2008/12/09 - PL. ÚS 48/06: STATE AS BANKRUPTCY CREDITOR

HEADNOTES

The right to property, as a fundamental right, is protected by Art. 11 of the Charter of Fundamental Rights and Freedoms. Under the first and second sentences of the first paragraph of that article, everyone has the right to own property, and everyone's property rights has the same content and enjoys the same protection. One cannot by any interpretation draw from that provision of the Charter any increased protection for the rights of the state as an owner, represented in tax matters by the tax administrator, that would give it an advantage in the event of a declaration of bankruptcy and de facto accord it a privileged position vis-à-vis other bankruptcy creditors.

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court, consisting of Stanislav Balík, František Duchoň, Vlasta Formánková, Vojen Güttler, Ivana Janů, Vladimír Kůrka, Dagmar Lastovecká, Jiří Mucha, Jan Musil, Jiří Nykodým, Pavel Rychetský, Miloslav Výborný, Eliška Wagnerová and Michaela Židlická, ruled on 9 December 2008 on a petition from the Municipal Court in Prague, filed under Art. 95 par. 2 of the Constitution of the Czech Republic, seeking a declaration that § 105 par. 1, third sentence of Act no. 235/2004 Coll., on Value Added Tax, as in effect before it was amended by Act no. 296/2007 Coll., was unconstitutional, as follows:

The provision of § 105 par. 1 third sentence of Act no. 235/2004 Coll., on Value Added Tax, as in effect before it was amended by Act no. 296/2007 Coll., specifically the text "Tax proceedings are not suspended by a declaration of bankruptcy, and after the declaration of bankruptcy any excessive assessment is returned to the taxpayer, if it does not, after the declaration of bankruptcy, have tax debts that arose before the declaration of bankruptcy," was inconsistent with Art. 11 par. 1 of the Charter of Fundamental Rights and Freedoms.

REASONING

I.
Definition of the matter and recapitulation of the petition

1. On 19 June 2006 the Constitutional Court received a petition from the Municipal Court in Prague seeking annulment of § 105 par. 1, third sentence of Act no.

235/2004 Coll., on Value Added Tax, as amended by later regulations, specifically of the text "Tax proceedings are not suspended by a declaration of bankruptcy, and after the declaration of bankruptcy any excessive assessment is returned to the taxpayer, if it does not, after the declaration of bankruptcy, have tax debts that arose before the declaration of bankruptcy," (the "contested provision").

2. The petitioner did this after, in connection with its decision-making activity, in accordance with Art. 95 par. 2 of the Constitution of the Czech Republic (the "Constitution") it concluded that § 105 par. 1, third sentence of Act no. 235/2004 Coll., on Value Added Tax, as amended by later regulations, which was to be applied in adjudicating the matter file no. 11 Ca 253/2005, is inconsistent with Art. 11 of the Charter of Fundamental Rights and Freedoms (the "Charter").

3. In matter file no. 11 Ca 253/2005, the Municipal Court in Prague is ruling on a complaint from JUDr. J. L., the bankruptcy administrator of the bankrupt company O.S.A., spol. s r. o., against a decision by the Financial Office for Prague 7 of 9 August 2005 ref. no. 76204/05/007914/3347, whereby the Financial Office denied the plaintiff's appeal against its decision of 18 July 2005 ref. no. 69719/05/007914/3347. In this decision the Financial Office for Prague 7 decided to transfer the overpayment of value added tax ("VAT") by the bankrupt company O.S.A., spol. s r. o., in the amount of CZK 3,668, established as of 18 July 2005, in order to cover the company's debt for payment of individual income tax on employment income and remuneration for offices held, established as of 18 July 2005, in the amount of CZK 1,825,71. In the petition, the plaintiff objects that the overpayment of tax that arose after the declaration of bankruptcy is an asset that belongs to the bankruptcy estate, and the financial offices are required to follow § 14 of Act no. 328/1991 Coll., on Bankruptcy and Settlement, as amended by later regulations, (the "Bankruptcy and Settlement Act" or "BSA") and respect the fact that assets belonging to the bankruptcy estate cannot be set off.

4. In reviewing the matter, the Municipal Court in Prague took the opinion that § 105 par. 1, third sentence of Act no. 235/2004 Coll., on Value Added Tax, as amended by later regulations, specifically the text: "Tax proceedings are not suspended by a declaration of bankruptcy, and after the declaration of bankruptcy any excessive assessment is returned to the taxpayer, if it does not, after the declaration of bankruptcy, have tax debts that arose before the declaration of bankruptcy," which might be applied in the matter, is inconsistent with the constitutional order of the Czech Republic, specifically with Article 11 of the Charter, and therefore it filed a petition seeking annulment of that provision under Art. 95 par. 2 of the Constitution, because it is bound by that provision.

5. In the reasoning of its petition, the Municipal Court in Prague argues on the basis of Constitutional Court judgment file no. I. ÚS 544/02 [judgment of 7 April 2005 (N 76/37 SbNU 75)], which concludes that if an ordinary court acted inconsistently with a mandatory norm [§ 14 par. 1 let. i) of the Bankruptcy and Settlement Act] and thus failed to respect the aims of that Act, it thus unjustifiably gave an advantage to one of the creditors, i.e. the state, represented by the financial authorities. The petitioner points out that the relationship between the bankruptcy administrator and the tax administrator in a tax proceeding is a public law relationship. Therefore, the question of whether the bankruptcy administrator does

or does not have the right to return of an overpayment of tax, or in what manner a returnable overpayment is to be handled, can be reviewed and decided only in terms of and according to public law regulations, not according to those that govern private law relationships. Likewise, a tax overpayment under § 64 of Act no. 337/1992 Coll., on the Administration of Taxes and Fees, as amended by later regulations (the "Act on Administration of Taxes and Fees") is a legal concept in public law. In the conclusion of the petition, the Municipal Court in Prague summarizes, with reference to the settled decision-making practice of the Constitutional Court, that incorrect application of a norm of simple law, which, in this case, permits giving an unjustified advantage to the state, as one of the creditors, would violate a constitutionally guaranteed right (Art. 11 of the Charter), and it therefore proposes that the Constitutional Court annul the contested provision on a date set forth in its judgment.

6. During the proceeding, the Municipal Court in Prague proposed, under § 63 of Act no. 182/1993 Coll., on the Constitutional Court, and § 95 par. 1 of Act no. 99/1963 Coll., the Civil Procedure Code, as amended by later regulations, a change to the original petition, the change being that the Constitutional Court declare that § 105 par. 1, third sentence of Act no. 235/2004 Coll., on Value Added Tax, as in effect before 1 January 2008, i.e. as in effect before the amendment made by Act no. 296/2007 Coll., ("Act no. 235/2004 Coll." or the "VAT Act") was inconsistent with Art. 11 par. 1 of the Charter. The Municipal Court in Prague justified its proposal with the fact that the contested provision was repealed by Act no. 296/2007 Coll., which Amends Act no. 182/2006 Coll., on Insolvency and Methods of Resolving It (the Insolvency Act), as amended by later regulations, and certain acts connected with enactment of the Insolvency Act, ("Act no. 296/2007 Coll."); nevertheless, the repeal does not change the fact that the contested provision must continue to be applied to legal relationships that arose when it was valid and in effect.

II.
Recapitulation of the Essential Parts of Responses from the Parties to the Proceeding

7. Under § 42 par. 4 and § 69 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, (the "Act on the Constitutional Court"), the Constitutional Court sent the petition to the parties to the proceeding – the Chamber of Deputies and the Senate of the Parliament of the Czech Republic.

8. In his statement of 13 June 2007, the Chairman of the Chamber of Deputies of the Parliament of the Czech Republic, Ing. Miloslav Vlček, states that the legal framework for the return of an excessive assessment in § 105 of the VAT Act was adopted into the law from the proceedings Act no. 588/1992 Coll., on Value Added Tax, as is stated in the background report on the Act. When approving the contested provision, the legislature relied on the fact that a tax proceeding is an implementation of the rights and obligations of a taxpayer vis-à-vis the state, represented by the tax administrator. The relationship between the taxpayer and the tax administrator, which is governed by regulations on tax proceedings, is thus established on inequality, as the purpose of tax regulations is the collection of

taxes so that the state's revenues will not be reduced. An excessive assessment of value added tax in the event that [the assessment exceeds the tax on output /the tax on output exceeds the tax assessment], is conceived as a payment of tax that the tax administrator uses to cover tax obligations under § 59 par. 5 of the Act on Administration of Taxes and Fees, or to cover any debt for payment of another tax, or, if appropriate, with a different tax administrator, under specified conditions. The legislative assembly that approved Act no. 235/2004 Coll. acted in the belief that the Act was consistent with the Constitution, the constitutional order, and our legal order. It is up to the Constitutional Court to evaluate the constitutionality of the cited provision in connection with the petition to annul § 105 par. 1, third sentence of Act no. 235/2004 Coll., and to issue the appropriate decision.

9. In the statement from the Senate of the Parliament of the Czech Republic of 14 June 2007, the Chairman, MUDr. Přemysl Sobotka, points out, that the Senate already spoke on the issue of the regulation in § 105 par. 1 of the VAT Act in its statement ref. no. 10412/06 of 17 October 2006 in the matter file no. Pl. ÚS 12/06 [judgment of 2 July 2008 (promulgated as no. 342/2008 Coll.)]. He further states that the petitioner's arguments, based only on the earlier Constitutional Court decision file no. I. ÚS 544/02 (see above) does not seem convincing, because § 105 of the VAT Act already explicitly contains what is basically an exception to the regime of the Bankruptcy and Settlement Act, in contrast to the legal status quo in effect until 30 April 2004, in which the abovementioned decision was issued. Although the legislature made it clear in the amendment to the Bankruptcy and Settlement Act, no. 27/2000 Coll., effective as of 1 May 2000, that it will no longer give the state a privileged position regarding its claims against bankrupt parties; the state's privileged position had lasted for virtually decades and concerned not only tax claims (fees, duties and social security contributions, if they arose no more than three years before the bankruptcy filing or during the bankruptcy proceeding), but by passing the new VAT Act it was as if it had revised that position and, together with the new Act, agreed that in the case of an excessive assessment of value added tax the state will not "share" with the other creditors. It is up to the Constitutional Court to determine whether the exception provided in § 105 par. 1, third sentence of the VAT Act, which gives the state, for fiscal reasons, "higher claims" for satisfaction of its claims than to other bankruptcy creditors, is the kind of regulation that the Constitutional Court considered constitutional and defensible under decision file no. I. ÚS 544/02.

III.
The Text of the Contested Legal Provision

10. The provision of § 105 par. 1, third sentence of Act no. 235/2004 Coll., on Value Added Tax, as in effect before 1 January 2008, i.e. before the amendment implemented by Act no. 296/2007 Coll., reads: "Tax proceedings are not suspended by a declaration of bankruptcy, and after the declaration of bankruptcy any excessive assessment is returned to the taxpayer, if it does not, after the declaration of bankruptcy, have tax debts that arose before the declaration of bankruptcy."

11. The amendment implemented by Act no. 296/2007 Coll. repealed the third

sentence of paragraph one of § 105 of the VAT Act, effective 1 January 2008.

IV.
Review of whether the Act was adopted and issued in a constitutionally prescribed manner

12. The Constitutional Court, in accordance with § 68 par. 2 of the Act on the Constitutional Court, first considered whether the Act whose contested provision (as in effect on the date when the financial office decision contested by the complaint was issued, i.e. as of 9 August 2005) is alleged to be unconstitutional was adopted and issued within the bounds of constitutionally prescribed competence and in a constitutionally prescribed manner.

13. The Constitutional Court confirmed that Act no. 235/2004 Coll. was passed by the Chamber of Deputies on 26 February 2004 at its 27th, when, out of 187 deputies present, 94 deputies voted in favor, and 93 were against. On 12 March 2004 the bill was passed on to the Senate, which passed it on 1 April 2004 at its 14the session, when, out of 73 senators present, 37 senators voted for it, and 31 were against. The president did not sign the Act, and returned it to the Chamber of Deputies, which voted on it at its 30th session on 22 April 2004. Out of 184 deputies present, 101 voted in favor, and 83 were against. The Act was promulgated in the Collection of Laws as no. 235/2004 Coll. on 23 April 2004, and went into effect on 1 May 2004.

14. Therefore, the Constitutional Court states that the Act was duly adopted and issued within the bounds of constitutionally provide competence and in a constitutionally prescribed manner.

V.
Review of the Constitutional Court's competence to review the submitted petition and the petitioner's active standing

15. The Constitutional Court first had to answer the question whether it was competent to review the petition on its merits, when the provision of the VAT Act that the petitioner sought to have annulled, and subsequently, by amending the petition, sought to have declared unconstitutional, was repealed by an amendment implemented by Act no. 296/2007 Coll., with effect as of 1 January 2008. However, the contested provision, as in effect before the amendment implemented by Act no. 296/2007 Coll., was applied in the matter, and so the application of that provision must also be reviewed in the proceeding on this complaint.

16. Under § 67 par. 1 of the Act on the Constitutional Court, although there are grounds to stop proceedings if the statute, or other legal regulation, or part thereof, which is proposed to be annulled, ceases to be in effect before the end of the proceeding before the Constitutional Court. However, as the Constitutional Court already stated in judgment file no. Pl. ÚS 38/06 [judgment of 6 February 2007 (promulgated as no. 84/2007 Coll., also available at http://nalus.usoud.cz)], according to the legal opinion in judgment file no. Pl. ÚS 33/2000 [judgment of 10

January 2001 (N 5/21 SbNU 29; promulgated as no. 78/2001 Coll.)], under Art. 95 par. 2 of the Constitution, the Constitutional Court is competent to review the constitutionality of a contested provision on the merits, even if it was already repealed (amended), provided that the addressee of the claimed reason for unconstitutionality is a public authority, and not a private law subject. In view of the fact that in this matter the addressee of the claimed reason for unconstitutionality is a public authority, in the context of the cited legal opinion stated in the matter file no. Pl. ÚS 38/06, the conditions for reviewing the petition on the merits have been met.

17. With the present petition the petitioner met the conditions of Art. 95 par. 2 of the Constitution, because it seeks to have declared unconstitutional § 105 par. 1, third sentence of the VAT Act, which is connected with its decision-making activity, and therefore that court is a petitioner with standing under Art. 95 par. 2 of the Constitution.

VI.
Hearing

18. Under § 44 par. 2 of the Act on the Constitutional Court, the Constitutional Court may, with the consent of the parties, waive a hearing, if it cannot be expected to clarify the matter further. Because the petitioner, in its letter of 29 May 2008, the Chairman of the Chamber of Deputies of the Parliament of the Czech Republic, in his statement of 13 June 2007 and the Chairman of the Senate of the Parliament of the Czech Republic, in his letter of 22 May 2008, gave their consent to waive a hearing, and because the the Constitutional Court believes that a hearing cannot be expected to clarify the matter further, a hearing was not held in this matter.

VII.
The Constitutional Court's Prior Case Law relating to the Adjudicated Issue

19. The Constitutional Court has already, in a number of its panel judgments considered the issue of permissibility of setting off overpayments of value added tax to cover tax debts if the taxpayer is a bankrupt party who is in bankruptcy proceedings, e.g. in judgments file no. I. ÚS 544/02 (see above), file no. II. ÚS 35/05 [judgment of 20 December 2005 (N 232/39 SbNU 457)], file no. III. ÚS 648/04 [judgment of 28 July 2005 (N 145/38 SbNU 135)], file no. III. ÚS 41/05 [judgment of 18 January 2006 (N 19/40 SbNU 147)], file no. IV. ÚS 408/05 [judgment of 31 July 2006 (N 146/42 SbNU 177)]. Upon a petition from the Supreme Administrative Court seeking annulment of § 37a of Act no. 588/1992 Coll., on Value Added Tax, as amended by later regulations, ("Act no. 588/1992 Coll."), § 105 par. 1, third sentence of Act no. 235/2004 Coll. and § 64 par. 2 of the Act on Administration of Taxes and Fees, the Constitutional Court considered this issue extensively in plenary judgment file no. Pl. ÚS 12/06 [judgment of 2 July 2008 (promulgated as no. 342/2008 Coll., also available at http://nalus.usoud.cz)]. The conclusions which the Constitutional Court reached in these cited judgments can also be applied to the presently adjudicated matter.

20. The Constitutional Court first stated that no interpretation can be used to draw from Art. 11 of the Charter increased protection of the rights of the state as an owner, represented in tax matters by a tax administrator, that would, in cases of bankruptcy proceedings, give it advantages and accord it a privileged position vis-à-vis the other bankruptcy creditors in connection with setting of a tax overpayment to cover a tax debt.

21. The Constitutional Court considered the question of the possibility of setting of private law and public law claims, i.e. whether § 14 par. 1 let. i) of the Bankruptcy and Settlement Act can, as a provision in a private law regulation, establish the impermissibility of such a setoff alongside private law claims and with public law claims, also raised by the petitioner in the present matter, in detail in the abovementioned judgment file no. III. ÚS 648/04 (see 1above). As the Constitutional Court states in that judgment, one cannot draw from the Constitutional Court's prior case law a generalization about ruling out the possibility of setting off private law and public law claims. Evaluating the permissibility of such a setoff depends on the particular positive law framework, and in this regard one can point to the legal opinion found in the judgment of the Supreme Administrative Court of the Czechoslovak Republic of 14 October 1932 no. 15.605 (Boh. A 10072/32), that "in order for the legal institution of compensation, established in private law, to also be used in the public law area, a special regulation is needed." On the issue of whether § 14 par. 1 let. i) of the BSA can also be considered such a special legal regulation, containing the impermissibility of compensation of not only private law but also private law and public law claims, of the BSA, the Constitutional Court took as its starting point the statement that in the event of conflict between two regulations of simple law with the same degree of legal force, when, nota bene, their relationship is not that one includes the other but that they overlap, the determination of which one is a general regulation and which one is a special regulation depends on the subject matter of the proceeding (which is defined by the procedural petition). Thus, the general legal regulation is the one that, in terms of the simple law, prima facie governs the subject matter of the proceeding as delineated by the petition.

22. In judgment file no. III. ÚS 648/04, just as in the plenary judgment file no. Pl. ÚS 12/06 (both, see above), the Constitutional Court, starting with the principle of giving priority to a constitutional interpretation of simple law, concluded that § 14 par. 1 let. i) of the BSA is a special legal regulation that establishes the impermissibility of set-off not only of private law, but also private law and public law claims. As such, therefore, § 14 par. 1 let. i) of the BSA, in the position of a special regulation, has priority over the general regulation contained in § 59 par. 3 let. e), § 40 par. 11 and § 64 par. 2 of the Act on Administration of Taxes and Fees, and a constitutional interpretation of these provisions leads to meeting the purpose and aims of the Bankruptcy and Settlement Act.

VIII.
Consistency of the Content of the Contested Statutory Provision with the Constitutional Order

23. After recapitulating the prior case law, the Constitutional Court proceeded to review the content of the contested provision in terms of its consistency with the constitutional order of the Czech Republic [Art. 87 par. 1 let. a) of the Constitution].

24. The abovementioned panel judgments and plenary judgment of the Constitutional Court on setting off overpayments of value tax reviewed the issue of protecting the property rights of bankruptcy creditors against increased protection of the rights of the state as an owner in the position of a bankruptcy creditor in terms of the previous legal regulation of value added tax, established by Act no. 588/1992 Coll. The present petition relates to the legal regulation of value added tax provided by the following statute, Act no. 235/2004 Coll., in effect as of 1 May 2004. This later legal regulation, in § 105 par. 1, third sentence of the Act on VAT, unlike the previous legal regulation, expressly stated that "tax proceedings are not suspended by a declaration of bankruptcy, and after the declaration of bankruptcy any excessive assessment is returned to the taxpayer, if it does not, after the declaration of bankruptcy, have tax debts that arose before the declaration of bankruptcy." Thus, for the period from 1 May 2004 to 31 December 2007 (i.e. until amendment by Act no. 296/2007 Coll.), the legislature regulated the set-off of tax overpayment to cover a tax debt by a mandatory norm that left the tax administrator no other possible procedure secundum et intra legem, than that imposed by the contested provision, i.e. it gave the tax administrator an obligation to return to the taxpayer any excessive assessment, only if the tax payer does not, after the declaration of bankruptcy, have tax debts that arose before the declaration of bankruptcy.

25. The legislature repealed the contested provision with effect as of 1 January 2008 in connection with the adoption of Act no. 296/2007 Coll., which, in addition to the VAT Act, also amended the Insolvency Act, the Act on Administration of Taxes and Fees, and some other statutes. The background report to the government draft of Act no. 296/2007 Coll. states, regarding amendment of the VAT Act, that it follows on from the changes reflected in the text of the draft amendment to the Act on Administration of Taxes and Fees, and the background report characterizes these changes by the need to define tax debts for purposes of insolvency proceedings. Repeal of the contested provision of the VAT Act by Act no. 296/2007 Coll. is an explicit expression of the legislature's intent, with effect pro futuro. In connection with this repeal of the contested provision, which took place only after the adjudicated petition was submitted to the Constitutional Court, the Municipal Court in Prague changed its original petition, and proposed that the now derogated provision be declared unconstitutional.

26. The essence of the petition is the petitioner's claim that, in view of its being bound by the statute, and thus also by the contested provision, it cannot, for the period when that provision was valid and in effect, protect the property rights of creditors, in view of the more advantageous position of the state as one of the bankruptcy creditors, and therefore it finds the contested provision inconsistent with Art. 11 par. 1 of the Charter.

27. In connection with the unconstitutionality of the contested provision claimed by the petitioner, it is necessary to consider the provision in its relationship to § 14

par. 1 let. i) of the BSA, as it also follows from the petitioner's belief that the unconstitutionality of the contested provision from the petitioner's belief that the unconstitutionality of the contested provision lies in its application to the case before the petitioner, of a bankrupt party, which is subject to the regime of the Bankruptcy and Settlement Act. In reviewing the relationship between the abovementioned legal regulations, the Constitutional Court begins first with the constitutionally enshrined fundamental rights, as corresponds to the requirement of respect for the rights and freedoms of the human being and the citizen, as the foundation of a state governed by the rule of law (Art. 1 par. 1 of the Constitution). The primacy of the individual before the state (Art. 1 of the Charter) must also be respected in cases of conflict between the fundamental rights and the general interests of the state.

28. The right to property, as a fundamental right whose protection is affected by the contested provision, is protected by Art. 11 of the Charter. Under the first and second sentences of the first paragraph of that article of the Charter, everyone has the right to own property, and everyone's property rights has the same content and enjoys the same protection. One cannot by any interpretation draw from that provision of the Charter any increased protection for the rights of the state as an owner. However, in the present matter, application of the contested provision necessarily results in such unjustified advantaging of the state, and the provision thus de facto accorded the state, represented in tax matters by the tax administrator, a privileged position vis-à-vis other bankruptcy creditors. In contrast, the derogation of the contested provision, which the legislature enacted by Act no. 296/2007 Coll., did not in any way give an advantage to the state, because, assuming the due exercise of its claims under § 20 of the BSA, it does not suffer any marked detriment, or a detriment not greater than that of other bankruptcy creditors. In this conclusion the Constitutional Court agrees with its previous conclusions from the abovementioned judgments; for brevity it refers to the arguments therein.

29. The Constitutional Court sees no reason to deviate from the conclusions it reached in the cited judgments, even as regards the petitioner's objection that the question of returning an overpayment of value added tax can be reviewed and decided only in terms of and according to public claw legal regulations. In judgment file no. III. ÚS 648/04 (see above) the Constitutional Court concluded that § 14 par. 1 let. i) of the BSA is a special legal regulation in relation to provisions of the Act on Administration of Taxes and Fees that establish the impermissibility of compensation not only of private law, but also private law and public law claims, and therefore, in the position of a special regulation, it has priority over a general regulation, contained in the cited provisions of the Act on Administration of Taxes and Fees (see the recapitulation of prior case law provided above). Using these arguments, one can also reach a similar conclusion in the present matter, as regards the relationship between § 14 par. 1 let. i) of the BSA and the contested § 105 par. 1, third sentence of the VAT Act.

30. In its settled case law the Constitutional Court has repeatedly emphasized the priority of a constitutional interpretation of a legal regulation, or its individual provisions, over annulment. In the present petition, the contested § 105 par. 1, third sentence of the VAT Act is a mandatory regulation, which cannot be

overcome by a constitutional interpretation, because its mandatory nature does not permit the addressee (the tax administrator) to deviate from this regulation without acting contra legem.

31. Based on the abovementioned arguments, the Constitutional Court concluded in the adjudicated matter that § 105 par. 1, third sentence of Act no. 235/2004 Coll., on Value Added Tax, in the version in affect before being amended by Act 296/2007 Coll., did not permit the ordinary courts to meet their obligations in protecting the fundamental rights and freedoms of bankruptcy creditors when reviewing the decision of a tax administrator to set off a tax overpayment to compensate a tax debt in the administrative judiciary, which is a failure to respect the principles enshrined in Art. 11 par. 1 of the Charter. Therefore, the Constitutional Court granted the petitioners petition submitted under Art. 95 par. 2 of the Constitution, with the provision that, in view of Art. 89 par. 2 of the Constitution, the public authorities are required to reflect the consequences of the unconstitutionality that has been determined in their decision making, i.e. not to apply the cited provision when resolving specific cases.