2003/11/06 - III. ÚS 150/03: COMPULSORY TOWING OF A VEHICLE

HEADNOTES

1) The obligation relationship is, under § 45 para. 4 of Act no. 361/2000 Coll. in connection with § 489 and § 420 of the Civil Code, established by the causing of damage, which is given by the expenses for removing a vehicle in order to ensure traffic on a surface roadway. This relationship arises between the vehicle operator and the person who was authorized to perform the compulsory towing of a vehicle and which incurred damages, the amount of which is given by the amount of expenses incurred for purposes of securing operation on the surface roadway. This person can be either the owner of the surface roadway or a person which, on the basis of a contractual relationship with the owner of the surface roadway, ensures the compulsory towing of vehicles; in both cases the position of the authorized entity is given by the instruction from a police officer or municipal police officer to remove the vehicle. This instruction has the character of an administrative decision, or intervention by an administrative body (under § 83 of the Administrative Court Procedure Code) and in that sense is subject to review, which is, for the vehicle operator, a procedural guarantee against possible arbitrariness. Only achieving the annulment of the decision at issue, or a decision under § 87 para. 2 of the Administrative Court Procedure Code, can establish grounds for applying a complaint in the matter of liability for damages caused in the exercise of public power or by an incorrect official procedure (under Act no. 82/1998 Coll., as amended by later regulations).

2) Insofar as the complainant under § 74 of Act no. 182/1993 Coll., as amended by later regulations, petitions for annulment of § 202 para. 2 of the CPC, the Constitutional Court refers to the maxim which it stated for evaluating the constitutionality of first level judicial review in judgment file no. Pl. ÚS 15/01: "No legal order is, nor can it be, from the point of view of a system of procedural means for protecting rights, as well as form the point of view of a system of organizing levels of review, constructed ad infinitum. Every legal system generates, and necessarily must generate, a certain number of mistakes. The purpose of review proceedings can realistically be to approximately minimize such errors and not to eliminate them completely. The system of review levels is therefore a result of comparing, on one hand, the effort to achieve the sovereignty of law, and on the other hand efficiency of decision making and legal certainty." Thus, in relation to "small" claims, as the Constitutional Court stated in its resolution file no. III. ÚS 173/02, single level judicial review is not inconsistent with the principle of proportionality, with regard to the requirements which arise in this context from Art. 1 of the Constitution and Art. 36 para. 1 of the Charter. The Constitutional Court reached the same conclusion in resolution file no. IV. ÚS 101/01, in which, in addition to the argument of proportionality, it stated that from a constitutional law point of view, judicial proceedings are not compulsorily at two

levels, with the exception of criminal matters, where this requirements arises from Art. 2 of Protocol no. 7 to the Convention on the Protection of Human Rights and Fundamental Freedoms; thus, Art. 36 of the Charter does not, without anything further, indicate the necessity of two-level judicial proceedings for matters other than criminal ones, as a result of which a single level judiciary, and particularly in matters of objectively small significance, does not in anyway exceed constitutional bounds.

CZECH REPUBLIC

CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

A Panel of the Constitutional Court decided, on 6 November 2003, in the matter of a constitutional complaint from Mgr. P. M., represented by Mgr. J. H., attorney, against a verdict of the District Court for Prague 10 of 5 February 2003, ref no. 13 C 186/2002-24, joined with a petition to annul § 202 para. 2 of Act no. 99/1963 Coll., as amended by later regulations, as follows:

I. The verdict of the District Court for Prague 10 of 5 February 2003, ref no. 13 C 186/2002-24, is annulled.

II. The petition to annul § 202 para. 2 of Act no. 99/1963 Coll., as amended by later regulations, is denied.

REASONING

I.

By a petition filed for delivery to the Constitutional Court on 20 March 2003 the complainant seeks annulment of the verdict of the District Court for Prague 10 of 5 February 2003, ref no. 13 C 186/2002-24. He feels that the cited decision affects his fundamental right to a fair trial under Art. 36 of the Charter of Fundamental Rights and Freedoms (the "Charter"), as well as rights which he claims arise from Art. 2 para. 2 and Art. 4 para. 1 of the Charter. Under§ 74 of Act no. 182/1993 Coll., on the Constitutional Court, he also proposes annulment of § 202 para. 2 of Act no. 99/1963 Coll., the Civil Procedure Code, as amended by later regulations.

The Constitutional Court requested the file of the District Court for Prague 10, file no. 13 C 186/2002, from which it determined that on 4 April 2002 that court received the complainant's complaint for the amount of CZK 870 against the limited liability company B. S. The complainant justified his complaint on the grounds that on 29 January 2001 the defendant in the proceedings before the general court towed his car, a Volvo 460, license plate number KLL 09-60 from Wenceslas Square in Prague. The car was issued to the petitioner after payment of CZK 870. He believes that the car was towed incorrectly, and paid the stated amount under duress, as a result of which the sued company received unjustified enrichment.

On 22 July 2002 the District Court for Prague 10 issued payment order ref no. 13 C 186/2002-7, which charged the sued company to pay the plaintiff the amount in question within 15 days from the day it was delivered.

On 19 August 2002 the defendant filed an protest to the payment order with the District Court. Subsequently, on 5 February 2003, the District Court, by verdict ref no. 13 C 186/2002-24 denied the complaint. It stated in the reasoning that the car was towed on the basis of an instruction from the Police of the Czech Republic, in accordance with an agreement concluded between the defendant and the capital city of Prague. The price for towing the car was set under capital city of Prague ordinance no. 12/97. Thus, the towing was done on the basis of legal grounds and there could not have been unjustified enrichment.

The petitioner filed a timely constitutional complaint contesting the decision of the District Court for Prague 10. In it he stated that in this matter no proceeding related to administrative infraction or other administrative proceedings were opened, i.e. no administrative body decided that a administrative infraction had been committed. Nevertheless, the complainant was forced to pay expenses for the towing of his car, which, however, can be billed only as a component of an imposed fine and parking fees. The constitutional complaint further states that in the proceedings before the general court, the defendant delivered to the court a filing in which it expressly stated that it was an protest against payment order file no. 13 C 351/2002, i.e. against a payment order issued in a completely different matter. Although the complainant pointed this fact out to the court and proposed that the payment order be acknowledged as legally in effect, the court did not consider this petition and did not resolve the issue in its verdict. According to the complainant, this violated Art. 2 para. 2 of the Charter, under which state power can be applied only in cases and within the bounds provided by law, as well as Art. 4 para. 1 of the Charter, under which obligations may be imposed only on the basis of law and within its bounds, and finally violated the right to a fair trial under Art. 36 of the Charter. Because the contested verdict can not, under § 202 para. 2 the Civil Procedure Code be contested by an appeal, the complainant petitioned the Constitutional Court to annul the cited statutory provision.

The District Court for Prague 10, as a party to the proceedings, was asked, under § 42 para. 4 for a position statement on the matter, and provided one.

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II.

Evaluating the constitutionality of interference by a body of state power with fundamental rights and freedoms consists of several components (III. ÚS 102/94, III. ÚS 114/94, III. ÚS 84/94, III. ÚS 142/98, III. ÚS 224/98 and others). The first is evaluating the constitutionality of the applied provision of the legal regulation (which is indicated by § 68 para. 2 of Act no. 182/1993 Coll., as amended by later regulations). Other components are evaluating the preservation of constitutional procedural rights, and finally evaluating the constitutional interpretation and application of substantive law.

In evaluating the matter, the Constitutional Court began with the factual judgments, which are undisputed by the parties to the proceedings. According to these, the complainant's car, a Volvo 460 license plate number KLL 09-60, was towed by the subsidiary party from Wenceslas Square in Prague on 29 January 2003, at the instructions of the Police of the Czech Republic (order PČR DI-OŘD of 29 January 2003 ref no. PSP-43/DI-I-2003). This towing was performed by the subsidiary party, which was authorized thereto on the basis of an agreement concluded with the capital city of Prague on 30 April 1999; under Art. 2.3 of the agreement the party liable for the authority to tow is the party who gives the order, i.e. the Police of the Czech Republic, the Technical Roadways Administration of the capital city of Prague, and so on, and the price of towing, which the subsidiary party is authorized to charge the vehicle's operator, was set by capital city of Prague ordinance no. 12/1997, on maximum prices for towing road vehicles and wrecks, compulsory towing of vehicles after a traffic accidents, and guarding these vehicles at assigned parking lots. Also undisputed is the fact that in this matter no proceedings related to administrative infraction were conducted against the complainant, as well as the fact that the complainant paid the appropriate amount for the compulsory towing of the vehicle to the subsidiary party as a condition for the vehicle being released.

At the level of simple law, § 45 para. 4 of Act no. 361/2000 Coll., on the Operation of Surface Roadways and Amending Certain Acts, as amended by later regulations, applies to the merits of the adjudicated matter; under it, "if a vehicle is an obstacle to traffic on a surface roadway, a police officer or officer of the municipal police shall decide on removing it; the vehicle is removed at the expense of its operator."

The purpose and aim of the Act on the Operation of Surface Roadways is, in particular, to provide rules which ensure safety for a public aim, which is, in this context, traffic on surface roadways. In accordance with the generally valid concept of objective liability for damages caused by operation of means of transportation (§ 428 of the Civil Code), the Act on the Operation of Surface Roadways, in § 45 para. 1, establishes the objective liability of the person who caused the obstacle to traffic on surface roadways so that it gives that person the obligation to remove the obstacle without delay, and if he does not do so, an obligation to pay the costs of removing it to the owner of the surface roadway. The provision of § 45 para. 4 of the Act is only a special provision, which determines the entities entitled to issue an order for the compulsory towing of a vehicle. As the reason for such an order can be either a delictual behaviour (in the case of violation of the rules for traffic on surface roadways) or protection of the public interest in the passability of a surface roadway regardless of fault (§ 19 para. 5, 6 of Act no. 13/1997 Coll., on Surface Roadways), the cited distinction is not decisive for application of § 45 para. 4 of the Act on

the Operation of Surface Roadways, as the liability relationship it establishes is built on the principle of objective liability.

Thus, the obligation relationship is, under § 45 para. 4 of Act no. 361/2000 Coll. in connection with § 489 and § 420 of the Civil Code, established by the causing of damage, which is given by the expenses for removing a vehicle in order to ensure traffic on a surface roadway. This relationship arises between the vehicle operator and the person who was authorized to perform the compulsory towing of a vehicle and which incurred damages, the amount of which is given by the amount of expenses incurred for purposes of securing operation on the surface roadway. This person can be either the owner of the surface roadway or a person which, on the basis of a contractual relationship with the owner of the surface roadway, ensures the compulsory towing of vehicles; in both cases the position of the authorized entity is given by the instruction from a police officer or municipal police officer to remove the vehicle. This instruction has the character of an administrative decision, or intervention by an administrative body (under § 83 of the Administrative Court Procedure Code) and in that sense is subject to review, which is, for the vehicle operator, a procedural guarantee against possible arbitrariness. Only achieving the annulment of the decision at issue, or a decision under § 87 para. 2 of the Administrative Court Procedure Code, can establish grounds for applying a complaint in the matter of liability for damages caused in the exercise of public power or by an incorrect official procedure (under Act no. 82/1998 Coll., as amended by later regulations).

From the point of view of this purpose and content of the simple law which applies to the adjudicated matter, the Constitutional Court did not find a reason to evaluate the constitutionality of § 45 para. 4 of Act no. 361/2000 Coll.

In the matter at hand, the compulsory towing was performed by a subsidiary party which as authorized thereto on the basis of an agreement concluded with the capital city of Prague on 30 April 1999, and on the basis of a decision by a police body. Due to the foregoing, the Constitutional Court agrees with the conclusion of the District Court for Prague 10 that in this matter there was no unjustified enrichment on the part of the subsidiary party.

Insofar as the complainant claims in this regard that his fundamental rights arising under Art. 2 para. 2 and Art. 4 para. 1 of the Charter have been affected, the Constitutional Court only refers to its settled case law (judgment file no. Pl. ÚS 12/94, III. ÚS 31/97, III. ÚS 593/99) under which Art. 4 para. 1 of the Charter does not provide independent individual fundamental rights, but only provides the necessity of imposing general obligations only on the basis of law, while preserving the fundamental rights and freedoms. Thus, this provision can be relied on only in connection with other provisions of the Charter, of the Constitution or of international agreements under Art. 10 of the Constitution, which contain the particular fundamental rights or freedoms which were violated. The same statement also applies for Art. 2 para. 2 of the Charter. Art. 2 para. 2, 3 of the Charter and Art. 2 para. 4 of the Constitution are provisions evidently inspired by Art. 5 of the Declaration of the Rights of the Human Being and the Citizen of 26 August 1789, which, in connection with Art. 1 of the Charter, delineate the range for an individual's free conduct, and it belongs among those constitutional norms which, in response to the past experience of totalitarianism, provide the framework principles for the relationship between and individual and the state.

Another point in the complaint is the claim of violation of Art. 36 of the Charter, consisting of the fact that the general court, in the reasoning of the decision contested by the constitutional complaint, did not in any way respond to the complainant's arguments under which the decision was made on the basis of the subsidiary party's protest filed against a payment order other than the one in question.

In this context, at the level of the simple law, the safeguards arising from § 157 para. 2 of the CPC apply to the adjudicated matter.

The file materials in the adjudicated matter indicate that the District Court for Prague 10 issued payment order ref no. 13 C 186/2002-7 on 22 July 2002. On 27 August 2002 the court received the defendant's protest against payment order file no. 13 C 351/2002. On 8 January 2003, proceedings were held at the District Court for Prague 10 in the matter file no. 13 C 186/2002, in the course of which the plaintiff did not raise the protest of incorrect identification of the protest filed by the subsidiary party, and the proceedings were postponed for purposes of completing the evidence (file of the District Court for Prague 10, file no. 13 C 186/2002, no. l. 11-12). On 15 January 2003 the District Court for Prague 10 received the position statement of the subsidiary part in the matter file no. 13 C 186/2002. On 20 January 2003 the proceedings continued, and the complainant again did not raise the objection of incorrect identification of the protest and the proceedings were again postponed for purposes of further evidence (file of the District Court for Prague 10 file no. 13 C 186/2002, no. l. 14-15). On 3 February 2003 the court received the position statement of the complainant containing the final petition, and within it also the objection of incorrect identification of the protest, as well as an excuse for absence from the proceedings on 5 February 2003. The District Court for Prague 10, by verdict of 5 February 2003 ref no. 13 C 186/2002-24, denied the complainant's complaint, and stated in the reasoning of the decision that the plaintiff, in his closing petition, pointed to the fact that the protest filed by the defendant was identified with the incorrect file number, and was thus filed for a different matter than the one which was the subject of the complaint, but did not respond to this objection.

The independence of the decision making of general courts is implemented in the constitutional and statutory procedural and substantive law framework. The procedural law framework is represented primarily by the principles of a proper and fair trial, as indicated by Art. 36 et seq. of the Charter, as well as by Art. 1 of the Constitution. One of these principles, which represents the role of the law in a fair trial, as well as the concept of a state governed by the rule of law (Art. 36 para. 1 of the Charter, Art. 1 of the Constitution), and which rules out arbitrariness in decision making, is the obligation of the courts to state the grounds for their verdicts (§ 157 para. 1 of the CPC) in a manner provided in § 157 para. 2 of the CPC. The Constitutional Court spoke on the effects of the safeguards contained in § 157 para. 2 of the CPC in the area of fundamental rights and freedoms in particular in judgment file no. IV. ÚS 304/98, where it stated the following: "A situation where a verdict lacks the requirements provided in § 157 para. 2 of the CPC leads to the fact that it becomes non-reviewable, and can be, and as a rule also is, a violation of the constitutionally guaranteed right to judicial protection provided in Article 36 para. 1 of the Charter."

In the adjudicated matter the District Court for Prague 10, in the reasoning of the decision, did not in any way address the petitioner's objection concerning the alleged inconsistency, and did not even mention the petition and the objection, although the objection was properly raised and the objected fact could have had a substantial influence on the court's decisions. Thus, by this procedure, the court fundamentally violated § 157 para. 2 of the CPC, and in the final consequence interfered with the petitioner's right to a fair trial, given by Art. 36 para. 1 of the Charter.

Due to the foregoing, the Constitutional Court had no choice but to annul the contested verdict of the District Court for Prague 10 of 5 February 2003 ref no. 13 C 186/2002-24 under § 82 para. 2 let. a) of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations.

Insofar as the complainant under § 74 of Act no. 182/1993 Coll., as amended by later regulations, petitions for annulment of § 202 para. 2 of the CPC, the Constitutional Court refers to the maxim which it stated for evaluating the constitutionality of first level judicial review in judgment file no. Pl. ÚS 15/01: "No legal order is, nor can it be, from the point of view of a system of procedural means for protecting rights, as well as form the point of view of a system of organizing levels of review, constructed ad infinitum. Every legal system generates, and necessarily must generate, a certain number of mistakes. The purpose of review proceedings can realistically be to approximately minimize such errors and not to eliminate them completely. The system of review levels is therefore a result of comparing, on one hand, the effort to achieve the sovereignty of law, and on the other hand efficiency of decision making and legal certainty." Thus, in relation to "small" claims, as the Constitutional Court stated in its resolution file no. III. ÚS 173/02, single level judicial review is not inconsistent with the principle of proportionality, with regard to the requirements which arise in this context from Art. 1 of the Constitution and Art. 36 para. 1 of the Charter. The Constitutional Court reached the same conclusion in resolution file no. IV. ÚS 101/01, in which, in addition to the argument of proportionality, it stated that from a constitutional law point of view, judicial proceedings are not compulsorily at two levels, with the exception of criminal matters, where this requirements arises from Art. 2 of Protocol no. 7 to the Convention on the Protection of Human Rights and Fundamental Freedoms; thus, Art. 36 of the Charter does not, without anything further, indicate the necessity of two-level judicial proceedings for matters other than criminal ones, as a result of which a single level judiciary, and particularly in matters of objectively trivial significance, does not in anyway exceed constitutional bounds.

Due to the foregoing, the Constitutional Court found the petition to annul § 202 para. 2 of the CPC clearly unsubstantiated, and therefore it denied it under § 43 para. 2 let. a), b) of Act no. 182/1993 Coll., as amended by later regulations.

Notice: Decisions of the Constitutional Court can not be appealed.

Brno, 6 November 2003