REGULATION OF GAMBLING
Pl.ÚS 6/13

Czech Republic
Constitutional Court
JUDGMENT

In the Name of the Republic

On 2 April 2013, under file reference Pl. ÚS 6/13, the Plenum of the Constitutional Court, consisting of Stanislav Balík, Vlasta Formánková, Vojen Güttler, Pavel Holländer, Ivana Janů, Vladimír Kůrka, Dagmar Lastovecká, Jan Musil, Jiří Nykodým, Pavel Rychetský, Miloslav Výborný, and Michaela Židlická, issued a judgment on the petition of the city of Klatovy, represented by JUDr. Jiří Štancl, attorney, with registered office at Čs. legií 172, 339 01 Klatovy, seeking the annulment of the provision of Art. II, point 4 of Act No. 300/2011 Coll., amending Act No. 202/1990 Coll., on Lotteries and Other Similar Games, as amended, and other related acts, under the presence of 1) the Chamber of Deputies of the Parliament of the Czech Republic and 2) the Senate of the Parliament of the Czech Republic, acting as parties to the proceedings, and the Public Defender of Rights, acting as the secondary party to the proceedings, as follows:

The provision of Art. II, point 4 of Act No. 300/2011 Coll., amending Act No. 202/1990 Coll., on Lotteries and Other Similar Games, as amended, and other related acts, shall be annulled upon the date of publishing this judgment in the Collection of Laws.

REASONING

I.
Summary of the proceedings before the Constitutional Court

I. a)
Previous proceedings on the constitutional complaint

1. On 20 June 2012, the Constitutional Court was delivered a constitutional complaint of the city of Klatovy directed against another action of the Ministry of Finance (hereinafter referred to as the "Ministry"), heard by the Constitutional Court under file reference IV. ÚS 2315/12. Pursuant to the provisions of Section 74 of Act No. 182/1993 Coll., on the Constitutional Court, as amended, in the constitutional complaint, the Petitioner sought the annulment of Art. II, point 4 of Act No. 300/2011 Coll., amending Act No. 202/1990 Coll., on Lotteries and Other Similar Games, as amended, and other related acts (hereinafter referred to as the "contested provision").

2. The Fourth Chamber of the Constitutional Court concluded that the application of the contested provision of the act resulted in the situation that is the subject of the constitutional complaint. Since at the same time, the Constitutional Court did not consider the constitutional complaint as manifestly unfounded, thus being otherwise admissible for the review on the merits, it held that the petition seeking the annulment of the contested provision needs to be considered on the merits. For this reason, upon the resolution issued on 16 January 2013, file reference IV. ÚS 2315/12, it discontinued the proceedings on the constitutional complaint and referred the Petitioner's petition seeking the annulment of the contested provision to the Plenum of the Constitutional Court.

I. b)
Argumentation of the Petitioner

3. The Petitioner considered the contested provision as unconstitutional due to the fact that in association with the administrative practice of the Ministry of Finance (whose interference was

primarily contested in the constitutional complaint), and it temporarily suspended the possibility of municipalities to control the operation of interactive video lottery terminals in their territory as constitutionally guaranteed and recognised by the Constitutional Court.

4. According to the Petitioner, the contested provision obstructs the review and potential annulment of permits to operate interactive video lottery terminals issued by the Ministry, although pursuant to the case law of the Constitutional Court [Judgment file reference Pl. ÚS 29/10, issued on 14 June 2011 (N 110/61 SbNU 625, 202/2011 Coll.), Judgment file reference Pl. ÚS 56/10, issued on 7 September 2011 (N 151/62 SbNU 315, 293/2011 Coll.), or Judgment file reference Pl. ÚS 22/11, issued on 27 September 2011 (N 169/62 SbNU 489, 328/2011 Coll.)], it is a question whose regulation falls within the constitutionally guaranteed authority of municipalities. In this context, the Petitioner paraphrased in detail the legal conclusions contained in the quoted judgments and upholding the constitutional guarantees of the right of municipalities to self-government.

5. The Petitioner also expressed a belief that the contested provision did not only violate the right of municipalities to self-government pursuant to the provisions of Art. 8 and Art. 100, para. 1 of the Constitution of the Czech Republic (hereinafter referred to as the "Constitution"), but also the provision of Art. 89, para. 2 of the Constitution, under which enforceable decisions of the Constitutional Court are binding on all authorities and persons. Even though the judgments of the Constitutional Court were primarily directed against municipalities and the Ministries of the Interior and Finance, it was impossible, according to the Petitioner, to disregard the fact that at least in the Judgment file reference Pl. ÚS 56/10, the Constitutional Court unambiguously expressed that the regulation of gambling was an area falling within the scope of territorial self-government. For this reason, this opinion was supposed to be respected by the legislature when adopting the act containing the contested provision.

I. c)
Statements of the parties to the proceedings

6. The Chamber of Deputies of the Parliament of the Czech Republic (hereinafter referred to as the "Chamber of Deputies") submitted its statement on the petition on 19 February 2013. It described the course of hearing the draft bill published under No. 300/2011 Coll., while briefly outlining the explanatory report attached to the draft bill. In relation to the contested provision, it mentioned that the validity of the permits would remain unaffected provided that they had been issued before the date of the generally binding ordinance of the municipality taking effect and that they did not comply with this ordinance. Pursuant to the explanatory report, any process to the contrary would establish inadmissible legal retroactivity, being inconsistent with the principle of legal certainty as stipulated in the Constitution. Shortening the validity of the existing permits would mean that the state, according to the explanatory report, would become exposed to the danger of arbitration disputes initiated by the existing operators. The draft bill was adopted by the Chamber of Deputies on 21 June 2011. The Senate of the Parliament of the Czech Republic (hereinafter referred to as the "Senate") returned the draft bill to the Chamber of Deputies with proposed amendments which the Chamber of Deputies accepted in its session on 6 September 2011, thus adopting the draft bill in the wording returned by the Senate. The Chamber of Deputies denied that the contested provision aimed at delaying the effect of the judgments of the Constitutional Court, while in particular referring to the temporal circumstances of discussing the draft bill. In this respect, it particularly emphasised that the Judgment file reference Pl. ÚS 56/10, issued on 7 September 2011 (N 151/62 SbNU 315; 293/2011 Coll.) was not issued until the Chamber of Deputies had adopted the drafting bill in the wording referred to by the Senate. In the conclusion of its statement, the Chamber of Deputies stated that the draft bill had been discussed and adopted by means of the constitutionally prescribed manner and pursuant to the standard rules of the legislative process.

7. In its statement submitted on the 8 February 2013, the Senate of the Parliament of the Czech Republic also expressed a belief that when adopting the act, it proceeded within the limits of the authority set forth by the Constitution and in the constitutionally prescribed manner. Specifically, the

Senate stated that the draft bill, adopted by the Chamber of Deputies in its 19th session on 21 June 2011, was duly submitted to it on 28 June 2011. As the Senate print No. 127, the draft bill was referred to the Committee on National Economy, Agriculture and Transport (acting as the guarantee committee), the Committee on Public Administration, Regional Development and the Environment, and the Committee on Legal and Constitutional Affairs. All the afore-mentioned committees recommended returning the draft bill to the Chamber of Deputies with proposed amendments. On 22 July 2011, the Senate adopted a resolution in which it returned the draft bill to the Chamber of Deputies in the wording of adopted proposed amendments. In its statement, the Senate also summarised in detail the content of the debate on the draft bill in question taking place in the Senate.

I. d)
Attitude of the Government and the Public Defender of Rights

8. Pursuant to the provisions of Section § 69, para. 2 and 3 of Act No. 182/1993 Coll., on the Constitutional Court, as amended, (hereinafter referred to as the "Constitutional Court Act"), the Constitutional Court, by means of an official letter dated on 23 January 2013 and delivered on 25 January 2013, notified the Government of the Czech Republic and the Public Defender of Rights of the pending proceedings, while reminding them of the time limits within which they may participate in the proceedings as secondary parties and possibly submit their statements on the petition.

9. On 1 February 2013, the Public Defender of Rights advised the Constitutional Court that it was joining the proceedings as the secondary party. Within the time limit prescribed by law (expiring on 25 February 2013), the Government of the Czech Republic did not advise the Court on its entry to the proceedings, and therefore it could not be attributed the position of the secondary party to the proceedings. By means of the official letter delivered to the Constitutional Court on 26 February 2013, JUDr. Jan Studnička, Chief Director of the Minister's Cabinet Section and Chairman of the Government's Legislative Council, asked the Judge Rapporteur to extend the time limit by one month in order for the Government to advise the Court whether it was to participate in the proceedings as the secondary party. The Constitutional Court could not admit any relevance to the afore-mentioned request not only due to the fact that its author could hardly be authorised to act on behalf of the Government within the proceedings before the Constitutional Court, but mainly owing to the fact that the thirty-day time limit for joining the proceedings was, pursuant to the provision of Section 69, para. 2 of the Constitutional Court Act, a time limit that could not be extended by the Constitutional Court and failure to comply with which could not be pardoned. The Government did not even submit its statement subsequently in the form of amicus curiae brief.

10. The Public Defender of Rights submitted a statement on the petition on 1 March 2013. It stated that the contested provision should not be perceived as an obstruction to annulling the issued permits, since in its opinion, it does not actually affect the control authority of municipalities existing before the amendment pursuant to the previous provision of Section 50, para. 4 of Act No. 202/1990 Coll., on Lotteries and Other Similar Games (hereinafter referred to as the "Lotteries Act"), i.e. the regulation of all technical gambling devices similar to slot machines pursuant to the former provisions of Section 2, letter e) of the Lotteries Act. However, despite this opinion, the Public Defender of Rights admitted that in the given case, it would support annulling the contested provision, also with respect to the long-term (and unlawful in its opinion) decision-making practice of the Ministry of Finance, the long-term interference of the state with the constitutionally guaranteed right of municipalities to self-government (failure to respect the issued generally binding ordinances, including the rejection of the possibility to annul the permit due to the inconsistency with the later ordinance), the problematic procedural position of municipalities, and factual abuse of the contested provision for the purposes of the above-described interference of the state with the constitutionally guaranteed right of municipalities to self-government.

II.
Dispensing with an oral hearing

11. Above all, the Constitutional Court considered that it was not necessary to hold an oral hearing in the instant case, since it would not bring any further or better clarification of the case than collected by means of written acts submitted by the parties to the proceedings. With respect to the provision of Section 44 of the Constitutional Court Act (in this context, let us particularly emphasise the amendment carried out by means of Act No. 404/2012 Coll., taking effect on 1 January 2013), it was thus no longer obliged to ask the parties whether they agreed to dispense with the oral hearing and issued the judgment in the case without an oral hearing.

III.
The actual review

III. a)
Wording of the contested provision

12. The provision of Art. II, point 4 of Act No. 300/2011 Coll., amending Act No. 202/1990 Coll., on Lotteries and Other Similar Games, as amended, and other related acts, reads as follows:

Art. II
Interim provisions

(…)

4. The authority of municipalities to issue a generally binding ordinance shall not apply, until 31 December 2014, to permits issued under Section 2, letters i) and j) and under Section 50, para. 3 of the Act on Lotteries and Other Similar Games in the wording effective prior to 1 January 2012; the same shall apply to the provision of Section 50, para. 5 of the Act on Lotteries and Other Similar Games in the wording taking effect on 1 January 2012. The term of validity of these permits shall be limited by the Ministry of Finance so that their validity expires no later than 31 December 2014 if these lotteries and any other similar games are operated contrary to the generally binding ordinance or contrary to the provision of Section 50, para. 5 of the Act on Lotteries and Other Similar Games, in the wording taking effect on 1 January 2012.

III. b)
Prerequisites of the review

13. The formally flawless petition was filed by an authorised person. The Constitutional Court is competent to consider the petition, while the petition has been declared admissible.

14. At first, the Constitutional Court was obliged to take into consideration whether it is authorised, in the instant case, to review (and possibly annul) the amendment to the act itself or its part.

15. Pursuant to the established case law of the Constitutional Court, it is impossible, as a matter of principle, to oppose an amending legal regulation by means of a petition, since such a legal regulation does not have, in general, a separate legal existence; this is acquired only as part of the amended legal regulation; for this reason, it was the amended legal regulation that was due to be submitted to the Constitutional Court for review [cf. e.g. the Resolution file reference Pl. ÚS 25/2000, issued on 15 August 2000 (U 27/19 SbNU 271), also available – just as all the other decisions referred to in this judgment – at http://nalus.usoud.cz].

16. However, the above does not mean that the petition directed against an amendment to an act or its part (just as in the instant case) could never be subject to review on the merits performed by the Constitutional Court [cf. the Judgment file reference Pl. ÚS 2/02, issued on 9 March 2004 (N 35/32 SbNU 331; 278/2004 Coll.)]. One group of review-allowing exemptions consists of situations in which the constitutionality of the procedure of adopting the amending legal regulation is verified [cf. e.g. the Judgment file reference Pl. ÚS 55/10, issued on 1 March 2011 (N 27/60 SbNU 279; 80/2011

Coll.) or the Judgment file reference Pl. ÚS 77/06, issued on 15 February 2007 (N 30/44 SbNU 349; 37/2007 Coll.)]. Another exemption undoubtedly represents a situation (which also occurred in the instant case) in which interim provisions of the amending legal regulation have been contested. In fact, interim measures of the amending legal regulation exist solely and exclusively as a part of it, while not becoming part of the amending legal regulation. Under these circumstances – and taking into account the fact that applying the interim provisions of the amendment may also interfere with the constitutionally guaranteed rights (cf. below) – the Constitutional Court found that the submitted derogatory petition was admissible for consideration.

17. The Constitutional Court admitted the possibility of reviewing intertemporal provisions in the Judgment file reference Pl. ÚS 21/96, issued on 4 February 1997 (N 13/7 SbNU 87; 63/1997 Coll.) or Pl. ÚS 33/01, issued on 12 March 2002 (N 28/25 SbNU 215, 145/2002 Coll.).

18. On the basis of the reasons described above, the Constitutional Court could proceed to the review of the contested provision.

III. c)
The review of the procedure of adopting the contested statutory provision

19. As imposed in the provision of Section 68, para. 2 of Act No. 182/1993 Coll., on the Constitutional Court, in the wording of Act No. 48/2002, Coll., the Constitutional Court first examined whether the contested provision (or the act in which this provision was included) had been adopted and issued within the confines of the powers set down in the Constitution and in the constitutionally prescribed manner. For this purpose, it proceeded from the publically accessible stenographic reports quoted below, recording the parliamentary debate, and the statements of both chambers of the Parliament.

20. The draft bill (subsequently published under number 300/2011 Coll.) was submitted to the Chamber of Deputies by the Government of the Czech Republic and was discussed as the document of the Chamber No. 138. The draft bill was adopted by the Chamber of Deputies in its 19th session of the sixth electoral term on 21 June 2011, while within vote No. 287, out of 164 Deputies present, 138 voted for and 18 against the draft bill.

21. On 28 June 2011, the draft bill was referred to the Senate. On 22 July 2011, in its 10th session of the 8th electoral term, the Senate adopted a resolution in which it returned the draft bill to the Chamber of Deputies in the wording of the adopted proposed amendments. Within vote No. 61, out of 64 Senators present, 59 voted for returning the draft bill and none of them voted against.

22. By means of the stenographic report of the 21st session of the Chamber of Deputies, held on 6 September 2011, the Constitutional Court established that the draft bill had been adopted by the Chamber of Deputies in the wording referred to by the Senate, whereas within vote No. 21, out of 179 Deputies present, 152 voted for and 18 against the draft bill.

23. On 15 September 2011, the act was delivered to the President of the Republic, who signed it on 27 September 2011.

24. On 14 October 2011, the act was published in Volume 106 of the Collection of Laws under number 300/2011 Coll.

25. The Constitutional Court concludes that Act No. 300/2011 Coll., containing the contested provision, was adopted and issued within the confines of the powers set down in the Constitution and in the constitutionally prescribed manner.

III. d)
Review on the merits of the contested provision

26. The key question of the material conformity of the contested provision with the constitutional order is whether this statutory norm, which, in association with the procedure adopted by the Ministry of Finance, temporarily restricts the possibility of municipalities to control the operation of interactive video lottery terminals by means of generally binding ordinances, interferes unconstitutionally with the constitutionally guaranteed right of municipalities to self-government pursuant (in particular) to the provision of Art. 8, Art. 100, para. 1, and Art. 104, para. 3 of the Constitution.

27. The quoted provisions of the constitutional order provide municipalities with self-government as territorial self-governing units (Art. 8 in association with Art. 100, para. 1 of the Constitution), while they also confer onto them the authority to control issues falling within the limits of their jurisdiction by means of issuing generally binding ordinances (Art. 104, para. 3 of the Constitution). In the context of the constitutional order, the constitutional guarantee of the right of municipalities to self-government represent a key element of the vertical division of powers, and some authors even include them among essential requirements of the democratic rule-of-law state (for instance, cf. Bahýľová, L., Filip, J., Molek, P., Podhrázký, M., Šimíček, V., Vyhnánek, L. Ústava České republiky: komentář [Constitution of the Czech Republic: Commentary]. Prague: Linde, 2010, pp. 140–141).

28. In its case law, the Constitutional Court has already dealt with defining the meaning, essence, content and extent of the right of municipalities to self-government on a number of occasions, both in general terms, and also specifically in relation to the constitutional right of municipalities to issue generally binding ordinances within the limits of their jurisdiction, and even more specifically, in relation to the possibility of municipalities to control the operation of slot machines and similar devices pursuant to the Lotteries Act.

29. The previous case law of the Constitutional Court interpreted the right of municipalities to self-government (particularly in relation to the performance of their jurisdiction to issue generally binding ordinances) in a rather restrictive manner. The Judgment file reference Pl. ÚS 45/06, issued on 11 December 2007 (N 218/47 SbNU 871; 20/2008 Coll.) offered explicit reassessment of the earlier case-law practice, establishing a new approach, significantly more favourable towards municipalities. In the afore-mentioned judgment, the Constitutional Court held that after fifteen (at that time) years of existence of the Constitution containing the constitutional guarantee of the right to territorial self-government, the content of the right of municipalities to self-government had already settled, becoming part of wider legal awareness. In this context, it referred to, in particular, the normative solution contained in Section 10 of Act No. 128/2000 Coll., on Municipalities (System of Municipalities), as amended, which materially defined the areas in which municipalities were allowed to issue generally binding ordinances and whose limits have also been specified by means of the extensive case law of the Constitutional Court.

30. Subsequently, the Constitutional Court emphasised [Judgment file reference Pl. ÚS 56/10, issued on 7 September 2011 (N 151/62 SbNU 315; 293/2011 Coll.)] that with respect to the constitutional guarantees of the right to self-government, it is impossible to proceed solely from the wording of the statute when defining it, since the right to self-government also has (regardless of the stipulation of the statute) a material aspect (or its own constitutional content). For this reason, the implementing statute cannot empty or in effect eliminate the content of the constitutionally guaranteed right to territorial self-government.

31. The Constitutional Court defined, in part, the content of the right to self-government, for instance, in the Judgment file reference Pl. ÚS 30/06, issued on 22 May 2007 (N 87/45 SbNU 279; 190/2007 Sb.), according to which the sphere of self-governing jurisdiction of municipalities, which may be regulated by means of generally binding ordinances pursuant to the territorial self-government as guaranteed by the constitutional order, includes matters of predominantly local or regional effect and whose regulation pursues the interests of the municipality and its citizens. In particular, the Court labelled these matters as securing local matters of public order, maintaining the cleanliness of streets and other public spaces, the protection of the environment, greenery in built-up areas and other public

greenery, using the municipality facilities serving the needs of the public, territorial development of the municipality, etc.

32. According to the Judgment file reference Pl. ÚS 56/10 (quoted here in paragraphs 4 and 30), decision-making on whether and where a lottery or any other similar gambling establishment (including interactive video lottery terminals) may be located in their territory is then a matter of local order, and in itself, it falls within the self-governing jurisdiction of municipalities, since they are provided with constitutional guarantees to control these matters. Following the above, the Constitutional Court subsequently observed [Judgment file reference Pl. ÚS 22/11, issued on 27 September 2011 (N 169/62 SbNU 489; 328/2011 Coll.)], that within the context of the legal regulation of the regulation of gambling, it is the duty of the Ministry of Finance to secure the respect for the constitutionally guaranteed right to self-government.

33. The above thus implies that the right to self-government pursuant to the provisions of Art. 8, Art. 100, and Art. 104, para. 3 of the Constitution and pursuant to the currently established case law of the Constitutional Court also includes the possibility of municipalities to control the operation of interactive video lottery terminals in their territory by means of issuing generally binding ordinances. In addition to this, it should be emphasised that the constitutional dimension of the right to self-government cannot obviously be amended by means of an ordinary statute (cf. the provision of Art. 9, para. 1 of the Constitution); for this reason the argument according to which the possibility to control the operation of interactive video lottery terminals in their territory was not conferred (granted) to municipalities until adoption of Act No. 300/2011 Coll. must be rejected as absolutely ill-founded.

34. On condition that the contested provision excludes (suspends), albeit only temporarily, yet for a non-negligible period of time, the possibility of municipalities to control the operation of interactive video lottery terminals, it is an interference with the constitutionally guaranteed right to self-government.

35. The Constitutional Court is aware of the existence of the interpretation alternative according to which the contested provision does not represent an obstacle to annulling the permits to operate interactive video lottery terminals (cf. the statement of the Public Defender of Rights), yet the administrative practice of the Ministry of Finance (also mentioned in the statement of the Public Defender of Rights) proves that this interpretation alternative, in practice, has not been completely accepted by the Ministry, and the application of the contested provision thus results in extensive and long-lasting interferences with municipalities' self-government. The same is also implied by the fact that the petition seeking the annulment of the contested provision was filed not only by the city of Klatovy but also in other proceedings (recorded by the Constitutional Court under file references II. ÚS 2335/12 and III. ÚS 2336/12), by the cities of Frýdlant nad Ostravicí and Židlochovice.

36. In this situation, the Constitutional Court proceeded to consider the question of whether the interference with the right of municipalities to self-government, induced by the contested statutory provision, was consistent with the proportionality principle; in this context, it first focused on the question of whether the temporary restriction of the possibility of municipalities to control the operation of interactive video lottery terminals pursued a legitimate goal.

37. Obviously inspired by the case law of the Federal Constitutional Court, the proportionality test was formulated by the Constitutional Court already in the Judgment file reference Pl. ÚS 4/94, issued on 12 October 1994 (N 46/2 SbNU 57; 214/1994 Coll.) as a cascade of review pursuant to three criteria. The first one is the suitability criterion, i.e. the answer to the question whether an institute restricting a certain fundamental right permits achievement of the pursued goal. The second criterion of weighing the fundamental rights and freedoms consists in the criterion of necessity, residing in the comparison of the legislative means restricting a certain fundamental right or freedom with other measures allowing achievement of the same goal, without impinging upon the fundamental rights and freedoms. The third criterion then consists in the comparison of the importance of both conflicting fundamental rights.

38. However, both this judgment and a large number of other judgments [cf. the Judgment file reference IV. ÚS 1770/07, issued on 1 November 11. 2007 (N 181/47 SbNU 391) or file reference Pl. ÚS 7/09, issued on 4 May 2010 (N 102/57 SbNU 315; 226/2010 Coll.), paragraph 34] clearly imply the review of the suitability criterion (the first step of the test) obviously assumes the answer to the question of whether the legitimate goal pursued by the normative regulation and considered by the Constitutional Court is legitimate. With respect to the fact that the very essence of the proportionality test consists in the effort to establish a balance between conflicting constitutional principles, the suitability criterion may only be taken into consideration when examining a regulation which suppresses or weakens one constitutionally protected interest (usually a fundamental right) for the purposes of protecting another constitutionally protected right. On condition that the examined normative regulation did not pursue any rationally recognisable objective (i.e. if it was completely arbitrary) or it merely pursued an illegitimate goal (which could not be provided with the constitutional protection), it would result in restriction of the constitutionally protected interest without any corresponding counter-balance. For this reason, when applying the proportionality test (or more precisely prior to its application), it is mandatory to establish whether the examined regulation pursues a legitimate goal; naturally, considering whether the examined regulation was suitable for achieving a non-existent or illegitimate goal would lack any sense.

39. In the course of the proceedings on the constitutional complaint (cf. the Resolution issued on 16 January 2013, file reference IV. ÚS 2315/12, which stayed the proceedings on the constitutional complaints by means of which the petition seeking the annulment of the contested provision was referred to the Plenum of the Constitutional Court), the Ministry of Finance stated that the contested interim provision legitimately dealt with the intertemporal issue related to balancing conflicting, constitutionally protected interests (i.e. the right to self-government and the protection of the right to own property, and the right to engage in enterprise), while also protecting the legitimate expectations of the operators of interactive video lottery terminals; in relation to this, the Ministry warned of the threat of disputes (initiated by the operators of interactive video lottery terminals) concerning the protection of rights under international agreements on the promotion and protection of foreign investment.

40. However, the Constitutional Court observes that none of the presented goals of the contested provision may be considered legitimate in the sense of approving the interference with the right of municipalities to self-government as described above. Neither the Chambers of the Parliament as parties to the proceedings, nor the Government proposing the adoption of the currently reviewed norm demonstrated any other legitimate goal eligible for weighing with the constitutional right of municipalities to self-government. The Constitutional Court did not find any implicitly stipulated objectives of this intertemporal norm, either, while also adding that it is not its duty to inquire whether there might be any other goal (goals) of the interim provision of Act No. 300/2011 Coll. (see paragraph 38 above) than the one (ones) communicated by the Ministry of Finance.

41. Within the context of assessing the intended purpose of the contested provision, the Constitutional Court emphasises, above all, that the alleged efforts to deal with intertemporal issues associated with balancing the conflicting, constitutionally protected interests, as mentioned by the Ministry, cannot be perceived as a legitimate goal. In fact, the statement on the existence of the intertemporal issue relies necessarily on the assumption that the option to control the operation of interactive video lottery terminals was made available to municipalities in their territory only as a consequence of a legislative change performed by means of the statute which includes the contested interim provision. Nevertheless, as implied from the above, the contrary is true, since the case law of the Constitutional Court quoted above merely affirmed this constitutional right; and neither the judgments of the Constitutional Court, nor the amending act implemented by the legislature at the same time created the already existing constitutional right of municipalities to self-government.

42. For this very reason, it is impossible to talk, in the case of operators of interactive video lottery terminals, about the existence of the legitimate expectation (which should probably be protected by

means of the contested provision) consisting in the hope that their activity will not be controlled, at least for a certain period, by means of generally binding ordinances issued by municipalities. Operators of interactive video lottery terminals – just as any other subject of law – in fact could and were supposed to be aware of the risk that their legal sphere might be affected as a consequence of adopting, amending or annulling legal regulations, i.e. not only laws but also by-laws (including generally binding ordinances). After all, this is also implied in the established case law of the Constitutional Court; for instance, cf. the Judgment file reference Pl. ÚS 21/96, issued on 4 February 1997 [N 13/7 SbNU 87 (96); 63/1997 Coll.], in which the Constitutional Court held that annulling an old and adopting a new legal regulation is necessarily associated with an interference with the principles of equality and the protection of the citizen's confidence in law. In agreement with the Petitioner, the Constitutional Court states that it is impossible to perceive the assumption of operators of interactive video lottery terminals that the administrative practice associated with neglecting the right of municipalities to self-government will continue as a legitimate expectation.

43. Finally, the alleged concerns of the state related to imminent arbitration disputes cannot be considered a legitimate goal of the contested regulation, either. The statement according to which the annulment (or change) of the issued permits to operate interactive video lottery terminals could result in initiating disputes under international agreements on the promotion and protection of foreign investment is not at all substantiated, thus amounting to mere speculation. Furthermore, it needs to be remembered that provided these were arbitrations initiated under international agreements on investment protection, the proceedings could be initiated solely by foreign operators, which is, however, excluded with respect to the provisions of Section 4, para. 4 of the Lotteries Act.

IV.
Conclusion

44. The Constitutional Court thus concludes that the contested provision interferes with the constitutionally guaranteed right of municipalities to self-government, as this intervention failed to pursue a legitimate goal. Without the necessity to proceed to further steps of the proportionality test, the above results in the conclusion on the unconformity of the contested provision with the provisions of Art. 8, Art. 100, para. 1, and Art. 104, para. 3 of the Constitution. For the reasons outlined above, the Constitutional Court annulled Art. II, point 4 of Act No. 300/2011 Coll., amending Act No. 202/1990 Coll., on Lotteries and Other Similar Games, as amended, and other related acts pursuant to the provision of Section 70, para. 1 of Act No. 182/1993 Coll., on the Constitutional Court, taking effect on the date of publishing the judgment in the Collection of Laws, since it had not found any reasons for determining the judgment's enforceability in a different manner.

45. Upon establishing the substantive law contradiction of the adopted legal regulation with the constitutional order, it was no longer necessary to deal with the Petitioner's objection according to which the unconstitutionality of the contested provision also consists in failure to comply with the conclusions of the Constitutional Court by Parliament (and thus violating Art. 89, para. 2 of the Constitution).

Chairman of the Constitutional Court:
JUDr. Rychetský