

Regulation No. 278/2001 Coll.

Constitutional Court of 20 June 2001 on the proposal to repeal of Act No. 6/1993 Coll., the Czech National Bank, as amended

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AWARD

Constitutional Court

On behalf of the Czech Republic

The Constitutional Court ruled on 20 June 2001 plenary of the Presidential proposal to repeal Act [No. 6/1993 Coll.](#), the Czech National Bank, as amended by Act No. 60/1993 Coll., No. 15/1998 Coll. and No. 442/2000 Coll., in [§ 1, paragraph 3](#) the words "a special legislation ¹⁾ "in [§ 2 paragraph 1 first sentence](#) in [§ 2, paragraph 2. e\)](#) the words "and under special legislation ¹⁾ "in [§ 5, paragraph 2, point. b\)](#) the words "the activities undertaken in securing the main objective" and the words "prepare a draft operating and capital budgets", [§ 6, paragraph 3](#), [§ 35 point. a\)](#) and [§ 47 paragraph 1-4](#), as follows:

The provisions of [§ 2, paragraph 1, first sentence](#), [§ 5, paragraph 2, point. b\)](#) the words "the activities undertaken in securing the main objective" and the words "and prepares a draft operating and capital budgets", [§ 6, paragraph 3](#), [§ 35 point. a\)](#) and [§ 47 paragraph 2-4 of Act No. 6/1993 Coll.](#), the Czech National Bank, as amended by Act No. 442/2000 Coll. shall be abolished on the date of publication in the Collection of Laws.
The remainder of the proposal is rejected.

Justification

22 December 2000 the Constitutional Court received the President's proposal to repeal Act No. 6/1993 Coll., the Czech National Bank, as amended by Act No. 60/1993 Coll., No. 15/1998 Coll. and No. 442/2000 Coll. (hereinafter the "Act on the CNB"), namely:

in [§ 1, paragraph 3](#) the words "a special legislation ¹⁾ "and in [§ 2, paragraph 2. e\)](#) the words "and under special legislation ¹⁾ "to conflict with [Article 2, paragraph 3](#) and [Article 98 of the Constitution of the Czech Republic](#) (hereinafter referred to as "the Constitution") and Article 2, paragraph 2 of the Charter of Fundamental Rights and Freedoms (the "Charter");

in [§ 2 paragraph 1 first sentence](#) to conflict with [Article 98 of the Constitution](#),

in [§ 5, paragraph 2, point. b\)](#) the words "the activities undertaken in securing the main objective" and the words "and prepares a draft operating and capital budget" for the conflict with [Article 98 of the Constitution](#),

[§ 6 para 3](#) of inconsistency with [Article 62 letters. k\) of the Constitution](#),

[§ 35 point. a\)](#) to conflict with [Article 98 of the Constitution](#), and

[§ 47 paragraph 1-4](#) for inconsistency with [Article 98 of the Constitution](#).

His proposal was president justifies closer so that the above provisions of [§ 1, paragraph 3](#) and [§ 2, paragraph 2. e\) of the Act on the CNB](#) Czech National Bank confer competence of an administrative authority only to the extent determined by the Act on the Czech National Bank, but also by special legal regulations and legal standards

are less legal force than the law. Given that the Constitution allows interfere with the Czech National Bank only by law, this provision is in direct conflict with Article 98 of the Constitution. In addition, according to [Article 2, paragraph 3](#) and [Article 98 of the Constitution](#) and Article 2, paragraph 2 of the Charter state power may be exercised only in the cases and within the limits set by law and in the manner prescribed by law. This means that the scope of state authority can not be established statutory regulation, but only by law. The provisions of [§ 2 paragraph 1 first sentence of the CNB Act](#) provides as the main target of the Czech National Bank's security price stability, while [Article 98 The second sentence of the Constitution](#) defines it as caring about the stability of the currency. According to the petitioner, these are two different concepts, while price stability is only one component of monetary stability. However, the law can not be changed, resp. narrow the scope of competence of the legal norm of higher legal force - the Constitution.

The provisions of [§ 5, paragraph 2, point. b\)](#) the words "the activities undertaken in securing the main objective" and the words "prepare a draft operating and capital budget" saves Czech National Bank to divide the budget into two parts - the budget for activities performed in providing the main objectives of the Czech National Bank and the operational and investment budget, the Bank Board takes jurisdiction of one of its parts and putting it at the Chamber of Deputies. This may occur by the petitioner significant threat to the fulfillment of the main objectives of the Czech National Bank pursuant to [Article 98, paragraph 1 of the Constitution](#) . In his view, can not draw a dividing line between the two budgets, as well as operating and capital budget includes funding a number of important activities of the Czech National Bank conditioning the realization of the main objective, such as the preparation of the monetary analysis, the issue of banknotes and coins transactions with banks and cash management .This is contrary to the intention of the Constituent Assembly, which was the independence of the Czech National Bank in meeting its goals. It was expressed by the inclusion of the Czech National Bank to separate the head of the Constitution outside the legislative and executive powers, when it was made special executive body of its kind with a well-defined scope, ie care about the stability of the currency. Due to the interference of other organs banks will not be able to fulfill this goal. According to [Article 98 of the Constitution](#) , the law can provide more detail and to interfere in its activities, but certainly not so that it led to the denial of the position of the Czech National Bank.

According to [§ 6 para 3 of the Act on the CNB](#) Governor proposes government, Vice-Governors and other members of the board, although [Article 62 letters. k\) of the Constitution](#) the authority entrusted exclusively to the jurisdiction of the President. The Act on the CNB thus limiting the power of the President of the Republic established by the Constitution.

The provisions of [§ 35 point. a\) CNB Act](#) obliges Czech National Bank set agreement with the Government's inflation target and exchange rate regime Czech currency to foreign currencies. In case of disagreement, and Czech National Bank will be forced to change its opinion on the stability of the currency. This can be understood by the President of the Republic as the government's efforts to gain the possibility to interfere with the independence of the Czech National Bank, and thus in its monetary policy. It may, in the medium term lead to greater throughput compromise monetary policy measures, and thus risks to price stability. The Act imposes an obligation to compromise, leading to the independence of the Czech National Bank, which is considered crucial for the president in terms of its further functioning of the fundamental monetary policy issues. Agreement between the Government and the Czech National Bank are due to the frequent differences of political, economic and monetary objectives, hardly achievable and time-consuming, which may significantly jeopardize the proper timing of monetary policy measures.

Application for annulment of [§ 47 paragraph 1-4 of the Act on the CNB](#) is based on the same grounds as for the annulment of [§ 5, paragraph 2, point. b\)](#) .

Judge-Rapporteur, in accordance with [§ 42 para 4](#) and [§ 69 of Act No. 182/1993 Coll.](#) , the Constitutional Court, as amended, requested the opinions of both houses of the Parliament of the Czech Republic, because all the contested provisions of the Act on the CNB are contained in amendment to this Act, ie Act [No. 442/2000 Coll.](#) , amending Act [No. 6/1993 Coll.](#) , the Czech National Bank, as amended, and Act [No. 166/1993 Sb.](#) , on the Supreme Audit Office, as amended, which was adopted at a time when the Parliament of the Czech Republic, he worked in the composition of both chambers.

In the Chamber of Deputies sent a statement of 6 February 2001 its chairman prof. Ing. Václav Klaus, PhD., Who said that the main reason for the amendment was the need for harmonization of the Act on the CNB with European Union regulations. Regarding the proposal to repeal the provisions of [§ 1, paragraph 3](#) and [§ 2, paragraph 2. e\) of the Act on the CNB](#) , pointed to a normative character of footnotes and the fact that the reference to special legislation in the legislative practice commonly used. In the footnotes, which are of a proposal are set out laws, and not subordinate legislation. The application for annulment [§ 2 paragraph 1 first sentence of the Act on the CNB](#) said that the petitioner was aware of the need to change [Article 98, paragraph 1, second sentence, of the Constitution](#) . Proposal to amend the Constitution, however, was rejected by the Chamber of Deputies. He pointed

out that the government is now in the Chamber of Deputies presented a new proposal short of amending the Constitution, which solves this problem. Chamber of Deputies approved the 26th January 2001. It therefore considers that the Constitutional Court should await the completion of the legislative process, discuss the constitutional changes. In the case of a proposal to repeal [§ 5, paragraph 2, point. b\)](#) and [§ 47 paragraph 1-4 of the Act on the CNB](#) House Speaker said he must remain on the wording of the law. Deputies came out [in Article 98, paragraph 1 of the Constitution](#), under which it is permissible to the activities of the Czech National Bank to intervene by law. In debates repeatedly been said that the Czech National Bank should not fall outside the supervision of the competent institutions in the areas exclusively the most common operations that are subject to such control and other state institutions. They are entrusted to the competence of the administrative authority supervises. President of the Chamber of Deputies also pointed to the fact that the President of the Republic in its proposal did not question the possibility of the Supreme Audit Office to check the performance of the Czech National Bank, unless the activities in securing its main objective, therefore, should not be questioned or change in [§ 5](#) and [§ 47](#). The argument that you can not draw a dividing line between operating and investment budget and the budget for the security of the main objectives is not a relevant argument, but unfounded fears. These costs can be accurately separated and has current annual management report compiled by the Czech National Bank as two separate types of management. Examples that the petitioners are clearly the cost of securing the main objectives and the Chamber of Deputies will discuss them. Any discrepancies are resolved while according [§ 47 paragraph 3 of the Act on the CNB](#). The procedure for approving the budget is not inconsistent with the proclaimed independence of the Czech National Bank. Also, institutions such as the Parliament, the Constitutional Court and the Supreme Audit Office are endowed with some degree of independence, but only the Supreme Audit Office, this attribute is explicitly mentioned in the Constitution. The law also does not imply the possibility of the Chamber of Deputies in the draft operating and capital budget to make any changes. It can only disapprove the request and its completion or clarification. Even in the case of disapproval does not occur with regard to [§ 47 paragraph 4 of limitations of financial flows Czech National Bank's ordinary operations](#). Does not agree with the proposal to repeal [§ 6 para 3 of the Act on the CNB](#). The Act on the CNB in [§ 6, paragraph 2](#) provides that the Governor, Vice-Governors and other members are appointed and dismissed by the President of the Republic, while according to [Article 62 letters. k\) of the Constitution](#) appoints the members of the Bank Board of the Czech National Bank. In the Chamber of Deputies proposal was completed in [§ 6, paragraph 3](#) of the appointment of the governor, vice-governors and other board members on the proposal of the Government, which in his opinion may not lead to conflict. Appointment of board members in one body is quite unusual not only in the EU but also in other developed countries. Czech Republic is a parliamentary republic according to [Article 54, paragraph 3 of the Constitution](#) is the President of the execution of his office. According to some expert opinion is then the idea that he could appoint their representatives will anyone irresponsible banks, incompatible with the concept of democratic parliamentary republic. The application for annulment of [§ 35 point. a\) of the Act on the CNB](#) House Speaker said that it is stored in cooperation with the Czech National Bank government as the supreme body of executive power. This kind of cooperation does not limit the exclusive competence of the bank or its independence. In the system of state power is not absolute independence, has its conceptual limitations, the Constitution are limited to very general roles and competencies of the Czech National Bank. Some autonomy is given to the inclusion of a separate title in the Constitution, in express terms, however, the text of the Constitution does not grant independence. Been challenged provisions [§ 2 paragraph 3 of the Act on the CNB](#) for its cooperation with the central banks of other countries, supervisors of banks and financial markets of other countries and international financial organizations, so it should not be called into question by the provisions of [§ 35 point. a\) of this Act](#). Various levels of interaction, communication and reconciliation are applied in a number of countries without their banks deemed to be dependent on the government. It concluded that the deputies acted with the knowledge necessary to tackle the necessary changes in the activities of the Czech National Bank, in order to harmonize legislation with the EU legislation, and for the situation to try to amend the Constitution to carry out the change of the main objectives of the Bank to remove formal unconstitutionality. In doing so were made some other changes in the law and believes that they are the responsibility of the legislature. The law was approved by the required majority of 14 votes July 2000, following the rejection by the Senate on the 4th August 2000 the Chamber of Deputies of the bill voted 27th October 2000 and remained on the original version as well as the 7th December 2000, which voted a law that returned to her by the President.

The Senate sent a statement of 7 February 2001 the President of the doc. JUDr. Petr Pithart, who summarized the discussion of the draft Act on the CNB in the Senate bodies. He said that particular issues were discussed [§ 2 paragraph 1](#) and [§ 6, paragraph 3](#), where it was generally held that are not in accordance with the Constitution and laws of the European Community. According to several senators, the term "monetary stability" by broader than taking care of price stability, and is therefore unacceptable that "simple law" defined the objective of the Czech National Bank narrower than the Constitution, even though the new formulation is fully consistent with

Article 105 Treaty on European Union. The prevailing view also that the appointment of board members according to [§ 6 para 3 of the Act on the CNB](#) is not in accordance with the Constitution, as it assumes exclusive jurisdiction of the President (as opposed to the appointment of members of the Supreme Audit Office). Regarding [§ 5, paragraph 2, point. b\)](#) was noted in the discussion that the budget allocation for the two of them against the independence of the central bank and is rejected by the European Commission as incompatible with the Treaty on European Union. The same is reflected in the unconstitutionality of [§ 47](#). Changes to these provisions should be preceded by a change of the Constitution, which ultimately was an opinion shared by the government, while the Chamber of Deputies proceeded amendment to the Act on the CNB is the proposed amendment to the Constitution. Also, the provisions of [§ 35 point. a\) of the Act on the CNB](#), in the opinion of some senators contradicts the principle of independence of the Czech National Bank and is not in accordance with Article 108 of the Treaty on European Union. The debate in the Senate did not affect other provisions, the unconstitutionality of the President of the Republic argues, that [§ 3 paragraph 1](#) and [§ 2, paragraph 2. e\) of the Act on the CNB](#). The Senate ultimately amendment to the Act on the CNB rejected in the ratio of 26 to 11 voices of the 48 senators present.

The Constitutional Court first proceeded to assess the formal requirements of the petition. The petition was filed by the appellant authorized in accordance with [§ 64 paragraph 1 point. a\) Act No. 182/1993 Coll.](#), the terms admissibility under [§ 66 paragraph 1 of Act No. 182/1993 Coll.](#) were satisfied in this case. The proposal was found admissible and the Constitutional Court could proceed within the meaning of [§ 68 of Act No. 182/1993 Coll.](#) finding that the contested provisions of the Act on the CNB has been to the CNB Act inserted by [Act No. 442/2000 Sb.](#), this law was passed and issued within the bounds of constitutionally provided jurisdiction of the Parliament of the Czech Republic and constitutionally prescribed manner.

In the case of a proposal to repeal § 1, paragraph 3 the words "a special legislation ¹⁾ "and § 2, paragraph 2. e) the words "and under special legislation ¹⁾ "to conflict with Article 2, paragraph 3 and Article 98 of the Constitution and Article 2, paragraph 2 of the Charter, the Court came to the conclusion that the proposal is not justified, and therefore by § 70 paragraph 2 of Act No. 182/1993 Coll. dismissed.

Regarding the Content of the provisions of [§ 2 paragraph 1 first sentence](#) in [§ 5, paragraph 2, point. b\)](#) the words "the activities undertaken in securing the main objective" and the words "prepare a draft operating and capital budgets", [§ 6, paragraph 3](#), [§ 35 point. a\)](#) and [§ 47 paragraph 2-4 of the Act on the CNB](#) with the Constitution, the Constitutional Court concluded that these provisions are not in accordance with the following provisions of the Constitution.

This part of the statement justifying its decision, the Constitutional Court as follows.

Generally, states that the proposal of the President of the Republic concerning the issue of the special position of the central bank in the constitutional system of the democratic rule of law. Constitutional Court as a basis for assessing the merits of the submitted proposal takes into literature has expressed the opinion that you can from [Article 98 of the Constitution](#) to conclude that the Constitution establishes the institutional guarantee of existence Czech National Bank as:

- central bank of the country,
- act as care for the stability of the currency, ie the Czech crown,
- independent in the performance of the constitutional functions of the executive and legislative at a rate that ensures the fulfillment of its primary mission,
- equipped with the possibility of monetary policy discretion in the choice of instruments and measures to achieve the objective,
- Bank, which supervises other banks.

It follows that the obligation of the State is to establish such a bank, set up its institutions and appoint their officers, adjust its position, scope and rules of operation in the constitutional definition of the framework, let it operate as such and protect it or even judicial power by unconstitutional prior [inconsistent s [Article 1](#), [Article 62 letters. k\)](#) and [Article 98 of the Constitution](#)] and unlawful interference in its activities by the legislative and executive powers ([Article 98, paragraph 1 and 2 of the Constitution](#)).

In the overall view of the petition is to be stressed that the Constitutional Court was in assessing the constitutional anchoring Czech National Bank is aware that right here builds on economic theory, and therefore it is possible to use economic categories for the interpretation of vague concepts and general clauses in constitutional law. Political constitutional structure starting position of the Czech National Bank, then the theory of separation of powers, according to which the most important defense against the natural tendency towards concentration of power is the separation of monitoring the highest authorities of the state. Historical experience shows that the weakening of democracy caused by excessive strengthening of governmental power is possible through currency manipulation. A classic example of overcoming financial difficulties governments through inflation emission of money in the modern history of many other variations. In reaction to these experiences is the separation of

decision-making on monetary matters from the executive. This development begins to dominate virtually all democratic countries with market economies. The constitution of the independent status of the central bank, however, found only in the most recent constitutions. This group includes the Constitution of the Czech Republic and for international comparisons positively evaluated. When deciding on a draft Constitutional Court has thus facilitate the path to the effect that the substantive component of the constitutional position of the central bank of the country can be inferred directly from the Constitution itself, and thus show the legislature empowered to regulate the details can not go outside this content. There is no doubt that the activities of the Czech National Bank may intervene by law, as stated in the Assembly of Deputies, the law must not be inconsistent with the contents of the main objectives of the Bank.

This expansion of the number of "pillars of state power" is natural, and therefore does not stand up counter-arguments based on the comparison with the older "classic" of the constitution, in which an independent bank does not write simply because economic theory at the time they were accepted, yet did not describe adequately the risk of monetary manipulation of the executive. This expansion and changes konstitucionalita (necessary and appropriate regulation of constitutional law) continues with the economic and technological development. Similarly, it is possible to predict, for example, that in the near future we will see a discussion on the need for constitutional anchoring of a "supreme Media Council". Power the importance of the mass media is unquestionable, and therefore the development rights must respond to changing real life. Also, in light of these general considerations de lege ferenda is a must see design evaluation.

The general criterion decision of the Constitutional Court on the constitutionality of the relevant provisions of the Act on the CNB was their compliance with the above provisions of the constitutional framework of the central bank of the country. The function of the Constitutional Court according to [Article 83 of the Constitution](#) the protection of constitutionality means a judicial own bodies. Part of constitutionality in this direction is also to protect the position of the central bank of the country in fulfilling its main task, which is de lata constitutione care about the stability of the currency by [Article 98, paragraph 1 of the Constitution](#), and the separation of the main body - the Bank Board - from the immediate influence policy makers through specific adjustments appointment of its officers and members according to [Article 62 letters. k\) of the Constitution](#), without the need for cooperation between the excluded and the legislative and executive branches.

The Constitutional Court is of the opinion that the adjustment position of the central bank of the Constitution based on the findings of modern constitutional law of the late 20th century, when it gradually occurred to conclusions about the need to control the position of the central bank not only in the constitutions of federal states where it has been associated with the vertical division of powers between the Federation and its Member States, but also in unitary states, for the reasons given above. Constitutional theory inspired economic theories showed that increasing the Constitution (Article 99, paragraph 2 of the Constitution of Switzerland, Article 111 of the Constitution of Estonia, Article 227 of the Constitution of Poland, Article 373N. Colombia Constitution, Article 261n. Ecuador Constitution, Article . Croatia 53 of the Constitution, Article 56, paragraph 1 of the Constitution of the Slovak Republic), which governs the position of the central bank and its functions. Where it is not explicitly enshrined in the constitutions (in the case of most of the Member States of the European Union, which already applies the Treaty of Amsterdam), leads to the following conclusions therein.

In this respect also go some contractual documents of European Community law (Article 108/ex - Article 107 of the Treaty establishing the European Community), which are then reflected in the interpretation of "domestic" constitutional texts (cf. commentary on Article 88 of the Basic Law of Germany in: Maunz-Dürig: Grundgesetz Kommentar, Stand Juni 1998, p 6). Amendment to the Act on the CNB this plan does not fully respect the constitutional framers. European law in Article 108 of the Treaty establishing the European Community (as amended by the Treaty of Amsterdam) expressly provides that in exercising the powers and carrying out the tasks and duties conferred upon them by this Treaty, not even the European Central Bank, nor a national central bank, nor any member of their authorities, decision makers require or take instructions from Community institutions, from any government of a Member State or from any other authority. Community institutions and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the institutions of the European Central Bank's decision-makers and the national central banks in the performance of their duties. The Constitution in 1992 to respond to the findings of economic theory that success is the central bank of the country in ensuring the stability of the currency, its exchange rate and control inflation significantly affected its independence from the executive branch, which is usually once every three to four years forced to seek re-election ago voters. Anything else is against the intention of the government before the election, after the election, or in the middle of the election period, and anything else necessary to ensure the stability of economic growth, the need for the implementation of long-term debt investments, etc.

The Constitution explicitly with the independence of the Czech National Bank does not speak, however, a historical interpretation of the circumstances of the adoption of the Constitution (see above), a teleological interpretation of

the term "care about the stability of the currency" a systematic interpretation of chapter six of the Constitution, which is to regulate the Czech National Bank is separated from editing the legislative and executive , it can be concluded that the purpose of anchoring the central bank of the Constitution in general, and in particular the head of the Constitution in particular was just creating a constitutional framework for the functioning independently of the legislative and executive powers. However, it is possible to point out the fact that already in the discussion of the draft Law on the State Bank of Czechoslovakia (Act [No. 22/1992 Coll.](#)), the contents of which have been incorporated in the current legal CNB Act, have been used to conduct a demonstration of the dependence of inflation on degree of central bank independence.

Interventions in her position, although the Constitution permits ([Article 98, paragraph 1, second sentence, in fine](#)), but in the opinion of the Constitutional Court can not conclude that the law may accept a solution that would be intervention or could be interpreted as interference in the independence of the bank in the performance of its core constitutional functions. This would be constitutional arrangement position of the central bank lost its originally intended purpose. The Constitutional Court is of the opinion that the constitutional basis can not be negated, regardless of the legislature's mandate to further the statutory framework, similarly as in the case of fundamental rights in Article 4, paragraph 4 of the Charter (warranty purpose and meaning). This approach to respect the constitutional and statutory provisions already expressed in the judgment of 15Second 1994 sp. Pl. U.S. 35/93 [Collection of Decisions of the Constitutional Court (hereinafter "the European Court"), Volume 1, Judgment No. 7, page 51, published as [No. 49/1994 Coll.](#)] and sees no reason to him in this case to depart.

The independence of any institution can be interpreted as a condition that is multi-faceted. Some of them have already been highlighted in the discussion of the original Act [No. 22/1992 Coll.](#) , the State Bank of Czechoslovakia (Federal Assembly of Czechoslovakia, the sixth term, Document No. 1024).

In the case of the Czech National Bank so we can talk about aspects of institutional independence, which is in its non-subordination to the Government in ensuring the stability of the currency.

Czech National Bank shall also functions as an administrative office. This position is part of the bodies of executive power. This does not apply to its principal function according to [Article 98, paragraph 1 of the Constitution](#) . In this capacity, the law must respect the independence of its decision, which is not covered by [Article 67, paragraph 1 of the Constitution](#) of the peak position of the government in a system of bodies of executive power or the Czech National Council [No. 2/1969 Coll.](#) , the establishment of ministries and other central bodies of state administration of the Czech Socialist Republic, as amended. In terms of authorization by the Czech National Bank has in meeting its primary objective (instrumental aspect), it is the choice of monetary policy instruments and the possibility of monetary policy discretion in the choice of these instruments and measures to achieve the constitutionally enshrined targets.

Finally it's independence in personal or organizational sense, that is the way the appointment and recall management of the bank. Another possible aspect of the independence of each institution's independence or more autonomy, economic or financial, that prior to the amendment of the Act on the CNB consisted of the budget department of the bank from the state budget. Amendments to the Act on the CNB in different intensity affects all of these aspects. The Constitutional Court, however, deals only with those of them that have their own constitutional basis, so diverging legal rights to them are in conflict.

Regarding the individual provisions whose annulment is requested, it should be noted the following:

In the case of a proposal to repeal [§ 1, paragraph 3](#) the words "a special legislation ¹⁾ "in [§ 2, paragraph 2. e\)](#) the words "and under special legislation ¹⁾ "The Constitutional Court could not agree with the opinion that it is unconstitutional provisions of the Act on the CNB. You can have reservations about the provisions of the Legislative Rules of the Government (Annex to Government Resolution of 19 March 1998 No. 188), which are stored in the preparation of legislation currently use this form of reference and where it is constitutionally precluded the use of other forms of law than the form law (here [Article 98, paragraph 2 of the Constitution](#)). The possibility of intervention of the Constitutional Court, however, in this case, given only in the event that the use of sub-statutory legislation actually occurred. But this is not the case, as the legislation is implemented through the law. Therefore, this part of the proposal is rejected as unfounded.

The Constitutional Court found reason to proposal to repeal [§ 2 paragraph 1 first sentence of the CNB Act](#) , which states that "the main objective of the Czech National Bank is to ensure price stability." The provisions of [Article 98, paragraph 1, second sentence, of the Constitution](#) , however, defines the main objective of the activity or, as the care of the stability of the currency. The second place that concept is wider, so the way the common law is to limit the extent of the main task of the central bank of the country. This is in terms of the rule of law ([Article 1 of the Constitution](#)), in terms of the constitutionally prescribed manner of changes and replenishment of constitutional law ([Article 9, paragraph 1](#) and [Article 39, paragraph 4 of the Constitution](#)), as well as in terms of the actual [Article 98, paragraph 1 of the Constitution](#) is unacceptable. It is a similar situation, which is expressly provided for in § 3, paragraph 4 of Law No. 309/1999 Coll. Collection of Laws and the Collection of International

Treaties, according to which secondary legislation may be announced soon on the day on which the law was promulgated to the performance of which they are issued; efficiency can acquire first day on which the Act comes into effect, the performance of which they are issued. In respect of the Constitution and ordinary law must be maintained by such a procedure rather.

The Constitutional Court merely states that it is a violation of the basic rules of hierarchical construction of the rule of law, according to which law minor regulations must not contradict the legal regulation of higher legal force. The government, which submitted a draft amendment to the Act on the CNB have been aware of this situation, as in the explanatory memorandum to its proposal (the Chamber of Deputies, the third term, Document No. 537) in connection with the proposed new wording of [§ 2](#) expressly stated that "the proposal amendment to the Act on the Czech National Bank therefore requires amendment to the Constitution. ". This change [Article 98, paragraph 1 of the Constitution](#) should be made constitutional law having submitted a proposal to the government as part of a broader proposal (Chamber of Deputies, the third term, Document No. 541), where in paragraph 15 of the proposed wording: "The Czech National Bank is the central bank of the State . in its activities are only permissible under the law. ". The draft constitutional changes, however, the Chamber of Deputies at its 25th meeting on 17 May 2000 rejected the 2nd reading, while the amendment to the Act on the CNB, complete with a number of other changes, was finally approved as Act [No. 442/2000 Sb .](#)

President of the Chamber of Deputies in this connection that the deputies acted with the knowledge necessary to tackle the necessary changes in the activities of the Czech National Bank, in order to harmonize legislation with the EU legislation, and for the situation to try to amend the Constitution to carry out the change of the main objectives of the Bank, to be removed formal unconstitutionality. About this malpractice evidenced by the words of the representative of the Government in justification of that subsequently submitted a proposal to amend [Article 98, paragraph 1 of the Constitution](#) (the Chamber of Deputies, the third term, Document No. 694) for 28 meeting of the Chamber of Deputies (the stenographic report of the 28th meeting of the Chamber of Deputies, page 416), when he said that the purpose of amending [Article 98, paragraph 1 of the Constitution](#) is to "get in line to the Institute on the one hand with the *acquis communautaire* and on the other side with the government's draft bill on the Czech National Bank, respectively, with an amendment to this Act." In a similar vein, the proposal is justified in the explanatory memorandum to print No. 694

Since the rule of law is not possible to additionally adapt the Constitution contrary to her laws, the Constitutional Court as a judicial body protection according to the constitutionality of [Article 83 of the Constitution](#) to the conclusion about the need to repeal the provisions of [§ 2 paragraph 1 first sentence](#) to conflict with [Article 1](#) , [Article 9, paragraph 1](#) and [Article 98, paragraph 1 of the Constitution](#) as unconstitutional. At the same time points out that in terms of the need to adapt the law of the Czech Republic, European Community law, it must do so in a constitutional manner. Czech Republic may, in accordance with the preamble of its Constitution to seek incorporation into the family of European democracies in the first place by being the rule of law will respect our Constitution. Only then can seek compliance with the primary law of the European Community (Article 105, Article 108/ex - Article 107 of the Treaty establishing the European Community), because without respect to its Constitution not to be admitted to the European Union consider.

In addition, the President proposed to repeal the provisions of [§ 5, paragraph 2, point. b\)](#) the words "for activities carried out in the main security objectives" and "prepare a draft operating and capital budget." His argument is combined with a proposal to repeal [§ 47 paragraph 1-4 of the Act on the CNB](#) .

The entire provisions of [§ 5, paragraph 2, point. b\) CNB Act](#) , as amended, reads as follows: "The Board approves the budget for the activities performed in providing the main goal of the Czech National Bank and prepares a draft operating and capital budget." In the case of granting the petition would therefore provision was: "The Board approves the budget of the Czech National Bank", so it is practically coincided with the original wording of the Act [No. 6/1993 Coll.](#) , the Czech National Bank.

The provisions of [§ 47 paragraph 1 to 4](#) added:

- (1)** The budget, which covers the activities undertaken in the provision of the main objectives of the Czech National Bank, approved by the Bank Board.
- (2)** In the operating and capital expenditure managed by the Czech National Bank budget approved by the Chamber of Deputies. The proposal of this budget compiles Board of the Czech National Bank and submit it to the President of the Chamber of Deputies at the latest three months before the beginning of the financial year.
- (3)** The refusal of the Chamber of Deputies a draft budget of the Czech National Bank, the Board shall within six weeks to submit a proposal to the amendments as requested by the Chamber of Deputies.
- (4)** If the Chamber of Deputies expressed agreement with the Czech National Bank's budget for the financial year before the first day of the financial year, the budget management since the first day of the financial year to the date of approval of the budget for this financial year, the volume of revenues and expenditures Czech National Bank approved for the previous financial year.

The president justifies the proposal to repeal this section by legislative change takes Bank Board authority to decide on one of its powers and entrusted to her the Chamber of Deputies. This may occur by the President of the Republic a major threat to the fulfillment of the main objectives of the Czech National Bank pursuant to [Article 98, paragraph 1 of the Constitution](#). In his view, can not draw a dividing line between the two budgets, as well as operating and capital budget includes funding a number of important activities of the Czech National Bank, which determine the realization of the main objective, such as the preparation of the monetary analysis, the issue of banknotes and coins transactions with banks or financial management cash. Due to the interference of other organs banks will not be able to fulfill this goal. According to [Article 98 of the Constitution](#), the law can provide more detail and to interfere in its activities, but certainly not so that it led to the denial of the position of the Czech National Bank.

The Constitutional Court in this regard the proposal of the President complied precisely with regard to what has been stated above about the various aspects of the independence of any institution. If the Constitutional Court came to the conclusion that the constitutional dimension of the independence of the central bank of the state must provide protection of the independence in terms of uninterrupted operation. Even if the argument did not apply to the President, it is not possible between the two budgets lead its limit, it should be noted that even the mere pressure of clearly separable operating and capital budget can affect the performance of the principal objectives of the central bank of the country. In other words, leaving aside the question of severability two budgets for the management of that institution, and as soon as one of these budgets approved by someone other than the central bank will always be easier to be indirectly influence the decision-making processes in the bank, and thus limit its independence.

Argument about the separation of the two parts of the budget in the annual financial reports of the Czech National Bank is also possible, as it is in its independence in achieving the main objective can not intervene. Approval of the budget of the Chamber of Deputies may not be sure at all times constitute an interference with its independence. However, this possibility is not excluded, since [§ 47 paragraph 2-4 of the Act on the CNB](#) contains sufficient tools to the Chamber of Deputies to make their voices heard. This conflicts with [Article 98, paragraph 1 of the Constitution](#). This remains the objection of the President of the Chamber of Deputies, the President of the Republic in its proposal did not question the possibility of the Supreme Audit Office to check the performance of the Czech National Bank, unless the activities in securing its main objective, and that it would therefore not be questioned or change in [§ 5 and 47 of the Act on the CNB](#). The Constitutional Court in its settled case law emphasizes the commitment verdict in the petition, not its reasoning, ie arguments that petitioner states [see already finding of 24 5th 1994 sp. Pl. U.S. 16/93 (Collection of Decisions, Volume 1, Judgment No. 25, page 190, promulgated under [No. 131/1994 Coll.](#)), Judgment of 14 6th 1994 sp. Pl. U.S. 20/93 (Collection of Decisions, Volume 1, Judgment No. 33, page 245, promulgated under [No. 141/1994 Coll.](#)), Judgment of 29 11th 1994 sp. l. U.S. 89/94 (Collection of Decisions, Volume 2, Judgment No. 58, page 151)]. Therefore assesses the proposal from other aspects of the protection of constitutionality than those referred to in the preamble to the proposal, but can not decide on the repeal of other provisions that are set out in the petition.

Likewise, the Constitutional Court decided to annul the provisions of [§ 6, paragraph 3 of the Act on the CNB](#), which states: "The Governor, Vice-Governors and other members proposed by the government.". This provision is contrary to the President's prerogative to appoint members of the Bank Board pursuant to [Article 62 letters. k\) of the Constitution](#). This means that the President of the Republic in terms of the constitutional act without restriction and there is bound to destroy the proposal or to any other conditions.

With regard to the reasons given above, the Constitutional Court was forced to cater to the petition to annul [§ 35 point. a\) CNB Act](#), which provides: "Czech National Bank in agreement with the government sets the inflation target and exchange rate regime Czech currency to foreign currencies.". "After the agreement" indicates that the Czech National Bank has the initiative in the matter when it comes to the proposal in this matter. His proposal but must submit to the Government, and that it needs to be or may not agree. Only after obtaining the consent of the Government's inflation target can be determined. The term "the agreement" does not correspond to the concept of independence of the Czech National Bank. Although it does not submit to the government, but the government building next to the board as an equal factor in determining the inflation target regime and the rate of the Czech currency. With the role of government but the current constitutional arrangement [Article 98, paragraph 1 of the Constitution](#) does not explicitly. This provision does not extend to the other constitutional treatment as a *lex specialis*, so it can not apply to the general characteristics of the position of the government in [Article 67, paragraph 1 of the Constitution](#). The provisions of [§ 35 point. a\) CNB Act](#) is inconsistent with the instrumental aspect of the independence of the Czech National Bank and may significantly affect the existence of other aspects of its independence from the institutional perspective.

For the stability of the Czech currency, the publication of the inflation target is crucial. It is therefore closely linked with the independence of the Czech National Bank. If the inflation target must be declared, the situation is legally

different than if they did not have to be declared. In the first case, the position of the government is much stronger, since in absence of agreement to the Czech National Bank, which does not fulfill its constitutionally mandated mission. This provision therefore undermines the space of the principal objectives of the Czech National Bank in a similar way as in the case of approval of operating and capital budget of the Czech National Bank. In contrast with him while other provisions of the Act itself on the CNB when his [§ 9](#) provides that the Czech National Bank and the Bank Board in the performance of their tasks independently of government instructions of the President, Parliament, other administrative authorities or bodies of local self-government (paragraph 1), and that matters relating to the determination of the exchange rate regime and inflation targets Czech National Bank shall consult with the Government and its demand has presented reports on these matters (paragraph 2), a modification that is not the principle of independence of the Czech National Bank to monitor its main objective in any way contrary. The same applies to [§ 11 of the Act on the CNB](#) , which authorizes the Minister of Finance or another authorized member of the government to participate in an advisory board meeting with the opportunity to submit to it proposals for consideration. Similarly, entitled governor of the Czech National Bank or its designated Governor to attend an advisory meeting of the government. In terms of states with the corresponding political culture meeting senior officials it is sufficient resource to find appropriate solutions. Otherwise, though, in terms of the Constitution shall have the final word Board, which contested provisions of [§ 35 point. a\) of the Act on the CNB](#) excluded.

Therefore, in this case, the reasons for the repeal of this provision by the fact that in this case, the direct contradiction with [Article 98, paragraph 1 of the Constitution](#) , which is still validly established as the main target of the Czech National Bank care about the stability of the currency. To be in this business independent Czech National Bank (otherwise fulfill this objective can not), can not be bound by the consent of the governing body of the executive power, which has since been otherwise constitutionally separated. Again, in practice, may not be in setting the inflation target and exchange rate regime Czech currency to foreign currencies to be any conflict situations. The Constitutional Court, however, aims at the protection of constitutionality as the authority to assess whether the adjustment is in accordance with constitutional requirements. This consistency is not given here.

The President of the Constitutional Court:
JUDr. Kessler P