including their decision making (court officials are primarily judges), to be seen and assessed that way by the outside world. Given the lack of a system of checks and balances on the executive branch for its exclusive decision-making powers in personnel matters, this possibility cannot be ruled out. Therefore, in a proceeding on abstract review of contested norms, the Constitutional Court must take it into account, because the statutory framework must not create conditions for the emergence of personnel corruption, which would threaten the constitutionally required independence and impartiality of judges. Possible unconstitutional situations in such a serious sphere need to be eliminated in advance. In this respect the consultative role that the Act on Courts and Judges assigns to judicial councils in § 51 par. 1 let. a), § 52 par. 1 let. a), and § 53 par. 1 let. a) is an insufficient guarantee. In the case of chairmen and vice chairmen of supreme courts, even that possibility is not provided for. The Constitutional Court emphasizes that in a proceeding on the abstract review of the constitutionality of norms it review the contested legal framework in terms of its potential to endanger the constitutional imperative to preserve the independence and impartiality of a judge, i.e., it does not review the particular behavior of several hundred judges who are involved in court administration at a particular moment. From this perspective the derogated framework is also capable of raising external doubts about court proceedings.

66. The petitioner also challenges the transfer of some of the appointment authority from the Minister of Justice to the President, who is not in any way equipped to monitor the activities of judicial officials. Of course, this can hardly serve as a reason for the Constitutional Court to declare such a transfer unconstitutional in the case of high and regional courts, given that these authorities are enshrined in the Constitution. In addition, it must be noted here

that appointing these officials does not fall within the scope of the sole discretionary powers of the president under Art. 62 of the Constitution, but under Art. 63 par. 3 of the Constitution in connection with Art. 91 par. 2 of the Constitution. Finally, as in other contexts, it must be noted that the President's appointment authority must be seen in the context of the principles of the organization and functioning of the judicial branch enshrined in the Constitution. Regarding the petitioner's objection that the sensitivity of this topic is intensified by preserving judicial internships at the Ministry of Justice, it must be noted that when this judgment goes into effect that objection will become pointless.

V.f
Constitutionality of Transition Provisions for Implementing Terms of Office of Chairmen and Vice Chairmen of courts

67. The petitioner also contests the transitional provisions in points 4, 5, 6, 7, 8, 9, 10 and 11 in Art. II in Part One of Act no. 314/2008 Coll. for the implementation of terms of office of chairmen of courts, which are shorter than the newly established terms of office of the relevant officials. Here the Constitutional court can only state that a transition period in itself cannot be unconstitutional, unless it is disproportional to the term of office. Such lack of proportion was not found in view of the proportion of 19 years in office and a 1 year transitional period for officials appointed up to 1989, 18 years in office and a 2 year transitional period for officials appointed in 1990, 14 to 17 years in office and a 3 year transitional period for officials appointed from 1991 to 1994, 10 to 13 years in office and a 4 year transitional period for officials appointed from 1995 to 1998, 8 to 9 years in office and a 5 year transitional period for officials appointed from 1999 to 2000, 6 to 7 years in office and 6 year transitional period for officials appointed from 2001 to 2002, and a transitional period of the same length as the term of office for officials appointed from 2003 until Act no. 314/2008 Coll. went into effect. Therefore, the Constitutional Court denied as unjustified the proposal to annul the transitional provisions to introduce terms of office of chairmen of courts in points 4, 5, 6, 7, 8, 9 and 10 in Art. II in Part One of Act no. 314/2008 Coll..

68. As regards the transitional provision for introducing a term of office for the chairman and vice chairmen of the Supreme Court in point 11 in Art. II in Part One of Act no. 314/2008 Coll., the Constitutional Court concluded that in the case of the chairman of the supreme Court this disproportion appears to be serious , both in terms of time, i.e. the ration of the specified transitional period to the length of the term of office, and in relation to the vice chairman of the Supreme Court and the chairman of the Supreme Administrative Court. Here the Constitutional Court agrees with the petitioner's arguments (point 32), pointing to the circumstances of the case and the misuse of the statutory form in the particular matter. Therefore, this provision was annulled as unconstitutional, because, as a manifestation of arbitrariness by the legislature, it interferes in the principles of a law-based state under Art. 1 par. 1 of the Constitution. At the same time, given the circumstances of the case, it is a violation of the right to access to public office on equal terms under Art. 21 par. 4 of the Charter. In view of the circumstances of the case, this is also an impermissible covert form of an individual legal act directed against a particular person, and therefore an attempt to interfere in the independence of the judicial branch.

69. Because derogation of the transition provision in point 11 in Art. II in Part One of Act no. 314/2008 Coll. would establish inequality, as the chairman and vice chairman of the Supreme Court would be the only two officials in the entire court system whose term of office would remain unlimited, i.e. to an inequality that could only with difficulty be considered acceptable in constitutional law , the Constitutional Court took advantage of the possibility of postponing the enforceability of this verdict in the judgment, and, under § 58 par. 1 of the Act on the Constitutional Court postponed it for approximately one year from the promulgation of the judgment in the Collection of Laws. It will be the task of the legislature to adopt a transitional provision governing the term of office of existing officials of the Supreme Court in the same manner as for officials of the Supreme Administrative Court.

V.g
Constitutionality of the Term of Office of the Chairman and Vice Chairman of the Supreme Administrative Court and the Possibility of their Repeat Appointment to Office

70. The petitioner also, without reasons analogous to the case of chairmen and vice chairmen of district, regional, and high courts and the Supreme Court, seeks (in point 33) annulment of the amended provisions of § 13 par. 3 and § 13a of Act no. 150/2002 Coll., the Administrative Procedure Code, as amended by Act no. 314/2008 Coll., i.e. the implementation of a term of office of 10 let for the office of chairman of the Supreme Administrative Court and the possibility of repeat appointment to that office. In that case, however, the transitional provision of Art. IV of Act no. 314/2008 Coll. is not contested.

71. In the case of the chairman and vice chairman of the Supreme Administrative Court, the Constitutional Court concluded that this proposal must share the fate of the analogous proposals in II.d and II.e. Therefore, this proposal was denied as unjustified, for the same reasons (see point 62n.), as regards introduction of a term of office for officials of the Supreme Administrative Court. In contrast, for the same reasons as in point 65, the proposal to annul § 13a of the Administrative Procedure Code was granted. Overlooking Art. IV of Act no. 314/2008 Coll., which is a transitional provision to § 13 par. 3 and § 13a of the Administrative Procedure Code, is meaningless in this case, because, even if that did not happen, it would not be possible, in light of what was stated in point 68, to decide otherwise, when both the length of the term of office and the length of the transitional period of 10 years are mutually proportional. Finally, in this case the petitioner does not even contest the transitional period, because it says that a constitutionally conforming possibility might be to exhaust the entire term of office provided by statute, counted from the date when the statute when into effect. In this case that requirement has been met.

VI.
Conclusion
72. In conclusion, the Constitutional Court summarizes that it found the petition to be partly justified. Therefore, under § 70 par. 1 of the Act on the Constitutional Court it acted to delete:

a) the words “to the Ministry or” in § 68 par. 1, and the words “the Ministry or” in § 68 par. 2 let. b) of Act no. 6/2002 Coll., due to inconsistency with the constitutional principle of separation of powers under Art. 2 par. 1 of the Constitution and the independence of the judicial branch and impartiality of judges under Art. 81 and Art. 82 par. 1 and 3 of the Constitution, and due to inconsistency with Art. 89 par. 2 of the Constitution, under which enforceable decisions of the Constitutional Court are binding on all bodies and persons,

b) § 100a par. 1 let. b) of Act no. 6/2002 Coll., due to inconsistency with the constitutional principle of separation of powers under Art. 2 par. 1 of the Constitution and independence of the judicial branch under Art. 81 and Art. 82 par. 1 of the Constitution, and due to inconsistency with the constitutionally guaranteed right to equal access to public office Art. 21 par. 4 of the Charter in connection with the constitutionally guaranteed right to judicial review of the legality of a decision by a public administration body under Art. 36 par. 2 of the Charter,

c) the words “and vice chairmen” in § 102 par. 1 of Act no. 6/2002 Coll. due to inconsistency with the constitutional principles of certainty of law and the prohibition of arbitrariness in the exercise of state power, arising from the concept of a democratic state governed by the rule of law under Art. 1 par. 1 of the Constitution, due to inconsistency with the constitutional principle of separation of powers under Art. 2 par. 1 of the Constitution and independence of the judicial branch under Art. 81 and Art. 82 par. 1 of the Constitution, and due to inconsistency with Art. 91 par. 2 of the Constitution, under which determining the organization of the courts is within the competence of the legislature, which must do so by statute,

d) point 11 in Art. II of Act no. 314/2008 Coll. due to inconsistency with the principles of a democratic state governed by the rule of law under Art. 1 par. 1 of the Constitution, prohibiting the arbitrary exercise of the state power and misuse of the form of a statute to adopt an individual legal act against a particular person, due to inconsistency with the constitutionally guaranteed right to equal access to public office under Art. 21 par. 4 of the Charter, and due to inconsistency with the constitutional principle of the independence of the judicial branch under Art. 81 and Art. 82 par. 1 of the Constitution, and finally

e) § 105a of Act no. 6/2002 Coll. and § 13a of Act no. 150/2002 Coll. due to inconsistency with the constitutional principle of separation of powers under Art. 2 par. 1 of the Constitution and the independence of the judicial branch and the impartiality of judges under Art. 81 and Art. 82 par. 1 and 3 of the Constitution;

The Constitutional Court postponed enforceability of the judgment, in the case of deletion of the words “and the vice chairman” in § 102 par. 1, of Act no. 6/2002 Coll. and point 11 in Art. II of Act no. 314/2008 Coll. under § 58 par. 1 of the Act on the Constitutional Court, for approximately one year, in order to provide the legislature sufficient time to adopt a constitutionally conforming legal framework and in order to prevent serious consequences that would be associated with immediate of these provisions. The Constitutional Court did not find the remainder of the petition justified, and therefore denied it under § 70 par. 2 of the Act on the Constitutional Court.

Dissenting opinions to the decision of the plenum, under § 14 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, were filed by Judge Jan Musil, regarding the part of verdict I derogating the words "to the Ministry or" in § 68 par. 1 and in § 68 par. 2 let. b) of Act no. 6/2002 Coll., and regarding verdict IV, Judges Ivana Janů, Vladimír Kůrka and Pavel Rychetský regarding verdict IV, Judge Eliška Wagnerová regarding verdict V, and Judge Pavel Holländer regarding the reasoning for verdict IV.

1. Dissenting opinion of Judge Jan Musil to the part of verdict I deleting the words "to the Ministry or" in § 68 par. 1 and in § 68 par. 2 let. b) of Act no. 6/2002 Coll. and to verdict IV

I disagree with the parts of verdict I and with verdict IV of the judgment of the Plenum of the Constitutional Court of 6 October 2010 file no. Pl. ÚS 39/08, which, among other things, annulled the words "to the Ministry or" in § 68 par. 1 and the words "to the Ministry or" in § 68 par. 2 let. b) and which annulled § 105a of Act no. 6/2002 Coll., on Courts, Judges, Trainee Judges, and the State Administration of Courts and Amending Certain Other Acts (the "Act on Courts and Judges"), as amended by Act no. 314/2008 Coll., and § 13a of Act no. 150/2002 Coll., the Administrative Procedure Code, as amended by later regulations.

Under § 14 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, I submit a dissenting opinion to these parts of the judgment, with the following reasoning:

I. Alleged Unconstitutionality of Temporary Assignment of a Judge to the Ministry of Justice under § 68 par. 1, § 68 par. 2 let. b) of the Act on Courts and Judges

1. The annulling judgment justifies the unconstitutionality of temporary assignment of a judge to the Ministry of Justice (in points 47 and 48 of the reasoning of the judgment) with several arguments:

a) inconsistency with the principle of separation of powers, which rules out connecting the judicial branch with the executive branch

b) violation of the requirement that a judge be independent

c) violation of the requirement of "continuous exercise of the office of a judge"

d) inequality arising in the compensation of employees to the Ministry of Justice on one side, and assigned judges on the other side

e) failure to comply with the previous judgment of the Constitutional Court, file no. Pl. ÚS 7/02.

2. I believe that the institution of temporary assignment of a judge to the Ministry of Justice does not in any way violate the constitutional principle of strict separation of the judicial branch and the executive branch, the principle that a judge must be independent, or the principle that the office of a judge is incompatible with an office in public administration (Article 82 par. 1 and 3 of the Constitution). The objections raised in the judgment, concerning the "connection of the judicial branch with the executive branch" and "violation of the requirement that a judge be independent" would certainly be relevant in a situation where, during temporary assignment of a judge to the Ministry of Justice the judge simultaneously exercised both powers, i.e., both adjudicated cases and exercised administrative powers at the ministry. Of course, nothing like that in fact

happens. During temporary assignment to the Ministry the performance of the judicial office is, in fact, interrupted, and during that time the judge performs different tasks at the ministry “in the interests of benefiting from his experience” (§ 68 par. 1 of the Act on Courts and Judges).

3. The hypothesis that a judge will be affected in his future judicial activities (after the temporary assignment) by his previous activities at the ministry is purely speculative – personal integrity and the requirements imposed on the selection and activities of judges must provide sufficient guarantees against such future influence. Following the logic of that hypothesis, it would be necessary to strictly prevent judges, before being appointed, from performing any activities in the legislative branch or in administration, in order not to be “contaminated” by it; the idea that a judge is some sort of “tabula rasa” living outside the social reality is entirely illusory.

4. In order not to burden this dissenting opinion with long and repetitive interpretations, I wish, for reasons of brevity, to refer to the arguments presented in the joint dissenting opinion of Judges Jiří Malenovský, Vlastimil Ševčík, and Pavel Varvařovský in the matter file no. Pl. ÚS 7/02, which concerned analogous issues. Those dissenting judges stated, among other things, the following opinions (with which I agree):
- With its derogative changes the Constitutional Court’s decision demonstrates a concept of judicial power freed from ties and specific relationships with both of the other pillars of state power, including from such ties and relationships as are not capable of evoking detriment to the independence of courts and judges, and are thus not in conflict with the principles of a state governed by the rule of law. The purpose of a state governed by the rule of law is not, in our opinion, judicial power immersed in itself and isolated from the other powers, but one reasonably cooperating with the legislative and executive powers.”
- “Therefore, a judge may not be forbidden any personal or extra-judicial social ties which occur outside of a causal connection with his decision-making. This also applies to the temporary assignment of a judge to the Ministry or to his activity in advisory bodies to the executive or legislative powers.”
- “In any case, “assignment” to the Ministry in and of itself is certainly not the exercise of an “office” in public administration. It could possibly be in conflict with Art. 82 par. 3 of the Constitution, if, during assignment, a judge assumed an “office’ in public administration, i.e. if he independently performed the tasks of state administration and if he were endowed for it with the appropriate authorizations and activity. The temporary nature of the assignment, temporary release from the exercise of the office of a judge, and the judge’s consent to the assignment are adequate guarantees against detriment to the independence or impartiality of judges. We consider it undoubted that under the stated conditions the “actual independence” of a judge … is ensured.”
- “Neither the Constitution nor the principles of a state based on the rule of law can be interpreted to rule out reasonable cooperation by the judicial power with the executive or legislative powers, provided that during this cooperation there is no pressure, inappropriate influence or other interference toward the judge in connection with the exercise of his decision-making activity ….”

5. In point 47 the judgment invokes the requirement of “continuous exercise of judicial office,” which was already expressed in judgment file no. Pl. ÚS 7/02. I believe that such a requirement cannot be derived from any constitutional regulation. Indeed, the Act on Judges (§ 99) recognizes three reasons for temporary removal from judicial office. One can surely also imagine a situation where the office of a judge terminates (e.g. because of resignation – § 95), a person carries out other activities for some time during his career , and is then again appointed to be a judge – in our time, characterized by considerable professional mobility, this is not necessarily an atypical case. In many foreign countries changing between various legal professions during one’s life is quite common (e.g. changing between the professions of judge, state prosecutor, attorney, ministry official, university professor, etc.) and is even considered beneficial for improving one’s professional qualifications.

6. In my opinion, the argument (in point 48 of the reasoning of the judgment) pointing to the inequality arising in compensation between employees of the Ministry of Justice on one side, and assigned judges on the other side, has no constitutional law relevance. This situation can be addressed by different means, at the level of sub-constitutional norms, without having to annul the contested provision.

7. Regarding the argument that the contested legal framework fails to comply with the previous judgment of the Constitutional Court, file no. Pl. ÚS 7/02, I state: The objections contained in that judgment in relation to the institution of temporary assignment of a judge to the Ministry at that time were tied to a different legislative framework than that which exists today.
The cited previous judgment, file no. Pl. ÚS 7/02, was adopted on 18 June 2002, i.e., eight years before the present judgment. Since then, the Act on Courts and Judges was amended eight times. Although the amendments to the Act concerned very diverse matters, I believe that some of them were appropriate responses to the criticisms contained in judgment file no. Pl. ÚS 7/02, concerning the Ministry’s excessive influence on the functioning of the judicial system. Indeed, the very deletion of a number of provisions from the Act on Courts and Judges by judgment file no. Pl. ÚS 7/02 (e.g., the proceeding to review the professional qualifications of judges) weakened the Ministry’s opportunities to influence the functioning of the judicial system.
In this new situation it was appropriate to reconsider whether the institution of temporary assignment of a judge to the Ministry still has sufficient weight to violate the constitutional principles of the judiciary. Although I fully respect, of course, the constitutional principle that decisions of the Constitutional Court are binding on all bodies (Art. 89 par. 2 of the Constitution), I believe that, in view of the changed context, the legislature did not violate this principle.

8. The institution of temporary assignment of a judge to the Ministry is completely standard in foreign legislative frameworks, where it does not create any constitutional doubts or practical problems (e.g., in Germany, France, Sweden, Italy, Poland, Slovakia, Austria, Iceland). Insofar as the judgment invokes the specific conditions in the Czech Republic that are supposed to justify a different approach on our part, that reasoning is not at all persuasive for me; the cited specific conditions have no causal connection with temporary assignment.

9. I add that temporarily assigning judges to the Ministry has many practical advantages, it has proven its value in practice, and in my opinion it is not presently overused by the Ministry or misused for purposes other than legitimate ones. It is especially important for the preparation of legislative projects for which the Ministry is responsible (e.g. the drafting of a new Criminal Code).
II. Alleged Unconstitutionality of the Possibility of Repeat Appointment of Chairmen and Vice Chairmen of Courts under § 105a of the Act on Courts and Judges and under § 13a of Act no. 150/2002 Coll., the Administrative Procedure Code, as amended by later regulations

10. I do not consider the possibility of repeat appointment of court officials (i.e., chairmen and vice chairmen of general courts of all levels, including the Supreme Administrative Court) to be unconstitutional, and I do not agree with annulment of § 105a of the Act on Courts and Judges and § 13a of the Administrative Procedure Code.

11. In this matter I agree with the dissenting opinion of Judge Pavel Rychetský, and for reasons of brevity refer to it in full.

2. Dissenting opinion of Judge Ivana Janů to verdict IV of the judgment
I differ from the opinion of the majority of the Plenum on the question of the constitutionality, or unconstitutionality, of repeat appointment to the office of chairman (vice chairman) of a court. I am of the opinion that the justification for unconstitutionality of repeat appointment, as set out in points 65 and 66 of the judgment, lacks constitutional law arguments.

In my dissenting opinion to part of the reasoning of judgment file no. Pl. ÚS 18/06, I emphasized, in an international comparison, the relatively standard model of a limited term of office for (the highest) court officials, in which the possibility of repeat appointment is not an exception. My line of argument in the matter then adjudicated was led against the model of an unlimited (life) term of office, in the face of the individual personalities of judges, where excellent judicial competence need not always include exceptional management qualities. I expressed the concern that “precisely in these situations, an unlimited term of office, which could last for decades, is an obstacle to the selection of a more suitable person.”

I believe that in the present matter this argument also applies and lets me be consistent. Insofar as the majority opinion a priori ruled out the constitutionality of possible repeat appointment as a court official, it set up, quite analogously to the previous legal situation, “an obstacle to the selection of a more suitable person,” who, beyond any doubt, could be a court official who has already held the office and in which he proved himself to be outstanding.

The reservoir of judges in the Czech Republic is not bottomless, and the approach chosen by the Plenum’s majority opinion may, in time (after several terms of office), result in a problem for some smaller courts to ensure enough new candidates. If holding office in a court is to be part of the repeatedly cited “career progression” of a judge, I ask myself to what extent that idea is fulfilled when it is

impossible for a court official to be appointed repeatedly, no matter how successful he was in his office. If the Plenum's conclusions are guided by concerns about self-serving behavior by judges and court officials in an attempt to please the executive branch, for whatever reason, then the principle question comes back into play, to what extent is the personal integrity of the courts, their professional status and institutional autonomy any guarantee of proper administration of the courts in the context of the permanent tension that exists between the branches of government in the country.
As regards details, I refer to the reasoning provided in the dissenting opinions of Judges Vladimír Kůrka and Pavel Rychetský.

3. Dissenting opinion of Judge Vladimír Kůrka to verdict IV of the judgment
The majority of the Plenum overlooked the fact that the Constitutional Court is not in the position of a body that establishes the regime for the creation of court officials of the general courts, i.e. that its constitutional role is not finding a regime that is suitable, or "better" as opposed to "worse," and therefore its deliberations should not be of the type "more likely yes" or "more likely no," or, "one can agree" or not. It is the legislature that is called on to normatively establish a certain legal situation (here, the possibility of repeat appointment of judges to the offices of chairmen and vice chairmen of general courts), which it did in the contested statute, and therefore, reversing the situation enshrined there in requires – logically – a strong argument; not only a strong argument, but an argument to prove that this legislative situation is unconstitutional.

However, the opinions or the majority of the Plenum, included in the appropriate part of the reasoning of the judgment (paragraphs 65 and 66), do not contain appropriate (constitutionally relevant) arguments. The emphasized threat to the independence of a judge in the position of a court chairman (vice chairman) pursuing re-appointment to that office is conceived exclusively on a hypothetical and speculative level, and it is not documented in any way that this is so, or must be so, even if only on an abstract level and in the degree of external "appearance."

It is not indicated in any way how the majority of the Plenum imagines that an the pursuit of such appointment to these offices could influences judicial decision making (sic!), which it would be necessary to prove, because only that can matter. If it is even permissible to descend to this level of deliberation, then we cannot not mention that one can already imagine such a "threat" at the point when a judge seeks to be appointed to the office of chairman (vice chairman) for the first time.

If it is not a threat to the independence of the Constitutional Court that a judge can be appointed (also "from outside," by representatives of other branches) repeatedly, then it can hardly be claimed, that the situation should be otherwise with the analogous appointment of (only) a court official.

Limiting repeat appointment to the office of chairman (vice chairman) in any case does not prevent a "former" chairman (vice chairman) be appointed to the same office at a different court.

The claimed uncertainty of the conditions for repeat appointment set out in § 105a of the Act falls away with the interpretation that an obvious requirement is a qualitative assessment of how the office of chairman (vice chairman) was performed so far, and there is no need to disqualify the role (even if only "consultative") of judicial councils in advance.

Although it is obviously not significant in the present "constitutional" context, it is nevertheless worth noting that the practical consequence established by the majority of the Plenum will be the weakening of "good" court administration, because the office of chairman (vice chairman) of a court will lose its current prestige ("one day every judge will be chairman"); the judges will also not have sufficient motivation to effectively ("managerially") make it theirs, because by the nature of the matter they would have to do so at the expense of the judicial education, which cannot be "worth it" for a mere seven years within a lifetime career as a judge ".

4. Dissenting opinion of Judge Pavel Rychetský to verdict IV of the judgment

This dissenting opinion, which I am filing under § 14 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, is directed exclusively against verdict IV of the judgment. With this verdict the majority of the Constitutional Court annulled the possibility of repeat appointment of court officials (i.e., chairmen and vice chairmen of general courts of all levels, including the Supreme Administrative Court) after the expiration of their newly defined term of office. The Plenum of the Constitutional Court did not agree with the reasoning of the petitioner, which based the petition to annul the institution of repeat appointment of court officials on the insufficient criteria for the possibility of repeat appointment of a court official, and the resulting unconstitutional threat to the independence of the judicial branch. On the contrary, the plenum of the Constitutional Court expressly states regarding these arguments that "in this regard they cannot be criticized in terms of protection of constitutionality." However, according to the reasoning of the judgment, the majority of the judges of the Constitutional Court sees the unconstitutionality of the contested provisions (§ 105a of the Act on Courts and Judges and § 13a of the Administrative Procedure Code in "the very possibility of repeat appointment, which can lead court officials to act in a way that would meet the requirements for their repeat appointment, or can lead to their individual actions, including their decision making (court officials are primarily judges), to be seen and assessed that way by the outside world." Of course, in my opinion these arguments are rather testimony of the constitutionality and overall usefulness of the institution permitting the repeat appointment of court officials, because it assumes prima facie that court officials – guided by their desire to be appointed again – will perform their offices in the court administration as well as possible. The following passage in the reasoning of the judgment, about the fact that the contested legal framework thus creates conditions for "personnel corruption" and potentially threatens the constitutional imperative of the independence and impartiality of judges, is based on the premise of a potential ill will, both on the part of the judges whom the state entrusted with the role of court administration, and on the part of state representatives to whom the law gives the appointing authority. Of course, within an abstract review of the constitutionality of a statute I cannot agree with the reasoning that is based on the

existence of such ill will, because, of course, every legal regulation can be abused from a position of "ill will." Moreover, I believe that if in the abstract review of norms this starting point were to be one of the basic guiding criteria for reviewing the constitutionality of the institution of filling offices that carry the authority to administer the courts, it would also have to apply in the same degree to the first appointment to such an office. From all the arguments to this derogative part of the judgment, which is, moreover, limited to a single paragraph under point 65, I accept only the deliberations that the overall concept of the statutory (or constitutional) regulation of the judicial branch does not yet represent sufficient guarantees of a balance of powers in the state that would meet the requirements for full institutional establishment of judicial independence. Of course, the task of the Constitutional Court in an abstract review of norms is not to seek optimal models for the functioning of a democratic, law-based state (it can only define them), but exclusive protection of the constitutionality of the legal order, with an exclusive derogative authority regarding those parts that it finds to be unconstitutional, but not merely unsuccessful. Therefore, I conclude that § 105a of the Act on Courts and Judges and § 13a of the Administrative Procedure Code are not, in my opinion, inconsistent with the constitutional order of the Czech Republic.

5. Dissenting opinion of Judge Eliška Wagnerová to verdict V of the judgment
With this dissenting opinion I express disagreement with denying the petition to annul Art. II points 4 to 10 – i.e., the transitional provisions of Part One of Act no. 314/2008 Coll., which differently set the end of the term of office of existing chairmen and vice chairmen of courts, depending on the number of years they have served in office, where the period is generally shorter than the term of office introduced by the Act.

I fully agree with the petitioner that the introduction of a term of office itself is retroactive interference in the performance of a public office, which the office of a judge serving as chairman or vice chairman of a court undoubtedly is. Nonetheless, the legislature presented rational grounds for introducing a term of office, representing various aspects of the public interest in the proper functioning of the judiciary, which can be constitutionally accepted, because in weighing the retroactive interference in the undisturbed performance of office against the interest in proper exercise of the judiciary, one can agree with the legislature's balancing of the two interests as it reflected in setting the basic lengths of terms of office of court officials (§ 102 par. 2, § 103 par. 2, § 104 par. 2, § 105 par. 2 of the Act on Courts and Judges). The interest in the proper functioning of the judiciary is an expression of the constitutional principle or concept of a law-based state (Art. 1 par. 1 of the Constitution of the Czech Republic), the implementation of which is unthinkable without a functioning judiciary.

It is otherwise in the case of setting the end of the term of office of existing court officials contained in the transitional provisions. In that case the legislature shortened the term of office so markedly, that its actions create the impression that it did not even recognize the need to preserve the interest in undisturbed exercise of public office, manifesting itself not only as a fundamental right of the presently serving chairmen and vice chairmen of courts (in which it did not

interfere as disproportionately), but also as a principle (value) – a component of objective law [Art. 21 par. 4 of the Charter as interpreted by the Constitutional Court – see judgment file no. II. ÚS 53/06 of 12 September 2006 (N 159/42 SbNU 305) – undisturbed exercise of public office], which structure the position and relationships between the branches of government in the state. Because, just as the courts are required to decide so that, if possible, as much as possible of both fundamental rights will be preserved, and if that is not possible, then to give priority to the fundamental right that is best supported by the general idea of fairness, or the general principle, so the legislature is always required to seek a solution that would permit preserving conflicting constitutional principles to the greatest possible degree. If that is not possible, it must be completely evident and clear wherein lies the urgent need to significantly reduce one of the conflicting constitutional principles.

The absence of a truly urgent need or important public interesting justifying the disproportional reduction of the principle of undisturbed exercise of public office is supported by the fact that the legislature allowed repeating the chairman's or vice chairman's mandate (§ 105a of the Act on Courts and Judges, or § 13a of the Administrative Procedure Code). Nothing about this is changed by the fact that these statutory provisions were annulled by the present judgment, although on different grounds (the possibility of personnel corruption, or at least the appearance thereof).Finally, empirical data in the form of the recent repeat appointment of certain chairmen of courts who had been serving for decades testifies to the fact that neither the legislature, nor the executive branch (the Minister of Justice) considered securing the public interest in a functioning judiciary by replacing court officials to be such a clearly urgent reason as would be constitutionally capable of justifying such fundamental interference in the principle of undisturbed exercise of public office. On the contrary, the adopted legislation may, at a minimum, raise the suspicion that the legislative and executive branches used it to create conditions for themselves to, in a very short period, replace the management of all the courts according to its own (i.e., political) ideas, as the Act does not set any substantive criteria for the selection of court officials, just as it also does not contain any correction, or balancing, of the appointing authority of the executive branch. Such an interest would, of course, not be in the least capable of limiting the principle of uninterrupted exercise of public office in any way.
All these reasons led to my being unable to agree with the denial of the petition, in the scope that I set out in the first paragraph of my dissenting opinion.

---

6. Dissenting opinion of Judge Pavel Holländer to the reasoning of verdict IV of the judgment
I agreed with verdict IV of the judgment of the Constitutional Court in the matter file no. Pl. ÚS 39/08, which annuls § 105a of the Act on Courts and Judges, but for different reasons that those in the reasoning of the judgment. These are based on the argument of the possibility of the "creation of personnel corruption, which would threaten the constitutional imperative of the independence and impartiality of judges."

Insofar as the majority vote connects the appointment of chairmen and vice chairmen of courts with the possibility that judges will seek these offices even at the price of “personnel corruption” and if we accept that premise, then there is no reason to believe that this will happen only with repeat appointment. In my opinion, from that point of view, the purpose of the annulled statutory provision formulated in the reasoning of the judgment does not meet the first step in the proportionality test, the requirement of suitability.

I maintain that the constitutionality of the subject provision must be evaluated in connection to the length of the term of office (§ 102 to § 105 of the Act on Courts and Judges), and also with regard to the safeguards that the Constitutional Court has expressed in its case law regarding the nature of the office of chairman (and vice chairman) of a court. The tenor of them is the proposition contained in judgment file no. Pl. ÚS 18/06: “In reviewing the position of chairmen of courts as court officials appointed by the Minister of Justice and by the President, it must be observed that a court official continues to take part in his own decision making activity as a judge. One must then begin with the premise that the role of chairmen of courts, as well as that of the chairman of the Supreme Court, is inseparable from the role of a judge, because we cannot construct a duality in the legal position of a chairman of a court as an official of state administration on one hand, and a judge on the other hand. Thus, the attributes of the independence of the judicial branch, or the independence of judges, must also be applied in the foregoing sense to the chairmen of courts.”

In my opinion, the repeated possibility of holding the office of chairman or vice chairman of a court, in connection with the length of the term of office, creates a situation in which for chairmen and vice chairmen of courts the role of performing state administration already predominates, to the detriment of the role of judge, which I see as a violation of the constitutional principle of the independence of the judicial branch and the independence of judges under Art. 81 and Art. 82 par. 1 of the Constitution.