2008/01/29 - PL. ÚS 69/06: JUDICIAL FEES

HEADNOTES

The Constitutional Court comprehensively considered the question of constitutional interpretation of letter a) point 2. of item 14a of the price list of fees in judgment file no. I. ÚS 664/03. In the introduction it referred to its previous case law on the duty to pay fees (file no. IV. ÚS 162/99), where it emphasized that "the regulation of the duty to pay fees, or exemption from it, implemented by Act no. 549/1991 Coll., on Court Fees, as amended by later regulations, is one of the fundamental instances that creates conditions for the right to judicial protection under Art. 36 par. 1 of the Charter." In judgment file no. I. ÚS 664/03 it then concluded from that thesis that "a general court's excess in deciding on the amount of a fee under Act no. 549/1991 Coll. can become so great that it also interferes in the fundamental right under Art. 36 par. 1 or 2 of the Charter." Therefore, it ruled out as unconstitutional the alternative interpretation permitting cumulation of court fees when applying letter a) point 2. of item 14a of the price list of fees: "The interpretation of Act no. 549/1991 Coll., under which a party to a proceedings is required to pay a court fee for all administrative decisions that are factually and legally completely identical, concern the same parties, and are issued the same day, by the same administrative body, is not only disproportional, but also unconstitutional. In Art. 36 par. 2, the Charter of Fundamental Rights and Freedoms provides the principle that anyone who claims that his rights were infringed by a public administration body can turn to a court to review the legality of that decision. In view of that article of the Charter, the steps taken by the municipal court substantially limited the complainant's access to the court."

In the cited decisions 1 Afs 127/2005-105 a 2 As 53/2004-76, in accordance with tradition, doctrine, and the constitutional principle of protecting freedom, the Supreme Administrative Court stressed the importance of the dispositive principle in administrative court proceedings, and within that the plaintiff's right to define the subject matter of the proceeding, i.e. including by the cumulation of contested administrative decisions. In this regard, in addition to the protection of freedom and autonomy of will, it pointed to the rationality of that procedure, to the principle of procedural efficiency. The Constitutional Court fully agrees with the understanding of both principles, the dispositive principle and the principle of procedural efficiency, as thus analyzed.

The permissibility of objective cumulation in the statement of claim of a petition also corresponds to the purpose of the legal institutions of joining or separating matters (§ 39 of the Administrative Procedure Code). Thus, if on the one hand the petitioner's autonomy of will, reflected in application of the dispositive principle, is protected, on the other hand the homogeneity of court proceedings is also protected, by the institution of separating matters under § 39 par. 2 of the Administrative Procedure Code, under which, if one complaint is directed against several decisions, the panel chairman may, by resolution, separate out each such decision for separate handling, if a joint proceeding is not possible or suitable. A joint proceeding is possible and suitable in the case

of matters that are factually and legally either identical or analogous and that concern the same parties. In this regard, the Supreme Administrative Court's reasoning in decision ref. no. 1 Afs 24/2005-70 is not aimed at the non-acceptability of procedure under § 39 par. 2 of the Administrative Procedure Code, but at the failure to observe the safeguards that that provision establishes.

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Constitutional Court, consisting 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 and Eliška Wagnerová, ruled on 29 January 2008 on a petition from the Municipal Court in Prague seeking the annulment of item 14a point 2. let. a) of the appendix to Act no. 549/1991 Coll., on Court Fees, as amended by later regulations, expressed by the words: "For a complaint, or other petition to open proceedings in matters of the administrative judiciary a) against a decision by an administrative body, CZK 2,000," as follows:

The petition is denied.

REASONING

I.
Definition of the Matter and Recapitulation of the Petition

On 21 September 2006 the Constitutional Court received a petition from the Municipal Court in Prague, seeking the annulment of item 14a point 2. let. a) of the appendix to Act no. 549/1991 Coll., on Court Fees, as amended by later regulations, expressed by the words: "For a complaint, or other petition to open proceedings in matters of the administrative judiciary a) against a decision by an administrative body, CZK 2,000."

The petitioner filed the petition under § 64 par. 3 Act no. 182/1993 Coll., as amended by later regulations, after it concluded, in connection with its decision-making activity in accordance with Art. 95 par. 2 of the Constitution and § 48 par. 1 let. a) of the Administrative Procedure Code, that item 14a point 2. let. a) of the appendix to the Act on Court Fees, which is to be applied in resolving the matters file no. 9 Ca 52/2006, 9 Ca 53/2006, 9 Ca 54/2006, 9 Ca 55/2006 and 9 Ca 56/2006, is inconsistent with Art. 36 par. 1 of the Charter of Fundamental Rights and Freedoms (the "Charter") and Art. 1 of the Constitution.

In the matters file no. 9 Ca 52-56/2006 the Municipal Court in Prague is ruling on five complaints by the company FAD, a. s., with its registered address at Václavské

nám. 1/846, Prague 1, against the Financial Directorate for the Capital City of Prague, whereby it seeks the annulment of 162 decisions by the defendant, which denied appeals against assessment of real estate transfer tax issued by the Financial Office for Prague 5. These decisions did not give the plaintiff in tax proceedings the right to exemption from real estate transfer tax under § 20 par. 7 let. a), b) of Act no. 357/1992 Coll., on Inheritance and Gift Tax and on Real Estate Transfer Tax, which it applied on the transfer of residential and non-residential units in precisely identified real estate, where the purchase contracts with the relevant buyers – individuals and legal entities – are from various dates, and the legal effects of the registration of ownership arising from these contracts also always arose at different moments (dates). The administrative decisions on tax assessment, as well as the appeal decisions in the administrative proceedings, were issued by the financial authorities as independent decisions, factually and legally evaluating the particular transfers. Within its discretion the plaintiff contested 162 administrative decisions in 5 complaints aimed against those administrative decisions that correspond to a particular transferred item (e.g., a flat with non-residential premises) or only non-residential premises of a particular kind (e.g. a cellar, or a garage).

At the beginning of the reasoning in the petition to annul the statutory provision in question, the Municipal Court in Prague refers to one of the conditions for filing complaints before an administrative court, fulfilling the duty to pay fees under Act no. 564/1991 Coll., on Court Fees, as amended by later regulations. Under § 1 let. a) of the Act, court fees are charged for proceedings before the courts of the Czech Republic, for services listed in the price list of court fees, and in matters for the administrative judiciary, under item 14a point 2. let. a) of the price list of court fees, which is an appendix to the Act on Court Fees, a court fee of CZK 2,000 is set for a complaint against a decision by an administrative body. According to the petitioner, in matters where the plaintiff contests more than one administrative decision, it is an open question what service actually is a complaint under item 14a point 2. let. a) of the price list of court fees. In other words, whether this service is, purely formally, without regard to the content and circumstances leading to the issuance of an administrative act, a written filing entitled “complaint,” or whether a complaint is every complaint item made in such a written filing, because that, if it is directed against another decision, must also be a complaint. Here the petitioner points out that in the administrative courts a proceeding before an administrative court is defined not only by the group or parties to the proceedings, the plaintiff and the administrative body that made a decision at the 2nd level of an administrative proceeding, but also by the subject matter of the proceedings, which is always autonomously the individual, independent administrative decision, because the issue is the evaluation of whether the decision was legal, substantively and procedurally.

As part of the grounds for its active standing in a proceeding on the review of norms, the Municipal Court points out that the statutory provision of item 14a point 2. let. a) of the price list of court fees is supposed to be applied in these legal matters as a prerequisite for processing complaints.

However, determination of the amount of a court fee in these proceedings depends on the choice of one of two alternative interpretations of item 14a point 2. let. a)

of the price list of court fees. In weighing them, the petitioner states that the fee amount set according to the number of written filings would not correspond to the actual number and scope according to the content of the complaint and proceedings conducted under § 65 et seq. of the Administrative Procedure Code, and would depend purely on the plaintiff's decision how many complaints – written filings – to use to exercise his right to judicial protection against a certain number of administrative decisions, so the fees for the proceedings would be based on the plaintiff's decision, regardless of the subject matter of the proceedings. By separating the petitions into individual complaints within his discretion regarding petitions the plaintiff would himself set the amount of court fees. The petitioner considers this consequence of the plaintiff's dispositive authority to violate the constitutional principle of equality (with reference to Art. 4 par. 1 of the Charter), because, in its opinion, this would create inequality in the right to access to courts. For that reason, in analogous cases the Municipal Court in Prague considered that it is not decisive for the duty to pay fees how a complaint is filed, whether matters are related, whether they relate to the same parties, whether the court will review and decide them on the basis of the same factual and legal analysis, or whether the contested decisions by administrative bodies were or were not issued on the same date, but, under item 14a point 2. let. a) of the price list of court fees, in connection with § 1 let. a) of the Act on Court Fees, it charged court fees for each complaint item directed against one independent administrative decision.

However, this procedure followed by the court was not found constitutional by Constitutional Court judgment file no. I. ÚS 664/03. After restating the content of that judgment, as well as corresponding decisions by the Supreme Administrative Court, ref. no. 2 As 53/2004-76 a ref. no. 1 Afs 127/2005-105, the Municipal Court in Prague states that, because the procedural steps on the issue of the duty to pay fees and the substantive essence of the dispute are absolutely comparable, in these matters cited above, with regard to which it is filing this petition to annul item 14a point 2. let. a) of the appendix to the Act on Court Fees, it feels bound by the opinion of the Constitutional Court, which rejects the interpretation that a party to a proceeding is required to pay a court fee for a complaint against each individual administrative decision.

Thus, if the Constitutional Court does not consider it constitutional, in the administrative courts, to charge a court fee of CZK 2,000 for a complaint against every administrative decision, and the law provides no other arrangement for charging court fees in administrative court matters, then, according to the Municipal Court, there is no choice but to conclude that item 14a point 2. let. a) of the price list of court fees, which must be applied only in connection with § 1 let. a) of the Act on Court Fees, is unconstitutional. According to the petitioner, this conclusion also follows from the Constitutional Court's arguments in judgment file no. I. ÚS 664/03, according to which, the procedure applied by the Municipal Court led to a disproportionate fee in relation to the amount of tax assessed (40% of the total tax assessed). However, in comparison to the adjudicated matter, the petitioner disputes that argument, because here the total amount of the court fee (CZK 324,000) appears very proportionate in relation to the total amount of taxes assessed, determined by the sum of the individual assessed taxes (each individual tax in the amount of tens of thousands, or thousands, or a million crowns). According to the petitioner, the criterion of disproportion between the amount of a

court fee and the possible result of a proceeding cannot be applied, for example, in a proceeding on review of administrative decisions in matters of misdemeanors, because, in view of the amount of a fine under Act no. 200/1990 Coll., on Misdemeanors, this amount is lower than a court fee. Peripherally to the merits of the compared matters, the Municipal Court in Prague points to the Constitutional Court's different view of the subject matter in an administrative proceeding, insofar as judgment file no. I. ÚS 664/03 argues on the basis of a "commercial case," and further states that it originally considered it clear that under the current wording of item 14a point 2. let. a) of the price list of court fees, only an administrative decision can be considered to be a measure of payment of a court fee, because that price list item concerns the administrative courts, where the subject matter of a review proceeding is an individual administrative act, and the court reviews not only substantive legality, but also the formal elements of the administrative act that was issued. For that reason, it handles individual tax decisions procedurally in independent proceedings as an administrative case, or a case of issuing an individual administrative act, which is why, in terms of a court fee, it does not consider a complaint against several decisions to be one commercial case, based on the factual and legal issues in the relationships that were the basis for issuing the tax decisions. Tax administrators issue tax assessments independently, and the assessments are independent grounds for execution of decisions.

However, according to the petitioner, in terms of the legal opinion in judgment file no. I. ÚS 664/03, the text of the statutory regulation in question does not express the viewpoints raised by the Constitutional Court. The Municipal Court in Prague believes that the situation that arose after the Court adopted judgment file no. I. ÚS 664/03 does not permit assessing a court fee for a complaint against each administrative decision in this matter of five complaints against 162 administrative decisions, because that would be unconstitutional. However, the Municipal Court believes that it does not have the ability to assess the plaintiff a court fee, even from a formal standpoint, according to the number of complaints, because it is responsible for charging a court fee in the correct amount, and that amount cannot be determined by the will of the plaintiff and the way in which the plaintiff chooses to file complaints, and Act no. 549/1991 Coll., as amended by later regulations, does not provide other criteria for charging court fees. At the same time, the Court states that it is bound by the legal opinion of the Constitutional Court as regards reviewing the connection between the amount of the court fee and the subject matter of the proceeding, i.e. as regards the need to decide on the amount of the fee case by case, which, however, could mean conflict with the principle of equality and predictability of law, as well as the principle of efficient proceedings (given the need, in such a case, to be familiar with the adjudicated matter in great detail at the point when a proceeding is opened). In view of these reasons, the petitioner takes the position that the statutory regulation of court fees in the administrative courts should precisely set the rules, for which service, or what proceeding, and in what amount a plaintiff can be charged a court fee, so that a court, when applying the relevant provision of the law, would not be exposed to various alternative interpretations. As the Municipal Court in Prague, based on its belief on the basis of the cited Constitutional Court judgment, found itself in a procedural situation where it is not certain what amount of court fees it is to charge the plaintiff for the complaints filed so that it

will fulfill its statutory obligation to charge court fees under item 14a point 2. let. a) of the price list of court fees in connection with § 1 let. a) Act no. 549/1991 Coll., and if it is, under Art. 95 par. 2 of the Constitution, bound by the law, and at the same time by the imperative to act in a constitutional manner, it therefore concluded that the legal regulation of item 14a point 2. let. a) of the price list of court fees is unclear, because it permits various interpretations of the amount of a court fee for a complaint against a decision by an administrative body, and, as a result, makes the parties to a proceeding unequal in their constitutionally guaranteed right to access to the court under Art. 36 par. 1 of the Charter, and at the same time violates one of the fundamental principles of a law-based state, the principle of legal certainty and confidence in the law under Art. 1 par. 1 of the Constitution, which is guaranteed by the principle of predictability of the law, its understandability, and the principle of the internal consistency of the law.

For these reasons, the Municipal Court in Prague proposes that the Constitutional Court, after conducting proceedings, decide in a judgment that item 14a point 2. let. a) of the appendix to Act no. 549/1991 Coll., on Court Fees, as amended by later regulations, expressed by the words: "For a complaint, or other petition to open proceedings in matters of the administrative judiciary a) against a decision by an administrative body, CZK 2,000," be annulled as of the date that the Constitutional Court specifies in the judgment.

II.
Recapitulation of the Essential Parts of the Briefs from the Party to the Proceeding, and the Petitioner's Response

Pursuant to § 42 par. 4 and § 69 Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, the Constitutional Court sent the petition to the Chamber of Deputies. In the opening of his brief of 1 November 2006, the Chairman of the Chamber of Deputies of the Parliament of the Czech Republic, Ing. Miloslav Vlček, states that item 14a, including the contested point 2. let. a), was inserted into the price list of court fees by an accompanying statute to the Administrative Procedure Code, which was published as no. 151/2002 Coll., and the bill was presented to the Chamber of Deputies by the government on 4 October 2001, and discussed as publication 1081. As regards the question of whether the contested statutory provision is consistent with the constitutional order, the brief refers to the explanatory report to the bill, according to which "the proposed regulation is consistent with the constitutional order of the Czech Republic and international treaties by which the Czech Republic is bound." The first reading, as the brief states, was held on 25 October 2001 at the 39th session of the Chamber of Deputies; in vote no. 234 the bill was assigned to the constitutional law committee, and of the 117 deputies present 109 voted in favor, and none against. The constitutional law committee discussed publication 1081 at its 97th meeting, on 18 January 2002; in contrast to the original wording of the government bill, containing an amount of CZK 5,000, in its resolution the constitutional law committee proposed lowering the amount to CZK 2,000 (committee resolution no. 235 was subsequently discussed as publication 1091/1). The second reading took place at the 46th session of the Chamber of Deputies; general debate of the bill took place on 30 January and 8 February 2002, and detailed debate followed on 8 February.

The amending proposals arising from it were combined in publication 1081/2. The third reading took place at the same, i.e. 46th session of the Chamber of Deputies, on 15 February 2002; the final resolution, whereby the Chamber of Deputies accepted the bill, based on publication 1081, as amended by the amending proposals, was adopted when, out of 159 deputies present, 149 voted in favor, and none against. The bill was then passed to the Senate, which did not discuss it. The President of the Republic signed the Act on 28 March 2002.

Based on the foregoing, the Chairman of the Chamber of Deputies states that the Act was approved by the required majority of deputies in the Chamber of Deputies, was signed by the appropriate constitutional authorities, and was duly promulgated.

In view of the amending proposals adopted by the Chamber of Deputies, which affected the contested provision only as regards the proposed amount, and in view of the explanatory report, the brief states that the legislative assembly acted in the belief that the adopted Act was consistent with the Constitution and the legal order, and that it is up to the Constitutional Court, in accordance with "the constitutional complaint from the Municipal Court in Prague" (sic!) and its petition to annul item 14a point 2. let. a) of the price list of court fees of Act no. 549/1991 Coll., on Court Fees, as amended by Act no. 151/2002 Coll., the part expressed by the words: "For a complaint, or other petition to open proceedings in matters of the administrative judiciary a) against a decision by an administrative body, CZK 2,000," to review the constitutionality of the Act and issue the appropriate decision.

In conclusion the Chairman of the Chamber of Deputies points to the less than precisely formulated petition from the Municipal Court in Prague, which proposes annulment of the words "For a complaint, or other petition to open proceedings in matters of the administrative judiciary a) against a decision by an administrative body, CZK 2,000," but in Item 14a point 2. the phrase is: "For a complaint, or other petition to open proceedings in matters of the administrative judiciary," and the text is then divided into letters a) to d). According to the party to the proceeding, deleting the words cited above would leave in this phrase in Item 14a point 2. only the words "or other petition," and the text of letters b) to d), which, in practice, would lead to confusion and make the provision inapplicable.

Pursuant to § 42 par. 4 a § 69 Act no. 182/1993 Coll., as amended by later regulations, the Constitutional Court also sent the petition to the Senate of the Parliament of the Czech Republic.

In the introduction of his brief of 7 November 2006, Senate Chairman MUDr. Přemysl Sobotka, in agreement with the brief from the chairman of the Chamber of Deputies, points to the incorrect formulation of the statement of claim in the petition, and points out that what would remain after derogation would be ungrammatical (e.g., the remaining words "or other" would obviously be out of place), and technical legislative inconsistencies [it is proposed to annul letter a) of item 14a point 2. including the words "For a complaint, or other petition to open proceedings in matters of the administrative judiciary," although letter a) does not contain those words at all], and finally inconsistencies in content [if the word

"complaint" were deleted, then for further interpretation letter d) point 2. of item 14a, would not be fully covered, i.e. "other cases" which now includes, eg.. a complaint about inactivity]. The Senate then adds that its brief will cover an alternative to the petition to annul letter a) point 2. of item 14a of the price list of fees.

Regarding the genesis of the contested statutory provision, the brief states that item 14a of the price list of fees was adopted during a period of legislative discussion of reform of the administrative judiciary in 2002 [with the exception of the newly inserted point 2. let. d), which was inserted in that point by Act no. 159/2006 Coll., on Conflict of Interest]. It was implemented by Act no. 151/2002 Coll. The bill of this Act was passed to the Senate on 25 February 2002, the Senate organization committee passed the bill, as no. 224, to the constitutional law committee, as the guarantee committee, and to the committee for local development, public administration, and the environment. Both committees, in resolutions no. 83 of 6 March 2002, and no. 94 of 12 March 2002, respectively, recommended that the Senate approve the version of the bill passed to it by the Chamber of Deputies. On 21 March 2002 the Senate addressed the bill in a plenary session at the 14th session of its third term of office, and in resolution no. 327 it expressed its intent not to discuss it. In vote no. 95, 38 of the 43 senators present were in favor of the bill, and one against.
According to the brief, as regards the content of the contested provision, no problems were raised during the legislative process in the Senate, which is also shown by the form in which the bill was adopted, which is de facto adopting a bill by the Senate in a plenary session without debate. The Senate concludes from this that it discussed the bill within the bounds of its constitutional power, and decided as stated above.

As regards the matter itself, the Senate's brief is based on interpretation of § 1 of the Act on Court Fees. It states that the text prima facie permits a thorough distinction between a proceeding fee, a court service fee, and a court administration service fee, and that, in response to non-uniform application in practice, the Supreme Court considered this distinction in its opinion of 4 July 1996. file no. Cpjn 68/95 and Opjn 1/95. It then summarizes the developments in regulation of court fees, beginning with Imperial Order no. 279/1915 Imperial Laws, through Act no. 173/1950 Coll., Minister of Finance Directive no. 3/1951 Coll., and no. 22/1959 Coll., Act no. 116/1966 Coll., Act no. 147/1984 Coll. up to Act no. 549/1991 Coll., and its amendment by Act no. 255/2000 Coll. According to the party, as much as the first of these regulations can be described as well organized and relatively highly specific, regulations from the period after 1948 were typically more generally, unclear, and combined various legal institutions (e.g. the legal framework from 1951 and 1959 mixed fees for a complaint or petition with fees for various extracts, certifications, etc.).
In connection with § 1 of Act no. 549/1991 Coll., as amended by Act no. 255/2000 Coll., the brief from the Senate chairman states that item 14a, which includes the affected provision, is placed in the fee list among fees charged for a proceeding, though neither the wording of § 1 let. a), under which fees for proceedings are charged "for services listed in the price list of fees," not the introductory sentence of point 2. of item 14a of the price list of fees, stating "for a complaint or another petition to open proceedings in matters of the administrative judiciary," nor the

two taken together, can be read to mean that the proceeding as a whole should not be subject to fees. The Senate believes that it specified the rate of the fee based on the requirement of making judicial protection available, the nature of the adjudicated matter, and the demands on the deciding body – the court. In view of the fact that in its petition the petitioner weights the terms “proceeding,” “complaint” and “administrative decision contested by a complaint,” the Senate is of the opinion that the legal construction of the fee law remains essentially unchanged despite the different terms used over time, and its basis is separation into fees for a proceeding and a fee for service items, taking into account the difference between services performed by a court and those performed by the judicial administration. For that reason, it formulates the following interpretation of the provision in question: in a court proceeding before an administrative court, against a decision by an administrative body, a fee is charged the performance of the judicial function in one matter, a fee of CZK 2,000 payable when filing a complaint.

The Senate emphasizes the freedom of expression of a subject of law, wherefore it considers it correct to tie the court fee to the complaint (an act performed at the discretion of the plaintiff), and not to conceive of it as an economic contribution to the state’s expenses for its official activities. The plaintiff’s discretion includes his right to define the subject matter of proceedings in his filing (e.g., to file one complaint with an administrative court, requesting the review of several administrative decisions). On the other hand, the Senate (with reference to decisions of the Supreme Administrative Court, ref. no. 2 As 53/2004-76 and ref. no. 1 Afs 127/2005-105) points out that the court is entitled to join matters to be handled jointly, or separate out for individual proceedings several administrative decisions contested in one complaint, if a joint proceeding is not possible or suitable (§ 39 par. 2 of the Administrative Procedure Code). The brief concludes from this analysis that in a matter where several decisions by administrative bodies are contested in a single complaint, the decisions are factually and legally identical, and they concern the same parties, one proceeding must be conducted, for which one rate is charged – one proceedings fee, per the price list. In this regard, it emphasizes the relationship between fulfilling the duty to pay fees and the guarantee of access to the court.

Based on the analogous elements between a civil court proceeding and the administrative courts, the Senate agrees with the doctrinaire position on the purpose of court fees (V. Hora, Československé civilní právo procesní. Díl II. [Czechoslovak Civil Procedure Law. Part II.], Prague 1923, p. 71), that on the one hand the judiciary “may not be a profit-making enterprise,” and on the other hand there should not be “litigiousness, abuse of the court and court proceedings, and thus damage to the whole.” In other words, a court fee should function as motivation for a potential plaintiff (to not abuse the judiciary), and in terms of the society, the fee plays the role of a partial economic equivalent for the activities of the court (the performance of the judiciary). According to the Senate, this legal conclusion also follows from the case law of the European Court of Human Rights (Buffalo, S.r.l. in liquidation v. Italy). Based on the proportionality of the relationship of these purposes, the Chairman of the Senate also considers the amount of the court fee (i.e. CZK 2,000) to be appropriate.

Regarding the objection that the petitioner is not clear, the Senate states that, in its opinion, the statutory rules in this matter are sufficiently clear, understandable, and sufficiently general that they permit the court to apply the norm case by case, yet leave sufficient room for discretion. It also believes that Constitutional Court judgment file no. I. ÚS 664/03, according to which "interpretation of Act no. 549/1991 Coll., under which a party to a proceeding is required to pay a court fee for each administrative decision that is factually and legally completely identical, concerning the same parties, and are issued on the same day by the same administrative body, is not only disproportional, but also unconstitutional," is a clear and understandable starting point for resolving any doubts in interpretation. Based on this, it points to the principle of constitutional interpretation of simple law, which should be the starting point for the petitioner's actions in this matter. In conclusion, the brief states that it is fully up to the Constitutional Court to "evaluate the constitutionality of the petition to annul the contested provisions."

In its response to the brief from the Chamber of Deputies, delivered to the Constitutional Court on 17 January 2008, the petitioner emphasizes that its petition is based on Art. 11 par. 5 of the Charter, under which fees can be imposed only on the basis of law, and on Art. 37 par. 3 of the Charter, under which all parties in a proceeding are equal, from which it concludes that even in the case of a complaint against more than one decision, the level of financial expense for the dispute must be determined independently of the judgment of the judge, derived from studying the elements of the matter. In the response, the Municipal Court in Prague illustrates the argument based on equality of parties to a proceeding with examples from its own practice. It also poses the question whether, if setting the amount of the court fee depends on the court's deliberation, the Ministry of Finance, as a person participating in the proceeding, should not have, under § 34 par. 1 of the Administrative Procedure Code, an opportunity to express its opinion on each amount of a court fee. Regarding the formulation of the statement of claim, the petitioner emphasizes that it is within the powers of the Constitutional Court, under § 70 par. 1 Act no. 182/1993 Coll., to decide that a statute or other legal regulation, or the individual provisions thereof, are annulled as of the date that it sets in a judgment, which is an instrument for preventing undesirable disproportion. In the conclusion of the response it states that it maintains its petition, and does so with reference to the newer case law of the Constitutional Court (file no. III. ÚS 464/06).

III.
Waiver of a Hearing

Under § 44 par. 2 Act no. 182/1993 Coll., as amended by later regulations, the Constitutional Court may, with the consent of the parties, waive a hearing, if it cannot be expected to clarify the matter further. In view of the fact that both the petitioner, in its filing of 22 January 2008, and the parties to the proceeding, in letters from the Chairman of the Chamber of Deputies of the Parliament of the Czech Republic, of 8 January 2008, and from the Chairman of the Senate fo the Parliament of the Czech Republic, of 7 January 2008, agreed to waive a hearing, and in view of the fact that the Constitutional Court believes that a hearing cannot

be expected to clarify the matter further, a hearing was not held in this matter.

IV.
Statement of Claim in the Petition, and the Wording of the Contested Legal Regulation

In its decision making, the Constitutional Court is bound by the scope of the filed petition, and cannot step outside its bounds (ultra petitum) in its decision (see, e.g. decisions in the matters file no. Pl. ÚS 16/94, Pl. ÚS 8/95, Pl. ÚS 5/01, Pl. ÚS 7/03, and Pl. ÚS 10/03). Insofar as the Municipal Court in Prague proposes annulling item 14a point 2. let. a) of the appendix to Act no. 549/1991 Coll., on Court Fees, as amended by later regulations, expressed by the words: "For a complaint, or other petition to open proceedings in matters of the administrative judiciary a) against a decision by an administrative body, CZK 2,000," although the entire content of the petition is directed against letter a) point 2. of item 14a of the price list of fees, the Constitutional Court considers the definition of the statement of claim to be an obvious error, and if it went outside that in its deliberations, that was not action ultra petitum, but the removal of obvious inconsistency between the content and citation of the legal regulation identifying the statement of claim in the petition (similarly, see judgment file no. Pl. ÚS 38/06). Otherwise, if the statutory provision identified by the petitioner were annulled, the remaining part of item 14a point 2. of the price list of fees would cease to make sense.

Letter a) point 2. of item 14a of the price list of fees, which is an appendix to Act no. 549/1991 Coll., on Court Fees, as amended by later statutes, reads: "a) against a decision by an administrative body, CZK 2,000."

V.
Conditions for Petitioner's Active Standing

The petition to annul letter a) point 2. of item 14a of the price list of fees, which is an appendix to Act no. 549/1991 Coll., on Court Fees, as amended by later statutes, was filed by the Municipal Court in Prague under § 64 par. 3 Act no. 182/1993 Coll., as amended by later regulations.
As already stated in the narration, in the matters file no. 9 Ca 52-56/2006 the Municipal Court in Prague is ruling on five complaints by the company FAD, a. s., with its registered address at Václavské nám. 1/846, Prague 1, against the Financial Directorate for the Capital city of Prague, whereby it seeks the annulment of 162 decisions by the defendant, which denied appeals against assessment of real estate transfer tax, issued by the Financial Office for Prague 5. These decisions did not give the plaintiff in tax proceedings the right to exemption from real estate transfer tax under § 20 par. 7 let. a), b) Act no. 357/1992 Coll., on Inheritance and Gift Tax and on Real Estate Transfer Tax, which it applied on the transfer of residential and non-residential units in precisely identified real estate.

The Municipal Court in Prague did so under § 64 par. 3 Act no. 182/1993 Coll., as amended by later regulations, in connection with its decision-making activity, in

accordance with Art. 95 par. 2 of the Constitution and § 48 par. 1 let. a) of the Administrative Procedure Code, after concluding that letter a) point 2. of item 14a of the price list of fees, which is an appendix to Act no. 549/1991 Coll., on Court Fees, as amended by later statutes, which is to be applied in resolving the matter file no. 9 Ca 52-56/2006, is inconsistent with Art. 36 par. 1 of the Charter and Art. 1 of the Constitution.

The procedural condition for the active standing of a general court under § 64 par. 3 Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, is a relationship between the law, or the individual provision, that is proposed to be annulled, and the subject matter of the core proceeding, such as establishes decision-making grounds for a general court to evaluate the matter. As paying the court fee is a condition for handling a matter (§ 9 of the Act on Court Fees), we can state that the conditions for the petitioner's active standing in a proceeding on review of norms have been met.

VI.
Constitutionality of Competence and the Legislative Process

In accordance with § 68 par. 2 Act no. 182/1993 Coll., as amended by later regulations, in proceedings on review of norms the Constitutional Court is required to review whether the contested act, its individual provision, or another legal regulation or its individual provision, was adopted and issued within the bounds of constitutionally provided competence and in a constitutionally prescribed manner.
It was determined from Chamber of Deputies publications and stenographic records, as well as the brief from the party to the proceedings, that the Chamber of Deputies approved the bill of the contested Act, i.e. Act no. 151/2002 Coll., in the 3rd reading, at its 46th session, on 15 February 2002, in resolution no. 2106, when, out of 159 deputies, 149 voted in favor and none were against.
The Senate addressed the bill in a plenary session on 21 March 2002, at its 15th session of its third term of office, and in resolution no. 327 it expressed its intent not to discuss it. In vote no. 95, out of 43 senators present, 38 were in favor and one was against.
The Act was signed by the appropriate constitutional officials, and was duly promulgated as no. 151/2002 Coll. in part 61 of the Collection of Laws, which was distributed on 17 April 2002, and, under Art. XXVII, the provision relevant for the Constitutional Court's decision, Art. X point 18. went into effect on 1 January 2003.

VII.
Consistency of the Contested Statutory Provisions with the Constitutional Order

The most general expression of the purpose and meaning of court fees is contained in the explanatory report to the government draft of the Act on Court Fees (publication 476), adopted by the Czech National Council on 5 December 1991, and promulgated as no. 549/1991 Coll.: "The task of legal regulations that govern the assessment and collection of court fees is also, through appropriate levels of fees, to party cover the expenses that the state incurs by operating the judiciary, and,

at the same time, to limit the filing of certain incompletely formulated petitions to open court proceedings. It is also their role to provide incentives for obligated parties to voluntarily fulfill their obligations vis-à-vis their fellow citizens and other subjects."

From a comparative law aspect, the German Federal Constitutional Court emphasizes the first of these purposes of court fees (BVerfGE 50, 217 [226]). It states that "a fee is a public law financial performance that is unilaterally imposed on the fee payer on the grounds of public law performance vis-à-vis an individual (by a public law norm or a similar sovereign act) and is intended to fully or partly cover the expenses in connection with that performance."

The meaning and purpose of letter a) point 2. of item 14a of the price list of fees, which is an appendix to Act no. 549/1991 Coll., on Court Fees, as amended by Act no. 151/2002 Coll., is to project the adoption of the Administrative Procedure Code into the regulation of court fees.

The petitioner's basic objection that the contested legal provision is unconstitutional is the existence of several alternative interpretations of it, and the lack of clear and definite criteria for choosing among them. Moreover, the petitioner does not accept the arguments contained in Constitutional Court judgment file no. I. ÚS 664/03, that setting the amount of a court fee under letter a) point 2. of item 14a of the price list of fees by imposing a fee for a complaint for each contested administrative decision led to a disproportionate fee in relation to the tax assessed, and the petitioner cites examples where such a disproportion does not occur.

The Constitutional Court comprehensively considered the question of constitutional interpretation of letter a) point 2. of item 14a of the price list of fees in judgment file no. I. ÚS 664/03. In the introduction it referred to its previous case law on the duty to pay fees (file no. IV. ÚS 162/99), where it emphasized that "the regulation of the duty to pay fees, or exemption from it, implemented by Act no. 549/1991 Coll., on Court Fees, as amended by later regulations, is one of the fundamental instances that creates conditions for the right to judicial protection under Art. 36 par. 1 of the Charter." In judgment file no. I. ÚS 664/03 it then concluded from that thesis that "a general court's excess in deciding on the amount of a fee under Act no. 549/1991 Coll. can become so great that it also interferes in the fundamental right under Art. 36 par. 1 or 2 of the Charter." Therefore, it ruled out as unconstitutional the alternative interpretation permitting cumulation of court fees when applying letter a) point 2. of item 14a of the price list of fees: "The interpretation of Act no. 549/1991 Coll., under which a party to a proceedings is required to pay a court fee for all administrative decisions that are factually and legally completely identical, concern the same parties, and are issued the same day, by the same administrative body, is not only disproportional, but also unconstitutional. In Art. 36 par. 2, the Charter of Fundamental Rights and Freedoms provides the principle that anyone who claims that his rights were infringed by a public administration body can turn to a court to review the legality of that decision. In view of that article of the Charter, the steps taken by the municipal court substantially limited the complainant's access to the court."

The Constitutional Court also confirmed that position in its other case law. In judgment file no. II. ÚS 745/06 it stated that “a constitutional result of interpretation of Act no. 549/1991 Coll. cannot be an interpretation that a party to a proceeding is required to pay a court fee for all administrative decisions, if these are decisions that are factually and legally completely identical, concern the same parties, and are issued on the same day by the same administrative body." In another judgment about this issue, file no. I. ÚS 43/07 it stated the following: “If the municipal court, in the contested decision, based on interpretation of the relevant provisions of Act no. 549/1991 Coll., assessed the plaintiff a court fee of CZK 2,000 for each individual administrative decision contested by the administrative complaint, although all these decisions concerned one case (an appeal against an assessment of penalties), addressed the same legal issue, concerned only the plaintiff, were issued on the same day by one and the same administrative body, and contained the same legal reasoning, according to the Constitutional Court that substantially limited the plaintiff in access to the court, or, in light of Art. 36 par. 2 of the Charter of Fundamental Rights and Freedoms, limited the plaintiff’s right to judicial review of a decision by a public administration body.” Insofar as the petitioner argues on the basis of judgment file no. III. ÚS 464/06, we can only state that, under § 23 Act no. 182/1993 Coll., that decision was not sufficient to justify a change in the Constitutional Court’s legal opinion on the adjudicated issue.

The Supreme Administrative Court also considered the question of interpretation of letter a) point 2. of item 14a of the price list of fees in its case law. From the nature of a complaint as a dispositive act, whereby the plaintiff turns to a court with a request for judicial protection and defines the subject matter of the court proceedings, it concluded in its decision ref. no. 1 Afs 127/2005-105 that the court has an obligation to respect the circumstance whether the plaintiff, in the complaint, contested one decision or several decisions, unless the plaintiff’s procedural conduct is inconsistent with procedural regulations. In other words, if objective cumulation is permissible, a court is not entitled to mar the effects of the dispositive act by separating matters out for independent treatment (in conflict with the conditions in § 39 par. 2 of the Administrative Procedure Code) and thus to violate the dispositive principle (on which the administrative judiciary is built), an individual’s subjective right to have the autonomy of his will respected, as well as the principle of procedural efficiency. Based on this analysis of grounds for impermissible procedure by a court, the Supreme Administrative Court, in decision ref. no. 2 As 53/2004-76 concluded, among other things, the following consequence, relevant for the adjudicated issue: “Where this procedure is not justified, it burdens … the parties to a judicial dispute (for example, by unjustified multiplication of court fees).”

In proceedings on the review of whether letter a) point 2. of item 14a of the price list of fees is consistent with the constitutional order, the Constitutional Court found no reason to deviate from is previous case law on this issue. It only adds the following:

The Constitutional Court’s basic reasoning methods in proceedings on review of a norm include the principle of giving priority to a constitutional interpretation over derogation, under which, in a situation where a certain provision of a legal

regulation permits two different interpretations, one consistent with the constitutional order and the other inconsistent with it, grounds to annul the provision do not exist. It is then the task of all state bodies, when applying that legal regulation, to interpret it in a constitutional manner. This method is based on the principle of separation of powers and the related principle of restraint, i.e. the principle that if a constitutional situation can be achieved by different means, the Constitutional Court chooses the means that limits the legislative branch least.

The Constitutional Court has subscribed to this principle in a number of its decisions. It first did so in judgment file no. Pl. ÚS 48/95. It then applied the principle of giving priority to a constitution interpretation over annulment in a number of other decisions in proceedings on review of norms (e.g. file no. Pl. ÚS 5/96, Pl. ÚS 19/98, Pl. ÚS 15/98, Pl. ÚS 4/99, Pl. ÚS 10/99, Pl. ÚS 41/02, and Pl. ÚS 92/06).

In the cited decisions, in accordance with tradition, doctrine, and the constitutional principle of protecting freedom, the Supreme Administrative Court stressed the importance of the dispositive principle in administrative court proceedings, and within that the plaintiff's right to define the subject matter of the proceeding, i.e. including by the cumulation of contested administrative decisions. In this regard, in addition to the protection of freedom and autonomy of will, it pointed to the rationality of that procedure, to the principle of procedural efficiency. The Constitutional Court fully agrees with the understanding of both principles, the dispositive principle and the principle of procedural efficiency, as thus analyzed.
The permissibility of objective cumulation in the statement of claim of a petition also corresponds to the purpose of the legal institutions of joining or separating matters (§ 39 of the Administrative Procedure Code). Thus, if on the one hand the petitioner's autonomy of will, reflected in application of the dispositive principle, is protected, on the other hand the homogeneity of court proceedings is also protected, by the institution of separating matters under § 39 par. 2 of the Administrative Procedure Code, under which, if one complaint is directed against several decisions, the panel chairman may, by resolution, separate out each such decision for separate handling, if a joint proceeding is not possible or suitable. A joint proceeding is possible and suitable in the case of matters that are factually and legally either identical or analogous and that concern the same parties. In this regard, the Supreme Administrative Court's reasoning in decision ref. no. 1 Afs 24/2005-70 is not aimed at the non-acceptability of procedure under § 39 par. 2 of the Administrative Procedure Code, but at the failure to observe the safeguards that that provision establishes.

Insofar as the petitioner objects to judgment file no. I. ÚS 664/03 on the basis of an example where the cumulate calculation of court fees does not reach a disproportionate level, the Constitutional Court only comments that in that judgment it only pointed out the possible negative consequences of interpretation of letter a) point 2. of item 14a of the price list of fees, as presented by the Municipal Court in Prague.
Thus, the Constitutional Court considers the analysis of letter a) point 2. of item 14a of the price list of fees, which is an appendix to Act no. 549/1991 Coll., on Court Fees, as amended by Act no. 151/2002 Coll., contained in the cited case law

of the Constitutional Court and the Supreme Administrative Court, to be constitutional, i.e. compatible both with Art. 36 of the Charter, and with Art. 1 of the Constitution. This fact establishes the grounds for applying the principle of priority for a constitutional interpretation over derogation in the adjudicated matter.
Based on the foregoing, the petition from the Municipal Court in Prague, seeking the annulment of letter a) point 2. of item 14a of the price list of fees, which is an appendix to Act no. 549/1991 Coll., on Court Fees, as amended by Act no. 151/2002 Coll., was denied [§ 70 par. 2 Act no. 182/1993 Coll.].

Instruction: Decisions of the Constitutional Court cannot be appealed (§ 54 par. 2 of the Act on the Constitutional Court).

Brno, 29 January 2008