2003/07/09 - PL. ÚS 5/03: TERRITORIAL SELF-GOVERNMENT UNIT

HEADNOTE

According to the starting thesis, on which the concept of self-government is built, the foundation of a free state is a free municipality, then, in terms of regional significance, at a higher level of the territorial hierarchy a self-governing society of citizens, which, under the Constitution, is a region. With this concept of public administration built from the ground up, the following postulate must be immanent to self-government, as an important element of a democratic state governed on the rule of law: that a TSU must have a realistic possibility to handle matters and issues of local significance, including those which by their nature exceed the regional framework and which it handles in its independent jurisdiction, on the basis of free discretion, where the will of the people is exercised at the local and regional level in the form of representative democracy and only limited in its specific expression by answerability to the voter and on the basis of a statutory and constitutional framework (Art. 101 par. 4 of the Constitution). Thus, territorial self-governing units representing the territorial society of citizens must have – through autonomous decision-making by their representative bodies – the ability to freely choose how they will manage the financial resources available to them for performing the work of self-government. It is this management of one's own property independently, on one's own account and own responsibility which is the attribute of self-government. Thus, a necessary prerequisite for effective performance of the functions of territorial self-government is the existence of its own, and adequate, financial or property resources.

CZECH REPUBLIC

CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court, consisting of JUDr. Vojtěch Cepl, JUDr. Vladimír Čermák, JUDr. František Duchoň, JUDr. Vojen Güttler, JUDr. Miloš Holeček, JUDr. Pavel Holländer, JUDr. Vladimír Jurka, JUDr. Vladimír Klokočka, JUDr. Jiří Malenovský, JUDr. Jiří Mucha, JUDr. Antonín Procházka, JUDr. Pavel Varvařovský, JUDr. Miloslav Výborný, JUDr. Eliška Wagnerová and JUDr. Eva Zarembová ruled on a petition from a group of 45 deputies of the Chamber of Deputies of the Parliament of the Czech Republic seeking the annulment of § 1 par. 2 let. b), § 2 par. 2 second sentence, § 3, § 4 par. 2 let. b), § 5 par. 2 second sentence and § 6 of Act no. 290/2002 Coll., on the Transfer of Certain Other Things, Rights

and Obligations of the Czech Republic to Regions and Municipalities, Civic Associations in Physical Education and Sport and on Related Amendments and Amending Act no. 157/2000 Coll., on the Transfer of Certain Things, Rights and Obligations from the Czech Republic, as amended by Act no. 10/2001 Coll., and by Act no. 20/1966 Coll., on Care for the Health of the People, as amended by later regulations, as follows:

The provisions of § 3 and § 6 of Act no. 290/2002 Coll., on the Transfer of Certain Other Things, Rights and Obligations of the Czech Republic to Regions and Municipalities, Civic Associations in Physical Education and Sport and on Related Amendments and Amending Act no. 157/2000 Coll., on the Transfer of Certain Things, Rights and Obligations from the Czech Republic, as amended by Act no. 10/2001 Coll., and Act no. 20/1966 Coll., on Care for the Health of the People, as amended by later regulations,
are annulled as of 31 December 2003.

The rest of the petition is denied.

REASONING

I.

On 24 February 2003 a group of 45 deputies of the Chamber of Deputies of the Parliament of the CR filed with the Constitutional Court, under Art. 87 par. 1 let. a) of the Constitution of the Czech Republic (the "Constitution"), a petition to annul § 1 par. 2 let. b), § 2 par. 2 second sentence, § 3, § 4 par. 2 let. b), § 5 par. 2 second sentence and § 6 of Act no. 290/2002 Coll., on the Transfer of Certain Other Things, Rights and Obligations of the Czech Republic to Regions and Municipalities, Civic Associations in Physical Education and Sport and on Related Amendments and Amending Act no. 157/2000 Coll., on the Transfer of Certain Things, Rights and Obligations from the Czech Republic, as amended by Act no. 10/2001 Coll., and by Act no. 20/1966 Coll., on Care for the Health of the People, as amended by later regulations, (the "Act" or "Act no. "290/2002 Coll.").

After recapitulating the individual provisions of the contested Act, the petitioners allege in the reasoning of their petition that these provisions, without giving the regions and municipalities the opportunity to appropriately express their agreement or disagreement, unilaterally determine that selected things, rights and obligations previously belonging to the state shall be transferred to these self-governing units, and at the same time determine that the defined state-administered departments and state-funded organizations shall become administered departments or funded organizations of the relevant self-governing units. The petitioners charge that the Act does not address such fundamental issues as the issue of payment of state obligations arising until 31 December 2002, which are transferred to the regions or municipalities as of 1 January 2003. It also does not address the question of paying the obligations of state-funded organizations which became regionally- or municipally-funded organizations as of 1 January 2003; if such funded organizations were dissolved their obligations would transfer to their organizer ,

thus, after 1 January 2003 to the region or municipality (§ 27 par. 3 of Act no. 250/2000 Coll., on budgetary rules for territorial budgets). According to the petitioners, the Act thus impermissibly burdens the financial position of territorial self-governing units (also referred to as "TSU"s), which are independent legal entities, separate from the state, and in which the state can interfere only for reasons of protecting the law. In paying such obligations the regions will be forced to use their own funds, and a situation will arise where the self-governing units will pay out of funds intended for self-government activities the obligations of the state or obligations of funded organizations which arose when the state was their organizer. This may have the undesirable consequence that considerably less money will be expended for a TSU's self-government activity than was originally intended and would have been expended if the state had not transferred its obligations or the obligations of its funded organizations to these TSUs. In this regard the petitioners emphasize that for a period of 10 years a key part of the acquired property – real estate – can not be used for a purpose other than the one for which it was used as of 1 January 2003. According to them, the situation also can not be resolved on the basis of the legal opinion held by some state representatives, the opinion that the state is a guarantor for the obligations of former state-funded organizations which were created up until 31 December 2002. There is a question whether, in cases where these organizations were transformed into regionally- or municipally-funded organizations as of 1 January 2003, the state guarantee which existed under § 74 of Act no. 218/2000 Coll., on Budget Rules and Amending Certain Related Acts (the Budget Rules) did not terminate. However, even if such a state guarantee existed after that date, this would not solve the problem of impermissible indebtedness by units of territorial self-government. If the state, as guarantor, paid the obligations of a former state-funded organization, the state would then have – in view of the legal consequences of providing a guarantee – a subrogated claim against the regionally-or municipally-funded organization, or directly against the region or municipality, and the relative financial independence of these self-governing units from the state, in particular the executive branch, would essentially be denied, as it would depend on the will of the state whether to exercise its subrogated claim against them or not. According to the petitioners, such a situation is inconsistent with the constitutional concept of self-government, as contained in Art. 99, Art. 100 par. l and Art. 8 of the Constitution. The petitioners emphasize that part of the TSUs' right to self-government is the right to commensurate financial resources for the activities performed by these units in the public interest, which the legislature entrusts to them. This concept of the right to self-government also corresponds to Art. 3 par. 1 of the European Charter of Local Self-Government (the "Charter"), which describes local self-government as not only the right, but also the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs, under their own responsibility and in the interests of the local population. One of the prerequisites for the capability of a TSU to implements its self-governing activities is adequate financial resources for them. It is naturally up to the legislative power how it organizes the system of taxes, fees and other income of the state and TSUs, but the resulting system must ensure the long-term financial stability of these public law entities. Otherwise the relative autonomy of these units would be an empty concept.

As the petitioners state, the transfer of rights and obligations from the state to regions or municipalities by statute could be consistent with the Constitution, if it were accompanied by a system of financial resources for the tasks connected with the transferring property that would ensure the long-term financial stability of the regions and municipalities after the completed transfer. However, the legislature is transferring, in particular to the regions, largely administered departments or funded organizations, such as hospitals and other health-care facilities, that are burdened by extensive debts. These debts not only can not be paid by the new owners in a reasonable time, under the existing system of financing, but, on the contrary, they can be expect to grow relentlessly, at a rate which could seriously endanger the financial stability of the regions. As evidence of the fact that the health care financing system is not financially self-sufficient at the present time, as well as the fact that a number of hospitals being transferred to the regions have long-term debt, the petitioners proposed presenting a report of the government or the Ministry of Health and an opinion from the Association of Regions of the Czech Republic. The petitioners also point out that not only does the contested legal framework result in impermissible interference in the independence of self-governing units, but there is also a risk of deterioration in the position of creditors of these obligations, who entered into contractual relationships with the state or a state-funded organization with the knowledge that their debtor was the state, directly or indirectly, but as a result of the Act the debtor becomes a different economic entity. They also point out that Act no. 172/1991 Coll., on the Transfer of Certain Things from the Czech Republic to Municipalities, which addressed a comparable problem, the asset base of newly-created municipalities, determined what things are transferred from state property to the municipalities without, however, burdening the municipalities with obligations which arose previously to the state or state organizations.

Finally, referring to Art. 11 par. 1 of the Charter of Fundamental Rights and Freedoms, in view of what has already been said about the transferred property, the petitioners conclude that the right of the regions, as owners of property to freely make decisions about their property is considerably relativized, and, on the basis of a state decision, rendered empty. In their opinion, there is also a question whether the contested provisions do not violate the constitutional principle of equality of property and freedom of ownership, because they force other persons to own something, as when the Act went into effect it in fact imposed ownership – the Act imposed the ownership of certain things on the regions and put them in the position of debtor in certain private law obligation relationships, which it certainly could not do to other persons. It is precisely there that the petitioners see a serious violation of the principle that the property rights of all owners have the same content and enjoy the same protection. In addition to that violation, there is also serious limitation of freedom of ownership, or the constitutional postulate that property ownership is understood as a right, not as an obligation, and obligations can only arise subsequently from ownership. An obligation to own something can not very well be imposed, and thus the region, as a subject of private law, lost the right to decide whether to acquire certain things. For these reasons the petitioners believe that this violated the right to self-government guaranteed by Art. 8 and Art. 100 par. 1 of the Constitution, violated the right to property guaranteed by Art. 11 par. l of the Charter of Fundamental Rights and Freedoms, and violated the principles on the basis of which the European

Charter of Local Self-Government was passed, and therefore they proposed that the Constitutional Court annul the abovementioned provisions of the Act.

The Constitutional Court, in accordance with § 69 par. 1 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, requested opinions from both houses of the Parliament of the Czech Republic. The Chamber of Deputies and the Senate submitted opinions on the petition.

In accordance with § 49 par. 1 of Act no. 182/1993 Coll., opinions were also requested from the Ministry of Health and the Association of Regions of the Czech Republic.

The opinion of the Ministry of Health states that passage of the contested Act was the culmination of reform of public administration connected to terminating of the activities of district offices and transferring their jurisdiction to TSUs. As part of the implementation of this reform it was also necessary to sort out state property which was managed by state-administered departments and state organizations of a regional nature for which district organizations functioned as founder or organizer. Thus, this was not a transfer of the exercise of state administration to TSUs, but a change of owner, and the related change of the legal position of these state institutions. Government resolution no. 765 of 25 July 2001 approved, for that purpose, the Schedule of Legislative Preparations for the Second Phase of Reform of the Public Administration, and the Ministry of Finance, working with the appropriate ministries, was assigned to develop a draft Act on the Transfer of State Property and on the Transfer of the Function of Organizer from District Offices to State-Funded Organizations and State-Administered Departments. Thus, as of 1 July 2002 the contested Act went into effect, and on the basis of it, as of 1 January 2003, state-funded organizations for which district offices performed the function of organizer as of the decisive day, became regionally-funded organizations. These organizations continued to bear all obligations existing as of the decisive day, and also continued to bear the rights and obligations from labor law relationships. As of the same day, all rights and other property values of the state, which these organizations had jurisdiction to manage, were transferred to the individual regions. The change of organizer thus did not interrupt the activities of the funded organizations, as they did not cease to exist; their legal status was merely changed from state organizations to non-state organizations. Therefore, no legal successors to them were created, and the organizations continue to function, under a different organizer with the same ID number and unchanged contractual and labor law relationships.

The Ministry of Health, under § 10 of Act no. 2/1969 Coll., on Establishment of Ministries and Other Central bodies of State Administration of the Czech Socialist Republic, as amended by later regulations, and under Act no. 20/1966 Coll., on Care for the Health of the People, as amended by later regulations, primarily handles issues in the area of providing health care, in accordance with the needs of the society, and lays out the main directions in the development of health care. Under the applicable legal framework [Act no. 218/2000 Coll., as amended by later regulations; Act no. 320/2001 Coll., on Financial Inspection in Public Administration and Amending Certain Acts (the Financial Inspection Act), as amended by later regulations; Act no. 147/2000 Coll., on District Offices, as amended by Act no. 320/2001 Coll.], the Ministry of Health is not and was not authorized to address the issue of financing, or in any other way interfere in the management of health care facilities if it is not their organizer. The management of state health care

facilities, as funded organizations, is governed by generally valid legal regulations which, until the end of 2002 also applied to facilities in the jurisdiction of district offices. When Act no. 218/2000 Coll. went into effect, district offices and the entities they organized and managed became part of the relevant budget chapter – 380 – in the jurisdiction of the Ministry of Finance. In view of that, the Ministry of Health states in its opinion that it can not bear responsibility for the individual particular results of management of health care facilities in the jurisdiction of other organizers.

The opinion from the Association of Regions of the Czech Republic of 22 May 2003 indicates that the Association agrees with the petition, and confirms the fact that the debts of health care facilities under the existing health care financing system can not be paid by the regions in the foreseeable future. To pay these debts, the regions would have to use funds intended for financing other obligations imposed on them by law, for example in the areas of education, transportation, culture, environment, social matters, etc.. The failure to address the problems in health care, long underestimated, could, in the near future, seriously endanger the financial stability of the regions or the availability of health care.

In view of the fact that the petitioners emphasize the problem of obligations in their petition primarily in connection with the transferring health care facilities, the Constitutional Court also requested the "Government Report on the Indebtedness of state Hospitals, on Addressing these Debts and the Legal Arrangements for the Transfer of Hospitals to the Regions of 5 December 2002, which the government discussed on 5 December 2002, and the Chamber of Deputies took cognizance of in its 8th session on 10 December 2002. This report, after the introductory description of changes brought by Act no.290/2002 Coll., says, among other things, that "the question of the position of health care facilities was to have been addressed by Act no. 219/2000 Coll., on the Property of the Czech Republic and Its Functioning in Legal Relationships, which did not happen. There were long discussions, in connection with the financial incapacity of hospitals, on the future legal position of health care facilities, primarily about whether health care facilities will be state or non-state facilities. In the end the alternative was chosen of so-called funded organizations, as well as 'health care facilities pending special legal regulation,' which led to limiting any organizer positions. The indebtedness of in-patient health care facilities, whose organizers is a district offices is not a problem which would arise only at the point of transfer to a region. Some hospitals have been, in the aggregate, at a certain level of indebtedness during the entire period of their existence in the system of payments from health insurance funding. At individual stages there were attempts to solve this situation, e.g. in 1995 there was a partial change of the manner [of payment] from health insurance companies by shifting to payment by a flat fee, which was constructed at a particular reference period in 1997, and the simultaneous provision of credit to several large hospitals and individual health insurance companies, most recently in 1997, with the so-called 'uniform debt clearance.' A comprehensive program was implemented with a two year delay, which responded to the oldest overdue obligations of health care facilities which met certain criteria. The source of this program was partial limitation of investment development proposed in the budget for the relevant year. With the general belief and certainty that it would not be possible to significantly increase funds from GDP for health care, proposals to change the financing of health care to a greater or lesser degree were

repeatedly submitted in the past . Most of them were not implemented." The report further states that "the state budget for 2002 and the proposed budget for 2003 do not contain funds for balancing the balance sheets of individual transferred hospitals. Therefore, it is necessary to proceed according to Act no. 290/2002 Coll., which specifies the plan for these transfer, with the provision that there are considerable differences in the financial management of individual health care facilities, where the previous organizer, which had direct influence on the running and thereby the financial management of hospitals, played an essential role." The report states that the value of the transferred property is considerably greater than the existing level of indebtedness; as of 30 September 2002 these facilities had receivables of approximately 3.1 billion crowns, and liabilities of 3.8 billion crowns. The value of long-term assets is about 42.2 billion crowns, which is being transferred to the regions. The report does not contain a specific solution to the problem of debts burdening the transferred health care facilities. It is evident from its appendices, as the text states, that there are considerable differences in the financial management of individual health care facilities. Reflecting the situation in the individual regions, the liabilities of hospitals (after subtracting receivables) are the following: the capital city of Prague – CZK 6,875,000, Central Bohemian Region – CZK 213,013,000, South Bohemian Region – CZK 60,001,000, Pilsen Region – CZK 47,579,000, Karlovy Vary Region – CZK 87,100,000, Ústí nad Labem Region – CZK 131,186,000, Liberec Region – CZK 13,741,000, Hradec Králové Region – CZK 151,312,000, Pardubice Region – CZK 100,951,000, Vysočina Region – CZK 88,708,000, South Moravian Region – CZK 66,852,000, Olomouc Region – CZK 0, Zlín Region – CZK 146,909,000, Moravia-Silesia Region – CZK 154,600,000.

II.

In proceedings to annul statutes and other legal regulations the Constitutional Court reviews the content of a statute according to criteria contained in § 68 par. 2 of Act no. 182/1993 Coll., as amended by later regulations, that is, in terms of its consistency with constitutional acts. Before it turned to reviewing the petition on the merits, it also reviewed, in accordance with its obligation arising from that provision (in fine), whether the formal conditions for passing a statute were met and the contested Act was passed within the bounds of constitutionally provided jurisdiction and in a constitutionally prescribed manner.

In that regard, the Constitutional Court determined from the stenographic record of the 43rd and 47th sessions of the Chamber of Deputies in the 3rd term that the Chamber of Deputies approved Act no. 290/2002 Coll. after proper discussion at its 47th session held on 27 March 2002 (by resolution no. 2208), when, out of the 159 deputies present, 85 voted in favor of the bill and 69 against. The stenographic record of the 17the session of the Senate in the 3rd term showed that on 14 May 2002 (resolution no. 384), out of 64 senators present, 55 voted in favor of the bill, as amended by amending proposals passed by the Senate, and 2 senators were against it. The Chamber of Deputies then voted on the bill returned by the Senate (as amended by its amending proposals) at its 51st session on 13 June 2002; out of 188 deputies present, 91 were in favor and 80 were against. Thus, this vote did not pass the bill as amended by the Senate. In subsequent voting on the bill, in accordance with Art. 47 par. 3 of the Constitution, this time the version which was

forwarded to the Senate, out of the same number of legislators present, 108 were in favor and 65 were against the proposal (resolution no. 2317). Act no. 290/2002 Coll. was then signed by the appropriate constitutionally designated persons and duly published in part 106 of the Collection of Laws, which was distributed on 28 June 2002. The Act went into effect on 1 July 2002.

Based on these findings, we can state that Act no. 290/2002 Coll. was duly passed and issued within the bounds of constitutionally provided jurisdiction and in a constitutionally prescribed manner (§ 68 par. 2 of Act no. 182/1993 Coll., as amended by later regulations), as a result of which the petition is eligible for review on the merits, in terms of evaluating its consistency with constitutional acts, or the constitutional order [Art. 83 and Art. 87 par. 1 let. a) of the Constitution].

(For thoroughness we must add that Act no. 290/2002 Coll. was amended by Act no. 150/2003 Coll., which went into effect on 23 May 2003; however, this amendment did not affect any of the provisions contested by the petition from the group of deputies).

III.

Act no. 290/2002 Coll. is a transformational statute, which was passed as part of implementing phase II of the reform of public administration. On the basis of § 1 par. 1, as of 1 January 2003 there was a transfer from the property of the Czech Republic to the property of the regions of things which, as of 31 December 2002 were under the management jurisdiction of state-administered departments and state-funded organizations, where the district offices performed the function of organizer as of 31 December 2002. Also as of 1 January 2003, these state-administered departments and state-funded organizations became, by operation of law, administered departments and funded organizations of the appropriate regions (§ 2 par. 1 and 2 of Act no. 290/2002 Coll.). As of 1 January 2003 there was also a transfer to the regions of, among other things, obligations of the state for which, as of 31 December 2002, the state-administered departments performed tasks under Act no. 219/2000 Coll. (on the Property of the Czech Republic and Its Functioning in Legal Relationships); the regionally-funded organizations created by the Act from state-funded organizations continued ex lege to bear the obligations, including rights and obligations from labor law relationships, which had, until that date, been certain named state-funded organizations [§ 1 par. 2 let. b), § 2 par. 2 of Act no. 290/2002 Coll.]. A similar transfer also occurred in relation to municipalities [§ 4 par. 2 let. b), § 5 par. 1, par. 2 of Act no. 290/2002 Coll.].

According to the petitioners, these provisions indirectly lead to impermissible interference in the constitutional right to territorial self-government, they violate constitutionally guaranteed relationships between the state and TSUs, impermissibly interfere in the private law position of third parties, and also violate the right to property guaranteed by the Charter of Fundamental Rights and Freedoms. The fundamental reason which led the petitioners to file their petition – as they expressly state – is the fact that, as a consequence of the Act, obligations previously belonging to the state are transferred to the regions, municipalities and organizations funded by them, and the state is thus

impermissibly solving its own indebtedness and that of its organizations, particularly in the area of health care.

The Constitutional Court first reviewed § 1 par. 2 let. b), § 2 par. 2 second sentence, § 4 par. 2 let. b) and § 5 par. 2 second sentence of the Act.

In its previous decision-making practice the Constitutional Court made clear that it considers local self-government to be an irreplaceable component of democracy, and repeatedly stated that local self-government is an expression of the right and ability of local bodies to regulate and manage part of public affairs, within the limits of the law, under their own responsibility, and in the interests of the local population (judgments file no. Pl. ÚS 1/96, file no. Pl. ÚS 17/98).

The Constitutional Court addressed the statutory expression of reform of public administration related to decentralization and de-concentration of it, connected to the establishment of regions, expanding the exercise of state power in the transferred jurisdiction of regions and municipalities and the termination of district offices in judgment file no. Pl. ÚS 34/02, which denied a petition from a group of Senators of the Parliament of the Czech Republic seeking the annulment of points 2, 5, 6, 7, 8, 9 and 11 Art. CXVII of Act no. 320/2002 Coll., on the Amendment and Annulment of Certain Acts in Connection with Terminating the Activities of District Offices. In the reasoning of that judgment the Constitutional Court stated that the constitutional guarantee of territorial self-government under the Constitution is laconic. The constitutional establishes the status of TSUs as subjects of law, and assumes that self-governing entities have their own property and manage themselves with their own budget (Art. 101 par. 3 of the Constitution). It also expressly assumes that TSUs share in the exercise of state power on the basis of statutory authorization (Art. 105 of the Constitution). The last-cited judgment also emphasized that the Czech constitutional standard of territorial self-government is supplemented and enriched by the standard which arises from the international obligations of the Czech Republic, namely the Charter of Local Self-Government, agreed on 15 October 1985, which entered into effect for the Czech Republic on 1 September 1999 by publication in the Czech Republic as no. 181/1999 Coll., with the provision that the rights guaranteed by the Charter of Local Self-Government are a framework. The Charter itself, in a number of its provisions, assumes the existence of a detailed domestic legal framework, and does not guarantee complete freedom of territorial self-government. Therefore, statues or other regulations may, according to the choosing and traditions of the parties, define in more detail the content of matters administered by territorial self-government, including those which the self-government has an obligation to pursue, an its organization, and also to set the framework for financial management, allocate assets and financial resources; nevertheless, as regards financial resources, Art. 9 par. 1 of the Charter provides that local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers, and these shall be commensurate with the responsibilities provided for by the constitution and the law (Art. 9 par. 2 of the Charter). In the cited judgment the Constitutional Court stated that the framework for financing TSUs (just like the definition of their roles) may not, while maintaining sound finances, lead to their financial collapse. (It also stated that therefore, in light of the Charter and of the Constitution, the view of authoritative delimitation and the functioning of delimited

employees of the terminated district offices within the framework of regions, authorized cities and municipalities must depend on the manner of financing the exercise of transferred jurisdiction by the state, with the conclusion that insufficient financing of the exercise of state power in transferred jurisdiction endangers the very existence of the functions of territorial self-government). In view of the material reviewed, one can draw on these basic arguments, in the present matter.

According to the starting thesis, on which the concept of self-government is built, the foundation of a free state is a free municipality, then, in terms of regional significance, at a higher level of the territorial hierarchy a self-governing society of citizens, which, under the Constitution, is a region. With this concept of public administration built from the ground up, the following postulate must be immanent to self-government, as an important element of a democratic state governed on the rule of law: that a TSU must have a realistic possibility to handle matters and issues of local significance, including those which by their nature exceed the regional framework and which it handles in its independent jurisdiction, on the basis of free discretion, where the will of the people is exercised at the local and regional level in the form of representative democracy and only limited in its specific expression by answerability to the voter and on the basis of a statutory and constitutional framework (Art. 101 par. 4 of the Constitution). Thus, territorial self-governing units representing the territorial society of citizens must have – through autonomous decision-making by their representative bodies – the ability to freely choose how they will manage the financial resources available to them for performing the work of self-government. It is this management of one's own property independently, on one's own account and own responsibility which is the attribute of self-government. Thus, a necessary prerequisite for effective performance of the functions of territorial self-government is the existence of its own, and adequate, financial or property resources.

In the area of these issues one must keep in mind the condition that these organizations, in considerable part health care facilities, are in. Most of these facilities – as the opinion from the Association of Regions of the Czech Republic also indicates – have not inconsiderable, in individual cases reaching as high as tens to hundreds of millions of crowns, which can markedly affect the budget of the territorial self-governing unit, particularly where there is a greater number of such debt-burdened health care facilities in a particular TSU. Act no. 250/2000 Coll., on Budget Rules for Territorial Budgets, as amended by later regulations, does provide rules for management of financial resources, the future receipt of which is provided for TSUs by other statutes – in particular by Act no. 243/2000 Coll., on Budgetary Allocation of Revenues from Certain Taxes to Territorial Self-Governing Units and Certain State Funds (the Act on Budgetary Allocation of Taxes), as amended by later regulations – but that changes nothing about the fact that at the very beginning of these entities' activities they are weighed down by a burden, which was caused by the activities of the state or its organizations, and its is thus evident that this fact can markedly affect self-governing activities and present territorial self-governing units from expending financial resources intended for their own self-governing activities in such a way as to serve the expected purpose (Art. 101 par. 3 of the Constitution). Nonetheless, one can not question the justification for the step where the state transferred certain property to TSUs, as part of the reform of public administration, as the reasons for it come from the historically established belief on the basis of which it is those who are affected by matters tied to property, and whom the property directly serves, are

capable, and by the nature of the matter also willing and motivated, to manage it with due care, often better than the central state power, and in a much more efficient, effective manner. Decentralization of tasks and the related transfer of property is also not something constitutionally unacceptable. However, the connection of this step to the subsequent transfer or further continuation of obligations tied to this property assumes a further solution, in connection with the system of taxes, subsidies and similar payments. The state should not – without anything further – rid itself of liability for debts which arose during the period when it managed the transferred property and which are a result of the previous loss-making application of property rights, perhaps even failure to observe legal regulations [§ 53 et seq. of Act no. 218/2000 Coll., on Budget Rules and Amending Certain Related Acts (the Budget Rules)]. It certainly should not do so in relation to entities which are to also fulfill its responsibilities consisting of securing the fundamental rights arising from Art. 31 of the Charter of Fundamental Rights and Freedoms, whose observance the state itself guarantees. Such behavior by the sovereign power raises questions about abuse of state power to the detriment of TSUs. Although this may be a diametrically opposite situation, in this context a reference also comes to mind to the premise, expressed on a horizontal level in private law and generally fair, that the acquirer of things – including in cases of transfer without compensation – is fundamentally responsible for debts tied to them (§ 500 par. 2 of the Civil Code), including under the argument a minori ad maius.

We can agree with the Senate's opinion that the problem of the deficit from the previous management must be addressed comprehensively, but if the indebtedness of the property in question is not to continue, there must be an effort by the state to remove this undesirable situation. If it were to continue, it could endanger both the performance of self-government functions and the position of creditors, whose rights should be secured in a state governed by the rule of law as a matter of course.

However, intervention by the Constitutional Court consisting of annulling the abovementioned provisions would not by itself remove this undesirable situation. Under § 71 par. 4 of Act no. 182/1993 Coll., on the Constitutional Court, which regulates the legal effects of judgments of annulment by the Constitutional Court (and by which the Constitutional Court is bound under Art. 88 par. 2 of the Constitution), the rights and obligations from legal relationships arising before a legal regulation was annulled remain untouched. Thus, the Constitutional Court had to take into consideration that, as indicated above, the contested Act is a transformational, one-time event. The legal consequences connected to the reviewed statutory provisions and expected by this Act arose ex lege as of 1 January 2003, and the capacity of these norms to create consequences in the future is thus fully exhausted. A favorable judgment from the Constitutional Court, having effects ex nunc, would thus no longer be able to change anything about the existing situation, including in view of § 71 par. 4 of Act no. 182/1993 Coll.. For that reason, the Constitutional Court had no choice but to deny that part of the petition.

IV.

However, in the opinion of the Constitutional Court, the situation is somewhat different when reviewing § 3 and § 6 of Act no. 290/2002 Coll., which limit the new owner (municipality, region) in relation to real estate, for a period of ten years from the day they

are acquired, to use only for the purpose for which it was used as of the day of transfer, with the provision that if, before the expiration of that period, they become unnecessary for that purpose for the municipality (region) based on local expectations and customs and it does not use them for social, educational or health care purposes, they must be offered for transfer to the state without compensation.

As is evident from the construction of this legal framework, as well as from the background report for the draft of Act no. 290/2002 Coll., this limitation aims to reflect the need to preserve, at least for a certain time, the use of the acquired real estate by the self-governing units for purposes for which they served until the day of the transfer, or to enable them to be used only for purposes serving other, definitively listed public interests.

In the Constitutional Court's opinion, this limitation must also be viewed (apart from the conclusions given below) in context with the conclusions given previously and also in terms of Art. 11 par. 3 of the Charter of Fundamental Rights and Freedoms, under which ownership entails obligations and may not be misused to the detriment of the rights of others or in conflict with legally protected public interests.

The imposition of a limitation on property rights, in this case provided by statute, with a precise, concretely defined and certain definition of the purpose of that limitation in the abovementioned public interest does not show elements of arbitrariness, and in view of the arguments on which it is based, does not meet the elements of unconstitutionality (in contrast to the situation in the matter under file no. Pl. ÚS 1/02, the judgment published as no. 404/2002 Coll.). The conclusion thus reached must be understood in connection with the on-going transformation implemented as part of the reform of public administration. Within this process one can ascribe to the public interest the capability of being, at a general level, permissible, reasonably justifiable grounds for limiting the property right of territorial self-governing units.

The decision-making practice of the Constitutional Court indicates that fundamental rights and freedoms may be limited in the event of their conflict with another constitutionally protected value which does not have the nature of a fundamental right or freedom, including in the event of an urgent public interest. The limitation considered must then be reviewed in terms of the principle of proportionality – see judgments of the Constitutional Court in the matters file no. Pl. ÚS 4/94, file no. Pl. ÚS 15/96, file no. Pl. ÚS 25/97, file no. Pl. ÚS 16/98, and file no. Pl. ÚS 3/02 – of which judgment file no. Pl. ÚS 15/96 also concerned the constitutionality of limiting the property right of a self-governing unit, and the matter now under consideration can draw on the conclusions reached in that judgment.

Thus it must be said that the present limitation of property rights enables reaching the pursued aim, that of observing the legitimate public interest in the existence of social, education and health care facilities (the criterion of suitability, or the principle of capability to fulfill the purpose). The criterion of necessity, as another component of the principle of proportionality, then arises from the very need to continually preserve (for a certain period of time) the existence of these facilities, including in view of the fundamental right enshrined in Art. 31 of the Charter of Fundamental Rights and Freedoms. The restriction also does not appear disproportionate when evaluating the gravity of both protected values, and in view of the generally acceptable and share

hierarchy of values it can not be absolutely rejected in the given context. However, its limitation in time should not be determined only by a relatively short transitional time period, in which the necessary experience is to be acquired which permits responsible handling of the property in the free discretion of the owner, i.e. the relevant TSU. However, the detriment to a fundamental right guaranteed by Art. 11 par. 1 of the Charter of Fundamental Rights and Freedoms limited by a ten year period, appears obvious disproportionate in relation to the intended aim, as it restricts this right so much that its negative consequences – because of its "temporariness," which is excessively long in terms of time – exceed the positive points, the pursuit of a public interest. Thus, from the viewpoint of the principle of proportionality, the contested provisions obviously do not meet the criterion of proportionality in the narrower sense. In relation to the constitutional requirement of preserving the essence and significance of the property rights being limited (Art. 4 par. 4 of the Charter of Fundamental Rights and Freedoms), in the present matter, out of the basic triad of property rights (ius possidendi, ius utendi et ius fruendi, ius disponendi) the right to use and dispose of property, in the sense of transferring it to another, is affected for a period of ten years; with reference to the foregoing, the solution adopted, in terms of its temporal aspect, can not be considered to correspond to the principle of proportionality, and thus shows elements of unconstitutionality. In this regard, the legal framework in § 3 and § 6 of Act no. 290/2002 Coll. exceeds the bounds and aspects of permissible interference in property rights, as the ten-year period of the limitation does not appear appropriate in the given context, in view of all the aspects of the issue being considered.

Thus, on the one hand, in relation to the contested (tempoarary) limitation of property rights, it is not possible to overlook its precisely set, certain, equal and thus constitutionally acceptable conditions (Art. 11 par. 1 of the Charter of Fundamental Rights and Freedoms, Art. 1 par. 1 of the Constitution); however, on the other hand, the Constitutional Court believes that the requirements arising from Art. 4 par. 4 of the Charter of Fundamental Rights and Freedoms can be met only by a legal framework which would establish this limitation only in the absolutely necessary extent of time, which can be understood as only a minimal, and clearly prima facie "transitional" period.

The Constitutional Court thus concluded that the limitation of property rights in § 3 and § 6 of Act no. 290/2002 Coll., in relation to all the components required by the principle of proportionality, does not meet the conditions for limiting a fundamental right, and therefore it annulled these provisions due to inconsistency with Art. 4 par. 4 in connection with Art. 11 par. 1 of the Charter of Fundamental Rights and Freedoms (§ 70 par. 1 of Act no. 182/1993 Coll., as amended by later regulations). However, it postponed enforceability of this part of the judgment until 31 December 2003, so that the Parliament of the Czech Republic would have sufficient time to set new deadlines.

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

Brno, 9 July 2003