Pl.ÚS 28/13 of 10 July 2014

Judges' Pay XV – setting base salary at a 2.75 multiple of average monthly salary

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

HEADNOTES

VERDICT
On 10 July 2014, under file no. Pl. ÚS 28/13, the plenum of the Constitutional Court, consisting of the Chairman, Pavel Rychetský and Judges Ludvík David, Jaroslav Fenyk, Jan Filip, Vlasta Formánková, Ivana Janů, Vladimír Kůrka, Jan Musil, Vladimír Sládeček, Radovan Suchánek, Kateřina Šimáčková, Vojtěch Šimíček, Milada Tomková (judge rapporteur) and Jiří Zemánek, ruled on a petition from the Municipal Court in Brno, submitted under Art. 95 par. 2 of the Constitution of the Czech Republic seeking the annulment of the words "a 2.75 multiple" in § 3 par. 3 of Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by Act no. 11/2013 Coll., and Art. II in Part One of Act no. 11/2013 Coll., which amends Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by later regulations, and certain other Acts, with the participation of the Chamber of Deputies of the Parliament of the Czech Republic and the Senate of the Parliament of the Czech Republic, as parties to the proceeding, ruled as follows:

I. The provision of § 3 par. 3 of Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by Act no. 11/2013 Coll., expressed by the words "a 2.75 multiple," as regards judges of district, regional, and high courts, the Supreme Court and the Supreme Administrative Court, is annulled as of the end of 31 December 2014.

II. The remainder of the petition is denied.

REASONING

I.
Definition of the matter and recapitulation of the petition

1. On 24 May 2013 the Constitutional Court received a petition from the Municipal Court in Brno, seeking the annulment of the words "a 2.75 multiple" in § 3 par. 3 Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by Act no. 11/2013 Coll., and Article II of Part One of Act no. 11/2013 Coll., which amends Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by later regulations, and certain other Acts, together with a petition for a priority ruling in the matter under § 39 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by Act no. 48/2002 Coll.

2. The Municipal Court in Brno submitted the petition under § 64 par. 3 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, (the "Constitutional Court Act"), after it concluded, in connection with its decision-making activity, in accordance with Art. 95 par. 2 of Czech National Council Constitutional Act no. 1/1993 Coll., the Constitution of the Czech Republic, (the "Constitution"), that

- in § 3 par. 3 of Act no. 236/1995 Coll., as amended by Act no. 11/2013 Coll., the words "a 2.5 multiple" and

- the provision of Part One Article II of Act no. 11/2013 Coll.,

which are to be used in resolving the matter file no. 50 C 22/2012, are inconsistent with Art. 1 par. 1 in conjunction with Art. 81 and Art. 82 par. 1 of the Constitution, with Art. 1 of the Charter of Fundamental Rights

and Freedoms (the "Charter"), and with Art. 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Protocol").

3. In the matter file no. 50 C 22/2012, the Municipal Court in Brno is ruling on a complaint in which a judge of the Regional Court in Brno seeks against the Czech Republic – the Regional Court in Brno – payment of the amount of the difference between a judge's entitlement to salary under § 28 to 31 of Act no. 236/1995 Coll., on the Pay and other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by later regulations, (also "Act no. 236/1995 Coll.", or the "Salaries Act") and the entitlement to a multi-purpose flat fee reimbursement of expenses ("expense reimbursement") under § 32 par. 1 let. a) of Act no. 236/1995 Coll., per the original complaint for January 2012, and under the expanded complaint also for January and February 2013, and between the actually paid salary and expense reimbursement, which were reduced for January and February 2013 under Act no. 11/2013 Coll., with effect as of 1 January 2013.

4. With reference to the plaintiff's claims in that matter, the petitioner states that the plaintiff was not paid his full salary for January 2013, of CZK 105,800, and full expense reimbursement of CZK 4,100, to which he would be entitled were it not for the reduction of salary and expense reimbursement by Act no. 11/2013 Coll. The plaintiff was paid a salary of only CZK 90,600 and expense reimbursement of only CZK 3,500; thus, the total of the difference in salary and expense reimbursement is the claimed amount of CZK 15,800. The same applies to February 2013.

5. In the petition before the Constitutional Court, the petitioner also refers to § 3 par. 3 of Act no. 236/1995 Coll., as amended by Act no. 11/2013 Coll., under which the base salary from 1 January to 31 December of the calendar year is a 2.75 multiple of the average nominal monthly salary of natural persons in the non-business sphere reached according to the published data of the Czech Statistical Office (the "CSO") for the next-to-last calendar year, and the level of the base salary for the relevant calendar year is announced by the Ministry of Labor and Social Affairs in the Collection of Laws by a notification. This notification was published in the Collection of Laws on 22 January 2013 as no. 18/2013 Coll., and the base salary for judges for 2013 was set at CZK 62,856.75.

6. As regards the claimed unconstitutionality of the abovementioned provisions, the petitioner presented the following arguments to the Constitutional Court. First, it contested defects in the legislative process and objected to impermissible retroactivity of Act no. 11/2013 Coll. It then presented general constitutional law arguments, constitutional law arguments for specific review of the matter, presented economic arguments, and described the history of salary restrictions applicable to judges.

7. The petitioner first claimed that the conditions for the Chairwoman of the Chamber of Deputies of the Parliament of the Czech Republic (the "Chamber of Deputies") to declare a state of legislative emergency, set forth in § 99 of Act no. 90/1995 Coll., on the Rules of Procedure of the Chamber of Deputies, as amended by later regulations (the "Rules of Procedure") had not been met. In the introduction, the petitioner recapitulated that the Constitutional Court, in judgment file no. Pl. ÚS 33/11 of 3 May 2012 (N 95/65 SbNU 259; 181/2012 Coll.) annulled the words "a 2.5 multiple" in § 3 par. 3 of Act no. 236/1995 Coll., as amended by Act no. 425/2010 Coll., as of the end of 31 December 2012, whereupon the government submitted to the Chamber of Deputies an amendment to Act no. 236/1995 Coll. as publication no. 763 on 30 July 2012. Of course, according to the petitioner this draft could hardly be considered a government bill under Art. 41 of the Constitution, because the draft could not be passed without any further steps (five alternative wordings were submitted), and the comprehensive amending proposal to it was rejected on 12 December 2012. Thereafter, on 14 December 2012, the government submitted to the Chamber of Deputies a proposed amendment to § 3 par. 3 of Act no. 236/1995 Coll., in which it set the base salary as a 2.75 multiple of the average salary in the non-business sphere (publication no. 880). This proposal was discussed in a state of legislative emergency and passed by the Chamber of Deputies on 18 December 2012 (it was published in the Collection of Laws as Act no. 11/2013 Coll. on 17 January 2013) with the effective date set in Part Four, Article V, as of 1 January 2013. In the background report to publication no. 880 the government expressly stated that it saw publication no. 763 "primarily as a legislative medium for a resolution arising from general political agreement." The petitioner claims that the government did not proceed in a constitutional manner in a matter as serious as determining the salary level of judges, because it did not present a proper bill in time for the legislature to be able to discuss it in time. The subsequent use of legislative emergency was abuse of the institution, based on the poor quality bill submitted as publication no. 763. Discussion of a bill in a state of legislative emergency cannot be an instrument for the laxity of the executive branch. The petitioner makes further objections aimed against the fact that, although the subject matter of the legislation was the level of judges' salaries, the amendment promulgated as no. 11/2013 Coll. was

not discussed with the judicial branch, and thus the judicial branch had no opportunity to defend its position during the preparations for the government's decision. In this regard the petitioner states that the Constitutional Court has already once adopted a warning position on this issue, in judgment file no. Pl. ÚS 12/10 of 7 September 2010 (N 188/58 SbNU 663; 269/2010 Coll.), but it did not receive any response from the sponsor of the bill.

8. The petitioner also addressed the question of the retroactivity of Act no. 11/2013 Coll. Under Part Four, Article V of Act no. 11/2013 Coll., the Act was to go into effect on 1 January 2013. It was published in the Collection of Laws on 17 January 2013. The petitioner believes that, in accordance with § 3 par. 3 of Act no. 309/1999 Coll., on the Collection of Laws and the Collection of International Treaties, Act no. 11/2013 Coll. went into effect on the fifteenth day after it was published, i.e. on 1 February 2013. According to the petitioner, this was also the conclusion of the Ministry of Labor and Social Affairs, which informed the Ministry of Justice of this fact and of the need to withhold social insurance contributions from expense reimbursements for January 2013. Thus, a situation resulted in which, as of 1 January 2013, the base salary for determining the salaries of judges was not set. This situation is then subject to Article II of Part One of Act no. 11/2013 Coll., which provides that the base salary under this Act shall be used for the first time to determine the salaries and reimbursement of expenses for the month of January 2013. The petitioner does not consider this framework to be one that would retroactively grant a certain performance in favorem of the judicial branch, but it believes that the framework is restrictive, and therefore impermissibly retroactive.

9. The petitioner draws the substantive law unconstitutionality of the contested statutory provisions from a recapitulation of the Constitutional Court's relevant case law concerning various aspects of the material security of judges. In the petitioner's opinion, the case law contains the following basic theses:

- reviewing the constitutionality of valid restrictions applicable to judges for a particular year falls within the framework defined by the principle of judicial independence [Constitutional Court judgment file no. Pl. ÚS 55/05 of 16 January 2007 (N 9/44 SbNU 103; 65/2007 Coll.), point 49],

- the constitutional positions of judges, on the one hand, and representatives of the legislative and executive branch, especially state administration, on the other hand, differ because of the principle of separation of powers and the principle of an independent judiciary; it follows that the legislature has different discretion as regards pay restrictions on judges, in comparison with the discretion for such restrictions in other areas of the public sphere (Constitutional Court judgment file no. Pl. ÚS 55/05, point 49),

- interference in the material security of judges guaranteed by law may not be an expression of arbitrariness by the legislature, but must, based on the principle of proportionality, be justified by unusual circumstances, e.g. the state being in a difficult financial situation, but even if this condition is met the different functions of judges and representatives of the legislative and executive branch, especially the state administration, must be taken into account; such interference may not give rise to concerns that it will limit the dignity of judges, e.g. that it is not an expression of constitutionally impermissible pressure by the legislative and executive branch on the judicial branch (Constitutional Court judgment file no. Pl. ÚS 55/05, point 49),

- the principle of an independent judiciary is one of the essential requirements of a democratic state governed by the rule of law under Art. 9 par. 2 of the Constitution (Constitutional Court judgment file no. Pl. ÚS 55/05, point 50),

- arbitrary interference by the legislature in the area of the material security of judges, including restrictions on pay, must be included in the sphere that is protected by the principle of judicial independence for two reasons. First, the independence of judges is conditioned on their moral integrity and level of expertise, but it is also tied to appropriate material security. The second reason for including a prohibition on arbitrary interference in the material security of judges (salary restrictions) in the principle of judicial independence is to rule out the possibility of pressure from the legislative branch, or the executive branch, on judicial decision making. In other words, to rule out arbitrary interference in the material security of judges as a possible form of "penalizing" judges by the legislative and executive branch, and thereby also to rule out forms of pressure on their decision making. [Constitutional Court judgment file no. Pl. ÚS 43/04 of 14 July 2005 (N 139/38 SbNU 59; 354/2005 Coll.)],

- the salary levels of judges, in a wider sense, should be a stable, non-reducible quantity, not a shifting factor, with which the governmental grouping of the moment can engage in trade-offs, for example, because they consider judges' salaries to be too high in comparison with the salaries of state employees or of other

professional groups. Striving for such equality departs from the bounds of constitutionality; it is a political aim that has no support in the constitutionally conceived principle of equality [Constitutional Court judgment file no. Pl. ÚS 11/02 of 11 June 2003 (N 87/30 SbNU 309; 198/2003 Coll.)],

- freezing the statutorily expected increase in the income of judges or other constitutional officials must be considered another form of salary restriction, and the Constitutional Court would undoubtedly consider, for example, "permanent" freezing of salaries to be a constitutionally unacceptable/impermissible step. The salaries of judges, in the wider sense, are supposed to be a stable, non-reducible value, unless quite extraordinary state circumstances arise [Constitutional Court judgment file no. Pl. ÚS 13/08 of 2 March 2010 (N 36/56 SbNU 405; 104/2010 Coll.), point 41; similarly, judgment file no. Pl. ÚS 55/05, point 55],

- the direct connection between the salaries of representatives of the legislative and executive branches, on one side, and the salaries of judges, on the other, must be considered a significant element of the guarantee of appropriate material security for judges, in terms of the principle of the division of state powers into the legislative, executive, and judicial branches, and the requirement for a balance between them. Thus, the structure of the statute on the salaries of state officials, which, using a uniform base salary and statutorily set coefficients guarantees that the salaries of judges will increase automatically and in the same proportion with an increase in the salaries of representatives of the legislative and executive branch, is a significant, built-in insurance policy in the legal order that the relative material security of representatives of the individual branches will be preserved in the future. (Constitutional Court judgment file no. Pl. ÚS 55/05, point 59).

10. The petitioner also states that these theses are also contained in many other Constitutional Court judgments relating to salary restrictions on judges. It points out that the Constitutional Court also agreed with these general theses in its judgment file no. Pl. ÚS 12/10 and in its last judgment concerning salary restrictions on judges, i.e. judgment file no. Pl. ÚS 33/11.

11. From that last Constitutional Court judgment, file no. Pl. ÚS 33/11, the petitioner also points out the following two general theses:

- unlike the salaries of other civil servants, judges' salaries, have been subject only to restrictions for a long time, intended to continue into the future. Measures concerning them no longer appear to be exceptional and proportional, but appear to be a targeted process aimed at returning judicial salaries to lower levels, and thus in this manner removing what is, from the point of view of the legislative and executive branch, the past "error" in setting the rules for calculating judicial salaries in the mid- 1990s. Such a leveling necessarily leads to a decline in the status of the judiciary within the middle class, degradation of its income in relation to other legal professions and a diminution of its necessary social prestige,

- the restriction involved in decreasing the coefficient for determining the base salary from a triple to a 2.5 multiple of the average nominal monthly salary of persons in the non-business sphere is disproportionate interference aimed solely against judges, and does not meet the requirements that the Constitutional Court established in the cited case law for accepting restrictions on judges' salaries.

12. From another Constitutional Court judgment, which does not concern salary restrictions on judges, the petitioner points to the conclusions in judgment file no. Pl. ÚS 22/09 of 7 September 2010 (N 186/58 SbNU 633; 309/2010 Coll.), point 40:

"Unlike the legislative and executive branches, a judge is a subject to the clear requirement of completing university education, passing a professional legal exam, and continuing professional education. An essential requirement for judges is their moral integrity, which the law requires and expects. Thus, the role of a judge is tied to many restrictive measures that reach into a judge's personal life, including a restriction on other income … It is precisely for that reason that the state committed itself to provide dignified material security for judges.

13. The Municipal Court in Brno also points to a number of international documents to support the conclusion that the contested statutory provisions are unconstitutional. First of all, it refers to Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, of 17 November 2010 (http://www.coe.int), which replaced the previous Recommendation R (94)12. Articles 53 to 55, which concerning the remuneration of judges, indicate that:

- judges' remuneration should be commensurate with their profession and responsibilities and be at an appropriate level,

- guarantees should exist for maintaining a reasonable remuneration in case of illness and maternity leave,

- judges' pensions must should be in a reasonable relationship to their previous salaries,

- there should be specific legal provisions as a safeguard against a reduction in judges' salaries.

14. Among other international documents the petitioner points to the European Commission for Democracy through Law (the Venice Commission), Report on the Independence of the Judicial System, adopted on 12 to 13 March 2010 (http://www.venice.coe.int), which states in Part III Article 6: "The Venice Commission shares the opinion that the remuneration of judges has to correspond to the dignity of the profession and that adequate remuneration is indispensable to protect judges from undue outside interference. ... The level of remuneration should be determined in the light of the social conditions in the country and compared to the level of remuneration of higher civil servants." Finally, as part of a comparative analysis, the petitioner also relies on the conclusions of the Consultative Council of European Judges in the activities of the Council of Europe of 2001, which, in Opinion no. 1 (Avis no. 1, points no. 61 and 62), emphasizes the need for legal provisions guaranteeing judicial salaries against reduction and ensuring at least de facto provision for salary increases in line with the cost of living (http://wcd.coe.int/).

15. Before the petitioner turned to constitutional law arguments relevant to the review of this case, it briefly mentioned the history of judicial remuneration, and cited the reasoning of the proposals in cases file no. Pl. ÚS 16/11 [decided by judgment file no. Pl. ÚS 16/11 of 2 August 2011 (N 135/62 SbNU 99; 267/2011 Coll.)] and file no. Pl. ÚS 33/11, in which the Municipal Court in Brno analyzed in detail the deconstruction of the system of remuneration of constitutional officials contained in Act no. 236/1995 Coll. In its opinion, this can be described as an attempt to reduce the remuneration level of judges by tens of interventions into components of material security. Above all, it pointed out the Constitutional Court's conclusions contained in judgment file no. Pl. ÚS 33/11, in which it agreed with the petitioner that reducing the base salary from triple the average salary in the non-business sphere to a 2.5 multiple was unconstitutional interference in the rights of judges. The Constitutional Court found no reason for such sharp intervention in the level of judicial remuneration ("the restriction … is disproportionate interference targeted only at judges …"). The petitioner believes that in that judgment the Constitutional Court did not give the legislature any room for discretion as to what level of the base salary is constitutional. In its opinion, in the case file no. Pl. ÚS 33/11 the Constitutional Court reviewed only two levels at which all the petitioner's arguments which directed: that is, that reducing the base salary from triple to a 2.5 multiple, given the situation that existed in remuneration in the public sector, was disproportionate vis-à-vis judges, and therefore unconstitutional, because judges enjoy increased constitutional protection in this regard. Thus, in the petitioner's opinion, the only constitutional measure was to return the base salary to a three times multiple.

16. However, as of 1 January 2013 the legislature was not able to adopt legislation that would guarantee the judicial branch its right to material security; a month later it reduced the already reached base salary level to 2.76 times the average salary in the non-business sphere. The petitioner believes that the only constitutionally possible interpretation of the question of what salary was due to a judge on 1 January 2013, and during the entire month of January 2013, is the one taken as a starting point in Constitutional Court judgment file no. Pl. ÚS 33/11, and concludes that a judge was entitled to a salary corresponding to a base salary at the level of three times the average salary in the non-business sphere during the year 2011 (because that was the level that the Constitutional Court considered to be constitutional). According to the Municipal Court in Brno, the government, as the proponent of a reduction in the base salary to a 2.75 multiple (publication no. 880), did not state anything relevant, only that a return to a three times multiple would place high demands on the state budget in 2013 and further years, i.e. at a time when cost-saving measures are being applied to practically all segments of the population.

17. The petitioner also used economic arguments to support its claims. It stated that data from the Czech Statistical Office indicate that the average gross monthly wage in the non-business sphere, as full-time equivalent (table 1b, an annex to Czech Statistical Office publication no. e-3106-12, titled "Registered Number of Employees and Their Wages 4th quarter of 2012" published 2 April 2013) had no nominal decline at all in the years 2000–2012 (for 2011 the number is CZK 24,469, for 2012 the number is CZK 25,015). For natural persons (which is a misleading number, because it does not take into account the length of employment) the average wage in the non-business sphere declined from 2009 to 2010 by CZK 36, and from 2010 to 2011 by CZK 42, in 2012 it grew to CZK 23,453 (i.e. by CZK 455). The legislation fully reflects these marginal fluctuations in the decline through the fact that the base salary also follows the level of the average salary in the non-business

sphere toward a decline, i.e. that the Czech Republic is evidently one of the few countries where judges' salaries automatically decline proportionately to the decline in the public sector. The legislature takes no account at all of this framework. Thus, the reasons for the far more substantial decline in the level of remuneration of judges remain hidden, or cannot stand up to the constitutional light. In reality, according to the petitioner, there is a long-term attempt to relatively reduce the remuneration of judges in the country, although judicial salaries cannot be considered unrealistic, even in an international comparison. The State Closing Accounts for 2011 published on the webpage of the Ministry of Finance states in part |i|. National Budget Expenses, in chapter 3 "Wages and Salaries in the budgetary sector," that in 2011 the salaries of pedagogical employees in regional education increased by CZK 1,554.4 million, while, as regards the numbers of employees, in central bodies (table 52) there was a decline of 676 employees, and the number of unfilled positions grew from 6,209 in 2010 to 14,745 in 2011. Given this situation, the petitioner does not find reducing the base salary of judges by almost 12% to be at all proportional. In its opinion, media reports also indicate that, despite announced cost-cutting measures, bonuses at the level of hundreds of thousands of crowns are still allocated in the central bodies of state administration.

18. Therefore, the petitioner closed its substantive law arguments by saying that it considers the words "a 2.75 multiple" set forth in § 3 par. 3 of Act no. 236/1995 Coll., as amended by Act no. 11/2013 Coll., to be unconstitutional due to the inconsistency of the level of this multiple with the right of judges to stable material security. In the case of the proposed annulment of Part One Article II of Act no. 11/2013 Coll., in addition to the inconsistency with the right of judges to material security there is another reason, violation of the prohibition on retroactivity of statutes. Therefore, based on the foregoing, it found the provisions in question to be inconsistent with Art. 1 par. 1 in conjunction with Art. 81 and Art. 82 par. 1 of the Constitution, with Art. 1 of the Charter, and with Art. 1 of the Protocol.

19. The petitioner adds that § 70 par. 1 of the Constitutional Court Act indicates that if the Constitutional Court concludes that a statute, or individual provisions thereof, is inconsistent with the constitutional order, it shall rule in a judgment that such statute, or its individual provisions, is annulled as of a date that it determines in the judgment. The petitioner believes that the Constitutional Court, if it grants the petition, should give the legislature a relatively short time to adopt new legislation, which will be consistent with the key reasons stated in the judgment. In other words, the date of annulment of the contested provisions, which the Constitutional Court must determine in the judgment, under § 70 par. 1 of the Constitutional Court Act, should be set so that, on the one hand, the legislature will have a certain amount of time to adopt new legislation, but on the other hand, so that there will not be unnecessary delays in adopting the new legislation. It is generally known that the legislature has been aware for a long time of the existence of many Constitutional Court judgments concerning salary restrictions on judges, and that these issues are well known to it. The legislature is capable of adopting new legislation in a relatively very short period of time, which it demonstrated in the case of the contested Act no. 11/2013 Coll., which was submitted to the Chamber of Deputies by the government on 14 December 2012, the Chamber of Deputies approved the bill on 18 December 2012, the Senate of the Parliament of the Czech Republic (the "Senate") discussed the bill on 28 December 2012, and that same day the adopted Act was delivered to the president for signature. Moreover, the longer the time provided to the legislature for adopting new legislation, the longer the unconstitutional state of affairs will continue.

20. The petitioner also proposed that the Constitutional Court, in accordance with § 39 of the Constitutional Court Act, rule on the submitted petition as a matter of priority, based on the argument of the legislature's repeated interference aimed at restricting the salaries of judges, the intensity of the interference, and the general effect on a decision in the matter of the high number of complaints by judges seeking payment of the rest of their salaries and reimbursement of expenses for January 2013.

II.
Recapitulation of the substantive parts of the statements from the parties to the proceeding

21. Pursuant to § 42 par. 4 and § 69 of the Constitutional Court Act, the Constitutional Court sent the petition to the parties to the proceeding for their responses. The Chamber of Deputies and the Senate sent their statements by the deadline. The Public Defender of Rights announced, in a letter delivered to the Constitutional Court on 10 June 2013, that he would not exercise his right to join the proceeding. The government did likewise, in a letter delivered to the Constitutional Court on 22 July 2013.

22. In her statement of 3 July 2013, the Chairwoman of the Chamber of Deputies, Miroslava Němcová, stated that the bill that was later promulgated as Act no. 11/2013 Coll. was submitted by the government to the Chamber of Deputies on 14 December 2012 and was sent to the deputies as publication no. 880. As the

government states in the background report, in response to Constitutional Court judgment no. 181/2012 Coll. (file no. Pl. ÚS 33/11), which, as of the end of 31 December 2012, annulled the general framework for the base salary level set forth in § 3 par. 3 of Act no. 236/1995 Coll., the setting of a new base salary level for determining salary and certain expense reimbursements, at the level of a 2,75 multiple of the average nominal monthly salary of persons in the non-business sphere, reached according to published data from the Czech Statistical Office for the next to last calendar year. The government further states in the background report that the reduction of the ratio of the base salary to the average salary in the non-business sphere from a multiple of three to a 2.5 multiple, which was made on 1 January 2011 by Act no. 425/2010 Coll., was identified by the Constitutional Court as a salary restriction on judges, which is inconsistent with Art. 1 par. 1 in conjunction with Art. 82 par. 1 of the Constitution. A return to a multiple of three would make great demands on state budget funds in 2013 and subsequent years, i.e. in a period when cost-cutting measures are being applied for practically all segments of the population. Therefore, especially in view of the present economic situation and the state budget, the government considers an appropriate solution to be setting the ratio of the base salary to the average salary in the non-business sphere at the level of a 2.75 multiple. Likewise, as the government states in the background report, the proposed solution is based on the assumption that the 2.5 ratio of base salary to the average salary in the non-business sphere, annulled by the Constitutional Court, is too low, although at the same time the Constitutional Court left it to the legislative branch and executive branch to decide the new level at which to set it. Insofar as the Constitutional Court found the base salary calculated as a 2.5 multiple to be unconstitutional, and logically then the original base salary, calculated as a multiple of 3 was safely constitutional, then the compromise solution chosen was to set the multiple at 2.75, that is, halfway between the two outer numbers. As regards Art. II of the bill, the background report states that the Constitutional Court annulled the base salary in the general framework (i.e. both for all judges, including Constitutional Court judges, and for representatives of the legislative and executive branches) as of the end of 31 December 2012, and unless the relevant amendment was implemented § 3 par. 3 of Act no. 236/1995 Coll. would become inapplicable. Thus, a special part of the background report concerning Article II emphasizes that, for reasons of legal certainty, the newly set base salary level will be used to determine salaries and expense reimbursements for the entire month of January 2013, even in the event that the Act is not published in the Collection of Laws until sometime during that month.

23. At the government's proposal, the Chairwoman of the Chamber of Deputies declared a state of legislative emergency. The proposal was assigned for discussion to the budget committee, which discussed it and on 18 December 2012 issued a resolution in which it recommended that the Chamber of Deputies adopt the government's proposal, not discuss it in general debate, only in detailed debate, discuss it by Tuesday, 18 December at 7 p.m., and adopt a resolution under § 99 par. 7 of the Rules of Procedure waiving general debate. On the same day the Chamber of Deputies, when discussing the bill, by a vote of 160 for and 3 against, out of 168 deputies registered, adopted a resolution that states that conditions exist for discussing a bill in shortened proceedings. The budget committee's resolution was passed by a vote of 133 for and 2 against, out of 161 deputies present. During detailed debate on the bill two amending proposals were made; the proposal of deputy Jana Suchá, which replaced the words "a 2.75 multiple" in Article I of the bill with the words "multiple of 3" was not adopted, by a vote of 24 for and 32 against, out of 106 deputies registered. The Chamber of Deputies then in its final vote passed the government bill by a vote of 80 for and 8 against, out of 99 deputies registered. On 19 December 2012 the Chamber of Deputies passed the bill to the Senate, which discussed it at its session on 28 December 2012, when it expressed its intent not to debate the bill. The President signed the bill on 11 January 2013. On 15 January 2013 the adopted Act was delivered for signature to the Prime Minister, and it was promulgated in the Collection of Laws on 17 January 2013.

24. Thus, according to the Chairwoman of the Chamber of Deputies, it can be said that the parts of Act no. 236/1995 Coll., as amended by Act no. 11/2013 Coll., contested by the proposal of the Municipal Court in Brno, were adopted in a properly conducted legislative process, and that the legislature acted in the belief that these provisions are consistent with the Constitution and our legal order. Therefore, it is up to the Constitutional Court to review the constitutionality of the subject provisions, in connection with the proposal from the Municipal Court in Brno, and issue a decision.

25. The Chairman of the Senate, Milan Štěch, in response to the Constitutional Court's request, sent a statement that was delivered to the Constitutional Court on 24 June 2013. It states that the bill that was adopted and promulgated in the Collection of Laws as no. 11/2013 Coll. was submitted by the government to the Chamber of Deputies on 14 December 2012 after the previous bill, which the government submitted at the end of July 2012 and which was discussed as Chamber of Deputies publication no. 763, failed to pass the final vote. The bill was discussed in the Chamber of Deputies as Chamber of Deputies publication no. 880 in a state of legislative emergency, declared by the Chairwoman of the Chamber of Deputies at the government's proposal for the period

from 17 December 2012 to 21 December 2012. The government bill was passed, together with amending proposals that added the provision that
expense reimbursements made as a percentage of base salary for state officials and certain state bodies and judges be removed from the category of incomes subject to insurance contribution payments in the relevant statutes governing contributions for social security and public health insurance.

26. The Chamber of Deputies passed the bill on to the Senate on 19 December 2012; the government, acting through the Prime Minister, asked the Chairman of the Senate to have the Senate discuss the bill in a shortened proceeding. The bill was discussed as Senate publication no. 10, it was assigned for discussion to three committees, the Committee for the Economy, Agriculture and Transport, the Committee for Health and Social Policy, and the Constitutional Law Committee. The Committee for the Economy, Agriculture and Transport, as the guaranteeing committee, discussed the bill at its 3rd meeting, on 28 December 2012, and in its resolution no. 18 recommended that the Senate not debate the bill. The Committee for Health and Social Policy discussed the bill at its 3rd meeting, on 28 December 2012, and after a proposal to adopt the bill in the submitted version failed, the Committee, in resolution no. 6 recommended that the Senate reject the bill. The Constitutional Law Committee discussed the bill at its 4th meeting, on 27 December 2012, and after a proposal to not debate the bill failed, the Committee, in resolution no. 14 recommended that the Senate return the bill to the Chamber of Deputies with amending proposals that the Committee adopted. The aim of the amending proposals was an overall amendment of the bill passed on from the Chamber of Deputies, based on setting the base salary at three times the average nominal monthly salary in § 3 par. 3 of Act no. 236/1995 Coll.; further amendments consisted of applying the base salary for judges to Constitutional Court judges, and deleting from the bill changes that were added by the amending proposals relating to income subject to contribution payments for social security and health insurance.

27. The Senate discussed the bill at its 3rd meeting, on 28 December 2012; at the beginning of its discussion it agreed with the government's request for a shortened proceeding. After hearing from the representative of the bill's sponsor and reporters from the committees to which the bill was assigned, a vote was taken under § 107 of Act no. 107/1999 Coll., on the Senate Rule of Procedure, without debate, on the bill recommended by the guaranteeing committee, that the Senate express its intention not to debate the bill. The Senate adopted this proposal in resolution no. 50; out of 74 Senators present 57 voted in favor and 11 were against. Regarding the discussion of the bill in committees, there was relatively extensive debate concerning the bill, which led to different conclusions in the committees, as indicated by the resolutions they adopted. The bill's sponsor stated regarding the proposed framework for the base salary level, that in the government's opinion the proposed framework is consistent with the Constitutional Court's judgments, which was also stated in the background report, and the time aspects arising as a result of the failure to adopt the previous government bill in the Chamber of Deputies, as a result of which it was necessary to turn to a shortened proceeding. A number of senators stated a different opinion regarding these arguments, in particular in the Constitutional Law Committee, where there were reservations concerning whether the conditions for a state of legislative emergency had been met, as well as reservations regarding the proposed base salary level for judges, where opinions were stated that, in accordance with the Constitutional Court's judgment, the Act should maintain the original framework, with the word "multiple of three," and there were also reservations to the framework that was added to the government bill through amending proposals adopted in the Chamber of Deputies regarding insurance contribution payments. In the Committee for Health and Social Policy the reservations of some senators led to the resolution to reject the bill, in the Constitutional Law Committee they led to amending proposals that would undoubtedly be consistent with the Constitutional Court's judgment. However, in the Committee for the Economy, Agriculture and Transport, there was support for the arguments that were also stated in the background report to the government bill, concluding that this is a compromise solution that could pass a potential future test of constitutional conformity, and based on that all senators present adopted the resolution recommending that the Senate not discuss the bill. That resolution was subsequently also adopted by the Senate, so no debate on the bill was conducted in the plenary Senate session.

III.
Waiver of a hearing

28. The Constitutional Court acknowledged that a hearing could not bring any significant shift in clarifying the matter other than what arises from the written statements from the parties to the proceeding. In view of § 44 of the Constitutional Court Act, as amended by Act no. 404/2012 Coll., there is no need to ask the parties to the proceeding about their position on this issue, therefore it was possible to rule in the matter without holding a hearing.

IV.
The text of the contested provisions

29. The provision of § 3 par. 3 of Act no. 236/1995 Coll., as amended by Act no. 11/2013 Coll., states:

From 1 January to 31 December of the calendar year, the base salary is a 2.75 multiple of the average nominal monthly salary of persons in the non-business sphere reached according to published data from the Czech Statistical Office in the calendar year before the previous year. The Ministry of Labor and Social Affairs shall announce the base salary level for each calendar year by a notification in the Collection of Laws.

30. Part One Art. II of Act no. 11/2013 Coll. reads:

Transitional Provision

The base salary under this Act shall be used for the first time for determining salary and expense reimbursement for January 2013.

V.
Petitioner's active standing

31. The proposal seeking the annulment of part of Act no. 236/1995 Coll. and the transitional provision included in Part One of Act no. 11/2013 Coll., together with a petition for a ruling in the matter on a priority basis under § 39 of the Constitutional Court Act was submitted by the Municipal Court in Brno under § 64 par. 3 of the Constitutional Court Act.

32. The Municipal Court in Brno is conducting a proceeding, file no. 50 C 22/2012, in which a judge of the Regional Court in Brno seeks from the Czech republic – the Regional Court in Brno – payment of the amount resulting from the plaintiff's entitlement to salary and flat-fee expense reimbursement per the expanded complaint, for January and February 2013 and the actually paid salary and expense reimbursement, which were reduced for the period January and February 2013 by Act no. 11/2013 Coll. The claimed reduction is an aggregate amount of CZK 15,800 for each month.

33. Under § 64 par. 3 of the Constitutional Court Act a condition for the active standing of a general court is that the statute, or individual provisions thereof, which is proposed to be annulled is related to the subject matter of a proceeding in such a way that it establishes decision making grounds for the court's review of the matter. In reviewing the entitlement to additional payment of salary and expense reimbursement for the months of January and February the general court must apply § 3 par. 3 of Act no. 236/1995 Coll., which sets the level of the base salary, including the transitional provision, which determines when the change in the base salary is to be applied for the first time (Art. II of Act no. 11/2013 Coll.).

34. In its settled case law, the Constitutional Court has repeatedly taken the opinion that an amendment to legislation does not have an independent normative existence, but becomes a component of the amended legislation; it accepted review of an amendment only in cases where it was objected that it was unconstitutional on the grounds of the non-existence of norm-creating competence or failure to observe the prescribed manner of adopting and issuing it. An analog of this situation is a case where a transitional provision is contested [cf. judgment file no. Pl. ÚS 6/13 of 2 April 2013 (112/2013 Coll.)], because that provision exists normatively only as a component of the amending statute, it does not become a component of the amended statute.

35. Thus, the petitioner has active standing.

VI.
Constitutional conformity of competence and the legislative process

36. In accordance with § 68 par. 2 of the Constitutional Court Act, in a proceeding on the review of norms, the Constitutional Court must review whether the contested statute (or its individual provisions) was adopted and issued within the bounds of constitutionally provided competence and in a constitutionally prescribed manner.

37. It was determined from Chamber of deputies publication no. 880/0 (the government bill), stenographers' records, as well as the statement from the party to the proceeding, government resolution no. 934 of 14 December 2012 (publicly available) and the decisions of the Chairwoman of the Chamber of Deputies no. 48 and

49 of 14 December 2012 (available in the digital library of the Chamber of Deputies) that the government approved the proposal submitted by the Minister of Labor and Social Affairs on 14 December 2012 by resolution no. 934, and at the same time suggested to the Chairwoman of the Chamber of Deputies that she declare a state of legislative emergency for the period from 17 to 21 December 2012 for discussion of this government bill, and requested that the government bill be discussed in a shortened proceeding as part of the state of legislative emergency. At the same time the government asked the Chairman of the Senate to have the senate discuss the government bill in a shortened proceeding.

38. The Chairwoman of the Chamber of Deputies, in decision no. 48 of 14 December 2012, declared a state of legislative emergency for the period 17 to 21 December 2012; she stated in the decision that the Prime Minister justified the request on the basis of "extraordinary circumstances that fundamental threaten the fundamental rights and freedoms of the citizens." In decision no. 49 of the same date she decided that Chamber of Deputies publication no. 880 would be discussed in a shortened proceeding (leaving out the first reading), assigned the publication to the Budget Committee for discussion, and set a firm deadline for presenting a resolution by 18 December 2012 at 10:00 a.m..

39. According to date from the digital repository of the Chamber of Deputies, publication no. 880/0 was sent to the deputies on 14 December 2012; the Budget Committee adopted a position on it in its resolution (no. 880/1) of 18 December 2012, in which it recommended that the Chamber of Deputies discuss the bill in general debate and discuss it by 18 December 2012 at 7:00 p.m..

40. The bill was discussed at the 49th meeting of the Chamber of Deputies on 18 December 2012 as point no. 164; in the opening the Chamber of Deputies (according to the stenographer's record) reviewed whether conditions existed for discussion in a shortened proceeding; none of the deputies addressed this question in the debate, and in vote no. 241 it was decided that conditions for discussion the government bill (publication no. 880) in a shortened proceeding; there were 168 deputies registered, 160 voted in favor, and 3 against.

41. The Minister of Labor and Social affairs cited as the reason for submitting the bill that "after its previous proposed solution was not approved, the government ... proposed a base salary of 2.75 time the average monthly nominal salary of natural persons in the non-business sphere ... based on this base salary, as of 1 January 2013 salaries are to be determined solely for judges, and indirectly also for state officials … I firmly believe that the submitted government bill will be passed, because otherwise no base salary would be set for determining the salaries of judges and state officials …."

42. The Chamber of Deputies then, in vote no. 242 (161 registered, 133 in favor, 2 against) decided to waive general debate (under § 99 par. 7 of Act no. 90/1995 Coll., on the Rules of Procedure of the Chamber of Deputies).

43. Two amending proposals were made in detailed debate (Deputy Jan Čechlovský proposed expanding the government bill to include amendment of the regulations on contribution payments for social security and public health insurance so that expense reimbursements provided under Act no. 236/1995 Coll. would not be subject to insurance premium withholding, and Deputy Jana Suchá proposed that instead of a 2.75 multiple the base salary would be three times the average salary in the non-business sphere). In the debate, the Minister of Justice pointed out to the Chamber of Deputies the risks connected with adopting the government bill and state that he would be glad if the "so-called multiple of three" were adopted, as it was "undoubtedly more constitutionally conforming" and "maybe this issue would finally be settled." The first amending proposal was adopted (removing expense reimbursement from payment of insurance premiums), the second – returning the base salary to a multiple of three – was not.

44. The bill was passed in vote no. 245 (there were 99 deputies registered; 80 voted in favor, and 8 against).

45. The Senate discussed the government bill as publication no. 10; the Chamber of Deputies passed it on to the Senate on 19 December 2012, the Senate scheduled the publication for its 3rd meeting, on 28 December 2012; according to the stenographer's record, during discussion in the Senate the Minister of Labor and Social Affairs stated that "the Chamber of Deputies discussed this bill in a state of legislative emergency, and therefore found that there was an extraordinary circumstance that fundamentally threatened the fundamental rights and freedoms of citizens, in particular the right of citizens to fair compensation for work, and hence the reason for the legislative emergency." The Senate Constitutional Law Committee in its resolution proposed returning the bill to the Chamber of Deputies; speaking through its chairman, who reported the content of the Committee's resolution, it rejected the interpretation that a 2.75 multiple determining the base salary means an increase in the

salaries of judges, and with reference to Constitutional Court judgment file no. Pl. ÚS 33/11 it stated that, based on the binding Constitutional Court judgment the salaries of judges are to be derived from a base salary that is a three times multiple of the average salary in the non-business sphere. It also pointed to the problematic state of legislative emergency, which, in its opinion, was declared only because the government has not managed to present bills on time, as it is supposed to do. The guaranteeing committee was the Committee for the Economy, Agriculture and transport, which proposed not holding debate on the bill. This proposal was adopted by the Senate in vote no. 4 (resolution no. 50; 74 senators registered, 57 in favor, 11 against).

46. The Act was delivered to the President of the Republic for signature on 28 December 2012, the President signed it on 11 January 2013, it was delivered to the Prime Minister for signature on 15 January 2013, and was promulgated in the Collection of Laws on 17 January 2013 as no. 11/2013 Coll.

47. The petitioner objects that the institution of legislative emergency was misused, because the government was unacceptably sluggish in submitting a bill to address the base salary level for determining the salaries of judges, and also emphasizes that the bill was not discussed with the judicial branch before being submitted to the Chamber of Deputies. Judgment file no. Pl. ÚS 33/11 of 3 May 2012 annulled, as of 31 December 2012, the framework under which the base salary for judges was to be derived from a 2.5 multiple of the average monthly salary in the non-business sphere for the calendar year before the previous year. The government did submit to the Chamber of Deputies on 30 July 2012 a bill (publication no. 763/0) that was to amend Act no. 236/1995 Coll., but it did so in a rare manner: it submitted five alternatives for the base salary (from 2.51 to a 3 times multiple) and in all alternatives proposed cancelling the freezing of the base salary contained in § 3a of Act no. 236/1995 Coll. A comprehensive amending proposal by Deputy Vladislav Vilímec was submitted to publication no. 763/0; it set the base salary at 2.75 times the average monthly salary in the non-business sphere and expected that "officials" remunerated under Act no. 236/1995 Coll. would have their base salary (coefficients 2.51 and 2.61) unfrozen in the years 2015 and 2016. Some other amending proposals were also made, which addressed the taxation of expense reimbursement, extending the freeze of the base salary for officials until 2015, as was a proposal to address the drop of the salaries of Constitutional Court judges vis-à-vis the salaries of general court judges or the level of the base salary derived from three times the average salary in the non-business sphere. The third reading of the bill took place on 12 December 2012, and the bill (as amended by the comprehensive amending proposal) was not passed.

48. The Constitutional Court does not doubt that the contested Act was adopted within the constitutionally provided competence of the Parliament, but the answer to the question of whether it was also done in a constitutionally prescribed manner is not so obvious.

49. In the past the Constitutional Court has repeatedly considered defects in the legislative process, including the declaration of a state of legislative emergency and discussion of a bill in a shortened proceeding; its opinions have developed from considerable restraint [e.g. judgment file no. Pl. ÚS 24/07 of 31 January 2008 (N 26/48 SbNU 303; 88/2008 Coll.), judgment file no. Pl. ÚS 56/05 of 27 March 2008 (N 60/48 SbNU 873; 257/2008 Coll.) or judgment file no. Pl. ÚS 12/10 of 7 September 2010 (N 188/58 SbNU 663; 269/2010 Coll.)] to an emphatic reminder of the importance of observing the principles for creating harmonious, transparent and predictable law as one of the attributes of a substantively understood state governed by the rule of law [e.g. judgment file no. Pl. ÚS 55/10 of 1 March 2011 (N 27/60 SbNU 279; 80/2011 Coll.) or judgment file no. Pl. ÚS 53/10 of 19 April 2011 (N 75/61 SbNU 137; 119/2011 Coll.)]. Although the institution of legislative emergency is exclusively a statutory instrument, it must certainly be seen from the point of view of the principles of separation of powers, pluralism, free competition between political forces and protection of parliamentary minorities. In judgment file no. Pl. ÚS 55/10 the Constitutional Court stated that the institution of a state of legislative emergency limits or relativizes these constitutional principles, and therefore the conditions for using it must be interpreted narrowly. The condition for declaring a state of legislative emergency is the existence of an extraordinary circumstance that can potentially threaten fundamental rights and freedoms in a fundamental manner, or when the state is in danger of considerable economic damage (§ 99 par. 1 of Act no. 90/1995 Coll., on the Chamber of Deputies Rules of Procedure). The conclusion that an extraordinary circumstance exists must be substantiated by facts, the justification for declaring a state of legislative emergency must also be based on weighing the intensity of reasons for declaring a state of legislative emergency in relation to the limitation of the affected constitutional principles, because in a particular case the interest in prevent or removing their consequences should, with regard to the protected values, outweigh the interest in the proper course of legislative procedure (cf. points 84-85 of judgment file no. Pl. ÚS 55/10). One also cannot overlook the fact that in parliamentary practice this institution is used very often – as the Constitutional Court has pointed out in the past.

50. The declaration of a state of legislative emergency was justified in the decision by the Chairwoman of the Chamber of Deputies, no. 48 of 14 December 2012, basically using the text of the law ("an extraordinary circumstance that fundamentally threatens the fundamental rights and freedoms of citizens"). However, the facts can be reliably reconstructed from the abovementioned overview of the legislative process; the reason for declaring a state of legislative emergency was the fact that as of 1 January 2013 there was no provision in the legal order from which a judge's salary could be calculated (likewise that of a state prosecutor), and on 12 December 2012 the Chamber of Deputies rejected publication no. 763/0, which it had discussed since 31 July 2012 in connection with the Constitutional Court's annulment of part of the provision on the base salary in Act no. 236/1995 Coll. (judgment file no. Pl. ÚS 33/11). The Constitutional Court gave the legislature seven months to resolve in a constitutionally conforming manner the unconstitutional reduction of the base salary and the ratio of a judge's salary to the average salary in the non-business sphere. The first error, which most likely started the chain of events that culminated in the rejection of the bill contained in publication no. 763/0, was committed by the government, which did not present in that publication a bill, in the material sense of the word, that could have been approved by the Chamber of Deputies, but – as it stated itself in the background report to the government bill submitted on 14 December 2012 – "a medium for a solution arising from general political agreement." After the "medium" was rejected, the government, within two days (during which it certainly did not manage to conduct comment proceedings, let alone discussions with representatives of the judicial branch, which, in the present situation must be considered to be the top courts in the judicial system, i.e. the Supreme Court and the Supreme Administrative Court) submitted to the Chamber of Deputies a new bill (publication no. 880/0), together with a request to declare a state of legislative emergency. With this tight timing (only 17 days remained until 31 December), both chambers of Parliament had to approve the bill, the President and the Prime Minister had to sign it, and the Act had to be promulgated. It is no wonder that this was not completely successful, even though this amount of time was "enough" to add to the bill an amendment to regulations governing the withholding of insurance contribution payments for social security and public health insurance – of course, the petitioner did not include this part of the Act in its objections, and most likely could not do so, in view of the subject matter of the proceeding, and therefore the Constitutional Court leaves it aside (the Act was finally promulgated in the Collection of Laws on 17 January 2013).

51. When the Constitutional Court compares the intensity of reasons for declaring a state of legislative emergency (here, the right of judges to remuneration for work, as the Minister of Labor and Social Affairs stated during discussion of the bill in the Senate) with the interest in proper and good quality legislative procedure, it must state that given the timing in that situation, it was the only possibility to try to ensure that judges not remain without remuneration for their work as of 1 January 2013. We also cannot overlook the fact that when discussion of publication no. 880 began, out of 168 registered deputies, 160 (i.e. more than a three-fifths majority of all deputies) voted for the proposition that conditions existed for discussing the bill in a shortened proceeding. Although one can object that the Chamber of Deputies could not properly consider the bill in four days, it cannot be overlooked that the Chamber of Deputies had discussed the same topic since 31 July 2012 in the form of publication no. 763, so the deputies were very well informed about the essence and nature of the legislative framework, the only purpose of which was to be replacing the coefficient of 2.5 with another, that was constitutionally conforming, as the Constitutional Court explained in judgment file no. Pl. ÚS 33/11, where it removed the coefficient of 2.5 from the Act. The Senate was under similar enormous time pressure, as it had only 10 days, including the Christmas holidays, to discuss the bill.

52. The Constitutional Court is forced to state that the government and the Parliament repeatedly – as far as the manner of adopting a statute that fundamentally affects the material security of judges is concerned – treat the third component of state power, that is, the judicial branch, in a manner which one can scarcely find in the European democratic and legal sphere. In the past the Constitutional Court has several times called for the executive and legislative branches to respect the rules of democratic political culture; in judgment file no. Pl. ÚS 12/10 the Constitutional Court stated (point 25): "In terms of the opportunity to relevantly express their will and defend themselves in the question of salaries, the judges found themselves in a worse position than other professions … in the event of exceptional circumstances, e.g. the state being in a difficult financial situation, judges should not be disadvantaged in this manner next time, and in order for the legislature to be able to impose salary restrictions, it should obtain a relevant statement from the representatives of the judicial branch, which should become part of the background report. In judgment file no. Pl. ÚS 16/11 the Constitutional Court pointed out, with great urgency, the constitutive principles of a democratic society with which a constitutional state stands and falls – in the words of judgment file no. Pl. ÚS 19/93 of 21 December 1993 (N 1/1 SbNU 1; 14/1994 Coll.) "…law and justice are not subject to the discretion of the legislature, and thus not even of the statutes, because the legislature is bound by certain fundamental values, which the Constitution declares to be inviolable." Salary restrictions on judges will always be a certain form of interference in one of the components of judicial independence (as will be explained again below), and therefore it is impermissible that such interference take

place unilaterally; in terms of the scope of personnel of Act no. 236/1995 Coll., judges constitute the largest group of persons, moreover a group which enjoys – as will also be emphasized below – special protection in constitutional terms, and the discretion for interference in their position is narrower than with other groups of constitutional officials. The judicial branch does not have representation in our constitutional conditions, but the court system culminates in two supreme courts – like it or not, in this situation they must fulfill the essential role of representing the judicial branch. It was already stated in judgment file no. Pl. ÚS 16/11, that "this negative situation creates pressure for wider interpretation of principles arising from the constitutional order, pressure to subordinate the rules of democratic political culture under a constitutionalist frame."

53. Thus, in the adjudicated matter a derogatory decision would only be the simple consequence of the government's and legislature's persistent attitude to the judicial branch, literally ignoring it; seemingly even virtually 25 years after the fundamental change in society, they see it only as a group of state officials dependent on the state, and paid as this or that political leadership chooses. However, the Constitutional Court also had to weigh the consequences of such a step in view of the fact that the petitioner, although it formulated objections to defects in the legislative process concisely, in the formulation of the proposed judgment it made clear that it intends to raise material objections, and prefers review of the constitutionality of the contested statute from a material point of view. In terms of demands on the legislative process, in the future it will not be possible for the Constitutional Court to approve any procedure that omits discussion with the leaders or representatives of the independent judiciary, both at the executive and legislative level. Interference in the material position of judges must be properly justified, including a comprehensive economic analysis, which will make clear the possibilities of the state budget, in the context of the state's economic situation, and proper data must be provided on the situation with remuneration of, in particular, higher civil servants and other persons with the highest remuneration for work who are paid from the state budget. We must point out that in countries with a long democratic tradition the ability to interfere in the material security of judges is restricted, for example, only on the basis of conclusions reached by a comprehensive position statement from a group of independent experts (cf., e.g., the situation in Canada).

54. Formal annulment of the legislative framework incorporated into Act no. 11/2013 Coll. (in Art. I, i.e. amendment of § 3 par. 3 of Act no. 236/1995 Coll.) – without evaluating the effect of the Act on material constitutionality – in these circumstances, from the point of view of the principle of proportionality, should give priority to the requirements of effective protection of constitutionality. Of course, the Constitutional Court does not thereby in any way prejudge situations in which – as it has done in the past – it considers a derogatory decision to be the only possibility, because of the unconstitutionality of the legislative process. In the adjudicated matter it gave priority to effective protection of constitutionality, and in the next step of its review it turned to review of the constitutionality of the provisions that the petitioner indicated in its petition.

VII.
Consistency of the contested provisions with the constitutional order

VII./A
The provision of § 3 par. 3 of Act no. 236/1995 Coll., most recently amended by Act no. 11/2013 Coll.

VII./A.1
Overview of the situation of judges' remuneration

55. The Constitutional Court consider it necessary for the scope of review of the constitutionality of the contested provision, to point out, as it has already done several times (in particular in judgments file no. Pl. ÚS 16/11 and file no. Pl. ÚS 33/11), that interference in the material position of judges has continued without interruption since 1997. It is not necessary to repeat the content of all the restrictive legislation here; the following summary will suffice, reflecting the history of the base salary, which is used to determine a judge's salary and flat-fee reimbursement of expenses.

56. In connection with the change in the structure for setting the base salary for persons remunerated under Act no. 236/1995 Coll. by Act no. 309/2002 Coll. (linking it to the average monthly salary of natural persons in the non-business sphere for the calendar year before the previous year), in 2003 salaries were frozen, i.e. the base salary was frozen as of 31 December 2002 (Act no. 425/2002 Coll.), which lasted until 2005 and resulted in reducing the ratio between average income in the non-business sphere and the base salary (for example, in 1996 the ratio was 4.38: base salary CZK 31,200, average salary in the non-business sphere according to data from the CSO was CZK 7,122 in 1994; in 2002 the ratio was 3.65: base salary CZK 46,440, average salary in the non-business sphere according to data from the CSO was CZK 12,731 in 2000) from ca. 3.33 in 2003 to 3.00 in 2005.

The model according to which the base salary was to follow (with a two-year delay) the growth of average salaries in the non-business sphere was applied only in 2005, 2006 and 2007; since 2008, as a result of Act no. 261/2007 Coll., on Stabilization of Public Budgets, as amended by later regulations, the base salary has been frozen again, at the level of 31 December 2007 (base salary level CZK 56,847). This freeze continued until 2010 (when the nominal reduction was annulled by judgment file no. Pl. ÚS 12/10), in 2010 the ratio of the base salary and the average salary in the non-business sphere in 2008 was ca. 2.5.

57. This reduction of the ratio between the base salary and the salary in the non-business sphere from 4.38 to 2.5 in the years 1996-2010 was the result of a change in the structure for setting the salaries of constitutional officials in 2002 and two freezes of the base salary, in the years 2003-2004 and 2008-2010. Beginning with 2011 until 2014 (Act no. 425/2010 Coll.) base salaries set ad hoc were to apply in the individual years, and only as an "insurance policy against a Constitutional Court decision" the "general" base salary was reduced to a 2.5 multiple, that is, the value reached as a result of freezing the base salary in 2008-2010, and the legislature expected that this base salary would not be used again until 2015.

VII./A.2
Constitutional Court judgments concerning the base salary in the period after 31 December 2010

58. In judgment file no. Pl. ÚS 16/11 the Constitutional Court annulled § 3b par. 1 of Act no. 236/1995 Coll., as amended by Act no. 425/2010 Coll., as of the day the judgment was promulgated in the Collection of Laws (12 September 2011), that is, the base salary applicable to judges, CZK 54,005 in 2011, due to inconsistency with Art. 1 par. 1 in conjunction with Art. 82 par. 1 of the Constitution. With reference to its earlier case law, the Constitutional Court emphasized that

- review of the constitutionality of salary restrictions on judges for a specific period of a specific year is within the framework defined by the principle of judicial independence,

- the constitutional position of judges, on one side, and of representatives of the legislative and executive branches, especially the state administration, on the other side, differs in view of the principle of separation of powers and the principle of judicial independence, which gives rise to the different degree of discretion for the legislature regarding salary restrictions on judges compared to the degree of discretion for such restrictions in other areas of the public sphere,

- interference in the material security of judges guaranteed by the law may not be an expression of legislative arbitrariness, but must, based on the principle of proportionality, be justified by unusual circumstances, e.g. the state being in a difficult financial situation, and even if this condition is met, the different function of judges and representatives of the legislative and executive branches, especially the state administration, must be taken into account; such interference may not create grounds for concern that it limits the dignity of judges, or that it is an expression of constitutionally impermissible pressure by the legislative branch and the executive branch on the judicial branch. In the adjudicated case the Constitutional Court did not find, for example, the deficit in public finances to be in any way unusual in an international context, it also emphasized the long-term trend of reducing and freezing judges' salaries, which it considered to be abandoning reasonable ratios between the level of judges' salaries and salaries in the public administration. Such leveling leads to a decline in the status of the judiciary within the middle class and to a diminution of its social prestige. The Constitutional Court pointed to the exceptional growth of salaries in the public sector in 2010, which it considered to be in conflict with the declared aim of necessary cost savings.

59. Annulment of the base salary for 2011 had the consequence of activating what the legislature and executive branch created, an "insurance policy … that would prevent an irreversible jump in the growth of salaries of judges that would occur without amendment of the general framework in § 3 par. 3 of Act no. 236/1995 Coll., as amended by Act no. 309/2002 Coll. … In view of the Constitutional Court's case law, it would evidently not be possible in future to markedly reduce the salaries that were thus reached" (background report to publication no. 133/0). A notification from the Ministry of Labor and Social Affairs, published as no. 271/2011 Coll., then announced a base salary for 2011 of CZK 57,747.50 (a 2.5 multiple of the average salary of natural persons in the non-business sphere for 2009).

60. In judgment file no. Pl. ÚS 33/11 the Constitutional Court annulled the base salary established ad hoc for the years 2012 to 2014 (§ 3b par. 2 of Act no. 236/1995 Coll., as amended by Act no. 425/2010 Coll.) as of the day the judgment was promulgated in the Collection of Laws, i.e. 1 June 2012, and also annulled the words "a 2.5

multiple" in § 3 par. 3 of Act no. 236/1995 Coll., last amended by Act no. 425/2010 Coll., as of the end of 31 December 2012.

61. In doing so, the Court pointed to the previously outlined general theses setting the boundaries on possible restriction in the material security of judges, pointed to comparison with the case law of European constitutional courts, and emphasized and clarified the principle of an independent judiciary as one of the essential requirements of a democratic state governed by the rule of law (Art. 9 par. 2 of the Constitution). The requirement of an independent judiciary comes from two sources: from the neutrality of judges as a guarantee of a fair, impartial and objective trial, and from ensuring that individuals' rights and freedoms are ensured by a judge who is separate from the political powers. Judicial independence is secured by guarantees of a special legal position (which must include that they cannot be cannot be demoted, recalled, or transferred), and by guarantees of organizational and functional independence from bodies representing the legislative and especially the executive branch, as well as by separation of the judiciary from the legislative and executive branches (namely, by applying the principle of incompatibility). In terms of content, judicial independence is ensured by binding judges only by the law, i.e. ruling out any elements of subordination in judicial decision making. The Constitutional Court comprehensively discussed the fundamental components of the principle of an independent judiciary in judgment file no. Pl. ÚS 7/02 of 18 June 2002 (N 78/26 SbNU 273; 349/2002 Coll.).

62. In the cited judgment, peripherally to § 3 par. 3 a § 3b par. 2 of Act no. 236/1995 Coll. the Constitutional repeated the statement it previously made in judgment file no. Pl. ÚS 12/10: " … judges' salaries, unlike the salaries of other 'state servants,' have been subject only to restrictions for a long time, intended to continue into the future. The measures concerning them then no longer seem exceptional and proportional, but appear to be a targeted process aimed at returning judges' salaries to lower levels, and in this manner removing what is, from the point of view of the legislative and executive branches, the past "error" in setting the rules for calculating judicial salaries in the mid-1990s. Such a leveling necessarily has the consequence of reducing the status of judges in the middle class, degradation of its income in relation to other legal professions, and diminution of its necessary social prestige." Nothing about this is changed by the claim of the bill's sponsor, that the framework in § 3b par. 2 of the Salaries Act returns the base salary "approximately" to the level of 2007 to 2009.

63. On the contrary, the restriction contained in reducing the coefficient for determining the base salary from a multiple of three to a 2.5 multiple of the average nominal monthly salary of natural persons in the non-business sphere (§ 3 par. 3 of the Salaries Act, as amended by Act no. 425/2010 Coll.) is disproportionate interference aimed only at judges, and does not meet the conditions for accepting restrictions on judges' salaries that the Constitutional Court set forth in the cited case law.

64. The consequence of judgment file no. Pl. ÚS 33/11 was that the Ministry of Labor and Social Affairs, in notification no. 183/2012 Coll., announced, only for the period from 1 June 2012 to 31 December 2012, the base salary level of a 2.5 multiple in relation to the existing average salary in the non-business sphere in 2010 of CZK 57,222/50 (thus, in the period from 1 January to 31 May 2012 judges had their salaries set according to the base salary "frozen" at the level of CZK 56,849, that is a base salary reduced nominally by almost CZK 1,000 compared to 2011).

65. The Constitutional Court does not consider the conclusions that it made in judgments relating to the "freezing" of the base salary in the years 2003-2010 to be referential criteria, because those conclusions have been largely reversed by developments and judicial practice since 31 December 2010.

VII./A.3
Setting the base salary for judges as a 2.75 multiple of the average salary of natural persons in the non-business sphere

66. The Constitutional Court points out, in particular, the basic maxims that it identified as relevant in judgments file no. Pl. ÚS 33/11 a file no. Pl. ÚS 16/11, with which it also intends to measure the legislative framework contested by the petitioner.

67. The actions of the executive branch and of the Chamber of Deputies after the Constitutional Court issued judgment file no. Pl. ÚS 33/11 are described in part VI of this judgment. The executive branch submitted a bill with five alternatives and the Chamber of Deputies could not find the necessary majority to agree on how to regulate the base salary for judges, even though upon reading the Constitutional Court's judgment there was no need to hesitate, and even though during the discussion of the bill the Minister of Justice himself presented reminders about Constitutional Court judgment file no. Pl. ÚS 33/11, as did the Chairman of the Constitutional

Law Committee in the Senate, and there were also proposals from deputies to return the ratio to a multiple of three.

68. In the matter file no. Pl. ÚS 33/11 the Constitutional Court reviewed the reduction of the base salary that determines the ratio between the average salary in the non-business sphere and the base salary for a judge's salary, as of 1 January 2011, from a multiple of 3 to a 2.5 multiple, and made the abovementioned conclusions. If the executive and legislative branches were not able or did not want to understand the Constitutional Court's conclusions, there is nothing left but to completely directly state: the reduction of the relative values in the system of remuneration of judges was a consequence of long-term freezing of the base salary in the first decade after the year 2000, which the executive and legislative branches should have know very well, including the fact that "unfreezing" after a long time must mean a certain abrupt increase, if it was only a freeze and not a targeted process aimed at permanently reducing the relative ratios, moreover this was the consequence of targeted pressure (which can be documented by quotations from the background reports in a number of Constitutional Court judgments) to reduce the salaries of judges and bring them closer to the salaries of civil servants (of course, it was never stated which group of civil servants).

69. The Constitutional Court does not consider the relative ratio between the base salary for judges' salaries and the average salary in the non-business sphere to be a constitutionally untouchable parameter; however, in judgment file no. Pl. ÚS 33/11 it was explained why the Constitutional Court considered a reduction of ca. 16% to be disproportionate in view of all the facts that it took into account.

70. The background report to publication no. 880/0 contains only one piece of information justifying the limit of a 2.75 multiple, that "returning to a multiple of three would place high demands on state budget funds in 2013 and in subsequent years, i.e. at a time when cost-savings measures are being applied for practically all segments of the population. An appropriate solution, especially in view of the current economic situation and the possibilities o the state budget, is considered to be setting the ratio … at a 2.75 multiple."

71. It is not the Constitutional Court's role in its judgment to formulate extensive economic analyses and investigate the possibilities of the state budget; that should have been part of the background report to the bill. It was not done either with Act no. 425/2010 Coll. or Act no. 11/2013 Coll. As regards cost-saving measures vis-à-vis the population because of the financial and economic crisis, it is necessary that the executive and legislative branches not use populist, general statements: judges' salaries were subject to a marked real decline in value (evidently unlike any other group of employees paid out of the state budget) as a result of interference in the years 2002–2010, when no cost-saving measures were applied in the area of compensation in the public sphere that would be reflected in the data on the average salary in the non-business sphere. According to publicly available data from the CSO (publication e-3106-13 published on 25 March 2014) the average gross monthly salary in the non-business sphere – adjusted numbers – in 2000-2013 (appendix 1b) did not decline in even one year, even in the years identified as a crisis period; through 2009 growth of 4.2 to 9.5% is recorded; in 2010 and 2011 there was stagnation (growth of 0.2%), in 2012 growth of 2.2% and in 2013 growth of 0.9%.

72. Judges' salaries reflect this trend only with a time delay (if the average salary declines, the salaries of judges decline only with a time delay – as determined by the framework contained in § 3 par. 3 of Act no. 236/1995 Coll.). Thus, solidarity of judges with other employees in the non-business sphere is built in quite strongly.

73. The alleged cost-cutting measures (as the background report to publication no. 880/0 states "for practically all segments of the population") thus did not find expression in the level of the average salary in the non-business sphere. The legislature did not make any analytic arguments on the basis of structural changes in employment in the public sphere or the decline of employees at the upper levels of the state administration. According to available publicly accessible date (the information system on average earnings published at www.mpsv.cz) the median gross monthly salary of the highest state officials of central state bodies grew between 2012 and 2013 from CZK 80,271 (revised results as of 26 March 2014) to CZK 84,139 (results as of 26 March 2014; in 2013 the average was CZK 91,398). Macroeconomic predictions (e.g. that of the Ministry of Finance, updated on 11 April 2014) state that the gradual recovery of economic activity should continue, GDP could grow this year by 1.7%, in 2015 the growth could increase to 2%; other prognoses published in publicly available sources indicate possible growth of up to 3%, the analytical consensus expects the Czech economy to grow this year by 2.5 to 3%.

74. Thus, the Constitutional Court finds that even reducing the ratio of the base salary and the average salary in the non-business sphere from a multiple of 3 to a 2.75 multiple is not based on analysis that would indicate that the change is proportionate, within the bounds of constitutionally defined discretion for interference in the

material security of judges. On the contrary, from the cited public sources one can conclude that the base salary, reduced since 2013 from a multiple of three to a 2.75 multiple, i.e. by 8.3%, deviates from the growth – even if mild – of the average salary in the non-business sphere (adjusted numbers) according to the CSO date for the same period, and is not at all in correlation to the ca. 4.6% growth in the median of average salaries of the highest state officials between 2012 and 2013. Moreover, judges' salaries are set as a fixed amount, and unlike those of state officials they cannot be increased by awarding any bonuses.

75. Freezing judges' salaries in the decade between 2002-2011 has already brought the state budget savings of billions of crowns; the savings on the salary of one district court judge at the beginning of his career as a result of the salary freeze can be estimated, just for the years 2007-2011 at over CZK 400,000. The state budget achieved further savings (on the order of billions) "thanks" to the selected method of regulating salaries, i.e. setting base salaries ad hoc for the years 2011-2014, evidently with the knowledge that a Constitutional Court decision basically functions ex nunc. However, the Constitutional Court will address questions of time later.

76. Therefore, we can summarize that, in setting the ratio between the average salary in the non-business sphere and the base salary for judges, the maxims that the Constitutional raised on this issue in its past case law were not taken into account; the narrower degree of discretion that the legislature has in this area was not reflected at all. After having their salaries frozen for years, judges legitimately expected that in 2011 the system of regular linking to the average salary in the non-business sphere would be renewed. A burdensome economic situation could have given grounds for certain restrictions, but, of course, precisely in view of the past, this discretion was already reduced a minimum, if not fully exhausted, in a situation where it was and is not possible to consider the economic situation in our country to be a state of pre-bankruptcy (fortunately). The Constitutional Court, having been exposed to a series of petitions from courts, has repeatedly informed itself about the attitude of the judiciary, which undoubtedly understands, and must understand, that in the event of economic difficulty, within the defined constitutional discretion, restrictions may also apply to the judicial branch. However, such a restriction must, within the framework of discretion reserved for it, always be proportionate, and may not cause inequality. If every public sector employee (or at least most of them) had been affected by the reduction in the real value of compensation for his work in the years 2002-2013, as was the case with judges, then the restrictive measures, although in the constitutionally defined degree of discretion, could theoretically also apply to judges. Of course, it is impossible not to see that even in the period when the volume of salaries was reduced in the public sphere, areas were set aside in which even these restrictions did not apply (e.g. education, health care). Added to this, of course, is restrictive interference in the past in the area of security for judges in illness or taxation of expense reimbursement; even though the Constitutional Court does not intend to follow the conclusions that it stated in the past in judgment file no. Pl. ÚS 13/08, in which it cited the net income of a judge, partially increased as a result of a change in income tax, we can point to the fact that in the years 2010 and 2011 the ceilings for premium payments for social security were raised, which led to a decline in the income of part of the judiciary. Moreover, judges differ from other constitutional officials because of the substantial restriction of any possibility of earning other income, e.g. from holding another office, being employed, or even doing business; thus, a judge cannot replace the lost income through other work (the work that is allowed is usually not capable of replacing the lost income – pedagogical or research activities). Moreover, the profession of judge is usually a choice for life, which should not be affected by constant interference in material security. In this regard the judicial branch is the most stable pillar of the state authority, because it is not subject to election cycles, the nature of which can evidently lead representatives of the legislative and executive branches to attempt to adjust to public opinion in the area of compensation for the performance of a parliamentary mandate. Of course, this approach does not apply to the judicial branch, and leads to breakdowns in the hierarchy of relationships between the components of the state authority, as regards the level of material security, as occurred when the system of a uniform base salary for the state authorities and judges was implemented.

77. The legislative and executive branches made a strategic mistake with regard to regulation of the material security of judges: unlike some neighboring countries that were also affected by the financial and economic crisis, they did not adopt general and long-term fundamental measures with regard to public administration employees and partial and time-limited measures with regard to judges, but the completely opposite approach. For example, the Polish Constitutional Court could state in decision file no. K 1/12, P 35/12 that the freezing of judges' salaries in 2012 was not unconstitutional; it based its conclusion on the finding that since 2008 the compensation of all employees and officials in state institutions was frozen and the general mechanism for increasing judges' salaries remained unchanged – this was only an occasional one-year adaptation to the state's financial situation. Of course, it also added that in the long term, judges' salaries should show an increasing trend, which should not be lower than the analogous trend in the average income in the public sector. Otherwise, international comparison of the decision making of European constitutional courts indicates that these bodies for the protection of constitutionality see to it that the Constitution does not become removed from the country's

economic reality; nonetheless, they emphasize that the Constitution is endowed with a particular normative autonomy that prevents economic aims from taking precedence without limitation over equality, or the comprehensively understood independence of the judicial branch, which constitutional principles protect (e.g. the Portuguese constitutional tribunal in decision no. 353/12 of 5 July 2012, the Constitutional Court of the Slovak Republic in judgment file no. PL. ÚS 99/2011 of 11 December 2013).

78. There is no choice but to again point to what the Constitutional Court already said in 2003 (judgment file no. Pl. ÚS 11/02): "The salaries of judges, in a wider sense, should be a stable, non-reducible value, not a variable factor, which one or another government group re-calculates because it thinks that judge's salaries are too high compared to the salaries of state employees or compared to the salaries of another professional group." And to repeat again what the Constitutional Court said in 2012 (judgment file no. Pl. ÚS 33/11): "The abandonment of any rational relationship whatsoever between the level of judges' salaries and the level of salaries in the public administration in the framework of the Salaries Act has been reflected in absurd consequences even in the salaries of Constitutional Court judges" – as a result of which, not only the chairmen of panels and the officials of both supreme courts, chairmen of the panels of high courts with 30 years of experience and their officials, but since 1 January 2014 even the chairmen of panels of regional courts and their officials have higher salaries than the judges of the Constitutional Court.

79. In these circumstances we cannot accept the thesis that the state budget has limited possibilities, given that no argument was presented in the statutory framework that could be seen as an "exceptional circumstance" justifying giving priority to equality in the area of restrictions in remunerating state employees, constitutional officials and judges over the principle of comprehensively understood judicial independence. Moreover, as stated above, the Constitutional Court also does not find any arguments that would testify in favor of equal treatment in the compensation of state employees and judges (in the sense of equal restrictions – reducing the volume of salaries in the public sphere need not lead to reducing or freezing the salary of each individual, in contrast to each judge).

80. The salary restriction contained in § 3 par. 3 of Act no. 236/1995 Coll., last amended by Act no. 11/2013 Coll., in the words "a 2.75 multiple" is inconsistent with Art. 1 par. 1 in conjunction with Art. 82 par. 1 of the Constitution, and therefore the plenum of the Constitutional court decided, under § 70 par. 1 of the Constitutional Court Act, on the derogation of the subject provision, as stated in verdict I. of the judgment. In view of the foregoing reasons, there is also at present no discretion for restrictive interference in the relative ratio enshrined in § 3 par. 3 of the Salaries Act, as it was established by Act no. 309/2002 Coll. (at the level of a multiple of 3). For purposes of adopting a constitutionally conforming relationship between the average salary in the non-business sphere and the base salary of judges, the Constitutional Court suspended enforceability of the judgment for an appropriate time, which will suffice for a proper legislative process for this legislatively simple amendment.

VII./B
Consistency of Art. II of Act no. 11/2013 Coll. with the constitutional order

81. Art. II of Act no. 11/2013 Coll. is a transitional provision as a result of which the reduced base salary under Art. I is used for the first time to determine a judge's salary for January 2013. This provision must be read together with Art. V on effectiveness, under which the Act went into effect on 1 January 2013. It was published in the Collection of Laws on 17 January 2013. According to the background report to publication no. 880/0 the transitional provision is justified as follows: "For reasons of legal certainty, it is emphasized that the newly set level of the base salary shall be used for determining salaries and expense reimbursements for the entire month of January 2013, even in the event that the Act is not published in the Collection of Laws until sometime during that month." Regarding the effectiveness of the Act, the report stated: "The proposed solution must go into effect immediately after the base salary level is annulled by the Constitutional Court, i.e. after 31 December 2012."

82. The petitioner concludes that this legal framework is impermissibly retroactive.

83. Under Art. 52 par. 1 of the Constitution, for a statute to be valid it is necessary that it be promulgated, and under paragraph 2 the manner in which it is promulgated shall be provided for by statute. That statute is Act no. 309/1999 Coll., on the Collection of Laws and the Collection of International treaties, as amended by later regulations. Under § 3 par. 1 of Act no. 309/1999 Coll., legal regulations become valid on the date they are promulgated in the Collection of Laws. Under § 3 par. 2 of that Act, the date of promulgation of a legal regulation is the date the relevant part of the Collection of Laws is distributed, as listed in its title, and under paragraph 3, if a later effective date is not specified, legal regulations go into effect on the fifteenth day after

being promulgated (a general vacatio legis). If an urgent general interest so requires, an earlier effective date can be set in exceptional cases, but no earlier than the date of promulgation. These provisions of the Constitution and of Act no. 309/1999 Coll. rule out the possibility for an adopted legal regulation to have its intended effects earlier than the date it is promulgated.

84. Act no. 11/2013 Coll. was promulgated in Part 7 of the Collection of Laws, which was distributed on 17 January 2013. Thus, if Art. V states that the Act goes into effect on 1 January 2013, then it is quite obvious that the effectiveness of the Act is set inconsistently with Art. 52 par. 1 of the Constitution and § 3 par. 3 of Act no. 309/1999 Coll. Thus, if Act no. 11/2013 Coll. in Art. II and V, specified that its effects begin before the date of publication, i.e. before it was promulgated, then it functions retroactively. The effective date of the legal regulation is before its date of validity, and the legal regulation sets a binding rule consisting of reducing the base salary from a multiple of 3 to a 2.75 multiple retroactively to a time when the Act had not been published. For completeness, we must add that the petitioner submitted to the Constitutional Court only the transitional provision, not the provision on the effectiveness of the Act.

85. The Constitution does not explicitly prohibit retroactivity of legal norms for all areas of law, but this follows from the principle, under Art. 1 par. 1 of the Constitution, of a state based on the rule of law; its elements include the principle of legal certainty and protection of confidence in the law. This prohibition fundamentally applies to cases of true retroactivity; the content of the prohibition as a constitutional principle is not ruling out any retroactive function whatsoever of a legal norm, but only such as simultaneously interferes in the principle of protection of confidence in the law, legal certainty, or acquired rights. In the past the Constitutional Court already formulated the scope of permissible exceptions to the prohibition on true retroactivity [cf. point 146 of judgment file no. Pl. ÚS 53/10 of 19 April 2011 (N 75/61 SbNU 137; 119/2011 Coll.)]: one such is a situation where a subject had to expect retroactive regulation, also the effect of a legal norm that is in deep conflict with fundamental, generally recognized principles of humanity and morals, in civil law relationships we could also use the reference to the "order public," the public order, if absolutely mandatory provisions were affected that were issued as the result of a certain extreme situation of the transformation of values in society.

86. Therefore, Art. II of Act no. 11/2013 Coll. (which could not – despite the provision on effectiveness stating 1 January 2013 – go into effect earlier than 1 February 2013) bears the signs of true retroactivity, and no reason can be found in the circumstances of its adoption to allow any of the exceptions previously defined by the Constitutional Court for breaching the prohibition of true retroactivity. This is not even a provision in favorem, for the benefit of judges of the general courts; after annulment of the "a 2.5 multiple" by the Constitutional Court as of 31 December 2012 the new framework cannot be seen otherwise than as a reduction of the attained level that had been contained in the legal framework for a long time (a "multiple of three"). The debate in both chambers of Parliament cited above only documents that some members of the legislature pointed out that the Constitutional Court's last judgment was transparent and clear, all the more so the addressees of this norm could not expect that the legislature would again manipulate the base salary level. As the Constitutional Court already stated in 2002 [cf. judgment file no. Pl. ÚS 33/01 of 12 March 2002 (N 28/25 SbNU 215; 145/2002 Coll.)]: "…in a state governed by the rule of law true retroactivity has no place in a situation where the legislature could already have 'had its say,' but did not do so."

87. In the adjudicated matter, in terms of the running of time, the legislature could have had its say (in judgment file no. Pl. ÚS 33/11 the Constitutional Court provided about 7 months), and it was only as a result of the government's actions and disagreement about a solution that it interfered retroactively in the material security of judges. A judge who began serving in office on 1 January 2013 did not know whether and how he would be remunerated, which is in conflict with § 34 par. 1 of Act no. 236/1995 Coll., which provides that a judge is entitled to remuneration as of the day when he fulfilled the statutory conditions for performing his office. Such a judge could not even have been given his salary statement when he began performing his office (although an employer must give on to all other employees on the day they begin work, under § 136 par. 1 of the Labor Code). Nothing about this is changed by the fact that the salary for 2013 was payable no later than in the calendar month following the month in which the entitlement to salary arose (§ 37 par. 1 last sentence of Act no. 236/1995 Coll. in conjunction with § 141 par. 1 of the Labor Code).

88. Although the Constitutional Court finds the contested provision, Art. II of Act no. 11/2013 Coll., to be an unconstitutional norm, its absence as a result of derogation would lead to even greater interference in the constitutionally protected value of judicial independence, that is, the lack of a legal basis for the material security of judges in January 2013. If the Constitutional Court's action cannot lead to a constitutionally conforming situation, it would be against the principle of effective protection of constitutionality to apply derogation mechanically without taking the consequences into account. The passage of time in the past cannot be reversed

even by a Constitutional Court decision; the legal consequences of the adjudicated provision took place as of 1 February 2013, and, in view of § 71 par. 4 of the Constitutional Court Act, a Constitutional Court judgment granting the petition, having effect ex nunc, would not be able to change anything; therefore, the Constitutional Court, pursuant to § 70 par. 2 of the Constitutional Court Act, denied the remainder of the petition [cf. also, e.g., analogous conclusions in judgment file no. Pl. ÚS 5/03 of 9 July 2003 (N 109/30 SbNU 499; 211/2003 Coll.)].

VIII.
Legal consequences of the derogatory verdict I for the legislature and the courts

89. Annulment of a statute under Art. 87 par. 1 let. a) of the Constitution does not cause retroactive effects, and if a derogatory verdict is not connected to a suspension of effectiveness, it has effect ex nunc. Thus, the annulled statutory provision loses its validity only on the date the judgment goes into effect. Annulment of an unconstitutional statutory framework does not in and of itself mean that individual legal acts based on application of it are revised. Therefore, under § 71 par. 4 of the Constitutional Court Act, "rights and duties arising from legal relationships created prior to the annulment of a legal regulation remain unaffected." On the other hand, it cannot be overlook that if the Constitutional Court states in a judgment that a statute or other regulation is inconsistent with the constitutional order, then that inconsistency existed during the time the regulation was previously in effect. Therefore, especially in cases where the reason for derogation is a finding that application of the annulled legal regulation violates the fundamental rights of individuals, it is a natural consequence that the affected individuals are provided protection of their fundamental rights and freedoms precisely by the fact that the legal regulation in question is not applied retroactively, in the scope in which the reason for derogation stated in the Constitutional Court's judgment applies. After all, as will be confirmed below, provision of this protection is the main purpose of a court's authority under Art. 95 par. 2 of the Constitution (taking into account Art. 4 of the Constitution). However, this applies only on the assumption that providing this protection does not block some other fundamental right or important public interest that must be given priority in case of a conflict. If, for example, in relationships between individuals, not applying an unconstitutional statute retroactively would mean protecting the fundamental rights of one party to that relationship, but at the same time negative interference in the fundamental rights of another party, who acted in the past in reliance on the statute, that consequence of derogation would be fundamentally ruled out, in view of the principle of legal certainty (with the exception of some extreme cases of interference in fundamental rights). In contrast, in the case of vertical legal relationships between the state and an individual, protection of the fundamental rights and freedoms of the individual has fundamental priority. Of course, even here account must be taken of the fact that retroactively not applying an unconstitutional statute could under certain circumstances endanger the state's ability to fulfill its functions (e.g. in view of the effect on the state budget) or endanger another important public interest, as a result of which, in contrast, it will be necessary to give priority to legal certainty and preserving the current situation [further to the foregoing explanation, see e.g. judgment file no. Pl. ÚS 38/06 of 6 February 2007 (N 23/44 SbNU 279; 84/2007 Coll.) as amended by a correction resolution, file no. Pl. ÚS 38/06 of 3 April 2007; judgment file no. IV. ÚS 1777/07 of 18 December 2007 (N 228/47 SbNU 983); judgment file no. Pl. ÚS 16/09 of 19 January 2010 (N 8/56 SbNU 69; 48/2010 Coll.); judgment file no. Pl. ÚS 15/09 of 8 July 2010 (N 139/58 SbNU 141; 244/2010 Coll.), point 53; judgment file no. IV. ÚS 1572/11 of 6 March 2012 (N 45/64 SbNU 551), points 25 to 28; judgment file no. III. ÚS 3489/12 of 23 May 2013 (available at http://nalus.usoud.cz), points 12 and 13].

90. This consequence applies analogously in the event of a derogatory judgment by the Constitutional Court, in both an abstract and specific review of norms. After all, § 71 par. 2 of the Constitutional Court Act presumes that decisions issued on the basis of an unconstitutional statute are unenforceable (on the assumption that the application is due to an appropriate reason for derogation, cf. judgment file no. IV. ÚS 1777/07), which certainly cannot be interpreted to mean that the general courts or other public bodies should continue to issue decisions where it is obvious in advance that they will not be enforceable. However, in these cases it is necessary to differentiate abstract and specific review of norms. Whereas the foregoing applies practically without exception to abstract review of norms, in a specific review of norms it is necessary to carefully weigh, on the one hand, the presumption that the contested statute is constitutional and the interest in legal certainty, and, on the other hand, the interest of the party whose actions initiated the proceeding on review of norms by the Constitutional Court. Succinctly put, it would make no sense if a Constitutional Court judgment granting a petition seeking annulment of the applied statutory provision could not function positively in the legal sphere of the party to the proceeding who either himself filed the petition seeking annulment of the statutory provision together with a constitutional complaint (§ 74 of the Constitutional Court Act), or was a party to a proceeding before a general court that, under Art. 95 par. 2 of the Constitution, submitted to the Constitutional Court a petition seeking annulment of a statute that is to be used in deciding the matter [cf. also the opinion of the plenum in file no. Pl. ÚS-st. 31/10 of 14 December 2010 (ST 31/59 SbNU 607; 426/2010 Coll.)]. However, even this rule need not apply without

exception, precisely in view of the need to compare the fundamental rights of that party, on one side, and the requirement of legal certainty, protection of the fundamental rights of other parties to the proceeding, or other constitutionally protected values, on the other side (see above). The result of this comparison need not be obvious, from the point of view of the general court that submits the matter to the Constitutional Court; it is the conclusions contained in a potential derogatory judgment that will be a key starting point in reviewing the matter.

91. Under § 70 par. 1 of the Constitutional Court Act, the contested legal provision is annulled "on the day specified in the judgment." Under § 58 par. 1 of that Act, judgments issued in proceedings on review of norms "are enforceable on the day they are published in the Collection of Laws, unless the Constitutional Court decides otherwise." Based on the Constitutional Court's settled case law, it follows that the Constitutional Court has the ability, in justified cases, to suspend enforceability of an annulling judgment in a proceeding on review of norms. The justification is a situation when immediate annulment of a legal regulation would cause more negative consequences than tolerating it temporarily. Therefore the Constitutional Court also suspended enforceability in the present matter as well (see point 80).

92. However, because this matter involves a case of specific review of norms, we must weigh what effects the suspension of enforceability will have on the proceeding that led to the issuance of this judgment, and on proceedings in the cases of other judges, which were suspended for reasons of submission of this petition by the Municipal Court in Brno and in deciding which this judgment could be taken into account.

93. Regarding this, the Constitutional Court states that setting the timing effects of annulling an unconstitutional legal regulation is to a certain degree a question which cannot be limited to purely constitutional law arguments. If the Constitutional Court could not also take into account other arguments, interest and values, then it should not apply suspension of enforceability at all. In evaluating whether to apply suspension of enforceability and for what period, it necessarily takes into account, e.g., the complexity of the legislation that would replace the annulled legislation, or the length of the legislative process, and it also cannot ignore aspects such as the date for elections to the Chamber of Deputies. If it did not do so, suspension of enforceability would not be purposeful. Therefore, it is not random that in the past the Constitutional Court set suspensions of enforceability of only a few months, as well as over a year.

94. In the present matter, the Constitutional Court states that although it is generally true that, even when the enforceability of an annulling judgment is suspended, that annulment should have real effects in the legal sphere of those parties whose proceeding led to issuing the positive judgment, in the present matter the conditions have been met for a decision not to apply this rule. When considering the legal effects of a derogatory judgment in a proceeding on review of norms, it is necessary to consider aspects other than purely procedural law aspects; the constitutional courts of other European countries also do this. The Constitutional Court believes that these aspects, in the aggregate, lead to a conclusion that the effects of this judgment can be applied to the cases of these parties only from the moment that the judgment becomes enforceable, and that this judgment does not establish an entitlement to retroactive payment of the difference in salaries and other amounts based on the base salary of a 2.75 multiple of the average salary in the non-business sphere for the calendar year before the previous year and the constitutionally conforming multiple of three, which was supposed to have been inserted in the statutory framework as of 1 January 2013.

95. The Constitutional Court is led to this conclusion primarily by the interest in calming down the general long-term prevailing atmosphere in the matter of judges' salaries, both on the political scene and especially among the general public. Although the Constitutional Court maintains that the legislature has, for a long time, been consciously acting in an unconstitutional, and thus inexcusable, manner, it is also necessary to see that retroactive payment of these amounts would be a significant and also unpredictable intervention in the state budget, which would necessarily lead to a further increase of the tension between the society and judges. The Constitutional Court could not overlook the fact that retroactive payment of the claimed amounts would also cover a period when the Czech Republic was in a financial crisis, or was only slowly recovering from that crisis. Therefore, this solution would obviously meet with a lack of understanding from the society, and could weaken the position of judges and discredit their role. The Constitutional Court also does not think that the applied coefficient of 2.75 times the average salary in the non-business sphere created a situation with judges that could be described as so intolerable that it would unquestionably require correction, not only for the future, but also for the past. In its deliberations, it also began with the premise that the role of a judge should be seen not only on a professional level, but also on a level of personality. Simply put, what is expected of a judge is not only professionalism and a high workload, but also irreproachability and above-average personal integrity [see, e.g., § 80 of Act no. 6/2002 Coll., on Courts, Judges, Trainee Judges and State Administration of Courts and amending

certain other Acts (the Act on Courts and Judges)]. Therefore, the Constitutional Court believes that this group, which should represent a true elite in society, can also be expected to have a greater degree of generosity and cooperativeness than other groups.

IX.
Obiter dictum

96. The Constitutional Court issued this judgment in an imaginary "continuous numbering" as number XIV. In past years it has had to consider interference in the material security of judges fourteen times. It has already several times expressed the hope that this will be the last time and that the legislature will perceive the limits for possible interference through the prism of constitutional principles applicable to the independence of the judicial branch.

97. The legal framework for the material security of judges based on the ratio of a three times multiple of the average salary in the non-business sphere, with a two-year delay reflecting the developments in the non-business sphere, could place judges in the upper middle class. It is a framework that is within European standards and basically represents the average position of a judge, for example in member states of the Council of Europe. It also contains the rare possibility for a nominal reduction in salary if the average salary in the non-business sphere declines – in a number of countries a judge's salary is protected from such a decline. In repeated proceedings before the Constitutional Court intervention by the legislature was shown to be arbitrary; based the background reports one can conclude there is an intent to reduce the ratio of the average salary and the base salary in effect for judges. This pressure cannot simply be justified on the basis of budgetary expenses for judges' salaries; on the other hand, the judicial branch does not exist outside the economic reality of the state, and the cited ratio is not a constitutionally untouchable value. However, interference in it would require very compelling arguments, supported by proper analyses of compensation in the public sphere, in a situation where the state has markedly restricted possibilities, while respecting the constitutional guarantees of the independence of the judicial branch. In its decision, the Constitutional Court decision did not establish an entitlement to retroactive payment for the period when judges were unconstitutionally damaged by the reduction of the level of their material security, which does not mean, for once and for all, that unconstitutional interference cannot also have a very significant impact on the state budget. It assumes that the legislature will, by the date this judgment becomes enforceable, insert in the legal framework provisions weighting the base salary at the constitutionally conforming level of three times the average salary in the non-business sphere; on the other hand, the Constitutional Court would not be surprised if judges withdrew from the ongoing disputes, and after several years of disputes a period of understanding and mutual respect would begin, which is appropriate for officials that represent a pillar of the state authority.

X.
98. The Constitutional Court could not grant the petitioner's request for review of the petition on a priority basis (§ 39 of the Constitutional Court Act), in view of the personnel changes in the majority of the Constitutional Court in 2013.

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

Dissenting opinions were filed under § 14 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, to verdict I of the plenary decision by Judges Jan Musil and Radovan Suchánek, and to part of verdict I of the plenary decision by Judge Vladimír Sládeček.

---

1. Dissenting Opinion of Judges Radovan Suchánek and Jan Musil

Under § 14 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, we file this dissenting opinion to verdict I. and the reasoning of judgment file no. Pl. ÚS 28/13:

1. We do not find the statutory provision concerned in verdict I of the judgment to be inconsistent with any norm of the constitutional order. The arguments of the petitioner and of the plenary majority do not convince us that the rule under which the base salary of judges of general courts is set, as of January 2013, each calendar year as a multiple of 2.75 times the average nominal monthly salary in the non-business sphere reached in the calendar year before the previous year, is inconsistent with Art. 1 par. 1 in conjunction with Art. 82 par. 1 of the Constitution of the Czech Republic, as stated in the reasoning of the judgment (point 80).

2. The judgment (points 58 to 69) cites relevant case law of the Constitutional Court, in particular its judgments of 2 August 2011, file no. Pl. ÚS 16/11 (N 135/62 SbNU 99; 267/2011 Coll.), and of 3 May 2012, file no. Pl. ÚS 33/11 (N 95/65 SbNU 259; 181/2012 Coll.). Of course, these judgments do not reverse, or do not revise the legal opinions that the Constitutional Court formulated regarding regulation of the base salary for judges, already stated in its judgments of 16 January 2007, file no. Pl. ÚS 55/05 (N 9/44 SbNU 103; 65/2007 Coll.), and of 2 March 2010, file no. Pl. ÚS 13/08 (N 36/56 SbNU 405; 104/2010 Coll.). In any case, all later judgments concerning the base salary of judges expressly cite judgment file no. Pl. ÚS 55/05. Therefore, we consider the assertion by the plenary majority in today's judgment, that "the conclusions that the Constitutional Court made in judgments relating to the "freezing" of the base salary in the years 2003-2010 … have been largely reversed" (point 65), not to be supported by anything, and to be inconsistent with point 62, which quotes from the judgment of 7 September 2010, file no. Pl. ÚS 12/10 (N 188/58 SbNU 663; 269/2010 Coll.), which also (in a section that is not quoted) cites judgments file no. Pl. ÚS 55/05 and file no. Pl. ÚS 13/08, (see points 20 and 21 thereof).

Judgments file no. Pl. ÚS 55/05 and file no. Pl. ÚS 13/08 formulated fundamental theses that the logic of the present judgment's arguments completely ignores; both of these judgments denied petitions seeking the annulment of measures that reduced the tempo of growth of the base salary for judges and for all representatives coming under Act no. 236/1995 Coll., on the Pay and Other Benefits Related to the Offices of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by later regulations, "freezing" its level for several years (in 2004 and 2005, and 2008 to 2010).

3. The Constitutional Court already stated in judgment file no. Pl. ÚS 55/05 that in the case of this measure, "this is not reducing or removing […] the entitlement component of a judge's compensation for exercising his office […], but a measure which in 2003 and 2004 reduced the tempo of growth of salaries (in other words, salaries were frozen)" – point 53. It also stated this fundamental thesis: "Thus, for the Constitutional Court, the quantification of material security of judges, in the form of their aggregate income in a calendar year, is a fundamental criterion for determining whether salary restrictions occurred as a result of measures in the sphere of compensation of judges." (point 55). The Constitutional Court added that "a permanent and unquestionable entitlement for judges' salaries to increase every year cannot be derived" from its existing case law" (point 57).

The Constitutional Court applied the cited basic criterion for reviewing salary restrictions, i.e. the quantification of material security of judges as their aggregate income in a calendar year again in judgment file no. Pl. ÚS 13/08 (point 41). However, in the present matter this criterion was not taken into account at all, despite our requests that, as in the past, during presentation of evidence, supporting documents be requested from the Ministry of Justice (and perhaps also from the petitioner) for determining the changes in the level of compensation of judges in recent years, in particular in 2013, which is decisive in terms of the petition (cf. points 22 and 23 of judgment file no. Pl. ÚS 55/05, points 12, 14, 22 and 24 of judgment file no. Pl. ÚS 13/08).

Based on these documents the Constitutional Court stated in judgment file no. Pl. ÚS 55/05 that stopping the growth of judges' salaries for a one-year period is not a restriction that is inconsistent with constitutional principles ("did not find that […] there was a decline in the material security of judges compared to the previous situation" – point 59) and in judgment file no. Pl. ÚS 13/08 "in response to the question whether stopping the growth of judges' gross salaries for three years (with a simultaneous growth of actual income) is constitutionally impermissible, it also had to answer in the negative" (point 51 of judgment file no. Pl. ÚS 13/08). In the judgment then cited the Constitutional Court also found that "it is essential that the actual effect on the income situation of judges be reviewed in the light of the legal opinions expressed in judgment file no. Pl. ÚS 55/05. The effect was not of the nature of a permanent reduction in the material security of a judge […]" (point 52).

The Constitutional Court also maintained this criterion in judgment file no. Pl. ÚS 12/10, in which it stated: "The fundamental starting point for the further development of case law is the theses stated in Constitutional Court judgment file no. Pl. ÚS 13/08: 'in terms of the principles of a democratic state governed by the rule of law, the Constitutional Court could scarcely approve of an action by the legislature which (would) not stop the rate of growth of judges' salaries, but even partially remove the already reached level of their material security. […]'" (point 21).

Thus, a clear difference was made between a constitutionally conforming reduction, or stoppage of the rate of growth, of salaries ("freezing") and an unconstitutional (in the given context) reduction of income in comparison with the income already actually reached, i.e., actually received in the foregoing period.

Insofar as the present judgment ignores this difference, and only states that "the Constitutional Court does not intend to follow the conclusions that it stated previously in judgment file no. Pl. ÚS 13/08, in which it cited a judge's net income, partly increased due to a change in the income tax […]" (point 76), in our opinion this is – delicately stated – misinterpretation of the cited legal opinions.

4. Another key these stated in judgment file no. Pl. ÚS 13/08 is this: "the Constitutional Court is convinced that in the present matter temporary stopping of the guaranteed growth of judges' salaries did not influence the level material security already reached in a manner that would create doubts about whether this is not an arbitrary step by the legislature aimed at limiting or ending judicial independence." (point 54).

Today's judgment lacks any evidence of arbitrariness by the government or the legislature aimed at interfering in judicial independence by setting a 2.75 multiple, or not setting a multiple of 3. One can scarcely consider as arbitrary procedure the fact criticized by the judgment, that it "omits discussions with the leaders or representatives of an independent judiciary, both at the executive and legislative level " (point 53), when Act no. 11/2013 Coll., which amends Act no. 236/1995 Coll., on the Salaries and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and European Parliament Representatives, as amended by later regulations, and certain other Acts, approved during a state of legislative emergency (approved by the judgment as the "only possibility to try to ensure that judges not remain without remuneration for their work as of 1 January 2013" – see point 51) after, on 12 December 2012, the Chamber of Deputies denied the previous government bill (criticized by the judgment in point 47 as "rare"), and less than three weeks remain until derogatory judgment file no. Pl. ÚS 33/11 becomes enforceable, i.e. for the adoption or entry into force of an amendment setting the base salary of all state officials coming under Act no. 236/1995 Coll..

5. In this regard we are surprised at the deliberation in point 53, that "in the adjudicated matter [a] derogatory decision would only be the simple consequence of the government's and legislature's persistent attitude to the judicial branch, literally ignoring it; seemingly even virtually 25 years after fundamental change in society, see it only as a group of state officials dependent on the state, and paid as this or that political leadership chooses." Not only do we not find this blanket critical assessment of the government and the Parliament to be appropriate (certainly not in the present matter), but we especially do not believe that deliberations on derogation of a statutory provision should take place at an emotional level, rather than the level of constitutionally relevant arguments. And, first and foremost: we cannot agree with the degradation of the prominent role of democratic political representatives in the formation of statutory rules for the financing of state functions (Art. 5 and 42 of the Constitution), which, of course, also include the rules for compensating judges. In this sense judges will always be "dependent on the state," which, of course, must obtain funds for their salaries and – if it wishes to be a democratic state governed by the rule of law – must provide judges the certainty of their material security, appropriate to the usual income levels in the country. We do not believe that the legal framework annulled by the judgment as it relates to judges betrayed this.

6. We believe that it was not arbitrariness by the government to justify the proposed coefficient of 2.75 by reference to the then-existing economic situation and the possibilities of the state budget (see the citation of the background report in point 70). Although the judgment enters into certain economic comparisons, the positive verdict disregards these arguments by the government, and, e.g. ignores the growth in the gross domestic product (GDP), as well as the public debt situation at the time the contested legal framework was adopted. As is well known, the Czech Republic's GDP was negative, i.e. it declined, in all of 2012 and the first three quarters of 2013. In 2013 GDP in the Czech Republic, expressed in the standard of purchasing power, reached 79% of the EU average, which is lower than in previous years (in 2009 the Czech Republic's output was 83% of the European Union average, and in 2011 it was 80%). Total government debt in 2012 and 2013 exceeded 46% of GDP.*

Mere predictions of GDP growth this year (2014), which the judgment mentions in point 73, cannot be relevant for the adjudicated matter. The legislature is not usually clairvoyant, and the petition seeking annulment of the contested provision was submitted as part of a specific review of norms.

The judgment's positive verdict is all the more paradoxical because the reasoning of the judgment rejects "retroactive payment of the demanded amounts" (i.e. to the level of a multiple of 3) as regards judges because "it would also apply to the period when the Czech Republic was in a financial crisis, or was only slowly recovering from that crisis" (point 95). Thus, the judgment involuntarily confirms that the setting of a 2.75 multiple instead of a multiple of 3 was not arbitrariness on the part of the government or the legislature, but had a serious economic reason. Of course, this argument testifies in favor of denying the petition, not for merely not granting judges retroactive payment of the difference in income for the period starting 1 January 2013.

7. As regards the European context, unfortunately the judgment does not in any way document that the level of judges' income, based on the existing rule of a 2.75 multiple of the average nominal monthly salary in the non-business sphere is outside "European standards" or represents "the average position of a judge, for example in the member states of the Council of Europe," as the plenary majority apparently believes (point 97).

8.Finally, the third thesis espoused in the Constitutional Court's existing case law reads" "The direct connection between the salaries of representatives of the legislative and executive branch, on one side, and the salaries of judges, on the other, must be considered a significant element of the guarantee of appropriate material security for judges in terms of the principle of the separation of state powers into the legislative, executive, and judicial branches, and the requirement of balance between them. Thus, the structure of the statute on the salaries of state officials, which, using a uniform base salary and statutorily set coefficients guarantees that the salaries of judges will increase automatically and in the same proportion with an increase in the salaries of representatives of the legislative and executive branch, is a significant, built-in insurance policy in the legal order that the relative material security of representatives of the individual branches will be preserved in the future. (point 59 of judgment file no. Pl. ÚS 55/05, see also point 52 of judgment file no. Pl. ÚS 13/08).

Today's judgment, on the contrary, systematically ignores the salary context in relation to representatives of the legislative and executive branches (members of Parliament, members of the government, the president) and compares judges' salaries fundamentally only with the salaries of administrative civil servants (points 74, 76, 79). We do not consider it correct that the judgment completely abandons a direct connection between the salary level of representatives of the individual branches of the state authority, which results from annulment of the "a 2.75 multiple" only "as regards judges" of the general courts. After all, the point is not "only" to have non-corrupt judges, but equally to have non-corrupt members of Parliament and representatives of the executive branch (members of the government, just like judges, do not have the possibility of earning incomes on the side).

9. Today's judgment creates the impression that there is no choice but to continue in the trend begun by the last two judgments from 2011 and 2012, file no. Pl. ÚS 16/11 and file no. Pl. ÚS 33/11. However, in our opinion the situation in the present proceeding is different from the one that was subject to review in those two judgments, in three aspects:

First, the subject of the present review is not the base salary for judges set by statute as an absolute number, ad hoc for a defined time period. Judgment file no. Pl. ÚS 33/11 annulled "a 2.5 multiple" only in connection with the repeated annulment of a base salary for judges set ad hoc, which was to serve as the "insurance" mentioned in point 59 , in view of the previous judgment, file no. Pl. ÚS 16/11, in case the Constitutional Court again annulled the ad hoc base salary for judges set for 2012 to 2014.

Second, unlike the situation in 2011-2012, in 2013 (the decisive period for review) the multiple for calculating the base salary for judges was not reduced; on the contrary, compared to the previous year it was increased from 2.5 to 2.75 (although not up to the previous statutorily set multiple of 3). Therefore, we consider it misleading that the judgment interprets the contested provision (a 2.75 multiple) as a salary restriction, based on the premise that there was a "reduction of the ratio between the base salary and the average salary in the non-business sphere from a multiple of 3 to a 2.75 multiple" from 2013 (point 74). The multiple of 3 had been established in § 3 par. 3 of Act no. 236/1995 Coll. until 31 December 2010, but in 2013, in view of the previous amendments to the legal framework in question (although the last was initiated by the Constitutional Court's derogation), it was already a past and hypothetical category.

Third, in the decisive period (2013) there was no decrease or stagnation of the real incomes of judges; on the contrary, they were significantly increased (as already discussed above, and in more detail below).

10. Thus, the subject matter of the present proceeding was not reviewing the constitutional conformity of the reduction of judges' salaries by decreasing the previous base salary (as was the case in the situation reviewed in judgment file no. Pl. ÚS 16/11, when Act no. 425/2010 Coll. reduced the base salary for judges for the year 2011 by CZK compared to 2008-2010), nor a merely negligible increase (cf. judgment Pl. ÚS 33/11, where the increase of the base salary for the years 2012-2014 under the same statute was to be a mere CZK 2, compared to the "frozen" base salary in effect during 2008-2010), but the subject matter of the present review was, or was supposed to be, the increase of the base salary of judges in 2013 compared to the previous year, 2012.

Thus, the reality is that in the decisive period of 2013 the base salary for judges grew, compared to 2012, by CZK 5,634.25, i.e. by 9.8%. As the base salary is only a starting value for determining a judge's income

(consisting of his salary and reimbursement of expenses, where the salary is determined by multiplying the base salary and the salary coefficient set according to the number of years of the credited period for a judge – see § 28 to 32 of Act no. 236/1995 Coll. and point 41 of judgment file no. Pl. ÚS 13/08), it is certainly more illustrative to give several examples, how the monthly "gross" income of judges increased since 2013, even with the 2.75 multiple for calculating the base salary for judges:

2012 (2.5 multiple) base salary: CZK 57,222.50 (per MLSA notification no. 183/2012 Coll.)*		2013 (2.75 multiple) base salary: CZK 62,856.75 (per MLSA notification no. 183/2012 Coll.)		2014 (2.75 multiple) base salary: CZK 64,495.75 (per MLSA notification no. 394/2013 Coll.)	
	Salary	reimbursement	salary	reimbursement	salary	reimbursement
district court judge up to 5 years of practice	50,400	3,200	55,400	3,500	56,800	3,600
district court judge, 15 years of practice	74,400	3,200	81,800	3,500	83,900	3,600
district court judge, 30 years of practice	86,500	3,200	95,000	3,500	97,400	3,600
regional court individual judge 30 years of practice	99,600	3,200	109,400	3,500	112,300	3,600
panel chairman of regional court, 30 years of practice	100,800	3,200	110,700	3,500	113,600	3,600
panel chairman of high court, 30 years of practice	112,200	3,200	123,200	3,500	126,500	3,600
Supreme Court judge Supreme Administrative Court judge	105,300	3,200	115,700	3,500	118,700	3,600
panel chairman of Supreme Court and Supreme Administrative Court	113,900	3,200	125,100	3,500	128,400	3,600

Thus, for example, if the monthly salary of a district court judge with thirty years of practice grew from CZK grew from CZK 86,500 in 2012 to CZK 95,000 in 2013, i.e. by CZK 8,500, and in addition the monthly multi-purpose reimbursement grew in the same period from CZK 3,200 to CZK 3,500, thus his total monthly income grew year on year by CZK 8,800, this cannot even be considered stagnation, let alone a decrease in income.

It is evident from this data that no permanent decrease in judges' income occurred in the decisive year 2013 (through Act no. 11/2013 Coll.) or later. On the contrary – their nominal and real incomes have grown consistently and significantly since 2012, even using the 2.75 multiple. This would, of course, also apply for 2015, when – according to the current legislation – using the 2.75 multiple, the base salary for judges and officials would increase to CZK 65,103.50, and accordingly, judges' salaries would again increase.

In this context, a categorical demand in the style of "nothing but a multiple of 3 and not a crown less" seems to us obviously disproportionate.

The reasoning of the judgment does not convince us that a difference of 0.25 in the multiple (i.e. between the current 2.75 multiple and the requested multiple of 3), which has an effect of slightly under CZK 5,800 on the base salary in 2013 has a constitutional dimension in the form of interfering with judicial independence. Is the independence of, e.g. the district court judge with 30 years of practice, whose monthly income grew in 2013 by "only" CZK 8,800 (using the 2.75 multiple), instead of growing by the CZK 17,700 (using the multiple of 3) demanded by the petitioner and the plenary majority really threatened?

11. Therefore, we disagree with the fundamental argument on which the verdict is based, that "there is also at present no discretion for restrictive interference in the relative ratio enshrined in § 3 par. 3 [of Act no. 236/1995 Coll.], as it was established by Act no. 309/2002 Coll. (at the level of a multiple of 3)" (point 80). We cannot agree with the idea on which the judgment is based, that any amount for the purpose of calculating the base

salary of judges that is lower than a multiple of 3 of the average nominal monthly salary in the non-business sphere is unconstitutional, even if it concerned the most negligible amount. We see no support in the letter, never mind the spirit, of the Constitution for the "sanctification" of the multiple of 3, on which the judgment is based.

12. Even if we accepted the optics of the judgment, that judges' salaries actually decreased in 2013 as a result of the fact that Act no. 11/2013 Coll. did not establish the multiple of 3, because of which there is some sort of cumulative slump in the income of judges [seen by the judgment in the period 2002-2011 (see point 75), although even in this decade there were periods when the Constitutional Court approved salary adjustments], we cannot agree that the salary adjustment set as of 2013 at the level of a 2.75 multiple had such a significant impact on the incomes of individual judges as to threaten their independence, never mind the independence of the judicial branch as a whole. That could happen only if the real decline of judges' compensation actually markedly undervalued the role of a judge, so that judges would be at risk of financial need or at least relative poverty. In the range in which the increasing salaries of judges have moved in recent years, we consider the argument of a risk of corruption or external influences on judicial decision making to be misplaced. Such an argument could certainly be drawn out ad absurdum per the saying that "every man has his price."

The framework for judges' incomes established by the contested provision (establishing the 2.75 multiple) does not in any way endanger the appropriate material security of judges, at least we found no evidence of it in the judgment. Quite the contrary, as the judgment states: "the Constitutional Court also does not think that the applied coefficient of 2.75 times the average salary in the non-business sphere created a situation with judges that could be described as so intolerable that it would unquestionably require correction, not only for the future, but also for the past." (point 95).

If judges are to be a social "elite," we consider it unworthy of their status and showing a lack of solidarity vis-à-vis the "rest" of society for them, given their monthly incomes which have long since surpassed those of the great majority of citizens (measured by the average salary) and which must rightly seem vertiginous to the "ordinary mortal," to file complaints seeking the payment of additional amounts, despite the fact that their incomes have been growing – unlike those of other state representatives – significantly more progressively since 2011.

The call of the plenary majority in this situation, to have judges receive even more, so that they can be included in the "upper middle class" (point 97), seems inappropriate. It behooves us to point out that our constitutional order is founded on the principle of citizen (human) equality (see, in particular Art. 2 par. 3 of the Constitution of the Czech Republic, Art. 1, Art. 3 par. 1, Art. 21 par. 4 of the Charter of Fundamental Rights and Freedoms) and does not recognize any estates, classes, castes or higher or lower social levels. Therefore, staying true to the Constitution, the Constitutional Court should support the idea of citizen equality, not the idea of "estates" and the elitist uppitiness of certain social groups. It is unfortunate that the Constitutional Court did not recall that it once also described judges and other state representatives as "servants of the state" (e.g. judgments file no. Pl. ÚS 13/08, point 56; file no. Pl. ÚS 12/10, points 24, 30; see also the quote in point 62 of the present judgment).

If the matter of the level of judges' incomes concerns the question of their social prestige, we cannot but ask: does social prestige truly derive only (mainly) from income level? We do not think that the Constitutional Court should support such measurements of social prestige.

We want to at least point out that not only the wider public, but important voices from the legal community also do not share the belief on which the present judgment is based, that is, that judges' salaries still somehow lag behind the level that they should have reached long ago. Some time ago it was aptly stated by constitutional law professor Václav Pavlíček (the long-time head of the constitutional law department in the Faculty of Law at Charles University), who responded to the question "why doesn't the judicial branch have the appropriate status?" by saying: "[…] in some cases it seems that the judicial branch is all-powerful, sometimes abuses power, and deviates from the principles of a democratic state. Even judges cannot become a special, non-criticizable caste. I don't mean only individual excesses, which can also occur in countries with a long, uninterrupted legal tradition. I mean cases where the Constitutional Court refuses to have the judicial branch, in solidarity, share in the cost-cutting in society like other components of the state. I cannot agree that a fundamental condition for judicial independence is for only the judicial branch to have untouchable salaries and have them increase, otherwise it could not make impartial decisions. Does it mean that solidarity with the cost-cutting, which affects legislators, the president, members of the government, police or other state bodies means that in the case of judges reducing their salaries legitimately opens room for corruption? What role do moral factors play? The authority of money and property cannot be the only value and authority in the state apparatus,

or the state will fall apart.“ (Listy. Year XLIV, no. 3/2014, p. 21–22; interview of 7. June 2011, authorized in September 2013).

13. Evidently we can expect that today’s judgment, even though verdict I. rules out retroactive effect (i.e. “supplemental payments” to judges’ salaries from 2013 bringing them up to the level of a multiple of 3), will not be seen (“appreciated”) by the majority of the political leadership as the legislature’s success (i.e. preserving cost-cutting measures), but primarily as a repeated confirmation and strengthening of the trend of “opening scissors” between the salaries of judges on one side and the salaries of other state representatives, let alone the average incomes of other citizens on the other side; as a result it will lead to increased tension between the “political sphere” and representatives of the judicial branch. That usually has negative consequences.

14. Finally, we cannot support verdict I. for another reason: It is a verdict that is partly derogatory and partly “interpretative,” or norm-creating. Under the Constitution of the Czech Republic and the Constitutional Court Act, if the Constitutional Court finds a statute to be unconstitutional, it only has the power to annul the statute; the derogatory effects of a judgment apply to a “provision” [Art. 87 par. 1 let. a) of the Constitution and § 64 par. 1, § 66 par. 1, § 67, 70 of the Constitutional Court Act]. The Constitutional Court is not authorized to provide that instead of annulling an unconstitutional provision it actually preserves the validity of the provision but “only” rules out application thereof to certain persons, i.e. that the personal application of a legal norm is restricted, as is done by the formulation of verdict I. The result is a completely impossible state of some sort of “annulment and non-annulment” of the contested provision, where one and the same statutory provision simultaneously does not apply (here, to judges) and applies (here, to other officials). From the point of view of what the verdict seeks to achieve, it should probably read that the provision expressed by the words “a 2.75 multiple” shall not “apply” to the judges of the enumerated courts as of 1 January 2015. If such a verdict is not possible, then of course, neither is Verdict I. in the adopted wording. With this verdict the Constitutional Court has stepped into the domain of the legislature.

This verdict also raises other questions, e.g.: Is it possible that in future, the Constitutional Court, in a hypothetical different proceeding before it, could again rule on a petition seeking annulment of the provision “2.75 multiple,” in relation to other officials covered by Act no. 236/1995 Coll. (what if complaints seeking “supplemental” payment of salaries calculated under this provision are not filed by, for example, members of the Supreme Audit Office)? Will the obstacle of res judicata then be applied to the petition seeking annulment of this “annulled” provision? How will Parliament amend this annulled/non-annulled provision – is it still part of the valid wording of the Act? Etc. (This situation is different from the verdict of the judgment in file no. Pl. ÚS 12/10, no. 269/2010 Coll., because the formulation there, “as regards judges,” mean annulling a word, or provision, reading “, a judge” in § 3 par. 4 of Act no. 236/1995 Coll., as amended by Act no. 418/2009 Coll.)

15. For all the foregoing reasons we believe that the petition seeking annulment of provisions of Act no. 236/1995 Coll., as amended by Act no. 11/2013 Coll., should have been denied in full.

---

*) This base salary applied to the period from 1 June 2012 to 31 December 2012.

---

2. Dissenting Opinion of Judge Vladimír Sládeček

In accordance with § 14 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, I file this dissenting opinion regarding verdict I, for the following reasons:

I.
I cannot agree with the words “as regards judges of district, regional, and high courts, the Supreme Court, and the Supreme Administrative Court” in verdict I.

I believe that the Constitutional Court – in accordance with the principle ne eat iudex ultra petita partium aut breviter ne ultra petita – is bound by the proposed judgment of any petition submitted to it. In any case, the Constitutional Court not infrequently says so in the reasonings of its judgments [for the first time in judgment file no. Pl. ÚS 16/93 of 24 May 1994 (N 25/1 SbNU 189; 131/1994 Coll.)]. Thus, this undoubtedly applies to a petition seeking the annulment of a statute. And the proposed judgment was for the annulment of (part of) § 3 par. 3 of Act no. 236/1995 Coll., on the Salaries and Other Appurtenances Relating to the Exercise of Office of Representatives of State Authority and Certain State Bodies and Judges and Members of the European parliament expressed by the words “2.75 multiple.”

Nevertheless, the failure to respect the proposed judgment is only one relevant aspect of the matter. On another side, there appear – evidently even more important as regards the impact – the necessary (logical) consequences of the thus-formulated verdict. Derogation will thus apply only to a particular group of persons defined in the verdict. The legal regulation (part of its provisions) will thus lack a generally binding nature, i.e. a fundamental (typical) attribute of all legal regulations, whereby they are distinguished from, e.g., internal regulations, which do not have this attribute. Naturally, that does not mean that all provisions of all legal regulations are necessarily binding on everybody. For example, Act no. 273/2008 Coll., on the Police of the Czech Republic, as amended by later regulations, applies primarily to police officers, or Act no. 85/1996 Coll., on Advocacy, as amended by later regulations, applies virtually exclusively only to attorneys. In these cases, the generally binding nature nevertheless consists of the fact that these statutes are binding – without exception – on every police officer or attorney.

The mere idea that a particular provision of a legal regulation not apply to someone (a specified group of persons) because it was annulled by the Constitutional Court only "in part" (for some people) and would continue to be binding for other persons is absolutely unacceptable. Even using all my efforts, I am unable to interpret Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, (§ 64 an.), or the relevant provision of the Constitution, i.e.. Art. 87 par. 1 let. a), in this manner.

For completeness, I must add that the reasoning of the judgment does not in any way explain why this "non-standard" approach was used in formulating the verdict.

In this issue I also refer to the dissenting opinion of Judges R. Suchánek and J. Musil (point 14), in which I join.

II.
Thus, I can conclude that in verdict I the words "as regards judges of district, regional, and high courts, the Supreme Court, and the Supreme Administrative Court" should have been omitted for the foregoing reasons, as I proposed during the plenary discussions.