Pl. ÚS 11/17 of 12 December 2017
60/2018 Coll.

Financing of Political Parties and Movements and Political Institutes

The Czech Republic
JUDGMENT
of the Constitutional Court
in the Name of the Republic

On 12 December 2017, under file no. Pl. ÚS 11/17, the plenum of the Constitutional Court, composed of the Chairman of the Court, Pavel Rychetský and Judges Ludvík David, Jaroslav Fenyk, Josef Fiala, Jan Filip, Jaromír Jirsa, Tomáš Lichovník, Jan Musil, Vladimír Sládeček, Radovan Suchánek (judge rapporteur), Kateřina Šimáčková, Vojtěch Šimíček, Milada Tomková, David Uhlíř and Jiří Zemánek, on a petition from a group of senators, represented by JUDr. Stanislav Polčák, attorney, with his registered office at Řehenice 10, seeking the annulment of, in § 17 par. 4 to 7, § 17 par. 8 letter i), the words "provided by a bank, payment institution, or electronic funds institution or by a branch of a foreign bank, payment institution, or electronic funds institution in the territory of the Czech Republic"; § 17 par. 8 letter j); in § 17a, the words "and political institutes" and "or political institute"; in § 17b, the words "or political institute," "or political institute," and "and political institutes"; in § 18 par. 1 letter g), the words "political institute"; § 18 par. 2; in § 19f, the words "and political institutes"; § 19h par. 1 letter k); § 19k; in § 19l, the words "or a political institute"; § 20 par. 1 letter b); § 20 par. 3 and 5; in § 20 par. 7, the words "per mandate of a deputy or senator is CZK 900,000 per year, and";§ 20 par. 8; in § 20 par. 10, the words "or a contribution to support the activity of a political institute"; in § 20 par. 11 and 12, the words "or for a contribution to support the activity of a political institute", "or a contribution to support the activity of a political institute" and "or a contribution to support the activity of a political institute"; and § 20a par. 3 of Act no. 424/1991 Coll., on Association in Political Parties and Political Movements, as amended by Act no. 302/2016 Coll., with the participation of the Chamber of Deputies and the Senate of the Parliament of the Czech Republic as parties to the proceeding and the Government as a secondary party to the proceeding, ruled as follows:

The petition is denied.

Reasoning

I.
Subject Matter of the Proceeding

1. In the petition filed under § 64 par. 1 letter b) of Act no. 182/1993 Coll., on the Constitutional Court, received by the Constitutional Court on 23 March 2017, a group of 18 senators (further, also the "petitioner") seeks to have the Constitutional Court, in a proceeding under Art. 87 par. 1 letter a) of the Constitution of the Czech Republic (the "Constitution") annul the following provisions of Act no. 424/1991 Coll., on Association in Political Parties and in Political Movements, as amended by later regulations, ("Act no. 424/1991 Coll."):

a) in § 17 par. 8 letter i), the words "provided by a bank, payment institution, or electronic funds institution or by a branch of a foreign bank, payment institution, or electronic funds institution in the territory of the Czech Republic", as of the day the judgment is promulgated in the Collection of Laws;
b) § 18 par. 2, as of the day the judgment is promulgated in the Collection of Laws;
c) § 20 par. 3, and in § 20 par. 7, the words "per mandate of a deputy or senator is CZK 900,000 per year, and", as of 1 January 2019 (Constitutional Court note: the petitioner identifies this provision as § 20 par. 6 of Act no. 424/1991 Coll., but Act no. 302/2016 Coll. renumbered the provision as paragraph 7);
d) § 17 par. 4 to 7, § 17 par. 8 letter j), and in § 17a, the words the words "and political institutes" and "or political institute"; in § 17b, the words "or political institute," "or political institute," and "and political institutes"; in § 18, the words "political institute,"; in § 19f, the words "and political institutes"; § 19h par. 1 letter k); § 19k; in § 19l, the words "or political institute"; § 20 par. 1 letter b); § 20 par. 5 and 8; in § 20 par. 10, the words "or a contribution to support the activity of a political institute"; in § 20 par. 11 and 12, the words "or for a contribution to support the activity of a political institute", "or a contribution to support a political institute" and "or a contribution to support the activity of a political institute"; and § 20a par. 3, as of the day the judgment is promulgated in the Collection of Laws .

2. The petition was accompanied by a request for priority treatment.

II.
The Text of the Contested Provisions and the Related Legislation

3. Since the date when the present petition was filed, Act no. 424/1991 Coll. was amended by Act no. 183/2017 Coll., amending certain Acts in connection with the adoption of the Act on Liability for Offences and Proceedings on Them and the Act on Certain Offences, and subsequently by Act no. 303/2017 Coll., amending certain Acts in connection with the Annulment of the Publicly Beneficial Status. The contested provisions and other related provisions are set forth without footnotes. The contested provisions, or selected parts of the contested provisions, of Act no. 424/1991 Coll. (Constitutional Court: marked in bold) read as follows:

§ 17 par. 4
"A party or movement may establish or be a member of one political institute; for purposes of this Act, political institute means a legal entity whose main activity is research, publishing, educational, or cultural activity in the area of
a) development of democracy, a law-based state, pluralism, and protection of fundamental human rights,
b) development of a civil society and social cohesion,
c) support for the active participation of citizens in public life,
d) improvement of the quality of political culture and public discussion, or
e) contribution to international understanding and cooperation."

§ 17 par. 5
"A political institute must, in a manner permitting remote access, publish all the results of its activity under paragraph 4 where the nature of the results permits."

§ 17 par. 6

"A political institute may not conduct the activities of a school or educational establishment under the Schools Act, or function as a university under the Act on Universities."

§ 17 par. 7
"A contribution to support the activity of a political institute can be provided if the political institute is registered with the status of publicly beneficial. A contribution to support the activity of a political institute may not be used to finance an election campaign of a party or movement or coalition or their candidate or an independent candidate."
(Constitutional Court note: The first sentence of this provision was annulled by Act no. 303/2017 Coll. with effect as of 1 January 2018.)

§ 17 par. 8
"A party or movement may have revenues from the following sources: …
i) loans and lines of credit provided by a bank, payment institution, or electronic funds institution, or by a branch of a foreign bank, payment institution, or electronic funds institution in the territory of the Czech Republic,
j) a contribution from the state budget of the Czech Republic to support the activity of a political institute."

§ 17a par. 1
"Parties and movements and political institutes use for their activities only funds maintained in accounts at a bank, payment institution, or electronic funds institution, or at a branch of a foreign bank, payment institution, or electronic funds institution in the territory of the Czech Republic. This does not apply to expenses not exceeding the amount of CZK 5,000; these expenses can be paid in cash."

§ 17a par. 2
"Parties and movements and political institutes shall keep separate accounts for
a) contributions from the state budget, income from gifts and other in-kind contributions,
b) fulfilment arising from an employment relationship to a party or movement or political institute,
c) financing of election campaigns under conditions set forth by election laws
d) other income and expenses."

§ 17a par. 3
"Parties and movements and political institutes shall keep funds under par. 2 letter a) in a special account permitting free and uninterrupted access by third parties to the display of the overview of payment transactions on these accounts (a 'special account')."

§ 17a par. 4
"Parties and movements and political institutes shall inform the Office for Supervision of the Economic Management of Political Parties and Political Movements (the "Office") without unnecessary delay of the number or other unique identifier of the account in which they keep funds under par. 2 letter d);

§ 17b par. 1
"A payment order in which a party or movement or political institute or other person requests a payment transaction into or out of a special account must state the purpose of the payment transaction."

§ 17b par. 2
"A payment services provider with whom a special account of a party, movement, or political institute is maintained is required to allow third parties to view the history of payment transactions retroactively for the period of the last 3 years."

§ 17b par. 3
"Parties and movements and political institutes shall notify the Office of the address of the webpage where the overview of payment transactions on a special account, and the Office shall publish the address on its webpage."

§ 18 par. 1
"Parties and movements may not accept gifts or other in-kind contributions
a) from the state, unless this Act provides otherwise,
b) from a budgetary organization,
c) from a municipality, city section, city district or region,
d) from a voluntary association of municipalities,
e) from a state company or a legal entity with equity holdings by the state or a state company, as well as from an entity in the management and inspection of which the state takes part; this does apply if the equity holdings of the state or state company are below 10%,
f) from a legal entity with equity holdings by a region, municipality, city section or city district; this does not apply if such equity holdings are below 10%,
g) from a publicly beneficial company, political institute, or institute,
h) from the assets of a trust fund,
i) from another legal entity, if another legal regulation so provides,
j) from a foreign legal entity, with the exception of a political party or foundation established for activities in the public interest,
k) from a natural person who is not a citizen of the Czech Republic; this does not apply in the case of a person who has the right to vote in elections to the European Parliament in the territory of the Czech Republic."

§ 18 par. 2
"Parties and movements may not accept gifts or other in-kind contributions if the sum of all financial gifts, or financial amounts corresponding to the usual price of a gift or other in-kind contribution received from one and the same person in one calendar year would exceed the amount of CZK 300,000. One and the same person is also considered to include a legal entity that is in a controlling or controlled relationship with the person in the first sentence. If the donor or provider of another in-kind contribution is a member of the party of movement, a membership fee in an amount over CZK 50,000 is also considered to be a gift or other in-kind contribution."

§ 19f
"The Office
a) exercises supervision of the economic management of parties and movements and political institutes under this Act,
b) prepares and publishes on its webpage a report on its activity for the relevant calendar year,
c) publishes on its webpage complete annual financial reports of parties and movements and the results of its activity,
d) informs the Ministry of Finance by 31 May of the relevant calendar year whether the financial report of a party or movement for the previous year was submitted to it and is, in its

determination, complete; the Office also informs the Ministry of Finance by that deadline if the annual financial statement was not submitted or is not complete,
e) informs the Ministry of Finance of the result of its evaluation of an annual financial report submitted supplementally under § 19h par. 3 or submitted in response to a call to supplement a report or remove deficiencies under § 19h par. 5, without delay, but not later than 10 days from the day when it received the annual financial report,
f) handles offences and imposes administrative penalties,
g) exercises the competence set forth by another legal regulation in the field of election campaign finance,
h) exercises the competence set forth by another legal regulation."

§ 19h par. 1
"Parties and movements are required to submit to the Office by 1 April each year an annual financial report that includes
a) financial statements according to the Act on Accounting
b) an auditor's report about audit of the financial report with an unqualified opinion
c) a summary of total income, itemized according to § 17 par. 8, to which the parties and movements shall attach:
1. a summary of commercial companies or cooperatives in which the party or movement has a share, stating the amount of the share,
2. a summary of credits, loans, and other debts, stating the amounts and conditions, including the due date, names, surnames, and dates of birth; if the provider is a legal entity, its company name and identification number shall be stated,
d) a summary of salary expenditures for persons paid by the party or movement, including the number of these persons and the kind of work performed,
e) a summary of total expenditures for taxes, fees, and other analogous financial payments,
f) expenditures for elections, itemized by individual kinds of elections in which the party or movement took part in the given calendar year,
g) a summary of donors and their gifts, stating the amount of a financial gift and usual price of a non-financial gift, names, surnames, and dates of birth; if a donor is a legal entity, its company name and identification number shall be stated,
g) a summary of other in-kind contributions received, the usual price of which is over CZK 50,000, stating the name, surname, and date of birth; if the donor is a legal entity, its company name and identification number shall be stated,
i) a summary of the value of property acquired by inheritance or legacy; if the value of the property received exceeds CZK 50,000, the name, surname, date of birth and date of death and municipality of the testator shall be stated,
j) a summary of members whose membership contribution for the calendar year is over CZK 50,000, stating their name, surname, date of birth, municipality of residence, and total amount of membership contribution,
k) name and registered address of a political institute in which the party or movement is a founder or member, and expenditures incurred to support its activity, at least in the amount of the contribution to the activity of the political institute."

§ 19k par. 1
"A political institute commits an offence if
a) it uses a contribution to support the activity of the political institute inconsistently with § 17 par. 7,
b) in violation of § 17a par. 7 it does not maintain separate accounts or does not inform the Office of data under § 17a par. 4, or

c) in violation of § 17a it does not establish a special account, or in violation of § 17b it does not give notice of its website address.“

§ 19k par. 2
“An offence under paragraph 1 letter a) can be penalized with a fine of up to CZK 200,000.”

§ 19l par. 1
“In setting the level of a fine for a legal entity, the effect of the fine imposed on the possibility for the continued existence of the party and movement or political institute shall also be taken into account.”

§ 20 par. 1
“A party or movement is entitled to the following state contributions, under the conditions set forth by this Act:
a) a contribution for its activity, which includes a regular contribution and a contribution per mandate, and
b) a contribution to support the activity of the political institute.”

§ 20 par. 3
“A right to a regular contribution arises for a party and movement that received at least 3% of votes in elections to the Chamber of Deputies.”

§ 20 par. 5
“A right to a contribution to support the activity of a political institute arises for a party and movement if at least one deputy was elector the given party and movement in at least two of the last three successive electoral periods, including the ongoing electoral period, and which is the founder or a member of the political institute. The party or movement may use this contribution solely to cover expenditures for the activity of the political institute.”

§ 20 par. 6
“The regular contribution is CZK 6,000,000 for a party and movement that received 3% of votes in the last elections to the Chamber of Deputies. For each additional and partial 0.1% of votes the party and movement shall receive CZK 200,000 per year. If a party and movement receive more than 5% of votes, the contribution does not increase further.”

§ 20 par. 7
“The contribution per mandate of a deputy or senator is CZK 900,000 per year, and per mandate for a member of regional representative body and a member of the representative body of the capital city of Prague is CZK 250,000 per year.”

§ 20 par. 8
“The contribution to support the activity of a political institute is an amount per year equal to 10% of the total amount of the contribution for activity that belongs to the party or movement. In its application under § 20a par. 3 the party and shall state the name and registered address of the political institute whose activity the contribution is intended to support.”

§ 20 par. 10
When determining entitlement to a regular contribution or a contribution to support the activity of a political institute and setting their level for a party and movement that are members of a coalition, the agreement on the proportion of coalition members in election

results is dispositive. If no such agreement exists or if it is not delivered to the Ministry of Finance by the deadline, the election results shall be divided equally among all coalition members. The provisions of paragraph 2 remain unaffected. All political parties or movements in a coalition shall deliver their agreements on the proportion of coalition members to the Ministry of Finance by the last day of the period in which the lists of candidates can be registered.

§ 20 par. 11
If the agreements presented to the Ministry of Finance in compliance with paragraph 10 differ from each other, and a party or movement is entitled to a regular contribution or a contribution to support the activity of a political institute, the Ministry of Finance shall suspend its payment of a regular contribution or a contribution to support the activity a political institute to all coalition members; once the inconsistency is eliminated, the Ministry of Finance shall pay out the regular contributions or contributions to support a political institute, including retroactively.

§ 20 par. 12
In a year of elections to the Chamber of Deputies, the Senate, regional councils or the Municipal Council of the City of Prague the annual state contributions are calculated for each electoral term separately. Each political party and movement is entitled to one-twelfth of its annual state contribution a month. In the month in which the elections take place, each political party and movement shall receive the higher of the two amounts to which it is entitled in accordance with its election results in both respective electoral terms. If the Chamber of Deputies is dissolved or if new elections to regional councils or to the Municipal Council of the City of Prague are held, each qualified political party and movement shall also be entitled to a proportional part of its annual regular contribution, per mandate contribution, and contribution to support the activity of a political institute for the month in which the Chamber of Deputies is dissolved or in which new elections to regional councils or to the Municipal Council of the City of Prague are held. If the mandate of any Deputy, Senator, regional councilor or member of the Municipal Council of the City of Prague becomes vacant and is not filled or if the mandate of any Senator is terminated, a proportional part of the annual mandate contribution and contribution to support the activity of a political institute shall also be paid for the month in which that circumstance occurs.

§ 20a par. 3
In each electoral term the Ministry of Finance shall pay the contribution to support the activity of a political institute at the request of a party or movement each year in two biannual instalments in arrears. The contribution to support the activity of a political institute cannot be paid before the contribution for activity is paid.

III.
The Petitioner’s Arguments

4. The contested provisions of Act no. 424/1991 Coll. concern the following four substantive areas.

A. The three percent voting threshold in elections to the Chamber of Deputies for entitlement to a regular contribution and the amount of a per mandate contribution for a deputy or senator in the amount of CZK 900,000

5. The petitioner addresses the unconstitutionality of the legislation for the threshold for entitlement to a regular contribution and a per mandate contribution for a deputy or senator, and finds them inconsistent with Art. 21 and 22 of the Charter of Fundamental Rights and Freedoms (the "Charter") and with the principle of free competition of political parties under Art. 5 of the Constitution. With the aid of specific examples and calculations the petitioner states that financial contributions for "established" political parties and political movements ("political parties") disproportionately give preference these parties over smaller parties and deviate from constitutional law limits. The petitioner refers to the fact that since the last Constitutional Court judgment on review of the constitutionality of the clause concerning entitlement to the regular contribution [judgment file no. Pl. ÚS 10/03 of 19 January 2005 (N 9/36 SbNU 85; 86/2005 Coll.)] it appears that the legislation is too strict and does not allow new subjects to enter the party system (the petitioner states that "the examples of a party financed by a billionaire, or established by former ministers from other parties, cannot be taken as proof to the contrary"). The threshold for entitlement to a regular contribution (3 %), which is 40 % lower than the entry threshold (5 %), is disproportionately high, in view of the election results and realistic support for parties that could reach entitlement to the contribution, for example, with a threshold of 2%. In practice, in some elections only three political parties outside the Chamber of Deputies reached that entitlement.

6. The petitioner also states that if the state imposes new obligations on political parties, which mean increased operating expenses, it should also contribute to fulfilment of these obligations. Therefore, the petitioner explicitly states that it is not submitting the petition seeking annulment of the relevant provisions with the motive of completely annulling the system of state support, but with the motive of creating a new and constitutional system that would remove the continuing inequality in the financing of political parties on the part of the state and that would reflect, for example, the conclusions of the GRECO group (a group of states against corruption) of the Council of Europe.

B. Limiting the total amount of gifts to a political party from one and the same person in a calendar year to CZK 3,000,000

7. The contested provision, § 18 par. 2 of Act no. 424/1991 Coll., forbids political parties from accepting a gift or other in-kind contribution (a "gift") from one and the same person if the total sum of such financial gifts, or financial amounts corresponding to the usual price of a gift or other in-kind contribution, exceeds CZK 3,000,000 in a calendar year.

8. The petitioner considers this provision to be fundamentally non-problematic; however, it claims that including political parties in the personal application of the ban interferes in the freedom of competition of political parties, inconsistently with Art. 5 of the Constitution. According to the petitioner, this amount is insufficient and limits political parties in their possibilities for cooperation. The legislation affects primarily smaller subjects, because for them the possibility of provision of a gift from another political party is one of the forms of cooperation that they utilize. As an example, the petitioner cites the situation of political party A, active on the regional level, which is not campaigning for the Chamber of Deputies, but would like to support another political party, B, which is campaigning, and intends to support the interests of party A in the Chamber of Deputies. Because of the contested provision, party A is limited by the amount of CZK 3,000,000. According to the petitioner, in the case of a gift there is a qualitative difference between a political party and another type of legal person. With a political party, a gift involves participation in free political competition. And since,

according to the petitioner, the inclusion of political parties in the personal application of the given provision cannot be overcome by interpretation, it proposes annulment of the provision.

C. Narrowing the circle of subjects with whom political parties are entitled to conclude contracts on loans and credit only to banks registered in the territory of the Czech Republic

9. The contested provision, § 17 par. 8 letter i) of Act no. 424/1991 Coll., narrows the circle of subjects with which political parties are entitled to conclude contracts on loans and credit (also only "credit"), only to banks, payment institutions, or electronic funds institutions or branches of a foreign bank, payment institution, or electronic funds institution in the territory of the Czech Republic ("Banks registered in the Czech Republic" or only "banks"). According to the petitioner, this provision disadvantages weaker political parties vis-à-vis economically strong parties, or those that receive state financial support. According to the petitioner, application of this provision then leads to indirect discrimination against economically weaker parties, which is inconsistent with Art. 3 par. 1 of the Charter. In its opinion, the cause is the fact that the ability of individual subjects to obtain funds for their activities by this route is fundamentally different, based on their economic situation, because banks thoroughly investigate the economic situation of an applicant before providing credit or loans, and there is no reason for them to act differently with political parties. Wealthy political parties, or parties receiving state contributions, are more attractive to banks, due to the assumption that they have assets they can use as guarantees, or are able to pay credits and loans, e.g. from the state contributions. Moreover, according to the petitioner, the disadvantageous effect on weaker political parties is strengthened by introducing the institution of a contribution for the activity of a political institute, the conditions for which are set so that it will be provided only to established and economically strong political parties.

10. Apart from the indirect discrimination against economically weaker political parties, the petitioner also raises the conflict of the contested provision with the principle of free competition of political parties under Art. 5 of the Constitution, because if a political party is unable to obtain credit or a loan due to its economic situation, it will be limited in the free competition among political parties, without meaningful justification.

11. The petitioner also finds the contested provision to be inconsistent with Art. 21 of the Charter, and claims that economically weaker political parties will, under the new legislation, have significantly more difficult access to credit and loans, especially if they do not achieve the election results that would guarantee them state contributions at a sufficient level. Narrowing the circle of possible providers of credit and loans will thus increase the pressure on economically weaker political parties to obtain funds through other legally permitted means. According to the petitioner, a solution in the form of increased membership dues, which is one of these means, appears unacceptable, because it would limit citizens' participation in public life based on their economic situation.

12. The last objection to the contested provision is its claimed disproportionality. The petitioner states that the aim of the amending proposal from Deputy Martin Plíšek, which led to the contested provision, was to strengthen transparency, both in the sense of transparency of the relationship between a political party and a credit or loan provider, and in the sense of strengthening the independence of political parties from such providers. The petitioner considers this second partial aim of transparency to be internally inconsistent, because removing the risk of dependence on other providers will lead to strengthening the risk of dependence on banks, which can use precisely the instrument of provision of credit or loans to

political parties to promote their economic-political interests. According to the petitioner, this narrowing will not lead to increased transparency or to stronger independence of political parties from credit and loan providers. In its opinion, there are alternative methods of achieving both aims, the application of which would better preserve the principles protected by the constitutional order.

13. According to the petitioner, to strengthen transparency it would suffice to have a wording in the form of the original government draft amendment of the Act, under which political parties would provide in their annual report a summary of credits, loans, and other debts, including their amounts and conditions, including the due date, name, surname, and date of birth. From these data it would be possible to assess whether the credit or loan is legitimate or questionable (a disguised gift).

D. Political institutes and the contribution to support the activity of a political institution

14. The petitioner considers the legislation for political institutes in the contested provisions, § 17 par. 4 to 7 of Act no. 424/1991 Coll. (as well as in other contested provisions that refer to political institutes) to be inconsistent with Art. 3 par. 1 of the Charter, because, in its opinion, it leads to discrimination against smaller and new political parties. According to the petitioner, because support under the Act is provided to the political institutes of only those parties that are their members or founders and that have had at least one deputy elected in two of the last three successive electoral terms of the Chamber of Deputies, including the current electoral term, leads to prioritizing established political parties. The petitioner states that according to the present key, support for the activity of a political institute would – as of the submission date of the petition – be achieved by only five political parties, namely the Czech Social Democratic Party, the Communist Party of Bohemia and Moravia, the Civic Democratic Party, and TOP 09. Yet, in the petitioner's opinion, it is not evident why only success in elections to the Chamber of Deputies was chosen as a criterion for entitlement to a contribution, and not success in elections to the Senate, the European Parliament, or regional representative bodies.

15. The petitioner compares the contested legislation with the legislation for what are called "political foundations" in the German Federal Republic (the "GFR"), which were the main inspiration for the contested Act, according to the background report. The German legislation requires, as a condition for entitlement to a contribution, that the political party related to the political foundation either get into the federal parliament, or get into one of the regional parliaments twice. It is thus more open than the Czech legislation. Another difference is the fact that if a political party in the GFR "drops out" of one of the representative bodies after elections, the foundation connected with it still receives support in the following electoral period. The petitioner also refers to the case law of the German Federal Constitutional Court, which emphasizes the legal and factual independence of political institutes on political parties as a condition for their financing from public funds, and also refers to the need for sufficient protective mechanisms in the relevant legislation, which work against the danger of disrupting the equal opportunities of political parties. According to the petitioner the Czech legislation does not meet these requirements.

16. In addition to the claimed conflict with the principle of a ban on discrimination, the petitioner also claims there is conflict with the principle of free competition of political parties under Art. 5 of the Constitution. According to the petitioner, the contested legislation petrifies the current party structure in the Czech Republic. As a practical example, it documents how

political parties with relatively similar gains in elections to the Chamber of Deputies (5.1 % and 4 % of votes) can receive markedly different levels of financial support from the state. This difference is further increased by the fact that the more successful of the parties can also receive support through a contribution for the activity of a political institute.

IV.
Statements from the parties and the secondary party to the proceedings, petitioner's response

17. The statement from the Chamber of Deputies of 4 May 2017 concerns only formal aspects of the legislative process that led to the passage of the contested legislation. The Chamber of Deputies states that it discussed Act no. 302/2016 Coll., which amends Act no. 424/1991 Coll., on Association in Political Parties and Political Movements, as amended by later regulations, and other related laws, as Chamber of Deputies document no. 569 (government bill) in the first reading on 20 October 2015, and it was also assigned for discussion to the Committee on Constitutional and Legal Affairs and the guaranteeing Committee on Budgetary Control. Both committees considered it three times. The second reading of the bill took place on 12 April 2016 and 1 June 2016 and amending proposals were processed as Chamber of Deputies document no. 569/7. The third reading of the bill took place on 29 June 2016 and the bill was approved by the Chamber of Deputies in the version including amending proposals from Deputy Martin Plíšek (concerning limitation of the circle of permissible credit providers) and Deputy Zbyněk Stanjura (who proposed increasing the amount of a deputy or senator mandate from CZK 855,000 to CZK 900,000).

18. In its statement of 5 May 2017, the Senate states that the Chamber of Deputies passed the bill to the Senate on 28 July 2016 and it was assigned document number 309 (in the 10th electoral period). The Constitutional and Legal Affairs Committee (the only committee to which the bill was assigned) was designated as the guarantee committee, and it recommended that the Senate approved the bill in the wording received from the Chamber of Deputies. The Senate discussed the bill on 24 August 2016. Speakers in the debate included Senator Jiří Šesták, who addressed the issue of limiting the circle of credit and loan providers and pointed out that there was a danger of "unequal political competition" and indirect discrimination against smaller political parties. In response, in general debate, Minister Jiří Dienstbier pointed out that the existing legislation, which did not limit the circle of credit and loan providers, also had its risks, as regards transparency and independence from private persons. He stated that limiting the circle of credit and loan providers to institutions that have a proper license for lending money was the most transparent solution. After general debate, a vote was held on the only submitted proposal, which was the proposal from the guarantee committee to approve the bill in the wording received from the Chamber of Deputies. The bill was approved by the votes of 37 senators out of 62 senators voting; no senator voted against it.

19. The government approved its entry to the proceeding by resolution no. 335 of 3 May 2017 and proposed denying the petition from the group of senators seeking annulment of the contested provisions of Act no. 424/1991 Coll. In its statement, delivered to the Constitutional Court on 6 June 2017, it addressed all the substantive areas of the contested provisions.

20. Regarding the alleged unconstitutionality of setting a threshold for entitlement to a regular contribution, the government states that the Constitutional Court already addressed this matter in judgment file no. Pl. ÚS 10/03. The government contradicts the petitioner's claim about the impossibility for a smaller party to penetrate the existing political system by gaining a Chamber of Deputies mandate. It mentions the parliamentary participation of the Green Party

after the elections in 2006, the Public Affairs Party ["Věci veřejné"] after the elections in 2010, and the parliamentary representation of the Dawn of Direct Democracy Party of Tomio Okamura ["Úsvit přímé demokracie Tomia Okamury] and the return of the Christian Democrats – Czech People's Party ["KDU-ČSL"] to the Chamber of Deputies in 2013.

21. The government also briefly addressed the issue of unconstitutionality of the amount of a contribution per mandate for a deputy or senator. In view of the fact that the political system is not closed to new subjects, the government asserts that in this case too there is no violation of the Constitution. The government states that, although the Constitutional Court, in judgment file no. Pl. ÚS 53/2000 of 27 February 2001 (N 36/21 SbNU 313; 98/2001 Coll.), found the then-existing amount of the contribution to be unconstitutional, it did so in the context of the previous annulment of the election contribution, which disproportionately increased the disproportion of financial support of political parties and aimed toward closing the then-existing political system. According to the government, at present the political system is not closed to new parties, the amendment of Act no. 424/1991 Coll. does not increase state contributions to parliamentary parties, and therefore the situation is different.

22. As regards provision of gifts between political parties, the government states, in particular, that setting limits for gifts from natural and legal persons is common in a number of European states and is justified by the need to prevent disproportionate influence on a political party by individual donors. The aim is precisely the support of the free competition of political parties that is protected by Art. 5 of the Constitution. The government also states that the petitioner's example of a political party for which the limit may seem burdensome does not document that there is a widespread practice of cooperation by political parties (in the scope of gifts above CZK 3,000,000). This example thus cannot justify the presence of a certain general interest in the non-existence of a similar limitation, or its "strangulatory effect".

23. Regarding the issue of loans and credits provided by banks, the government argues that it is necessary to start with a relative concept of the principle of equality. According to the government, with reference to the Constitutional Court's case law [e.g., judgment file no. Pl. ÚS 16/98 of 17 February 1999 (N 25/13 SbNU 177; 68/1999 Coll.)], this means that a statutory provision is unconstitutional if it enshrines an inequality that simultaneously violates another fundamental right, and thereby violates the very substance of equality, or, if difference between legal subjects are set arbitrarily. However, according to the government, neither of these instances has been met. The government primarily argues that there is not fundamental right "to obtain credit or a loan from a non-bank (or other) subject." For that reason, according to the government, the substance of equality has not been violated. Credit-based financing of political parties can be seen as economic activity of a political party that falls within Art. 26 par. 2 of the Charter, which permits setting statutory conditions and limitations on it. At the same time, this right can be exercised only within the bounds of the statutes that implement it, because it falls under the regime of Art. 41 par. 1 of the Charter.

24. The government also states that the subject limitation on banks cannot be considered arbitrary. The government first refers to the background report to Chamber of Deputies document 569/0, which led to Act no. 302/2016 Coll., amending Act no. 424/1991 Coll., according to which the purpose of the amendment is "to ensure a higher degree of transparency in the financing of political parties and political movements, primarily in the context of their financial and material support by third parties, and a higher degree of inspection of the party's business management …." Because political parties have a

privileged status, due to their role in a representative democracy, there is also a legitimate state interest in the transparent financing of political parties. According to the government, the amending proposal of Deputy Martin Plíšek, which led to narrowing the circle of credit and loan providers only to banks and analogous institutions, strengthens transparency by the fact that these providers are themselves transparent and can be effectively inspected. Thus, according to the government, the contested legislation has a legitimate aim, is rational, is not arbitrary, and is effective with regard to general supervision of banks and the "special authorization" of the Office for Economic Supervision of Political Parties and Political Movements, which can, based on § 38 par. 3 of Act no. 21/1992 Coll., on Banks, as amended by later regulations, require information about their clients. The government considers identification of the legitimate purpose of the legislation to be suitable both for ruling out the claimed indirect discrimination and for ruling out violation of Art. 5 of the Constitution.

25. The government adds to this point, that a potential increase in the dependence of political parties on other kinds of financing can also be viewed positively, as a call for political parties to be thrifty and careful in their business management and that it is necessary to respect the discretion of the legislature, which passed the bill and can evaluate the effect of the Act in the future. Finally, with reference to Decree no. 163/2014 Coll., on the Activities of Banks, Savings and Credit Unions, and Securities Dealers, and Decree no. 141/2011 Coll., on the activities of payment institutions, electric funds institutions, small-scale payment services providers, and small-scale electronic funds issuers, as amended by later regulations, the government states that the rules set forth in them ensure ruling out arbitrariness by banks when providing credit.

26. As regards the claimed unconstitutionality of the legislation for political institutions, the government states that the legislature's aim was to create conditions for the establishment and long-term sustainable functioning of institutions that would have a reinforcing role for political parties in society, and thereby for the stability of the entire political system. The government emphasizes that political institutes, through their content under § 17 par. 4 of Act no. 424/1991 Coll., strengthen the fundamental characteristics of the democratic political system and that the public has the ability to supervise this through the obligation of political institutes to publish the results of their activity, where their nature permits, in a manner that permits remote access.

27. The government also notes that provision of a contribution for the activity of a political institute is possible only if the political institute is registered with the status of being in the public interest, which does not prove that political institutes could serve to interfere with the free competition of political parties (Constitutional Court note: the passage of Act no. 303/2017 Coll., which amends certain Acts in connection with annulling the status of being in the public interest, annulled the provision about registration with the status of being in the public interest).

28. Thus, according to the government, setting the activity of political institutes is rational, as is the aim of the legislature to financially support political institutes financially by the designated method. According to the government, this is an aspect of the concept of a "democracy defending itself", which is also testified to by the legislature's inspiration in the German legislation.

29. According to the government, the legislature did not exceed its discretion when it tied the entitlement to a state contribution to support the activity of a political institute to results only

in elections to the Chamber of Deputies and not in elections to other representative bodies. Here the government cites Constitutional Court judgment file no. Pl. ÚS 10/03 and states that the contested legislation is justified by the status of the Chamber of Deputies as the most significant representative body in the Czech Republic. According to the government, the connection to success in elections to the Chamber of Deputies, reflects the actual position of a political party in the state's constitutional system. According to the government, it is thus understandable that the legislature derives financial support for political institutes from election to the Chamber of Deputies.

30. The government also corrects the petitioner's claim when it points out that, under the contested legislation, a contribution for the activity of a political institute is also provided to a political party that "dropped out" of the Chamber of Deputies for one period, and that in this regard the Act thus did not deviate from the German model. Apart from that, the government emphasizes that the petitioner neglected to include the Christian Democratic Party – Czech People's Party in the list of parties that would be authorized to receive support for the activity of a political institute at the present time.

31. The government does not agree with the petitioner's claim that the Czech legislation for political institutes would not stand if faced with the requirements of the German Federal Constitutional Court for legal and de facto independence of analogous institutions from political parties and for an absence of gaps in protective instruments against violation of the equal opportunity of political parties. It points out that a political institute is not a new type of legal person. In view of the fact that a political institute is a legal person separate from a political party, and that it is subject to legal regulations governing the relevant type of legal person (the Civil Code, the Act on Commercial Corporations, etc.), the risk of gaps in the legislation is also reduced. According to the government, a de facto situation of independence cannot yet be evaluated or presumed, due to the newness of this legislation.

32. The Public Defender of Rights decided not to use her procedural right under § 69 par. 3 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, and did not join the proceeding.

33. In its reply, delivered to the Constitutional Court on 24 August 2017, the petitioner addressed the government's statement. As regards the setting of the threshold of 3% of votes for entitlement to a regular contribution and as regards the contribution per mandate of a deputy or senator, the petitioner attached additional comparisons of financial support for selected political parties to support its claim of the unconstitutionality of the current financing model.

34. As regards limiting the total sum of gifts to the amount of CZK 3,000,000 and its unconstitutional effect on the free competition of political parties, the petitioner states that the government's argument, that the practice of providing gifts among political parties is not sufficiently frequent that it would justify rejecting a limit on gifts in general, is misguided. According to the petitioner, the possible low rate of occurrence of certain behavior cannot be grounds to heal unconstitutionality.

35. As regards the issue of credits and loans provided only by banks, the petitioner states that it still maintains that narrowing the circle of permissible providers has an unconstitutional effect on economically weaker political parties, because this narrowing will have a marked effect on them, in contrast to established political parties. In response to the government's

objection that limiting the providers to banks supports achieving transparency in the business management of political parties, the petitioner states that although achieving transparency, in the sense of transparency of relationships between a political party and a credit provider, is legitimate (including in the sense of ensuring the cleanness of the sources of provided funds), the problem is in the disproportionality of the chosen means to the achievement of the given aims. The petitioner emphasizes that the disproportionality of these means can be illustrated by the statement of Deputy Plíšek who, in justifying the amending proposal in question, spoke of ruling out the possibility of "financing through credit provided by, e.g., an anonymous individual," but the wording proposed by him and approved by the legislature is much more general and does not permit any providers other than banks.

36. The petitioner also rejects the government's argument that the possible increased dependence of political parties on other forms of financing than credit and loans can also be seen as an incentive for political parties to have lower expenditures. In the petitioner's opinion, the need to reduce expenditures will more visibly affect precisely those political parties that do not have extensive assets and will have more difficult access to credit, whereas it will not be relevant for economically strong political parties. The petitioner further disputes the government's claim that the rules contained in Decree no. 163/2014 Coll. ensure ruling out arbitrariness in the provision of credit by banks. It points to the fact that the Decree permits the application of a non-standard regime for the provision of credit in special cases (per § 34 of the Decree) and that the financing of political parties is such a case. Moreover, the petitioner argues that the very reviewability of a bank's decision to provide credit to a political party (or not) is problematic.

37. Finally, as regards the government's claim that political institutes do not serve to petrify existing party structures but to reinforce the democratic system, the petitioner states that the democratic character of the political system cannot be reinforced by a situation when only political parties selected in a very disputable manner will obtain another state contribution. In its opinion, this is a hidden form of further financing of established political parties.

V.
Active procedural standing and conditions of the proceeding

38. The petitioner is a group of 18 senators, headed by Senator Jan Horník and represented by the attorney listed in the heading. It submits the petition seeking the annulment of the contested provisions of Act no. 424/1991 Coll. on the basis of § 64 par. 1 letter b) of the Act on the Constitutional Court. Joined to the petition is a signature page on which each of the senators individually confirmed that he or she is joining in the petition. Therefore, it is justified to consider the petitioner to have active standing to submit the adjudicated petition.

39. Of course, the Constitutional Court did not overlook the fact that the following senators who now propose annulment of the contested legislation, introduced by Act no. 302/2016 Coll., voted for it: František Čuba, Alena Dernerová, Zdeněk Papoušek, Leopold Sulovský, Jiří Šesták, Jiří Vosecký and Eliška Wagnerová. Although that fact has no effect on the active standing of the group of 18 senators to submit the petition, it is true that if none of the named senators had voted for Act no. 302/2016 Coll., it would not have been passed in the Senate. Adoption of the Act required, with 62 senators present, 32 votes, and 37 senators voted in favor of it (vote no. 15 at the 27th meeting in the 10th electoral period); thus, without the votes of seven of the abovementioned senators, the bill would not have been approved by the Senate [cf. point 25 of the judgment of 28 June 2016 file no. Pl. ÚS 18/15 (N 121/81 SbNU 889;

271/2016 Coll.)]. In this regard, it is also worth mentioning that, except for the speech by Senator Jiří Šesták, in which he expressed doubts as to the constitutionality of limiting the subjects from which political parties can draw credit, none of the proposing senators spoke in the debate at all.

40. The petition contains all requisites required by law. It is not impermissible under § 66 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by Act no. 48/2002 Coll., nor are there any grounds to stop the proceeding under § 67 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by Act no. 48/2002 Coll. The Constitutional Court ruled on the petition without ordering a hearing, because it did not conduct presentation of evidence and a hearing could not be expected to clarify the matter further (§ 44 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations).

41. As regards the petitioner's application for priority treatment of the matter, the Constitutional Court states that, although this application was not ruled on formally, it was granted via facti, as the plenum ruled on the matter less than nine months from the day when the petition was delivered to the Constitutional Court.

VI.
Review of the adoption procedure of the contested provisions

42. Under § 68 par. 2 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by Act no. 48/2002 Coll., the Constitutional Court evaluates not only whether the content of a statute is consistent with constitutional laws, but also whether it was adopted and issued within the bounds of constitutionally defined competence and in a constitutionally prescribed manner. Neither the petitioner nor the other participants in the proceeding raise any relevant objections in this regard.

43. The majority of the provisions that the petitioner considers to be unconstitutional were inserted into Act no. 424/1991 Coll. by Act no. 302/2016 Coll., except for § 20 par. 3 and parts of the contested § 20 par. 7 [in that provision Act no. 302/2016 Coll. changed the number 855,000 to 900,000 (CZK)]. The bill of Act no. 302/2016 Coll. was approved by both chambers of Parliament, in a procedure that was described in the statements from the Chamber of Deputies and the Senate as recapitulated in points 17 and 18 above, and was subsequently delivered to the President of the Republic for signature on 31 August 2016. After he signed it, the approved Act was sent for signature to the Prime Minister, and on 21 September 2016 it was promulgated in the Collection of Laws.

44. The Constitutional Court concluded that the reviewed provisions of Act no. 424/1991 Coll. were adopted within the bounds of constitutionally defined competence and in a constitutionally prescribed manner.

45. The text of § 20 par. 3 on the regular contribution to political parties that received at least 3 % of votes in elections to the Chamber of Deputies became part of Act no. 424/1991 Coll. in the amendment implemented by Act no. 117/1994 Coll. (then as § 20 par. 4). This amendment also enshrined the contribution per mandate for a deputy or senator. The fact that this Act too was adopted and issued within the bounds of constitutionally defined competence, as well as in a constitutionally prescribed manner, was already confirmed in Constitutional Court judgment file no. Pl. ÚS 10/03, which, therefore, can be cited here.

VII.
Basic starting points for review of the contested legislation

46. As part of reviewing the justification of the submitted petition, the Constitutional Court states first that the contested legislation cannot be reviewed in isolation, but only strictly comprehensively (and contextually), that is, that it is necessary to also take into account other (uncontested) provisions of Act no. 424/1991 Coll. and likewise all relevant provisions of the legal order concerning – directly or indirectly the question of the financing of political parties. Thus, it is necessary to take into account, for example, not only those provisions of Act no. 247/1995 Coll., on Elections to the Parliament of the Czech Republic and amending and supplementing certain other acts, as amended by later regulations, (the "Elections Act"), which guarantee selected political parties a substantial part of their financing sources, but also the provisions of the amending statute, Act no. 302/2016 Coll., which, in addition to the provisions contested by the petitioner, also inserted into Act no. 424/1991 Coll., for example, the provisions establishing the Office for Economic Supervision of Political Parties and Political Movements. In addition, the Constitutional Court took into account the changing circumstances of free competition of political parties, or empirical circumstances, i.e. the factual results – even if partial and short-term – of the application of the contested legislation.

47. In its review on the merits of the contested provisions of Act no. 424/1991 Coll., the Constitutional Court takes as its starting point a number of fundamental constitutional principles and considerations that are key for the constitutional regulation of the financing of political parties.

48. Under Art. 5 of the Constitution, the political system of the Czech Republic is founded on the free and voluntary formation of political parties that respect the fundamental democratic principles and renounce force as a means of promoting their interests.

49. The same provision of the Constitution gives rise to a requirement to protect and guarantee the free competition of political parties that respect these values. Under Art. 22 of the Charter the legislation for all political rights and freedoms and its interpretation and application must permit and protect the free competition among political forces in a democratic society. The openness and freedom of competition also require the principle of equal opportunity for political parties to success in the environment of political life, in particular in the process of elections to representative bodies, including the chambers of Parliament. This is an integral principle of the current constitutional system, without which elections would not be true elections – capable of fulfilling their role as "one of the most significant means of political legitimacy" in a democratic state, and giving meaning to the constitutional principle of temporary government and to the opportunity for a political minority to become the majority. The free competition of political parties is inherently tied to the existence of "modern" democracy, a prerequisite for which is "the verifiability of political consensus in society and, from time to time, or in case of urgent need, formation of a new consensus. The consequence of the principle of verifiability is that every government is a 'temporary government,' after which the people are to decide again whom they will entrust with government" (both quotations from Klokočka, V. Politická reprezentace a volby v demokratických systémech. [Political Representation and Elections in Democratic Systems.] Prague: Aleko, 1991, pp. 19 and 34). In addition, the requirement for protection of the political minority also arises from the second sentence of Art. 6 of the Constitution, which expresses the legislative imperative that the decision-making of the majority shall take into consideration the protection of minorities. The purpose of this provision, which is binding on

the legislature, i.e. the current political majority, also lies in preserving a realistic opportunity for a political minority, after an appropriate time, to be able to again compete with other contestants and have a chance, in conditions of open and equal competition, to become the majority.

50. Art. 20 par. 4 of the Charter then gives the imperative for separation of political parties and political movements (as well as other associations) from the state. However, financing political parties from state funds is permissible to a certain extent, because it reflects their importance to representative democracy. Of course, in that case, the state is required to act in accordance with the principle of preserving the free competition of political parties and equal opportunity for them, i.e. not to create disproportionate interference in such competition when setting the conditions for state financing. Likewise, it is required to act in accordance with the principle of the free formation of political parties, that is, to not disproportionately burden the formation of new political parties through the support of (existing) political parties from the state budget and other rules for financing political parties.

51. The legislation for financing of political parties must also reflect respect for the principle of equal active and passive voting rights of all citizens of the Czech Republic under Art. 21 par. 3 and 4 of the Charter and Art. 18, 19 and 102 of the Constitution. The respect of the state (the legislature) for these principles in the area of legislation governing the financing of political parties is supposed to lead to – proportionate – support for the openness of the political system including minority directions or opinions, i.e. to allow heretofore marginal political entities to undergo, insofar as possible, a maximally equal (fair) competition of thoughts and ideas, that is, insofar as possible, an equal electoral competition for all involved actors. Respecting these fundamental principles is supposed to lead not only to variety in political debate, but also to the opportunity for a certain cultivation of political expression of those who would otherwise remain outside the relevant political sphere. At the same time, this is supposed to meet (or at least approximate) the ideals of political citizenship (in this context in the sense of awareness that the value of each citizen for the state's democratic system is just as important as the value of another citizen), which via facti represents a basic prerequisite for maintaining the legitimacy of the entire political system, because without it an individual's will to participate in the political life of the state necessarily weakens, which is consequently reflected in the gradual erosion of the legitimacy of the political system as a whole. Therefore, a state approach to the legislation governing the financing of political parties that does not sufficiently take into account the principle of equal voting rights potentially leads to a conclusion by a part of the citizenry that the selection of elected representatives is losing its elementary purpose, and thus to an unwillingness by a significant part of the electorate to even participate in the act of voting itself. These potential consequences on the one hand endanger the necessary legitimacy of a given political system, and on the other hand can lead to an unintended long-term marginalization of the voters thus left behind (squeezed out), whose gradual radicalization can lead to their (logical) rejection of the fundamental values of the existing constitutional order.

52. The role of the Constitutional Court, in accordance with Art. 83 of the Constitution, is the judicial protection of constitutionality. In the area of review of legal norms regulating the financing of political parties, the Constitutional Court enters a terrain where it is supposed to review the Parliament, which is in great part occupied precisely by representatives of political parties, that is, members of legal persons that are directly subject to this legislation. Therefore, it is this specific feature of the contested legislation that must be taken into account in the necessary scope within an abstract review of constitutionality; so it is necessary on the one

hand to respect the legislature's relatively wide scope for discretion as regards setting the individual parameters of the system of financing political parties, but on the other hand also a priori not to overlook the – immanent – risk that parliamentary parties will adapt the statutory conditions for financing political parties for themselves so that they strictly correspond to their interests, to the detriment of parties not represented in Parliament, whereby they could fundamentally influence the form of political competition. In this light, and with this awareness, it is therefore the role and obligation of the Constitutional Court to subject the contested legislation for financing political parties to a constitutional law review with the aim of determining whether the legislation (still) guarantees the fulfilment of key constitutional principles and citizens' fundamental political rights.

VIII.
Review on the merits

53. The petitioner contests as unconstitutional the provisions of Act no. 424/1991 Coll., that concern both private and public (state) financing of political parties. The first area concerns provisions that enshrine the threshold of 3 % of votes received in elections to the Chamber of Deputies for entitlement to a regular contribution for a political party and provisions setting the amount of a contribution for a deputy or senator mandate at CZK 900,000. The second area concerns provisions forbidding a political party from accepting gifts from one person in a total annual amount over CZK 3,000,000. The third area concerns provisions limiting the circle of permissible credit and loan providers only to banks registered in the territory of the Czech Republic. And finally, the fourth area proposes annulment of the legislation for contributions for the activity of a political institute, which is contested together with the entire legislation for political institutes.

54. The Constitutional Court first points out that it is not in any way overlooking the fact that some scholars have consistently and for a long time criticized the existing model of financing political parties. Nonetheless, the task of the Constitutional Court is not to evaluate whether the model chosen by the legislature is optimal, but (only) whether it is constitutionally consistent, or whether the functioning of its individual mechanism, in the aggregate does not (already) cause constitutional defects. The Constitutional Court starts with the previously stated premise [see judgment file no. Pl. ÚS 26/94 of 18 October 1995 (N 62/4 SbNU 113; 296/1995 Coll.)], that state financing generally is consistent with the Constitution, but at the same time it cannot be set up so as to a) make it impossible for non-parliamentary parties to realistically seek parliamentary representation in the future (Art. 5 of the Constitution and Art. 22 of the Charter), but also not so that b) parliamentary political parties would, as a result of generous state funds, completely abandon the (natural) need to be anchored in civil society to a necessary degree and to draw part of their funds from members of that civil society (in this regard the Constitutional Court repeatedly cited Art. 20 par. 4 of the Charter – for details, see below).

55. In judgment file no. Pl. ÚS 26/94, the Constitutional Court formulated the function of political parties as "an intermediary link between citizens and the state" that "serves for their participation in the political life of the society, in particular for the formation of legislative bodies and local administration bodies." Here the Constitutional Court stated that grounds for rejecting state financial support of political parties cannot be drawn from the constitutional order, but it emphasized that this support has its limits, arising, among other things, from the principle of free competition between political parties in Art. 5 of the Constitution, from Art. 2 par. 3 of the Constitution ("State authority is to serve all citizens …") and also from Art. 20

of the Charter, including the principle of separation of political parties from the state. The Constitutional Court continued by saying that "partial support of political parties is undoubtedly acceptable in view of the need to partly equalize their chances. Generally, however, one must begin with the premise that the more political parties are subsidized by the state, the less they feel the need to seek funds and support for their activity in the civil structure of society. Therefore, the contribution for the activities of political parties should not weaken the efforts of political parties to obtain political and material support from their voters and supporters. Political parties cannot fulfill their function if they are left to the mercy of the state or rely on state support more than on the support of citizens."

56. In connection with this it is appropriate to point out that state financing of political parties in the Czech Republic originally (that is, at the time that Act no. 424/1991 Coll. was passed and in the first years it was in effect) represented a means for a certain correction of the inherent inequality between those political parties that owned extensive property and (or) had available a large membership bases on the one hand, and those political parties that had neither of those things, and therefore form that point of view could not be considered sufficiently competitive solely on the basis of private financing. Likewise, it is necessary to view in an appropriate historical context the reference, repeatedly stressed in the Constitutional Court's judgments, to Art. 20 par. 4 of the Charter, that is, the requirement of separation of political parties from the state. The Constitutional Court adopted these repeatedly cited conclusions in the cited judgment file no. Pl. ÚS 26/94, that is, in a decision in which it reviewed the constitutionality of the statutory provision that permitted the Supreme Auditing Office to review the financing of political parties as private law legal persons. At the same time, it is appropriate to keep in mind that Art. 20 par. 4 of the Charter must be seen first of all as a response by the constitutional framers to the wording of Art. 4 of Constitutional Act no. 100/1960 Coll., the Constitution of the Czechoslovak Socialist Republic, in the version in effect until 29 November 1989, (cf. e.g., Wagnerová, E., Šimíček, V., Langášek, T., Pospíšil, I. and collective of authors. Listina základních práv a svobod – Komentář. [The Charter of Fundamental Rights and Freedoms – Commentary.] Prague: Wolters Kluwer, 2012, p. 489), that is, more as a different expression of the interest in the existence of multiple political parties (forces), none of which is permanently merged with the state and its bodies, than as an expression of a principle from which it would be possible – without anything further (see below) – to derive constitutional limitation of the degree of state financing of political parties.

57. The Constitutional Court starts with the assumption (potentially incidentally questionable) that within the available range of possible models for financing political parties – and here it seemingly abandons some of the premises stated in prior judgments – none of the possible models can be unconstitutional a priori, even in the event that one of the "pole" models is chosen; that is, both a model of purely state financing of political parties and a model in which the state pillar is absent and political parties are completely reliant on funds that they obtain from private law subjects are models that are not – otherwise– unconstitutional. At the same time, however, one cannot overlook that at a minimum both extreme alternatives offer such risks – even if within the abstract review of constitutionality they are still merely theoretical – for the functioning of the political system that a legislation actually establishing one of them would evidently cause unconstitutional effects. The task of the legislature in a pluralistic democratic system is to (suitably) balance the positive and negative aspects of both these extreme alternatives, with the awareness that strengthening one component of the system of financing political parties (and therefore giving preference to its unquestionable advantages) "automatically" weakens the negative effects of the opposite component, but also

simultaneously weakens its positive aspects (and thus emphasizes the unfortunate consequences of the strengthened component). In other words, whenever the legislature shifts, when adopting a (new or modified) model for the financing of political parties on the theoretical continuum from private financing to state financing, or back, there is always (again with a potentially imaginable exception) a "zero-sum game," because the suppressed negatives of one alternative simultaneously – by the nature of the matter – replace the strengthened negatives of the other alternative. Thus, on a concrete level, this means (succinctly expressed), for example, that in case of tightening or limiting financial resources from private law persons (for now regardless of whether they are in the form of gifts or credit or loans) does reduce the risk that a given political party will be under the disproportionate (and, moreover, often non-transparent) influence of a small number of private law subjects pursuing their particular interests, but it simultaneously increases the risk that a given political party will – disproportionately – strengthen its dependence on state contributions, which can lead to a situation where such a political party no longer has any need to be substantially grounded in civil society (see above). Nevertheless, at the same time it is appropriate to state that even such a consequence need not – in and of itself – cause the legislation to be unconstitutional, because if such a political party really lost its necessary support in the relevant segment of civil society, it would also lose (in a relative short time) the entitlement for financing of its activity by state funds. In contrast, neither can a party system in which the maximum possible amount of financial resources of political parties comes from membership contributions be considered an a priori "ideal," because it is empirically documentable that such a system leads to disproportionate enlargement of the importance of membership in political parties, including in those segments of society that should remain apolitical.

58. Thus, in its constitutional law review of the contested legislation, the Constitutional Court will not focus on the question of whether the existing model for financing political parties shows serious defects (because such an indication can always be expected to some degree, as it is apparently immanent to these systems), but will only evaluate whether these defects individually or in the aggregate cause sufficiently serious interference in the free competition of political parties that – from a long-term point of view – they endanger the very essence of Art. 5 of the Constitution and Art. 22 of the Charter.

59. A key role in this evaluation is the understanding of the importance and role of what are called small or non-parliamentary parties. The Constitutional Court starts with the assumption that this designation represents a time-based attribute of each political party (if Art. 5 of the Constitution in connection with Art. 20 par. 4 of the Charter is to be met), that is – in other words – that every political party that is designated as non-parliamentary before any elections, or before any elections to the Chamber of Deputies, has (must have) the opportunity to gain parliamentary representation if it has the necessary electoral support, and likewise every heretofore parliamentary party may (must) lose this status in a relative short time if it no longer represents the interests of a relevant part of the electorate. The system of political parties in a democratic law-based state is a dynamic system, which also applies to its individual participants, i.e. political parties. Thus, although it cannot be overlooked that if a system of financing of political parties is adopted (modified) the political parties, through their members represented in Parliament, are making a decision "in their own case," which is why the given system in the submitted petition must be reviewed with maximum care in this regard, at the same time it must not be forgotten that although the legislature is "biased," in this regard, the members of Parliament, at the moment when they adopt the legislation, are setting rules only pro futuro, i.e. they are in fact setting rules for a situation (determined by the future results of elections) the substantive contours of which they are not able to anticipate

precisely, and thus at the time when they adopt that legislation they are deciding – cum grano salis – under a certain "veil of unawareness"; none of the actors (again, on the assumption that Art. 5 of the Constitution in connection with Art. 20 par. 4 of the Charter is not violated) can have any certainty that his electoral gain (the percentage of votes and mandates gained) will be at least the same as in the previous electoral period.

60. For the reasons laid out, the Constitutional Court, in reviewing the justification of the present petition, does not consider material the question of whether the existing model of financing political parties is discriminatory to "smaller" or non-parliamentary parties, because a certain degree of inequality between these political parties and parliamentary parties is inherent in every party system. It considers material only the question of whether the existing system of financing damages certain political parties (without other attributes) so much that it de facto makes it impossible for them to represent appropriately (ideally in the Parliament) the interests of that non-marginal part of society which that party was created, and exists, to protect and defend. In this connection, the Constitutional Court starts with the premise that every political party was – from a long-term perspective – established so that its members would be elected to norm-creating public bodies (see the words "in formation of legislative assemblies, bodies of higher self-governing territorial units and local self-governing authorities" in § 1 par. 1 of Act no. 424/1991 Coll.); a contrario, therefore, one must apply the (refutable) presumption that a political party which is unable to gain the relevant representation in these bodies long-term, either is not striving for such representation, due to which it lacks the material element of a political party (in terms of classification it is then more a certain association of interests), or is striving for it unsuccessfully, and in evaluating the constitutionality of the model of financing political parties such political parties must be considered irrelevant, in the sense that their inability to cross a certain minimum threshold cannot indicate a violation of the principle of free competition political parties. Within these deliberations, the Constitutional Court starts with the (also certainly refutable ad hoc) presumption that in every pluralistic system of political parties there is only a limited number of meaningful dividing (conflicting) lines (the occurrence of which, theoretically, leads to the formation of individual political parties),and therefore it is appropriate to start with the following set of assumptions: A political party that represents a relevant interest arising from one of the meaningful conflicting lines must have a long-term possibility of gaining parliamentary representation, and at the same time, a political party that is not able, long-term to gain parliamentary representation either does not represent an interest arising from a relevant dividing line, or it does pursue such an interest, but the same or similar interest is already represented by another party (or parties) represented in Parliament. In the case of the last two types of political parties, in the Constitutional Court's opinion, (again purely through the prism of the question of the constitutionality of the current legislation for financing political parties) it is an appropriate (refutable) presumption that the existence of thus-defined (classified) political parties need not be taken into account, because their inability to cross the minimum statutory threshold is not in and of itself material for constitutional law review, precisely because their long-term lack of success evidently has its origin in the natural character of political party competition, not in the settings of a model of financing political parties. In other words, the existence of these types of political parties is not the consequence of the legislation, but is the consequence of citizens' (voters') lack of interest in their program and candidates.

61. The Constitutional Court thus evaluated the contested legislation from the viewpoints set out, wherefore, as regards the four individual areas of the contested legislation, it is appropriate to state the following.

A. The three-percent threshold of votes for entitlement to a regular contribution and the level of the contribution per mandate of a deputy or senator in the amount of CZK 900,000

62. The petitioner finds the threshold for entitlement to a regular contribution at the level of 3 % of votes in elections to the Chamber of Deputies and the level of a contribution per mandate of a deputy or senator in the amount of CZK 900,000 inconsistent with Art. 5 of the Constitution, Art. 22 of the Charter and Art. 20 par. 4 of the Charter.

63. As regards the regular contribution, the Constitutional Court already considered the same (constitutional) legal issue in judgment file no. Pl. ÚS 10/03 of 19 January 2005 (N 9/36 SbNU 85; 86/2005 Coll.), in which (among other things) it denied a petition seeking the annulment of § 20 par. 4 (as of 1 January 2017 identified as § 20 par. 3) and § 20 par. 6 of Act no. 424/1991 Coll., establishing a threshold of 3 % of votes for entitlement to the contribution and its amount. Nonetheless, the Constitutional Court states that, although the question of constitutionality of the three percent threshold of votes was the subject of a matter about which the Constitutional Court has already decided in a judgment, in this matter there is no "impediment of res judicata" making the petition impermissible in that scope (§ 35 par. 1 of the Act on the Constitutional Court). The Constitutional Court believes that, in the period since judgment file no. Pl. ÚS 10/03 there have been both considerable social changes [cf. the judgment of 24 January 2001 file no. Pl. ÚS 42/2000 (N 16/21 SbNU 113; 64/2001 Coll.), part VI.2, and the judgment of 5 December 2001 file no. Pl. ÚS 9/01 (N 192/24 SbNU 419; 35/2002 Coll.), part V] characterized by a markedly dynamic development in the political (party) system, and other fundamental changes in the legislation for financing of political parties. It is also necessary to take into account the fact that judgment file no. Pl. ÚS 10/03 was issued on the basis of a petition submitted together with a constitutional complaint under § 74 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by Act no. 48/2002 Coll., [§ 64 par. 1 letter e), or then letter d) of that Act], whereas the present proceeding is an abstract review of constitutionality conducted at the petition submitted by a group of senators [§ 64 par. 1 letter b) of the Act on the Constitutional Court], which is concerned with evaluation of the joint effect of a number of statutory provisions regulating the financing of political parties. Thus, there is a relevant difference from judgment file no. Pl. ÚS 10/03, which, for procedural reasons, ruled on the merits solely on the legislation for a regular contribution (see verdict 2 in the judgment). Thus, in the adjudicated matter, the Constitutional Court must start with the conclusions adopted in judgment file no. Pl. ÚS 10/03, but it must simultaneously weigh whether those conclusions are still valid, that is, whether the actual functioning of political party competition does not cast doubt on certain conclusions adopted earlier within abstract or incidental review of constitutionality, or whether the de facto form and mechanisms of the existing party system do not confirm the claim of the petitioner, who seeks new evaluation of the constitutionality of the contested three percent threshold.

64. First we must quote from this judgment, which is key for the adjudicated matter, and recall the key conclusions that the Constitutional Court reached in the previous proceeding.

65. In judgment file no. Pl. ÚS 10/03 the petitioner ("SNK association of independents", which submitted the petition together with its constitutional complaint against failure to pay a regular contribution) regarding the claimed unconstitutionality of the 3% threshold for entitlement to the regular contribution, argued that the threshold for payment of a regular contribution discriminates against smaller political parties, and also considered

unconstitutional the fact that the entitlement to payment of a regular contribution is derived solely from the results of elections to the Chamber of Deputies, and not from elections to other representative bodies. Thus, substantively it argued similarly to the petitioner in the presently adjudicated matter.

66. The Constitutional Court denied the previous petition seeking annulment of the 3 % threshold of votes for payment of a regular contribution, because it accepted the different purpose of the individual kinds of contributions to political parties from the state budget; in that connection it stated: "The purpose of state financing of political parties is to support the equal opportunity to participate in a pluralistic political system. The individual forms of this financing pursue different aims, i.e., they support different activities of the parties. The aim of paying election expenses is to enable political parties that meet the condition of, 'the serious effort of the competing parties,' or 'the seriousness of the election aims of parties,' to participate in electoral competition. If the Constitutional Court, in judgment file no. Pl. ÚS 30/98, saw the limit of this 'seriousness' in a gain of 'around 1 %' of the total number of valid votes, the legislature, in the current legislation, set the threshold at the level of 1.5 %. The contribution per mandate mirrors the tasks of political parties that are connected with their activities in the field of legislation. The condition for providing it is election to the Chamber of Deputies or to the Senate (§ 20 par. 5 of Act no. 424/1991 Coll.), i.e., it affects only parliamentary political parties. The regular contribution is a form of financing both parliamentary and non-parliamentary political parties. For the stated reason, a condition for its constitutionality is that it ensures the openness of the pluralistic political system, therefore the threshold for providing it must be significantly lower than the level of the threshold of the proportional electoral system. The threshold of 3 % of valid votes gained in elections can be considered such a markedly lower limit, i.e. a threshold 40 % lower than the level of the electoral threshold. If the legislation for the regular contribution meets the constitutional requirement of guaranteeing the openness of the political system, then in view of the different function of the regular contribution for activities and payment of election expenses of political parties there is no reason for their levels to be equivalent."

67. In the cited judgment, the Constitutional Court simultaneously emphasized that it is not changing anything about the conclusions already stated in previous judgments: "If the free competition of political parties under equal conditions is not respected, and if there is an effort to create different conditions for large or larger parties and thus to directly or indirectly form political parties with a better or worse position, and thus also citizens with different conditions for their movements in the political system, such steps cannot be described as constitutional. It cannot be overlooked that a democratic society is characterized precisely by the free competition among political parties, whose activities in the administration of public affairs is derived from free choices made by voters. The Constitutional Court measured the maxim of equal standing of political parties, ensuring their free and fair competition, as well as the openness of the political system, using the value of the seriousness of political intentions of parties, 'measured' by their minimal representation (file no. Pl. ÚS 3/96, file no. Pl. ÚS 42/2000), as well as the using the purposes of individual forms of state financing of parties (file no. Pl. ÚS 53/2000)." The Constitutional Court considered the entitlement to a regular contribution, dependent on reaching the threshold of 3 % of votes in elections to the Chamber of Deputies, to correspond to the principle of openness of the political system in accordance with the principle of free competition.

68. The Constitutional Court finally justified its decision not to annul the threshold of 3% of votes by accentuating the fact that: "[l]owering the threshold for providing a regular

contribution for the activities of political parties under 3 % … not only does not solve the cited problem, but, on the contrary, expands the circle of addressees of this contribution, and in consequence means further growth in the state share of financing of political parties, i.e. movement in a direction with which the Constitutional Court did not agree in its previous case law. In addition to increasing the demands on the state budget, such a shift would contradict the principle of political parties being grounded in civil society, a principle that finds expression above all in the voluntary support of political parties on the part of citizens, on the basis of their deliberation and selection according to their alignment with parties' programs."

69. Under the cited judgment, the mechanism deriving an entitlement to the regular contribution (and the level of it) only from political parties' success in elections to the Chamber of Deputies would be unconstitutional only in the event of a complete absence of "a rational connection between the [given] legislation and the aim pursued." The judgment drew the connection from the nature of political parties in the Czech Republic and from the position of the Chamber of Deputies in the constitutional system: "Neither the constitutional order of the Czech Republic nor its legal order contain an explicit legal definition of a political party (political movement). A political party's constitutional nature, its legal subjectivity, and its purpose and aim must be drawn from the overall constitutional framework and general legislation governing parties. Political parties are a key subject in a democratic pluralistic political system; they have the function of representing pluralistic, differentiated interests. Their aim is achieving those interests through the means of a democratic constitutional system, i.e. by representation in representative bodies, especially in the Parliament, as well as in municipal and regional representative bodies … this indicates that the Czech constitutional and legal system does not recognize a special category of regional political parties; it connects their functioning with the formation of all representative bodies. In the Czech Republic's constitutional system, the two chambers of Parliament do not have the same powers and do not participate in the legislative process to the same extent, so they do not have a symmetrical status. Only the Chamber of Deputies creates the government and expresses lack of confidence in it; in the area of legislative power it has the final decision-making power as a rule. The Senate's position in relation to the Chamber of Deputies is that of a brake, a counterweight. Insofar as the legislation derives the entitlement to a regular contribution for activity from the results of elections to the Chamber of Deputies, it thereby mirrors a political party's actual position in the state's constitutional system, in particular the degree of its participation, or, with non-parliamentary parties, potential participation in the legislative power, as well as in the formation of the supreme body of the executive power – the government. Insofar as this legislation is not also derived from the results of elections to municipal or regional representative bodies, it then mirrors the conceptual characteristics of a political party (movement) in the sense of a of nationally relevant political subject, not only a regionally-relevant one." Thus, the Constitutional Court judged the connection of a regular contribution to the appropriate success in elections to the Chamber of Deputies to be constitutional, in view of the privileged, and in a number of aspects exclusive, position of this chamber of Parliament.

70. In view of the recognition of the constitutional acceptability of the three percent threshold for payment of a regular contribution, and its derivation only from elections to the Chamber of Deputies, the Constitutional Court denied the petition seeking annulment of the relevant statutory provisions.

71. The petitioner's key argument, whereby it de facto seeks a certain review of the conclusions stated in the cited judgment, is the claim that the contested legislation is too strict

and "does not permit new subjects to penetrate into the party system" (when it emphasizes that "the example of a party financed by a billionaire or founded by the former ministers of other parties cannot be taken as proof to the contrary"). At the same time, the petitioner expresses the belief that the incriminated three percent threshold for an entitlement to a regular contribution is disproportionately high, and in that regard adds that it would be appropriate to set the threshold at 2 %.

72. According to the petitioner, the unsustainability of the existing three percent threshold for entitlement to a regular contribution is evident in the example of those political parties whose success in elections is precisely around this 3% threshold. Using the example of the 2010 elections to the Chamber of deputies, the petitioner compares the electoral results of the Green Party (received 2.44 % of votes, state financing in the form of a contribution for election expenses in the amount of ca. CZK 12.8 million) and the party Sovereignty – the bloc of J. Bobošíková (received 3.67 % of votes, state financing in the form of a contribution for election expenses and a regular contribution in the amount of ca. CZK 49 million). This comparison shows that a party that received only 1.5 times the number of votes compared to another party received a contribution virtually four times higher. A similar situation was repeated in the 2013 elections to the Chamber of Deputies with the example of the Free Citizens Party (received 2.46 % of votes, amount ca. CZK 12.3), the Czech Pirate Party (received 2.66 % of votes, amount ca. CZK 13.2 million) and the Green Party (received 3.19 % of votes, amount CZK 41.5 million).

73. The Constitutional Court is not losing view of the fact that the entitlement to individual state contributions is conditioned on crossing the stated threshold, which, from the nature of the matter, means that the amount of the state financial support accorded always increases by jumps, precisely depending on crossing one of the three percentual thresholds. Thus, the present legislation de facto creates at least seven basic categories of political parties: a) a party that received ("electoral gains") at least 5 % of votes in elections to the Chamber of Parliament, which is entitled to a contribution per mandate, to a regular contribution, and to a contribution for election expenses; b) a party with electoral gains of 3 % and higher, but not reaching the entry threshold of 5 %, which – if its candidates did not success in any other kind of election – is entitled to a regular contribution and a contribution for election expenses; c) a similarly defined party which, however, produced at least one senator, regional representative or European Parliament representative, d) a party with electoral gains of 1.5 % and higher, but not reaching 3 %, which – if its candidates did not success in any other kind of election – is entitled only to a contribution for election expenses; e) a similarly defined party as in the previous alternative, which, however, also produced at least one senator, regional representative or European Parliament representative, f) a party with electoral gains lower than 1.5 %, which is presumed to lack serious intent in the electoral competition, and which therefore is not entitled to any financial support from the state, and finally g) the last defined party which, however, also produced at least one senator, regional representative or European Parliament representative. Unlike the petitioner, the Constitutional Court does not conclude the existence of any a priori constitutional defects from the indicated consequences of the contested legislation, even with the reservation that there are variations on the existing system that would remove the jumps in the amount of state support accorded or at least greatly eliminate them. In the Constitutional Court's opinion, the fact that the existing financing model creates these seven theoretical groups of political parties has the necessary justification. Political parties that do not exceed the threshold of 1.5 % are irrelevant in terms of the state financing of political parties (see above), which the petitioner also does not question [in this regard it is appropriate to recall that in elections to the Senate the legislature

presumes insufficiently serious will in a candidate who did not receive at least 6 % of votes – see § 61 par. 2 letter e) of the Elections Act]. At the same time, the petitioner (in the petition's proposed verdict) does not question the fact that there is a legitimate reason to differentiate between political parties that achieve representation in the Chamber of Deputies and those that do not have sufficient electoral support to "enter" the Chamber of Deputies; it only questions the internal (and in its opinion, unjustifiably discriminatory) differentiation of political parties that did cross the threshold of 1.5 % of valid votes in elections, but did not achieve representation in the Chamber of Deputies. Nonetheless, in the Constitutional Court's opinion, in this regard the conclusions stated in judgment file no. Pl. ÚS 10/03 are still valid, so it suffices to refer to them in full.

74. In the Constitutional Court's opinion, for the reasons discussed below the existing form, which differentiates two groups of non-parliamentary political parties using the criterion of their degree of success in elections to the Chamber of Deputies, despite all its imperfections, still offers (and guarantees) conditions that are essential both for appropriate support of the authenticity of individual citizens' political expression and for maintaining the necessary degree of connection between the civil society and political parties. That is – in other words – it still creates conditions for healthy competition among parliamentary and non-parliamentary political parties, as well as healthy competition among existing and newly arising non-parliamentary parties, which can rightly be considered an essential requirement for preserving open political debate in which majority and minority opinions and themes conflict, that is, open political discussion, the existence of which is a central requirement for the key principle of every democratic law-based state, temporary government (see Art. 21 par. 2 of the Charter).

75. In the Constitutional Court's opinion, the key argument against the petitioner's claim that the contested legislation "does not permit the penetration of new subjects into the party system" consists of empirical facts, namely, first of all, the result of elections to the Chamber of Deputies held on the 20th and 21st of October 2017. Without going into unnecessary details, it is enough to recall that a) the highest number of political parties since the creation of the Czech Republic "qualified" for the Chamber of Deputies, b) three of these nine political parties were not (at least in their existing formal form) represented in the Chamber of Deputies in the previous electoral period, c) over 60 % of mandates were gained by parties that were not represented in the Chamber of deputies before the elections in 2013, and, what is most important, d) precisely these last-defined political parties did not exist at all just ten years ago. On the margin of the argument that the contested legislation favors "large" parties, it is appropriate to recall that the sum of votes for the two political parties that always received the highest number of votes from 1996 to 2010 (and in 2006 that sum reached 67.7 % of all votes cast) was only about 18.6 % of all votes in the last elections to the Chamber of Deputies. Thus, the suggested volatility of voter preferences to the benefit of new (unestablished) parties and to the detriment of "large" and established parties represents an indisputable argument (or evidence, though contextually still only in the sense of correlation, not causality) that the existing system of political parties (maybe even despite the contested legislation) is a sufficiently open system, which guarantees the realization of the maxim contained in Art. 5 of the Constitution and Art. 22 of the Charter.

76. For clarity it is appropriate to recall the development of electoral support for the Czech Pirate Party. This political party was created in the summer of 2009, received 0.8 % of votes in elections to the Chamber of Deputies in 2010, jointly nominated a successful candidate in elections to the Senate in 2012, received 2.66 % of votes in elections to the Chamber of

Deputies in the fall of 2013, received 4.78 % of votes in elections to the European Parliament in the spring of 2014, and in the subsequent municipal elections held in the fall of 2014 it received (among other things) four mandates in the City Council of the Capital city of Prague. The gradual and steady increase in its electoral support resulted in it receiving 10.79 % of votes in elections to the Chamber of deputies in October 2017.

77. Using the example of the Czech Pirate Party (and in comparison with other political subjects in a similar position), one can also illustratively demonstrate the fact that not crossing the three percent threshold (while crossing the 1.5% threshold) does not necessarily mean that a political party has a (unconstitutionally) unfavorable position. While this party received 2.66 % of votes in elections to the Chamber of Deputies in 2013, whereby it was entitled to a contribution for election expenses, and (apparently also with the help of this state support) it increased its gains in all subsequent elections, in elections to the Chamber of Deputies in 2010 the political party Sovereignty – the bloc of J. Bobošíková received 3,67 % votes, but its de facto successor (HEADS UP – Electoral Bloc) received only 0.42 % of votes in the following elections, and thus lost any entitlement whatsoever to state support; similarly, the Green Party, represented in the Chamber of Deputies (and in the government) in the electoral period 2006 to 2010, received 3.19 % of votes in elections to the Chamber of Deputies in 2013, but in the subsequent elections to the Chamber of Deputies it did not even cross the threshold of 1.5 %.

78. The petitioner's claim that the party system is closed to new political subjects as a result of the contested legislation also does not correspond to the clear trend that can be seen in the present decade, marked by the steadily growing number of political parties represented in the Chamber of Deputies, or those that receive a regular contribution: in the elections held in 2006 and 2010, 5 parties achieved representation in the Chamber of Deputies, in 2013 it was 7 parties, and in 2017, as already stated, 9; in 2006 five parties became entitled to a regular contribution, in 2010 and 2013 eight parties, and in 2017 nine parties.

79. Thus, as much as it might be appropriate to agree with the petitioner on a purely abstract level that the contested legislation (impermissibly) gives precedence to established parliamentary parties at the expense of the remaining political parties, the empirical data fully refute its arguments. It is evident that failure to cross the three percent threshold criticized by the petitioner does not make it impossible for a political party that only approaches the threshold to successfully cross (not only) that threshold in subsequent parliamentary elections, and at the same time that crossing the three percent threshold, and therefore reaching the entitlement to a regular contribution, does not guarantee any political party "protection" from subsequent (electoral) decline into the group of fully irrelevant political subjects.

80. It is also true that for reasons already analyzed in judgment file no. Pl. ÚS 10/03 the legislature legitimately derives the level of the entitlement to state contributions primarily from the results of elections to the Chamber of Deputies, because only these elections fall in the category of what are known as first-order elections, which is, among other things, also reflected in electoral participation which (if we set aside the unique nature of the election of the president of the republic) considerable exceeds electoral participation in the remaining types of elections; moreover, the legislature suitably supplements this model by rewarding (in reasonable proportion to the results of elections to the Chamber of Deputies), not only the successful nomination of a candidate for senator, but also takes into account the acquisition of mandates in elections to regional representative bodies and to the European Parliament.

81. As regards the question of a deputy or senator mandate under § 20 par. 7 of Act no. 424/1991 Coll., the Constitutional Court already considered the analogous question of the constitutional amount (then CZK 1,000,000 per calendar year) in judgment file no. Pl. ÚS 53/2000 of 27 February 2001 (N 36/21 SbNU 313; 98/2001 Coll.). In addition, it also reviewed the constitutionality of the then second sentence in § 20 par. 4 of the same Act, under which a party that became entitled to a regular contribution in one election to the Chamber of Deputies would lose that entitlement in subsequent elections, even though, like the last time, it reached the required minimum threshold of 3 % of votes, if in those subsequent elections it did not receive even one mandate in the Chamber of Deputies.

82. In the present petition, the petitioner also contests part of § 20 par. 7 of Act no. 424/1991 Coll., specifically the words "per mandate for a deputy or senator is CZK 900,000 per year", but does not present any extensive arguments as to why this part of the statutory provision should be unconstitutional; it only presents a model calculation demonstrating the noticeable difference in the total amount of state support received – precisely because the amount is set this way – on the one hand, by a political subject that only barely crosses the five percent threshold in elections to the Chamber of Deputies, and, on the other hand, a political subject whose electoral result is only one percent less, i.e. it will receive four percent of votes cast. If the Constitutional Court sets aside its previously stated premises, that it is appropriate to distinguish, in terms of state financial support, parliamentary parties that – at a given time – fulfill the fundamental functions on which the existing model of representative democracy is based, from non-parliamentary parties, with special emphasis on the result of elections to the Chamber of Deputies (from which the composition of the government is indirectly derived), it is necessary to point out two facts that the petitioner has apparently overlooked.

83. First, one cannot lose sight of the fact that the contested amount of the annual contribution per mandate for a deputy or senator was inserted into Act no. 424/1991 Coll. by Act no. 170/2001 Coll. (by which the legislature responded to the previous derogative Constitutional Court judgment file no. Pl. ÚS 53/2000); from May 2001 until the end of 2010 (when, as a result of the economic recession the legislature reduced the amount of the annual contribution per mandate for a member of Parliament to CZK 855,000) and then again from January 2017, that is over a time of more than sixteen years, this contribution is still at the same amount (if not temporarily at a reduced amount), or during this period there was no increase in the state contribution. The amount disputed by the petitioner must be placed in a wider economic context, for which – as regards a state contribution – the amount of total income and expenses of the state budget is relevant: whereas in 2001 the total income of the state budget was set at CZK 636,197,400,000 and its total expenses at CZK 685,177,300,000 (§ 1 of Act no. 491/2000 Coll., on the State Budget of the Czech Republic for the Year 2001), in 2017 this total income is to be CZK 1,249,272,037,180 and total expenses CZK 1,309,272,037,180 (§ 1 of Act no. 457/2016 Coll., on the State Budget of the Czech Republic for the Year 2017). A similar picture is provided by the amount of the average gross monthly nominal wage (the "average wage") in the national economy – according to data from the Czech Statistical Office the average wage in 2001 was CZK 14,793, in the 1st to 3rd quarter of 2017, during the time of the proceeding on the submitted petition, the average wage reached CZK 28,761. It is thus evident that in the period in question the total income and expenses of the state budget as well as the average wage doubled, but the amount of the contribution per mandate of a deputy or senator remained nominally the same, which means that during this time it was in fact substantially reduced. Therefore, if the petitioner generally sees the contested legislation as unconstitutional due to giving an impermissible advantage to parliamentary parties at the

expenses of non-parliamentary parties, from the point of view indicated, one can state that the value of this state contribution – via facti – is gradually decreasing.

84. Second, it is necessary to recall the fact that in the given statutory provision the legislature rewards not only every deputy or senator mandate, but also every mandate for a member of regional representative body and the City Council of the Capital City of Prague, with an amount of CZK 250,000 per year, which the petitioner does not contest in any way. This fact must be placed in the appropriate context. In the case of the part of the statutory provision contested by the petitioner, the total amount allocated is CZK 252,900,000 per year (that is, 281 deputies and senators multiplied by CZK 900,000); based on the remaining (uncontested) part of this provision the allocated amount is only somewhat smaller, specifically CZK 185,000,000 per year (a total of 675 regional representatives + 65 representatives of the Capital City of Prague multiplied by CZK 250,000). In addition, it must be recalled that a much lower number of votes cast is sufficient to obtain a mandate in elections to regional representative bodies and the City Council of the Capital City of Prague than in the case of a mandate for one elected deputy. Thus, if the petitioner (implicitly) considers the state contribution of CZK 250,000 per mandate of a regional representative or member of the City Council of the Capital City of Prague to be constitutional, from constitutional law positions neither can anything be criticized from that point of view about the contribution of CZK 900,000 per year per mandate of a deputy or senator.

85. Likewise, therefore, in the case of the disputed amount of the state contribution to political parties derived from the number of deputies and senators elected from their candidate lists, the Constitutional Court does not find any constitutional law shortcomings that would lead to annulment of the contested legislation.

B. Limiting the total amount of gifts to a political party from one and the same person in a calendar year to CZK 3,000,000

86. The petitioner proposes annulment of the entire provision of § 18 par. 2 of Act no. 424/1991 Coll., which, apart from the prohibition on accepting gifts from one and the same person in a calendar year above the total amount of CZK 3,000,000 also provides that a legal person that is a controlling or controlled person in relation to the person in question is also considered to be one and the same person, and further, a membership contribution by a member of a political party in an amount above CZK 50,000 is also considered to be a gift.

87. In the petitioner's opinion, it is legitimate to limit the influence of donors on political parties, including by setting an outside limit on their gifts. However, it considers the effect of this prohibition on gifts provided mutually between political parties to be unconstitutional, because it limits their financial cooperation as one of the varieties of cooperation between them. In its opinion, this is impermissible interference in the free competition of political parties under Art. 5 of the Constitution, which is also indirect discrimination against "smaller" political parties in conflict with Art. 3 par. 1 of the Charter.

88. The Constitutional Court's task in an abstract review of constitutionality is to review the harmony of the contested provision with the constitutional order as a whole; therefore, the Constitutional Court will first review the constitutionality of the contested provision on a general level and then specifically in relation to the limitation on the amount of gifts provided by political parties mutually to each other.

89. Setting a limit on the total amount of gifts is primarily capable of interfering in the free competition among political parties and forces under Art. 5 of the Constitution and Art. 22 of the Charter, in the sense that it limits the scope of financial support that political parties could receive from their sympathizers without such a limitation. It also interferes in the right to freedom of expression (expressing an opinion "in another manner") of donors willing to financially support a political party with an amount over CZK 3,000,000, protected by Art. 17 par. 1 and 2 of the Charter. Like free competition among political parties, so freedom of expression belongs to the fundamental protected principles, and therefore it is necessary (possible) to justify interference with them on the basis of a legitimate aim and the proportionality of means for achieving it.

90. The background report does not say much about the aim of the limitation in question, as it only states: "The limit for providing a gift to a party or movement is proposed in comparison with foreign legislation more at the upper limit. In doing so, the control relationship between legal persons is taken into account."

91. The various motives leading to the provision of gifts to a political party are relevant in seeking possible aims for the legislation. According to the professional literature, there are typically three kinds of motives for private giving: "a) ideological or idealistic, which expresses the donor's real intent to support a political party or candidate that is close to it in values (ideologically), and thus increase its/his chances of success; b) ensuring the social status, access to positions, and other personal advantages for the donor with an office holder or a political party (e.g. ensuring a member-donor's rise in the hierarchical structure inside a party or on a candidate list); c) ensuring material advantages or influence, known as quid pro quo corruption, the formation of client connections between private subjects and political representatives, and so on." (KYSELA, J., KOKEŠ, M. Zákon o sdružování v politických stranách a politických hnutích – Komentář. [The Act on Association in Political Parties and Political Movements – Commentary.] Prague: Wolters Kluwer, 2017, p. 115).

92. Through the prism of the last cited alternative, the main reason for introducing maximum financial limits for gifts is often said to be the legislature's effort to minimize the risk of corruption that is connected with the donor's possible expectation of a counter-service for the gift provided, and with the concern that the amount of the gift proportionately strengthens that expectation or the political party's readiness to grant it. Another reason is the effort to protect the free (open) and equal competition of political forces from deviations caused by the fact that certain subjects, with financially strong donors behind them, would have a considerably greater opportunity to influence the nature of political debate and political competition as a whole. The Constitutional Court considers both of these reasons (which, in relation to freedom of expression, could be subordinated under limitation on the grounds of protecting "the rights and freedoms of others" in Art. 17 par. 4 of the Charter) to be legitimate, and likewise finds the manner of establishing a financial ceiling to be a suitable means for achieving them, because they create a certain imaginary limit on dangerous expectations, or deviations in the context of a principally equal political competition.

93. The criterion of the necessity of a given means requires comparing the selected limitation of the amount of CZK 3,000,000 per one donor and one calendar year with other available means that would equally effectively achieve the legitimate aims and interfere less in the protected constitutional principles of the free competition of political parties and freedom of expression. Enshrining the prohibition on accepting gifts above a certain total amount from one person is at present a usual element in the regulation of financing of political parties in

the world, although some states do not apply this limitation (e.g. Austria or Germany), or apply (i) other limitations [e.g. the prohibition on accepting gifts from legal persons in France, Belgium, or Greece, from specific legal persons such as, for example, churches or charitable organizations in Germany, the possibility of accepting gifts only for specific purposes, like, for example, for purposes of an election campaign in France, setting a total permitted volume of gifts for one political party, like, for example, in Portugal, etc.; information from a study by the Parliamentary Institute, DRAHORÁD, V., NĚMEC, J., PECHÁČEK, Š. Regulation of Financing Political Parties and Election Campaigns in Selected States of the European Union. Study no. 1,187 [Úprava financování politických stran a volebních kampaní ve vybraných státech Evropské unie. Studie č. 1.187]. (available at https://www.psp.cz/sqw/text/orig2.sqw?idd=20552) and from a study by Transparency International, KLIMEŠOVÁ, M., BUREŠ, R., BOUDA, P. Financování politických stran v České republice a potřebné změny regulace. [Financing Political parties in the Czech Republic and Necessary Changes in Regulation] (available at https://www.transparency.cz/wp-content/uploads/financovani_politickych_stran_-_analyza_ eps_tic_a_sou.pdf.pdf)]. In this regard the Czech legislation does not seem strict vis-à-vis political parties, as documented by, for example, the results of the comparison in the second study (p. 36 and 37), which show not only variation in terms of whether a financial limit is set on gifts in the state, but also considerable variation in the amount of the limit. Therefore, the Constitutional Court accepts a considerable degree of discretion for the legislature in this question as well, because the degree of limitation on gifts does not represent a fundamental limitation on the free competition of political parties, because it still leaves them a wide opportunity to address a large group of subjects with a request for proportional financial support. Moreover, the provision under review also is not disproportionate interference in the freedom of expression of donors, as it basically does not limit their circle, but only – for legitimate reasons – sets the maximum financial amount of this support, without at the same time limiting other support, through which one can also exercise freedom of expression (volunteering, publishing support officially "joining" a political party, etc.). For these reasons, in this question of regulating the financing of political parties from private sources, one can accept the approach of the legislature, which selected the alternative of direct limitation of a political party and a donor by setting the maximum amount of gifts, and not the alternative of only increased review of such financing through the form of strengthened record-keeping. Therefore, the Constitutional Court concludes that the legislature, by setting the limit in question, did not exceed the bounds of its discretion, because all parts of the contested provision stood up to the test of proportionality.

94. For completeness it is appropriate to briefly address the petitioner's claim that the contested provision causes indirect discrimination against "smaller" political parties. Regarding this claim, the Constitutional Court states that political parties can mutually cooperate with other political parties by providing gifts, which can be a legitimate means of functioning in an environment in which "smaller" (e.g. regional) political parties have more complicated access to the Chamber of Deputies as a result of the need to cross the statewide threshold, while at the same time creating formal coalition cooperation between political parties comes up against a distinct disadvantage in the strictly set threshold for entry into the Chamber of Deputies, which is not standard in settled democracies. This disadvantage has a demotivating influence on possible formal coalition cooperation, and thus it is understandable if smaller political parties, in particular, seek other forms of cooperation, which could also be connected with financial support (e.g. the members of one political parties running on the candidate lists of another political party that is more likely to cross the 5% threshold in elections to the Chamber of Deputies). In this situation, the legislature could thus seriously

consider reevaluating the applicability of the limitation to gifts provided mutually between political parties. Nonetheless, the amount of CZK 3,000,000 does not seem to the Constitutional Court to be so low and (already) impermissibly limiting financial support of another political party that it would have to annul the contested provision for that reason within the abstract review of constitutionality.

C. Narrowing the circle of subjects with which political parties are entitled to conclude a contract on the provision of loans and credit only to banks registered in the territory of the Czech Republic

95. The subject matter of the contested § 17 par. 8 letter i) of Act no. 424/1991 Coll. is narrowing the circle of subjects with which political parties are entitled to conclude a contract on the provision of loans and credit only to banks registered in the territory of the Czech Republic. The petitioner finds that limitation to be unconstitutional in four aspects. It claims indirect discrimination against economically weaker political parties inconsistent with Art. 3 par. 1 of the Charter, as well as conflict with the principle of open competition of political parties under Art. 5 of the Constitution and conflict with Art. 21 of the Charter, and it independently argues that there is violation of the principle of proportionality.

96. It is generally true that the public authority may not set conditions that would create unjustified barriers for certain political parties, for their establishment and their competitive functioning in the free competition among political parties. Thus, any limitation is constitutionally permissible only if it pursues a legitimate aim, is a suitable instrument for achieving that aim, is necessary, and at the same time does not limit the given principle beyond a degree that is proportionate to achieving the desired legitimate aim. The contested limitation of the circle of permissible providers of credit was inserted into the bill of the Act by adopting an amending proposal; therefore the justification of the aim of the legislative change is missing in the background report for the government bill. Therefore, we can start with the justification of the sponsor of the amending proposal, Deputy Martin Plíšek, whose statement emphasized the need for "greater transparency in the financing of political parties." According to the sponsor, as regards the circle of possible providers these are "trustworthy subjects and there are clear, legible rules for providing credit to political parties. On the contrary, this proposal would … rule out the possibility of financing a political party with the aid of credit provided by various anonymous natural or legal persons, whom political parties may then be obligated to after the elections" (http://www.psp.cz/eknih/2013ps/stenprot/047schuz/s047193.htm). It is appropriate to state that increasing the transparency of financing political parties was a stated general aim of the government bill, as documented by its background report, which the government refers to in its statement regarding this petition, where it says, among other things, that "[t]he proposed legislation should ensure a higher degree of transparency in the financing of political parties and political movements, especially in the context of their financial and material support by third persons, and a higher degree of review of the business management of parties and movements, supplemented with a more effective penalty system." The Constitutional Court considers strengthening the transparency of financing political parties to be a legitimate aim, in both potential senses attributed to it by the sponsor. Thus, it is legitimate both in the sense of ensuring formal transparency of the relevant relationships between a political party and a provider, and in the sense of minimizing relationships of inappropriate dependence between a party and a provider, which arises from emphasizing the trustworthiness of the selected providers.

97. The Constitutional Court also believes that in the case of the contested institution of limiting the circle of subjects with which political parties are authorized to conclude contracts on the provision of loans and credit, the intervention is suitable, that is, that the means chosen is, for the reasons stated below, capable of meeting the requirement of the aim pursued in the form of increased transparency in the financing of political parties.

98. Insofar as the petitioner sees the contested provision as inconsistent with the principle of the free competition of political parties and political forces under Art. 5 of the Constitution and Art. 22 of the Charter, it must be emphasized, first of all, that it has apparently overlooked the difference between credit (or a loan) and a subsidy (state contribution). Providing a (factual) credit is always based on the debtor's creditworthiness. Therefore, elementary economic laws lead to the fact that an economically weaker subject has a smaller chance of obtaining credit than a subject that already has some more extensive property, and – naturally – vice versa. It is also true that the economic deliberation of a responsible creditor is basically the same, regardless of the kind of debtor, because the primary interest of every reasonable creditor is the full rate of return of the credit (or loan). The guarantee of free political competition in Art. 5 of the Constitution necessarily does not mean that a statute should even out the inherent inequality of debtors, it merely may not unjustifiably and disproportionately deepen it, which the existing legislation does not do, as it applies to all political parties in the same degree. Moreover, there is no reason to petrify legislation that would leave it up to each political party's choice from whom to seek credit precisely based on the alignment of its probable interests with the politics of the given party. These interests may be various, and with banks they can at least be considered predictable and relatively transparent. It is undoubtedly precisely the area of legal regulation of the bank sector with which the legislature justifiably connects its effort to suppress, as much as possible, adverse consequences of the phenomenon known as laundering dirty money, i.e. legalizing revenues from criminal activity. After all, this prism too must be used (inter alia) to view § 38 par. 3 letter k) of Act no. 21/1992 Coll., on Banks, inserted into the statute by Act no. 302/2016 Coll., according to which a bank shall, for purposes of supervision, submit a report to the Office for Economic Supervision of Political Parties and Political Movements about matters concerning a client that are subject to bank secrecy, without the client's consent. Thus, the contested provision can be considered as one of the means for realizing not only the appropriate domestic (or European) legislation, but also the international obligations of the Czech Republic.

99. The Constitutional Court does not consider appropriate the concern that only political parties that, as the saying goes, "dance to their tune" will get credit from banks. Experience thus far does not indicate that, for example, political parties seeking greater regulation of the banking sector, or even special taxation of it, would not receive bank credit, even though they are parliamentary parties. With non-parliamentary parties the possibility of receiving credit in exchange for supporting a bank's interests is all the more questionable. Moreover, a situation where a debtor is obligated– ex contractu – to pay to its creditor, or a situation where a credit applicant has to meet conditions proving its ability to duly repay the credit, cannot be considered impermissible dependence of political parties on credit providers. Impermissible (or inappropriate) dependence would be (only) a situation where the conditions for providing credit would be independent from the business economic situation [in that case, however, it would be possible to indicate discriminatory conduct by the credit provider under § 1 par. 1 of Act no. 198/2009 Coll., on Equal Treatment and on Legal means of Protection from Discrimination and Amending Certain Acts (the Anti-discrimination Act)]. Prevention of such conduct by creditors is achieved by the contested legislation at least in the sense that the

banking sector is subject to supervision and that creditors from that sector have the provision of credit as their subject matter of business; thus, it is in the interest of their successful business activity to observe the necessary fundamental principles of professional ethics, which, in contrast, need not in any way be observed by creditors who provide credit quite randomly, or even secretly, that is not as a service subject to strict quality control.

100. In the Constitutional Court's opinion, it is not a constitutional law defect if the legislature, while pursuing a legitimate aim in the form of increasing the transparency of the financing of political parties, does not in any way take into account the interests of "smaller" political parties in the sense that, among subjects for whom the contested legislation rules out the possibility of providing credit to a political party, economically weaker political parties would have special chances to obtain credit disproportionate to their economic standing. Such a situation would quite obviously open numerous opportunities for speculative conduct by creditors, where there would be a real danger of disproportionate dependence by the debtors. Therefore, under the proportionality test, the contested legislation must be evaluated not only as suitable, because it protects political competition from disproportionate dependence of political parties on subjects that are not professional credit institutions, and thus can provide "credit" as a specially conditioned benefit, but also as necessary legislation, because the mere reporting of credit relationships by political parties cannot prevent the abovementioned undesirable conduct (it can only indicate it, which is not sufficient).

101. We can agree with the petitioner only that, as regards proportionality, the legislature could have taken into account whether it would not suffice – as in the case of gifts – to limit the amount of credit provided by non-bank subjects with some fixed amount. However, the Constitutional Court believes that in the case of credit provided by subjects other than banks, it is difficult to eliminate the risk that the political party receiving credit will get into a potentially dependent position in relation to the credit (or loan) provider, and the primary economic interest (only) in due repayment of the credit may not be the main interest controlling the credit provider's relationship with the credit-receiving political party. Whereas in the case of a gift, if the gift-receiving political party does not act in accordance with the donor's interests it is exposed "only" to the risk that the given donor will not give another gift in the future, in the case of credit, the credit-receiving political party is in the position of a sort of hostage until it repays the credit, and the credit provider, which may not be pursuing the primary economic interest in due repayment of the credit, may, for example, have a tendency to try to influence the political party's individual steps by promising that it will not (any longer) require payment of the outstanding part of the credit. That risk – as discussed above – can be more or less ruled out in the case of banks. On the other hand, however, from this point of view the contested legislation which, on the one hand, permits limited gift giving by any subject, on the other in a substantial manner limits the circle of possible credit providers, can therefore be considered coherent, internally consistent, and constitutional.

D. Political institutes and a contribution to support the activity of a political institute

102. Finally, the petitioner proposes annulment of the entire legislation of political institutes, including the regulation of the contribution to support the activity of a political institute, on the grounds of conflict with the principle of non-discrimination under Art. 3 par. 1 of the Charter and the principle of free competition of political parties under Art. 5 of the Constitution. In view of the fact that this is a relatively independent part of the petition, the Constitutional Court separated it for individual review, although the question of the contribution to support the activity of a political institute concerns an aspect of state financing

of political parties, and thus a question materially connected with the previous section concerning the regular contribution (and the contribution per mandate). The statutory regulation of the amount of the contribution to support the activity of a political institute is actually dependent on the amount of the contribution for activity to which a political party is entitled and which, under § 20 par. 1 letter a) of Act no. 424/1991 Coll., consists of the regular contribution and the contribution per mandate.

103. The background report to the bill of Act no. 302/2016 Coll. states the following regarding political institutes and state financial support of their activity: "[F]or the purpose of creating conditions for the establishment and long-term sustainable financing of institutions whose activity would strengthen the role of the political party system in society and thereby also the stability of the political system as a whole …, it is proposed the supplement the current legislation with the possibility of establishing or participating in the activity of a political institute – a publicly beneficial legal person whose role should be, in particular, as in a number of developed European democracies, educating the public in political thinking and procedure, improving the quality of public debate and political culture, support of democratic values and the law-based state, support of citizens' active participation in the election process, and, last but not least, broadening and solidifying the base of expertise of political parties." (p. 41 and 42 of the background report).

104. In the words of the then Minister for Human Rights and Equal Opportunity, Jiří Dienstbier, the inspiration for the formal introduction of political institutes was the German example of political foundations (or foundations related to political parties, Parteinahe Stiftungen, Parteistiftungen, politische Stiftungen), existing both on the federal and state level. Among the best know are the Friedrich-Ebert-Stiftung (FES) related to the SPD, the Konrad-Adenauer-Stiftung (KAS) related to the CDU and the Hanns-Seidel-Stiftung (HSS) related to the CSU. We must add that in Germany these institutions, functioning with some exceptions on the basis of § 55 et seq. of the German Civil Code, are financed on the federal level about 90 % by public funds through the relevant ministries. The management of state contributions is reviewed during the year by the Federal Administrative Office (Bundesverwaltungsamt) which, at the end of the year, also performs an annual inspection together with the Ministry of the Interior. However, no law has been passed yet to govern the financing of political foundations, which is subject to criticism especially by academics (e.g., GEERLINGS, J. Constitutional and Administrative Law Problems in the State Finanzing of Party-related Foundations. [Verfassungs- und- verwaltungsrechtliche Probleme bei der staatlichen Finanzierung parteinaher Stiftungen.] Berlin: Duncker & Humblot, 2003, and MERTEN, H. Party-related Foundations in Political Party Law. [Parteinahe Stiftungen im Parteienrecht.] Baden-Baden: Nomos Verlagsgesellschaft, 1999). In the past the German Federal Constitutional Court considered the question of whether state financing of political foundations is not a hidden form of financing political parties. Rejecting this in its judgment file no. 2 BvE 5/83 of 14 July 1986 [BVerfGe 73, 1] it found that state financing of political foundations is in the public interest, but that allocating public funds to support political education for foundations presumes legal and de fact independence of these institutions from political parties. In practice this means a requirement to maintain a strict distance from individual parties, or their mutual independence in organization and personnel. It is also required that there not be direct financial flows between a political party and the foundation related to it.

105. In the Czech Republic as well there are already institutions that are related to certain political parties and have, for example, the legal nature of an association or institute (e.g. the

Masaryk Democratic Academy [Masarykova demokratická akademie, z. s.], the Institute for Politics and Society [Institut pro politiku a společnost, z. s.], and the CEVRO Institut, z. ú.). However, in contrast to political institutes under Act no. 424/1991 Coll. these are institutions without state financing through a special contribution from the state budget. In contrast, under certain conditions political institutes are entitled to a state contribution – a contribution to support the activity of a political institute, which is one of the permitted revenues of political parties under § 17 par. 8 letter j) of Act no. 424/1991 Coll. Thus, under this provisions, legally this is income of a political party, not of a political institute, although the legislation is not completely clear in this regard – for example, under the Act it is a political institute that may not use a state contribution to finance the election campaign of a political party, otherwise it is liable for an offense.

106. The contested legislation provides that a political party may establish or be a member of one political institute, which, for purposes of Act no. 424/1991 Coll. means a legal person whose main activity is research, publication, educational or cultural activity in one of the areas listed in § 17 par. 4 letter a) to e), e.g. the development of democracy, the law-based state, pluralism, or the support of citizens' active participation in public life. The political institute must publish on the internet all the results of its activity in these areas, where their nature so permits (§ 17 par. 5).

107. The transparency of the business management of political institutes is regulated by the Act together with the obligations of political parties – like political parties, they are required to use for their activity only funds maintained in accounts at banks (and similar financial institutions) in the territory of the Czech Republic (with the exception of payments not exceeding CZK 5,000). Like political parties, they have a statutory obligation to keep separate accounts for various purposes and an account for purposes of contributions from the state budget, and must keep income from gifts and other in-kind contributions in a transparent account (§ 17a of Act no. 424/1991 Coll.). In contrast to political parties, however, political institutes are not subject to the financial limit on gifts or other in-kind contributions (§ 18 par. 2 of Act no. 424/1991 Coll. a contrario). The provision of § 17a par. 2 letter c) of Act no. 424/1991 Coll. indicates that political institutes may also finance election campaigns, but may not do so using a state contribution to support the activity of a political institute. If a political institute violates this obligation and finances an election campaign using a state contribution, it would commit an offence under § 19k par. 1 letter a) of Act no. 424/1991 Coll., which, under § 19k par. 2 of Act no. 424/1991 Coll., is subject to a fine of up to CZK 200,000. Under § 18 par. 1 letter g) of Act no. 424/1991 Coll., a political party may not accept gifts or other in-kind contributions from a political institute.

108. The Constitutional Court has not overlooked the fact that a contribution to support the activity of a political institute, which under the Act can be used only to cover expenses for the activity of a political institute is supposed to be provided only if a political institute is registered with publicly beneficial status; the sponsor (i.e., the government) connected registration with publicly beneficial status to a higher degree of public supervision of political institutes, but nonetheless by the adoption of Act no. 303/2017 Coll. the requirement of registration with publicly beneficial status was annulled even before the legislation governing a contribution to support the activity of a political institute went into effect. However, this fact does not in and of itself make political institutes (and public support of them) unconstitutional.

109. Under § 20 par. 5 of Act no. 424/1991 Coll., the entitlement to this contribution arises for a political party that is a founder or member of a political institute and had at least one deputy elected to the Chamber of Deputies in at least two of three successive electoral periods, including the current electoral period. The annual amount corresponds, under § 20 par. 8 of Act no. 424/1991 Coll., to an amount of 10 % of the total amount of contribution for activity to which the political party in question is entitled (i.e. the sum of the regular contribution and the contributions per mandate).

110. A political party's entitlement to a contribution to support the activity of a political institute could potentially be interference in the free competition of political parties and political forces under Art. 5 of the Constitution and Art. 22 of the Charter, if it unjustifiably gave a financial advantage to parties that receive it, compared to weaker parties. Although the state contribution is formally intended exclusive to support the activity of a political institute, it is via facti support for political opinions close to the political party that is its founder or member. As political competition is, first of all, a competition of political thinking (ideas), the state's decision about who will be entitled to a contribution, and thus whose political ideas can benefit from the contribution, is a certain form of intervention by the legislature in free political competition. Generally, state support provided to political institute can be considered legitimate in view of the abovementioned role that they are to fulfill according to the background report. At the same time, support through state contributions can also be considered a suitable means for this support, as it is capable of really making that role easier. Therefore, as regards the legislation for a political institute, the Constitutional Court respects the legislature's free discretion, but also recalls that the existence (and the relevant legislation) of political institutes may not impermissible interfere in the free competition of political parties beyond the necessary degree.

111. Nor can constitutional defects be seen in the statutory condition that a political party connected to a given political institute must achieve representation in the Chamber of Deputies in at least two of the three last elections, because that condition clearly expresses the legislature's legitimate requirement that public funds be used in this manner to support only those subjects that really represent consistently relevant political interests and ideas.

112. The legislation of political institutes itself does not at present appear to be clearly constitutionally problematic, although it is evident that the Czech legislation is not formally based on their personnel and organizational independence from political parties, as required by, e.g. the German Federal Constitutional Court for German political foundations (where, however, the degree of state support for political foundations is much more extensive). This is true despite the fact that by the adoption of Act no. 303/2017 Coll. the instrument for control through the test of public benefit fell away.

IX.
Summary

113. In conclusion, the Constitutional Court again emphasizes that it reached the above conclusions as the result of deliberations that included both conclusions reached in its previous judgments and empirical facts, as well as the (changed) context of the comprehensive legislation for financing political parties.

114. Although it may appear from the foregoing that the Constitutional Court unjustifiably paid less attention to the requirement stressed in previous judgments that political parties be

separate from the state, it is appropriate to emphasize that the Constitutional Court always kept this principle in view when evaluating the present petition. However, at the same time it had to give appropriate consideration to the fact that the Constitutional Court first stated the repeatedly cited conclusion in judgment file no. Pl. ÚS 26/94 in connection with the Supreme Auditing Office's ability to supervise the financing of political parties; as a similar power is entrusted to the Office for Economic Supervision of Political Parties and Political Movements, which the petitioner does not contest at all, the Constitutional Court must appropriately take into account the changed context of constitutional review, or the changed context of previously reached conclusions (the same applies to those conclusions that the Constitutional Court reached in connection with indications of the unconstitutionality of election deposits in relation to "smaller" political parties).

115. Despite this the Constitutional Court must emphasize that there is no loss of timeliness and urgency of the previously stated warning of a threat to the principle of separating political parties from the state under Art. 20 par. 4 of the Charter, which can occur in consequence of an overblown system of financing political parties, which professional literature has long pointed to (cf., e.g., KYSELA, J., KOKEŠ, M. Zákon o sdružování v politických stranách a politických hnutích – Komentář. [The Act on Association in Political Parties and Politcial Movements – Commentary.] Prague: Wolters Kluwer, 2017, pp. 162–163; WAGNEROVÁ, E., ŠIMÍČEK, V., LANGÁŠEK, T., POSPÍŠIL, I. and coll. Listina základních práv a svobod. Komentář. [Charter of Fundamental Rights and Freedoms. Commentary.] Prague: Wolters Kluwer, 2012, p. 490), pointing to the reduced motivation to seek contributions from members of political parties or from other supporters and in general at political parties distancing themselves from (other components of) civil society [ANTOŠ, M. Lék pro české politické strany? Peníze! [Medicine for Czech Political Parties? Money!] In: ŠIMÍČEK, V. (ed.). Financování politického života. Brno: [The Financing of Political Life.] Mezinárodní politologický ústav Masarykovy university [International Institute of Political Science of Masaryk University], 2015, p. 135 et seq.]. The annual reports of political parties show that, for example, revenues in the form of membership fees or private gifts are often only in the single digits of percent of the total revenue of a particular political party. This fact must, of course, be taken in context with the approach of the legislature, which, in the contested legislation, moved to more pronounced regulation of private financing of political parties, which can to some extent make their position more difficult compared to the past, when revenues from private sources were not subject to such regulation. Moreover, the amendment of Act no. 424/1991 Coll. enacted by Act no. 302/2016 Coll. imposed new obligations (or renewed old ones), some of which will increase their administrative burden and thus also their operating expenses (e.g., maintaining four separate accounts under § 17a par. 2 or accepting gifts or other in-kind contributions whose amount or usual value is over CZK 1,000 only based on a written contract under § 18 par. 5 of Act no. 424/1991 Coll.). State financing of political parties thus has an important role, to support political parties that demonstrate the seriousness of their part in the political system even under these more difficult conditions.

116. At the same time, of course, it is important for the state financing system to be set up so that it supports and does not disturb the free competition of political parties and political forces in accordance with Art. 5 of the Constitution and Art. 22 of the Charter and that it not systematically lead to supporting the dependence of political parties on contributions from the state budget. In other words, although the old Roman saying pecunia non olet is apparently still valid, and although the Constitutional Court has not overlooked the fact that (due to inflation) the amount of state support in past years has de facto declined considerably, the question is unavoidable whether excessively generous financial support from the state does

not rather cause harm to (some) political parties. The results of the last elections to the Chamber of Deputies nevertheless document that fears among some experts, that there is a "cartelization" of political parties have not materialized as yet. Nevertheless, however, the legislature should serious consider the question of whether it is not suitable to modify the present model of financing political parties so that, for example, it would condition the entitlement to a state contribution on a political party's proving that it has a certain minimal ability to also obtain part of its funding from its members or sympathizers. The Constitutional Court states this conclusion not only in the awareness that at the present time the willingness of citizens to join political parties is generally declining in democratic regimes, but also with awareness of the fact that no one can be forced to participate in the political life of a society. At the same time, however, long term one cannot overlook the fact that realistically meeting Art. 5 of the Constitution is inconceivable without a necessary degree of party participation, and it is the reasonable setting of a system of financing political parties that may (and should) proportionately contribute to achieving or at least maintaining it.

117. Thus, the Constitutional Court does not rule out the possibility that the contested legislation (for example, the substantial restriction of private law sources of financing) will cause the entire system of financing political parties to deviate outside the constitutional framework in future. Therefore, denying the petition does not mean definitive approval of the existing model, because – as stated above – the Constitutional Court will be able in future (if the prerequisite of a substantial change in circumstances is met) to review the constitutionality of the system of financing political parties again in response to a potential new petition.

118. For all the foregoing reasons, the Constitutional Court ruled as is stated in the verdict of this judgment. For completeness, the Constitutional Court states that the verdict of this judgment did not rule on the constitutionality of § 20 par. 6 of Act no. 424/1991 Coll., as amended, because the petitioner did not seek the annulment of that provision in the proposed verdict of its petition.

119. Finally, the Constitutional Court states that a majority of eight judges voted in favor of the petition to annul in § 17 par. 8 letter i) the words "provided by a bank, payment institution or electronic funds institution or a branch of a foreign bank, payment institution or electronic funds institution in the territory of the Czech Republic" and for the petition to annul § 20 par. 5, first sentence of Act no. 424/1991 Coll.; therefore, in that scope the abovementioned conclusions reflect the position only of a "relevant" minority, arising due to the failure to reach the nine votes necessary under § 13, second sentence, of Act no. 182/1993 Coll., on the Constitutional Court, as amended by Act no. 48/2002 Coll., to annul the contested provisions of the Act [cf. judgment of 15 May 1996, file no. Pl. ÚS 3/96 (N 39/5 SbNU 315; 161/1996 Coll.)].

Chairman of the Constitutional Court:
JUDr. Rychetský /signed/

Dissenting opinions to the decision of the plenum under § 14 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, were adopted by Judges Ludvík David, Jan Filip, Vladimír Sládeček, Radovan Suchánek, Kateřina Šimáčková and Vojtěch Šimíček.

Dissenting Opinions
1. Dissenting opinion of Judges Kateřina Šimáčková, Ludvík David and Vojtěch Šimíček

1. Pursuant to § 14 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, we are filing a dissenting opinion to the verdict and reasoning of this judgment. We believe that in § 17 par. 8 i) the words "provided by a bank, payment institution, or electronic funds institution or by a branch of a foreign bank, payment institution, or electronic funds institution in the territory of the Czech Republic"; § 20 par. 3; the first sentence of § 20 par. 5; § 20 par. 6, and in § 20 par. 7 the words "per mandate for a deputy or senator is CZK 900,000 per year and" of Act no. 424/1991 Coll., on Association in Political Parties and in Political Movements, as amended by later regulations, (the "APPPM") should have been annulled, and only the remainder of the petition should have been granted. Although we agree with the general constitutional starting points contained in the reasoning of the judgment (part VII), we are convinced that these general principles lead to significantly different constitutional law conclusions.

I. The legislation for entitlement to a regular contribution, the amount of the regular contribution, the amount of the contribution for a deputy or senator, and the creation of the entitlement to a contribution to support the activity of a political institute

Regarding the general starting points for the review of the contested legislation and regarding the relevant case law of the Constitutional Court

2. Of fundamental importance for a political party to survive in free political competition is its ability to attract and keep its sympathizers and supporters to a degree that allows it to realistically compete for seats in representative bodies. If the state decides to provide contributions to political parties from the state budget, it must do so in a manner such that this free competition and the ability of political parties to succeed in it will not be influenced or deviate beyond an acceptable level. The principle of free competition of political parties (art. 5 of the Constitution) includes – precisely in terms of the state's approach to financing political parties from the state budget – the principle of "economically equal participation of parties in the electoral competition" [judgment file no. Pl. ÚS 53/2000 of 27 February 2001 (N 36/21 SbNU 313; 98/2001 Coll.)]. It is natural that the state can, to a certain degree, legitimately differentiate the amount of financial support for political parties according to their electoral success (and thus their representativeness in society), but the degree of these differences requires very thorough justification, because otherwise it is unconstitutional violation of the principles of free and in principle equal competition of political parties.

3. The predominant prior case law of the Constitutional Court in the area of financing political parties gives rise to the need for strict review of the observance of the binding constitutional framework. At the same time this review must be comprehensive – it concerns a cumulative evaluation of the joint effect of various elements of financing political parties on their competition and the principled equal opportunity in it. In judgment file no. Pl. ÚS 30/98 of 13 October 1999 (N 137/16 SbNU 27; 243/1999 Coll.) the Constitutional Court stated: "For the Czech Republic as well … it is true that, when making regulations in the area of the of political will, the legislature must respect the fact that in this field, it is subject to narrow limits and that it is barred from different treatment of parties that is not based on a reason of extraordinary gravity … Any direct or indirect limitation of the equality of parties in free competition may not, individually or in the cumulation of measures that differently hinder or advantage certain parties, a priori repress the very participation of political parties in electoral

competition. The cumulation of financial support for only certain parties is ultimately simultaneously a cumulation of de facto financial penalties for other parties. Therefore, it is necessary to weigh carefully whether the purpose of such measures has not been crossed. That purpose must be only the seriousness of the effort of competing parties, which is not directed at aims other than participation in political representation and the promotion of their own program within it. Integrative stimuli are permissible to a certain degree in a representative democracy only after completion of the process of free competition of equal political parties, that is, after counting the votes for the parties, and through a certain differentiation in the allocation of mandates, but not a priori through financial stimulation of some parties and disadvantaging other parties, because that would lead to modification and stylization already in the number of votes cast for the parties." The Constitutional Court also conducted a strict and comprehensive review in judgment file no. Pl. ÚS 53/2000, in which it identified the number of votes received by a party as the basic criterion for state support and in which it also stated: "If the free competition of political parties in equal conditions is not respected, and if there is an effort to create different conditions for big or bigger parties, and thus to form, directly or indirectly, political parties with a better or worse position, and thus also citizens with different conditions for their movement in the political system, such steps cannot be described as constitutional."

4. In a certain respect the Constitutional Court deviated from this case law approach in judgment file no. Pl. ÚS 10/03 of 19 January 2005 (N 9/36 SbNU 85; 86/2005 Coll.). However, it must be remembered that the procedural situation then was unique insofar as the petition for annulment of several provisions of the APPPM was an accessory petition joined to the petition from the petitioner, a political party, against the non-payment of a regular contribution. The Constitutional Court declined for procedural reasons to consider those provisions of the Act that were not directly applied in the proceeding that preceded the filing of the constitutional complaint, so it found that they did not fulfil the condition to which the Act on the Constitutional Court ties the right of a constitutional complainant to file a petition seeking the annulment of a statute (part IV of that judgment). However, in the reasoning and here the Constitutional Court referred, in agreement, to general principles for approaching the question of constitutionality in this area stated in judgment file no. Pl. ÚS 53/2000.

5. A strict and comprehensive review in this area of the law is all the more appropriate because, with the legislation governing the financing of political parties from the state budget, the Constitutional Court is reviewing legislation in which the political parties in Parliament are, to a considerable degree, ruling "on their own case." And although this involves decision making with a certain degree of uncertainty as regards future electoral success, and thus also the income that can be expected from the state budget, which the judgment's reasoning cites as one of the arguments leading to a narrower angle of review by the Constitutional Court (point 60 of the reasoning), it is appropriate to add the two following considerations to that claim. First, the uncertainty need not apply if the newly adopted regulation goes into effect during the currently running electoral term. Second, one can assume that parliamentary parties can, with a greater or lesser degree of probability, at least estimate their chances in the next elections and have an interest – in the event their success is lower – in preserving their competitive advantage arising from the appropriate degree of state contributions, compared to other subject in political competition.

6. Finally, strict review of constitutionality in this area is supported by doctrine [e.g., KYSELA, J., KOKEŠ, M. Zákon o sdružování v politických stranách a politických hnutích – Komentář. [The Act on Association in Political Parties and Political Movements –

Commentary.] Prague: Wolters Kluwer, 2017, p. 163, or ANTOŠ, M. Lék pro české politické strany? Peníze! [Medicine for Czech Political Parties? Money!] In: Šimíček, V. (ed.). Financování politického života. [Financing Political Life.] Brno: Mezinárodní politologický ústav Masarykovy univerzity, [The International Institute of Political Science of Masaryk University] 2015. p. 137], as well as by the approach of selected foreign constitutional courts [e.g., the decision of the German Federal Constitutional Court of 9 April 1992, BVerGE 85, 264 (Parteienfinanzierung II) and in overviews, e.g., KOMMERS, D., MILLER, R. A. The Constitutional Jurisprudence of the Federal Republic of Germany. 3. ed. Durham and London: Duke University Press, 2012, p. 269 et seq.].

On the method of review applied in the reasoning of the judgment

7. Although the Constitutional Court states in several places in the reasoning that review of legislation must be approached "with maximum care" (e.g., point 59 of the reasoning), it did not perform such a review, in fact, with its approach it even indicated an excessive benevolence in future toward potential further legislation in the area of regulating the financing of political parties.

8. We cannot agree, in particular, with the approach in the judgment's reasoning, which accepts a priori that purely state financing of political parties is constitutional (point 57 of the reasoning), whereby, of course, it deviated without clear justification from the Constitutional Court's arguments in its previous decisions [e.g., judgment file no. Pl. ÚS 53/2000, but also judgment file no. Pl. ÚS 26/94 of 18 October 1995 (N 62/4 SbNU 113; 296/1995 Coll.]. Moreover, the argumentation used in this part of the reasoning is internally inconsistent: although it expressly accepts that both "pole" models of financing (i.e. purely state and purely private) are constitutional, it also states that such legislation would evidently "cause unconstitutional effects." Thus, the reasoning of the judgment reached the classic result called contradictio in adiecto, where it simultaneously claims that some solution is not, but actually also is unconstitutional. Our mind boggles at this. We also have no idea by what arguments the judgment's reasoning accepts a priori "unconstitutional effects" for a model based on purely private financing of political parties. Although we have no doubts about the unconstitutionality of a model based on predominant or even purely state financing of political parties, because such a model would directly conflict with Art. 20 par. 4 of the Charter (which, incidentally, the Constitutional Court has stated repeatedly in the past), we see no reason for doubts about the constitutionality of a model based on purely private financing, even though we do not claim that such a model would be realistic and reasonable at present in our context.

9. We also fundamentally oppose the way the reasoning of the judgment, given the declared review of the defects in the legislation for financing political parties in terms of whether they endanger the very essence of Art. 5 of the Constitution and Art. 22 of the Charter (point 58 of the reasoning), considers material "only the question of whether the existing system of financing damages certain political parties (without other attributes) so much that it de facto makes it impossible for them to represent appropriately (ideally in the Parliament) the interests of that non-marginal part of society which that party was created, and exists, to protect and defend" (point 60 of the reasoning). We are convinced that protection of Art. 5 of the Constitution and Art. 22 of the Charter requires much more. It requires that the Constitutional Court not content itself only with pointing to the fact that some political party succeeded in gradually asserting itself until it gains mandates in the Chamber of Deputies, although its state financial support was markedly lower, while another political party, which

was entitled to a higher degree of state support, did not succeed in the next elections (points 76 and 77 of the reasoning). Nor is it enough to point to the fact that in the most recent electoral periods more political parties got into Parliament than used to be the rule, and that they include new parties (and some of those are new more in a formal sense) (point 78 of the reasoning). This second argument is not only constitutionally deficient for reasons discussed below, but it is also logically erroneous, because the constitutionality of the current framework of the APPPM cannot be evaluated (basically only) empirically according to the post-election situation and the representation of political parties in Parliament in those electoral periods, to which the reasoning of the judgment refers, because the current legislative framework has been shifted by the fact that there was a not unsubstantial change (tightening) of the conditions for private financing of political parties, which was present at the birth and further functioning of certain new and electorally successful political subjects in the given elections. This is like arguing that a patient (not financed by the state) was cured (succeeded in elections) when he received medicine (used sources of private financing) that he could obtain relatively freely, and that such a patient will certainly be cured in the future as well, and forgetting that the patient will not receive the medicine in the future, or only a limited amount. Thus, one cannot agree with the relativization that the Constitutional Court made in point 79 of the reasoning of the judgment, where it states: "Thus, as much as it might be appropriate to agree with the petitioner on a purely abstract level that the contested legislation (impermissibly) gives precedence to established parliamentary parties at the expense of the remaining political parties, the empirical data fully refute its arguments." The circumstance of what number of political parties is represented in the Chamber of Deputies depends on a number of factors, one of which is precisely the legislation for the financing of political parties. The Constitutional Court's task is to ensure that this legislation ensures the permeability of the political system, its true plurality, and does not contain any "sharp edges" that disproportionately and unjustifiably disadvantage certain political parties. Unfortunately, the majority of the plenum stopped at the statement that "everything is in order," because the number of parties represented in the Chamber of Deputies has increased, and it did not consider at all which parties they are, how they are financed, and whether the existing legislation does not complicate the achievement of greater political representation for other subjects. Not to mention the fact that apart from the functioning of political parties in the Chamber of Deputies, the functioning of those parties at the regional level is also very important, which the legislation does not take into account sufficiently because, e.g., municipal elections are completely outside the state financing system.

10. In this context we also criticize the majority of the plenum for the merely apodictic statement, that the "model" for financing political parties, based on giving priority to the results of elections to the Chamber of Deputies, is allegedly suitably and in "reasonable proportion" supplemented by rewarding the acquisition of mandates in the Senate, in regional representative bodies, and in the European Parliament (point 80 of the reasoning). We really do not know what the majority of the plenum bases this opinion on: whether it really considers that CZK 30 for one vote in elections to the European parliament (compared to CZK 100 for one vote in elections to the Chamber of Deputies, and, moreover, without entitlement to a contribution per mandate!), or the complete absence of any state financing of an independent candidate in elections to the Senate, is a "reasonable proportion," and mainly – why?

11. Therefore, it is key to the evaluation of the constitutionality of the contested legislation, or the fundamental constitutional law problem and question that the Constitutional Court was to study in this matter, whether the markedly different amount of state financial contributions

arising from this legislation gives an impermissible advantage in the competition among political parties to those parties that receive them as a result of their electoral results. The reasoning in the judgment is based on the correct premise, that a certain degree of inequality in the state financing of political parties is natural if it is derived from differing success in elections. The presently adjudicated matter, however, concerns what the proportion of the state contributions paid out is to the electoral gains of individual political parties. In other words, whether political parties that reach a certain threshold of political results (specifically 3 %, or 5 % in elections to the Chamber of Deputies), do not receive amounts from the state budget that give them an impermissible advantage compared to parties that were roughly similarly successful in elections, but did not cross the thresholds (even if just barely). This was also the key substance of the petitioner's arguments. It is evident that setting certain percentual thresholds will lead to "jumpy" growth of state contributions, but it is material how large the jump is in these circumstances, and how this jump increase functions in the context of other elements of the legislation for financing political parties.

Grounds for annulling the contested legislation

12. In terms of the systems of the types of financing of political parties, the petitioner turned against two, or three, elements of direct state financing of political parties. In addition to the legislation for the regular contribution and the contribution per mandate of a deputy or senator, there is also the contribution to support the activity of a political institute, to which a political party is entitled if it received at least one mandate in the Chamber of deputies in at least two of the last three electoral periods, including the current one, and if it is a founder or member of the political institute. In addition to these forms of state financing of political parties, however, there is another type of contribution that is relevant in the context of elections to the Chamber of Deputies – the contribution for election expenses which, at present, under § 85 of Act no. 247/1995 Coll., on Elections to the Parliament of the Czech Republic and amending and supplementing certain other acts, as amended by later regulations, is provided to a political party or coalition that received at least 1.5 % of the total number of votes cast in elections to the Chamber of Deputies, in the amount of CZK 100 for each vote cast.

13. The petitioner supported its claim about the disproportionality of state financing of political parties under the current legislation for a regular contribution using several real and hypothetical examples that are also cited in the reasoning of the judgment and which we will partially repeat here for the sake of the flow of our arguments. According to the petitioner, the problem of the existing 3% threshold for entitlement to a regular contribution is clear especially with those political parties whose success in elections ranges around that 3% threshold. For example, comparing data from elections to the Chamber of Deputies shows that the Green party received 2.44 % of votes and state support in the form of a contribution for election expenses in the amount of ca. CZK 12.8 million, whereas the party Sovereignty – the Bloc of Jana Bobošiková received 3.67 % of votes, but its state contributions, in the form of a contribution for election expenses and a regular contribution were ca. CZK 49 million. In other words, a party that received only a 1.5 multiple of votes compared to another party, received a contribution virtually four times higher. (For clarity, we must note that the cited calculations are only model ones, and do not take into account the dissolution of the Chamber of Deputies in 2013, which reduced these amounts accordingly). Another example cited in the reasoning of the judgment also testifies to the considerable change in a political party's financial situation brought by reaching an entitlement to a regular contribution (all in point 72 of the reasoning).

14. These results must also be weighed in the context of other disproportions that arise between parties that range around the 5% entry threshold for elections to the Chamber of Deputies, crossing which means that they will be paid contributions for mandates (per the effective legislation, CZK 900,000 annually per mandate). Here the petitioner again stated the examples of parties under and over the limit of the 5% entry threshold, from which it is unquestionable that the state provides markedly higher financial support to parties that cross the 5% entry threshold and achieve representation in the Chamber of Deputies than it does to other parties.

15. The current legislation creates four categories of political parties in terms of elections to the Chamber of Deputies: (A) parties with electoral gains of 5 % and higher, which are entitled to a contribution per mandate, to a regular contribution, and to a contribution for election expenses; (B) parties with electoral gains of 3 % and higher, but not reaching the entry threshold 5 %, which are entitled to a regular contribution and a contribution for election expenses; (C) parties with electoral gains of 1.5 % and higher, but not reaching 3 %, which are entitled only to a contribution for election expenses; and (D) parties with electoral gains lower than 1.5 %, which are presumed to lack serious intent in the electoral competition, and which therefore are not entitled to any financial support from the state. The existence of four different categories of political parties in terms of their state financing nonetheless requires rational and constitutional justification; therefore, criteria should exist that justify different treatment of these categories of political parties (that is, a clear purpose pursued by this different treatment). In other words, if political parties in category A fall under a different legal regime than political parties in category B, there must be a reason for that; the same applies to different treatment of categories B and C, and also with categories C and D. Otherwise the legislation leads to the formation of political parties "with a better or worse position" without rational justification, which is precisely the situation that the Constitutional Court, in judgment file no. Pl. ÚS 53/2000, described as unconstitutional.

16. By adding up the three types of state financing of political parties (the contribution for election expenses, the regular contribution, and the contribution per mandate) we can calculate the total amount that a particular political party is entitled to be based on its results in elections to the Chamber of Deputies. If this total amount is divided by the number of votes received by a given political party, the result is something like the "financial value of one vote" cast in favor of that political party in elections. This means that the financial value of one vote in the individual categories of political parties (defined in the previous point) will be the following: (A) ca. CZK 270 to CZK 420; (B) ca. CZK 230 to CZK 270; (C) exactly CZK 100; and (D) exactly CZK 0. Even leaving out political parties in category D (i.e., those that do not receive even 1.5 % of votes) we can conclude from these data that, compared to the less successful parties in categories B, C a D, successful political parties in category A not only have an obvious and natural advantage in the form of obtaining mandates and participation in the legislative process, but also a significant financial advantage, in which the value of one vote received is several times higher than the value of one vote received by a less successful party. Another way to express this disproportion in numbers is to compare sample parties with results (A) 6.66 %, (B) 4.44 % and (C) 2,22 %. Under the current legislation, this means that the difference between categories B and C in election results is only a multiple of two, but there is a difference of about a multiple of five in the amount that these parties receive from the state budget, and when comparing parties in categories A and C this difference in financing is up to approximately a multiple of ten, although the difference in electoral success is only a multiple of three. At the same time, with declining electoral

participation these disproportions increase, and, on the contrary, with increasing electoral participation they decrease. To eliminate possible doubts, we state that we use the concept of the "financial value of one vote" here only as a theoretical construct intended to clarify our arguments and which, although not explicitly named as such, the Constitutional Court also used in judgment file no. Pl. ÚS 53/2000.

17. It is evident from these calculations that the setting of conditions for paying the regular contribution under § 20 par. 3 and 6 and contributions per mandate under § 20 par. 7 of the APPPM creates a marked inequality between individual political parties to a degree that lacks the rational and constitutional justification that would arise from their different functioning in political competition and that also does not correspond to the degree of their support (representativeness) in society. That, however, should be the defining criterion for the scope of state support, as the Constitutional Court already emphasized in the abovementioned judgment file no. Pl. ÚS 53/2000, when it called on the legislature to prepare a new legislation for the financing of political parties "so that the proportion between subsidies of positions reached and subsidies of success in electoral competition … would change markedly in favor of valuing the number of votes received in elections." The threshold of 3 % and the combination of it with the considerable jump in the volume of state support for political parties reaching it appear to be an artificial divide that markedly interferes in the principle of the free competition of political parties. The artificialness and the consequences of the divide thus set up are especially dangerous because they have markedly disproportionate effect on the parties that range around that threshold of success (ca. 2 to 4 %), which objectively places them in the role of possible competitors for political parties represented in the Chamber of deputies, i.e. those who have, in accordance with the principles of "a temporary government" the potential to change from a political minority into a political majority. In addition, we state that the Constitutional Court found a similar jump connected to a markedly different financial effect on the relevant group of subjects to be unconstitutional, e.g., when evaluating the constitutionality of the legislation for taxing working pensioners in judgment file no. Pl. ÚS 18/15 of 28. 6. 2016 (N 121/81 SbNU 889; 271/2016 Coll.).

18. Therefore, we believe that in this regard the Constitutional Court should have deviated from the legal opinion stated in judgment file no. Pl. ÚS 10/03, where it postulated a different function for the regular contribution (without, however, explaining it at all, which, however, the reasoning of the judgment in this matter does not do either – see point 66 of the reasoning), and from that derived the permissibility of the limit for the payment high above the limit to which, in its earlier case law, the Constitutional Court tied the degree of seriousness of the representativeness of political parties in society (around 1 % of votes). Here we can again refer to judgment file no. Pl. ÚS 30/98, in which the Constitutional Court recognized the permissibility of certain integrative stimuli in the interest of the functioning of the parliamentary system, but in which it also stated that this does not mean that the integrative interest could have precedence over the principle of free competition of political parties, because that is an expression of the pluralist nature of the democratic political system.

19. The interference in the principle of equal opportunity for political parties connected with reaching the designated limit for payment of the regular contribution in the statutorily set amount is also, as was evident from the examples already cited, strengthened by political parties' other financial gains if they cross the entry threshold in elections to the Chamber of Deputies. In that situation, political parties also receive, in addition to the permanent annual contribution of CZK 10,000,000, contributions per mandates of deputies of CZK 900,000 per mandate annually, and also support through various forms of indirect state financing (e.g., in

the form of contributions for the expenses of deputies' caucuses, deputies' reimbursements or in the form of various administrative supported connected to functioning in Parliament, or in the government). Although it is true, as the reasoning of the judgment states, that the real value of the contribution per mandate is lower today than in the past, that there has been a marked increase in the volume of income and expenses in the state budget, or an increase in the average wage (point 83 of the reasoning), one must realize that all political parties function in these changed conditions (i.e., that all of them have to take into account, for example, the growth in expenditures for wage expenses). It follows from this that either this decrease in the real value of the funds of political parties affects all parties proportionately, and thus the disproportion between them remains proportionately the same, or – and this is more likely – the decrease in the real value of the funds of political parties more markedly impacts poorer political parties, because they have smaller financial reserves than the wealthier parties have. Summa summarum, the decreased real value of the contribution for a mandate of a deputy or senator is not an argument that would diminish the advantage of those political parties that are entitled to it.

20. In its present form the contribution per mandate of deputies again makes problematic tying the regular contribution to political parties only to success in elections to the Chamber of Deputies, and not other elected representative bodies (the Senate, the European Parliament, regional and municipal representative bodies). In judgment file no. Pl. ÚS 10/03 the Constitutional Court justified the constitutionality of this limitation by the privileged position of the Chamber of Deputies in the constitutional system of the Czech Republic and its assessment that the Czech legislation "reflects the conceptual characteristics of a political party (movement) in the sense of a of nationally relevant political subject, not only a regionally-relevant one." Although we can acknowledge that the Chamber of Deputies really does have a privileged position in the constitutional system in a number of aspects, that, in and of itself, does not sufficiently justify why the state should pay further generous bonuses to political parties only on the basis of reaching 3 % of votes in elections to the Chamber of Deputies. It thereby indirectly penalizes political parties that were unsuccessful in the elections, although they may be political parties that are successful, for example, at the municipal or regional level.

21. Together with the way the current legislation for state financing of political parties markedly favors parliamentary political parties (or parties with at least three per cent gains in elections to the Chamber of Deputies), it is evident that these funds are a completely decisive component of income for a number of parties. The annual reports of political parties show what part of their income comes from membership dues or private gifts. For example, in 2015 we can see that the portion of membership dues and private gifts (and inheritance) was: for ČSSD - 4.84 %, or 0.47 % of the party's income; for ODS – 3.1 %, or 11.14 %; for ANO 2011 4.7 %, or 10.11 %; for KSČM 12.74 %, or 7.4 %; for KDU-ČSL - 5.21 %, or 8,01 %; for TOP 09 - 5 %, or 7.79 %; and for Úsvit – Národní koalice - 0.02 %, or 0 %. This documents the trend which is also cited by the professional literature (e.g., that cited in point 115 of the reasoning of the judgment), that in a certain sense the interconnection of political parties and civic society is dying, and at the same time the dependence of political parties on state financing is growing.

22. The legislature adopted more pronounced regulation of private financing of political parties, and in this judgment the Constitutional Court found constitutional both setting a limit for gifts to political parties from one and the same person in a calendar year (which we agree with) and narrowing the circle of permissible providers of credit an loans (which we will

disagree with below). Certain other changes in the legislation, or the imposition of new obligations on political parties that will lead to an increase in their operating expenses, are set forth at the conclusion of the reasoning of the judgment (point 115 of the reasoning). In this situation it is all the more important for the state to support free competition among political parties, including the principle of (relative) equal opportunity, and not interfere in it impermissibly.

23. However, for the reasons given above we are of the opinion that the contested legislation, on the contrary, markedly differentiates between political parties whose electoral gains demonstrate the justification of their functioning in society (their degree of representativeness) without a relevant legitimate reason, and to a degree that is substantially disproportionate to their representativeness. Therefore, the Constitutional Court should have annulled § 20 par. 3 and 6 and the relevant contested part of § 20 par. 7 of the APPPM due to inconsistency with the principle of the free competition among political parties and forces under Art. 5 of the Constitution and Art. 22 of the Charter. Moreover, this legislation leads to a long-term systematic support of the dependence of political parties on support from the state budget, which impinges on the principle of separation of political parties from the state under Art. 20 par. 4 of the Charter (cf. also KYSELA, J., KOKEŠ, M. Zákon o sdružování v politických stranách a politických hnutích – Komentář. [The Act on Association in Political Parties and Political Movements – Commentary.] Prague: Wolters Kluwer, 2017. p. 162–163, or Šimíček, V. commentary on Art. 20 of the Charter in WAGNEROVÁ, E., ŠIMÍČEK, V., LANGÁŠEK, T., POSPÍŠIL, I. and collective of authors. Listina základních práv a svobod – Komentář. [The Charter of Fundamental Rights and Freedoms – Commentary.] Prague: Wolters Kluwer, 2012. p. 490, or ŠIMÍČEK, V. Volební nález Ústavního soudu. [The Election Judgment of the Constitutional Court] Právní rozhledy [Legal Perspectives] 2005, year 13, no. 10, p. 359–364). In addition, as regards the contribution per mandate of a senator in § 20 par. 7 of the APPPM there is additional advantaging of political parties whose candidates were successful in elections to the Senate, compared to independent candidates, who are not entitled to this contribution if they succeed in elections, which is another deviation from the conditions of free competition of political forces under Art. 22 of the Charter. In deliberations on a balanced system of financing political parties it is relevant that again it is in large part those political parties that already have an advantage from the regular contribution and from contributions for mandates for deputies that also benefit from this contribution. A similar comment can be made regarding the results of elections to regional representative bodies or the City Council of the Capital City of Prague, as it is evident from official data that the parties that succeed in them, in an absolutely predominant degree, are those that are successful on a nationwide basis, and which therefore benefit from the contested legislation.

24. In the proposed judgment of the petition, the petitioner did not explicitly contest § 20 par. 6 of the APPPM, which repeats the 3% threshold for entitlement to a regular contribution and also establishes the calculation of the amount (between CZK 6,000,000 and 10,000,000 per year). However, it is evident from the reasoning in the petition, as well as from the logic of the matter, where the petition is based on the argument of disproportion of the contested legislation, that it really contested this provision as well. In any case one cannot consider any disproportion at all without taking into account the relevant financial amounts that are connected to exceed the designated threshold of success in elections. Moreover, it is difficult to understand why the petitioner would contest only the 3% threshold for entitlement to the regular contribution in § 20 par. 3 of the APPPM, but leave uncontested the same threshold in § 20 par. 6 of the APPPM.

25. Thus, as regards the threshold for entitlement to a regular contribution, and as regards the amount, the Constitutional Court, by declaring them unconstitutional, should have deviated under § 13 of the Act on the Constitutional Court from the legal opinion stated in judgment file no. Pl. ÚS 10/03. It should have been led to do so, in accordance with Constitutional Court judgment file no. Pl. ÚS 11/02 of 11 June 2003 (N 87/30 SbNU 309; 198/2003 Coll.), "by a shift of the relevant legal environment created by sub-constitutional legal norms, which, in the aggregate, influence the view of constitutional principles without, of course, deviating from them, and above all do not restrict the principle of democratic legal statehood (art. 1 par. 1 of the Constitution)" and also by the change in the comprehensively viewed social and economic situation of political parties, because the time that has passed since judgment file no. Pl. ÚS 10/03 proved the markedly disproportionate effects of that threshold on political competition without a relevant legitimate reason. In addition, it must be noted that in the reasoning of judgment file no. Pl. ÚS 10/03 the Constitutional Court did not substantively consider the amount of the regular contribution at all, but only addressed the question of the threshold for entitlement to it, despite the fact that the provision about the amount of the contribution was also contested in that case. In this regard its evaluation was incomplete. For the abovementioned reasons we also raise the analogous criticism against the justification of the present judgment.

26. In our opinion, in addition to the relevant provisions of the APPPM concerning the regular contribution and the contribution per mandate of a deputy or senator, the Constitutional Court should also have annulled the first sentence of § 20 par. 5 of the APPPM, establishing the conditions under which a political party becomes entitled to a contribution for support of the activity of a political institute (defined by the Act as income of a political party). The annual level is set as an amount corresponding to 10 % of the total amount of the contribution for activity, to which a political party is entitled, and which, in accordance with § 20 par. 1 let. a) in conjunction with § 20 par. 4 of the APPPM is composed of the regular contribution and the contribution for mandates that the political party has (deputies, senators, members of regional representative bodies and members of the City Council of the Capital City of Prague). According to the reasoning of the judgment the state, through this contribution, could potential interfere in the free competition among political parties and political forces under Art. 5 of the Constitution and Art. 22 of the Charter, only if it "unjustifiably gave financial advantage to political parties that receive it, compared to other parties." At the same time, of course, it acknowledges that this involves intervention "by the legislature in free political competition" (point 110 of the reasoning). We believe that this contribution really is the interference in free competition, but the key question is whether it is also a violation of the principle in question, and thus is insufficiently justified and unconstitutional interference. In our opinion, in a situation where the Constitutional Court should have evaluated the combined functioning of the threshold for entitlement to a regular contribution, its amount, and the amount of the contribution per mandate of a deputy or senator as unconstitutional, because it creates a marked disproportionate disadvantage for those political parties that have already demonstrated the seriousness of their functioning in politics, but did not meet all the conditions for this additional support, a further bonus for the already advantaged narrow circle of political parties cannot meet the test of constitutionality in the given context. Directing this contribution only to parties that show repeated success in elections to the Chamber of Deputies (though not necessarily in every election), again gives an advantage to those parties that already have a disproportionate benefit from the regular contribution and the contribution per mandate. Moreover, the legislature, without an understandable purpose creates a narrower privileged group of parties that become entitled to this additional financial contribution.

27. Thus, in our opinion, the contribution to support the activity of a political institute in its present form deepens even more the already existing deviation from equal conditions for the free competition of political parties, whereby this situation is inconsistent with Art. 5 of the Constitution and Art. 22 of the Charter. As regards the rest of the contested legislation for political institutes, in our judgment the Constitutional Court should have rejected the petition due to obvious lack of justification (i.e. not denied the petition), with the knowledge that if in future it turned out that political institutes really do function to circumvent the rules for financing political parties, the Constitutional Court will be prepared to subject the given legislation to a new review. This conclusion would be justified, in particular, by the fact that the Czech legislation is not based on the personnel and organizational independence of political institutes and political parties, and also that the original legislation, which assumed review through the test of the public benefit of public institutions, fell away as a result of legislative changes.

II. Narrowing the circle of subjects with which political parties and political movements are authorized to conclude agreements on the provision of credit and loans ("credit") only to banks, or other financial institutions registered in the territory of the Czech Republic ("banks")

28. The constitutional law review of the contested provisions of the APPPM concerning regulation of private financing of political parties must again be based on the principle of the free competition of political parties and political forces (art. 5 of the Constitution and Art. 22 of the Charter). In this context, too, the principle of free competition also means the principle of equal access of political parties to political competition and the principle of equal opportunity in it (e.g., judgment file no. Pl. ÚS 30/98). Beyond that, however, in this review the position of a political party as a legal person under private law, which has fundamental rights and freedoms, including the general freedom to act under Art. 2 par. 3 of the Charter, is also relevant. We believe that the contested part of § 17 par. 8 let. i) of the APPPM, which limits the circle of permissible credit providers for political parties only to banks, impermissibly interferes and thus violates both the principle of free competition of political parties and the cited fundamental right, for the following reasons.

29. In view of the fact that the principle of free competition of political parties means that the public power may not, through its interventions, create unjustified obstacles to the free formation and functioning of political parties, it is necessary to carefully review and justify each such restriction on free competition. It is constitutional if it pursues a legitimate aim, is a suitable instrument for achieving that aim, is necessary, and at the same time does not limit the given principle beyond a degree that is proportionate to the achievement of the required legitimate aim [e.g., judgment file no. Pl. ÚS 14/14 of 19 May 2014 (N 98/77 SbNU 429; 176/2015 Coll.), point 37, or, from older case law, judgment file no. Pl. ÚS 25/96 of 2 April 1997 (N 37/7 SbNU 251; 88/1997 Coll.)].

30. Narrowing the circle of possible credit providers to only banks is intervention in the free competition of political parties, because it creates unequal opportunities for political parties to obtain credit, when, according to available analyses, in a simple average the share of loans and credit is approximately 30 % of the funds of political parties (study by Transparency International: Průběžný monitoring financování politických stran – únor 2016 [Ongoing Monitoring of the Financing of Political Parties – February 2016], available at https://www.transparency.cz/wp…/Financování-politických-stran-2016-Analýza.docx).

Economically weaker political parties will be in a worse position than stronger political parties, because they do not have the same financial credibility, and thus their access to obtaining bank credit can be considerably more difficult. A lower ability to obtain credit is generally typical for economically weaker subjects, which, of course, is not a reason to disagree with the judgment's reasoning (point 98 of the reasoning). However, in our opinion, the position of political parties, including economically weaker political parties, is unique insofar as Art. 5 of the Constitution guarantees to them too free political competition, and not only in their own interest, but because the constitutional framers considered it to be key for the preservation of a democratic political system. For this reason too a careful approach by the Constitutional Court in reviewing the subject legislation is justified.

31. We share the conclusion in the reasoning of the judgment that the aim of the contested legislation, strengthening the transparency of private financing of political parties, is generally legitimate, both in terms of strengthening the formal transparency of the relationships between a political party and a credit provider, and in terms of minimizing relationships of inappropriate dependence between a party and such a provider (point 96 of the reasoning).

32. If the aim of the intervention in the free competition of political parties is legitimate, it is necessary to evaluate whether the intervention is suitable, in other words, whether the means selected is capable of meeting the requirement of greater transparency in the financing of political parties. In our opinion the degree of legal regulation of banks and supervision of them can be considered an increased guarantee of the transparency of relationships between a political party and a bank in the first sense. Nonetheless, we disagree that narrowing the circle of credit providers to only banks would, without anything further, also achieve a reduced risk of a political party's inappropriate dependence on credit providers (and the related danger of corruption).

33. As soon as the legislature makes it impossible for political parties to obtain credit from other subjects, banks are placed in a certain exclusive position, if only in the aggregate. As there are not, and cannot be, legal rules that would establish an obligation of a bank to provide credit to a political party under certain circumstances, it is only up to the bank whether, and if so, under what conditions, it will do so. There is no reason to think that a political party could not become dependent on a bank that provided credit to it. For example, we can consider a situation when a bank provides credit under more advantageous conditions than it would otherwise do for the reason that the political party promised to support the bank's economic interests. For that reason, we do not consider narrowing the circle of providers to only banks to be a suitable instrument to support transparency of the financing of political parties, because, on the contrary, as a result of a prohibition on accepting credit from other subjects, the interconnection of the bank sector and political parties can grow, and the dependence of political parties on banks can strengthen. In any case, this framework too opens several possibilities for circumventing the prohibition, e.g., if the payment of the credit is guaranteed by a third party, which could then become subject to inappropriate dependence, which the sponsor of the relevant amending proposal, M. Plíšek, argued against in the Chamber of Deputies. Finally, narrowing the circle of credit providers to banks puts in a disadvantageous position those political parties whose program includes a policy aimed at increased regulation of the banking sector, for which it can be considerably more difficult to obtain bank credit – if, of course, they are not willing to amend their policy. That also does not indicate the creation of conditions that would minimize cases of inappropriate dependence.

34. In addition, however, it is key that, in our opinion, the criterion of the necessity of the limitation, i.e. that there is no other available legal means that would lead to the same legitimate aim but would intervene less in the relevant protected constitutional interest, here the principle of the free competition of political parties, has also definitely not been met. The prohibition on accepting credit from subjects other than banks is a considerably restrictive means, whose aim – strengthened transparency of the financing of political parties – could have been achieved by a less restrictive measure. The possibility that comes to mind above all is the now statutorily established obligation for a political party to provide a list of credits from providers, giving the amounts and repayment terms, including other identifying data, in a publicly accessible annual report of the political party, which is subject to review by the Office for Economic Supervision of Political Parties and Political Movements [§ 19h par. 1 let. c) point 2 of the APPPM], as would correspond to the original government bill of the Act, which considered this form of supervision to be sufficient, and did not limit the circle of credit providers. In any case, insofar as the reasoning of the judgment mentions the newly-established obligation of a bank to submit a report about matters concerning a client, which are subject to banking secrecy, without its consent, to the Office for Economic Supervision of Political Parties and Political Movements (point 98 of the reasoning), the same degree of supervision would be preserved even if the legislature did not limit (so exclusively) the circle of permissible credit providers, but established an obligation to provide credit (by anyone) only in the form of a bank transfer, with the provision that these funds too must be maintained in a special transparent account [as expected today by § 17a par. 2 let. a) in conjunction with par. 3 of the APPPM, or § 17b of the APPPM in relation to contributions from the state budget, income from gifts, and other in-kind contributions]. The legislation would then not be as restrictive, but would lead to the aim of strengthening transparency.

35. This would also suit the doctrinaire opinion that in the financing of political parties from private sources priority should be given to supervision rather than to restricting or prohibiting by regulation (KYSELA, J., KOKEŠ, M. Zákon o sdružování v politických stranách a politických hnutích – Komentář. [The Act on Association in Political Parties and Political Movements – Commentary.] Prague: Wolters Kluwer, 2017, p. 101). In addition to strengthening the transparency of receiving credit through more detailed registration, which would be a relatively minimal restriction on a political party in view of the legitimacy of the aim, the legislature could also weigh other measures. These could be, e.g., setting certain maximum total amounts for credit from one provider to one political party, which would also establish a certain limit for possible dependent relationships, if this restriction were disproportionate. These means would lead to milder intervention in the principle of free competition and equal access to it, because they would have a smaller effect on the ability of economically weaker parties to obtain credit, as they could obtain it not only from banks, but, for example, from their sympathizers, while still maintaining transparency.

36. Thus, although the contested provision pursues a legitimate aim, in our opinion it cannot be considered a suitable or necessary means for achieving that aim.

37. In addition to the review of the constitutionality of the contested legislation in terms of the principle of free competition of political parties and political forces under Art. 5 of the Constitution and Art. 22 of the Charter, it is necessary to evaluate the intervention of the given provision into the freedom of political party as a legal person under private law to do anything that the law does not forbit, and not to be forced to what the law does not require (art. 2 par. 3 of the Charter). Political parties are associations with employees, with a certain need for a material base and need to care for them, and therefore legitimately have the

freedom to conclude an agreement on the provision of credit, which they may need for their formation and further functioning. However, an economically weaker party will be in a more difficult position for obtaining credit from a bank, because its ability to make a commitment against the credit is lower. However, another credit provider may provide it credit (of its own free will, because it too is exercising its property rights under Art. 11 of the Charter) under conditions that may be more beneficial to the political party than the conditions for bank credit, but will still be in accordance with good morals, and their transparency can be ensured in the same ways that we presented above (an annual report available to the public, a bank transfer, a transparent account, and the supervision of the Office for Supervision of the Economic Management of Political Parties and Political Movements).

38. In our opinion, limiting the circle of credit providers to only banks is also unconstitutional in terms of the fundamental right of a political party to act freely under Art. 2 par. 3 of the Charter, because the same arguments can be raised against it that were presented in relation to the principle of free competition of political parties, and due to which it will also not pass the test of the proportionality of the intervention in a fundamental right. Thus, in our opinion the contested legislation should have been annulled for inconsistency with Art. 5 of the Constitution and Art. 22 of the Charter, as well as with Art. 2 par. 3 of the Charter.

39. To our conclusion that the contested legislation is unconstitutional, we add that we would also reach the same conclusion if the legitimate aim pursued by the contested legislation were reducing the risk of the influence of, e.g., foreign subjects on domestic political competition, or the influence of other subjects that, in the legislature's opinion, represent a heightened risk of inappropriate influence on political parties. Although the given aim would be considered legitimate, a more suitable and less restrictive means for achieving it would be adopting a legislation analogous to that contained in§ 18 par. 1 of the APPPM. That contains a list of subjects from which political parties may not accept a gift or other in-kind contribution, but does not limit the circle of providers to only one selected type of subject.

40. Finally, only for support we refer to comparative data according to which similar limitation of providers of credit only to banks or similar institutions appears in the legal orders of only some states of the Council of Europe (e.g., Bulgaria, Estonia, Lithuania, Poland, and Serbia). However, the legislations in the individual countries are varied – from a complete prohibition on providing credit to political parties (Latvia) to the absence of any limitation in this regard in terms of permissible providers (e.g., Belgium, Denmark, Finland, Croatia, Ireland, Italy, Hungary, Germany, the Netherlands, Norway, Austria, Spain). From this one can conclude that states can fulfill their commitments in the area of prosecuting money laundering, arising from European or international law, which the reasoning of the judgment (point 98 of the reasoning) mentions, in a different manner, less restrictive in this regard. In terms of the strength of the banking sector's influence on the political process, the ongoing discussion in France can be an interesting example for the Czech Republic. France's legislation contains a certain limitation of the circle of credit providers (although it is not limited only to banks). The criticism has been raised that banks have significant influence on the result of democratic elections through their decision about to whom to provide credit or not, and some candidates in the presidential elections complained about the problem that banks refuse to work with them due to their political opinions (See http://www.huffingtonpost.fr/2017/01/03/ pourquoi-les-banques-refusent-de-preter-de-largent-au-front-nat_a_21646240/).

41. We note further that the recommendations of the Venice Commission, which the Constitutional Court also applies in the arguments of some of its decisions, do not contain limitation of permissible credit providers, but rather emphasize ensuring proper provision of information about the credit provided, and viewing credit provided under more advantageous conditions, or credit that was written off by the creditors, as additional income of political parties, subject to regulations concerning the amount of contributions, etc. [European Commission for Democracy through Law (Venice Commission): Compilation of Venice Commission Opinions and Reports Concerning Political Parties. CDL-PI(2016)003, 15 March 2016, available at http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2016)003-e)].

III. Summary and note concerning the possible postponement of the executability of annulment of the relevant legislation

42. Our partially dissenting opinion is guided by the belief that state intervention in the principle of the free competition of political parties and political forces, as well as other basic principles relevant to the evaluation of the constitutionality of the contested legislation, must be subjected to strict and comprehensive review by the Constitutional Court, review that takes into account the mutual interconnectedness and joint effect of individual elements of state and private financing of political parties. For the reasons we presented above, we have concluded that the provisions of the APPPM governing the threshold for payment of a regular contribution, its amount, the amount of the contribution per mandate of a deputy or senator, and the entitlement to a contribution for support of the activity of a political institute only for a party that is characterized by the relevant repeated gain of mandates in the Chamber of Deputies, as well as the provision narrowing the circle of permissible providers of credit to political parties to only banks should have been annulled by the Constitutional Court as unconstitutional. The fundamental point for us was the cumulative effect of the contested state contributions that give disproportionate advantage in the competition of political parties to parliamentary political parties, or those parties that achieve a regular contribution.

43. In the event of concerns about possible intervention in the already existing legitimate expectation of political parties arising from the contested legislation for state financial support, the Constitutional Court could have annulled the relevant provisions of the APPPM with effect deferred to the end of the current regular electoral term of the Chamber of deputies. Thus, in this electoral period political parties would receive funds according to the current legislation, unless there were other legal changes in the meantime. Parliament would decide on a new legislation only for future electoral terms.

44. Only to eliminate potential doubts, we repeat and again emphasize that in our judgment, the legislation for the financing of political parties can legitimately make certain differences between political parties according to their relevance in the political system, but the legislation must be balanced and may not prefer a certain group of political parties to the detriment of other parties as markedly as the contested legislation does. Thus, nothing of the foregoing prevents the legislature from taking into account the importance of elections to the Chamber of deputies, but when doing so it must take care to preserve an overall balanced approach and respect for the principle of equal opportunity for all political parties meeting the criteria in Art. 5 of the Constitution that proved the seriousness of their participation in elections. Likewise, nothing of the foregoing should lead to the conclusion that this approach can be realized only by increasing the demands on the state budget. When adopting a new legislation, the legislature could, for example, set a certain ceiling for the total expenditures

from the state budget for the financing of political parties, and within that, allocate contributions in a constitutional manner. It could also adopt a decision that is not necessary to that it will maintain the generous financial support that is provided to political parties that are advantaged under the current legislation, and will adapt the level of contributions for other parties only according to these amounts, and instead of that, to choose a generally more modest approach to the financing of political parties.

45. In conclusion, with a certain regret, we state that the history of the development of legislation governing political parties in the Czech Republic and in other democratic European states illustratively shows that more fundamental changes are realistically taken only in two cases: if the Constitutional Court provides the impulse for the change the change, or if there is a large (often financial) scandal that grow into a political crisis. We regret that the majority of the plenum was not able to clearly identify the larges constitutional law deficiencies of the existing model of the financing of political parties and thus did not contribute to removing them.

Judge Jan Filip joined the dissenting opinion of Judges Kateřina Šimáčková, Ludvík David and Vojtěch Šimíček in part I concerning the non-annulment of the first sentence of § 20 par. 5 of the Act on Association in Political Parties and Political Movements and in part II of the dissenting opinion.

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2. Dissenting opinion of Judges Vladimír Sládeček and Radovan Suchánek

1. We voted to adopt a negative verdict, but we were led to do so by the fact that the previous proposed verdict submitted by Radovan Suchánek, which we voted for, was not approved (by a difference of one vote). That verdict proposed denying the petition except the proposal to annul § 20 par. 3 of Act no. 424/1991 Coll., on Association in Political Parties and Political Movements, as amended by later regulations, ("Act no. 424/1991 Coll."), which was to be rejected as impermissible due to the obstacle of res judicata under § 35 par. 1 of Act no. 182/1993 Coll., on the Constitutional Court, because the Constitutional Court already ruled on the merits on the constitutionality of that provision in judgment file no. Pl. ÚS 10/03. We do not consider the reasoning of the present judgment, containing new review on the merits (point 63), to be at all convincing

2. That case (file no. Pl. ÚS 10/03) involved a final decision, because decisions of the Constitutional Court cannot be appealed (§ 54 par. 2 of the Act on the Constitutional Court). Nor can one consider application of § 63 of the Act on the Constitutional Court, which allows proportionate application of the Civil Procedure Code (the "CPC"), unless the Act on the Constitutional Court provides otherwise, precisely because it is provided otherwise. Thus, it is not possible to apply, for example, the provision on renewing a proceeding (§ 228 et seq. of the CPC), where in a renewed proceeding it can happen that the decision in the matter itself is changed, and a new decision replaces the original decision (§ 235h par. 1 of the CPC), and thus the obstacle of res judicata is removed. In any case, the Act on the Constitutional Court permits the renewal of a proceeding, and thus also the potential overcoming of the obstacle of a matter decided on the merits, although only in quite specific cases, and generally with a decision on constitutional complaints (§ 119 et seq. of the Act on the Constitutional Court). Apart from that exception, the obstacle of res judicata is applied, or its absence represents a general condition for the permissibility of every petition in any proceeding before the

Constitutional Court. Thus, it also applies to a proceeding on annulment of statutes under Art. 87 par. 1 let. a) of the Constitution and § 64 et seq. of the Act on the Constitutional Court. In other words, this is a principle that fundamentally does not make it possible for the Constitutional Court to repeatedly decide one and the same matter on the merits.

3. We are of the opinion that the matter which the Constitutional Court already decided in a judgment is bindingly defined first by the proposed verdict in the petition and then definitively by the verdict of the judgment in which it was decided. Thus, in a proceeding on annulment of statutes the matter is defined: 1. by designating the statute(s) or its (their) individual provision(s) that is (are) proposed to be annulled, and about whose conflict, or on the contrary, consistency with the constitutional order the Constitutional Court has ruled in the verdict of a judgment, as well as 2. by which constitutional act(s) and its (their) individual provisions the Constitutional Court applied when ruling on the consistency of the contested statutory provisions with the constitutional order.

4. The professional literature states regarding this, e.g.: "In the case of a proceeding to annul statutes and other legal regulations the identity of the matter is given by the identity of the legal regulation or provision thereof, the unconstitutionality of which the Constitutional Court already considered in a judgment, regardless of the circle of parties to the proceeding, or without regard to the person of the petitioner. In the case of review of a norm, the question in the forefront is whether the scope of the review is also decisive, i.e. which constitutional norms and constitutional principles was the previous review based on. The idea that the Constitutional Court covered all possible constitutional law aspects of the matter in the previous decision and reviewed the petition in relation to all relevant norms of constitutional law is obviously unrealistic … the obstacle of res judicata exists only in relation to those constitutional law norms that the Constitutional Court included in its deliberations." (POSPÍŠIL, I., in WAGNEROVÁ, E., DOSTÁL, M., LANGÁŠEK, T., POSPÍŠIL, I. Zákon o Ústavním soudu s komentářem. [The Act on the Constitutional Court with Commentary.] Prague: ASPI, a. s., 2007, p. 118). "In a proceeding on review of norms … the subject of the proceeding is evaluation of the constitutionality of statutes … in this case the identity of the matter is given by the identity of the petition seeking the annulment of the designated statute …, or their individual provisions with the statute …, or the individual provisions on the constitutionality of which the Constitutional Court already ruled in a judgment. In the case of a negative judgment, a certain deficiency in the obstacle of res judicata thus interpreted in a proceeding on review of norms is the impossibility of repeatedly evaluating the constitutionality of the same statute …, but for different constitutional reasons than in the previous case. The use of the obstacle of res judicata without exception is based on the presumption that in a constitutional review the Constitutional Court is and must be able, a priori, regardless of the arguments contained in the petition, to consider all imaginable constitutionally relevant contexts. However, this presumption is an illusion. For that reason, other systems of constitutional judiciary generally, in this regard, under certain conditions leave room for repeated decision making in the same matter …" (HOLLÄNDER, P. In: FILIP, J., HOLLÄNDER, P., ŠIMÍČEK, V. Zákon o Ústavním soudu. Komentář. [The Act on the Constitutional Court. Commentary.] Prague: C. H. Beck, 2007, p. 165 et seq.). "However, a somewhat different situation can arise if such a petition was denied by the judgment … In that case, the legal regulation contested by the petition is still in effect, without it being possible to fully rule out that, despite the negative judgment, it is after all unconstitutional, because the Constitutional Court, e.g., did not duly take into account all aspects of its constitutionality; insisting that for formal reasons such a regulation can now never be reviewed by the Constitutional Court (only the norm creator itself could annul it), could, in

the context of a law-based state, be considered disproportionate." (MIKULE, V., SLÁDEČEK, V. Zákon o Ústavním soudu – komentář a judikatura k Ústavě ČR a Listině základních práv a svobod. [The Act on the Constitutional Court – Commentary and Case Law Regarding the Constitution of the Czech Republic and the Charter of Fundamental Rights and Freedoms.] Prague: Eurolex Bohemia, 2001, p. 107). Thus, some of the opinions do not completely rule out a breach of the principle of the obstacle of res judicata in a proceeding on a petition seeking the annulment of a statute (or other legal regulation) or its individual provisions. However, we do not believe that such views can be applied to the present case.

5. Therefore, it behooves us to emphasize that in judgment file no. Pl. ÚS 10/03 the Constitutional Court (in the negative verdict no. 2) ruled on the constitutionality of § 20 par. 4 of Act no. 424/1991 Coll., which has not changed in any way since the issuing of that judgment (there is only a formal change in the fact that as of 1 January 2017 it is designated as paragraph 3, which, of course, is not relevant for its identity). In the cited judgment the Constitutional Court reviewed the constitutionality of that provision in terms of Art. 5 of the Constitution, Art. 20 par. 2 and Art. 22 of the Charter of Fundamental Rights and Freedoms (see the last sentence of the reasoning), and in the present judgment the criteria for review were Art. 5 of the Constitution, Art. 20 par. 4 and Art. 22 of the Charter (point 62). The fact that now a group of senators has also pointed to Art. 20 par. 4 of the Charter, which the Constitutional Court also did not find the provision to be in conflict with, does not persuade us that this is really a new matter, differing – in something substantive – from the previous one, and all the more so if judgment file no. Pl. ÚS 10/03 reviewed the legislation of the regular contribution in a wider scope than the present matter, where § 20 par. 6 of the Act, concerning the amount of the regular contribution, was not even reviewed, in view of the proposed verdict in the petition (see point 118). In any case, the reasoning of this judgment itself states that the petitioner in the matter file no. Pl. ÚS 10/03 argued substantively similarly to the group of senators in the present matter (point 65), and builds on the key conclusions that the Constitutional Court reached in the previous proceeding (points 66 to 70).

6. Although we recognize the truth of the argument that "in the time since the issuance of judgment file no. Pl. ÚS 10/03 there have been considerable social changes … characterized by markedly dynamic development of the political (party) system", as well as "other fundamental changes in the legislation for the financing of political parties" (point 63), under the Act on the Constitutional Court not one of these facts establishes grounds for a new review on the merits of the same statutory provision. We also disagree with the reference to the Constitutional Court's case law, which is cited in that point of the reasoning to support the arguments presented in favor of permitting a new review: although both judgments – file no. Pl. ÚS 42/2000 and file no. Pl. ÚS 9/01 – point to the social changes that occurred in the period of several years that passed from the previous review of the "same" legislation, at the same time it is necessary to keep in mind that both concerned specific situation that are different from the present one. In the first case the Constitutional Court reviewed an amended legislation, so it was not the same matter (an election deposit, originally CZK 200,000, then CZK 40,000), which was supported by the fact that the previous negative judgment (file no. Pl. ÚS 3/96) was adopted by the votes of a "relevant minority," and the Constitutional Court newly saw "as relevant precisely what was stated in the dissenting opinions of several judges" to that judgment. In the second case the Constitutional Court addressed the possibility of a new review of constitutionality of the "lustration" law in connection to its previous review by the Constitutional Court of the CSFR.

7. Finally, even the fact that judgment file no. Pl. ÚS 10/03 was adopted on the basis of a petition joined to a constitutional complaint under § 74 of the Act on the Constitutional Court, does not constitute a relevant reason for not respecting the obstacle of res judicata. Both the cited judgment and the present one were adopted in proceedings under Art. 87 par. 1 let. a) of the Constitution and the first section of the second chapter of part two of the Act on the Constitutional Court, which is why distinguishing by the petitioner or by other procedural circumstances is quite without legal significance for the identity of the adjudicated matter – defined by the contested statutory provisions and the constitutional law perspectives for review. Recently the plenum of the Constitutional Court unanimously reached the same conclusion when reviewing a petition from a group of senators seeking the annulment of § 16 of the implementing regulation for Act no. 36/1967 Coll., on Experts and Interpreters, i.e. Decree no. 37/1967 Coll., on Implementation of the Act on Experts and Interpreters, as amended by Decree no. 432/2002 Coll., [judgment of 15 September 2015, file no. Pl. ÚS 13/14 (N 164/78 SbNU 451; 297/2015 Coll.), point 34], when it stated that this petition would be impermissible due to the obstacle of res judicata under § 35 par. 1 of the Act on the Constitutional Court, if the same contested provision had been previously reviewed on the merits based on the procedure under § 78 par. 1 in conjunction with § 74 of the same Act.