2011/03 - PL. ÚS 55/10: STATE OF LEGISLATIVE EMERGENCY

CZECH REPUBLIC
JUDGMENT
CONSTITUTIONAL COURT OF THE CZECH REPUBLIC

IN THE NAME OF THE REPUBLIC

HEADNOTES
The representatives of parliamentary opposition, usually composed of representatives of political parties which are included in Parliament, but not directly taking part in the execution of governmental power and generally acknowledging themselves in the minority in terms of number, must be allowed, with respect to the constitutionally guaranteed principle of protection of minorities (see above), within the scope of legislative procedures, to exercise their constitutionally guaranteed rights; it must not be made impossible for them to exercise the above-mentioned functions of a parliamentary opposition which are non-substitutable in a democracy.

The most fundamental rights of the parliamentary opposition or of an individual member of the same, which should be constitutionally guaranteed in a democratic rule of lawd state, especially include rights guaranteeing parliamentary opposition their participation in parliamentary procedures; rights allowing the parliamentary opposition to carry out supervision and inspection of the governmental majority and the government itself. Furthermore, they include rights allowing the parliamentary opposition to block or delay decisions adopted by the majority, as well as rights allowing the opposition to request constitutional review of adopted decisions (acts) and, last but not least, also rights protecting the parliamentary opposition and individual members of the same from persecution and arbitrariness of the majority. The scope (depth) and level of arrangement of the aforementioned rights of the parliamentary opposition in the specific system, as well as the leeway which the parliamentary opposition is afforded to perform their irreplaceable functions, are not only a sign of the level of the political and parliamentary culture of the given society, but also express the level of democratic spirit of the specific political system.

When making a decision on the height of the level and width of the guarantee of any of the above-listed rights of the parliamentary opposition, as well as when actually exercising the same, it is always necessary to seek and assess the balance between the legitimate interests of the governing majority and the parliamentary opposition or minority. On one hand, not to provide any of the above-mentioned rights to the opposition, or actual disallowing proper and untroubled exercise of the same as a result of actions by the governing majority, may lead not only to weakening the legitimacy of the exercise of power, but permanent restriction or even violation of the basic democratic principles may lead to a threat imposed on the democratic nature of the political system itself. On the other hand, an excessive level and width of guarantee of the individual rights to the parliamentary opposition may lead to

frequent overuse or even abuse of these rights by the opposition, of which the result may be weakening or elimination of effective exercise of power by the governing majority (cf. the above-quoted report of the Venice Commission). Therefore, it is necessary that the individual rights and entitlements guaranteed to the parliamentary opposition are matched with certain obligations and responsibility for the exercise of the same. Consequently, the parliamentary opposition, when exercising such rights, is obliged (not only towards its electors), in addition to necessary respect for the legal order, to fulfil the role of "responsible and constructive opposition".

The Constitutional Court had to take into consideration also the fact that the constitutional order explicitly permits the possibility to discuss the governmental draft bill in summary consideration only on the basis of Article 8 of Constitutional Act No. 110/1998 Coll. on Security of the Czech Republic, at a time of endangerment of the state or under the state of war. Therefore, if the constitutional order specifies such a possibility only in a single case, it is obvious that in other situations the same is generally not possible. This is not a gap in the Constitution of the Czech Republic if the constitutional order does recognise the possibility to discuss a draft bill in summary consideration. The constitutional framer has only decided to permit such a possibility only in extreme and exceptional situations. It may be admitted that at the level of an act (Rules of Procedure), other cases shall be established in which acts may be discussed in summary consideration (legislative emergency), but because this is an arrangement praeter constitutionem and because the purpose of constitutional-law regulation of such shortened discussion is the protection of rights and principles governing the legislative procedure in a democratic rule of law state, the use of the institution of legislative emergency is possible only under the pre-condition of a wide consensus in Parliament (acclamation, or at least such a majority which is comparable to the majority required for adoption of a constitutional act) or (and) only in the case when the type-specific seriousness of situations in which the legislative emergency is to be used corresponds to the seriousness of the actual situations which the constitutional order qualifies for summary consideration of a draft bill (endangerment of the state, the state of war).

The pre-condition for declaration of a state of legislative emergency is not only a threat of specific negative consequences, but primarily the existence of an exceptional circumstance which may possibly threaten the fundamental rights and freedoms in an essential way or when considerable economic losses threaten the state (§ 99 paragraph 1 of the Rules of Procedure of the Chamber of Deputies). An exceptional circumstance (from the point of view of constitutional principles) may by considered to be formed only by such a circumstance which evidently exceeds the usual course of internal and external political processes, or the same may be a circumstance which is represented by a natural disaster. This very exceptionality justifies the necessity of an immediate reaction by the legislature and the related restriction of constitutional principles pertaining to parliamentary procedure. The conclusion of existence of such an exceptional circumstance must, therefore, have a reasonable basis and be supported by factual circumstances. Furthermore, the

type-specific seriousness of the same must be comparable with Article 8 of Constitutional Act on Security of the Czech Republic.

The disagreement of the parliamentary opposition with the shortening of the procedure, therefore, does not establish an element of exceptionality, not even in the context of the understandable interest of the government to adopt the contested act before the beginning of the budget year.

JUDGMENT

Under file No. Pl. ÚS 55/10, the Constitutional Court decided, on 1 March 2011, in 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 (Justice Rapporteur) and Michaela Židlická, on a petition from a group of members of the Chamber of Deputies of the Parliament of the Czech Republic, with a registered office in Prague 1, Sněmovní 4, represented by Deputy Mgr. Bohuslav Sobotka, for annulment of Act No. 347/2010 Coll. Whereby Some Acts are Altered in Connection with Economisation Measures under the Competence of the Ministry of Labour and Social Affairs; with the participation of the Chamber of Deputies of the Parliament of the Czech Republic and the Senate of the Parliament of the Czech Republic as parties to the proceedings, as follows:

Act No. 347/2010 Coll. Whereby Some Acts are Altered in Connection with Economisation Measures under the Competence of the Ministry of Labour and Social Affairs, shall be annulled upon expiry of the date of 31 December 2011.

REASONING

I.

Recapitulation of the petition

1. A group of 45 members of the Chamber of Deputies of the Parliament of the Czech Republic requested, through a proper petition [cf. Article 87 paragraph 1, clause a) of the Constitution of the Czech Republic and § 64 paragraph 1, clause b) of Act No. 182/1993 Coll. on the Constitutional Court] delivered to the Constitutional Court on 9 December 2010, that Act No. 347/2010 Coll. Whereby Some Acts are Altered in Connection with Economisation Measures under the Competence of the Ministry of Labour and Social Affairs (hereinafter referred to only as the "contested act") be annulled.

2. The petitioners themselves summarised the essence of their objections in such a way that the contested act had not been adopted in a constitutionally prescribed manner. In the opinion of the petitioners, each individual action taken by the governmental majority in the Chamber of Deputies and the Senate, specifically a) abuse of the instrument of state of legislative emergency, b) unforeseeable convocation of an exceptional session of the Chamber of Deputies, c) unjustified omission of a general debate, and d) denial of the right for elected Senators to vote, violated in an inadequate, insufficiently justified and arbitrary manner fundamental rights, constitutional principles and values; specifically Article 1

paragraph 1, Article 2 paragraph 3, Articles 5, 6, 26 and 36 of the Constitution of the Czech Republic, and Article 4 paragraphs 2 and 4, Article 21 paragraphs 1 and 4, and Article 22 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter referred to only as the "Charter"). The forcefulness of such infringement of the above-specified fundamental rights and principles is, according to the petitioners, even more serious in that the same took place within the scope of adoption of an act which in itself considerably infringes the sphere of fundamental rights of the individual, in particular social rights. The petitioners aimed their argumentation in particular at the general definition of principles governing the legislative process, with which they consequently confronted the specific manner and circumstances, described in the proposal in detail, relating to the process of adopting the contested act, which they considered to be unconstitutional; therefore, they requested that the same be annulled.

I. A) Constitutional Norms and Principles Governing the Legislative Process

3. When generally defining the fundamental principles and values governing the legislative process, the petitioners started from findings of legal theory as well as conclusions resulting from the case law of the Constitutional Court or foreign courts of justice. In particular, they extensively quoted conclusions at which the Constitutional Court arrived in Judgment file No. Pl. ÚS 77/06, dated 15 February 2007 (N 30/44 SbNU /Collection of Judgments and Rulings of the Constitutional Court/ 349; 37/2007 Coll.), where the Constitutional Court distinctly defined the claims and minimal requirements which the current democratic rule of law state imposes on parliamentary discussion of draft bills. The petitioners claimed that the fundamental principle consists in particular of the presence of contradictory parliamentary debates in public, since legislation should possess the quality of a rational legal discourse in which "(...) all participants have been granted the opportunity to familiarise themselves in detail with the matter being discussed and to offer an informed opinion on the same. Therefore, such a process is considered proper when it provides for open discussion between proponents of differing viewpoints, including minority views.") (cf. the above-quoted Judgment file No. Pl. ÚS 77/06, clause 38).

4. The petitioners, through referring to the findings of legal theory, presented the opinion that parliamentary discussion and parliamentary debate accomplish at least two objectives the function of creation and that of legitimisation. The function of creation is based on the precondition that a political decision in parliamentarianism is brought about through debate, or at least debate makes formulating such a decision possible. An affirmed political decision is thus generated during the confrontation of arguments and counterarguments in a parliamentary debate, which thus provides also for balancing out competing interests or facilitating compromise of the same. Even when a government coalition, with a relatively large majority in the Chamber, is currently able to comfortably enforce in the Chamber of Deputies also such affirmed political decisions which are actually made outside Parliament, according to the petitioners, the realistic (also in terms of time) opportunity on the part of the opposition to prepare amendments and submit the same to the draft bills developed by the government must be understood as a minimum requirement resulting from Article 15 of the Constitution of the Czech Republic. Only in such a way may the opposition fulfil their function in the democratic political system.

5. However, according to the petitioners, in the context of constitutional review, the legitimising function of parliamentary debate is even more essential. Even if an actual political decision was to be made outside Parliament, parliamentary debate is retained so as to possess the purpose of legitimisation; that is public presentation of the pro et contra arguments which have played a role in the political decision. The public is thus made familiar and confronted with significant aspects of the given decision, which makes it possible for members of the public to form their own judgement on the given matter, to accept or reject the arguments presented and to adapt their future behaviour adequately to reflect the result – be it at election time or through another form of political participation. Therefore, debate, in its legitimising function, does not result in a decision as such, but substantiates and legitimises a decision which has already been made, making the reasons of supporters and opponents of such a decision transparent. Transmission of the intention of the legislature and of the purpose of the act through parliamentary debate is also important for the legal awareness of citizens and, as one of the elements of interpretation of law, facilitates also legal certainty as one of the principles of a rule of law state, protected by Article 1 paragraph 1 of the Constitution of the Czech Republic. The petitioners repeatedly supported their statements with conclusions from the above-quoted Judgment file No. Pl. ÚS 77/06 (clauses 55 and 56), as well as conclusions specified in the dissenting opinion of Justice Rapporteur E. Wagnerová concerning Judgment file No. Pl. ÚS 24/07, dated 31 January 2008 (N 26/48 SbNU 303; 88/2008 Coll.).

6. In addition, the petitioners claim that the manner of adoption of the contested act represented a failure of control mechanisms (checks) for constitutionally conforming execution of the legislative process (represented, in sequence, by the Chairperson of the Chamber of Deputies, or the person chairing its session, the Senate and the President of the Republic) determined by the above-quoted Judgment file No. Pl. ÚS 77/06, clauses 57 to 60, since the first and third of them (that is the Chairwoman of the Chamber of Deputies and the President of the Republic) did not wish to intervene and the second (the Senate), as a result of the acceleration of the legislative process detailed below, was not able to intervene.

I. B) The process of Adopting the Contested Act and its Constitutional Defects

7. The petitioners believe that the provisions of Act No. 90/1995 Coll. on the Rules of Procedure of the Chamber of Deputies, as amended by later regulations (hereinafter referred to also as the "RPCD") and Act No. 107/1999 Coll. on the Standing Rules of the Senate, as amended by later regulations, (hereinafter referred to only as the "SRS"), which were employed in discussion on the draft of the contested act, must be interpreted in light of the above-specified facts, when the petitioners stated that circumstances for adopting the contested act, as well as the legislative process alone regarding the same, detailed in the petition, were absolutely and undoubtedly in conflict with the above-presented constitutional principles and values. The petitioners saw this conflict specifically in a) abuse of the instrument of legislative emergency [see I. B.a)], b) unforeseeable convocation of an exceptional session of the Chamber of Deputies [see I. B.b)], c) unjustified denial of a general debate [see I. B.c)], and d) denial of the right for elected Senators to cast votes [see I. B.d)]. With respect to all these procedures, the petitioners discerned disproportionality of such infringement, insufficient

justification, and attributes of arbitrariness. According to the petitioners, the above-specified steps within the scope of decision making on declaration of a state of legislative emergency, also in the course of the same, should undergo a three-stage test of proportionality, as used by the Constitutional Court, in order to asses any collision of constitutionally protected values. The state of legislative emergency and summary consideration are to prevent the endangerment of fundamental rights and freedoms of citizens, endangerment of the security of the state or considerable economic losses (legitimate objective), which, however, is achieved through an infringement of the above-specified rights of the minority in the Chamber (a disturbed value). Such infringement is constitutionally feasible only when the same is also suitable, necessary and proportional.

I. B.a) Abuse of Legislative Emergency

8. In relation to the instrument of legislative emergency and the conditions for declaring the same pursuant to § 99 paragraph 1 of the RPCD, the petitioners objected that declaration of legislative emergency and summary consideration without conditions pursuant to § 99 paragraph 1 of the RPCD being fulfilled would not only constitute violation of law but, due to the pressure of time, also considerable abridgement of the constitutionally protected privilege of parliamentary debate and the right of a Deputy to present amendments, and thus abridgement of their right to properly discharge their elective office, as well as the equality of the deputies, as the deputies representing the government are in a clearly advantageous position. In connection with this, they referred to a part of Judgment of the Constitutional Court file No. Pl. ÚS 12/10, dated 7 September 2010 (269/2010 Coll.; clauses 17 and 18), in which the Constitutional Court also assessed general preconditions for declaring a state of legislative emergency and compliance with the same. According to the petitioners, the opinion of the Constitutional Court suggests that the Constitutional Court understands any decision on legislative emergency, to a large degree, to be a political decision, however, the Constitutional Court warns against abuse of the same as a tool of abridgement of the rights of the minority in the Chamber. In this case, according to the petitioners, it is seriously questionable whether declaration of the state of legislative emergency and summary consideration were capable of preventing considerable economic losses to the state; unlike in previous cases of declaration of the state of legislative emergency, the government did not succeeded in convincing the opposition's deputies on the necessity to approve the given changes related to the adoption of the act on the state budget in such a way that the same become effective on 1 January 2011 at the latest. They failed to convince the opposition that the declared economies of less than CZK 24 billion, representing approximately 2% of scheduled budgetary expenses, formed the essence of the draft, rather than major political decisions on restriction of some social rights.

9. At the level of necessity, that is finding out whether the issue concerned was actually a minimal infringement on the privilege of parliamentary debate and the rights of the deputies, necessary to achieve the pursued objective of preventing considerable economic losses to the state, then according to the petitioners it is necessary to understand that the government had available an alternative course of action, in particular that the government could have achieved such an objective through submitting the draft bill in a more timely way. However, from the sequence of steps taken by the governmental majority, it may be inferred that

parallel political objectives were pursued: first of all non-consideration of the unpopular draft bill in the plenum of the Chamber of Deputies before the local elections and elections to the Senate, and then consideration of the draft bill in the Senate as early as prior to the expiry of mandates of the Senators elected six years earlier. However, these objectives, especially the latter, which effectively prevents newly elected Senators from participating in decision making, cannot be considered legitimate. Therefore, according to the petitioners, the necessity to declare the state of legislative emergency for preventing considerable economic losses to the state may also be doubted.

10. Equally, the petitioners doubted the proportionality of the very declaration of the state of legislative emergency and summary consideration. While the level of risk of considerable economic losses is rather disputable, the degree of abridgment of privilege of parliamentary debate and the rights of the deputies is indubitable. Under the state of legislative emergency, which makes it possible to adopt a draft bill in the Chamber of Deputies in one day, the deputies cannot properly study the draft bill and give a considered opinion on the same. They do not have time for preparing amendments, cannot obtain, through consulting experts, more detailed knowledge on the content of the draft bill and its various consequences, and cannot, within Parliament, voice the opinions of their electors and possibly those of legitimate interest groups which may be so voiced in Parliament only via such deputies. In addition to abridgement of the rights of the deputies, also the rights of citizens are abridged in terms of exposure, to an adequate scope, to the pro et contra arguments on the act adopted, when, in the given case, the statutory scope of social rights are restricted and abridged, at least in the form of a decrease in the rate of illness benefits, annulment of social benefits, a decrease in the allowance for carers, limitation of a claim to unemployment benefit for some sectors of society, or elimination of birth allowance for most families with a new-born child.

I. B.b) Unforeseeable Convocation of an Exceptional Session of the Chamber of Deputies

11. The above-outlined three-stage test of proportionality was applied by the petitioners also to the manner of convocation of the exceptional session of the Chamber of Deputies, where there is a clash of rights or protected values as well. On one hand, there is the interest in accelerated consideration of the draft bill in order to counteract considerable economic losses, on the other, there is the above-specified privilege of parliamentary debate, and the rights of the deputies and citizens to participate in the administration of public affairs and, in addition, even with the extreme brevity of the term, also the right of a Deputy to be actually present at the session of the Chamber of Deputies.

12. Pursuant to the provisions of § 51 paragraph 6 of the RPCD on convocation of the session of the Chamber of Deputies, the deputies must be notified at least five days in advance. If this term is not complied with, the member of the Chamber of Deputies may propose that the session be adjourned, and the Chamber of Deputies decides on such a proposal without a debate. Thus the law associates a single consequence with a failure to comply with the five-day term – the right to propose that the session be adjourned, a decision on which is then made by the Chamber of Deputies. Therefore, the majority in the Chamber may enforce the exceptional

session even upon non-compliance with the statutory term. However, the petitioners believe that the provisions of § 51 paragraph 6 of the RPCD must be interpreted with respect to constitutional principles and values and pursuant to Article 22 of the Charter, pursuant to which the statutory arrangement of all political rights and privileges and their interpretation and application must make possible and safeguard free competition of political powers in a democratic society. According to the petitioners, the five-day term in § 51 paragraph 6 of the RPCD serves the purpose of the deputies being able to familiarise themselves with the proposed agenda of the session and become prepared for its clauses and, in an extreme case (for example, if the deputies discharge their obligation on an official journey, but definitely wish to take part in discussing the draft of the contested act), being actually informed of the session taking place. Upon approval by the Chamber of Deputies, the law makes it possible to reduce such a term, indubitably in the interests of a due and effective response to the political situation so prevailing. However, the petitioners would consider it arbitrary if the five-day term were reduced without any reasons being given, while the shorter the term between convocation of the session and the commencement of the session, the more serious the reasons for such a reduction must be; however, no argument or reason for such a quick convocation of the session being necessary was voiced at the session of the Chamber of Deputies.

13. In the first step, the suitability test, the petitioners referred to the facts stated above; if it is admitted that adoption of the act by 1 January 2011 prevents the threat of considerable economic losses, a rapid convocation of an exceptional session of the Chamber of Deputies is a qualified tool for averting the same.

14. However, according to the petitioners, the rapid convocation of the exceptional session of the Chamber of Deputies shall not pass the test of necessity. The same objective would have been achieved also through considering the draft bill on 3 November, 4 November or 5 November 2010, without convening the exceptional session in 40 minutes being thus necessary. Such infringement, that is consideration and adoption of the draft bill during such a precariously convened session, is, according to the petitioners, arbitrarily “trampling on the political rights” of the opposition deputies pursuant to Article 21 paragraphs 1 and 4 of the Charter, and of citizens, pursuant to Article 21 paragraph 1 of the Charter. Such a rush seems to be necessary merely for pursuing another objective, this being consideration of the adopted draft bill in the Senate by 13 November 2010, that is prior to the date of cessation of mandates of Senators elected six years earlier. However, the petitioners consider this objective – eliminating Senators which had already been newly elected from participation in decision making of the Senate – to be illegitimate.

15. As convoking and holding the exceptional session of the Chamber of Deputies, in the petitioners’ opinion, clearly fails the test of necessity, it is not necessary to deal with the test of proportionality. In addition to this, the petitioners have pointed out that the infringement of rights and protected values is actually vast. In particular, the deputies who were properly excused from the 7th session of the Chamber of Deputies on 2 November 2010, had their legitimate expectations “trampled on”, such an expectation being that the four draft bills in question, including the contested one, would not be discussed that day. However, this

legitimate expectation was also affected with respect to the deputies who, being under the pressure of time anyway, familiarised themselves with the submitted draft bills, consulted on them and prepared amendments to the same. Convocation of the exceptional session within a term of 40 minutes, which goes against convention, as well as the meaning of § 51 paragraph 6 of the RPCD, thus considerably worsened the impacts of the actual declaration of the state of legislative emergency and, as a consequence, resulted in the fact that only four days (of which only two were working days) passed – from presenting the draft bill and adopting the same. In addition, such a four-day discussion of the draft bill was not foreseeable at the beginning of the fourth day.

I. B.c) Unjustified Denial of General Debate

16. The petitioners doubted also the procedure through which holding a general debate when adopting the contested act was precluded. Pursuant to § 99 paragraph 7 of the RPCD, the Chamber of Deputies may decide, under a state of legislative emergency, that general debate in the second reading be abandoned. Through this, the complete discussion on the draft bill in the plenum of the Chamber of Deputies may be reduced to a detailed debate in the second reading, and immediately following the third reading is concluded with final voting. The above-quoted provisions of § 99 paragraph 7 of the RPCD must also be, in the petitioners' opinion, interpreted with respect to constitutional principles and values and pursuant to Article 22 of the Charter. Additionally, it is necessary to take into account the different function of general debate and detailed debate pursuant to § 93 and § 94 of the RPCD, where general debate is understood as an opportunity for political discussion and detailed debate as that merely for submitting amendments with a brief reasoning. The petitioners document this practice with extensive quotes from opinions of and proclamations from former and current officials chairing sessions of the Chamber of Deputies, which prove that truly general debate and detailed debate must be made distinct. According to the petitioners, abandoning general debate means another significant reduction in the freedom of speech of a Deputy and privilege of parliamentary debate, as it leads the deputies (with the exception of deputies with a preferential right to speak) to speak only in connection with presenting amendments or other proposals and restricts their input only to reasoning for such a proposal. Otherwise they expose themselves to intervention from the person chairing the session of the Chamber of Deputies, as was true in the case under consideration, which took place just a day after the contested act was adopted by the Chamber of Deputies. The course of action taken by the majority in the Chamber, which decided that general debate in the second reading would be abandoned, in spite of the fact that the Committee on Social Policy recommended discussing said draft bill in the second reading both in general debate and – all drafts – in detailed debate, thus means an infringement of the constitutionally guaranteed rights of the deputies pursuant to Article 21 paragraphs 1 and 4 of the Charter, and of citizens, pursuant to Article 21 paragraph 1 of the Charter. Therefore, the petitioners also subjected this infringement to the test of its suitability, necessity and proportionality.

17. However, abandonment of general debate is, in the petitioners' opinion, capable of accelerating the procedure of the Chamber of Deputies; but once again, rather in relation to the interest in the draft bill being considered still by the previous Senate, since in relation to the act becoming effective on 1 January 2011,

the amount of time saved in this manner is entirely marginal. However, the course of action taken by the majority in the Chamber, according to the petitioners, fails the test of necessity. Restriction of parliamentary debate by abandoning general debate appears to be totally without reason, as holding a general debate would not at all have impinged on the achievement of the objective declared, i.e. the act becoming effective on 1 January 2011 for the reason of preventing considerable economic losses. The petitioners also made a minor reference that the opposition deputies have by no means given rise to the anxieties voiced by the representatives of the government – that they would resort to stonewalling, i.e. delaying or precluding Parliament's actions. This potential fear of the current opposition so stonewalling was, therefore, not justified at all.

I. B.d) Denial of the right of the Elected Senators to Vote

18. Last but not least, the petitioners objected that due to the application of the summary consideration pursuant to § 118 of the SRS, upon a proposal by the government and a decision of the majority of the Senate not to permit adjournment and to not make use of the remaining 21 days from the thirty-day term pursuant to Article 46 paragraph 1 of the Constitution of the Czech Republic, the draft of the contested act was considered in the Senate as early as 12 November 2010; that is in the interim between the election of the Senate members which gave rise to the mandates of newly elected Senators, and the moment when the mandates of the Senators elected six years earlier ceased to exist. In spite of the fact that one session of the Senate has usually been held in such interim periods in the past terms of office (only in the years 1998 and 2004 was no such session held), and pursuant to both actual practice and legal science the newly elected Senators may not cast votes at such a session, the petitioners believed that holding a second session of the Senate in the given interim period, and particularly on 12 November 2010, which is on the last but one day of the validity of mandates of the Senators elected in 2004, suggests traits of arbitrariness on the part of the governmental majority, attempting to deny the right of the newly elected Senators to cast votes, or, as the case may be, to ensure voting at the last possible moment when the government's supporters still held the majority in the Senate.

19. According to the petitioners, the summary consideration pursuant to § 118 of the SRS must be seen in the context of the above-specified defects in the legislative process relating to the contested act. Were it not for the accumulation of non-standard actions by the governmental majority, that is declaration of the state of legislative emergency without consensus and convincing substantiation, convocation of an exceptional session of the Chamber of Deputies with a drastic shortening of the five-day term, and consideration of the draft bill without a general debate in the evening hours of a single day, it would not have been possible to consider the draft bill in the Senate prior to cessation of the mandates of the Senators elected in 2004. On the basis of a series of steps taken by the government and the governmental majority in the Chamber of Deputies and the Senate, the petitioners believe that the main objective was to block proper consideration of the draft at the session of the Senate which could be attended by the newly elected Senators, and where the government's supporters would no longer hold the majority. However, according to the petitioners, this procedure infringes the constitutional right of the Senators to exercise their mandates, when such mandates come into being as soon as a senator is elected. Such a right of the

Senators must be measured, under these circumstances, against antagonistic constitutional values which consist of the capability of the Senate to express opinions concerning a draft bill within the term of thirty days established by the Constitution of the Czech Republic on one hand, and the interest in the indubitable nature of a resolution of the Senate through a possible decision of the Supreme Administrative Court on the invalidity of the election on the other. The hitherto practice of a single session of the Senate within the given interim, where such draft bills are discussed for which a thirty-day term expires prior to the first session of the new term of office, is, in this respect, according to the petitioners, a reasonable and balanced solution to this collision.

20. On the contrary, the petitioners believe that consideration of the draft of the contested act at the 25th session of the Senate on 12 November 2010 constituted a direct infringement of the Senators' right to uninterrupted exercise of their mandates, without sound reasons for such a course of action being prima facie apparent. In addition, the petitioners subjected such an infringement to the above-outlined test of proportionality and arrived at the conclusion that the only declared legitimate objective may again be prevention of considerable economic losses, which were allegedly threatening unless the act was to become effective at the latest on 1 January 2011. With respect to suitability, the petitioners admitted that consideration of the draft of the contested act pursuant to § 118 of the SRS as early as 12 November 2010 was capable of accelerating the legislative process.

21. Nevertheless, according to the petitioners, such accelerated discussion of the draft of the contested act in the Senate fails the test of necessity. This was documented by the petitioners using the statement of the Vice-President of the Senate, P. Pithart, at the beginning of the given session: "It is not true that if we do not proceed via a summary consideration, the proposed amendments to the acts cannot become valid from the first day of the following year. They can. The only point is that other steps would have to be taken, by all those from whom such steps are expected, earlier than at the very end of the statutory term. When the rule of the majority adjusted by the protection of minorities and rights of individuals turns into the mere rule of said majority, democracy itself begins to falter." In such a connection, the petitioners remarked that the thirty-day term of the Senate for consideration of the draft of the contested act ended on 3 December 2010. At that time the newly elected Senators could have attended the discussion and a proper debate could have been held, for which they could have prepared. If the Senate had dismissed the draft bill or returned the same with amendments as late as 3 December 2010, the Chamber of Deputies could have considered the same again, in the proper manner (i.e. were it not for the state of legislative emergency), after ten days (cf. § 97 paragraph 3 or 4 of the RPCD), which is as early as the week commencing 13 December 2010. The petitioners believed, with respect to public statements by the President of the Republic, that possible application of the President's veto pursuant to Article 50 of the Constitution of the Czech Republic was completely unlikely, and the expectation that the contested act would soon be signed by the President was fulfilled, as the President appended his signature as early as the fourth day after the act had been submitted to him. Therefore, according to the petitioners, promulgation of the act even before the end of the year would not be obstructed in any way, even in the case of the same being considered by the Senate and then several days later also

by the Chamber of Deputies, which would make it possible for the Senate to fulfil its function and the opposition would have been capable of effectively exercising its rights within the legislative process. The method of considering and adopting the contested act in the Senate consequently forms, according to the petitioners, an inadequate infringement of the right of the Senators elected in 2010 to exercise their mandates pursuant to Article 21 paragraph 4 of the Charter in connection with Article 4 paragraph 4 of the Charter. Senators may exercise their mandate only once they have taken the oath, but purposeful and arbitrary postponement of an essential political decision in contravention of parliamentary conventions prior to the moment of potentially taking the oath does not respect the essence and meaning of such a restriction of the exercise of the Senator's mandate. As a result of such an artificially maintained governmental majority in the Senate, adoption immediately after the general debate (§ 108 paragraph 2 of the SRS) was facilitated, and thus the opposition's senators (unlike the deputies who simply did not have sufficient time for preparation) could not submit amendments at all.

I. C) Description of Circumstances Surrounding the Legislative Procedure for Adopting the Contested Act

22. The Constitutional Court cross-checked the statements specified in the petition with shorthand records from the meetings of the Chamber of Deputies, the Senate and their committees, and further with the resolutions and prints of the Chamber of Deputies, freely available from the digital library at the website of the Chamber of Deputies and the Senate of the Parliament of the Czech Republic at www.psp.cz and www.senat.cz.

23. On 5 October 2010, the government submitted to the Chamber of Deputies a draft of the Act Whereby Some Acts are Altered in Connection with Economisation Measures under the Competence of the Ministry of Labour and Social Affairs, approved by Government Resolution No. 672, dated 22 September 2010, and proposed such discussion of the draft so as to permit the Chamber of Deputies to approve the same as early as during the first reading (§ 90 paragraph 2 of the RPCD). On 8 October 2010, such a draft was distributed to the deputies as Print of the Chamber of Deputies No. 120/0 – governmental draft of Act in Connection with Economisation Measures under the Competence of the Ministry of Labour and Social Affairs. The draft bill of 26 pages was set to amend 18 other acts, and an Explanatory Report of 80 pages was appended to the draft. On 14 October 2010, the Steering Committee recommended consideration of the draft bill, appointed a rapporteur and proposed that the draft be considered by the Committee on Social Policy (resolution No. 32). The first reading commenced at 4:00 p.m. on 26 October 2010 in the 7th session, where the draft was considered within a general debate. During this, the Chamber of Deputies did not agree with holding the discussion in such a way that the Chamber would manage to approve the draft bill as early as in the first reading, and, after information on the forthcoming proposal from the government for declaration of legislative emergency appeared in press, the political group of the Czech Social Democratic Party (ČSSD), at 5:20 p.m., requested a recess be permitted. This request was granted and discussion of the draft bill was discontinued until 9:00 a.m. on 27 October 2010. In fact, the government withdrew, on the basis of Resolution No. 758, dated 26 October 2010, this draft bill (together with three more governmental draft bills) on 27 October 2010 during the first reading. The actual 7th session of the Chamber of Deputies

continued until 2:02 p.m. on 29 October 2010, when the same was discontinued until 2 November 2010 at 2:00 p.m.

24. In the interim, the government, on the basis of Resolution No. 759, dated 26 October 2010 firstly proposed that the Chairperson of the Chamber of Deputies declare a state of legislative emergency for the period from 1 November to 5 November 2010 for consideration of the same governmental draft bill (together with the three governmental draft bills mentioned above), secondly requested that the Chairperson of the Chamber of Deputies decide that the above-mentioned governmental draft bills would be considered within a summary consideration within the scope of the state of legislative emergency thus declared, and also requested the President of the Senate that the Senate actually discuss the governmental draft bills mentioned above as part of said summary consideration. At the same time the government authorised the Prime Minister to re-submit the governmental draft bills mentioned above, as well as the draft bills adopted on the basis of the government's resolution quoted above, to the Chairperson of the Chamber of Deputies for additional consideration.

25. The governmental draft of the contested act was thus re-submitted by the government to the Chamber of Deputies on 29 October 2010, and distributed to the deputies on the same day as Print of the Chamber of Deputies No. 155/0 – the governmental draft of Act in Connection with Economisation Measures under the Competence of the Ministry of Labour and Social Affairs (as well as the remaining three governmental draft bills mentioned above –Prints of the Chamber of Deputies Nos. 156 to 158).

26. Consequently, the Chairperson of the Chamber of Deputies, on the basis of the proposal by the government mentioned above, through decision No. 7, dated 29 October 2010, declared, pursuant to § 99 paragraph 1 of the RPCD, a state of legislative emergency for the period from 1 November to 15 November 2010. In her decision she stated, amongst other points, that the request by the Prime Minister, Petr Nečas, was substantiated by "the threat of considerable economic losses". Immediately thereafter, the Chairperson of the Chamber of Deputies decided, through decision No. 8 of the same date, pursuant to § 99 paragraph 2 of the RPCD, that the governmental draft bill in question (together with the other three) would be considered as part of a summary consideration (without the 1st reading) and, pursuant to § 99 paragraph 3 of the RPCD, allocated Print of the Chamber of Deputies No. 155 to the Committee on Social Policy, and also established "an unexceedable term for submitting a resolution: 2 November 2010, 12:00 noon" for consideration of the same.

27. On 2 November 2010 at 2:02 p.m., the interrupted 7th session of the Chamber of Deputies resumed. The Chamber of Deputies firstly assessed whether conditions for the state of legislative emergency remained in place. Statements from the petitioners as well as shorthand records from the given session make it clear that several opposition deputies during the general debate objected to these steps taken by the Chairperson of the Chamber of Deputies, claiming that the RPCD are thus violated as, pursuant to § 99 paragraph 4 of the RPCD, the Chamber of Deputies is to evaluate the continuance of the state of legislative emergency always "before consideration of the proposed agenda of the session", while the

agenda of the ongoing 7th session of the Chamber of Deputies was approved as early as the date of 26 October 2010, and Print of the Chamber of Deputies No. 155 had not been included (and could not have been included) on such an agenda. To the contrary, Petr Tluchoř, chairman of the political group of the Civic Democratic Party (ODS), in the course of the session (3:19 p.m.), announced that he was to submit a proposal from the coalition deputies for convening an exceptional session of the Chamber of Deputies and recommended that such a session be convened on the same day at 4:00 p.m. The Chairperson of the Chamber of Deputies immediately granted this proposal (at 3:20 p.m.) and put the conference of the 7th session into recess until 4:00 p.m., when the 8th session of the Chamber of Deputies would commence. As was emphasised by the petitioners, 40 minutes passed between the recess of the 7th session and commencement of the so convened 8th session of the Chamber of Deputies.

28. The 8th session that was convened by the Chairperson of the Chamber of Deputies pursuant to § 51 paragraph 4 of the RPCD, this on the basis of a request by 108 deputies, commenced at 4:01 p.m. In relation to this, the petitioners pointed out the fact that the Chairperson of the Chamber of Deputies did not respect the RPCD, the provisions of § 51 paragraph 6 of which impose on her the duty to inform all deputies of the convocation of each session of the Chamber of Deputies at least 5 days in advance, this objection being raised by the Deputy V. Filip. According to the statement made by the petitioners, the invitation to attend the 8th session of the Chamber of Deputies was sent to the deputies by the Organisation Department of the Office of the Chamber of Deputies by electronic mail a mere 7 minutes before the so convened session actually commenced, and the opposition not only had no possibility to prepare properly for said session, but also some of the opposition deputies had no chance to actually arrive for the same. Furthermore, the chairman of the political group of the Czech Social Democratic Party (ČSSD) responded to such non-compliance with the term, pursuant to the same provisions of the RPCD, by filing a proposal for adjournment of the session until the following day, i.e. 3 November 2010 at 9:00 a.m., and substantiated this by stating the intention that all the deputies would then be able to prepare for said session in the proper manner. However, this proposal was not accepted (see voting No. 2).

29. After the opening of the 8th session of the Chamber of Deputies, the opposition deputies again spoke in the debate and referred to the non-compliance with the conditions for declaring the state of legislative emergency, or the abuse of such an instrument by the governmental majority to the detriment of the rights of the political minority. The Chairman of the political group of the Czech Social Democratic Party (ČSSD) then requested a recess of two hours in the session of the plenum for the purpose of a meeting for counsel of the political group of the Czech Social Democratic Party (ČSSD). This request was dismissed (voting No. 3). Consequently, the Chairman of the political group of the Civic Democratic Party (ODS) filed a procedural proposal “that the Chamber of Deputies is to meet and vote on acts additionally after 7:00 p.m., 9:00 p.m. and midnight”. The Chamber of Deputies approved the proposal in voting No. 4 and proceeded to assess whether the conditions for the state of legislative emergency for considering Prints of the Chamber of Deputies Nos. 155 to 158 still continued to exist, and adopted Resolution No. 111, whereby continuance of the state of legislative emergency was confirmed (voting No. 5 – votes cast as follows: 151 deputies were present, 105

voted for it, 46 against it). Consequently, the agenda of the 8th session was approved (voting No. 6), and the body proceeded to discuss the individual points on the agenda.

30. Before actually discussing the bill of the contested act, the Chamber of Deputies this time examined whether conditions for considering the bill of the contested act as part of the summary consideration were given, and the Chamber of Deputies adopted Resolution No. 112, whereby they declared that the conditions for considering the bill of the contested act as part of the summary consideration continued to exist (vote No. 7 – votes cast as follows: 134 deputies were present, 90 voted for it, 39 against it). Thus it was possible to consider the bill of the contested act in the second reading. In connection with this, the petitioners pointed out the fact that from the time of submission of the draft bill to the commencement of discussion on the same in the Chamber of Deputies, only four days had passed, i.e. from 29 October 2010 (Friday), including Saturday and Sunday, and discussion of the draft bill as early as 2 November 2010 was not sufficiently foreseeable for the opposition deputies, they were not given the chance to familiarise themselves in detail with the matter under discussion and give an informed opinion on the same, especially with respect to the fact that not only the bill of the contested act had been scheduled and considered in the above-mentioned manner, but so had also three other draft bills (Prints of the Chamber of Deputies Nos. 156 to 158).

31. On the basis of the above-specified decision of the Chairperson of the Chamber of Deputies No. 8, the appointed Committee on Social Policy considered the draft bill and, on 2 November 2010, passed a resolution delivered to the deputies as Print No. 155/1 (amendments), in which they recommended the Chamber of Deputies to "discuss the bill within a general debate; consider all parts of the same in an additional detailed debate, this by Friday 5 November 2010 by 4:00 p.m."; additionally, the Chamber of Deputies was recommended to approve the draft bill with the above amendments. As was emphasised by the petitioners, in spite of the fact it had been decided, on the basis of vote No. 8, not to hold a general debate within the scope of the second reading as part of adopting the bill of the contested act, and the detailed debate took place immediately, at which six deputies and minister J. Drábek as the Rapporteur for the bill spoke. Immediately thereafter, pursuant to § 99 paragraph 7 of the RPCD, the third reading of the draft of the contested act commenced; firstly, votes were cast concerning amendments suggested by the Rapporteur of the Committee and some deputies, and consequently votes were cast on actual adoption of the bill of the contested act in the wording of the amendments so approved, and the bill of the contested act was adopted (resolution No. 113) after the Chamber of Deputies expressed its approval with the same, when of 156 deputies present, 108 voted for and 47 voted against the bill (vote No. 17 held at 8:45 p.m.).

32. On 3 November 2010, the Chamber of Deputies advanced the bill of the contested act to the Senate, and on the same day, the Organisation Committee assigned the same as Print No. 363/0 to the Committee on Health and Social Policy as a guarantor. The Committee on Health and Social Policy discussed the bill and on 11 November 2010 adopted Resolution No. 76, whereby they recommended that the Senate approve the bill; this Resolution was distributed as Print No. 363/1. The

Senate placed this Print as part of its 25th session that was convened by the President of the Senate pursuant to § 118 paragraph 3 of the SRS to take place on 12 November 2010. Immediately after its commencement, voting was held concerning the above-mentioned request by the government, dated 26 October 2010 for the Senate to consider the bill of the contested act (together with the remaining three) within the summary consideration pursuant to § 118 of the SRS, and, on the basis of vote No. 3, this request by the government was granted and the bill of the contested act was considered in the summary consideration. After closing the debate (pursuant to § 108 of the SRS, a detailed debate, at which amendments could be submitted, was not held), Resolution No. 601 was adopted, whereby the Senate approved the draft bill in the wording submitted to the Senate by the Chamber of Deputies. Forty-two senators of those 77 present voted for the resolution, 30 voted against, whilst 5 senators abstained.

33. On 19 November 2010, the act was delivered to the President of the Republic, who signed it on 23 November 2010. On 30 November 2010, the approved act was delivered to the Prime Minister to be signed. On 8 December 2010, the act was promulgated in the Collection of Laws under No. 347/2010 Coll. with effectiveness from 1 January 2011, with the exception of the provisions of Article XXIX clause 1, which became effective on the date of promulgation of the act. In connection with this, the petitioners referred to the contrast between the speed of the legislative process (the draft bill was submitted on 29 October 2010, approved by the Chamber of Deputies on 2 November 2010, approved by the Senate on 12 November 2010 and signed by the President of the Republic on 23 November 2010, i.e. a mere 25 days after submitting the draft bill) and slowness of promulgation of the adopted act in the Collection of Laws (8 December 2010, that is 15 days after the President appended his signature). Even though the unusual haste (according to the petitioners) of the legislative process was explained by the government as exceptional circumstances where the state risked considerable economic losses (§ 99 paragraph 1 of the RPCD), the executive actually took longer than usual to promulgate the act after the same had been signed by the President. So delayed promulgation of an adopted act firstly shortens vacatio legis; that is the period between the promulgation of an act and the time the same takes legal effect, and thus also the opportunity for citizens to duly familiarise themselves with the new legal arrangement; secondly, it considerably aggravates the possibility of a constitutional review, as, according to the petitioners, the actual effects of the unconstitutionally adopted act may only be effectively averted if the contested act is annulled by the Constitutional Court before the date of effectiveness of the same. As a result of steps taken by the bodies of executive power, resulting in Act No. 347/2010 Coll. being promulgated as late as 8 December 2010, it proved possible to file the petition for annulment of said act merely 24 days prior to the date of effectiveness of the same.

I. D) Summary

34. At the close, the petitioners briefly recapitulated their petition, saying that as a result of the above-described procedure, the bill of the contested act was approved by the Chamber of Deputies as early as the second working day after it had been submitted, when only on this second day it became apparent that such a day would be also the last one. Due to the shortness of time it was not possible to properly prepare amendments concerning the bill and consult them, and due to the

combination of lack of time and the omission of the general debate, the opportunity to argue against the draft bill within the parliamentary debate in the Chamber of Deputies was considerably aggravated. According to the petitioners, the government coalition also intentionally evaded a thorough critical discussion in the Senate, the chance to submit amendments there as well as the potential exercise of powers of the Senate restored via the election to dismiss the draft bill or return the same to the Chamber of Deputies. This was achieved by combining the abuse of the state of legislative emergency, the unforeseeable convocation of the exceptional session of the Chamber of Deputies, as well as restricting the time for discussing the draft bill in the Senate to a mere nine days from the constitutional term of thirty days. With respect to an act which represents no trivial restriction of fundamental rights and freedoms, Parliament thus completely failed in its constitutional role as the instance of legitimisation. The petitioners pointed out that they did not contest all the acts adopted by Parliament in November 2010 whilst under the state of legislative emergency, in spite of the fact that most of the defects specified below may be found even in the case of such acts. Adoption of the contested act was, however, associated with the extreme arbitrariness of the governmental majority and, from a broader point of view, the petitioners believe that the manner of adopting the contested act effectively means the continuation of a tendency which is extremely harmful to the development of democracy in the Czech Republic. It is a tendency leading to marginalisation of Parliament and parliamentary debates, which they pointed out also by referring to circumstances surrounding adoption of Act No. 261/2007 Coll. on Stabilisation of Public Budgets, when the manner of adoption of this act, as well as the manner of adoption of the contested act, shows a tendency by the governmental majority to abridge the possibility of free discussion in both chambers of Parliament. Parliamentary debate thus loses its contradictory quality which is so important for fulfilling its functions. These are all expressions of the tendency to trivialise both chambers of Parliament to a mere voting instrument, which effectively would only serve to recast a political decision of the governmental majority in the form of an adopted act as quickly as possible and with the minimum of inconvenient debate. If the contested act is not annulled, with the unconstitutionality of such abridgement of parliamentary debate thus being clearly declared, then, according to the petitioners, such a method of adopting principal acts that represent statutory restriction of fundamental rights and freedoms may soon become the rule and standard practice; the petitioners, through their petition, would wish to prevent this.

II.
Recapitulation of Statements Provided by the Parties to the Proceedings

35. The Constitutional Court, pursuant to the provisions of § 42 paragraph 4 and § 69 of Act No. 182/1993 Coll. on the Constitutional Court, as amended by later regulations (hereinafter referred to only as the “Act on the Constitutional Court”), sent the given petition for annulment of the contested provisions to the Chamber of Deputies and to the Senate of the Parliament of the Czech Republic.

36. The Chamber of Deputies of the Parliament of the Czech Republic, represented by Miroslava Němcová, the Chairperson, in its statement dated 22 December 2010, in particular described in detail the procedure for adopting Act No. 347/2010 Coll. Whereby Some Acts are Altered in Connection with Economisation Measures under

the Competence of the Ministry of Labour and Social Affairs. At the close she stated that the contested act was adopted after a properly conducted legislative process, and it is up to the Constitutional Court to evaluate its constitutionality.

37. The Senate of the Parliament of the Czech Republic, represented by Milan Štěch, the President, in a statement dated 22 December 2010, also presented a detailed description of the procedure for evaluating the contested Act No. 347/2010 Coll. by the Senate, amended with a copy of a shorthand record from the 25th session of the Senate dated 12 November 2010.

38. In addition, the Senate presented, with respect to the petition by the group of deputies, specifically as regards the objection of denial of the right of newly elected senators to cast votes, a legal analysis of the issue of verifying the validity of the election of the senators, and concluded that the senators newly elected in the October election to the Senate could not be allowed access and vote (that is the exercise of their mandates) at the session of the Senate held in the previous 7th term of office from 12 November 2010, as at that time it was not verified that the mandates of the senators had actually originated. The point is that the mandates of senators elected in the October election to the Senate were verified by the Committee on Mandate and Parliamentary Privilege of the Senate as late as at a session held on 24 November 2010, after submission of certification of their being elected. On the same date, the first session of the Senate in the new 8th term of office commenced, at which the newly elected Senators took an oath prescribed by the Constitution of the Czech Republic and began to exercise their mandates constituted by the election.

39. By way of a letter dated 18 January 2011, the Constitutional Court requested a statement from the Prime Minister P. Nečas regarding specific reasons for adopting Government Resolution No. 759, dated 26 October 2010, whereby the government proposed to the Chairperson of the Chamber of Deputies of the Parliament of the Czech Republic to declare the state of legislative emergency, and at the same time requested her to decide that the governmental bill of the contested act, amongst other items, would be considered as part of the summary consideration within the scope of the declared state of legislative emergency (see clause 24).

40. In his statement delivered to the Constitutional Court on 28 January 2011, the Prime Minister, P. Nečas, firstly recapitulated the circumstances surrounding the legislative procedure of adopting the original drafts of the governmental acts, which preceded the adoption of the given Government Resolution No. 759 (see clause 23). Consequently, beyond the scope of the information requested, he extensively presented a personal opinion on the issue of declaration of the state of legislative emergency in general, on the legal arrangement of such an instrument and its application in the past. As for the very reasons for which the government proposed that a state of legislative emergency should be declared in the given case, the Prime Minister stated that in the case of non-approval of the above-specified governmental draft bills, the Czech Republic would have risked incurring considerable economic losses. In addition he stated that the measures included in all the acts of reform should bring about yearly economies of up to CZK 45 billion, and on the contrary, non-adoption of such acts duly would result in considerable economic losses in the region of billions, perhaps tens of billions of Czech crowns,

as well as in problems regarding taxation and accounting. With respect to the fact that all the above-specified governmental draft bills were based on the draft bill concerning the state budget, failure to adopt them would either mean a greater deficit in the state budget (when, pursuant to the provisional budget, the very economy would be governed by the volume of income and expenses of the budget approved for 2010) or the outlook of the Czech Republic, expressed by the ratio of the deficit of public budgets to the GDP of 4.6% to 5.5%, would be worsened. Both conditions would mean considerable losses for the Czech Republic. A provisional budget would be a signal of internal instability and a signal of the government not being able to assert such reforms so as to maintain the deficit of public finances at a bearable level, which would decrease the credibility of the government and the whole Czech Republic. In the opinion of the Prime Minister, this would ultimately affect also the change of the approach of rating agencies and market participants in the assessment of the credit risk of the Czech Republic in the domestic and foreign capital markets, and thus the costs of servicing the national debt would considerably increase, which was described in greater detail by the Prime Minister in his statement using a specific example of the development of rating long-term foreign obligations of the Czech Republic pursuant to the evaluation of rating agencies. At the close of his speech, the Prime Minister stated that "as early as when the government, in a session on 22 September 2010, approved the given set of acts of reform, the government was aware of the fact that their late adoption might cause considerable economic losses to the Czech Republic and that exceptional circumstances, comparable with exceptional circumstances under which the state of legislative emergency was declared in the past, are given also as the result of a relatively restricted time frame for adoption of the given acts. However, the government decided to file a petition for declaration of the state of legislative emergency only as late as at the time it became clear that using other procedural instruments provided by the Rules of Procedure of the Chamber of Deputies (in particular granting approval of a draft as early as in the first reading, or shortening the term for consideration of the draft in such a way that the effectiveness of the reformist acts is secured together with the act on the state budget of the Czech Republic for 2011) could not effectively be employed as a result of the attitude adopted by the opposition. Therefore, the government was actually forced to make use of the instrument of the state of legislative emergency due to the attitude adopted by the opposition." (See pages 9 to 10). Therefore, the Prime Minister concluded his statement with a declaration that the government, in its decision making on the application of the procedure pursuant to § 99 paragraph 1 of the RPCD, proceeded fully in compliance with the law both in the case of withdrawal of the draft bills of the reformist acts and regarding the petition for declaration of the state of legislative emergency for the period from 1 November to 5 November 2010 for consideration of the same.

41. On 4 February 2011, the Constitutional Court received an unsolicited personal statement from the Chairperson of the Chamber of Deputies of the Parliament of the Czech Republic. In this document, she in particular states that it was her obligation to declare the state of legislative emergency pursuant to § 99 of the RPCD, and that she herself is not entitled to review and decide whether conditions for its declaration are given and whether she might herself declare the state of legislative emergency. Then, the Chairperson of the Chamber of Deputies recapitulated the process of adopting the act in question, from the stage when the

original bill of the governmental act was submitted for approval of the given bill of the contested act within the scope of legislative emergency at the exceptional session of the Chamber of Deputies. The objections from a group of deputies regarding the failure to meet the five-day term for convocation of a session of the Chamber of Deputies were rejected by the Chairperson by referring to a section of the second sentence, following the semicolon, of § 51 paragraph 6 of the RPCD, saying that the RPCD do not establish any minimal term that would have to be observed and under which the basic term of five days could not be reduced. The opposition deputies had the chance to voice their opinions on the draft bill and to present their amendments, as the draft bill was discussed by the Committee on Social Policy where also the opposition deputies were present, and said body adopted its amendments; further amendments were also submitted by the opposition deputies directly in the session of the Chamber of Deputies as part of the second reading. When the Chamber of Deputies decided to refrain from holding a general debate during the second reading, they proceeded in accordance with § 99 paragraph 7 of the RPCD and besides, in spite of such a general debate not being held, the opposition deputies with preferential right of speech could have presented their opinions. The Chairperson of the Chamber of Deputies rejected the notion of the inequality of time which was devoted to the draft bill in Parliament in comparison with the time required for its declaration in the Collection of Laws. The Chairperson of the Chamber of Deputies thus rejects that the instrument of legislative emergency was abused in the given case and states that, in her opinion, the exceptional session was convened pursuant to the statutory rules. The Chairperson discerned no so-claimed traits of arbitrariness, or failure in the safeguards of the constitutionally conforming legislative process in the steps she herself or the Chamber of Deputies took. Additionally, she does not identify with the opinion (which was, however, not presented by the petitioners in any way) pursuant to which the declaration of the state of legislative emergency ought to be supported by a considerable majority of the deputies, in order for such a state to be in accordance with the law; that is she rejected the opinion that when the ratio of voting is lower, i.e. when it corresponds to the actual ratio of the political powers in the Chamber of Deputies, such a procedure is not legitimate. She believes that the Constitutional Court should subject the given case to the test of proportionality between the alleged violation of the rights of minorities in the Chamber of Deputies and possible serious consequences relating to potential annulment of the act in question; this also with respect to the principle of minimising their infringement. At the close, the Chairperson of the Chamber of Deputies expressed bewilderment that in spite of the fact that the four acts were undergoing adoption within the scope of legislative emergency, the petitioners were only contesting, via the Constitutional Court, two of them.

III.
Findings from the Media and Public Resources

42. In order to obtain sufficient knowledge on political relations and the circumstances surrounding the declaration of the state of legislative emergency, the Constitutional Court, from the publicly available resources and media, gathered the following findings:

On 18 October 2010, in connection with the results of the 1st round of the elections to the Senate on 15 and 16 October 2010, Prime Minister Petr Nečas gave an interview to the media in which he was asked about possible complications for

governmental reforms in the case that the Czech Social Democratic Party (ČSSD) managed to secure the majority in the Senate after the second round of the elections (held on 22 and 23 October 2010). The Prime Minister's answer included the following: "(...) even though it would change nothing in the reformist efforts of the government, it would mean a vast destructive complication, as it would bring about prolongation of the entire legislative process and any conflicts" (source: Lidové noviny, 18 October 2010), "(...) the Czech Social Democratic Party (ČSSD) is not able to act as a constructive opposition, it forms a completely negative wave which complicates and spoils everything it can. An orange Senate would be a vast negative force which would only increase the potential of political conflicts. This would polarise society completely needlessly" (source: MF Dnes, 18 October 2010).
Immediately after approval of the governmental resolution on submitting a petition for declaration of the state of legislative emergency for consideration of the contested bill of the governmental act (and the remaining three bills), the Prime Minister P. Nečas commented on this step in the media as follows "(...) It was only possible to achieve this objective in the way we have taken. That means withdrawing them and resubmitting them together with a request for declaration of legislative emergency. (...) It is now unambiguously proven that these norms, with respect to obstructions caused by the Social Democratic Party (ČSSD), cannot be approved. Or are at grave risk of being not approved by the end of this year so that they become effective from 1 January of next year, to which the draft of the state budget is linked. This means that the reputation of the Czech Republic in the financial markets is considerably endangered: there is a risk of receiving a worse rating, there is a risk of increased debt service, a risk of a rise in the deficit of the state budget and ultimately, in some aspects, a risk of tax evasion. This all contributes to the danger of great economic losses and under such circumstances it is the obligation of the government to prevent great economic losses and declare such a state of legislative emergency." (Source: ČT 24 / Czech Television 24 – Události, komentáře / Affairs, Commentaries, 26 October 2010, similarly also on ČRo Rádio Česko / Czech Radio – Rozhovor na aktuální téma / Interview on current affairs, 27 October 2010). "We had no choice. (...) With respect to the totally obstructive and destructive behaviour of the Social Democratic Party. (...) Non-adoption of acts on which the budget for the following year is based would well cause economic losses to the Czech Republic." (Source: "Škrty a zase škrty. / Cuts and more cuts. Koaliční lavina smetla opozici / The coalition avalanche swept aside the opposition", Lidové noviny, 3 November 2010).
Furthermore, the Chairman of the political group of the Civic Democratic Party (ODS), P. Tluchoř, gave an opinion regarding the reasons for declaration of the state of legislative emergency: "(...) Well, because there were fundamental economic losses threatening the Czech Republic. Fundamental economic detriment, if the acts submitted by the government to the Chamber of Deputies had not been adopted before 1 January. It would not have been possible to pass the budget in such a form in which it was presented. And that would be the starting point for a whole number of other steps. We made an effort, even on Monday and Tuesday we clearly offered to discuss the acts in a reasonable standard manner. We proposed that the term should be shortened to 15 days. This would make consideration in committees easily possible, and it would also make it possible to adopt the acts or their effectiveness by 1 January 2011. Therefore, I am still talking about the situation when the Social Democratic Party advised of a complete blockade in the Senate, when the Social Democrats decided to impede

these acts. So, this reason is clear." (Source: ČRo 1 – Radiožurnál / Czech Radio 1 – Radio Journal: Stalo se dnes / Round-up of the Day, 29 October 2010).
The Chairwoman of the political group of VV (Public Affairs), K. Kočí, declared – regarding the given issue – that "(...) the state of legislative emergency has been employed by the Chamber of Deputies several times before; its purpose is to make possible a more streamlined discussion of draft bills. Naturally, I prefer a standard legislative process, but the destructive conduct of the opposition gave the coalition no other choice. (...) We did not want it, and I personally believe that state of legislative emergency is the ultimate solution. I truly was in favour of approving that in a standard way. Nevertheless, the opposition did not make it possible for us last week to approve these key acts within the summary proceedings for us to manage to achieve it; they had already clearly declared in the Senate, in which they hold the majority after the last elections to the Senate, that they would immediately veto and return all these acts, meaning it would be impossible to really do it within the proper term before the end of this year. That's the reason for that state of legislative emergency." At the same time she expressed her conviction that the draft bills could have been submitted to the Chamber of Deputies earlier and, in such a case, the state of legislative emergency would not have been necessary. "(...) It is simply a fact that some ministers of this government, be it for the reason of elections or for some other reason…I don't want to say that they were inactive, but still, they did not pass it to the Chamber of Deputies." (Source: ČT 24 / Czech Television 24, 3 November 2010, or "Kočí: Zahnali nás do kouta. Proto jsme sáhli po legislativní nouzi / Kočí: They had us cornered. That's why we used the legislative emergency", Parlamentní listy, 8 November 2010, available at http://www.parlamentnilisty.cz/parlament/180705.aspx).
K. Klasnová, the Vice-chairperson of the Chamber of Deputies, spoke in the same spirit: "(...) however much I may believe that our coalition partners perhaps waited to submit the unpopular cuts at a period after the October elections, I regret the hysteria created by the state of legislative emergency." (Source: "Listopad ve sněmovně očima její místopředsedkyně / November in the Chamber as seen by its Vice-chair", 9 December 2010, available at http://katerinaklasnova.cz/komentare-23-listopad-ve-snemovne-ocima-jeji-mistopredsedkyne).
The open letter from the coalition deputies, headed by the chairpersons of political groups of coalition political parties, through which they addressed the individual ministers of the government with an appeal regarding the acceleration of preparation of acts of reform, was also based on the same belief. "(...) With respect to knowledge on the terms and procedures applied in the Chambers, we would like to request of the ministers that we be able to discuss the same in an unhurried fashion within our the political groups so that everything may become valid from the beginning of 2012 (...) It is not our wish that such principal acts be approved under a pressure of time, for example, under a state of legislative emergency." (Source: HN.Ihned.cz, 8 December 2010).

IV.
Oral Hearing before the Constitutional Court
43. During the oral hearing before the Constitutional Court held on 8 February 2011, the parties to the proceedings in their declarations referred to their statements which formed the content of their respective written reports delivered

to the Constitutional Court. In addition, the Senate of the Parliament of the Czech Republic, represented by the Vice-President, A. Gajdůšková, emphasised the circumstances of the legislative procedure of adopting the contested act in the Senate, and stated that when the given draft bill was considered in the Chamber of Deputies in the summary consideration within the scope of the declared state of legislative emergency, then the wording of the provisions of § 118 of the SRS unambiguously imply the obligation of the Senate to consider the act so passed in adherence to the legislative process established by the Chamber of Deputies; that is within the summary consideration. In other words, the decision of the Chamber of Deputies to consider the given draft bill within the scope of legislative emergency pre-determined also the nature of the legislative process in the Senate as well as its very result.

44. The Constitutional Court called as a witness the Prime Minister of the Czech Republic, P. Nečas, for him to state his opinion on the factual circumstances of adoption of the resolution of the government, whereby the government proposed, to the Chairperson of the Chamber of Deputies of the Parliament of the Czech Republic, to declare the state of legislative emergency, and at the same time requested that she pass the decision that the governmental bill of the contested act would be considered in the summary consideration within the scope of the declared state of legislative emergency. After an inquiry from the President of the Constitutional Court, P. Rychetský, on what specifically formed the basis for the government to arrive at such a decision, Nečas answered that on the basis of the conduct of the opposition there was a real threat that the given bill of the contested act, together with other acts of reform, would not be adopted before 1 January 2011, which would cause the origination of considerable economic losses for the Czech Republic, and result in a change in the approach of rating agencies and market participants in the assessment of credit risks associated with the Czech Republic in the national and foreign capital markets. As for the query from the Vice-President of the Constitutional Court, E. Wagnerová, on whether Nečas could state an opinion on the term when, had the proper legislative process in the Parliament of the Czech Republic been observed, adoption of the contested draft bill would have been realistic, Nečas answered that it would probably have been during January or February 2011. To another question from the Vice-President of the Constitutional Court, asking that Nečas express an opinion on what amount of money (in absolute figures) Nečas considered would form considerable economic loss through an increase in the deficit of the state budget compared to that originally scheduled, he, using an analogy with the amount of economic losses caused, for example, by floods, specified an amount of approximately 45 billion crowns. Consequently, the Vice-President of the Constitutional Court asked whether P. Nečas would be able to specifically enumerate economic losses which would have been suffered upon adopting the contested act under the conditions of the proper legislative process which, in his opinion, would have been completed in January or February 2011. In response to this P. Nečas mentioned that these would have been economic losses in the region of some billions of crowns per month. The Vice-President of the Constitutional Court questioned the opinion of Nečas regarding the expected threat of change in the approach by rating agencies to assessing the credit risk of the Czech Republic in the national and foreign capital markets using statistical data published by the Czech National Bank and the rating agencies alone; these data indicate that, in addition to other points, for example,

even a considerable increase in the deficit of the state budget compared to the scheduled deficit in the budget for 2009 in fact would not mean such an advised decrease in the rating and change in the approach of rating agencies to assessing the credit risk of the Czech Republic, and thus she expressed doubts regarding such a threat. As for an enquiry from Justice V. Güttler and subsequent question asked by the Vice-President of the Constitutional Court regarding the steps chosen by the government, specifically why the acts of reform were adopted only after acceptance of the estimate of the state budget, or why the changes in the form of cuts anticipated by the contested draft bill were not adopted in the form of individual amendments to the given acts, P. Nečas stated that adoption of draft bills of reform as well as evaluation of the impact of the same represents a very complicated and comprehensive process which must be considered as a whole, within one package, in order to avoid unexpected and unforeseen infringements of its structure. Similar was the response of Nečas to the enquiry from Justice S. Balík on whether the government had assessed the possibility and impacts if the contested draft bill had been adopted within the scope of the proper legislative process and the remaining acts of reform had been adopted under the regime of legislative emergency. Regarding inquiries of the representative of the petitioners concerning some specific circumstances of and reasons for the steps chosen by the government (non-convocation of the exceptional session of the Chamber of Deputies at an earlier date or knowledge of the opinion of the opposition), Nečas' response was similar to that in his written statement dated 28 January 2010. As for another question from the representative of the petitioners on whether the government had possessed any specific analyses or data informing their decision to propose to the Chairperson of the Chamber of Deputies the declaration of the state of legislative emergency due to the threat of considerable economic losses, Nečas answered that there had been a whole number of expert opinions and statements to draw upon, naturally in the form of forecasts and probable scenarios and estimates. As for the query from Justice I. Janů on whether the Prime Minister believed that the deputies involved could have had doubts on what they were considering in the case of the repeatedly submitted bill of the contested act, and possibly on the basis of what such doubts were removed, Nečas said that each Deputy must have been informed of the specific content of the matter discussed, of which he had been assured several times by the sponsors alone.

45. During the oral hearing, the representative of the petitioners, B. Sobotka, proposed that evidence should be amended by hearing a witness – the Chairperson of the Chamber of Deputies, M. Němcová. For this purpose, the Constitutional Court adjourned the hearing to 22 February 2011.

46. Before holding the adjourned oral hearing, statements by the petitioners regarding the written statement of the Chairperson of the Chamber of Deputies, M. Němcová, dated 4 February 2011, regarding the written statement of the Prime Minister Nečas, dated 27 January 2011, and regarding his testimony before the Constitutional Court on 8 February 2011 were delivered to the Constitutional Court on 14 February 2011.

47. In relation to the written statement from the Chairperson of the Chamber of Deputies, the petitioners repeatedly presented argumentation which they had previously applied in their petition, and contrasted the same with the specific

declarations by the Chairperson of the Chamber of Deputies, in particular with the supposition that the deputies had had sufficient time available to become familiar with the discussed bills, this also with respect to the fact that the given governmental draft bills were submitted for a second time. In addition, they did not agree with the statement from the Chairperson of the Chamber of Deputies that the deputies of the opposition with preferential right of speech could have voiced their opinions on the given issue in spite of not holding the general debate, since abridgment of the debate regarding the draft bill only in relation to deputies with the preferential right to speak they consider to be discriminatory; this was also under criticism in the above-quoted Judgment of the Constitutional Court file No. Pl. ÚS 24/07. In relation to this, they pointed out that, compared to the past election term, the possibility on the part of the opposition deputies to communicate their assessments through persons with the preferential right of speech were considerably reduced as a result of a decrease in the number of officials of the Chamber of Deputies. Last but not least, the petitioners pointed out that the Chairperson of the Chamber of Deputies declared the state of legislative emergency in conflict with § 99 paragraph 1 of the RPCD, pursuant to which the Chairperson of the Chamber of Deputies declares a state of legislative emergency upon the proposal by the government for a definite period of time since she, in conflict with the proposal by the government, declared the state of legislative emergency for a period from 1 November 2010 until 15 November 2010 (not until 5 November 2010, as was proposed by the government).

48. In addition, the petitioners contrasted the written statement from the Prime Minister with the argumentation presented in their petition. Specifically, they did not agree with the statement from the Prime Minister regarding the obstructive conduct of the opposition, by which he tried to defend the steps taken by the government and the governmental majority in the Chamber of Deputies; this conduct is seen in the application of the objection pursuant to § 90 paragraph 3 of the RPCD, preventing the adoption of the draft bill at as early a stage as the first reading, and objections pursuant to § 91 paragraph 2 of the RPCD, preventing the shortening of the statutory term for consideration of the draft bill in committees by more than 30 days. The petitioners believe that exercise of rights granted by the RPCD in these two provisions to the minority in the Chamber certainly cannot be considered obstruction; that is abuse of the Rules of Procedure of the Chamber of Deputies in order to protract the parliamentary conference. The purpose of these provisions is to guarantee that the minority in the Chamber receive a minimum time frame for proper evaluation of draft bills; with respect to the instrument of adoption of an act in the first reading (§ 90 paragraphs 2 to 6 of the RPCD) it is clear that it is determined only for adopting simple and non-controversial draft bills. The petitioners, according to their statement, filed an objection pursuant to § 90 paragraph 3 of the RPCD so that they might put forward amendments to the submitted draft bills and thus exercise the actual function of opposition, consisting of offering alternate suggestions. The instrument of approving an act at as early a stage as the first reading does not allow submitting amendments. The petitioners believe that also their interest in shortening the sixty-day term for consideration of the draft bill in the committees by 30 days at the most was legitimate with respect to the importance of political decisions contained in the drafts, consisting in particular of restricting the statutory scope of economic and social rights guaranteed by the Charter. “We are convinced that our

interest in proper and thorough consideration of the submitted draft bill was easily foreseeable and, therefore, it cannot be legitimately used by the Prime Minister as sufficient reason for declaring the state of legislative emergency." (Page 5)

49. At the close, the petitioners also polemized with some statements from the Prime Minister presented during the oral hearing before the Constitutional Court. Regarding the statement that if it were not for the steps taken by the opposition, who vetoed both the procedure pursuant to § 90 of the RPCD and diminishment of the terms for consideration by the committee to a period of 15 days, "a standard second reading would have taken place and, from the viewpoint of said terms, this draft would have been discussed by the newly composed Senate", the petitioners remarked that if the Prime Minister understood the fact, with respect to the original draft bill, that it would have been, following approval by the Chamber of Deputies, discussed by the newly composed Senate, then it seems to be illogical that this draft bill was, after having been withdrawn and resubmitted, considered by the Senate as previously composed, even though such a draft was submitted to the Chamber of Deputies three weeks later than the original governmental draft bill. The petitioners also criticised the reply given by the Prime Minister regarding the impacts of the given governmental draft bill to the state budget and regarding the consequences of the failure to adopt the same, and stated that even the Explanatory Report to the bill of the contested act quantified its impacts on the state budget for 2011 differently, in such a way that in terms of expense there would exist a decrease of CZK 11.283 billion and with respect to income, there would exist an increase of CZK 12.22 billion. Thus, this amendment has a total impact on the annual balance of the 2011 state budget of approximately CZK 23.5 billion. If, according to the petitioners, the total impact of the contested act is reflected in the annual balance of the state budget in a sum of approximately CZK 23.5 billion, then in a situation in which this act would have become effective later than as to 1 January 2011, it would have represented an impact on the balance of the state budget at the amount of approximately CZK 1.96 billion per month. Therefore, had the contested act become effective, for example, as of 1 February 2011, which would have been completely realistic upon proper consideration without declaring the state of legislative emergency, it would have been reflected in the balance of the state budget at the amount of CZK 1.96 billion, upon effectiveness of the act from 1 March 2011 at the amount of approximately CZK 3.92 billion, and so on. Therefore, even such postponement would definitely not be capable of increasing the deficit of public finance "to the magnitude of tens of billions" as was postulated by the Prime Minister. According to the petitioners, the data presented by the Prime Minister, which heightened the impacts on the state budget of all acts in question by more than one third, cannot be considered well founded. The petitioners also emphasised that according to the statement from the Prime Minister, the government, upon presenting the request for consideration of the contested draft bill under the state of legislative emergency, did not have available any analyses or other relevant data in order to discern the level of the threat of considerable economic losses processed for such a purpose by any relevant authority. The government did not have such analyses made even at the time of preparing the contested draft bill, and yet the government under such circumstances should have or could have requested, in the opinion of the petitioners, that such data be developed, in particular by the Ministry of Finance and the Czech National Bank. Last but not least, the petitioners did not identify

themselves with the repeated references by the Prime Minister to assessment by rating agencies, since according to the petitioners, the opinions of rating agencies bear no relation whatsoever to adoption or non-adoption, or the method of consideration, and, therefore, also the time of effectiveness of the contested draft bill, all the less so to the specific budgetary impacts of the measures introduced by the same from the viewpoint of preventing the origination of possible considerable economic losses.

50. Furthermore, on 17 February 2011, the Chairperson of the Chamber of Deputies delivered to the Constitutional Court an overview of the instances of the state of legislative emergency declared in the Chamber of Deputies since 1995 to present. As she stated, this overview should provide information for the Constitutional Court concerning the number and types of cases in which the state of legislative emergency has been declared in the past and in which cases the acts discussed under such a state were enlisted to the agenda of the session of the Chamber of Deputies contemporary to the time. The overview makes it clear that the state of legislative emergency was declared 23 times within the given period of time.

51. On 22 February 2011, the oral hearing before the Constitutional Court continued by examining a witness, M. Němcová, the Chairperson of the Chamber of Deputies of the Parliament of the Czech Republic, who was summoned by the Constitutional Court upon request by the petitioners, for her to make a statement concerning the factual circumstances of adoption of her decision dated 29 October 2010, whereby she granted the requests of the government and declared the state of legislative emergency and also decided on consideration of the governmental bill of the contested act in the summary consideration within the scope of the state of legislative emergency so declared.

52. Firstly, the Chairperson of the Chamber of Deputies, upon queries voiced by P. Holländer, the Vice-President of the Constitutional Court, gave an opinion on arguments and reasons which specifically had led her to her decision; she emphasised that on the basis of the verbatim wording of § 99 paragraph 1 of the RPCD, and from the hitherto practice of the Chamber of Deputies, it was clear that she is not entitled to judge and evaluate the reasons for which the government submitted the petition for declaration of the state of legislative emergency. Consequently, this argumentation so voiced by her was confronted by the Vice-President of the Constitutional Court with the fact that she, in decision No. 7, dated 29 October 2010, declared the state of legislative emergency for a period of time longer than proposed by the government, which was again explained by the Chairperson of the Chamber of Deputies by the hitherto practice from the past and also so as to provide sufficient time for proper consideration of all governmental draft bills under such legislative emergency; she had consulted the legal department of the Chamber of Deputies and with the legislative department concerning this issue.

53. To answer the query made by the Vice-President of the Constitutional Court, E. Wagnerová, if and how the Chairperson of the Chamber of Deputies justified the adoption of her decision on consideration of the governmental bill of the contested act in the summary consideration within the scope of the state of legislative emergency declared, adopted according to § 99 paragraph 2 of the RPCD which

provides her with a certain degree of discretion, the Chairperson of the Chamber of Deputies specified that she had based her reasoning on the hitherto course of discussion of said act in the Chamber of Deputies and on the statement from the Prime Minister on possible economic losses which might occur as a result of failure to adopt the same duly, and expressed her conviction that as a result of the fact that the contested draft bill had been submitted repeatedly, all the deputies were sufficiently familiarised with the content under discussion. Thereafter, the Vice-President of the Constitutional Court contrasted her argumentation with reality, both with the specific circumstances of adopting the contested draft bill, described above in the Judgment, and with statements from M. Benda and F. Laudát, deputies of the Civic Democratic Party (ODS) and TOP 09 respectively, communicated via the media, whereby they responded to the fact that by adopting the amendment to the act on income tax, perquisites of the deputies were taxed and their income thus reduced, of which they were not informed within the discussion and which was not apparent. Therefore, the Vice-President of the Constitutional Court repeatedly asked whether the Chairperson of the Chamber of Deputies persisted in her opinion on sufficient information and knowledge on the part of all deputies regarding the content of the draft bill which is now under examination and which is undoubtedly more complicated, and its possible impact; the Chairperson of the Chamber of Deputies emphasised that the point in question represented merely a subjective statement from the individual deputies. Consequently, the Vice-President of the Constitutional Court, by referring to Article 68 paragraph 1 of the Constitution of the Czech Republic, establishing the accountability of the government to the Chamber of Deputies, questioned the attitude voiced by the Chairperson of the Chamber of Deputies concerning her being bound by proposals submitted to her by the government, which rather suggests the opposite position; i.e. that the parliamentary majority is answerable to the government.

54. As to the query of the President of the Constitutional Court P. Rychetský, whether a similar situation, that is withdrawal of the governmental draft bill in the course of its proper discussion and its resubmission under the state of legislative emergency as in the case now under examination, took place within the hitherto practice of the Chamber of Deputies in declaration of the state of legislative emergency, the Chairperson of the Chamber of Deputies stated that she did not remember any such instance.

55. Justice of the Constitutional Court V. Güttler aimed his enquiries at the 8th exceptional meeting convened by the Chairperson of the Chamber of Deputies, and at circumstances of its convocation and course; to this the Chairperson of the Chamber of Deputies replied that as for the very form of its convocation, everything was conducted in a proper manner, and as for its agenda and the matter discussed, all took place in a manner sufficiently foreseeable by all deputies.

56. Justice of the Constitutional Court J. Musil inquired of the Chairperson of the Chamber of Deputies in particular regarding her subjective motives and reasons by which she, as a Deputy, justified her approval of the proposed actions of the government; the Chairperson of the Chamber of Deputies referred to the argumentation of the government, the sponsors of the given draft bill, as well as the statement from the Prime Minister at the oral hearing before the Constitutional

Court dated 8 February 2011, which were determinants for her. As to the query whether she, as the Chairperson of the Chamber of Deputies, obtained any expert data and opinions (for example, from the Czech National Bank) to inform her decision on declaration of the state of legislative emergency, she specified that she had not, since judging and evaluating reasons for which the government filed its proposal for declaration of the state of legislative emergency pertains to the Chamber of Deputies as a whole.

57. As to the query from Justice of the Constitutional Court S. Balík, whether the Chamber of Deputies or the individual deputies have any procedural means which can be used to oppose a decision by her on dismissal of the declaration of the state of legislative emergency or under a circumstance of inactivity on her part, the Chairperson of the Chamber of Deputies stated that such a situation may not occur since, pursuant to the RPCD, she must act and approve such a proposal. Consequently, S. Balík asked whether, prior to consideration of the contested act, her proposal for declaration of the state of legislative emergency was justified by the opinion of the government, for example, that if proper legislative procedure had taken place and the act had been adopted merely at the end of February, a loss would have occurred of not approximately CZK 24 billion per year but of "only CZK 1.96 billion". The Chairperson of the Chamber of Deputies answered to the negative.

58. Consequently, the Chairperson of the Chamber of Deputies faced a whole number of queries raised by B. Sobotka, the representative of the petitioners, aimed at the reasons for her decision on convocation of the exceptional session, determination of the unexceedable term of the committee for submitting an opinion as well as specific procedural decisions within the scope of discussion regarding the contested draft bill. To these questions, the Chairperson of the Chamber of Deputies constantly responded with statements that these were standard procedures, much used in the past, which were in accordance with the Rules of Procedure. Consequently, the Chairperson of the Chamber of Deputies was asked by B. Sobotka about circumstances which resulted in the fact that before actual convocation of the exceptional session, the chairperson was replaced, when the Vice-chairperson, L. Zaorálek, who earlier on the same day had presided over the proper 7th session of the Chamber of Deputies, was replaced with herself prior to the commencement of the 8th exceptional session. To this, the Chairperson of the Chamber of Deputies said that this was a matter of "internal" agreement and was a common procedure which in the given case was, in addition, necessary due to the fact that the original chairperson, Vice-chairperson L. Zaorálek, would, due to being devoted to the affairs of the political party to which he belonged, not observe the determined time when the discussion of the Chamber of Deputies was to resume after the break, and she thus did not want to face criticism by the deputies.

59. Consequently, Justice of the Constitutional Court V. Kůrka asked the representative of the petitioners whether he himself, during the discussion of the draft bill which was consequently adopted and published under No. 120/2010 Coll., and which related to taxation of employee benefits (meal vouchers) (Act No. 120/2010 Coll. which alters Act No. 235/2004 Coll. on Value Added Tax, as amended by later regulations), as discussed in the Chamber of Deputies from 26

February 2010 until 2 March 2010 under the state of legislative emergency, and whose Rapporteur was B. Sobotka himself, then voted or otherwise opposed such a procedure, and if not, for what reason. The respondent was to give a specific reason anticipated by § 99 paragraph 1 of the RPCD, and how, in his opinion, it was completed. The representative of the petitioners stated that he had not opposed it, as it was a situation different from the one in the case now under consideration. Under the then conditions, discussion had been held for a long time between the government and representatives of the trade union and there was the chance of a strike in transport, which, according to opinions held by the representatives of the government, could have led to serious economic losses, and additionally, this represented a solution to an exceptional social conflict between representatives of the trade union and the government, when the government, on the basis of such a discussion, brought to the Chamber of Deputies a proposal for the above-mentioned procedure. The existence of those considerable economic losses was not specifically proven by the government, and voting on the part of the respondent had been based merely on the opinion of the government. Justice Kůrka confronted this opinion with the case now under discussion and the objections brought by the petitioners, i.e. that the government did not prove in a qualified manner their reasons for declaration of state of legislative emergency and the existence of economic losses. To this, the representative of the petitioners repeatedly responded that these situations were different and that he, as a person who filed the petition now under consideration, sees them as dissimilar; as in the first case, exceptional social conflict was being resolved, while in the case under consideration, the state budget was being prepared for 2011 in the same way as it is prepared for each year, and thus the impacts of any decision by the Chamber of Deputies were clearly quantifiable. In the first case, losses were not accurately calculable, as it was not possible to accurately quantify the economic impacts at the time a strike was only being threatened. Upon an enquiry by Justice V. Kůrka, as to whether he would come, even after some time has passed, to the same conclusion, i.e. that the state of legislative emergency in place then had been declared in accordance with the law, even when he applied such aspects as contained in the petition now under examination, the representative of the petitioners stated to the affirmative, since in the situation then there had not existed such an accumulation of steps made by the governmental majority as criticised by the petition in comparison to this case.

60. Consequently, the parties to the proceedings, in their concluding statements, repeated and summarised their opinions, which formed the content of their written filings delivered to the Constitutional Court.

V.
Reference Criteria for Evaluating the Petition

V. A) Sources of the parliamentary law and democratic principles of the legislative process

61. Article 1 paragraph 1 of the Constitution of the Czech Republic, which describes the Czech Republic as a democratic rule of law state established on respect for rights and freedoms of a man and citizen, includes a normative principle of a democratic rule of law state. Respect for the rights and freedoms of an individual is, therefore, also one of the principles of the concept for a rule of law state, which had been adopted by the Constitution of the Czech Republic, or it

is the purpose of the function of the state and its power. Respect for the same purpose is also reflected in Article 2 paragraph 3 of the Constitution of the Czech Republic, pursuant to which state power may be asserted only in cases, within the bounds, and in the manner provided for by law. The above implies that even Parliament or its two chambers cannot proceed when adopting acts in an arbitrary manner, but are bound by law (the constitutional order as well as the parliamentary law adopted and interpreted in light of the constitutional order – see below).

62. In the past, the Constitutional Court in its case law dealt with a whole number of constitutional aspects which the legislature, and possibly other constitutional bodies, must observe in the various stages of the legislative process [see, for example, Judgment file No. Pl. ÚS 21/01, dated 12 February 2002 (N 14/25 SbNU 97; 95/2002 Coll.), Judgment file No. Pl. ÚS 5/02, dated 2 October 2002 (N 117/28 SbNU 25; 476/2002 Coll.), Judgment file No. Pl. ÚS 12/02, dated 19 February 2003 (N 20/29 SbNU 167; 83/2003 Coll.), Judgment file No. Pl. ÚS 77/06, dated 15 February 2007 (N 30/44 SbNU 349; 37/2007 Coll.), Judgment file No. Pl. ÚS 24/07, dated 31 January 2008 (N 26/48 SbNU 303; 88/2008 Coll.)]. In Judgment file No. Pl. ÚS 5/02 quoted above, the Constitutional Court repeatedly elucidated the principles for which – amongst other points, also as a requirement resulting from the concept of the rule of law state – respect for procedural rules is necessary: "only in a procedurally flawless process (a constitutional proceedings) can a legal and constitutional result (decision) be achieved, and therefore increased attention must be paid to the procedural integrity of the decision making process (proceedings) and it must be provided considerable protection. If these principles related to the constitutionality of proceedings before public bodies and to decision issued in them (to the specified procedure under Art. 36 para. 1 of the Charter of Fundamental Rights and Freedoms), there are no reasonable grounds to diverge from these principles in matters of review of the legislative process and statutes (legal norms) passed in them, because, although the legislative decision making process differs to a certain degree from decision making processes in proceedings before other public bodies – and in that sense it can be understood as a decision making process sui generis – the guiding principles of decision making in which a final result is reached are, in both cases, identical. Moreover, one cannot lose sight of the fact that the consequences arising from legislative acts are, due to their society-wide effect, certainly more significant that in cases of individual (defective) decisions by other public bodies. Thus, in the legislative process, the foremost requirement is that legal acts on which the state governed by the rule of law, and accordingly the life of citizens in it, rests, be stable, convincing and necessary; however, such acts and the attainment of the necessary authority of legislative bodies cannot be achieved otherwise than by respect for the rules (fundamentals of legislative activity), which, in any case, the Chamber of Deputies itself, as a significant bearer of the legislative power, provided by statue for its own activity."

63. The above-mentioned rules of the legislative process are contained in various sources of the (parliamentary) law, which include in particular the Constitution of the Czech Republic; additionally, these are the rules of procedure of both chambers of Parliament (the RPCD and SRS), interpreted in constitutionally conforming form; more detailed rules of conduct as adopted by resolutions of the

individual chambers of Parliament on the basis of § 1 paragraph 2 of their rules of procedure ("autonomous resolution"); as well as settled practice of parliamentary chamber and its bodies which "owing to long-term repetition, can be considered as an unwritten part of the legislative procedure, that is, if they can be found to be in harmony with the higher values of law formation, of the democratic political system, etc." (see clause 38 of the above-quoted Judgment file No. Pl. ÚS 77/06) – the "unwritten rules" which are capable of solving issues explicitly unregulated by the rules of procedure and which "optimise the self-organisation of Parliament." [Schneider, H. P. – Zeh, W. (eds.): Parlamentsrecht und Parlamentspraxis in der Bundesrepublik Deutschland, Berlin 1989, p. 385, quoted according to Wintr, J. Česká parlamentní kultura / Czech Parliamentary Culture, Prague 2010, p. 43.].

64. The last three above-mentioned sources of parliamentary law are the expression of autonomy of Parliament, or its chambers, consisting of self-regulation of parliamentary procedures, which is necessary to a certain extent, since the Constitution of the Czech Republic naturally regulates the rules for legislative process (the operation and roles of both chambers of Parliament, their basic organisational structure, quorum, and the majorities necessary for individual types of resolutions, parliamentary immunity, the basic rules for the course of sessions of both chambers and so on) merely in a general manner, and anticipates adoption of more detailed rules for the legislative process in the form of acts on rules of procedure of the individual chambers of Parliament. In one of its decisions (judgment dated 21 July 2000, 2 BvH 3/91, available in electronic form at http://www.bverfg.de/entscheidungen/hs20000721_2bvh000391.html), the German Federal Constitutional Court stated that they consider the subject of self-regulation of the parliamentary chamber to include also arrangement of legislative process, unless the same is contained in the Constitution itself, in addition to the function, composition and manner of work of committees, as well as the exercise of rights of execution of legislative initiative, information and supervision, along with the generation and arrangement of rights of political fractions and exercise of the parliamentary right to free speech and parliamentary debate. At the same time, the Court emphasised that this catalogue containing subjects of self-regulation and instruments of parliamentary autonomy is not fully comprehensive. This is due to the fact that this catalogue must be made more specific again and again with respect to changing political relations so that it facilitates adaptation to any altered working conditions. Thus parliamentary autonomy may obtain, in comparison with former constitutional epochs, new relevancy through the circumstance that no longer is it Parliament and the government that stand against each other, as is anticipated by classic theory, but a line runs through the parliamentary plenum, when the government and the parliamentary majority supporting said government form a political unity against the opposition. Parliament also must respond to the increasing complexity of regulatory needs. Therefore, a modern Parliament must develop a strategy of a work-distributing co-operation and co-ordination of political generation of will, unless it intends to lose its "readiness for action". However, such self-regulating powers of Parliament relating to its own matters must not be endless and are subject to constitutional restrictions, which give rise to demands regarding the form and interpretation of rules of procedure of parliamentary chambers in particular [cf. the dissenting opinion of Justice E. Wagnerová regarding Judgment of the Constitutional Court file No. Pl. ÚS 24/07, dated 31 January 2008 (N 26/48 SbNU 303; 88/2008 Coll.)].

65. The essential constitution-law bases for parliamentary and legislative procedures were defined by the Constitutional Court especially in Judgment file No. Pl. ÚS 77/06, often quoted by the petitioners, where the Constitutional Court has repeatedly emphasised the necessity of compliance with the rules of the legislative process, since eliminating arbitrariness from the decision making of bodies of public power is a basic requirement on the part of – even if only formally conceived – a rule of law state, where non-compliance with the rules may result not only in questioning the legitimacy of an adopted decision (act), but also the legality of the same, which, in the given case, actually resulted in annulment of the contested provisions of the act, this due to the conflict between the procedure of adoption of the same and the constitutional principles of a democratic rule of law state. "Adherence to the procedural rules contained in the mentioned sources of law must be demanded due to the fact that, although the addressees of these norms are not private persons, the non-observance of them may, in the final outcome, meaningfully affect fundamental rights of private persons." (see clause 38).

66. Therefore, the Constitutional Court not only strongly appealed to the Parliament of the Czech Republic in terms of the necessity of compliance with the principles of creating concordant, easy-to-understand and predictable law as one of the attributes of a materially understood rule of law state, but the Court has also constitutionally justified the necessity to respect the democratic principles in the legislative process (supported by Article 1 paragraph 1 of the Constitution of the Czech Republic), which must be taken into account both in the arrangement and the very execution of the procedure of adoption acts. In other words, these principles imply some requirements for the form and interpretation of the Rules of Procedure of Chambers of Parliament especially. These principles have to be found in connection of the principle of the division of powers with the functions of the legislative power, especially in the constitutionally based principle of representative democracy, which is based on the free exercise of mandates of members of Parliament, and on the equality of members of Parliament as representatives of the people, as well as on the freedom of speech and free parliamentary debate (Article 15, Article 23 paragraph 3 and Article 26 of the Constitution of the Czech Republic).

67. In the above-quoted Judgment file No. Pl. ÚS 77/06, the Constitutional Court named as a basic principle of parliamentary decision making also the principle of pluralism, which it derived from the principle of free competition of political powers (Article 22 of the Charter) and which as a characteristic feature and sign of every free society forms one of the essential parts of a democratic state pursuant to Article 9 paragraph 2 of the Constitution of the Czech Republic. » There is no doubt that the addressees of a legal norm have the right legitimately to expect that any limitation upon their fundamental rights carried out by law will be by a statute which is the result of a discourse conducted across the political spectrum, namely a discourse in which all participants had the opportunity elaborately to acquaint themselves with the matter under consideration and to give their informed view upon it. It is also proper that such a process make possible an open discussion between the proponents of competing views, including minority views. Therefore, those procedures enter into prominence which ensure, on the one hand,

the hearing of the parties and, on the other, the formal quality of the legislative work. From this perspective, the legislative procedure becomes “the actual source of a statute’s legitimacy”« (see clause 38).

68. Through numerous references to Czech and foreign literature focusing on the issues of parliamentary decision making, also from the point of view of comparing the same with judicial decision making, the Constitutional Court, in the last-quoted Judgment, justified the requirement of the concept of execution of legislation in a form of rational legal discourse. “Parliamentary decision making concerns general cases; it is supported by the exclusion of essential decisions adopted in a parliamentary procedure, which ensures evaluation of the subject on which the decision is being made, with the participation of political parties which represent organised interests of the civic society. The act as a result of a parliamentary deliberation is a compromise between interests, which reflects social consensus, which must be considered to be a criterion of acceptance of the act. Each of the institutions forming or applying the law is defined by formal characteristics, for example procedures which are used for fulfilling the purpose of the given institution. The procedures relate additionally to the forms of acting of said Parliament, as well as the division of work between the bodies of the same, and should guarantee democracy, legitimisation of authority, rationality of legislation, procedural justice (hearing the parties, debate), etc. (Kysela, J. Zákonodárný proces v České republice jako forma racionálního právního diskursu? / Legislative Process in the Czech Republic as a form of Rational Legal Discourse?, Právník / Lawyer, 2005, No. 6). Parliamentary procedures are also an important element for completing the form of division of power and the conditions for political competition in the state (Kabele, J. Z kapitalismu do socialismu a zpět. Teoretické vyšetřování přerodů Československa a České republiky / From Capitalism to Socialism and Back. Theoretical Investigation of Transformations of Czechoslovakia and Czech Republic. Prague: Karolinum, 2005, p. 205). (...) Finally, for C. Schmitt, parliamentarism as a form of government is an open discussion of argumentation, in which differences and opinions are confronted – the political power is, therefore, forced to a discussion which makes public control possible (Schmitt, C. The Crisis of Parliamentary Democracy, London, 1994, quoted according to Kysela, J. Zákonodárný proces v České republice jako forma racionálního právního diskursu? / Legislative Process in the Czech Republic as a form of Rational Legal Discourse? Právník / Lawyer, 2005, No. 6).” (see clauses 41 a 43).

69. Both in the case of judicial decision making and parliamentary decision making, the idea of a “fair decision”, which is immanent to the rule of law state, requires compliance with the rule of natural law to hear all the parties. Transparent hearing of parties representing the public contributes to the identification of the public with the product of the decision-making process, in this particular case with an act. The essential characteristics of parliamentary decision making must, therefore, be perceived also in terms of the principle of public nature, strictly applied in discussing acts. This principle works inwardly as well as outwardly of the parliamentary chamber. The inward operation serves for free development of opinions of members of the parliamentary chamber; the outward operation serves for informing the public.

70. Last but not least, the democratic principles of the legislative process also include the principle of majority decision making and, indivisible from the former, the principle of protection of minorities (Article 6 of the Constitution of the Czech Republic), when these minorities are represented in Parliament by the parliamentary opposition. The basic functions of the same especially include formulation of minority opinions, submission of alternative proposals to majority opinions and decisions, and inspection of the governmental majority, all of these in view of the public, i.e. the civic society, which forms and specifies their opinion in this way. These characteristics are related to the basic elements of a democratic rule of law state (see below).

71. The above-listed democratic principles of a legislative process, and so related requirements for fairness of use of rules regulating the process of creation of political will, may be included under the essential requirements of a democratic rule of law state or its very essence, and all together these compose a picture of "parliamentarianism viewed in the substantive sense; that is conceived as the institutionalised exchange of views between representatives of groups with competing opinions present in society and with the aim of finding such compromise as would satisfy the majority of a society originally fragmented in opinion" (cf. the above-quoted dissenting opinion of Justice Rapporteur concerning Judgment file No. Pl. ÚS 24/07).

V. B) Role of Parliamentary Opposition in the Legislative Process

72. Although the above-mentioned principle of majority decision-making (Article 6 of the Constitution of the Czech Republic) is one of the basic defining characteristics of democracy and democratic decision making, and most of the governments of parliamentary democracies are dependent on the support (confidence) of the parliamentary majority, formed by representatives of one or more political parties represented in Parliament, said Parliament is not a body of this majority, but the same is based on the free exercise of mandates of all its members – on the equality of these members – because all of them are representatives of the people; furthermore, Parliament is based on the freedom of speech of everyone and on the freedom of parliamentary debate (Article 15, Article 23 paragraph 3, Article 26 and Article 27 paragraph 2 of the Constitution of the Czech Republic), this irrespective of the political faction or stream of opinion with which the individual members of Parliament identify themselves. The representatives of parliamentary opposition, usually composed of representatives of political parties which are included in Parliament, but not directly taking part in the execution of governmental power and generally acknowledging themselves in the minority in terms of number, must be allowed, with respect to the constitutionally guaranteed principle of protection of minorities (see above), within the scope of legislative procedures, to exercise their constitutionally guaranteed rights; it must not be made impossible for them to exercise the above-mentioned functions of a parliamentary opposition which are non-substitutable in a democracy [cf. resolution of the Parliamentary Assembly of the Council of Europe (PACE) No. 1601 (2008) on "Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament" dated 23 January 2008]. "The presence of the opposition (and media) also forces a coherent governmental majority to explain and justify their decisions – thereby the principle of adversary nature is guaranteed, one that is based on the free exchange of opinions and standpoints

with the purpose of finding a broader consensus and possibly also elimination of possible defects from a submitted act. This principle is actually an ideological base of the work of Parliament as a place for the exchange of opinions, for convincing the opponents of truth and justice, and also a place for negotiation. In this sense, parliamentarism is an attempt at government through discussion." (Quoted pursuant to Kysela, J.: Zákonodárství bez parlamentů / Legislation without Parliaments, Prague 2006, p. 23).

73. The most fundamental rights of the parliamentary opposition or of an individual member of the same, which should be constitutionally guaranteed in a democratic rule of law state, especially include rights guaranteeing parliamentary opposition their participation in parliamentary procedures; rights allowing the parliamentary opposition to carry out supervision and inspection of the governmental majority and the government itself. Furthermore, they include rights allowing the parliamentary opposition to block or delay decisions adopted by the majority, as well as rights allowing the opposition to request constitutional review of adopted decisions (acts) and, last but not least, also rights protecting the parliamentary opposition and individual members of the same from persecution and arbitrariness of the majority. The scope (depth) and level of arrangement of the aforementioned rights of the parliamentary opposition in the specific system, as well as the leeway which the parliamentary opposition is afforded to perform their irreplaceable functions, are not only a sign of the level of the political and parliamentary culture of the given society, but also express the level of democratic spirit of the specific political system. One of the necessary conditions for sufficient legal arrangement of the above-mentioned rights and entitlements of the parliamentary opposition or minorities should definitely be a requirement that these rights are arranged in such a way that they make it impossible for the governmental majority to annul or change these rights in an essential way solely on the basis of their own discretion, or at least prevent the majority from doing so without a sufficient time interval after assuming power [cf. report of the Venice Commission CDL-AD(2010)025 "Report on the role of the opposition in a democratic parliament" dated 15 November 2010].

74. At a European and international level (the European Convention for the Protection of Human Rights and Fundamental Freedoms, International Covenant on Civil and Political Rights), the rights of the parliamentary opposition are protected through protection of fundamental rights and political rights of members of parliamentary minorities. These include, for example, their right to free and fair election, freedom of speech, freedom of association or assembly, etc. A similar situation exists in the Czech Republic. The Constitution of the Czech Republic does not explicitly mention the instrument of parliamentary opposition, and from all the rules of procedure, only the RPCD mentions the parliamentary opposition (under the term "non-governmental political parties"), this in § 78 paragraph 4. In spite of this, supported by a constitutionally normative democratic principle, being applied also in the requirement for the democratic nature of internal parliamentary processes and procedures, the conclusion may be drawn that the above-mentioned rights of the parliamentary opposition, i.e. the rights of the non-governmental parliamentary political factions or individual deputies and senators, are either explicitly specified in the Constitution of the Czech Republic and the rules of procedure of both chambers of Parliament, interpreted in a constitutionally

conforming manner [see, for example, Article 27, 28, 30 or Article 87 paragraph 1 clause a) of the Constitution of the Czech Republic, reflected in § 64 paragraph 1 clause b) of the Act on the Constitutional Court], or these rights are immanently present in the Constitution of the Czech Republic because of the normative influence of the democratic principle. Through a constitutionally conforming interpretation of individual provisions of the rules of procedure, in light of the above-mentioned requirements resulting from application of the principles which must govern the proper legislative process, it is possible to gather, also from the present form of the rules of procedure of both chambers, that their purpose is to guarantee these rights. Formally they thus provide sufficient legal support for enforcement of these rights, and thus also allow the opposition to perform their functions.

75. As already stated above, only such legislative process may be considered proper which allows rational discourse, hearing the parties and open discussion between the advocates of competing opinions, including minority opinions, supported by the opportunity of active participation of the persons involved in the process (cf. concise but exact quotation "The principle underlying parliamentary procedure is that the minority should have its say and the majority should have its way" – Laundy, P., Parliaments in the Modern World, Aldershot 1989, p. 95). Therefore, it is necessary to define and specify the above-presented rights of the parliamentary opposition, which guarantee the parliamentary minority such active as well as passive participation in the parliamentary procedures. This is because the guarantee and implementation of the same are one of the necessary preconditions for fulfilling the requirements for proper and fair democratic legislative process. Among the rights of the parliamentary opposition which are connected with participation of the same in legislative procedures, the above-quoted resolution of the Parliamentary Assembly of the Council of Europe includes, in addition to guaranteeing the simple presence of the same in the parliamentary consideration connected with the opportunity to vote, also the right to actively take part in a debate and express opinion to the discussed item or interpellate a present member of the government, and further a guarantee of the opportunity to influence the discussed agenda of the parliamentary session to follow, which should thus not be solely under the control of the governing majority, including the possibility to necessitate an extraordinary session, to achieve that a new item is listed on the agenda, or to the contrary, the possibility of blocking the same or postponing discussion of a certain item of the agenda through "obstruction". It is also necessary to include in this list also the right of participation of the parliamentary opposition in the committees and control bodies of the given parliamentary chamber, which allows the opposition to effectively exercise its supervision and control functions regarding decision-making of the parliamentary majority and decision-making of the government. Last but not least, this range must include also the right of the opposition to actively participate in essential political and organisational decisions of the given parliamentary chamber.

76. When making a decision on the height of the level and width of the guarantee of any of the above-listed rights of the parliamentary opposition, as well as when actually exercising the same, it is always necessary to seek and assess the balance between the legitimate interests of the governing majority and the parliamentary opposition or minority. On one hand, not to provide any of the above-mentioned

rights to the opposition, or actual disallowing proper and untroubled exercise of the same as a result of actions by the governing majority, may lead not only to weakening the legitimacy of the exercise of power, but permanent restriction or even violation of the basic democratic principles may lead to a threat imposed on the democratic nature of the political system itself. On the other hand, an excessive level and width of guarantee of the individual rights to the parliamentary opposition may lead to frequent overuse or even abuse of these rights by the opposition, of which the result may be weakening or elimination of effective exercise of power by the governing majority (cf. the above-quoted report of the Venice Commission). Therefore, it is necessary that the individual rights and entitlements guaranteed to the parliamentary opposition are matched with certain obligations and responsibility for the exercise of the same. Consequently, the parliamentary opposition, when exercising such rights, is obliged (not only towards its electors), in addition to necessary respect for the legal order, to fulfil the role of "responsible and constructive opposition". Though this is rather a moral appeal depending on the overall level of political culture in the given society, a necessary condition for proper and effective fulfilment of functions of parliamentary opposition is the very fact that the same is being performed in a constructive and responsible way which corresponds to the legitimate functions of the opposition as a true alternative to the governmental majority or corresponds to the functions of supervision and control over the activities of the governing majority. This requirement is, among other points, also a representation of the principle of a government limited in time, when the present governing majority as well as the minority should remember that they do not belong to either of these groups forever, and that the present governing majority may soon find itself in the role of the parliamentary minority and vice versa. Therefore, such decisions should not be adopted which actually disallow the exercise of rights guaranteed to either of the groups (the Constitutional Court expressed its opinion on the time-related aspects of creation of parliamentary majorities and minorities in the above-quoted Judgment file No. Pl. ÚS 21/01).

V. C) Constitutional Criteria for Declaration of a State of Legislative Emergency and Consideration of a Draft Bill within a Summary Consideration pursuant to § 99 of the RPCD

77. The institution of declaration of the state of legislative emergency is a statutory instrument, the purpose of which is, under exceptional circumstances, to accelerate consideration of governmental draft bills through summary consideration. The content sense or purpose of this instrument is to prevent irreversible or arduously removable losses to the basic interests of the members of society or to prevent actual considerable losses to property (present or expected) of the state.

78. The way of declaring the state of legislative emergency, the reasons for the same and the discussion itself of draft bills in the state of legislative emergency are regulated especially in § 99 of the RPCD ("Legislative process under the state of legislative emergency"). The state of legislative emergency may be promulgated "under exceptional circumstances, when fundamental rights and freedoms of citizens are materially threatened... or when considerable economic losses threaten the state" (§ 99 paragraph 1 of the RPCD). The state of legislative emergency may be declared through a decision of the Chairperson of the Chamber

of Deputies, on the basis of a proposal from the government. Concurrently, on the basis of a proposal by the government, the Chairperson of the Chamber of Deputies may decide, that the submitted governmental draft bill shall be considered in "summary consideration" (§ 99 paragraph 2 of the RPCD). In such a case, the draft bill shall be allocated to one of the committees and an unexceedable time limit shall be set for said committee's decision. The Chamber of Deputies shall discuss the draft bill directly in the second reading, and is entitled to decide on omission of a general debate, as well as on curtailment of the speaking time to five minutes; on the basis of a proposal by the relevant committee, also to limit the detailed debate only to some parts of the act. Immediately afterwards, a third reading of the act may be held. In short, the Chamber of Deputies as a whole is fully in control of the state of legislative emergency and the summary consideration – the Chamber has the right to dismiss the state of legislative emergency during the discussion of the agenda of the session, or to decide that the discussion shall not be held in summary consideration, if they consider that the conditions for declaration of the state of legislative emergency have ceased to exist or the conditions for summary consideration are not existent. The procedure itself of adoption of a draft bill in summary consideration within the scope of the state of legislative emergency declared is specified in detail in § 99 paragraphs 3 to 9 of the RPCD.

79. With respect to the fact that this is an instrument shortening the procedure of adopting governmental draft bills, not only restriction or curtailment of the above-mentioned rights of the parliamentary opposition necessarily occurs (especially through omission of the first reading and the possibility of omitting the general debate, as well as a possibility of shortening the speaking time down to five minutes, or disallowing submission of some procedural proposals in relation to the agenda of the session and also in relation to the course of the same), but as the final consequence additionally violation or relativisation of the above-explained democratic principles governing legislative process occur. This is due to the fact that, for reasons of the rapidity of adopting the submitted governmental draft bills, detailed preparation and familiarisation with the matters discussed is disallowed and generally parliamentary procedures and debates are limited and shortened. Therefore, the constitutional requirement, pursuant to which the legislative procedure governed by the above-mentioned democratic principles should become "the actual source of the legitimacy of the act", is, within the declared state of legislative emergency and summary consideration of governmental draft bills applied within the same, seriously relativised and disrupted. In this way, such necessary parliamentary debate is limited in a significant way and the Chamber of Deputies may in such a situation easily become a mere validator of draft bills submitted by the government, without these being examined in detail and considered, or without the same being subjected to criticism and confronted with alternative proposals, not only from the opposition. The above-mentioned deficiency becomes even more important under circumstances of this being a reformist governmental draft bill, influencing not only the state budget, but particularly with impacts on the sphere of fundamental rights and the freedoms of addressees of the act adopted in such a way. Therefore, even though this is a strictly statutory instrument specified only by the Rules of Procedure of the Chamber of Deputies, it is obvious that the consequences of its application distinctly exceed the statutory level.

80. In such a connection, the Constitutional Court had to take into consideration also the fact that the constitutional order explicitly permits the possibility to discuss the governmental draft bill in summary consideration only on the basis of Article 8 of Constitutional Act No. 110/1998 Coll. on Security of the Czech Republic, at a time of endangerment of the state or under the state of war. Therefore, if the constitutional order specifies such a possibility only in a single case, it is obvious that in other situations the same is generally not possible. This is not a gap in the Constitution of the Czech Republic if the constitutional order does recognise the possibility to discuss a draft bill in summary consideration. The constitutional framer has only decided to permit such a possibility only in extreme and exceptional situations. It may be admitted that at the level of an act (Rules of Procedure), other cases shall be established in which acts may be discussed in summary consideration (legislative emergency), but because this is an arrangement praeter constitutionem and because the purpose of constitutional-law regulation of such shortened discussion is the protection of rights and principles governing the legislative procedure in a democratic rule of law state, the use of the institution of legislative emergency is possible only under the pre-condition of a wide consensus in Parliament (acclamation, or at least such a majority which is comparable to the majority required for adoption of a constitutional act) or (and) only in the case when the type-specific seriousness of situations in which the legislative emergency is to be used corresponds to the seriousness of the actual situations which the constitutional order qualifies for summary consideration of a draft bill (endangerment of the state, the state of war).

81. The Constitutional Court has mentioned the issues of adoption of acts under the state of legislative emergency in Judgment file No. Pl. ÚS 12/10, dated 7 September 2010 (269/2010 Coll.). The Constitutional Court has formulated a proposition there that the legislature is not obliged to “compare the fulfilment of conditions for declaration of the state of legislative emergency in a form of a potentially threatened considerable economic loss with a specific draft bill, which is to prevent the threat of said considerable economic loss. The decision on whether the economic loss is an actual threat is not decision making about losses in a legal sense, but is based on assessment of wider political consequences. The decision on whether the state is in danger of considerable economic losses pursuant to § 99 paragraph 1 of the RPCD does not have to include an assessment related to the scope to which the submitted draft bill is to prevent or reduce the said threatening considerable economic loss, in a kind of analogy to the provisions of § 417 paragraph 1 of the Civil Code” (clause 17). The Constitutional Court has added to this that »in the case under assessment it may not be overlooked that in voting on confirmation of the state of legislative emergency, always a considerable majority of the deputies have voted for the proposal; that during the discussion on the act, neither in the Chamber of Deputies nor in the committees of the same, a strong minority has been formed to which the rights could seem to be abridged, and that even in a third reading and also in voting after submitting the draft bill to the Senate, a considerable majority of the deputies voted for the proposal. Therefore, in this specific case, the Constitutional Court, also being aware of the principle of minimisation of intervention, agreed with the opinion of the Chamber of Deputies, that “the draft bill was discussed under the state of legislative emergency in compliance with the statutory conditions”« (clause 18).

82. In the above-mentioned Judgment, the Constitutional Court emphasised that in assessing the question of reasonability of the declaration of the state of legislative emergency, the Chamber of Deputies is permitted great scope for discretion. This scope is given by the purpose of this instrument itself, which is to allow an immediate reaction by the legislature to a specific exceptional circumstance, as a consequence of which there is a threat of serious consequences anticipated by law in terms of fundamental rights and freedoms, the security of state or property values. Assessment of the nature of threatening losses is not accurately reviewable; the occurrence and scope of these losses is considered only at the level of probable tendencies and require assessment of many facts and relations – for example, the interests of the individual subjects concerned, impacts from the point of public finances, and domestic and foreign political circumstances. Due to the nature of the case, in many instances it may be necessary to react immediately without having any knowledge of all the relevant information which could otherwise relativise a possible conclusion on the reasonability of adoption of the act within a summary procedure. With respect to this very connection, the assessment of the above-mentioned circumstances is entrusted firstly to the government, at whose request the declaration of the state of legislative emergency is pre-conditioned, as it may be expected that it is the government, with respect to the powers and competences of the same, which is the most suitable body to sufficiently and in a relatively short time evaluate the seriousness of specific circumstances, this also with a possibly limited extent of information, and on the basis of the same to assess the reasonability of accelerated consideration of a specific draft bill under the state of legislative emergency.

83. However, while in the above-quoted Judgment file No. Pl. ÚS 12/10, the Constitutional Court, especially through reference to the scope of political consensus related to evaluating the reasonability of the declared state, did not find a reason to define the limits of such discretion in greater detail; the Court on the contrary deems it necessary in the case now being assessed. As already stated, although the instrument of declaration of a state of legislative emergency is an exclusively statutory instrument, it is necessary to interpret the same through the point of principles which may be derived from the normative principle of democracy (Article 1 paragraph 1 of the Constitution of the Czech Republic), and, therefore, the conditions for declaration of a state of legislative emergency must be interpreted very restrictively. The reasons for application of the same must be undoubtedly legitimate and constitutionally approvable; their evaluation must be subjected to the strictest standards. In order to eliminate arbitrariness (or wantonness) of the governing majority, such reasons must be interpreted properly, in detail and in a reviewable manner in such a way as is required by the doctrine of restriction of fundamental rights and as such is derived from the notion of requirements imposed on fair decision making. If the specific reasons for declaration of a state of legislative emergency have been found legitimate and constitutionally approvable, then equally strict standards must be used to compare also with respect to all the above-mentioned rights and principles governing the legislative process; in this case as early as during the procedure anticipated for the state of legislative emergency. This is especially due to the fact that within this procedure considerable shortening of legislative procedures and the restriction of rights of the parliamentary opposition occur, as well as relativisation of democratic principles of a proper legislative process, and, therefore, any additional shortening

or restriction of rights and principles must be considered to be exceptionally grave, as denial of the rights of the opposition is at threat, as well as of the democratic principle, which could seriously and permanently influence the very quality of democracy, at least in the social perception of the same by civic society.

84. Specifically, it is necessary to emphasise that the pre-condition for declaration of a state of legislative emergency is not only a threat of specific negative consequences, but primarily the existence of an exceptional circumstance which may possibly threaten the fundamental rights and freedoms in an essential way or when considerable economic losses threaten the state (§ 99 paragraph 1 of the RPCD). An exceptional circumstance (from the point of view of constitutional principles) may by considered to be formed only by such a circumstance which evidently exceeds the usual course of internal and external political processes, or the same may be a circumstance which is represented by a natural disaster. This very exceptionality justifies the necessity of an immediate reaction by the legislature and the related restriction of constitutional principles pertaining to parliamentary procedure. The conclusion of existence of such an exceptional circumstance must, therefore, have a reasonable basis and be supported by factual circumstances. Furthermore, the type-specific seriousness of the same must be comparable with Article 8 of Constitutional Act on Security of the Czech Republic.

85. The reasonability of declaration of the state of legislative emergency alone must be necessarily assessed, taking into consideration the time of decision making and the scope of information which was available at that time. Furthermore, it is also necessary to compare the intensity of the reasons for the state of legislative emergency in relation to the restriction of the constitutional principles concerned, because the interest in preventing or removing the consequences of the same should outweigh, with respect to the protected values pursuant to § 99 paragraph 1 of the RPCD, in the specific case, the interest in the proper course of the legislative procedure. It must be obvious which specific consequences, according to the government, threaten the values specified in this provision, i.e. what justifies the conclusion of such a threat of considerable economic losses or endangerment of fundamental rights and freedoms or the security of the state. In this, these reasons must not be arbitrary and a specific draft bill, the discussion of which in summary consideration is being proposed by the government, must represent suitable means to prevent the occurrence or duration of the given threat to the public interest.

86. In addition, it cannot go unnoticed that in the case of application of the instrument of the state of legislative emergency – unlike similar instruments which also shorten legislative procedures (procedure of adoption of a draft bill in the first reading pursuant to § 90 paragraph 2 of the RPCD or in summary consideration pursuant to Constitutional Act No. 110/1998 Coll. Coll. on Security of the Czech Republic) – the qualified minorities have practically no chance of preventing the use of the procedure. This procedure is declared at the request of the government, which acts so being aware of the support of its parliamentary majority. The request is addressed to the Chairperson of the Chamber of Deputies, elected by the Chamber of Deputies, controlled by the same parliamentary majority which, through their decision, would grant (or not) such a request, and possibly also determines a guarantor with a non-exceedable deadline to issue a resolution. The existence of conditions for declaration of state of legislative emergency generally,

and then also conditions for processing the given draft bill in the summary consideration at the time before discussion of the individual points of the agenda of the session, is evaluated by the Chamber of Deputies, again controlled by the same parliamentary majority (cf. Syllová, J. et al. Parlament České republiky / Parliament of the Czech Republic, 2nd edition, Prague 2008, p. 244). Any possible agreement by a significant majority of the deputies, although the meaning of the same cannot be denied in relation to the review of the reasonability of the state of legislative emergency (cf. the above-quoted Judgment file No. Pl. ÚS 12/10, clause 18), is not a pre-condition for consideration of a draft bill in the summary consideration. The purpose of this instrument is to shorten the parliamentary procedure because of the occurrence of exceptional circumstances, not so as to achieve consensus in Parliament, be it one reached across the political spectrum. The only remaining obstacle to the possible abuse of the process is, therefore, the statutory definition of reasons on the basis of which the state of legislative emergency may be declared, which are undoubtedly legitimate, constitutionally approvable and reviewable.

87. However, the practice of the Chamber of Deputies is that the reasons for declaring the state of legislative emergency are defined very generally and interpreted relatively widely. The state of legislative emergency itself is definitely not used exceptionally and with clear respect to the rights of opposition and to the basic democratic principles dominating the legislative process [especially in the second election term in 1996-1998 and in the third election term in 1998-2002, many important draft bills were considered under the state of legislative emergency, for example, amendment to Act No. 247/1995 Coll. on Elections to the Parliament of the Czech Republic and on Modification and Amendment to Some Other Acts, as amended by later regulations, the state budget rules, acts on state debenture programmes, amendment to Act No. 168/1999 Coll. on Motor Third Party Liability Insurance and on Modification to Some Related Acts (Act on Motor Third Party Liability Insurance) or amendments to Acts No. 483/1991 Coll. on Czech Television as amended by later regulations and No. 484/1991 Coll. on Czech Radio, as amended by later regulations, and No. 468/1991 Coll. on Operation of Radio and Television Broadcasting, as amended by later regulations]. The state of legislative emergency is declared for a fixed period, but the reason here has been adoption of such a draft bill which should supposedly have prevented the occurrence of considerable economic loss, or in case of failure to adopt the same, the security of the state might have been threatened [for example, in November 2001, the government so enforced the conservation of the then existing salary regulations in order to avoid a provisional budget, with the justification of a security threat in the case of failing to adopt the budget in the period after September 11; in the debate of the Plenum of the Chamber of Deputies held on 15 November 2001, this was criticised by a high number of deputies then in opposition. For example, M. Kalousek, the current Minister of Finance and also a Deputy for the governmental majority, then one of the opposition deputies, stated that these arguments of the government were “overstepping the bounds”, “purpose-built”, “shameless” and concealing “the (government’s) incompetence”; the current Justice of the Constitutional Court, M. Výborný, has called for thorough justification of the governmental draft bill on declaration of the state of legislative emergency – cf. Wintr, J. Česká parlamentní kultura / Czech Parliamentary Culture, Prague 2010,

p. 157; or Syllová, J. et al. Parlament České republiky / Parliament of the Czech Republic, 2nd edition, Prague 2008, p. 243].

88. The instrument of the state of legislative emergency is not, generally seen, specific only to the Czech Republic. Similar instruments are established in the constitutions (!) of the Federal Republic of Germany (Article 81 of the GG) and Austria (at federal level in Article 18, paragraphs 3 to 5 of the B-VG). When comparing such instruments in these countries it is quite obvious that their purpose, the arrangement for the use of the same, constitutional-law limits and frequency of application differ remarkably from the legislative emergency instrument established in the RPCD. As stated earlier, in the Federal Republic of Germany, the declaration of the state of legislative emergency is regulated by Article 81 of the GG. It allows acts to be adopted without the proper resolution of the Federal Diet (Bundestag, lower house of Parliament) being necessary. [The adoption of acts under the state of legislative emergency must be distinguished from the adoption of acts under the conditions of endangerment of the state or under circumstances of defence of the state (Verteidigungsfall) pursuant to Articles 115a-115l of the GG]. The state of legislative emergency may be declared only by the Federal President upon a proposal by the federal government, with prior agreement of the Federal Council (Bundesrat, upper house of Parliament). However, the President is not obliged to grant the proposal for declaration of the state of legislative emergency; the President as the final participant possesses political discretion. Revision of such a decision from the viewpoint of constitutional law and constitutional justice must then be limited only to a review of its compliance with the formal requirements for declaration of a state of legislative emergency or to a review of possible misuse of the President's discretion (see Schmidt-Bleibtreu, B., Klein, F. Kommentar zum Grundgesetz, 9. Auflage, Kristel 1999, p. 1251). The state of legislative emergency is limited to a six-month period from declaration of the same, and after the expiry of this term, another state of legislative emergency may not be declared until the end of the term of office of the chancellor who asked for such a declaration. The provisions of Article 81 of the GG have never actually been used in the entire history of the Federal Republic of Germany, because its application is practically unnecessary due to the smooth democratic development of the Federal Republic of Germany, in which the entire political system is oriented towards forcing the political parties to find mutual consensus, possibly by seeking a solution via fresh elections for Parliament [cf. Kunig, P. (Hrsg.): Grundgesetz – Kommentar, Band 3, 3. Auflage, München 1996, p. 311].

89. In Austria, the instrument of legislative emergency at federal level is anticipated by Article 18 paragraphs 3 to 5 of the Federal Constitutional Act (B-VG). These provisions establish a legal basis for a solution to exceptional situations (however, not related to the state of endangerment of the state, which are solved in Articles 9a and 79 and the following of the B-VG), when the legislative body at federal level does not, for various reasons, form a quorum. In Article 18 paragraph 3 of the B-VG, the state of legislative emergency is defined as a situation when averting an obvious and irreparable loss to society requires, pursuant to the constitution, immediate adoption of a resolution by the National Council (Nationalrat, upper house of Parliament), which, however, is not in session in the deciding period, may not meet in time for such consideration or a force majeure

event prevents the actions of the same. In such a case, the federal President may, on the basis of a proposal from the federal government, adopt a "provisional order" (Notverordnung) at the former's own responsibility and that of the federal government, through which an act may be altered and the provisions to avert the loss adopted. The proposal for adoption of the steps pursuant to the first sentence may be submitted by the federal government only upon agreement by a Permanent Sub-committee of the Main Committee of the National Council (regulated under Article 55 paragraph 3 of the B-VG); such an order must be co-signed by the federal government (cf. Mayer, H. Bundes-Verfassungsrecht. Kurzkommentar 2. Auflage. Vienna 1997, p. 212). Each provisional order issued must be immediately submitted by the federal government to the National Council, convened by the federal President (in the case the National Council is not in session) or by the President of the National Council (if the same is in session at the given time) within a period of eight days from the submission of the provisional order. Within a period of four weeks from the submission of the proposal, the National Council is obliged either to adopt a relevant federal act instead of the order, or require, through a resolution, that the federal government annul the order immediately. The federal government is obliged to comply with the proposal for annulment at once. In the case that the federal government annuls the provisional order, the statutory regulations annulled by the order become valid once again upon the date of effectiveness of the annulment. Constitutional-law limits for provisional orders are specified in Article 18 paragraph 5 of the B-VG. Provisional orders may not alter the provisions of the Federal Constitutional Act and may not cause permanent financial burden to the state, federal states, districts or municipalities, or a financial commitment to the citizens. Additionally, they must not relate to alienation of state property, exercise provisions in cases pursuant to Article 10 paragraph 1, clause 11 of the B-VG (which is a matter of labour law, rights related to social and contractual insurance, and labourers' and employees' chambers) or pertain to the right to associate, or protection of tenants. The available resources indicate that, in the modern history of Austria, a state of legislative emergency in the form anticipated by Article 18 paragraphs 3 to 5 of the B-VG has never occurred. However, it is necessary to remark that, from the point of constitutional history, the provisional orders were used during the government of federal chancellor E. Dollfuß (1933–1934) to establish a dictatorship and remove practically all attributes of a democratic rule of law state (to this cf. Hoke, R. Österreichische und deutsche Rechtsgeschichte. Vienna 1996, pp. 474–476).

VI.
The Actual Review

90. The Constitutional Court evaluated the reasonability of the declaration of the state of legislative emergency, under which the contested draft bill was considered. The decision of the Chairperson of the Chamber of Deputies No. 7, dated 29 October 2010, as well as Government Resolution No. 759, dated 26 October 2010, justify declaration of the state of legislative emergency briefly through the "threat of considerable economic loss". A more detailed justification for declaration of the state of legislative emergency may be derived from statements by the Prime Minister P. Nečas at the seventh session of the Chamber of Deputies on 27 October 2010 and eighth session of the same on 2 November 2010, which are described in greater detail in the above-recapitulated statement by the Prime Minister dated 27 January 2011. The above-mentioned statements show that

the reason for declaration of the state of legislative emergency was the necessity to adopt all the relevant governmental draft bills before the end of the year, as the draft bill on the state budget of the Czech Republic for 2011 was based on the fact that these acts would become effective on 1 January 2011. The threat of considerable economic loss to the state, therefore, allegedly consisted of the fact that the state budget would be based on a non-existent legal condition, as a consequence of which the deficit of public finances would grow. This fact would also affect the evaluation of the credibility of the Czech Republic on financial markets, which would result in a decrease in rating and greater expenses on debt services. The exceptional circumstance was seen in the alleged "obstruction" by the parliamentary opposition which, in the situation when it was not possible to consider all the relevant governmental draft bills through the usual procedure so that the same would become effective before the end of the year, did not allow their accelerated consideration in the first reading (§ 90 paragraph 2 of the RPCD) or through the term for consideration of the same by relevant committees so shortened to fifteen days (§ 91 paragraph 2 of the RPCD). The Prime Minister defined these reasons similarly also during the oral hearing held on 8 February 2011 (see above), when he was heard as a witness. His expression implies that the very "obstruction" on the part of the parliamentary opposition was seen by the government as the main reason for which they had to withdraw the original draft bills and adopt resolutions through which they proposed a new consideration of the same under the state of legislative emergency and summary consideration.

91. The Constitutional Court has primarily dealt with the issue whether the above-mentioned "obstruction" by the opposition deputies may be considered an exceptional circumstance pursuant to § 99 paragraph 1 of the RPCD. According to § 90 paragraph 3 of the RPCD, two political groups or a group of 50 members of the Chamber of Deputies may apply an objection against a proposal suggesting that the Chamber of Deputies agrees with a draft bill in the first reading. Through application of such an objection, such means of consideration of the draft bill is disallowed. A similar objection may be applied by the same entities pursuant to § 91 paragraph 2 of the RPCD also in relation to a proposal suggesting a shortening of the term of 60 days for consideration of a draft bill in a relevant committee pursuant to paragraph 1 of this provision to less than 30 days. Both of these provisions are expressions of protection of the rights of the parliamentary opposition (minority), in this case protection against remarkable restriction of structure and duration of the legislative procedure, as the legal arrangement allows such shortening only upon agreement of a considerable majority of the deputies, exceeding three quarters of their total number.

92. If objections were applied during a discussion concerning the draft bill of the contested act, where such objections concerned solely such compliance with the proper legislative procedure regarding consideration of a draft bill, then according to the opinion of the Constitutional Court, no element of exceptionality may be seen in such an approach by the parliamentary opposition. In fact, it was actually utilisation of a right which the Rules of Procedure of the Chamber of Deputies provide to the qualified minority of the deputies for protection of their rights. This approach of the opposition cannot be considered an exceptional circumstance even in the context that the draft bill on the state budget of the Czech Republic for the year 2011, which the government submitted to the Chamber of Deputies along with

the original draft bills, anticipated, from the viewpoint of the structure of income and expenditure, adoption of all related governmental draft bills before the end of the year 2010 at the latest. In such a connection, the Constitutional Court proceeded from the specifics of the act on the state budget from the viewpoint of the requirements of the contents of the same as well as from its function within the constitutional and political system. The act on the state budget includes a sum of expected income and estimated expenses of the state budget in the budget year. Regarding the contents, the same is an act only in a formal sense (cf. Judgment dated 10 September 2009 file No. Pl. ÚS 27/09; 318/2009 Coll.), because the establishment of no rights or obligations may be contained in the same. Despite this, the act has prime political importance because the same in a binding way specifies primarily the structure of expenses of the state budget and, therefore, permits the government to execute their political priorities through re-distributing the income from the state budget (cf. the above-quoted Judgment file No. Pl. ÚS 21/01). However, not even in this way is the discretion of the government and the Chamber of Deputies unlimited, because when specifying the amount and structure of income and expenditure of the state budget, the same must be based on valid legal regulations which define the rights and obligations influencing the state budget in the form of mandatory expenses. Enforcement of the priorities of the government in the act on the state budget is, therefore, usually accompanied by necessary alteration of special acts that allow achievement of the requested changes in income or expenditure of the state budget.

93. When the government justifies the need for adoption of the draft bill of the contested act in summary consideration by negative consequences resulting from the fact that their draft bill on the state budget is based on these changes, such argumentation may not be considered acceptable from the viewpoint of reasons specified by law for declaration of a state of legislative emergency. It is each government's own responsibility to base a draft bill on the state budget on valid legal regulations, and if the government considers it reasonable to carry out an alteration to the same, to implement on time their entitlement to submit a relevant draft bill, through which the requested changes would be reached (to this, cf. the above-mentioned statements by some of the coalition deputies). No exceptional circumstance is formed even when, with respect to some political circumstances, the act on the state budget itself would not be adopted before the first day of the budget year. In such a case, until adoption of the same, the finances of the state would be directed according to the rules of a provisional budget pursuant to § 9 of Act No. 218/2000 Coll. on Budget Rules and Alteration of Some Related Acts (Budget Rules), as amended by later regulations. Additionally, in these cases, it is consequently a regularly repeated process of adoption of the state budget and a standard way of enforcing the budget policies of the government through relevant legislative changes.

94. The disagreement of the parliamentary opposition with the shortening of the procedure, therefore, does not establish an element of exceptionality, not even in the context of the understandable interest of the government to adopt the contested act before the beginning of the budget year. If the Constitutional Court considered, in the case under evaluation, the reason for declaration of state of legislative emergency defined by the government as constitutionally approvable, this decision could have ominous consequences in the future, when it would be

practically possible at any time to crucially limit (or even eliminate) parliamentary discussion and thus block consideration of a draft bill through regular legislative procedure, this only with reference to the fact that the actual draft bill on the state budget for the following year anticipates adoption of such legal norms and is bound to the existence of the same. The incomes or expenses of the state budget, however, reflect almost every draft bill and such an approach would, therefore, disallow the parliamentary opposition to express their opinion on draft bills and would make the opposition fully dependent on the will of the parliamentary majority.

95. The above-mentioned conclusions cannot be interpreted in such a way that the Constitutional Court belittles or relativises in any way the justified interest of the government in the credibility of the Czech Republic on financial markets, taking the form of favourable ratings. To the contrary, the Constitutional Court is aware of the importance of the above-mentioned facts for the state of public finances, as well as for the possibilities of the Czech Republic to promote their interests and the interests of their citizens. However, such interest, which is in the long term reflected in the budget and economic policy of individual governments, does not liberate the bodies of public power from the obligation to proceed, in the process of enforcement of the same, on the basis of law and within the limits of the same (Article 2 paragraph 3 of the Constitution of the Czech Republic). The questions relating to the decrease or increase in the income and expenditure of public budgets, the rate of taxes and contributions, as well as social benefits or claims from the state budget, are not – and usually are not – a matter of social consensus. Finding the means and instruments for solving this issue is always pre-conditioned by the political and ideological orientation of the government or the parliamentary majority. It is not the task of the Constitutional Court to evaluate the contested acts through their efficiency and so influence political competition. The mission of the Constitutional Court is to provide protection of such political competition of democratic powers, as well as to other constitutional principles mentioned above which are related to the procedure established for adopting draft bills. The Constitutional Court may not resign its function of protecting constitutionality merely for the reason of a general and hypothetical risk, not supported by any specific data; that its Judgment, issued in proceedings on the control of norms could have a negative impact on the rating of the Czech Republic by rating agencies or that the same would trigger a negative reaction on financial markets.

96. The Constitutional Court is aware of the fact that in the above-quoted Judgment file No. Pl. ÚS 12/10, the Court accepted adoption of Act No. 418/2009 Coll. whereby Act No. 236/1995 Coll. is Altered, on Salary and Other Requirements Related to the Exercise of Functions of Representatives of State Power and Some State Bodies and Justices and Deputies of the European Parliament, as amended by later regulations, and Act No. 201/1997 Coll. on Salary and Some Other Requirements of Public Prosecutors and on Change and Amendment to Act No. 143/1992 Coll. on Salary and Bonus for Work Emergency in Budget Organisations and Some Other Organisations and Bodies, as amended by later regulations, under the state of legislative emergency, although the objective of the same, which was a decrease in the salaries of public officials, has also led to a decrease in the expenditure of the state budget. However, this case significantly differed from the case presently discussed. Act No. 418/2009 Coll. was, along with Act No. 362/2009

Coll. whereby Some Act are Altered in Connection with a Draft Bill on the State Budget of the Czech Republic for 2010, adopted under exceptional political circumstances (annulment of early elections by the above-quoted Judgment file No. Pl. ÚS 27/09) and under a threat of a fundamental and unplanned rise in the public finance deficit as a consequence of the economic crisis, when there was a consensus across the political spectrum regarding the urgency of the situation and the need to adopt measures rapidly, this with regard to the ongoing economic crisis, which was implicitly found relevant by the Constitutional Court (cf. Judgment file No. Pl. ÚS 12/10, clause 18).

97. The conclusion on the exceptionality of circumstances justifying the declaration of the state of legislative emergency in the case under examination is questioned additionally by the fact that, as the Prime Minister also confirmed during his hearing, the objectives of the government, included in all four governmental draft bills discussed in the summary consideration, had been widely known a long time in advance. In such a connection, it may be mentioned that the original governmental draft bill was first submitted on 4 October 2010, when the first reading of the act was held as late as 26 October 2010. Neither the explanatory report on said draft nor the relevant debate at the seventh session of the Chamber of Deputies held on 26 October 2010 implies that the government would justify adoption of the submitted draft bill due to the existence of exceptional circumstances. On the contrary, the sponsor of the act and also the deputies of the governmental majority only repeatedly emphasised the fear that the legislative process relating to all governmental draft bills, which were later considered under the state of legislative emergency, would not be finished until the end of 2010.

98. On the basis of the above-specified facts, additionally the Constitutional Court derived that the only reason for consideration and adoption of the contested act by the Chamber of Deputies under the state of legislative emergency in summary consideration was endangerment of adoption of the same in time so that the same would consequently become effective before the end of 2010, which was disallowed by the actions taken by the opposition pursuant to § 90 paragraph 3 and § 91 paragraph 2 of the RPCD. However, the reason so ascertained may not be considered a legitimate and constitutionally approvable reason to allow declaration of a state of legislative emergency pursuant to § 99 paragraph 1 of the RPCD. The Constitutional Court has, therefore, come to the conclusion that, in the contested case, all the decisions of the bodies of the Chamber of Deputies, made on the basis of a proposal of the government, as well as the decision on continuation of the state of legislative emergency and continuation of conditions for consideration of the contested act in the summary consideration (upon omission of the first reading pursuant to § 99 paragraph 6 of the RPCD – see Resolution No. 112 from the 8th session of the Chamber of Deputies - voting No. 7), were made in conflict with the aspects explained above describing the constitutional democratic principle. Therefore, it proved already possible to close the constitutional review in this phase by stating that during the process of adopting the contested act, Article 1 paragraph 1 and Article 6 of the Constitution of the Czech Republic and Article 22 of the Charter were violated (even more so in the situation when objections to the content of the act had not been applied in a relevant way).

99. Under such circumstances, it was not necessary to deal with other claimed defects in the process which took place under the conditions of legislative emergency and in the summary consideration. Especially it was not necessary to review the powers of the Senate in connection with the composition of the same, in which the Senate voted on the contested act. Yet the Constitutional Court finds it necessary to add, merely as obiter dictum, that defects in the consequent process in the Chamber of Deputies consisted firstly of the fact that the term for convocation of an exceptional session was not met when the draft bill, submitted by the government for consideration under the state of legislative emergency and in summary consideration, was provided to the deputies under such a pressure of time that not only the opposition deputies, but also the deputies representing the government were actually unable to compare the identity of the draft bill with the previous governmental draft bill, and even less so to become familiarised in detail with the content of the same and so assess any possible impact of the same (that this is not only a hypothesis may be proven by statements from some deputies of the coalition, presented in the media after adoption of one of the given governmental draft bills under the state of legislative emergency – see the above-recapitulated oral hearing before the Constitutional Court on 22 February 2011). What is more, the democratic nature of the procedure of adopting the contested act, as already restricted, was undoubtedly additionally abridged through omitting a general debate in the second reading, this in conflict with Resolution No. 16 adopted by the Committee on Social Policy in its fourth session held on 2 November 2010, which recommended that the Chamber of Deputies should discuss the bill of the contested act also in a general debate (see clause 31).

100. Consideration of this case, as well as experience with declaring a state of legislative emergency in the past, for example the evaluation of the scope of restriction and abridgment of the rights of the current parliamentary opposition, and primarily the infringement of the democratic principles governing the legislative process, have led the Constitutional Court to seriously doubt the constitutionality of the present arrangement of the instrument of legislative emergency. It would be possible to approve the present statutory arrangement only in the case that the same is interpreted in the most restrictive way possible, whilst remaining constitutionally friendly and responsibly. However, this did not happen in the contested case and has also not often happened in the past. The Constitutional Court believes that the Chamber of Deputies should consider amending their Rules of Procedure in the way indicated above so that the RPCD would reflect the constitutional principles explained above.

VII.
Verdict of the Judgment and Postponement of Enforceability

101. The Constitutional Court has already expressed in the past that possible "evaluation of (...) violations of principles of the legislative process with the test of proportionality, in connection with principles of protecting the citizens' justified confidence in the law, legal certainty, and acquired rights, or in connection to other constitutionally protected principles, fundamental rights, freedoms, or public values." (Judgment dated 27 March 2008, file No. Pl. ÚS 56/05; N 60/48 SbNU 873, 257/2008 Coll., clause 44). In this Judgment, the Constitutional Court remarked that it is necessary, when assessing procedural failures in adopting acts, without their material constitutionality being contested, that the consequences of possible

annulment of the act for other values protected by the constitutional order be taken into consideration and assessed. If the Constitutional Court began to grant petitions justified "simply on procedural grounds on the border between the constitutional order and orderly law, a state of considerable legal uncertainty would arise, especially where there were otherwise no substantive grounds on which to criticize the contested statute." (Clause 44 of the Judgment); furthermore, the Court also mentioned that "formal annulment of the regulation... (nothing else comes into consideration in this case) would mean the danger that the same regulation would be passed again, but simply with the difference that all the requirements of the legislative process would be observed". (Clause 45 of the Judgment).

102. The above-specified legal conclusions must be taken into consideration also in the decision making of the Constitutional Court in the given case; however, it is necessary to explain such conclusions in greater detail. The task of the Constitutional Court, in assessing whether a legal regulation has been adopted in a way prescribed by law, is not to be the final arbiter in disputes whether "merely" the Rules of Procedure of both houses of Parliament or other procedural regulations have been violated. The function of the Constitutional Court is to protect constitutionality and, therefore, the Court must assess whether, during the process of adopting a legal regulation, requirements set by the Constitution of the Czech Republic for adopting an act have been complied with (cf. Judgment dated 18 August 2004, file No. Pl. ÚS 7/03; N 113/34 SbNU 165; 512/2004 Coll.). Thus, merely the constitutionality of the procedure is assessed, not the content of the final form of the legal regulation.

103. A logical consequence of a verbatim application of the above-mentioned conclusions included in Judgment file No. Pl. ÚS 56/05 would be that violating the constitutional rules of the legislative process could never lead to a derogative Judgment. Such a conclusion would, however, remove any sense from constitutional principles which influence the legislative procedure, because the same would cease to be a reference measure for review of the constitutionality of legal regulations. Also, the order imposed on the Constitutional Court by the conclusion of § 68 of the Act on the Constitutional Court (to review whether acts have been adopted in a prescribed way) would become obsolete and dysfunctional; and the Constitutional Court has already expressed its opinion on the algorithm of the review in the above-quoted Judgment file No. Pl. ÚS 77/06, clause 61. This is, however, not acceptable with regard to Article 87 paragraph 1, clause a) of the Constitution of the Czech Republic, as the above-mentioned provisions of the Act on the Constitutional Court implement the same. In the given case, the Constitutional Court, therefore, had to explicitly deal with the issue whether there exist some material limitations which would, under certain conditions, prevent the annulment of a legal regulation only for reason of the unconstitutionality of the legislative procedure. In such a connection, it is necessary to differ whether, with respect to the given defect in the legislative process, the conditions for adoption of an individual act have been complied with at all (for example, due to absence of agreement by one of the Chambers of Parliament) or whether the same is a defect, as a consequence of which the rights of individual participants in the legislative process, guaranteed by the constitutional order, have been infringed, where the application of such rights is fully at their disposal.

104. In the given case, the Constitutional Court makes a decision on a petition through which a group of opposition members of the Chamber of Deputies attempt to reach annulment of the contested act immediately after adoption of the same, due to the reason that they have been curtailed in their rights guaranteed by the Constitution in the legislative process. A different situation would occur if a group of deputies submitted a similar petition after a longer period of time, i.e. after several months or even years after the adoption of the act. Such a term could be considered an (additional, silent) agreement of the given deputies with the actions of the parliamentary majority. Furthermore, such an approach would not allow the actual protection of such violated rights of the given deputies, as Parliament would decide on the draft bill under different conditions, possibly also with a different composition of power in its chambers. Also, the Constitutional Court would have to pay much greater regard to the rule of justified trust by the citizens in the law, legal certainty and the principle of obtained rights (cf. Judgment dated 2 December 2009, file No. Pl. ÚS 4/07; 10/2010 Coll.; clause 28). As a consequence of the passing of time, annulment of such a legal regulation would affect an ever larger scope of recipients of the same, while the existing application of the same would not be burdened by a declaration of unconstitutionality from the point of view of actual content.

105. For the reasons mentioned above, the Constitutional Court may not abide with the verbatim version of the previously expressed conclusion, according to which an act may not be annulled only on the basis of a defective legislative procedure (see Judgment file No. Pl. ÚS 56/05, clauses 44 and 45). Such a strictly defined conclusion is also not compatible with the settled case law of the Constitutional Court related to this issue. It is not the task of the Constitutional Court to review whether consideration of the draft bill in a constitutionally conforming procedure would lead to a different result (content of the act) than on the basis of defective procedure. The mission of the Constitutional Court is to protect the constitutional principles which are related to the prescribed procedure (cf. the above-quoted Judgment file No. Pl. ÚS 5/02). However, the Court is always obliged to take into account also other relating elements, in particular to take into consideration any potential effects on private persons from the viewpoint of respect for the principle of legal certainty and good faith in the validity of law. However, because the petition for annulment of the contested act in this given case was submitted by a group of deputies immediately after the publication of the act in the Collection of Laws, and in said petition the deputies have applied relevant objections to the course of the legislative procedure, there is nothing to prevent the Constitutional Court from annulling the act as a consequence of the above-mentioned procedural failures of the parliamentary majority, achieving constitutional relevance.

106. The Constitutional Court believes it necessary to explain why the same has annulled only the act executing the amendment, and not also the act being amended, as is usual in its prevailing practice [cf. Judgment file No. Pl. ÚS 5/96, dated 8 October 1996 (N 98/6 SbNU 203; 286/1996 Coll.), Resolution file No. Pl. ÚS 25/2000, dated 15 August 2001 (U 27/19 SbNU 271), Judgment file No. Pl. ÚS 21/01, dated 12 February 2002 (N 14/25 SbNU 97; 95/2002 Coll.), or Judgment file No. Pl. ÚS 33/01, dated 12 March 2002 (N 28/25 SbNU 215; 145/2002 Coll.)]. It is necessary to mention that the petitioners have submitted a petition relating only

to the act executing the amendment, and the Constitutional Court, as is well known, constantly feels bound by the proposed verdict shown in the petition. In addition, however, there is the fact that only the process of adoption of the contested act has actually been contested, and no relevant objections to the content of the same have been submitted. Consequently, the discussed case differs distinctly from cases discussed by the Constitutional Court in the past, and with reference to clause 98 of this Judgment, it has not been possible to perform a review of the amended provisions. Nevertheless, it is necessary to emphasise that the amended provisions, from the viewpoint of validity and enforceability of the same, share the fate of the amending act now being assessed.

107. With respect to the fact that the Constitutional Court has found a conflict between the contested act and Article 1 paragraph 1, Article 6 of the Constitution of the Czech Republic and Article 22 of the Charter, the Court has decided, pursuant to § 70 paragraph 1 of the Act on the Constitutional Court, to annul of the contested act upon expiry of December 2011. The Constitutional Court, when specifying the date for annulment of the contested act, has taken into consideration the negative consequences which could occur in the case of annulment of the act as to the date of promulgation of the Judgment in the Collection of Laws, or by annulment of the same with effect ex tunc, this both from the viewpoint of legal certainty of addressees of the relevant legal norms, and with regard to the impact of such an approach to the state budget. It is however necessary to add that unless a new arrangement is adopted before the time the derogative verdict of this Judgment comes into effect, then on 1 January 2012, the arrangement included in the legal order before the effective date of Act No. 347/2010 Coll., annulled by this Judgment, shall return into force.

Justices Stanislav Balík, Ivana Janů, Vladimír Kůrka, Dagmar Lastovecká, Jiří Mucha and Michaela Židlická hold dissenting opinions to the decision of the Plenum pursuant to § 14 of Act No. 182/1993 Coll. on the Constitutional Court, as amended by later regulations.

1. Dissenting Opinion of Justice Stanislav Balík

I voted to dismiss the petition for the following reasons:

For mothers, I have good and bad news.

The bad news is that regarding social benefits including child benefits, birth allowance and parent allowance, the situation remains unchanged until 31 December 2011.

The good news is that the Constitutional Court has just issued a loose sequel to the stories of Koloběžka I, the clever queen.

It happened that the contested act has both been valid and has not at the same time. Most of the two hundred heads of the dragon have been cut off, but they can still roll under a spring of the water of life and manage to adopt the same statutory text until the date specified above. Only if this should not go well, the previous legal arrangement, otherwise lying dormant for a few months, could maybe rise from the dead.

It seems that the principle of minimisation of interference, until now standard in the case law of the Constitutional Court, has been abandoned, and foundations for a doctrine of maximising non-interference have been established.
Perhaps the only thing missing from perfection was to annul the act with the date of effectiveness on the date constitutive meeting of the Chamber of Deputies of the Parliament of the Czech Republic, elected in the following elections.
The decision thus accepted gives one an excellent opportunity to feel a subjective experience similar to that probably experienced by a Swedish soldier after the battle of Lützen. The battle was won, but the capable king Gustavus I Adolphus – obiter dictum due to betrayal – has fallen.

x x x

I recall a scene described in a report from Warsaw about holding of the Polish Diet twenty-two years later, in 1652:
»The Chamber of Heralds' pronatura sua discords and contradictions dies consumendo, did not come pursuant to the law ad constitutionem colloqui with the Senators even on the fifth day prior to the close (of the Diet), not even on the fourth, third and second day, only on die ultima, (the deputies) marched up to the Senate. The discord occurred per causam (for this reason):
On Wednesday, Prince Radziwill, the Governor of Lithuania, went to the castle around the Pokrzywnicky public house in Beer Street, where a harnessed carriage of the Lord Mayor was parked. The cavalcade first set upon the wagoner and the hayduks, and then the Governor himself cried "Thrash them!". And so two hayduks of the Lord Mayor were killed and the wagoner was hardly able to escape death. Many Lithuanians were also cut with swords ex parte of the Lord Mayor, but force praevaluit, so the Lithuanians fought their way inside the house. This crime, therefore, moram fecit in two days, because the Prussians did not want to accept anything until this case is considered by a court. Only on Friday, the Prussians have been satisfied, when the Chamber of Heralds should so apply and beg the King to order arbitration of the case. And so stetit that the court shall be held. On that day, adjournment until Saturday was ordered. On Saturday, the Lords of the Crown started to roughly attack the Prussians ratione coaequatinois of the expired taxes, wanting – should the Diet be dismissed ("torn down"), blame in causam of the Prussian land, however some of them inarcanis (acted) in favour of Lord Radziejowsky, promoventes restitutionem (of Lord Radzijowsky) inhonorem pristinum. When however the Prussians publice expressed, that totaliter along with the towns wish to stay by His Majesty the King until death, the efforts of Their Majesties (the Lords of the Crown) were totally wasted. Then, when the Rzech Pospolita asked to prolong the Diet until Monday, one of the Lithuanian heralds cried "I do not allow the prolongation!", unexpectedly jumped up, raised protest and at once crossed to the other bank of Visla. And so a requiem was sang for the Diet, but God please do not let this be the cum requiem (to the whole) of Poland.«
(Quoted pursuant to S. Balík, S. Balík jun., Texty ke studiu právních dějin evropských zemí a USA / Texts for Studies of Legal History of European Countries and the USA, Pilsen 2005, p. 119).
After this first liberum veto, the exclamation "ja niepozwalam" became quite a usual phenomenon in the 18th century. Even though it paralysed the activity of the Diet, the Polish nobility considered it to be one of their fundamental rights. It is necessary to add that the consequence of this was the three partitions of Poland at

the end of the 18th century, which could not be prevented even by the fact that the Constitution of 1791 annulled the liberum veto...

x x x

My opinion is that in the assessed case, the proportionality principle should have been applied, but not in relation to the individual partial steps or phases of the legislative process, but the substantive reasons and thoughts on the situation to which the act which was adopted and now is annulled by Constitutional Court should have responded should have been balanced against the actual procedure itself and rights of the parliamentary minority.
When the two do the same, it is not the same.
The example of Austria in the times of Dolfuss was not the only one from the world between the two World Wars.
Additionally, Czechoslovakia was, at the beginning of the 1930s, in a situation when a reaction to the world economic crisis was necessary.
Furthermore, mentioning the Polish example in these times was not entirely random.
Is the term “parliamentarism” identical with the term “democracy”?
Is the most democratic state the one in which the role of Parliament is the strongest, compared to other countries?
Is it possible to maintain a condition when functioning of Parliament remains static, even when development is dynamic?
Is a copybook model of a static Parliament too idealistic?
Addressing the question of proportionality between the objective and the means used is definitely difficult, and the opinions of contemporaries may indubitably differ, as well might those of historians describing the past.
Could it be, for example, that the point of view published in the Great History of the Lands of the Bohemian Crown is realistic?
Could an objection be raised to this opinion that Masaryk’s Czechoslovakia was indeed undemocratic?
The only thing I find definite is the fact that in evaluation of the objective and the means then, it was the means that was given considerably greater weight than in the case assessed today:
»Masaryk considered enabling acts to be necessary. However, he saw the degree of risk associated with them, derived also from the people who would exercise them...
... One of the creators of the Constitution, Professor Weyr, in the Sunday columns of Lidové noviny, said that he doubted that it would be possible to preserve the old order, and mentioned an ancient Greek quotation that a government of an individual is better than that of a group...
... On 7 June [1933], the President began – also pursuant to a proposal from Beneš – to modify the scheme of the enabling act. The modification, however, was not carried out. Masaryk gave ground to the parties and agreed with empowerment to the President and the whole government...
... an Act on “Exceptional Power to Give Orders” (Enabling Act) was issued on 9 June 1933. The material content of the same was extended and the validity of the same was prolonged twice until June 1935; during this time, 240 orders of an economic nature were issued based on this act; the act was definitely annulled as late as 30 June 1937, when the government stated that it was not useful anymore.

The act enabled the government to accept orders and measures which were subject only to subsequent approval of Parliament. The debate whether Parliament was entitled to transfer part of its entitlements to the government, did not come to unified and clear conclusions. It is, however, necessary to emphasise that in Czechoslovakia – unlike some other countries – no misuse of said Enabling Act occurred… (cf. A. Klimek, Velké dějiny zemí Koruny české / A Great Book of History of the Lands of the Bohemian Crown, XIV, 1929-1938, Prague-Litomyšl 2002, pp. 133, 216, 239)
The amendment to the Rules of Procedure of the Chambers of Parliament from May 1933 "established that acts shall be submitted in the first reading by the Prime Minister or by the relevant minister and that a leading representative of every governmental party in Parliament shall hold a speech regarding them, at least 30 deputies shall be present at the meeting of the Chamber of Deputies, and the representatives of the people must not read their speeches..."« (cf. A. Klimek, Velké dějiny zemí Koruny české/ A Great Book of History of the Lands of the Bohemian Crown, XIV, 1929–1938, Prague-Litomyšl 2002, pp. 239–240).

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In these introductory thoughts, I had to reflect also an evaluating view into the legal history of the United States of America in the 1930s, at the time of Roosevelt's New Deal:
"At the end of the acting period of 1936, the Supreme Court decided against the Acts of the New Deal in seven out of nine cases, which had been presented to the same…
...In the end, Roosevelt's effort to change the Supreme Court was weakened by unforeseeable circumstances. Through a number of decisions adopted in spring 1937, the Supreme Court changed its previous decrees and supported the Wagner Act and Social Security Act. A conservative Justice resigned and instead of him, Roosevelt appointed one of the most consistent exponents of the New Deal, Senator Hugo Black from Alabama.
Later, Roosevelt stated that he had lost a battle but won a war. The Supreme Court changed its opinion on the important acts of the New Deal and Roosevelt was able to appoint Justices who identified themselves with his politics." (cf. G. B. Tindall, D. E. Shi, Dějiny států / History of Countries. USA. Prague 1994, p. 579).

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Let us try to evaluate the actions of participants in the legislative process from the point of view of whether these participants knew or not that through their actions they may violate or endanger an interest protected by the Constitution, although they, given the circumstances and their personal situation, should and could have known of this.
Primarily, the phenomenon of "mental residues in the heads of long-term deputies, who reproduce the patterns and make them accessible also to the parliamentary novices" must be regarded (cf. J. Kysela, Parlamenty a jejich funkce v 21. století: Uvedení do tématu / Parliaments and their Function in the 21st Century: Introduction, in: J. Kysela, Parlamenty a jejich funkce v 21. století / Parliaments and their Function in the 21st Century, Sborník příspěvků k 10. výročí ustavení Senátu Parlamentu ČR / Collection of Contributions to the 10th Anniversary of

Establishment of the Senate of the Parliament of the Czech Republic, Prague 2006, p. 128). I dare to add that this phenomenon cannot be prevented, as well as it is impossible to prevent sons from taking on the good and bad habits of their fathers.
The state of legislative emergency was declared on 29 October 2010. It happened less than two months after the Constitutional Court issued Judgment dated 7 September 2010 file No. Pl. ÚS 12/10 (269/2010 Coll.). In this Judgment, whose words I, as the Justice Rapporteur in that case, cannot understand otherwise than as they were formulated as an expression of my thoughts, the Constitutional Court, through the votes of fifteen Justices expressed as an essential reason, that "The decision on whether the economic loss is an actual threat is not decision making about losses in a legal sense, but is based on assessment of wider political consequences. The decision on whether the state is in danger of considerable economic losses pursuant to § 99 paragraph 1 of the Rules of Procedure does not have to include an assessment related to the scope to which the submitted draft bill is to prevent or reduce the said threatening considerable economic loss, in a kind of analogy to the provisions of § 417 paragraph 1 of Act No. 40/1964 Coll., the Civil Code".
In the same Judgment, it is stated that: »The Constitutional Court primarily remarks that in Judgment of the Constitutional Court file No. Pl. ÚS 7/03 (N 113/34 SbNU 165; 512/2004 Coll.) the Court expressed that "when the arrangement of the legislative process, which is a part of ordinary law, is not an expression of a constitutional principle, then even possible violation of the same does not establish a reason for derogation, this pursuant to § 68 paragraph 2 of Act No. 182/1993 Coll., as amended by later regulations, for not complying with the constitutionally prescribed manner of adopting an act or other legal regulation." This principle has governed the Constitutional Court also in other Judgments, especially file No. Pl. ÚS 24/07 (N 26/48 SbNU 303; 88/2008 Coll.).«.
From the same Judgment, it has also been known that the petitioner, in the case kept under file No. Pl. ÚS 12/10, inferred that the state of threat of considerable economic loss to the state pursuant to § 99 paragraph 1 of the same Rules of Procedure of the Chamber of Deputies did not occur, for which the same »presented economic reasons consisting mainly of the fact that "the saved sum represents 0.008% of the expenses of the state budget", and so, in their opinion, in this case the declaration of state of legislative emergency was misused in order to avoid the proper legislative process, as the expected savings of the expenses in the state budget in such relatively small volume could not fulfil the requirement of "considerable nature" of the economic loss so threatening.«
In the case being assessed, especially in a situation when more mutually interconnected acts were discussed, also connected to the future state budget, the economic specification of said threatening loss could have seemed prima vista higher. The participants of the legislative process could have, in relation to the contested act, calculated the same as the petitioners, i.e. that in the case of adoption of the act under proper legislative process would mean a loss of "only CZK 1.96 billion". It would be no wonder if they come to the conclusion via this information and these statements that it is a situation analogical to the one which occurred in discussion of Act No. 418/2009 Coll., through which Act No. 236/1995 Coll. is Altered, on Salary and Other Requirements Related to the Exercise of Functions of Representatives of State Power and Some State Bodies and Justices and Deputies of the European Parliament, as amended by later regulations, and Act No. 201/1997 Coll. on Salary and Some Other Requirements of Public Prosecutors

and on Change and Amendment to Act No. 143/1992 Coll. on Salary and Bonus for Work Emergency in Budget Organisations and Some Other Organisations and Bodies, as amended by later regulations.
In the context of the above-mentioned “mental residues”, experienced individuals could recall and novices discover that under the analogical situation in the case of adoption of Act No. 418/2009 Coll. basically nobody objected to anything against the declaration of the state of legislative emergency, which could result in an impression that the recent practice is derived from previous discussions on the subject of legislative emergency.
I presume that the participant of the legislative process, as well as myself, found, in relation to the declaration of the state of legislative emergency, no constitutional-law norm stating “many strikes and you’re out”.
It is a well-known fact that a kind of continuity inside the Parliament is kept by its expert bodies, while from the evidence presented it is obvious that the Chairperson of the Chamber of Deputies of the Parliament of the Czech Republic consulted the legal department concerning her actions in declaring the state of legislative emergency.
I ask myself the question what it is that was omitted when considering whether or not it was possible to proceed to considering a draft bill under the state of legislative emergency. The only thing coming to mind is that probably, even at that time, “certainty of a surprising decision of the Constitutional Court” was counted on.
Let us proceed from unintentional negligence to direct intent, i.e. from the means to the objective.

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The majority knew that they wanted to enforce adoption of the act and wished to reach this objective.
Unless we want to presume that the parliamentary majority is a gang with criminal intentions, a verdict saying that this majority knew what they wanted to enforce and so enforced it is not sufficient.
For such adoption of the contested act to become condemnable, the direct intention in relation to the procedure and the result is not sufficient, also the direct intention in relation to the content is needed.
Can we be sure and say that economisation measures were taken maliciously?
Has any loss actually been caused through adoption of the act?
Are there any guarantees and provable certainty that without the economisation measures the loss would not have occurred?
Have we forgotten Quod bonum, felix, faustum, fortunatumque sit, or should we not believe it anymore?
Have we become so mentally aged that scepticism is the only thing we have left?
In any case, it is necessary to take into account that the reason for declaration of the state of legislative emergency was the effort to discuss the draft bill “in summary proceedings”.
Is it the intention to set conditions for evaluating whether a situation is fit for declaring a state of legislative emergency so that discussion on whether such a situation has occurred would later last longer than consideration of an act through proper legislative process?

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It was clear from the testimony of the Chairperson of the Chamber of Deputies of the Czech Republic, Miroslava Němcová, that she interpreted the Rules of Procedure in such a way that, based on her position in the Chamber of Deputies, she had no possibility other than to declare the state of legislative emergency upon a proposal to that effect.
In my opinion, such a point of view is correct, not only from the viewpoint of linguistic interpretation, but particularly from a teleological point of view.
If it were the inverse, then almost ad absurdum the government would have no means of achieving the discussion of an act under the state of legislative emergency, should the powers of the Chairperson of the Chamber of Deputies of the Czech Republic be incorrectly applied as a decision-making authority. If the Chairperson of the Chamber of Deputies refused to declare such a state, there would be no remedy.
Would the position of the government on one hand and the opposition deputies on the other be balanced if the government were defenceless in the above-mentioned sense, while the deputies might at any time fight against an ongoing discussion of a draft bill under the state of legislative emergency and reverse the same?

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As for the discussion over the bill of the act, or publicity of the same, I basically identify myself with the finding that “definitely it is not the rule that the nation learns of principal intentions of the government from a parliamentary forum....instead of having a monopoly, parliaments have become more a part of a network of public discourse, containing the media, political parties, non-governmental organisations, etc.; parliaments, however, still differ from the others by being institutional seats of sovereignty with a claim on the definitiveness of a decision (pre-conditioned by compliance with the Constitution).” (cf. J. Kysela, Parlamenty a jejich funkce v 21. století: Uvedení do tématu / Parliaments and their Function in the 21st Century: Introduction, in: J. Kysela, Parlamenty a jejich funkce v 21. století / Parliaments and their Function in the 21st Century, Sborník příspěvků k 10. výročí ustavení Senátu Parlamentu ČR / Collection of Contributions to the 10th Anniversary of Establishment of the Senate of the Parliament of the Czech Republic, Prague 2006, p. 129). Therefore, I do not agree with the argument of the petitioners that the rights of citizens to hear the arguments for and against the adopted act in sufficient scope were remarkably abridged.
As is also apparent from the reasoning for this Judgment of the Constitutional Court, for some people, statements made via the media have become reference criteria for a decision, almost to the level of a piece of evidence being presented. If this were so, it would be a question whether also the other party has been so “heard”, as the quotations included in the reasoning are generally the words of deputies and politicians of the coalition.
In the petition, the petitioners stated that it had been prohibited for them to present arguments as deputies for and against the act adopted. However, the petition does not include any factual arguments, so it is not possible to form a conclusion as to what scope such arguments would have been serious, because also in this way it would have been easier to consider the proportion between abridgment of the legislative process and weight of the arguments not so voiced.

I believe as trustworthy the part of the witness testimony of Prime Minister Nečas, in which he testified on the scope to which the sponsor of the draft bill was familiar with the arguments of the opposition. In this time of the information society, especially in a situation when the opinions comprised part of the election programmes of the individual political parties, as well as of the policy announcement by the government, the positions of both parties became factually known to everyone interested in politics.

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Jan Kysela mentions, using Bryce's analysis, as one additional factor for weakening parliaments, the circumstance that "rational debate begins to give way to the voting machinery on one hand, and to frequented obstructions and arguments on the other." (cf. J. Kysela, Parlamenty a jejich funkce v 21. století: Uvedení do tématu / Parliaments and their Function in the 21st Century: Introduction, in: J. Kysela, Parlamenty a jejich funkce v 21. století / Parliaments and their Function in the 21st Century, Sborník příspěvků k 10. výročí ustavení Senátu Parlamentu ČR / Collection of Contributions to the 10th Anniversary of Establishment of the Senate of the Parliament of the Czech Republic, Prague 2006, p. 124)). Also in this case it is obvious that this is a permanent phenomenon which the constitutionalist literature regularly describes, but failed to find effective remedy against it.
Might the Constitutional Court actually become a successful preceptor under these circumstances?
It is a de lege ferenda question whether the arrangement of the relation between the coalition and the opposition in Parliament, especially in terms of the contours of acceptable or correct obstructions and instruments against obstructions of the opposite type, should arise directly from the Rules of Procedure instead of parliamentary customs.
Another circumstance which I believe is de lega lata unfortunate is the fact that the proposal on discussing the draft bill under the state of legislative emergency may not be made in the course of a legislative process. In this situation, the action taken in a situation when the sponsor found reasons for proposing the declaration of the state of legislative emergency is, in my opinion, the least contestable action, juristically speaking. The witness Petr Nečas, from my point of view, credibly explained that this had been the reason why the process was held in such a way that after withdrawal, the same text of the draft bill was submitted again together with a proposal for declaration of the state of legislative emergency.
In this specific case under assessment, it is thus necessary to view the details on the time frame not only as if, upon the second presentation, the periods for becoming familiar and working with the text started at the zero point.
When a child turns a computer off before the arrival of a parent, after having played a computer game for two hours, and turns in it on again hurriedly so that the time gauge shows a play duration of ten minutes at the moment of the arrival of a parent, has the child been playing the computer game for 10 or 130 minutes?

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If we accept that the unconstitutionality of an act may be based only on the fact that should the act not have been adopted under the state of legislative

emergency, then the question is raised of how many times a day we act pursuant to an unconstitutional act which has never been annulled.
Perhaps people could contemplate this issue after a good lunch paid for with a meal voucher...
However, how should one deal with petitions for annulment of such acts?
In my opinion, the Constitutional Court is not called upon to issue a legal norm through its verdict or even only through the reasoning of its decision, by which the Court would set a deadline for submitting such a petition.
Should such a term be preclusive?
Or perhaps just one of limitation?
Could the rights of a parliamentary minority be claimed by a minority which would be composed of deputies other than those who would state violation of their rights?
Is it possible to accept the argumentation of the petition of the deputies claiming the unconstitutionality of the act due to the unconstitutionality of the legislative procedure in the Senate of the Parliament of the Czech Republic when there was no Senate minority formed which could submit the petition, or vice versa?
When might the subjective term for submitting the petition start for individual entitled petitioners?
Should this issue be entrusted for possible adoption of a legal arrangement to the constitutional framer or at least the legislature, instead of nine justices of the Constitutional Court?

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There is nothing left but to conclude that I have not found as unconstitutional the course of action during the declaration of the state of legislative emergency and discussion of the draft bill.
As usual, I profess restraint as for the review of economic acts by the Constitutional Court.
I am convinced that not even economic experts could unambiguously agree on whether the condition of threat for declaration of the state of legislative emergency was actually fulfilled.
Ius summum saepe summa est iniuria…

2. Dissenting Opinion of Justice Jiří Mucha

Pursuant to § 14 of Act No. 182/1993 Coll. on the Constitutional Court, as amended by later regulations, I submit a dissenting opinion to the verdict as well as to the reasoning of Judgment file No. Pl. ÚS 55/10. In these proceedings, the petitioners have contested: a) misuse of the instrument of legislative emergency; b) unforeseeable convocation of exceptional session of the Chamber of Deputies; c) unjustified omission of general debate; and d) denial of the right of vote from the newly elected Senators; this, in the petitioners' opinion, violates the fundamental rights, constitutional principles and values, specifically Article 1 paragraph 1, Article 2 paragraph 3, Articles 5, 6, 26 and 36 of the Constitution, and Article 4 paragraphs 2 and 4, Article 21 paragraphs 1 and 4, and Article 22 of the Charter; the petitioners emphasised that it is even serious that this took place regarding adoption of an act which in itself seriously infringes the domain of social rights in particular. Majority of the Constitutional Court granted the objections listed under clauses a) to c) and stated that Article 1 paragraph 1 and Article 6 of the

Constitution and Article 22 of the Charter were violated. The majority came to the conclusion that the point of the case was only threat to timely adoption of Act No. 347/2010 Coll. so that the same would become effective no later than by the end of 2010, which was not a reason for declaration of the state of legislative emergency. I cannot identify myself with the conclusions and course of action taken by the majority of the Constitutional Court. I have reached this conclusion for the following reasons:

1. The Constitutional Court has insufficiently answered the question whether these defects cause unconstitutionality as a whole or separately; further, the Court has insufficiently justified the conjunction of the objections, when the same has not accepted as unconstitutional an important argument of the petitioner, i.e. the effort of the government to make the Senate vote in the previous composition. By this, the argumentation of the petitioner has been seriously weakened.

2. Also in choosing the reference aspect for assessment of the petition (clauses 61 to 76 of the reasoning), the reasoning preserves the argumentation of the petitioner, which however consisted only of reproducing general theorems on position of the opposition in the parliamentary system, or of reproducing conclusions of Judgment file No. Pl. ÚS 77/06, dated 15 February 2007 (N 30/44 SbNU 349; 37/2007 Coll.) which, however, relates to very different issues (relation of a draft bill and possible amendments). This applies also to references to Judgments file No. Pl. ÚS 5/02, dated 2 October 2002 (N 117/28 SbNU 25; 476/2002 Coll.) or file No. Pl. ÚS 56/05, dated 27 March 2008 (N 60/48 SbNU 873; 257/2008 Coll.) (see below). Moreover, the majority opinion does not infer anything from the conclusions on responsible and constructive opposition (clause 76). Yet I would expect, from transmitted reproduction of conclusions (of H. P. Schneider, G. Kretschmer, J. Pitzker or H. Schultz-Fielitze) that the Constitutional Court would take a stand on how often the Chamber of Deputies has utilised the instrument of legislative emergency in its practice so far and whether it is today possible to set brand new standards (see clause 80) which the RPCD or the constitutional order do not recognise. In fact, no one recognises such standards, so the RPCD leave this problem to the government as the initiator and the Chamber of Deputies as the controller. Not even the Constitutional Court has come to conclusions in these proceedings, which would allow the participating subjects in the chambers of Parliament, as well as the government, to foresee how the problem will be solved next time. The only fact in which the above-mentioned parties may find precarious certainty is that the Constitutional Court may annul the result of the state of legislative emergency. When and why this would happen, has not been clearly defined by the Constitutional Court, so it will depend on subtle standards which may differ from case to case. This fact, however, casts a shadow also on this decision, in which such conclusions were made, especially when instead of well-known facts about the opposition, the Constitutional Court should have found and provided reference criteria for evaluation of such kind of procedural decisions of the chambers of Parliament, connected with evaluation of the conditions in the society and the state.

3. Additionally, I cannot agree with the conclusion that in the given case the important circumstances pertaining to a democratic rule of law state, which, according to the majority opinion, includes also rational legal discourse, have been

infringed. In such a case, however, with the familiar way in which the Chamber of Deputies acts, Article 9 paragraph 2 of the Constitution is permanently threatened! Moreover, the Constitutional Court uses also moral appeals regarding observance of political culture (clause 76), while in my opinion this cannot be a reference criterion. The Constitutional Court identifies the rules of judicial decision making with decision making of Parliament, even though the latter is based on different rules for the very reason that it is a political decision making, predetermined by the results of elections. Also, in such connection (clause 69), the construction of an idea of "fair decision" as a measure for evaluation of constitutionality of a parliamentary procedure does not contribute to the consistency of the majority opinion. Firstly, I do not know what it is, and secondly, I am proceeding from Article 6 of the Constitution which still speaks about political decisions resulting from the will of the majority.

4. I have no doubt that protection of minorities is one of important requirements of a democratic rule of law state; however, the concept of the majority opinion moves this essential principle of democratic decision making to a kind of a new form. A fear thus appears that parliamentary consideration could become judicial proceedings (see above), in which "political" decision making continues through judicial means (politics by lawsuit); proceedings when the governmental majority becomes the defendant and the opposition, which failed the voting, becomes the prosecutor. Through such course of actions taken by the majority of the Constitutional Court, the way to the "third chamber" of Parliament would be open wider than ever before.

5. When evaluating constitutionality of procedure of adopting Act No. 347/2010 Coll., I do not consider the omission of general debate in the second reading to be such a serious problem that it could be qualified as violation of Article 1 paragraph 1 of the Constitution. If the majority considers the same a violation of important requirements and a reason for granting the petition, I must state that the same cannot be an infringement of the core of the position of the opposition, because it includes, in my opinion, the right to participate in a debate, submit a draft and initiate voting on such draft. Otherwise, § 99 of the RPCD would have to be annulled as unconstitutional because sedes materiae is found right there. The essence of the rights of the opposition (not all of them) has been protected through a detailed debate and the right of a representative of a political group to speak in a debate. Through that, the right to be heard has certainly been secured. Moreover, the Constitutional Court failed to take into account the possibility given to the representatives of political groups by § 59 paragraph 1 of the RPCD.

6. Equally, I cannot identify myself with the fact that the reasoning uses the term "opposition" (not recognised by our legal order), as if we were located in the setting of a Westminster-type parliamentarism (which, however, does not prevent the majority opinion from expressing a fear that the governmental majority may enforce declaration of the state of legislative emergency – clause 86). The majority opinion frames such term probably as a surprise for electors of both non-governmental parties, being put together and mentioned as one political unit.

7. Rules for evaluation of infringement in the fundamental rights and freedoms may not be applied mechanically to relationships between the majority and the

opposition, because also the opposition is a part of organisation of public power, not a group of natural persons or a kind of new legal entity. In the case the minority has means available to delay the adoption of an act, which they otherwise cannot preclude, also the majority may have (and use) means to prevent this. This is still a direct conflict of two groups of opinions within a single branch of the state power, not a direct intervention of the state power into fundamental rights and freedoms of persons of the private law. This conflict has been predetermined by results of the elections, provided that the same does not infringe the material requirements of a democratic state (protection of minority).

8. In such connection, the majority opinion does not sufficiently distinguish between the rights of a minority and entitlements resulting from legal status of individual deputies or non-governmental political groups. Some of the conclusions of the majority opinion (equally as in the case of suppression of the possibility pursuant to § 59 paragraph 1 of the RPCD) have been made through unsustainable interpretation of the key provisions of the RPCD. In clause 80, the majority opinion frames a surprising conclusion, that the use of the instrument of legislative emergency is possible only under the precondition of a wide consensus in Parliament in the form of acclamation. However, the RPCD do not recognise acclamation at all as a form of decision making and referring to acclamation in connection with the idea of "fair decision" and "convincing the opponents of truth and justice" is surprising. The same applies to argumentation by majority (again clause 80), which is comparable to the majority needed for adoption of a constitutional act. Then it is not clear to me why § 99 paragraph 4 of the RPCD has not been contested, when the same is under governance of Article 39 paragraph 2 of the Constitution, not Article 39 paragraph 3 or even Article 39 paragraph 4 of the Constitution. In clause 91, the reasoning, in order to support the majority opinion, exchanges the terms "qualified minority" and "qualified majority"! In this connection, in order to avoid dealing with the basic question of exceptional circumstances from the viewpoint of economic situation, state debt and fulfilling obligations resulting from membership in the European Union in the field of economic policy pursuant to the Treaty on the Functioning of the European Union [logic of Judgment "Lisbon I" – Judgment file No. Pl. ÚS 19/08, dated 26 November 2008 (N 201/51 SbNU 445; 446/2008 Coll.) – has disappeared completely from the assessments of the Constitutional Court in this Judgment!], the majority opinion replaced this by evaluation of whether the obstruction of the opposition forms an exceptional circumstance (clause 91). In this way, the essence of the problem has been replaced by the phenomenal aspect of the case and the problem of state debt was replaced by parliamentary squabble of the governmental majority with the opposition.

9. To summarise my opinion, I wish to state the following:
- the majority opinion has not fulfilled its task. It did not set a guideline for further procedure in comparable cases, moreover, it has come up with a peculiar structure of a kind of a "limitation period" (I am not aware that § 12 of Act No. 162/1920 Coll. on the Constitutional Court from the First Republic should still apply) for contesting acts for this reason. Violation of important requirements of a democratic law-based state is not indicated when, after some time, such a violation may be tolerated;

- the proceedings have not proved that the economic situation would be within limits of acceptability. This is a constant fact in a state with high debt. The important fact should have been that Act No. 347/2010 Coll., which was under consideration, and whose content is basically suppressed by the reasoning, has been initiated in direct connection with the solution to this situation. It is not important whether the act may solve the situation, but whether it was related to the solution and could contribute to the solution (the potentiality and responsibility of the government apply). Evaluation of such consequence belongs to the Constitutional Court rather than speculation how many billion crowns are concerned. Therefore, no arbitrariness occurred, as the government is responsible to the Chamber of Deputies for economic policy of the state, this in relation to the result of the elections. This basic constitutional aspect as a reference criterion for evaluation of the process taken by the government has been completely suppressed by the majority opinion;

- the government as a constitutionally responsible subject of state power has been equipped, pursuant to § 99 of the RPCD, with a possibility how to proceed in a similar situation. The procedural means used was not contested even by the petition for annulment of the act which was adopted through such means. This is understandable, because upon the change of the government, today's opposition will surely be ready to use such means as well, as they used it earlier anyway. The Constitutional Court has not found a procedure whereby the Court would clearly determine for the cases to follow when the state of legislative emergency may be used and when not, and so the Court cast doubts on fulfilment of constitutional obligations of the executive, which is responsible for the economic policy of the state;

- the thoughts that something could have been done (if there were a will) before the end of the year or the end of February, should stay beyond the subject of assessment by the Constitutional Court, as the Court is not responsible for the economy of the state, and the Court has not found the means of evaluating the same (see clause 82). Therefore, in my opinion, when in doubts, it is necessary to give priority to the government to go its own way ("they should have its way" – in the words of the reasoning – clause 75) in a situation when the opposition was not denied the right on making an opinion, submitting a draft, and voting (they did have "its say"). In the given case, both were possible and compatible as well, which is definitely a relevant conclusion in this case also in the context of value assessments;

- general debate and possibility of obstruction do not belong to the core of the right to protection of a minority and not at all among the important requirements of a democratic law-based state. When solving these problems, it is therefore necessary to distinguish properly the constitutional level and inside the same the important requirements pursuant to Article 9 paragraph 2 of the Constitution, and the subjects of regulating law which only complete parliamentary procedures; therefore, they should not have become the basis for verdict whereby the petition was granted;

- not all of the arguments of the petitioner reached the constitutional level. Therefore those should have been eliminated which lie under this threshold;

constitutionally relevant arguments should have been evaluated individually and those accepted also in mutual connection;

- a petition which does not contest sedes materiae (§ 99 of the RPCD and § 118 of the SRS) calls for evaluation whether the same is not manifestly unfounded; the content of Act No. 347/2010 Coll. was not mentioned at all in the petition, except for mentioning that the act infringes social rights, even though in an acceptable way. Regarding the verdict of the Judgment, I have come to the conclusion that the sense of the petition consists only in teaching the governmental majority a lesson and in preventing possible petitions demanding review of the actual content of the contested "unconstitutional" act;

- at the conclusion I wish to emphasise that I cannot identify myself with the way in which the case law of the Constitutional Court has been reflected in this exceptional case. In addition to the above-mentioned cases, a change of the legal opinion of Judgment file No. Pl. ÚS 56/05, dated 27 March 2008 (N 60/48 SbNU 873; 257/2008 Coll.) is particularly relevant, and I must consider the same, due to the lack of a close connection, an unacceptable "rider" to the Judgment, which is related to a different question. In the squeeze-out case, the content of the act was contested first, which was seen to be a serious problem in the case of a large number of shareholders and business companies. Only then, a procedural objection was added to the petition. In the current case, the content of the act has not been contested at all, and so I miss a basis for comparison of these two situations.

10. Therefore I declare that the majority failed to sufficiently prove, in the reasoning, violation of Article 1 paragraph 1 and Article 6 of the Constitution and of Article 22 of the Charter. It is still a mystery to me why violation of these very provisions necessitates postponement (a mere alibi) of enforceability of the Judgment to the end of the budget year, when the reasoning has so far denied any impact on the state budget and the condition of the same.

3. Dissenting Opinion of Justice Ivana Janů

Pursuant to § 14 of Act No. 182/1993 Coll. on the Constitutional Court, as amended by later regulations, I submit a dissenting opinion to the verdict as well as to the reasoning of Judgment of the Constitutional Court file No. Pl. ÚS 55/10.

I.

The nature of the problem assessed by the Constitutional Court is formed by the issue whether Act No. 347/2010 Coll. 347/2010 Coll. Whereby Some Acts are Altered in Connection with Economisation Measures under the Competence of the Ministry of Labour and Social Affairs was adopted in a constitutionally acceptable procedure, especially taking into account the objection of the petitioners as to whether procedural regulations have been violated in such way that eliminates those functions of parliamentary opposition, or the minority, which are under constitutional protection.

The question mentioned above I answer negatively. I believe that the government, having majority in Parliament, is responsible for the economic policy of the state, and the same will be accountable to the electors no later than at the following

election to the Chamber of Deputies. To the contrary, the specific circumstances of the use of the legislative emergency, as they resulted from the evidence presented before the Constitutional Court, and the economic condition of the country, as must be generally known to anyone who has read some economic reports in newspapers in the last few years, have convinced me that the actions of the parliamentary majority have not been arbitrary and that the parliamentary minority has not been deprived of the rights and functions that belong to it. The government, or the parliamentary majority, had very specific and clearly declared reasons for their actions and at the same time they were burdened with responsibility (as was plausibly proven from hearing Prime Minister Nečas and consequently also the Chairperson of the Chamber of Deputies, Miroslava Němcová). The urgency of the case was given by the discussed material (economisation measures) being interlinked with the act on state budget being prepared, compliance with which is definitely one of the governmental (political) priorities. It is the very constitutionally preferred principle of majority (Article 6 of the Constitution) that is to secure that responsibility of the governmental majority is accompanied with sufficient (procedural) means, through which the defined objective may be achieved. Under a contrary interpretation, basically every government would be doomed to fail in fulfilling their (political) objectives.

Use of the instrument of legislative emergency, justified by the threat of considerable economic loss in the case being assessed today fully complies with the international context of the economic crisis. A number of relatively well-developed countries of the European Union have gradually and – for many people – surprisingly fallen into such economic problems which must be considered extremely complicated and difficult to solve. Also, perhaps no professional authority considers the development of Czech economic indicators to be positive. I believe that the opinion that the economic situation of countries which find themselves in deep recession, is unimportant for us, is completely devious. to the contrary, their situation and the solutions adopted should work as a warning and lesson for us. International credibility is inevitably based on visible and traceable abilities of any single country to have, for example, the state budget deficit under control and take steps to reduce the same, not vice versa.

Undoubtedly, no political government is happy to take radical and unpopular economisation measures and thus inevitably lose support of electors. A government which finds the courage to take such steps cannot be a priori considered irresponsible, it is actually the opposite. In a democratic process of government and administration of the country, where political parties and their coalitions ascend to power and lose it again, I consider important that the election majority, in the specifically limited time frame, has sufficient degree of certainty concerning constitutionality of the instruments they can use.

The Constitutional Court always makes decisions on the basis of a specific petition; that means the Court does not establishes its own agenda. If the petitioners pursued achievement of their political objectives through decision making of the Constitutional Court, it could be considered to be unacceptable attempt at politicisation of judiciary. In such situation, the Constitutional Court must be very careful not to apply excessive activism (accepting the game played by various political powers) and thus expose itself to accusation of “judicialisation” of the

politics, i.e. of temptation to determine, by its decisions, ever expanding scale of (political) issues. When one of schools of law and philosophy emphasises discursive judicial procedures in finding justice (law), I disapprove the transfer of such quasi-judicial standards into political decisions, as does the majority opinion of the Plenum.

Blurring and obscuring the different roles of parliamentary majority and functions of the opposition may lead to a decrease in the democratic standard, as it would further worsen the electors' understanding of the basic issues of administration of public affairs.

II.
I believe that legitimacy of acts of Parliament, which is a crucial value protected by the Rules of Procedure of the Parliament Chambers, cannot be assessed mechanically (with absolute consequences) in relation to the individual steps of the legislative process. Equally to individual legal acts, also acts adopted by Parliament may be assessed with respect to the specific context of the matter and material compliance with discursive relations between the governmental majority and opposition minority, requested by majority of the Plenum.

The process of elections provides political and constitutional legitimacy to specific political powers and programmes, which formed majority in the Chamber of Deputies, and consequently also taken responsibility for the administration of the country. Legitimacy of the legislative assembly (or the government) and of actions taken by the same need not remain unchanged during the whole election term. This legitimacy is bound to many factors, which necessarily include also the nature of the post-election majority, course of the process of voting on confidence or non-confidence for the government, i.e. generally the fact whether and for how long the actions of Parliament or the government comply with the political will of majority of citizens, expressed in the elections. The Constitutional Court does not assess the issue of legitimacy of state power formally, but takes into consideration a number of factors including "factual legitimacy" [Judgment file No. Pl. ÚS 6/07, dated 9 February 2010 (66/2010 Coll.), clause 54].

It may be assumed that, for example, at the end of an election term, the state power (legislative, executive) is in a different position than a newly elected legislative assembly (or a government), which implements their explicit election programme, directly tested by recent elections. The electors' preferences and their actual will undoubtedly change during the exercise of mandate of a legislative assembly, but this does not happen from day to day. If the government and the legislative assembly are to take certain steps which they consider to be necessary and urgent (from the viewpoint of politics or economy) and which were an explicit subject of the electoral competition of political powers, this in the first few months of their mandate, then legitimacy of such steps is so strong that the interest in formal protection of one of (many) elements of institutional establishment of the roles and functions of parliamentary opposition, which has not convinced enough electors with their programme, cannot outweigh the same.

The above material assessment of legitimacy of the actions of the parliamentary majority is what I completely miss in considerations of the Plenum majority, which

has focused only on strict assessment of pureness (speed) of the legislative process, without taking into account the nature (in terms of content) of the contested act, the core of which has been directly and explicitly tested in the elections (pre-election declarations of economisation measures and changes in the social field) and implemented directly in the introductory stage of the exercise of the government mandate (parliamentary majority). I wish to remark that the changes presented by the contested act may be considered to be a rather simple issue, in terms of the legal aspect; rather than creating legal rules of behaviour, these are parametrical – not essential – changes, with mostly economic consequences. Also this fact surely influences the assessment of the importance of parliamentary discussion in the given matter.

III.

I believe that, in the case under discussion, protection of parliamentary opposition has been fulfilled. The Czech constitutional order and legal order include many provisions that represent institutionalised protection of parliamentary opposition, starting with the very nature of the proportional election system, privileges, immunity and material advantages provided to all deputies without distinguishing the (governmental) affiliation, possibility to initiate adoption of a deputies' draft bill, possibility on the part of a legislatively procedural opposition (qualified minority) to block or delay some decisions of the majority, inspection and interpellation instruments, representation in the bodies of the Chamber of Deputies, up to the possibility on the part of a qualified group of (opposition) members of the Chamber of Deputies to submit a petition to the Constitutional Court for annulment of an act, and require inspection of constitutionality of the legislative process in every single case. Therefore, isolated assessment of compliance with only one of many guarantees (specifically whether consideration of an act under the state of legislative emergency represented constitutionally relevant violation of the rights of the parliamentary minority) seems to be rather inadequate, taking into account the general level of legal protection that the opposition members of the Chamber of Deputies enjoy as individuals and as a collective.

In Judgment file No. Pl. ÚS 56/05, dated 27 March 2008 (N 60/48 SbNU 873; 257/2008 Coll.) and previously in Judgment file No. Pl. ÚS 77/06, dated 15 February 2007 (N 30/44 SbNU 349; 37/2007 Coll.), the Constitutional Court pointed out that possible assessment of violation of principles of legislative process would be related to a test of proportionality in connection with principles of protecting the citizens' justified confidence in the law, legal certainty, and acquired rights, or in connection to other constitutionally protected principles, fundamental rights, freedoms, or public values. However, in my opinion, majority of the Plenum has resigned thorough assessment of all specific circumstances of the matter in the test of proportionality, and, in particular, the majority did not respect the essential conclusions expressed in Judgment file No. Pl. ÚS 12/10 concerning constitutional relevance of the instrument of legislative emergency (clauses 15–17).

Findings of the Constitutional Court do not imply that the legislative process has been done surreptitiously, hidden from the critics of the parliamentary opposition, or that the parliamentary minority has lost contact with the discussed draft bill in any stage of the legislative process; this has been confirmed for example by the Prime Minister upon my question during oral hearing held by the Constitutional

Court. The petitioners have not proven, and other facts did not imply that the deputies voting on the bill of the contested act could doubt its identity with the bill submitted sufficient time in advance before the declaration of legislative emergency.

Discussions of the Chamber of Deputies is almost live broadcast by media, and so the factual control of the individual steps is extended to include journalists and the general public.

It is indubitable that if the opposition does not enjoy guaranteed sufficient complex of competences, the democracy as a system of government is weakened. On the contrary, if the opposition has a widely defined and institutionalised position, which they do not use to suggest useful and rational alternatives ("constructive opposition"), then it has a strong potential to weaken and paralyse the effective administration of the country.
I reproach the majority opinion of the Plenum for its considerations being submitted mostly at an abstract level, as if the case were related to a model parliament, not a real one. The Czech constitutional practice, however, is far from being so ideal. The majority opinion of the Plenum did not take into consideration that the instrument of legislative emergency, as defined by law, has no explicit constitutional limits and is long-term used for different purposes. Many acts have been adopted under this state, which acts, in my opinion, overweight in significance the amendment presently assessed.

It has actually been today's main opposition party which, just recently, has taken active part in the legislative process under the state of legislative emergency. For example, on 29 September 2009, Act No. 362/2009 Coll. has been adopted in such way, through which some acts are altered in connection with draft bill on act on state budget of the Czech Republic for 2010, also with the help of votes of today's main opposition party. Later, on 2 March 2010, the same party did not mind the legislative emergency when pursuing political objectives in the case of taxation of employee benefits [governmental draft bill through which Act No. 235/2004 Coll. on Value Added Tax, as amended by later regulations, (print of the Chamber of Deputies 1059)]. If the evaluation of "violations of rights of the parliamentary opposition" is to be complete, a great deal of hypocrisy and purposefulness must be admitted in today's claiming "their own rights". At this moment, I do not take into consideration the fact that the main role and meaning of democratic opposition is to offer alternatives to the governmental majority in their effort to enforce their serious interest to take over governmental responsibility. At the time after the fall of the government of Mirek Topolánek, it was also today's main opposition party, who played the main role in the total failure of the parliamentary opposition to accept the governmental responsibility.

Certain constitutionally conforming behaviour is requested not only from the parliamentary majority [Judgment file No. Pl. ÚS 27/09, dated 10 September 2009 (318/2009 Coll.)], but also the role of the opposition, if the legislative process is to be functional (effective and efficient), cannot be based on simple negation, blocking and criticism of submitted drafts presented in media.

The issue of economies in public expenses has been a dominant topic of public political discussion for the last few years. The present parliamentary opposition consists of parties which have been represented in Parliament of the Czech Republic (and not only as the opposition, see the government of Prime Minister Jan Fischer) continually for whole period during which the economic problems have persisted. Present opposition therefore had enough space and time to present their solutions and alternatives continuously and through that truly enhance the parliamentary discourse. The more legal instruments the parliamentary opposition has available, the greater responsibility and constructive approach may be requested from them.

IV.
In my opinion, the submitted petition is primarily a political matter, not one of constitutional law. I consider it an expression of decline of political and legal culture, missing decency at a human level, across the political spectrum. In my opinion, the Czech legal order includes a complex of guarantees in terms of law and conventions, which sufficiently and through different means protect the participation of parliamentary opposition in democratic legislative process. Due to the reasons mentioned above I believe that the adoption of the contested act has not violated either Article 1 paragraph 1, Article 6 of the Constitution or Article 22 of the Charter of Fundamental Rights and Basic Freedoms.
As for other points, I refer to dissenting opinion of Justice Jiří Mucha with which I agree.

4. Dissenting Opinion of Justice Vladimír Kůrka

I.
Individual Objections
1. The first objection is based on syncretic and compilative argumentation structure, in which the majority opinion, by frequently quoting its own case law (especially therein presented general principles of parliamentary normative process), leaves too open space for seeking how, which one and in what sense has been applied in the case currently assessed. This is becoming even more complicated also because these general principles did not (did not need to) find direct expression in specific circumstances, as the decisive opinions were formed elsewhere. For example, the essential “procedural” opinion (clause 62) was expressed in Judgment file No. Pl. ÚS 5/02, dated 2 October 2002 (N 117/28 SbNU 25; 476/2002 Coll.), the point of which was (merely) whether it is possible to “revoke” a resolution of the Chamber of Deputies, through which a draft bill was adopted; another source Judgment file No. Pl. ÚS 77/06, dated 15 February 2007 (N 30/44 SbNU 349; 37/2007 Coll.) is related to “riders” and reflected to certain degree the technical aspect of generation of a legal regulation (from the viewpoint of existence of “tight relation” of the amendment), and thus the same are not directly and clearly instrumentally reflected in the political aspect of the given matter (parliamentary discourse, role of the parliamentary opposition, conditions of considering an act under the state of legislative emergency). What is more, also different case law is available: in Judgment file No. Pl. ÚS 24/07, dated 31 January 2008 (N 26/48 SbNU 303; 88/2008 Coll.), the results of the “riders” Judgment are

not only distinctly mitigated (cf. » If the maxim of a statute's substantive consistency, as declared in Judgment No. Pl. ÚS 77/06 („[i]n a substantive law-based state, a statute in the formal sense cannot be understood as a mere repository of a wide variety of changes made throughout the legal order"), should be conceived of in the sense of being a derogational ground, then it would be so only in an extreme situation«), but also the procedural aspect of "a discourse conducted across the political spectrum … in which all participants had the opportunity elaborately to acquaint themselves with the matter under consideration and to give their informed view upon it" (clause 67) is relativised, if – in a situation "politically" and "procedurally" comparable to the current one – "the basic question of whether it is or is not in harmony with the principle of parliamentarianism to have a situation in which the majority in the second assembly of Parliament can, by their decision, block the public consideration of a bill, and thereby preclude the free parliamentary expression of the minority", was answered by the Constitutional Court (although with reservation and in relation to specific peculiarities) in such way that the Court did not infer a reason for derogation from this, and considers this "rather a manifestation falling within a field which is already removed from the field of constitutional review, that of the level of democratic political culture of the Senate majority". The Constitutional Court has also expressed a tolerant opinion towards otherwise controversial "collecting amendments" [Judgment file No. Pl. ÚS 21/01, dated 12 February 2002 (N 14/25 SbNU 97; 95/2002 Coll.)], "comprehensive amendments" [Judgments file No. Pl. ÚS 33/09, dated 29 September 2010 (332/2010 Coll.) and file No. Pl. ÚS 39/08, dated 6 October 2010 (294/2010 Coll.)], and eventually, the Court was equally "kind" also to the legislative emergency itself [Judgment file No. Pl. ÚS 12/10, dated 7 September 2010 (269/2010 Coll.)], not mentioning the procedurally "liquidating" Judgment file No. Pl. ÚS 56/05, dated 27 March 2008 (N 60/48 SbNU 873; 257/2008 Coll.), with which the majority opinion here decided to explicitly break up.

2. Plurality of sources, moreover not very coherent, and indistinctness of application of the proclaimed general principles into specific conclusions is accompanied – logically – also with uncertainty in the question what values the majority of the Plenum decided to protect from the constitutional-law positions; whether the parliamentary discourse (clause 67) or the rights of the minority (clause 70), parliamentary opposition (clauses 72 and following), group of members of the Chamber of Deputies (clause 104) or the recipient of the legal regulation as a parliamentary output (clause 65). This forms the basis for the second reservation, because this must be clear, and only then it may be evaluated what actually has been infringed (affected), whether in a relevant way or not, possibly whether there is a special reason for which not to provide the protection (which could apply to the "group of members of the Chamber of Deputies" – petitioners, or the parliamentary opposition or other minority, if the same referred to rules they themselves break). A specific form of such evaluation is provided by the fact that the argument of unconstitutionality is connected exclusively with the procedure, without the unconstitutionality being claimed substantively, in its result, in a form of a specific legal regulation, (however, if the resulting act were "right", the thought about affecting the "recipients" would become irrelevant).

3. The facts mentioned above are important also due to the fact that – at a general level – there are procedural defects and "defects"; some are (may be) reflected in the result, some are not, or, even elimination of such defects could not bring about a different result within the scope of the process under evaluation. Moreover, the Constitutional Court has perceived this earlier, and in most of the above-mentioned Judgments the Court did not even acknowledge that the procedural defects have an effective impact, when – such as in Judgment file No. Pl. ÚS 56/05 – the Court connected the evaluation of these defects with "the test of proportionality, in connection with principles of protecting the citizens' justified confidence in the law, legal certainty, and acquired rights, or in connection to other constitutionally protected principles, fundamental rights, freedoms, or public values". The third reservation results from the way in which majority of the Plenum dealt with the conclusion of this Judgment, summarised in clause 101. Explanation "in greater detail", advised in clause 102, is presented firstly in a form of their simple negation (cf. first two sentences of clause 103, or that "the order … to review whether acts have been adopted in a prescribed way … would become obsolete and dysfunctional" and it is "not acceptable"), and then through an opinion that in spite of this (?) it is necessary to distinguish whether, with respect to the given defect in the legislative process, the conditions for adoption of a certain act have been fulfilled at all (which is however not the matter of this case), or whether it is a "a defect, as a consequence of which the rights of individual participants in the legislative process, guaranteed by the constitutional order, have been infringed, where the application of such rights is fully at their disposal" (which, on the contrary, is the matter of this case, as is clear from the following clause 104). However, it is not logically understandable why it should be reasonable to "distinguish" these two situations, when also the second, "more delicate" one, forms a reason to eliminate conclusions of Judgment No. Pl. ÚS 56/05, when the same is moreover bound to less significant values (compared to the parliamentary discourse), which is "merely" a violation of a right of "a group of members of the Chamber of Deputies". In other words, eventually the point is again only (unjustified) "negation" of the previous case law; while nothing prevented the Court to stick to this Judgment, and reserve a possible intervention of the Constitutional Court in specific circumstances, when exclusively a procedural defect is claimed (without questioning the constitutionality of the legal regulation adopted through this procedure) for truly essential situations, as the one which most of the Plenum, in such connection, mentions as an example "for distinguishing".

4. It is true that the process doctrines and under-constitutional law in force - again in general niveau - mark as special kind of defects those ones, which are considered so important that existence of the same itself causes that a decision given in process influenced by the same cannot stand and must be eliminated without further procedures. Such defect may also occur in legislative process, and an intervention of the Constitutional Court, as indicated in previous paragraph, would be appropriate in such case (the majority opinion anticipates such situation in thereby referred clause 103 in a form of "... absence of acceptance by one of the chambers").

5. The majority of the Plenum had on mind, also in the current case, the existence of a similar absolute defect (based on "confusion"), this in relation to the very fact

that the contested act was adopted under legislative emergency, as the majority has not evaluated anything except whether conditions for declaration of the same and for discussing the draft bill in summary consideration have been fulfilled or not. And that was due to the fact – as given for example in clause 79 – that this instrument itself is in its nature able to disallow "detailed preparation and familiarisation with the matters discussed" and "and generally parliamentary procedures and debates are limited and shortened", through which a risk of relativisation and disturbance of a constitutional request is established, pursuant to which the legislative procedure governed by the above-mentioned democratic principles should become "the actual source of the legitimacy of the act", because "In this way, such necessary parliamentary debate is limited in a significant way and the Chamber of Deputies may in such a situation easily become a mere validator of draft bills submitted by the government, without these being examined in detail and considered, or without the same being subjected to criticism and confronted with alternative proposals, not only from the opposition".

6. The core of the fourth reservation is the fact that it is impossible to identify oneself with such concept of the nature and consequences of a procedural defect, because there is no reason for such – and different from the Court's own previous case law – assessment; also for this reason, evaluation based on a broader context should have therefore taken place [cf. Judgment file No. Pl. ÚS 24/07, dated 31 January 2008 (N 26/48 SbNU 303; 88/2008 Coll.)] and especially on reflection of the position of the Constitutional Court related to the Chamber of Deputies, and evaluation of the sense and effects of the derogation instruments, which the same has available in relation to the Chamber of Deputies, corresponding to the same. Even in the above-explained concept of majority, this is not a defect which would, due to the quality of the same, exceed evaluation of the importance of the same for the result of the process affected by the same.

7. The fifth objection consists in the opinion that the majority of the Plenum has incorrectly explained the statutory conditions for declaration of the state of legislative emergency, when they perceived the provisions of § 99 paragraph 1 of the RPCD in such way that the same sets the evidence of presence of "exceptional circumstances" as an independent and even a primary condition, and that only then, other conditions may be considered, specifically "threat to fundamental rights and freedoms", "threat to the security of the state" or "threat of considerable economic loss". It is obviously the opposite; fundamental conditions consist of these "threats", provided that the scope of such threats may be considered exceptional. Considerations of the majority, saying that "obstruction" of the opposition deputies is nothing "exceptional" (clause 92), that the exceptionality is not given by the very fact that the act being adopted has been anticipated by previously adopted act on state budget, because "it is each government's own responsibility to base a draft bill on the state budget on valid legal regulations" etc. (clauses 93 and 94), that this case is not "exceptional" because the objectives of the government in the draft bill in consideration have been known "a long time in advance" (clause 97) and that equally it is not important that the act would not have come into effect "before the end of 2010" (clauses 93 and 98), are therefore erroneous and do not concern the factual conditions for declaration of the state of legal emergency pursuant to § 99 paragraph 1 of the RPCD.

8. The sixth reservation is a result of the above; when one of these actual conditions, the existence of which was used as an argument by the government, i.e. the threat of economic losses, has been evidently disparaged by the majority of the Plenum (clause 95); even though during the oral hearing, the individual Justices have strongly focused at this subject, this circumstance is basically not mentioned in the reasoning of the Judgment. This is in spite of the fact that in the Judgment file No. Pl. ÚS 12/10, the Constitutional Court has dealt with the condition of the threatening loss, and even tried to define such "loss" above the limit of "loss in legal sense", that is with an overlap into the field of "wider political consequences". In addition, it is relevant to add, against the opinion of the majority, that the "threat of loss" will become a regular condition for declaration of state of legislative emergency evidently also in the case when the government submits a draft bill to the Chamber "after date", whether this happens for external reasons or reasons on the part of the government; the need to discuss the draft bill under such state will be objective, if the loss would actually threaten.

9. In addition, the argument applied by the majority resulting from existence of constitutional Act No. 110/1998 Coll. on Security of the Czech Republic, as amended by Constitutional Act No. 300/2000 Coll. (clause 80) will not stand "in full power" (seventh objection). Naturally, also such interpretation is available that – simply – if a state of "threat to the country" or a state of "war" exists, the draft bills submitted by the government will be discussed "in summary consideration", and that it is all what this act implies. It does not mean that other situations "adequately" (which does not have to mean "comparably") exceptional are excluded, for example those which are set as conditions for declaration of the state of legislative emergency by the provisions of § 99 paragraph 1 of the RPCD, i.e. situations when fundamental rights and freedoms are threatened, or when serious loss threatens, for example when natural disasters occur. The condition expressed by the majority (for situations other than those regulated by the above-mentioned constitutional act), which is to consist of "wide consensus in Parliament", seems, in this context, to be quite irrelevant and unclear; also this "consensus" is being used by the majority unclearly, perhaps arbitrarily; while here the same is marked (clause 80) as a pre-condition for the "use of the legislative emergency instrument", in clauses 83 and 86, its meaning is suppressed, or marked as unimportant. However, if the rights of a "group of members of the Chamber of Deputies" were considered important, as is declared by the majority in various parts of the Judgment, then their "consensus" could not be unimportant, as well as in the case of their long-term silence (clause 104).

II.
Summary reservations
10. The focus of the Judgment may perhaps be seen (although just approximately, since, in a confused fashion, also other values are proclaimed as affected) particularly in the fact that through a specific declaration of the state of legislative emergency, the basic principles of parliamentarism have been infringed, the requirement of regular parliamentary discourse and the right to express an opinion in Parliament have been restricted, this with inner consequences (initiating a discussion) and outer overlaps, towards the electors, in favour of public democratic

review. Majority of the Plenum has come to the conclusion that this process of adoption of the contested act shows, from the viewpoint of legality and constitutionality, attributes of incorrectness; however, the Constitutional Court did not have just the task to compare the academically constructed principles of parliamentary procedures to the state which actually took place, but additionally, the task to assess whether the conditions have been fulfilled under which the deviations found by the Constitutional Court are important enough to establish a condition when the intervention of the Constitutional Court is inevitable. It is worth emphasising, that these are really conditions of "inevitability", because, while regarding the evaluation of products of parliamentary procedures (from the constitutional point of view), there is no doubt about the mission of the Constitutional Court, but regarding the inner parliamentary life and procedures taking place inside the institution, the situation is considerably different, as these procedures are particularly political and express certain, usually quite heated, form of political competition. For understandable reasons – also because of maintaining balance between the affected "powers" – the Constitutional Court is required to abide by the principle of restraint and "minimisation of intervention" (which, for that matter, the Constitutional Court often proclaims itself), and this requirement is posed with exceptional urgency; in other words, for active intervention of the Constitutional Court into this "procedural" space, specific conditions must be fulfilled.

11. However, in this case, such conditions have not been fulfilled; description of the parliamentary procedure (clauses 22 to 33) does not imply that the basic principles of parliamentarism (see above) have been extremely violated or, that the essence of the same has been violated; "some" (at certain level and with certain content) parliamentary discourse was actually held, statutory draft was known to all deputies, in sufficient time period in advance. This should have been enough for the Constitutional Court, since otherwise – pursuant to the factual summary included in clauses 23 to 27 – the case was nothing else than a political fight of the government and from both parts of the parliamentary spectrum (parties) exactly by those means, which had been given to each party individually by their political power, and which had corresponded to the specific stage of this fight. The fact that in this fight there is no place for the Constitutional Court as an arbiter (in the Chamber of Deputies) is out of doubt.

12. Representative of the group of members of the Chamber of Deputies – petitioners in this case (Deputy Sobotka) – was asked whether he would, in the case that he would have been bound by exactly these strict criteria for declaration of the state of legislative emergency, which he currently enforces, also in the past situation when he, in a position of a Rapporteur, submitted Act No. 120/2010 Coll. amending the Act on Value Added Tax (lower taxation of employee benefits – the "meal vouchers" case) – and he answered – surprisingly – positively. This cannot be interpreted in any way other than although in the current case he contests this process at a specifically qualified level (before the Constitutional Court), in practical political circumstances the same would become acceptable at any time when it would be to the benefit of the political interest pursued.

13. The Constitutional Court should have reserved its intervention in the parliamentary procedures for situations not only truly extraordinary, as was

mentioned several times earlier, but also factually comprehensible and convincingly incontestable. The principles on the grounds of which the Court decided to intervene in the "hazy space" of the current case are definitely worthy of admiration, but evidently distant from real political parliamentary life (real "discourse"). It is to be feared that the Constitutional Court will face lack of understanding in this field, its decision will not bring about permanent effect, and the Court, considered an ineffective mentor, might rather lose credit.

III.
Conclusion
Therefore, the petition should have been dismissed.

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5. Dissenting Opinion of Justice Dagmar Lastovecká

The Constitutional Court has expressed, in its previous case law quoted in the Judgment [especially Judgment file No. Pl. ÚS 77/06, dated 15 February 2007 (N 30/44 SbNU 349; 37/2007 Coll.)], its opinion on legislative procedure and consequences of constitutional deficit of the same. However, in relation to this issue, the Constitutional Court also emphasised certain degree of restraint in some Judgments related to the same [cf. Judgment file No. Pl. ÚS 56/05, dated 27 March 2008 (N 60/48 SbNU 873; 257/2008 Coll.)], this also in relation to adoption of acts under the state of legislative emergency [cf. Judgment file No. Pl. ÚS 12/10, dated 7 September 2010 (269/2010 Coll.)] or non-interference in situations which are only politically incorrect [cf. Judgment file No. Pl. ÚS 24/07, dated 31 January 2008 (N 26/48 SbNU 303; 88/2008 Coll.)].

In my opinion, the scope of the review conducted in the given case, i.e. review of legislative procedure under specific conditions of legislative emergency, absolutely does not correspond to these conclusions, moreover inaccurately interpreted (especially file No. Pl. ÚS 12/10).

I do not identify myself with the sources of the review as well as with the conclusions made from the "factual findings".

In the case of declaration of the state of legislative emergency, the Constitutional Court should, in the first step, assess only whether the government and then the Chairperson of the Chamber of Deputies have clearly abused this instrument or not.

The government may ask for declaration of legislative emergency only under conditions specified in § 99 paragraph 1 of the RPCD and the request must be properly justified. The reasons must therefore be objectively recognisable, must correspond to the above-quoted provision, and, unless arbitrary deviation from these requirements occurs, the Constitutional Court is not entitled to review the reasons, in terms of merits, such review being based on subjective opinions of individual Justices. This applies even more in the case of exceptional circumstances consisting of threat of serious economic loss, i.e. an economic issue, on which even reputable economists may have different opinions. Another fact which must not be disregarded is that the reason for declaration of legislative emergency is only the threat, while the consequence of such threat does not necessarily occur. The reasons for threat of serious economic loss, stated by the

government or its Prime Minister, from the viewpoint of possible consequences of unrealistic budget not based on relevant legislative changes (consisting of worsened rating, higher expenses associated with debt services and greater state deficit) are not reasons which could be considered clearly arbitrary.

Separate assessment of extraordinary circumstances as a condition for declaration of legislative emergency is, in my opinion, incorrect from the viewpoint of interpretation of provisions of § 99 paragraph 1 of the RPCD, as the situation when a serious economic loss threatens the state is naturally an extraordinary circumstance which does no longer need to be ascertained. Therefore I do not share the interpretation of the provision quoted above, according to which extraordinary circumstances and threat of serious economic loss are two separate conditions which must be fulfilled cumulatively.

Therefore, I have found no arbitrary abuse of the instrument of legislative emergency on the part of the government or on the part of the Chairperson of the Chamber of Deputies who declared the state of legislative emergency on the basis of properly justified request.

In the second step, I therefore consider adequate to the powers of the Constitutional Court to assess whether in this specific legislative process, a violation of the procedure for discussing the act occurred or not in such way which would have constitutional-law consequences (objective impossibility to study the bill of the specific act or total absence of parliamentary discussion held in relation to this bill, affecting exclusively to the non-governmental deputies). Therefore it is always necessary to assess the specific circumstances of the legislative process, i.e. deal with the question whether the basic principles of a democratic state were violated or not.

It is necessary to say that under the state of legislative emergency and with the summary consideration of acts, the rights of individual deputies are always limited, this relating to the deputies of the government coalition as well as the opposition deputies. Limitation of these rights takes place in order to reach a legitimate objective, that is an accelerated adoption of an act whereby a threat to fundamental rights and freedoms of citizens or security of the country or threat of serious economic loss are to be averted. However, not even in this kind of legislative procedure, the rights of deputies or the parliamentary opposition cannot be surrendered in the sense of the above-indicated excess, which would mean violation of the provisions of Article 22 of the Charter.

In the given case, the matter was surely known to the deputies, as relevant draft bills were available to them for an adequate period of time, a general debate on the same began, they were considered in the committee of the Chamber of Deputies, and it was possible to submit amendments to the same within the detailed debate. No source, not even the petition itself, indicated to the Constitutional Court that any of the deputies or any of the political parties were limited in their rights in any way other than a way corresponding to the conditions of this kind of legislative procedure which, upon fulfilling the conditions for declaration of state of legislative emergency, cannot be considered unconstitutional.

The instrument of legislative emergency has been used by the government and the Chamber of Deputies rather often since 1993, also in cases which are perhaps not fully in compliance with the original intention of the legislature. However, every instrument of law is fulfilled only upon being applied, and it is rather complicated to imagine that the Constitutional Court should be the arbiter in the individual cases, when, with the exception of a threat to fundamental rights and freedoms of citizens, the Court has no power (and no sufficient expertise) to assess the "threat" identified by the government (and the Chamber of Deputies, pursuant to § 99 paragraph 4 of the RPCD). Therefore, it is also difficult to compare similar instruments of shortened legislative procedures established in other countries, because their content, establishment in the given constitutional system, or traditional use may be completely different.

For the reasons mentioned above I am convinces that, during adoption of Act No. 347/2010 Coll. under the state of legislative emergency, principles of a democratic state as well as the rights of the opposition deputies or the opposition parties were not violated in such a way which would mean violation of provisions of Article 1 paragraph 1, Article 6 of the Constitution and Article 22 of the Charter; therefore, the petition should have been dismissed.

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6. Dissenting Opinion of Justice Michaela Židlická

The general interpretations in the reasoning of the above-quoted Judgment must be agreed with. However, it is impossible to agree with the application of the same in this specific case. I have established my dissenting opinion on the following reasons:

It is obvious that procedural instruments allowing acceleration and simplification of legislative process were used in an inadequate way in the case discussed. However, upon a balanced evaluation of the situation which occurred, the level of political culture in the Czech Republic should have been evaluated, which is not related only to the governmental majority, but also to the parliamentary opposition. Conclusions of the report of the Venice Commission quoted or paraphrased in clauses 73 and 76 of the Judgment should be read in these connections; such conclusion include the following: "When making a decision on the height of the level and width of the guarantee of any of the above-listed rights of the parliamentary opposition, as well as when actually exercising the same, it is always necessary to seek and assess the balance between the legitimate interests of the governing majority and the parliamentary opposition or minority. On one hand, not to provide any of the above-mentioned rights to the opposition, or actual disallowing proper and untroubled exercise of the same as a result of actions by the governing majority, may lead not only to weakening the legitimacy of the exercise of power, but permanent restriction or even violation of the basic democratic principles may lead to a threat imposed on the democratic nature of the political system itself. On the other hand, an excessive level and width of guarantee of the individual rights to the parliamentary opposition may lead to frequent overuse or even abuse of these rights by the opposition, of which the result may be weakening or elimination of effective exercise of power by the governing majority…"

When the Constitutional Court tried to support its conclusions by a parallel between position of parties to judicial proceeding and position of the governmental majority and parliamentary opposition, the Court – even taking into account the differences between both elements – should have done this consistently. When assessing compliance with constitutional-law elements of the right to a fair trial, the Constitutional Court came to a conclusion in its case law that not every violation of norms of sub-constitutional law causes an infringement violating values protected by the constitutional law. Not even in this connection does the above-quoted Judgment imply that the Constitutional Court – having actually used such comparison itself – would take this aspect (i.e. such seriousness of violation of constitutional-law values and norms) properly into account, again with respect to the specific background of the case under assessment.

Vladimír Čermák has drawn attention to hidden problems of overestimating the importance of procedural rules: "It is true also about Parson's opinion [that only on the basis of a procedural primacy, the system may cope with a wide scale of ever changing circumstances and types of cases] that it overestimates the degree of independence of law of the composition of political and economic interests. However the law and legal consciousness may, to certain degree, transcend the existing social circumstances, it never happens to such scope from which it would be possible to infer their independence of political and economic interests. On the other hand, excessive emphasising of the procedural factor could result in its hypertrophy, allowing a difficult-to-recognise irruption of simulative and dissimulative elements. The procedural conditionality of law is indispensable for the functions of the same, but this conditionality may be updated only in social polémos, not through using anticipated and formal aspects." [cf. Čermák V. Otázka demokracie 4) Hodnoty, normy a instituce / The Issue of Democracy 4) Values, Norms and Institutes, 1st edition, Olomouc, Nakladatelství Olomouc, 2002, p. 223].

Čermák's text contains yet another important argument of my dissent, which is the fact, that legal issues cannot be separated and isolated from the current state of economy. Contested Act No. 374/2010 Coll. 347/2010 Coll. Whereby Some Acts are Altered in Connection with Economisation Measures under the Competence of the Ministry of Labour and Social Affairs was adopted by the Parliament of the Czech Republic as a reaction to economic events in Europe, especially the "Greek crisis", and in connection with the fear of this condition arriving in other countries of the European Union. The purpose of the contested act was to secure that the Czech Republic is perceived as a stable subject in financial markets.

In its case law related to economic and political issues, the Constitutional Court has clearly expressed that it annuls a legal arrangement due to violation of rules typical of legal culture of well-developed democracies only in exceptional cases. In the case currently assessed, causa cognita the Constitutional Court, with respect to the submitted written filings, course of the oral hearing, and especially with respect to the broader economic and political circumstances, should have respected the principle of restraint and minimisation of infringement.