

2002/04/30 - PL. ÚS 18/01: LIABILITY OF STATE FOR DAMAGE

HEADNOTES

Civil law, which includes Act No. 82/1998 Coll., defines damage as property detriment which can be objectively expressed in a general equivalent, i.e. money. True damage is considered to be property detriment expressible in money, which consists of reduction, lowering or other devaluation of the injured party's already existing property, as well as in the outlay of expenses for the removal of this devaluation. It is apparent from this very definition that damage can also be the expenses actually incurred by parties to proceedings for the proceedings, and that the state is also liable for damage thus arising, provided, of course, that other conditions for this liability relationship to arise have been fulfilled, i.e. the existence of a causal relationship between the creation of the damage and the statutorily presumed damaging event, i.e. with the issuance of an unlawful decision or with an incorrect official procedure. The legislature itself, as indicated by § 31 para. 1 of Act No. 82/1998 Coll., expressly includes proceedings costs in the damage which is compensable under this Act; nonetheless, as is evident from comparing the following two paragraphs, it does not maintain the same approach to all entities which come into consideration. It sets different conditions under which incurred proceedings costs can be compensated under the Act when, in relation to those damaged by incorrect official procedure it sets as the only condition a causal relationship between the incurring of proceedings costs and the procedure in question (para. 2), while in relation to those entities which were damaged by an unlawful decision (apart from the condition that the proceedings costs have not yet been awarded under procedural regulations, which is acceptable), conditions further compensation of incurred expenses on the existence of damage which arose through the decision. In the words of the explanatory report, "proceedings costs can be paid as part of compensation of damages caused by the decision, but they may not be the only damage". In this way the contested provision then de facto divides those entities to which it applies who incurred property detriment in connection with the issuance of an unlawful decision into two categories. One consists of those who incurred damage consisting "only" of the incurred proceedings costs, and the other of those who at the same time incurred other damage, and only this second-named group, under para. 3, is entitled to compensation of proceedings costs as part of damage compensation (assuming that compensation of these expenses was not awarded under procedural regulations). In the Constitutional Court's opinion, the legislature is thus making differences which can not be justified on legal grounds, as in both cases there is a reduction in the injured party's property, and there is therefore damage in the above-mentioned sense, the right to compensation of which is guaranteed by Art. 36 para. 3 of the Charter.

Under Art. 4 para. 2 of the Charter, limitations can be placed upon fundamental rights and freedoms under the conditions prescribed by this constitutional document only by law, and in employing the provisions concerning limitations upon the fundamental rights and freedoms their essence and significance must be preserved, and such limitations may not be misused for purposes other than those for which they were laid

down (Art. 4 para. 4 of the Charter). Thus, if everybody is entitled to compensation for damage caused to him by an unlawful decision by a court, other state body or public administrative body or by incorrect official procedure, and the conditions and details of exercise of this right are set by law (Art. 36 para. 3, para. 4 of the Charter), then such a law, issued on the basis of constitutional authority, may not completely annul (negate) the right to compensation of damage arising as a consequence of such conduct and thereby deny, even if only in certain cases, a constitutionally guaranteed fundamental right. Thus, in the cases of persons who incurred damage consisting “only” of proceedings costs, the procedure projected by the legislature in the contested provision led to the complete exclusion of this category of entities from the right to compensation of damages caused by the unlawful decision of a court, other state body or public administrative body. Such a procedure is in sharp conflict with the constitutional order of the Czech Republic and does not respect the principle of minimizing interference in the fundamental rights in the form of possible limitation and maximizing the preservation of the substance of a fundamental right. Therefore, the Constitutional Court annulled the contested provision due to conflict with Art.36 para. 3, in connection with Art. 1 para. 1, Art. 3 para. 1 and Art. 4 para. 4 of the Charter.

CZECH REPUBLIC

CONSTITUTIONAL COURT JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court decided on the petition from the District Court for Prague 10 to annul § 31 para. 3 of Act No. 82/1998 Coll., on Liability for Damage Caused During the Exercise of State Power by a Decision or Incorrect Official Procedure and Amending Czech National Council Act No. 358/1992 Coll., on Notaries and Their Activities (the Notarial Code) as amended by Act No. 120/2001 Coll., with the participation of the Chamber of Deputies and the Senate of the Parliament of the Czech Republic as parties to the proceedings, as follows:

Provision of § 31 para. 3 of Act No. 82/1998 Coll., on Liability for Damage Caused During the Exercise of State Power by a Decision or Incorrect Official Procedure and Amending Czech National Council Act No. 358/1992 Coll., on Notaries and Their Activities (the Notarial Code) as amended by Act No. 120/2001 Coll., is annulled as of the day this judgment is published in the Collection of Laws.

REASONING

On 28 June 2001 the Constitutional Court received a petition from the District Court for Prague 10 in which that court seeks the annulment of § 31 para. 3 of Act No. 82/1998

Coll., on Liability for Damage Caused During the Exercise of State Power by a Decision or Incorrect Official Procedure and Amending Czech National Council Act No. 358/1992 Coll., on Notaries and Their Activities (the Notarial Code) as amended by Act No. 120/2001 Coll., basically with the claim that this provision is in evident conflict with the principle enshrined in Art. 36 para. 3 of the Charter of Fundamental Rights and Freedoms (the “Charter”), under which everyone is entitled to compensation of damage caused to him by an unlawful decision of a court, other state body or public administrative body or by an incorrect official procedure. The District Court for Prague 10 thus used the opportunity given it by § 64 para. 4 of Act No. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, on the basis of which a court is entitled to file a petition to annul a law or its individual provisions in connection with its decision making activity under Art. 95 para. 2 of the Constitution of the Czech Republic (the “Constitution”).

The petitioner, by resolution file no. 9 C 6/2001 of 25 June 2001, interrupted, under § 109 para. 1 let. c) of Act No. 99/1963 Coll., the Civil Procedure Code, as amended by later regulations, proceedings opened on a complaint from E. H., V. H. and J. Š. versus the Czech Republic, represented by the Ministry of Justice of the CR, in the matter of compensation of damages, claimed on the basis of Act No. 82/1998 Coll., and submitted the matter to the Constitutional Court. In that case, the above mentioned plaintiffs based their claim for compensation of damage on the fact that, on the basis of a filed accusation, criminal prosecution was opened and conducted against them for the crime of evasion of taxes and similar payments under § 148 para. 1, para. 4 of the Criminal Code [in the case of the last named, § 148 para. 1, para. 3 let. c) ditto], committed as accomplices (§ 9 para. 2 ditto). However, criminal prosecution of all the defendants was subsequently stopped, as it was not proved that they committed the act for which an accusation was filed against them [§ 172 para. 1 let. c) of the Criminal Code]. As proceedings in the cases concerned a crime for which the law provides a prison sentence with a maximum exceeding five years, they were required to already have defense counsel in the preparatory proceedings, for required defense, based on § 36 para. 3 of the Criminal Procedure Code. In the complaint for compensation of damage, the plaintiffs then expressed the opinion that disclosure of the accusation is considered, in the event criminal prosecution is stopped, to be incorrect official procedure, and if damage arises as a result, which happened in this case, the state is liable for it, and compensation of damage which was caused by the indicated incorrect official procedure is also considered to include the amount expended for costs related to defense, which the plaintiffs enumerated in detail and documented. They also stated and documented that, in accordance with § 6 para. 1, para. 2 let. a) of Act No. 82/1998 Coll. they turned to the defendant - the Ministry of Justice of the CR, damage compensation department. The defendant informed them, by letter of 5 April 2000, file no. Odšk. 136-8/2000, that the right to compensation of damage under § 7 of Act No. 82/1998 Coll. had arisen, but it that their application for payment of compensation could nevertheless not be granted. In this regard, it stated that under § 31 para. 3 of this Act, the right to compensation of proceedings costs as part of compensation of damages arises only if other damage also arose by the decision (as the disclosure of accusation was characterized for purposes of Act No. 82/1998 Coll.). In support of this position, it pointed to the explanatory report for the proposal of the Act. In view of this fact, the plaintiffs, who persisted in their decision to claim damages only for the amount of the standard prescribed rates for the expenses of legal representation, presented their complaint to the court and argued that this opinion was not correct, as this conclusion

could not be unambiguously concluded from the cited provision. They pointed to the fact that the finding of a right is a matter solely for the court, and that they considered relying on the explanatory report to be unsuitable. They also argued that the Act can not be interpreted so as to be in conflict with the Charter, in their matter specifically with Art. 36 para. 3 of this constitutional document. They believe that evaluation of entitlement to compensation of damages arising during the exercise of state power by a decision or incorrect official procedure must always be subject to this article, which generally prescribes state liability for causing damage, on the basis of constitutional Act No. 23/1991 Coll., i.e. a regulation of higher legal force. In connection with these deductions, in relation to the arguments presented by them, they also relied on Constitutional Court judgment file no. I. US 245/95 of 22 September 2000. Finally, they also emphasized that this restrictive interpretation, followed through ad absurdum, could basically lead to the rejection of any claim exercised independently, even despite the fact that damage was clearly caused by the exercise of state power and was proved. Apart from that, they are convinced that such an interpretation is in conflict with general principles of justice and good morals, as it was not their fault that an accusation of crimes requiring mandatory defense counsel was filed against them and they had to pay the defense counsel from their own means.

As was already stated, the District Court for Prague 10 interrupted the proceedings and submitted the matter to the Constitutional Court for evaluation. In the grounds for its petition it stated that it was capable of interpreting the provision in question in favor of the plaintiffs, but it systematically could not, nor did it wish to, ignore the text of the explanatory report to Act No. 82/1998 Coll., which, in connection with the formulation of the contested provision, paragraph 3 of § 31, poses a problem of interpretation as regards para. 1 of § 31 of the Act. If costs of legal representation are clearly defined as damage in paragraph 1, then subjecting this claim to the existence of other damage is not justifiable in terms of Art. 36 para. 3 of the Charter. The sudden restrictive concept of an indisputable obligation of the state power to compensate damage is not in accordance with the cited norm of the Charter, and it is not even interpreted by the cited explanatory report. That report contains nothing more than a terse statement in this regard. The Act itself contains internally inconsistent provisions in para. 1 and para. 3 of § 31, whose inconsistency the explanatory report tries to remove by using the phrase “other damage”, which, however, § 31 does not contain at all. The petitioner thus concludes that it is appropriate to fundamentally resolve the conflict with the constitutional principle under Art. 36 para. 3 of the Charter, and therefore it proposes annulling para. 3 of § 31 of the cited Act.

Upon affirmatively answering the question whether the submitted petition meets formal requirements, in particular whether it was filed by an entitled party under conditions provided in § 64 para. 4 of Act No. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, whether conditions of admissibility under § 66 para. 1 were met and whether there are no grounds to reject it under § 43, or for stopping proceedings under § 67, the petition was sent, in accordance with § 69 of the same Act, to the Chamber of Deputies and the Senate of the Parliament of the Czech Republic for their comments.

II.

Under § 68 para. 2 of Act No. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, the Constitutional Court first reviewed whether the legal regulation in question had been passed and issued within the bounds of constitutionally prescribed jurisdiction and in a constitutionally prescribed manner. The Constitutional court stated that the law was passed and issued within the bounds of constitutionally prescribed jurisdiction and in a constitutionally prescribed manner.

III.

In the substantive review of the petition, the Constitutional Court took as its starting point, among other things, the fact that it is not limited by the reasoning of the petition, but only by its statement of claim, and therefore it also reviewed the contested provision in terms of its consistency with other constitutional norms. After reviewing the petition and the positions of parties to the proceedings, it then reached the conclusion that there were grounds for the petition. In doing so, it took into account the following considerations.

The Act containing the contested provision went into effect on 15 May 1998 and replaced the previous legal regulation, implemented by Act No. 58/1969 Coll., when the legal regulation contained in that Act ceased to fit the changing social situation. It had been established on the principle of a single exclusive bearer of liability for damage, which was the state, but in connection with the application of the principle of local government in our legal order the state ceased to be the sole holder of public power. Therefore, the new legal regulation had to take this fact into account, just like other changes in the existing legal order, i.e. in particular the changes in the structure of state bodies, to which the definitions of bodies, office holders or other entities which could cause damage for which the state is liable had to be adapted. Generally, it is now the state and local government entities which are liable for damage on the Act on Liability for Damage. The legal regulation contained in this Act applies to damage which was caused under conditions provided in the Act by the public law activities of the state; local government entities are liable for damage caused within the exercise of those independent jurisdiction powers which are entrusted to local government entities by law. Under the Act on Liability for Damage, liability for damage is construed as objective liability; no grounds for liberation from it are prescribed in the Act. The Civil Code is in a subsidiary relationship to the Act (§ 26). In contrast to the previous legal regulation, contained in Act No. 58/1969 Coll., the new Act contains detailed regulation of conditions concerning the compensation of proceedings costs incurred in proceedings in which unlawful decisions or incorrect official procedure occurred. This regulation is implemented by § 31 of Act No. 82/1998 Coll., in the joint and transitional provisions in the part labeled manner and scope of compensation of damage, whose text reads as follows:

"§ 31

(1) Compensation of damages includes compensation of proceedings costs which the injured party incurred in proceedings in which an unlawful decision or decision on custody,

punishment or protective measures was issued or in proceedings in which an annulling or absolving decision was issued, a decision in which criminal proceedings were stopped, or a decision in which a matter was assigned to another body.

(2) Compensation of damages includes compensation of proceedings costs which the injured party incurred in proceedings in which incorrect official procedure occurred, if these costs are related to the incorrect official procedure.

(3) The entitlement to compensation of proceedings costs as part of compensation of damages arises only if the decision caused damage and if compensation of costs has not already been awarded under procedural regulations.

(4) Legal representation costs are part of proceedings costs. They include the actual expenditures incurred by an attorney and compensation for representation. The amount of this compensation is determined according to provisions of a separate regulation on non-contractual compensation.

(5) The injured party is not entitled to compensation of legal representation costs which arose in connection with the handling of the exercised entitlement before the appropriate body."

The petitioner's petition contests para. 3 of the above cited norm basically because, while para. 1 states that compensation of damage which arose through the issuance of an unlawful decision includes compensation of proceedings costs, the contested paragraph, on the other hand, conditions the creation of the entitlement to compensation of damage caused by paying proceedings costs on another - additional damage. It is convinced that this concept is narrowing, as the entitlement concerning proceedings costs is tied to the existence of other damage, and can not be satisfied by itself, independently of the existence or non-existence of other damage, and it considers this concept to be in conflict with Art. 36 para. 3 of the Charter.

Article 36 para. 3 of the Charter provides that everybody is entitled to compensation for damage caused him by an unlawful decision of a court, other state body or public administrative authority or by an incorrect official procedure. The Act on Liability for Damage is precisely the statute whose issuance is presumed by para. 4 Art. 36 of the Charter, and it should therefore implement the fundamental right to compensation of damage caused by unlawful or incorrect interference by the public power.

Civil law, which includes Act No. 82/1998 Coll., defines damage as property detriment which can be objectively expressed in a general equivalent, i.e. money. True damage is considered to be property detriment expressible in money, which consists of reduction, lowering or other devaluation of the injured party's already existing property, as well as in the outlay of expenses for the removal of this devaluation. It is apparent from this very definition that damage can also be the expenses actually incurred by parties to proceedings for the proceedings, and that the state is also liable for damage thus arising, provided, of course, that other conditions for this liability relationship to arise have been fulfilled, i.e. the existence of a causal relationship between the creation of the damage and the statutorily presumed damaging event, i.e. with the issuance of an unlawful decision or with an incorrect official procedure. The legislature itself, as indicated by § 31

para. 1 of Act No. 82/1998 Coll., expressly includes proceedings costs in the damage which is compensable under this Act; nonetheless, as is evident from comparing the following two paragraphs, it does not maintain the same approach to all entities which come into consideration. It sets different conditions under which incurred proceedings costs can be compensated under the Act when, in relation to those damaged by incorrect official procedure it sets as the only condition a causal relationship between the incurring of proceedings costs and the procedure in question (para. 2), while in relation to those entities which were damaged by an unlawful decision (apart from the condition that the proceedings costs have not yet been awarded under procedural regulations, which is acceptable), conditions further compensation of incurred expenses on the existence of damage which arose through the decision. In the words of the explanatory report, “proceedings costs can be paid as part of compensation of damages caused by the decision, but they may not be the only damage”. In this way the contested provision then de facto divides those entities to which it applies who incurred property detriment in connection with the issuance of an unlawful decision into two categories. One consists of those who incurred damage consisting “only” of the incurred proceedings costs, and the other of those who at the same time incurred other damage, and only this second-named group, under para. 3, is entitled to compensation of proceedings costs as part of damage compensation (assuming that compensation of these expenses was not awarded under procedural regulations). In the Constitutional Court’s opinion, the legislature is thus making differences which can not be justified on legal grounds, as in both cases there is a reduction in the injured party’s property, and there is therefore damage in the above-mentioned sense, the right to compensation of which is guaranteed by Art. 36 para. 3 of the Charter.

The Constitutional Court interprets the constitutional principle of equality enshrined in Art. 1 of the Charter, under which people are free, have equal dignity, and enjoy equality of rights, and complementarily expressed in article 3 of the Charter, as well as the principle forbidding discrimination in the recognized fundamental rights in its case law from two perspectives (e.g. judgments file no. Pl. US 16/93, file no. Pl. US 36/93, file no. Pl. US 5/95, file no. Pl. US 9/95, file no. Pl. US 33/96, Pl. 9/99 and others). The first comes from the requirement of ruling out arbitrariness in the legislature’s procedures in distinguishing groups of subjects and their rights, the second by the requirement of constitutionally admissible grounds for distinguishing, i.e. the inadmissibility of affecting one of the fundamental rights and freedoms by distinguishing subjects and rights on the part of the legislature. In this regard, the Constitutional Court did not find any reason which would justify the inequality in the approach to individual groups of injured parties as they are described above. The legislature also did not justify in any way the procedure establishing this inequality. The Constitutional Court therefore concluded that the contested provision has as a consequence an unjustified inequality between subjects who were caused damage during the exercise of public power. The postulate of equality does not lead to a requirement that everyone be equal to everyone else, but it does lead to a requirement that the law not give an advantage or disadvantage one group over another groundlessly. In this case it is indisputable that the requirement of providing the same rights under the same conditions without groundless differences is not respected by the text of the contested provision, as the legislature, without constitutionally admissible grounds, disadvantaged those subjects who sustained damage only in the form of incurred proceedings costs.

In connection with the foregoing, we cannot overlook the fact that under Art. 4 para. 2 of the Charter, limitations can be placed upon fundamental rights and freedoms under the conditions prescribed by this constitutional document only by law, and in employing the provisions concerning limitations upon the fundamental rights and freedoms their essence and significance must be preserved, and such limitations may not be misused for purposes other than those for which they were laid down (Art. 4 para. 4 of the Charter). Thus, if everybody is entitled to compensation for damage caused to him by an unlawful decision by a court, other state body or public administrative body or by incorrect official procedure, and the conditions and details of exercise of this right are set by law (Art. 36 para. 3, para. 4 of the Charter), then such a law, issued on the basis of constitutional authority, may not completely annul (negate) the right to compensation of damage arising as a consequence of such conduct and thereby deny, even if only in certain cases, a constitutionally guaranteed fundamental right. Thus, in the cases of persons who incurred damage consisting “only” of proceedings costs, the procedure projected by the legislature in the contested provision led to the complete exclusion of this category of entities from the right to compensation of damages caused by the unlawful decision of a court, other state body or public administrative body. Such a procedure is in sharp conflict with the constitutional order of the Czech Republic and does not respect the principle of minimizing interference in the fundamental rights in the form of possible limitation and maximizing the preservation of the substance of a fundamental right. Therefore, the Constitutional Court annulled the contested provision due to conflict with Art.36 para. 3, in connection with Art. 1 para. 1, Art. 3 para. 1 and Art. 4 para. 4 of the Charter.

For the sake of completeness we must add that the contested provision was annulled in full, despite the fact that, insofar as it further excludes from the opportunity to seek incurred proceedings costs as part of compensation for damage those subjects to whom compensation of costs was awarded under procedural regulations, then this is a condition which is not unconstitutional but is completely superfluous, because in such cases the fundamental prerequisite of liability for damage, i.e. the existence of damage itself, is completely lacking.

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

Brno, 30 April 2002