1993/12/21 - PL. ÚS 19/93: LAWLESSNESS

HEADNOTES:

1. Our new Constitution is not founded on neutrality with regard to values, it is not simply a mere demarcation of institutions and processes, rather it incorporates into its text also certain governing ideas, expressing the fundamental, inviolable values of a democratic society. The Czech Constitution accepts and respects the principle of legality as a part of the overall basic outline of a law-based state; positive law does not, however, bind it merely to formal legality, rather the interpretation and application of legal norms are subordinated to their substantive purpose, law is qualified by respect for the basic enacted values of a democratic society and also measures the application of legal norms by these values. This means that even while there is continuity of "old laws" there is a discontinuity in values from the "old regime". This conception of the constitutional state rejects the formal-rational legitimacy of a regime and the formal law-based state. Whatever the laws of a state are, in a state which is designated as democratic and which proclaims the principle of the sovereignty of the people, no regime other than a democratic regime may be considered as legitimate. Any sort of monopoly on power, in and of itself,

2. An indispensable component of the concept of the limitation of the right to bring a criminal prosecution is the intention, efforts and readiness on the part of the state to prosecute a criminal act. Without these prerequisites, the content of the concept is not complete, nor can the purpose of this legal institute be fulfilled. That happens only if there has been a long-term interaction of two elements: the intention and the efforts of the state to punish an offender and the ongoing danger to the offender that he may be punished, both giving a real meaning to the institute of the limitation of actions. If the state does not want to prosecute certain criminal acts or certain offenders, then the limitation of actions is pointless: in such cases, the running of the limitation period does not take place in reality and the limitation of actions, in and of itself, is fictitious.

3. Neither in the Czech Republic, nor in other democratic states does the issue of the procedural requirements for a criminal prosecution in general, and that of the limitation of actions in particular, rank among the principal fundamental rights and basic freedoms which form a part of the constitutional order of the Czech Republic and, thus, take the place of the usual chapter in a constitution on fundamental rights and basic freedoms found in other constitutions. Neither the Constitution nor the Charter of Fundamental (and not of other) Rights and Basic Freedoms resolve detailed issues of criminal law, but set down, in the first place, uncontested and basic constitutive principles of the state and of law. Article 40, para. 6 of the Charter of Fundamental Rights and Basic Freedoms1) deals with the issue of which criminal acts may in principle be prosecuted (namely those which were defined by law at the time the act was committed) and does not govern the issue of for how long these acts may be prosecuted.

CZECH REPUBLIC

CONSTITTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

On 21 December 1993, the Plenum of the Constitutional Court of the Czech Republic, concerning the petition submitted by a group of Deputies to the Parliament of the Czech Republic seeking the annulment of Act No. 198/1993 Coll., regarding the Lawlessness of the Communist Regime and Resistance to It, decided thusly: The petition is rejected.

REASONING

On 15 September 1993, a group of 41 Deputies of the Parliament of the Czech Republic submitted a petition requesting that the Constitutional Court, on the basis of Article 87, para. 1, letter a) of the Constitution of the Czech Republic, annul Act No. 198/1993 Coll., regarding the Lawlessness of the Communist Regime and Resistance to It, due to its incompatibility with the Constitution of the Czech Republic, the Charter of Fundamental Rights and Basic Freedoms, the Constitutional Act of the Czech National Council No. 4/1993 Coll., on Measures connected with the Dissolution of the Czech and Slovak Federal Republic, and certain international treaties.

Since the submission of the petition met the requirements of § 64 of Act No. 182/1993 Coll., on the Constitutional Court, and the petition was admissible under § 66 of the same statute, the Constitutional Court instituted a proceeding and requested the Parliament of the Czech Republic to give its opinion on the petition within the time period designated by law.

The Constitutional Court classified the raised objections into three groups:

A. Objections to §§ 1 through 4 of Act No. 198/1993 Coll.2)

B. Objections to § 5 of Act No. 198/1993 Coll.4)

C. Objections to §§ 6 and 8 of Act No. 198/1993 Coll. 6) 7)

A. Objections to § 1 through 4 of Act No. 198/1993 Coll.2)

The overall conceptual approach to the problems of the contested statute are expressed primarily in points 2.1, 2.2 and 2.3 of the petition. In particular, it is stated in these

points that Czech law is founded on the sovereignty of statutory law and on the principal of legality derived from it. From this point of view, the petitioners criticize the provisions of § 2, para. 1 of the statute2), according to which the political regime during the period from 1948 - 1989 was illegitimate, and label this statement as "unconstitutional". It is clear from the context that this term does not mean a situation that is "praeter constitutionem" [outside of the constitution] but "contra constitutionem" [against the constitution], therefore anti-constitutionality. The reasoning of the group's opinion makes reference to the fact that the Czech Republic is one of the legitimate successor states to the now defunct Czechoslovakia and that the inherited statutes and other legal regulations, as well as the legal obligations of the former Czechoslovakia remain in force in it. This "substantive continuity of domestic and international rights" is, according to the petitioners, an indication of the legitimacy of the governmental and political regime during the period from 1948 - 1989.

The petitioners object that a doctrinaire evaluation of an historical period of the former Czechoslovakia, introduced in the form of a statute, excludes other opinions and conclusions resulting from scholarly knowledge of historical facts, by which means the freedom of research is restricted (Article 15, para. 2 of the Czech Charter of Fundamental Rights and Basic Freedoms3)). Then in points three and four, they make arguments against the attempt - evidently presumed - on the part of the legislators to understand and interpret the provisions of §§ 1 through 4 of Act No. 198/1993 Coll.2) as the basis for sanctions in criminal law, employment law and in other areas of the law. According to the opinion of the petitioners, with the phrasing concerning crimes, persecution, murder and so forth, as well as the phrasing concerning the responsibility or joint responsibility of persons, the statute creates the impression that concepts bearing a direct relationship to substantive criminal law are involved, and that this responsibility or joint responsibility is borne by an entire group of persons for whom not even the declaratory nature of the provisions rules out collective or individual imposition of non-criminal sanctions.

The explanatory report for the statute proceeds from the fact that "... with the exception of the very brief Act No. 480/1991 Coll., concerning the Period of Non-Freedom, ...there has not been a more comprehensive definition and characterization of the injustice and crime of the dictatorship, by which the whole society became so deeply and systematically marked. The society had very bad feelings about this absence of legal regulation, especially in relation to particular persons who were the persons responsible for the mentioned state of affairs and were not punished for their crimes, while on the other hand, no moral exoneration of the opponents of the communist regime took place.

In the Preamble and the whole first part of the statute (§§ 1 through 4), it is asserted that the Communist Party of Czechoslovakia, its leadership and its members are responsible for the manner of rule during the period from 1948 - 1989, then the characteristics of this manner of rule are mentioned, and § 1 describes the approach " ...which the communist regime, its active supporters and those exercising power used in its decision-making about directing the government and about the fate of the citizens" (Explanatory report). Thereafter, it expresses the joint responsibility of those who supported the communist regime for crimes committed and other arbitrary acts (§ 1, para. 2), a regime founded on the basis of communist ideology is declared to be criminal, illegitimate and abominable (§ 2, para. 1), as is likewise the Communist Party of Czechoslovakia, as well as

other organizations founded upon the same ideology (§ 2, para. 2). §§ 3 and 4 express moral recognition of those citizens who put up resistance to this regime, as well as of its innocent victims.

The evaluation of individual objections depends on the determination - a limine fori - whether and to what extent these provisions are legal norms of an imperative or of a dispositive nature which bind the state or give it discretion to act in a certain way with this or some other legal consequences for persons, groups of persons or organizations.

It is possible to fully concur with the opinion of the group of Deputies that the sentences in the first part of the statute have only a general character, without at the same time conceding that they thereby become binding legal norms. It is also possible to agree, again without conceding them to be binding legal norms, that they are provisions which are worded "axiomatically and broadly", that they do not make use of precisely and specifically defined concepts, that established legal concepts with precise contents have not been used, as well as with the designation of the sentences as declaratory norms.

Contrary to the assertion of the petitioners, however, neither the text of the statute itself nor the Explanatory Report give any grounds at all for inferring that the first part of Act No. 198/1993 Coll., regarding the Lawlessness of the Communist Regime and Resistance to It, might have created, in the area of substantive criminal law or in some other area of the law, a legal duty or a statutory power of the state to prosecute certain persons, or to inflict non-criminal sanctions upon them. The precondition for a criminal act is the definition of its elements. Nothing in §§ 1 through 42) can be understood as the designation of the material elements of a criminal act.

The first part of the statute represents the moral-political viewpoint of the Czech Parliament, the purpose of and the grounds for which are explained in the above-mentioned quotation from the Explanatory Report. The first four paragraphs of the statute are concerned with the nature of the regime, its specific aims and methods and its structural characteristics, not at all with the nature of individuals who, out of some motive or another, were members of organizations upon which the regime relied.

The statute discusses the "joint responsibility" of individuals on two levels: the joint responsibility of the members of the Communist Party of Czechoslovakia (KSČ) for the manner of rule in the years 1948 - 1989 and further the joint responsibility of those "who actively supported the communist regime" (§ 1, paras. 1 and 2 of Act No. 198/1993 Coll.2) - in this instance for the crimes committed by the regime. In both cases, the differentiation of the levels of political and moral, and not of criminal, responsibility of individuals is concerned, and is characteristic of Parliament's initiative to reflect upon the past.

The joint responsibility of members of the KSČ for the manner of rule is expressed only in the Preamble to the statute and should be understood as an effort to instigate reflection on the part of those who were, or from then on continue to be, members of an organization, the leadership and political activities of which over and over again departed markedly, not only from the basic values of humanity and of a democratic law-based state, but also from its own program and laws.

This distinction in the degree of moral joint responsibility results from the nature of a totalitarian dictatorship. It is an erroneous notion to assume that a party which conducts itself toward society in a dictatorial manner is able to act internally in a democratic fashion. This party was also stratified between the governing and the governed, its membership base was manipulated by the centers of power and, at the same time, it became an instrument, even a certain type of captive of those who "actively supported the regime."

We cannot criticize the Parliament for the fact that, in its moral-political, jural-political proclamation, it did not make use of customary legal terminology. In this respect, this portion differs from §§ 5 and 6 of the statute, in which - and in which alone - crimes are not spoken of, but which uses the precise terminology of criminal law: "criminal act". At the same time, the Explanatory Report gives no evidence of any effort to introduce a new definition of the material elements of a crime into the criminal law, when it explains § 2 with the words: "With the exception of cases involving the infringement of the provisions of the criminal law then in force, the words abomination and criminality must be considered rather as terminology from the domains of politics and morals."

If the declaratory character of the provisions of the first part of Act No. 198/1993 Coll. is undeniable, it is not necessary to scrutinize the petitioners' particular arguments - with the exception of three of them.

The first of these objections states that a declaratory provision does not exclude the possibility of making use of non-penal sanctions contained in other legal norms, for example, in statutes governing the rights and duties of educational employees and research assistants, journalists, writers and artists. This objection must be rejected because it does not relate to the contested statute itself but to other legal norms not more specifically designated, none of the legal substance of which is changed by Act No. 198/1993 Coll. Also, the term "non-criminal sanctions" is vague. The so-called lustration law, for example, does not impose sanctions, rather it sets the prerequisites for holding certain offices which, in consideration of their nature and political significance, have a constitutional stature in those countries founded on the principle of the law-based state.

Likewise the petitioners make the further objection that the "joint responsibility" or "collective responsibility" dealt with in the first part of the contested statute is "firstly . . . joint responsibility under criminal law", but this objection must be rejected because this part of the statute is of a moral-political, and not a juridical, character. This means that the appraisal of an historical period of the former Czechoslovakia in no way excludes opinions and conclusions other than those expressed in the text of Parliament's statute. The freedom of research guaranteed by Article 15, para. 2 of the Charter3) as well as by international legal acts is not affected thereby. From the point of view of scholarly and journalistic activities, the evaluation contained in the contested statute does not represent a binding opinion, "not even", as the group of Deputies' petition rightly observed, "in the case that such sentences are contained in legal acts designated as statutes" (page 2 of the petition).

The petitioners find a further element of anti-constitutionality in the intention " ...that the statute serve an interpretive function in relation to court decisions" - an intention which the legislators never expressed in the text of the statute. A relevant intention is one that is expressed in a legally relevant manner. An objection to the wording of an Explanatory Report cannot be the subject of review or a decision of the Constitutional Court. Moreover, the conditional nature of the Explanatory Report's expression ("should serve ...if need be also for a decision of the court in this field") does not show a clear intention.

Also the introductory declaration of Parliament, " . . . that in its future activities it will use this statute as its point of departure", cannot be considered a legal norm which would bind Parliament. It concerns an expression of political will of a programmatic character, a will established at a certain time and with a certain line-up of forces in Parliament, a fact which may not be interpreted inconsistently with the right of Parliament, in the area and within the bounds of its competence, to adjust the matter differently at another time, nor inconsistently with the principle of the free exchange of views on the floor of the Parliament.

The constitutional foundation of a democratic state does not deny the Parliament the right to express its will as well as its moral and political viewpoint by means which it considers suitable and reasonable within the confines of general legal principles - and possibly in the form of a statute, if it considers it suitable and expedient to stress its significance in the society and the scope of its declaration in the legal form of a statute. Such an example was the statute issued under the First Republic which stated that T. G. Masaryk deserves credit for the building of the state.

On the whole, it is evident that the statute under attack does not define the material elements of any new criminal act and that nothing analogous can be deduced from the text of the first part of it. In addition, Article 40, para. 6 of the Charter of Fundamental Rights and Basic Freedoms1) applies as a general norm for judging any sort of act from the perspective of its criminal nature, and according to it "criminal liability for an act shall be considered and punishment shall be imposed in accordance with the law in force when the act was committed. A later statute shall be applied only if it is more favorable to the defendant."

However, the objections of the petitioners are directed at certain general issues of the fundamentals of Czech law and the nature of the governmental and political system during the period from 1948 to 1989. Above all, the group of Deputies objects that the provisions of Sec. 2, para. 1 of Act No. 198/1993 Coll. contain "the unconstitutional statement that the political system during the period from 1948 to 1989 was illegitimate." Its assertion concerning the legitimacy of this regime rests upon the principle of the continuity of law, the given reception of the domestic legal acts and the continuity of the international legal obligations from the period of the "old regime"; on page 3 of its petition, it concluded: "If the statutory statement concerning the illegitimacy of the governmental and political system during the period from 1948 to 1989 were correct and remained in effect, than the legal acts adopted during the stated period would no longer have been valid as of 1 August

1993; naturally, this did not occur, for legal certainty is one of the basic characteristics of a state based upon law, and that certainty depends upon the constancy of legally expressed principles in particular areas of the law, on the constancy of legal relations" and so on (point 2.3 of the petition).

It is necessary to evaluate an objection of such a fundamental nature in relation to the basic outline of the Constitution and the constitutional foundation of the Czech Republic.

As is known, the process of the creation of the modern constitutional state in Central Europe was not completed until after the First World War. At the same time, remarkable results in the positivistic elaboration of procedural rules and guarantees had already been achieved earlier, and they strengthened citizens' legal certainty and the stability of laws. However, the positivistic tradition carried over into the post-war constitutions (including the Czechoslovak constitution from 1920), in its later development many times exposed its weakness. Constitutions enacted on this basis are neutral with regard to values: they form the institutional and procedural framework, fillable with very diverse political content, because the criteria for constitutionality then becomes the observance of the jurisdictional and procedural framework of constitutional institutions and procedures, thus criteria of a formal rational nature. As a consequence of this, in Germany the National Socialist domination was accepted as legal, even though it gnawed out the substance and in the end destroyed the basic foundations of the Weimar democracy. After the war, this legalistic conception of political legitimacy made it possible for Klement Gottwald to "fill up old casks with new wine". Then in 1948 he was able, by the formal observance of constitutional procedures, to "legitimate" the February Putsch. In the face of injustice, the principle that "law is law" revealed itself to be powerless. Consciousness of the fact that injustice is still injustice, even though it is wrapped in the cloak of law, was reflected in the post-war German Constitution and, at the present time, in the Constitution of the Czech Republic.

Our new Constitution is not founded on neutrality with regard to values, it is not simply a mere demarcation of institutions and processes, rather it incorporates into its text also certain governing ideas, expressing the fundamental, inviolable values of a democratic society. The Czech Constitution accepts and respects the principle of legality as a part of the overall basic outline of a law-based state; positive law does not, however, bind it merely to formal legality, rather the interpretation and application of legal norms are subordinated to their substantive purpose, law is qualified by respect for the basic enacted values of a democratic society and also measures the application of legal norms by these values. This means that even while there is continuity of "old laws" there is a discontinuity in values from the "old regime".

This conception of the constitutional state rejects the formal-rational legitimacy of a regime and the formal law-based state. Whatever the laws of a state are, in a state which is designated as democratic and which proclaims the principle of the sovereignty of the people, no regime other than a democratic regime may be considered as legitimate. Any sort of monopoly on power, in and of itself, rules out the possibility of democratic legitimacy. The starting point of our Constitution is the substantive-rational conception of legitimacy and the law-based state. In the overall structure of a democratic constitutional state and of a functioning democracy, legality mutatis mutandis undoubtedly embodies a part of the legitimacy of the regime, however, these concepts are not quite

interchangeable. In a regime, in which hardly anybody was unaware that the elections were not elections, that the parties were not parties, that democracy was not democracy and that the law was not law [at least not in the sense of a law-based state, since the application of the law was politically schizophrenic and everywhere discarded when the interests of those governing entered into the picture], in such a regime it is even less possible to reduce the concept of legitimacy to that of the formal legality of normative legal regulation.

A political regime is legitimate if, on the whole, the majority of citizens accepts it. Political regimes which lack democratic substance avoid empirical verifications of legitimacy in favor of ideological arguments, primarily from the perspective of formal-rational legality. In this they are facilitated by the fact that consolidated governmental power is not just a fact of political power, but at the same time of legally organized power. However, it is precisely in such a regime that politics most differs from law and legality from legitimacy. For this reason, not even the continuity of law signifies recognition of the legitimacy of the communist regime. It cannot be asserted that every act or all conduct, so long as it does not cross over the line given by law, is legitimate, because, in this way, legality becomes a convenient substitute for an absent legitimacy.

The legitimacy of a political regime cannot rest solely upon the formal legal component because the values and principles upon which a regime is built are not just of a legal, but first of all of a political nature. Those principles of the Czech Constitution, such as the sovereignty of the people, representative democracy, and a law-based state, are principles of the political organization of society, which are not entirely normatively definable. Positive law proceeds from them, however normative regulation does not make up the full contents of these principles - something apart from it remains.

For these reasons, on the basis of the substantive rational starting point of the Czech Constitution, the petitioners' concept, that the political regime during the years from 1948 to 1989 was legitimate, must be rejected. The phrasing of § 2, para. 12) of the contested statute concerning the illegitimate nature of that regime cannot be considered unconstitutional.

The petitioners' assertion that "Czech law is based on the sovereignty of statutory law" is the point of departure for their formal, legalistic arguments. For that is substituted a higher principle, namely the principle of the sovereignty of the people, who are the bearers of supra-governmental power, constitutive power, while statutes are the product of an already constituted and institutionalized internal state power. Within the concept of a constitutional state, there are no longer sovereign powers, there are only competencies. Czech law is not founded on the sovereignty of statutory law. The precedence of statutes over legal norms of a lower order does not signify their sovereignty. It is not possible to speak of the sovereignty of statutory law, not even in the sense of the scope of the legislative power within the bounds of a constitutional state. Within the concept of the constitutional state, upon which the Czech Constitution is based, law and justice are not subjects for the unfettered discretion of the legislators, not even subjects for a statute, for the legislators are bound by certain basic values which the Constitution has declared as inviolable. For example, the Czech Constitution provides in Article 9, para. 2 that "changes of the essential requirements for a democratic law-based state are impermissible." Thus, the constitutive principles of a democratic society in the

framework of this Constitution are placed beyond the legislative power and are thus "ultra vires" of the Parliament. A constitutional state stands or falls with these principles. To do away with any of these principles, by whatever means carried out, whether by a majority or an entirely unanimous decision of Parliament, could not be otherwise interpreted than as the elimination of this constitutional state as such.

B. Objections to § 5 of Act No. 198/1993 Coll.4)

The main object of the group of Deputies' criticism is § 5 of Act No. 198/1993 Coll., according to which "the period of time from 25 February 1948 until 29 December 1989 shall not be counted as part of the limitation period for criminal acts if, due to political reasons incompatible with the basic principles of the legal order of a democratic state, [a person] was not finally and validly convicted or the charges [against him] were dismissed."

According to the petitioners' view " ...the fact that state bodies, which no longer exist and formerly had competence over criminal matters, were, for whatever reason, inactive or ineffectual and brought on the termination of criminal liability for certain acts by virtue of the expiration of the limitations period, was not and is not a component of the subjective element [the mens rea or culpability requirement] of a criminal act, came about independently of the will of the offender, and therefore may not be to his detriment."

Thus, the Constitutional Court is, in the first place, concerned with the question why the "formerly competent state bodies [were] inactive or ineffectual", and further with the question whether the reasons for their failure to criminally prosecute politically shielded offenses, by their significance, their extent and their consequences to society, justify the measures in § 5 of Act No. 198/1993 Coll.4)

At the same time, the Constitutional Court proceeds from the recognition that the constitutional law texts of the communist regime merely formulated a principle of legality that was general and equally applicable to all (or the so-called socialist legality). As early as the Constitution of 9 May (No. 150/1948 Coll.), the duty to uphold the constitution and laws (§ 30) was imposed on every citizen regardless of office or official position. Then even more markedly, the Constitution from 1960 (No. 100/1960 Coll., as later amended), in its Article 17, para. 1, imposed upon citizens, as well as upon state and societal organizations, the observance of legality; in Article 34 it provided that citizens are obliged to uphold the constitution and laws; Article 104 placed the duty to supervise the observance of the laws upon the offices of the prosecutor; and Article 106a required the submission of reports on the state of socialist legality.

However, these legal norms became fictional and hollow whenever the party recognized such to be advantageous for its political interests. Its monopoly on political and governmental power and the bureaucratically centralized organization of them were constructed upon this simple expedient, and they resulted, never from the division, but from the concentration of power and from firmly linking the political and governmental bodies, as well as from the lack of basic democratic relations in society. The anchoring of the Communist Party's leading role in society and state (in Article 4 of the 1960

Constitution) was not the cause, rather the resulting manifestation, of the realities which had much earlier led to the strengthening of this power monopoly.

According to a commentary on the Czechoslovak Constitution published in Prague in 1988 (under the principal editing of St. Zdobinský), in addition to using direct political action, the Communist Party of Czechoslovakia also accomplished its leading role, in particular, "by means of state bodies, principally legislative committees, national committees, state administrative bodies, courts and the procurator" (page 68). The authorities in charge of the protection of legality thus became instruments of the central monopoly power.

In the period from 1948 to 1989, the regime of illegality that went unprosecuted attained a massive scope: starting with the purges in 1948, through the illegal way in which agriculture was collectivized, the transfer of 77,500 employees of administrative bodies to manufacturing work in 1951, the arrests and executions in the context of the so-called fight against agents of imperialism, to the preparations for invasion of the Warsaw Pact armies, the illegality of the so-called normalization process and the firings and prosecutions of political dissidents on a massive scale.

Documents from that period show not only the amount of instances in which political and governmental bodies and their agents violated in a gross fashion the laws then in force, but also several of the means with which it was possible. They concerned the system of the genuine subjugation of all institutions and organizations in the government to the political directives of the governing party and to decisions of persons influential in places of power. Such decisions were not regulated either by the Constitution or by other legal norms: these decisions were received in the constitutional and political hinterland, often only as oral instructions or as requests communicated by telephone.

A onetime employee of a body of the Central Committee of the Czechoslovak Communist Party (ÚV KSČ), the historian Karel Kaplan, who was a member of the party's commission investigating matters relating to the political trials of the 1950's quoted, in 1976 in his open letter to Vasil Bilak, the testimony of Ladislav Kopøiva, who was the Minister of State Security in 1950-1951. When the commission began to discuss the issue of Kopøiva's responsibility for mass arrests and illegal convictions, Karel Kaplan wrote that Kopøiva defended himself with these words: "I was just carrying out the orders of the Party. It is, after all, absolutely clear that I could not have arrested ministers and the General Secretary of the Party on my own initiative. However, if I had not carried out this order, I would have been convicted together with the others (letter published in Hans-Peter Riese: Citizen's Initiatives for Human Rights, Europäische Verlangsanstalt 1977, page 105).

It follows from this fact that Act No. 198/1993 Coll. is linked to Act No. 480/1991, on the Period of Non-Freedom, which in § 1 describes the ongoing and massive way in which legality was violated by the communist regime, in these words: "During the period from 1948 to 1989, the communist regime violated human rights as well as its own laws."

Although the Deputies' petition seeking the annulment of the statute regarding the Lawlessness of the Communist Regime and Resistance to It, does not generally dispute that, during the given period, illegal activities occurred and that the state did not prosecute them, even though it knew about them; however, it is clear from the type of arguments they make that, as regards the extent and implications of these cases, they do

not consider them worthy of special attention or special resolution. Rather, the group of Deputies bases its arguments on juristically worded objections which can be summarized as follows:
1) paragraph five4) creates a new legal impediment to the limitation of actions in the sense meant under § 67, para. 2 of the Criminal Act. By excluding the period from 25 February 1948 until 29 December 1989 from the running of the limitation period, it considerably extends the limitation period, leading to the destabilization of rights and an infringement of citizens' legal certainty;

2) paragraph five4) infringes a principle of law-based states, that criminal liability may not be revived once it has been extinguished by the expiration of the limitation period, and it introduces retroactive effect (retroactivity) of statutes, otherwise permissible only in instances where the subsequent statute is more favorable to the offender. According to the petitioners, this situation violates Article 40, para. 6 of the Charter of Fundamental Rights and Basic Freedoms1), as well as the Czech Republic's international legal obligations;

3) alongside the preceding argument on the anti-constitutionality of retroactivity, the petition also raises its incompatibility with Article 1 of the Charter5) concerning the equality of all persons before the law and Article 40, para. 6 of the Charter, 1) according to which the criminal liability of an act should be judged in accordance with the laws in force when the act was committed.

Ad B/1

The introduction of new legal impediments to the running of the statutory period limiting the right to bring a criminal prosecution is not, in and of itself, unconstitutional, which means that the Constitutional Court would not be required to deal with the matter at all. However, this claim relates to issues which affect the evaluation of the other objections raised against § 5 of Act No. 198/1993 Coll.,4) so that we can not pass over it.

Act No. 198/1993 Coll. itself does not alter the regulation of the legal institute of the limitation of criminal prosecutions. According to § 67, para. 2 of the Criminal Act No. 140/1961 Coll., as subsequently amended, periods of time when it was not possible to bring an offender before a court due to legal impediments, as well as periods when he remained abroad, are not counted as part of the limitation period. Nor does the length of the limitation period set down in § 67, para. 1 of the Criminal Act change: it is 20 years when the act permits the imposition of an exceptional punishment, ten years if the upper limit of the sentencing scale is likewise ten years, five years if the punishment could be as long as three years, and three years for other criminal acts.

Paragraph five of Act No. 198/1993 Coll.4) neither modifies the scale of the limitation period nor creates any further (new) legal impediments to the running of the limitation period beyond those which, on the basis of § 67, para. 2 of the Criminal Act, already exist (a procedural exemption under the Code of Criminal Procedure, in particular an exemption from the jurisdiction of bodies active in criminal proceedings under § 10 of the Code of Criminal Procedure).

According to its sense, § 5 of Act No. 198/1993 Coll.4) does not establish a new impediment, rather, for criminal acts, which on political grounds were not prosecuted by the regime then in power, it declares the period of time during which the limitation period could not run, even though it should have run. Therefore, in assessing § 5 of Act No. 198/1993 Coll.,4) we are not concerned either generally with the institute of the limitation of actions as such, or with the introduction of a new statutory impediment to the running of the limitation period, rather with the question whether the institute of the limitation of actions should be viewed as real or as fictional for a period when the infringement of legality in the entire sphere of legal life became a component of the politically as well as governmentally protected regime of illegality. Paragraph five of Act 198/1993 Coll.4) is not a constitutive norm, rather a declaratory norm. It is merely a declaration that during a certain stretch of time and for a certain type of criminal act the limitation period could not run, as well as the reasons therefor. It is well-known that, apart from those areas of societal and individual life where the legal order from 1948 to 1989 retained a certain real significance and was based on legality, there were also spheres of the ruling class' political interest in which a condition of legal uncertainty existed and which the regime maintained as a measure of preventive self-defense and as an instrument for the manipulation of society.

The criminal behavior of persons in political and governmental positions, inspired or tolerated by the political and governmental leadership, was a component of this peculiar regime when, in consideration of its actual or supposed interests, the governing class found it expedient to contravene even its own laws. The group of Deputies is not at all credible in its arguments that the limitation period was running during that era even for this category of governmental and political criminal behavior, that carried out entirely by the state. Political power founded on violence should, in principle, take care not to rid itself of those who are carrying out its violence. The state became much rather a guarantor of their non-sanctionability and their actual criminal law immunity. Naturally, the impediment to their criminal prosecution could not be expressed publicly in the form of positive law. This impediment was the consequence of the poor condition of legality in this country, later even the elevation to a constitutional principle of the leading role of the KSÈ in the state and society, but especially the direct result of the illegal practices of those in power, who, to the extent of their interests, guaranteed in advance that the offender would be "legibus absolutus" [legally absolved].

An indispensable component of the concept of the limitation of the right to bring a criminal prosecution is the intention, efforts and readiness on the part of the state to prosecute a criminal act. Without these prerequisites, the content of the concept is not complete, nor can the purpose of this legal institute be fulfilled. That happens only if there has been a long-term interaction of two elements: the intention and the efforts of the state to punish an offender and the ongoing danger to the offender that he may be punished, both giving a real meaning to the institute of the limitation of actions. If the state does not want to prosecute certain criminal acts or certain offenders, then the limitation of actions is pointless: in such cases, the running of the limitation period does not take place in reality and the limitation of actions, in and of itself, is fictitious. Written law is deprived of the possibility of being applied. In order for a criminal act to become statute-barred, it would be necessary for the process involved in the running of the limitation period to proceed, that is, a period of time during which the state makes efforts

to criminally prosecute the offender is necessary. An action is barred at the end of the limitation period, only if at that time the ongoing efforts of the state to prosecute a criminal act remain futile. This prerequisite cannot be met for the category of politically protected offenses from 1948 until 1989. The condition of mass, state-protected illegal activities was not the consequence of individual errors, blunders, negligence or misdeeds, which would have left open some possibility for criminal prosecution, rather it was the consequence of the purposeful and collective behavior of the political and state authorities as a whole, which ruled out criminal prosecution in advance. By these means, the protection of offenders became as universal as the system of power.

Therefore, we cannot agree with the petitioners' position that an a priori awareness of the non-prosecutability of certain offenses was not a part of the subjective element of these criminal acts and that this "quasi limitation of actions" ran independently of the intent of the offender. The situation is different for offenders under the political protection of the state. Their criminal act was de facto "statute-barred", even before it was committed. This fact sometimes functioned precisely as an incentive to additional criminal acts. To understand the period of time which passed from the commission of their criminal acts as the running of a "limitation period" which was not permitted to run, would mean a quite paradoxical interpretation of a law-based state. That would be the validation of the type of "legal certainty" which the perpetrators of such criminal acts already had when they began their activities and which consists of state assured immunity from criminal liability.

This "legal certainty" of offenders is, however, a source of legal uncertainty to citizens (and vice versa). In a contest of these two types of certainty, the Constitutional Court gives priority to the certainty of civil society, which is in keeping with the idea of a law-based state. Some other solution would mean conferring upon a totalitarian dictatorship a stamp of approval as a law-based state, a dangerous portent for the future: a sign that crime may become non-criminal, so long as it is organized on a massive scale and carried out over a long period of time under the protection of an organization so empowered by the state. That would mean the loss of credibility of the present law-based state, as well as the current infringement of Article 9, para. 3 of the Constitution of the Czech Republic " ...legal norms may not be interpreted so as to justify eliminating or jeopardizing the foundations of a democratic state."

It cannot be considered reasonable to make a claim to legal certainty of this sort, not even from the subjective perspective of an offender. A requirement for a law-based state is the maintenance of a state of trust in the durability of legal rules. The perpetrators of this type of criminal activity do not have the continuity of written law in mind, rather that of unwritten practices. It would be an infringement of the continuity of written law, if the violation of law, which was committed under the protection of the state, could not even now be criminally prosecuted.

All of these individual points of view gain significance in direct proportion to the considerable extent to which this form of state protected or tolerated political criminal behavior was committed. In forced labor camps and in the so-called auxiliary technical battalions alone, over 200,000 persons were held during this period of time. As is known, nearly a quarter of a million persons have already been rehabilitated on the basis of the statute on court rehabilitation.

Although we take into consideration that in many of the cases it may only have been a matter of the unreasonable harshness of the criminal law regime then in force, or "strict law", in may of these cases of rehabilitation, the power apparatus' violation of its own legal principles was an important, if not the principal factor.

Ad B/2

One of the principal objections to the provisions of § 5 of Act No. 198/1993 Coll.,4) concerning the Lawlessness of the Communist Regime and Resistance to It, makes reference to its inconsistency with Article 40, para. 6 of the Charter of Fundamental Rights and Basic Freedoms. 1) The petitioners are working from the assumption that criminal acts, with which § 5 of Act No. 198/1993 Coll.4) are concerned, are for the most part statute-barred. In the view of the petitioners, these acts thus become no longer punishable, yet, in spite of that, they should once again become, with retroactive effect, the potential objects of criminal prosecution. In their opinion, this outcome is inconsistent with the prohibition of retroactivity in criminal law, expressed in Article 40, para. 6 of the Charter of Fundamental Rights and Basic Freedoms. 1) They contend that any criminal liability which is extinguished by the expiration of the limitation period may not be revived and that, by means of a subsequent law, it is only possible to decriminalize an act or to abolish fines, as well as to reduce, but never to extend, the period of limitations. They further assert that to introduce a new definition of the material elements of a criminal act, or to set a higher sentence rate or more severe conditions for criminal liability, including the repeal of the statute of limitation for certain criminal acts and new legal impediments to the running of the limitation period, is permissible only prospectively.

The petitioners come to their conclusions regarding the retroactive effect of a statute in the case of § 5 of Act No. 198/1993 Coll.4) on the basis of the substantive law understanding of the institute of the limitation of criminal prosecutions, although not even in criminal law doctrine has the ongoing dispute between the proponents of the substantive nature of the institute of the limitation of actions and the proponents of its procedural nature been resolved.

For this reason, it is necessary to assess to what extent the provisions of Article 40, para. 6 of the Charter of Fundamental Rights and Basic Freedoms1) or Article 15 of the International Convention on Civil and Political Rights (No. 120/1976 Coll.) prevents a subsequent amendment to the procedural rules, making possible the subsequent running of the limitation period in those special cases when the prior political regime prevented it from running.

Under Article 40, para. 6 of the Charter, 1) criminal liability for an act should be judged and punishment imposed in accordance with the laws in effect when the act took place. A subsequent statute shall be applied if it is more favorable to the offender. Article 15 of the Convention is worded according to the same sense and, in addition, para. 2 it makes possible to punish acts in accordance with "the general principles of law recognized by the community of nations."

Article 40, para. 6 of the Charter of Fundamental Rights and Basic Freedoms1) defines and restricts the prohibition on the retroactive effect of statutes in two respects, namely:
a) if a "criminal act" is concerned, or

b) if the "imposition of punishment" is concerned.

According to Czech criminal law theory, the criminal nature of an act is understood to mean the possibility to be prosecuted for a criminal act, found guilty of it and punished for it. The basis for criminal responsibility is the criminal act, which is defined by means of a precise description of its characteristics and also by what is referred to as its objective characteristics, namely, by the danger the act poses for society. It is the expression of the principle "nullum crimen sine lege" ["no crime without law"] or "sine culpa" ["without fault"].

With regard to the "imposition of punishment", Article 40, para. 6 of the Charter1) takes as its starting point the terminology of criminal law, contained in the Criminal Act from 29 November 1961, No. 140 Coll., as subsequently amended, especially that in the second section: "General Principles for the Imposition of Punishment" (§ 31 and following of the Criminal Act). The imposition of punishment is understood to mean the determination of the type of punishment as well as the term of imprisonment for those types of punishments which have gradations. Therein is expressed the criminal law principle, "nulla poena sine lege" ["no punishment without law"]. Article 40, para. 6 of the Charter1) manifestly does not permit the retroactivity of a statute where the definition of criminality or the severity of punishment is concerned.

The Charter is not made up of norms of criminal law, but of certain principles, which are drawn from various areas of law and which are considered as fundamental, thus worthy of increased legal protection. Nothing more was intended by Article 40, para. 61) than what is stated, namely that the definition of individual criminal acts and of their criminal nature, which is effected under the Criminal Act by the designation of their specific characteristic features and the degree of danger which the individual acts pose to society; it may not be "ex post", an amendment to the detriment of the offender adopted subsequently to the commission of an act. The same requirements are also set for the definition and the setting of the length of punishment. The second sentence of para. 6 defines the prohibition of the retroactivity of law only in this sense and to this extent (compare the text, "subsequent statutes shall be applied ...").

Neither in the Czech Republic, nor in other democratic states does the issue of the procedural requirements for a criminal prosecution in general, and that of the limitation of actions in particular, rank among the principal fundamental rights and basic freedoms which, under Article 3 of the Constitution, form a part of the constitutional order of the Czech Republic and, thus, take the place of the usual chapter in a constitution on fundamental rights and basic freedoms found in other constitutions.

The argument that the limitation of actions is an institute of substantive criminal law is not crucial to judgment in this matter, not only due to the fact that the issue is an ongoing subject of dispute in criminal law doctrine and that in several other democratic states it is considered, for the most part, as a procedural law institute, but first and foremost due to

the fact that neither the Constitution nor the Charter of Fundamental (and not of other) Rights and Basic Freedoms resolve detailed issues of criminal law, but set down, in the first place, uncontested and basic constitutive principles of the state and of law. Article 40, para. 6 of the Charter of Fundamental Rights and Basic Freedoms1) deals with the issue of which criminal acts may in principle be prosecuted (namely those which were defined by law at the time the act was committed) and does not govern the issue of for how long these acts may be prosecuted.

As a consequence, the regulations on the limitation of actions and on the limitation period, especially those setting the period during which an act which is declared to be criminal may be prosecuted, cannot be understood to be an area governed by Article 40, para. 6 of the Charter. 1) Neither does Article 39 of the Charter speak in favor of the petitioners. According to Article 39 of the Charter, only by law is it possible to designate "which action is a criminal act" and "what sort of punishment, as well as what sort of other detriment to rights or property, can be imposed for committing them." The procedural requirements for prosecution are not the subject of this reservation.

From among the European judicature, we can refer to the same point of view of the Federal Constitutional Court of the FRG, which in 1969 ruled that the prohibition on the retroactivity of statutes did not apply to the statute of limitations: the subsequent designation of criminality or of a higher possible punishment fall under this prohibition, but not the limitation of actions, governing the period of time during which an act which is declared to be criminal may be prosecuted and leaving the criminality of an act unaffected. (Volume 25, page 269 and following, Collection of Decisions).

[X 1) The statute on the "tolling" of the limitation period for the unlawful acts of the SED [the Socialist Unity Party of East Germany] of March 1993 proceeds from the same point of view. Under this statute, in calculating the period of limitation for the prosecution of acts which were committed during the rule of the unlawful regime of the SED, but on the basis of the explicit or presumed wishes of the state or party leadership of the former GDR [German Democratic Republic], such acts were not prosecuted on political or other grounds incompatible with the free order of a law-based state, the period from 11 October 1949 until 2 October 1990 shall not be counted. Thus, a criminal prosecution may be instituted for acts which were already "statute-barred" before then. Later, a second statute regulated more precisely the running of the limitation period and excluded the criminal prosecution of acts which were statute-barred by a later deadline of 27 September 1993.]

Ad B/3

The group of Deputies also detect in § 5 of Act No. 198/1993 Coll.4) a violation of Article 1 of the Charter of Fundamental Rights and Basic Freedoms5) concerning the equality of all persons before the law because - as they assert - it involves discrimination against one segment of the citizenry because those who were not put on trial, for reasons that were not political, will still enjoy the right not to be prosecuted, while this right is denied others, if for political reasons they were not convicted or the charges against them were dropped.

Equality before the law must always be judged in relation with the nature of the matter at issue. When assessing matters that are apparently, or even only in certain formal respects, identical, legislators must make efforts that they do not contradict the ideas of justice and reasonableness, which belong among the conceptual requirements of a law-based state, of the fundamental principles of the constitutional establishment of the Czech Republic (Article 1 of the Constitution of the Czech Republic5)). In the case of § 5 of Act No. 198/1993 Coll.,4) it seems reasonable and just to extend the possibility of criminal prosecution for those criminal acts which, by the will of the political and state leadership, were earlier exempted from that possibility. In contrast to what the Deputies' contend, this is the way to rectify the inequality with those who had already faced the possibility of being put on trial because, not only were they not under special political protection, but it was the state's wish and in its interest to prosecute them for the criminal acts which they committed.

Even under the law then in force, the principle of the equality of citizens before the law required a general investigation of criminal acts and a consistent and just application of the criminal law without regard to the identity of the offender.

With regard to the principle of the equality of citizens before the law, § 5 of Act No. 198/1993 Coll.4) does not establish any special or extraordinary criminal law regime: § 5 does not permit the principle of collective guilt or collective responsibility, nor does it alter the principle of the presumption of innocence or the prohibition of the retroactivity of statutes, which means that criminal prosecution is only possible for acts which were criminal at the time of their commission, and only on the basis of the law then in force, unless the subsequent statute is more favorable for the offender. § 5 of Act No. 198/1993 Coll. merely alters the period of time during which a criminal prosecution may take place and defines only a certain category of such criminal acts for which this may be done, meaning those that the principle of the equality of citizens before the law makes necessary in order for a law-based state to maintain its credibility.

It follows from the definition of the criminal acts in § 5 of Act No. 198/1993,4) that criminal prosecution on the basis of this provision is ruled out:

1. in the case of criminal acts the period of limitation for which has already expired since the start of the limitation period, that is since 30 December 1989;

2. in the case of criminal acts, when the former regime, as an exception, considered it expedient to show an effort to punish violations of legality by its agents; for these exceptional cases, the internationally recognized principle "ne bis in idem" applies, even if the final judgment of the former regime was extraordinarily lenient;

3. in the case of criminal acts which did not result in a final, valid conviction or where the charges were dropped, not on political grounds incompatible with the basic principles of a law-based state, but on grounds other than exactly political ones.

From the perspective of the equality of citizens before the law, comparability of treatment is maintained even in the respect that similarly to other - earlier punishable - criminal acts, it can be presumed that in this category of previous criminal acts, for which the limitation period has had the chance to run only afterwards, far from all of these

criminal acts will be tracked down, discovered and proven, so that obviously only a small part of this category of crimes is concerned. In reality, this category of criminal acts is not at all less favorably treated; it has actually enjoyed an advantage because the punishment of these acts is made more difficult due to the additional time, a long period, which has passed since the commission of the act, as well as the offenders' interest in the speeding removal of evidence and the difficulty of proving things after a long time interval.

It is likewise necessary to carefully consider that, even from the perspective of the law in effect at the time this type of criminal behavior was done, the failure to prosecute these criminal acts was even in conflict with the principle of equality contained in the constitution at that time, as well as with the definition of principles in the criminal law of the time, and, not the least, with the then valid constitutional duty of "strict maintenance of socialist legality". From this perspective, § 5 of Act No. 198/1993 Coll.,4) only makes up for this deficiency of constitutionalism and legality and this lack of equality of citizens.

C. Objections to §§ 66) and 87) of Act No. 198/1993 Coll.

1. § 6 of Act No. 198/1993 Coll.6) creates a special regulatory scheme for the reconsideration of criminal acts which had resulted in a conviction and to which Act No. 119/1990 Coll., on judicial rehabilitations, does not apply. If it is proven in the proceeding that the sanctioned action was an effort to protect basic human and civil rights and freedoms, and not by unreasonable means, upon petition the court shall quash or mitigate the sentence already imposed.

In the reasoning of its petition, the group of Deputies make the objection that this legislative scheme is discriminatory and contravenes the constitutional principle of the equality of all persons before the law, as well as Article 40, para. 6 of the Charter of Fundamental Rights and Basic Freedoms, 1) which requires that criminal liability for an act be judged and punishment be imposed in accordance with the law in effect when the act was committed.

The reasons which led the legislators to adopt this legislative scheme evidently consist in the fact that, under the earlier regime, those criminal acts for which the offender had a demonstrable motive of protecting the fundamental rights and basic freedoms of humans and citizens, were also adjudged to be political offenses, and such persons were found guilty of creating an unusually high degree of danger to society. Since they were interpreted more or less as acts hostile to the political regime as such, an excessive punishment was attached to them. Therefore, the reconsideration of these sentences, which might come about under § 6 of Act No. 198/1993 Coll.,6) is not aimed at the infringement of, rather at the resulting restoration of, the principle of civil equality by reasonably mitigating or even quashing the sentence.

It remains to be seen whether this subsequently resulting legislative scheme conflicts with Article 40, para. 6 of the Charter of Fundamental Rights and Basic Freedoms, 1) which requires that criminal liability for an act be judged and punishment be imposed in accordance with the law in effect when the act was committed. However, under the first sentence of Article 40, para. 6 of the Charter1), the prohibition upon the retroactive effect of statutes does not even apply because the second sentence of Article 40, para. 6 of the Charter1) permits retroactive statutes if they are more favorable to the

offender. Considering the wording of § 6 of Act No 198/1993 Coll.6) ("Upon request a court may quash or mitigate a sentence"), this condition is met.

2. The Deputies' final objection is directed at § 8 of Act No. 198/1993 Coll.7) and states that the Parliament's grant to the government of the authority "to rectify certain injustices committed against opponents of the communist regime and against persons who were injured thereby socially, in their health or financially" is too broad and indefinite. They make the argument that, in this case, there is no definition of the injustices to which the rehabilitation statute does not apply, no delimitation of the types or the extent of the claims of authorized persons, no provision for the manner of their assertion, nor a designation of the organ which should make decisions about claims and implement them. The petition asserts that, in this respect, § 8 of Act No. 198/1993 Coll.7) conflicts with Article 788) and Article 2, para. 3 of the Constitution of the Czech Republic, and that the provisions of Article 2 (that state authority may be exercised only in cases, within the limits and in the manner provided for by law) applies also to the issuance of government orders. The petitioners then deduced from the wording of Articles 90 and 95 that, when granting protection of rights and in the process of decision-making concerning them, courts are to be bound solely by statute.

Even reading this argument in conjunction with the text of Articles 90 and 95 of the Constitution does not lead to the conclusion that in protecting rights under Article 90, courts are bound by statutes alone. Article 90 merely states that courts shall protect rights in the manner provided by law. Therefore, it concerns the methods and means by which a court protects rights, it does not release courts from their duty to apply the law when other types of legal norms are involved. In addition to statutes, there are other types of legal norms which are generally binding, hence they bind courts as well. A court should apply a subsidiary legal norm unless it comes to the conclusion that the norm does not conform to a statute. The text of Article 95, para. 1 lends support to this conclusion when it states that judges are empowered to judge whether other types of legal norms conform to a statute.

In the petitioners' view, the government may carry out the goals contained in an authorizing statute only on the basis of that statutory authorization and may not exceed the limits of that statute.

In contemporary parliamentary systems, the extent of the government's authority to create norms by issuing orders extends beyond the legislative activities of Parliament. There is, firstly, the authority to issue orders independently, directly on the basis of the Constitution (Article 78 of the Constitution of the Czech Republic8)). In such cases, for the purpose of implementing statutes, the government is empowered to issue orders which stay within the limits of the statute. The government is not required to obtain special authorization from the Parliament in order to do this.

In some democratic states, the constitution also provides for a derivative governmental power to issue orders on the strength of a delegation from the parliament. In such cases, the constitutional condition applies that the specification of the scope, whether in terms of subject or of time, of such an authorization must be found in the statute itself and that a mere indefinite, general authorization to the government is not permissible. At the same time, it is primarily the parliament's job to determine a reasonable and suitable

limit, in terms of subject matter, upon the authorization, and to ensure that the government does not exceed the statutory confines, is primarily the business of Parliament itself.

There is only a single type of governmental order under the Constitution of the Czech Republic. It is found alone in the provisions of Article 78,8) which sets merely two conditions on it: for the purpose of implementing a particular statute, the government may issue a governmental order (even without being authorized by the Parliament) which stays within the limits of the statute. No other provisions designate by what means the limits are determined and to what extent. This means that such limitations proceed directly from the law which the government order implements. Since even government orders that are based on the authorization in § 8 of Act No. 198/1993 Coll. must be assessed in accordance with Article 78 of the Constitution of the Czech Republic,8) such an authorization to the government is still permissible from the viewpoint of the Constitution, even if it is given in very broad terms.

Pl. US 19/93

Overview of the most important legal regulations

1. Art. 40 par. 6 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that the question whether an act is punishable or not shall be considered, and penalties shall be imposed, in accordance with the law in effect at the time the act was committed. A subsequent law shall be applied if it is more favorable to the offender.

2. In §§ 1- 4 of Act no. 198/1993 Coll., on the Illegality of the Communist Regime and Resistance Against It, elements of the communist regime and methods which it used are defined, particularly the fact that it denied citizens any possibility whatsoever of free expression of political will and forced them to public state their agreement with what they considered a lie or a crime (§ 1 par. 1), and the Act provides which persons are jointly answerable for this regime (§ 1 par. 2); the Act also provides that the regime founded on communist ideology in the period from 25 February 1948 to 17 November 1989 was criminal, illegitimate, and is contemptible (§ 2 par.1) and the Communist Party of Czechoslovakia was a criminal and contemptible organization (§ 2 par. 2); citizens' resistance against this regime was legitimate, just, morally justified, and deserves respet (§3); everyone who was unjustly punished and persecuted by the communist regime deserves participation and moral satisfaction (§4)

3. Art. 15 par. 2 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that the freedom of scholarly research and of artistic creation is guaranteed.

4. § 5 of Act no. 198/1993 Coll., on the Illegality of the Communist Regime and Resistance Against It, provides that the statute of limitations period for crimes shall not include the period from 25 February 1948 to 25 December 1989 if a legally effective conviction or acquittal from an accusation did not take place due to political reasons incompatible with the basic elements of the legal order of a democratic state.

5. Art. 1 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that All people are free, have equal dignity, and enjoy equality of rights.

6. § 6 of Act no. 198/1993 Coll., on the Illegality of the Communist Regime and Resistance Against It provides that, in response to a motion, a court shall cancel or reduce a sentence imposed for a crime which is not subject to rehabilitation under Act no. 119/19990 Coll., on Judicial Rehabilitation, if it is proved during the proceedings that the conduct of the convicted person was aimed at protecting fundamental human and civil rights and freedoms by means that are not clearly disproportionate.

7. § 8 of Act no. 198/1993 Coll., on the Illegality of the Communist Regime and Resistance Against It provides that the government is authorized to, by decree, correct certain crimes committed against opponents of the communist regime and against persons who were affected by its persecution in the social, health, and financial areas.

8. Art. 78 of Act no. 1/1993 Coll., the Constitution of the Czech Republic, provides that in order to implement statutes, and while remaining within the bounds thereof, the government is authorized to issue orders.