

# 1996/05/28 - I. ÚS 127/96: ELECTION COALITION

## HEADNOTES

Act no. 247/1995 Coll., on Elections to the Parliament of the Czech Republic does not govern public law conditions for the creation and activities of a coalition, and does not set forth the power of any body to decide that a particular political party or group of political parties or movements is to be considered a coalition participating in elections. Thus there is no authorization for a state body or a body entrusted with exercising public powers to interfere, by its decisions, in the pre-election activities of political entities, and the legislature apparently did not intend to interfere via public law in the creation of (election) coalitions.

We can conclude from the existing legal situation that only the political subject itself decides of its own free will whether it wishes to participate in elections as an independent (election) subject or as an (election) coalition. Given a lack of other legal regulations the only relevant thing is thus how the subject registers its candidate list. This is also indicated by the fact that the cited Act, when enumerating subjects authorized to submit candidate list for elections, sets forth coalitions as well as political parties without any further determination or characteristics. The creation of (election) coalitions is thus subject to agreement of the parties, which is not in any way regulated or forbidden by public law. The cited act does not tie any legal consequences for a participating party to such actions, nor is it stated that only members of a participating party can be entered in the candidate lists. Creation of a coalition is under present laws - a voluntary act, i.e., a manifestation of the will of two or more political parties or movements to create an election coalition, which is not subject to any further act of approval or review by state bodies.

## CZECH REPUBLIC

## CONSTITUTIONAL COURT

## JUDGMENT

## IN THE NAME OF THE CZECH REPUBLIC

The Constitutional Court of the Czech Republic decided, in a Panel, on the constitutional complaint of the complainant, the political party the Free Democrats - the National Social Liberal Party (Svobodní demokraté - Liberální strana národně sociální) (SD - LSNS), against the decision of the Central Election Commission of 27 April 1996, that the complainant would be considered a coalition in elections to the Chamber of Deputies of the Parliament of the Czech Republic, as follows:

The Constitutional Court forbids the Central Election Commission to express an opinion on the question of whether the complainant's candidate list is or is not a candidate list of a coalition, or to pass resolutions about this.

The Constitutional Court also orders the Central Election Commission to renew the status of the complainant in elections to the Chamber of Deputies of the Parliament of the Czech Republic so as to correspond to the status before the election commission's resolution after registration of the complainant's candidate list and, when exercising its powers, not to take into account its resolution, which stated in point 9 that SD - LSNS is a coalition; further, in connection with the renewal of the complainant's status, within 24 hours after delivery of this judgment, to send to the CTK press agency a declaration that the complainant's candidate list will be considered a candidate list of a single political party in the 1996 parliamentary elections.

Concerning the complainant's other motions, the constitutional complaint is denied.

## REASONING

### I.

In its constitutional complaint of 3 May 1996, the complainant - the political party the Free Democrats - the National Social Liberal Party (Svobodní demokraté - Liberální strana národně sociální) (SD - LSNS), proposed that the Constitutional Court decide that the Central Election Commission's resolution of 27 April 1996, that the political party SD - LSNS would be considered a coalition in the 1996 parliamentary elections, interfered in the political party's constitutionally guaranteed rights and freedoms and, as a result, also in the constitutional rights of citizens who associated in that party. The complainant objects that the decision is in complete conflict with legal regulations contained in Act no. 247/1995 Coll., on Elections to the Parliament of the Czech Republic and Amending and Supplementing Certain Other Acts, as amended by later regulations (the "Election Act"), and with the purpose of that Act. The issue is that the Central Election Commission decided that the complainant, heretofore considered a political party, which needs 5 % of votes to enter the first scrutiny, would in future be considered a coalition, which needs to receive 7 % of votes to enter the first scrutiny.<sup>11)</sup> The complainant states that the Central Election Commission decided on this condition even though no provision of the Election Act authorizes it to do so, and decided in its own discretion. In view of the fact that this commission is composed of representatives of all political parties, it can in fact be said that representatives of political parties decided, completely outside the scope provided by law, to create more difficult conditions for another political subject to enter the Parliament of the CR.

The complainant emphasizes that it met all conditions provided by law for registration of candidate lists, and these lists were also registered. Subsequently the Central Election Commission assigned the complainant, by lottery, a number to identify its candidate lists for elections to the Chamber of Deputies of the Parliament of the Czech Republic, and the

complainant, as a political party, paid the appropriate security deposit under the law. The decision of the Central Election Commission that is criticized in this constitutional complaint was made only after all the above-mentioned formalities had been met. This decision, that the complainant would be considered a coalition in the 1996 elections to the Parliament of the Czech Republic, was made despite the fact that in previous meetings of the Central Election Commission it was resolved that the complainant would not be considered a coalition.

The complainant sees the steps that were taken concerning it as violation of the articles of the Charter of Fundamental Rights and Freedoms stated below. Under Art. 2 par. 3 everyone may do that which is not forbidden by law and nobody may be compelled to do that which is not imposed upon him by law. Under Art. 3 par. 1 fundamental rights and freedoms are guaranteed to everyone without regard to, among other things, political or other conviction. Under Art. 4 par. 3 statutory restrictions of fundamental rights and freedoms must apply equally to all cases that meet the specified conditions. Under Art. 21 par. 4 citizens have access to elective and other public office under the specified conditions. The complainant also raised the objection that there was violation of free competition of political forces in a democratic society under Art. 22 of the Charter of Fundamental Rights and Freedoms. It agrees that elections to the Parliament of the CR, although they are a manifestation of the constitutional right to vote freely, certainly cannot avoid certain formalities that must be met as a condition for access to elections. These are quite evidently formalities whose fulfillment guarantees that a political party which participates in elections has been duly registered, that the clear identity of candidates will be ensured, duplication, consisting of a certain candidate running for election in multiple election districts, will be prevented, that a candidate's rank on a candidate list will be clear and it will also be apparent that the candidate is a citizen of the Czech Republic. In all these cases decision making about whether these formalities were met or not is clear, and precludes the possibility of any sort of discretion. Any actions excluding a political party or a candidate from participation in elections, whether by decision of a Regional Election Commission or Central Election Commission, can be appealed to a court, which is required to decide in a very short time whether or not a mistake was made in evaluating the above mentioned formalities and the relevant consequences. Even here, however, the matter is not one of discretion, but of comparing conditions provided by law with the facts.

The foregoing indicates that the much lesser interference in free competition of political forces, which the Central Election Commission conducts when reviewing the formal requirements of candidate lists, is subject to court review. Thus, the legislature clearly did not even consider the possibility that the Central Election Commission would be authorized to interfere in competition in other ways, which would not be subject to court review. Quite clearly, then, there can be no question of interference where the decision about whether steps will or will not be taken is only a question of discretion without any firm rules.

The complainant also points out that the Election Act does not define what is a coalition, nor does any other law passed in the CR since 1918. Thus, when defining a coalition it is not possible to rely on analogie legis or analogie iuris. The legislature clearly did not want to define a coalition in any way, so as not to create the necessity of deciding what is a

coalition and what is not a coalition. In that state of affairs, then, a coalition is, de iure, only a subject that identifies itself as such on its candidate list.

## II.

The complaint was also reviewed in formal terms, and no reasons were found to reject it.

## III.

The Constitutional Court began with the filed constitutional complaint and statements of the parties, and in view of its status as a judicial body for protection of constitutionality, considered whether the actions of the Central Election Commission did or did not violate the complainant's constitutionally guaranteed fundamental rights and freedoms.

Before the Constitutional Court turned to evaluating the matter itself, it was necessary to note how the term "coalition" was understood in the course of actions by the Central Election Commission. Differences of opinion in that regard undoubtedly led to the filing of this constitutional complaint. The Constitutional Court states that the term "coalition" was not defined by the Act on Elections or in other legal regulations. The term "coalition" is familiar from political practice, mostly from the co-operation of a so-called "governing coalition," whose meaning has been settled for years. Where this is not so, the term "coalition" may indicate various levels of relationships, from mere co-operation between various parties through tighter or looser interconnection up to a degree of co-operation which precedes the merger of such parties.

No provision of the Election Act governs public law conditions for the creation and activities of a coalition, enshrines the authority of any body to decide that a particular political subject (political party or declared or undeclared group of political parties or movements) participating in elections (e.g. as a party) must be seen as a coalition; there is thus no authorization for a state body or a body entrusted with exercising public powers to interfere, by its decision-making, in (pre-) election activities of political subjects. This is also confirmed by Act no. 424/1991 Coll., on Association in Political Parties and Political Movements, which explicitly provides that state bodies may interfere in their status and activities only on the basis of law and within its bounds. 6) It is apparent that the legislature did not intend to interfere (via public law) in the creation of coalitions. If it wanted to influence such questions, it would have to precisely define an election coalition and also regulate the mechanism of review (evidently judicial) of whether a political subject is a party or a coalition. We can conclude from this, in accordance with Art. 2 par. 2 1) and Art. 3 3) of the Charter of Fundamental Rights and Freedoms, or Art. 2 par. 3 and Art. 4 of the Constitution of the CR (particularly with the argument that "everyone may do that which is not prohibited by law") that in the existing legal situation only the political subject itself decides of its own free will whether it wishes to participate in elections as an independent (election) subject or as an (election) coalition. Given a lack of other legal regulations the only relevant thing is thus how the subject registered its candidate list. The Election Act itself provides some support for such a conclusion in § 31 par. 1 9) where,

when enumerating subjects authorized to submit candidate lists for elections, it sets forth coalitions (without further requirements) in addition to political parties. The creation of (election) coalitions is thus subject to agreement of the parties, which is not in any way regulated or forbidden by public law. The Election Act does not tie any legal consequences for a participating party to such actions. It is not even prescribed that only members of a party are recorded on its candidate list; any natural person who is entitled to run for office can be registered. 8) Creation of a coalition is - under present laws - a voluntary act, i.e., a manifestation of the will of two or more political parties or movements to create an election coalition, which is not subject to any further act of approval or review by state bodies.

A similar construction, though expressed more precisely, was adopted, for example, in Act no. 47/1990 Coll., on Elections to the Federal Assembly, as amended by Act no. 59/1992 Coll., which provided that “political parties may agree to submit a joint candidate list. Provisions of this Act applying to a political party shall be applied commensurately to a coalition thus created ...”<sup>12)</sup> An identical provision was also included in Act no. 54/1990 Coll., on Elections to the Czech National Council, as amended by Act no. 94/1992 Coll. For the sake of completeness it must be noted that in the first elections to the highest representative bodies, in 1990, only a minimum threshold was provided for votes necessary to progress to the first scrutiny, which applied to political parties and coalitions, and thus it was not necessary to distinguish between the two political subjects. Differentiated thresholds were not established until amendments to the election acts in 1992.

The Constitutional Court also had to clarify for itself what was the position of the Central Election Commission in resolving the conflict about whether the candidate list of SD - LSNS is a candidate list of a political party or a candidate list of a coalition under § 31 of the Election Act.<sup>9)</sup> The answer to this is given by the Election Act, which provides that elections to the Parliament are governed by the Central Election Commission, whose jurisdiction is elaborated in § 12 par. 6 of the Election Act,<sup>7)</sup> under which the Central Election Commission

- a) monitors the observance of Acts and other legal regulations on elections,
- b) decides on complaints against procedures taken by regional and district election commissions and appeals against their decisions; the decision of the Central Election Commission is binding for all election commissions,
- c) determines and publishes the results of elections,
- d) shall deliver a record of the results of elections to the Parliament of the Czech Republic to the appropriate chamber of the Parliament,
- e) shall issue a certificate of election to elected candidates,
- f) performs other tasks under this Act and other legal regulations.

Other tasks of the Central Election Commission must be understood to mean, in particular, review of the candidate lists by the Central Election Commission under § 33, registration of candidate lists under § 34, resolving disputes on rejection of a candidate list under § 32

par. 3 in the period before its registration, or cancellation of registration if a political party that submitted a candidate list was dissolved or its activities suspended (§ 31 par. 4).

Thus, in this case, where the Central Election Commission decided that the already registered candidate list of a political party is a candidate list of a coalition, it exceeded its powers, because the law does not give it such authorization. The question of whether in this case there was a political party or a coalition under the Act on Elections was related chronologically primarily to submitting and reviewing candidate lists under §§ 31 to 33 of that Act.

To evaluate this case it must also be stated that the complainant was already registered as a political party, had been allocated, by lottery, a number to the Chamber of Deputies by the Central Election Commission, and it paid the deposit prescribed by law. If no inadequacies in the candidate list were discovered at this stage of preparations for elections, the Central Election Commission's authority to decide in the matter in question after registration of candidate lists cannot be derived from the text of the law.

After clarifying the foregoing questions the Constitutional Court of the CR concluded that the procedures of the Central Election Commission were interference by a body of public power into the constitutionally guaranteed fundamental rights and freedoms of a political party, i.e., the complainant. The Central Election Commission's procedures were not only a violation of the Act on Elections, as was discussed above, but also a violation of Art. 4 of the Charter of Fundamental Rights and Freedoms, under par. 14) of which obligations may be imposed only on the basis of law and within its bounds and only while respecting fundamental rights and freedoms. This also corresponds to the purpose of Art. 20 of the Constitution of the CR,<sup>5)</sup> under which further conditions for exercise of the right to vote, organization of elections and the extent of judicial review shall be provided by law.

The cited provision of the Charter of Fundamental Rights and Freedoms was violated by the fact that the Central Election Commission's resolution was not based on statutory provision or authorization, and, merely on the basis of discretion, beyond the framework of its authority, required a legal entity, in this case a political party, to tolerate the fact that, unlike other parties, its entry to the Parliament of the Czech Republic will not be subject to the condition of receiving at least 5 % of votes, but the need to receive at least 7 % of votes under the Act on Elections.<sup>11)</sup> Therefore this "resolution," even though, for example, the constitutional complaint speaks of it as a "decision," must be considered interference by a body of public power in the complainant's fundamental rights and freedoms, in the wider sense of the word, under § 72 par. 1 letter a) of Act no. 182/1993 Coll., and the conclusions which are set forth in verdict of this judgment must be drawn.

While the Central Election Commission, in oral proceedings, pointed to the provisions of § 49 par. 1 and 2 of Act no. 247/1995 Coll.,<sup>10) 11)</sup> and from it derived its authority to decide whether the complainant is or is not a coalition, the Constitutional Court believes that this provision cannot be taken into account in the adjudicated matter. The cited provision governs only the counting of valid votes cast for political parties and for election coalitions, and does not give the Central Election Commission an ex post right, i.e., after voting has been completed, to subsequently change the status of parties or coalitions duly registered to participate in elections.

For all these reasons, the Constitutional Court, applying § 72 par. 1 letter a) and § 82 par. 3 letter b) of Act no. 182/1993 Coll., on the Constitutional Court, decided as follows: it forbade the Central Election Commission from continuing to violate the complainant's rights and freedoms, and ordered it to renew the situation before the violation. Within this framework, the Constitutional Court ordered the Central Election Commission to send the CTK press agency the declaration which is set forth in the verdict of this judgment. Therefore, to renew that situation, i.e., for voters to be properly informed, an active step of the Central Election Commission is necessary, in the form of a declaration for the CTK press agency.

The Constitutional Court rejected the constitutional complaint only insofar as the complainant sought to impose an obligation on the respondent to apologize to the complainant and secure posting of the declaration for the CTK press agency in front of every election room.

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### **Overview of the most important related legal regulations**

1. Art. 2 par. 2 of Act no. 2/1993 Coll. which promulgates the Charter of Fundamental Rights and Freedoms, provides that state power may be asserted only in cases and within the bounds provided for by law and in the manner prescribed by law.
2. Art. 2 par. 3 of Act no. 2/1993 Coll. provides that everyone may do that which is not prohibited by law, and nobody may be compelled to do that which is not imposed upon him by law.
3. Art. 3 par. 1 of Act no. 2/1993 Coll. provides that fundamental rights and freedoms are guaranteed to everyone regardless of gender, race, color of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national ethnic minority, property, birth, or other status.
4. Art. 4 par. 1 of Act no. 2/1993 Coll. provides that duties may be imposed only on the basis of and within the bounds of law and only while respecting the fundamental rights and freedoms.
5. Art. 20 of Act no. 2/1993 Coll. provides that the right of free association is guaranteed and everyone has the right to associate with others in clubs, societies, and other associations.
6. § 3 par. 1 of Act no. 424/1991 Coll. on Association in Political Parties and Political Movements provides that state bodies may interfere in the status of parties and movements only on the basis of law and within its bounds.
7. § 12 par. 6 of Act no. 247/1995 Coll. on Elections to the Parliament of the CR and Amending and Supplementing Certain Other Acts provides the obligations of the Central Election Commission such that it ensures that electoral laws and statutes are observed, decides on complaints against procedures taken by regional and district election

commissions and appeals against their decisions, ascertains and publishes total election results, conveys a record of election results to the Parliament of the CR, issues a certificate of election to elected candidates and performs other tasks set by law.

8. § 25 of Act no. 247/1995 Coll., on Elections to the Parliament of the CR and Amending and Supplementing Certain Other Acts provides that any voter who, no later than the second day of the elections, has reached the age of at least 21 years and is not prohibited from exercising the right to vote may be elected as a deputy to the Chamber of Deputies.

9. § 31 par. 1 of Act no. 247/1995 Coll. on Elections to the Parliament of the CR and Amending and Supplementing Certain Other Acts provides that candidate lists for elections to the Chamber of Deputies may be submitted by political parties or coalitions through a representative, no later than 60 days before the day of elections.

10. § 49 par.1 of Act no. 247/1995 Coll. on Elections to the Parliament of the CR and Amending and Supplementing Certain Other Acts provides that the Central Election Commission determines how many total valid votes were cast.

11. § 49 par. 2 of Act no. 247/1995 Coll. on Elections to the Parliament of the CR and Amending and Supplementing Certain Other Acts provides that for purposes of political parties and coalitions progressing to the first scrutiny the Central Election Commission shall determine which political parties received less than 5 % and which coalitions, composed of two political parties, received less than 7 %, provided that within further determination of election results and allocation of mandates these political parties and coalitions are no longer taken into account.

12. § 18 par. 10 of Act no. 59/1992 Coll. on Elections to the Federal Assembly, as amended by Act no. 59/1992 Coll., provides that political parties may agree to submit a joint candidate list, and that provisions of the Act concerning a political party shall apply commensurately to a coalition thus created.