2001/01/24 - PL. ÚS 42/00: ELECTIONS ACT

HEADNOTES

The process of differentiation can fulfill its basic function as a driving force and a creative element in historical development and progress only if it is implemented on the field of a continuum between extreme tendencies, the functional tension of which rules out taking extreme positions. Therefore, the model also used in political practice, "proportional representation," can and must make a series of concessions to the principle of integration, but this can only happen on a particular segment of the continuum, when it remains "turned" to its ideal type, in other words, when there is a tendency to at least approach this type in its basic aspects. However, in the opinion of the Constitutional Court, in this particular case, i.e. in the matter at hand, increasing the number of election regions to 35 (§ 27 first sentence),1) setting the lowest number of mandates in the region to 4 (§ 48 par. 4)2) and the method of calculating shares and allocating a mandate with the modified d'Hondt formula (§ 50 par. 1, 2, 3)4) in its aggregate represents a concentration of integration elements which result in abandoning the continuum, still capable of registering at least a turning to the model of proportional representation. Thus, if the constitutional assembly decided to apply proportional representation to elections to the Chamber of Deputies, then even while respecting integrationist stimuli and the emphasis laid on the functionality of the democratic political system it is necessary at the same time to observe the need to reflect the will of the highest possible number of voters.

If the country's political system is based (among other things) on the free competition of political parties respecting the democratic organization of the state, then constitutionally there are no other barriers which could (should) prevent political parties from participating in electoral competition, all the more so if these parties, as was already stated, have already gone through the filter provided by the Act on Association in Political Parties and political Movements (Act no. 424/1991 Coll.). Therefore election deposits too are a preventive a priori measure, which a limine restricts free competition, and, in addition, financial levers which do not belong in elections.

If the fact is taken into account that the contested provision, § 85 third sentence of Act no. 247/1995 Coll., as amended by later regulations,6) decreased the amount of payment for each vote cast from CZK 90 to CZK 30, the Constitutional Court believes that even lowering the threshold from three percent to two percent can not, in the context of all the relevant circumstances, change anything about the justification of the conclusion stated in the Constitutional Court's previous judgment, that the cited provision is (even after it was amended) in conflict with Art. 5 of the Constitution of the CR 7) and Art. 22 of the Charter, 8) which judgment was evidently not respected by the legislature.

However, concerning the contested provision of § 49 par. 1 let. b), c), d), par. 3 let. b), c), d) of the Election Act,3) it must be emphasized that the Constitution of the CR contains no express provision about the formation of coalitions, that it is governed only

by Act no. 247/1995 Coll., on Elections to the Parliament of the CR and Amending and Supplementing Certain Other Acts, as amended by later regulations. The Constitution of the CR enshrines in Art. 57) the principle of free competition among political parties; the Charter, in Art. 228) uses the term "political forces". The legislature, in setting the level of the closing clause for coalitions of political parties or political movements, basically applies the method of adding the 5 percent allocated to each individual political party or political movement, which it does not abandon until the case of a coalition of more than 4 political parties or political movements, as the closing clause for 4 and more of these parties or movements is always a maximum of 20 percent of the total number of valid votes. In the Constitutional Court's opinion, the possibility that this provision is self-serving can not be ruled out, as the legislature, if it regulates the ability to form election coalitions at all, as a rule, should simultaneously aim to create conditions for a certain mitigation of the 5 % threshold for parties that are capable of entering into a coalition with others, so that in this regard allowing election coalitions in the amendment of the Election Act without a simultaneous mitigation of the conditions for their participation in the distribution of mandates appears to lack purpose; however, the existence of this possible self-servingness in the legislature's intent can scarcely lead to a conclusion that it was unconstitutional.

CZECH REPUBLIC

CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE REPUBLIC

The Constitutional Court, in the Plenum, decided on 24 January 2001 in the matter of the petition from the President of the Czech Republic for annulment of the provisions of § 27 first sentence,1) § 48 par. 4,2) § 49 par. 1 let. b), c), d) and par. 3 let. b), c), d),3) § 50 par. 1, 2 and 3 4) and Appendices no. 1 and 2 of Act no. 247/1995 Coll., on Elections to the Parliament of the Czech Republic and Amending and Supplementing Certain Other Acts, as amended by later regulations (the "Election Act"), and the proposal from a group of senators of the Parliament of the CR, for annulment of the provisions of § 31 par. 4 5) and § 85 third sentence of the Election Act6) with the participation of 1) the Chamber of Deputies of the Parliament of the CR, 2) the Senate of the Parliament of the CR, as parties to the proceedings, and a group of senators of the Parliament of the CR, also as a secondary party, as follows:

The provisions of § 27 first sentence,1) § 31 par. 4,5) § 48 par. 4,2) § 50 par. 1, 2, 3,4) § 85 third sentence6) and Appendices no. 1 and 2 of Act no. 247/1995 Coll., on Elections to the Parliament of the Czech Republic and Amending and Supplementing Certain Other Acts, as amended by later regulations, are annulled as of the day this decision is promulgated in the Collection of Laws.

On the day this decision is promulgated in the Collection of Laws, the Decree of the Ministry of Finance no. 268/2000 Coll., which sets more detailed conditions for the manner of making and returning a deposit in connection with elections to the Parliament of the Czech Republic, also ceases to be valid, in the parts of the provisions concerning the deposit for elections to the Chamber of Deputies.

The proposal for annulment of the provisions of § 49 par. 1 let. b), c), d), par. 3 let. b), c), d)3) of Act no. 247/1995 Coll., Elections to the Parliament of the Czech Republic and Amending and Supplementing Certain Other Acts, as amended by later regulations, is denied.

REASONING

I.

On 17 July 2000 The Constitutional Court received a proposal from the President of the Czech Republic for annulment of the provisions of provisions of § 27 first sentence,1) § 48 par. 4,2) § 50 par. 1, 2 and 34) and Appendices no. 1 and 2 of the Election Act due to conflict with Art. 18 par. 1 Of the Constitution of the CR and for the annulment of the provisions of § 49 par. 1 let. b), c), d) and par. 3 let. b), c), d)3) of the Election Act due to conflict with Art. 5 of the Constitution of the CR7) and Art. 228) of the Charter of Fundamental Rights and Freedoms (the "Charter").

The proposal states that § 27 first sentence of the election Act1) creates 35 election regions for elections to the Chamber of Deputies, which, in comparison with the situation before the last amendment of the Election Act (8 election regions) is a considerable increases in their number. Meanwhile, it is precisely the number of election regions which is a fundamental element of the election system, influencing the quality of the projection of the proportion of votes cast in the shares held by individual political entities in the allocated mandates. The number of election regions established determines the number of mandates allocated in individual regions, and the more mandates are distributed in a given district, the more the given system is "proportional". As a result of this provision, on the one hand the election system diverges in the opposite direction toward a majority system, and on the other hand, apart from the statutorily set closing clause, a "natural" closing clause is created, which will be, for a candidate entity within a region, at least over 10 % of valid votes necessary to obtain a mandate. The complainant doubts that this distortion of proportionality is reasonable and justified in relation to the specified objective, i.e. the creation of a stable government.

Concerning § 50 par. 1, 2 and 34) the proposal states that it governs the method of calculating mandates from votes obtained and that the chosen method is a modification of the classical d´Hondt system of an election divisor, from which it differs in the initial divisor, instead of the number 1, the number 1.42. This leads to a deformation of the system, which even more distinctly gives an advantage to stronger political entities, which already have an advantage to a certain extent anyway. The absence of any kind of justification for introducing a divisor of 1.42 casts doubt upon the appropriateness of the interference in the proportionality of the election system.

According to the complainant these fundamental changes of the basic elements of the election system, due to their complexity, cross the acceptable limits, in which it is possible to deviate from the principles of the proportional representation system without it losing its constitutional character. The complainant is also led to conclude that deformation of the proportionality of the election system exists by the case law of the Constitutional Court in matters of the Election Act. In connection with reviewing the constitutionality of the five percent closing clause (decision no. 88/1997 Coll.) and the requirement of a 3 % threshold of votes obtained for the provision of a contribution to cover election expenses (decision no. 243/1999 Coll.) the Constitutional Court reached significant legal conclusions and evaluations concerning the balance of the principle of natural differentiation, which is part of the proportional system, and the principle of purposeful integration, which is meant to be part of the system only in a limited extent, necessary to ensure the functionality of the elected body. The complainant believes that the cited provisions, unilaterally giving an advantage to strong political entities, grossly interfered with the balance of these principles in the election system. Because the first sentence of § 27 of the Election Act1) is directly tied to Appendix no. 1, containing the list of election regions for elections to the Chamber of Deputies, stating their capital cities, and Appendix no. 2, which sets the maximum number of candidates on candidate lists, annulment of these is also proposed.

Concerning § 48 par. 4 of the Election Act,2) which provides at least 4 mandates in an election region regardless of the number of participating voters in the region, the complainant states that given minimal voter participation a voter in such a region will have a "stronger" vote than voters in other regions, where the number of elected deputies is calculated under § 48 par. 1 to 3 of the Election Act, using the national mandate number, which is in conflict with the principle of equality of voting rights under Article 18 par. 1 of the Constitution of the CR,9) which requires not only that each voter have at his disposal the same number of votes, but also that each vote have the same weight, i.e. that one mandate receive approximately the same number of votes.

According to the complainant, as a result of § 49 par. 1 let. b), c), d) and par. 3 let. b), c), d) of the Election Act3), a considerable increase of the closing clause results from introducing a calculation model according to the number of coalition members. This can lead to discouraging stronger political parties from associating with weaker coalition partners out of concern that they will not jointly cross the thus raised threshold for entry into the Parliament, or the effect of the change may discourage voters from voting for a coalition, particularly if a more numerous one is established. Thus, in the complainant's opinion, the new provisions for the entry of coalition election entities into the Chamber of deputies in a constitutionally unacceptable manner restricts the free competition of political parties enshrined in Art. 5 of the Constitution of the CR7) and Art. 22 of the Charter.8)

II.

The Chamber of Deputies of the Parliament of the CR stated in its position that the new statutory regulation of the number of election regions reflects the principle of proportional representation, because, under the new regulation too, mandates are distributed on the

basis of the candidate lists of political parties, political movements, or their coalitions, according to the number of votes received. The constitution leaves the legislature relatively wide authorization to determined in the Election Act both the number and size of election districts, and the election technique through which the votes cast are converted into mandates. The Constitutional Court also reasoned this way in decision no. 88/1997 Coll., when it stated that building certain integration stimuli into the election mechanism is permissible where serious reasons for doing so exist. Therefore, the Election Act may also limit the principle of proportional representation by "closing clauses," which are to prevent the existence in the Chamber of Deputies of too large a number of political parties with a very low number of mandates. The existing method of converting votes to mandates considerably hinders the activity of the Chamber of Deputies, and for several years has markedly complicated the creation of a stable majority government. Increasing the number of election regions is a modification of the existing system which, however, does not cross the line between a proportional and a majority system, is in accordance with Art. 18 par. 1 of the Constitution of the CR,9) and by strengthening the relationship between the voter and the deputy, is also in accordance with the requirement that elected deputies reflect and express the will of their voters as faithfully as possible.

A position on the proposal was also stated by the Senate of the Parliament of the Czech republic, which emphasized in its position that the proposed changes do lead to strengthening larger political parties, but on the other hand do not in any way restrict the right of smaller political parties to take part in elections and, based on their results, obtain representation in the Chamber of Deputies, which means that the principle of free competition between political parties guaranteed in Art. 5 of the Constitution of the CR7) remains preserved.

A position on the proposal was stated, at the invitation of the Constitutional Court, by the Ministry of the Interior, which stated in its position that the d´Hondt method is without any doubt traditionally classed among methods of the proportional representation system, and its application in the Act thus can not be in conflict with the Constitution, which provides the principle of proportional representation for elections to the Chamber of Deputies. Therefore, the new regulation of the number of election regions also can not be in conflict with the Constitution, because the distribution of mandates will take place according to the principle of proportional representation, nor can the introduction of the initial divisor of 1.42, because it is merely a modification of the d´Hondt method, but fully within the framework of proportional representation. The Ministry of the Interior is of the opinion that the Act as passed is not in conflict with the principle of the free competition of political parties and does not conflict with Art. 22 of the Charter.8)

III.

On 1 September 2000 the Constitutional Court received a proposal from a group of 33 senators of the Senate of the Parliament of the CR for annulment of § 27 first sentence,1) § 48 par. 4,2) § 50 par. 1, 2 and 34) and Appendices nos. 1 and 2 of the Election Act, § 31 par. 4,5) § 49 par. 1 let. b), c) and d) and par. 3 let. b), c) and d)3) and § 85 third sentence6) due to conflict with provisions of the Constitution of the CR and the Charter.

The proposal states that the amendment of the Election Act results in fundamental change revision of voting rights in the Czech Republic, as there are substantial changes to the organization of elections, the manner of exercising voting rights, and primarily individual components of the election system, so as to meet the political order of two political parties which have a narrow majority in Parliament, which might be acceptable under certain circumstances, if this procedure did not affect the Constitutionally defined principles of elections and the political system and did not restrict subjective voting rights. The concept of proportional representation is generally understood to mean that the elections will proportionally transfer to Parliament a political distribution which corresponds to how voters voted, and the result of such elections is usually a parliament with several political parties and a coalition government. However, the group of senators if of the opinion that the Election Act, in terms of its factual fulfillment, does not correspond to this principle. The election formula, particularly the high first divisor, combined with the large number of election districts with a small number of mandates will cause disproportional results of elections comparable to a single-round majority election system, which is not only in conflict with Art. 5 of the Constitution of the CR7) and Art. 22 of the charter,8) but in its results also an indirect amendment to the Constitution through a procedure not corresponding to the prescribed regime for amending the Constitution, as well as a violation of the principle of two chambers in parliament, as election according to the principles of proportional representation is prescribed for the Chamber of Deputies and election according to the principles of a majority system is prescribed for the Senate.

V.

The Constitutional Court, under § 68 par. 2 pf Act no. 182/1993 Coll., on the Constitutional Court, reviewed whether Act no. 204/2000 Coll., which amended the Election Act, Act no. 99/1963 Coll., the Civil Procedure Code, as amended by later regulations, and Act no. 2/1969 Coll., on Establishment of Ministries and Other Central Bodies of State Administration of the Czech Republic, as amended by later regulations, which, among other things, amended the Election Act in the contested provisions, was passed within the limits of Constitutionally prescribed competence and in a Constitutionally prescribed manner.

The Constitutional Court states that the Act was passed and issued within the limits of the competence prescribed by the Constitution of the CR and in a Constitutionally prescribed manner.

VI.

Because the proposal from the president of the republic preceded the proposal from the group of senators, the Constitutional Court denied the senators' proposal in the part which was identical with the proposal from the president of the republic, by decision of 19 September 2000, file no. Pl. ÚS 42/2000-39, as amended by the corrected decision of 23 October 2000, file no. Pl. ÚS 42/2000-47, under § 43 par. 2 let. b) and § 43 par. 1 let. e) of Act no. 182/1993 Coll., on the Constitutional Court, as amended by Act no. 77/1998 Coll., on the grounds of being barred by a pending matter, with the provision that the group of

senators has the right to take part in the proceedings on the previously submitted proposal as a subsidiary party (§ 35 par. 2 second sentence after the semi-colon of the Act on the Constitutional Court).The Constitutional Court by decision of 19 September 2000, file no Pl. ÚS 42/2000-34, in the interests of efficiency of the proceedings under § 63 of the Act on the Constitutional Court and under § 112 of the Civil Procedure Code, combined the rest of the proposal, i.e. concerning § 31 par. 45) and § 85 third sentence of the Election Act,6)for joint discussion and decision.

VII.

1) The provisions of § 27 first sentence, § 48 par. 4, § 49 par. 1 let. b), c) and d), par. 3 let. b), c) and d), § 50 par. 1, 2 and 3 of Act no. 247/1995 Coll., as amended by later regulations

§ 27 first sentence:

For elections to the Chamber of Deputies, 35 election regions are created in the territory of the Czech Republic; election regions are provided in Appendix no. 1 to this Act.

§ 48 par. 4:

The lowest number of mandates in an election region is 4. If an election region is allocated fewer than 4 mandates, the missing number of mandates is progressively allocated from election regions which have the smallest division remainders. If remainders are equal, the decision is made by drawing lots.

§ 49 par. 1 let. b), c) and d), par. 3 let. b), c) and d):

§ 49:

par. 1:

On the basis of a record of the election results in the regions, the Czech Statistical Office shall determine how many valid votes in total were cast for each political party, each political movement and each coalition, and,

let. b):

which coalitions, composed of 2 political parties or political movements, received less than 10 percent

let. c):

which coalitions, composed of 3 political parties or political movements, received less than 15 percent

let. d):

which coalitions, composed of at least 4 or more political parties or political movements, received less than 20 percent of the total number of valid votes.

Par. 3:

If the Czech Statistical Office determines that at least 2 coalitions or 1 coalition and 1 political party or political movement or 2 political parties or political movements have not advanced into the scrutiny, it shall lower

let. b):

for a coalition under par. 1 let. b) the 10 percent threshold to a 6 percent threshold let. c)

for a coalition under par. 1 let. c) the 15 percent threshold to an 8 percent threshold let. d):

for a coalition under par. 1 let. d) the 20 percent threshold to a 10 percent threshold.

§ 50 par. 1, 2, 3:

Par. 1:

The number of valid votes for each of the political parties, political movements and coalitions which advanced into the scrutiny is within each election regions successively divided by 1.42, 2 and 3 and then each time by a number that is greater by 1. As many shares as there are candidates on the election ballot are calculated, but not counting candidates who gave up their candidacy after the registration of the candidate list or were recalled under § 36. The values of the shares are calculated and stated rounded up to two decimal places.

Par.2:
All shares calculated under par. 1 are listed in decreasing order of size and a list is provided of as many shares as were allocated to the election region under § 48. If 2 or more shares in this series are equal, the order is decided by the number of votes for the political party, political movement or coalition in the election region, and if that is identical, the order of the share is decided by drawing lots. The political party, political movement or coalition which achieved the share is stated along with the size of the share.

Par. 3:

A political party, political movement or coalition is allocated 1 mandate for each share contained in the list under paragraph 2.

Under Art. 18 par. 1 of the Constitution of the CR9) elections to the Chamber of Deputies are conducted by secret voting on the basis of a general, equal and direct voting right, on the principle of proportional representation. As provided in Art. 18 par. 2 of the Constitution of the CR,9) elections to the Senate are conducted by secret voting on the basis of a general, equal and direct voting right, on the principles of the majority system. This indicates that our Constitution distinguishes between “proportional representation” and the “majority system”. Although Art. 20 of the Constitution of the CR10) provides that a statute shall provide further conditions for the exercise of voting rights, organization of elections and the extent of judicial review, it is beyond any doubt that this can occur only within the limits and thresholds of the two institutions provided. Here, for greater clarity,

the Constitutional Court considers it necessary to state that the proportional and majority principles are two different principles of political representation, striving to find a solution for the age-old problem of democratic systems arising from the tension between the pretended government of all the people and the need to ensure optimum functioning of the system. While the advantages of majority representation include, among other things, that it prevents fragmentation of parties and, on the contrary, supports their concentration and the creation of a stable government and permits voters to directly decide which political party should form a government instead of leaving this decision to coalition negotiations after elections, the advantages of proportional representation include, among other things, that it permits maximum representation of all opinions and interests in parliament, prevents excessive political majorities and supports the formation of a majority on the basis of negotiation and compromise. Both basic election systems produce the effects ascribed to them only under certain social and political conditions, and therefore specific social and political conditions existing in various countries must be taken into account in evaluating these effects.

In this introductory part it is also necessary to emphasize that every social concept is, precisely by its social nature, subject to a process of differentiation. So, for example, views of what can be understood under the concept of democracy differ in a number of cases to such a degree that they are completely divergent. Therefore, the concept of "proportional representation" also can not be connected to attributes such as absolute certainty or single definability, but, on the contrary, it must be understood and interpreted in connection with the unavoidability of the process of constant change, with oscillation on various parts of a smooth continuum, and therefore with the mere possibility of approaching one or another polar position. If we place the subsequently stated mere possibility of approximating an ideally typical model of proportional representation in relation to the process of differentiation and integration, then what the Constitutional Court stated in its decision file no. Pl. ÚS 25/96 (č. 88/1997 Coll.) seems quite evident, i.e. that a certain restriction of differentiation in distributing mandates is unavoidable, and therefore admissible. The purpose of voting is indisputably differentiation of the electorate. However, the aim of elections is not merely expressing the political will of individual voters and obtaining only a differentiated mirror image of the opinions and political positions of voters. Because the people also exercise the state power – primarily through the Parliament of the CR – and because exercise of state power presupposes the ability to make decisions, elections and the election system must also bear in mind the ability to make such decisions based on the will of the majority. The consequential proportional image of the results of voting in the composition of the chamber of deputies could create political representation split into a large number of small groups with diverse interests, which would considerably hinder the formation of a majority or make it completely impossible. Thus, in the stage of the election process in which mandates are distributed, the principle of differentiation comes into conflict with the principle of integration, because elections should create a chamber of deputies whose composition permits the creation of a political majority which is capable of forming a government and the performing the legislative activity for which the Constitution authorizes it. Therefore, in terms of the principle of representative democracy, it is admissible to build into the election mechanism itself certain integrationist stimuli where serious reasons for this exist, in particularly on the assumption that an unlimited proportional assembly would resulting in fragmenting votes between a large number of political parties, in unlimited "over-

multiplication" of political parties, and thus in endangering the functionality and ability to act, as well as the continuity of the parliamentary system. In this fact lies the admissibility of the existence of a restricting clause, conditioned, however, in every case on serious reasons and in the stage of rising thresholds justifiable on by especially intense seriousness. The increasing of thresholds in the restrictive clause cannot be unlimited, so for example the 10 % clause can already be considered intervention in the proportional system which endangers its democratic substance.

In the adjudicated matter the Constitutional Court adds to the cited decision that it is very well aware of the complexity of social and political events in which structuring society is provoked by the effects of decentralizing, differentiating social forces, which, however, do not represent the only constituent in the social process, but are always noticeable only in an antinomic position toward all "centralizing" integrationist manifestations. Likewise, these "centralizing" integrative elements, if they became the only factor in social development, would, by their pressure toward integration and cooperation, would finally annul all social structures and would thus bring human society to the form of an unmoving monolith, so on the contrary disproportional domination of "decentralizing", differentiationist forces would transform human events into a whirl of statements eliminating any kind of communication, not even capable of an indication of structural composition. Thus, the very basis of the structural principle contains a polarly and co-relatively based substratum, preventing, on the one hand, a disproportional diffusion of structures, but on the other hand also achieving a disproportional degree of integration. The process of differentiation can thus fulfill its basic function of a driving force and a formative element of historical development and progress only if it is implemented in a continuum between extreme tendencies, whose functional tension rules out taking extreme positions. Thus, the model of "proportional representation" used in political practice can, and also must, make a number of concessions to the principle of integration, but this can only happen in a certain section of the continuum, where it remains "turned" to its ideal type, in other words, where it manifests tendencies to at least approximate this type in its fundamental aspects. However, in the opinion of the Constitutional Court, in this specific case, i.e. in the adjudicated matter, increasing the number of election regions to 35 (§ 27 first sentence),1) setting the minimum number of mandates in a region at 4 (§ 48 par. 4)2) and the method of calculating shares and allocating mandates using a modified d´Hondt formula (§ 50 par. 1, 2, 3)4) in the aggregate represents a concentration of integrationist elements whose results lead to abandoning the continuum which would be capable of registering at least a "turning" to the model of proportional representation.

To reach this conclusion the Constitutional Court naturally does not have at its disposal any of the means of exact measuring and research, often typical for the natural sciences, and it is therefore, just as with social concepts and events in general, left more to means such as comparison, classification, evaluation, etc, However, such means can also be reliable sources of information, particularly because in these cases it is not a question of capturing a particular static point, but the overall dynamic appearing on a certain continuum, trends. In this regard, starting with the report from the Czech Statistical Office of 28 November 2000, ref. no. 1694/2000, by comparing the results of elections to the Chamber of Deputies in 1998 with the results calculated under the amendment of the Election Act one can conclude that in elections regions numbering 35 there would be a marked raising of the entry threshold enabling the acquisition of at least 1 mandate. The smallest

increase of this natural closing clause would take place in the election regions Liberec (10.49 %) and Brno – city (10,78 %), which the greatest increase would take place in the election regions Ostrava – city (17.67 %), Ústí nad Labem (18.74 %) and Teplice (18.87 %). On average, as far as individual elections regions are concerned, this natural closing clause is 14.69 %. All this leads the Constitutional Court to the conclusion that the amendment of the Election Act in the provisions of § 27 first sentence1) and § 50 par. 1, 2 and 3,4) concerning the number of election regions and the election divisor, as well as § 48 par. 4,2) introducing the minimum number of mandates in a region at 4 – which is in conflict with the principle of equality of voting rights enshrined in Art. 18 par. 1 of the Constitution of the CR9), introduces into the election process for elections to the Chamber of Deputies, as far as proportional representation is concerned, more than elements of proportional representation, elements which, in the aggregate, are a kind of hybrid, but the Constitution of the CR does not presume such a hybrid, as it distinguishes only proportional representation and the majority system. If the will of voters in the proportional representation system becomes irrelevant in a scope ranging in individual regions from 10.49 % to 18.87 %, thus on average 14.69 %, then, in the opinion of the Constitutional Court, this fact evidently testifies to casting doubt on the will of the sovereign. If the legislature decided, as far as elections to the Chamber of Deputies are concerned, to apply proportional representation, then even if respecting the integrationist stimuli and the emphasis laid on the functionality of the democratic political system it is necessary at the same time to observe the need to reflect the will of the highest possible number of voters. Thus, however the data obtained from the Czech Statistical Office may certainly appear in many ways disputable in this regard, e.g. because in elections in 1998 the voter could reflect the effects of a different legal regulation, in the opinion of the Constitutional Court, despite the possible disputability, they are basically quite evident testimony of the existence of the already discussed basic trends toward a dysfunctional and inadmissible hypertrohpy of integrationist elements in the system of proportional representation, evident testimony not only because in any elections a similar situation can not at a minimum be eliminated, but also because integrationist trends are markedly multiplied by the modified d´Hondt system, expressed in this case by the election divisor of 1.42. The determining element in the proportional representation system is the size of election districts, so that as, on the one hand, the larger the district, the more the election results approach the principle of proportionality on the other hand, the small the election district, the more markedly the cited result becomes distant from that principle. Moreover, it is also quite evident that Art. 18 of the Constitution of the CR9) has in mind precisely the global effect of proportional representation models, that is, the election of the Chamber of Deputies according to principles of proportional representation as a whole. If the legislature had a different effect in mind, it would have to formulate Art. 18 of the Constitution of the CR9) not globally ("elections to the Chamber of Deputies are held ... according to principles of proportional representation"), but it would have to expressly state this intent, e.g. like the Spanish constitution in Art. 63 with the formulation that elections are held in each (individual) election district according to the proportional representation system. In this way the Spanish constitution clearly expressed the particularization of the effect of proportional representation for purposes of combining proportional and majority elements in distributing mandates in individual districts, but the Constitution of the CR does not contain such a provision.

In addition, just for comparison, it is necessary to state that the Bavarian constitutional court deliberated analogously in its decision of 24 April 1992, ref. no. Vf. 5-V-92, in which it stated, among other things, that it is not a conflict with the fundamental right of election equality if there is distribution of parliamentary seats allocated to an election district under Art. 23 par. 1 second sentence of LWG and now divided into 7 election districts. However, such a provision on distribution must be oriented toward the higher principle of the most identical possible value of the success of each election vote with the aim of achieving a composition of the Land Assembly according to proportional distribution of places in the entire country. If several calculation methods are available for the distribution of seats within an election district, the legislature must choose a method which approaches this aim as much as possible. The separate application of the d´Hondt method of the highest number in distributing the mandatory share of seats may lead, in individual election districts, to disadvantaging small parties in the entire country and to a result which is not compatible with the fundamental right of election equality. The distribution of parliamentary mandates must mirror as precisely as possible the relative strength of parties represented in the Land Assembly according to the number of votes cast for them in the entire country, and therefore there should not be a deviation for any party of more than 1 seat. In the adjudicated matter, the Constitutional Court adds to this that the election divisor beginning, under § 50 par. 1 of the Election Act, with the number 1.42 multiplies this deviation so that for individual parties it is several times the cited one seat.

Therefore, for all the cited reasons the provisions cited in point 1 of § 27 first sentence,1) § 48 par. 4,2) § 50 par. 1, 2 and 3,4) and the related Appendices no. 1 and 2 of Act no. 247/1995 Coll., as amended by later regulations, are in conflict with Art. 1,10) Art. 5 of the Constitution of the CR7) and Art. 22 of the Charter of Fundamental Rights and Freedoms,8) Art. 9 par. 2 of the Constitution of the CR,11) as well as Art. 18 par. 1 of the Constitution of the CR.9)

However, concerning the contested § 49 par. 1 let. b), c) and d) and par. 3 let. b), c), d),3) it must be emphasized that the Constitution of the CR contains no express provisions about the formation of coalitions; that is governed by Act no. 247/1995 Coll., on Elections to the Parliament of the CR and Amending and Supplementing Certain Other Acts, as amended by later regulations. The Constitution of the CR enshrines in Art. 57) the principle of free competition between political parties; the Charter, in Art. 228), uses the term “political forces”. In setting the level of the closing clause for coalitions of political parties or political movements, the legislature basically applies the method of adding the 5 percent allocated to each individual political party or political movement, which it abandons on the in the case of a coalition of more than 4 political parties or political movements, as the closing clause for 4 and more of these parties or movements is always at most 20 percent of the total number of valid votes. In the opinion of the Constitutional Court the possibility that this provision is self serving can not be ruled out, as the legislature, if it regulates the ability to form an election coalition at all, as a rule should simultaneously also aim to create conditions for a certain mitigation of the 5 % threshold for parties which are capable of entering into a coalition with others – so in this regard allowing election coalitions in the amendment to the Election Act without a simultaneous mitigation of conditions for the participation in mandates appears to be senseless, the existence of this possible self-servingness in the legislature’s intent can nevertheless hardly lead to a conclusion that it is unconstitutional. So, e.g., the German Federal

Republic, in § 27 of its election law (Bundeswahlgesetz-BWG, as in effect on 20 April 1998) does not allow the possibility of forming election coalitions, as parties may take part in elections only individually. The Austrian election law of 1992 (Nationalrats Wahlordnung Nr 471/1992) also requires distinct identification of a party (§ 43), and the law indicates, that in practice this means a political party. The gaining of mandates by coalitions is not expressly regulated in this law. Election coalitions are also not regulated in the Republic of Hungary or in the Netherlands, where candidate lists are submitted by political parties. In Estonia, where political parties used the possibility of forming coalitions to overcome the 5 percent closing clause for the next round of allocating mandates and when in Parliament immediately divided and formed independent parliamentary factions, this led to amendment of the law on elections and a ban on election coalitions. In contrast, for example in the Polish Republic, candidate lists may also be submitted by election coalitions, and there is no restriction at all for the number of entities associated in a coalition. The closing clause for an election coalition is 8 percent. In the Slovak Republic, amendment 223/1999 Coll. introduced a closing clause of 10 percent for 4 and more parties.

The foregoing brief review of the legislative regulation of election coalitions in other states thus indicates that these states variously reflect one or the other aspect of the self-servingness of the problem, in other words, that they leave the resolution to the legislature, which is naturally bound at least by the level of the closing clause for 1 political party. Therefore, in view of the undisputed existence of the variety of these purposes, pursued by individual political forces, in the opinion of the Constitutional Court this contested provision can hardly be considered unconstitutional.

2) § 31 par. 4 of Act no. 247/1995 Coll., as amended by later regulations5)

A political party, political movement or coalition shall attach to the candidate list confirmation of payment of a deposit of CZK 40,000. A deposit is paid in all election regions in which the political party, political movement or coalition submits a candidate list, to a special account which the District Office in the region's capital city shall open with the Czech National Bank no later than 72 days before election day. The District Office in the capital city in the region shall return the paid deposit to the political party, political movement or coalition within 1 month after election results are announced if the political party, political movement or coalition advanced to the scrutiny (§ 49).3) Interest on the deposit and amounts which are not returned are income of the state budget.

The Constitutional Court already considered the question of election deposits in connection with the then valid § 35 of the Election Act12) in its negative decision file no. Pl. ÚS 3/96, published under no. 161/1996 Coll. The cited decision was, in the manner it was adopted, borderline, and it is precisely in such cases, reflecting a difference of opinion, it can be considered completely natural and in no way outside the constitutional framework, if after the passage of more than 4.5 years the matter may appear in a somewhat different light, particularly if during that time social changes have occurred, e.g. characterized by strong pressure in the direction of integrationist stimuli. What appears relevant to the Constitutional Court at present is precisely what was stated in the dissenting opinions of several judges to the cited decision. Primarily this is the basic opinion that this provision is in conflict with the Constitution of the CR and the Charter, as it is the duty of the state to enable parties which were legally registered to take part in

elections to Parliament and ensure full implementation of Art. 5 of the Constitution of the CR.7) Setting a deposit introduces a priori discrimination by making it impossible, through the introduction of property (financial) conditions, for some parties to take part in elections which are the decisive and most watched stage for the competition of political parties, and demonstrate the degree of voter support. The conditions for registration of political entities are given by statute, and in the period before elections it is not possible from a legal aspect to construct deliberations about the representativeness of parties. A party's ability to fully participate in the competition of political forces would be verified only in the registration process under Act no. 424/1991 Coll., on Association in Political Parties and Political Movements, as amended by later regulations. The degree of representativeness is then express in elections and their results. Effective integrationist stimuli in proportional representation systems are based on so-called "restrictive" clauses, which have the advantage that they do not restrict the principle of free competition between political parties in elections and are applied only in the stage of distributing mandates, i.e. after the free competition has ended and the results of voting have been determined. In contrast, election deposits are a preventive and a priori measure which restricts free competition "a limine", and in addition, financial levers which do not belong in elections. Moreover, the purpose and function of election deposits have their specific differences in the proportional representation system used for elections to the Chamber of Deputies and different ones in connection with the majority system used for elections to the Senate. These specific features are tied to the different characteristics of the two election systems, the first of which is based primarily on the principle of choice and differentiation and on the basic value criterion of proportional representation of political forces vis a vis the number of votes received by them, while the second emphasizes the importance of election differentiation as a starting point for political integration to the benefit of the majority expressed. In view of this, experience from abroad, from countries which apply the proportional representation system and rely on the five percent restrictive clause, do not support the introduction of election deposits, or even hint at them. As an example, we can cite states such as Belgium, Denmark, Germany, Switzerland, Sweden, Norway, Finland Span, Portugal and others which do not have election deposits. This absence of election deposits in proportional representation systems is no coincidence, but is a logical result of the overall function of this type of election mechanism in a system of representative democracy.

In addition, the amount of money prescribed by the Act is, in conflict with the generally understood meaning, as well as the administratively established concept, described as a deposit, although in the given case, in the relationship political party – state, it is evidently not a deposit. The essential requirements of a deposit include primarily a certain (generally contractual) legal relationship on one side and a sufficiently clearly expressed duty (obligation) on the other side, where there must be, on the side of the obligated party, an objective and realistic ability to fulfill the obligation arising from the contractual (or analogous) legal relationship so that, e.g., in the area of public law (exercise of public power) the state (an office) "by imposing the deposit did not make its task easier at the cost of the citizens". The "deposit" imposed by the contested Act does not meet either of these basic conditions. First of all, in the considered circumstances, there is no legal relationship (even less a contractual one) between a political party (coalition) and the state, because – considered according to constitutional aspects – it is among the primary duties of the state to create, in selecting its political representation, such conditions for

political parties as enable them to reach the constitutionally presupposed aim. In contrast – by order of the Constitution of the Czech republic – political parties are basically given a single duty, that in their efforts to gain a share in the state power they respect "fundamental democratic principles and reject force as a means for promotion their aims " (Art. 5 of the Constitution of the CR).7) In other words, if the Czech Republic's political system is founded (among other things) on the free competition of political parties respecting the democratic organization of the state, then constitutionally there are no other barriers which could (should) hinder political parties in taking part in the electoral combat, all the more so if these parties, as was already stated, have already gone through the filter given by the Act on Association in Political Parties and Political Movements (Act no. 424/1991 Coll.).

Therefore, in the opinion of the Constitutional Court, § 31 par. 4 of Act no. 247/1995 Coll.5) is in conflict with the constitutional order of the Czech Republic, specifically with Art. 5 of the Constitution of the CR and Art. 22 of the Charter.

3) § 85 third sentence of Act no. 247/1995 Coll., as amended by later regulations6)

A political party, political movement or coalition which received at least 2 percent of the total number of valid votes will be paid CZK 30 from the state budget for each vote received. In this case as well the Constitutional Court discussed an analogous matter in its decision file no. Pl. ÚS 30/98, published under no. 243/1999 Coll. The Constitutional Court decided in view of the then valid wording of § 85, under which a political party, political movement or coalition which received at least three percent of the total number of valid votes, will receive CZK 90 from the state budget for each vote received. Even a cursory comparison of the previously valid and amended wording points primarily to the fact that there was a marked decrease in the state contribution provided in this connection. The Constitutional Court is aware that the constitutionality of the above-mentioned provision was decided in a situation where the Election Act contained election deposits, which, however, were annulled in the adjudicated matter. However, in the cited decision something was stated which can be considered relevant, that although election deposits do not exist in European Union countries, the threshold itself for providing a contribution to cover election costs is critically evaluated. So, e.g. i Germany, the level of 2.5 % of votes received was found unconstitutional by the Federal Constitutional Court and a new wording of § 18 of the Act on Political Parties reduced it to 0.5 % for federal and 1 % of votes for land elections. The Federal Constitutional Court declared in its decision (Entscheidungen, vol. 24, p. 300, 339 n.) that the legislature may make the payment of an election contribution dependent on receiving a certain minimal number of votes, but it described the threshold of 2.5 % as unconstitutional, as it is in conflict with the principle of equal election opportunities of political parties. The principle of free competition of political parties conceptually includes the obligation of the state to respect the equality of parties' chances from the point of view of legal regulation of the conditions of the competition and regulation of entitlements for its participants, as this is basically application of the general principle of equality, guaranteed by both constitutional and international acts. A percentage restriction for payment of a contribution to cover the election expenses of political parties may not be the product of arbitrary will or suitability evaluated only from the point of view of the interests of established parties. Therefore, it also applies to the

Czech Republic that the legislature must, when making regulations in the area of formation of political will, respect the fact that in this field it has been given especially narrow boundaries and that it is denied any differentiated treatment of parties which is not based on an exceptionally serious grounds. The purpose of an election contribution may not be a restriction on free electoral competition, but must ensure its seriousness. It is not an instrument for further integration, but simply a determination of whether the proposals and programs submitted for election are intended seriously, whether they are oriented exclusively toward election success and not toward other aims. The Federal Constitutional Court of Germany, for example, expressly stated that a 0.5 % share of votes as proof of serious efforts in the election competition is sufficient and makes verification by other criteria unnecessary. In view of these and other circumstances the Constitutional Court in its previous decision reached the conclusion that tying the contribution for covering election expenses to obtaining at least three percent of the total number of valid votes in elections to the Chamber of Deputies of the Parliament of the CR, in its scope, and also particularly in view of other restrictions which affect political parties that received less than five, or three, percent of votes, exceeds the degree necessary to determine the seriousness of parties' election intentions and interferes in the equality of opportunity of political parties in election competition. In this aggregate of financial burdens for some of them participation in elections becomes a financially impossible luxury. In conclusion the Constitutional Court emphasized that it is a matter for the deliberation of the Parliament of the CR whether, for elections of the Chamber of Deputies given the existence of election deposits, a certain threshold should be retained, e.g. around 1 % of votes received as proof of the seriousness of parties' election intentions, and thereby also a condition for payment of the contribution to cover election expenses.

Thus, if we take into consideration the fact that the contested provision reduced the amount of payment for each vote received from CZK 90 to CZK 30, the Constitutional Court believes that even lowering the threshold from three percent to two percent can, in the context of all relevant circumstances, change anything about the justifiability of the conclusion stated in the Constitutional Court's previous decision, that the cited provision is (even after it was amended) in conflict with Art. 5 of the Constitution of the CR7) and Art. 22 of the Charter, which decision was not respected by the legislature.

Therefore, for all the state reasons, the Constitutional Court annulled § 27 first sentence, § 48 par. 4,2) § 50 par. 1, 2, and 3,4) Appendices no. 1 and 2 of Act no. 247/1995 Coll., as amended by later regulations, due to conflict with Art. 1,10) Art. 5 of the Constitution of the CR,7) Art. 22 of the Charter,8) Art. 9 par. 211) and Art. 18 par. 1 of the Constitution of the CR,9) annulled § 31 par. 45) of the cited Act due to conflict with Art. 5 of the Constitution of the CR and Art. 22 of the Charter, annulled § 85 third sentence of the cited Act due to conflict with Art. 5 of the Constitution of the CR and Art. 22 of the Charter, as of the day of promulgation of the decision in the Collection of Laws, while otherwise, concerning § 49 par. 1 let. b), c) and d) and par. 3 let. b), c) and d) of the cited Act it denied the petition. In view of the fact that this decision annulled § 31 par. 4 Act no. 247/1995 Coll., as amended by later regulations, concerning the payment of election deposits, the Constitutional Court decided under § 70 par. 3 of Act no. 182/1993 Coll., on the Constitutional Court, that by promulgation of the decision in the Collection of Laws the decree of the Ministry of Finance of the CR no. 268/2000 Coll., which sets more detailed conditions for the manner of paying and returning a deposit in connection with holding

elections to the Parliament of the CR, also ceases to have effect, in those parts of the provisions concerning deposits for elections to the Chamber of Deputies.

The Constitutional Court is aware that, with regard to the derogations performed, and also taking into account the fact that some provisions of the amendment to the Act were to take effect only as of 1 January 2002, a situation arises which, if difficult interpretation disputes are to be avoided, requires the active work of the legislators, i.e., in the spirit of the Constitutional Court's decision, making such adaptations to the Election Act which will permit problem-free conduct of elections.

This decision is executable on the day of its promulgation in the Collection of Laws.

Decisions of the Constitutional Court cannot be appealed.

Pl. ÚS 42/2000

Dissenting opinion of judge JUDr. Ivana Janů

To the verdict of the decision

I agree with the majority opinion expressed in the 1st and 2nd paragraphs of the verdict of the decision of the Constitutional Court in the Plenum and with its reasoning.

My separate vote is directed solely at the decision on the contested provision of § 49 par. 1 let. b), c) and d) and par. 3 let. b), c) and d) of the Election Act,3) as amended, which governs the formation of coalitions and conditions for their participation in elections, which the majority opinion did not find unconstitutional.

The reasoning for my dissenting opinion is as follows: To start with, it is necessary to point out the mutual interaction of the principles of differentiation and integration in election systems. The five percent entry threshold as an integration stimulus for a political party basically means that even if a party received a number of votes which would be enough to receive one or more mandates, it will not receive any mandate if it has not received an aggregate of 5% of all votes cast in the elections.

It is a matter of the legislature's sovereign will, whether or not it recognizes the creation of coalitions as a natural instrument of integration of the formation of political will and the penetration of political parties' programs. However, if it recognizes coalitions, it is in conflict with the principles of a state governed by the rule of law, logic and fulfilling the purpose of the law for it to then negate the indicated intention by another provision of the same law.

The admissibility of coalitions in elections in a proportional representation system generally manifests the will to mitigate the artificially set threshold for entry to the parliament by small parties. This measure mitigates for these parties their inability to overcome the threshold of 5%, which is not a problem for large parties.

The case of a linear additive model, which the legislature selected in the contested amendment, is a completely isolated regulation in the world. Our degressive legal

regulation before the amendment was quite standard and logical, and this also exists in, e.g. Polish legislation, which sets an entry threshold for coalitions of 8%, regardless of the number of entities in the coalition.

The legal treatment before the amendment set a 5% entry threshold for a political party, 7% for a two-member coalition, 9% for a three-member coalition, and ended at 11% for a coalition of four or more members. The legislature thus proved that it understood the principle of proportional representation, into which an integration threshold is artificially inserted in the interest of integration, and therefore it gave small parties a chance to overcome the five percent threshold, if they are able to associate in a coalition.

In this regard one cannot overlook other facts, which the majority opinion does not reflect sufficiently clearly.

First, the constitutionality of most of the provisions of the contested amended Election Act that were annulled by the decision was evaluated in the context of mutual internal relationships, but in my opinion this approach was abandoned in evaluation the constitutionality of § 49,3) concerning coalitions, and the cited legal provision was evaluated in isolation. That led to a simplified view of its constitutionality.

Further, in 1996, when the Constitutional Court addressed the constitutionality of the 5% integration clause (Pl. ÚS 25/96, in: Collection of Decisions of the Constitutional Court ÚS, vol. 7, p. 251 et seq.), coalitions were formed under advantageous conditions (see above: 7%, 9% and 11%). The new setting of integration thresholds (entry clauses) for coalitions by the legislature, at 10%, 15% and 20%, was not found unconstitutional by the majority opinion of the Constitutional Court in the Plenum. In my opinion, the question arises whether the Constitutional Court did not thereby cast doubt on the constitutionality of the five percent entry threshold itself, in the sense of minimal interference in the equality of the voting right, expressed in the cited earlier judgment and confirmed by its current decision.

In that regard, the cited decision (Pl. ÚS 25/96) stated, among other things, that the 5% limiting clause causes a certain disproportion in the acquisition of mandates, which affects small political parties. At the same time, however, it justified the constitutionality of the 5% threshold by the need to limit the number of parties which get into parliament, as elections are supposed to produce a chamber of deputies whose composition makes possible the formation of a political majority which is able to both form a government and perform the legislative activity for which it is authorized under the Constitution. The principle of minimizing state interference in relation to the selected aim also applies to a restrictive clause. Therefore, it is also necessary to interpret the need of election restrictions in a restrictive manner.

Setting the entry of a coalition to parliament at a multiple of the basic, i.e. 5% entry threshold for one political party, at 10 % and 15 %, as well as the fact that the increase ends at 20 % for a four-member coalition and is then zero, leads me to conclude that this is self-serving behavior by the legislature, and does not testify that the assumptions on which the legislature relied had a credible foundation, particularly in the analysis of previous legal regulations.

In my opinion, this approach denies the aim which is otherwise pursued by admitting coalitions. The steps taken by the legislature unconstitutionally affect, in particular, Art. 1, Art. 5 and Art. 18 par. 1 of the Constitution, as well as Art. 22 of the Charter. Specifically, it does not adequately materially protect the equality of the voting right of a citizen which is implemented through the free competition of political parties.

A state governed by the rule of law should not knowingly produce laws which suffer from serious internal conflict and do not respect the principle of proportionality and minimizing state interference in the equality of the voting right in s proportional representation system, as happened in the contested amendment.

Brno, 24 January 2001

Pl. US 42/2000

Overview of the most important legal regulations

1. § 27 first sentence of Act no. 247/1995 Coll., on Elections to the Parliament of the CR and Amending and Supplementing Certain Other Acts, as amended by later regulations, provides that 35 elections regions are created in the territory of the Czech Republic for elections; the election regions are specified in Appendix no. 1 to this Act.

2. § 48 par. 4 Act no. 247/1995 Coll., on Elections to the Parliament of the CR and Amending and Supplementing Certain Other Acts, as amended by later regulations, provides that the lowest number of mandates in an election region is 4. If fewer than 4 mandates are allocated to an election region, the number of missing mandates is progressively allocated from election regions which have the smallest division remainders. If the remainders are equal, the decision is made by drawing lots.

3. § 49 of Act no. 247/1995 Coll., on Elections to the Parliament of the CR and Amending and Supplementing Certain Other Acts, as amended by later regulations, provides: Par. 1: let. a) Based on a record of the results of elections in the regions the Czech Statistical Office shall determine how many valid votes in total were cast for each political party, each political movement and each coalition, and let. b): which coalitions, composed of 2 political parties or political movements, received less than 10 percent, let. c): which coalitions, composed of 3 political parties or political movements, received less than 15 percent let. d): which coalitions, composed of at least 4 and more political parties or political movements received less than 20 percent of the total number of valid votes. Par.

3: let. a) If the Czech Statistical Office determines that at least 2 coalitions or 1 coalition and 1 political party or political movement or 2 political parties or political movements do not advance into the scrutiny, It shall lower let. b): for a coalition under par. 1 let. b) the threshold of 10 percent to a threshold of 6 percent let. c) for a coalition under par. 1 let. c) the threshold of 15 percent to a threshold of 8 percent let. d): for a coalition under par. 1 let. d) the threshold of 20 percent to a threshold of 10 percent.

4. § 50 of Act no. 247/1995 Coll., on Elections to the Parliament of the CR and Amending and Supplementing Certain Other Acts, as amended by later regulations, reads:

Par. 1: The number of valid votes for each political party, political movement and coalition which advanced into the scrutiny is, within the framework of each election region, consecutively divided by the numbers 1.42; 2 and 3 and further each time by a number that is one higher. As many shares are calculated as there are candidates on the voting ballot, but candidates who gave up their candidacy after registration of the candidate list or were recalled under § 36 are not counted. The values of the shares are calculated and state rounded up to two decimal places.

Par. 2: All shares calculated under par. 1 are listed in descending order by size and as many shares are stated in the list as there are mandates allocated to the election region under § 48. If 2 or more shares are equal in this list, for its purposes the number of votes for a political party, political movement or coalition in the election region is decisive for its order, and if that is identical, the order of the shares shall be decided by drawing lots. The name of the political party, political movement or coalition which attained the share is stated along with the size of the share.

Par. 3: For each share in the list under paragraph 2 a political party, political movement or coalition is allocated 1 mandate.

5. § 31 par. 4 of Act no. 247/1995 Coll., on Elections to the Parliament of the CR and Amending and Supplementing Certain Other Acts, as amended by later regulations, provides that a political party, political movement or coalition shall attach to its candidate list confirmation of payment of a deposit of CZK 40,000; this deposit is returned if the political party, political movement or coalition advanced into the scrutiny.

6. § 85 third sentence of Act no. 247/1995 Coll., on Elections to the Parliament of the CR and Amending and Supplementing Certain Other Acts, as amended by later regulations, provides that a political party, political movement or coalition which received at least 2 percent of the total number of valid votes will be paid CZK 30 from the state budget for each vote received.

7. Article 5 of Act no. 1/1993 Coll., the Constitution of the CR, provides that the political system is founded on the free and voluntary formation and free competition of political parties which respect basic democratic principles and reject force as a means for promoting their interests.

8. Art. 22 of the Charter, Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that the statutory regulation of all political rights and freedoms and its interpretation and use must permit and protect the free competition of political forces in a democratic society.

9. Art. 18 of Act no. 1/1993 Coll., the Constitution of the CR, provides in par. 1, that elections to the Chamber of Deputies are held by secret ballot on the basis of a general, equal and direct voting right, according to the principles of proportional representation. Par. 2 provides that elections to the Senate are held by secret ballot on the basis of a general, equal and direct voting right, according to the principles of a majority system.

10. Art. 1 of Act no. 1/1993 Coll., the Constitution of the CR, provides that the CR is a sovereign, unitary and democratic state based on the rule of law, founded on respect for the rights and freedoms of the human being and the citizen.

11. Art. 9 par. 2 of Act no. 1/1993 Coll., the Constitution of the CR, provides that amendment of the essential requirements of a democratic state is not permissible.

12. § 35 of Act no. 247/1995 Coll., on Elections to the Parliament of the CR and Amending and Supplementing Certain Other Acts, as amended by later regulations, provides the obligation of a political party or coalition whose candidate list was registered in a region to pay a deposit; this deposit is returned only if the party or coalition advanced to the first scrutiny.