2007/02/15 - PL. ÚS 77/06: LEGISLATIVE RIDERS

HEADNOTES

To stray from the restricted field reserved for proposed amendments might be of such a nature as to overstep the actual content of the bill in question, or of such a nature as to constitute a blatant departure from the bill's subject matter. The first type of proposed amendment has long been designated in American doctrine as „legislative riders", the use of which in the U.S. is often and heatedly debated and which, although considered as undesirable, is nonetheless still considered to be a constitutionally-conforming form of proposed amendment. It is necessary to distinguish this first type from a second type, called „wild riders". The second type represents a transgression of the criteria of the test applied on the basis of the „germaneness" rule, that is, the rule of the close relation. In other words, it tests the issue as to whether, in a concrete case, a proposed amendment is proper or is a proposal which has, in the Czech milieu, been given the designation, „limpet". In this case, the technique of proposing amendments attaches to a bill the legislative scheme from an entirely different statute, with an unconnected legislative pattern.

The Assembly of Deputies did not recognize that the introduced amendment cannot be considered as such in the substantive sense. A constitutionally-conforming interpretation of the provisions governing the right to introduce amendments to a debated bill requires that the proposed amendment in actual fact merely modify the submitted legal scheme, that is in conformity with the requirement of the „rule of close relation", according to which the proposed amendment must concern the same subject as the bill which is under consideration in the legislative process, if the given proposed amendment is not to stray from the field reserved for proposed amendments in the form of a blatant departure from the debated bill's subject matter. In the Constitutional Court's view, this corresponds to a constitutionally conforming interpretation of the first part of § 63 para. 1 of the Standing Orders of the Assembly of Deputies. In the Constitutional Court's view this requirement has not been met in the given case, however. In consequence, the principle of the separation of powers, among others, was violated, with consequences for the principle of the formation of harmonious, transparent, and predictable law, which the Constitutional Court has already previously linked to the attributes of the democratic, law-based state. In addition, the institute of legislative initiative under Art. 41 of the Constitution of the Czech Republic was circumvented, as was the Government's right, under Art. 44 of the Constitution of the Czech Republic, to give its view on bills.
Following consideration of the content and objective, both of the original bill and the proposed amendment at issue, the Constitutional Court came to the conclusion that, in terms of content and objective, they are fundamentally different. On that ground alone it was necessary to find that the proposed amendment at issue strays from the restricted field reserved for proposed amendments. In other words, it is evident that it was a „proposed amendment" which could only be considered as such in the formal sense not, however, in the material sense.

In a substantive law-based state, a statute in the formal sense cannot be understood as a mere repository of a wide variety of changes made throughout the legal order. On the contrary, the substantive conception of the law-based state requires that a statute be, both in terms of form and substance, a predictable, consistent source of law.

The requirement that the law be predictable, which is a component of the principle of the law-based state, ceases to be satisfied in the moment when an amendment to a statute is contained in an entirely different statute, as understood in the formal sense, the content of which is in no way connected to the amended statute. Without employing the instruments of information technology, it is thus becoming entirely impossible for the addressees of legal norms to orient themselves in the legal order. At the same time, it is evident that without the possibility to make use of these systems, people cannot today acquaint themselves with the legal order of the Czech Republic, and this makes problematic the application of the general legal principle, ignorance of the law is no excuse. In this way, law becomes for its addressees entirely unpredictable.

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

On 15 February 2007, the Constitutional Court Plenum, composed of judges František Duchoň, Vojen Güttler, Pavel Holländer, Ivana Janů, Vladimír Kůrka, Dagmar Lastovecká, Jiří Mucha, Jan Musil, Jiří Nykodým, Pavel Rychetský, Miloslav Výborný, Eliška Wagnerová (judge-rapporteur) ane Michaela Židlická, on the petition of a group of Senators of the Senate of the Parliament of the Czech Republic, represented by an attorney, JUDr. K. Š., proposing the annulment of a portion of Act No. 319/2001 Coll., which became a part of its transitional provisions on the strength of Act No. 443/2006 Sb., in eventum proposing the annulment of Part Two of Act No. 443/2006 Coll., specifically its Art. II and Art. III., with the participation of the parties to the proceeding, the Assembly of Deputies of the Parliament of the Czech Republic and the Senate of the Parliament of the Czech Republic, decided as follows:
Part Two, specifically Art. II and Art. III., of Act No. 443/2006 Coll., which amends Act No. 319/2001 Coll., which amends Act No. No. 21/1992 Coll., on Banks, as subsequently amended, is annulled as of the day this Judgment is published in the Collection of Laws.

REASONING

I.

I. A) Summary of the Petition

1. A group of 23 Senators of the Senate of the Parliament of the Czech Republic by its petition which was duly submitted (cf. Art. 87 para. 1, lit. a) of the Constitution of the Czech Republic and § 64 para. 1, lit. b) of Act No. 182/1993 Coll., on the Constitutional Court, as subsequently amended (hereinafter „Act on the Constitutional Court“)) on 12 October 2006, sought the annulment of a portion of the transitional provisions of the above-mentioned Act No. 319/2001 Coll., which, on the strength of Act, No. 443/2006 Coll., became a part of Act No. 21/1992 Coll., on Banks.

2. By a submission delivered to the Constitutional Court on 10 January 2007, the petitioners elaborated upon the request in their petition as follows: the petitioners propose that the Constitutional Court of the Czech Republic annul, due to their conflict with the constitutional order of the Czech Republic, the contested provisions cited in Art. I of their submission, that is, that portion of Act No. 319/2001 Coll. which became a part of its transitional provisions on the strength of Act No. 443/2006 Coll., in eventum they propose that it annul Part Two of Act No. 443/2006 Coll., specifically Art. II and Art. III.

3. The essence of the objections are summarized by the petitioners themselves such that the Parliament of the Czech Republic has exceeded its authority and that the contested provisions, due to non-genuine retroactivity (albeit the petitioner subsequently objects rather that it is a case of genuine retroactivity), may constitute a violation of Art. 1 para. 1 and Art. 2 paras. 1 and 3 of the Constitution of the Czech Republic. Further, they may in consequence result in the ownership and property rights and the right to judicial protection, that is Art. 11 and Art. 36 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter „the Charter“) also being violated; they may as well result in a violation of the principle, forming one of the maxims of the substantive law-based state (deduced by interpretation of Art. 1 and Art. 2 of the Constitution of the Czech Republic, as well as of Arts. 1 and 4 of the Charter), that legal enactments must be of a due and proper nature and clear; they may also violate the prohibition of arbitrary conduct in the legislative procedure (deduced from the provisions of Art. 1 and Art. 2 para. 3 of the Constitution of the Czech Republic and Art. 2 para. 2 of the Charter, as well as from Art. 37 para. 2, Art. 41 and Art. 44 of the Constitution of the Czech Republic). Last but not least, in the petitioners‘ view the contested provisions are in conflict with Directive 94/19/EC of the European Parliament and of the Council on deposit-guarantee schemes, in consequence of which are violated the international obligations of the Czech Republic arising from its membership in the EU and thereby also Art. 1 para. 2 of the Constitution of the Czech Republic.

4. According to the petitioners, the contested provisions of the above-mentioned Act and the legislature’s intent are in conflict with the principle of the separation of powers, thus, in conflict with one of the foundational rules of the democratic, law-based state, as the Czech Republic is defined in Art. 1 para. 1 and in Art. 2

para. 1 of the Constitution of the Czech Republic, where it is laid down that the people exercise all state authority through the legislative, executive, and judicial bodies. According to the Constitution of the Czech Republic, the legislative power is vested in the Parliament of the Czech Republic, whereas a statute is a normative legal act which binds an undetermined class of subjects and regulates situations which will come to pass in the future. The case of the contested provision was a situation which had occurred in the past and concerned particularly known subjects. In this context the petitioners referred to the judgments (No. Pl. US 24/04 or No. Pl. US 55/2000), in which the Constitutional Court declared: „Among the foundational principles of the material law-based state belongs the maxim that legal rules be of a general character (the requirement of the generality of statutes). The general character of the content is an ideal, typical, and essential characteristic of a statute (alternatively, of legal enactments in general).“ In its decision No. Pl. 12/02, the Constitutional Court stated, among other things, of a statute which governs a singular case: „It departs also from one of the fundamental substantive characteristics of the concept of a statute, which is its general character. Let us recall that the requirement that a statute be of a general character is an important element of the principle of the rule of law and thereby also of the law-based state . . . . A separate argument against statutes regulating singular cases is the principle of the separation of powers, that is, the separation of the legislative, executive and judicial powers in a democratic law-based state.” According to the petitioners, in this case the Parliament of the Czech Republic made an exception to the rule for the specific cases of the clients of banks granted a preference, alternatively for one particular subject - the Czech Insurance Company, a.s. (Art. III, point 4 of the contested Act). And if the Parliament of the Czech Republic had already made an exception to this rule in a prior instance, it did so in a legislatively purer manner, without providing preferences to specific individual persons, without qualifying as further examples of the impugned unconstitutional steps, and at a time when this exception was socially and morally justifiable (the protection of bank customers as consumers in the period of becoming accustomed to a market setting).

5. According to the petitioners, by adopting the contested provisions, the Parliament of the Czech Republic also violated Art. 2 para. 3 of the Constitution of the Czech Republic, as it exerted its power in a manner which neither a statute nor the Constitution of the Czech Republic provides for or permits; the Parliament of the Czech Republic acted beyond the bounds of its authority laid down in the Second Chapter of the Constitution of the Czech Republic.

6. In the petitioners‘ view, the contested provisions have unconstitutional retroactive effects and, as such, are in conflict with the principle of the democratic law-based state, more precisely with the principle of the protection of citizens confidence in law and with the principle of the prohibition of genuine retroactivity, that is, with Art. 1 of the Constitution of the Czech Republic, as the contested provisions modify the legal consequences which came about, in accordance with law, long before the day on which the contested provisions came into effect. The legislature even amended transitional (intertemporal) provisions to one of the preceding amendments to Act No. 21/1992 Coll., on Banks (hereinafter „the Act on Banks“), the effects of which were meant to be exhausted by the latter amendment. If the legislature intended to resolve the problem of the

transitional provisions to Act No. 319/2001 Coll., in the petitioners‘ view it should have done so at the time it was adopted. Since that statute was adopted, the legislature has carried out several further amendments to the Act on Banks, each with its own transitional provisions, and now is intervening retroactively into the transitional provisions several amendments back. The relations of the depositors of Kreditní banka Plzeň, Plzeňská banka and Union banka toward these banks, alternatively toward the Depositor Insurance Fund (hereinafter „Fund“),came into being pursuant to the Act on Banking in its current wording. In accordance with § 41d of the Act on Banking, a claim to the payment of compensation comes into being on the day that the Fund receives a written notification from the Czech National Bank informing it of a bank’s inability to meet its obligations toward entitled persons, or in consequence of the receipt of an analogous written notification relating to the branch of a foreign bank. Such notification must be sent within a relatively short time-frame, namely within 21 days of ascertaining that the bank is not capable of meeting its obligations. Thus, in the petitioners‘ view, the relations arising from deposit insurance in relation to the three cited bankrupt banks, alternatively to the Fund, demonstrably came into being in May, 2003 at the very latest (the bankruptcy of Union banka occurred on 29 May 2003, the bankruptcy of the two other banks was declared earlier). The petitioners also referred to the decision of the Constitutional Court, No. Pl. US 33/01, according to which “genuine retroactivity has no place in a law-based state in situations where the legislature already could have ‘had its say’, but did not do so.“ In the petitioners‘ view, the contested provisions expand the class of entitled persons, change the procedure, and re-open relations after they had already been resolved by statute. The enactment allows to come into being relations between newly-defined entitled persons and the Fund on the same day in which similar relations arose in favor of entitled persons under the preceding legal framework (thus, in May, 2003 at the latest). And according to the petitioners‘, it is precisely in those aspects in particular that it is unequivocally a case of impermissible genuine retroactivity.

7. In the petitioners‘ opinion, in the case of the contested provisions the State first lays down a general rule as to how it should compensate the customers of bankrupt banks, which balances the protection of consumers of bank services and the liability of citizens as investors of their funds, who have the freedom to choose gainful risk investments or to prefer the safe, but less lucrative, deposit of monetary funds. Afterwards, however, it dealt with these funds in conflict with the general rules thus laid down, and to the detriment of safety funds, which manage money turned over by private persons, in consequence of which it preferred a certain group or a certain subject over others. In this they see a violation of the principles of the due functioning of the substantive law-based state, guaranteed in Art. 1 of the Constitution of the Czech Republic, consisting in securing the protection of legitimate confidence in the constancy of the legal order.

8. The petitioners further emphasized that the contested provisions result in private monies, paid by banks and taken from bank customers, which are designated for the compensation of bank customers who contribute to the Fund, will be made available outside of the framework of the rules which applied at the time the banks contributed to the Fund, which interferes with the protection of

private property and legitimate expectations under Art. 11 of the Charter and can be perceived to be expropriation, in the broad sense of the word. If then the property of the Fund as such will not be interpreted as the property of a holder of a fundamental right or basic freedom, this results vicariously in the limitation of the ownership and the property-related legitimate expectations of commercial banks contributing to the Fund, as in view of the consequences expected from the contested provisions, this can result in an increase of their contribution to the Fund or in injury to their customers.

9. According to the petitioners, the Fund, as a creditor, is restricted and discriminated against in its rights and in the protection of the property it administers because, in view of the time shift, the Fund would, in the case of a supplementary payment in accordance with the contested provisions, be deprived of the possibility to declare itself as a bankruptcy creditor in the bankruptcy proceedings of the affected banks. The petitioners stated that the provisions restrict in the same manner the Fund‘s rights to judicial protection consisting in the possibility for it to assert, against the bankruptcy debtors, claims which arose as a result of paying out the compensation. According to § 41h para. 2 of the Act on Banks, which still remains in effect, on the day that payment of compensation to entitled persons began, the Fund became the creditor of the bank in the amount of the rights of entitled persons of the bank to the payment from the Fund. From this follows also its statutory obligation to assert its claims within a bankruptcy proceeding which had already (1998 or 2003) been initiated. The retroactive legislative scheme introduced by the contested provisions renders ineffective the assertion of this right, as the final deadline for filing bankruptcy claims against the bank at issue had already expired. For this reason, this results in the described situation in the denial of justice - denegatio iustitiae, by which even the Fund’s rights to judicial protection according to Art. 36 of the Charter are violated.

10. The petitioners added, as a further argument, that the contested provisions are unconstitutional also due to their sharp conflict with EC law, which can be established at two basic levels. In the petitioners‘ view, the contested provisions are in conflict with the Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes, the objective of which is to ensure a harmonized minimum level of deposit protection for all deposits in the Community. The harmonization of the Czech legal arrangements for deposit protection contained in the amendment to the Act on Banks, No. 319/2001 Coll., anticipates a maximum compensation in the amount of 25,000 Euros, which is higher by 5000 Euros than the amount presumed in the Directive itself as the minimum level of insurance for all EU Member States, where by and large the average level of deposits per citizen is higher than in the Czech Republic. The maximum limit of compensation in an amount up to 4 million Crowns, such as is introduced by the contested provisions, goes entirely beyond the framework for the protection of small depositors and thus misses the meaning of the Directive. The petitioners further stated that Art. 249 of the Treaty Establishing the European Community provides that directives shall be binding, as to the result to be achieved, upon each Member State to which they are addressed, but shall leave to the national authorities the choice of form and methods. The result of the aforementioned directive should be the protection of small bank depositors and the restriction of anonymous deposits in connection with the protection from money

laundering. The contested provisions modify the already introduced harmonized legislative scheme where, by expanding the class of entitled persons to include also the owners of bearer certificates of deposit, bearer savings notes, and „guarantors of claims“ and their legal successors, they make possible the payment of compensation even to anonymous accounts, which goes directly against the sense of the directive and is thereby in direct conflict with EC law.

11. According to the petitioners, its conflict with Directive 94/19/EC is not the only respect in which the contested provisions violate EC law, and thereby also the obligations arising from Art. 1 para. 2 of the Constitution of the Czech Republic. According to the petitioners the contested provisions breach the existing principle that it is only injured depositors who can be the beneficiary of compensation from the Fund. The bill envisages the compensation of the Czech Insurance Company, a.s., which in the past voluntarily and entirely in conformity with its commercial plan paid out compensation to depositors of the Kreditní banka Plzeň in the amount of 1.78 billion Czech Crowns. This unprecedented preference of a commercial subject violates the principle of not providing unauthorized state aid in the sense of Art. 87 para. 1 of the Treaty Establishing the European Community, by which the Czech Republic is bound. State aid is defined as aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain subjects. Monies deposited in the Fund are not monies from the state budget; they are, however, public monies, on the use of which the State decides. Compensation in the amount of 1.78 billion Czech Crowns, which should be paid out from the Fund of Czech Insurance Companies, is unauthorized state aid in the sense of Art. 87 para. 1 of the Treaty Establishing the European Community, as it cannot come under the exceptions laid out in para. 2 of the cited Article.

12. In connection with the above-mentioned line of argument, the petitioners also referred to the fact that the very preference given to the Czech Insurance Company, a.s. (as follows from Art. III, point 4 of the contested provisions) also is not in conformity with the general principle of equality of conditions for economic competition expressed in Art. 3 para. 1 lit. q) of the Treaty Establishing the European Community. The contested provisions unjustifiably give a substantial preference to a private entrepreneurial subject – the Czech Insurance Company, a.s. and its private owners.

13. The petitioners also stated that the contested provisions in many places are lacking in sense, preventing any sort of interpretation, or allowing for several possible interpretations. Of fundamental importance is, for ex., the fact that the contested provisions are not comprehensible as regards the question of the running of time periods (it is not clear when such periods begin and end), or that the contested provisions contain concepts not extant in law („the guarantor of a claim“ cannot exist, as one can only guarantee obligations). In the petitioners view, it is very problematic in terms of the comprehensibility of the text that the contested provisions are an amendment to the transitional provisions of an act which was adopted five years previously, whereas those transitional provisions were exhausted with the respective amendment, and since that time the Act on Banks has already been amended several times, where individual amendments each had their own transitional provisions. The amendment to the transitional provisions

repeatedly changes the regime for banks which already five years previously come within the terms of certain exceptions from the regime of the Act and, pursuant to the contested provisions, now come within the terms of a new exception. It is in this respect that the petitioners see conflict with a characteristic attribute of the substantive law-based state, not explicitly mentioned in the Constitution of the Czech Republic nonetheless deduced from interpretation of Art. 1 and Art. 2 of the Constitution of the Czech Republic, as well as Art. 1 and Art. 4 of the Charter, which is the principle of legal certainty, where everybody may have trust in the law and its transparency and comprehensibility, and thereby also with the principle of the regularity and clarity of the laws.

14. The petitioners drew attention to the fact that the rule laid down both in the Constitution of the Czech Republic (Art. 2 para. 3) and in the Charter (Art. 2 para. 2), whereby the State (a state body) is limited by the rules which it itself lays down, is quite fundamental to the law-based state. It then follows from this rule that, in adopting statutes, the legislature is obliged to observe certain legislative rules; and in this vein the petitioners referred to the decision of the Constitutional Court (No. Pl. US 23/04), according to which: „The manner in which a statute was passed and promulgated is subject to the review of the Constitutional Court solely within the confines set out in the constitutional order (in particular Art. 1, Art. 39 paras. 1 and 2, Art. 41, Arts. 44 to 48, Arts. 50 to 52 of the Constitution of the Czech Republic). It is, therefore, the approved text of a statute which is the object of the Constitutional Court's review; the records from the chambers‘ discussions serve as the main evidence in evaluating one component of the tripartite evaluation, i.e. observance of the constitutionally prescribed manner of adopting a statute.“ In the legislative procedure, the legislature is thus bound by the Constitution of the Czech Republic, as well as statutes (for ex., the Standing Orders of the Assembly of Deputies). If in the course of the legislative procedure the legislature violates the rules which are prescribed for it by statute, then, according to the petitioners, that also qualifies, in consequence thereof, as a violation of Art. 2 para. 3 of the Constitution of the Czech Republic and Art. 2 para. 2 of the Charter. According to the statute, proposed amendments are limited to points under debate at the session, whereas the proposed amendment of Deputy Doktor, on the basis of which the contested provision became a part of the Act on Banks, had not been placed on the program of that session of the Assembly of Deputies, whereby the procedure laid down in Act No. 90/1995 Coll., on the Standing Orders of the Assembly of Deputies, was violated. According to the petitioners, it is in conflict with the prescribed procedure, that is, the constitutional rules for the legislative procedure, to vote on an act in the framework of a point of the session of the Assembly of Deputies which is devoted to another act and where it is not indicated in the program that the former act should be dealt with. In the petitioners‘ view, the substantive and procedural errors of the legislature in the case of the contested provisions are so numerous and grave that, taken together in the aggregate, they can lead to a finding of conflict with the constitutional order, in particular with the principle of regularity and clarity of the laws, making up one of the principles of the substantive law-based state, as well as with the prohibition of the arbitrary conduct of the legislative procedure.

I. B) The Statements of Views of Parties to the Proceeding

15. Pursuant to §§ 42 para. 4 and 69 of the Act on the Constitutional Court, the Constitutional Court sent the petition proposing the annulment of the contested provisions to the Assembly of Deputies and the Senate of the Parliament of the Czech Republic.

16. In its 7 November 2006 statement, the Assembly of Deputies of the Parliament of the Czech Republic, represented by its Chairman Ing. Miloslav Vlček, stated that the mentioned bill, No. 443/2006 Coll., which also amends Act No. 319/2001 Coll., was submitted by a group of Deputies. The Assembly of Deputies debated the bill in its 4th Electoral Term, originally as Assembly Print No. 965. After it was not approved on its 3rd reading on 21 December 2005, on 19 April 2006 the bill at issue was proposed to the full Assembly of Deputies, into Assembly Print No. 1222, on its 2nd reading. The Assembly of Deputies voted on Assembly Print No. 1222 as a whole in its 3rd reading on 23 May 2006, and by a vote of 156 for the bill (of the 176 Deputies present), it adopted the bill. On 21 June 2006 the Senate indicated that it did not intend to deal with the bill. The Chairman of the Assembly of Deputies signed the bill on 21 August 2006, and the President of the Republic let expire the 15 day deadline which the Constitution of the Czech Republic affords him, without returning the Act to the Assembly of Deputies or signing it. On 8 September 2006, the Prime Minister of the Czech Republic signed the bill, and it was duly promulgated in the Collection of Laws.

17. In the view of those Deputies who submitted the bill, as stated in the Explanatory Report, the bill ensures a partial equalization of the rights of those customers of banks in bankruptcy assisted only to the extent called for in the statute, whereas in other cases persons were assisted to a greater degree, and thus to mitigate the basic inequality which arose in consequence of the unsystematic steps taken in the past when paying out compensation. The requirement of equal treatment of the customers of all banks in bankruptcy, just as the requirement of equal adequate compensation of all customers, must be considered as entirely legitimate. Act No. 319/2001 Coll. introduced a dual system of compensation, which discriminates against a portion of the customers in the banking sector. From the perspective of legal certainty, the foreseeability of law, and the democratic principles of the equality of citizens of the Czech Republic, such a state of affairs is entirely undesirable. In the view of those Deputies who submitted the bill, the principle of the protection of the deposits of bank customers in the form of contributions by banks into the Depositor Insurance Fund (hereinafter „Fund“) is founded on the joint liability of all persons on the banking market. With the bill, these Deputies were thus pursuing a subsequent curing of the original harshness and non-functionality of the system for the compensation implemented in relation only to certain customers of banks presently in bankruptcy, instead of in relation to all customers of banks presently in bankruptcy, and in the same way the compensation of persons who played a part, in the Fund's stead, in resolving the past crisis situation. In the view of those Deputies who submitted the bill, it is necessary to preserve and uphold the principle of joint responsibility of all persons on the banking market in the Czech Republic and the connected and logically tied in compensation of participating persons other than banks, participating in place of

the Fund in the resolution of the overall situation. As the conclusion of its statement, the Assembly of Deputies stated that, in debating and adopting the bill, the legislative body did so in the conviction that the adopted bill was in conformity with the constitutional order of the Czech Republic. It is up to the Constitutional Court to adjudge the constitutionality of the provisions contested in the petition and to issue the relevant decision.

18. In its 7 November 2006 statement, the Senate of the Parliament of the Czech Republic, represented by its Chairman, MUDr. Přemysl Sobotka, first described the procedure by which the Senate assessed Act No. 443/2006 Coll. On 25 May 2006 the Assembly of Deputies sent Act No. 443/2006 Coll. to the Senate as a bill, and the Senate's Organizational Committee designated it, as Senate Print No. 362 (5th Electoral Term), for consideration by the Committee for Economics, Agriculture, and Transportation. On 15 June 2006, this Committee considered Senate Print No. 362, but it adopted no resolution on the bill. The full Senate considered the bill contained in Senate Print No. 362 at its 12th Session on 21 June 2006. Following the Rapporteur's Report, which merely incorporated the record of the hearing of the Committee for Economics, Agriculture, and Transportation asserting that the Committee had not reached a majority view, it was proposed that the Senate declare its intention not to deal with the bill. Before the vote on this proposal, the Chairwoman of the Club of Open Democracy, Senator S. Paukrtová, spoke and, in view of the dissenting position on the bill of the Government of the Czech Republic, of the Ministry of Finance especially, and of the Czech National Bank, called upon the full Senate to schedule the bill for full debate. Then the Vice-Chairman of the Senate, Senator P. Pithart, spoke and also requested that the bill be scheduled for full debate on the grounds that it is „a norm that is, in its way, retroactive, unjust, and discriminatory against bank houses". Nonetheless, in the vote on the bill, of the 69 Senators present 39 Senators voted for (and 18 against) a Senate resolution „not to deal with the bill".

19. The Senate further stated of the group of Senators' petition that one cannot but refer to the fact that the relief requested in the petition proposing the annulment of the transitional provisions is to a certain extent imprecise and incomplete. Act No. 319/2001 Coll. is not an act „on banks", as is stated in the petition, rather its title reads „an act which amends Act No. 21/1992 Coll., on Banks, as subsequently amended"; this fact is in no way changed by the erroneous heading to Part Two of Act No. 443/2006 Coll. (formally speaking, an act going by the title „No. 319/2001, on Banks" does not exist), as the introductory sentences to Art. II of Act No. 443/2006 Coll. leaves no doubt as to which act was amended. It is evident that the amending provisions of Art. II of Act No. 443/2006 Coll. were incorporated into Art. II of Act No. 319/2001 Coll., however, the following Art. III remains as merely a part of Act No. 443/2006 Coll., and it was not incorporated into some other act; the amendment of No. 319/2001 Coll. was restricted solely to Art. II of Act No. 443/2006 Coll. It is necessary to emphasize that, even following further amendments, Art. III of Act No. 319/2001 Coll. continues to contain only provisions on its entry into effect; in no case, however, are the provisions of Art. III of Act No. 443/2006 Coll., separate provisions of the last-named act, incorporated into Act No. 319/2001 Coll. The Senate has persisted in this view, even in its 19 January 2007 written statement reacting to the 9 January 2007 submission in which the petitioners stated more specifically the relief

requested in their petition.

20. The Senate further asserted that it can be conceded that the obligation adopted by the legislature to compensate customers of certain banks in the scope stated in Part Two of Act No. 443/2006 Coll., to a certain extent interferes with the private property, and violates the legitimate expectations, of interested persons (meaning the banks, or the Deposit Insurance Fund), as, on the basis of these provisions, private funds, paid by banks and taken from the customers of those banks, will be paid out beyond the extent of their previous obligations, all the more so, in that, in many cases this intervenes into already completed judicial proceedings, or proceedings already in progress, without it being possible, due to the passing of deadlines, for new facts to be taken into account. A broader scope of performance from the Fund could with great probability, in view of the level of payment into the Fund, represent increased claims on other banks, in the case that other banks file for bankruptcy; nonetheless, one cannot disregard the fact that compensation beyond the bounds of the general legal framework in the Act on Banks already occurred on the basis of Point 5 of Art. II of Act No. 16/1998 Coll., even if only to a minor extent (and that both in terms of the persons affected and of the object). In the case of compensation of savings, this is not by any means an extraordinary manner of compensating beyond the bounds of the general legal framework: for ex., in the sector of deposit insurance concerning cooperative credit banks, at the time the cooperative credit banks went bankrupt and in contrast to the then valid legal situation, the compensation was increased on the strength of Point 1 of Art. II of Act. No. 212/2002 Coll., and to cover the needs of the Safety Fund for Cooperatives, established on the basis of Act No. 215/2002 Coll., the State even issued bonds, as there was not enough money in the Safety Fund to pay the full compensation provided for by statute.

21. Beyond the framework of the petitioners‘ arguments, that the contested provisions suffer from serious legal defects which could make more difficult or even „make impossible any sort of interpretation“ or allow for various interpretations, the Senate stated that it is not at all clear in what terms or relation is the new legal arrangement introduced in Art. II of Act No. 319/2001 Coll., as amended by points 1 and 2 of Art. II of Act No. 443/2006 Coll. and the legal arrangement contained in Art. III of Act No. 443/2006 Coll. Thus, a state of affairs came about in which two procedures are prescribed for the customers of the same bank, which are in their very essence separate and partially overlapping procedures, whereas it is laid down in both legal arrangements that „neither the depositors of the banks, nor any other persons in connection with the disbursement of supplementary compensation pursuant to this transitional provision of the Act, are entitled to any claim other than those which follow from this transitional provision of the Act“; in addition, in relation to the customers of Kreditní banka Plzeň a.s., Plzeňská banka, a.s. a Union banka a.s. (all of which are in bankruptcy proceedings), this procedure has been valid and in effect from the same day, that is, from 18 September 2006.

22. As far as concerns the petitioners‘ objections to the procedure, specifically to the violation of the prohibition of arbitrariness in the legislative procedure, the Senate asserted that proposed amendments submitted in the second reading (and adopted in the third reading), by which an entirely unrelated amendment is incorporated into the act under consideration, have been a quite common

phenomenon, especially in the most recent electoral term of the Assembly of Deputies. It is a phenomenon which does not contribute to the good arrangement of the legal order or to the legal certainty of the addressees of these amendments; nonetheless, in strictly formal terms, it is evident that, in the sense of the Constitution of the Czech Republic, Deputies are not in any way restricted in attaching proposed amendments.

23. The Senate further stated that in assessing the petition it is necessary to take into account additional very serious aspects consisting, in particular, in the character of the contested provisions, as not only have new legitimate expectations (to the compensation of customers of other bankrupt banks beyond the framework of the general legal arrangements adopted in the past) without doubt arisen on the basis thereof, but in many cases even new rights came into being after the Act came into effect. It is up to the Constitutional Court to adjudge whether the petitioners‘ objections against the contested provisions are so consequential that it would be appropriate to annul these provisions, and thereby allow already acquired rights to be lost, which appears quite problematic especially in the case of those small depositors of bankrupt banks who are not transferees.

I. C) Statements of amici curie

24. On 2 November 2006, the Constitutional Court requested the position of the Czech National Bank and the Czech Bank Association on the issue of the economic consequences of launching a supplemental compensation for bank deposits from the Depositor Insurance Fund (hereinafter „Fund“) on the basis of amendments adopted to the Act on Banks, both in general terms and in terms of the payment capacity and functioning of the Fund; it further requested a statement on the issue of whether the adopted legislative arrangements for supplemental compensation are in conformity with EC law, when the area of deposit insurance is regulated by Directive of the European Parliament and Council No 94/19/ES.

25. In its 20 November 2006 position, the Czech National Bank, represented by its Governor, Ing. Zdeněk Tůma, stated, in relation to the issue of economic consequences, that as of 30 September 2006 the financial reserves of the Deposit Insurance Fund (hereinafter „Fund“) amounted to approximately 6.3 billion Czech Crowns. The supplementary compensation of deposits will amount to approximately 3.84 billion Czech Crowns (the amount will be specified only after each bank submits its documents demonstrating the right to the payment of compensation). The Fund’s reserves will thus be lowered to approximately 2.46 billion Czech Crowns. The effectuation of the supplementary compensation payments will not have immediate direct impact on the levy upon banks of contributions to the Fund; nevertheless, in the case that another insured event were to occur, it very realistically could eventuate in a situation where the Fund did not have sufficient financial means, precisely due to the currently statutorily-enshrined payment of supplemental compensation. In consequence thereof, the amount which banks would have to pay pursuant to § 41k of the Act on Banks would double. The payment of above-standard compensation naturally significantly puts off the moment when the Fund performs at such a level as to allow to be enacted

into law a drop in the rate of contributions to the Fund, or to entirely end the levy of contributions. It must be added thereto that the current rate of contributions represents for domestic banks a significant competitive disadvantage. The rate is relatively high, especially due to the repeated amendments to the Act on Banks supplementary above-standard compensation.

26. According to the position of the Czech National Bank, the amendment to the Act on Banks, leading to the above-standard compensation, markedly worsens the Fund's position as a potential debtor. In § 41i of the Act on banks is laid down the following provisions: „In the case that the Fund's assets do not suffice to pay the statutorily prescribed compensations, the Fund shall procure the necessary monetary means on the market. The Fund is obliged to see to it that the monetary means are provided to it on the conditions most advantageous to it." It is evident that prospective creditors will not be prepared to lend at a low rate of interest to a debtor whose future financial situation is unforeseeable in consequence of a genuine danger of Assembly action leading to repeated exhaustion of its assets. As a potential debtor, the Fund thus becomes unreadable for investors, and it may not, in consequence, be accepted as a debtor on the market, alternatively it will be accepted only in the position of a risk debtor, that is, at a rate of interest which is markedly increased over that which would be possible to obtain under normal circumstances. In this connection, it is necessary to refer to the fact that, after the integration of oversight over the financial market, the system for the insurance of claims from deposits, as laid down in the Act on Banks, applies as well to savings banks and savings and loan associations. It is thus only a matter of time before demands are heard in the Assembly of Deputies for four-million compensation for members of savings banks and savings and loan associations which had previously gone bankrupt.

27. On the issue of whether the adopted rules on supplementary compensation are in conformity with EC law (Directive No 94/19/EC), the Czech National Bank stated in its position that it sees such nonconformity in particular in the following:
a) Conflict with Article 11 of the above-mentioned Directive, which provides: „Without prejudice to any other rights which they may have under national law, schemes which make payments under guarantee shall have the right of subrogation to the rights of depositors in liquidation proceedings for an amount equal to their payments." In consequence of the Act's retroactive operation, from the Fund's perspective, all deadlines for making claims in bankruptcy proceedings will be missed. This will result in a violation of Article 11 with negative consequences for the management of the Fund.
b) Conflict with the spirit of the Directive expressed in its Preamble: „Whereas, on the one hand, the minimum guarantee level prescribed in this Directive should not leave too great a proportion of deposits without protection in the interest both of consumer protection and of the stability of the financial system; whereas, on the other hand, it would not be appropriate to impose throughout the Community a level of protection which might in certain cases have the effect of encouraging the unsound management of credit institutions; whereas the cost of funding schemes should be taken into account; whereas it would appear reasonable to set the harmonized minimum guarantee level at ECU 20 000; whereas limited transitional arrangements might be necessary to enable schemes to comply with that figure . . ." In the Czech National Bank's view, the contested part of Act

No. 443/2006 Coll. is in conflict with the sense of the Directive, since its declared objective is not solely the protection of small depositors and the strengthening of the stability of the banking system, but also the fight against „moral hazard“ and imprudent conduct by banks.
c) Conflict with Article 9, which provides in its para. 1: „Member States shall ensure that credit institutions make available to actual and intending depositors the information necessary for the identification of the deposit-guarantee scheme of which the institution and its branches are members within the Community or any alternative arrangement provided for in Article 3 (1), second subparagraph, or Article 3 (4). The depositors shall be informed of the provisions of the deposit-guarantee scheme or any alternative arrangement applicable, including the amount and scope of the cover offered by the guarantee scheme.“ As follows from the given wording, each depositor must receive information prior to making a deposit, and it must be entirely clear to them in advance what are the conditions of insurance. In consequence of a series of retroactive amendments to the Act on Banks, depositors in the Czech Republic have for a long time not received true information on the functioning of the system of deposit insurance and their prospective investment decision can be made under the influence of information which subsequently proves to be untrue, distorted.
d) Beyond the scope of the query, the Czech National Bank called attention also to the contested provision's possible conflict with Article 87 of the Treaty Establishing the European Community, which reads as follows:
„Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.“ In the Czech National Bank's view, the contested provisions concern aid provided to the Czech Insurance Company by the State, although from the Fund's money. Compensation paid out in this manner has no foundation from the economic perspective, as the previously rendered performance of that insurance company for depositors was in harmony with its entrepreneurial plan of the time (the elimination of reputational risk), follows from its position in the financial group, and was voluntary.

28. On 21 November 2006, the Constitutional Court received the Czech Banking Association's statement of position. In its position, the Czech Banking Association, represented by its Executive Director, Ing. P. Š., stated that it supports the view of the group of Senators as formulated in their submission, as it is of the same view that the provisions of the contested act are in conflict with the constitutional order of the Czech Republic, and further in conflict with the rules for deposit insurance as set down in EC law. Due to its retroactive establishment of unauthorized public aid, the Act represents a serious violation of the Treaty Establishing the EC. In its statement of position, it further described in detail the evolution, from 1994 until the present, of the insurance of claims from deposits and the higher-than-standard compensation. In its statement it also drew attention to the relevant Community law, and the content thereof.

29. On 12 February 2007, the Constitutional Court of the Czech Republic received an unrequested statement from the Civic Association of the Customers of Union banka (hereinafter „UB“). It is said in this statement that, in the case that Act No.

443/2006 Coll. is annulled, it will result „in an entirely unprecedented violation of fundamental constitutional rights of members of the Civic Association of the Customers of UB, who consider themselves to be directly affected by the petition". The statement further described the origin of private banks in the Czech Republic in the era of the formation of the private banking sector, that is, the era of the transformation of the banking industry. It stated that first-rate banking oversight did not function and no first-rate guarantee existed on the creation and maintenance of equal competitive conditions for the state-held banks, on the one hand, and for the newly emerging private banks, on the other. On this ground alone, the position of private banks, as well as the orientation of depositors on the market for banking services, was very difficult. This situation, together with the repeated management crises lead to the situation that private banks got into economic difficulties, in consequence of which a large number of depositors subsequently lost their savings. It was a matter of the State's poor banking and monetary policy, as well as the State's insufficient and inconsistent regulatory policy in the banking industry; evidently, these were the reasons it was subsequently decided that the State would provide compensation, up to 4 million Czech Crowns per depositor, to the depositors of devalued deposits. First of all, the Czech National Bank and the Ministry of Finance of the Czech Republic provided compensation, later compensation was provided to customers of bankrupt banks on the basis of various statutory schemes. In view of what has been stated, the expectations of the depositors of Kreditní banka Plzeň, Plzeňská banka and Union banka, namely that their deposits will be refunded under the same conditions and in the same amount as applied for previously compensated depositors, can also be considerable as well-founded. The contested Act thus eliminates actual discrimination of the depositors of Kreditní banka Plzeň, Plzeňská banka and Union banka as compared to the depositors of, for ex., Pragobanka, Universal banka, Moravia banka and others, and is thus in conformity with the requirement of equality in rights, which flows from the Charter of Fundamental Rights and Basic Freedoms. In its statement, the Civic Association of the Customers of UB rejected out of hand the arguments put forward by the Senators seeking the annulment of the contested act, which it further reasoned. As its conclusion it proposed that the group of Senators' petition be rejected on the merits.

30. On 13 February 2007, the Constitutional Court received a submission from the customers of Union banka, a.s., designated as a statement on the petition proposing the annulment of a portion of Act No. 319/2001 Coll., as amended by Act No. 443/2006 Coll. I. L. empowered an attorney, JUDr. P. D., LL.M., Ph.D, to submit the statement, which was confirmed by the presentation of his power-of-attorney. According to the constant jurisprudence of the Constitutional Court of the Czech Republic (for ex. Pl. US 52/03), the group of persons who may be parties to a proceeding on the annulment of statutes or other legal enactments is set by statute and this enumeration cannot by expanded by decision of the Constitutional Court of the Czech Republic. The purpose of a proceeding on the annulment of statutes or other legal enactments is the protection of the principles and public goods found in the constitutional order, from which follows that the Constitutional Court can accept in this type of proceeding the statement of „friends of the Court", that is, statements from such persons who are not pursuing solely their own private interests, rather are able, alone from their very nature, to take into account the public interest in the form of the mentioned principles and public

goods. Whereas it was possible to find the indicated characteristics in the case of the Civic Association of the Customers of UB, which is an association pursuing certain interests, the same cannot be said of a private person who considers himself to be directly affected by the Senators' petition, and has the status, in relation to the Constitutional Court of the Czech Republic, of a person asserting merely his private interests. Proceedings on the annulment of statutes or other legal enactments do not, however, serve this purpose; therefore, the Constitutional Court of the Czech Republic could not accept the submission of I. L. as a statement of a „friend of the Court".

I. D) Evidentiary Material obtained by the Constitutional Court from Public Sources

31. As one of the bases for its decision, the Constitutional Court also obtained the stenographic records from the debates of the Assembly of Deputies, the Senate, and their committees, further their resolutions and assembly prints, freely accessible in the digital library on the web pages of the Assembly of Deputies and the Senate of the Parliament of the Czech Republic at www.psp.cz and www.senat.cz., and also the transcripts from the 11th, 12th and 13th sessions of the Senate's Permanent Commission for the Constitution of the Czech Republic and Parliamentary procedure accessible at www.senat.cz.

I. E) The Oral Hearing before the Constitutional Court

32. In their concluding statements given at the oral hearing before the Constitutional Court, which was held on 15 February 2007, the parties to the proceedings merely restated and summarized their positions, which corresponded to the content of the written submissions delivered to the Constitutional Court.

II. Description of the Legislative Procedure for the Adoption of the Contested Provisions of the Act

33. From the statements of both chambers of the Parliament of the Czech Republic, attached appendices, and documents accessible by electronic means, the Constitutional Court ascertained that the original bill was submitted to the Assembly of Deputies on 22 December 2005 by a group of Deputies (Assembly Print No. 1222/0 – Amendment to the Act on the Annulment of the Fund of National Property), and they proposed that the bill be debated so as to allow the Assembly to express its approval of it already on the first reading. On 22 December 2005 the bill was submitted to the Government of the Czech Republic for it to express is position on it. On 20 January 2006, it sent to the Deputies its position along with comments on the bill (Assembly Print No. 1222/1). On 25 January 2006 the Organizational Committee recommended debate on the bill, designated a rapporteur, and proposed assigning it to the Budget Committee for debate. The 1st reading took place on 16 March 2006 at the 54th Session, at which the bill was discussed in general debate. The Assembly did not agree to the bill being debated so as to allow the Assembly to express its approval of it already on the first reading and assigned the bill to the Budget Committee for debate (Resolution No.

2321). The Budget Committee debated the bill and on 10 April 2006 issued a resolution, delivered to the Deputies as Print No. 1222/2, in which it recommended that the bill be approved. In the 2nd reading on 19 April 2006 at the 55th Session, the original bill first went through general debate, after which there was detailed debate, during which was submitted the contested proposed amendment, which was contained in Print No. 1222/3. This proposed amendment was distributed to the Deputies on 21 April 2006. The 3rd reading took place on 23 May 2006 at the 56th Session, where the vote on the contested proposed amendment was conducted as serial number 16. 142 of the 167 Deputies present voted in favor of it, with three against. Thereafter the bill passed (Resolution No. 2470) when the Assembly of Deputies expressed its approval of it, 156 of the 172 Deputies present voting in favor of it, and three against.

34. On 25 May 2006, the Assembly of Deputies transmitted the bill to the Senate as Print No. 362/0. The Organizational Committee assigned the Committee for Economics, Agriculture, and Transportation as the guarantee committee, and it debated the bill on 15 June 2006 and adopted Resolution No. 7, which was distributed as Print No. 362/1. The petition was debated on 21 June 2006 at the 12th Session of the Senate, at which was adopted a resolution not to deal with the bill (Resolution No. 499), where 39 of the 63 Senators present voted for the resolution and 18 were against, with 6 abstaining.

35. On 21 August 2006 the Act was delivered to the President of the Republic for his signature. The President did not sign the Act by the prescribed deadline, nor did he return it to the Assembly of Deputies. On 11 September 2006, the adopted Act was then delivered to the Prime Minister for his signature. The Act was promulgated on 18 September 2006 in the Collection of Laws, in Part 144, as No. 443/2006 Coll. and it entered into effect on the day of its promulgation.

III. The Considerations Applicable for the Adjudication of the Petition

III. A) The Principle of the Law-Based State and the Democratic Legislative Process

36. In its decision No. Pl. US 21/01, the Constitutional Court stated: „the situation where several statutes bearing absolutely no direct substantive relation to each other are amended by a single act, must be designated as an undesirable phenomena, and one not corresponding to the purpose and principles of the legislative process. Such a situation comes about, for example, due to the speeding up of the legislative process, in part in the form of submitted proposed amendments. (As the most blatant such example can clearly be given the adoption of Act No. 170/2001 Coll., on the State Bond Program for the Settlement of Obligations arising from Treaties among the Governments the Czech Republic, Slovak Republic, and the Federal Republic of Germany, on amendments to Act No. 407/2000 Coll., on the State Bond Program for the Partial Defrayment of the Damage suffered by Agricultural Subjects in the Drought of 2000, and on amendments to Act No. 424/1991 Coll., on Association in Political Parties and Political Movements, as amended, into which the amendments to Act No. 424/1991 Coll. were quite unsystematically included.) Such a manner of proceeding, thus, does not correspond to the basic principles of a law-based state, among which

belong the principle that laws should be foreseeable and comprehensible, and the principle that they should be internally consistent. If then the substantive content regulated in several statutes is affected by a single statute (in the formal sense), and these affected statutes do not, either by content or systemic considerations, have any connection with each other, then a quite murky legal situation immediately emerges which does not respect the principles of foreseeability, comprehensibility or internal consistency.“ (Collection of Judgments and Rulings of the Constitutional Court, Volume No. 25, Judgment No. 14, p. 97, No. 95/2002 Coll.).

37. The normative principle of the democratic law-based state is contained in Art. 1 para. 1 of the Constitution of the Czech Republic, which expressly designates the Czech Republic as a democratic state governed by the rule of law, founded on respect for the rights and freedoms of man and of citizens. Respect for the rights and freedoms of the individual also without doubt constitutes one of the principles of the law-based state, as is meant by the Preamble of the Constitution of the Czech Republic, alternatively one of the objectives of the functioning of the State and state power. The same objective is expressed in Art. 2 para. 3 of the Constitution of the Czech Republic, according to which state authority may be asserted only in cases, within the bounds, and in the manner provided for by law.

38. What follows therefrom is that neither the Parliament, nor its two chambers may conduct themselves in an arbitrary manner, but are bound by the law. When engaging in legislative activity, they are bound first and foremost by the Constitution of the Czech Republic and the standing orders interpreted in conformity therewith, also by the settled practice of the parliamentary chambers and their bodies which, owing to long-term repetition, can be considered as an unwritten part of the legislative procedure, that is, if they can be found to be in harmony with the higher values of law formation, of the democratic political system, etc. Adherence to the procedural rules contained in the mentioned sources of law must be demanded due to the fact that, although the addressees of these norm are not private persons, the non-observance of them may, in the final outcome, meaningfully affect fundamental rights of private persons. There is no doubt that the addressees of a legal norm have the right legitimately to expect that any limitation upon their fundamental rights carried out by law will be by a statute which is the result of a discourse conducted across the political spectrum, namely a discourse in which all participants had the opportunity elaborately to acquaint themselves with the matter under consideration and to give their informed view upon it. It is also proper that such a process make possible an open discussion between the proponents of competing views, including minority views. Therefore, those procedures enter into prominence which ensure, on the one hand, the hearing of the parties and, on the other, the formal quality of the legislative work. From this perspective, the legislative procedure becomes „the actual source of a statute’s legitimacy“.

39. The requirement that the law be predictable, which is a component of the principle of the law-based state, ceases to be satisfied in the moment when an amendment to a statute is contained in an entirely different statute, as understood in the formal sense, the content of which is in no way connected to the amended statute. Without employing the instruments of information technology, it is thus

becoming entirely impossible for the addressees of legal norms to orient themselves in the legal order. At the same time, § 13 of Act No. 309/1999 Coll., on the Collection of Laws and on the Collection of International Agreements, envisages that territorial self-governing units have the obligation to make it possible for everyone to look into the Collection of Laws. The law is silent on the obligation to afford everyone access to an informational system containing the full wording of legal enactments in electronic form. At the same time, it is evident that without the possibility to make use of these systems, people cannot today acquaint themselves with the legal order of the Czech Republic, and this makes problematic the application of the general legal principle, ignorance of the law is no excuse. In this way, law becomes for its addressees entirely unpredictable. While the mentioned principle is a necessary condition of the effectiveness of every system of valid law, it cannot be interpreted solely to the detriment of the addressees of the law, but also as an obligation of public authorities to make the law cognizable, because it is only to such law that people can conform their conduct. A related problem is also the prospective nature of law, as it is only possible to conform one's future conduct to the law.

40. Following the example of the right to good administration, it also makes sense in this context to speak of the „right to good legislation", which legal scholarship, and not solely Czech, connects to the principles of the democratic law-based state (Čebišová, T.: The Right to Good Statutes (?), in: Vostrá, L., Čermáková, J. (eds.): The Issues of Law Formation in the Czech Republic, the Polish Republic and the Slovak Republic, Plzeň, Aleš Čeněk 2005, p. 84 and foll.).

41. According to L. Fuller, judicial proceedings and voting in the framework of a representative body belong among the basic models of decision-making in a democracy (Fuller, L, The Morality of Law, Prague 1998 [Translator's Note: This refers to the Czech translation of the English original], cited according to Kysela, J.: The Legislative Process in the Czech Republic as a Form of Rational Legal Discourse?, Právník [The Lawyer], No. 6/2005). Parliamentary decision-making concerns general cases, in favor of which sounds the reservation of fundamental decisions adopted in parliamentary procedure, which ensures that political parties, which represent the organized interests of the civic public, participate in the consideration of the subject which is being decided upon. A statute, the end-product of parliamentary deliberation, is a compromise between interests, into which is projected societal consensus, a fact which must be considered as a criterion of the acceptance of the statute. Each of the institutions forming or applying law is defined by formal attributes, among which are the procedures which serve the effectuation of the objective of the given institution. The procedures also effect the form in which the Parliament conducts its business, as well as the division of labor between its bodies, and should guarantee democracy, the legitimization of authority, the rationality of legislation, procedural justice (hearing of parties, debate), etc. Kysela, J.: The Legislative Process in the Czech Republic as a Form of Rational Legal Discourse?, Právník [The Lawyer], No. 6/2005). For that matter, parliamentary procedures also constitute a significant component in establishing the form of the separation of powers and of the conditions for political competition in the State (Kabele, J.: From Capitalism to Socialism and Back, Theoretical Examination of the Transformations of

Czechoslovakia and the Czech Republic, Prague, Carolinum 2005, p. 205).

42. From the historical perspective, democratic legislation can be explained also as the transposition of the notion of the judicial process to the political process in the form of the creation of statutes. As is known, the English Parliament had historical roots in the Curia Regis, that is, in a body which had the function of a judicature and the function of development of law. Its legislative function was always conceived of as the development of law in broader contexts (Court of Parliament). The legislature thus discharged the role of an „accelerator", „regulator", and „director" of further law formation. Common law existed as judicial law even prior to statutes, and alongside them. Political power was thus obliged to settle conflicts, concerning power, opinion, and interests, in a procedurally regulated discourse, which resulted in a binding decision (Kriele, M.: The Democratic Principle in the Basic Law [Das demokratische Prinzip im Grundgesetz], VVDStRL 29, WdeG Berlin 1971, p. 50 and foll.).

43. Finally, for C. Schmitt parliamentarianism was a form of government by open argumentative discourse, in which differences and opinions confront each other - political power is thereby forced to engage in a discussion which allows for oversight by the public (Schmitt, C.: The Crisis of Parliamentary Democracy, London 1994, as cited in Kysela, J.: The Legislative Process in the Czech Republic as a Form of Rational Legal Discourse?, Právník [The Lawyer], No. 6/2005).

44. Similarly as in judicial decision-making, parliamentary decision-making also requires the idea of a „just decision", which is an immanent aspect of the law-based state, the observance of the natural-law maxim to hear all parties. Whereas the parties to a dispute are before a court, in parliament it is a matter of the opportunity to hear the representatives of all political parties participating therein. Transparency of the hearing of parties representing the public conduces to their identification with the result of the decision-making process, in this case with statutes. That is also the main reason for the preference for parliamentary legislation rather than the adoption, within the executive, of acts with the force of a statute.

45. Next to substantive quality, however, formal quality also constitutes an element of „correct" or „good" law. This concerns the „formal values" of law which, although they do not determine the content of legal enactments, they should ensure the existence, acceptance, and applicability of law: the values of order, foreseeability, freedom from arbitrariness, legal equality or legal certainty (Summers, R. S., Essays in Legal Theory, Dordrecht – Boston – London: Kluwer Publishing, 2000, p. 30). N. MacCormick speaks in a similar fashion on the ethics of legalism, of which regularity, foreseeability, certainty, constancy, and unity are characteristic (as cited in Přibáň, J., Dissidents of Law, Prague 2001). The essence of these considerations is the recognition that a condition of the effective operation of law is its development subordinate to certain principles, which should ward off even possible attacks by the legislature; that is, they should bind it. In this connection, Czech legal scholarship emphasizes the requirement of no contradiction, that is, the harmony and unity of the legal order (Šín, Z., The Formation of Law and its Rules, Olomouc 2000).

46. Otherwise Czech legal scholarship also draws attention to the importance of the adherence to parliamentary procedure, all the more so as its preponderant part has the character of statutory rules. The starting point for this perspective is the proposition of V. Knapp: „Neither a statute nor any other legal enactment can come into being in an unlawful manner“, whereas one of the examples of unlawfulness is the violation of mandatory enactments on the creation of law (Knapp, V., The Theory of Law [Teorie Práva], Prague C. H. Beck 1995, p. 107). If the legislative process is a legal process with precisely formally defined rules, then, in view of the consequences, it is necessary to insist upon their strict observance; „it merits consideration that the insistence upon the rules of parliamentary procedure is far less internalized than, for example, the judicial procedural codes, although the outcome of the legislative process (a statute) has far more serious impact on the society as a whole than has procedural error in the issuance of individual judgments.“ (Filip, J., Repeated Voting by the Assembly as a Constitutional Problem, or a Parliamentary Majority Is not Permitted to Do Everything not Expressly Prohibited by the Standing Orders, The Journal of Legal Scholarship and Practice [Časopis pro právní vědu a praxi], No. 4/2001, p. 343). The Constitutional Court has also expressed its view on the necessity of adherence to procedural rules for the purpose of reaching a regular (constitutionally conforming) decision, namely in its Judgment No. Pl. US 5/02, where it said: „In a number of its judgments concerning the review of decision-making by public bodies, the Constitutional Court repeatedly laid out principles for which – in terms of the attributes of a law-based state, among other things - respect for procedural rules is essential; in brief: the settled decision-making practice of the Constitutional Court concluded that only in a procedurally flawless process (a constitutionally conforming proceedings) can a legal and constitutionally conforming result (decision) be achieved, so that increased attention must be paid to the procedural integrity of the decision-making process (proceedings) and it must be provided considerable protection. If these principles relate to the constitutionality of proceedings before public bodies and to decision issued in them (to the legally-prescribed procedure under Art. 36 para. 1 of the Charter of Fundamental Rights and Freedoms), there are no reasonable grounds to diverge from these principles in matters of review of the legislative process and enactments (legal norms) adopted therein, because, although the legislative decision-making process differs to a certain extent from decision-making processes in proceedings before other public bodies - and in that sense it can be understood as a decision making process sui generis - the guiding principles of decision-making in which a final result is reached are, in both cases, identical. Moreover, one cannot lose sight of the fact that the consequences arising from legislative acts are, due to their society-wide effect, certainly more significant than in cases of individual (defective) decisions by other public bodies. Requirements upon which rests the law-based state, and correlatively the life of citizens in it, gain in prominence in the legislative process, namely the requirements of the constancy, persuasiveness and indispensability of legal enactments; however, such enactments, and the attainment of the necessary authority of legislative bodies, can not be achieved otherwise than by respect for the rules (the principles of legislative activity), which the Assembly of Deputies, the prominent bearer of the legislative power, has otherwise provided by statute for its own activity.“ (Collection of Judgments and Rulings of the Constitutional Court, Volume No. 28,

Judgment No. 117, p. 25, No. 476/2002 Coll.).

47. From the principle of the substantive conception of the law-based state follows also the requirement of the separation of powers, which has the character of a value. The separation of powers is, at the same time, also a structural element of the Constitution of the Czech Republic. The Constitutional Court outlined the following characteristics of the separation of powers in its Judgment No. Pl. US 7/02, where it stated: „In this state the people, in the sense of Article 2 of the Constitution, is the source of all state authority, which is asserted through the bodies of the legislative, executive, and judicial branches. As can be deduced from this prefatory statement, this enshrined principle of the separation of powers is the very foundation of our constitutional system. It is a principle ensuing from the idea that the tendency toward the concentration of and abuse of power is rooted in the very nature of man, which became a guarantee against the arbitrary exercise and the abuse of state authority and, in essence, also a guarantee of liberty and the protection of the individual, a principle which is the outcome of, and reaction to, the then attained historical, intellectual, and institutional developments for which in the modern era such notable figures as John Locke and Charles Montesquieu played their role, as did institutions such as the British Parliament and the British justice system. It is not the Constitutional Court's task, in a situation that can be considered as given, to further concern itself with the causes of the rise or the evolution of this principle. Nonetheless, it considers it essential briefly to assert that at the very foundations of the given principles lies the conviction that it has never been possible to attribute to human thought and societal occurrences a solely rational character, for they include as well an evidently irrational component, and moreover the rationality of thought has never fully coincided with the rationality of action. As the expression of an already existing state of affairs, the phrase, the ‚government of all', is a mere ideological formulation often times masking the completely opposite social condition. In a social situation marked by the internal and external inadequacies of the individual as well as the entire society, basic human needs can be satisfied, while at the same time at least maintaining momentum in the direction of a goal such as democracy represents, solely by the route of a conflictual settling of individual interests.“ (Collection of Judgments and Rulings of the Constitutional Court, Volume No. 26, Judgment No. 78, p. 273, No. 349/2002 Coll.). The separation of powers, conceived of from this perspective, also constitutes a grounds for the constitutional delimitation of concurrent action by individual powers, in the given case the executive and the legislative powers in the course of the legislative process (Art. 41 para. 2 and especially Art. 44 para. 1 of the Constitution of the Czech Republic, see below).

48. The inadequacy of the collaboration between the Government and the Parliament in the course of the legislative process is felt very acutely in the case of the adoption of legal norms which have impact on the state budget. It is without doubt the Government’s responsibility to see to the observance of the state budget, the key instrument for governing; and if the Government is to meet this obligation, it must have an effective instrument to prevent subversive conduct by the Parliament. This requirement is closely related precisely with the separation of powers and with the due performance of their function by particular constitutional bodies within its framework. Merely at the margin of the issue, the Constitutional Court alludes to the fact that in other states this specific

requirement is resolved in its constitution or by the standing orders of the respective parliament. As examples can be given the FRG and Spain, where the Government must give its consent to all bills which have impact on the state budget.

III. B) The Principle of the Constitutionally Conforming Interpretation of Sources of Law Governing the Legislative Process

49. The distinction between the terms, „proposed amendment“ and „bill“, is decisive for the resolution of this case. Whereas bills are referred to in various contexts by the Constitution of the Czech Republic (Art. 41, Art. 42, Art. 44 – Art. 48), if we disregard the relations between the two chambers of Parliament as governed by the Constitution of the Czech Republic (in this connection, the Constitution of the Czech Republic refers to „proposed amendments“ – see Art. 46 para. 2, Art. 47 para. 2, 3 and 4, Art. 50 para. 2), proposed amendments are referred to solely in Act No. 90/1995 Coll., on the Standing Orders of the Assembly of Deputies, as subsequently amended (hereinafter „SOAD“). The introductory clause of § 63 para. 1 of the SOAD provides that in the course of the debate a Deputy may submit proposals „on the matter under consideration“. These proposals should relate „to a certain matter of the point under consideration“. The provisions of § 63 para. 1, point 5 of the SOAD authorizes Deputies to submit proposed amendments which omit, expand upon or modify certain parts of the original bill. The right to submit proposed amendments to bills in the course of parliamentary debate is derived from the right of legislative initiative, nonetheless it is not identical to it, as it naturally restricted by the sphere reserved precisely for the exercise of the right of legislative initiative. Alone due to the need to distinguish the legislative initiative from proposed amendments, for the sake of observance of the increased constitutional demands on the former, one can deduce that a proposed amendment should in fact only amend the submitted legal scheme, thus it should not even modify, nor expand upon, it in any fundamental manner, much less should it move beyond the subject of the legislative initiative, or the bill (similarly, Schorm, V., Easy Rider, Administrative Law [Správní právo], No. 2/2000, p. 65 and foll.)

50. To stray from the restricted field reserved for proposed amendments might be of such a nature as to overstep the actual content of the bill in question, or of such a nature as to constitute a blatant departure from the bill’s subject matter. The first type of proposed amendment has long been designated in American doctrine as „legislative riders“, the use of which in the U.S. is often and heatedly debated and which, although considered as undesirable, is nonetheless still considered to be a constitutionally-conforming form of proposed amendment.

51. It is necessary to distinguish this first type from a second type, called „wild riders“. The second type represents a transgression of the criteria of the test applied on the basis of the „germaneness“ rule, that is, the rule of the close relation. In other words, it tests the issue as to whether, in a concrete case, a proposed amendment is proper or is a proposal which has, in the Czech milieu, been given the designation, „limpet“. In this case, the technique of proposing amendments attaches to a bill the legislative scheme from an entirely different

statute, with an unconnected legislative pattern. It is evident that even the breadth of the changes contained in a limpet, even if it is submitted in relation to a connected bill (in that case, it would not of course be a classic limpet, rather more a proposed amendment that strays due to its breadth), might, in and of itself, present a problem which is of course not resolved in the process of adopting a „limpet“ proposed amendment, as in the third reading in the process of adopting statutes there is no space for this type of debating. This would merely multiply and expand the danger of the use of limpet-type techniques.

52. The rule of close relation (the germaneness rule) has been applied by the American Congress since 1789 and is today contained in the Congress‘ standing orders (similarly, the classic handbook, Mason´s Manual of Legislative Procedure, 1989, Art. 402 /Amendments Must Be Germane/, pp. 264-265). This rule expressed the requirement, according to which a proposed amendment must concern the same subject as the bill which is just then being considered in the legislative process. It is based on the idea that, at any given time, an assembly may consider solely one substantively delimited matter. Its objective is to ensure a proper procedure, in the sense of duly informed and substantively prepared debate, and to ensure the versatility and effectiveness of the assembly’s actions. If the proposed amended that is put forward is in conflict with this rule, then another member of the chamber can object to this fact. The burden of proof in demonstrating the proposed amendment’s conflict with the rule is upon the person who makes the objection. After one raises the objection that an amendment is in conflict with the rule, the chair of the body must first assess the nature and objective of the provision of the bill under consideration and then the relation to that provision of the proposed amendment objected to. It follows from this rule that the proposed amendment must closely relate to objective of the specific provision, or part thereof, of the bill under consideration. Among the assessment criteria rank, in particular, the following criteria, whereas in order to establish that a proposed amendment conflicts with the rule, it is sufficient if only one of them is satisfied:
- proposed amendments must relate to the subject of the bill under consideration;
- the fundamental objective of a proposed amendment must have a close-fitting relation to the fundamental objective of the bill under consideration;
- rules concerning a specific subject must not be amended by provisions of a general character;
- general subjects may be modified by specific proposals;
- if a proposed amendment contains permanent changes in a bill envisaging only temporary or provisional changes in the law, it cannot be considered as a proposal having a close-fitting relation.

53. The presidential system in the USA is nonetheless distinguished by a high degree of autonomy of the Congress, separated from the executive power. It is thus more inspirational to review the circumstances of parliamentary or semi-presidential systems. For ex., rules concerning the way in which proposed amendments are dealt with in France are very subtle, (Schorm, V., The Legislative Process in France, post-graduate thesis defended at the Law Faculty of the Masaryk University in Brno, 2000, p. 124 and foll.). It follows therefrom that the amendment (proposed amendment) must have some connection to the discussed text of the bill (accessorial relation: change of the content, elaboration, tying it in

with other related provisions of the legal order). In the case of a clash in terms of ideas, it would be an impermissible „legislative rider", that is, a heterogeneous provision. The Conseil constitutionnel began as far back as the 1980's independently to adjudge the relation between legislative initiative and the right to submit proposed amendments, and that regardless of how one or the other chamber assessed the permissibility of the proposed amendment. It was motivated to do so by the especially large growth in the number of proposed amendment, by which Deputies and Senators wished to circumvent the conditions of the legislative process (speed up, avoid attention, etc.).

54. In New Zealand the conditions for proposed amendments are clearly laid down partly by distinguishing them from the motion to reject the bill, partly and above all by the criterion of relevance (relation to the matter which should be modified – the point is given by inclusion in the agenda, thematic restriction on both speakers and proposers) (McGee, D., Parliamentary Practice in New Zealand, Wellington, 3rd ed. 2005, esp. pp. 216-217). The issue is similarly dealt with in the Australian Senate, where by a proposed amendment is meant the omission of a word, replacement of a word by another, or the addition of a new word, of course while respecting the principle of the proposed amendment's relation to the modified bill (Evans, H. (ed.), Odgers´ Australian Senate Practice, Canberra, 11th ed. 2002, pp. 184-185). Also German theory devotes comparable attention to this problem, including the critique of the „concealed statutes" (Geheimgesetzgebung), which are the outcome of unrelated amendments proposed by Deputies, which are not reflected in the title of the act. Such a practice violates the principle of the transparency of law creation and the right of initiative, and both Deputies and addressees of the right have this right (Klein, E., Legislation without Parliament? [Gesetzgebung ohne Parlament?], Berlin, De Gruyter Recht, 2004, pp. 16-17). Proposed amendments should be prepared primarily by expert committees, should modify only the submitted bill, alternatively have a direct nexus with it, as „additions" to a statute should only result from legislative initiative (Schneider, H., Legislation [Gesetzgebung], Heidelberg: C. F. Müller, 2. ed. 2002, p. 84).

55. As was stated above, the Constitution of the Czech Republic regulates to a certain extent questions surrounding bills, namely in Chapter Two, which deals with the legislative power. It is thus evident, that the institute of the bill or proposed act should be governed by the principles which apply for the exercise of legislative power. These principles must be looked for in connection with the functions of this power, as was indicated above. The defining characteristic of a parliament is the free, equal, universal election of its members, their freedom in carrying out their mandate, further the principle, fundamentally adhered to, that statutes are to be debated publicly, as well as the principle that decisions are made by the majority. The public debate principle is directed both internally, within the parliamentary chamber, and externally. Its internal operation serves the free formation of opinions of the parliamentary chamber's members; its external operation serves to inform the public. And however much scholarly literature tends to draw attention to the sterility of parliamentary debate, such debate must be preserved, if only due to the fact that through it the public is informed.

56. In a parliament is also reflected the idea of pluralism, which is both the foundation and a characteristic feature of each free society. In parliamentary debate, and naturally also in the work of individual parliamentary committees, the opposition is also given the floor, and in that way it also accomplishes the monitoring which can be seen as one of the basic characteristic features of the law-based state. Often it is only in parliament that „weak“ interests, that is, interests of such societal groups which do not have at their disposal the means to implement their program, are given the opportunity to express their views. It is precisely these characteristics of parliamentary debate which indicate the parliament's special role in the accommodation and integration of interests. All of these principles need to be taken into account when creating the legal framework for, and putting into practice, the procedure pertaining to parliamentary bills, all the more so that pertaining to the interpretation of what must be considered a bill.

III. C) Safeguards of the Constitutionally Conforming Exercise of the Legislative Process

57. In the first place it is necessary to consider the Chairman of the Assembly of Deputies, or the presiding officer, as the guarantor of the observance of the rules of parliamentary procedure. In the debate on bills in the appropriate legislative phase, all proposals, including proposals designated as proposed amendments, are delivered to these persons. Without a doubt these persons have the authorization, even the obligation (even if not asserted), to assess whether a proposal designated as a proposed amendment genuinely is one in the substantive sense, in the way described above. As properly interpreted, § 59 para. 4 a § 63 para. 1 of the SOAD without doubt authorize the presiding officer to take this step. In the view of legal science, „if a proposed amendment is a proposal which would change the content or the outward form of the bill, the chair should not even permit a vote on the substantively unconnected, that is, merely apparent, proposed amendment. The Government should, in the case of „comprehensive“ proposed amendments, insist upon its right, under Art. 44 of the Constitution of the Czech Republic, to give its views on the bill, since in actuality it is a disguised new legislative initiative.“ (Kysela, J., Law Formation in the Czech Republic: A Tragedy with a Happy Ending?, Legal Reporter [Právní zpravodaj], No. 7/2006).

58. The debate on a bill in the second chamber of Parliament, that is, in the Senate, represents a safeguard, the task of which is, among other things, to expose errors in the legislative process and, in relation to them, to take the appropriate action within the confines of the possibilities which the Senate is granted, albeit it is evident that, regrettably, they are limited possibilities

59. The President of the Republic's exercise of his right to return adopted acts to the Assembly of Deputies, as is foreseen in Art. 50 para. 1 of the Constitution of the Czech Republic, constitutes a further safeguard in the sense of the monitoring of the proper legislative process. Within the bounds of the legislative process, the President's function is certainly not a political one, as the function of the President of the Republic does not consist in the formation of competing policies in relation to the Government. In the Constitution of the Czech Republic, the President of the Republic is conceived of as a non-party constitutional organ. In terms of the

conception of the Constitution of the Czech Republic, irrespective of reality, he is predestined by this specific characteristic to monitor the observance of the constitutionality of the legislative process with the help of the means entrusted to him by the Constitution of the Czech Republic, that is, by the exercise of the presidential veto.

60. Should the foregoing, above-designated safeguards miscarry, the Constitutional Court may gain the floor, if it is addressed by means of a petition duly submitted by a petitioner with standing, as § 68 para. 2 of the Act on the Constitutional Court obliges the Constitutional Court, when deciding on the conformity of a statute with the constitutional order, to ascertain, among other things, whether the contested act was adopted and issued in the constitutionally-prescribed manner. This provision obliges the Constitutional Court to adjudge the constitutionality of the legislative procedure with the implication of derogational conclusions, which the Constitutional Court has made use of in the past – see Judgment No. Pl. US 5/02. In this Judgment, the Constitutional Court stated, among other things: "In the legislative process, requirements upon which rests the law-based state, and correlatively the life of citizens in it, gain in prominence, namely the requirements of the constancy, persuasiveness and indispensability of legal enactments; however, such acts, and the attainment of the necessary authority of legislative bodies, can not be achieved otherwise than by respect for the rules (the principles of legislative activity), which the Assembly of Deputies, the prominent bearer of the legislative power, has otherwise provided by statute for its own activity."

IV. Actual Review

61. The Constitutional Court considers it necessary, in the first place, to circumscribe, in the matter under adjudication, the manner and extent of constitutional review. In the first place, the Constitutional Court observes that the petitioners called into doubt not only the merits of the contested provisions of the Act, but also the manner in which they were adopted. In a norm control proceeding under Art. 87 para. 1, lit. a) of the Constitution of the Czech Republic, in the sense of the provisions of § 68 para. 2 of the Act on the Constitutional Court, the Constitutional Court is obliged, apart from the assessment of the content of statutes in terms of their conformity with constitutional acts, to review whether a statute was adopted and issued within the confines of the powers set down in the Constitution, and further whether it was issued in the constitutionally-prescribed manner. Since in the matter under consideration, it was also called into doubt whether the contested provisions of Act No. 443/2006 Coll. had been adopted in the constitutionally-prescribed manner within the framework of this trio (constitutional conformity of the content, the competence, and the procedure), the Constitutional Court had first of all to deal with the constitutionality of the procedure for adopting the Act. It is evident that one cannot deduce from the wording of the provisions of § 68 para. 2 of the Act on the Constitutional Court the sequence of the aspects of review stated therein, as they are not logically interconnected steps. In place of a grammatical interpretation, or the literal wording of this provision, it is necessary to employ a logical interpretation, which first of all requires the review of the competence, then the procedure and finally

the content of the contested provision.

62. The Constitutional Court had no doubts as to the competence of the Parliament of the Czech Republic, so that it was possible to proceed directly to the procedure for adopting the contested provisions.

63. For the review of the constitutionally-prescribed manner of the adoption and issuance of the contested provisions of the Act, the Court must concern itself with the course of the legislative process which preceded the adoption and issuance of the Act, of which the contested provisions forms a part. As has already been described in detail (see Point II.), on 21 December 2005, Deputies M. Hašek, M. Kraus and J. Dolejš submitted to the Assembly of Deputies a bill for the issuance of an act which amends Act No. 178/2005 Coll., on the Annulment of the Fund of National Property of the Czech Republic and on the Competence of the Ministry of Finance in the Privatization of the Property of the Czech Republic (Act on the Annulment of the Fund of National Property) (Assembly Print No. 1222/0). As follows from the stenographic record of the 55th Session of the Assembly of Deputies from 19 April 2006, during the consideration of the cited bill, in the detailed debate part of the second reading, Deputy M. Doktor put forth a proposed amendment which contained the contested provisions. The Deputy submitting this proposed amendment himself stated, as follows from the stenographic record of the 55th Session as well as from the Appendix, which the petitioners attached to the petition in this case, that a bill that was identical in content with the proposed amendment had already at least once been submitted to the Assembly of Deputies as a separate bill and had been discussed as Assembly Print No. 965 – the Amendment of the Act on Banks. However, after the Government had on 26 May 2005 issued a negative position on it, this separate bill was not approved in its third reading at the 51st Session of the Assembly of Deputies.

64. The proposed amendment under review was put forward by Deputy M. Doktor in the second reading and included in Print No. 1222/3. This proposed amendment supplemented the title of the original bill with the words, „ . . . and Act No. 319/2001 Coll., which amended Act No. 21/1992 Coll., on Banks, as subsequently amended“. Further, it inserted into the bill, following Article I, a new Part Two, which read as follows (the heading included): „PART TWO – The Amendment of Act No. 319/2001 Coll., on Banks“, and which contained the contested provisions, which amend and supplement the legislative scheme on the disbursement of supplementary compensation from the Depositor Insurance Fund. The vote on the contested proposed amendment was then held in the 3rd reading, on 23 May 2006 at the 56th Session, as serial number 16, when 142 of the 167 Deputies present voted in favor of its adoption, with three against. Thereafter the amended bill was approved by the Assembly of Deputies (Resolution No. 2470).

65. Afterwards, on 25 May 2006 the Assembly of Deputies transmitted the bill to the Senate (Print No. 362/0). The bill was debated by the Senate on 21 June 2006 at its 12th Session, at which was adopted a resolution not to deal with the bill (Resolution No. 499). As is seen from the stenographic record of the 12th Session of the Senate, in the course of action, the Deputy Chairman of the Senate, Senator P. Pithart, put forward a proposal to bring the bill under consideration up for general debate, as it was a serious matter. He also said the following: „That which

was stuck onto (the original bill) is against good morals, not only against the rules of correct banking . . . Most unfair of all is the timing of this limpet, which resembles extortion.“ This statement by the Deputy Chairman of the Senate must be applied to the fact that the election to the Assembly of Deputies was held on the 2nd and 3rd of June 2006, so that it was evident that, if the Senate returned the entire bill to the Assembly of Deputies with proposed amendments, the bill would not be adopted, since the Assembly of Deputies in its original composition was no longer able to meet prior to the election. Art. 47 para. 1 of the Constitution of the Czech Republic is interpreted both by scholars (K. Klíma and Collective, Commentary to the Constitution and the Charter, Plzeň, 2005) and in practice such that the discussion of a bill is tied to the particular electoral term of the Assembly of Deputies, which functions on the basis of the principle of discontinuity between individual electoral terms, according to which, if discussion of a bill is not completed, it ends. If the Senate (and analogously, the President of the Republic) returns a bill to the Assembly of Deputies, its ruling has the consequence of a „pocket veto“, as the new Assembly of Deputies may not vote on the bill. The same would apply if the Senate had rejected the bill or returned it prior to the expiration of the Assembly of Deputies‘ electoral term, but the Assembly did not gather again before the election.

66. In adjudicating, in the given case, the constitutionality of the legislative procedure for the adoption of the contested provisions, it is crucial for the Constitutional Court to assess the issue of whether the Deputy M. Doktor’s proposal, designated as a proposed amendment and included in Assembly Print No. 1222/3, genuinely was one in the substantive sense, as was explained above (Point III. B); that means, to assess whether the proposed amendment at issue in the given case overstepped the bounds of the restricted field reserved for proposed amendments, that is, whether it was a case of impermissible extension in interpreting the issue of what constitutes a proposed amendment. In making this interpretation, the Constitutional Court, for the reasons given in Part III of this Judgment, that is, on the grounds of considering the applicable constitutional criteria defined in that Part, dealt with it also in terms of the „rule of the close connection“ (germaneness rule) (Point III. B).

67. For this purpose, it was necessary first of all to assess the content and objective of the original bill and the content and objective of the proposed amendment under adjudication. The Constitutional Court ascertained that, as follows from Assembly Print No. 1222/0 and from the Explanatory Report attached to this bill, the content of the original bill was the adoption of a statute which amends Act No. 178/2005 Coll., on the Annulment of the Fund of National Property of the Czech Republic and on the Competence of the Ministry of Finance in the Privatization of the Property of the Czech Republic (Act on the Annulment of the Fund of National Property). The Deputies submitting the bill sought, by its adoption, to obtain funds in the amount of two billion Czech Crowns with the aim of transferring those funds to the Ministry of Work and Social Affairs for the construction of a home for seniors. The proposed legislative scheme was thus intended to correct, at least partially, the problem of the lack of space in these homes.

68. The Constitutional Court further ascertained that the content of Assembly Print No. 1222/3, into which was included the wording of the proposed amendment under adjudication, was an amendment to Act No. 319/2001 Coll., which amends Act No. 21/1992 Coll., on Banks, and which specifically modifies and supplements the rules concerning the subjects and the manner of disbursement of supplementary compensation for deposits from money of the Depositor Insurance Fund (hereinafter „the Fund"). In view of the fact that this was a proposed amendment, no explanatory report was attached to it. Nonetheless, as follows from the above-described findings made by the Constitutional Court, this proposal was identical in content to a separate bill debated by the Assembly of Deputies as Print No. 965, to which an explanatory report was naturally attached. As follows from the wording of that bill, the purpose of this amendment, or rather of the addition to the statutory provisions in question, was to ensure the equal enjoyment of rights by those customers of banks which are currently in bankruptcy, whose claims against the banks had, in the past, been remitted only in the amount set by law, whereas in the case of other banks the remittance of depositors' claims also occurred beyond the statutory framework. Further, that the objective of this amendment was to provide the Fund with the certainty that persons, their legal successors, or transferees of claims arising from the satisfaction of such claims which in certain cases were secured by the remittance of claims of bank depositors, instead of by the Fund, will not raise against it any claims other than claims to the remittance of those funds which these persons used to pay the supplementary compensation of bank depositors up to the amount of 4 million Czech Crowns. Last but not least, the objective of this amendment was to provide the Fund with the certainty that, by satisfying the depositors of banks listed in the proceeding provision, those depositors' claims against the banks will be satisfied in full and that these depositors will not be able to raise any further claims against the Fund. The purpose of this amendment was also to guarantee the Fund that payment of supplemental compensation to depositors of banks relate only to cases from the past, where the purpose thereof is to eliminate the above-described inequality between depositors of individual banks, whereas in the case of other banks their depositors will not be authorized in the future to claim from the Fund remittance of compensation in an amount beyond the statutory framework.

69. Following consideration of the content and objective, both of the original bill and the proposed amendment at issue, the Constitutional Court came to the conclusion that, in terms of content and objective, they are fundamentally different. On that ground alone it was necessary to find that the proposed amendment at issue strays from the restricted field reserved for proposed amendments. In other words, it is evident that it was a „proposed amendment" which could only be considered as such in the formal sense not, however, in the material sense.

70. The Constitutional Court is obliged to observe that Deputy M. Doktor's proposed amendment does not relate to the subject of the original bill (that is, the transfer of funds to support the reconstruction of a seniors' home) nor does its fundamental objective (that is, ensuring equal rights to all customers of banks currently in bankruptcy, whose claims against the bank had in the past been reimbursed only in the amount laid down in a statute, further to provide the Depositor Insurance Fund with security against certain claims and situations that arise due to its providing

supplementary compensation) bear any close relation to the fundamental objective of the debated bill (that is, the effort to resolve the shortage of places in a senior home). Both proposals under adjudication bear no direct substantive relation to each other, as a result of which, following the approval of the bill thus amended, a statute was issued (No. 443/2006 Coll.) which amends statutes which bear absolutely no direct substantive relation to each other (Act No. 178/2005 Coll., on the Annulment of the Fund of National Property, and Act No. 319/2001 Coll., which Amends Act No. 21/1992 Coll., on Banks), which, for the reasons laid out in Part III of this Judgment, represents a violation of the sub-principles flowing from the principle of the democratic law-based state (the separation of powers, the democratic nature of the legislative process, etc.). As was stated above, in it Judgment No. Pl. US 21/01, the Constitutional Court characterized, in the following manner, the situation where several statutes bearing absolutely no direct substantive relation to each other are amended by a single act, moreover, often precisely in the form of submitted proposed amendments: „[It is] an undesirable phenomena, one not corresponding to the purpose and principles of the legislative process. . . . Such a manner of proceeding, thus, does not correspond to the basic principles of a law-based state, among which belong the principle that laws should be foreseeable and comprehensible, and the principle that it should be internally consistent. If then the substantive content regulated in several statutes is affected by a single statute (in the formal sense), and these affected statutes do not, either by content or systemic considerations, have any connection with each other, then a quite murky legal situation immediately emerges which does not respect the principles of foreseeability, comprehensibility or internal consistency." The Constitutional Court would add thereto that in a substantive law-based state, a statute in the formal sense cannot be understood as a mere repository of a wide variety of changes made throughout the legal order. On the contrary, the substantive conception of the law-based state requires that a statute be, both in terms of form and substance, a predictable, consistent source of law. It cannot be permitted for the communicatory nature of statutes, as a source of law, to disappear, with all the above-mentioned negative consequences. The jurisprudence of the European Court of Human Rights sounds in a similar spirit, which imposes comparable requirements on the quality of statute (accessible, foreseeable, precise), although the mentioned court declared its views in connection with hearing complaints in specific legal matters (cf., for ex., Berger, V., The Jurisprudence of the European Court of Human Rights, IFEC 2003, pp. 455-6; para. 4 of Kruslin v. France, Huvig v. France, pp. 502-503, para. 4 of Autronic AG v. Switzerland).

71. If under the above-mentioned circumstances the Assembly of Deputies adopted a resolution (of 23 May 2006, No. 2470), by which it expressed its consent with the bill thus amended, that is, if it burdened the legislative process, to the extent of the „proposed amendment", with a defect which cannot be overlooked, this fact is projected into the assessment of the constitutionality of the entire legislative procedure. It is a situation which is all the more serious in that it is not an aberration, but is becoming an unpropitious practice, of which moreover the Members of Parliament are aware, to which fact is attested, for ex., the critical Senate Resolution No. 303 from 25 January 2006, in which is stated, among other things: „the unceasing amendment of statutes that have already been amended numerous times and the technique of effecting them by attaching them to bills

with an unrelated content, makes more difficult or even rules out the stabilization of awareness of that which applies as law.“ The literature has already for years drawn attention to it, in part as a violation of the Act on the Standing Orders of the Assembly of Deputies, in part as a circumvention of the right of the Government, under Art. 44 of the Constitution of the Czech Republic, to give its view on every bill, which can also be understood as the right of other participants in the legislative process to know the Government's opinion. (Hujer, M., The Deputies' Proposed Amendments Are often not Related to the Bill Being Debated, Parliamentary Reporter, No. 8-9/2001; Kysela, J., in Klíma, K. and collective, Commentary to the Constitution and the Charter, Plzeň, 2005, p. 236; Voříšek, V., The Sins of the Father-Lawgivers, Legal Perspectives [Právní rozhledy] No. 16/2006). To this should be added a reference to the fact that proposed amendments lack an explanatory report, whereas it applies that the absence of substantiation for a decision always indicates a heightened risk of arbitrary conduct. In the specifically adjudicated case, contemplation on the issue of arbitrariness otherwise makes evident that the separate bill was first rejected so that it could subsequently be adopted in the period just before the election in the form of an unrelated proposed amendment.

72. The legislative process in the Czech Republic generally also suffers from other defects (the increasing number of cases where statutes are approved with the date of entry into effect set prior to the day of adoption), which the Constitutional Court could not deal with in the specific case; nonetheless, it could not fail to take into account as evidence the circumstances in the formation of statutes, especially as far as concerns the merely limited functionality of the supervisory mechanisms internal to the legislative process. Naturally that increases pressure on the operation of external control, represented in relation to constitutionalism by the Constitutional Court (see also Filip, J.: Legislative Technique and Constitutional Court Jurisprudence, Journal for Legal Scholarship and Practice, No. 3/2005, writing of „legislative mischief or barbarity“).

73. The Assembly of Deputies did not recognize that the introduced amendment cannot be considered as such in the substantive sense. A constitutionally-conforming interpretation of the provisions governing the right to introduce amendments to a debated bill requires that the proposed amendment in actual fact merely modify the submitted legal scheme, that is in conformity with the requirement of the „rule of close relation“, according to which the proposed amendment must concern the same subject as the bill which is under consideration in the legislative process, if the given proposed amendment is not to stray from the field reserved for proposed amendments in the form of a blatant departure from the debated bill's subject matter. In the Constitutional Court's view, this corresponds to a constitutionally conforming interpretation of the introductory clause of § 63 para. 1 of the Standing Orders of the Assembly of Deputies. In the Constitutional Court's view this requirement has not been met in the given case, however. In consequence, the principle of the separation of powers, among others, was violated, with consequences for the principle of the formation of harmonious, transparent, and predictable law, which the Constitutional Court has already previously linked to the attributes of the democratic, law-based state. In addition, the institute of legislative initiative under Art. 41 of the Constitution of the Czech Republic was circumvented, as was the Government's right, under Art.

44 of the Constitution of the Czech Republic, to give its view on bills.

74. Accordingly, nothing remains but for the Constitutional Court to find that the contested provisions of Act No. 443/2006 Coll., which amends Act No. 319/2001 Coll., which amends Act No. 21/1992 Coll., on Banks, as subsequently amended, were not adopted by the Assembly of Deputies in the constitutionally-prescribed manner. This is enhanced by the fact that the President of the Republic did not sign it, which – with the legal exception of the overriding of a veto – should be, in accordance with Art. 51 of the Constitution of the Czech Republic, and according to the views of theory, the certification of the due completion of the legislative process.

75. The Constitutional Court proceeded to derogate the statutory provisions after it had in its previous jurisprudence (see in particular Judgment No. Pl. US 21/01) made an emphatic appeal to the Parliament of the Czech Republic, calling upon it to observe the principles of comprehensibility, transparency, and clarity of the legal order, which rank among the components of the law-based state, as does respect for the democratic principles in the legislative process (Art. 1 of the Constitution of the Czech Republic). In this matter it proceeded to annul Part Two, namely Art. II and Art. III of Act No. 443/2006 Coll.; it thereby opened grounds pro futuro, especially for derogation under Art. 1 para. 1 of the Constitution of the Czech Republic. The Constitutional Court has in the past tied the potential assessment of similar violations of the principles of the legislative process with the test of proportionality in conjunction with the protection of citizens‘ justified confidence in the law, legal certainty and acquired rights, alternatively in connection with further principles protected by constitutional order, fundamental rights, freedoms, and public goods.

76. This conclusion, in and of itself, makes impossible the constitutional review, in terms of the substantive objections of unconstitutionality, of individual provisions of the Act under adjudication. Thus, the Constitutional Court of the Czech Republic does not, in this Judgment, prejudge the question of what would be a constitutionally conforming solution to the issues governed by the annulled provisions.

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

Brno, 15 February 2007