

# 2002/04/19 - IV. ÚS 512/01: PARTY TO A PROCEEDINGS

## HEADNOTES

If a court decision which has become final establishes the right of a person to whom property has been restituted to conclude an agreement with an obligated person on issuing real estate, that right must be evaluated as “another right to land or buildings” under § 59 para.1 let. b) of Act No. 50/1976 Coll. (the Building Code). Therefore, the entitled person is a party to proceedings to permit or remove a building on the neighboring parcel of land.

## CZECH REPUBLIC

### CONSTITUTIONAL COURT JUDGMENT

#### IN THE NAME OF THE CZECH REPUBLIC

A Panel of the Constitutional Court decided in the matter of a constitutional complaint by H.S. against the decision of the Prague Regional Court of 31 July 2001, file no. 45 Ca 148/2000-31, the decision of the Beroun City Office of 20 July 1999, file no. 2237/99-Pch, the decision of the Beroun City Office of 15 September 2000, file no. Výst.: 2932/2000-Pch, and the decision of the Beroun District Office of 16 November 2000, file no. 2473/2000/RR, with the participation of the Prague Regional Court, as a party to the proceedings and the Beroun City Office, building department, with its registered office at Husovo nám. 68, Beroun, and the Beroun District Office, regional development division, with its registered office at Politických vězňů 20, Beroun, as secondary parties, as follows:

The decisions of the Prague Regional Court of 31 July 2001, file no. 45 Ca 148/2000-31, and the decision of the Beroun City Office of 20 July 1999, file no. 2237/99-Pch, are annulled.

In the part where the petitioner sought annulment of the decision of the Beroun City Office of 15 September 2000, file no. Výst.: 2932/2000-Pch, and the decision of the Beroun District Office of 16 November 2000, file no. 2473/2000/RR, the constitutional complaint is denied.

## REASONING

By petition delivered to the Constitutional Court on 21 August 2001, supplemented by a filing of 9 November 2001, the petitioner sought to have the Constitutional Court issue a

judgment annulling the decision of the Prague Regional Court of 31 July 2001, file no. 45 Ca 148/2000-31, the decision of the Beroun City Office of 20 July 1999, file no. 2237/99-Pch (originally issued under file no. 2254/99-Pch), the decision of the Beroun City Office of 15 September 2000, file no. Výst.: 2932/2000-Pch, and the decision of the Beroun District Office of 16 November 2000, file no. 2473/2000/RR, as well as “any final building approval decisions”.

The contested decision of the Prague Regional Court of 31 July 2001 stopped proceedings to review the decision of the Beroun City Office, building department, of 20 July 1999, file no. 2237/99-Pch, which, in response to an application by J. B., owner of the real estate neighboring the real estate co-owned by the petitioner, permitted building of the restaurant U M. - expansion of garden in Beroun 3, and interim use of this building. The proceedings were stopped on the grounds that the petitioner (the plaintiff) was not a party to the administrative proceedings at the time the administrative body made its decision, as she was not the owner of neighboring real estate, and also on the grounds that the complaint was directed against a decision of the first level, which can not be subject to review by a court, because it is not, under § 247 para. 2 of the Civil Procedure Code, a decision which, after exhaustion of due means of appeal which are permitted for it, went into legal effect. The reasoning of the cited decision indicates that the Regional Court also reviewed the possibility of applying § 250b of the Civil Procedure Code, but concluded that the petitioner could not have been a party to the proceedings at a time when she was not yet an owner of the neighboring real estate.

The contested decisions of the Beroun City Office of 15 September 2000, file no. Výst.: 2932/2000-Pch, and of the Beroun District Office of 16 November 2000, file no. 2473/2000/RR, denied, as a final decision, the petitioner’s petition to renew proceedings in the matter of the building permit for the restaurant U M. - expansion of garden in Beroun 3, and interim use of the building.

The petitioner stated that she is a co-owner of 23/24 of real estate, i.e. building no. 4, land parcel no. 229 and land parcel no. 189/1 in the registration area Beroun. She acquired 1/24 co-ownership of the real estate in restitution proceedings under Act No. 87/1991 Coll., on Extra-Judicial Rehabilitation, on the basis of a decision of the Beroun District Court of 29 April 1998, file no. 7 C 80/92-167, ordering the city of Beroun to conclude an agreement on issuance of real estate with the petitioner and two other plaintiffs. The decision went into effect on 18 September 1998.

The petitioner recapitulated the course of the proceedings and stated that the administrative court, by stopping proceedings, violated her constitutionally guaranteed right to judicial protection, enshrined in Art. 36 and Art. 38 para. 2 of the Charter of Fundamental Rights and Freedoms (the “Charter”). She also claimed that the Beroun City Office violated her property right enshrined in Art. 11 para. 1 of the Charter. She is of the opinion that she should have been a party to the building permit proceedings in question, because she is a person who, at the time of the decision, had a substantive (or other) right to the neighboring parcel of land and building on it, under § 59 para. 1 let. b) of Act No. 50/1976 Coll., the Building Code, as amended by later regulations, and these rights could have been directly affected by the building permit. The Beroun City Office, building department, undoubtedly knew from the restitution dispute being conducted before the

Beroun District Court under file no. 7 C 80/92, that the petitioner, together with two other plaintiffs, sought the issuance of the real estate neighboring those concerned by the building permit proceedings. The decision of the Beroun District Court of 29 April 1998, file no. 7 C 80/92-167, ordering the town of Beroun to conclude an agreement on the issuance of real estate with the plaintiffs, went into effect on 18 September 1998, but the legal effects of registration in the real estate register did not begin until 20 August 1999, although the court, as the issuer of the document, was required to send the decision to the real estate registration office within 30 days after it went into effect. It can not be held to the petitioner's detriment that the entry was not made in the real estate register until 20 August 1999. The petitioner believes that the Prague Regional Court did not address the matter in detail. It only stated in the reasoning of the contested decision that, in connection with the effect of the entry as of 20 August 1999, and under the gift agreement with the effect of the entry as of 30 August 1999, the petitioner could not have been a party to the proceedings at the time of the decision. However, it did not take into consideration the cited decision of the Beroun District Court and its effect on the circle of parties to the building permit proceedings.

The petitioner pointed to the Constitutional Court's judgment in the matter under file no. IV. US 131/2000, and the judgment of the Plenum of the Constitutional Court published under no. 95/2000 Coll., which annulled § 78 para. 1 of the Building Code. She is of the opinion that the laws in effect do not permit implementing the principle "let everyone watch his rights", and pointed to § 250 para. 2 of the Civil Procedure Code, § 65 of the Administrative Procedure Code, and the judgment published under no. 32 in volume 13 of the Collection of Judgments and Resolutions of the Constitutional Court of the CR.

The Prague Regional Court, as a party to the proceedings, in its statement on the constitutional complaint, referred in full to the reasoning of the contested decision and proposed that the constitutional complaint be denied for lack of grounds.

The Beroun City Office, building department, as a secondary party to the proceedings, in its statement on the constitutional complaint of 11 December 2001 stated, among other things, that a decision which had been subject to administrative review, i.e. the decision of the Beroun City Office of 20 July 1999, file no. 2237/99-Pch, was correctly issued under file no. 2254/99-Pch. This inadequacy occurred through a typographical error, which the building office was supposed to correct under § 47 para. 6 of the Administrative Procedure Code. It also recapitulated the building permit proceedings. The statement says, in particular, that the building office was familiar with the Beroun District Court decision on the obligation to conclude an agreement to issue a thing with the petitioner and two other plaintiffs, and therefore they were recognized as parties in the original proceedings, opened on 16 June 1999. It was only in the subsequent proceedings, opened under § 88 of the Building Code, i.e. in proceedings on removing a non-permitted structure, that the building office obtained data from the real estate register, and after finding that the petitioner was not an owner of any of the neighboring parcels of land or buildings, did not "include" her as a party to the proceedings.

The Beroun District Office, regional development division, in its statement on the constitutional complaint, presented facts concerning the petitioner's appeal against the decision of the Beroun City Office, building department, of 15 September 2000, file no.

2932/2000-Pch, which denied her petition to permit renewal of proceedings in the matter of permitting building adaptations and permitting interim use of the building “Restaurace U M. - expansion of garden on parcel no. 231/1 and parcel no. 232, real estate registration area Beroun”.

The Constitutional Court determined from the files of the Prague Regional Court, file no. 45 Ca 148/2000 that, on the basis of the Beroun District Court decision of 29 April 1998, file no. 7 C 80/92-167, ordering the city of Beroun to conclude an agreement on the issuance of real estate with the plaintiff, on 15 June 1999 the restitutees concluded with the city of Beroun an “Agreement on Issuance of a Thing under Act 87/91 Coll., on Extra-Judicial Rehabilitation”, and, as indicated by part V. of the agreement, the will of the obligated party was replaced by the cited decision. On the basis of this agreement, the Beroun Real Estate Registration Office permitted an entry of rights in the real estate register, with legal effect as of 20 August 1999.

The Constitutional Court, after familiarizing itself with the assembled documentation for the decision and took into account the consent of the parties to the proceedings to decide the matter without a hearing, concluded that the constitutional complaint must be granted in part, for the following reasons.

The substance of the constitutional complaint is the petitioner’s disagreement with not being treated as a party to the building permit proceedings which led to the issuance of the contested decision of 20 July 1999, permitting construction on parcel no. 231/1, 232 in the real estate registration area Beroun, even though the building office, during the building permit proceedings, had sufficient knowledge that, under the Beroun District Court decision of 29 April 1998, file no. 7 C 80/92-167, which went into effect on 18 September 1998, the defendant city of Beroun was required to conclude with her and two other plaintiffs and agreement on issuance of a thing, i.e. the neighboring parcel of land, no. 229 and no. 189/1, real estate registration area Beroun. The building office even confirmed this in its above mentioned statement.

From a constitutional law viewpoint, the main issue is evaluating the question of whether or not conduct by an administrative court (and the preceding administrative proceedings), which derived the petitioner’s participation, or non-participation, in administrative proceedings only from the fact that at the time of the administrative proceedings she was not yet the owner of neighboring real estate, and did not take into account a fact sufficiently known to the deciding public bodies, i.e. that the cited decision of the Beroun District Court required the city of Beroun to conclude an agreement on issuance of the specified real estate with the plaintiffs, is compatible with the constitutional right to judicial review of lawfulness of a decision of an administrative body, enshrined in Art. 36 para. 2 of the Charter.

Under § 59 para. 1 let. b) of the Building Code, participants of building permit proceedings include persons who have property or other rights to neighboring parcel of land and buildings on them, which rights may be directly affected by a building permit. The meaning of “other rights to parcels of land and buildings” is demonstratively defined in the Building Act in § 139 let. f). Thus, this can undoubtedly include other rights, whose substance and importance must be evaluated case by case.

Thus, in the petitioner's case as it was necessary to evaluate whether her right to conclude an agreement on issuance of real estate should or should not have been considered a right in this category. In the Constitutional Court's opinion, in the particular given circumstances, the term "other right" under § 59 para. 1 let. b) of the Building Code had to be interpreted so that the petitioner's right to restitution, or to conclusion of an agreement on issuance of real estate, was a right of that type and that intensity. The building office had sufficient knowledge on the city of Beroun's failure to fulfill its obligation to conclude an agreement on issuance of real estate, arising from the restitution decision which had been in effect for almost a year. The administrative court should have taken this as a starting point when, under § 250b para. 2 of the Civil Procedure Code, it evaluated whether the petitioner was or should have been a party to the building permit proceedings. Insofar as the petitioner was not granted the status of a party to the building permit proceedings in these circumstances, or the court agreed with the opinion of the administrative bodies that she should not have been a party, there was a violation of her constitutional right to judicial review of an administrative decision, established in Art. 36 para. 2 of the Charter of Fundamental Rights and Freedoms, as well as her right to have state power exercised in a manner prescribed by law (Art. 2 para. 3 of the Constitution). It is evident from § 3 para. 2 of the Administrative Procedure Code that administrative bodies are required to act in proceedings in close cooperation with citizens and to always give them an opportunity to effectively defend their rights and interest, in particular to state positions on the grounds for a decision and to present their petitions. Basically this is a statutory expression of the rules of "elementary politeness and good morals", without which any fair process, including administrative decision making, can not be imagined. Therefore, the petitioner should have been at least invited to the building permit proceedings as a so-called "other person" under § 59 para. 3 of the Building Code, or the building permit proceedings should have been suspended until registration of her property right in the real estate register (in this case it was a matter of one month, as the building permit was issued on 20 July 1999 and her property right was entered in the real estate register on 20 August 1999). It is apparent from the files presented that the proceedings on removal of or subsequent permission for a building took place suspiciously quickly, and from other circumstances as well one can deduce an attempt to circumvent the rights of known future owners of the neighboring parcel of land through a sequence of individual steps that would eliminate their participation in the building permit proceedings.

For the above mentioned reasons the Constitutional Court granted the constitutional complaint in the part which sought annulment of the decision of the Prague Regional Court of 31 July 2001, file no. 45 Ca 148/2000-31 and the decision of the Beroun City Office of 20 July 1999, file no. 2237/99-Pch.

In the part requesting annulment of the decision of the Beroun City Office of 15 September 2000, file no. Výst.: 2932/2000-Pch, and the decision of the Beroun District Office of 16 November 2000, file no. 2473/2000/RR, the Constitutional Court found the constitutional complaint to be inadmissible under § 43 para. 1 let. e) a § 75 para 1 of Act No. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, because the petitioner did not contest the cited decision through an administrative complaint under Part Five, Chapter Two of the Civil Procedure Code, and thus did not exhaust all procedural means which the law provided her for protection of her rights. If the petitioner was of the opinion that an administrative complaint is not admissible against such a decision, or that its

acceptance for review on the merits by an administrative court is problematic, she should have filed a timely constitutional complaint against the decision of the administrative appeals body. In this regard, it would also be possible to reject part of the statement of claim due to late filing (§ 43 para. 1 let. b) of the Act on the Constitutional Court). In addition, it is evident that if the Constitutional Court were to annul the original administrative decision, review of proceedings on re-opening proceedings would lose all meaning.

**Instruction: A decision of the Constitutional Court can not be appealed.**

Brno, 19 April 2002