CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE REPUBLIC

Pl. ÚS 16/12 of 16 October 2012
"Objections against a Bill-of-Exchange Payment Order"

HEADNOTES

The Constitutional Court defined three essential perspectives on the basis of which it assesses the conformity of a particular period as prescribed by the relevant regulation, i.e. whether it was not prescribed by the legislature arbitrarily, whether it is not excessive and whether it does not prejudice any group of entities with another in the possibility to exercise the right as a result of an additional change of conditions.

The contested time limit was disproportionate since the bill of exchange had been used among entities that are not, in essence, in an equal position and that cannot (even though it would not be fair to expect it from them) perceive the bill-of-exchange relation in its global perspective, thus reflecting any possible risks arising from it.

VERDICT

On 16 October 2012, under file reference Pl. ÚS 16/12, the Plenum of the Constitutional Court, consisting of Chief Justice Pavel Rychetský and Justices Stanislav Balík, Vlasta Formánková, Vojen Güttler, Ivana Janů, Vladimír Kůrka, Dagmar Lastovecká, Jan Musil, Jiří Nykodým, Miloslav Výborný, and Michaela Židlická on the petition of K. Š. seeking the annulment of Section 175 of Act No. 99/1963 Coll., Civil Procedure Code, as amended, in the presence of the Chamber of Deputies and the Senate of the Parliament of the Czech Republic, acting as parties to the proceedings, as follows:

I. The provisions of Section 175, para. 1 of Act No. 99/1963 Coll., Civil Procedure Code, as amended, shall be annulled in the words "within three days" and "in the same period" upon expiration of 30 April 2013.

II. In the remaining parts, the petition seeking annulment of Section 175, para. 1 of Act No. 99/1963 Coll., Civil Procedure Code, as amended, shall be dismissed as inadmissible.

REASONING

I.
Summary of the petition

1. By means of a constitutional complaint, filed in a timely and appropriate manner, the petitioner seeks that the Constitutional Court issued a judgment annulling the decision of the High Court in Prague, issued on 11 November 2010, file reference 5 Cmo 270/2010-112. The proceedings on the constitutional complaint are conducted under file reference IV. ÚS 376/11. Alongside the petition seeking the annulment of the afore-mentioned decision, she also sought the annulment of Section 175 of Act No. 99/1963 Coll., Civil Procedure Code, as amended (hereinafter referred to as the "CPC"), mainly for the following reasons:

2. In its decision issued on 17 June 2010, file reference 37 Cm 419/2009-84, the Regional Court in Ústí nad Labem – Liberec Branch, annulled the bill-of-exchange payment order of the Regional Court in Ostrava, file reference 32 Cm 76/2009-14, issued on 25 February 2009. The Plaintiff, GORASAN COMPANY LIMITED, Theklas Lysioti 35, EAGLE STAR HOUSE, 6th floor, P. C. 3030, Limassol, Cyprus, filed an appeal against this decision (within the proceedings on the constitutional complaint of the petitioner, registered by the Constitutional Court under file reference IV. ÚS 376/11 as a secondary party to the proceedings, hereinafter referred to as the "plaintiff"). Within the appellate procedure, the High Court in Prague overturned the decision of the Regional Court in Ústí nad Labem – Liberec Branch, keeping the bill-of-exchange payment order of the Regional Court in Ostrava, file reference 32 Cm 76/2009-14, issued on 25 February 2009, effective. In the petitioner's view, the High Court in Prague, in the decision referred to above, decided particularly inconsistently with the provisions of Section 3 of Act No. 40/1964 Coll., Civil Code, as amended, inconsistently with the provisions of Sections 1, 2, 120 and 134 of the CPC, and inconsistently with Art. 11, Art. 36, para. 1 and Art. 37, para. 3 of the Charter of Fundamental Rights and Freedoms, thus violating the petitioner's right to a fair process. In this case (and not only in this case), the High Court in Prague does not decide, in the petitioner's view, bill-of-exchange suits impartially and interprets the law (particularly Sections 120 and 134 of the CPC) deliberately in completely the wrong manner, in contradiction with the wording and sense of the law, in contradiction with the case law of the Supreme Court, in contradiction with generally conceived principles of morality and justice and in contradiction with good manners.

3. According to the petitioner, any bill-of-exchange suits in the Czech Republic are only tried by certain chambers specialising in these issues and strictly following Act No. 191/1950 Coll., Bill and Cheque Act, as amended (hereinafter referred to as the "Bill and Cheque Act") and Section 175 of the CPC, not taking into account any other parts of the Civil Code, the Civil Procedure Code, or any other regulations including the Constitution of the Czech Republic (hereinafter referred to as the "Constitution"), the Charter, or the Convention on the Protection of Human Rights and Fundamental Freedoms.

4. In order to illustrate the circumstances of the case currently being heard, the petitioner mentions, in particular, that in approximately 2002, the Company K FAST FINANCE, s. r. o. provided small loans to a large number of clients. Pursuant to the contract, the loans were subsequently repaid so that an employee of the loan provider collected the repayments in person on a weekly basis. In the course of repayment, however, the loan provider stopped collecting the repayments in person and sent the clients a letter informing them that they had decided to change the manner of repayment so that the clients would send money by means of a postal order on a monthly basis. Despite the fact that the client disagreed with the change, the loaner stopped coming to collect the repayments, thus leaving the debtor in default. After some time, the creditor sought the payment order concerning the payment of the amount due including the interest. Since debtors (clients) usually do not have any legal or economic education, they were not able to defend themselves, eventually paying everything, including the enforcement costs. After the enforcement, when the enforcement agent confirmed to them that the whole debt had been repaid, they considered the matter to be completed and no longer kept most of the documents in this matter. The Company FAST FINANCE, s. r. o. waited for several years (in the course of which it endorsed bills of exchange on behalf of the plaintiff) and then several thousands of bill-of-exchange actions were filed. The overwhelming majority of defendants do not have any idea what it is about and they are unable to respond adequately, merely writing in the bill-of-exchange objections that they have repaid the loan including the accessory and that they are free of any debts. According to the petitioner, amounts around 10,000 CZK are not usually borrowed by the rich and educated. If someone borrows the amount of 10,000 CZK, they usually do not have an attorney or sufficient knowledge of law. After being served the bill-of-exchange payment order, they are provided with only 3 days to arrange for an attorney, and at the same time, to pay them several thousands of crowns as an advance payment. Even though some defendants manage to do this, another problem occurs. The loans were provided in 2002 and the actions were filed in 2008–2009. After so many years, the defendants usually no longer have the necessary documents or they do not remember precisely the whole course of events; the attorney thus does not have the necessary documents to produce relevant objections, while being left merely one or two days to do that. According to the

petitioner, the courts then issue decisions in which they keep the bill-of-exchange payment order effective, stating the strictness of the bill-of-exchange proceedings and the rigidity of the statute. On condition that the first instance court dealt with the matter, setting aside the bill-of-exchange payment order, the plaintiff appealed, and the High Court always overturned the decision of the Regional Court, thus keeping the bill-of-exchange payment order effective.

5. In this respect, according to the petitioner, this was characteristically expressed in the statement of JUDr. Zdeněk Kovařík (Judge of the High Court in Prague and leading expert in the bill-of-exchange law in the Czech Republic), for instance in the article entitled "On producing evidence on the authenticity of the bill's signature". Právní rozhledy, 2010, vol. 8, p. 267–272, where the author, in the petitioner's view, prefers, in principle, the owner of the security, i.e. the bill of exchange.

6. Furthermore, according to the petitioner, it should be taken into consideration that the bill-of-exchange law, as represented by the Bill and Cheque Act, was formulated in the second half of the 19th century, not being subject to any more substantial changes since then. It thus reflects the reality of the 19th century, when bills of exchange were only used among a relatively narrow group of individuals who usually knew each other or knew of each other by means of their mutual acquaintances. Today, in addition to using bills of exchange in business relations, usage has also expanded to usage of, above all, blank bills of exchange by various non-banking persons, often of dubious or even fraudulent character, in order to obtain unauthorised or fraudulent profits, with the courts helping this due to their excessive formalism.

7. In accordance with this general context, it is then obvious, in the petitioner's view, that the remitter and plaintiff act in agreement, and the bills were endorsed (i.e. even those bills mentioning the petitioner as the debtor) merely in order for the plaintiff to avoid causal objections or possibly in order to avoid paying tax (this was probably the reason why he transferred the bills to a Cyprus-based company).

8. The petitioner believes that the courts should decide impartially, rather than defend the interests of the owners of securities, particularly in the instances of obviously unethical, or probably even intentionally fraudulent, behaviour of the plaintiff and his legal predecessor. After all, this has also been demonstrated by the steps taken by the plaintiff in the petitioner's case. The remitter has never raised any claim for the payment of the contractual penalty or any other claim. He did not even have any claim due against the petitioner, and therefore he was not entitled to complement the security blank bill. Despite this, he complemented the blank bill and endorsed it on behalf of the plaintiff. Nobody notified the petitioner of this fact; the bill was not presented to her even on its due date, so she was completely unaware of its existence. In this situation, the plaintiff filed an action and the court issued a bill-of-exchange payment order. Whereas the plaintiff had several years to prepare the action, as well as the whole procedure, the petitioner was provided with three days to enter objections to the bill-of-exchange payment order, since the court does not take into consideration any other objections entered later. Since the petitioner did not sign the blank bill in question, she was not aware of what was going on and within three days, she was forced to state everything that she objected to in the bill-of-exchange payment order. This undoubtedly violates the equality of the parties to the proceedings. In her view, it is therefore necessary to annul Section 175 of the Civil Procedure Code and subject bill proceedings to general proceedings in order that the defendant has the possibility to adequately defend against enforcing the bill claim.

9. Apart from the arguments related to the principles of bill-of-exchange proceedings – as it has just been outlined above – the petitioner (complainant) also criticised the general courts for encumbering her with the burden of proof concerning the issue of the authenticity of the signature on the bill and that the expert opinion in graphology used for the proceedings purposes was of poor quality (in the constitutional complaint, for instance, the complainant analyses in detail whether the signatures were typical for the complainant or not within the examination performed by the expert witness).

10. Due to all the reasons mentioned above, the petitioner thus seeks that the Constitutional Court issue a judgment annulling the decision of the High Court in Prague issued on 11 November 2010, file reference 5 Cmo 270/2010-112, and pursuant to Section 64 or Section 74 of Act No. 182/1993 Coll., on the Constitutional Court, as amended (hereinafter referred to as the "Act on the Constitutional Court"), she seeks that it issues a judgment annulling the provisions of Section 175 of the Civil Procedure Code.

II.
Course of Proceedings before the Constitutional Court and Established Facts from the Requested File Material

11. In the Resolution issued on 2 May 2012, file reference IV. ÚS 376/11-23, the Fourth Chamber of the Constitutional Court concluded that the application of Section 175, para. 1 in the words "within three days" and in the words "in the same period" resulted in the situation that is subject to the constitutional complaint, thus referring the petitioner's petition seeking the annulment of the contested provision, or its part, to the decision of the Plenum of the Constitutional Court pursuant to Art. 87, para. 1, letter a) of the Constitution.

12. The Constitutional Court requested the file documentation and invited the parties to the proceedings to submit their statements concerning the petition seeking the annulment of the contested provision.

13. From the requested file material of the Regional Court in Ústí nad Labem – Liberec Branch, registered under file reference 37 Cm 419/2009, it was established that by means of the bill-of-exchange payment order file reference 32 Cm 76/2009-14, issued on 25 February 2009, the District Court in Ostrava ordered the petitioner to pay to the plaintiff the bill sum in the amount of 30,751 CZK together with a six-per cent annual interest starting from 9 April 2008 until payment, the bill fee in the amount of 103 CZK, and the amount of 16,880.50 CZK as a compensation of the court proceedings costs.

14. The petitioner entered the objections to the bill-of-exchange payment order in question in a timely manner (she entered these objections on her own without the assistance of an attorney). She claimed that she had never completed or signed a blank bill for the bill amount of 30,751 CZK. According to the petitioner, the bill in question was a fraud due simply to the false signature. The petitioner does not deny entering into a loan contract with the Company FAST FINANCE, s. r. o., although without any signature of the submitted blank bill. Within the objections, the petitioner also requested that the proceedings were referred to the locally competent court in Liberec due to her permanent residence in V.

15. By means of the Resolution of the Supreme Court, file reference 4 Nd 305/2009-34, issued on 18 September 2009, the case was referred to be heard and decided by the Regional Court in Ústí nad Labem – Liberec Branch.

16. In its decision issued of 17 June 2010, file reference 37 Cm 419/2009-84, the Regional Court in Ústí nad Labem – Liberec Branch held annulling the bill-of-exchange payment order of the Regional Court in Ostrava, file reference 32 Cm 76/2009-14, issued on 25 February 2009 (verdict I). Furthermore, it ordered to the plaintiff to pay to the petitioner within three days after the decision becoming effective the amount of 23,445.80 CZK to the attention of JUDr. J. B., attorney, as a compensation for the costs of the objection proceedings (verdict II). And finally, it ordered the plaintiff to pay, within three days after the decision becoming effective, to the Czech Republic – the Regional Court in Ústí nad Labem the amount of 2,870 CZK as a compensation of the court proceedings costs (verdict III).

17. In relation to the case itself, the Regional Court in Ústí nad Labem – Liberec Branch, in its extensive reasoning, stated, in particular, that according to the conclusions of the expert opinion, the contested signature on the original of the bill in question was highly likely to be the petitioner's signature. Despite this, it found the petitioner's objection concerning the authenticity of the bill's signature reasonable. According to the court, the graphologic examination allows for the possibility to express a categorical conclusion beyond reasonable doubt whether the examined signature is or is not authentic by means of a spontaneous signature of a certain person. In the instant case, the expert witness did not express the categorical conclusion despite the fact, according to the Regional Court, that the expert opinion referred to a sufficient amount of good-quality comparison material.

18. For this reason, the Regional Court concluded that within the proceedings, it was not established that the signature attached to the bill, given the entered objection of the lack of authenticity of the signature contesting the authenticity and truthfulness of the bill as a private instrument, was an authentic signature of the petitioner beyond reasonable doubt. Under such circumstances, the court found the petitioner's objection to be completely reasonable, thus annulling, in the full extent, the contested bill-of-exchange payment order due to this fact and applying the provisions of Section 175, para. 4 of the Civil Procedure Code.

19. According to the Regional Court, if the petitioner further pointed out, in her objections, the fact that she had concluded, with the Company FAST FINANCE, s. r. o., a loan contract unspecified any further and without signing the submitted blank bill, then the court assessed the objection statement as vague and impossible to consider, since according to the court, the afore-mentioned objection did not clearly show any arguments against the submitted bill. Under such circumstances, when the defendant denied the authenticity of the signature on the bill in her objections, the remaining objections have made it obvious that in fact, she did not mention the specific function of the bill (either payment or security) in relation to the possible loan contract, unspecified any further, concluded with the Company FAST FINANCE, s. r. o., i.e. the entity being different from the plaintiff, and she did not mention or specify the content of the causal relationship, either. The objection conceived in this manner was thus assessed by the Regional Court as absolutely vague and impossible to consider, when according to the court, the afore-mentioned objection does not make it at all clear what the subject to the proceedings on such an objection should be. For the sake of completeness, the Regional Court mentioned in the reasoning behind the decision that on condition that the petitioner's attorney entered any other objections within the oral hearing in the given matter taking place on 10 December 2009, then the Regional Court did not take such objections into account with respect to the provisions of Section 175, para. 4 of the Civil Procedure Code, since the afore-mentioned objections were entered upon the expiry of the statutory three-day period for entering objections.

20. In its decision issued on 11 November 2010, file reference 5 Cmo 270/2010-112, the High Court in Prague decided on the plaintiff's appeal, overturning the first-instance decision when the bill-of-exchange payment order of the Regional Court in Ostrava, fire reference 32 Cm 76/2009-14, issued on 25 February 2009 was kept effective (verdict I). In its verdict II, the petitioner was ordered to pay to the plaintiff the compensation of the court proceedings costs before the courts of both instances in the amount of 17,380 CZK within three days after the decision becoming effective, to the attention of the plaintiff's attorney. Finally, in its verdict III, the petitioner was ordered to pay to the Czech Republic, the Regional Court in Ústí nad Labem – Liberec Branch the amount of 2,870 CZK as a compensation for the court proceedings costs within three days after the decision becoming effective.

21. According to the High Court – or at least as it is implied in the reasoning behind its decision – it is certainly possible to categorically state whether the signature on the bill of exchange is or is not authentic. Yet according to the High Court, in the case of renowned expert witnesses, there are practically no categorical conclusions concerning the signature's authenticity. Obviously, the Regional Court did not proceed from the expert opinion mentioned by it as a whole. Above all, the adjudication of the first instance court may be reproached due to the fact that on the one hand, it considers the expert opinion itself as consistent and according to the Regional Court, the expert witness provided logical and convincing reasoning of his conclusions, yet on the other hand, the Regional Court did not

consider the expert opinion as conclusive evidence, even though in this case, there was a merely negligible degree of improbability of the authenticity of the petitioner's signature. The court of appeal thus does not share the opinion of the first instance court that the defendant (petitioner), upon the entered objection of the lack of authenticity of the signature, upheld the defence against the duty imposed on her by the bill-of-exchange payment order, since with a high degree of probability, the signature attached to the bill of exchange is her own signature. Nevertheless, as for the other objections of the petitioner, these were, according to the High Court, appropriately adjudicated by the Regional Court as vague or late, which consequently means they were impossible to be considered and conceptually incapable of overturning the duty to comply with the bill-of-exchange payment order.

22. In its statement to the petition, the Senate of the Parliament of the Czech Republic, as a party to the proceedings, mainly summarised the petition of the complainant (petitioner). Furthermore, it stated that even though the petition formally seeks the annulment of the whole Section 175 of the Civil Procedure Code, the content of the submission, according to the Senate of the Parliament of the Czech Republic, makes it obvious that it is mainly the time limit of three days to submit objections to the bill-of-exchange payment order that should be constitutionally contestable. In this respect the Senate of the Parliament of the Czech Republic particularly emphasised that none of the amendments concerning the provision in question [i.e. Act No. 519/1991 Coll. (effective from 1 January 1992), Act No. 238/1995 Coll., Act No. 30/2000 Coll., and Act No. 7/2009 Coll.] aspired to a conceptual change of the regulation of the bill-of-exchange (cheque) payment order. Yet on 18 May 2012, the Government submitted to the Chamber of Deputies of the Parliament of the Czech Republic a draft bill amending the Civil Procedure Code and some other acts (document of the Chamber of Deputies No. 686; the first reading of the draft bill was included in the agenda of the fortieth session of the Chamber of Deputies of the Parliament of the Czech Republic starting on 5 June 2012), in which the word "three" within the current wording of Section 175, para. 1 of the Civil Procedure Code is to be replaced with number "8", claiming that the period of three calendar days appears to be too short – the debtors are unable to adequately respond to the issued bill-of-exchange (cheque) payment order. At the same time, the President of the Senate of the Parliament of the Czech Republic expressed his consent to dispense with an oral hearing pursuant to Section 44, para. 2 of the Act on the Constitutional Court.

23. In its statement to the petition, the Chamber of Deputies of the Parliament of the Czech Republic, as a party to the proceedings, only summarised the legislative process from which the amendments affecting Section 175 of the Civil Procedure Code emerged. According to the Chamber of Deputies of the Parliament of the Czech Republic, in this situation, it is impossible but to express a statement that the legislature was convinced on the conformity of the afore-mentioned amending laws with the Constitution and the legal order of the Czech Republic. Adjudicating the constitutionality of Section 175 of the Civil Procedure Code is thus within the full competency of the Constitutional Court. In the conclusion of the statement on the petition, the Chairwoman of the Chamber of Deputies of the Parliament of the Czech Republic expressed, on behalf of the Chamber of Deputies, her consent to dispense with an oral hearing pursuant to Section 44, para. 2 of the Act on the Constitutional Court.

24. In her response to the statements of the parties to the proceedings, the petitioner mentioned that Section 175 of the Civil Procedure Code was applicable (with the exemption of the three-day period) in the case of a "classical bill of exchange". According to the petitioner, the situation significantly differs in the case of blank bills of exchange, since defendants are frequently unaware why the bill of exchange has been completed (if they are at all aware of its existence). According to the petitioner, in the case of blank bills of exchange it is not only the three-day period that is contestable but also the concentration of the proceedings prescribed in para. 1 and 4 of the examined statutory provision; as a matter of fact, the defendant is completely unaware of the bill of exchange, being left with three days to mention everything that he or she objects to in the bill-of-exchange payment order. For this reason, the petitioner insists that the Constitutional Court annul the whole Section 175 of the Civil Procedure Code. In the conclusion of her response, the petitioner agreed to dispense with an oral hearing pursuant to Section 44, para. 2 of the Act on the Constitutional Court.

25. Pursuant to Section 44, para. 2 of the Act on the Constitutional Court, the Constitutional Court dispensed with the oral hearing, since it concluded that further clarification of the matter could not be expected and the parties to the proceedings expressed their consent to dispense with the oral hearing.

III.
Statement of the Petition and Wording of the Contested Legal Regulation

26. In her petition, the petitioner seeks the annulment of Section 175 of the Civil Procedure Code, as amended. The wording of the provisions of Section 175 of the Civil Procedure Code reads as follows:

"(1) Where the plaintiff submits the original copy of a bill of exchange or cheque whose authenticity does not need to be contested and other documents to support their claim, the court shall issue, upon a motion filed by the plaintiff, a bill-of-exchange (cheque) payment order holding the defendant liable for the payment of the claim and the costs of the proceedings within three days or requesting the defendant to enter objections in which he or she is requested to mention everything that he or she objects to in the payment order. The bill-of-exchange (cheque) payment order shall be personally served on the defendant. Unless it is possible to grant the motion seeking the issue of the payment order, the court shall list a hearing.

(2) The provisions of Section 174, para. 4 shall apply mutatis mutandis.

(3) Where the defendant does not enter the objections within the specified time or withdraws the objections, the bill-of-exchange (cheque) order shall have the effects of a final judgment. The court shall dismiss as inadmissible any objections entered after the specified time or those lacking due reasoning. The court shall also dismiss as inadmissible any entered objections provided they have been entered by a person not entitled to enter objections.

(4) Where the defendant enters the objections within the specified time, the court shall list a hearing to consider them; however, it shall disregard any objections raised after the specified time. In the decision, the court shall rule either to uphold the bill-of-exchange (cheque) order to annul it as a whole or in part.

(5) Where the defendant withdraws the objections, the court shall discontinue the proceedings on the objections; a hearing need not be listed.

(6) An appeal shall serve as a remedy only against the verdict on the proceedings costs."

Let us make a note on the above-mentioned:

27. The summary of both the petition of the complainant (petitioner) and the previous course of proceedings before ordinary courts make it obvious that the core of this decision is a bill of exchange or its procedural and substantive regulation. Nevertheless, both from the historical and legislative and technical perspectives, the bill of exchange (and the regulation contained in the legal order of the Czech Republic does not constitute any exemption in this respect) is accompanied with a cheque, yet its current use is significantly less frequent and relatively more narrow; in principle, the cheque is merely used as a means of payment. Contrary to the above, also in respect to the wording to the statutory provision examined by the Plenum of the Constitutional Court, this decision affects (at least formally) the cheque as well. This is reflected in the overall concept of the decision defining itself, in terms of its arguments, against the bill of exchange and its regulation – after all, it would not be correct, in respect to the application practice, to apply the conclusions of the Constitutional Court on their own to the cheque – nevertheless, the consequences of the reflections of the Constitutional Court have a reasonable impact onto the regulation of the cheque law, even though it will not always be emphasised a priori. As for the possibility of a complete separation of both securities, the legislative and technical solution chosen by the legislature is limiting to some extent.

The conditions for the standing to sue of the petitioner to file the petition

28. As mentioned earlier, the petitioner filed a petition seeking the annulment of the quoted provision together with a constitutional complaint pursuant to Section 72 and seq. of the Act on the Constitutional Court. Her standing to sue is thus based on the provisions of Section 64, para. 1, letter e), or Section § 74 of the Act on the Constitutional Court. Pursuant to these provisions, the Constitutional Court was obliged first to examine whether the conditions for filing such a petition had been met in the case of the complainant (petitioner). As for the constitutional nonconformity of the provisions of Section 175 of the civil Procedure Code, the petitioner explicitly mentions in her constitutional complaint the following: "Whereas the plaintiff had several years to prepare the action, the defendant [i.e. the petitioner, as noted by the Constitutional Court] has been provided with three days to enter objections to the bill-of-exchange payment order, since the court does not take into consideration any other objections entered later. Since the defendant did not sign the blank bill in question, she was not aware of what was going on and within three days, she was forced to state everything that she objected to in the bill-of-exchange payment order. This undoubtedly violates the equality of the parties to the proceedings. In my view, it is therefore necessary to annul Section 175 of the Civil Procedure Code and subject bill proceedings to general proceedings in order that the defendant has the possibility to adequately defend against enforcing the bill claim. (…) If someone borrows the amount [around ten thousand CZK], they probably do not have an attorney or sufficient awareness of law and being served the bill-of-exchange payment order, they are provided with [three] days to [arrange for an attorney], and at the same time, to gather [for them] several [thousands crowns as an advance payment]." Among other things, the decision contested by the constitutional complaint (it is thus a constitutional complaint obviously registered by the Constitutional Court under file reference IV. ÚS 376/11) reads in the relevant part of its reasoning as follows: "The court of appeal thus does not share the opinion of the first instance court that the defendant, upon the entered objection of the lack of authenticity of the signature, upheld the defence against the obligation imposed on her by the bill-of-exchange payment order. Nevertheless, as for the other objections, the first instance court appropriately adjudicated such statements as vague or late, and as a consequence, impossible to be considered and conceptually incapable of overturning the obligation to comply with the bill-of-exchange payment order." The High Court thus follows the decision of the Regional Court in Ústí nad Labem – Liberec Branch, whose decision, among other things, read as follows: "If the defendant further pointed out, in her objections, the fact that she had concluded, with the Company FAST FINANCE, s. r. o., a loan contract unspecified any further and without signing the submitted blank bill, then the court assesses the objection statement as vague and impossible to consider, since the afore-mentioned objection does not clearly show any arguments against the submitted bill. Under such circumstances, when the defendant denied the authenticity of the signature on the bill in her objections, the remaining objections make it obvious that in fact, she does not mention the specific function of the bill (either payment or security) in relation to the possible loan contract, unspecified any further, concluded with the Company FAST FINANCE, s. r. o., i.e. the entity different from the plaintiff, and she does not mention or specify the content of the causal relationship, either. The court thus assessed the objection conceived in this manner as absolutely vague and impossible to consider, when the afore-mentioned objection does not make it at all clear what the subject to the proceedings on such an objection should be." In this respect, if both courts refer to the objections entered by the defendant (petitioner), they refer to the objections which the petitioner (at that time not yet represented by an attorney) sent to the Regional Court in response to the instruction contained in the bill-of-exchange payment order of the Regional Court in Ostrava, issued on 25 February 2009, file reference 32 Cm 76/2009-14. The petitioner stated in them, above all, as follows: "The defendant has never completed or did not sign, on 18 December 2001 in Dolní Poustevna, the blank bill of exchange for the bill sum of 30,751 CZK, whose very poor copy was served on the defendant as an appendix to the bill-of-exchange payment order. The above-mentioned blank bill of exchange submitted to the court is a fraud, since it is a blank bill of exchange forged as a whole, not only due to the false signature that I resolutely deny… The defendant does not deny entering into a loan contract with the Company FAST FINANCE, s. r. o., Hradební 9/768, Prague 1, but without signing the afore-mentioned submitted

blank bill of exchange. I attach the copies of the postal orders, which serve as a proof that I am repaying the loan in question."

29. According to the established case law and the literature (cf., for instance, Wagnerová, E. et al. Zákon o Ústavním soudu s komentářem [Act on the Constitutional Court with Comments]. Prague: ASPI 2007, p. 367 and seq., and Šimíček, V. Ústavní stížnost. 3. vyd. [Constitutional Complaint. Third Edition.] Prague: Linde, 2005, p. 230 and seq. with the case law references therein) the petitioner may only seek the annulment of such a legal regulation (its individual provision) the application of which has resulted in the situation which is the subject of the constitutional complaint, i.e. on the basis of which a public authority has issued a decision contested by the constitutional complaint. In the view of the Constitutional Court, this condition has been met, since as implied in the above-mentioned quotations, as well as the nature of the proceedings before ordinary courts, resulting in the decision contested by the constitutional complaint, the relevant statutory provision has been applied in the matter and according to the Constitutional Court, its application is capable of interfering with the right to a fair process – as also happened in the petitioner's case – due to the reasons explicitly pointed out by the petitioner in the constitutional complaint and described in further detail below.

30. Beyond the scope of the above, the Constitutional Court refers, in this respect, to its own case law [cf. appropriately, for instance, the Judgment of the Constitutional Court, file reference II. ÚS 3168/09, issued on 5 August 2010 (N 158/58 SbNU 345)], pursuant to which justice must always be present in the procedure through which the law is interpreted and applied. This applies even despite the fact that the ideas of justice are inherent only to the human being as a psychophysical, historic and social phenomenon, and it is only the human being that, in respect to the complexity of one's own consciousness and the historical continuity, may construe it, question it, or gradually implement it. This remains unaffected even by the fact that the ideas of justice have often been abused for the purposes of the biggest crimes. Actually, if the idea of identifying justice with destruction had upheld the historical and social development of humanity, the human society as a whole would have fallen apart a long time ago. It may thus be assumed that although it is certainly impossible to simple define what is just and what is not, the starting point, after all, probably consists in gradual analysis confronted with the above-mentioned historical and social consciousness. Within such reflections, paraphrased here, Vladimír Čermák [cf. Čermák, V. Otázka demokracie. 4) Hodnoty, normy a instituce [The Question of Democracy. 4) Values, Norms, and Institutions]. First Edition. Olomouc : Nakladatelství Olomouc, 1998, p. 156–157 (248 p.)], concludes, for instance, that "it is the neminem laedere principle that may [be] generally regarded as an obvious date of justice…"

31. In the view of the Constitutional Court, the afore-mentioned starting points must also be reflected when adjudicating the very standing to sue of the petitioner. As shown in the afore-mentioned summary, the expressly objected inconsistency of the contested statutory provision with the principle of the equality of the parties to the proceedings is, with her line of arguments, based mainly on the afore-mentioned three-day period (cf. also below). After all, this conclusion is also implied in the petitioner's response to the statements of the parties to the proceedings, yet she formally wonders about the principle of concentration stipulated in para. 1 and 4 of the contested provision, particularly in association with blank bills of exchange; although she does so opposing the principle forcing the bill-of-exchange (cheque) debtor to mention everything that they object to in the payment order using again the perspective of the afore-mentioned period – cf. the relevant wording of the petitioner: "[Whereas] in the case of the common bill of exchange, [bill-of-exchange debtors] are aware of the bill of exchange …, the situation is different in the case of a blank bill of exchange. Pursuant to [the Bill and Cheque Act], the remitter or his legal successor should present the bill of exchange duly on the due date for payment, yet in practice, the owner of the bill of exchange files directly a bill-of-exchange action and courts admit such practice allowing that the bill of exchange claimed through the action is presented for payment by the owner of the bill of exchange by means of the bill-of-exchange action. As a result of this procedure, the defendant finds himself in an unequal position. [Defendants are often unaware of] the reason for completion, the bill-of-exchange sum or its due date. And within [three] days, they [are requested] to enter objections in which they are requested to mention everything

that they [object] to in the payment order, [since] any objections raised later cannot be taken into consideration." The petitioner contests the afore-mentioned period despite that fact that she managed to enter her objections, at least formally, in a timely manner, whereas even one of the objections could be considered, according to the court's assessment, within the proceedings on keeping the bill-of-exchange order effective (i.e. the objection of the lack of authenticity of the petitioner's signature on the bill of exchange in question). In this case, the Constitutional Court considered whether the petitioner might, also in this situation, infer the unconstitutionality of Section 175 of the Civil Procedure Code from this partial component as well. It concluded that she might well infer that. In fact, any conclusion to the contrary would not be sustainable due to its excessive formalism. It would mean that the petitioner would be in a procedurally more favourable position if she did not even attempt to satisfy the requirements of Section 175 of the Civil Procedure Code imposed on her as the defendant, while subsequently objecting, for instance, to the insufficiency of the prescribed period. Nevertheless, according to the Constitutional Court, such an approach would not only be no worse than the absurdity of the vicious circle of Catch XXII by Joseph Heller, when, strictly speaking, the constitutional complaint might be, under such circumstances, assessed as inadmissible pursuant to Section 75 of the Act on the Constitutional Court, or in addition to that, it might also be assessed as a "mock dispute" or a so-called "collusive case" – cf. Filip, J. Vybrané kapitoly ke studiu ústavního práva. vyd. 2., dopl. [Selected Chapters on the Study of the Constitutional Law. 2nd completed edition.] Brno: Masarykova univerzita, 2001, p. 391–392 (458 p.). And finally, such an approach would consequently mean restricting the review of norms; within the scope of the instant case [i.e. not within the abstract review of constitutionality pursuant to the provision of Section 64, para. 1, letters a) and b) of the Act on the Constitutional Court], the unconstitutionality of the period in question could be considered, apart from the competent Chamber of the Constitutional Court, solely by the court provided it was, for instance, due to issue a bill-of-exchange payment order, and instead, it proceeded pursuant to Art. 95, para. 2 of the Constitution. According to the Constitutional Court, however, such restriction of the possibility to initiate the constitutional review of the norms by the Constitutional Court does not have any support either in the Act on the Constitutional Court or in the constitutional order of the Czech Republic, and especially in the perspective of the petitioner herself, it could be regarded as an obvious contradiction to justice, as mentioned by Vladimír Čermák. If the Constitutional Court accepted this restricting interpretation, it would digress from the generally accepted ideas of justice, ending up on the verge of a life-alienated Ivory Tower.

V.
Constitutional Conformity of the Legislative Process

32. Also pursuant to Section 68, para. 2 of the Act of the Constitutional Court, the Constitutional Court also examined whether the statute (its individual provision) where the petitioner objects to the unconstitutionality of its provision, was adopted and published within the limits of the competence defined by the Constitution and in the constitutionally prescribed manner. Nevertheless, the contested provision was included in the original wording of the Civil Procedure Code from 1963. Assessing the legislative process in relation to the original wording of the statute would thus mean assessing the conformity with already ineffective legal regulations applicable at the time of adopting the statute. Proceeding from Section 66, para. 2 of the Act on the Constitutional Court, pursuant to which any petition shall be inadmissible if, prior to its delivery to the Court, the constitutional act or the statute with which the enactment under review is alleged to be in conflict lost force and effect, the Constitutional Court thus states that in the case of legal regulations issued before the Constitution took effect on 1 January 1993, it is authorised to examine only their content conformity with the existing constitutional order, rather than the constitutionality of the procedure of their enactment and compliance with the norm-creating competence [cf., where appropriate, the Judgment of the Constitutional Court issued on 27 November 1999, file reference Pl. ÚS 10/99 (N 150/16 SbNU 115; 290/1999 Coll.)]. For this reason, the Constitutional Court assessed the afore-mentioned procedure only in relation to the amendments to this original provision, i.e. Act No. 238/1995 Coll., Act No. 30/2000 Coll., Act No. 7/2009 Coll. Using the relevant documents of the Chamber of Deputies and the information on the course of voting, it established that the amendments to the contested Section 175 of

the Civil Procedure code were adopted while complying with the quorums as determined in Art. 39, para. 1 and 2 of the Constitution, duly signed by the competent constitutional official, and promulgated in the Collection of Laws; they were thus issued in a manner prescribed by the Constitution and within the limits of the competence defined by the Constitution.

VI.
Assessment of the Petition

33. The Constitutional Court dealt with the alleged inconsistency of the contested provision with the equality principle of the parties to the proceedings pursuant to Art. 37, para. 3 of the Charter, which is part of the right to a fair process. It proceeded from the fact that the equality principle of the parties to the proceedings is incorporated in Art. 96, para. 1 of the Constitution, being declared as a subjective right in Art. 37, para. 3 of the Charter. It is one of the underlying principles that must be inherent to court proceedings. It expresses the fact that the parties to the proceedings must have an equal position before the court without providing either party with preferential treatment of any kind. The law must thus provide all parties to the dispute with equal possibilities to exercise their rights; all parties must be provided with a possibility to act tangibly and effectively within the court proceedings, particularly to make statements on the allegations of the counter-party, as well as to submit evidence, etc. (cf., where appropriate, the Judgment of the Constitutional Court issued on 16 June 6. 2011, file reference III. ÚS 3379/10, available at http://nalus.usoud.cz). In fact, their subjective right to an equal treatment within the court proceedings is exercised through undisturbed realisation of procedural rights of all parties to the proceedings. If the legal regulation unreasonably restricts the prescribed conditions for realising the procedural rights of any of the parties to the proceedings, it also amounts to a violation of the party's fundamental right to a fair process.

34. Also within these limits, the Constitutional Court nevertheless first took into account that if a constitutionally conforming interpretation comes into question, it enjoys priority over being annulled [for instance, cf. the Judgment of the Plenum of the Constitutional Court issued on 29 September 2010, file reference Pl. ÚS 16/08 (N 203/58 SbNU 801; 310/2010 Coll.)]. This procedure, following the principle of minimising the interference with the activity of other public authorities, was also taken into consideration by the Constitutional Court in the instant case. In her petition pursuant to Section 74 of the Act on the Constitutional Court, the petitioner seeks, in fact, the annulment of "Section 175 of the Civil Procedure Code [and subjecting] the bill-of-exchange proceedings (…) to the general proceedings so that the defendant has the possibility to properly defend the bill-of-exchange claim from being exercised." Yet, the constitutionality protection – particularly due to the fact that it is existentially associated, among other things, with minimising the interference – also proceeds (unless a constitutionally conforming interpretation is possible) to annul either decisions of public authorities or legal regulations (or their individual provision) in a restrictive manner [for instance, where appropriate, cf. the Judgment of the Constitutional Court issued on 9 February 2011, file reference IV. ÚS 1521/10 (N 15/60 SbNU 153) or the Judgment of the Constitutional Court issued on 8 October 1996, file reference Pl. ÚS 5/96 (N 98/6 SbNU 203; 286/1996 Coll.)]. For this reason, the Constitutional Court was obliged to consider whether it was the quoted provision of the Civil Procedure Code en bloc that prevents (i.e. whether at all and if so, why) the bill-of-exchange debtor from defending their rights. In this consideration, it was impossible to disregard the special nature of the bill of exchange and the bill-of-exchange procedure, which, to the most admissible extent (at least given the existing legal regulation) takes into account the properties of the bill of exchange as a security (i.e. its circulating nature); its easy transferability represents one of its most typical (and also sought-after) properties (for instance, cf. Kovařík, Z. K dokazování o pravosti podpisu směnky [On producing evidence on the authenticity of the signature on the bill of exchange]. Právní rozhledy, 2010, Vol. 8, p. 267–272). After all, alongside its liquidity, this property was at the very inception of the bill of exchange [cf. Kovařík, Z. Směnka a šek v České republice. 6. přeprac. a dopl. vyd. [The bill of exchange and cheque in the Czech Republic. 6th revised and completed edition.] Prague: C. H. Beck, 2011. p. 1 et seq. (642 p.)]; according to the Constitutional Court, without the need to present a more detailed historical analysis, it would not be reasonable to subject bills of exchange to completely

general civil proceedings, since it would turn this security into a certain "debenture bond". In fact, even the petitioner does not provide much further detail to the constitutional argumentation in this sense (not even within her response to the statements of the parties to the proceedings). On the contrary, according to the Constitutional Court, the constitutional complaint may be, in this respect, interpreted (as implied within the afore-mentioned response and the findings made from the file material of the Regional Court in Ústí nad Labem – Liberec Branch, file reference 37 Cm 419/2009; cf. above) so that the fact that consequently resulted in the violation of the petitioner's right to a fair process (or contributed to it) is the three-day period pursuant to Section 175, para. 1 of the Civil Procedure Code, prescribed by the legislature to enter objections, as mentioned by the petitioner. According to the Constitutional Court, the individual parts of the reasoning behind court decisions summarised above imply, in this respect, that in her objections, the petitioner attempted to object to the nonexistence of the receivable within the causal defence. Yet as for this objection, the Regional Court stated that "[although the defendant] pointed out, in her objections, the fact that she had concluded, with the Company FAST FINANCE, s. r. o., a loan contract unspecified any further and without signing the submitted blank bill, [although the court assessed the objection statement] as vague and impossible to consider, since the afore-mentioned objection did not clearly show any arguments against the submitted bill." In its decision contested by the constitutional complaint, the High Court completely identified with this assessment (i.e. that the objections were late and vague): "The court of appeal thus does not share the opinion of the first instance court that the defendant, upon the entered objection of the lack of authenticity of the signature, upheld the defence against the obligation imposed on her by the bill-of-exchange payment order. [Nevertheless], as for the other objections, the first instance court appropriately adjudicated such statements as vague or late, and as a consequence, impossible to be considered and conceptually incapable of overturning the obligation to comply with the bill-of-exchange payment order." The facts of the case described above impose a question – and the petitioner points this out expressly both in her constitutional complaint and the response (cf. their statement that she was completely unaware what it was about and within three days, she was forced to mention everything that she objected to in the bill-of-exchange payment order) – whether the three-day period is adequate given the situation when the bill of exchange no longer functions and an institute solely used by professionals but on the other hand, it is also used in the circumstances in which it is mainly the natural person that acts as a bill-of-exchange debtor, not having entered into the bill-of-exchange relation with the intent to engage in a professional or business activity.

35. The Constitutional Court has already dealt with the issues of time limits and their associations to the constitutional guarantees on a number of occasions, also within the proceedings on annulling laws and any other legal regulations; in this context, it should be pointed out that, within this type of proceedings, the task assigned to the Constitutional Court is to assess the constitutionality of the contested legal regulations or their specified parts, or possibly to assess whether the contested legal regulations may be interpreted and applied in a constitutionally conforming manner.

36. As thus implied in the previous parts of this reasoning, the Constitutional Court is facing the task to assess whether the three-day period provides the bill-of-exchange debtor, regardless of their position in a particular bill-of-exchange relation, with an actual possibility to be able to (mainly with respect to the particularities of the bill-of-exchange proceedings) enter qualified objections, i.e. pursuant to Section 175 of the Civil Procedure Code, in order to mention everything that they object to in the bill-of-exchange payment order. When searching for an answer to this question, in the view of the Constitutional Court, it is above all necessary to proceed from the sense and purpose of the existence of the legal institute of a time limit. In this respect, the Constitutional Court has already held that "[its purpose] is reducing entropy (indefiniteness) when exercising rights or authorities, time limitation of the state of uncertainty in legal relations (which plays an important role, in particular, from the perspective of producing evidence in disputes and litigations), and speeding up the decision-making process with the aim of actual achievement of the intended goals. Such reasons led to introducing time limits thousands of years ago" [cf. the Judgment of the Constitutional Court issued on 17 December 1997, file reference Pl. ÚS 33/97 (N 163/9 SbNU 399; 30/1998 Coll.)]. The extent of the constitutional review of the statutory provisions prescribing time limits was subsequently defined by

the Constitutional Court in the Judgment file reference Pl. ÚS 46/2000, issued on 6 June 2001 (N 84/22 SbNU 205; 279/2001 Coll.), where it held that within the review of constitutionality, "it may only annul unconstitutional regulations, or their parts, yet it is not its task to rectify the consequences occurring as a result that the petitioner failed to exercise their right within the specified period. Annulling time limits violates the principles of the rule of law state, since it significantly interferes with the principle of legal certainty, which is one of the essential requirements of the current democratic legal systems. On its own, the period cannot be [according to the Constitutional Court] unconstitutional. However, it may appear so with respect to specific circumstances." The unconstitutionality of the period may only be pronounced in a dialogue with particular circumstances of the case at hand [cf. the Judgment of the Constitutional Court issued on 13 December 2005, file reference Pl. ÚS 6/05 (N 226/39 SbNU 389; 531/2005 Coll.)]. According to the Constitutional Court, these circumstances are as follows:

1. The excessiveness (disproportionality) of the time limit in relation to the time-limited possibility to exercise the constitutionally guaranteed right (claim), or in relation to the specified time limit of the restriction of a subjective right. In this case, the Constitutional Court refers to the Judgment file reference Pl. ÚS 5/03, issued on 9 July 2003 (N 109/30 SbNU 499; 211/2003 Coll.) annulling the provisions of Sections § 3 and 6 of Act No. 290/2002 Coll., on the Transfer of Certain Other Things, Rights and Obligations of the Czech Republic to Regions and Municipalities, Civic Associations in Physical Education and Sport and on Related Amendments and Amending Act No. 157/2000 Coll., on the Transfer of Certain Things, Rights and Obligations from the Czech Republic, as amended by Act No. 10/2001 Coll., and Act No. 20/1966 Coll., on Care for the Health of the People, as amended by later regulations, amounting to an inappropriate restriction of the property right pursuant to Art. 11 of the Charter, as prohibited by Art. 4, para. 4 – in the given case, it was the restriction of the right to use real property acquired by the territorial self-government units. At that time, the Court considered, within the adjudicated context, any legal regulation that would establish such a limitation solely in the necessary time horizon, rather than a period of ten years, to be constitutionally conforming.

2. The legislature's arbitrariness when determining the time limit (its establishment or annulment). The Court proceeded within the meaning of this perspective of reviewing the constitutionality in the case of file reference Pl. ÚS 2/02, the Judgment issued on 9 March 2004 (N 35/32 SbNU 331; 278/2004 Coll.), in which it considered as unconstitutional the annulment of the provisions of the Civil Code quoted therein, through which the legislature interfered with the legitimate expectations of the precisely defined group of entities only one day before the expiry of the period in which the acquisition of the ownership title would have occurred.

3. The constitutionally unacceptable inequality of two groups of entities, which is a result of the annulment of a certain statutory condition for exercising the right due to its unconstitutionality, whereas the affected group of entities were deprived of any further possibility to exercise their right due to the expiry of the periods as a result of derogation – cf. the additional removal of the permanent residence for the purposes of applying restitution claims and the related regulation concerning the periods: the Judgment file reference Pl. ÚS 3/94, issued on 12 July 1994 (N 38/1 SbNU 279; 164/1994 Coll.)

37. Following the theses expressed in the past and still being applicable, the Constitutional Court thus states that the time limit in question cannot be unconstitutional on its own. It is up to the legislature's discretion whether and what period is to be determined for exercising the right. As a matter of fact, this has not been questioned. However, even the length of the period itself cannot constitute, according to the Constitutional Court, the reason for its annulment, in principle. Any conclusion on its (un)constitutionality may be made only after assessing other contextual circumstances.

38. In accordance with the considerations set out above, the Constitutional Court weighed whether the afore-mentioned three-day period is not excessive, whether it does not constitute any unreasonable inequality of several groups of entities, and whether it has not been adopted by the legislature arbitrarily. Within the contexts of the constitutional arguments of the petitioner, that may be

concentrated in the statement that the institute of the bill of exchange and the bill-of-exchange proceedings is, in the case of consumer relations (when, in particular, there are economic entities providing funds to people in dire straits), used absolutely inappropriately (or abused), it is used for the purpose that mainly consumers (cf. for the concept of the "consumer" below) were drawn into structures established in this manner and could be further "yielded" economically by those to whom they had originally turned for assistance.

39. The bill-of-exchange proceedings and bill of exchange have their predecessor in Roman abstract contracts, providing the creditor with the advantage of the strict law regime – stricti iuris. This procedural regime did not allow the judge to take into account secondary circumstances, examining only the formal correctness of the concluded contract. It is thus possible to refer also to the partial (general) statement of Zdeněk Kovařík [Kovařík, Z. Směnka a šek v České republice. 6. přeprac. a dopl. vyd. [The bill of exchange and cheque in the Czech Republic. 6th revised and completed edition.] Prague: C. H. Beck, 2011. p. 1 et seq. (642 p.)] that instruments proving the debt of the promisor have their origins in time immemorial, yet the above-quoted author himself, within the historical excursion into the issues of bills of exchange, emphasises mainly the crusades and related business activity, which, according to him, were at the origins of the bill of exchange (an instrument with the properties of a bill of exchange was then established among tradesmen starting from the 12th century). The particularities and properties related to them (bill-of-exchange obligations are direct, abstract, unconditional, and showing considerable formal strictness) have been preserved by the bill of exchange, in principle, until today; in fact, this is reflected in the substantive regulation of the bill-of-exchange law in the Czech Republic (i.e. particularly the Bill and Cheque Act), directly following the unifying Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes, as well as the Convention on the Conflict of Laws, and the Convention on Stamp Laws in connection with Bills of Exchange and Promissory Notes (all three documents were signed on 7 June 1930 in Geneva), as well as the procedural regulation contained in the Civil Procedure Code, i.e. specifically in its provision of Section 175 of the Civil Procedure Code, which, since the Civil Procedure Code took effect (i.e. on 1 April 1964), has not been subject to any significant amendments, not even concerning the period in question, thus still being three days. In its opening passages, the statement of reasons, note No. 1), to the Bill and Cheque Act [cf. the document of the Chamber of Deputies No. 528, National Assembly of the Czechoslovak Republic, 1948 – 1954, statement of reasons, Chapter I – General Part] reads as follows: "… the Czechoslovak Republic is one of the states that have signed the convention. The conventions were also acceded by the Soviet Union, which had accepted the Geneva law of bills of rights already in 1937, and people's democratic states such as Poland and Romania. In international business relations, bills of exchange continue to be used as a credit instrument and cheques as a payment instrument. Adopting the Geneva text facilitates international business relations, since it eliminates the possibility of contradictions arising from the differences among national regulations of individual states. For this reason, although in our economy, serving the purposes of building socialism, the bill of exchange and cheque have lost their earlier importance mainly due to the introduction of cashless payments, it is necessary that the bill-of-exchange and cheque relations with foreign countries are governed in the same manner as in most foreign countries."

40. As for the bill-of-exchange payment order, the statement of reasons to the Civil Procedure Code [cf. the document of the Chamber of Deputies No. 147, 3rd term of office of the National Assembly of the Czechoslovak Socialist Republic; 1960–1964, statement of reasons, Special Part – Part Three (First Instance Proceedings), Chapter Four – payment order)] laconically reads as follows: "Due to the fact that bills of exchange and cheques have been used so far, particularly in business relations with foreign countries, the draft also accepts the institute of the bill-of-exchange and cheque payment order with the concentration principle, to be applied here."

41. In the view of the Constitutional Court, yet taking into account the merely informative character of the Parliament documents [in this respect, where appropriate, cf. the statement of the Plenum of the Constitutional Court, file reference Pl. ÚS-st. 1/96, issued on 21 May 1996 (ST 1/9 SbNU 471)], this implies that the law of bills of exchange tended to be perceived by the socialist legislature as a residue that was used almost exclusively for the purposes of foreign trade [Ondřej Hruda – cf. Hruda O.

Třídenní lhůta k podání směnečných námitek – neobvykle tvrdý přežitek [Three-day period to enter bill-of-exchange objections – an unusually strict relict]. Obchodněprávní revue, 2011, Vol. 8, p. 236 (234–238) – that the bill of exchange was rather tolerated in our country]. This may have been the reason why the wording of Section 175 of the Civil Procedure Code adhered to the three-day objection period, which had already been known, for instance, in Austria-Hungary (cf. Section 557, para. 1 of Act No. 113/1895 Coll., on Court Proceedings in Civil Legal Disputes (Civil Procedure Rules), in the wording until 31 December 1949. Further reflections may take the direction that the three-day period – provided that the socialist countries perceived the bill of exchange as antiquated – was also an expression of certain antagonism of the then bipolar world. On condition that the legislature had considered the period in question as sufficient, it might not be (despite the outlined ideological burden) considered as determined arbitrarily; it followed the historical tradition, and it was due to be applied mainly within the activity of power and economic entities of the centrally planned economy.

42. Nevertheless, while it was mainly the procedural regulations concerning bills of exchange that have undergone substantial development in western economies [cf. in details, for instance, the afore-mentioned comparative study of O. Hruda], the Czech legal regulation has remained unchanged. According to the Constitutional Court, comparison with Austria is particularly beneficial, also with respect to the historical and cultural closeness. The afore-mentioned Civil Procedure Rules, published in Austria BGBl, also under number 113/1895, abbreviated as "ZPO") were amended in 1979 upon adopting the Consumer Protection Act (Konsumentenschutzgesetz BGBl. No. 140/1979, hereinafter referred to as "KSchG") so that the afore-mentioned period was extended to fourteen days (this regulation has remained unchanged within the ZPO until now – cf. the current state of Section 555 of the ZPO in the wording taking effect on 1 August 2010). In fact, the afore-mentioned extension was adopted in relation to a wider regulation governing the use of bills of exchange in consumer relations – apart from the "recta" clause, the Austrian Consumer Protection Act requires that the bill-of-exchange creditor is identical to the entrepreneur, pursuant to KSchG – cf. Section 11 of this Act [in this respect, it should be noted that for instance Act No. 145/2010 Coll., on the Consumer Credit and on Amendments to Certain Acts, suffices, as far as the consumer protection is concerned in relation to bills of exchange (cf. Section 18), with the declaration not yet fully appreciated in practice that "if the consumer repays the consumer credit by means of a bill of exchange or cheque or if he uses them to secure repayment, the creditor shall act in order to preserve all the consumer's rights arising from the contract in which the consumer credit has been concluded"; in this respect, for the sake of completeness, it should also be noted that on 22 August 2012, the Government of the Czech Republic discussed a draft bill which should, among other things, amend the regulation governing the use of bills of exchange and cheques within Act No. 145/2010 Coll.].

43. Besides, the path taken by the Austrian legislature completely conforms to the procedure in other European countries. For instance, J. Kotásek [Kotásek, J. Funkce směnky a její použití u spotřebitelských úvěrů [Functions of the bill of exchange and its use in consumer credits]. Obchodní právo, 2002, Vol. 2, p. 24 (20–27)] points out that, regarding the reflection of the consumer in bill-of-exchange relations, even the German legislature did not opt for a direct intervention to the statute concerning bills of exchange, taking an indirect approach to regulate the bill of exchange used by the consumer and the entrepreneur, i.e. the act on consumer credits, among other things. On condition that it is the afore-mentioned measures adopted in the laws of Austria or Germany that the Constitutional Court uses for the purposes of comparison with the regulation in the Czech Republic, then merely on the basis of the above, it must conclude that it is insufficient. At the same time, according to the Constitutional Court, the inequality between bill-of-exchange creditors and bill-of-exchange debtors is further contributed by the objection period pursuant to Section 175 of the Civil Procedure Code, associated with the substantial strictness of the interpretation of the Bill and Cheque Act [for instance, cf. the partial notes of Radim Chalupa concerning the restriction of access of bill-of-exchange debtors to causal objections; substantiating the reasonableness of the objection of intentional acts of the creditor to the detriment of the debtor, etc. – Chalupa, R. Zneužití zajišťovací směnky [Abuse of the security bill of exchange]. PRÁVO – časopis pro právní teorii a praxi, 2011, Vol. 4, p. 19–34]. To put it using the afore-mentioned starting points of the previous case law of the Constitutional Court, the three-day objection period pursuant to Section 175 of the Civil Procedure Code is unconstitutional in

the dialogue with other components of the legal regulation. Not only is the substantive regulation concerning bills of exchange highly formalised [i.e. it requires substantial expertise that cannot be reasonably expected from an individual without legal education when even many practising lawyers find it strange – cf. Kotásek, J. Funkce směnky a její použití u spotřebitelských úvěrů [Functions of the bill of exchange and its use in consumer credits]. Obchodní právo, 2002, Vol. 2, p. 22–23 (20–27)], but it is also accompanied with order proceedings, being specific on their own, even in comparison other order proceedings. Among other things, entering bill-of-exchange objections does not mean annulling the issued bill-of-exchange order, or considering the matters of the statement of a claim as if no order has been issued at all [cf. in detail Kovařík, Z.: K dokazování o pravosti podpisu směnky [On producing evidence on the authenticity of the signature on the bill of exchange]. Právní rozhledy, 2010, Vol. 8, p. 267–272)]. According to the Constitutional Court, in association with the unconditional concentration principle, this implies a situation when consumers in the position of bill-of-exchange, in particular, are exposed to the pressure approved by the law, which is not only reasonable, but consequently, it does not produce the intended purpose, either, i.e. the speed of the bill-of-exchange proceedings. On condition that the bill-of-exchange debtor enters the objections through which the law (or the competent judge) does not grant the relevance and effect intended by the debtor, the bill-of-exchange proceedings are extended anyway. According to the Constitutional Court, the positive legal regulation thus contributes to producing a state when the possibility to enter objections pursuant to Section 175 of the Civil Procedure Code actually results, in many cases, in merely "delaying" the whole proceedings, without representing a meaningful instrument of defence. If the three-day period for entering objections has been reasonably extended, since the three-day objection period associated with very strict proceedings is unique, even in the broader European context (i.e. not only in comparison with Austria), this change, from the perspective of the bill-of-exchange creditor, could not have had any, let alone negative, effect due to the speed in which ordinary courts are able to review the debtors' objections (of any nature). On the contrary, the bill-of-exchange creditor would be provided with actual space to adequately respond to the particular bill-of-exchange relation and his role in it.

44. Furthermore, according to the Constitutional Court, extending reasonably the period for entering the objections also completely conforms to the afore-mentioned principles of the primacy of the constitutional interpretation over the annulment of the examined provision of the legal regulation, or the principle of minimising the interventions of the Constitutional Court into the activity of public authorities. Upon assessing the constitutionality, if the Constitutional Court had proceeded to annul any other part of Section 175 of the Civil Procedure Code, or possibly, if it had annulled the whole regulation contained therein, it would result in disproportionate consequences related to the functioning of the whole bill-of-exchange mechanism. Due to the formality and particularity of the bill-of-exchange proceedings, mentioned several times above, the Constitutional Court also believes that establishing at least partial procedural equality between the bill-of-exchange creditor and debtor would not be possible to achieve, in a permanent and procedurally unquestionable manner, even with the help of a constitutionally conforming interpretation or with the support of the general provisions of the Civil Procedure Code related to the regulation of time limits [cf., for instance a restrictively interpreted institute of the remission of the missed period pursuant to Section 58 of the Civil Procedure Code, which is also applicable in the case of the objection period in question – see, by analogy, Kovařík, Z. Uplatňování práv v souvislosti se směnkami a šeky v soudním řízení [Exercising rights in relation to bills of exchange and cheques in court proceedings]. Bulletin advokacie, 2000, Vol. 10, p. 17 (11–21)]. Subsequently, it is the task of the legislature rather than the Constitutional Court, to regulate the institute of the bill of exchange and the bill-of-exchange proceedings in a manner corresponding to the needs of the present time. According to the Constitutional Court, the above outlines make it obvious that prescribing a longer period for entering objections is merely an instrument which is capable of introducing only partial equality in the bill-of-exchange relations, and extending the period for entering objections certainly should not be perceived as a sufficient and definitive solution. As for the appeal to the legislature, expressed above and concerning the reflection of the development of using the bill of exchange, it should also be noted that the existing substantive and procedural regulation (cf., for instance, the Civil Procedure Code itself or the afore-mentioned Act on the Consumer Credit and on Amendments to Certain Acts, also in the perspective of the draft

amendment referred to above) somehow forgot Aristotle's doctrine of causality (from "causa" in Latin) searching for the purpose of "everything" [cf. Aristoteles. Metafyzika. 2. vyd. [Metaphysics. 2nd edition.] Prague: Petr Rezek, 2003, 579 p.]. In the concept of law, it is this cause that has become (although often implicitly) one of the key ideas of modern civil codifications and that may be, to some extent, part of the bill of exchange – in this respect, the Constitutional Court is thinking of the so-called "false accessority" and "false subsidiarity", when a receivable embodied in a security bill of exchange (anyway, the very expression of the security bill of exchange appears to be an oxymoron) exists regardless of the existence of the secured receivable, and the accessority (subsidiarity) consists merely in the fact that courts grant to the debtors, against asserting the security bill of exchange, the defence based, in essence, on the accessority and subsidiarity of the exercised right – paraphrased in part according to Chalupa, R. Zajišťovací směnka [Security bill of exchange]. Prague: Linde, 2009, p. 49–51 (189 p.). What thus matters is distinguishing between causal obligations (referring to their economic purpose) and abstract obligations, where the original purpose of the obligation is not decisive. According to the Constitutional Court, the facts associated with the petition of the complainant (petitioner), resulting in these proceedings before the Constitutional Court, then merely reveal, in its entirety, the insufficiency in which the existing legal regulation of bill-of-exchange relations reflects the capacity of the bill of exchange to act, to some extent, with or without the cause; in the petitioner's case, the bill of exchange of an obviously securing nature (i.e. specifically causal) turned into an almost "abstract" obligation as a result of endorsement (cf. the limitations in the provision of Section 17, para. 1 of the Bill and Cheque Act). As implied in the outlined international comparison, the solution to the implied conflict probably should not be sought in restricting the properties of the bill of exchange turning it into an attractive security, but above all, in introducing effective mechanisms preventing its misuse (cf. also below).

45. Provided that in the case law quoted above, the Constitutional Court defined three essential perspectives on the basis of which it assesses the conformity of a particular period as prescribed by the relevant regulation, i.e. whether it was not prescribed by the legislature arbitrarily, whether it is not excessive and whether it does not prejudice any group of entities with another in the possibility to exercise the right as a result of an additional change of conditions, then in accordance with the conclusions outlined above, the Constitutional Court summarises that the relevant period for entering objections was not prescribed arbitrarily; it was based on the historical continuity corresponding to the previous legal regulation having its origin already in the 19th century. Furthermore, at the time of adopting the Civil Procedure Code, the bill of exchange was used, compared to the present time, completely marginally, i.e. in principle, only with important power and economic entities – in their case, there was no need to consider the excessiveness in terms of three days. On the other hand, this does not apply to the contemporary reality of the market economy, where the bill of exchange is also used among entities that are not, in essence, in an equal position and that cannot (even though it would not be fair to expect it from them) perceive the bill-of-exchange relation in its global perspective, thus reflecting any possible risks arising from it. Newly prescribed by the legislature, the reasonable period will help alleviate the disproportion described above, at least on the procedural level. Both the bill-of-exchange creditor and the bill-of-exchange debtor will be provided with an actual possibility to exercise their rights before the court, and as a result (even in the case of the bill-of-exchange debtor), to protect their property. Provided that in the afore-mentioned case law, the Constitutional Court stated that the purpose of the time limit is to reduce entropy, for instance, when exercising rights and reducing the uncertainty in legal relations, then on the other hand, the afore-mentioned restriction imposed on exercising rights, for instance through a time limit prescribed by the legislature, obviously must not result in denying them or emptying them, particularly in the case of fundamental rights and freedoms (cf. Art. 4, para. 4 of the Charter) – in the instant case, the assessed period, due to the impact of the development of society, inadmissibly (i.e. contrary to Art. 4, para. 4 of the Charter) restricts the afore-mentioned possibility of bill-of-exchange debtors to defend their rights before the court, thus creating an unreasonable inequality between bill-of-exchange debtors and bill-of-exchange creditors in bill-of-exchange relations pursuant to Art. 37, para. 3 of the Charter.

46. As for the remaining criterion, i.e. assessing whether the afore-mentioned period does not prevent a certain group of entities from exercising their right as a result of an additional change of conditions,

owing to the nature of the assessed period, this is out of the question, since this period has never meant any formal or factual change of conditions.

VII.
Formulating the Verdict of the Derogatory Judgment and its Legal Consequences

47. Every Judgment of the Constitutional Court in which the Constitutional Court concludes that the examined statute or its individual provision is contrary to the constitutional order includes the determination of the date to which the examined statute or its individual provision shall be annulled. In the instant case, if the Constitutional Court proceeded to annul the period in question on the date of publishing this Judgment in the Collection of Laws on its own, it would produce a situation in which bill-of-exchange (cheque) debtors would not be provided with any time limit for entering bill-of-exchange (cheque) objections, which would amount to violating the legal certainty of their creditors, and consequently, the impossibility to carry out any bill-of-exchange (cheque) relation. Having considered the real legislative and technical possibilities of the legislature, the need to extend the space, in particular, for bill-of-exchange debtors for the purposes of applying adequate defence in the form of bill-of-exchange objections, and the legal certainty of bill-of-exchange (cheque) creditors, the Constitutional Court decided to annul Section 175, para. 1 of the Civil Procedure Code in the words "within three days" and in the words "in the same period" upon expiration of 30 April 2013, also taking into account the afore-mentioned draft bill (the document of the Chamber of Deputies number 686 – cf. paragraph 22 of this Judgment), amending the Civil Procedure Code and some other acts. As already mentioned, the draft bill referred to above assumes, among other things, that the period in question is to be extended from three to eight days. At the same time, it is within the power of the legislature to make sure that the draft bill becomes effective so that the three-day period in question was continuously replaced with the new period.

48. However, beyond the scope of the above, the Constitution Court urges the legislature to take into account, when determining the period, not only the need (albeit primary) to provide space for adequate procedural defence (and protection) to mainly bill-of-exchange debtors, but also to consider the appropriateness of certain harmony and inner consistency of the Civil Procedure Code on its own. According to the Constitutional Court, the legislature (or to put it more precisely and generally, norm creator) should take into account, within its activity, not only the formal consistency of the newly adopted legal regulation with the existing legal order, but it should also proceed so that it was actually the individual that represents the core of the existence of society organised in a democratic rule of law state. For this reason, with respect to the individual, either with or without legal education, the legislature should, when determining the adequate period pursuant to Section 175 of the Civil Procedure Code, proceed from the common periods, already in use within the Civil Procedure Code, and without any more significant reason, it should not introduce a new time definition unknown to the civil court proceedings. After all, the tendency not to burden unnecessarily the existing legal regulation with solutions not used so far is a sign of the culture of legislative technique. With respect to the starting points mentioned above, it is not uninteresting to refer again, in this respect, to the Austrian legislature, who, when re-codifying the Austrian Commercial Code (taking effect on 1 January 2007) not only left the content the legal regulation (where possible) unchanged, but also attempted, to maximum possible extent, the classification of the original legal regulation [after all, in this sense, one may borrow a philosophical and ethic simile of Josef Čapek from his essay Limping Pilgrim, when according to him, even trees – despite the fact that each of them is and wishes to be an individuality – still remain faithful to the characters of the type; cf. Čapek, J. Kulhavý poutník: (co jsem na světě uviděl) [Limping Pilgrim: (what I have seen in the world)]. Prague: Dauphin, 1997, p. 64 (152 p.)].

49. In conclusion, the Constitutional Court wishes to eventually summarise and emphasise, as in fact implied earlier, that the petitioner herself, despite the fact that she is seeking the annulment of Section 175 of the Civil Procedure Code en bloc, directs her arguments essentially against the period in question. This may also be inferred from the above-paraphrased response of the petitioner to the

statements of the parties to the proceedings. Besides, according to the Constitutional Court, the current wording of Section 175 of the Civil Procedure Code is, from the constitutional perspective, acceptable with the exemption of the parts referred to above. By means of the provision, the legislature introduces to the legal system a specific type of civil proceedings, whose certain special features (compared to the other regulation contained in the Civil Procedure Code) are acceptable particularly in respect to the pursued purpose, also in the part containing the concentration of the proceedings, explicitly contested in the response. In this context, the Constitutional Court points out, in particular, that even in the case when the court does not issue the bill-of-exchange (cheque) payment order – cf. the condition at the introduction of para. 1, first sentence of Section 175 of the Civil Procedure Code: "Where the plaintiff submits the original copy of a bill of exchange or cheque whose authenticity does not need to be contested and other documents to support their claim, the court shall issue, upon a motion filed by the plaintiff, a bill-of-exchange (cheque) payment order …", or if the bill-of-exchange (cheque) debtor (defendant) enters objections, the concentration of the proceedings shall apply even under this situation, although pursuant to Section 118b of the Civil Procedure Code. Consequently, the concentration of the proceedings occurs in any case; it is only a matter of when (which is again determined pursuant to the time limit). Besides, the provision of Section 175 of the Civil Procedure Code is purely a procedural provision, which is the reason why, regardless of the repeatedly mentioned formal strictness of the substantive bill-of-exchange regulation, it cannot take into account the circumstances in which the specific bill-of-exchange relation was being established. Furthermore, if the petitioner explicitly argues, within her response, against blank bills of exchange, she does not completely reflect that at the stage of the plaintiff's motion to issue the bill-of-exchange order, there is only the bill of exchange complying with the statutory requirements; the fact that it originated, for instance, as a result of completing gradually the bill-of-exchange instrument, may be relevant for the objections of the bill-of-exchange debtor – defendant (cf. Section 10, A. 1 of the Bill and Cheque Act), rather than for the proceedings concentration on its own, either under the terms of Section 175 of the Civil Procedure Code or pursuant to Section 118b of the Civil Procedure Code [as for the proceedings concentration pursuant to Section 175 of the Civil Procedure Code, the Constitutional Court has already expressed its statement, for instance, in the Judgment issued on 26 March 2009, file reference III. ÚS 3300/07 (N 69/52 SbNU 677), holding that it concerns the bill-of-exchange objections, rather than the concentration of submitted evidence]. The Bill and Cheque Act requests, on its own, that both the bill of exchange and the promissory note contain the term of "bill of exchange", rather than "blank bill of exchange", for instance. Furthermore, the motion seeking the bill-of-exchange order (of the bill of exchange itself) is not required to make it clear why the bill of exchange has been issued.

50. According to the Constitutional Court, no other component of the quoted provision (not even the proceedings concentration) has so far demonstrated any signs implying the need to be annulled by the Constitutional Court.

51. In the previous paragraphs of this Judgment, the Constitutional Court sufficiently declared – particularly on the basis of the reasonable international comparison – that the current tension associated with bills of exchange is largely due to their inappropriate use (misuse) mainly in relation to individuals from whom the knowledge of the specific and substantially rigid regulation concerning bills of exchange cannot be legitimately required. In this context, they may be labelled using the legislative shortcut of the "consumer", repeatedly mentioned above and used within the legal order. Besides, Act No. 634/1992 Coll., on Consumer Protection, as amended (hereinafter referred to the Consumer Protection Act), defines the consumer as a natural person not acting within their business activity or within the separate performance of their business. When defining the consumer, the provision of Section 1 of the above-quoted KSchG is based on the negative definition in relation to their counterpart, i.e. an entrepreneur. Within the Austrian laws, the consumer is thus defined (or inferred) in relation to the entrepreneur in such a way that defining the consumer reflects a specific legal relation between them and the entrepreneur – cf. Rummel, P. (Hrsg.) Kommentar zum Allgemeinen bürgerlichen Gesetzbuch : mit EheG, KSchG, MRG, WGG, WEG 2002, BTVG, HeizKG, IPRG, EVÜ. 2. Band, 4. Teil, 3. Aufl. Wien: Manz, 2002, esp. p. 175–178 (481 p.). Among other things, KSchG thus stipulates that it concerns legal acts which involve on one side a person whose legal act is related to conducting their business – i.e. the entrepreneur for the purposes of the

consumer protection and on the other side, they involve an entity to whom the above-mentioned does not apply (in the words of the statute: "… jemand, für den dies nicht zutrifft …"), i.e. the consumer. The afore-mentioned emphasis on this relation is then reflected in Section 11 of the KSchG (i.e. the provision stipulating, for the purposes of bill-of-exchange relations among entrepreneurs and consumers, the condition of the agreement between the entrepreneur and the consumer and the compulsory "recta" clause – cf. above) not only through the impossibility to endorse such a bill of exchange, but also as a fact that the bill-of-exchange creditor is the entrepreneur from whom the consumer is deduced. On condition that the bill of exchange does not include the afore-mentioned "recta" clause or if the entrepreneur does not correspond to the person to receive payment (cf., in the Czech Regulation, Art. 1, Section 1, point 6 or Art. 1, Section 75, point 5 of the Bill and Cheque Act), it does not invalidate such a bill of exchange, yet the consumer is provided with a regressive claim in relation to the entrepreneur, with the exemption expressly stipulated in KSchG.

52. According to the Constitutional Court, this briefly paraphrased Austrian legal regulation is inspirational not only for an apt definition of the consumer (which, in essence, does not collide with the definition in Section 2 of the Consumer Protection Act and may thus serve as an interpretation aid), but also due to the fact that it maintains, for the consumer in relation to the entrepreneur, the objections in the full extent, and furthermore, it also keeps any potential bill-of-exchange relation "transparent" to the benefit of the consumer, since it is essentially foreseeable from who and to whom it is to be paid. At the same time, this is all done in a way that does not, in principle, limit the bill of exchange arising from a relation between the consumer and the entrepreneur as far as its properties as a security are concerned. One may wonder, after all, whether the Czech legislature, following the need to introduce the afore-mentioned mechanisms preventing the misuse of the bill of exchange mainly in relation to consumers, should not opt for a similar solution, especially in view of the fact that the substantive regulation of Austrian law related to bills of exchange is based on the same Geneva Conventions (quoted above) as the Czech regulation.

53. Therefore, the Constitutional Court concludes that Section 175, para. 1 of the Civil Procedure Code in the words "within three days" and in the words "in the same period" is contrary, above all, to Art. 4, para. 4, Art. 36, para. 1, and Art. 37, para. 3 of the Charter, since mainly bill-of-exchange debtors are unreasonably restricted in the possibility to defend their rights before an impartial and independent court, thus introducing an unacceptable inequality between bill-of-exchange debtors and bill-of-exchange creditors. For this reason, pursuant to Section 70, para. 1 of the Act on the Constitutional Court, the Constitutional Court decided to annul this part of the provision upon expiration of 30 April 2013. In the remaining parts, the petition seeking annulment of Section 175 of Civil Procedure Code has been dismissed as manifestly unfounded [Section 43, para. 2, letter a), in association with the provision of Section 43, para. 2, letter b) of the Act on the Constitutional Court].

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1) The conclusions concerning the historical and comparative analysis of bill-of-exchange issues included in this Judgment are based on paper by Ondřej Hruda – cf. Hruda O. Třídenní lhůta k podání směnečných námitek - neobvykle tvrdý přežitek [Three-day period to enter bill-of-exchange objections – an unusually strict relict]. Obchodněprávní revue, 2011, Vol. 8, p. 234–238.

Dissenting opinions to the Plenum's decision, under Section 14 of Act No. 182/1993 Coll., on the Constitutional Court, as amended, were submitted by Judges Stanislav Balík and Jiří Nykodým.

Dissenting opinion of Judge Stanislav Balík

I voted to dismiss the petition, and my dissenting opinion is directed at the first conforming verdict and the reasoning related to it, for the following reasons.

x x x

First of all I would like to emphasise that the practices engaged in by the secondary party to the proceedings at the Constitutional Court under file reference IV. ÚS 376/11, also appear to me to be quite unethical and that I also regard usury as antisocial (see also Balík, S. O kletbě lichvy [On the curse of usury]. Právo & byznys, March 2012, p. 52–55).

In contrast to the Fourth Chamber of the Constitutional Court, which suspended the proceedings and referred the matter to the Plenum for a specific review of the provision of Section 175, para. 1 of Act No. 99/1963 Coll., Civil Procedure Code, as amended, I believe that the complainant could easily have been accommodated even without an annulment of the three-day period for entering objections against a bill-of-exchange payment order.

The first question that I cannot help asking myself therefore relates to the complainant's actions.

Does a person who finds himself in distress have the right to defend himself with an untruth?

In his publication "O právích země České knihy devatery" [On the laws of the Czech lands in nine books], among other things Viktorin Kornel ze Všehrd wrote:

"It is more useful for every man on trial to relate his case himself, to the best of his ability, and be sure that the judge passeth judgment not only on speech, however wittily composed, but on connections, reasons, defence and deductions" (cf. H. Jireček, M. Viktorina ze Všehrd O právích země České knihy devatery [On the laws of the Czech lands in nine books], Prague 1874, p. 70).

The complainant in this case – as is also apparent from the records of the general court – met the deadline for entering objections, but did not uphold her main defence, that the signature on the bill of exchange was not hers.

Does the first verdict of the Judgment under file reference Pl. ÚS 16/12 perhaps allow her the possibility of assembling further objections?

How much longer will she be allowed to amass such objections?

I cannot conceive that this subsequently modified objection could be considered logical:

"The signature is not mine, but they extracted it from me."

According to the Všehrd way of thinking it might have sufficed at the beginning of the three-day period to submit a letter to the court with approximately this wording:

"Just court, I signed that paper at the time because they told me that it was of no importance as long as I discharged the debt on time. They only told me that that was how it was done. I then paid as I was supposed to, and with that I considered the matter closed. That is why all this now seems unfair to me and I do not understand what they want from me. Please rule that I do not have to pay anything."

x x x

How long is a time limit still conforming to the constitution and which one is not?

Some time ago I arrived at an explanation of why a very capable lawyer is often the cheapest. He has the remunerative misfortune that the idea of how to resolve the case comes to him in a flash and it is

then embarrassing for him to pretend that he had to rack his brains for several hours or even days over what is to him a triviality.

It seems to me that in bill-of-exchange law, which is known for its rigour and formality, there are not very many variations on the objections that can be entered. I doubt that a person who doesn't come up with an idea in three days will be helped by having eight, fifteen or sixty days.

Are other time limits not indeed unconstitutional?

Three days from the announcement of a resolution during a trial for the defendant who meets the deadline and after a short meeting with his attorney is transported on the Friday afternoon before Whitsun or Easter to a remand prison a number of kilometres away?

Eight days to file a protest against a criminal order, which will be delivered as a Christmas gift on the afternoon of 21 December 2012, with the ban on reformationis in peius not applying here?

Six months to deliver a summons to the correct obligated party for the issuing of restitution under penalty of lapse of entitlement (see also the story of the Constitutional Court's Judgment under file reference II. ÚS 773/07 from 23 August 2012)?

Buck-passing time limits beginning with the fiction of delivery?

This raises the question of whether to favour rigour or mercy.

Otherwise I tend to be an advocate of mercy, but in my eyes bill-of-exchange law is deliberately very strict, and therefore there would have to come into play here only the most merciful, from my point of view inappropriate, form of mercy.

Will this be accomplished only by an annulment of the three-day time limit due to a sophisticatedly constructed unconstitutionality in order to ensure that unfortunates are not cheated, or are or should other instruments be designed for this within the division of powers and competences of various bodies? Does the heart of the matter not lie in the fact that the case under adjudication concerns a consumer relationship, in which bills of exchange might not necessarily be de lege ferenda admissible?

How much longer will more and more unfortunates "draw up" bills of exchange? For as long as other unfortunates continue to purchase worthless trinkets for high prices at demonstration events, even though the Constitutional Court drew attention to the unethicality of sellers through its case law more than a decade ago?

I fear that through well-intended activism we could violate the whole concept and purpose of bill-of-exchange law…

x x x

I admit that during totalitarian times I remained via facti a secondary school student in the field of material and procedural bill-of-exchange law. At the law faculty more attention was devoted to economic law and within it the economic contract on arrangements for carriage.

Although unacquainted with the norms of bill-of-exchange law, even before graduating from secondary school I knew that signing a bill of exchange could be fateful. It was enough to recall the story of the ship owner Morrel from Dumas' Count of Monte Cristo, which – as is well known – ended well only thanks to Edmond Dantes…

Bill-of-exchange law is a set of legal norms designed for those who are supposed to know what they are getting into.

The rigour of bills of exchange is not intended as callousness and cruelty.

Bill-of-exchange law did not arise as a means for immoral fraudsters who mislead someone when signing a bill of exchange and extract a signature from them.

What prevents the general courts from making decisions on the basis of these starting points?

Allow me to put forward some observations of a legal-historical nature.

x x x

"Renaissance Italy, however, did not only provide the world with banks and bankers, but also other novelties which were connected with mercantile capital. From the 13th century (perhaps from the 12th century in Genoa) money began to be replaced by bills, for which the recipient in a distant foreign country paid in cash. In fact, it turned out that it was impossible to continually carry pouches of silver and gold, especially if the buyer did not sell directly to the consumer, but to another buyer. A bill of exchange became established which initially only replaced the transport of money. However, from the 13th century the bill of exchange itself became an item to be sold, bought and traded," wrote Josef Macek (cf. Macek, J. Italská renesance [Italian Renaissance], Prague: Nakladatelství Československé akademie věd, 1965, p. 57) and in illustrated appendix No. 20 he displays a picture of a bill of exchange from the 14th century.

Wouldn't the followers of Marco Polo have been held up if they had had to wait for a long time in the caravans of the Sultan for a decision concerning bill disputes during their Chinese silk journeys?

Even today, is the bill of exchange not primarily an instrument in the relations of traders, who are now in even more of a hurry than their medieval predecessors?

x x x

I was fortunate that at the time when a discussion was taking place at the Plenum of the Constitutional Court concerning the report submitted by the Judge-Rapporteur in the case file reference Pl. ÚS 16/12, I had at my disposal a manuscript by Antonín Ignátius Hrdina on a dispute over attorney's fees between the client Earl Špork and his attorney Václav Neumann from Pucholz.

This dispute, which took place during the Baroque era, was not only a dispute over attorney's fees, but also over bills of exchange. On one side was the lawyer, a specialist on bill-of-exchange law, and on the other side the client, who had guaranteed the attorney the bill of exchange.

When the book is published, the reader should pay particular note to the information that Špork's library contained Neumann's book De cambio...

Why do some of those who sign bills of exchange today lack Špork's ambition to acquaint themselves with the basics of bill-of-exchange law?

x x x

In 1879 the Czech journalist, politician and diplomat Karel Jonáš published the book American Laws. Seven years later it was issued for the third time under the title American Law.

"The ideas in the book express the need for pragmatism, practicality and an attempt to express as clearly as possible and as succinctly as possible, sometimes in a very raw manner without any kind of

frills or scruples, everything that needs to be known about the law for everyday life in a tough but also extremely viable country…" wrote Josef Blahož in the afterword to a reprint of Jonáš's book in 2008.

The cited publication also provides a chapter on bills of exchange. Here it is possible to read that:

"A note or written bill can be written on any type of paper, in any language, in ink or pencil. The name may be signed or confirmed by a stamp (if the person cannot write)." (cf. Jonáš, K. Americké právo [Americal Law]. Prague : Vysoká škola aplikovaného práva, 2008, p. 187).

This therefore shows that bill-of-exchange law can also be understood and used by people who cannot write…

x x x

The periodical Právník from 1877 offers an interesting practical case with this legal clause:

"If a payment order is annulled because the bill of exchange was not completed in accordance with the agreement, it does not have the defence of determined dispute of place against a new action concerning the bill then completed in accordance with the agreement." (cf. Právník, 1877, pp. 627–639).

Might not the description of the factual events and the legal assessment of the dispute, which commenced on 18th August 1873 at the Imperial Commercial Court in Prague, provide interesting inspiration for objections to the payment order in the case which ended up at the Plenum of the Constitutional Court?

x x x

To sum up

- Annulling the three-day time limit for entering objections to a bill-of-exchange payment order as part of a specific review of norms will not, in my view, influence the outcome and is not directly associated to the decision on the constitutional complaint in file reference IV. ÚS 376/11,

- I do not consider the three-day time limit to be unconstitutional,

- Mitigation of rigour may lead to an unwanted shift in the nature of bill-of-exchange law,

- Historical experience confirms that the law of bills of exchange is a set of legal norms designed for those who should know what they are getting into.

In conclusion I would point out that the determination of the time period for entering complaints against a bill-of-exchange payment order should remain entirely within the competency of the legislature.

Dissenting opinion of Judge Jiří Nykodým

I disagree with the Plenum's majority view, which by the proposal of the Fourth Chamber annuls Section 175, para. 1 of the Civil Procedure Code (hereinafter referred to as "CPC"). This is mainly because I am convinced that the proposal of the Fourth Chamber to annul Section 175, para. 1 of the CPC did not meet the procedural requirements for its submission provided by Act No. 182/1993 Coll., of the Constitutional Court on amended regulations. According to Section 64, para. 1, letter c) of the

Act in question, the Senate of the Constitutional Court may submit a proposal to annul a law, or part thereof, only in connection with a decision concerning a constitutional complaint. It is therefore a case of a so-called specific review of constitutionality, which is permissible only if the law, or part thereof, whose annulment is proposed is directly applicable in that specific case.

However, while deliberating in the trial to which the complainant was a party, the contested provision was not directly applied by the general courts. In the particular case the Regional Court in Ústí nad Labem – Liberec Branch, via the verdict of 17 June 2010, file reference 37 Cm 419/2009-84, annulled the bill-of-exchange payment order from the Regional Court in Ostrava from 25 February 2009, file reference 32 Cm 76/2009-14. The plaintiff filed an appeal against this judgment and the High Court in Prague overturned the decision of the Regional Court in Ústí nad Labem – Liberec Branch, so that the bill-of-exchange order from the Regional Court in Ostrava from 25 February 2009, file reference 32 Cm 76/2009-14 remained in force. In the judgments of the courts the time period for entering complaints against a bill-of-exchange order was significant only to the extent that the general courts had to judge whether the complaints against the bill-of-exchange order had been submitted on time, and as they evidently had been, the existence of this procedural time limit was not directly reflected in the constitutional complaint of the contested decision.

If the Constitutional Court had decided to annul the part of Section 175, para. 1 of the CPC with the words "in three days" and "in the same period", then this fact could not be in any way reflected in the decision on the constitutional complaint, which is directed against the decision of the High Court in Prague, as this annulled provision no longer applied. The argumentation of the judgment that such an interpretation would be excessive formalism because it would lead to the conclusion that the complainant would be in a more advantageous position if she failed to submit her complaint in time, is unacceptable. The connection with a decision on a constitutional complaint is understood as the direct influence on the provisions of an act whose constitutional deficit is challenged. In a specific review of norms it is, therefore, not essential that some provisions of an act appear unconstitutional to the Constitutional Court for some reason. The conditions under which the Constitutional Court may, through its own activity, necessitate the process of norm review, are restricted by the statute on the Constitutional Court. With regard to the division of power, this competency of the court cannot be extended by extensive interpretation. Hence the argument of excessive formalism in relation to the interpretation of Section 64 para. 1 letter c) of the Act on the Constitutional Court is unacceptable.

The problem on which the submitted constitutional complaint is established is not primarily the problem of the limited time period for submitting complaints against bill-of-exchange payment orders, but is due to the fact that the use of different types of bills, in this case blank bills, which are conceived as the instrument of professional traders, spread to consumer contracts, where the professional is the only party who approaches their use with knowledge of the matter, as opposed to the other party, who in the great majority of cases is completely uninformed. Given the consequences of these circumstances, with their basis in substantive regulation of the law of bills of exchange, a longer time limit for submitting means of redress does not significantly protect the weaker party. Once again, this should be sought exclusively in the substantive regulation, for instance, by means of relating the provisions for consumer protection to the regulation of the law of bills of exchange or to some of its tools such as the blank bill.