2002/08/13 - PL. ÚS 1/02: REGION´S MANAGEMENT PROPERTY

HEADNOTE

The contested, valid, and still effective § 19 para. 1 of Act no. 129/2000 Coll., on Regions, because it does not contain any statutory bounds for setting conditions for regions' management of property acquired from the state, and thus establishes absolute discretion, or an opportunity for arbitrariness by state bodies in setting them, is inconsistent with Art. 101 para. 4 of the Constitution, because it makes it possible for new owners to be restricted in their rights, arising from Art. 11 of the Charter of Fundamental Rights and Freedoms, in a manner which does not preserve the essence and significance of these rights.

CZECH REPUBLIC

CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court decided on a petition from the fifth panel of the administrative section of the High Court in Prague to annul § 19 para. 1 of Act no. 129/2000 Coll., on Regions (Regional Establishment), as follows:

The provision of § 19 para. 1 of Act no. 129/2000 Coll., on Regions (Regional Establishment), is annulled as of the day this finding is promulgated in the Collection of Laws.

REASONING

On 2 January 2002 the Constitutional Court received a petition from the fifth panel of the administrative section of the High Court in Prague, in which the petitioner, with reference to Art. 95 para. 2 of the Constitution of the Czech Republic (the "Constitution") seeks the annulment of § 19 para. 1 of Act no. 129/2000 Coll., on Regions (Regional Establishment), (also the "Act on Regions"), expressed in the words, "The state has the right, in cases of uncompensated transfer or devolution of personal property, rights and real estate to the region, where there is financial participation in the obtaining of such property by the region, to reserve to itself the setting of conditions for further management or handling of this property."

The petitioner stated that it is conducting proceedings, under file no. 5 A 73/01, on an administrative complaint by the Pilsen Region (the "Region") against the defendant, the Ministry of Education, Youth, and Sports (the "Ministry"). In the complaint, the Pilsen Region seeks annulment of an administrative act issued under § 1 para. 1 and 2 of Act no. 157/2000 Coll., on the Transfer of Certain Things, Rights and Obligations from the Czech Republic to the Regions, by which the Ministry transferred to the jurisdiction of the Pilsen Region things, rights, and obligations which are managed by pre-school facilities, schools and school facilities specified in appendix A1 of the cited decision, including these pre-school facilities, schools and school facilities, with effect as of 1 April 2001. This decision simultaneously transferred to the Pilsen Region real estate listed in appendix B, part I.A and parts B/1 and B/1b of the cited decision, and personal property listed in appendix B, part I.B. of the decision. In the complaint, the Pilsen Region protested, in particular, that in the cited decision, the Ministry, with reference to § 19 of the Act on Regions, set four conditions for further management and handling of the transferred real estate, which restrict it, as the owner, and which it considers unlawful. The conditions set by the Ministry are so broad and restrictive that they exceed the authority given to the Ministry by the Act, because they interfere in the rights of the region as owner so much that they paralyze the full exercise of its ownership rights. This simultaneously interferes with the Constitutionally guaranteed right to the self-governance by the region, as a higher self-governing territorial unit. In its response to the complaint, the Ministry stated that the specified conditions are based on § 19 of the Act on Regions and that the Ministry did not violate the Act or exceed its framework. It recognizes that the conditions are restrictive, but says that the state is responsible for creating appropriate conditions for the fulfillment of the Constitutional right to education, and a change in the use of properties allocated for education could cause serious problems.

The High Court in Prague took into account the Supreme Court's decision of 21 August 2001, file no. II. ÚS 326/01, which rejected the Pilsen Region's complaint as inadmissible, because the Region, as complainant, did not exhaust all the means of redress which the law provides for protection of rights, that is, it filed a constitutional complaint when it was simultaneously seeking review of the Ministry's decision by a course of action under § 244 et seq. of Act no. 99/1963 Coll., the Civil Procedure Code (the "CPC"). In evaluating the administrative complaint in the matter, the High Court reached the conclusion that § 19 para. 1 of the Act on Regions is inconsistent with the constitutional order of the Czech Republic, insofar as it provides that, "The state has the right, in cases of uncompensated transfer or devolution of personal property, rights and real estate to the region, where there is financial participation in the obtaining of such property by the region, to reserve to itself the setting of conditions for further management or handling of this property," without also specifying the substantive scope of this state authorization, i.e. the scope and manner of setting conditions by which the state (a state body) will be bound. Therefore it interrupted proceedings on the matter under § 109 para. 1 let. c) of the CPC and submitted the matter to the Constitutional Court with a petition to annul the provision in question.

The petitioner, with reference to Art. 2 para. 3, Art. 8, Art. 99, Art. 101 para. 3 and 4 of the Constitution and Art. 2 para. 2 of the Charter of Fundamental Rights and Freedoms (the "Charter") argues that a region manages its property independently, and it is precisely this management on its own account and own responsibility which is the attribute

of self-government. Therefore, the state may interfere with the right to self-government only if this is necessary to protect the law, and only in a manner provided by law. The Act on Regions specifies a region's obligations in managing property and also specifies the manner of inspection of management, in § 17 et seq. Moreover, in contrast to the provision on inspection of management, the law, in § 19 of the cited Act, establishes the right of the state to reserve to itself, in cases of uncompensated transfer or devolution of personal property, rights and real estate to the region, where there is financial participation in the obtaining of such property by the region, conditions for further management or handling of this property. The petitioner acknowledges the state's interest in securing education and the need to materially and financially secure the cited interest, and also the possibility for the state to intervene in the self-government of municipalities and regions and impose on them binding obligations aimed at securing the right to education. Of course, it must specify the cases, limits, and methods of that intervention. In the petitioner's opinion, § 19 of the Act on Regions only specifies cases when the state can reserve to itself the setting of conditions, but does not specify limits or methods for such setting of conditions. Thus, the state may impose any obligations whatsoever on a region, and, in addition, penalize failure to fulfill them. The petitioner considers this situation to be inconsistent with the constitutional order, in particular with Art. 2 para. 3 of the Constitution of the CR, under which state authority is to serve all citizens and may be asserted only in cases, within the bounds, and in a manner provided by law, and with Art. 101 para. 4 of the Constitution of the CR, under which the state may intervene in the affairs of territorial self-governing units only if it is required to protect the law, and in a manner specified by law.

The petitioner further stated, with reference to the abovementioned Constitutional Court decision, file no. II. ÚS 326/01, that in this matter it is entitled to review the lawfulness of the decision contested by the complaint, within the bounds given by the complaint, i.e. whether the conditions no. 2-4 have been imposed in accordance with the law [2) the requirement of prior written consent from the Ministry for changing the purpose of use of real estate, or parts or components thereof, outside the framework of the first condition, for their sale, exchange, giving as a gift, contribution to the assets of another person, or burdening by a lien, or for lending or renting the real estate, or parts or components thereof, for a period greater than one year; 3) the obligation to return as a gift to the state, i.e. if it is impossible to use the real estate according to condition no. 1 and if consent is refused for a change in its use, or for the sale, exchange, giving as a gift, or contribution to the assets of another person, the region's obligation to submit to the Ministry, within 90 days from the refusal of consent, a draft gift agreement giving such real estate to the state; 4) if consent to lending or renting under condition no. 2 is not given, the region's obligation to submit, within 90 days after the refusal of consent, a draft agreement, confirmed by the region as the lender, on the lending of this real estate to the benefit of the Ministry or another person specified by it]. With regard to the abovementioned text of § 19 para. 1 of the Act on Regions, the petitioner concluded that a statutory provision under which the court could decide on the lawfulness of the specifically provided conditions is lacking. In this situation the administrative office has no statutory boundaries for setting conditions, and thus, logically, does not violate the law by setting any kind of conditions at all, except cases where conditions are absurd, outside the logic of the matter, and so on. The administrative office's absolute discretion, understood thus,

is, in the petitioner's opinion, inconsistent with the Constitution. Of course, if the petitioner, as a judicial body, in the absence of a statutory framework for the limits and manner of setting conditions, agreed to review the lawfulness of a decision, found it only in relation to the Act's general provisions, the aim and purpose of establishing regions, and the grounds for the transfer or devolution of state property to these public law corporations, and attempted by interpretation to replace something the legislature did not expressly incorporate in the Act and by which it did not bind the executive power, it would, in this case, appropriate for itself a role which does not belong to it, the role of the legislature, whereby it would also violate the principle of separation of powers.

In conclusion, the petitioner states that the current framework, which permits the discretionary setting of quite different conditions for managing transferred property, or in connection with the devolution of property or financial participation in the obtaining of such property, is not only inconsistent with the "foreseeability of a decision," but, above all, inconsistent with the principle of equality. With regard to Art. 100 para. 1, 101 para. 3 and 4 of the Constitution, a statutory framework may not establish an opportunity for non-uniform, unlimited intervention by the estate or arbitrariness in setting conditions, but there must be a statutory framework for the limits and manner of such intervention which is equally valid for all cases of the same kind and ensures the same conditions for handling the property in question in all regions, and all regions will be equal in terms of the limitations placed on their activities by the state.

The Constitutional Court requested, under § 69 para. 1 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, position statements on the petition from the Chamber of Deputies and the Senate of the Parliament of the Czech Republic, as parties.

The Chairman of the Chamber of Deputies of the Parliament of the Czech Republic (the "Chamber of Deputies"), Václav Klaus, stated about the petition, that the legislative assembly acted in the belief that the statute passed was consistent with the Constitution, the constitutional order and the legal order. He referred to the background report to the government's proposed draft of the Act on Regions, under which "the Act shall also provide conditions under which it will be possible to dispose of property acquired with state participation. The jurisdiction of the Ministry of Finance will make it possible to inspect the handling of state funds provided to the region for the exercise of state administration." He considers the petitioner's interpretation to be self-serving. The petitioner is not taking into account the state's tasks in the area of securing education, nor the fact that the state must take care to materially and financially secure the right to education. Therefore, it is entitled by the Act to intervene in the sphere of self-government decision making by municipalities and regions. The state is also required to take into account the specific conditions and needs of individual regions. The original government draft required the acquisition of property by regions to have the prior consent of the state. The version passed by the Chamber of Deputies gives regions the guarantee that, if the specified conditions are fulfilled, no further state consent will be necessary to manage and handle the property. He also points out that the petition to annul § 19 para. 1 of the Act on Regions must be considered unjustified also because § 19 para. 2 and 3 are expressly bound to it, and would be ineffective in practice. He believes that the legal situation would not be improved by annulling the cited provision. In conclusion he adds

that the Act on Regions was approved, signed by the appropriate constitutionally-specified bodies, and duly promulgated.

The Chairman of the Senate of the Parliament of the Czech Republic (the "Senate"), Petr Pithart, in his position statement described the course of the Senate approval proceedings on the Act on Regions. He stated about the content of the bill that § 19 para. 1 of the Act on Regions was incorporated into the Act so that the state, in an uncompensated transfer or devolution of property, would ensure the use of the property for "publicly beneficial" purposes, i.e., in particular where the state has an obligation to secure some of its responsibilities. Of course, in exercising these powers, the state should see to it that the limitations applied were not inconsistent with Art. 1 and 4 of the Charter, i.e. that the essence and significance of the right to property were preserved and that the restrictions were not used for purposes other than those for which they were provided. He pointed out that, vis-à-vis the party acquiring the property, this is a one-sided act which that party can not influence through its own will. In conclusion the Chairman of the Senate stated that the petition filed by the High Court in Prague indicates that the Pilsen Region filed a petition to annul the "entire" decision. In the even of its annulment, the state will again become the owner of the property cited in the decision, and it can not be ruled out that the region's subsidized organizations would, as a consequence of § 2 para. 1 of Act no. 157/2000 Coll., on the Transfer of Certain Rights and Obligations from the Czech Republic to the Regions, again become state subsidized organizations, with all the related consequences.

The Constitutional Court first, in accordance with § 68 para. 2 of the Act on the Constitutional Court, reviewed whether the statute whose provisions are claimed to be unconstitutional by the petitioner was passed and issued within the bounds of constitutionally provided jurisdiction and in a constitutionally prescribed manner. From the position statements of the Chamber of Deputies and the Senate, as well as from relevant Chamber of Deputies documents received and from information about the course of the voting, the Constitutional Court determined that the Chamber of Deputies approved the draft of the Act on Regions at its 22nd session on 8 March 2000, when, out of the 183 deputies present, 118 voted in favor and 59 were against. The Senate approved the bill at its 18th session on 12 April 2000. Out of the 73 senators present, 45 voted in favor and 22 were against. The president of the CR signed the Act on Regions on 4 May 2000. The Act was promulgated on 15 May 2000 in the Collection of Laws, in part 38 under number 129/2000 Coll. The Act on Regions was thus passed and issued in the constitutionally prescribed manner and within the bounds of constitutionally provided jurisdiction, and the rules provided in Art. 39 para. 1 and 2 of the Constitution were observed.

In the submitted petition, the petitioner seeks the annulment of § 19 para. 1 of the Act on Regions. Under that provision the state has the right, in cases of uncompensated transfer or devolution of personal property, rights and real estate to the region, where there is financial participation in the obtaining of such property by the region, to reserve to itself the setting of conditions for further management or handling of this property.

In decision making under Art. 87 para. 1 let. a) of the Constitution, the Constitutional court determines – on the substantive side – whether the contested provisions are in accordance with the constitutional order (so that their annulment is not necessary) or whether these provisions do not conform to the Constitution. However, it considers a

petition to annul a statute, other legal regulation, or its individual provisions only on the assumption that the statute, other legal regulation, or their individual provisions did not cease to be valid before the end of the proceedings before the Constitutional Court. If such a situation arises and the statute, other legal regulation, or its individual provisions ceased to be valid, the Constitutional Court, in accordance with § 67 para. 1 of the Act on the Constitutional Court, stops the proceedings.

The Constitutional Court verified that the Act on Regions was repeatedly amended. The amendment implemented by Act no. 231/2002 Coll. is relevant for the adjudicated petition. This amendment annulled, among other things, the entire § 19 (point 30). The petitioner's submitted petition seeks the annulment of the first paragraph of § 19. This Act was duly approved by the Chamber of Deputies on 26 March 2002. The Senate did not discuss the bill. On 17 May 2002 the Act was delivered to the president of the CR, who signed it on 23 May 2002. It was promulgated in the Collection of Laws, in part 87, distributed 4 June 2002, with the provision that it was to go into effect on 1 January 2003, with the exception of points 26 and 79, which, however, do not relate to the contested provision.

In this situation the Constitutional Court was forced to ask whether it can make a decision in the matter, or whether the procedure under § 67 para. 1 of Act no. 182/1993 Coll., on the Constitutional Court, comes into consideration, that is, stopping the proceedings, i.e. whether the statutory provision which is proposed to be annulled ceased to be valid before the end of the proceedings before the Constitutional Court.

The reason for inadmissibility of a petition in proceedings to review of norms, or the reason for stopping such proceedings, is, according to the valid legal framework, that a legal regulation is not valid, not that it is not in effect. In this regard, the contested § 19 para. 1 of Act no. 129/2000 Coll. (the "Act on Regions") must be viewed as a provision which is, as of the date of the Constitutional Court's decision making, valid and in effect, and part of which is to be repealed as of 1 January 2003. Therefore, the High Court's petition must be considered admissible, all the more so because in finding Pl. ÚS 33/2000 the Constitutional Court expressed the opinion that if a court, pursuant to Art. 95 para. 2 of the Constitution, submits for evaluation a statute which is no longer valid, it is appropriate to give a verdict on the constitutionality of that statute.

After taking into account the consent of the parties to the proceedings that the petition be decided without oral proceedings, the Constitutional Court, deliberated on the matter as follows:

One of the basic attributes of self-government is the right of self-governing units to manage their property independently, on their own account and their own responsibility. The content of the ownership right is the owner's authority to hold a thing, use it, use its fruits and income, as well as authority to dispose of a thing. The right to dispose of a thing is considered central. However, as is indicated by this particular case, during the review of which the High Court in Prague stopped the proceedings and submitted § 19 para. 1 of the Act on Regions to the Constitutional Court for review, on the basis of that provision, in some cases, or by some Ministries, this right to the acquired property is restricted in such a manner as makes the self-governing regions more the administrators of someone else's property than owners. One must agree with the petitioner that a situation where the state

feels authorized to impose obligations on self-governing regions through any conditions whatsoever, and, moreover, penalizes the failure to fulfill them with considerable fines, is inconsistent with Art. 101 para. 4 of the Constitution, under which the state may state may interfere with the activities of territorial self-governing units only if it is required to protect the law, and only in a manner provided by law. However, the contested, valid, and effective § 19 para. 1 of the Act on Regions does not contain any statutory boundaries for setting conditions for managing the acquired property, and thus establishes absolute discretion, or rather an opportunity for arbitrariness by state bodies in setting them. This state of affairs makes it possible that in cases which are the same, the same procedures need not be followed, the possible future decision by state bodies is unforeseeable, and its consequences may seriously violated the equality of self-governing entities to which property is transferred or to which it devolves. In that case the steps taken by the state are fundamentally different from the steps when transferring property to municipalities which acquired it by devolution directly from Act no. 172/1991 Coll., and that Act did not specify any further conditions for the municipalities' management of the property thus acquired, nor did it subject the devolution to any decision by central state government bodies with the ability to set conditions.

Apart from the abovementioned reservations, the valid and effective text of § 19 para. 1 of the Act on Regions also raises doubts in terms of legal theory and accepted legal terminology, when it places under the same regime both the transfer and the devolution of property. The devolution of property happens on the basis of a legal fact, in this case Act no. 157/2000 Coll., on the Transfer of Certain Things, Rights and Obligations from the CR to the Regions, that is, independently of the will of the entity. In that case, conditions for managing such property can be set only by law, and not by an administrative office. However, the cited Act on the transfer of property does not set any conditions connected with this devolution. It regulates only the formal requisites of future administrative decisions, and § 4 is the only provision which can be considered ex lege to restrict future owners to a certain extent; under § 4, where a restitution claim was or will be made, the region becomes the obligated party under special regulations. On the other hand, the transfer of ownership happens by agreement, and in this two-sided act one can undoubtedly also agree on other conditions. This confusion of concepts then continues in § 19 para. 2 and 3 of the Act on Regions, which penalize the violation of obligations imposed under para. 1 without differentiation, although such penalizing would only come into consideration with the violation of obligations or conditions provided with a transfer of ownership ex lege, whereas such penalties can hardly stand if the region, as a public law corporation, entered into a contract on the transfer of property with the state. In such a case, penalties can only be agreed upon in the contract.

The abovementioned problems were apparently known to the government, which, in the proposed amendment of the Act on Regions proposed a different text of § 19, which, however, was ultimately not accepted by the legislative assembly, and that section was deleted from the final version of the Act (with effect as of 1 January 2003). However, the general section of the background report indicates that the purpose of the amendment of the Act on Regions (no. 231/2002 Coll.) is, among other things, to expand the jurisdiction of the regions, which is necessary so that the regions to can completely fulfill the mission which belongs to them, as significant bodies of territorial self-government, under the Constitution of the CR. Insofar as the legislature, by Act no. 231/2002 Coll., annulled the

entire § 19 of the Act on Regions, in view of the circumstances this can be considered an expression of its recognition that the construction of § 19 did not meet the constitutional requirements arising from Art. 101 para. 4 of the Constitution, and that its generality and uncertainty did not meet the elements of foreseeability, sufficient precision, and clarity which define the concept of a "statute" in a state governed by the rule of law. By not meeting the cited elements, § 19 clearly did not provide the affected parties (the regions) sufficient protection against the caprice or arbitrariness of the state power. Thus, the contested provision made it possible for new owners to be restricted in their rights, arising from Art. 11 of the Charter of Fundamental Rights and Freedoms, in a manner which does not preserve the essence and significance of these rights, and is therefore inconsistent with Art. 4 para. 4 of the Charter. This situation would also not be consistent with the European Charter of Local Self-Government, which was included in the legal order of the CR by notification of the Ministry of Foreign Affairs, no. 181/1999 Coll., with effect as of 1 September 1999. Under Art. 8 of the European Charter, any administrative review of self-governing societies can only be conducted as prescribed by the Constitution or a statue.

For all the abovementioned reasons, the Constitutional Court granted the petition of the High Court in Prague, and annulled § 19 para. 1 of the Act on Regions as of the day this finding is promulgated in the Collection of Laws.

The Constitutional Court also considered annulling the related para. 2 a 3 § 19 of the Act on Regions, aware of the fact that in finding Pl. ÚS 15/01, published under no. 424/2001 Coll., it expressed an opinion which would permit such a step even without a petition. In that finding the Constitutional Court said that in a situation where, as a consequence of annulling a certain statutory provision another provision, separate in content from the one annulled, loses reasonable purpose, i.e. loses the justification for its normative existence, grounds exist for also annulling that provision, without this being a procedure ultra petitum. In view of the fact that this basically technical derogation occurred through the abovementioned amendment of the Act on Regions, which will go into effect on 1 January 2003, the Constitutional Court limited itself in this specific case only to annulling the key provision which was expressly contested, that is, § 19 para. 1 of the Act on Regions.

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

Brno, 13 August 2002