2008/01/29 - PL. ÚS 72/06: POSITION OF TAX GUARANTOR

HEADNOTES
Provision § 57 par. 5 third sentence of Act no. 337/1992 Coll., on the Admistration of Taxes and Fees, in the version before it was amended by Act no. 230/2006 Coll., which amends Act no. 89/1995 Coll., on the State Statistical Service, as amended by later regulations, and other related acts, annulled the guarantor´s right to seek protection of his rights against a summons to pay a tax debt by means of appeal, or eventually by administrative plaintiff, in all cases except the three expressly provided, and at the same time denied a constitutionally guranteed fundamentals rights of the tax guarantor under Art. 36 par. 1 and 2 of the Charter of Fundamentals Rights and Basic Freedoms.
Through the appeal against „a guarantor summons", not all situations where the gurantor´s right to peaceful enjoyment of property has been violated cannot be considered effectively remedied under Art. 13 of the Convention for the Protection of Human Rights and Fundamentals Freedoms.
If the guarantor is to have the same obligation as a debtor – i.e. the obliogation to pay the tax debt, although it has at its disposal diametrically qualitatively different means for protection from the same obligation, then i tis caused unjustified inequality in the treatment in contradiction with Art. 1and Art. 37 of the Charter.

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The plenum of the Constitutional Court, consisting of Stanislav Balík, František Duchoň, Vlasta Formánková, Vojen Güttler, Pavel Holländer, Ivana Janů, Vladimír Kůrka, Dagmar Lastovecká, Jiří Mucha, Jan Musil, Jiří Nykodým, Pavel Rychetský, Miloslav Výborný, Eliška Wagnerová and Michaela Židlická, decided on a petition from the Supreme Administrative Court under Art. 95 par. 2 of the Constitution of the CR to pronounce unconstitutional § 57 par. 5 of Act no. 337/1992 Coll., on the Administration of Taxes and Fees, in the version before it was amended by Act no. 230/2006 Coll., as follows:

I. The provision of § 57 par. 5 third sentence of Act no. 337/1992 Coll., on the Administration of Taxes and Fees, in the version before it was amended by Act no. 230/2006 Coll., was inconsistent with Art. 1, Art. 11 par. 1, Art. 36 par. 1 and 2, and Art. 37 par. 3 of the Charter of Fundamental Rights and Freedoms and Art. 6 par. 1 and Art. 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms.
II. The rest of the petition is denied.

REASONING

I.
Definition of the Matter and Recapitulation of the Petition

1. On 5 October 2006 the Constitutional Court received a petition from the Supreme Administrative Court asking that it pronounce unconstitutional § 57 par. 5 of Act no. 337/1992 Coll., on the Administration of Taxes and Fees, in the version before it was amended by Act no. 230/2006 Coll. (also referred to as the "contested provision").

2. The petitioner did so after, in connection with its decision making activity in accordance with Art. 95 par. 2 of the Constitution and § 48 par. 1 let. a) of Act no. 150/2002 Coll., the Administrative Procedure Code, as amended by later regulations (the "Administrative Procedure Code"), it concluded that § 57 par. 5 of Act no. 337/1992 Coll., on the Administration of Taxes and Fees, in the version before it was amended by Act no. 230/2006 Coll., which is to be applied in resolving the matter file no. 2 Afs 108/2005, is inconsistent with Art. 1, Art. 36 and Art. 37 par. 3 of the Charter of Fundamental Rights and Freedoms (the "Charter").

3. In the matter file no. 2 Afs 108/2005, the Supreme Administrative Court is deciding on a cassation complaint from the plaintiff, Ing. Jiří Novák, against a decision by the Regional Court in Hradec Králové of 20 January 2005, file no. 31 Ca 115/2004. This decision denied his complaint against a decision of the Financial Directorate in Hradec Králové of 9 March 2004 ref. no. 6828/150/2003-Stř., which denied the plaintiff's appeal against a decision by the Financial Office in Pardubice of 20 August 2003, ref. no. 149179/03/248940/2632. That decision was a summons for the guarantor to pay a tax debt under § 57 par. 5 of Act no. 337/1992 Coll., on the Administration of Taxes and Fees, in the amount of CZK 274,084.

4. The Supreme Administrative Court suspended proceedings in the matter and submitted to the Constitutional Court a petition to pronounce the contested provision unconstitutional. In the introduction to the petition, it points to the fact that it already submitted a petition to annul § 57 par. 5 of Act no. 337/1992 Coll., on the Administration of Taxes and Fees, in the version before it was amended by Act no. 230/2006 Coll., to the Constitutional Court in the matter conducted as file no. 7 Afs 116/2004. However, the Constitutional Court, by plenary resolution of 11 July 2006 file no. Pl. ÚS 30/05, suspended proceedings on that petition with reference to § 67 par. 1 of Act no. 182/1993 Coll., because, "in reviewing the petition, the Constitutional determined that on 25 April 2006 the Parliament of the Czech Republic adopted Act no. 230/2006 Coll., which amends Act no. 89/1995 Coll., on the State Statistical Service, as amended by later regulations, and other related Acts ("Act no. 230/2006 Coll."). This Act also amended Act no. 337/1992 Coll., on the Administration of Taxes and Fees, as amended by later regulations. That Act also annulled the provision contested by the petition, § 57 par. 5 of the Act (cf. Part Five, Art. V., point 10, of Act no. 230/2006 Coll.) and regulated the institution of providing a guarantee in § 57a) in a substantially different manner from the contested – and annulled – § 57 par. 5 of Act no. 337/1992 Coll." The Supreme Administrative Court then points to the fact that this decision by the

Constitutional Court did not create an obstacle of res iudicata, because that would happen only in the case of a decision issued in the form of a judgment. In support of its conclusion, it also makes the argument that in the proceeding on that petition, and in the proceeding on the present petition, the Constitutional Court was authorized to evaluate whether the contested provision was constitutional, on the basis of direct application of Art. 95 par. 2 of the Constitution of the Czech Republic (the "Constitution").

5. The Supreme Administrative Court further states in the petition – with reference to the arguments made in the petition conducted at the Constitutional Court as file no. Pl. ÚS 30/05 – as regards the merits of the matter, i.e. regarding the claim of unconstitutionality, the following.

6. The guarantor's duty to pay a tax debt on behalf of a tax debtor represents serious interference in his subjective rights. The Constitutional Court has already addressed the question of protection of these rights many times in its decisions, and under its settled case law a summons under the cited provision must always be reviewable by the appropriate general court within the administrative court system, because denying judicial review would leave a party to an administrative proceeding without judicial protection, which would violate his constitutionally guaranteed fundamental right under Art. 36 par. 1 and 2 of the Charter. Under the opinion expressed by the Constitutional Court, it is necessary, especially in terms of constitutional law perspectives and requirements arising from protection of constitutionality, to devote sufficient, and marked attention to the scope and manner of judicial review of compulsory administrative acts, just as it is necessary to sufficiently and convincingly justify a denial of judicial review of them.

7. The Act on the Administration of Taxes and Fees, compared to § 14 of Act no. 71/1967 Coll., on the Administrative Procedure Code, as amended by later regulations, restricts the circle of parties so that not all persons whose rights are affected and on whom obligations are imposed or whose rights are addressed in the proceeding, or whose rights may be affected by the administrative decision, are parties to the proceeding and can effectively defend their rights in it. The Act on the Administration of Taxes and Fees, in § 7, names the persons participating in a proceeding, who are employees of the tax administration, tax subjects, and third parties. While the rights and obligations of the tax administrator and of tax subjects can be determined from the Act, the procedural status and rights of third parties in a proceeding into which they enter primarily ex offo, often not until the final phase of a proceeding, as in the case of a tax guarantor, are not regulated in greater detail. Some third parties may be directly affected, e.g. concerning their property rights, with others the direct interference in their rights is perhaps only at the level of theory and deliberation (an expert, a witness, etc.), because they are not burdened by a tax obligation, but only have obligations of a non-monetary nature.

8. Under § 57 par. 1 of the Act on the Administration of Taxes and Fees a guarantor is basically in the position of a tax debtor, and has a tax liability to which his own property is subject, but the Act does not put any other third party in that position. The only authorization that is accorded to the guarantor under par. 5 of that provision is the right to file, in a limited scope, an appeal against a summons to pay

a tax debt, in the phase where a decision on the tax liability has already taken legal effect. The tax administrator treats the guarantor like "a person participating in the proceeding," which means that it imposes obligations, and accords rights in a very limited extent (the right to appeal, stating one of a defined list of grounds) in a proceeding which it did not open with the guarantor, in which it grants him no procedural status, in which it did not deal with the guarantor, and where it brought the guarantor into the tax proceeding ex offo only at the point where the tax subject did not fulfill his tax liability.

9. The guarantor is not a party to the assessment proceeding, and only if the taxpayer does not fulfill his tax liability does he have an obligation to pay the tax debt, and it cannot be ruled out that cases might arise where the taxpayer's tax liability was set inconsistently with the law. However, the guarantor's ability to file objections against that decision in the administrative proceeding and, accordingly, in the review proceeding before a court is limited by the grounds that are listed in § 57 par. 5 third sentence of the Act on the Administration of Taxes and Fees, although the decision establishes his obligation to pay instead of the taxpayer.

10. Although the guarantor has basically the same obligation as the taxpayer to pay the assessed tax, the conditions for exercising his rights are incomparably more limited. Thus, the law, without material grounds, accords different rights to the taxpayer and to the guarantor, although he could not affect the fact that he became a guarantor, because that is provided by law. The current legal framework completely ignores procedural regulation of the guarantor's posititon in the assessment proceedings, because it does not permit him to participate in this proceeding, the opening of which he is not aware of, and imposes an obligation on him with a minimum guarantee of rights, for the first time in the execution proceeding.

11. Beyond that, the Supreme Administrative Court states that the new statutory regulation implemented by Act no. 230/2006 Coll., is not of better constitutional law quality in fundamental aspects, and it presents arguments in support of that claim (comparing it with the contested provision).

II.
Recapitulation of the Essential parts of the Brief from the Party to the Proceeding

12. Under § 42 par. 4 and § 69 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations (the "Act on the Constitutional Court"), the Constitutional Court sent the petition to the Chamber of Deputies. In his brief of 4 January 2008, the Chairman of the Chamber of Deputies of the Parliament of the Czech Republic, Ing. Miloslav Vlček, recapitulated the process of adoption of Act no. 337/1992 Coll., pointed to its amendment by Act no. 230/2006 Coll. (he also summarized the process of adopting that Act), and stated the opinion that in both cases, when discussing these Acts, the legislative assembly acted in accordance with legal procedure and in the belief that the adopted Acts were consistent with the constitutional order and the legal order of the Czech Republic. The Chairman of the Chamber of Deputies agreed to waive a hearing.

13. Under § 42 par. 4 and § 69 of the Act on the Constitutional Court, the Constitutional Court also sent the petition to the Senate of the Parliament of the Czech Republic. In a brief of 3 January 2008, the Senate Chairman, MUDr. Přemysl Sobotka, agreed with the petitioner's opinion that even the new regulation, which was inserted into the Act on the Administration of Taxes and Fees based on Act no. 230/2006 Coll., did not adequately handle the abovementioned problem, especially as regards the position of the guarantor as a "third party," and in the future will probably bring problems similar to those brought by the previous regulation. Theoretically the concept of review of constitutionality is a logical whole, because there is no choice but to insist that, as regards the annulment of legal regulations, the Constitutional Court can be formally endowed only with the right to annul a provision or regulation in its "last," adopted, i.e. valid, version. In practice, however, one can conclude that application of § 66 and § 67 of the Act on the Constitutional Court, in connection with the institution of suspending proceedings under Art. 95 par. 2 of the Constitution, or under § 109 par. 1 let. c) of the Civil Procedure Code, from time to time causes difficulties in fulfillment, which, however, in many cases can more likely be ascribed to hastily adopted changes to the legal order. Nonetheless, these circumstances, which the affected persons more or less cannot control, should not function to their detriment.

III.
Text of the Contested Legal Regulation

14. The provision of § 57 par. 5 of Act no. 337/1992 Coll., on the Administration of Taxes and Fees, in the version before it was amended by Act no. 230/2006 Coll., reads: "Guarantors are also required to pay tax debts, if the law imposes a guarantee obligation on them, and if they are summoned to do so by the tax administrator. A guarantor may appeal against the summons. In the appeal, the guarantor can claim only the fact that he is not a guarantor, or that the guarantee was applied in a greater scope than that provided by law, or that the taxes were already paid."

IV.
Evaluation of the Constitutional Court's Jurisdiction to Review to Petition, and Conditions for the Petitioner's Active Standing

15. The Constitutional Court first had to answer the question of whether it had jurisdiction to review the petition on the merits, because the petitioner did not seek annulment of the contested provision, but only a declaration that it was unconstitutional. This statement of claim in the petition was a logical consequence of the fact that on 25 April 2006 the Parliament of the Czech Republic adopted Act no. 230/2006 Coll., which amends Act no. 89/1995 Coll., on the State Statistical Service, as amended by later regulations, and other related Acts ("Act no. 230/2006 Coll."), which also amended Act no. 337/1992 Coll., on the Administration of Taxes and Fees, as amended by later regulations. That Act also annulled the provision contested in the petition, § 57 par. 5 of this Act (cf. Part Five, Art. V., point 10, of Act no. 230/2006 Coll.) and regulated the institution of providing a guarantee in § 57a) in a substantially different manner from the

contested – and annulled – § 57 par. 5 of Act no. 337/1992 Coll. However, the contested provision, in the version before it was amended by Act no. 230/2006 Coll., was applied in the present matter, i.e. in the proceeding on the cassation complaint the application of that provision will have to be reviewed, and therefore the Supreme Administrative Court, under Art. 95 par. 2 of the Constitution, turned to the Constitutional Court.

16. In this regard the Constitutional Court refers to judgment file no. Pl. ÚS 38/06 (related to judgment file no. Pl. ÚS 33/2000), which responded to the question posed with the legal opinion that under Art. 95 par. 2 of the Constitution the Constitutional Court has jurisdiction to review on the merits whether the contested provision is constitutional, even though it was already annulled (amended), on condition that the addressee of the claimed grounds for unconstitutionality is the public authority, and not a subject of private law. In view of the fact that in this matter the addressee of the claimed grounds for unconstitutionality is the public authority, conditions in the context of the cited legal opinion from the matter file no. Pl. ÚS 38/06 for review of the petition on the merits have been met. As regards the Constitutional Court's earlier decision, file no. Pl. ÚS 30/05, the Constitutional Court, in agreement with the Supreme Administrative Court, states that in view of § 35 par. 1 f the Act on the Constitutional Court it does not create the obstacle of rei iudicatae.

17. As stated above, the petition from the Supreme Administrative Court is related to its decision making activity, and therefore that court is an authorized petitioner under Art. 95 par. 2 of the Constitution; the conditions for the petitioner's active standing in a proceeding on review of norms have also been met.

V.
Consistency of the Content of the Contested Statutory Provisions with the Constitutional Order

18. In the petition, the Supreme Administrative Court contested – from the point of view of the claimed unconstitutionality – § 57 par. 5 of Act no. 337/1992 Coll., on the Administration of Taxes and Fees, in the version before it was amended by Act no. 230/2006 Coll., as a whole. The contested provision is structure in three sentences, containing three different legal norms, and therefore the constitutionality of their content must be reviewed separately.

V. A)

19. The first sentence of the contested provision provides that "Guarantors are also required to pay a tax debt, if the law imposes a guarantee obligation on them, and if they are summoned to do so by the tax administrator."

20. We cannot reliably draw from the Supreme Administrative Court's arguments where it finds this part of the contested provision to be unconstitutional. In a certain sense, we can even doubt whether the petition even argues that the first sentence (and the second sentence) of the contested provision is unconstitutional,

and whether it does not find only the third sentence of the contested provision to be unconstitutional (this seems to be the case, for example, from the content of point VI. of the petition). However, the petition's statement of claim expressly contests the provision as a whole, and the Constitutional Court is bound in its decision making by the petition's statement of claim, not by its reasoning.

21. The Constitutional Court states that the legal norm established in the first sentence of the contested provision by itself provides only that guarantors are also required to pay a tax debt, if the law imposes a guarantee obligation on them, and if they are summoned to do so by the tax administrator, that is, it expresses the basis of the institution of providing a guarantee. Thus, § 57 par. 5, first sentence, of Act no. 337/1992 Coll., on the Administration of Taxes and Fees, in the version before it was amended by Act no. 230/2006 Coll., is not unconstitutional. It is only the result of the entire statutory concept (which is composed of several legal provisions), under which the tax guarantor is not, from the beginning of tax proceedings with the tax subject, a party to the proceeding with the same rights and opportunities for procedural defense as the tax subject has. The petitioner did not contest this statutory concept before the Constitutional Court, and therefore the Constitutional Court could not review it.

22. We can reach a similar conclusion regarding the claimed unconstitutionality of the second sentence of the contested provision: "A guarantor may appeal against the summons," because this is a legal norm that enshrines protection of the rights of a tax guarantor in proceedings before administrative bodies, which is also a prerequisite for protection before administrative courts.

V. B) 1)

23. As regards the third sentence of the contested provision, "In the appeal, the guarantor can claim only the fact that he is not a guarantor, or that the guarantee was applied in a greater scope than that provided by law, or that the taxes were already paid," that basically involves a different situation. The Constitutional Court (which is not bound in its decision making by the petition's reasoning, which becomes important in view of the content of the petition's reasoning in the present matter) primarily reviewed the question of whether a norm establishing a limited scope of circumstances that the guarantor can claim in an appeal is inconsistent with the constitutional order, specifically with Art. 36 par. 1 of the Charter, under which "Everyone may assert, through the legally prescribed procedure, his rights before an independent and impartial court or, in specified cases, before another body."

24. Article 36 par. 1 of the Charter enshrines everyone's right to seek protection of his rights before a court or another body. The meaning and purpose of this provision is to establish the state's obligation to provide protection of rights to everyone, because in a law-based state there cannot be a situation in which a rights-holder could not seek protection of that right (before a court or another body). This is generally based on the fact that the state exists in order to protect its citizens, but also persons staying on its territory, and to provide them

guarantees that their rights will be protected.

25. Paragraph 4 Art. 36 of the Charter (to which par. 1 Art. 36 of the Charter basically refers with the phrase "prescribed procedure") refers to a statute that regulates "conditions and detailed procedure" in relation to all the previous paragraphs of Art. 36 of the Charter; nonetheless such a statute, issued on the basis of constitutional authorization is bound by Art. 36 of the Charter, and thus cannot deviate from its content (thus the argument is relevant that the key viewpoint for constitutional conformity of such a statute is, for example, the degree to which the legislature denies these constitutional rights, etc. as the Supreme Administrative Court argued in decision file no. 2 Afs 51/2004: "… of course, constitutional safeguards arising from Art. 36 par. 1 of the Charter of Fundamental Rights and Freedoms and from Art. 1 par. 1 of the Constitution do not permit that a tax guarantor be deprived in such an extent … of the right to effective protection of his subjective public rights …"). Under Art. 36 par. 4 of the Charter the meaning and purpose of an "ordinary" statute is simply to set forth the conditions and details of exercising rights whose content has (already) been provided by the constitutional framers in Art. 36 of the Charter, that is, conditions and details of a purely procedural nature (not "material legal").

26. If, under Art. 36 par. 1 of the Charter, everyone has the right to seek protection of his rights before a court or other body, and the conditions and rules for the exercise of that right are provided by law, then such a law, issued on the basis of constitutional authorization, cannot completely negate everyone's right to seek protection of his rights before a court or other body in one or another situation, and thus deny the constitutionally guaranteed fundamental right, even if only in certain cases. Article 36 par. 1 of the Charter constitutionally guarantees everyone the opportunity to seek protection of his rights before a court or another body in all situations where the right is violated (there is no constitutional restriction). In other words, no person can be completely excluded by law from the opportunity to seek protection of his right, even if only in a certain case, because his right under Art. 36 par. 1 of the Charter would be annulled. The opposite interpretation would also mean that the establishment by the constitutional framers, that is with the highest legal force, of everyone's right to turn to judicial and other bodies for protection of his rights would basically lose meaning, because it could be annulled for one or another situation of violation of rights by the will of the "ordinary," subordinate legislature.

27. In the present matter, we must state, first of all, that the Act on the Administration of Taxes and Fees in the version then in effect (i.e. in the version before it was amended by Act no. 230/2006 Coll.) imposes a primary obligation to pay taxes on the tax subject to whom the tax assessment is delivered, and only then imposes a payment obligation on the guarantor. Thus, the obligation to pay a tax debt rests, in addition to the taxpayers – debtors – themselves, with the guarantors, if the law imposes the guarantee obligation on them, and if they are summoned to pay this obligation by the tax administrator. This is an institution of a special statutory guarantee governed by public law regulation, which, assuming that a particular person has the position of a statutory guarantor, can be implemented by only a summons from the tax administrator in relation to the person who is the statutory guarantor. However, the tax guarantor is not a party to

the tax proceeding from the beginning, with the same rights and possibilities for procedural defense as the tax subject has (in § 7 par. 2 of the Act on the Administration of Taxes and Fees the guarantor is even included amog "third parties," with the same position as, e.g. a witness, an expert, etc.). The guarantor is not even sent a copy of the payment assessment or other decision that imposed the tax liability for payment. The tax proceeding begins for the tax guarantor only with the delivery of the "guarantor summons" under the contested provision, but at the same time delivery of that puts the guarantor into the position of a subject on whom a payment obligation is imposed. Thus, the "guarantor summons" is a decision by which the obligation to pay a tax debt is transferred to the guarantor, it is a decision that has substantive law consequences, because it determines that all legal prerequisites have been met for the guarantor to step into the place of the original debtor and that it has the position of the original debtor with all the consequences, which means that it can also be subject to debt collection. The actual content of this summons (a decision in the material sense) is not changed in any way by the imprecise name chosen by the legislature, i.e. "summons" (and not, e.g. "decision").

28. The Constitutional Court argues similarly in its case law on the nature of customs guarantees, which can also be applied to the position of a guarantor in tax proceedings. The Constitutional Court stated in judgment file no. II. ÚS 445/2000 that "a summons made by the customs body under § 73 par. 1 of Act no. 337/1992 Coll., directed to a debtor who has not paid the customs debt by the statutory deadline and which calls on him to pay the debt by an alternate deadline, is the first procedural step by a body conducting the collection of customs debts, and is therefore of a procedural nature. Up to this point we can fully agree with the court's conclusions. The administrative court then takes the fact that a guarantor summons aims at the same purpose, and concludes that a guarantor summons is of the same procedural nature. However, that conclusion ignores the mandatory § 32 par. 1 of Act no. 337/1992 Coll. Under that provision, in a tax proceeding, and, in view of § 320 of the Customs Act in a customs proceeding as well, obligations can be imposed or rights accorded only by a decision. However, in contrast to a debtor who has been given an obligation to pay a debt by a decision of a customs body, in relation to a guarantor, that obligation arising from the decision of the customs body was not imposed before the summons was made. The guarantor's declaration in the guarantee document alone, even if its acceptance by the customs body is confirmed by a decision, cannot have the character of a decision that imposes an obligation under § 32 of the abovementioned Act, because the guarantor's obligation to pay a debt on behalf of the debtor – testified to by the very essence of the institution of providing a guarantee – is implemented only when the debtor himself does not duly pay his debt on time, and it is not until the summons directed to the guarantor that the guarantor learns that the debtor, for whom he has provided a guarantee to pay customs duty, has not paid his debt in a particular amount. Thus, it is only this summons that imposes on the determined guarantor – as testified to by the content of the summons in question – the obligation to pay the debt by a specified deadline, in a specific amount, for the debtor who did not himself pay it by the specified deadline. It is only this summons, despite its name, that can be considered a decision issued under § 32 par. 1 of Act no. 337/1992 Coll., which thus becomes grounds for execution in relation to the guarantor in the collection of the debt, and for that reason it must be viewed as a decision of a

substantive nature."

29. Thus, it is only upon delivery of the "guarantor summons," setting the payment obligation for the tax guarantor, that the tax proceeding begins for the tax guarantor, and only from that point on can the guarantor effectively exercise his procedural rights, and thus protect his substantive rights.

30. Nonetheless, as regards the actual content of these rights, it is key that the third sentence of the contested provision limits the material scope of the circumstances that the guarantor can raise in an appeal, by providing an exclusive list; in an appeal against a "guarantor summons," the guarantor can claim only "the fact that he is not a guarantor, or that the guarantee was applied in a greater scope than that provided by law, or that the taxes were already paid."

31. Nothing about this limitation is changed by the expansive interpretation of these facts, often applied in administrative and court practice, which permits including certain circumstances that cannot be deduced from the literal wording; even if this expansive interpretation can be applied, the limitation still remains in the objections that can be made in an appeal. The opposite interpretation could not be accepted even by applying the rule of constitutional interpretation (if it were concluded that the cited limitation of objections for an appeal were unconstitutional), because – as is indicated by the Constitutional Court's case law (and expert commentary) – this rule can be applied only in a situation where there are two (or more) possible interpretations of a legal regulation (otherwise it would logically not be interpretation of the law, but creation of a statute, and the derogatory authority of the Constitutional Court would be generally redundant if it were possible to "interpret" every statute in a constitutional manner). In this case, of course, we cannot conclude from the fact that the legislature substantively limited the circle of applicable objections to three expressly stated ones an opposite conclusion, i.e. that in fact it did not set any limitation. The use of an exhaustive list by the legislature would then lose any reasonable meaning. In any case, the settled practice of administrative bodies, administrative courts (cf. the statement of the Supreme Administrative Court in the petition), as well as the Constitutional Court, rests on the position about the limited substantive scope of facts that the guarantor can claim in an appeal.

32. A necessary logical consequence is the identical limitation of the substantive scope of applicable objections in proceedings before an administrative court. An administrative court could not question a decision by an administrative body in the refusal to consider objections that cannot be classified under this statutory provision, because the opposite approach by the administrative body would be inconsistent with the statutory imperative, and the decision could not be replaced by substantive review of these objections by the administrative court itself. This is supported by the practice of the administrative courts (including the Supreme Administrative Court) and the Supreme Administrative Court even argues on that basis in the present petition ("The guarantor's ability to file objections against that decision in the administrative proceeding and, accordingly, in the review proceeding before a court is limited by the grounds that are listed in § 57 par. 5 last sentence of the Act on the Administration of Taxes and Fees …").

33. Thus, we cannot but conclude that in the third sentence of the contested provision the legislature annulled the guarantor's right to seek protection of his rights before a court or other body in all cases except the three expressly provided, and thus it denied a constitutionally guaranteed fundamental right in those cases. In the case of tax guarantors who would want to seek protection of their rights with the claim that it was violated otherwise than by their being imposed an obligation to pay a tax debt even though they are not guarantors, or that the guarantee was applied in a greater scope than that provided by law, or that the taxes were already paid, the legislature's actions thus excluded that category of subjects from the right to seek protection of their rights before a court or other body. Under § 57 par. 5 third sentence of the Act on the Administration of Taxes and Fees, in the version in effect at the time, a guarantor obviously cannot claim, for example, facts affecting the basis and amount of his tax obligation, and thus cannot object – as the Supreme Administrative Court correctly indicated in this petition – that a tax should not have been imposed (on the tax debtor) at all, should have been imposed on another person, was assessed in an incorrect amount, etc. The legislature's (unconstitutional) intent was obviously, through this limitation of grounds for an appeal against a "guarantor summons," to rule out the possibility that deciding on an appeal under § 57 par. 5 third sentence of the Act on the Administration of Taxes and Fees, in the version in effect at the time, would, in relation to the tax guarantor, replace a "tax finding proceeding" that had already taken place, and that it would essentially informally take place twice.

34. Therefore, the Constitutional Court can only state that these actions by the legislature are inconsistent with the constitutional order. The provision of § 57 par. 5 third sentence of the Act on the Administration of Taxes and Fees, in the version in effect at that time, is inconsistent with Art. 36 par. 1 of the Charter.

35. This statement applies especially in a situation where the guarantor, appealing against a "guarantor summons," seeks protection not only of an "ordinary" right, but of a fundamental right, the right to peaceful enjoyment of property (which is included under Art. 11 par. 1 of the Charter – see, e.g. judgment file no. III. ÚS 120/96). The obligation to pay a tax debt represents interference in the guarantor's property sphere, because it deprives him of part of his property, i.e. the part that he will be required to pay. The tax obligation (or the actual collection of tax) is considered interference in the right to peaceful enjoyment of property (cf. Art. 1 paragraph 1, first sentence, of the Protocol to the Convention: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions.") and in the case law of the European Court of Human Rights (see, e.g. decision of 9 November 1999 in the case Špaček, s.r.o. v. the Czech Republic), and thus also means violation of the guarantor's fundamental right to peaceful enjoyment of property under Art. 11 par. 1 of the Charter.

V. B) 2)

36. The Constitutional Court also finds § 57 par. 5 third sentence of the Act on the Administration of Taxes and Fees, in the version in effect at the time, to be unconstitutional in the context of Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention"), under which

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

37. The obligation to pay taxes (including a tax debt) could, in particular cases, be inconsistent with Art. 1 of the Protocol to the Convention, and therefore, in accordance with Art. 13 of the Convention, everyone whose rights were violated, including a tax guarantor, must have effective legal means of remedy before a national body.

38. However, in view of the third sentence of the contested provision, the legal order does not have an effective legal means of remedy for violation of a tax guarantor’s right to peaceful enjoyment of property, because through the appeal against a “guarantor summons” it is possible to substantively evaluate only the content of the claim that the guarantor’s rights were violated because an obligation was imposed on him to pay a tax debt although he is not a guarantor, or that the guarantee was applied in a greater scope than that provided by law, or that the taxes were already paid, and so only violation of that right of the tax guarantor can be appropriately remedied under Art. 1 of the Protocol to the Convention. In other words, through the institution of an appeal under § 57 par. 5 third sentence of the Act on the Administration of Taxes and Fees, in the version in effect at that time, not all situations where the guarantor’s right to peaceful enjoyment of property has been violated can be effectively remedied, and therefore this instrument cannot be considered “effective” under Art. 13 of the Convention, so we can only state that the third sentence of the contested provision is also inconsistent with the cited article of the Convention.

V. B) 3)

39. The Constitutional Court also considers that the third sentence of the contested provision is inconsistent with Art. 36 par. 2 of the Charter, under which: “Unless a law provides otherwise, a person who claims that his rights were curtailed by a decision of a public administrative authority may turn to a court for review of the legality of that decision. However, judicial review of decisions affecting the fundamental rights and basic freedoms listed in this Charter may not be removed from the jurisdiction of courts.”

40. Art. 36 par. 2 of the Charter adopted the principle that administrative decisions are generally subject to judicial review, which means that all administrative decisions are subject to judicial review unless they are excluded from such review by law; the purpose is a more effective guarantee that the activities of the public administration will be legal (than on the basis of an enumerative principle, which therefore provides more limited judicial review). The constitutional framers reflected the need for the rule for review of the executive branch – which, although it is entitled to authoritative interfere in the legal sphere of natural and legal persons, lacks elements of independence, etc. – by the independent judicial branch. Thus, this is basically protection of everyone’s public rights (provided by the independent judicial branch), that is, protection from (illegal) interference by the public administration, which also differs from the previous general paragraph

of Art. 36 of the Charter, which guarantees everyone the right to seek protection of rights other than public subjective rights, and thus does not deal with only protection from interference by public administrative bodies, but also by a natural or legal person.

41. Although in the second sentence of the cited provision the constitutional framers delegation to the legislature allowing exceptions from the review of administrative decisions by a court, that constitutional authorization is limited in the fact that decisions concerning the fundamental rights and freedoms guaranteed by the Charter may not be removed from removed from the jurisdiction of courts. Here the constitutional framers obviously reflected the different relevance of the fundamental rights and freedoms and "ordinary" rights and freedoms; the more important rights logically deserve greater protection by definition.

42. In the present matter, as concluded above, the decision on the obligation to pay a tax debt (i.e., in the case of a "guarantor summons" and the decision on the appeal against it) concern the guarantor's fundamental rights (the right to peaceful enjoyment of property); therefore, here the constitutional framers have not permitted the cited legal exception from the rule.

43. The conclusions regarding Art. 36 par. 1 and 4 of the Charter apply equally to Art. 36 par. 2 of the Charter, i.e., a statute that provides "conditions and detailed provisions" under Art. 36 par. 4 of the Charter cannot deviate from the content of Art. 36 par. 2 of the Charter. Thus, if everyone has, under Art. 36 par. 2 of the Charter, the right to judicial review of decisions by public administration bodies affecting the fundamental rights and freedoms, and the conditions and rules for the exercise of that right are provided by law, then such a statute, issued on the basis of constitutional authorization, may not completely negate that right of every person, even if only in certain cases, and thereby deny the constitutionally guaranteed fundamental right in those situations. Article 36 par. 2 of the Charter does not permit a statute to make any restrictions in content of the right to judicial review of decisions concerning the fundamental rights and freedoms.

44. The logical consequence – as was concluded above – of the limited material scope of facts that a guarantor can claim in administrative proceedings under the third sentence of the contested provision is identical to the limitation of applicable objections before an administrative court.

45. Thus, we can only conclude that the contested provision, also implying limitation of the material scope of objections before an administrative court, is – taken comprehensively – also inconsistent with Art. 36 par. 2 of the Charter. In § 57 par. 5 third sentence of the Act on the Administration of Taxes and Fees, in the version then in effect, the legislature annulled a guarantor's right to judicial review of decisions concerning his fundamental rights in all situations, with the exception of the three expressly provided, and thus denied a constitutionally guaranteed fundamental right in those situations. In the case of tax guarantors who would seek protection of their rights in the event that their fundamental rights were violated otherwise than by their being imposed an obligation to pay a tax debt even though they are not guarantors, or that the guarantee was applied in a greater scope than that provided by law, or that the taxes were already paid, the

legislature's actions thus excluded that category of subjects from the right under Art. 36 par. 2 of the Charter.

46. Similarly, § 57 par. 5 third sentence of the Act on the Administration of Taxes and Fees, in the version in effect at the time, is inconsistent with Art. 6 par. 1 of the Convention, because it does not meet the requirement that everyone whose civil rights or obligations are involved must be guaranteed the right to access to the courts.

V. B) 4)

47. The Constitutional Court also evaluated whether the contested provision is inconsistent with the constitutional principle of equality. The Constitutional Court interprets the constitutional principle of equality, enshrined in Art. 1 of the Charter, under which all people are free, have equal dignity, and enjoy equality of rights, complementarily expressed in Article 3 of the Charter, as well as the principle of prohibition of discrimination in recognized fundamental rights, in its case law from two viewpoints (e.g., judgments file no. Pl. ÚS 16/93, file no. Pl. ÚS 36/93, file no. Pl. ÚS 5/95, file no. Pl. ÚS 9/95, file no. Pl. ÚS 33/96, Pl. 9/99, and others). The first is the requirement of preventing arbitrariness in the actions of the legislature in differentiating groups of subjects and their rights; the second is the requirement of constitutionally acceptable grounds for differentiation, i.e. the impermissibility of affecting a fundamental right or freedom by differentiation of subjects and rights on the part of the legislature.

48. Delivery of a summons for the guarantor to pay the tax debt places the guarantor in the same position as the tax debtor whose tax debt he guarantees. He acquires an obligation to pay the tax debtor's tax debt, to the extent of the guarantee, i.e. the same obligation as the tax debtor, with the possibility that his property will be seized in execution. Thus, as the Supreme Administrative Court states in the petition, one can say that the guarantor is, under § 57 par. 1 of the Act on the Administration of Taxes and Fees, basically in the position of the tax debtor. On the other hand – unlike the tax debtor, who was, e.g., a party in an assessment proceeding in which he could fully protect his rights and raise any objections – the contested provision permits the guarantor protection of his rights only in a very limited material scope provided by the exhaustive list of objections that can be applied in an appeal against the "guarantor summons."

49. However, the principle of equality requires that if the guarantor is to have the same obligation as a debtor – i.e. the obligation to pay the tax debt, which reduces his property by payment of taxes in the same way as for a tax debtor – we can find no grounds that would be able to justify the inequality in the treatment of the tax debtor and guarantor in the manner described above (they have at their disposal diametrically qualitatively different means for protection from the same obligation – the scope of objections applicable by a tax guarantor against a decision on tax obligation concerning him is considerably substantively restricted). Thus, the Constitutional Court concluded that the contested provision has the consequence of an unjustified inequality between subjects on whom a tax obligation is imposed. The postulate of equality does not require general equality of everyone with

everyone else, but it gives rise to a requirement that the law not give an unjustified advantage or disadvantage to one person vis-à-vis another. In this case it is indisputable that the contested provision does not respect the requirement of providing the same rights under the same conditions without unjustified differences, because the legislature considerable disadvantaged subjects in the position of a tax guarantor without constitutionally acceptable reasons.

50. Providing a guarantee is not an institution that appears only in tax proceedings, but, on the contrary, is a general institution in the entire legal order, which is addressed in detail primarily in the theory and case law of private law, whose roots go deep into years long past, and are permeated by the Roman law tradition, adopted and adapated by various trends and schools in the process of reception of Roman law. Thus, providing guarantees does not originate in financial law, and certainly not in the Czech tax laws (cf. e.g., Supreme Administration Court decision file no. 1 Afs 86/2004). One of the fundamental principles of the private institution of a guarantee is that a guarantor can raise all the objections against a creditor that the debtor would have against the creditor (§ 548 par. 2 of Act no. 40/1964 Coll., the Civil Code). The Constitutional Court also reasoned to this effect in its abovementioned judgment, file no. II. ÚS 445/2000, where it spoke of the "essence of the institution of providing a guarantee" (in the framework of public law guarantees), as well as in judgment file no. I. ÚS 429/2001: "The public law regime of obligations on the grounds of guaranteeing customs duty cannot completely eliminate the principles of relationships under the law of obligations … In any case, we must point out that in the modern legal understanding the boundary between public and private law is no longer seen to be as sharp as in the past, so that private law elements can often be seen in a legal relationship that is essentially under public law, and vice versa." The Constitutional Court further stated in judgment file no. I. ÚS 643/03, "the imperative for internal harmony and consistency of the legal order gives rise to a requirement that the same legal institution (here, a guarantee) mean the same thing, regardless of which branch of law it is being applied in. The Supreme Administrative Court relied on similar principles, e.g. in its decision file no. 2 Afs 81/2004, where it said that "a legal order based on principles of unity, rationality, and internal consistency of content, necessarily brings an imperative of taking the same view of comparable legal institutions, even if they are provided in different legal regulations, or even different branches." In its decision file no. 5 Afs 138/2004, the Supreme Administrative Court stated that "We cannot accept an interpretation under which there is a substantial difference between public law and private law guarantees; this follows from the decision of the expanded panel of the Supreme Administrative Court (1 Afs 86/2004, available at www.nssoud.cz)." If in civil law, where contractual guarantees are made, there is no limitation on the objections that a guarantor can apply, we can conclude by the logical argument a maiori ad minus, that it is all the more so true that such a marked restriction of applicable objections has no place with regard to statutory guarantees.

51. Thus, the Constitutional Court states that insofar as the third sentence of the contested provision establishes unconstitutional inequality, it is also inconsistent with Art. 1 and Art. 37 par. 3 of the Charter.

VI.

52. For the foregoing reasons, the Constitutional Court concluded that § 57 par. 5 third sentence of Act no. 337/1992 Coll., on the Administration of Taxes and Fees, in the version before it was amended by Act no. 230/2006 Coll. was inconsistent with Art. 1, Art. 11 par. 1, Art. 36 par. 1 and 2, Art. 37 par. 3 of the Charter, Art. 6 par. 1 and Art. 13 of the Convention, wherefore it granted that part of the petition from the Supreme Administrative Court under Art. 95 par. 2 of the Constitution. In view of Art. 89 par. 2 of the Constitution, public bodies are required to reflect the consequences of this unconstitutionality are reflected in their decision making practice, i.e. to not apply that provision in resolving particular cases. The Constitutional Court did not find § 57 par. 5 first and second sentences of Act no. 337/1992 Coll., on the Administration of Taxes and Fees, in the version before it was amended by Act no. 230/2006 Coll., to be inconsistent with the constitutional order, and therefore it denied that part of the petition.

Instruction: Judgments of the Constitutional Court cannot be appealed.

Brno, 29 January 2008