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HEADNOTES

It generally applies that, where Community legislation has left certain matters in the competence of the Member States (that is, where there are no explicit Community law rules), or where it has explicitly delegated the regulation of these matters back to the Member States, it is up to the Member States to adopt and apply their own legislation. Still, it cannot be asserted that Community law in no way operates in such fields. On the contrary, even in cases where Members States implement part of Community policy by means of their own legal instruments, the Member States' discretion is limited by the overarching general principles of Community law, among which also ranks the protection of fundamental rights. As such rules take the form of national law, they must simultaneously be in conformity with the Czech constitutional order.
Although the Constitutional Court's referential framework has remained, even since 1 May 2004, the norms of the Czech Republic's constitutional order, the Constitutional Court cannot entirely overlook the impact of Community law on the formation, application, and interpretation of national law, all the more so in a field of law where the creation, operation, and aim of its provisions is immediately bound up with Community law. In other words, in this field the Constitutional Court interprets constitutional law taking into account the principles arising from Community law.

In its judgment No. Pl. US 11/02 (published as No. 198/2003 Sb.), the Constitutional Court formulated the doctrine of the continuity of its own case-law, which it deduced from the attributes of the democratic law-based state. There is no doubt that, as a result of the Czech Republic's accession to the European Community (EC), or European Union (EU), a fundamental change occurred within the Czech legal order, as at that moment the Czech Republic took over into its national law the entire mass of European law. Without doubt, then, just such a shift occurred in the legal environment formed by sub-constitutional legal norms, which necessarily must influence the examination of the entire existing legal order, constitutional principles and maxims included, naturally on the condition that the factors which influence the national legal environment are not, in and of themselves, in conflict with the principle of the democratic law-based state or that the interpretation of these factors may not lead to a threat to the democratic law-based state. Such a shift would come into conflict with Art. 9 par. 2, or Art. 9 par. 3 of the Constitution of the Czech Republic.

In the Constitutional Court's view, the current standard within the Community for the protection of fundamental rights cannot give rise to the assumption that this standard for the protection of fundamental rights, through the assertion of principles arising therefrom, is of a lower quality than the protection accorded in the Czech Republic, or that the standard of protection markedly diverges from the standard up till now provided in the domestic setting by the Constitutional Court.

As far as concerns measures of an economic nature pursuing an aim that flows directly from the Community policy of the EC, a definite principle of constitutional self-restraint can be inferred from the case-law of the European Court of Justice (ECJ). For

that matter, the Constitutional Court was also aware of this point when it adopted judgment No. Pl. US 39/01, since it stated in its reasoning that, as concerns the extent of its review powers, such a conclusion may not be reached which would afterwards present an obstacle to the Czech Republic's membership in the European Union, albeit by its holding it denied that self-restraint to a certain extent.

The Constitutional Court therefore came to the conclusion that in this case there are grounds for departing from its judgment in matter No. Pl. US 39/01. This modification does not, however, relate to the substantive assessment itself of the key selected by the Government, rather to the fact that the Constitutional Court no longer deems itself to be called upon to subject such a key to abstract constitutional review in the manner in which it did in its judgment No. Pl. US 39/01. Naturally, that does not rule out the possibility that the ordinary courts address, in specific cases of individual producers, the fairness of this key, assuming that specific facts will be established on the basis of which such inequality is alleged.

By its adoption of the contested provisions, § 3 of Regulation No. 548/2005 Sb., which merely paraphrases Art. 1 par. 3 of Commission Regulation (EC) No. 1609/2005, the Government failed to respect the fact that, as a result of the Czech Republic's accession to the EU, a transfer of powers of national organs to supra-national organs has taken place on the basis of Art. 10a of the Constitution of the Czech Republic. In the moment when the Treaty Establishing the European Community, as amended by all revisions to it and by the Treaty of Accession, became binding on the Czech Republic, a transfer was effected of those powers of national state organs which, according to EC primary law, are exercised by organs of the EC, upon those organs.

The Czech Republic conferred these powers upon EC organs. In the Constitutional Court's view, this conferral of a part of its powers is naturally a conditional conferral, as the original bearer of sovereignty, as well as the powers flowing therefrom, still remains the Czech Republic, whose sovereignty is still founded upon Art. 1 par. 1 of the Constitution of the Czech Republic. In the Constitutional Court's view, the conditional nature of the delegation of these powers is manifested on two planes: the formal and the substantive plane. The first of these planes concerns the power attributes of state sovereignty itself, the second plane concerns the substantive component of the exercise of state power. In other words, the delegation of a part of the powers of national organs may persist only so long as these powers are exercised in a manner that is compatible with the preservation of the foundations of state sovereignty of the Czech Republic, and in a manner which does not threaten the very essence of the substantive law-based state. In such determination the Constitutional Court is called upon to protect constitutionalism (Art. 83 of the Constitution of the Czech Republic). According to Art. 9 par. 2 of the Constitution of the Czech Republic, the essential attributes of a democratic state governed by the rule of law, remain beyond the reach of the Constituent Assembly itself.

Direct applicability in national law and applicational precedence of a regulation follows from Community law doctrine itself, as it has emerged from the case-law of the ECJ. If membership in the EC brings with it a certain limitation on the powers of the national organs in favor of Community organs, one of the manifestations of such limitation must

necessarily also be a restriction on Member States' freedom to designate the effect of Community law in their national legal orders. Art. 10a of the Constitution of the Czech Republic thus operates in both directions: it forms the normative basis for the transfer of powers and is simultaneously that provision of the Czech Constitution which opens up the national legal order to the operation of Community law, including rules relating to its effects within the legal order.

The Constitutional Court is of the view that – as concerns the operation of Community law in the national law – such approach must be adopted as would not permanently fix doctrine as to the effects of Community law in the national legal order. A different approach would, after all, not correspond to the fact that the very doctrine of the effects that Community acts call forth in national law has gone through and is still undergoing a dynamic development. This conception also best ensures that which was already mentioned, that is, the conditionality of the transfer of certain powers.

CZECH REPUBLIC

CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Constitutional Court Plenum, composed of Stanislav Balík, František Duchoň, Vlasta Formánková, Vojen Güttler, Pavel Holländer, Ivana Janů, Vladimír Kůrka, Dagmar Lastovecká, Jiří Mucha, Jan Musil, Jiří Nykodým, Pavel Rychetský, Miloslav Výborný, Eliška Wagnerová and Michaela Židlická on the petition of the group of Deputies of the Assembly of Deputies of the Czech Parliament proposing the annulment of §§ 3 and 16 of Government Regulation No. 364/2004 Sb., Laying Down certain Conditions for the Implementation of Measures of the Common Organization of the Markets in the Sugar Sector, as well as the petition of the same petitioners proposing the annulment of § 3 of Government Regulation No. 548/2005 Sb., Laying Down certain Conditions for the Implementation of Measures of the Common Organization of the Markets in the Sugar Sector, with the participation of the Government of the Czech Republic as a party to the proceeding and the Public Defender of Rights as a secondary party to the proceeding, has decided, as follows:

I. The proceeding on the petition proposing the annulment of §§ 3 and 16 of Government Regulation No. 364/2004 Sb., Laying Down certain Conditions for the Implementation of Measures of the Common Organization of the Markets in the Sugar Sector, is d i s m i s s e d.

II. § 3 of Government Regulation No. 548/2005 Sb., Laying Down certain Conditions for the Implementation of Measures of the Common Organization of the Markets in the Sugar Sector, is a n n u l l e d.

REASONING

I.
Resumé of the Petition

A) In their original petition, delivered to the Constitutional Court on 18 October 2004, a group of 35 Deputies of the Assembly of Deputies of the Czech Parliament sought the annulment of §§ 3 and 16 of Government Regulation No. 364/2004 Sb., Laying Down certain Conditions for the Implementation of Measures of the Common Organization of the Markets in the Sugar Sector.

As the petitioners stated, the market in sugar has for several years been regulated in the Czech Republic. The Government attempted to regulate the production of sugar in its Regulation No. 51/2000 Sb., which was in force from 14 March 2000 until 12 March 2001 and was annulled by the Constitutional Court in its judgment No. 96/2001. After that regulation had been annulled, the Government issued Government Regulation No. 114/2001 Sb., § 4 par. 3, § 5 par. 3, § 7 and § 13 of which the Constitutional Court annulled in its judgment No. 499/2002 Sb., the main ground it gave for its decision to annul being the inequality between producers, thus also growers dependent upon the producers. According to the petitioners, the Constitutional Court stated that the inequality „came about due to the fact that, on the basis of a measure which was formally unconstitutional and substantively discriminatory, certain producers might have increased their production, as they were protected from competitors who did not have a production quota and, thus, could not produce without being burdened by a punitive levy. The Government had, in a rule that was formally proper, retained into the future the undesirable state of affairs which was called forth by its earlier regulation, both formally and substantively unconstitutional.“

.... According to petitioners, the Constitutional Court reached this conclusion on the basis of its finding that the position of individual sugar refineries was influenced by the unconstitutional rules contained in Government Regulation No. 51/2000 Sb. prior to its annulment.

On 5 November 2003 the petitioners submitted a petition proposing the annulment of Government Regulation No. 114/2001 Sb., on the Setting of Production Quotas for Sugar for the Quota Years 2001/2002 through 2004/2005....

.... with effect from 1 July 2004, the contested Regulation was repealed by Government Regulation No. 364/2004 Sb., and on 31 July 2004 the petitioners requested a postponement with hearing the matter so that it might amend its original petition. The petitioners were convinced thta the newly adopted Regulation No. 364/2004 Sb. was connected in substance with the already contested Government Regulation No. 114/2001 Sb., thus they intended to submit a request to amend their original petition ... However, by its 14 September 2004 ruling the Constitutional Court dismissed the proceeding pursuant to § 69 par. 1 of Act No. 182/1993 Sb., as subsequently amended (hereinafter „Act on the

Constitutional Court“).

The petitioners thus expressed their conviction that also the newly adopted Regulation No. 364/2004 Sb., in particular §§ 3 and 16 thereof, is in conflict with the constitutional order of the Czech Republic. According to the petitioners, both provisions deal with the issue of the allocation of quotas, while it is evident from the mere text of both contested provisions that they proceed from the preceding legal enactment (Government Regulation No. 114/2001 Sb., in the version which had already been contested in the proceeding which the Constitutional Court dismissed). In view thereof the petitioners arguments are directed against a regulation which is formally no longer in effect and to which the contested provisions of the new regulation refer.

....

Even despite the above-mentioned Constitutional Court judgment (published as No. 499/2002 Sb.), the lawmaker did not rectify the matter, rather by its reference to the quotas determined in accordance with existing legal enactments retained the unconstitutional state of affairs in the newly contested regulation.

....

The Government thus selected, as the reference period for the determination of the key to the allocation of quotas to individual applicants, precisely a period in which the unconstitutional Regulation No. 114/2001 Sb. was in effect ... Thus, according to the petitioners, instead of selecting, as the reference period for the determination of the key to the allocation of quotas to individual applicants, a period in which the market in sugar had not yet been regulated, the Government, entirely arbitrarily and in conflict with the position taken by the Constitutional Court, laid down as the reference period precisely a period during which an unconstitutional legal regulation was in effect.

....

The assumption, via § 3 of Government Regulation No. 364/2004 Sb., contested by the petitioners, of the system of quotas determined in accordance with the rules contained in Government Regulation No. 114/2001 Sb., resulted in the new regulation also being unconstitutional.

By calling into doubt the constitutionality and legality of the determination of individual production quotas, the petitioners thereby call into doubt also the reserve, to which § 16 of Government Regulation No. 364/2004 Sb. refers ....

In other words, the contested provisions, §§ 3 and 16 of Government Regulation No. 364/2004 Sb., maintain continuity with the preceding, according to the petitioners unconstitutional and unlawful, rules contained in the preceding Regulation No. 114/2001 Sb., which was also contested by the petitioners in the previous proceeding before the Constitutional Court. However, the Constitutional Court dismissed that proceeding in view of the fact that, during the course of the proceeding, the contested regulation was repealed precisely by Regulation No. 364/2004 Sb.

....

B) On 3 January 2006, the Constitutional Court received a submission by which the petitioners reacted to the steps taken by the Government, which on 21 December 2005 adopted Regulation No. 548/2005 Sb., Laying Down certain Conditions for the Implementation of Measures of the Common Organization of the Markets in the Sugar Sector. With effect from 31 December 2005, this regulation repealed Regulation No. 364/2004 Sb., §§ 3 and 16 of which were contested by the original petition. In their submission the petitioners expanded the original petition and expressly proposed the annulment of § 3 of the new regulation, No. 548/2005 Sb. In the reasoning of their petition they stated that they consider the Government to have acted be opportunistic as part of an already repeated attempt to evade a hearing on the matter before the Constitutional Court ....

The petitioners believe that to dismiss the petition and thereby de facto approve the Government's manner of proceeding would be a purely formalistic approach, for which the Constitutional Court has always criticized the ordinary courts. Accordingly, they submitted ... an amendment to the original petition and proposed that the Constitutional Court annulled § 3 of the new regulation, No. 548/2005 Sb., as of the judgment is published in the Collection of Laws.

II.

Resumé of the Essential Parts of the Views of Parties, Secondary Parties, and Additional Evidence

A) In its 24 November 2004 statement of views on the original petition proposing the annulment of §§ 3 and 16 of Regulation No. 364/2004 Sb., the Government of the Czech Republic submitted the following arguments to the Constituitonal Court. According to the Government, following the Czech Republic's accession to the EU the Czech sugar-making industry, as well as the sector of the sugar beet growers, is governed in full by the rules of the common organization of the market in sugar, which form a part of the EU Common Agricultural Policy .... Within the framework of the Czech Republic's preparation to join the Common Agricultural Policy of the EU in the sugar sector of the common organization of the market, in the Government's view it was necessary to proceed to the adoption of legal instruments which would make it possible, at the moment of the Czech Republic's accession to the EU, to provide for administrative measures in the sugar sector of the common organization of the market, which the State Agricultural Intervention Fund would implement on the basis of Act No. 256/2000 Sb., on the State Agricultural Intervention Fund ...

....

The basic legal instrument for introducing the currently valid system of production quotas into the legal order of the Czech Republic was Act No. 256/2000 Sb., which empowers the Government to lay down by regulation the production quotas and the conditions for the system of production quotas ....

....

In concluding its statement, the Government observed that it considered the petition

unfounded, in view of the Czech Republic's obligation toward the EU to construct, consistent with the objectives of the rules of the EU Common Agriculture Policy, a functioning and effective system of production quotas. As the Government stated, in case the contested provisions of the regulation were to be annulled, the Czech Republic would become a country which, in the framework of the market organization have not allocated production quotas to individual sugar producers, which within the framework of the EU would be quite unusual, and according to the Government such a circumstance would bring upon the Czech Republic unquantifiable and inestimable consequences, with impact on all growers of sugar beets and producers of sugar. The Government thus proposed that the Constitutional Court reject the petition on the merits.
....

D) Further on 2 January 2006, the Constitutional Court requested from the State Agricultural Intervention Fund information concerning whether Commission Regulation (EC) No. 1609/2005 had been applied within the Czech Republic. The Fund's information made clear that the Fund had met its obligations arising from Art. 1 par. 3 of the Regulation and, prior to 1 November 2005, laid down a reduction applicable to each producer holding a Quota A or Quota B.

E) On 4 January 2006 the Constitutional Court received the Government's reaction to the petitioners' submission requesting permission to amend the original petition so as to be a petition proposing the annulment of § 3 of Regulation 548/2005 Sb. The Government gave its views that the results that the proceeding has so far yielded cannot serve as the foundation of an amended petition, as the two regulations differ (§ 3 of Regulation No. 548/2005 Sb is formulated differently from the original § 3 of Regulation No. 364/2004 Sb.). The Government denies the assertion that it has repeatedly been evading a hearing and judgment by the Constitutional Court, as the legislative process proceeded independently of the procedure before the Constitutional Court; the request to abbreviate the legislative process for the draft regulation was circulated already on 1 November 2005, that is, already before the Government was asked whether it agrees to dispense with an oral hearing. A new regulation was adopted because it was necessary to accommodate the national norms to Commission Regulation (EC) No. 1609/2005 and also to prepare the national norms for a new sugar regime which will be adopted on the Community plane. In view of the extent of the changes the Government opted for the route of issuing a new enactment rather than amending the existing one. The Government thus proposed that the Constitutional Court not permit the petition to be amended and that it dismiss the proceeding.

F) On 12 January 2006 the Government delivered to the Constitutional Court documents relation to the process of adopting Regulation No. 548/2005 Sb. ...
Further the Government informed the Constitutional Court that, by withholding its consent to dispensing with the oral hearing, it was exercising its right, as it attached extraordinary importance to the proceeding. After all the legislative process was still under way at that point in time and it was not clear either that the regulation would be adopted or when it would come into effect. It was for this reason that the Government apprised the Constitutional Court of the facts only in the moment when the regulation was published in the Collection of Laws.

....

III.

The Oral Proceeding

At the 8 March 2006 proceeding, the petitioners' legal representative referred to the content of all petitions and summarized the major arguments. The petitioners do not seek the abolition of regulation as such, merely that the manner in which sugar is regulated be modified. In that regard, what is essential is the choice of the reference period for designating individual quotas, which in the case of all earlier regulations had always been a period which the Constitutional Court in its previous judgments determined to be unconstitutional. The choice of the reference period in the key was arbitrary, as follows even from a comparative survey that a longer period could have been selected. While the petitioners' legal representative acknowledged that absolute equality between producers was unobtainable, still in the effort to approach, to the greatest extent possible, a situation of equal status between producers, another manner for allocating quotas could have been chosen.

....

The Government's representative also referred to the Government's pleadings in which it clearly laid down the reasons it considered as fair the chosen means for allocation. In its view various methods for calculating individual quotas had been selected in the past, but in all cases it had been called into doubt; and it can be expected that, even were the Government to select another key in the future, it would be contested as well. In the view of the Government's representative, an absolutely fair method for calculation cannot be found, and if one producer should happen to be disadvantaged from this, it cannot be condemned as creating an unequal status of all producers. Accordingly, the Government adheres to its view that the submitted petition is unfounded.

....

IV.

Standing of the Petitioner and Admissibility of the Petition

The Constitutional Court first of all examined whether the conditions for standing of the petition are met, whether the petition is admissible, and whether there are grounds for dismissing the proceeding. It declared that, in conformity with § 64 par. 2 lit. b) of the Act on the Constitutional Court, the petition was submitted by an authorized subject, namely a group of 35 Deputies of the Assembly of Deputies of the Czech Parliament.

In connection with assessing the petition's admissibility and the conditions for dismissing the proceeding, the Constitutional Court was confronted with a situation in which, during

the course of the proceeding on the original petition, the Government repealed the contested legal enactment and adopted a new one, to which the petitioner reacted by requesting permission to amend the original petition. Then, after it had become acquainted with the arguments of the parties and the secondary party to the proceeding, in its 14 February 2006 ruling, the Constitutional Court decided, in relation to the request to amend the petition, that it would permit the petition to be amended.

The Constitutional Court has already in the past, in its proceeding No. Pl. US 8/02, been faced with a similar situation where, during the course of the proceeding, the Ministry of Finance repealed the the contested act on the regulation of rents and adopted a new one, of the same content; also in the proceeding No. Pl. US 49/03, where, as well during the course of the proceeding before the Constitutional Court, the Representative Body of the Municipality, Jindřichovice pod Smrkem, annuled the contested generally binding ordinance and adopted a new ordinance of identical content. In both those case the Constitutional Court permitted the petition to be amended.

In the case now being heard before the Constitutional Court, it found grounds for proceeding in the same manner since, in the course of the proceeding on the original petition, the Government formally repealed the contested legal enactment and adopted a new one, substantively similar to the preceding one. In addition, the Government did so only after it had refused its consent to dispense with an oral proceeding, moreover just before the date set for the oral proceeding. At the time when the draft regulation was already prepared, the Government did not apprise the Constitutional Court of that fact, even though it must have been aware of the fact that regulation's adoption would have considerable impact on the proceeding before the Constitutional Court. Then, several days before the oral proceeding, the Government's representative merely informed the Constitutional Court of the adoption of the new regulation, at the same time indicating that it did not plan to take part in the oral hearing, as it anticipated the proceeding would be dismissed.

Should the Constitutional Court accept the Government's approach and dismiss the proceeding, as the Government presupposed, that would represent, in the given situation, the repudiation of the aim and purpose of the institute of abstract norm control. By resort to the same approach as the Government adopted in this case, the Constitutional Court could, at any time in the future, be debarred from reviewing contested legal enactments of any sort whatsoever. In other words, the dismissal of the proceeding would represent an intolerable precedent for future action by state bodies. In this way the function of a specialized and concentrated system of abstract norm control, as envisaged by the Constituent Assembly, would be directly thwarted. The overall ramifications of such an approach would be to enfeeble the protection of constitutionalism in the Czech Republic, thus also the principle of the substantive law-based state.

In the Constitutional Court's view, the substantive identity of § 3 of Regulation No. 364/2004 Sb. and § 3 of Regulation No. 548/2004 Sb. is evident from the actual issue on the merits that is the subject of constitutional review, namely the constitutional

conformity of the prescribed manner for the calculation of individual production quotas. Although one can concur with the Government that the wording of both provisions differs, as regards their content, implicit within the terms of both provisions is the retention of the original key for the calculation of individual production quotas, which was the main subject of constitutional review, both in the original and the amended petition. Therefore, the outcome of the proceeding up till now relating to the review of §§ 3 and 16 of Regulation No. 364/2004 Sb. can, in this respect, serve also for the proceeding on the amended petition proposing the annulment of § 3 of Regulation No. 548/2004 Sb.

In view of these facts, the Constitutional Court has, pursuant to § 63 of Act No. 182/1993 Sb., on the Constitutional Court, as subsequently amended, in conjunction with § 95 par. 1 of the Civil Procedure Code, granted the request to amend the petition.

As regards the petition proposing the annulment of § 3 and § 16 of Regulation No. 364/2004 Sb., the Constitutional Court has, pursuant to § 67 par. 1 of the Act on the Constitutional Court, dismissed the proceeding and carried on with the proceeding in relation to the petition to annul § 3 of Regulation No. 548/2005 Sb.

Since the petition proposing the annulment of § 3 of Regulation No. 548/2005 Sb. was submitted to the Constitutional Court after Regulation No. 548/2005 Sb. had been published in the Collection of Laws, it is, thus, an admissible petition (§ 66 of the Act on the Constitutional Court a contrario).

V.

The Wording of the Contested Provision

The provision, contested in the original petition, of Government Regulation No. 364/2004 Sb., Laying Down certain Conditions for the Implementation of Measures of the Common Organization of the Markets in the Sugar Sector, reads as follows:

„§ 3
Quotas

(1) The production quota for sugar 3) assigned to a producer of sugar (hereinafter ‚quota holder') by the State Agricultural Intervention Fund (hereinafter ‚Fund') from 1 September 2003 subdivided among the sugar refineries operated by a quota holder, or a production quota for sugar 3) by which the Fund has reduced a quota holder's quota, in accordance with existing legal enactments 4) shall be considered as the total of Quota A 5) and Quota B 5) in accordance with European Community enactments 1).

(2) Quota A 5) of a quota holder amounts to 97 % of the quota assigned by the Fund to the quota holder in accordance with existing legal enactments 4). Quota B 5) of a quota holder amounts to 3 % of the quota assigned by the Fund to the quota holder in accordance with existing legal enactments 4).

(3) Within 30 days of the day this Regulation comes into effect, the Fund shall designate

for the quota holders under paras. 1 and 2, the quantity of Quota A 5) and the quantity of Quota B 5) for the period as laid down in European Community measures 6), subdivided according to the quota holders‘ individual sugar refineries.“

1) Council Regulation (EC) No. 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector, as amended by Commission Regulation (EC) No 680/2002 of 19 April 2002, nařízení Komise (ES) č. 2196/2003 of 16 December 2003, Commission Regulation (EC) No. 39/2004 of 9 January 2004 and the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded.
....
3) § 2 lit. d) of Act No. 256/2000 Sb., on the State Agricultural Intervention Fund and on Changes to Certain other Acts (the Act on the State Agricultural Intervention Fund), as amended by Act No. 128/2003 Sb.
4) § 5 and foll. of Government Regulation No. 114/2001 Sb., on the Setting of Production Quotas for Sugar for the Quota Years 2001/2002 through 2004/2005, as amended by Government Regulation No. 296/2002 Sb., Government Reglation No. 15/2003 Sb., Government Regulation No.. 97/2003 Sb., Government Regulation No. 319/2003 Sb., Government Regulation No. 160/2004 Sb. and judgment of the Constitutional Court announced as No. 499/2002 Sb.
5) Art. 11 of Council Regulatin (EC) No. 1260/2001.
6)Art. 10 par. 1 of Council Regulation (EC) No. 1260/2001.“

The new provision, adopted by the Government and contested by the petitioner, of Regulation No. 548/2005 Sb., Laying Down certain Conditions for the Implementation of Measures of the Common Organization of the Markets in the Sugar Sector, reads as follows:
„§ 3
Production Quotas
A sugar producer who is the holder of an individual production quota of sugar A (hereinafter „Quota A“) and the individual production quota of Sugar B (hereinafter „Quota B“) in accordance with existing law 4) (hereinafter „quota holder“) is, for the economic year 2005/2006 a holder of Quota A and Quota B as reduced in accordance with European Community enactments 5) on the quantity of sugar which represents this quota holder’s share in the overall reduction in the guaranteed quantities within the framework of Quotas A and B allotted to the Czech Republic. 5)
4) § 3 of Regulation No. 364/2004 Sb., Laying Down certain Conditions for the Implementation of Measures of the Common Organization of the Markets in the Sugar Sector.
5) Art. 1 of Commission Regulation (EC) No. 1609/2005.“

It is evident from the wording of the contested provision that both the rule contained in § 3 of Regulation No. 364/2004 Sb., and the rule contained in § 3 of Regulation No. 548/2005 Sb. maintains in effect the pre-existing legal rules, that is, they proceed on the basis of the key for the allocation of individual production quotas which was laid down in the

preceeding Regulation No. 114/2001 Sb. and, thus, applied to individual applicants in the appropriate proceedings. Therefore, it is evident that, regardless the form which a given legal rule takes, its possible constitutional infirmity springs from the preceding rule, as the petitioners themselves otherwise asserted in their petition (see below). Accordingly, the Constitutional Court focused its attention first of all on the adjudication of the issue whether the key laid down by the Government for the allocation of individual production quotas is in conformity with the constitutional order of the Czech Republic

VI.

Actual Review

A) What follows from the wording of the contested provisions is merely the fact that the production quota for sugar, laid down for individual producers by decision of the Fund pursuant to Regulation No. 114/2001 Sb., is considered to be preserved unaffected even now, that is, following the Czech Republic's accession to the EC, and that it is considered as the sum of Quota A and Quota B, pursuant to EC Regulation No. 1260/2001 (§ 3 of Regulation No. 364/2004 Sb.), or that, in consequence of the reduction, pursuant to Commission Regulation (EC) No. 1609/2005, of the national quota, as subdivided into Quota A and Quota B, the production quota of individual producers is reduced proportionately (§ 3 of Regulation No. 548/2005 Sb.).

In this connection the Constitutional Court considers as essential the fact that the Government has already annulled, in its Regulation No. 364/2004 Sb., its previous regulation, which had laid down the original key for the allocation of individual production quotas. Although, in the contested provision, the Government explicitly presumes that the decisions adopted on the basis of the previous legal rule remain unaffected, at the same time it annulled the normative foundation for those decisions. The Government repeatedly (in adopting Regulation No. 364/2004 Sb. and Regulation No. 548/2005 Sb.) elected such an approach, even while being aware of the fact that the key for the allocation of individual production quotas is under adjudication in a proceeding before the Constitutional Court. In consequence of the annulment of Regulation No. 114/2001 Sb., the Constitutional Court had already once in the past been precluded from the constitutional review of the key for the original allocation of individual production quotas. In other words, although the Government formally repealed, in its Regulation No. 364/2004 Sb., the previous rule for the allocation of individual production quotas, via § 3 of Regulation No. 364/2004 Sb. and, following its repeal, § 3 of Regulation No. 548/2005 Sb., the results of that allocation remain unaffected.

For this reason, the Constitutional Court focused its attention on the review of the key which the Government had prescribed for the allocation of quotas already in its Regulation No. 97/2003 Sb, which amended Regulation No. 114/2001 Sb., as this key is directly tied to both § 3 of Regulation No. 364/2004 Sb. and § 3 of Regulation No. 548/2005 Sb., albeit the

very provision defining the key for the calculation of quotas had already in the past been formally repealed by the Government.

The legal rules governing the allocation of production quotas for sugar are contained in a field of law in which the national rules are tied up with the rules contained in the acquis communautaire. In other words, whereas the aims and objective of these rules, which form a part of the broader field of the common organization of the market in agricultural commodities, that is, are a component of the instruments of the Common Agricultural Policy, are contained in the norms of European law, they left to the Member States the definition and selection of the corresponding means by which those aims are to be achieved. Thus, the contested legal rules relating to the setting of the key for the allocation of quotas are, on the one hand, within the domain of national law, on the other hand they are directly tied to the norms of European law. The Constitutional Court was, thus, for the first time faced with the question of the degree to which it is even authorized to adjudge the constitutional conformity of such legal norms as are tied up with Community law.

The Constitutional Court is not competent to assess the validity of Community law norms. Such questions fall within the exclusive competence of the European Court of Justice. In terms of Community law, as it has been expounded by the European Court of Justice (hereinafter „ECJ“), Community law norms enjoy applicational precedence over the legal order of Member States of the EC. According to the case-law of the ECJ, where a matter is regulated solely by EU law, it takes precedence and cannot be contested by means of referential criteria laid down by national law, not even on the constitutional level.

Without the Constitutional Court being obliged to gives it view on this ECJ doctrine, it cannot overlook the following circumstances. There are additional circumstances and reasons which must be considered when assessing this issue. First and foremost, the Constitutional Court cannot disregard the fact that several high courts of older Member States, including founding members, such as Italy (Frontini v. Ministero delle Finanze, Constitutional Court, Case No. 183/73, 27 December 1973; Fragd v. Amministrazione delle Finanze dello Stato, Constitutional Court, Case No. 232/1989, 21 April 1989) and Germany (Wünsche Handelsgesellschaft (Solange II), Federal Constitutional Court, Case No. 2 BvR 197/83, 22 October 1986; Maastricht Treaty 1992 Constitutionality Case, Federal Constitutional Court, Case Nos 2 BvR 2134 and 2159/92, 12 October 1993), and later acceding Member States such as Ireland (Society for the Protection of Unborn Children (Ireland) Ltd. v. Grogan , Supreme Court, 19 December 1989, and Attorney General v. X, 5 March 1992) and Denmark (Carlsen and Others v. Rasmussen, Supreme Court, Case No. I-361/1997, 6 April 1998), have never entirely acquiesced in the doctrine of the absolute precedence of Community law over the entirety of constitutional law; first and foremost, they retained a certain reserve to interpret principles such as the democratic law-based state and the protection of fundamental rights.

The Constitutional Court is aware of the fact that on these issues rests the foundation of constitutional exegesis for the entire Community and that these issues have certain implications not just in the legal sphere, but also the political. These issues may have a serious impact on the subsequent evolution of the judicial practice within the Community, even on the evolution of the Community, or Union, as such, so that it should, therefore, even be the obligation of the Constitutional Court, the judicial body for the protection of constitutionalism of one of the recently acceded Member States, to attempt in its case law to cogently express its view on these issues. Of especial significance in this respect is the issue whether Czech constitutional law, and above all the essential attributes of the democratic law-based state in the sense of Art. 9 par. 2 of the Constitution of the Czech Republic, countenance that an international organization, to which the Czech Republic has transferred a part of its sovereignty, is accorded the possibility to create law which enjoys applicational precedence over the entire Czech constitutional order [for more detail on this issue, see Part V.B) of this judgment],

As referred to above, where the subject regulated by Community law is the common organization of the market, in the given case the market in agricultural commodities, the Community enjoys in practice full competence. However, that does not entail the absolute obligation on the part of the Community to prescribe rules for each and every issue related to the sector of regulation in question. Rather, the Community is obliged, by virtue of the application of the principle of subsidiarity, to adopt a position of restraint and leave a certain part of that competence in the hands of the Member States or, after the Community assumes full competence over a certain field, to delegate it back, in particular for the purpose of supplementing specific aims of general „policy-making“ or for the purpose of the administration of the general rules of Community law. Therefore, it is generally the case that, where Community legislation has left certain matters in the hands of the Member States (that is, where there are no explicit Community law rules), or where it has explicitly delegated the regulation of these matters back to the Member States, it is up to the Member States to adopt and apply their own legislation. Still, it cannot be asserted that Community law in no way operates in such fields. On the contrary, even in cases where Members States implement part of Community policy by means of their own legal instruments, the Member States‘ discretion is limited by the overarching general principles of Community law, among which also ranks the protection of fundamental rights (see the ERT Case, Case C-260/89, Elliniki Radiophonia Tiléorassi AE and Panellinia Omospondia Syllogon Prossopikou v Dimotiki Etairia Pliroforissis and Sotirios Kouvelas and Nicolaos Avdellas and others, [1991] ECR I-2925).

In other words, in certain cases the Community delegates powers back to the Members States for the purpose of implementing certain Community law acts, or it leaves certain issues unregulated, thus allowing Member States to adopt specific rules for the implementation of European law. Naturally even in such cases, the Czech Republic is bound by the principles of European law. As such rules take the form of national law, they must simultaneously be in conformity with the Czech constitutional order.

The Constitutional Court is thus convinced that, although the applicable legal rules are rules of national law, to which apply the criteria flowing from the constitutional order of the Czech Republic, nonetheless, it cannot, without more, disregard the fact that they relate to an issue, the origins of which spring from Community law, a legal system produced by an international organization to which the Czech Republic has, by virtue of its accession pursuant to Art. 10a of the Constitution of the Czech Republic, transferred some portions of its state sovereignty. In consequence thereof, this system has, in those portions, become directly binding for the Czech Republic, also within the legal order of the Czech Republic.

Although the Constitutional Court's referential framework has remained, even after 1 May 2004, the norms of the Czech Republic's constitutional order, the Constitutional Court cannot entirely overlook the impact of Community law on the formation, application, and interpretation of national law, all the more so in a field of law where the creation, operation, and aim of its provisions is immediately bound up with Community law. In other words, in this field the Constitutional Court interprets constitutional law taking into account the principles arising from Community law.

A-1)

The Assesment of the Contested Legal Provision Taking into Account the Criteria Resulting from ECJ Case-Law

Before proceeding to adjudicate upon the contested legal provision from the perspective of the standards attained in Community law, the Constitutional Court investigated whether the conformity of the key chosen for the allocation of individual production quotas is an issue which the Constitutional Court should, pursuant to Art. 234 of the EC Treaty, refer to the ECJ for its direct assessment. There is, however, a further issue related thereto, namely whether the Constitutional Court can be considered a court or tribunal which is, pursuant to Art. 234 of the EC Treaty, called upon to submit preliminary questions. It is necessary to inquire whether it is appropriate for a court which adjudicates matters from a restricted perspective, as is the case with the Constitutional Court, to refer matters to the ECJ. At the very least such query appears legitimate in relation to proceedings on abstract norm control, which is the type of proceeding in the matter under consideration. For example, in a 1995 judgment the Italian Constitutional Court declared that it did not feel itself to be a court under Art. 234 of the EC Treaty (see Case No. 536/95, Messaggero Servizi Sr. v. Office of Registrar of Padua, 29 December 1995). It gave two basic reasons for this conclusion. The Constitutional Court is not the type of court to which Art. 234 applies, and Art. 234 cannot be applied in the context of certain types of proceedings which the Constitutional Court hears (abstract norm control proceedings).

On the other hand, one cannot overlook the opposing practice of other Member State constitutional courts which, in contrast, consider themselves to be a court in the sense of Art. 234 of the EC Treaty and in a number of cases have made references to the ECJ for a

preliminary ruling (the Austrian Constitutional Court or the Belgian Court of Arbitration) (cf. Bobek, M., Komárek, J., Passer, J. M., Gillis, M., The Preliminary Question in Community Law, Linde, Praha 2005, pp.72 – 73).

The Constitutional Court is aware of the delicacy of the question as to whether the Constitutional Court can be considered a court in the sense of Art. 234 of the EC Treaty, or in which type of proceedings, and reserves to itself in the future the possibility of adopting an unequivocal answer, in other words, to refer a matter for the adjudication to the ECJ in individual types of proceedings.

The Constitutional Court is, however, of the the view that, in the given case, one of the exceptions formulated in ECJ case-law could be applied to the matter before the Court (see Case 283/81, Srl CILFIT and Lanificio di Gavardo SpA v. Ministry of Health, [1982] ECR 3415, recently affirmed by its decision of 15 September 2005, C 495/03, Intermodal Transports BV v Staatssecretaris van Financiën). In these decisions the ECJ determined that it is not necessary to submit a preliminary reference to the extent that „previous decisions of the Court have already dealt with the point of law in question, irrespective of the nature of the proceedings which lead to those decisions, even though the questions at issue are not strictly identical". In other words, this is a situation where previous decisions of the Court have already dealt with the legal issue being resolved in the case at hand (CILFIT par. 14). In the Intermodal Transports Case, the ECJ stated that the solution adopted in CILFIT and Others gives the national courts sole responsibility for determining whether the correct application of Community law is so obvious as to leave no scope for any reasonable doubt and for taking the decision as to whether it is necessary to refer to the ECJ a question concerning the interpretation of Community law which has been raised before it (on this point, see also Bobek, M., Komárek, J., Passer, J. M., Gillis, M., The Preliminary Question in Community Law. Linde, Prague 2005, pp.227 – 231).

In the field of the Common Agricultural Policy, and especially as regards the setting of production quotas, there is such an extensive, consistent and long-term settled case-law of the ECJ as to, without any doubt, enable the Constitutional Court to review the key to the allocation of the production quotas from the perspective of national constitutional law interpreted in light of Community law itself, or in light of its conformity with the general principles of Community law. In that process, the Constitutional Court allows the general principles of Community law, expressed in the existing ECJ jurisprudence, to radiate through its interpretation of constitutional law.

The Principle of Member State Discretion and its Limits

Practically from the beginning of its operations, the ECJ has emphasized that the regulation of matters in areas governed by Community law must be supplemented by Member State regulation (see joined cases 205 to 215/82 - Deutsche Milchkontor GmbH and

others v Federal Republic of Germany, ECR 2633 at par. 17: "According to the general principles on which the institutional system of the Community is based and which govern the relations between the Community and the Member States, it is for the Member States, by virtue of Article 5 [now Art. 10] of the Treaty, to ensure that Community regulations, particularly those concerning the Common Agricultural Policy, are implemented within their territory. In so far as Community law, including its general principles, does not include common rules to this effect, the national authorities when implementing Community regulations act in accordance with the procedural and substantive rules of their own national law.") For that matter such a conclusion corresponds, on the one hand, to the needs of a developing legal order, but, on the other hand, is still appropriate to the notion of leaving certain matters to national or local conditions. As was further pointed out in the Milchkontor case, this conclusion follows from the principle of cooperation under Art. 10 of the Treaty and applies especially in the area of agriculture. In such cases, where national legal provisions are connected to Community rules, as the Constitutional Court already emphasized above, the Member State is nonetheless bound by the general principles of Community law, in particular, the postulates concerning the protection of fundamental rights (Case 5/88 - Hubert Wachauf v Bundesamt für Ernährung und Forstwirtschaft [1989] ECR 2609; Case C-459/02, Willy Gerekens and Association agricole pour la promotion de la commercialisation laitière Procola v État du grand-duché de Luxembourg, par. 21).

In the past the ECJ has construed Community legislation in the area of agriculture very liberally so as to allow Member States a high degree of discretion in implementing the relevant instrument of agricultural policy: "in matters concerning the common agricultural policy the Community legislature has a discretionary power which corresponds to the political responsibilities given to it by Articles 40 and 43 [now Articles 34 a 37] of the Treaty" (Case C-331/88 - The Queen v Minister of Agriculture, Fisheries and Food and Secretary of State for Health, ex parte: Fedesa and others [1990] ECR I-4023, at par. 14; or see paras. 13-16 of Joined cases 196/88, 197/88 and 198/88 - Daniel Cornée and others v Coopérative agricole laitière de Loudéac (Copall), [1989] ECR 2309). In one case concerning the setting of quota quantities by the Member States, the Community law provision requiring the MS to "take account of" the production objective of a development plan was interpreted by the ECJ as according the MS discretion whether or not to grant to those producers who had undertaken a development plan any additional reference quantities as a result. Even where the MS granted such additional quantities, the ECJ only required that the amount "bear a relation to the production objective" and not that they be in "a relationship of strict proportionality". On the contrary, in relation to the overall planned production objective, Member States were entitled to take account of other criteria, such as social objectives, for example, by giving some advantage to smaller producers (see also Case C-16/89 - G. Spronk v Minister van Landbouw en Visserij [1990] ECR I-3185, par. 14-16). According to ECJ case-law, the Member States' broad discretion is limited only by three basic criteria: the adopted measure must be consistent with the objectives of the agricultural policy, be based on objective criteria, and comply with the general principles of Community law (see case C-313/99, Gerard Mulligan and others v. Minister for Agriculture and Food, Ireland, paras. 33-35; see also case C-16/89 - G. Spronk v Minister van Landbouw en Visserij [1990] ECR I-3185, par. 13, concerning Member State discretion to determine the size of the special reference quantities to be allocated to

producers).

The Member States‘ wide discretion is thus restricted solely by the objectives of the Common Agricultural Policy and by the general principles of Community law. For example, in a case where the linguistic interpretation of a Community measure would have led to the infringement of particular producers’ fundamental rights, the ECJ held that “[t]he Community regulations in question accordingly leave the competent national authorities a sufficiently wide margin of appreciation to enable them to apply those rules in a manner consistent with the requirements of the protection of fundamental rights” (Case 5/88 - Hubert Wachauf v Bundesamt für Ernährung und Forstwirtschaft, [1989] ECR 2609, par. 22).

The high degree of discretion accorded to Member States in implementing Community legislation in the field of agriculture can also be illustrated by one case involving milk quotas. The Community legislation provided generally that, in case of the transfer of land, the allotted reference quantity remains tied to the land. In its domestic legislation, Ireland implemented this norm in a manner whereby it provided that, in case of such transfer of land, 20 % of the allotted reference quantity would return to the national reserve. In its decision, the ECJ confirmed that it considered such a measure as falling within the limits of Member State discretion (see case C-313/99, Gerard Mulligan and others v. Minister for Agriculture and Food, Ireland, paras. 33-35).

In light of these principles, the Constitutional Court assessed the alleged infringement of the constitutionally protected right of equal access in relation to applicants for quotas, and came to the conclusion that the approach adopted by Government of the Czech Republic in laying down the key to the allocation of quotas .passes muster.

The Principle of Proportionality

According to the ECJ’s case-law, the principle of proportionality forms an integral part of the general principles of Community law. The ECJ has several times in its decisions held that this principle requires Community legislation to be “appropriate and necessary for meeting the objectives legitimately pursued by the legislation in question” and that “when there is a choice between several appropriate measures, the least onerous measure must be used and [it] must not be disproportionate to the aims pursued” (for ex., Case 265/87, Hermann Schräder HS Kraftfutter GmbH & Co. KG v Hauptzollamt Gronau, [1989] ECR 2237, par. 21).

It follows from the constant jurisprudence of the ECJ that the ECJ does not apply the standard of proportionality equally stringently to all cases. In particular in the field of economic policy-making, it is clear that the ECJ has opted rather for the route of judicial restraint and has left to the competent legislative body the major responsibility for

determining whether the measure in question has met the relevant standard: “In so far as an assessment of a complex economic situation is involved, it must be borne in mind that, as the Court has held, where, as in this case, the Commission enjoys significant freedom of assessment, the Community judicature, when examining the lawfulness of the exercise of such freedom, cannot substitute its own assessment of the matter for that of the competent authority but must restrict itself to examining whether the assessment of the competent authority contains a manifest error or constitutes a misuse of powers . . . “(Case C-99/99, Italian Republic v Commission of the European Communities, [2000] ECR I-11535, par. 26).

Typically, the ECJ exercises this type of restraint as well in the area of agriculture: “[I]n matters concerning the common agricultural policy the Community legislature has a discretionary power which corresponds to the political responsibilities given to it by Articles 40 and 43 [now Articles 34 a 37] of the Treaty.” (Case C-331/88 - The Queen v Minister of Agriculture, Fisheries and Food and Secretary of State for Health, ex parte: Fedesa and others, [1990] ECR I-4023, at par. 14). In other words, in the area of the Common Agricultural Policy, the ECJ has made very clear where the limits of judicial scrutiny lie.

As a consequence of this highly deferential standard, the ECJ leaves to the legislature a wide margin of appreciation for deciding when a measure is necessary and appropriate: “Where the need to evaluate a complex economic situation is involved, the Community institutions enjoy a wide measure of discretion. In reviewing the legality of the exercise of such discretion, the Court cannot substitute its own assessment of the matter for that of the competent authority but must confine itself to examining whether that assessment is vitiated by a manifest error or misuse of power or whether the institution in question has not manifestly exceeded the limits of its discretion” (Case C-87/00 - Roberto Nicoli v Eridania SpA., par. 37). Accordingly, the ECJ has seldom in practice come to the conclusion that a measure in the area of economic policy-making violated the principle of proportionality. When it has in the past, it was not due to its disagreement as to the soundness of the measure in question, that is with the measure‘s actual content, rather as a result of its excessive impingement on individual rights and their blatant infringment (see Case 114-76, Bela-Mühle Josef Bergmann KG v Grows-Farm GmbH & CO. KG, [1977] ECR 1211, at par. 7).

The ECJ has also in the past spoken directly to the issue of whether a measure directed at restricting the level of production of a certain agricultural commodity represents an infringement of the principle of proportionality (see Case 138/79, SA Roquette Frères v Council of the European Communities, [1980] ECR 3333). That particular case was instigated by the situation where the ECJ had previously declared a specific regulation invalid, in consequence of which the regulation subsequently adopted was contested by the interested parties on the grounds that the relevant producers were left in doubt as to what the regulation would be, which resulted in their production being hampered. The ECJ observed in that case that the legitimacy of the aim which the relevant measures pursue must be kept in mind. It is the stabilization of the relevant market through limiting

surplus production. In other words, if the measure pursues this aim, the quota system which is the means of its attainment cannot, in and of itself, represent a violation of the principle of proportionality. In relation to claimants‘ specific arguments that uncertainty in relation to the content of the legal rules lead to the worsening on their situation on the market, the ECJ stated that: “the Council cannot be expected to have regard to the reasons, commercial choices and internal policy of each individual undertaking when it adopts measures of a general interest” (Roquette Frères, par. 30) Further, the ECJ pointed out in the case that such an argument could be relevant only in the cases that individual producers demonstrate that, due to the unclear legal situation, they have in fact changed the circumstances of their business and production.

Since the Constitutional Court is, in the given case, operating within the circumscribed confines of a proceeding on abstract norm control, it can scarcely review what impact, if any at all, that the contested legal rule has had on the sphere of fundamental rights of specific individual producers. In this type of proceeding, the Constitutional Court could review the contested legal rule solely from the perspective of principles which can be derived from specific fundamental rights, it did not and could not have reviewed any possible actual intrusion upon the fundamental rights of individual producers.

The Principle of the Protection of Fundamental Rights

As has already been mentioned above, when implementing Community law, Member State are bound by the obligation to respect fundamental rights (Case 5/88 - Hubert Wachauf v Bundesamt für Ernährung und Forstwirtschaft. [1989] ECR 2609; Case C-459/02, Willy Gerekens and Association agricole pour la promotion de la commercialisation laitière Procola v État du grand-duché de Luxembourg, par. 21). The ECJ has many times adjudicated upon restrictions of these fundamental rights by measures in the area of economic policy and has repeatedly declared that, in implementing Community policies, fundamental rights may be subject even to significant limitation: “The fundamental rights recognized by the Court are not absolute, however, but must be considered in relation to their social function. Consequently, restrictions may be imposed on the exercise of those rights, in particular in the context of a common organization of a market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of those rights.” (for ex., Case 5/88 - Hubert Wachauf v Bundesamt für Ernährung und Forstwirtschaft, [1989] ECR 2609, par. 18).

In assessing the permissibility of limitation upon the fundamental rights in the area of agricultural policy, the ECJ has found it essential to weigh and consider the particular nature of the common organization of the market and the quota system in the Common Agricultural Policy. “It is an essential feature of that organization of the market that it is variable in terms of the economic factors which affect the development of the market and

in terms of the general direction of the Common Agricultural Policy." (Case 230/78 - SpA Eridania-Zuccherifici nazionali v Minister of Agriculture and Forestry, [1979] ECR 2749, par. 21).

In view of what has been stated above, the Constitutional Court now proceeds to assess the issue of whether the contested legal rules can be considered as in conformity with the basic sectoral principles and the fundamental rights arising from Community law which could be affected by the contested legal rules. These are the principles of legitimate expectation, the principle of legal certainty and the prohibition of retroactivity, the prohibition of discrimination, the protection of the right to undisturbed engagement in economic activity in the form of entrepreneurship or employment, and the protection of property rights.

a) The Principle of Legitimate Expectations

The principle of legitimate expectations has been formulated in the ECJ case-law as a general principle of Community law. In the context of the Common Agricultural Policy, the ECJ has concluded that the principle of legitimate expectations cannot be interpreted such as to guarantee a producer access to a reference quantity in an amount corresponding to what it expected or can claim in terms of its expected production in a given year (see case 230/78 - SpA Eridania-Zuccherifici nazionali v Minister of Agriculture and Forestry, [1979] ECR 2749, par. 22) In that case the ECJ stated that an individual producer "cannot claim a vested right to the maintenance of an advantage which it obtained from the establishment of the common organization of the market". On the contrary, the ECJ has clearly expressed the position that individual producers' expectations may be disappointed due to the necessity to modify the relevant rules as required for the implementation of the Common Agricultural Policy and that they remain "subject to any restrictions stemming from Community rules adopted after the plan was approved, in particular in the context of market or structural policy" (see joined cases 196-198/88 - Daniel Cornée and others v Coopérative agricole laitière de Loudéac (Copall), par. 26).

As the ECJ stated in another case: "It is settled case-law that in the sphere of the common organization of the markets, whose purpose involves constant adjustments to meet changes in the economic situation, economic agents cannot legitimately expect that they will not be subject to restrictions arising out of future rules of market or structural policy" (Case C-63/93 - Fintan Duff et al v Minister for Agriculture and Food and Attorney General, [1996] ECR I-569, par. 20). In that case the ECJ held that the discretion given to the Member States in an EC Regulation to grant special reference quantities to producers who had adopted a development plan, did not create in such producers a legitimate expectation actually to receive such reference quantity (see also Case C-177/90 - Ralf-Herbert Kühn v Landwirtschaftskammer Weser-Ems [1992] ECR I- 35, par. 13). According to the ECJ, for the same reason it is not in conflict with the principle of legitimate expectations if a 4.5 % reduction in the reference quantity, which is initially introduced as "temporary", is subsequently made permanent (Case C-22/94 - The Irish Farmers Association and others v Minister for Agriculture, Food and Forestry, Ireland and Attorney General, [1997] ECR I-1809, paras. 17-25). In other words, in the situation where EU institutions or the Member States may need to change the agricultural policy at any time in

reaction to changes in the economic situation or due to the need to reform agriculture in general, producers simply have to expect such changes and have no legitimate expectations to the maintenance of the status quo (see The Irish Farmers Association and others v Minister for Agriculture, Food and Forestry, Ireland and Attorney General, par. 25: "if a prudent and discriminating trader could have foreseen the adoption of a Community measure likely to affect his interests, he cannot plead [legitimate expectations] if the measure is adopted"; see also Case C-459/02, Willy Gerekens and Association agricole pour la promotion de la commercialisation laitière Procola v État du grand-duché de Luxembourg, par. 29).

On the other hand, the principle of legitimate expectations may be affected by Community rules only in the case that the Community itself has previously created a situation which can give rise to a legitimate expectation (Case C-63/93 - Fintan Duff et al v Minister for Agriculture and Food and Attorney General, [1996] ECR I-569, par. 20; Case C-177/90 - Ralf-Herbert Kühn v Landwirtschaftskammer Weser-Ems [1992] ECR I- 35, par. 14; Case C-459/02, Willy Gerekens and Association agricole pour la promotion de la commercialisation laitière Procola v État du grand-duché de Luxembourg, par. 29). Such a situation arose, for example, when the EC induced producers to suspend their production in exchange for specific payments, then introduced a system of quotas tied to the amount of production in the year during which such producers had temporarily suspended productions, which led to the consequence that those producers who had taken advantage of the possibility to suspend production lost entitlement to any quota at all.

The ECJ found that since it was the Community authorities themselves which had induced the producers to suspend production only for a limited time, these producers had a legitimate expectation that they would be able to continue in the production after the expiration of that term (Case 120/86 - J. Mulder v Minister van Landbouw en Visserij, [1988] ECR 2321). On the other hand, where a producer limits or entirely suspends activities in consequence of a freely-taken decision, that is, without being encouraged to do so by a Community measure, during a period which is subsequently designated as reference period, that does not violate legitimate expectations (Case C-177/90 - Ralf-Herbert Kühn v Landwirtschaftskammer Weser-Ems [1992] ECR I- 35, par. 15). In that case, the production was limited due to the transfer of the agricultural holding from a lessee back to the owner, and the ECJ concluded that the fact that the producer operating the holding has changed during the reference year chosen by the Member State concerned, in consequence of which production was curtailed, this does not constitute a violation of legitimate expectations.

As of yet the Constitutional Court has adjudicated on the principle of legitimate expectation in conformity with the case-law of the European Court of Human Rights, from which has clearly emerged the conception of the protection of legitimate expectations as a property claim, which has already been individualized by an individual legal act, or is individualizable directly on the basis of legal rules (cf. the judgment in case No. Pl. US 2/02, published as No. 278/2004 Sb.). Proceeding on the basis of this principle, the Constitutional Court stated that the principle of legitimate expectations has not been

violated by the contested enactment, when an individualizable claim decidedly cannot be inferred from the judgment in case No. Pl. US 39/01. On the contrary, that judgment left open the possibility for the executive power to adopt new rules on the allotment of production quotas. Thus, it cannot be asserted that the contested legal rules violated the principle of legitimate expectation to which the preceding Constitutional Court judgment could have given rise.

b) The Principle of Legal Certainty and the Prohibition of Retroactivity
In the ECJ case-law, the principle of legal certainty and the prohibition of retroactivity has been interpreted so as to generally preclude retroactive legislation, either by the EU or a Member State, unless such legislation is adopted in exceptional circumstances "when the purpose to be attained so demands and when the legitimate expectations of the persons concerned are duly respected" (Case C-459/02, Willy Gerekens and Association agricole pour la promotion de la commercialisation laitière Procola v État du grand-duché de Luxembourg, paras. 23-24). One such exceptional situation is that where a MS has implemented Community legislation that is of limited temporal application, and that legislation was later found to violate Community law, so that the Member State was obliged to adopt new legislation that applies to that already concluded time period. If such legislation could not apply retroactively, that "would compromise that objective" and "jeopardize the effectiveness of the arrangements" for agricultural quotas (C-459/02, at paras. 25-26).

The contested legal provision did not violate this principle since, even though the rules on the allotment of production quotas were modified in consequence of Constitutional Court case-law, these rules always applied prospectively, not retrospectively, and they were always duly published in the Collection of Laws.

c) The Non-Discrimination Principle, or the Prohibition of Discrimination
In the area of agriculture, the principle of equal treatment is required not just by the general principles of Community law, but also by Art. 34 par. 2 (formerly Art. 40 par. 3) of the EEC Treaty, which is a "specific enunciation of the general principle of equality" (joined cases 201 and 202/85, Marthe Klensch and others v Secrétaire d'État à l'Agriculture et à la Viticulture, [1986] ECR 3477, par. 9). The establishment of the common organization of agricultural markets in the context of the implementation of the Common Agricultural Policy must „exclude any discrimination between producers or consumers within the Community". That provision covers all measures relating to the common organization of agricultural markets, irrespective of the authority which lays them down. In other words, according to the ECJ, it is also binding on the Member States when they are implementing the common organization of the markets (joined cases 201 and 202/85, Marthe Klensch and others v Secrétaire d'État à l'Agriculture et à la Viticulture, [1986] ECR 3477, p. 8).

In determining whether the principle of equality has been respected, the ECJ considers two aspects of the situation – comparability and objective justification. As regards the criterion of comparability, the ECJ has held that "[d]iscrimination within the meaning of Article 40 of the Treaty cannot occur if inequality in the treatment of undertakings

corresponds to an inequality in the situations of such undertakings." (Case 230/78 - SpA Eridania-Zuccherifici nazionali v Minister of Agriculture and Forestry, [1979] ECR 2749, par. 18). In that case the ECJ found that the principle of equality was not violated by a Community measure calling for a Community wide 5% reduction in sugar quotas, but allowing for deeper cuts for Italian producers. According to the ECJ reasoning, since it is "commonly accepted that the situation in the beet and sugar sectors in Italy differs appreciably from that in the other Member States ... such differences in treatment are ... based on objective differences arising from the underlying economic situations"(Case 230/78 at paras. 18-19).

In certain situations, even discrimination or differential treatment as between individual producers can be justified, especially where it is directed toward accomplishing the aims of the Common Agricultural Policy. Accordingly, the ECJ has found various forms of differential treatment justified to the extent that they facilitated sound and effective administration of the agricultural policy. For example, in allocating quotas the Member States may discriminate in favor of certain forms of business association, excluding those the form of which, due to their organization and structure would more easily allow for violation of Community requirements (see Case C-15/95 - EARL de Kerlast v Union régionale de coopératives agricoles (Unicopa) and Coopérative du Trieux, [1997] ECR I-1961, at par. 39: "Member State must be in a position to exclude certain forms of company which facilitate operation in a manner not in compliance with the Community rules").

The ECJ has also found that, although the reference year chosen by the Member State may not be ideal for some producers, the resulting differential treatment of them can be justified in the interest of sound administration and the corresponding restriction of the length of the reference period, or the number of reference years provided for. In reaction to a particular producer's claim that he had been discriminated against as against other producers because in the year chosen as the reference period for the reference quantity that producer did not have a production yield representative of his capacity, the ECJ concluded that "[s]uch an effect is justified by the need to limit to the greatest extent possible, in the interests of both legal certainty and the effectiveness of the additional levy scheme, the situations which may justify the reference to another reference year." (Case C-177/90 - Ralf-Herbert Kühn v Landwirtschaftskammer Weser-Ems [1992] ECR I-0035, p. 18). A similar problem arose in the case of producers who carried out a development plan (and expanded their production capacity), but whose reference quantity did not reflect that expansion due to the fact that the selected reference year came before the completion of the development plan. The ECJ stated that it did not consider such producer's situations objectively different from those of producers who had not carried out such a plan, because "it is the reference year which is decisive for comparing the situation of the two categories of producers" (Case C-63/93 - Fintan Duff et al v Minister for Agriculture and Food and Attorney General, [1996] ECR I-569, par. 26). In other words, the selection of reference period, in and of itself, was not capable of establishing a violation, as between producers, of the principle of equality.

On the other hand, under ECJ case-law Member States are not allowed total discretion in selecting the reference year. The ECJ has declared that certain choices could result in the violation of the principle of equality. For example, the ECJ decided that the selection of a reference period can result in discrimination forbidden by the principle of equality "[i]f, owing to the particular conditions on the market of that state, the implementation of that option in its territory leads to discrimination between producers within the Community" (joined cases 201 and 202/85, Marthe Klensch and others v Secrétaire d'État à l'Agriculture et à la Viticulture, [1986] ECR 3477, par. 12). It was claimed in that case that the specific selection of the reference period favored big producers to the detriment of smaller ones.

The ECJ also dealt with the issue of equality in relation to the transfer of reference quantities from one producer to another. The ECJ has found, for example, that Community law should not be construed in a manner which would allow producers who cease production to transfer their quotas to the persons who had been purchasers of their production, as such a transfer would lead to inequality in favor of those persons to the detriment of other purchasers of production in the given field of production. The reference quantity should rather be returned to the national reserve and then reallocated in a fairer manner (joined cases 196/88, 197/88 and 198/88, Daniel Cornée and others v Coopérative agricole laitière de Loudéac (Copall) and Laiterie coopérative du Trieux, [1989] ECR-2309, par. 21-23).

Finally, reference can be made to the ECJ's position that it cannot assess a merely hypothetical assertion to the effect that the national measure discriminated against certain producers, unless some evidence is actually presented to show that any of the producers whom the measure had allegedly harmed had in fact been negatively impacted by that measure (joined cases 196/88, 197/88 and 198/88, Daniel Cornée and others v Coopérative agricole laitière de Loudéac (Copall) and Laiterie coopérative du Trieux, [1989] ECR-2309, par. 19).

The Constitutional Court has not found an inroad into the principle of the prohibition of discrimination, as interpreted in light of the ECJ case-law. As will be explained at length, the Constitutional Court is revising its existing construction of the principle of equality arising from Art. 1 of the Charter of Fundamental Rights and Basic Freedoms made in its judgment No. Pl. US 39/01, in particular for the field of law which is related to Community law (see below).

d) The Principle of the Protection of the Right of Entrepreneurship and to Engage in some other Economic Activity

In its decisions the ECJ has ruled that, in relation to the system of quotas, the right to engage in economic activity cannot be interpreted as guaranteeing the right to obtain a particular level of quota. According to the ECJ, quotas "do not restrict the economic activity of the undertakings in question but fix the quantities of production which may be marketed in accordance with the special arrangements established by the common organization of the market ..." (Case 230/78 - SpA Eridania-Zuccherifici nazionali v Minister of Agriculture and Forestry, [1979] ECR 2749, paras. 20-21). Further, due to the

variability of the common organization of the market, quotas are the subject of change (cf. the discussion above on legitimate expectations).

Such restrictions on the right of entrepreneurship and to engage in other economic activity even meet the general standard for limiting fundamental rights, in that they "in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of those rights" (Case 5/88 - Hubert Wachauf v Bundesamt für Ernährung und Forstwirtschaft, [1989] ECR 2609, par. 18). The first criteria (conformity with the objective pursued) is observed if the restriction is part of a legislative scheme to remedy surpluses in a market of agricultural commodities by limiting excess production. The second criteria (proportionality) is met if the very substance of the right of entrepreneurship and to engage in other economic activity is not impaired. In other words, to the extent that the system of quotas does not restrict the right to make other uses of the land in question, to engage in business in other economic fields, or to market other agricultural products, then it is compatible with the protection of the right of entrepreneurship and to engage in other economic activity (Case C-177/90 - Ralf-Herbert Kühn v Landwirtschaftskammer Weser-Ems [1992] ECR I- 0035, par. 17, or Case C-63/93 - Fintan Duff et al v Minister for Agriculture and Food and Attorney General, [1996] ECR I-569, par. 30, where the ECJ held that such right is not infringed even if a producer obtains a reference quantity that does not take into account a development plan, that is a quota which does not correspond to the objective level of production which that producer would be capable of after executing the plan). In other words, according to the ECJ case-law, the grant of a particular level of quota, in and of itself, cannot be considered an infringement of the fundamental right to engage in entrepreneurship or other economic activity.

The principle of the protection of the right to engage in economic activity is approved in the constitutional order of the Czech Republic as an economic right which can be asserted only within the confines of the statutory provisions implementing them (Art. 41 of the Charter of Fundamental Rights and Basic Freedoms) and the existing jurisprudence of the Constitutional Court resting on the principle of „self-restraint" [trans. note: the Czech original employs the English term] entirely corresponds with the ECJ's approach. Accordingly, the Constitutional Court has not found that this principle has been violated.

A-2)

The Assessment of the Contested Legal Rules from the Perspective of the Criteria following from the Constitutional Order of the Czech Republic in light of the Constitutional Court's Existing Jurisprudence

As stated above, the setting of the key for the calculation of individual production quotas represents the national implementation of the objective of the Common Agricultural Policy arising from the norms of Community law, that is, a field in which Community law has left

Member States discretion as to what specific instrument it chooses for the attainment of the objective (restriction of the production of sugar). Although the setting of the key for the allocation of the production quota is a matter of national law, it cannot be overlooked that it pursues an objective resulting from Community law.

As was stated above, the Constitutional Court is persuaded that, after the Czech Republic became a full Member State of the EC, or EU, the constitutional law review of issues relating to this field cannot be carried out in total isolation, without regard to the criteria and bounds of the rules laid down in Community law and existing ECJ case-law. In other words, in adjudicating the conformity of the chosen key with the constitutional order of the Czech Republic, therefore the manner in which European law and the ECJ approach the issues of production quotas and the method for their allocation cannot be entirely disregarded. In contrast to the Constitutional Court's preceding decision, Community law cannot be approached merely as a subject of comparison from which would follow indirect arguments in relation to national rules, rather at the present time Community law radiates into the Czech Republic constitutional order, if it applies in a field of law related to Community law.

On the other hand, due to the principle of legal continuity of its own jurisprudence, in the contemporary period the previous case-law of the Constitutional Court cannot be disregarded (see below).

In its judgment No. Pl. US 45/2000 (published as No. 96/2001 Sb.), the Constitutional Court annulled Government Regulation No. 51/2000 Sb., which Lays Down Measures and the State's Participation in the Creation of Conditions for Ensuring and Maintaining the Production of Sugar Beets and Sugar and the Stabilization of the Market in Sugar. This was the legal enactment which, for the first time, introduced into the Czech Republic regulation of the market in sugar, for the period running from 1 August 2000 until 30 September 2001. In that judgment the Constitutional Court decided that, with this regulation, the Government had failed to heed the constitutional limits provided for in Art. 78 of the Czech Constitution. In that judgment the Constitutional Court did not concern itself with the actual content of the regulation, nor with its conformity with the constitutional order. According to the regulation, the amount of the quotas was defined such that the reference period was set as the five preceding years, that is the years 1995 - 1999.

In its judgment No. Pl. US 5/01 (published as No. 410/2001 Sb.), the Constitutional Court addressed the constitutional conformity of Regulation No. 445/2000 Sb., on Setting Production Quotas for Milk for the years 2001 to 2005. The Constitutional Court granted that petition in part, as it annulled § 4 par. 2 and § 14 par. 2 of the regulation, once again due to defects in the statutory empowerment for the restriction of the allocation of production quotas from the reserve for farmers in the system of ecological cattle breeding and the unconstitutionality and illegality of the delegation to the Ministry of Agriculture of decision-making on the amount of reserves. Nonetheless, in this judgment the Constitutional Court also spoke to the substantive conformity with the constitutional order

of milk production quotas (as one of the methods for regulating the state's agricultural policy), in the process of which it did not find this system to be unconstitutional as such. At the same time it formulated the basic constitutional limits both for placing restrictions upon agricultural by introducing production quotas and for the system of allocation of production quotas to individual producers. Above all the Constitutional Court concluded that (within the bounds provided by the constitutionally guaranteed basic principles, human rights and fundamental freedoms) the legislature may, as it considers appropriate, introduce price or quantitative regulation of the production in certain branches of the economy, circumscribe or influence the type and number of subjects operating in it, or restrict contractual freedom when production is brought to the market or when raw materials and production equipment are purchased. The Constitutional Court also denied that every restriction upon the entrepreneurial freedom can be introduced solely by statute. On the contrary it stated that, for practical reasons, the Czech Constitution allows statutes to be implemented by means of sub-statutory enactments, if the rules laid-down in that way remain within the bounds of statutory law. The Constitutional Court also rejected the argument that placing limits on production constitutes expropriation that is not justified in the public interest and effected without compensation. The ownership in production in excess of the production quota is not divested, rather, the marketing of it is merely made more difficult. The system of production quotas represent a form of control on the use of property which pursues the public interest, namely the stabilization of the market in commodities. It then found the instruments employed, that is the allocation of individual production quotas, to be proportionate.

As concerns the system for the allocation of individual production quotas, the Constitutional Court has denied that the dissimilar legal position of all producers who obtain quotas and those who request them would represent unconstitutional discrimination. Likewise it did not consider as unconstitutional the natural differentiation between existing and new producers, as it stated that the handicap for new entrepreneurs (which obtain quotas solely through the transfer of quotas from current producers who have already been allocated quotas) is an integral part of any sort of limitation on production. Of course, one cannot exclude the possibility of discrimination between producers who request quotas and obtain them in the full amount and producers who are denied quotas or receive them only in part. For this reason, already in § 12 par. 6 of Act No. 256/2000 Sb., on the State Agricultural Intervention Fund, was introduced the requirement that the method of initial allocation of production quotas among applicants be governed by the principle of equality and of an objective method of calculation. The Constitutional Court observed on this point that this general instruction, which is nothing other than a derivation of the principle of equality found in Art. 1 of the Charter and Art. 1 of the Constitution of the Czech Republic, must be borne in mind by the Government when it designates the method of allocation of quotas within the framework of the individual systems of production quotas with respect to the attributes and particular features of the production of commodities whose production is subject to limitation. The Constitutional Court may, therefore, assess the key employed for the original allocation of quotas, whereas in the case of the allocation of production quotas for milk it recognized a one-year reference period as proportionate. At the same time, however, the Constitutional Court acknowledged that not even a minutely elaborated key, which takes into account

regular causes of the fluctuation in production volume, cannot take all circumstances into account. Thus, in particular cases this can result in injustices which, however, are not of constitutional dimension.

Finally in its judgment No. Pl. US 39/01 (published as No. 499/2002 Sb.) the Constitutional Court once again concerned itself with the rules for the production quotas on sugar, adopted in the form of Regulation No. 114/2001 Sb., on the Setting of Production Quotas for Sugar for the Quota Years 2001/2002 through 2004/2005. In this judgment the Constitutional Court annulled § 4 par. 3, § 5 par. 3, § 7 and § 13 of the regulation and rejected on the merits the proposal to annul § 13 of Act No. 256/2000 Sb., on the State Agricultural Intervention Fund. The Constitutional Court assessed the key chosen at that time for the allocation of individual production quotas (on the basis of the volume of production in the three most successful, in terms of quantity, of the preceding five production years) as in conflict with the statutory requirement of the objective method of calculation and the requirement of equality. This assessment was grounded on reflections concerning whether the position of individual operators of sugar refineries was influenced by the legal rules under Regulation No. 51/2000 Sb., which was applied before its annulment by the Constitutional Court, that is, in the period from 30 March 2001 until 29 November 2002. Although this regulation was annulled on formal grounds, that is, for inadequate basis in law, the Constitutional Court additionally stated that the differentiation made at that time between sugar refineries as strategic and non-strategic can legitimately be considered as a suspect classification which represents an arbitrary, scarcely justifiable distinction between individual producers. The Constitutional Court further observed that the key chosen in Government Regulation No. 114/2001 Sb. was not unconstitutional per se; nonetheless, the undesirable repercussions of the preceding method of calculation, which was both formally defective and substantively discriminatory, had not been cured. Rather, it had merely tempered them by the fact that the quantity of the decisive average annual quota was not calculated based on the volume of production for all five seasons, as it took into account the fact that certain sugar refineries were not in operation in each year and took into account the three seasons when they produced the most, alternatively the years in which they produced, if they produced for three years or less. The Constitutional Court found a failure to cure the inequality in the fact that, on the basis of a measure which was formally unconstitutional and substantively discriminatory, certain producers might have increased their production, as they were protected from competitors who did not have a production quota and, thus, could not produce without being burdened by a punitive levy. The Constitutional Court then concluded that the Government had, in a rule that was formally proper, retained into the future the undesirable state of affairs which was called forth by its earlier regulation, both formally and substantively unconstitutional.

In its 22 June 2004 ruling, No. Pl. US 48/03, the Constitutional Court dismissed the proceeding on the petition of a group of Deputies proposing the annulment of the relevant part of Regulation No. 114/2001 Sb., as amended by Regulation No. 97/2003 Sb., which the Goverment had adopted, in reaction to the preceding Constitutional Court judgment, to newly regulate the allocation of individual production quotas. The Constitutional Court had dismissed the proceeding pursuant to § 67 of the Act on the Constitutional Court, since

the contested regulation had, during the course of the proceeding, been repealed and replaced by Regulation No. 364/2004 Sb., §§ 3 and 16 of which are contested by the petition now before the Court. Regulation No. 114/2001 Sb., as amended by Regulation No. 97/2003 Sb., provided a new key to the allocation of quotas such that the allocation was effected on the basis of capacity for sugar production defined as the highest average quantity of sugar that a sugar refinery, which produced sugar during the month of November 2001 or October 2002, produced during a 24 hour period, assuming sugar had been produced in that refinery in the quota year 2002/2003, however no more than the verifiable quantity corresponding to the maximum daily technical capacity of the sugar refinery's equipment.

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The Constitutional Court is thus deciding on the constitutional conformity of the key for the calculation of individual production quotas in a situation where its previous case-law has laid down certain limits, both for the actual permissibility of the legal regulation of production quotas as such, and for the allocation of individual production quotas to individual producers. Thus, among other things, the adjudication of the current legal rules must be carried out from the perspective of the Constitutional Court's existing case-law, by which the Constitutional Court is bound, unless the conditions are met for departing therefrom.

As concerns a system of quotas as such, the Constitutional Court has stated that this judgment is bound up to its current case-law in the area of quotas. It is a different matter, however, to adjudge the actual allocation of quotas in terms of the constitutional principles, such as they were formulated in the Court's preceding judgment, No. Pl. US 39/01.

In its judgment No. Pl. US 11/02 (published as No. 198/2003 Sb.), the Constitutional Court formulated the doctrine of the continuity of its own case-law, which it deduced from the attributes of the democratic law-based state; in other words, it concluded that the Constitutional Court is bound by its own decisions, from which it can depart in its case-law solely under certain conditions. The first circumstance in which the Constitutional Court may depart from its own case-law is a change of the social and economic relations in the country, a change in their structure, or a change in the society's cultural conceptions. A further circumstance is a change or shift in the legal environment formed by sub-constitutional legal norms, which in their entirety influence the examination of constitutional principles and maxims without, of course, deviating from them and, above all, without restricting the principle of the democratic state governed by the rule of law (Art. 1 par. 1 of the Constitution of the Czech Republic). An additional circumstance allowing for changes in the Constitutional Court's jurisprudence is a change in, or an addition to, those legal norms and principles which form the Constitutional Court's binding frame of reference, that is, those which are contained in the Czech Republic's constitutional order, assuming, of course, that it is not such a change as would conflict with the limits laid down by Art. 9 par. 2 of the Constitution of the Czech Republic, that is,

they are not changes in the essential attributes of a democratic state governed by the rule of law.

After full consideration of the constant jurisprudence of the ECJ and the Constitutional Court's own current jurispruence, the Constitutional Court weighed whether this case does not present facts which would justify a departure from the Constitutional Court's existing holdings. As was already mentioned above, there is no doubt that, as a result of the Czech Republic's accession to the EC, or EU, a fundamental change occurred within the Czech legal order, as at that moment the Czech Republic took over into its national law the entire mass of European law. Without doubt, then, just such a shift occurred in the legal environment formed by sub-constitutional legal norms, which necessarily must influence the examination of the entire existing legal order, constitutional principles and maxims included, naturally on the condition that the factors which influence the national legal environment are not, in and of themselves, in conflict with the principle of the democratic law-based state or that the interpretation of these factors may not lead to a threat to the democratic law-based state. Such a shift would come into conflict with Art. 9 par. 2, or Art. 9 par. 3 of the Constitution of the Czech Republic.

There is not doubt that the standard within the Community for the protection of fundamental rights and basic freedoms by means of the observance of the principles arising therefrom has undergone a dynamic development since the early reluctance to accord protection by means of Community law, also expressed in the ECJ case-law (among others, in judgment No. 1/58, Stork v. High Authority of the ECSC [1959]), through the implementation of the protection of these principles in the ECJ case-law up to the effort to form a binding catalogue of fundamental rights, which would form a part of primary law. In the same way, the reaction to this problem in the case-law of the constitutional courts of particular Member States also experienced a dynamic development; the most representative examples of this are the changes in position of the Federal Constitutional Court of the FRG (cf. its decision of 29 May 1974, No. 2 BvL 52/71, „Solange I", its decision of 22 October 1986, No. 2 BvR 197/83, „Solange II", and its decision of 12 October 1993, No. 2 BvR 2134 and 2159/92 on the European Union Treaty).

In the Constitutional Court's view, the current standard within the Community for the protection of fundamental rights cannot give rise to the assumption that this standard for the protection of fundamental rights through the assertion of principles arising therefrom, such as otherwise follows from the above-cited case-law of the ECJ, is of a lower quality than the protection accorded in the Czech Republic, or that the standard of protection markedly diverges from the standard up till now provided in the domestic setting by the Constitutional Court. Moreover, this follows as well from a comparison of the above-mentioned ECJ rulings concerning the permissibility of quantitative restrictions upon production by means of laying down production quotas and the findings which the Constitutional Court has made in the past on the same issue. In the Constitutional Court's view, the sole exception is the ruling in judgment No. Pl. US 39/01, in which the Constitutional Court adjudged the key laid down by the Government for the allocation of

production quotations as infringing the principle of equality.

If this conclusion is compared with the above-cited case-law of the ECJ, it can be considered as excessive in the respect that the Constitutional Court ventured out onto the relatively „thin ice“ of assessing economic quantities, which it afterward projected into the constitutional law assessment. As follows from the cited ECJ case-law, that court does not consider itself authorized to assess measures which form a part of the Common Agricultural Policy in terms of their substance. For example, to the extent that the ECJ assessed the reference criteria with respect to the asserted inequality among producers, it referred to the fact that this inequality cannot be merely hypothetical, rather it must be based on concrete facts, which would be established in relation to specific producers. For that matter, the conclusion flowing from judgment No. Pl. US 39/01 can, to a certain degree, be considered as excessive even in relation to the case-law of the Constitutional Court itself, which in the judgment preceding it, in which it adjudicated on the system of milk quotas, unequivocally stated that „not even a key that is elaborated in detail, which takes into account the regular causes of fluctuation in the volume of production, could pay heed to all circumstances. Therefore, this can in particular cases result in injustices which do not, however, attain constitutional dimensions.“ Thus, in the case currently before it, the Constitutional Court does not feel itself called upon, within the bounds of constitutional review, to examine in the abstract the actual key for the allocation of quotas.

In other words, in the case currently before the it, as far as concerns measures of an economic nature pursuing an aim that flows directly from the Community policy of the EC, the Constitutional Court cannot avoid the conclusions which flows directly from the case-law of the ECJ and from which a definite principle of constitutional self-restraint can be inferred. For that matter, the Constitutional Court was also aware of this point when it adopted judgment No. Pl. US 39/01, since it stated in its reasoning that, as concerns the extent of its review powers, such a conclusion may not be reached which would afterwards present an obstacle to the Czech Republic’s membership in the European Union, albeit by its holding it traversed that self-restraint to a certain extent.

The Constitutional Court therefore came to the conclusion that in this case there are grounds for departing from its judgment in matter No. Pl. US 39/01. This modification does not, however, relate to the substantive assessment itself of the key selected by the Government, rather to the fact that the Constitutional Court no longer deems itself to be called upon to subject such a key to abstract constitutional review in the manner in which it did in its judgment No. Pl. US 39/01. Naturally, that does not rule out the possibility that the ordinary courts address, in specific cases of individual producers, the fairness of this key, assuming that specific facts will be established on the basis of which such inequality is alleged.

On the contrary, inspired by the holding of the ECJ, which since 1 May 2004 it has, in the area under consideration, taken into account to the extent delineated above, and bound by the holdings which it handed down prior to its judgment No. Pl. US 39/01, the

Constitutional Court did not assess whether the key selected by the Government in Regulation No. 97/2003 Sb. (the results of which were projected into the originally contested provision, § 3 of Regulation No. 364/2004 Sb., and following the repeal of that regulation into § 3 of Regulation No. 548/2005 Sb.) is capable, in terms of its content, of constituting inequality among producers in the abstract. Thus, it will not assess the issue of whether the criterium selected by the Government is capable of reflecting the fluctuations in the production of individual producers, as the Constitutional Court considers that issue to involve such a high degree of economic expertise that it does not feel called upon to answer it.

Merely as obiter dictum, that is, outside the actual confines of constitutional review, the Constitutional Court further states on this point that it does not directly follow from its judgment Pl. US 39/01, as the petitioners have submitted to the Constitutional Court, that the Government was obliged to select, as the reference period, a period prior to the moment in which it began to regulate the production of sugar by means of production quotas, that is, the period prior to 2000.

It appears from the comparative survey which the Constitutional Court requested for the purpose of this proceeding, that the majority of Central and East European states which joined the EC in 2004 in practice selected the time interval 1994 – 1999 as their reference period; however, the situation in the Czech Republic is quite unusual in that the key for the allocation of quotas had been repeatedly annulled by the Constitutional Court (the first time on formal grounds, for the second on substantive grounds). Although the Constitutional Court does not feel called upon to adjudicate such questions, nonetheless, it appears to the Court that to set, in the year 2004, a reference period from a time before 2000 would be technically unfeasible, perhaps even unreasonable, and constituting further grounds for asserting that even such a reference period is capable of establishing inequality between producers. On the contrary, in the Constitutional Court's view what can be inferred from the chosen key, now contested by the petitioner, is the effort on the part of the Government to select such a period as could be viable as a reference period and, on the other hand, be capable of eliminating market distortion that had arisen in consequence of the previous regulation as, in its judgment No. Pl. US 39/01, the Constitutional Court called to its attention.

The Constitutional Court also considers it necessary to emphasize that the holding it now adopts in no way signifies that the Constitutional Court would abdicate its powers of constitutional review of national legal enactments which are complementary to Community law, as has been done by several courts of EC Member States (cf. the decision of the Irish Supreme Court in the case of Lawror v. Minister for Agriculture 1 [1990] IR 356 cited by Kühn, Z.: The Expansion of the European Union and the Relations among Twenty-Six Constitutional Systems, Právník 8/2004, p. 765). The shift in its conclusions derives from the shift in the entire national legal order which occurred on 1 May 2004 and relates solely to the issue of the limits of constitutional review in this particular case.

It can be concluded that the key to the allocation of individual production quotas has been found to be constitutionally conforming, from which follows that it would have been necessary to reject the petitioners‘ original petition on the merits.

B) The Constitutional Court could not, however, overlook and accept the fact that, by its adoption of the contested provisions (§ 3 of Regulation No. 548/2005 Sb.), which merely paraphrases Art. 1 par. 3 of Commission Regulation (EC) No. 1609/2005, the Government failed to respect the fact that, as a result of the Czech Republic’s accession to the EU, a transfer of powers of national organs to supra-national organs has taken place on the basis of Art. 10a of the Constitution of the Czech Republic.

Art. 10a, which was added to the Constitution of the Czech Republic by Constitutional Act No. 395/2001 Sb. (the „Euro-Amendment“ to the Constitution), constitutes a provision that makes possible the transfer of certain powers of Czech state organs to international organizations or institutions, thus primarily to the European Community and its organs. In the moment when the Treaty Establishing the European Community, as amended by all revisions to it and by the Treaty of Accession, became binding on the Czech Republic, a transfer was effected of those powers of national state organs which, according to EC primary law, are exercised by organs of the EC, upon those organs.

In other words, at the moment of the Czech Republic’s accession to the European Community, the transfer of these powers was accomplished such that the Czech Republic conferred these powers upon EC organs. Thus, the powers of all relevant national organs are restricted to the extent of the powers that are being exercised by EC organs, regardless of whether they are powers of norm creation or powers of individual decision-making.

In the Constitutional Court’s view, this conferral of a part of its powers is naturally a conditional conferral, as the original bearer of sovereignty, as well as the powers flowing therefrom, still remains the Czech Republic, whose sovereignty is still founded upon Art. 1 par. 1 of the Constitution of the Czech Republic. It states that the Czech Republic is a sovereign, unitary, and democratic state governed by the rule of law, founded on respect for the rights and freedoms of man and of citizens. In the Constitutional Court’s view, the conditional nature of the delegation of these powers is manifested on two planes: the formal and the substantive plane. The first of these planes concerns the power attributes of state sovereignty itself, the second plane concerns the substantive component of the exercise of state power. In other words, the delegation of a part of the powers of national organs may persist only so long as these powers are exercised in a manner that is compatible with the preservation of the foundations of state sovereignty of the Czech Republic, and in a manner which does not threaten the very essence of the substantive law-based state. Should one of these conditions for the transfer of powers cease to be fulfilled, that is, should developments in the EC, or the EU, threaten the very essence of state sovereignty of the Czech Republic or the essential attributes of a democratic state governed by the rule of law, it will be necessary to insist that these powers be once again

taken up by the Czech Republic's state bodies; in such determination the Constitutional Court is called upon to protect constitutionalism (Art. 83 of the Constitution of the Czech Republic). That is the case in the formal dimension within the confines of the current constitutional rules. As concerns the essential attributes of a democratic state governed by the rule of law, according to Art. 9 par. 2 of the Constitution of the Czech Republic, these remain beyond the reach of the Constituent Assembly itself. In its very first judgment, Pl. US 19/93, concerning the Act on the Lawlessness of the Communist Regime and Resistance to It, the Constitutional Court declared that in the framework of this Constitution, the constitutive principles of a democratic society are placed beyond the legislative power and are thus ultra vires the Parliament. In a further judgment, Pl. US 36/01, the Constitutional Court stated that no amendment to the Constitution may be interpreted in a sense, in consequence of which the already achieved procedural level for the protection of fundamental rights and basic freedoms would be restricted.

Should, therefore, these delegated powers be carried out by the EC organs in a manner that is regressive in relation to the existing conception of the essential attributes of a democratic law-based state, then such exercise of powers would be in conflict with the Czech Republic's constitutional order, which would require that these powers once again be assumed by the Czech Republic's national organs.

In the specific case before the Court, however, such a situation was not generally present, so that, in the Constitutional Court's opinion, the Government had no reason to exercise its power of norm creation in the manner it did, that is, by the adoption of the constested provision, § 3 of Regulation No. 548/2005 Sb.

After assessing the content of the contested provision, § 3 of Regulation No. 548/2005 Sb., the Constitutional Court came to the conclusion that, in adopting it, the Government exceeded its authority; that is, it asserted its power of norm-creation in a field which, on the basis of Art. 10a of the Constitution of the Czech Republic, had already been transferred to EC organs, namely by Art. 37 par. 2 and 3 of the EC Treaty and Art. 1 par. 3 of the Treaty of Accession of the Czech Republic to the European Union. If then § 3 of Regulation No. 548/2005 Sb. is meant to be the implementation of Commission Regulation (EC) No. 1609/2005, its adoption constitutes action ultra vires in relation to Art. 78 of the Constitution of the Czech Republic, as the Government was not empowered to adopt such legal rules.

Commission Regulation (EC) No. 1609/2005 is the Community law enactment by which the Commission, on the basis of Art. 10 paras. 3 and 4 of Council Regulation (EC) No. 1260/2001 reduced, for the year 2005/2006, the quotas for the production of sugar pertaining to individual Member States. This Regulation takes precedence over national legal (statutory) rules and is directly applicable in the national legal order.

Direct applicability in national law and applicational precedence of a regulation follows from Community law doctrine itself, as it has emerged from the case-law of the ECJ (cf.,

for ex., decision 26/62 NV Algemene Transport- en Expeditie Orderneming Van Gend en Loos v. Nederlandse Administratie der Belastingen [1963] ECR 1; 6/64 Costa v. ENEL [1964] ECR 585). In contrast to international law, Community law itself determines and specifies the effects it has in the national law of the Member States.

If membership in the EC brings with it a certain limitation on the powers of the national organs in favor of Community organs, one of the manifestations of such limitation must necessarily also be a restriction on Member States' freedom to determine the effect of Community law in their national legal orders (cf. Král, R.: Once Again on the Foundation in the Constitution of the Czech Republic of the Effects in National Law of Community Law. Legal Horizons [Právní rozhledy], 2004, No. 3, p. 111). In other words, the transfer of certain powers to the EC entails also the loss of the Czech Republic's freedom to designate the effects Community law has in national law, which effects are derived directly from Community law in fields in which such transfer occurred. Art. 10a of the Constitution of the Czech Republic thus operates in both directions: it forms the normative basis for the transfer of powers and is simultaneously that provision of the Czech Constitution which opens up the national legal order to the operation of Community law, including rules relating to its effects within the legal order of the Czech Republic (cf. Kühn, Z. – Kysela, J.: On which Basis will Community Law Operate in the Czech Legal Order? Legal Horizons [Právní rozhledy], 2004, No. 1, pp. 23 – 27; or Kühn, Z.: Once More concerning the Constitutional Basis for the Operation of Community Law in the Czech Legal Order. Legal Horizons [Právní rozhledy], 2004, No. 10, pp. 395 - 397).

The Constitutional Court is of the view that – as concerns the operation of Community law in the national law – such approach must be adopted as would not permanently fix doctrine as to the effects of Community law in the national legal order. A different approach would, after all, not correspond to the fact that the very doctrine of the effects that Community acts call forth in national law has gone through and is still undergoing a dynamic development. This conception also best ensures that which was already mentioned, that is, the conditionality of the transfer of certain powers.

According to Art. 1 par. 3 of the Regulation, Member States were obliged, by 1 November 2005 at the latest, to set for each production undertaking which had been allocated a production quota, the amount by which that quota was to be reduced. As the Constitutional Court ascertained by an inquiry to the State Agricultural Intervention Fund, the reduction in the quota were notified to all holders of quotas by means of individual acts on the basis of the direct application of this provision of Commission Regulation (EC) No. 1609/2005.

In other words, at the time when the Government adopted § 3 of Government Regulation No. 548/2005 Sb., the individual production quota of each particular producer had already long since been reduced, moreover on the basis of the direct application of Community law by the organ competent to do so, that is, the State Agricultural Intervention Fund. On the one hand, such a provision cannot in practice give rise to any legal consequences, on the other, the Government was not even authorized to adopt it, as this was a field in which

such empowerment had been transferred to the Community organs, which exercised it in the given case by adopting Regulation No. 1609/2005, which, as was already noted above, is directly applicable in the law of the Member States, so that no further implementation in the national law is contemplated.

Moreover ECJ case-law has developed a rule, according to which Member States may not, by means of legal enactments under national law, reproduce the provisions of directly applicable Community law, or that any sort of national measure implementing a regulation is in conflict with the directly applicability of the regulation (cf. Cases 93/71, Orsolina Leonesio v. Ministero dell'agricoltura e Oreste, [1972] ECR 287; 39/72 Commission of the European Communities v. Italian Republic, [1973] ECR 101; and 34/73 Fratelli Variola S.p.A. v. Amministrazione italiana delle Finance, [1973] ECR 981)

As the Constitutional Court further ascertained, the examples of other Member States (the FRG and Slovakia) demonstrate that these states applied the Commission Regulation (EC) directly, without resorting to the normative transformation of this regulation into some form of national law.

By adopting the contested provisions, the Government therefore acted ultra vires and violated Art. 78 in conjunction with Art. 10a and Art. 1 par. 2 of the Constitution of the Czech Republic, as it thereby exercised an authority which had already been transfered to Community organs and which the Government, as a result, no longer held.

In the Constitutional Court's view, the annulment of the contested provision as unconstitutional in no way affects either the actual system of regulation of the market in sugar, or the chosen key for the allocation of individual production quotas. The current level of the quotas for the economic year 2005/2006 was itself reduced on the basis of the directly applicable Commission Regulation (EC) No. 1609/2005, in the form of individual acts, the effects of which have been maintained and, as both parties were in agreement in confirming, the national sugar quota for the following economic year, 2006-2007 has already been set.

In view of these grounds alone, the Constitutional Court has therefore decided, pursuant to § 70 par. 1 of the Act on the Constitutional Court, to annul § 3 of Government Regulation No. 548/2005 Sb., on Laying Down certain Conditions for the Implementation of Measures of the Common Organization of the Markets in the Sugar Sector, due to its conflict with Art. 1 par. 2, Art. 10a and Art. 78 of the Constitution of the Czech Republic, as of the day this judgment is published in the Collection of Laws.

Notice: A decision of the Constitutional Court cannot be appealed.

Brno, 8 March 2006