

1995/06/22 - IV. ÚS 56/94: DREITHALER COMPLAINT

HEADNOTE:

In the practice of ordinary courts, in cases of confiscation of property pursuant to decree No. 108/1945 Coll.,¹⁾ where the administrative body made its decision only after 25 February 1948 with regard to whether the conditions for confiscation under this decree were met, the growing tendency is to authorize courts to judge whether the statutory prerequisites for the passage of the item to the state are met in respect to the provisions of § 6 para. 2 of Act No. 87/1991 Coll.)

CZECH REPUBLIC

CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Constitutional Court of the Czech Republic, in the matter of a constitutional complaint against the 26 October 1993 judgment of the Regional Court in Ústí nad Labem, the Liberec Division, file no. 29 Co 647/93-30, with the Regional Court in Ústí nad Labem, the Liberec branch, decided, thusly:

The judgment of the Regional Court in Ústí nad Labem, the Liberec Division from 26 October 1993, file no. 29 Co 647/93-30, is hereby quashed.

REASONING

The complainant submitted the constitutional complaint in a timely manner against the judgment referred to above by the Regional Court in Ústí nad Labem, the Liberec Division. That judgment upheld the judgment of the District Court in Liberec from 25 February 1993, which rejected the complainant's petition to have it declared that the first above-mentioned secondary party is obliged to surrender to the complainant, and to conclude with him an agreement concerning the surrender of, the home, parcel number 285 with building site number 1768/1, as well as an outbuilding, recorded as LV No. 2433 Liberec Land Registry, and the other secondary party be obliged to surrender the plot of land No. 1768/2, registered at LV No. 16 Liberec Land Registry. The complainant contends that in the contested decision, the Regional Court in Ústí nad Labem, the Liberec Division, violated several fundamental rights and basic freedoms guaranteed by the Charter of Fundamental Rights and Basic Freedoms, namely the right embodied in Article 11 of the Charter, which provides that everyone has the right to own property and that the

ownership of each owner has the same statutory content and protection, and which guarantees inheritance.

The Regional Court in Ústí nad Labem, the Liberec Division, prayed that the constitutional complaint be rejected on the merits and, to the reasons given for its decision, it added that, in each case, the confiscation of the requested property took place outside of the „decisive period“, stated in § 1 of Act No. 87/1991 Coll., on Extra-Judicial Rehabilitation,³⁾ that is, the period from 25 February 1948 until 1 January 1990. The confiscation in question was actually effected by the promulgation, in the Collection of Laws and Orders, of Decree No. 108/1945 Coll., on the Confiscation of Enemy Property and the Funds of National Renewal, thus, on 30 October 1945.

As it has declared in a great number of its earlier judgments, the Constitutional Court is not a court placed in a position superior to ordinary courts, it is not the summit of the court system, so that it cannot arrogate to itself the right of review over their activities, provided, however, that in their decisions these courts conform to the provisions found in the Fifth Chapter of the Charter of Fundamental Rights and Basic Freedoms.

Just such a constitutionally protected fundamental right is laid down in Article 36 para. 1 of the Charter,⁴⁾ giving to everyone the right to seek vindication of their rights by the prescribed procedure before an independent and impartial court. In the case at hand, however, the ordinary court did not proceed in accordance with the cited Article, for it did not draw any conclusions from the fact that there exists obvious and substantial discrepancies between the 27 November 1992 extract and the 11 February 1993 extract from the Land Register for the Liberec Land Registry, in relation to book folder No. 775. As a result of these discrepancies, it is not at all clear who was the owner of the land in question prior to its confiscation. The ordinary court should rather have cleared up these discrepancies because, while confiscation of the property pursuant to Decree No. 108/1945 Coll.¹⁾ occurred ex lege, nonetheless it occurred only upon the fulfillment of all the conditions prescribed by the Decree, which include a final and valid decision by an administrative body to the effect that the conditions for the confiscation under the Decree (§ 1 para. 4) have been fulfilled. In view of the above-stated facts, all the more should the ordinary court have acquainted itself with the content of the confiscation decision, so that in this way it would obtain a basis for the conclusion regarding when and from whom the property which the present case concerns was confiscated, for only then could they react suitably when judging the claim asserted by the complainant and its factual accuracy. In this connection, it is necessary to refer to the fact that even in the practice of ordinary courts, in cases of confiscation of property pursuant to decree No. 108/1945 Coll.,¹⁾ where the administrative body made its decision only after 25 February 1948 with regard to whether the conditions for confiscation under this decree were met, the growing tendency is to authorize courts to judge whether the statutory prerequisites for the passage of the item to the state are met in respect to the provisions of § 6 para. 2 of Act No. 87/1991 Coll.²⁾ (See, Decision No. 16/1994, the Collection of Court Decisions and Positions, decision of the High Court in Prague from 30 December 1994, file no. 4 Cdo 174/84).

The violation of a person's right to judicial protection under Article 36 para. 1 of the Charter⁴⁾ is so clearly evident in this case that it was not necessary to deal with the

complainant's further criticisms directed rather against Decree No. 108/1945 Coll.,1) as such, since they are irrelevant to the proceeding on the constitutional complaint.

Therefore, since the decisions of the ordinary courts violated the complainant's constitutionally protected right to judicial protection under the cited Article 36 para. 1 of the Charter,4) the Constitutional Court hereby grants the constitutional complaint submitted under Article 87 para. 1, letter d) of the Constitution and vacates the 26 October 1993 judgment of the Regional Court in Ústí nad Labem, Liberec Division, (§ 82 para. 3, letter a) of Act No. 1982/1993 Coll., on the Constitutional Court).

IV. US 56/94

Overview of the most important legal regulations

1. Decree of the President of the Republic no. 108/1945 Coll., on Confiscation of Enemy Property and the National Renewal Funds.
2. § 6 par. 2 of Act no. 87/1991 Coll., as amended by later regulations, provides that the obligation to issue a thing also applies to other cases not stated in par. 1, which fall under § 2 par. 1 letter c), where the state took the thing without legal grounds.
3. § 1 of Act no. 87/1991 Coll., as amended by later regulations, provides that the Act applies to the mitigation of the consequences of certain property and other injustices created by civil law and labor law acts and administrative acts, performed in the period from 25 February 1948 to 1 January 1990 (the "decisive period") in conflict with the principles of a democratic society, respecting the rights of citizens stated by the United Nations Charter, the Declaration of Human Rights and related international covenants on civil, political, economic, social and cultural rights.
4. Art. 36 par. 1 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that everyone may assert, through the legally prescribed procedure, his rights before an independent and impartial court or, in specified cases, before another body.