

1997/09/23 - I. ÚS 291/96: WAIVER OF RIGHTS

HEADNOTE

We cannot concur with the petitioners' assertion that the right for the objection in law against the punitive order cannot be waived, for although the Criminal Procedure Code¹⁾ does not directly provide for the right to submit an objection in law, it is appropriate in this case to make an analogy to § 250 of Criminal Procedure Code on the defendant's right to submit an appeal, because also in the case of the right to submit the objection in law, it is a right which is made available to the defendant to perform a legal act in a criminal matter, which concerns him.

CZECH REPUBLIC

CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Constitutional Court ruled in the matter of the constitutional complaint of N.T.T., residing at P., and N.B.D., residing at P., against the manner in which the District Court for Prague 4 proceeded in the criminal case ref. No. 33 T 2/96, as follows:

The District Court for Prague 4 is prohibited from continuing in the violation of the complainants' rights, and therefore it is instructed to consider on the merits the objection in law against the punitive order, ref. No. 33 T 2/96, dated 5 January, 1996.

REASONING

I.

The constitutional complaint is directed against the manner of proceeding/actions of a state authority, the District Court for Prague 4, which took place on 27 August, 1996.

The constitutional complaint objects that by proceeding in the manner described above, a violation of Article 36, Paragraph 1 of the Charter of Fundamental Rights and Basic Freedoms²⁾ (hereinafter "Charter") took place, as well as the violation of the right to the fair consideration by a court of one's matter under Article 6 para. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.³⁾

In order to clarify the core of the dispute, the complainants state the following: The petitioner was charged pursuant to § 150 para.1 of the Criminal Act.⁴⁾ Based on this charge a punitive order was issued, by which the petitioner was found guilty and sentenced to pay a fine, in eventum to imprisonment and to the confiscation of the thing. Afterwards the

petitioner changed her residential address. However, she duly announced the change to the authorities of foreigner police. Based on this announcement, a new identification card with residence permit was issued for her, containing the new residence address. In spite of the fact that the Court could have found out this information in police records, after the failure of the attempt to deliver the punitive order to the old address, the Court issued an order to arrest the petitioner. The petitioner travelled abroad, and on her return journey she was detained by police, and escorted to the cell for detention on suspicion. The next day, in bad psychological condition, because the reason for detention was not communicated to her, hungry, after insufficient sleep, tired and distressed, she was presented to the Court.

According to the statement of the petitioner, without enabling her to explain the matter, the judge presented the petitioner the charge and the punitive order. At the same time the judge said to the petitioner that if she does not want to be taken to the custody, she should waive the objection in law against the punitive order. The petitioner, in bad psychological condition, and distressed, agreed with the proposed procedure, and therefore she signed the protocol, according to which she waives the right for the objection in law against the punitive order for herself and for other authorized persons. Afterwards she was released. Due to the fact that the petitioner is not acquainted with the provisions of the Penal Code, she could not understand what does it mean to waive the objection in law for the authorized persons as well.

Based on this situation, the petitioner and her brother subsequently submitted objection in law against the punitive order within the period required by law and simultaneously they produced the power of attorney. However, the judge for Prague 4 did not order a main hearing in the case, instead she contacted the counsel by telephone and informed him that the petitioner had waived the right for the objection in law for the authorized persons as well, and that therefore the punitive order had come into force.

Thereafter the counsel sent a written statement to the Court alerting it to the fact that the Criminal Procedure Code does not include any institute of the waiver of the right for objection in law against the punitive order. However, the Court informed him in writing that it maintains its position that the case has been resolved with final force.

The petitioners consider the Prague 4 District Court's above-described course of action to be illegal and in violation of the petitioner's fundamental human rights, for as a result thereof the petitioner is deprived of her right, on the basis remedial actions timely submitted by eligible persons, to have her case considered before a court. In this case the petitioners have no other option, because the objection in law against the law prescribes for punitive orders specific effects which differ from those of other remedial actions. A court makes no decision on the objection in law, rather it merely orders a hearing in the matter.

In the petitioners' view, pursuant to § 314 g of the Criminal procedure Code⁵) it is possible to submit the objection in law against the punitive order, however it is not possible waive the objection in law or to withdraw it, because the Penal Code neither includes nor admits such acts with regard to the fact that the objection in law as a specific type of remedial action has quite specific effects. For the above mentioned reasons, the complainants consider that the objection in law, timely submitted by the petitioner and her brother, is

valid and that, since the punitive order was thereby cancelled, the court is obliged to give the matter a full hearing.

According to the petitioners the manner in which the court proceeded violated their fundamental right to assert their rights before an independent and impartial court pursuant to Article 36 para. 1 of the Charter, 2) and their right to a fair hearing of their case by a court pursuant to Article 6, Paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, published as No. 209/1992 Coll.3) For this reason the petitioners request that the court be prohibited from continuing in the violation of the petitioners' above mentioned rights.

In a supplement to the constitutional complaint the petitioners mentioned that the procedure of the court, exercised during the examination of the petitioner, is considered by the jurisprudence as illegal development of pressure on the charged person, which may cause a fundamental fault of such examination, and they refer to the apparent intention of the court to impose the custody upon the petitioner if she does not waive right for the objection in law. This is indicated by the imprisonment of the petitioner based on the order to arrest her. However, based on the law, the imprisonment is conditioned by the existence of reasons for custody (§ 69, Art. 1 of Penal Code). According to the petitioners, however, the issuing of the order to arrest and the imprisonment itself were illegal, because the reasons for imprisonment are conditioned by the above mentioned provision of Penal Code by the fact that it is impossible either to summon or to detain the charged person, which was not the case here.

If the court would have made an inquiry at the population register of Police of the Czech Republic, or at the department of foreigner police, it would have found the new address of the petitioner, and it would be able to summon her, because the petitioner stayed at the place of her new residence. Due to this reason the limitation of personal freedom of the petitioner by imprisonment and subsequent escort present a development of pressure on the petitioner, and these acts were unconstitutional, for the reasons based on law, which are required for such procedure against the petitioner, did not exist.

According to the petitioners, all the above mentioned facts form a consistent chain of evidence that the legal act, by which the right for the objection in law against the punitive order was waived by the petitioner for herself and for other authorized persons, was not done freely and with understanding, but under pressure, when the term "for other persons" was neither translated nor explained for the petitioner at all, and therefore it means that the legal act is absolutely null and void. The law relates no legal effects to invalid legal acts, except for legal consequences against the person, who caused such legal act or who benefited from such legal act. According to § 89, Art. 3 of the Penal Code it is prohibited to use in the proceeding such evidence, which was obtained by illegal coercion or by a threat of such coercion. Out of all aforesaid reasons the complainants proposed to consider the objection in law, submitted on 2nd September, 1996, as submitted within the period required by law and submitted by the persons eligible to do so. According to their opinion, based on this fact, the punitive order was cancelled and the petitioner has the right for investigation of the case in main session pursuant to § 314 g, 1,2 of Criminal procedure Code.5)

II.

It is possible to draw two conclusions from the evaluation of the aforementioned facts. Firstly we cannot concur with the petitioners' assertion that the right for the objection in law against the punitive order cannot be waived, for although the Criminal Procedure Code¹⁾ does not directly provide for the right to submit an objection in law, it is appropriate in this case to make an analogy to § 250 of Criminal Procedure Code on the defendant's right to submit an appeal, because also in the case of the right to submit the objection in law, it is a right which is made available to the defendant to perform a legal act in a criminal matter, which concerns him. On the other hand, however, the waiver of the objection in law is suspect under the above mentioned circumstances in connection with an arrest, which as it is mentioned below was manifestly not rightful. Therefore, it was not appropriate for the district court merely to communicate to the defense counsel that the case can be considered settled due to the fact that the accused waived her right for the objection in law and that, consequently, a main hearing will not be ordered in this case.

In addition, it is impossible to ascertain from the evidence taken, whether this legal act (the waiver of the right to the objection in law, on behalf of related persons as well) was truly performed by the petitioner voluntarily, that as a foreigner she fully understood what this legal act means, and what consequences it will entail. On contrary, based on the documentary evidence taken, it is not possible to rule out convincingly the complainant's objection that in fact she performed this legal act under the pressure of the circumstances, and without properly understanding it. It appears from the protocol, written up with the complainant at the District Court for Prague 4 on 27 August 1996, that she was instructed on her rights pursuant to § 33 paras. 1 and 26) and § 95 para. 27) of the Criminal Procedure Code. Instruction on the institute of the objection in law against the punitive order pursuant to § 314 g of Criminal Procedure Code⁵⁾ is neither mentioned in the protocol, nor can it be inferred from it.

Moreover, it can justifiably be presumed that the court's decision of 29 February 1996 to issue the warrant for the petitioner's arrest, and thus to limit her freedom, was not rightful, since she had duly registered her new permanent residence, and an identification card with her new address had been issued to her. In particular, in view of the fact that the court did not make an inquiry at the department of aliens police but acted solely on the basis of the information communicated to it by the Local Department of the Czech Republic Police in Prague Jižní Město, in which, on top of that, the petitioner is designated a male. On 13 June 1997 the department of aliens police informed the Constitutional Court, that "... the above mentioned foreigner had a long term residence permit in the Czech Republic for business purposes for the period from 15 January 1993 to 23 February 1997. At that time she resided at the address in Prague 4, H 851, however, on 23 February 1996 she registered as having moved from that residence to a new residence at the address in Prague 4, S. 216. Currently she has a permanent residence permit, which she has held since 24 October 1996. Her permanent residence permit is valid until 24th October, 2001. Her most recent registered address: Prague 5 Radotín, U J. 2/190, c/o Mr. I.S." It follows from the information communicated by the department of aliens police that no

grounds existed for the issuance of the 29 February 1996 warrant to arrest the petitioner, seeing as it was not her fault that she was not summoned at the correct address.

In view of the fact that the statement of the petitioner concerning the manner in which and the conditions under which she was examined by the court and under which the protocol on taking over the documents was written with her, as well as the conditions under which she waived the right to make an objection, was not disproved by the documentary evidence which was taken; and in view of the fact that the ordinary court did not give sufficient consideration to the complainants' proposals on taking evidence; as well as in view of the fact that the court did not consider the change of the complainant's residential address when summoning her, the Constitutional Court concluded that the complainants' proposal on the taking of evidence has to be given consideration. With regard to all the aforesaid circumstances and uncertainties, the Constitutional Court found that the District Court for Prague 4, by its refusal to hold proceedings on the objection in law, submitted by the complainants against the punitive order dated 5th January, 1996, did not adequately provide legal protection of the petitioners' right to the fair hearing of her matter by a court pursuant to Article 6 para. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.³⁾ Therefore the Constitutional Court prohibited the District Court for Prague 4 from violating these of the petitioners' rights and ordered that proceedings be held on the submitted objection in law.

I. ÚS 291/96

Overview of the most important legal regulations

1. § 250 of Act no. 141/1961 Coll., on Criminal Court Proceedings (the Criminal Procedure Code), which regulates waiving and withdrawing an appeal provides in paragraph 1 that after a verdict is announced an entitled person may expressly waive an appeal.
2. Art. 36 par. 1 of the Charter 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.
3. Art. 6 par. 1 of the Convention for the Protection of Human Rights and Fundamental freedoms governs the right to a fair trial and provides that everyone has the right to have his matter adjudicated fairly, publicly and in a reasonable time by an independent and unbiased court.
4. § 150 of Act no. 140/1961 Coll., the Criminal Code, governs the definition of the crime of violation of rights to trademarks, business name and a protected designation of origin.
5. § 314g of Act no. 141/1961 Coll., on Criminal Court Proceedings (the Criminal Procedure Code), provides that an appeal against a criminal order may be filed by the accused, persons who are entitled to file an appeal in his favor, and the state prosecutor. If an appeal was filed against a criminal order by an entitled person by the deadline, the criminal order is thereby annulled and the judge shall order trial proceedings in the matter.

6. § 33 of Act no. 141/1961 Coll., on Criminal Court Proceedings (the Criminal Procedure Code), regulates the rights of the accused.

7. § 95 par. 2 of Act no. 141/1961 Coll., on Criminal Court Proceedings (the Criminal Procedure Code), provides that, except for a protocol on the main trial proceedings or a public session, [a protocol] must be presented for reading or read after the end of questioning; the accused has the right to request that the protocol be added to or that corrections be made in it in accordance with his testimony. The accused must be notified of this right.