

2003/06/18 - I. ÚS 153/02: COMPENSATION OF DAMAGES

HEADNOTES

The Constitutional Court has already considered the constitutionality of § 31 para. 3 of Act no. 83/1998 Coll., and in its judgment of 30 April 2002, file no. Pl. 18/01, (published under no. 234/2002 Coll.) it annulled the cited provision due to inconsistency with Art. 36 para. 3 of the Charter, in connection with Art. 1 para. 1, Art. 3 para. 1 and Art. 4 para. 4 of the Charter of Fundamental Rights and Freedoms.

In that case the Regional Court did not recognize the complainant's entitlement to compensation of proceedings costs (specifically, the costs of defense which, under § 31 para. 4 of Act no. 82/1998 Coll. are part of the proceedings costs) as material detriment which the state caused him by its measure, for the reason that the complainant did not incur any further (other) damages under the then valid § 31 para. 3 of Act no. 82/1998 Coll. In view of the subsequent finding of the Constitutional Court it is evident that the complainant is entitled to compensation of defense costs regardless of whether he incurred additional damages other than those which consist of the proceedings costs. Although the Constitutional Court is aware that on this point the Regional Court acted in accordance with the then valid § 31 para. 3 of Act no. 82/1998 Coll., nonetheless the contested verdict led to violation of the complainant's constitutionally guaranteed right under § 36 para. 3 of the Charter of Fundamental Rights and Freedoms.

JUDGMENT CONSTITUTIONAL COURT CZECH REPUBLIC

IN THE NAME OF THE CZECH REPUBLIC

A Panel of the Constitutional Court decided on this day in the matter of a constitutional complaint by the complainant J. P., represented by Mgr. V. V., attorney, against a verdict by the City Court in Prague of 14 November 2001, file no. 13 Co 223/2001, as follows:

The constitutional complaint is granted, and the verdict of the City Court in Prague of 14 November 2001, file no. 13 Co 223/2001, is annulled.

REASONING

I.

In his timely filed constitutional complaint, the complainant seeks annulment of a verdict of the City Court in Prague of 14 November 2001, file no. 13 Co 223/2001, which changed a verdict of the District Court for Prague 1, of 21 June 2001, file no. 13 C 177/2000, so that the complaint was denied.

The complainant stated in the constitutional complaint that he participated, along with other persons, in a demonstration held on 16 May 1998 in Prague 1. After the Police of the CR intervened against the demonstrators the complainant was informed that he was charged with crimes under § 9 para. 2 to § 202 of the Criminal Code and § 9 para. 2 to § 155 para. 1 let. a) of the Criminal Code. The criminal prosecution was stopped by decision of 26 June 1998, and therefore the complainant sought compensation of damages in the amount of CZK 10,169.60 with 15% interest from 11 March 1999 until payment. This amount represents the costs of attorney's fees. The abovementioned factual situation was determined by the court of the first level, and neither the parties to the proceedings nor later the appeals court contested it.

In its verdict of 21 June 2001, the District Court for Prague 1 recognized the complainant's claim to be justified, and awarded him compensation of damages in the requested amount. However, the CR - the Ministry of Justice - appealed against the verdict, and the appeals court subsequently changed the verdict of the court of the first level and denied the complaint. It justified its decision on the grounds that, under § 13 para. 1 of Act no. 82/1998 Coll., the state is liable for damages caused by incorrect official procedure, and the notification of charges under § 160 para. 1 of the Criminal Procedure Code must be considered as such, if criminal prosecution was stopped by decision of the investigator or the matter was transferred to another body (§ 31 para. 1 of the cited Act). Under § 9 para. 1 of the same Act, someone who was taken into custody is entitled to compensation of damages caused by the decision to take him into custody if criminal proceedings against him were stopped, if he was cleared of the charge, or if the matter was transferred to a different body. The provisions of § 31 para. 1 and 2 of Act no. 82/1998 Coll. also regulate the right to compensation of damages, which includes compensation of legal 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 a reversal or not guilty decision was issued, whereby the criminal proceedings were stopped or the matter was transferred to another body. This compensation includes compensation of the proceedings costs which the injured party incurred in the proceedings in which the incorrect official procedure occurred, if these costs are related to the incorrect official procedure. Under § 31 para. 3 of the cited Act, 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 yet been awarded under procedural regulations. The appeals court concluded from the cited provision that a condition for the entitlement to compensation of proceedings costs to arise is the existence of “other damages” as property detriment which the injured party suffered through the incorrect official procedure or incorrect decision. For these reasons the appeals court denied the complainant’s complaint.

In the constitutional complaint, the complainant takes the position that the appeals court’s interpretation leads to unjustified narrowing of the entitlement to compensation of damages, and to such a degree that it practically rules out compensation of damages in a case where the injured party was not taken into custody, or was taken into custody but did not prove lost profits. This leads to disadvantaging one group of injured parties. An injured party who was taken into custody for more than a month and who proved that, as a result of being taken into custody, he lost profits, is entitled not only to compensation of damages for that detriment, but also to compensation of attorney’s fees in the amount of non-contractual fees. An injured party who fails to meet one of these conditions has no entitlement to compensation of attorney’s fees, even though he paid them, just like the first injured party. This legal interpretation is inconsistent with the principle of equality, which is enshrined in Art. 1 of the Charter of Fundamental Rights and Freedoms. The complainant is convinced that everyone has the right to compensation of damages caused by the unlawful decision of a court, other state body, or public administration body, or by incorrect official procedure, in accordance with Art. 36 para. 3 of the Charter of Fundamental Rights and Freedoms. The complainant is also convinced that he incurred, in a causal connection with the notification of charges, he suffered damages in the amount which he was forced to expend to cover the costs of attorney’s fees. The appeals court decision then violated his fundamental right enshrined in Art. 36 para. 3 of the Charter of Fundamental Rights and Freedoms.

The City Court in Prague, which issued the contested decision, in its position statement on the content of the constitutional complaint, merely stated that it expressed its legal opinion in the reasoning of the verdict. The CR - the Ministry of the Interior - as a subsidiary party to the proceedings, did not submit a position statement.

II.

The Constitutional Court has often emphasized in the past that it is not part of the general court system [Art. 91 in connection with Art. 90 of the Constitution of the CR], and therefore can not review the decision making activity of the general courts. The Constitutional Court is authorized to intervene in the activity of the courts, in particular, if their legally effective decisions in proceedings in which the complainant was a party would violate his fundamental rights and freedoms protected by a constitutional law. In the Constitutional Court’s opinion this situation arose in this case, and therefore the constitutional complaint is justified.

As an introduction, the Constitutional Court notes that it has already considered the constitutionality of § 31 para. 3 of Act no. 83/1998 Coll., and in its finding of 30 April 2002, file no. Pl. 18/01, (published under no. 234/2002 Coll.) it annulled the cited provision due to inconsistency with Art. 36 para. 3 of the Charter, in connection with Art. 1 para. 1, Art. 3 para. 1 and Art. 4 para. 4 of the Charter of Fundamental Rights and Freedoms, when it concluded that if “everyone is entitled to compensation of damages caused him by an unlawful decision by a court, other state body or a public administration body, or by an incorrect official procedure, where the conditions and details of implementing this right are provided by statute [Art. 36 para. 3 a 4 of the Charter], then that statute, issued on the basis of constitutional authorization, may not completely annul (negate) the entitlement to compensation of damages, arising as a result of the cited actions, and thereby deny a constitutionally guaranteed fundamental right, even if only in certain cases. Thus, in the case of persons who incurred damages consisting “only” of proceedings costs, the legislative procedure reflected in the contested provision led to the complete exclusion of this category of persons from the right to compensation of damages, caused by an unlawful decision by a court, other state body or public administration body. Such a procedure is strictly inconsistent with the constitutional order of the Czech Republic and it does not respect the principle of minimizing interference with fundamental rights in the form of restricting them and maximizing the preservation of the essential content of a fundamental right.”

In that case the Regional Court did not recognize the complainant’s entitlement to compensation of proceedings costs (specifically, the costs of defense which, under § 31 para. 4 of Act no. 82/1998 Coll. are part of the proceedings costs) as material detriment which the state caused him by its measure, for the reason that the complainant did not incur any further (other) damages under the then valid § 31 para. 3 of Act no. 82/1998 Coll. In view of the subsequent finding of the Constitutional Court it is evident that the complainant is entitled to compensation of defense costs regardless of whether he incurred additional damages other than those which consist of the proceedings costs. Although the Constitutional Court is aware that on this point the Regional Court acted in accordance with the then valid § 31 para. 3 of Act no. 82/1998 Coll., nonetheless the contested verdict led to violation of the complainant’s constitutionally guaranteed right under § 36 para. 3 of the Charter of Fundamental Rights and Freedoms, and the Constitutional Court therefore had no choice but to agree with the complainant under § 82 para. 2 let. a) of the Act on the Constitutional Court, and to annul the verdict cited in the heading under § 82 para. 3 let. a) of the cited Act.

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

Brno 18 June 2003