

# 1996/11/05 - I. ÚS 5/96: UNDUE DELAY

## HEADNOTE

Inactivity by a court, or its incommensurate delay in hearing a matter constitute an infringement of Article 38 para. 2 of the Charter of Fundamental Rights and Basic Freedoms,1) according to which everybody has the right to have her case considered without unnecessary delay.

## CZECH REPUBLIC

## CONSTITUTIONAL COURT

## JUDGMENT

## IN THE NAME OF THE CZECH REPUBLIC

of the Constitutional Court of the Czech Republic (Panel I) of 5 November 1996 sp. zn. I. ÚS 5/96 in the matter of the constitutional complaint of M. Č. and others against the court's inactivity and its delay in court proceeding no. 15 C 246/93 of the District Court in Ústí nad Labem.

The Constitutional Court of the Czech Republic requires the District Court in Ústí nad Labem not to persist in its delay in the matter conducted before it under the file number 15 C 246/93 and to hear the matter without delay.

## REASONING

1. In their constitutional complaint, the petitioners object to the inactivity of the District Court in Ústí nad Labem in the matter with file no. 15 C 246/93. The petitioners conclude that, as a result of the District Court's inactivity, their right to have their complaint considered without unnecessary delay as meant by Article 38 para. 2 of the Charter of Fundamental Rights and Basic Freedoms1) has been violated. They ask, therefore, that a judgment be issued in which the District Court in Ústí nad Labem is instructed to order a hearing in the petitioners' matter, conducted under the file no. 15 C 246/93.

In essence, therefore, this is a constitutional complaint filed against some impingement by public authorities other than a decision, as a result of which constitutionally guaranteed fundamental rights were infringed.

In their constitutional complaint, the petitioners assert that, until 24 February 1993, they were the tenants of apartments in Ústí nad Labem - Předlicích. The owner of the apartments in question is the municipal division of Ústí nad Labem 1 - City, represented by the Local Office in Ústí nad Labem 1. On 24 February 1993, the Municipal Police of the

city of Ústí nad Labem broke into the petitioners' apartments, and, with the assistance of employees of the residential division of the Local Office in Ústí nad Labem, they cleared the apartments in question such that the belongings and the furnishings were placed out on the street, and they compelled the tenant and members of their households to vacate the apartments. In addition, the documents concerning the apartment were taken from their possession. Train tickets to Slovakia, as well as freight space for their apartment furnishings, were purchased for them, and in the presence of the police they were placed on a train, which took them off to Slovakia.

The Local Office in Ústí nad Labem justified its conduct by pointing to the fact that the petitioners expressed the desire to vacate the apartments. Equally, in the context of their arbitrary resettlement of the petitioners it was considered that, as Slovak citizens, they should be provided with apartments in Slovakia, which did not happen. The Municipal Office in Chmiňanské Jakubovany refused to accept them into the territory of Slovakia for the reason that they are probably Czech citizens. Consequently, the petitioners sold off their property and returned back to Ústí nad Labem. Since they were not permitted to live in their original apartments, they lodged with the District Court in Ústí nad Labem a complaint requesting a determination that they are the lessees of apartments in Ústí nad Labem - Předlicích, as indicated in the complaint, and that the defendant is obliged to give them access to their apartments and to issue them a lease contract. In addition, in the complaint they submitted a petition seeking provisional measures that would allow them access and use of the apartments within three days of the issuance of the provisional measures. The Local Office in Ústí nad Labem 1 was designated as the defendant. The complaint was filed with the District Court in Ústí nad Labem on 21 May 1993.

In consequence of a filing error, the complaint requesting a determination that lease relations continued was registered under the file no. 15 C 246/93, and the petition for issuing provisional measures was registered separately under file no. 15 C 243/93. In both cases, however, the District Court in Ústí nad Labem did not take a single step until the time when the constitutional complaint was filed. Then on 9 January 1996 it made a decision in the matter of provisional measures, namely, by ruling no. 15 C 243/93 of 9 January 1996, it dismissed the proceeding. The grounds for its decision were that the defendant did not meet the procedural requirements for the proceeding, that is the capacity to be a party to a proceeding, since the municipal division Ústí nad Labem (Local Office in Ústí nad Labem 1) lacks capacity, in the sense meant in the Act on Municipalities, to be a party to a proceeding in according with § 19 of the Civil Procedure Code.<sup>2)</sup> Then in appellate proceedings, the first-instance decision was affirmed by resolution of the Regional Court in Ústí nad Labem, file no. 10 Co 125/96 of 28 February 1996.

Despite reminders on the part of the petitioners' council in relation to matter 15 C 246/93, that is in the matter of the determination complaint, as of yet no action has been taken.

It is clear from the 25 March 1996 and 26 April 1996 memoranda/notes of the District Court in Ústí nad Labem, that that court is cognizant of delays in the proceeding. It declares that registering the matter into two files instead of into one was a flawed manner of proceeding. In addition, it states that it has not up until now ordered a hearing in the matter of the determination complaint, which has resulted in demonstrable delay. It justifies the situation by citing the insufficient number of judges and the consequence arising therefrom of overworked judge, who is dealing with this case. In conclusion, it

states that a request for the payment of court fees and for curing defects in the pleading concerning the designation of the defendant will be made in the matter. The actual decision in the constitutional complaint is left entirely to the Constitutional Court's sole discretion.

2. In the given case, it was demonstrated entirely beyond dispute in part by the views expressed by the District Court in Ústí nad Labem, in part by the content of the attached file of the District Court in Ústí nad Labem, file no. 15 C 243/93, that that court truly is considering and deciding on the petitioners' rights in an incommensurate time frame. Due to its inactivity in the matter of file no. 15 C 246/93, the court thus impinged upon the right guaranteed by the Charter to judicial and other legal protection, specifically upon the rights in Article 38 para. 2 of the Charter of Fundamental Rights and Basic Freedoms.<sup>1)</sup> According to this provision, everyone has the right to have her case considered without unnecessary delay, which was not respected in the petitioners' case.

In the case of this constitutional complaint, some impingement other than a decision upon the constitutionally-guaranteed right enshrined in Article 38 para. 2 of the Charter of Fundamental Rights and Basic Freedoms was proven, therefore the Constitutional Court of the Czech Republic decided as stated above.

## I. US 5/96

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

1. Art. 38 para. 2 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that everyone has the right to have his case considered in public, without unnecessary delay, and in his presence, as well as to express her views on all of the admitted evidence. The public may be excluded only in cases specified by law.

2. § 19 of Act no. 99/1963 Coll., the Civil Procedure Code, provides that anyone who has capacity to have rights and obligations, or, anyone to whom the Act assigns it, has capacity to be a party to proceedings.