2003/06/11 - PL. ÚS 40/02: COLLECTIVE BARGAINING AGREEMENT

HEADNOTES

1) In the settled opinion of the Constitutional Court (see findings file no. Pl. ÚS 24/99, Pl. ÚS 5/01, Pl. ÚS 39/01 – published in Collection of Decisions, vol. 18, p. 135 et seq., vol. 24, p. 79 et seq. and vol. 28) an essential component of a democratic state governed by the rule of law is protection of the freedom of contract, which is a derivative of constitutional protection of the right to property under Art. 11 para. 1 of the Charter (the fundamental component of which is ius disponendi). Tied to the very nature and purpose of collective bargaining, the institution of their extension, i.e. the possibility of extending the normative over the obligation-creating effect of a collective bargaining agreement, thus, from a constitutional law viewpoint, establishes conflict between the restriction on property rights under Art. 11 of the Charter and the public good under Art. 6 of the European Social Charter, published under no. 14/2000 Collection of International Treaties, in connection with Art. 1 of the Constitution and Art. 27 of the Charter.

If the starting point for constitutional acceptability of extending the applicability of higher level collective bargaining agreements is European democratic legal experience and the standards arising from it, comparison with European Union law, as well as finding a procedural mechanism to ensure a balance between legal protection of freedom and guaranteeing the internal peace of human society, in the adjudicated context the related aims can be achieved only at the price of restricting property rights. However, the priority given to the public good over the right to property must be conditioned on the legitimacy (representativeness) of the collective bargaining system, so by the relevance of the contracting parties' market share in a given field. Further, the requirement of minimizing the interference in a fundamental right or freedom, which is part of the principle of proportionality, also gives rise to the safeguard that this measure must be exceptional, and the related maxims for the norm creator to accept extending the applicability of a collective bargaining agreement only in extraordinarily justified cases of the public interest.

2) Thus, an individual regulation contained in a legal regulation which deprives the addressees of the possibility of judicial review of whether the general conditions of a normative framework have been met concerning a particular entity, a regulation which lacks transparent and acceptable justification within the general possibility of regulation, must be considered inconsistent with the principle of a state governed by the rule of law (Art. 1 of the Constitution), to which the separation of powers and judicial protection of rights is immanent (Art. 81, Art. 90 of the Constitution). These derogatory grounds for judicial review of constitutionality apply fully to evaluating the constitutionality of § 7 of the Collective Bargaining Act. It is fully up to the legislature whether it sets the procedure for extending applicability in the form of administrative proceedings with the possibility of judicial review (as the Constitutional Court indicated in its resolution of 11 July 2002 file no. IV. ÚS 587/01) or in the form of a

general normative definition of an entire group of employers to which the extension applies, with the possibility of judicial review of the fulfillment of subsumptive conditions (e.g. in a dispute on the exercise by an employee of claimed entitlements arising from a higher level collective bargaining agreement, or judicial review of administrative decisions concerning, e.g., inspection of working conditions).

CZECH REPUBLIC
CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court, after oral proceedings on 11 June 2003, decided in the matter of a petition from a group of 52 deputies of the Chamber of Deputies of the Parliament of the Czech Republic, in whose name deputy A. P. is authorized to act, to annul § 7 of Act no. 2/1991 Coll., on Collective Bargaining, as follows:

The provision of § 7 of Act no. 2/1991 Coll., on Collective Bargaining, is annulled as of 31 March 2004.

REASONING

I.

On 8 November 2002 the Constitutional Court received a petition from a group of 52 deputies of the Chamber of Deputies of the Parliament of the Czech Republic to annul § 7 of Act no. 2/1991 Coll., on Collective Bargaining.

The petitioner first recapitulates the content of the contested statutory provision, which permits the Ministry of Labor and Social Affairs (the "Ministry") to provide by legal regulation that a higher level collective bargaining agreement is binding on employers who are not members of the employer organization which concluded the agreement. It points out that the legal framework distinguishes between a collective bargaining agreement concluded between the appropriate union body and an employer (a "company" agreement) and a collective bargaining agreement concluded for a greater number of employers between the appropriate union body and the employer organization or organizations (a "higher level collective bargaining agreement"), and it points to § 20 of the Labor Code and to the Collective Bargaining Act. In terms of their content, it points out that these agreements are of a partly normative character, in relation to employee entitlements based on the employment relationship, and partly of an obligation-creating nature, i.e. they set the mutual obligations of the parties to the agreement. From the point of view of evaluating the general character of collective bargaining agreements, the petitioner

classifies them with private law agreements, in which it is typical that the parties to the agreement regulate their relationships voluntarily, on the basis of an expression of their free will. It considers a legal framework which would limit the free will of contracting parties in private law agreements to be inconsistent with Art. 1 of the Constitution of the Czech Republic (the "Constitution"), which provides that the Czech Republic is a democratic state governed by the rule of law. The petitioner includes the freedom to enter into private law relationships among the attributes of a state governed by the rule of law.

In the petitioner's opinion, inconsistently with this requirement that Art. 1 of the Constitution places on the legal regulation of the freedom of contractual relationships, § 7 of the Collective Bargaining Act permits the Ministry to provide by legal regulation (decree) that a higher level collective bargaining agreement is binding on employers who are not members of the employer organization which concluded the agreement. The petitioner believes that this violates an age-old legal principle which is part of European legal culture, the principle that a contract can regulate only relationship between the parties to it, as the state is assuming the right to extend the application of an entire higher level collective bargaining agreement, in its own discretion, to subjects other than those which concluded it, and which thus did not demonstrate the intent to regulate their relationship in this manner. In this regard, the petitioner also points to the practice of the Ministry which, although it asks employers who are not members of employer associations in writing for their position on extending the binding effect of the agreement, goes ahead with extension regardless of the position they express.

Concerning the obligations arising for an employer from higher level collective bargaining agreements, the petitioner states that these are, in particular, the setting of wage conditions, lengthening of convalescence leave and setting other, as a rule above-standard, labor law entitlements of employees, and these obligations are set by a mere sub-statutory act (a decree), yet they are enforceable in judicial proceedings (§ 20 par. 3, § 207 of the Labor Code). In the petitioner's opinion, this procedure, established by § 7 of the Collective Bargaining Act, also establishes inconsistency with Art. 2 para. 4 of the Constitution and with Art. 2 para. 2 and 3 and Art. 4 para. 1 of the Charter of Fundamental Rights and Freedoms (the "Charter"), which set constitutional limits on the ability to statutorily limit freedom, and also with Art. 11 para. 1 and 4 of the Charter, in connection with restriction of property rights tied to extension of the binding nature of higher level collective bargaining agreements.

The petitioner also points to the fact that the institution of overextending the binding effect of a higher level collective bargaining agreement may also have unfavorable effects on employees, because under § 4 para. 2 let. c) of Act no. 2/1991 Coll., a (company) collective bargaining agreement is invalid if it guarantees employees wage entitlements in a scope greater than that set by a higher level collective bargaining agreement as the highest permissible, i.e. invalid in the amount exceeding this highest permissible scope.

The petitioner considers another deficiency of the contested statutory regulation to be the fact that an employer to which the binding effect of an agreement is extended has practically no opportunity to defend itself against that step. When extending the binding effect of collective bargaining agreements the Ministry does not issue any decision which would apply to individual employers (i.e. a decision of the nature of an administrative

decision), against which means of redress exist. From the point of view of protecting the right to possible procedural means, the petitioner points out that issuing a decree can not be considered a measure under the Act on the Constitutional Court, and the process which takes place before issuing a decree extending the binding effect of a higher level collective bargaining agreement is a legislative process, and thus, from the position of those on whom obligations are imposed, it is not subject to possible legal review. The petitioner points out that including a particular employer on a list which is an appendix to the decree under § 7 of the Collective Bargaining Act is, by its nature, de facto a decision which can interfere in the rights of an employer which, however, is not provided procedural protection under Art. 6 para. 1 of the Convention on Protection of Human Rights and Fundamental Freedoms (the "Convention").

From an empirical point of view, the petitioner states that in 2001 alone decrees no. 238/2001 Coll., no. 300/2001 Coll., no. 303/2001 Coll. and no. 417/2001 Coll. extended the binding effect of seven higher level collective bargaining agreements to a total of 3,860 employers – legal entities and natural persons. In 2002, as of the day the petition was filed, decrees no. 81/2002 Coll., no. 223/2002 Coll., no. 300/2002 Coll., no. 301/2002 Coll., no. 302/2002 Coll., no. 409/2002 Coll. and no. 410/2002 Coll. did so to a total of 2,282 employers. Thus, according to the petitioner, some higher level collective bargaining agreements are, on the basis of a sub-statutory legal regulation, binding on a greater number of employers than the number for which they were concluded. In the petitioners opinion, a minority of employers thus forces its will on the majority in a given sector or field, which the petitioner considers inconsistent with the rights arising from Art. 26 of the Charter.

In this regard, the petitioner points to the fact that, although under § 7 para. 2 of the Collective Bargaining Act the binding nature of a higher level collective bargaining agreement can be extended only to an employer with similar activities and similar economic and social conditions, the procedure applied by the Ministry does not guarantee that this rule will be observed, because – with such a great number of affected employers – the individual conditions of individual employers are not reviewed, nor can they be. Due to the foregoing, a number of them may find themselves in a difficult economic situation, which applies particularly to small businesses.

In terms of the certainty and understandability of the text of the contested statutory provision, the petitioner considers the expression "employers with similar activities and similar economic and social conditions, with their registered address in the appropriate republic," to be disputable, in view of meeting the elements contained in it.

The petitioner also argues with the purposes of extending the applicability of collective bargaining agreements. It points out that they consist of an effort to create the same of comparable conditions in a competitive environment, as well as the same or comparable social conditions for employees. However, in the petitioner's opinion, extending the binding effect of a higher level collective bargaining agreement, in the manner provided in § 7 of Act no. 2/1991 Coll., not only does not support competition, but, on the contrary, restricts it, by setting conditions for the conduct of business for employers who are not members of the relevant employer association – regardless of their specific possibilities. If the state subjects employers who are not members of the relevant employer association to

a legal regime which is the result of collective bargaining, then, according to the petitioner, it discriminates against these employers and also indirectly pressures them to join the employer association, which the petitioner considers inconsistent with the right of the freedom of association under Art. 27 para. 1 of the Charter.

In view of all these arguments, the petitioner proposes that the Constitutional Court annul § 7 of the Collective Bargaining Act due to inconsistency with Art. 1 and Art. 2 para. 4 of the Constitution, Art. 2 para. 3, Art. 4 para. 1, Art. 11 para. 1 and 4, Art. 26 para. 1 and Art. 27 para. 1 of the Charter, as of the day this finding is promulgated in the Collection of Laws.

II.

Under § 42 para. 3 and § 69 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, the Constitutional Court sent the petition at issue to the Chamber of Deputies of the Parliament of the Czech Republic. In the introduction to his position statement of 17 December 2002, the Chairman of the Chamber of Deputies of the Parliament of the Czech Republic, PhDr. Lubomír Zaorálek, states that the International Labour Organization Convention no. 98, concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, (1948) provides the right to state support of voluntary bargaining on collective agreements between employers and employer organizations, on the one hand, and employee organizations on the other hand, so that conditions of employment can be regulated in this manner. Similarly, the European Social Charter (1961) requires the parties to support, where necessary and suitable, mechanisms for voluntary negotiation between employers or employer organizations and employee organizations for purposes of setting employment conditions through collective agreements. International Labour Organization Recommendation no. 91, concerning Collective Bargaining Agreements, (1951) presumes that the binding effect of a collective bargaining agreement will be extended to other employers an employees, even if they did not themselves sign the collective bargaining agreement; some conditions are to be met, specifically, that the collective bargaining agreement already binds a representative number of employers and employees, that the application for extension will be filed by one or more employee or employer organizations which are parties to a given agreement, and that employers and employees to whom the binding effect of a collective bargaining agreement is to be extended will be invited to state their positions.

Starting with this outline, the party to the proceedings concludes that international agreements give precedence to the regulation of minimum wages and other working conditions being secured by collective bargaining agreements (their normative provisions), i.e. precedence over a framework provided by statutory or sub-statutory regulations; the role which collective bargaining agreements are to fulfill, in particular as sources of law, is tied to an important rule, the extension of the applicability of a collective bargaining agreement. This rule, according to the statement of the Chairman of the Chamber of Deputies, makes it possible to guarantee a uniform standard of labor law and wage conditions for groups of companies with similar activities, economic and social conditions, usually for a certain economic sector or field, and the rule also prevents speculative behavior by certain employers, who could avoid the binding effect of a collective

bargaining agreement on their business by not becoming members of an employer organization.

For these reasons, the party to the proceedings concludes that extending the applicability of a higher level collective bargaining agreement, is not, in and of itself, inconsistent with international treaties by which the Czech Republic is bound.

According to the Chairman of the Chamber of Deputies, a legal regulation which extends the binding effect of a collective bargaining agreement differs from other labor law regulations in that its content is not the actual regulation of labor law relationships, but in fact only the extension of the binding effect of an already existing legal regulation (source of law) to other labor law subjects, and thereby also relationships. Thus, according to him, this regulation does not take the provisions of a collective bargaining agreement as its own provisions; the collective bargaining agreement, vis-à-vis affected third parties, does not change into a ministerial regulation issued independently on the basis of a statute and within its bounds, but remains a collective bargaining agreement.

The position statement further states, critically, that unlike international treaties and International Labour Organization Recommendation no. 91, the legal framework contained in § 7 of the Collective Bargaining Act is very terse and does not correspond to the requirements of the Recommendation. The party to the proceedings believes it is undisputed that the Act itself should set certain conditions for extension and not leave the matter to the absolutely free and unrestrained discretion, that an obligation should be provided for the state administration to evaluate the need for extension, set criteria for evaluating that need, also criteria for evaluation the representativeness of a given collective bargaining agreement, as well as criteria for setting the general interest in extending its binding effect with the aim of ruling out economic detriment to some employers. For this purpose the statutory framework, according to the Chairman of the Chamber of Deputies, should ensure that the necessary determinations will be made, in particular determination of the positions of those subjects which are to be affected by the extension; the framework should also contain at least the most basic procedural rules, in particular concerning the discussion of the legal regulation which is to extend the binding effect of a collective bargaining agreement, beyond the usual legislative discussion. Despite these reservations, the party to the proceedings considers the contested statutory provision of § 7 of the Collective Bargaining Act to be consistent with international treaties (with Convention no. 98, concerning the Application of the Principles of the Right to Organise and to Bargain Collectively and with the European Social Charter), as well as with Art. 2 of the Constitution and Art. 2 and Art. 4 of the Charter.

The position statement's conclusion states that it is up to the Constitutional Court to evaluate the cited provision in connection with the filed petition and to issue an appropriate decision.

Under § 42 para. 3 and § 69 of Act no. 182/1993 Coll., as amended by later regulations, the Constitutional Court also sent the petition in question to the Senate of the Parliament of the Czech Republic. In his position statement of 19 December 2002, the Senate Chairman, doc. JUDr. Petr Pithart, states, concerning the petitioners' reservations about the purpose of extending the binding effect of higher level collective bargaining agreements, that the

main purpose is to create a comparable competitive environment for employers which are active in similar fields of activity, which means creating comparable conditions in their economic competition. In this regard, in his opinion, the public law nature of higher level collective bargaining agreements completely predominates, which arises from the fact that a collective bargaining agreement (both a company agreement and a higher level agreement), in terms of its normative content, is a source of law, and always applies to all of the relevant employer's employees, including those who are not members of the union organization which concluded the collective bargaining agreement. Because of the foregoing, he expresses doubts about the arguments of the petitioner, which derives the unconstitutionality of this institution from something which is characteristic of private law relationships and private law contracts.

The position statement points to the fact that extending the binding effect of higher level collective bargaining agreements was already done in the Czech Republic – after developing somewhat roughly from the beginning of the 20th century – in the period of the "pre-Munich" republic, when collective bargaining agreements as understood today were called collective employment agreements. These agreements were first applied on the basis of the principle of subsidiarity (i.e. wage and other agreed conditions applied to the parties' employees unless something else was agreed upon in individual employment agreements), and subsequently became binding (if individually agreed upon conditions were worse than the conditions in the collective work agreement, the more favorable framework contained in the collective work agreement applied). During a certain period the legal framework permitted a collective employment agreement – under specified conditions – to be declared binding in a particular area, if the employer or employee, or both, were not members of the organizations which negotiated the collective employment agreement. That was the situation, for example under government directive no. 102/1935 Coll. of Laws and Directives, which regulates the working conditions of workers in textile manufacturing for a transitional period, or under government directive no. 141/1937 Coll. of Laws and Directives, on the binding effect of collective employment agreements.

From a comparative legal viewpoint, the Chairman of the Senate states that a similar institution is also applied in other European countries. For example, in Germany, the Act on Collective Bargaining, in § 5, contains a regulation which permits extending the binding nature of collective bargaining agreements under the specified conditions to employees and employers who are not members of any of the organizations which concluded the collective bargaining agreement.

A procedure which, according to the party to the proceedings, to a certain extent can be compared to extending the binding effect of collective bargaining agreements is also applied in European Union law. Art. 139 of the Treaty of Amsterdam provides that "Should management and labour so desire, the dialogue between them at Community level may lead to contractual relations, including agreements. Agreements concluded at Community level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 137, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission." In recent years, a European Community Council directive was thus passed in a number of cases, the content of which was a framework agreement containing regulation of the relevant area of labor law, which was concluded by labor and management, the

European Trade Union Confederation (ETUC), the Union of Industrial and Employers' Confederations of Europe (UNICE), and the the European Centre of Enterprises with Public Participation (CEEP). On the basis of the directive thus passed, member states must, in their own jurisdiction, pass legal regulations or other measures which will be in accordance with the directive, i.e. ensure the validity and effectiveness of the framework agreement in their territory. In the opinion expressed in the statement from the Chairman of the Senate, in this manner, basically the binding effect of framework agreements concluded between management and labor is extended to all employers in the member states. As an example, the party to the proceedings cites European Council Directive 96/34/EC, on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, European Council Directive 97/81/EC concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, and European Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP. The reasons for this procedure are expressed in detail in the preambles to the directives, which indicate, among other things, that in certain cases such a procedure is considered suitable and desirable in the European Union. In this regard, the position statement states that one of the reasons mentioned in the preambles to the directives is the fact that the Council did not decide (i.e. a consensus was not reached) on the draft of the relevant directive in the area of employment relationships, submitted with regard to interference with economic competition, and it called on management and labor to conclude relevant agreements "with the aim of increasing the competitiveness of companies." The party to the proceedings concludes from this that the aspect of comparable conditions in economic competition is also accentuated within the European Union, in the area of employment relationships. The Chairman of the Senate points out that these framework agreements between management and labor at the European Union level will also bind all of our employers, or in some cases already do, because, for example, Directive 96/34/EC, on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC was reflected in the Labor Code when it was amended by Act no. 155/2000 Coll., as part of the harmonization of our legal order with European Union law.

Concerning the petitioner's reservations concerning the inadequacy of the legal regulation extending higher level collective bargaining agreements, including the cited arguments, according to the Chairman of the Senate, one can agree with them in principle, because no appeal can be filed against the issuance of any legal regulation can be filed in administrative proceedings or the administrative courts. In this regard, as he states further, it would evidently be useful to define the mechanism of extending higher level collective bargaining agreements more closely in the legal framework, including defining the decisive criteria for evaluating whether the conditions for extension have been met in a particular case. However, it is an open question whether unconstitutionality can be seen in the fact that the statutory framework appears too concise, as the petitioner concludes. Such a statutory framework can also be, in the opinion of the party to the proceedings, applied in a constitutional manner (by a procedure preceding the issuance of a legal regulation on extending the binding effect of a higher level collective bargaining agreement so that the existing statutory conditions of that extension will be fulfilled without any further steps). Thus, according to the Chairman of the Senate, more detailed legal regulation would make it possible to evaluate, either within the total re-codification

of labor legislation currently being prepared (the new Labor Code being prepared and amendments to related laws), or even earlier, in "routinely" executed amendments to labor law regulations.

Beginning with the possibilities given by § 49 para. 1 of Act no. 182/1993 Coll., and because application of § 7 of the Collective Bargaining Act directly affects the Ministry of Labor and Social Affairs, the Constitutional Court turned to the Ministry with a request for a position statement on the petition at issue.

In its position statement of 23 December 2002, the Ministry states, concerning extending the binding effect of higher level collective bargaining agreements, that this has become a component of modern legal orders of democratic European countries, and its use is widespread in various forms in many states, e.g. in Austria, Belgium, France and Germany (a detailed overview is contained in an appendix to the position statement). The purpose of the institution of extending the binding nature of collective bargaining agreements is, according to the Ministry, an effort to prevent unjustified competitive advantage for those employers who resist collective bargaining, or bargain collectively but do not want to provide their employees the advantages which are usual and appropriate at similar employers, whereby they create for themselves a more advantageous cost of labor and a better market position at the expense of their employees. At the same time, extending the binding effect of higher level collective bargaining agreements is recognized as a state measure to support collective bargaining under International Labour Organization Convention no. 98, concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (no. 470/1990 Coll.).

Concerning the inconsistency, alleged by the petitioner, of the contested statutory provision with Art. 2 para. 4 of the Constitution and Art. 2 para. 3 and Art. 4 para. 1 of the Charter, the Ministry states that the state imposes obligations under the Charter through its bodies, and that the expression "on the basis of law" must be understood so that "obligations may be imposed by a statute or a norm other than that which is expressed in a statute, but only if that norm where authorized thereto by a regulation with at least the legal force of a statute." Likewise, "the bounds determining imposition of obligations may be," according to the Ministry, "set only by regulations with at least the legal force of a statute." The Collective Bargaining Act, which in § 7 para. 1 authorizes a legal regulation (decree) to extend the binding effect of a higher level collective bargaining agreement, i.e. to impose obligations, must be considered a statute which determines these bounds; in § 7 para. 2 it provides the bounds for imposing obligations, and permits extension only to employers who have similar activities and similar economic and social conditions.

In the Ministry's opinion, the state does not proceed capriciously when extending the binding nature of higher level collective bargaining agreements if such extension must meet statutory conditions. The position statement also states, with reference to Constitutional Court resolution file no. IV. ÚS 587/01, that § 7 of the Collective Bargaining Act is incomplete, and as a result the Ministry, in the recent period, on the basis of dialogue with management and labor, has sought to complete the wording of the Act by a procedure agreed upon in the Council of Economic and Social Agreement. Applying the condition of "similar activities" for extending the binding effect of a higher level collective bargaining agreement is at present based on data from the Administrative Register of Economic Subjects/Entities of the Ministry of Finance, which gives the activities of

economic entities under the Industrial Classification of Economic Activities, maintained by the Czech Statistical Office, which uses employers' data as a basis. Another criterion for the evaluation of individual entities by the Ministry is the number of employees, which is verified from three independent sources (data from the parties to the higher level collective bargaining agreement in question, the Administrative Register of Economic Entities of the Ministry of Finance, and the Register of the Czech Social Security Administration), and the binding effect of a higher level collective bargaining agreement is not extended to entities with fewer than 20 employees.

In practice, according to the Ministry, the process of extending the binding effect of higher level collective bargaining agreements is begun by at least one of the parties submitting a properly justified petition. If both parties do not submit the petition jointly, the position of the other party must be attached to it. If the other party does not agree with the petition, this disagreement is submitted for evaluation to the consulting body of the Ministry of Labor and Social Affairs – the Commission for Extending the Binding Effect of a Higher Level Collective Bargaining Agreement to Other Employers (the "Commission"). The Commission is composed of three representatives of employers and three representatives of the unions, who are appointed after agreement and at the proposal of the top bodies of the organizations of employers and the unions. It is presided over by the deputy minister who, however, does not vote. Although in the current practice the sides in the Commission have always agreed, if there is no agreement, then the decision falls to the minister. The Ministry also evaluates whether the higher level collective bargaining agreement contains provisions which are inconsistent with legal regulations; if it finds such inconsistencies, it conducts negotiations with the parties to correct them.

The Ministry calls on employers to whom extension of the binding effect of a collective bargaining agreement has been proposed to take a position which is evaluated by the Commission. It also informs them that if it does not receive their position statement by a stated deadline, they are presumed to have consented with the proposed extension of the binding effect. The Ministry considers this mechanism a certain protection for employers who may, for competitive reasons, hesitate to give information about employees' above-standard advantages or about their economic intentions. If it is not proved that a request for a position has not been duly delivered to a particular employer, the binding effect is not extended to it. The Commission evaluates the fulfillment of conditions required by the Collective Bargaining Act separately with each employer to which the binding effect of a higher level collective bargaining agreement is extended, and presents a recommendation to the minister.

In the conclusion of its position statement, the Ministry states that the draft decree on extending the binding effect of a collective bargaining agreement goes through the usual legislative process, i.e. discussion with all commenting parties and then in the bodies of the Government Legislative Council, or in the Government Legislative Council, in accordance with the government's legislative rules.

III.

Under § 68 para. 2 of Act no. 182/1993 Coll., the Constitutional Court, in decision making in proceedings to annul statutes and other legal regulations, evaluation the content of these regulations from the viewpoint of their consistency with the constitutional order, or with statutes, in the case of a different legal regulation, and determines whether they were passed and issued within the bounds of constitutionally provided jurisdiction and in a constitutionally prescribed manner. If the Constitutional Court, within its review of norms, evaluates the constitutionality of the jurisdiction of a norm-creating body and the constitutionality of the norm-creating process, it takes as its basis § 66 para. 2 of the Act on the Constitutional Court, under which a petition in proceedings to annul statutes and other legal regulations is inadmissible if a constitutional act or an international agreement with which the reviewed regulations are inconsistent according to the petition, ceased to be valid before the petition was delivered to the Constitutional Court. The foregoing indicates that with legal regulations issued before the Constitution of the Czech Republic, Act no. 1/1993 Coll., went into effect, the Constitutional Court is authorized to review only their consistency with the existing constitutional order, but not the constitutionality of the procedure in which they were created and observance of norm-creating jurisdiction. (See finding file no. Pl. ÚS 9/99, published in Collection of Decisions, vol. 16, p. 13-14.)

This interpretation of § 68 para. 2 of Act no. 182/1993 Coll., applies fully to the adjudicated matter, where Act no. 2/1991 Coll. was approved by the former Federal Assembly of the CSFR on 4 December 1990, and went into effect on 1 February 1991, i.e. before the Constitution of the Czech Republic went into effect; the contested § 7 of the Act was not affected by any of the amendments to it (i.e. Acts no. 519/1991 Coll., no. 118/1995 Coll., no. 155/1995 Coll., no. 220/2000 Coll. and no. 151/2002 Coll.).

IV.

The text of § 7 of Act no. 2/1991 Coll., contested by the petition, is the following:

"§ 7"

(1) The Ministry of Labor and Social Affairs of the republic may provide, by legal regulation, that a higher level collective bargaining agreement is also binding on employers who are not members of the employer organization which concluded the agreement.

(2) The binding effect of a higher level collective bargaining agreement can be extended under the previous paragraph only to employers with similar activities and similar economic and social conditions with their registered address in the territory of the relevant republic and for which the higher level collective bargaining agreement is not binding."

V.

The legal institution of collective bargaining agreements is established in the Czech legal order by, in particular, § 20 to 22, § 30, § 32, § 35, § 60a, § 73, § 74, § 83a, § 85, § 88, § 92, § 95, § 96, § 99a, § 102, § 105, § 111, § 119, § 120, § 124-126, § 128, § 129, § 131, § 140, § 143 and § 200 of the Labor Code and by Act no. 2/1991 Coll., on Collective Bargaining, as amended by later regulations. Collective bargaining agreements are the result of collective bargaining between management and labor. The purpose of legal regulation of collective bargaining in the European Context, and within that also of collective bargaining agreements, is to ensure social conciliation and to create a mechanism for on-going social communication and democratic procedural resolving of possible conflicts between employers and employees. The system of collective bargaining reflects the development of European democracy in the second half of the 19th and first half of the 20th centuries; it reflects the search for a mechanism for peaceful, non-violent resolution of the tensions which endanger domestic peace.

The realistic functioning of this mechanism comes from acceptance of the result of social bargaining by the state (under certain conditions, in Czech law contained in, e.g. § 4 of the Collective Bargaining Act), i.e. giving the normative content of collective bargaining agreements the status of being a source of law; the agreements then give rise to entitlements which are exercisable in court.

The mechanism of collective bargaining is also applied in areas other than labor law relationships. An analogous example is § 17 para. 2 of Act no. 48/1997 Coll., on Public health Insurance, as amended by later regulations, under which the regulation of substantive performance in providing health care to insured parties is given by a framework agreement which is the result of negotiations between representatives of associations of health insurance companies and representatives of the relevant group health facilities represented by their professional associations, where the individual framework agreements are submitted to the Ministry of Health, which evaluates them in terms of consistency with legal regulations and the public interest and then issues them as a decree.

In a free society, in which neither employees or employers can be considered to have an obligation to associate instead of the right to do so (Art. 27 of the Charter), the institution of collective bargaining, resulting in collective bargaining agreements, is regularly tied to the extension of their normative applicability beyond the framework of an obligation-creating jurisdiction. The mechanism of this extension can be conceptually contained even in the collective bargaining agreement itself, without such extension then requiring the passage of another normative act (an example is the legal framework in Great Britain), or this mechanism assumes that a special normative act will be issued which establishes the extension of applicability. The European conceptual standard in this regard is based on an assumption that the concept of collective bargaining agreements in the sense of legal acts binding only the parties would not make it possible to achieve the basic aim of collective bargaining.

If the aim of collective bargaining is to be a mechanism of social communication and democratic procedural resolution of potential conflicts which endanger domestic peace, then it is also tied to a requirement of legitimacy (representativeness). This is considered to be, for example in the German legal framework (§ 12 para. 1 of Tarifvertragsgesetz) the limit of 50% of employers operating in a given field. In other words, the minister of labor and social affairs of Germany may proclaim a particular collective bargaining agreement (Tarifvertrag) to be generally binding only if at least 50% of the employers in the given field took part in concluding it within the participating employer associations.

V./a

The objections of the petitioner, the group of deputies, against the constitutional deficiencies in § 7 of the Collective Bargaining Act can be divided into four groups. The first are objections concerning the restriction of contractual freedom of employers not participating in higher level collective bargaining agreements, the second is the lack of judicial protection for these employers, the third is the objection of uncertainty of the contested statutory provision, and finally the fourth is the restriction on the freedom of association.

V./b

In the settled opinion of the Constitutional Court (see findings file no. Pl. ÚS 24/99, Pl. ÚS 5/01, Pl. ÚS 39/01 – published in Collection of Decisions, vol. 18, p. 135 et seq., vol. 24, p. 79 et seq. and vol. 28) an essential component of a democratic state governed by the rule of law is protection of the freedom of contract, which is a derivative of constitutional protection of the right to property under Art. 11 para. 1 of the Charter (the fundamental component of which is ius disponendi). Tied to the very nature and purpose of collective bargaining, the institution of their extension, i.e. the possibility of extending the normative over the obligation-creating effect of a collective bargaining agreement, thus, from a constitutional law viewpoint, establishes conflict between the restriction on property rights under Art. 11 of the Charter and the public good under Art. 6 of the European Social Charter, published under no. 14/2000 Collection of International Treaties, in connection with Art. 1 of the Constitution and Art. 27 of the Charter.

The extension of applicability of a higher level collective bargaining agreement, by its generally economic nature, is price regulation, by regulating the wages and work conditions of employees (the positive law definition of the concept of price regulation under Act no. 526/1990 Coll., on Prices, as amended by later regulations, is, however, narrower). The Constitutional Court delineated a certain constitutional framework in relation to the legislature for the permissibility of price regulation in its previous case law. It considered the safeguards for this permissibility in the context of the acceptability of setting the value of a point in health insurance, the acceptability of rent regulation, and finally the acceptability of production quotas for agricultural and food products.

In the finding in the matter file no. Pl. ÚS 24/99, in connection with setting the value of a point in health insurance, the Constitutional Court stated: "An essential component of a democratic state governed by the rule of law is protection of the freedom of contract, which is a derivative of the constitutional protection of property rights under Art. 11 para. 1 of the Charter (whose fundamental component is ius disponendi). Therefore, price regulation is an exceptional measure, and is acceptable only under quite limited conditions. Although the fundamental right contained in Art. 26 para. 1 of the Charter can be exercised, under Art. 41 para. 1 of the Charter, only within the bounds of an implementing statute, for the legislature, or for a norm creator, this case too is subject to the limit set by Art. 4 para. 4 of the Charter, under which, when applying provisions on limitations on fundamental rights and freedoms their meaning and purpose must be preserved. State (public) regulation, based on taking into account important facts (in this area the amount of insurance premium collected, the level of expenses in providing health care, etc.), must, when setting the price, also take into account the opportunity to create profits. The consequence of the absence of this maxim during price regulation can be making a certain field of entrepreneurial activity impossible and creating a state monopoly, i.e. affecting the meaning and purpose of the fundamental right arising from Art. 26 of the Charter."

In the finding in the matter file no. Pl. ÚS 3/2000 – published in Collection of Decisions, vol. 18, p. 287 et seq., the Constitutional Court again addressed the question of price regulation, this time in connection with evaluating the constitutionality of legal regulation of rent. It took as its starting point Art. 1 para. 2 of Protocol no. 1 to the Convention, which provides states the right to pass such laws as they consider necessary for the regulation of the use of property in accordance with the general interest, and also the case law of the European Court for Human Rights. According to the case law, such statutes are especially necessary and usually in the field of housing, which, in modern societies, becomes a central issue of social and economic policy, and for that purpose the legislature must have a wide "margin of appreciation" (evaluation), both in determining whether a public interest exists authorizing the application of regulatory (control) measures, and concerning the selection of detailed rules for applying such measures. As the European Court for Human rights emphasized in the case James et al., state interference must respect the principle of a "fair balance" between the requirement of the general interest of society and the requirement to protect the fundamental rights of the individual. There must be a reasonable (justified) proportionality relationship between the means used and the aims pursued. Thus, in this matter the Constitutional Court accepted possible price regulation of rent, but on the condition of applying the principle of proportionality (comprehensively, concerning all components of the principle of proportionality, see Constitutional Court findings, file no. Pl. ÚS 4/94, Pl. ÚS 15/96, Pl. ÚS 16/98 – published in Collection of Decisions, vol. 2, p. 57 et seq., vol. 6, p. 213 et seq. and vol. 13, p. 177 et seq.). Although the Constitutional Court recognized the presence of the first component, i.e. the suitability of the means used in relation to the aim pursued, it found that the principle of necessity had not been met, i.e. the subsidiarity of the means used in relation to other possible means, from the point of view of the fundamental right limited thereby (in the given matter, property rights): "In order for rental building owners to be able to meet their stated obligations, and so that the right of the individual to adequate housing under Art. 11 of the International Covenant on Economic, Social and Cultural Rights (the "Covenant") to thus have a realistic chance, one could have chosen the path taken by the

legislature of the First Republic, which in § 9 para. 4 of Act no. 32/1934 Coll., as amended by later regulations, permitted the raising of rent on the grounds of compensation of expenses incurred for occasional or extraordinary necessary repair and renovation of the building." On the basis of the cited arguments, the Constitutional Court concluded that Art. 4 para. 3 and 4 of the Charter, were violated, in connection with Art. 11 para. 1 of the Charter. From a general viewpoint, the Constitutional Court, in the finding in question, also formulated another criterion for evaluating the constitutionality of price regulation: "Price regulation, if it is not to exceed the bounds of constitutionality, must not evidently lower the price so much that the price, in view of all demonstrated and necessarily incurred expenses, would eliminate the possibility of at least recouping them, because in that case it would actually imply denial of the purpose and all functions of ownership."

Peripherally to the constitutional safeguards for setting quotas for the manufacture of food and agricultural products, in findings file no. Pl. ÚS 39/01 and Pl. ÚS 5/01 the Constitutional Court emphasized that neither the constitutional order nor international agreements on human rights and fundamental freedoms forbid the legislature from limiting the amount of production, distribution or consumption of values. Therefore, the legislature may (within the bounds of constitutionally guaranteed basic principles, human rights and freedoms) in its discretion introduce price or quantitative regulation of production in a certain branch of the economy, define or influence the kind and number of entities operating in it, or limit contractual freedom in the placement of production in the market or in the purchase of raw materials and production facilities. The Constitutional Court did not find the free market free of all regulation to be a value of constitutional importance. It pointed to the limits on the freedom to conduct business in the European Union, where a market economy is directly declared to be a constitutional principle in the establishment treaty. It emphasized that an entitlement to achieve a certain price in the market is not, however, a fundamental right. It pointed out that a production quota system is a form of control of the use of property, which is introduced do to the public interest. It also referred to the case law of the European Court of Justice. In its judgment in Metallurgiki Halyps A.E. v Commission of the European Communities (258/81), the Court emphasized that community limitations on steel production, although they can endanger the profitability of a company, are not a violation of the right to own property. It pointed to the fact that the European Court for Human Rights has never evaluated the general legal measures of member states of the Council of Europe, which regulated the volume of economic production, in view of the compatibility with the European standard of the fundamental right to own property. It pointed out that the current case law of constitutional and supreme courts of European Union member states and other democratic states governed by the rule of law does not indicate that limiting production for reasons of stabilizing market prices at a certain level, if fairly imposed on all existing producers, would be considered incompatible with the national standard of property ownership. Of course, this statement does not rule out their receiving political criticism, which is strong. However, the Constitutional Court did not find a reason to interpret Art. 11 of the Charter differently. It considered the introduction of production quotas in the adjudicated cases to be justified, as it serves the public interest, which it identified as a guarantee of a minimum price in an environment where state subsidies contribute to an increase in production which demand would not cause. State intervention in agriculture is motivated by its social, economic and ecological idiosyncrasies. The Constitutional Court acknowledged that production quota systems for agricultural products exist in the

European Union, and rejected the idea that the domestic standard of human rights would require a pure market economy, free of state intervention. It expressed restraint concerning the request that it subject to strict control, from the point of view of its necessity and real need, a legal framework whereby the state intervenes in the economy. It emphasized that the Parliament of the Czech Republic, as the political body which bears political responsibility vis-à-vis voters for recognizing problems in the economy and selecting instruments to resolve them, has jurisdiction to choose economic policy.

In the matter of the constitutionality of § 7 of the Collective Bargaining Act, the Constitutional Court concluded that it was justified to diverge from the previous findings, file no. Pl. ÚS 5/01 and Pl. ÚS 39/01, and to test the acceptability of the priority of the public interest, arising from protection of values protected by Art. 6 of the European Social Charter, published under no. 14/2000 Collection of International Treaties, in connection with Art. 1 of the Constitution and Art. 27 of the Charter, in conflict with the right to own property under Art. 11 of the Charter. In cases of conflict it is necessary to set conditions under which, if met, priority goes to one fundamental right or freedom, and others under which, if met, priority goes to another fundamental right or freedom, or a particular public good (on the principle of proportionality see the settled case law of the Constitutional Court, in particular findings file no. Pl. ÚS 4/94, Pl. ÚS 15/96, Pl. ÚS 16/98). Fundamental in this regard is the maxim under which a fundamental right or freedom can be restricted only in the interest of another fundamental right or freedom or a public good. Measuring conflicting fundamental rights and freedoms or public goods against each other is based on the following criteria: The first is the criterion of suitability, i.e. evaluating whether the institution restricting a certain fundamental right makes it possible to reach the aim pursued (protection of another fundamental right or public good). The second criterion for comparing fundamental rights and freedoms is the criterion of necessity, consisting of comparing the legislative means which restricts a fundamental right or freedom with other measures which make it possible to reach the same aim, but which do not affect fundamental rights and freedoms, or which affect them with a lower intensity. The third criterion is comparing the gravity of both conflicting fundamental rights or public goods. These fundamental rights, or public goods, are prima facie equal. Comparing the gravity of conflicting fundamental rights, or public goods (after the conditions of suitability and necessity have been met) consists of weighing empirical, systemic, contextual and value-based arguments. An empirical argument can be understood as the factual gravity of a situation which is tied to the protection of a certain fundamental right. A systemic argument means weighing the purpose and classification of the affected fundamental right or freedom in the system of fundamental rights and freedoms. A contextual argument can be understood as the other negative effects of restricting one fundamental right as a result of giving priority to another. A value-based argument means weighing the positive aspects of conflicting fundamental rights n view of the accepted hierarchy of values.

Within the structure of this principle, the Constitutional Court, in its case law, does not apply only the postulates of suitability, necessity and proportionality in the narrow sense, but also the postulate of minimizing interference with fundamental rights (see finding Pl. ÚS 4/94): “Thus, one can state that if it is concluded that giving priority to one over another of two conflicting fundamental rights is justified, a necessary condition for the final decision is also to use all possibilities to minimize the interference in one of them. This conclusion can also be derived from Art. 4 para. 4 of the Charter, in the sense that

fundamental rights and freedoms must be preserved not only when applying the provision on the bounds of fundamental rights and freedoms, but also analogously in the event of their restriction as a result of conflict."

In the adjudicated matter, the institution of collective bargaining and the connected effect of extension of applicability of collective bargaining agreements meets the conditions for acceptance arising from the safeguards of suitability and necessity. It is an effective means for achieving the aims pursued (social conciliation) and it also meets the safeguard of analyzing multiple possible normative means in relation to the intended aim and their subsidiarity from the point of view of restricting constitutionally protected values – of a fundamental right or public good (e.g., from the point of view of comparing the extension of applicability of a collective bargaining agreement and state regulation outside the system of collective bargaining, an example of which is setting the minimum wage under § 111 para. 4 of the Labor Code).

The comparison of both conflicting constitutionally protected values, from systemic, value-based, contextual and empirical points of view, in and of itself makes it possible to reach a conclusion to accept the institution of extension of applicability of collective bargaining agreements, although only on the condition of meeting certain safeguards.

If the starting point for constitutional acceptability of extending the applicability of higher level collective bargaining agreements is European democratic legal experience and the standards arising from it, comparison with European Union law, as well as finding a procedural mechanism to ensure a balance between legal protection of freedom and guaranteeing the internal peace of human society, in the adjudicated context the related aims can be achieved only at the price of restricting property rights. However, the priority given to the public good over the right to property must be conditioned on the legitimacy (representativeness) of the collective bargaining system, so by the relevance of the contracting parties' market share in a given field. Further, the requirement of minimizing the interference in a fundamental right or freedom, which is part of the principle of proportionality, also gives rise to the safeguard that this measure must be exceptional, and the related maxims for the norm creator to accept extending the applicability of a collective bargaining agreement only in extraordinarily justified cases of the public interest.

From the point of view of these conditions from the principle of proportionality, § 7 of the Collective Bargaining Act must be considered inconsistent with Art. 11 and Art. 26 of the Charter, in connection with Art. 4 para. 4 of the Charter, as it did not meet the requirement of defining the bounds of the representativeness of the collective bargaining system as part of comparing conflicting fundamental rights and public goods, and further, from the point of view of minimizing the restriction of fundamental rights it did not meet the requirement that such measures be exceptional.

V./c

The provision of § 7 of the Collective Bargaining Act authorizes the Ministry, by decree, to extend the binding effect of a higher level collective bargaining agreement for employers who are not members of the relevant employer associations if they conduct similar activities, have similar economic and social conditions as the contracting parties to the agreement, and have their registered address in the republic.

The Ministry extends the applicability of a collective bargaining agreement by decree in the entire period when the Collective Bargaining Act is in effect by stating in it that, for a precisely identified higher level collective bargaining agreement, its binding effect is hereby extended for employers listed in an appendix, where the appendix contains a precise enumeration of employers with their business name, address and ID number (see, e.g., decree no. 410/2002 Coll.).

Thus, in practice, fulfillment of the statutory authorization contained § 7 of the Collective Bargaining Act by a decree, i.e. by a generally binding legal regulation, takes place by a regulation applied to precisely individualized entities, which is typical for the application of law.

The current practice thereby deviates from one of the fundamental material elements of the concept of a law (legal regulation), which is universality . Let us remember that the requirement of the universality of a law is an important component of the principle of the sovereignty of law, and thus also of a state governed by the rule of law.

Arguments in the favor of the universality of a law, or a legal regulation, as the Constitutional Court has already pointed out in the finding in the matter file no. Pl. ÚS 12/02 (to be published in Collection of Decisions, vol. 29), are these: separation of powers, equality, and the right to independent judge.

The first of the arguments against laws, legal regulations, concerning individual cases is the principle of the separation of powers, or the separation of the legislative, executive and judicial power in a democratic state based on the rule of law: “Passing laws concerning individual cases meets the most resistance in the area of application of rights. The right to a lawful judge and the independence of legal protection also rule out individual legislative directives in areas where they are not protected by the principle ‘nulla poena sine lege’ (and here lex can meaningfully be only a general and written statement of law).” (H. Schneider, Gesetzgebung, 2nd edition, Heidelberg 1991, p. 32). Article I Section 9 of the Constitution of the USA states provides in this regard: “No Bill of Attainder ... shall be passed.”

Thus, an individual regulation contained in a legal regulation which deprives the addressees of the possibility of judicial review of whether the general conditions of a normative framework have been met concerning a particular entity, a regulation which lacks transparent and acceptable justification within the general possibility of regulation, must be considered inconsistent with the principle of a state governed by the rule of law (Art. 1 of the Constitution), to which the separation of powers and judicial protection of rights is immanent (Art. 81, Art. 90 of the Constitution). These derogatory grounds for judicial review of constitutionality apply fully to evaluating the constitutionality of § 7 of

the Collective Bargaining Act. It is fully up to the legislature whether it sets the procedure for extending applicability in the form of administrative proceedings with the possibility of judicial review (as the Constitutional Court indicated in its resolution of 11 July 2002 file no. IV. ÚS 587/01) or in the form of a general normative definition of an entire group of employers to which the extension applies, with the possibility of judicial review of the fulfillment of subsumptive conditions (e.g. in a dispute on the exercise by an employee of claimed entitlements arising from a higher level collective bargaining agreement, or judicial review of administrative decisions concerning, e.g., inspection of working conditions).

V./d

The Constitutional Court has also addressed, in a number of its findings, the question of the conditions under which the uncertainty and lack of understandability of a legal regulation must be considered inconsistent with the principle of a state governed by the rule of law, and thus under what conditions these become grounds for annulment. In its finding file no. Pl. ÚS 6/2000 (Collection of Decisions, vol. 21, p. 195 et seq.), it stated in this regard: "If, under Art. 1 of the Constitution, the Czech Republic is a democratic state governed by the rule of law, that means – among other things – that its legal order is supposed to follow the principle of the foreseeability of the consequences of a legal regulation and that regulation's certainty and understandability. Only a law whose consequences can be clearly foreseen corresponds to the cited concept of a democratic state governed by the rule of law." The court has already stated the factors for testing a legal provision's constitutionality with regard to the requirement of certainty and understandability in finding file no. Pl. ÚS 9/95 (Collection of Decisions, vol. 5, p. 107 et seq.): "the uncertainty of one of the provisions of a legal regulation must be considered inconsistent with the requirement of legal certainty and thus also with a legal state governed by the rule of law (Art. 1 of the Constitution) only if the intensity of that uncertainty rules out the possibility of setting the normative content of that provision with the use of the usual interpretative procedures."

These factors must be applied in connection to the requirements of constitutionality, which the Constitutional Court imposes on the legislature when it sets implementing legal provisions.

According to the legal opinion contained in finding file no. Pl. ÚS 45/2000 (Collection of Decisions, vol. 21, p. 261 et seq.) constitutional definition of derived norm creation by the executive rests on the following principles: "Another legal regulation" must be issued by an authorized entity, may not interfere n matters reserved to statute (thus, it can not set primary rights and obligations), and must indicate the clear will of the legislature to create a regulation which is over the statutory standard (thus, room must be opened for the sphere of "another legal regulation"). In finding file no. Pl. ÚS 3/95 (Collection of Decisions, vol. 4, p. 91 et seq.) the Constitutional Court provided the condition of certainty of the statutory bounds of "another legal regulation" in the authorizing provision: "Fulfillment of conditions of a special regulation which are not specified in more detail, and which then become ex post constitutive elements of a legally protected subject,

creates the impression that it would be possible to formulate the legislature's authorization of the executive power in other areas of the life of the society with equal uncertainty."

The provision of § 7 of the Collective Bargaining Act identifies the state body whose norm creating authority it establishes, and defines a class of possible extension of applicability of a collective bargaining agreement by the elements of similar activities, similar economic and social conditions, and a registered address in the Czech Republic. Although very general, one can assume that this framework offers an adequate interpretative framework for setting conditions for extension in connection to a specific higher level collective bargaining agreement with regard to the viewpoint of the similar position of employers who are members of employer associations and those who are not.

From the point of view of the petitioners' objections concerning the uncertainty of § 7 of the Collective Bargaining Act, the Constitutional Court states that the wording of the contested statutory provision fails to meet not the requirement of certainty, but the requirement of completeness, which arises for statutory authorization of the extension of applicability of a higher level collective bargaining agreement from the principle of proportionality, by the deficiency in regulating the representativeness of collective bargaining and the extraordinariness of a measure restricting the fundamental right to property, and which arises for it from the maxim of ensuring a fundamental right to judicial protection.

V./e

The petitioners' objection concerning the restriction of the freedom of association applies to restriction of the negative aspect of that freedom, i.e. the right to freely decide not to be a member of a particular association, and the corresponding ban on forcing anyone to join an association.

If it were possible to agree with this objection from the point of view of the current wording of § 7 of the Collective Bargaining Act, which, in terms of the proportionality principle suffers from the lack of a definition of the bounds of representativeness of collective bargaining, when these bounds are established the criticism that extending the applicability of a higher level collective bargaining agreement is inconsistent with the right to freedom of association loses its relevance.

V./f

In view of all the reasons laid out, the Constitutional Court annulled § 7 of the Collective Bargaining Act due to inconsistency with Art. 11 para. 1, Art. 26 in connection with Art. 4 para. 4 of the Charter and Art. 1, Art. 81 and Art. 90 of the Constitution.

Aware of the fact that annulment of the cited statutory provision without a commensurate delay in effect vacantia legis would result in a constitutionally undesirable incompleteness in the Act, by postponing the effect of the annulment finding under § 70 para. 1 of Act no. 182/1993 Coll., to 31 March 2004, the Constitutional Court created sufficient time for the democratic legislature to constitutionally implement Act no. 2/1991 Coll., on Collective Bargaining, as amended by later regulations.

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

Brno, 11 June 2003