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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**THE BUDGET OF THE CONSTITUTIONAL COURT:
CONTROL AND MANAGEMENT**

by Mr Pavel VARVAROVSKY,
Judge
Constitutional Court of the Czech Republic

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It is not disputed that the status, organisation and activities of judicial bodies is a crucial matter for a democratic law-based state, as the Czech Republic is characterised in Article 1 of the Constitution. It is interesting to note that, in most textbooks and in various legal systems, the independence of courts and of judges is conceived the same and in essence are formulated in the same manner in acts which are meant to guarantee this independence. These are the rules including the organisation of courts as a special set of bodies separated from the legislative and executive branches. The traditional concept of the legal judge is connected with these principles. A judge cannot be bound to follow anybody's instructions in specific cases, and nobody may threaten his independence (which is generally protected by a special criminal sanction, the judge is protected as a public official, the law guarantees that he may be recalled only in extraordinary cases, etc.).

The Recommendation of the Committee of Ministers to Member States on Independence, Efficiency and Role of Judges (adopted on 13 October 1994) can be given as an example of a certain summing up of these principles. Certain principles and maxims mentioned here no doubt apply as well to the specialised constitutional courts (in particular that judges' tenure in office and their remuneration should be guaranteed by law, no body other than the courts themselves decide upon their competence, as defined by law, that the distribution of cases should not be influenced by the wishes of any party to a case or any person concerned with the results of the case, etc.). The principles of the Recommendation concerning proper working conditions are even more important for our topic. These principles provide, in particular, that a sufficient number of judges should be recruited and provided with proper training both at the start and throughout their careers. In addition, an adequate support staff and equipment must be made available. Adequate equipment includes office automation and data procession facilities, to ensure that judges can act efficiently and without undue delay. Finally, it is necessary to ensure not only that the status and remuneration of judges, but also of their support staff. In sum, the working conditions must be commensurate with the dignity of their profession and the burden of responsibilities they shoulder.

Anyone who thinks even a little bit in terms of economics knows full well that, unless a court's personnel and financial requirements are sufficiently provided for, that judicial independence will remain merely a theoretical concept. If then the European Convention, for example, assures everyone the right to judicial protection within a reasonable time, then without sufficiently qualified and numerous administrative personnel no judge can meet these requirements, especially in a country like the Czech Republic, where each year the number of cases submitted to the Constitutional Court grows radically (if we compare the year 1994 with last year, we are looking a growth of approximately 80 %). If then the number of judges is fixed by the Constitution, then this explosion cannot be managed without increasing support staff. If the personnel is to be sufficiently qualified, then it has to be well-paid, which is extremely difficult to guarantee at the present time when incomes in the private sector are substantially higher than in the public sector. In other words, it is unrealistic to expect to obtain highly-qualified attorneys at „rate wages“.

Unfortunately, the Czech Constitution does not include any provision concerning the above mentioned problem at least in framework, not even as concerns the judges themselves. The Constitution itself lacks a provision such as that contained, for example, in Article 178 of the new Polish Constitution of 1997, which guarantees to judges such work conditions and remuneration as corresponds to the importance of the office and the status of judges.

As far as concerns its own budget, the Czech Constitutional Court has the status as one of the Czech Republic's central state institutions, and as such its budget forms one of 33 independent chapters of the state budget. The basic principles of the state budget are as follows. The budget shall be adopted for one year and is valid only for the year for which it was adopted. Bills on the state budget and the final state accounting shall be introduced to the Parliament by the government. They shall be debated in public session of the lower chamber of Parliament, the Assembly of Deputies, and only the Assembly of Deputies may adopt resolutions concerning them (Article 42 of the Constitution). In effect, this limitation means that the Senate can neither vote down budget bills nor return them to the Assembly of Deputies, as it can with all „ordinary“ bills.

The financial resources allotted to the Constitutional Court for the period of one calendar year (which corresponds exactly with the fiscal year) result from the Constitutional Court's proposal for its own budget. On the basis of overall global data supplied by the Ministry of Finance, during the first half of each year the Constitutional Court submits its proposal for budgetary funds for the subsequent calendar year. As a sort of guarantee, the chapter of the budget for the Constitutional Court is assessed by the Constitutional Legal Committee of the Assembly of Deputies of the Czech Parliament. In oral debate, at which the Constitutional Court is represented by its Chairman and a representative of the Ministry of Finance is also present, the Constitutional-Legal Committee assesses whether the Constitutional Court's requests are justified and then votes on how it will further proceed. Up until now, it has in all cases recommended that the Constitutional Court's budget requests be granted, despite the fact that they exceeded the overall limits prescribed by the Ministry of Finance. In certain cases, the Budget Committee of the Assembly of Deputies has adopted a position on the Constitutional Court's budget recommendations.

The above-described process is prescribed by the Act on Budget Rules (Act No. 576/1990 Sb., as amended). An analysis of this statute quite unambiguously demonstrates the dominant position of the Ministry of Finance, in that it directs all work on the budget without distinction as to which institution is concerned. The text of the statute does not call for differing treatment for judicial bodies. Quite clearly then, the executive branch has the raw potential to „suffocate“ an otherwise autonomous judicial branch. This fact is also clear from a significant provision of this statute, which provides that, in cases where a budget is not adopted by 1 January, the state's economic affairs (thus, those of the Constitutional Court as well) are to be managed and directed in accordance with the government's proposal (a sort of budget provisorium). On the other hand, however, it must be acknowledged that the Constitutional Court's position and status is a good deal stronger de facto than de jure. In this regard, it is again interesting to draw parallels with the situation of our Polish colleagues. Polish law accords the Polish Constitutional Tribunal (as well as the Supreme Court, the Supreme Administrative Court, and the Office of the Ombudsman) a status in relation to budget matters far stronger than that enjoyed by the Czech Constitutional Court. The Constitutional Tribunal's budget is adopted by the Plenum of Justices, and the Tribunal's Chairman submits it directly to the Sejm. Therefore, in the process of adopting the budget, the Tribunal's Chairman enjoys de facto the status of a Minister of Finance in relation to the Tribunal's chapter of the budget.

Czech law gives no such competence to the Constitutional Court Plenum. The Act on the Constitutional Court merely provides that the Court's Chairman, among his other

responsibilities, is to perform the Court's administration. He is assisted in this task by the Court's administrative staff, which is headed by its director. The Constitutional Court's own budget is made up of binding limits on both investment and non-investment expenditures and limits on wage funds, which de facto entails a limit on the number of Court employees. For the sake of comparison, the Court's 1998 budget expects overall expenditures totalling around 1,9 million USD, of which 40 % goes to wages for employees, which includes 15 Justices and about 65 other employees (including those responsible for building maintenance). The Justice's wages are designated by a special statute which prescribes the pay for constitutional officials and judges of ordinary courts. These wages are derived from the highest wage for state administration (that of the President), and are generally at such a level that the basic pay for the Court's Chairman corresponds to that of the Prime Minister and the basic pay for other Justices corresponds to that for Ministers. The wages for the Court's other employees are the same as those in state administration generally and are provided for in the same legal acts. When they retire, both Justices and other employees are subject to the same pension conditions as all other pensioners.

The Court's budget is subdivided into further items, and a quarterly report on the use of funds is submitted to the Ministry of Finance. The Constitutional Court is authorised to shift funds, but only between particular sub-items. Then after the close of each year a final assessment is drawn up for the Assembly of Deputies (more specifically, its Constitutional-Legal Committee) and for the Ministry of Finance. This assessment makes up a part of the final state accounting for the Czech Republic.

The budget and the accounts of the state are approved by law, they have gone through all stages of the legislative process, including publication in the Collection of laws of the Czech Republic. The principle of the universality of the budget means that all revenues raised and all moneys expended by the Constitutional Court in the course of its operations shall be accounted for in its respective part of the budget. The Supreme Auditing Office shall perform annual audits on the management of and implementation of the state budget.