

# 1996/10/15 - IV. ÚS 275/96: SENATE ELECTIONS I

## HEADNOTE:

If the purpose of the Act on Elections is to bring to life and set down more detailed provisions on the basic political right to elect and stand for election, then contested provisions must always be interpreted in a manner that is solicitous of this right, so as to facilitate, to the extent possible, the right to elect and stand for election, and not the contrary.

## CZECH REPUBLIC

## CONSTITUTIONAL COURT

## JUDGMENT

## IN THE NAME OF THE CZECH REPUBLIC

The Constitutional Court of the Czech Republic, in the matter of the constitutional complaint of PhDr. J. Š., against the 7 October 1996 resolution of the Supreme Court of the Czech Republic, action no. Ovs 78/96/Št, in conjunction with the 27 September 1996 decision of the Central Electoral Commission, action no. ÚVK 281/1996, and the decision of the District Electoral Commission for District No. 54, headquartered in Znojmo, all of which rejected his application for registration for the election to the Senate of the Parliament of the Czech Republic, decided, thusly:

The 7 October 1996 resolution of the Supreme Court of the Czech Republic, action no. Ovs 78/96/Št, the 27 September 1996 decision of the Central Electoral Commission, action no. ÚVK 281/1996, and the decision of the District Electoral Commission for District No. 54, headquartered in Znojmo, all of which rejected the application of PhDr. J. Š for registration to the Senate election, are hereby annulled.

## REASONING

In his constitutional complaint, delivered to the Constitutional Court of the Czech Republic on 11 October 1996, the complainant requested the annulment of the 7 October 1996 resolution of the Supreme Court of the Czech Republic, action no. Ovs 78/96/Št, which turned down his petition seeking his registration as a candidate for the election to the Senate in Electoral District No. 54, after his registration application had already been rejected by the District Electoral Commission on 18 September 1996, and his appeal to the Central Electoral Commission was unsuccessful as well. All of these bodies gave, as the

grounds for rejecting his registration, the fact that his application contained no document evidencing Czech citizenship, so that it was incomplete.

The complainant states that he is naturally aware of the fact that Czech citizenship is one of the conditions for candidacy given in Art. 19 para. 2 of the Constitution of the Czech Republic.<sup>2)</sup> However, in his view the Electoral Act does not prescribe the specific manner in which citizenship should be proven. Such legal provisions are contained in Act No. 40/1993 Coll., on the Acquisition and Loss of Citizenship of the Czech Republic, specifically in § 20,<sup>3)</sup> which distinguishes a total of four kinds of documents, all of which are equally valid. The civil identity card, which in practice is used most often, comes under letter a). The complainant also made use of this document to prove his citizenship when, on 16 September 1996, he attempted to submit a copy of it as part of the application he filed with the registrar of the District Electoral Commission. However, the registrar of the commission refused to accept it. For this reason, the complainant obtained, without unnecessary delay (that same day) a certificate of citizenship from the City Council of Brno, which, together with a certified copy thereof, he delivered to the registrar of the District Electoral Commission on the following day, 17 September 1996. None of the stated bodies referred to above ever entertained any doubts concerning the complainant's citizenship. What is more, as the complainant states, § 14 para. 1(c) of Interior Ministry Regulation No. 74/1996 Coll.,<sup>4)</sup> which lays down detailed provisions for implementing the Electoral Act, gave the district electoral commissions and the Central Electoral Commission the authority, without problem, to verify facts relating to the citizenship by enquiring at authorized offices.

The complainant concurs with the factual findings in the case as they were stated in the contested Supreme Court resolution; however, he is of the opinion that the formulation of the legal rule contained in it infringes his fundamental right to compete under equal conditions for elected office, which Art. 21 para. 4 of the Charter of Fundamental Rights and Basic Freedoms<sup>5)</sup> (hereinafter „Charter“) guarantees him. He states that he fulfills all of the statute's substantive, as well as formal, requirements, but still he was disqualified from standing as a candidate on the basis of the legal interpretation that the civil identity card may not be used as a document evidencing citizenship of the Czech Republic for the purposes of a candidate's registration for election to the Senate. In his opinion, support for such an interpretation can be found neither in the Act on Elections to the Parliament of the Czech Republic nor in the Act on the Acquisition and Loss of Citizenship of the Czech Republic.

The complainant further objected that the Supreme Court violated his right guaranteed by Art. 38 para. 2 of the Charter,<sup>6)</sup> for the proceeding was conducted in a manner which did not allow him the opportunity to give his views on the admitted evidence. On this point, he also cites the Constitutional Court judgment which annulled § 250f CCP [Code of Civil Procedure]<sup>7)</sup>.

For all of the above-given reasons, the complainant seeks the annulment of the contested Supreme Court resolution and requests that he be granted, under § 62 of the Act on the Constitutional Court, the reimbursement of the costs of his legal representation. In view of the fast approaching date for the Senate election, he also requests that the Constitutional Court give priority to deciding his case, as § 39 of the Act on the Constitutional Court<sup>8)</sup> empowers it to do. The Constitutional Court, therefore, first of all

considered the urgency of the matter and, after consideration of all circumstances, came to the conclusion that the conditions for invoking § 39 of the Act on the Constitutional Court<sup>8</sup>) are met.

In its submission made on 14 October 1996, the Supreme Court in essence continued to adhere to the arguments upon which it rested its decision in the matter. In particular, it rejected the contention that the declaration of the registrar of a district electoral commission, who is not authorized to assess whether a person meets the conditions for eligibility for election, could be accepted in place of a document evidencing citizenship. In addition, as it stated in its submission, in resolving election disputes, the Supreme Court has dealt with a number of cases where the registrar came to erroneous conclusions concerning submitted documents evidencing citizenship. It can be seen from the record, that the District Electoral Commission gave the candidate explicit written notification of the fact that a certificate of citizenship is the most suitable means of meeting the requirements under § 61 para. 4(a) of the Act on Elections to the Parliament of the Czech Republic.<sup>9</sup>)

In considering the constitutional complaint, the Constitutional Court first directed its attention to judging the constitutionality of those provisions of the Act on Elections to the Parliament of the Czech Republic, the application of which brought on the state of affairs which form the subject of the constitutional complaint, in this case, the refusal to register the complainant as a candidate for the election to the Senate.

The basic interpretive principle for any acts which set down more detailed provisions for the exercise of political rights is without question Art. 22 of the Charter,<sup>1</sup>) which provides that every body that applies law is required to interpret and apply the statutory rules in such a way as to facilitate and protect the free competition among political forces in a democratic society. In the view of the Constitutional Court, this principle requires that all provisions of the Act on Elections, as well as of other related statutes, the meaning of which are open to dispute, be interpreted and applied in favor of the purpose and meaning of these statutes. At the same time, the purpose and meaning of the law is not to be sought in the words and clauses of enactments alone. Legal enactments do, and must always, include within themselves the principles recognized as part of a democratic law based state. In Art. 1 of the Constitution,<sup>10</sup>) the Czech Republic declares itself to be just such a law-based state. If then the purpose of the Act on Elections is to bring to life and set down more detailed provisions on the basic political right to elect and stand for election, then contested provisions must always be interpreted in a manner that is solicitous of this right, that is then, so as to facilitate, to the extent possible, the right to elect and stand for election, and not the contrary. Apart from this special interpretive rule for political rights, the Constitutional Court's opinion also rests on Art. 4 para. 4 of the Charter<sup>11</sup>) which provides that, when employing the provisions concerning limitations on the fundamental rights and basic freedoms, the essence and significance of these rights and freedoms must be preserved.

Giving consideration to the above-cited constitutional interpretive principle, which without a doubt binds the Constitutional Court itself as well, the Constitutional Court can come to no conclusion other than that the constitutional complaint is well-founded.

In judging the case, all participating state bodies considered the decisive issue to be whether the civil identity card is or is not a document that adequately evidences that the holder possesses Czech citizenship. At the same time, they all reached the conclusion that, for the purposes of candidate registration for elections to the Senate, the document is insufficient, even despite the fact that § 20 of Act No. 40/1993 Sb,<sup>3)</sup> on the Acquisition and Loss of Citizenship of the Czech Republic, School Materials Decision explicitly lists this document as one of the documents that proves Czech citizenship. The Act on Elections to the Parliament of the Czech Republic contains no special provision on this issue. The arguments made by all bodies, including the Supreme Court of the Czech Republic, consists in the fact that the civil identity card is a special document which cannot be submitted in duplicate, and further that to submit it would be a violation of the duty imposed on the holder of the identity card by Act No. 75/1957 Coll., on Civil Identity Cards, that the registrar of a district electoral commission is not a subject which would be authorized to take away the civil identity card, and then finally, that it is not possible to certify copies of the civil identity card (§ 3 para. 3(a) of Act No. 41/1993 Coll., on the Certification that Copies are Identical with a Document, on the Certification by Municipal Offices that a Signature is Genuine,<sup>12)</sup> and on the Issuance of Acknowledgments by Municipal Bodies and District Offices). With such an interpretation, the bodies applying law raise considerations of convenience and practicality over the law, and above all over constitutional principles, and they count any inconsistencies among laws to the detriment of those who are trying to assert their constitutional rights. The civil identity card is a public document, so that a presumption applies that it is accurate; thus, unless the contrary is shown, it holds that the contents of such a certificate correspond to the facts. While it may be possible, even probable, that it would facilitate the job of the electoral commissions to work with something that can be copied, certified, and reproduced (for example, with a certificate on citizenship), this consideration in no way alters the fact that the means which the complainant chose to prove his citizenship fulfills all of the statute's requirements. In this regard, one can also refer to the fact that another Supreme Court Panel, judging in a different case, came to an identical conclusion.

In the opinion of the Constitutional Court, the grounds described above are in and of themselves sufficient grounds for granting the constitutional complaint. However, the Constitutional Court considers it appropriate to give its view on an additional issue as well. The contested Supreme Court resolution takes no position whatsoever on an issue to which the complainant raised objections, practically from the beginning of the entire proceeding. Specifically, he alludes to the fact that he immediately submitted the document which the electoral commission requested and that, from the very beginning, there had not been, nor could there have been, any doubt as to whether, at the moment he submitted his application, the complainant met the conditions for eligibility for election, that is, possession of Czech citizenship. In this regard, the Constitutional Court would expect that the Supreme Court would have adopted a position concerning the character of the proceeding which took place before it pursuant to § 200m of the CCP,<sup>13)</sup> namely whether it is or is not possible in this type of proceeding to cure any formal deficiencies there might be in the application. In view of the systematic placement of § 200m of the CCP,<sup>13)</sup> there can be no doubt that it is a special proceeding and that, therefore, it is not related to the part of the CCP on judicial review of administrative decisions; if the opposite were the case, the court would be bound by the determination of the facts of the case made by the administrative organ (the electoral commission), and it

would only be competent to make a judgment as to whether, at the moment the commission made its decision, it proceeded in accordance with law. The proceeding before the Supreme Court of the Czech Republic is a proceeding which results in a decision having no formal relation to the Central Electoral Commission's decision. Consequently, with its resolution, the Supreme Court does not modify the decision of the electoral commission, rather it decides the matter directly. For this reason, the Constitutional Court does not share the Supreme Court's views concerning the character of the deadline given under § 61 para. 5 of the Electoral Act.<sup>14)</sup> For the same reasons, neither does it share the opinion of the complainant to the effect that, the Constitutional Court judgment Pl ÚS 18/96, in which it declared § 250f of the CCP<sup>7)</sup> to be unconstitutional, should constitute a fact that is relevant to consideration of this case.

On the basis of all the above-cited reasons, the Constitutional Court declares that the contested decisions constitute an infringement of Art. 4 para. 411) and Art. 221) of the Charter and, in consequence thereof, also an infringement of Art. 21 para. 4 of the Charter<sup>5)</sup> and Art. 90 of the Constitution.<sup>15)</sup> In order to ensure that this judgment serves its purpose, the Constitutional Court hereby annuls the decisions of the Central Electoral Commission and the District Electoral Commission as well.

Taking into account the fact that this is the first election to the Senate and, thus, also the first application of a number of provisions of Act No. 247/1995 Coll., the Constitutional Court considers this judgment, first and foremost, as a decision which should assist in the future in interpreting this law in a manner that is correct from the perspective of constitutional law. At the same time, it makes the assumption that the legislature will consider, in the spirit of this judgment, the possible need for modifications and clarifications of the text of the Act on Elections to the Parliament of the Czech Republic.

#### IV. US 275/96

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

1. Art. 22 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that statutory provisions relating to political rights and freedoms, as well as the interpretation and application of them, shall make possible and protect the free competition among political forces in a democratic society.
2. Art. 19 par. 2 of Act no. 1/1993 Coll., the Constitution of the CR, provides that any citizen of the Czech Republic who has the right to vote and has attained the age of forty is eligible for election to the Senate.
3. § 20 par. 1 of Act no. 40/1993 Coll., on Acquiring and Losing Citizenship of the CR, as amended by later regulations, provides that citizenship of the CR is proved by a) a citizen ID card, b) a travel document, c) certification or confirmation of citizenship of the CR, d) certification of legal capacity to enter into marriage, if this information is stated in it.
4. § 14 par. 1 letter c) of Ministry of the Interior Decree 74/1996 Coll. provides that at the request of a Regional, District or Central Election Commission, district offices (or the

appropriate city district offices or town halls) shall disclose facts concerning a candidate's citizenship.

5. Art. 21 par. 4 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that citizens shall have access, on an equal basis, to any elective and other public office.

6. Art. 38 par. 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 his views on all of the admitted evidence. The public may be excluded only in cases specified by law.

7. § 250 f, of Act no. 99/1963 Coll., the Civil Procedure Code, provided when a court may decide by a verdict without conducting proceedings. Note: Constitutional Court Judgment no. 269/1996 Coll. annulled this provision due to conflict with Art. 38 par. 2 of the Charter and Art. 6 par. 1 of the Convention for the Protection of Human Rights and Fundamental freedoms.

8. § 39 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, provides that in processing petitions, the Constitutional court does not have to be governed by the order in which it received the petitions, if it decides that the matter which the petition concerns is urgent.

9. § 61 par. 4 letter a) of Act no. 247/1995 Coll., on Elections to the Parliament of the CR and on Amendments and Supplements to Certain Other Acts, in par. 4 letter a) regulates the requirements for a registration application, which are: the candidate's first name and last name, personal ID number, date of birth, municipality of permanent residence, occupation and a document on citizenship,

10. Art. 1 of Act no. 1/1993 Coll., the Constitution of the CR, provides that the Czech Republic is a sovereign, unitary, and democratic state governed by the rule of law, founded on respect for the rights and freedoms of man and of citizens.

11. Art. 4 par. 4 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that in employing the provisions concerning limitations upon the fundamental rights and basic freedoms, the essence and significance of these rights and freedoms must be preserved; such limitations are not to be misused for purposes other than those for which they were laid down.

12. § 3 par. 3 letter a) of Act no. 41/1993 Coll., on Verification of the Authenticity of Signatures by Municipal Offices and on the Issuance of Confirmations by Municipal Bodies and District Offices, provides that an authority shall not perform verification (i.e. certify that a transcript or copy corresponds to a document) among other things in the case of a transcript (copy) of a citizen ID card.

13. § 200m of Act no. 99/1963 Coll., the Civil Procedure Code, as amended by later regulations, governs proceedings in the matter of elections.

14. § 61 par. 5 of Act no. 247/1995 Coll., on Elections to the Parliament of the CR and on Amendments and Supplements to Certain Acts, provides that, if the registrar of the district

election commission determines that an application does not meet the requirements under the foregoing paragraphs, he shall notify the deputy or independent candidate. Until the expiration of the deadline under paragraph 3 (i.e. no later than 60 days before the election day) the deputy or independent candidate can remove any deficiencies.

15. Art. 90 of Act no. 1/1993 Coll., the Constitution of the CR, provides that courts are called upon above all to provide protection of rights in the legally prescribed manner. Only a court may decide upon guilt and determine the punishment for a criminal offense.