

## **IVth Congress of the World Conference on Constitutional Justice**

# **THE RULE OF LAW AND CONSTITUTIONAL JUSTICE IN THE MODERN WORLD**

11–14 September 2017, Vilnius, Lithuania

## **QUESTIONNAIRE**

filled by

### **Constitutional Court of the Czech Republic**

#### **A. THE RULE OF LAW AND CONSTITUTIONAL JUSTICE IN THE MODERN WORLD**

Without attempting to give a definition, for the purpose of this questionnaire, rule of law shall refer to a state in which all persons, institutions and entities, public and private, including the state itself, are bound by and accountable to the law.

As a concept of universal validity, the rule of law is a characteristic of modern democratic legal systems. Even if some Member Courts of the World Conference on Constitutional Justice have very specific powers, they all ensure the supremacy of the Constitution, and thus they promote the rule of law.

The need for universal adherence to and implementation of the rule of law at both the national and international levels was endorsed by all Member States of the United Nations in the Outcome Document of the 2005 World Summit. In 2011, the United Nations published the Rule of Law Indicators and, in 2012, a high-level meeting of the General Assembly recognized that the rule of law applies to all states equally, and to international organizations.

At the regional level, the Inter-American Democratic Charter of the Organization of American States, the Constitutive Act of African Union and the Arab League refer to the rule of law. For the Council of Europe, the rule of law is one of the three principles which form the basis of all genuine democracy, together with individual freedom and political liberty.

While the scope of the rule of law is not always defined in the same manner in these instruments, the work of the Venice Commission may be able to provide some guidance for the 4th Congress and for the replies to this questionnaire.

Following its 2011 Report on the Rule of Law (CDL-AD(2011)003rev), the Venice Commission, in March 2016, adopted its detailed Rule of Law Checklist (CDL-AD(2016)007), which provides an overview of the wide scope of the rule of law, inter alia, covering legality (supremacy of the law, relationship between international law and domestic law, law-making procedures, law-making powers of the executive, emergency situations, private actors in

charge of public tasks), legal certainty (accessibility of legislation and court decisions, foreseeability, stability and consistency, legitimate expectations, non-retroactivity, *nulla poena sine lege*, *res judicata*), prevention of abuse of powers, equality in and before the law and non-discrimination, access to justice (independence and impartiality of the judiciary and judges, fair trial, including effectiveness of judicial decisions, autonomy of the prosecution service). These topics can help in order to identify elements which are part of the rule of law, even when they are used without an explicit reference to this principle.

In your replies to the questions below, please briefly present the case-law of your Court whenever applicable.

### **I. The different concepts of the rule of law**

*1. What are the relevant sources of law (e.g. the Constitution, case-law, etc.) which establish the principle of the rule of law in the legal system of your country?*

The Czech Republic is defined in Art. 1 (1) of the Czech Constitution (hereinafter the “Constitution”) as a democratic State governed by the rule of law. This article lays down a general and primary principle that forms the basis for a number of sub-principles, some of which are laid down (1) explicitly at the constitutional level, while others (2) have been inferred in the Constitutional Court’s case-law (e.g. order, predictability, non-arbitrariness, equality in law and legal certainty).

The first paragraph of Art. 1 of the Constitution combines two principles – democracy and the rule of law. In the conditions of the Czech Republic, the democratic principles are thus finely intertwined with the principles of constitutionalism, which draws its main source from the liberal political concepts of modern times. Although in a constitutional democracy (1.) representatives freely elected by the people should govern, they must (2.) respect certain substantive limitations to their authority. In such a democracy, elections are not merely formal, but must meet a certain set of minimal requirements. The rule of law, the separation of powers and respect for and protection of fundamental rights and freedoms must also all be in place (cf. the dissenting opinion of Eliška Wagnerová on judgment File No. Pl. ÚS 73/04).

The Constitutional Court of the Czech Republic stated in its first plenary judgment (judgment File No. Pl. ÚS 19/93) that “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 their basic enacted values of a democratic society and also measures the application of legal norms by these values.” The Constitutional Court emphasized that “the values and principles upon which a regime is built are not must of a legal, but first of all of 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.” Therefore, although

the first paragraph defines the Czech Republic as a democratic State governed by the *rule of law*, we must take into account that the nature of the principle is ultimately political, not definable entirely by the law. The abstract character of this provision enabled the Constitutional Court to develop more thoroughly the different facets of the principle of the rule of law.

The emphasis on values (human dignity, freedom, justice) and principles (sovereignty of the people, *rule of law*, representative democracy) attests to the degree to which the Czech Constitutional Court strived to keep pace with post-war constitutionalism.

*2. How is the principle of the rule of law interpreted in your country? Are there different concepts of the rule of law: formal, substantive or other?*

According to the doctrine, the phrase rule of law is commonly given two different meanings: “In the broadest, or weak or formal sense, it means any legal system in which public powers are conferred by law, and wielded in the forms and by means of the procedures the law prescribes (...). In the second, strong and substantive sense, rule of law, instead, stands only for those systems in which public powers are also subject to (and hence limited or constrained by) law not only in the content of their decisions. All powers, including legislative power, are constrained by substantive principles normally provided for by the constitution (...).” In its first judgement (judgement File No. Pl. ÚS 19/93), the Constitutional Court of the Czech Republic implicitly differentiates between these two concepts of the rule of law. Reflecting on the particular historical experience of the Central Europe, the Constitutional Court, on the one hand, appreciated “remarkable results in the positivistic elaboration of procedural rules and guarantees” which “strengthened citizen’s legal certainty and the stability of laws”, on the other hand, the Constitutional Court mentioned the particular weakness of the positivistic tradition because “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 (...), 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.” That is why our new Constitution is not founded on neutrality with regard to values and its starting point is the substantive-rational conception of legitimacy and the law-based state.

The Constitutional Court provided perhaps the most extensive analysis of the distinction between the formal and material aspects of a rule of law (along with aforesaid judgement File No. Pl. ÚS 19/93) in its judgement File No. I. ÚS 2517/08, where it held that “unlike the modern, material rule of law, which is based on the idea of fairness, the formal rule of law (first mentioned by R. v. Mohl) – the predecessor of material rule of law – requires that each act of the State power be made on the basis of a legal norm adopted by the State; in other words, a State governed by the formal rule of law is a State ruled by laws adopted in conformity with the procedure prescribed by the Constitution. Only a law can lay down the competencies of individual governmental authorities, while the powers of the three individual branches of State power are set out by the Constitution.” According to the Constitutional Court, the rule of law, in its modern concept, “aims at establishing and maintaining a materially fair state of

affairs. The rule of law is both an important element of democracy and a prerequisite for unimpaired exercise of the fundamental rights by individuals, including human dignity as their inherent aspect, which serves as a starting point for inferring the individual fundamental rights and also (in addition to other principles, such as non-discrimination) the prohibition of arbitrary conduct (arbitrariness), which is thus embodied – in doctrinal terms – in the wording of Art. 2 (2) of the Charter of Fundamental Rights and Freedoms.”

*3. Are there specific fields of law in which your Court ensures respect for the rule of law (e.g. criminal law, electoral law, etc.)?*

Basically, the concept of the rule of law has implication for all fields of law. However, only rarely are constitutional cases decided only by the application of the concept of the rule of law. Predominantly, the concept of the rule of law is applied in conjunction with other constitutional provisions [Among the exceptions could be some cases concerning the necessity of compliance with the rules of the legislative process, since eliminating arbitrariness from the decision making of bodies of public power is a basic requirement on the part of – even if only formally conceived – a rule of law state, where non-compliance with the rules may result not only in questioning the legitimacy of an adopted decision (act), but also the legality of the same (...)]. Given the wording of the Czech Constitution, in the criminal law and electoral law cases the more concrete provision of the Constitution are evoked. However, the right to judicial and other legal protection can be understood as the unfolding of the general principle of the rule of law (judgment File No. II. ÚS 1975/08).

*4. Is there case-law on the content of the principle of the rule of law? What are the core elements of this principle according to the case-law? Please provide relevant examples from case-law.*

The concept of the rule of law accepted by the constitutional legislature does not treat material and formal rule of law as opposing phenomena, even though the construction of the material rule of law – as developed in the case-law of the Constitutional Court in a number of areas – has clearly overcome the original idea of formal rule of law that is conceptually based on legalism and positivism (paragraph 19 of Judgement File No. I. ÚS 420/09). However, this does not mean that the law need not have certain formal qualities. To the contrary, even nowadays “the principle of the rule of law is bound to *formal characteristics* that must be manifested by the legal rules in the given legal system so that individuals can take them into account when determining their future conduct. [...] Even in a democratic State governed by the rule of law, the law must have proper formal quality (Judgement File No. Pl. ÚS 77/06, paragraph 45). In this context, legal doctrine speaks about “*formal values of law*”, which “do not determine the contents of the legal regulations, but are to secure the very existence of law as well as its acceptance and applicability: these values include order, predictability, non-arbitrariness, equality in law and legal certainty. [...] Legal philosopher Neil MacCormick speaks in this respect about the *ethics of legalism*, which is characterised by regularity, predictability, certainty, permanency and unity. [...] The basic principles of the rule of law include the principle of predictability of law, its comprehensibility and lack of inherent contradictions.” (Pl. ÚS 77/06, paragraph 36; see also judgment File No. Pl. ÚS 21/01). “Every legal regulation must express respect for the general legal principles, such as confidence in law, legal certainty and predictability of legal acts that structure the legal order of a democratic State governed by the rule of law or can be inferred from them (paragraph 20 of Judgement File No. I. ÚS 420/09).

The material aspect of the rule of law (i.e. the notion of fairness or justice) is expressed primarily by the concept of an individual as a *dignified human being* that has equal rights with all other beings (Article 1 of the Charter). The Constitutional Court then interpreted Article 2 of the Constitution as the general freedom to act, i.e. an umbrella or general clause which logically responds to the inability to predict all future encroachments on the free space of an individual when formulating the fundamental rights (cf. Judgements I. ÚS 512/02, I. ÚS 546/03, I. ÚS 43/04, IV. ÚS 29/05, I. ÚS 1835/07, etc.).

Material rule of law has important implications for the activities of public authorities and this is why public authorities “must remain within the confines of their powers and competencies stipulated by the constitutional order and laws, which is true not only in formal terms, as the exercise of these powers must also conform, in material terms (in their contents), to certain fundamental principles which are mostly expressed in the provisions of the constitutional order and which guarantee the fundamental rights and create the value base of the constitutional order. In respect of the exercise of powers and competencies of a public authority, it is therefore crucial to also follow the purpose at which the exercise of the powers is aimed, as well as the means that are used therein (Judgement File No. I. ÚS 1849/08 of 18 February 2010).

Important consequences of the element of constitutionalism in constitutional democracy – i.e. the material rule of law – include not only the aforesaid construction of non-constitutional law with a focus on its values, but also the need to avoid excessive formalism in application and interpretation of non-constitutional law [indeed, this usually entails sophisticated justification of clear injustice – see historic Judgement File No. III. ÚS 127/96 and extensive case-law following on from that judgement], as well as the need to bear in mind unwritten principles of democratic society in the sense of the sources of law. At the same time, the Constitutional Court emphasises the link between the entire exercise of public power and the concept of fairness, not only in a situation where clear injustice is being justified under the veil of formalism, but also in cases where two constitutional principles collide with each other.

*5. Has the concept of the rule of law changed over time in case-law in your country? If so, please describe these changes referring to examples.*

There is a fundamental continuity in the Czech case-law given the fact that the concept of the rule of law was authoritatively outlined for all the other jurisprudence in the first plenary judgment of the Constitutional Court (File No. Pl. ÚS 19/93). However, that does not mean that the concept was not further specified as is clearly visible from the above mentioned examples from the jurisprudence of the Constitutional Court. Still, the basic meaning of the concept of the rule of law follows from the two distinct normative models, (1.) the positivist model of the legal state and (2.) the new model of constitutional state in which statutes are not only subject to formal norms about their production, but also to substantive ones about their meaning. Consequently, the Constitutional Court has specified different aspects of the formal and material concepts of the rule of law. However, there has not been any paradigm shift in understanding these constitutional concepts.

*6. Does international law have an impact on the interpretation of the principle of the rule of law in your country?*

Basically, from the origin of the Constitutional Court, it was understood that the Czech Republic had been approaching the tradition of Western constitutionalism. Consequently, the

Czech conception of the rule of law has been formulated especially on the basis of the German constitutionalism, which most prominent Constitutional Court justices have strived to follow, and they therefore have adopted its basic concepts. Especially scholars serving on the Constitutional Court with rich foreign experience (e.g. Vladimír Klokočka, Pavel Holländer, Eliška Wagnerová) were the ones who made the decisive contribution to the definition of constitutional principles, and more particularly, of the rule of law. They thus construed similarly with Western constitutional jurisprudence analogous provisions of the Czech Constitution and Charter on which they relied in establishing particular constitutional principle (see above for an analysis of Art. 1 (1) of the Constitution, which mentions a democratic State governed by the rule of law and which could thus have been the origin for the distinction between formal and material rule of law). The international law as such has not been decisive for the interpretation of the rule of law in the Czech Republic.

## II. New challenges to the rule of law

7. *Are there major threats to the rule of law at the national level or have there been such threats in your country (e.g. economic crises)?*

The Czech society has not encountered any major threats to the rule of law such as the economic crisis in recent years. Naturally, corruption, lack of respect for minorities (ethnic, religious) or ignorance of judicial decisions by politicians occurs and affects legal culture.

8. *Have international events and developments had a repercussion on the interpretation of the rule of law in your country (e.g. migration, terrorism)?*

As mentioned above, migration flows and terrorism threats have not particularly hit the Czech Republic yet. It is true that the law enforcement agencies tend to gain more competences as a result of cyberthreats or organised crime, however, so far the Czech Constitutional Court has not dealt with any abuse of these new powers, nor with complaints that would stem from migratory flows.

9. *Has your Court dealt with the collisions between national and international legal norms? Have there been cases of different interpretation of a certain right or freedom by your Court compared to regional / international courts (e.g. the African, Inter-American or European Courts) or international bodies (notably, the UN Human Rights Committee)? Are there related difficulties in implementing decisions of such courts / bodies? What is the essence of these difficulties? Please provide examples.*

The Czech Constitutional Court respects and implements decisions of the European Court of Human Rights. It openly departs from the case-law only in situations when interpreting the Convention in more generous terms (e.g. Article 6 of the Convention applies to reopening of proceedings). When it comes to the Court of Justice of the European Union, in judgment No. Pl. ÚS 5/12 the Constitutional Court declared judgment of CJEU in the Czechoslovak Pensions Issue No. C-399/09 *ultra vires* (see the translation <http://www.usoud.cz/en/decisions/20120131-pl-us-512-slovak-pensions-1/>). Otherwise, the Czech Constitutional Court accepts and applies the case-law of the Luxembourg Court. Finally, the Czech Constitutional Court did not take into account the opinion of the UN Human Rights Committee that concerned restitution claims. The Committee declared the statutory requirement of Czech citizenship for filing restitution claims as violating the Covenant, however the Czech Constitutional Court found the statutory requirement as not breaching the

Constitution and the Czech Charter of Fundamental Rights. No other conflicts with the UN Human Rights Committee arose.

### **III. The law and the state**

*10. What is the impact of the case-law of your Court on guaranteeing that state powers act within the constitutional limits of their authority?*

Since its beginnings in 1993 the Constitutional Court has enjoyed high level of trust among both the general public and state authorities. This is not only due to the appointment of respectable justices but particularly to the persuasive power of their judgments and their reasoning. Therefore both legislators, executive and prosecuting authorities as well as ordinary court judges and other officials in most cases follow the Constitutional Court's findings.

*11. Do the decisions of your Court have binding force on other courts? Do other / ordinary courts follow / respect the case-law of your Court in all cases? Are there conflicts between your Court and other (supreme) courts?*

According to Article 89 (2) of the Constitution enforceable decisions of the Constitutional Court are binding on all authorities and persons. With regard to ordinary courts a distinction can be made e.g. between proceedings to annul statutes or other legal enactments or individual provisions thereof and proceedings concerning individual constitutional complaints. Judgments in the former proceedings are so called generally binding and ordinary courts are therefore obliged to follow them including their reasoning (*ratio decidendi*). Judgments in the latter proceedings are in general binding only *inter partes* unless published in the Collection of Laws.

It can be said that judgments of the Constitutional Court are widely respected by ordinary courts. However, there have been some conflicts between the Constitutional Court and the Supreme Court (e.g. with regard to procedural safeguards concerning the concurrence of constitutional complaint and appeal on the points of law – see Judgment File no. Pl. ÚS 1/03) and also the Supreme Administrative Court (e.g. with regard to the so called Czechoslovak pensions issue – see judgment no. Pl. ÚS 5/12) in the past. On the other hand, this gives the Constitutional Court another opportunity to further develop its case-law and react to changing circumstances.

*12. Has your Court developed / contributed to standards for law-making and for the application of law? (e.g. by developing concepts like to independence, impartiality, acting in accordance with the law, non bis in idem, nulla poena sine lege, etc.).*

A growing body of case-law of the Constitutional Court has shaped the legislative process over time. The Constitutional Court has developed principles with regard to proper law-making e.g. in cases relating to formal requirements of the “law” (its clarity, comprehensibility etc. – see Judgment File no. Pl. ÚS 23/02), legislative technique (repealing provisions, “collecting” amendments etc. – see Judgment File no. Pl. ÚS 24/07) or legislative procedure (e.g. legislative riders – see Judgment File no. Pl. ÚS 77/06).

As far as the application of the law is concerned, the Constitutional Court has issued hundreds of judgments relating to the above mentioned fundamental principles, mainly in cases dealing with individual constitutional complaints. For example there have been many cases relating to the principle of *non bis in idem* with regard to persistent refusal of military service (see e.g.

Judgment File no. IV. ÚS 81/95), or cases relating to the principle of independence of judges with regard to restitutions (see e.g. Judgment File no. II. ÚS 252/96).

*13. Do you have case-law relating to respect for the rule of law by private actors exercising public functions?*

The Constitutional Court quite often deals with cases concerning private actors exercising public functions such as bailiffs, insolvency administrators, or notaries, however these cases mostly concern issues not directly related to the principle of rule of law (liability for damages, remuneration etc.). However, it can be noted that the Constitutional Court at least on one occasion dealt with a case concerning impartiality of an insolvency administrator (see Judgment File no. III. ÚS 780/08).

*14. Are public officials accountable for their actions, both in law and in practice? Are there problems with the scope of immunity for some officials, e.g. by preventing an effective fight against corruption? Do you have case-law related to the accountability of public officials for their actions?*

In the Czech Republic, public officials are generally accountable for their actions, however the scope varies depending on the function the public official holds (e.g. judges, MPs compared to civil servants), and the distinction can be made also with regard to criminal or civil liability.

The Constitutional Court has recently dealt with two cases concerning Members of Parliament, one with regard to the scope of parliamentary privilege in relation to expressions on Facebook (see Judgment File no. I. ÚS 3018/14), the other with regard to the judicial review of disciplinary decisions of one of the Chambers of Parliament (see Judgment File no. Pl. ÚS 17/14). The Constitutional Court has not dealt with a case regarding corruption in relation to immunity.

#### **IV. The law and the individual**

*15. Is there individual access to your Court (direct / indirect) against general acts / individual acts? Please briefly explain the modalities / procedures.*

According to Art. 87 (1) (d) of the Constitution, the Constitutional Court has jurisdiction over constitutional complaints against final decisions or other encroachments by public authorities infringing constitutionally guaranteed fundamental rights and basic freedoms. The proceedings of the constitutional complaint enables the individual access of both natural and legal persons to the Court. An overwhelming majority of all proceedings before the Constitutional Court are proceedings on constitutional complaints (over 95%). The Constitutional Court rules on a constitutional complaint against a decision that has gone into legal effect or other intervention by a public authority that interferes in constitutionally guaranteed rights and freedoms. The Act on the Constitutional Court sets out standing to file a constitutional complaint in Section 72 (1). Under that provision, a constitutional complaint can be filed by an individual or legal entity that claims that a decision that has entered into legal effect in a proceeding in which s/he/it was a party, a measure or other intervention by a public authority (“intervention by a public authority”) violated his/its fundamental right or freedom guaranteed by the constitutional order. The catalog of fundamental rights and freedoms guaranteed by the constitutional order are contained primarily in the Charter of Fundamental Rights and Freedoms and in the Constitution.

A constitutional complaint may also seek annulment of a provision of a legal regulation, but, under § 74 of the Act on the Constitutional Court, only if application of that provision led to a circumstance that is the subject matter of the constitutional complaint, and only if the complainant claims that the legal regulation or the provision is inconsistent with a constitutional act (or another law, in the case of a sub-statutory legal regulation). In other words, the contested legal regulation must have actually been applied in the complainant's case, and the complainant must state which constitutional act, or law, and which provision thereof, the contested legal regulation is inconsistent with. A petition seeking the annulment of a legal regulation is of an accessory nature as regards a constitutional complainant, which means that it shares its fate. Therefore, if the constitutional complaint is rejected for any reason, the petition seeking annulment of a legal regulation is thereby also automatically denied. Without a connection to a particular decision or intervention by a public authority, an individual or legal entity is not entitled to propose the annulment of a legal regulation. The Constitutional Court would have to deny a direct petition seeking the annulment of a legal regulation, because it is a petition filed by an obviously unauthorized party [§ 43 (1) (c) of the Act on the Constitutional Court].

*16. Has your Court developed case-law concerning access to ordinary / lower courts (e.g. preconditions, including, costs, representation by a lawyer, time limits)?*

A requirement raised most frequently in respect of court proceedings is the requirement of a fair trial. This usually means a general requirement for constitutionality and fairness of the proceedings as a whole. A survey of the database of rulings of the Constitutional Court indicates that this is by far the most frequently pleaded and applied right. Naturally, there have been many cases concerning the access to ordinary/lower courts. Among those cases, the most prominent concerns appeal on points of law. The Constitutional Court disagrees especially with the overly formalistic approach taken by the Supreme Court.

*17. Has your Court developed case-law on other individual rights related to the rule of law?*

The Constitutional Court's decisions vary depending on the matters presented to it by the applicants. Sometimes, the Constitutional Court evokes the formal and material aspect of the rule of law, but more often the Constitutional Court protects the particular fundamental rights and freedoms. The jurisprudence of the Constitutional Court is very diverse, involving the cases in which civic, political, and socio-economic rights have been applied. Several analysts, more notable former deputy chief-justice Mrs. Eliška Wagnerová, complain that the jurisprudence of the Constitutional Court has been infected by a 'hypertrophy of the right to due process'. According to Wagnerová, "a hypertrophy of the right to due process (incomparable with, for example, the case law of the Federal Constitutional Court of Germany) has occurred, originally in connection with the very beginnings of [Czech] constitutional justice, when purely judicial approaches were promoted, imitating the approaches taken by ordinary courts, as there was no experience of interpreting material fundamental rights expressed in the form of principles and not in schemes of legal norms. The right to due process seemed the one that could be most easily grasped."

*18. Is the rule of law used as a general concept in the absence of specific fundamental rights or guarantees in the text of the Constitution in your country?*

Yes, but not in the constitutional complaints proceedings, but only in abstract or concrete review of legal norms, in which the specific disputable or contested legal rule is assessed based on the constitutional principles. Pursuant to Art. 87 (1) (d) in which the Constitutional Court decides on (constitutional) complaints against final decisions or other interferences by a public authority with constitutionally guaranteed fundamental rights and freedoms, and the complainant thus cannot invoke solely a breach of a constitutional principle, but must rather state in each case which fundamental right was allegedly breached through the contested act of public authority. It holds that failure to respect certain sub-principle of the rule of law can result in breach of a specific fundamental right. The Constitutional Court can then specify in its ruling that by using a procedure violating Art. 1 (1) of the Czech Constitution, the contested act of public authority violated a specific complainant's fundamental right guaranteed by the constitutional order.

However, in abstract or concrete review of legal rules, the specific disputable or contested legal rule is assessed based on the constitutional principles. In proceedings on review of legal rules, constitutional principles such as the rule of law may serve as a ground for derogating from a certain provision (i.e. violation of certain sub-principle of the rule of law interpreted as the violation of the Art. 1 (1) of the Constitution). For instance, principle of non-retroactivity of legal rules is widely invoked. According to the Constitutional Court, this principle follows from the principle of protection of the citizens' confidence in law, which further delimits the category of the rule of law (judgment File No. Pl. ÚS 21/96 of 4 February 1997). Decisions of the Constitutional Court regarding the legislative procedure can serve as another example of the above; in this case, a major role in respect of "legislative riders" was played by the principle of predictability of law, its comprehensibility and absence of internal contradictions, which is inferred from the rule of law (Judgement File No. Pl. ÚS 77/06 of 15 February 2007).