I. ÚS 3018/14 of 16 June 2015
The Scope of Parliamentary Indemnity
in Relation to Statements Made by a Deputy on Facebook

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

HEADNOTES

The basic idea underlying the parliamentary immunity is to provide the elected representatives of the people with some assurance allowing the representatives to exercise effectively their democratic mandate, without having the fear of being persecuted for their conduct, harassed or victimised by the executive power, the judiciary or political opponents. The Constitutional Court therefore considers that the indemnity within the meaning of Article 27 (2) of the Constitution protects the freedom of speech regardless of its content. In this context, the Constitutional Court observes that such a speech must meet other conditions set out in Article 27 (2) of the Constitution, i.e. it shall have an permissible form (see Items 43 to 47 of this judgment), it must be made at one of the "protected forums" (see Items 50 to 62 of this judgment below), and must be directly aimed against at least one deputy or senator or a person authorised to attend the parliamentary meeting (see Items 63 to 71 of this judgment below).

VERDICT

The Constitutional Court has decided through the panel composed of presiding judge Ludvík David, judge-rapporteur Kateřina Šimáčková, and judge David Uhlíř, on the constitutional complaint by complainant Otto Chaloupka, represented by Mgr. Jan Mates, LL.M., lawyer based at Kvestorská 5, Prague 4, against the resolution of the Supreme Court, of 25 June 2014, ref. No. 3 Tcu 33/2014-26, as follows:

The constitutional complaint is dismissed.

REASONING:

I. Previous course of the proceedings

1. In June 2013, a married couple was physically assaulted by a group of Romani people in Duchcov. The father of one of the women accused of assaulting the married couple, referred to as F. T. in the quoted text below, published a letter addressed to the mayor of Duchcov in response to that event. The complainant, at that time serving as a deputy of the Chamber of Deputies of the Parliament of the Czech Republic responded to this letter by posting on 21 June 2013, at an hour not exactly established, on his profile on the social network Facebook the following text:

"Dear G(ipsy) Vajda F. T. A few comments on your letter to mayor D.:

Your statement about the married couple assaulted by your gang, saying "Nothing happened to them in fact", is beyond acceptability. Your G(ipsy) arrogance has grown long ago into a dimension which requires a response. Decent people have long endured your thefts, aggression, and unjustified requirements for more and more benefits. But, as any reasonable person knows, this could not continue indefinitely. People are afraid of going on streets, they fear for their children, do not feel safe, and also are tired of that out of their money they earn by work they must nurture thousands of your families. They earn their money at a time when many of you spend time in game rooms and casinos. People have had enough of that, Mr T., they have lost their patience. You move them beyond the imaginary edge by each of your provocations. You are pushing and something must necessarily burst. Soon. Do not rely on

that you are protected by the state and you are permitted to do anything. People do not feel protection from the state and it is only a matter of time when they will protect themselves using their own hands. And then, Mr T., it will be bad. Take it from me as a good advice. You have it for free. I ask you to stop using the appellation "Gadjo" for us, your breadwinner. Until you stop using it, I consider to be entitled to use the appellation "G(ipsy)".

"Very clever from the G(ipsy) leader. They have abundance of arrogance and self-confidence, haven't they. But people are on the edge and some more of such G(ipsy) provocations and they can expect a good hiding. And then they will not be protected by armour-clad policeman either."

"Top of insolence and arrogance, G(ipsy) leader. Let's go on, you squabs, push a little bit more and it will crack somewhere. People are already on the edge, push more and you can expect a good hiding. I can already hear the yelling. It will not matter how fast you can run."

2. On 4 March 2014, the Police of the Czech Republic, District Police Directorate Prague 1, under Section 160 (1) of Act No. 161/1961 Coll., on criminal proceedings (hereinafter referred to as the "Criminal Procedure Code"), initiated the criminal prosecution of the complainant for the offence of inciting hatred against a group of persons or limitation of their rights and freedoms under Section 356 (1) and (3) (a) of Act No. 40/2009 Coll., the Criminal Code (hereinafter the "Criminal Code"), allegedly committed by the complainant by publishing the above-quoted text. On 23 April 2014, an action for the said offence was filed with the District Court for Prague 1; subsequently, on 5 May 2014, the complainant filed with the Supreme Court a petition for the exemption from the powers of law enforcement authorities pursuant to Section 10 (2) of the Criminal Procedure Code.

3. The complainant argued in his petition that Article 27 of the Constitution of the Czech Republic (hereinafter the "Constitution") implies that the scope of the rules on the partial substantive exemption of deputies are not limited to the Chamber of Deputies in terms of its conduct, but also on speeches associated with the exercise of mandate. A speech of a deputy as such does not include only statements in the meetings and legislative bills or other proposals, but also exercising the constitutional rights associated with the position of a deputy, through which he/she exercises his/her mandate. Such speech shall be deemed to include observations on current events, which reflect the desire to contribute to calming the situation and to defusing tension within the society. Given that the text was published in the Chamber of Deputies, it is a conduct of a deputy in the Chamber of Deputies, which must be regarded as part of exercise of the mandate of a deputy and as such the conduct enjoys constitutional protection within the meaning of Article 27 (2) of the Constitution.

4. The Supreme Court has decided through its resolution contested by the constitutional complaint that the complainant is not exempted from the powers of law enforcement authorities as regards his conduct mentioned above. It stated in advance in the reasoning for the decision that the complainant was no longer a deputy at the time of initiation of criminal prosecution and, therefore, the procedural exemption as referred to in Article 27 (4) of the Constitution did not apply to him, being subject to the consent of the chamber of which the prosecuted person is a member. The complainant's conduct is not subject to paragraph 1 relating to the voting or paragraph 3 relating to the administrative offences neither. It reviewed thus the request from the perspective of Article 27 (2) of the Constitution according to which "deputies and senators may not be criminally prosecuted for speeches in the Chamber of Deputies or the Senate respectively, or in the bodies thereof."

5. The Supreme Court stated that the speech can be both a verbal expression and an expression in another form, e.g. shouting, making a gesture or wearing clothes of a specific style. A speech also means a written statement, i.e. legislative proposals, written parliamentary questions, etc., because they may have the same meaning in its verbal form and in its written form. Also speeches in writing therefore enjoy protection under Article 27 (2) of the Constitution.

6. According to the Supreme Court, a speech within the meaning of Article 27 (2) of the Constitution is not only an insult uttered during the debate in the Chamber of Deputies or the Senate but any

manifestation of will in legal or criminal-law sense, which would be eligible to fulfil the factual elements of a criminal offence. The local extent of criminal-law exemption then refers to the bodies of the Chamber of Deputies, namely commissions, committees, parliamentary groups, etc., but not only to their seats but also to other places that serve parliamentary purposes *ad hoc*.

7. However, to ensure that a speech enjoys the protection under Article 27 (2) of the Constitution, it is not enough when it is made by a deputy or senator - it must be made in connection with the exercise of his/her mandate. That means in connection with political activities, i.e. any conduct as part of negotiations on political agreements, compromises or decisions, whether in one or more political parties or coalitions thereof. The speeches and acts that are clearly not part of the exercise of the mandate, though made in the Parliament, therefore do not fall under the protection of Article 27 (2) of the Constitution. By analogy, the immunity of the Members of the European Parliament only applies to speeches made within the exercise of their duties, exclusive of e.g. appearances in television political debates, at a party congress or in press.

8. Given the above, the Supreme Court held that posting any text on the social network Facebook does not have the attributes of a speech of a deputy in the Parliament. A publicly accessible user profile on a social network and other generally accessible websites have the character of a mass communication medium and are thus equivalent to the press, radio, and television. If a deputy presents his ideas publicly through the media and these are directed towards the public, i.e. outside the environment of the Chamber of Deputies, it is a civil speech subject to a public scrutiny. It is thus not a speech of a deputy within the competition of political forces, debates in the legislative process or any plenary session or a meeting of any body of the Chamber of Deputies and it is therefore not part of the exercise of deputy's mandate in the Chamber of Deputies. The fact that the text was posted on a social online network from a computer in a building of the Parliament is not legally relevant either. If an opposite view is adopted, the application of criminal-law provisions against deputies and senators would be virtually impossible.

II. Parties' arguments

9. The complainant contested the decision of the Supreme Court through its constitutional complaint because the decision is, in his opinion, contrary to his right to the substantive exemption under Article 27 (2) of the Constitution and the right to the freedom of speech as protected by Article 17 of the Charter of Fundamental Rights and Freedoms (hereinafter referred to as the "Charter").

10. The complainant summarises in his constitutional complaint the events in Duchcov and points out that the above-mentioned father of one of the assailant attempted to downplay through a letter the situation which stemmed from the tense social situation. The complainant responded to this belittlement through the above-quoted text led by an effort to calm down the situation from the position of a deputy and politician, because such belittlement only escalates tensions and exacerbates the situation. As a deputy, the complainant has been interested on a long-term basis in the situation in excluded localities and drawn up a bill which was to contribute to solving problems. For that reason, he communicated with the inhabitants of excluded localities, the representatives of local government and local politicians, and commented on topical issues related to this issue. He exercised his mandate in accordance with the constitutional promise in the interest of all the people and according to his best knowledge and conscience.

11. According to the complainant, Article 27 of the Constitution exempts deputies and senators from the criminal liability, prosecution of criminal offences, and prosecution of administrative offences. Article 27 (2) of the Constitution then excludes the prosecution of a deputy or senator for speeches made in the Parliament. In that event, a deputy or senator is only subject to the disciplinary jurisdiction of the chamber to which he/she belongs and the application of other institutions of public-law responsibility than the disciplinary jurisdiction of the chamber is not an option for other public-law offences either, not only for criminal offences.

12. The complainant committed the alleged criminal offence as a member of the Chamber of Deputies of the Parliament of the Czech Republic, directly in the Chamber of Deputies. According to the case-

law of the Supreme Court, any speech made in the Chamber of Deputies must be considered the conduct of a deputy in connection with political activities (cf. the resolution of the Supreme Court, of 16 July 2013, file No. 3 Tcu 77/2013). The speech may be verbal and can have other forms, such as shouting, making a gesture or wearing clothes of a specific style, etc.; also written comments or statements must also be considered as an expression, if made in connection with the exercise of mandate. A written statement of the complainant on the current events should therefore be viewed as a speech made in the Chamber of Deputies in connection with his political activities and, therefore, as an expression within the meaning of Article 27 (2) of the Constitution.

13. In this respect, the complainant agrees with a view of the Supreme Court that the publicly available profiles on social networking sites have the character of mass communication means. However, the complainant sees no reason why any presentation of political beliefs through the Internet should be protected less than for example his views presented in a television broadcast from the Chamber of Deputies or through direct audio-visual transmission of any session, available on the website of the Chamber of Deputies. Therefore, there is no reasonable ground for a different protection of certain means of communication when they have basically comparable impact.

14. The complainant therefore expressed his opinion and did so in the Chamber of Deputies in connection with the exercise of deputy's mandate. That speech should therefore be subject to the protection under Article 27 (2) of the Constitution as well as the protection under Article 17 of the Charter. The complainant is aware that the freedom of speech may be limited, in accordance with Article 17 (2) of the Charter, by law, however, in the case of deputies and senators the freedom of expression must be understood in a broader sense with regard to the protection provided for under Article 27 of the Constitution. The immunity of deputies is thus any kind of deviation from the general principle of equality before the law, the purpose of which is to guarantee the freedom of speech of deputies and senators in the exercise of their mandate. This freedom is an essential guarantee of the independence of parliament in a democratic society, and as such is superior to the interest of the state in prosecuting any conduct for which a person who does not exercise the mandate of a deputy or senator could be punishable by law.

15. The Supreme Court, being a party to the proceedings, in its response to the constitutional complaint, referred to the reasoning of the contested decision in its entirety.

16. At the request of the Constitutional Court on the constitutional complaint, the President of the Chamber of Deputies of the Parliament of the Czech Republic commented on the constitutional complaint. He stated that also deputies were also involved in the discussion about the interpretation of Article 27 (2) of the Constitution submitted by the Supreme Court in its earlier decisions, but only through the mass media not at the official meeting of the Chamber of Deputies. Any resolution has not been adopted as for this issue. The President of the Chamber of Deputies mentioned that the Chamber of Deputies is not a party to the proceedings or an intervener and the interpretation of legislation does not fall within its competences, and the presidents of the chambers of Parliament are not entitled to form their own will separately and may only communicate the factual and undisputed circumstances. Consequently, the President of the Chamber of Deputies does not feel entitled to any further comment.

17. At the request of the Constitutional Court, the President of the Senate of the Parliament of the Czech Republic also stated that it is not a party to the proceedings or an intervener and the interpretation of legislation does not fall within its competences. In his statement, he confined himself to the information known from the activities of the Senate. He noted that in response to the decision of the Supreme Court concerning the indemnity a group of senators submitted a proposed amendment to the Criminal Procedure Code (see the Document of Senate No. 157, 9th term of office) in August 2013 to be discussed. The proposed amendment should amend Section 10 of the Criminal Procedure Code by adding in the provision the interpretation of the term of "speech" of a deputy or senator made in the chambers of the Parliament of the Czech Republic and its bodies and the list of those bodies where the expression is protected by the indemnity. That change was to achieve a narrowing of an excessively broad definition of speeches protected by the indemnity. Due to differences of opinion on the extent of

indemnity, however, the proposed amendment to Section 10 of the Criminal Procedure Code has not been passed.

18. Given that the statement of the Chamber of Deputies and the Senate of the Czech Republic did not contain any substantive arguments, the Constitutional Court did not consider it necessary due to efficiency purposes to send the statements of the chambers of the Parliament of the Czech Republic to the complainant for his reply.

III. Assessment by the Constitutional Court

19. Before the Constitutional Court proceeds to the subject-matter assessment of the constitutional complaint, it shall investigate whether the petition fulfils all the requirements prescribed by law and whether the conditions of discussing the constitutional complaint laid down by the Constitution and Act No. 182/1993 Coll., on the Constitutional Court (hereinafter referred to as the "Act on the Constitutional Court"), are given.

20. According to the settled case-law of the Constitutional Court, the defining feature of the term of constitutional complaint under Article 87 (1) (d) of the Constitution and Section 72 (1) (a) of the Act on the Constitutional Court, any interference by a public authority with the constitutionally guaranteed fundamental rights and freedoms of individuals [cf. the resolution, file No. IV. ÚS 352/03, of 27 January 2005 (U 2/36 of the Collection of Judgments of the Constitutional Court 751) or the resolution, file No. I. ÚS 115/14, of 7 February 2014]. The above-mentioned implies that only such entity (a natural or legal person) has the *locus standi* to file a constitutional complaint who has the capacity to hold fundamental rights and freedoms (cf. the opinion of the Plenum of the Constitutional Court, file No. Pl. ÚS-st. 9/99, of 9 November 1999, ST 9/16 of the Collection of Judgments of the Constitutional Court 372). In the present case, the complainant has been criminally prosecuted, which can potentially result in an interference with the fundamental rights of the complainant as a natural person. Therefore, this definition attribute of the constitutional complaint is complied with.

21. The Constitutional Court thus concluded that the constitutional complaint filed is a proposal the Constitutional Court is competent to discuss and meets all the requirements laid down by the Constitution and the Act on the Constitutional Court and that it has been filed in a timely manner. Therefore, the Constitutional Court proceeded to the review of the petition on the merits.

1. General principles

22. The indemnity and immunity of deputies and senators are enshrined in Article 27 of the Constitution. The first paragraph of Article 27 of the Constitution provides that "There shall be no legal recourse against deputies or senators for their votes in the Chamber of Deputies or Senate respectively, or in the bodies thereof." This paragraph therefore establishes the full indemnity (impunity) of deputies and senators, which is substantive in nature. It is a substantive exemption, which excludes any penalty, be it criminal, disciplinary or administrative, for their voting. In other words, the vote of deputies and senators in their chambers and their bodies is not a criminal offence, administrative offence or disciplinary offence.

23. The second paragraph of Article 27 of the Constitution lays down that "deputies and senators may not be criminally prosecuted for speeches in the Chamber of Deputies or the Senate respectively, or in the bodies thereof", nevertheless "deputies and senators are subject only to the disciplinary authority of the chamber of which they are a member". It follows that deputies and senators enjoy indemnity against criminal liability for their speeches in their chambers and their bodies, but not any disciplinary indemnity. The indemnity against criminal liability has again a nature of substantive exemption from the scope of criminal law and, therefore, any speech of a deputy or senator in the respective chamber and their bodies shall not be subject to criminal prosecution. Based on the argument *a maiori ad minus*, any speech of a deputy or senator in the respective chamber and its bodies can be any kind of administrative offence either (in accordance with BAHÝĽOVÁ, L. et al., Ústava České republiky: komentář (*Constitution of the Czech Republic: Commentary*.), Prague: Linde, 2010, p. 395; KYSELA, J. K úvaze o rozšíření rozsahu poslanecké imunity. Parlamentní privilegia, rovnost před zákonem a role

soudů *(On Consideration of Extending the Scope of Parliamentary Immunity. Parliamentary Privileges, Equality before Law and the Role of Courts)*. Právní rozhledy, 2013, No. 11, p. 392-397, p. 395; RYCHETSKÝ, P. et al. Ústava České republiky (1/1993 Sb.) - Komentář (*The Constitution of the Czech Republic (No. 1/1993 Coll.) - Commentary.*), Prague: Wolters Kluwer, 2015, p. 296, Item 24; SLÁDEČEK, V., MIKULE, V., SYLLOVÁ, J. Ústava České republiky: komentář (*The Constitution of the Czech Republic*: *Commentary*.), Prague: C. H. Beck, 2007, p. 220). Any deputy or senator may not therefore be criminally prosecuted or be subject to administrative proceedings for any of their speeches in the respective chamber and their bodies, however the chamber which the deputy or senator is a member of may initiate administrative proceedings against the deputy or senator and subsequently impose any disciplinary measure upon them. The criminal and administrative responsibilities of deputies and senators shall thus be replaced by a specific disciplinary responsibility in relation to the relevant chamber. In this context, the Constitutional Court adds that on whether Article 27 (2) of the Constitution excludes also civil actions against deputies for his speeches made in the Chamber of Deputies or bodies thereof the Constitutional Court does not comment in this case because the answer to that question is not necessary in the present case.

24. The third paragraph of Article 27 of the Constitution provides that "in respect of administrative offences, deputies and senators are subject only to the disciplinary authority of the chamber of which they are a member, unless a statute provides otherwise." The relevant legislation in this case is Act No. 200/1990 Coll., on administrative offences, as amended by Act No. 78/2002 Coll., which provides in Section 9 (3) that "this Act shall apply to the proceedings concerning administrative offences committed by deputies and senators, unless they require a competent body to hear the administrative offence in disciplinary proceedings under the special legislation". Section 9 (3) of the Act on Administrative Offences, in conjunction with the express consent under Article 27 (4) of the Constitution, gives deputies and senators choice whether they want to their offence to be considered in the "standard" administrative proceedings before administrative authorities or in the disciplinary proceedings conducted by "their" chamber of the Parliament of which they are a member (for the consequences of this choice, cf. the resolution, file No. Pl. ÚS 17/14, of 13 January 2015). It is therefore neither the substantive administrative offence indemnity nor the automatically occurring procedural immunity from liability for administrative offences, but "only" the ability of deputies and senators to use the procedural administrative offence immunity.

25. The fourth paragraph of Article 27 of the Constitution provides that "deputies and senators are subject only to the disciplinary authority of the chamber of which they are a member", and "if that chamber withholds its consent, such criminal prosecution shall be forever foreclosed". This paragraph thus provides the immunity from criminal liability which is procedural in nature. It is procedural exemption (immunity from prosecution) which excludes only criminal prosecution. Article 27 (4) of the Constitution (as amended by Constitutional Act No. 98/2013 Coll.), only allows suspending the criminal prosecution of a deputy or senator until she/he finishes his/his mandate. The fourth paragraph of Article 27 of the Constitution, therefore, as opposed to the first and third paragraphs, does not provide that something is not a criminal offence, nor does it preclude prosecution in the future, but only allows for a certain period of time preventing the criminal prosecution of a deputy or senator.

26. The fifth paragraph of Article 27 of the Constitution then lays down the conditions for arresting a deputy or senator and the following procedure and the time limits within which the concerned chamber of the Parliament of the Czech Republic shall decide finally on the permissibility of prosecution. Given that the present case does not raise any questions regarding the interpretation of Article 27 (5) of the Constitution, it is not necessary to deal with the interpretation of this paragraph any further.

27. This case concerns the interpretation of the second paragraph of Article 27 of the Constitution, however, the whole article should be viewed in its entirety and observed on a system basis. The system background of Article 27 of the Constitution, for example, implies that the phrase "in the Chamber of Deputies or the Senate" must have the same meaning for the first and second paragraphs of Article 27 of the Constitution. The system background of that article also implies that the fourth paragraph of Article 27 of the Constitution only applies to the acts that can be classified neither as "voting" within

the meaning of the first paragraph of Article 27 of the Constitution nor as a "speech" within the meaning of the second paragraph of Article 27 of the Constitution. Likewise, the fact that the Constitutional Court did not allow the judicial review as for the disciplinary jurisdiction of a chamber of the Parliament in the case of administrative offences under Article 27 (3) of the Constitution (see the resolution, file No. Pl. ÚS 17/14, of 13 January 2015) has consequences even for the interpretation of the second sentence of Article 27 (2) of the Constitution.

28. Article 27 of the Constitution should also be construed with regard to any other relevant provisions of the constitutional order, particularly with regard to Article 28 of the Constitution, which gives deputies and senators the right to withhold testimony about facts they have learned in connection with the exercise of their mandate, to Article 10b (3), Article 30, Article 31 (1), and Article 64 (1) of the Constitution mentioning the bodies of the two chambers of the Parliament, Article 54 (3) in conjunction with Article 65 (1) of the Constitution providing the unaccountability of the President of the Czech Republic and his/her absolute indemnity for the term of his/her office, and Article 17 of the Charter defining the freedom of speech (in accordance with BARTOŇ, M. Rozlišení projevu od jiného jednání v kontextu dogmatiky svobody projevu (*Dividing Line between the Expression and other Conduct in the Context of Dogmatics of the Freedom of Expression*). Právní rozhledy, 2014, Vol. 22, No. 9, p. 317-325, p. 324).

29. A number of following principles shall apply to all forms of the immunity and indemnity of deputies and senators. In the following text, the Constitutional Court distinguishes the concepts of immunity (procedural exemption) and indemnity (substantive exemption) to avoid confusing the two institutions which are close to each other, while being subject to somewhat different principles (cf. Report on the Scope and Lifting of the Parliamentary Immunities of the European Commission for Democracy through Law (Venice Commission), of 14 May 2014, CDL-AD(2014)011, Sections 9 to 15). The term "parliamentary immunity" is then used to designate both forms of exemption. If the Constitutional Court also uses the term of deputies' immunity or indemnity, the respective conclusions also apply to the immunity and indemnity of senators the scope of which is identical in the Czech constitutional order.

30. The basic idea underlying the parliamentary immunity is to provide the elected representatives of the people with some assurance allowing the representatives to exercise effectively their democratic mandate, without having the fear of being persecuted for their conduct, harassed or victimised by the executive power, the judiciary or political opponents (Report on the Scope and Lifting of Parliamentary Immunities of the Venice Commission of 14 May 2014, CDL-AD(2014)011, Sections 7 and 22). This applies to both basic models of parliamentary immunity, i.e. the English model which focuses primarily on the immunity (freedom of arrest) and provides only a limited indemnity (freedom of speech) and the French model which underlies most of the continental constitutions, including the Constitution of the Czech Republic, which conceives the parliamentary immunity on broader terms and provides the members of the Parliament with protection not only for the purpose of ensuring the freedom of expression (indemnity) but also protects them from prosecution (immunity) for any acts not within the exercise of the mandate (Report on the Scope and Lifting of Parliamentary Immunities of the Venice Commission of 14 May 2014 CDL-AD(2014)011, Sections 16 to 21; SLÁDEČEK, V., MIKULE, V., SYLLOVÁ, J. Ústava České republiky: komentář (*Constitution of the Czech Republic: Commentary*). Prague: C. H. Beck, 2007, p. 217; BAHÝĽOVÁ, L. et al., Ústava České republiky: komentář (*Constitution of the Czech Republic: Commentary*.), Prague: Linde, 2010, p. 393).

31. The parliamentary immunity has two basic functions - it ensures that the Parliament is ready for its duties and guarantees for its members the opportunity to express freely their opinions. This dual purpose of parliamentary immunity is also accepted by the European Court of Human Rights which has repeatedly stated that the parliamentary immunity pursues a "legitimate objective of protecting the freedom of speech in the Parliament and maintaining the separation of powers between the legislative and judicial power" (the judgment of the ECtHR in the case of A. versus the United Kingdom, of 17 December 2002, No. 35373/97, Section 77; and the judgment of the Grand Chamber of the ECtHR in the case of Kart versus Turkey, of 3 December 2009, No. 8917/05, Section 97). As regards the protection of freedom of speech, its main purpose consists in the fact that an elected representative of the people

does not have to worry about being punished by those in power for what he/she says unpleasant to them (KYSELA J. Glosa k výkladu čl. 27 Ústavy Nejvyšším soudem (*Comment on the Interpretation of Article 27 of the Constitution by the Supreme Court*). Státní zastupitelství, 2013, No. 5, p. 27-31, p. 29). As already stated by Václav Bouček in 1938, "the immunity can only be justified by the need of the deputy to vote according to his/her conscience and to castigate any misdeed without fear for his/her personal freedom" (BOUČEK V. O poslanecké imunitě (*About the Parliamentary Immunity*). Soudcovské listy. 1938, vol. 19., p. 126-129, p. 128). The need for such privileges is undeniable due to the Czech historical experience. For this reason, the Czech constitution forming body provided the freedom of speech of members of the Parliament with increased protection (indemnity against criminal liability within the meaning of Article 27 (2) of the Constitution) compared to their other activities ("only" immunity from criminal liability within the meaning of Article 27 (4) and (5) of the Constitution). Maintaining the separation of powers protects the autonomy of the Parliament and the parliamentary opposition, which prevents and strengthens the democracy and democratic state which constitute the core of the Czech constitutionality (Article 1 (1) and Article 9 (2) of the Constitution) and the system of protection of fundamental rights built on the Convention on the Protection Human Rights and Fundamental Freedoms (hereinafter also referred to as the "Convention" or "ECHR"; cf. the judgment of the Grand Chamber of the ECtHR in the case of Kart against Turkey, of 3 December 2009, No. 8917/05, Section 81; the resolution, file No. Pl. ÚS 21/12, of 16 October 2012, Item 15; and the resolution, file No. Pl. ÚS 2632/12, of 17 September 2012).

32. The parliamentary immunity belongs to the Parliament as a whole, not to its members (the resolution, file No. Pl. ÚS 21/12, of 16 October 2012, Item 15). The explanatory memorandum on the Constitution in this regard expressly states that "in any case, it is not about the personal immunity from prosecution or civil irresponsibility of deputies as their personal privilege". The parliamentary immunity protects its members so that they could freely and fully and in accordance with its promise carry out their mandate only for the purpose of effective functioning of the Parliament as the representative of the people, not as a personal privilege of deputies (Report on the Scope and Lifting of Parliamentary Immunities of the Venice Commission, of 14 May 2014, CDL-AD(2014)011, Section 22; (the judgment of the ECtHR in the case of A. versus the United Kingdom of 17 December 2002. No. 35373/97, Section 85; and the judgment of the Grand Chamber of the ECtHR in the case of Kart versus Turkey, of 3 December 2009, No. 8917/05, Section 97). The whole Czech doctrine agrees with this view (cf. e.g. RYCHETSKÝ, P. et al. Ústava České republiky (1/1993 Sb.) - Komentář (*The Constitution of the Czech Republic (No. 1/1993 Coll.) - Commentary.*), Prague: Wolters Kluwer, 2015, p. 290, Item 1; ŠIMÍČEK, V. Imunita jako ústavněprávní problém (*Immunity as Constitutional Issue*). Časopis pro právní vědu a praxi, 1996, Vol. 1, p. 41-52, p. 51; or BAHÝĽOVÁ, L. et al., Ústava České republiky: komentář (*Constitution of the Czech Republic: Comment*.), Prague: Linde, 2010, p. 392). This institutional nature of the parliamentary immunity also implies that deputies and senators cannot waive their immunity themselves (if not explicitly allowed by the constitutional arrangement, as in Switzerland, Poland or the United Kingdom; cf. the judgment of the Grand Chamber of the ECtHR in the case of Kart versus Turkey, of 3 December 2009, No. 8917/05, Section 52; and the Report on the Scope and Lifting of Parliamentary Immunities of the Venice Commission of 14 May 2014, CDL-AD(2014)011, Section 75), and ultimately they might be unable to "clear his name" in the criminal proceedings and be denied the right of access to the court (as it has been accepted also by the European Court of Human Rights in the judgment of the ECHR Grand Chamber in the case of Kart versus Turkey, of 3 December 2009, No. 8917/05, Sections 98 and 111; and the judgment of the ECtHR in the case of A. versus the United Kingdom, of 17 December 2002, No. 35373/97, Section 77).

33. The parliamentary immunity forms an exception to the principle of equality before law, being one of the fundamental principles of the rule of law [the judgment, file No. I. ÚS 420/09, of 3 June 2009 (N 131/53 of the Collection of Judgments of the Constitutional Court 647), Item 20; in accordance with RYCHETSKÝ, P. et al. Ústava České republiky (1/1993 Sb.) - Komentář (*The Constitution of the Czech Republic (No. 1/1993 Coll.) - Commentary.*), Prague: Wolters Kluwer, 2015, p. 290, Item 1; KYSELA J. Glosa k výkladu čl. 27 Ústavy Nejvyšším soudem. (*Comment on the Interpretation of Article 27 of the Constitution by the Supreme Court*). Státní zastupitelství, 2013, No. 5, p. 27-31, p. 29); SLÁDEČEK, V., MIKULE, V., SYLLOVÁ, J. Ústava České republiky: komentář (*Constitution of the Czech*

Republic: Commentary). Prague: C. H. Beck, 2007, p. 218.] However, the parliamentary immunity also guarantees the freedom of debate in the Parliament, that is the highest forum for discussion, and the implementation of the will of the people through elected representatives, which is an integral part of democracy (in accordance with KUDRNA, J. K rozšíření rozsahu poslanecké imunity (*On the Extension of the Scope of Deputies' Immunity*). Právní rozhledy, 2013, No. 4, p. 131-136, p. 134). There is a tension within the parliamentary immunity between two basic principles of the Constitution, which light up the whole legal system, between the democratic state and the rule of law (cf. Article 1 (1) of the Constitution in conjunction with Article 9 (2) of the Constitution). None of these principles can, according to the Constitution as amended, completely prevail over the other and, therefore, it is necessary to find a reasonable balance between them.

34. From a comparative perspective it can be noted that most member countries of the Council of Europe lay down in their constitutions both the indemnity (non-liability, freedom of speech, irresponsabilité, Indemnität) and the immunity (inviolability, freedom of arrest, inviolabilité, Immunität). However, there is no consensus among the member countries of the Council of Europe as regards the scope or concept of the parliamentary immunity (Report on the Scope and Lifting of Parliamentary Immunities of the Venice Commission of 14 May 2014, CDL-AD(2014)011, Sections 8 to 9). They differ in the personal scope, temporal scope, as well as the scope of protected conduct. This applies to both immunity and indemnity. For this reason, according to ECtHR, the parties to the Convention when setting up parliamentary immunity have broad discretion (the judgment of the Grand Chamber of the ECtHR in the case of Kart versus Turkey, of 3 December 2009, No. 8917/05, Section 82; the judgment of the ECtHR in the case of Karácsony and others versus Hungary, of 16 September 2014, No. 42461/13, Section 45). Also the Constitutional Court agrees with this opinion (the resolution, file No. Pl. ÚS 17/14, of 13 January 2015, Item 68). As regards the indemnity the interpretation of which is the subject of these proceedings, three basic concepts have developed in Europe: (1) The absolute indemnity (unconditional non-liability) which includes all forms of speech made in connection with the exercise of the mandate and is not expressly limited in terms of scope and the concerned member of parliament may not waive it; (2) the limited indemnity (non-liability limited by law) which expressly excludes certain criminal offences from the scope of indemnity (such as defamation or a racially motivated conduct); and (3) the revocable indemnity (non-liability that may be lifted) which may be revoked by the parliament. (Report on the Scope and Lifting of Parliamentary Immunities of the Venice Commission, of 14 May 2014, CDL-AD(2014)011, Section 76).

35. The previous case-law of the Constitutional Court concerning the interpretation of Article 27 of the Constitution has only the form of resolutions which do not have so strong precedent effects and, in addition, focuses primarily on the interpretation of immunity from liability for administrative offences in the third paragraph of this article (the resolution, file No. Pl. ÚS 17/14, of 13 January 2015) and the immunity from criminal liability as enshrined in the fourth and fifth paragraphs (cf. e.g. the resolution, file No. Pl. ÚS 21/12, of 16 October 2012; the resolution, file No. Pl. ÚS 2632/12, of 17 September 2012; the resolution, file No. Pl. ÚS 2135/13, of 16 July 2013), not on the interpretation of indemnity against criminal liability under the second paragraph. Nevertheless, it is necessary to take into account the principles formulated in particular in the above-mentioned plenary resolutions.

36. The case-law of the European Court of Human Rights in generally considers neither indemnity (the judgment of the ECtHR in the case of A. versus the United Kingdom, of 17 December 2002, No. 35373/97, especially Sections 77 and 83) nor immunity (the judgment of the Grand Chamber of the ECtHR in the case of Kart versus Turkey, of 3 December 2009. No. 8917/05, especially Sections 85 and 90) *a priori* as non-conforming with the right of access to the court within the meaning of Article 6 of the Convention or other substantive rights guaranteed by the Convention and its Protocols (cf. A. versus the United Kingdom, of 17 December 2002, No. 35373/97, Section 88; and Kart versus Turkey, of 3 December 2009, No. 8917/05, Sections 112 to 114). However, the European Court of Human Rights has also repeatedly held that the indemnity must not go beyond what is necessary to protect the democratic functions of parliament and must not relate to private meetings and speeches of deputies [the judgment of the ECtHR in the case of Cordova versus Italy (No. 1), of 30 January 2003, No. 40877/98, Sections 62 to 63; the judgment of the ECtHR in the case of Cordova versus Italy (No. 2), of 30 January

2003, No. 45649/99, Sections 63 to 64; the judgment of the ECtHR in the case of De Jori versus Italy, of 3 June 2004, No. 73936/01, Sections 53 to 54; and the judgment of the Grand Chamber of the ECtHR in the case of Kart versus Turkey, of 3 December 2009, No. 8917/05, Section 83]. The case-law of the ECtHR therefore follows that the indemnity is compatible with the Convention only if such speech is protected, which is connected with the exercise of the mandate.

37. The current literature [cf. e.g. KRENC, F. La regle de l'immunité parlementaire a l'épreuve de la Convention européenne des droits de l'homme. Revue trimestrielle de droits de l'homme, 2003, No. 55, p. 813-821; WIGLEY, S. Parliamentary Immunity: Protecting Democracy or Protecting Corruption? The Journal of Political Philosophy, 2003, Vol. 11, No. 1, p. 23-40; MAINGOT, J., DEHLER, D. Politicians Above the Law. The case for the abolition of parliamentary inviolability. Canadian Parliamentary Review, 2010, Vol. 34, Issue 2, p. 49-51; STEELE, J. Immunity of Parliamentary Statements. Nottingham Law Journal, 2012, Vol. 21, p. 43-53; MEHTA, R. S. Sir Thomas' Blushes: Protecting Parliamentary Immunity in Modern Parliamentary Democracies. European Human Rights Law Review, 2012, Vol. 3, p. 309-318; and HARDT, S. Parliamentary Immunity. A Comprehensive Study of the Systems of Parliamentary Immunity in the United Kingdom, France, and the Netherlands in a European Context. Cambridge, Antwerp, Portland: Intersentia, 2013] and documents of some international organisations (the so-called soft law; as to those documents, see the Report on the Scope and Lifting of Parliamentary Immunities of the Venice Commission, of 14 May 2014, CDL-AD(2014)011, Sections 42 to 50) criticise an excessively broad parliamentary immunity in some countries. However, this criticism is directed primarily against a broad immunity, the indemnity continues to be considered a legitimate part of national constitutions. Four basic arguments speaks for its preservation: (1) The parliamentary freedom of speech is so fundamental that it enjoys protection greater than the standard provided by Article 17 of the Charter and Article 10 of the Convention; (2) the purpose of indemnity is to protect the democratic functioning of the Parliament, rather than individuals, justifying thus a standard of protection higher than the freedom of speech afforded within the meaning of Article 17 of the Charter and Article 10 of the Convention, which is an individual right; (3) the indemnity of deputies is able to provide more effective protection than the individual right to the freedom of speech; and (4) Article 17 of the Charter or Article 10 of the Convention does not protect deputies against the commencement of criminal prosecution, which itself can have a deterrent effect on the freedom of deputies to express their views and exercise their mandate in accordance with the will of their electors (cf. by analogy the Report on the Scope and Lifting of Parliamentary Immunities of the Venice Commission of 14 May 2014, CDL-AD(2014)011, Sections 84 to 89 and Section 198). These four arguments imply that the indemnity is still necessary despite the fact that the Charter and the Convention guarantees the right of deputies and senators to the freedom of speech.

38. The Constitutional Court also points out that the consequence of indemnity under Article 27 (1) and (2) of the Constitution is the substantive exemption from the scope of criminal law. Therefore, a narrow interpretation of the term of "speech" within the meaning of Article 27 (2) of the Constitution as only any speech that is not a criminal offence or as speech that is merely the "proper" exercise of the mandate is a logical nonsense because Article 27 (2) has been included in the Constitution in order to protect the speeches that would otherwise be a criminal offence (e.g. a criminal offence of defamation, a threat of disclosure of confidential information or an incitement to hatred against a group of persons or limitation of their rights and freedoms) and which are by nature only an "improper", i.e. unlawful, exercise of the mandate (KRATOCHVÍL, V. Ústavní exempce, indemnita, imunita: Jak s nimi zacházet v trestním procesu? (*Constitutional Exemption, Indemnity and Immunity: How to Deal with them in Criminal Trial?*). Právní rozhledy, 2013, No. 19, p. 655-660, p. 660). In this respect (and not generally, see Item 34 of this judgment), a comparative argument can be used as an auxiliary method of interpretation. The Czech regulation of indemnity for the speech under Article 27 (2) of the Constitution, contrary to a number of foreign regulations, does not contain a negative definition which excludes for example defamatory libel from the scope of indemnity (cf. the second sentence of Article 46 (1) of the German Basic Law: "Dies gilt nicht für verleumderische Beleidigungen"; as to this, see RYCHETSKÝ, P. et al. Ústava České republiky (1/1993 Sb.) - Komentář (*The Constitution of the Czech Republic (No. 1/1993 Coll.) - Commentary.*), Prague: Wolters Kluwer, 2015, p. 296, Item 16, or more generally, Report on the Scope and Lifting of Parliamentary Immunities of the Venice Commission of 14 May 2014 CDL-

AD(2014)011, Section 69, No. 21) and the so-called "hate speech" (see the Report on the Scope and Lifting of the Parliamentary Immunities of the Venice Commission of 14 May 2014, CDL-AD(2014)011, Section 69). It follows that the Constitutional Court cannot classify these limitations of indemnity, considered when the Constitution was drawn up, under Article 27 (2) of the Constitution based on its case-law. If these substantive limitation of indemnity applicable to the speech were to be part of the Czech constitutional order, the constitution forming body would have to enshrine them in it.

2. Application of general principles to the present case
39. The present case raises three fundamental questions concerning the interpretation of Article 27 (2) of the Constitution: (1) What is meant by the "speech" protected by this Article; (2) where are such speeches protected (i.e. "Protected Fora"); and (3) is only the speech made in connection with the exercise of one's mandate protected.

(a) What does the "speech" mean within the meaning of Article 27 (2) of the Constitution?
40. The Constitutional Court has not yet had an opportunity to comment on the term of "speech" within the meaning of Article 27 (2) of the Constitution. Doctrinal views are markedly different at the same time. Some authors plead for a narrow concept of speech, which would include primarily the speeches of the speakers at the meetings of the Chamber of Deputies and the Senate, or in their bodies, and also consider the inclusion of written statements under the term of "speech" within the meaning of Article 27 (2) of the Constitution as a broad interpretation (KYSELA J. Glosa k výkladu čl. 27 Ústavy Nejvyšším soudem. (*Comment on the Construction of Article 27 of the Constitution by the Supreme Court*). Public Prosecutor's Office, 2013, No. 5, p. 27-31, p. 29). On the contrary, some commentators have interpreted the term of speech in a broad sense as any "manifestation of will" of a deputy or senator, that is as his or her "conduct" in a legal or criminal sense (cf. KRATOCHVÍL, V. Ústavní exempce, indemnita, imunita: Jak s nimi zacházet v trestním procesu? (*Constitutional Exemption, Indemnity and Immunity: How to Deal with them in Criminal Trial?*). Právní rozhledy, 2013, No. 19, p. 655-660, p. 656; or KUDRNA, J. K rozšíření rozsahu poslanecké imunity (*On the Extension of the Scope of Deputies' Immunity*). Právní rozhledy, 2013, No. 4, p. 131-136, p. 134-135). These views seem to suggest that a protected speech could also be a theft of a laptop during a break, physical assaults with consequences for the health or life of other deputies (KRATOCHVÍL, V. Ústavní exempce, indemnita, imunita: Jak s nimi zacházet v trestním procesu? (*Constitutional Exemption, Indemnity and Immunity: How to Deal with them in Criminal Trial?*). Právní rozhledy, 2013, No. 19, p. 655-660, p. 660), or even the shooting of an opposition deputy from the lectern (KRATOCHVÍL, V. Ústavní exempce, indemnita, imunita: Jak s nimi zacházet v trestním procesu? (*Constitutional Exemption, Indemnity and Immunity: How to Deal with them in Criminal Trial?*). Právní rozhledy, 2013, No. 19, p. 655-660, p. 658). Between these two antipodes, there are authors who infer in particular with reference to the explanatory memorandum to the Constitution that the term of speech within the meaning of Article 27 (2) of the Constitution includes not only verbal presentations, but also written statements and non-verbal expressions, however, they must always be a manifestation expressing an opinion or position of a deputy or senator (PAVLÍČEK, V. Ústava a ústavní řád České republiky: komentář (*Constitution and Constitutional Order of the Czech Republic: Commentary*). Vol. 1. 2nd edition. Prague: Linde, 1998, p. 151; BAHÝĽOVÁ, L. et al., Ústava České republiky: komentář (*Constitution of the Czech Republic: Commentary*.), Prague: Linde, 2010, p. 394; RYCHETSKÝ, P. et al. Ústava České republiky (1/1993 Sb.) - Komentář (*The Constitution of the Czech Republic (No. 1/1993 Coll.) - Commentary.*), Prague: Wolters Kluwer, 2015, p. 294, Items 18 to 19; KLÍMA, K. Komentář k Ústavě a Listině. (*Commentary on the Constitution and the Charter*). Vol. 1. 2nd edition. Plzeň: Aleš Čeněk, 2009. p. 282). Therefore, most authors do not regard any speech as a "conduct" in the legal or criminal sense. The definition of speech expressly excludes e.g. physical attacks (PAVLÍČEK, V. Ústava a ústavní řád České republiky: komentář (*Constitution and Constitutional Order of the Czech Republic: Commentary*). Vol. 1. 2nd edition. Prague: Linde, 1998, p. 151) or the acceptance of a bribe (ŠIMÍČEK, V. Imunita jako ústavněprávní problém (*Immunity as Constitutional Issue*). Časopis pro právní vědu a praxi, 1996, Vol. 1, p. 41-52, p. 46; and BARTOŇ, M. Rozlišení projevu od jiného jednání v kontextu dogmatiky svobody projevu *(Dividing Line between the Speech and other Conduct in the Context of Dogmatics of the Freedom of Speech)*. Právní rozhledy, 2014, Vol. 22, No. 9, p. 317-325, p. 324).

41. The Supreme Court in some of its decisions construed the concept term of "speech" within the meaning of Article 27 (2) of the Constitution fairly broadly and classified under it also an offer of loan to other members of a deputies group (the resolution of the Supreme Court, of 10 March 2012, ref. No. 11 Tcu 135/2012-42) or the resignation of a deputy (the resolution of the Supreme Court, of 16 July 2013, ref. No. 3 Tcu 77/2013-65; and the resolution of the Supreme Court, of 16 July 2013, ref. No. 3 Tcu 76/2013-66). In its resolution, ref. No. 3 Tcu 85/2013-126, the Supreme Court stated that a "speech within the meaning of Article 27 (2) of the Constitution is not only an insult uttered during the debate in the Chamber of Deputies or the Senate but any manifestation of will in legal or criminal-law sense, which would be eligible to fulfil the factual elements of a criminal offence". The Supreme Court, however, added in the same resolution that "this does not mean that any speeches under the cited article of the Constitution could be considered acts of proving that it is obviously not part of the exercise of one's mandate (e.g. any conduct made in the Parliament which would be directed against the dignity, property, health or life of another, etc.)" (cf. also the resolution, of 25 June 2014, ref. No. 3 Tcu 33/2014-26, contested by the constitutional complaint, which is paraphrased in Items 6 to 7 of this judgment). By means of this emphasis on the connection with the exercise of mandate (which is perceived by the Supreme Court somewhat differently than by the Constitutional Court; cf. Items 63 to 71 of this judgment), the Supreme Court has somewhat moderated its broad interpretation of the term of "speech" in its latest case-law. In summary, the Supreme Court has classified under the term of "speech" within the meaning of Article 27 (2) of the Constitution also the manifestations of will associated with the exercise of deputy's or senator's mandate.

42. The Constitutional Court notes that in connection with the interpretation of the term "speech" within the meaning of Article 27 (2) of the Constitution two separate issues of interpretation, as to both the form and the content of any speech. We will also deal with them further in this order.

(i) Permissible forms of "speech"
43. The "speech" within the meaning of Article 27 (2) of the Constitution according to the explanatory memorandum to the Constitution means "not only statements but also gestures, written submissions, proposals, and other manifestations of will". For this reason, the constitution forming body has chosen the term "speech" as a term broader than the "statement", as used in Section 23 of the Constitution of Czechoslovakia from 1920 (see SLÁDEČEK, V., MIKULE, V., SYLLOVÁ, J. Ústava České republiky: komentář (*The Constitution of the Czech Republic*: *Commentary*.), Prague: C. H. Beck, 2007, p. 221), by which the Czech constitution forming body was greatly inspired. As emphasised above, the purpose of indemnity is to maintain a free and an open exchange of views at the highest debate forum in the country, to keep the autonomy of Parliament, and to protect the opposition (see Item 31 of this judgment). With regard to the meaning of indemnity, there is no reason to protect the verbal outputs of speakers. On the other hand, any form of speech that contributes to the debate in the Parliament, whether verbal, written or verbal, fulfils the function of indemnity. Likewise, the term of "speech" protected by the freedom of speech as enshrined in Article 17 of the Constitution includes not only a verbal expression but also a written statement, visual expression, and other ways to express opinions (Article 17 (2) in conjunction with Article 17 (1) of the Charter).

44. However, neither the text of Article 27 (2) of the Constitution nor the intention of the Czech constitution forming body nor a systematic argument implies that any conduct, i.e. any outward manifestation of the will, is a "speech" within the meaning of Article 27 (2) of the Constitution. The phrase "other manifestations of will" in the relevant section of the explanatory memorandum to the Constitution which reads "the expression means not only statements but also gestures, written submissions, proposals, and other manifestations of will" must be deemed, with respect to the interpretation principle of *noscitur a sociis* according to which the questionable meaning of a doubtful word can be derived from its association with other words, manifestations of will of the same kind (*ejusdem generis*) as the forms of speeches specifically enumerated therein, i.e. manifestations of the same kind such as the "statements, gestures, written submissions, and proposals". The common denominator of "statements, gestures, written submissions and proposals" is that it is the communication of information (i.e. the presentation of facts or factual statements) or of an opinion (which usually includes an assessment, a judgment, a consideration or an idea). It corresponds to the functional concept

of indemnity which is based primarily on the freedom of speech - apart from the immunity where the need to preserve the autonomy of parliament and the separation of powers is emphasised as the reason for it to be enshrined (see Item 31 of this judgment). In a systematic point of view, it must also be noted that the term of "speech" is used in the whole Constitution and the Charter precisely and only in those two articles. The Charter has been taken (except the "introductory" Constitutional Act No. 23/1991 Coll.) from the time of the Czech and Slovak Federal Republic and, therefore, if the constitution forming body wanted to include any manifestation of will in the indemnity under Article 27 (2) of the Constitution and to distinguish thus its scope from the scope of the freedom of speech under Article 17 of the Charter, it could use the word "conduct". The Constitutional Court also notes that the comparison of the indemnity of deputies and senators of the one part and of the President of the other part speaks against the interpretation of "speech" under Article 27 (2) of the Constitution as including any manifestation of will. The text of the Constitution, the explanatory memorandum to the Constitution, and a historical position of the President within the Czech and Czechoslovak statehood show that the constitution forming body did not intend to make deputies and senators irresponsible for essentially anything made by them in the Chamber of Deputies, the Senate, and their bodies (*a contrario* Article 54 (3) in conjunction with Article 65 (1) of the Constitution). The above-mentioned arguments therefore follow that in order to interpret the term of "speech" within the meaning of Article 27 (2) of the Constitution, it is necessary to seek guidance on the freedom of speech as guaranteed by Article 17 of the Charter (in accordance with BARTOŇ, M. Rozlišení projevu od jiného jednání v kontextu dogmatiky svobody projevu (*Dividing Line between the Speech and other Conduct in the Context of Dogmatics of the Freedom of Speech*). Právní rozhledy, 2014, vol. 22, No. 9, p. 317-325, p. 324).

45. The Constitutional Court therefore finds that the "speech" within the meaning of Article 27 (2) of the Constitution is the communication of information or expression of an opinion verbally, in writing, visually or in another way. The communication of information and expression of an opinion in "another way" also includes expressive speeches. Any expressive and symbolic speeches are not, therefore, generally excluded from Article 27 (2) of the Constitution, however, their classification must be considered on a case by case basis (cf., by analogy, the judgment of the ECtHR in the case of Szél and others versus Hungary of 16 September 2014, No. 44357/13, Item 67; the judgment of the ECHR in the case of Karácsony and others versus Hungary of 16 September 2014 No. 42461/13, Sections 60, 70, and 72; these judgments have been referred to the Grand Chamber of the ECHR, but the matter at issue is not the definition of the term of "speech"). The "speech" within the meaning of Article 27 (2) of the Constitution thus can be e.g. wearing an embroidery or other symbol on the lapel of a jacket (the judgment of the ECtHR in the case of Vajnai versus Hungary of 8 July 2008, No. 33629/06, Sections 6, 47, and 52 to 53; the judgment of the ECHR in the case of Fratanoló versus Hungary of 3 November 2011, No. 29459/10, Section 24; and the judgment of the ECHR in the case of Donaldson versus the United Kingdom of 25 January 2011, No. 56975/09), painting a sculpture (the judgment of the ECHR in the case of Murat Voral versus Turkey of 21 October 2014, No. 9540/07, Sections 54 to 56), flying a flag (the judgment of the ECHR in the case of Fáber versus Hungary of 24 December 2014, No. 40721/08, Section 36), gestures, grimaces, and banners (the judgment of the ECHR in the case of Szél and others versus Hungary of 16 September 2014 No. 44357/13, Sections 68 and 72; the judgment of the ECHR in the case of Karácsony and others versus Hungary of 16 September 2014 No. 42461/13, Section 71), the use of a hunting horn (the judgment of the Grand Chamber of the ECtHR in the case of Hashman and Harrup versus the United Kingdom of 25 November 1999, No. 25594/94, Section 28) or a megaphone (the judgment of the ECHR in the case of Szél and others against Hungary of 16 September 2014, No. 44357/13, Sections 68 and 72) or collective leaving the assembly room in which a meeting of the Parliament takes place (the judgment of the ECHR in the case of Szél and others against Hungary of 16 September 2014, No. 44357/13, Section 70). When assessing whether any conduct or behaviour is a "speech" within the meaning of Article 10 of the ECHR or not, the ECtHR takes into account the objective criterion (as the given conduct is interpreted by those who see him) and the purpose or intention of the acting person (subjective criterion), while in order to be a "speech" within the meaning of 10 of the ECHR both criteria must be fulfilled [the judgment of the ECtHR in the case of Murat Voral versus Turkey, of 21 October 2014, No. 9540/07, Sections 54-56; by analogy also the decision of the US Supreme Court in the case of Texas versus Johnson, 491 U.S. 397, 404 (1989)].

46. This distinction test shows that the "speech" within the meaning of Article 27 (2) of the Constitution on the contrary does not include e.g. a contract executed between the two natural persons, a physical assault [see also the decision of the German Federal Administrative Court, Beverage 83, 1 (16)], submitting false information in connection with parliamentary refunds [cf. also the decision of the Supreme Court of the United Kingdom in the case of R versus Chayton and others [2010] KUSCH 52 (SC), in particular Item 47 and subsequent], offering a bribe, passive acceptance of a bribe or resignation (in accordance with BARTOŇ, M. Rozlišení projevu od jiného jednání v kontextu dogmatiky svobody projevu (*Dividing Line between the Speech and other Conduct in the Context of Dogmatics of the Freedom of Speech*). Právní rozhledy, 2014, vol. 22, No. 9, p. 317-325, p. 324) or theft of a laptop or shooting an opponent down (in accordance with p. 321 and 324 of the above-mentioned source). Even if these cases fulfil the subjective criterion, the objective criterion would not be fulfilled as such conduct is not perceived primarily by an ordinary observer as the communication of information or expression of an opinion. The generally formulated elements of criminal offences such as a theft or receiving a bribe are not intended to limit the communication of information or expressing opinions and their potential impact on the freedom of speech is utterly minimal, given the importance of public property protected by these elements and a high public interest in the protection of the public property.

47. The above mentioned list of what is meant by "speech" within the meaning of Article 27 (2) of the Constitution or not is merely illustrative. The Constitutional Court does not consider it necessary or possible in this judgment to anticipate and respond to all possible forms of expressive conduct, such as nudism or burning a national flag. The creativity of legislature in this regard is infinite (cf., for example, the expressive speech of Oklahoma Senator James Inhofe in the United States Senate on 27 February 2015 who made clear his opposition to the theories of global warming by bringing into the hall from the outside a snow ball and throwing it during his rhetorical speech among his colleagues; the video of this is available e.g. at http://time.com/3725994/inhofe-snowball-climate/). Likewise, the Constitutional Court does not consider it appropriate to assess, without relation to specific facts, the transferability of more detailed tests to assess the differences between any conduct and speech [such as, e.g., the so-called O'Brien's test under the US Supreme Court decision in the case of United States versus O'Brien, 391 U.S. 367, 376-377 (1968)] into the Czech law. The Constitutional Court merely emphasises that the scope of the term of "speech" in Article. 27 (2) of the Constitution is closely linked with the scope of freedom of speech as enshrined in particular in Article 17 of the Charter and Article 10 of the Convention and interpreted in the case-law of the Constitutional Court and the European Court of Human Rights regarding this fundamental right.

(ii) Permissible content of speech

48. The Constitutional Court notes that the Constitution of the Czech Republic - contrary to many foreign regulations - does not set any limitations concerning the content of speech protected by the indemnity under Article 27 (2) of the Constitution (see Item 38 of this judgment). Article 27 (2) of the Constitution does not contain any condition of the connection between the speech and the exercise of the mandate, even though Section 23 of the Constitution of Czechoslovakia of 1920, by which the creators of the Constitution of the Czech Republic were significantly inspired, expressly provided that the speech must be made "when exercising one's mandate", and in order to activate the indemnity it us required the cumulative fulfilment of the conditions of the protected place and the exercise of the mandate. Thus, the historical argument also sounds clearly. The functional concept of indemnity in this case does seem conclusive as the meaning of indemnity is fulfilled by both possible solutions.

49. The Constitutional Court therefore considers that the indemnity within the meaning of Article 27 (2) of the Constitution protects the freedom of speech regardless of its content. In this context, the Constitutional Court observes that such a speech must meet other conditions set out in Article 27 (2) of the Constitution, i.e. it shall have an permissible form (see Items 43 to 47 of this judgment), it must be made at one of the "protected forums" (see Items 50 to 62 of this judgment below), and must be directly aimed against at least one deputy or senator or a person authorised to attend the parliamentary meeting (see Items 63 to 71 of this judgment below).

(b) Where are the speeches within the meaning of Article 27 (2) of the Constitution protected ("protected forums")?
50. Article 27 (2) of the Constitution protects only the speeches of deputies and senators "made in the Chamber of Deputies or the Senate respectively, or in the bodies thereof". This limitation applies regardless of whether it was a speech made in connection with the exercise of mandate or not. The wording of Article 27 (2) of the Constitution, namely an express local limitation of indemnity, clearly excludes the possibility that the constitution forming body wanted to protect the speeches made by deputies or senators at any place, i.e. outside the Chamber of Deputies or the Senate, even though these are speeches made in connection with the exercise of their mandate. If the constitution forming body intended to do so, it would only set in Article 27 (2) that "no deputies or senators may be criminally prosecuted for their speeches". In addition to the text argument, a broader interpretation is not supported by the fact that in the speeches made outside the Parliament and bodies thereof there is missing one of the main reasons justifying the indemnity, namely maintaining the separation of powers consisting, in particular, in the protection of the autonomy of the Parliament (see Item 31 of the judgment). For this reason, the protection by indemnity within the meaning of Article 27 (2) of the Constitution shall not apply to any speeches of deputies and senators made for example at election rallies or television debates. At such places, the speeches of deputies and senators enjoy "only" enhanced protection of the freedom of speech granted to politicians within the meaning of Article 17 of the Charter and Article 10 of the Convention (cf. the judgment of the Grand Chamber of the ECtHR in the case of Castells versus Spain, of 23 April 1992, No. 11798/85, Section 42; the judgment of the ECtHR in the case of Jerusalem versus Austria, of 27 February 2001, No. 26958/95, Sections 36, and 40; and the judgment of the ECtHR in the case of A. versus the United Kingdom, of 17 December 2002, No. 35373/97, Section 79), rather than a complete substantive exemption from criminal and administrative liability (cf. e.g. the judgment of the ECtHR in the case of Barata Monteiro da Costa Nogueira and Patricio Pereira versus Portugal, of 11 January 2011, No. 4035/08, Section 42).

51. It is therefore necessary to consider whether the speech of the complainant was made "made in the Chamber of Deputies or the Senate respectively, or in the bodies thereof". In this context, the Constitutional Court notes that the following analysis of "protected forums" within the meaning of Article 27 (2) of the Constitution is not exhaustive. The Constitutional Court, for example, does not deal in this judgment with whether Article 27 (2) of the Constitution protects a speech made in a group of deputies or senators Chamber (or Caucus) club because it is not made in the Chamber of Deputies or the Senate respectively, or in the bodies thereof for the outcome of the present constitutional complaint proceedings.

(i) "Bodies" of the Chamber of Deputies and the Senate
52. The Constitution defines the bodies of chambers in Article 31 (1) of the Constitution which provides that "each chamber shall establish committees and commissions as its bodies". The relevant part of Article 30 (1) of the Constitution states that "for investigations into matters of public interest, the Chamber of Deputies may create an commission of inquiry". Article 10b paragraph. 3 of the Constitution further provides that "the act governing the principles of dealings and relations between both chambers, as well as externally, may entrust the exercise of the chambers' competence pursuant to paragraph 2 [i.e. in the European issue] (added) to a body common to both chambers". The explicit enumeration of bodies of the chambers of the Parliament of the Czech Republic in the Constitution ends this way.

53. The bodies of the Chamber of Deputies and of the Senate, however, also include sub-committees which are integral parts of the committees within the meaning of Article 31 (1) of the Constitution [in accordance with SLÁDEČEK, V., MIKULE, V., SYLLOVÁ, J. Ústava České republiky: komentář (*The Constitution of the Czech Republic*: *Commentary*.), Prague: C. H. Beck, 2007, p. 220); and RYCHETSKÝ, P. et al. Ústava České republiky (1/1993 Sb.) - Komentář (*The Constitution of the Czech Republic (No. 1/1993 Coll.) - Commentary.*), Prague: Wolters Kluwer, 2015, p. 294, Item 20].

54. The functional concept of parliamentary immunity (see Item 31 of this judgment) also implies that it is irrelevant whether any meeting of a commission, committee, subcommittee, commission of inquiry or a joint body of both chambers under Article 10b (3) of the Constitution is held at the seat of one of

the chambers of the Parliament or somewhere else. The speeches of deputies and senators made at the meetings of these bodies of the Parliament are thus protected by indemnity within the meaning of Article 27 (2) of the Constitution, regardless of where the meeting is held - i.e. also at a meeting not held at the place of seat.

(ii) "The Chamber of Deputies or the Senate"
55. Article 27 (2) clearly implies that the speech "in the Chamber of Deputies or the Senate" includes speeches at a meeting of the Chamber of Deputies or the Senate, i.e. at a meeting of one of the chambers. The phrase "in the Chamber of Deputies or the Senate" presents a series of interpretation issues the solution of which is not so apparent.

56. The first interpretation issue associated with the phrase "in the Chamber of Deputies or the Senate", consists in the fact that the Constitution explicitly does not comment on whether the indemnity within the meaning of Article 27 (2) also covers the joint meeting of both chambers or not. The Constitutional Court notes in this context that the functional interpretation of the Constitution speaks clearly in favour of the broader interpretative alternative - by nature of parliamentary immunity enjoyed primarily by the Parliament as a whole (see Item 32 of this judgment) and with regard to the function of parliamentary immunity, particularly maintaining the free exchange of opinions, autonomy of the Parliament, and the protection of the opposition it implies that the words "in the Chamber of Deputies or the Senate" must be interpreted as including also speeches at a joint meeting of both chambers. This interpretation is also supported by the systematic argument: The Constitution explicitly provides the protection for the speeches of deputies and senators made in a joint body of both chambers (see Article 10b (3) in conjunction with Article 27 (2) of the Constitution) and, where the freedom of speech is protected in a joint body of both chambers, it is illogical not to protect the freedom of speech at a joint session of both chambers [in accordance with KYSELA J. Glosa k výkladu čl. 27 Ústavy Nejvyšším soudem. (*Comment on the Interpretation of Article 27 of the Constitution by the Supreme Court*). Státní zastupitelství, 2013, No. 5, p. 27-31, p. 30; RYCHETSKÝ, P. et al. Ústava České republiky (1/1993 Sb.) - Komentář (*The Constitution of the Czech Republic (No. 1/1993 Coll.) - Commentary.*), Prague: Wolters Kluwer, 2015, p. 295, Item 21 in fine].

57. The functional concept of indemnity also implies that its purpose is to maintain a free and an open exchange of views at the highest debate forum in the country, to keep the autonomy of Parliament, and to protect the opposition (see Item 31 of this judgment). This purpose can be achieved only if a speech is protected at the place where the Chamber of Deputies or the Senate holds its meeting - i.e. also when they hold their meetings outside the buildings of the Chamber of Deputies or the Senate. The indemnity thus protects the Parliament as a forum (functional concept), rather than as a place (territorial approach). For this reason, it is then irrelevant whether the meeting of the Chamber of Deputies or the Senate or the joint meeting of both chambers is held at the seat of one of the chambers of the Parliament or elsewhere (such as the above-mentioned joint meeting of both chambers of the Parliament during the presidential elections in 2008, held at the Spanish Hall of the Prague Castle, or any other meeting of either chamber held outside their seat). The speeches of deputies and senators made at the meetings of either chamber of the Parliament are thus protected by indemnity within the meaning of Article 27 (2) of the Constitution, regardless of where the meeting is held (cf. by analogy in relation to the bodies of the chambers of the Parliament, Item 54 of this judgment).

58. The Constitutional Court also notes that the functions of the parliamentary immunity referred to in Items 31 and 57 of this judgment imply that the indemnity enshrined in Article 27 (2) of the Constitution applies to the speeches of deputies and senators in both chambers and their bodies, irrespective of whether the concerned deputy (or senator) is a member of the relevant chamber [in accordance with SLÁDEČEK, V., MIKULE, V., SYLLOVÁ, J. Ústava České republiky: komentář (*The Constitution of the Czech Republic*: *Commentary*.), Prague: C. H. Beck, 2007, p. 220); RYCHETSKÝ, P. et al. Ústava České republiky (1/1993 Sb.) - Komentář (*The Constitution of the Czech Republic (No. 1/1993 Coll.) - Commentary.*), Prague: Wolters Kluwer, 2015, p. 295, Item 21 in fine].

59. Article 27 (2) of the Constitution, however, neither limits explicitly the protection only to the speeches at the meetings of the Chamber of Deputies or the Senate nor specifies in detail what is meant by the speech "in the Chamber of Deputies or the Senate". In this context, the Constitutional Court also refers to Article 64 (1) of the Constitution, which explicitly mentions the right of the President of the Czech Republic to take part in the "meetings of both chambers of Parliament", which is the wording that the constitution forming body could also use in Article 27 (2) of the Constitution but did not do so. It can be stated that while in the case of bodies of a chamber it is quite obvious that the speech made at "a body of the chamber" cannot not be made otherwise than in the course of meeting of such body, such clear conclusion cannot be made in the case of speeches in the Chamber of Deputies and the Senate from the wording used [RYCHETSKÝ, P. et al. Ústava České republiky (1/1993 Sb.) - Komentář (*The Constitution of the Czech Republic (No. 1/1993 Coll.) - Commentary.*), Prague: Wolters Kluwer, 2015, p. 295, Item 21].

60. It is therefore necessary to consider whether Article 27 (2) of the Constitution also applies to speeches made outside the meeting of either one or both chambers of the Parliament. The major part of doctrinal works in this context rejects the "territorial" concept of the Chamber of Deputies and the Senate that would cover by indemnity all the speeches within the building of the Parliament [SLÁDEČEK, V., MIKULE, V., SYLLOVÁ, J. Ústava České republiky: komentář (*The Constitution of the Czech Republic*: *Commentary*.), Prague: C. H. Beck, 2007, p. 220); ŠIMÍČEK, V. Imunita jako ústavněprávní problém (*Immunity as Constitutional Issue*). Časopis pro právní vědu a praxi, 1996, Vol. 1, p. 41-52, p. 45-46; BAHÝĽOVÁ, L. et al., Ústava České republiky: komentář (*Constitution of the Czech Republic: Commentary*.), Prague: Linde, 2010, p. 394; PAVLÍČEK, V. Ústava a ústavní řád České republiky: komentář. *(Constitution and Constitutional Order of the Czech Republic: Commentary)*. Vol. 1, 2nd edition. Prague: Linde, 1998, p. 151; RYCHETSKÝ, P. et al. Ústava České republiky (1/1993 Sb.) - Komentář (*The Constitution of the Czech Republic (No. 1/1993 Coll.) - Commentary.*), Prague: Wolters Kluwer, 2015, p. 295, Item 22; KYSELA J. Glosa k výkladu čl. 27 Ústavy Nejvyšším soudem. (*Comment on the Interpretation of Article 27 of the Constitution by the Supreme Court*). Státní zastupitelství, 2013, No. 5, p. 27-31, p. 30)]. The named authors rely on the functional (institutional) concept of indemnity and state that they are only protected by the speeches made while exercising the mandate and, therefore, expressly exclude from the scope of Article 27 (2) of the Constitution, for example, speeches in the lobby, restaurants or private conversations [SLÁDEČEK, V., MIKULE, V., SYLLOVÁ, J. Ústava České republiky: komentář (*The Constitution of the Czech Republic*: *Commentary*.), Prague: C. H. Beck, 2007, p. 220); ŠIMÍČEK, V. Imunita jako ústavněprávní problém (*Immunity as Constitutional Issue*). Časopis pro právní vědu a praxi, 1996, No. 1, p. 41-52, p. 46; BAHÝĽOVÁ, L. et al., Ústava České republiky: komentář (*Constitution of the Czech Republic: Commentary*.), Prague: Linde, 2010, p. 394; PAVLÍČEK, V. Ústava a ústavní řád České republiky: komentář (*Constitution and Constitutional Order of the Czech Republic: Commentary*). Vol. 1. 2nd edition. Prague: Linde, 1998, p. 151; RYCHETSKÝ, P. et al. Ústava České republiky (1/1993 Sb.) - Komentář (*The Constitution of the Czech Republic (No. 1/1993 Coll.) - Commentary.*), Prague: Wolters Kluwer, 2015, p. 295, Item 22]; at election meetings (PAVLÍČEK, V. Ústava a ústavní řád České republiky: komentář (*Constitution and Constitutional Order of the Czech Republic: Commentary*). Vol. 1. 2nd edition. Prague: Linde, 1998, p. 151); or after the meetings of chambers and their bodies [RYCHETSKÝ, P. et al. Ústava České republiky (1/1993 Sb.) - Komentář (*The Constitution of the Czech Republic (No. 1/1993 Coll.) - Commentary.*), Prague: Wolters Kluwer, 2015, p. 295, Item 22].

61. The Constitutional Court agrees with this view and notes that Article 27 (2) of the Constitution is based on the functional concept of indemnity and not on the territorial concept (see, by analogy, Item 57 of this judgment). Therefore, only the forums intended for a free and open exchange of views between deputies or senators are protected (the so-called protected forums). For this reason, Article 27 (2) of the Constitution shall not apply e.g. to any speeches in the lobby, restaurants, during private conversations, at election meetings or after meetings of chambers even if those speeches are made in the building of one of the chambers of the Parliament.

62. It can be therefore summarised that the "protected forums" where the speeches of deputies and senators are protected by indemnity within the meaning of Article 27 (2) of the Constitution include a

meeting of the Chamber of Deputies of the Senate or their committees, subcommittees, and commissions, including commissions of inquiry, and the joint meetings of the Chamber of Deputies and the Senate, or of the bodies thereof. However, the Constitutional Court does not hereby prejudge that Article 27 (2) of the Constitution shall not apply to any other forums (such as meetings of the groups of deputies or senators); answering these questions was not the subject of this judgment (cf. also Item 51 of this judgment).

(c) Must be a speech made in connection with the exercise of mandate?
63. Another interpretation issues arising in connection with the present case is whether a speech in order to be protected by indemnity within the meaning of Article 27 (2) of the Constitution must be made in connection with the exercise of mandate and what is meant by this requirement.

64. The Constitutional Court in this regard reiterates that Article 27 (2) of the Constitution does not expressly mention any condition of the connection between the speech and the exercise of the mandate, even though Section 23 of the Constitution of Czechoslovakia of 1920, by which the creators of the Constitution of the Czech Republic were significantly inspired, provided that the speech must be made "when exercising one's mandate", and in order to activate the indemnity it thus required the cumulative fulfilment of the conditions of the protected place and the exercise of the mandate (see Item 48 of this judgment). However, the Constitutional Court is of the opinion that the absence of explicit emphasising the need for the connection between the speech and the exercise of mandate has only limited significance for the interpretation of Article 27 (2) of the Constitution (see Items 48 to 49 of the judgment). The precise purpose of the indemnity is to ensure that deputies and senators are not prevented from exercising their mandate (in accordance with SLÁDEČEK, V., MIKULE, V., SYLLOVÁ, J. Ústava České republiky: komentář (*The Constitution of the Czech Republic*: *Commentary*.), Prague: C. H. Beck, 2007, p. 220). The case-law of the ECtHR has analogical consequences and the Constitutional Court acknowledges its considerable prescriptive effects in the interpretation of the Constitution [cf. the judgment, of 25 June 2002, file No. Pl. ÚS 36/01 (No. 403/2002 Coll.); and the subsequent judgments, of 24 June 2003, file No. Pl. ÚS 44/02 (No. 210/2003 Coll.); of 15 April 2003, file No. Pl. ÚS 752/02; of 5 April 2005, file No. Pl. ÚS 44/03 (No. 249/2005 Coll.)].

65. In view of the European Court of Human Rights, the indemnity must not go beyond what is necessary to protect the democratic functions of parliament and must not relate to private meetings and speeches of deputies [the judgment of the ECtHR in the case Cordova versus Italy (No. 1), of 30 January 2003, No. 40877/98, Section 62; the judgment of the ECtHR in the case of Cordova versus Italy (No. 2), of 30 January 2003, No. 45649/99, Section 63; the judgment of the ECtHR in the case of C.G.I.L. and Cofferati (No. 2) versus Italy, of 24 February 2009, No. 46967/07, Section 72; the judgment of the ECtHR in the case De Jori versus Italy, of 3 June 2004, No. 73936/01, Sections 53 to 54; and the judgment of the Grand Chamber of the ECtHR in the case of Kart versus Turkey, of 3 December 2009, No. 8917/05, Section 85]. The extent of indemnity of the Members of the European Parliament was commented on in the same spirit by the Court of Justice of the European Union, stating that there must be a "direct and obvious" connection between the opinion expressed and a parliamentary post [see the judgment of the Grand Chamber of the Court of Justice, of 6 September 2011, in the Case C-163/10 Patriciello, Item 35 (though it is necessary to take into account in this respect that the indemnity of Members of the European Parliament is directly determined by definition as the views held in the exercise of mandate)]; by major European constitutional courts (cf. the decision of the French Constitutional Council, of 7 November 1989, décis. nÂ° 89-262 DC, Recueil des décisions de Conseil Constitutionnel de 1989, p. 90; and the decision of the Supreme Court of the United Kingdom in the case of R versus Chayton and others [2010] KUSCH 52 (SC), Item 47 in particular).

66. The Constitutional Court has concluded above that the absence of the words "in the exercise of mandate" in Article 27 (2) of the Constitution has certain implications for the interpretation of that provision. Specifically, it follows that Article 27 (2) of the Constitution protects a speech regardless of its content, i.e. no matter what is being communicated (see Items 48 to 49 of this judgment). It cannot be however inferred from the absence of the words "in the exercise of mandate", that any speech by a deputy or senator at places protected by Article 27 (2) of the Constitution (see Items 50 to 62 of this

judgment) is protected - including the speech that is not a contribution to the parliamentary debate. This is all the more so because the constitution forming body could hardly anticipate in 1992 the massive expansion of the Internet and certainly could not take into account the possibilities of social networks such as Facebook, which at that time did not exist at all.

67. The Constitutional Court in this regard must take into account the fact that the parliamentary immunity belongs to the Parliament as a whole (see Item 32 of this judgment). Therefore, in the event of indemnity, the Parliament, as a forum of debate among deputies and senators, not the individual freedom of speech or personal privileges and immunities of individual deputies or senators, is protected primarily. It is not enough that any speech of a deputy (or a senator) is the communication of information or expression of an opinion (see Items 43 to 47 of the judgment) and is made "in the Chamber of Deputies or the Senate, or in the bodies thereof" (within the interpretation of these words by the Constitutional Court in Items 50 to 62 of this judgment), but this speech must not, at the same time, be directed only outwardly. This means that the any speech of a deputy or senator made during the meeting of a chamber or a body thereof must be directed toward other participants of the parliamentary debate, i.e. to the other deputies and senators (i.e. at least to one such deputy or senator) participating in a meeting of the given chamber or a body thereof (i.e. a meeting of a chamber, commission, committee, subcommittee, commission of inquiry or a joint committee of both chamber under Article 10b (3) of the Constitution) or to any other person who has the right to take part in the meeting of the given chamber or a body thereof [such person may be the President of the Czech Republic (cf. Article 64 (1) of the Constitution) or an external expert (who is not a deputy or senator) who is a member of a commission of either chamber of the Parliament (cf. Section 47 (1) of Act No. 90/1995 Coll., on the Rules of Procedure of the Chamber of Deputies; or Section 43 (1) Act No. 107/1999 Coll., on the Rules of Procedure of the Senate)].

68. If any speech of a deputy (or a senator) is directed exclusively outside the Parliament, even if it was made during a meeting of the Chamber of Deputies (or the Senate), it is not protected by indemnity within the meaning of Article 27 (2) of the Constitution. This means for example that if the deputy provides during a meeting of the Chamber of Deputies gives an interview to a nationwide television, even if it was in the hall where the meeting takes place, it is not a speech directed to other Members, but a speech that is functionally identical to the speech on television outside a building of the Parliament. It is because in the second case the deputy does not participate in the formation of a political will in the Parliament and is not part of the autonomous system of parliamentary debate for which the indemnity has originally been created. The same applies to text messages, blog posts, tweets and Internet articles posted, uploaded or sent by deputies during a meeting of a chamber of the Parliament.

69. The argument of the complainant that there is no reason why any presentation of political beliefs through the Internet should be protected less than for example his views presented in a television broadcast of his speech made in the Chamber of Deputies or through direct audio-visual transmission of any session, available on the website of the Chamber of Deputies, cannot stand. The decisive for the granting of indemnity under Article 27 (2) of the Constitution is not a form of speech or the medium in which the speech of a deputy appears but the purpose of that speech - i.e. whether the speech contributes to a parliamentary debate, communicates information or expresses opinions towards other deputies (or other persons who have the right to take part in a meeting of the chambers of the Parliament or bodies thereof; as to this, see Item 67 of this judgment in fine) or enables the refinement of ideas and finding the political will of a majority in the Chamber of Deputies or bodies thereof (see Items 31, 57, and 61 of this judgment in particular). The television broadcast of a meeting of the Chamber of Deputies does not follow this purpose - it merely serves as a public scrutiny of the activities of the Parliament. Further, any speech of a deputy at a meeting of the Chamber of Deputies broadcast by television can be, in contrast to a speech on the Internet, is limited in time and by other speeches of speakers in the order, can be interrupted by the Chair or even discordant reactions of other deputies, and, finally, it can also be cut by TV (or indecent parts of speech can be "bleeped out") or not broadcast at all.

70. The Constitutional Court therefore finds that the indemnity as enshrined under Article 27 (2) of the Constitution of the Constitution protects a speech communicating information or expressing an opinion

in the Chamber of Deputies or the Senate, or in the bodies thereof, only if this speech contributes to the parliamentary debate, which means it must not be directed exclusively outside but must be directed towards other participants of the parliamentary debate in a broader sense, namely deputies, senators, and others within the meaning of Item 67 of this judgment. A speech of a deputy or senator at the lectern (or the speech of the person allowed to speak by the Chair word) shall always be considered a speech directed towards other participants in the parliamentary debate. The same applies to any speech of a deputy or a senator present at the meeting of those bodies in relation to the speaker. The communication of information and exchange of opinions, however, can occur not only between the speaker and the "non-speaker" but also between non-speakers. Also in that event a speech is protected by indemnity within the meaning of Article 27 (2) of the Constitution.

71. However, it is necessary to point out in this respect that the indemnity under Article 27 (2) of the Constitution protects only a speech in terms of the communication of information and expression of an opinion (see Items 43 to 47 of this judgment). For this reason, e.g. the conclusion of the loan agreement between two deputies during a meeting of the Chamber of Deputies is not covered by indemnity under Article 27 (2) of the Constitution, although it is the conduct of two deputies in the Chamber of Deputies, because it is not the communication of information or expression of an opinion. If reduced to absurdity, an agreement to commit a violent or property criminal offence concluded between two deputies during the meeting of the Chamber of Deputies is also not protected by indemnity under Article 27 (2) of the Constitution.

(d) Summary of the criteria for the application of indemnity under Article 27 (2) of the Constitution
72. Based on the above-mentioned considerations, the Constitutional Court states that in order to activate the indemnity of deputies and senators within the meaning of Article 27 (2) of the Constitution, the following conditions must be cumulatively complied with: (1) It must be the communication of information or the expression of opinion in a speech, writing, a picture or other means; (2) such expression must be made at one of the "protected forums", i.e. at the meeting of the Chamber of Deputies and the Senate, their committees, subcommittees and commissions, including commissions of inquiry, or a joint meeting of the Chamber of Deputies and the Senate, or of those bodies; and (3) the expression made at the meeting of the respective chamber and its bodies must not be directed only outwardly, i.e. must be directed towards other participants in the parliamentary debate in a broader sense, namely deputies, senators and others within the meaning of Item 67 of this judgment.

(e) Assessment of the complainant's speech
73. The Constitutional Court must therefore assess whether the complainant meets all three conditions for the activation of the indemnity as enshrined in Article 27 (2) of the Constitution: (1) Whether his text is the communication of information or expression of an opinion in a speech, writing, a picture or other means; (2) whether such expression has been made at one of the "protected forums" , i.e. at the meeting of the Chamber of Deputies and the Senate, their committees, subcommittees and commissions, including commissions of inquiry, or a joint meeting of the Chamber of Deputies and the Senate, or of those bodies; and (3) whether his expression has been directed towards other participants in the parliamentary debate in a broader sense, namely deputies, senators and others within the meaning of Item 67 of this judgment, not only outwardly.

74. As to the first condition, the Constitutional Court notes that the text posted on 21 June 2013, at an hour not exactly established, by the complainant on his profile on the social network Facebook is undoubtedly an expression of opinion. The first condition is therefore satisfied.

75. As to the second condition the Constitutional Court notes that the complainant does not argue that he has made his speech at one of the "protected forums" within the meaning of Article 27 (2) of the Constitution, i.e. at a meeting of the Chamber of Deputies of the Senate or their committees, subcommittees, and commissions, including commissions of inquiry, and the joint meetings of the Chamber of Deputies and the Senate, or of the bodies thereof, but only at the Chamber of Deputies. Since the Constitutional Court rejected the territorial concept of indemnity (see especially Items 31, 57, and 61 of this judgment), the second condition is not met.

76. As to the third condition, the Constitutional Court finds that the complainant's text posted by him on his profile of the social network Facebook is not directed to other participants in the parliamentary debate (i.e. not directed to any other deputy or senator or any other person within the meaning of Item 67 of this judgment participating in a meeting of a chamber of the Parliament or bodies thereof) and does not contribute to the formation of political will (see Item 68 of this judgment) either. The complainant posted this text on a publicly accessible user profile on a social network and directed it specifically towards the public (as to the nature of Facebook and the differences between private and public communications on Facebook, cf. the judgment of III. ÚS 3844/13, of 30 October 2014, in particular Items 38 to 39), i.e. only outwardly. It was not therefore a contribution to the autonomous system of the parliamentary debate. In this regard, the Constitutional Court agrees with the Supreme Court that the publicly accessible user profile on a social network, same as other generally accessible websites, has the character of a mass communication medium and is thus equivalent to any presentation in a TV political debate, at a party congress or in press, that is not protected by indemnity within the meaning of Article 27 (2) of the Constitution (see in particular Items 50 and 61 to 62 of the judgment). If a deputy presents his ideas publicly through the media and these are directed only towards the public, i.e. outside the environment of the Chamber of Deputies, it is a civil expression only subject to the procedural immunity within the meaning of Article 27, (4) and (5) of the Constitution or possibly in the meaning of Article 27 (3) of the Constitution.

77. In order to activate the indemnity of deputies and senators within the meaning of Article 27 (2) of the Constitution, all three conditions as given in Item 72 pf this judgment (cf. also paragraph 73 of this judgment where the conditions are reformulated into questions) must be complied with on a cumulative basis: As the second and third conditions for the activation of indemnity under Article 27 (2) of the Constitution are not fulfilled in this case, the complainant is not exempted, regarding the conduct referred to in Item 1 of this judgment, from the powers of the law enforcement authorities. The Constitutional Court therefore concludes, albeit with partially different grounds, that the contested resolution of the Supreme Court, of 25 June 2014, ref. No. 3 Tcu 33/2014-26, is in line with the constitutional order.

IV. Summary

78. The parliamentary immunity belongs to the Parliament as a whole, not to its members. Therefore, in the event of indemnity, the Parliament, as a forum of debate among deputies and senators, not the individual freedom of speech or personal privileges and immunities of individual deputies or senators, is protected primarily. In order to activate the indemnity of deputies and senators within the meaning of Article 27 (2) of the Constitution, the following conditions must be complied with on a cumulative basis: (1) It must be the communication of information or the expression of opinion in a speech, writing, a picture or other means; (2) such expression must be made at the meeting of the Chamber of Deputies and the Senate, their committees, subcommittees and commissions, including committees of inquiry, or a joint meeting of the Chamber of Deputies and the Senate, or of those bodies; and (3) the expression made at the meeting of the respective chamber and its bodies must not be directed only outwardly, i.e. must be directed towards other participants in the parliamentary debate in a broader sense, namely deputies, senators and others who have the right to take part in the meeting of the respective chamber or its bodies (such as the President of the Republic or an external expert who is a committee or commission member of the chamber of the Parliament). In the present case, the complainant did not comply with the second and the third condition.

79. For the above-mentioned reasons, the Constitutional Court, under Section 82 (1) of Act No. 182/1993 Coll., on the Constitutional Court, dismissed the constitutional complaint since the contested decision has not violated the constitutionally guaranteed rights of the complainant.

Appeal: No appeal is permissible against the judgment of the Constitutional Court.

In Brno on 16 June 2015