2004/02/11 - PL. ÚS 1/03: REASONS FOR APPEAL ON POINT OF LAW

HEADNOTES

1) In various proceedings before courts of the same state, in a procedural situation which is, if not identical, very similar (the party to the proceedings seeks the annulment of an effective court decision on grounds of incorrect legal evaluation, or asks the highest body in the court system to address a question which the party to the proceedings considers to be fundamental and as yet unresolved) the party to the proceedings can not be treated differently unless reasonable grounds for such action are evident.

2) Stating brief reasons on which the Supreme Court based its denial decision (e.g. citations of the Court's cases which address the matter and which the court found no reason to change or deviate from) can not significantly burden the Supreme Court, and thus they can not significantly influence the overall length of court proceedings; thus limiting the rights of a party to appellate proceedings on a point of law appears to be clearly disproportionate to the aim pursued.

CZECH REPUBLIC
CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court, composed of JUDr. František Duchoň, JUDr. Pavel Holländer, JUDr. Dagmar Lastovecká, JUDr. Jiří Malenovský, JUDr. Jiří Mucha, JUDr. Jan Musil, JUDr. Jiří Nykodým, JUDr. Pavel Varvařovský, JUDr. Miloslav Výborný and JUDr. Eliška Wagnerová, ruled on a petition from the minors Jan and Pavel Boukal, represented by their mother, Monika Boukalová, all residing at Višňová 146, legally represented by JUDr. Antonín Janák, attorney with his registered office in Příbram, seeking the annulment of § 243c par. 2 of Act no. 99/1963 Coll., the Civil Procedure Code, as amended by later regulations, with the consent of the parties without conducting oral proceedings, as follows:

The provision of § 243c par. 2 of Act no. 99/1963 Coll., the Civil Procedure Code, as amended by later regulations, is annulled as of the day this judgment is promulgated in the Collection of Laws.

REASONING

In a petition delivered to the Constitutional Court on 2September 2002 (file no. IV. ÚS 582/02), the complainants, the minors Jan Boukal and Pavel Boukal, represented by their mother, Monika Boukalová, legally represented by JUDr. Antonín Janák, seek to have the Constitutional Court annul the decision of the Supreme Court of the CR of 19 June 2002, file no. 33 Odo 360/2002-127, the decision of the Regional Court in Prague of 22 January 2002, file no. 28 Co 11/2002-111 and the decision of the District Court in Příbram of 17 October 2001, file no. 11 C 165/97-81.

Together with the constitutional complaint, the complainants filed a petition to annul § 243c par. 2 of Act no. 99/1963 Coll., the Civil Procedure Code, as amended (the "CPC" of the CPC).

The fourth panel of the Constitutional Court, after stating that application of the contested provision resulted in one of the facts which are the subject matter of the constitutional complaint, i.e. that the conditions provided in § 74 of Act no. 182/1993 Coll., on the Constitutional Court, have been met, suspended proceedings on the constitutional complaint and forwarded the petition to annul § 243c par. 2 of the CPC to the Plenum of the Constitutional Court.

The petitioners consider § 243c par. 2, of the CPC, which permits the Supreme Court to not give any reasons at all in decisions on appeals on points of law ["dovolání"] specified therein, to be inconsistent with everyone's right to a fair trial, in particular with Art. 6 par. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In their opinion, this convention is a treaty under Art. 10 of the Constitution, and thus directly applicable and has precedence before statutes. In support of their opinion, they argue on the basis of decisions of the European Court of Human Rights, in particular they point to the judgment of 21 January1999 in the case of García Ruiz v. Spain, which clearly states that according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based." The petitioners also point out that the extent of this duty may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see Ruiz Torija v. Spain and Hiro Balani v. Spain, 1994, and Higgins and Others v. France, 1998). Finally, they point to the conclusions of the ECHR that, although Article 6 par. 1 obliges courts to give reasons for their decisions, this duty cannot be understood as requiring a detailed answer to every argument (see Van de Hurk v. the Netherlands, 1994). Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (see Helle v. Finland, 1997).

The petitioners believe that in both kinds of cases regulated by the contested provision, § 243c par. 2 of the CPC, where the Supreme Court can omit giving reasons, it is not a question of a mere procedural decision in the matter (e.g. denial on grounds of a late filing or filing by an unauthorized person), but that the appellate court on a point of law must preliminarily answer the question concerning the merits of the matter and conclude that it

is not a question of fundamental legal significance, or that the appeal on a point of law is clearly groundless. Thus, it must consider the matter in terms of substantive law. Insofar as it is one of the main tasks of the Supreme Court to have a unifying effect on the case law of lower courts through its interpretations of the law in individual cases, then, according to the petitioners, this role must be fulfilled by a clear, even if only brief, reference, e.g. to a decision of the Supreme Court in an analogous matter. However, one can hardly speak of fulfilling this role in a cases where the appellants are not even informed why there is not a question of fundamental legal significance, or why the appeal on a point of law is clearly groundless. Therefore, the petitioners conclude that if the law permits the court to not give reasons for its decision at all, although Art. 6 par. 1 of the Convention establishes the right of every participant in court proceedings to an adequate statement of the reasons on which a decision is based, it thereby directly violates the right to a fair trial. An absence of reasons can never be adequate reasons.

The Constitutional Court, under § 69 of Act no. 182/1993 Coll., on the Constitutional Court (the "Act"), requested opinions from the Chamber of Deputies and the Senate.
…

The Constitutional Court also asked for opinions on the petition from the Ministry of Justice and the Supreme Court of the CR (§ 48 par. 2 and § 49 par. 1 of the Act on the Constitutional Court).

The Ministry of Justice expressed the opinion that the contested provision is an exception from the general framework of providing reasoning for resolutions whereby a court decides a matter on the merits, under § 169 par. 4, or § 157 par. 2 and 4 of the CPC. This exception has its justification in the fact that, in the case of a decision to deny an appeal on a point of law under § 243c par. 2 of the CPC, the reasons for the decision may be merely formal. In its reasoning, the court would basically only repeat the relevant provisions of the law, which provide quite unambiguous criteria for denying an appeal on a point of law– either it is not a question of a decision which has fundamental legal significance for the merits of the matter, or the appeal on a point of law is clearly groundless. The permissibility of an appeal on a point of law, as an extraordinary means of redress in cases under § 237 par. 1 let. c) of the CPC, or its denial as clearly groundless under § 243b par. 1 of the CPC, depend on the consideration of the court. However, this consideration is very narrowly defined. If the contested decision of the appeals court is correct, consistent with case law, and otherwise error-free, a sufficient substantive basis for a reasoning in the scope foreseen by, in particular, § 157 par. 2 of the CPC does not even exist.

The ministry also pointed out, that an appeal of a point of law is an extraordinary means of redress, which is permissible only if provided by statute (it is not based on the principle of universality, unlike an ordinary appeal) and its purpose is, apart from deciding individual matters, to have a unifying effect on case law. If the appellate court concludes that an appeal on a point of law is not permissible under § 237 par. 1 let. c) of the CPC, because the contested decision does not have fundamental legal significance, or that the appeal on

a point of law is clearly groundless under § 243b par. 1 of the CPC assumes that the decision of the appellate court is correct, and that even in terms of its reasons the appellate court has not reason to add anything. The fact that it does not give reasons for its decision to deny an appeal on a point of law can not be inconsistent with the right to a fair trial, because stating reasons for the decision of the appellate court [on the point of law] could only point to the correct conclusions of the appellate court [on the ordinary appeal]. Therefore, it is not procedurally economical to give the reasons for such a decision, because the [first] appellate court resolved the dispute correctly, and the reasons of the appellate court [on the point of law] can bring no benefit either to the parties or for purposes of unifying case law. For these reasons, the Ministry of Justice is convinced that § 243c par. 2 of the CPC, which does not required the court to give reasons for its decision, can not be considered a violation of the right to a fair trial under Art. 6 par. 1 of the Convention on Human Rights and Fundamental Freedoms.

In its opinion of 28 March 2003, the Supreme Court relied in part on the statement submitted in the proceedings on a constitutional complaint by the chairwoman of the panel which decided on the appeal on a point of law in the particular matter, and which holds the opinion that the contested provision of the CPC does not deny the party's right to a fair trial under Art. 6 par. 1 of the Convention. The contested provision of the CPC, providing that reasons are not given in decisions to deny an appeal on a point of law in designated cases, was established in the Civil Procedure Code in the interest of speeding up and shortening proceedings in appeals on points of law before the Supreme Court. It is necessary to see that these proceedings are proceedings on an extraordinary means of recourse, so they do not in any way interfere with the principle of two levels of civil court proceedings (The Supreme Court is a third level in this case), and that the European Union, or the majority of its states, considers two court levels to be quite adequate. One can not assume that the contested provision interferes with the party's constitutional right to a fair trial, as it meets the requirement for speeding up court proceedings and making them more economical in those cases where decisions on appeals on points of law (of a more or less trivial nature), weighed down by unnecessary giving of reasons, take away from the Supreme court's capacity to unify court practice and make decisions on matters of fundamental importance. The complainants' arguments, relying on the particular case law of the European Court of Human Rights, apply to the ordinary appellate court, not the appellate court handling the appeal on a point of law.

In conclusion, the Supreme Court's statement says that these opinions are also consistent with the trend toward efficiency in civil proceedings in Germany and other states of the European Union.

After reviewing the arguments presented by the petitioners and after weighing the abovementioned opinions and statements, the Constitutional Court concluded that there were grounds for the petition. It based this on the following considerations.
We can agree with the objections of both houses of Parliament, as well as the Ministry of Justice, that the petitioner's arguments overlook the fact that, through the promulgation of constitutional Act no. 395/2001 Coll., priority of application of international treaties was enshrined in the legal order of the CR with effect as of 1 June 2002, and as result their reference to the original wording of Art. 10 of the Constitution. Likewise, one can agree

with the Supreme Court that the particular cases of the European Court of Human Rights, to which the petitioners point are concerned rather with the requirements imposed on the reasoning of decisions by first-level or appellate courts. However, these arguments do not in themselves make the petition groundless.

It is evident from the opinions of both houses of Parliament, as well as the expert opinions of the Ministry of Justice and the Supreme Court, that the main aim of adding the contested provision into the CPC by the amendment performed by Act no. 30/2000 Coll. is removing unnecessary delays in the activity of courts, in particular easing the situation of the Supreme Court, that is, meeting the requirements of Art. 38 par. 2 of the Charter, or Art. 6 par. 1 of the Convention, as regards court decision making in an appropriate and reasonable time. That aim is undoubtedly legitimate, but the means of attaining it should not come into conflict with the right of a party to court proceedings to fair and equal treatment which prevents arbitrariness.

The Constitutional Court has already stated the requirements which must be imposed on the decision-making of the general courts in a number of its decisions. Primarily, it stated that the independence of decision-making by general courts is implemented in a constitutional and statutory framework of procedural and substantive law. The procedural law framework means primarily the principles of a proper and fair trial, as arising from Art. 36 et seq. of the Charter of Fundamental Rights and Freedoms, and from Art. 1 of the Constitution of the Czech Republic. One of these principles, which is a component of the right to a fair trial, as well as of the concept of a state governed by the rule of law (Art. 36 par. 1 of the Charter of Fundamental Rights and Freedoms, Art. 1 of the Constitution of the Czech Republic) and which rules out arbitrariness in decision-making, is the obligation of courts to give reasons for their verdicts. (judgment file no. III. ÚS 84/94, Collection of Decisions of the Constitutional Court of the Czech Republic, volume 3, no. 34, p. 257). In judgment file no. III. ÚS 176/96 (Collection of Decisions of the Constitutional Court of the Czech Republic, volume 6, no. 89, p. 151) the Constitutional Court expressed the opinion that if one of the purposes of court jurisdiction is to be met, that being the requirement of "education aimed at preserving the law … at respect for the rights of fellow citizens" (§ 1 of the Civil Procedure Code), it is completely necessary that the decisions of the general courts not only conform to the law in the merits of the matter, and be issued with full observance of procedural norms, but also that the reasoning of issued decisions, in relation to the cited aim, meet the criteria given by § 157 par. 2 in fine, par. 3 of the Civil Procedure Code, because only substantively correct decisions (fully consistent with the law) and decisions which are properly justified, i.e. in the legally required manner, meet – as an inseparable component of the "designated procedure"– the constitutional criteria arising from the Charter of Fundamental Rights and Freedoms (Art. 38 par. 1). Similarly as in the area of facts, likewise in the area of inadequately analyzed and justified legal arguments there are analogous consequences which lead to decisions being incomplete and, in particular, unconvincing, which is of course inconsistent not only with the aim of court proceedings but also with the principles of a fair trial (Art. 36 par. 1 of the Charter of Fundamental Rights and Freedoms), as the Constitutional Court understands them.

Also of significance for the present matter is judgment file no. III. ÚS 206/98 (Collection of Decisions of the Constitutional Court of the Czech Republic, volume 11, no. 80, p. 231 et seq.), in which the Constitutional Court stated that part of the constitutional framework of the independence of courts is their obligation to observe equality in rights arising from Art. 1 of the Charter. Equality of rights in relation to the general courts thus establishes, among other things, the right to the same decision-making in the same matters, and at the same time rules out arbitrariness in application of the law.

On the other hand, the Constitutional Court has also said in its case law that the right to an appeal on a point of law is not constitutionally guaranteed, and this extraordinary means of redress, which the law makes available to parties in civil and criminal proceedings, thus goes beyond the framework of constitutionally guaranteed procedural entitlements (decision file no III. ÚS 298/02, Collection of Decisions of the Constitutional Court of the Czech Republic, vol. 26, no. 18, p. 381).

Although the constitutional order does include an entitlement to file an appeal on a point of law, or another so-called "extraordinary" means of redress, the Constitutional Court considered it key to review the question of whether the procedure chosen by the legislature sufficiently eliminates possible arbitrariness in application of the law, which is indisputably one of the elements of a state governed by the rule of law. In other words, whether the fact that a particular procedural process goes beyond the framework of constitutional requirements is, in itself, sufficient grounds to conclude that the criteria arising from the existing case law of the Constitutional Court need not be applied to the reasoning of a decision about such procedural process, or that it is not necessary to apply these criteria even commensurately. Another question which the Constitutional Court had to answer was whether limiting the right of the appellant on a point of law to learn (in certain cases) on what grounds the Supreme Court denied the petition is commensurate with the aim pursued, or whether it can even serve this aim at all.

The background report for § 243c par. 2 of the CPC states that as the reason why the Supreme Court is denying an appeal on a point of law is obvious, it is not necessary to state a reasoning for the decision. The opinions from both houses of Parliament and the opinions of the Ministry of Justice and the Supreme Court of the CR were in the same spirit. However, the Constitutional Court believes that these arguments are unconvincing, because the "obviousness" of the reason is de facto expressed only by reference to the text of the relevant provisions of the CPC, which is actually a kind of circular argument. The appellant on a point of law thus does not learn, even if briefly, why the Supreme Court did not consider the question presented to it in the appeal on a point of law to be one of fundamental legal significance, why it considered the appeal on a point of law to be clearly groundless. In this regard, the Supreme Court's decision is thus non-reviewable, which could perhaps stand if the Supreme Court really were the last body of a judicial type which could consider the matter. However, in view of the position of the Constitutional Court, as well as of the European Court of Human Rights, the absence of any reasoning makes it impossible to review, even roughly, the reasons for the decision, and in the event that the matter is presented to these bodies there will still be an obligation on the Supreme Court to give reasons for its decisions (supplementally).

In the case law of the European Court of Human Rights, it is up to each state how to arrange its court system and the relationships between its individuals levels. If so-called extraordinary means of redress were not permitted at all, no doubt such a framework should stand from that point of view, and from the point of view of constitutional law. On the other hand, if such means are permitted, in a state governed by the rule of law their framework should be fundamentally identical for all types of court proceedings, or differ only if there are reasonable grounds for it. However, a comparison of the requirements which must be contained in a decision on an appeal on a point of law in civil and criminal proceedings, or the requirements which the Administrative Procedure Code requires for decisions on a cassation complaint, shows significant differences, and their rationale is not clear to the Constitutional Court.

If the Supreme Court denies an appeal on a point of law in criminal proceedings, it is required by law to briefly state the reason for the denial, with a reference to the circumstance relating to the statutory grounds for denial(§ 265i par. 2 of the Criminal Procedure Code). The commentary to the Criminal Procedure Code says that the defining element – brevity – will necessary be affected by the grounds for the denial. More extensive explanations of reasons are required, according to the commentary, for grounds listed in § 265i par. 1 let. b),c), and particularly f), that is, if it is to be explained why a particular question is not of fundamental legal significance. Thus, a comparison of the requirements for providing a reasoning in a decision on an appeal on a point of law in civil proceedings indicates that, in terms of the requirements for the reasons for its decision, the Supreme Court can decide quite differently on matters of basically the same character. Comparing these different requirements for reasons in decisions on appeals on points of law with the requirements for a decision by the Supreme Administrative Court on a cassation complaint shows that § 55 par. 4 of the Administrative Procedure Code permits omitting reasons only in a decision which does not terminate the proceedings and which does not impose obligations on anyone. It does not permit a verdict without reasons (§ 54). In view of the fact that under § 120 of the Administrative Procedure Code the provisions of part three chapter one of the Administrative Procedure Code are applied commensurately to proceedings on a cassation complaint, one can conclude that the Supreme Administrative Court must always give reasons for a decision on a cassation complaint.

It is evident from the foregoing that in various proceedings before courts of the same state, in a procedural situation which is, if not identical, very similar (the party to the proceedings seeks the annulment of an effective court decision on grounds of incorrect legal evaluation, or asks the highest body in the court system to address a question which the party to the proceedings considers to be fundamental and as yet unresolved) the party to the proceedings can not be treated differently unless reasonable grounds for such action are evident.

The Constitutional Court believes that the argument that denying an appeal on a point of law in civil court proceedings without giving reasons will contribute to courts making decisions in an appropriate time (which is undoubtedly a legitimate aim) will also not stand. Limiting the right of a party in appellate proceedings on a point of law in civil matters to learn the reason why the Supreme Court decided as it did can only minimally serve the declared aim (if at all). Stating brief reasons on which the Supreme Court based its denial decision (e.g. citations of the Court's cases which address the matter and which

the court found no reason to change or deviate from) can not significantly burden the Supreme Court, and thus they can not significantly influence the overall length of court proceedings; thus limiting the rights of a party to appellate proceedings on a point of law appears to be clearly disproportionate to the aim pursued. In this regard we can also point to the opinion expressed in the decision by the European Court of Human Rights in the case of Delcourt (1970 A 11, § 25), that in a democratic society, the right to a fair administration of justice holds such a prominent place, that it can not be sacrificed for convenience. Justice must not only be done, it must also be seen to be done.

For the foregoing reasons the Plenum of the Constitutional Court decided to annul § 243c par. 2 of the CPC due to its inconsistency with the principles of a state governed by the rule of law (Art. 1 of the Constitution), as well as with the principle of equality (Art. 1 of the Charter), as the Constitutional Court has interpreted these principles in its existing case law; it did not find grounds to delay the enforceability of this decision.

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

Brno, 11 February 2004