

2002/02/19 - I. ÚS 663/01: DELAYED PROCEEDINGS

HEADNOTES

The Constitutional Court states that, under its settled case law, if there is an objection about delays in proceedings before the general courts, it is necessary, even before filing a constitutional complaint, to file a complaint about delays in proceedings - under Act No. 436/1991 Coll., on Certain Measures in the Judiciary, on Election of Lay Judges, Their Removal and Recall from Office and on State Administration of the Courts of the Czech Republic - with the chairman of the relevant court (note: this Act has been annulled as of 1 April 2002 by Act No. 6/2002 Coll., on the Courts, Judges, Lay Judges and the State Administration of the Courts and Amending Certain Other Acts; nonetheless, the right to file a complaint about delays in proceedings with court administration bodies is provided in a comparable way in § 164 para. 1 of Act No. 6/2002, which replaces the annulled Act No. 436/1991 Coll. However, this principle is not without exception. The Constitutional Court has also ruled, that if filing of the appropriate procedural means is evidently ineffective, it can not be insisted upon (see, e.g. judgment file no. IV. US 240/95, The Constitutional Court of the CR: Collection of Judgments and Resolutions, vol. 5, p. 298).

The Constitutional Court states that it has already considered the question of delays in proceedings before the general courts in a number of its decisions. Justifiable delays in proceedings include an “other actions” infringing the petitioner’s fundamental rights? Art. 87 para. 1 let. d) of the Constitution of the CR and § 72 para. 1 let. a) of Act No. 182/1993 Coll., on the Constitutional Court?, enshrined in Art. 38 para. of the Charter and in Art. 6 para. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the “Convention”). Both of these cited provisions guarantee everyone’s right to have his case heard without unnecessary delays (or in a reasonable time), and it is naturally inconsistent with these provisions if unnecessary delays in proceedings occur in a particular case before a general court. The Constitutional Court has repeatedly ruled that delays in proceedings can not be justified even by the generally known overload on the courts, because “it is up to the state to organize its judiciary so that judicial principles enshrined in the Charter and the Convention are observed and any shortcomings in this regard can not be to the detriment of citizens who justifiably expect from the courts protection of their rights in a reasonable time” (e.g. judgment file no. IV. US 55/94, The Constitutional Court of the CR: Collection of Judgments and Resolutions, vol. 2, p. 39). It must be said that this legal opinion also conforms to the case law of the European Court of Human Rights in the interpretation and application of the Convention.

Reference to the computer equipment of the registration court or to a file located temporarily at another court are not reasons which can be interpreted otherwise than as technical and organizational problems, which, however, in this regard, may not be used to the detriment of the petitioner (a private law corporation), which justifiably expects from the court protection of its rights in a reasonable time under Art. 38 para. 2 of the Charter and Art. 6 para. 1 of the Convention. However, if the Regional Court is waiting to handle a petition only because it does not have the relevant file at its

disposal and is thus waiting for the High Court's decisions for technical reasons and not reasons on the merits, this procedure is fundamentally unjustified, and unconstitutional in its final results. The registration court can take steps such as requesting the return of the relevant file for a short period for purposes of handling the petition in question, or making copies of those parts of it which it needs for its decision. In other words, the registration court must do all that it can so that the petitioner's fundamental rights are not violated as a result of the technical and organizational problems of state bodies.

**CZECH REPUBLIC
CONSTITUTIONAL COURT**

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

A Panel of the Constitutional Court decided today on the constitutional complaint of the petitioner C., s.r.o., in which it seeks annulment of the resolution of the Hradec Králové Regional Court of 19 September 2001, file no. F 18945/2001, Rg. C 13213, and an order to the Hradec Králové Regional Court to act and decide in the matter Rg. C 13213, as follows:

I. The Constitutional Court forbids the Hradec Králové Regional Court to continue violating the petitioner's rights under Art. 38 para. 2 of the Charter of Fundamental Rights and Freedoms and Art. 6 para. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and orders it to process the petitioner's matter file no. Rg. C 13213 without unnecessary delays.

II. The petition to annul the resolution of the Hradec Králové Regional Court of 19 September 2001, file no. F 18945/2001, Rg. C 13213, is denied.

REASONING

I.

In the resolution cited in the introduction, the Hradec Králové Regional Court (a higher court official), in the matter of an application to register the petitioner's changes in the commercial register, ordered the petitioner to (1.) send another copy of the current text of the memorandum of association to be included in the file, (2.) send another copy of the application under § 79 para. 3 and § 200c para. 1 of the Civil Procedure Code and pointed out (3.) the fact that "the submitted application will be processed only after the High Court's decision on the appeal."

II.

In its constitutional complaint, the petitioner states that his submission in the matter of an application to register changes is in no way related to further proceedings conducted before the High Court, in which the High Court will decide on the petitioner's appeal. Therefore, the petitioner filed a complaint with the Ministry of Justice, which, however, approved the Regional Court's procedure with the reasoning that "the computer equipment at the Hradec Králové commercial register does not permit making any changes in the register until the previous application has been concluded with legal effect and until registration of the previous change has been made and completed." However, the petitioner objects that the Civil Procedure Code does not permit the court to not act in a matter because it does not have the appropriate technical equipment at its disposal. Therefore, it claims that by this procedure and the contested decision the Hradec Králové Regional Court violated its right enshrined in Art. 36 of the Charter of Fundamental Rights and Freedoms (the "Charter").

The petitioner consented to waive a hearing before the Constitutional Court.

III.

The Constitutional Court first of all states that, under its settled case law, if there is an objection about delays in proceedings before the general courts, it is necessary, even before filing a constitutional complaint, to file a complaint about delays in proceedings - under Act No. 436/1991 Coll., on Certain Measures in the Judiciary, on Election of Lay Judges, Their Removal and Recall from Office and on State Administration of the Courts of the Czech Republic - with the chairman of the relevant court (note: this Act has been annulled as of 1 April 2002 by Act No. 6/2002 Coll., on the Courts, Judges, Lay Judges and the State Administration of the Courts and Amending Certain Other Acts; nonetheless, the right to file a complaint about delays in proceedings with court administration bodies is provided in a comparable way in § 164 para. 1 of Act No. 6/2002, which replaces the annulled Act No. 436/1991 Coll.). If the petitioner did not file such a complaint, the Constitutional Court considered the constitutional complaint inadmissible and denied it, because the petitioner did not, before filing it, exhaust all means for protection of his rights (e.g. resolution file no. III. US 169/96, The Constitutional Court of the CR: Collection of Judgments and Resolutions, vol. 5, p. 589). In this case the petitioner does not claim or prove that he filed a complaint about delays in proceedings with the chairman of the relevant court and that he has therefore - under the settled case law of the Constitutional Court - exhausted all procedural means for protection of his rights before filing a constitutional complaint. However, this principle is not without exception. The Constitutional Court has also ruled, that if filing of the appropriate procedural means is evidently ineffective, it can not be insisted upon (see, e.g. judgment file no. IV. US 240/95, The Constitutional Court of the CR: Collection of Judgments and Resolutions, vol. 5, p. 298).

In the adjudicated matter the Constitutional Court concluded that filing a complaint against delays in proceedings with the chairman of the court under Act No. 436/1991 Coll.

would be evidently ineffective, and therefore did not make this a condition for admissibility of a constitutional complaint. In this case, the petitioner documented that on 27 September 2001 he filed a complaint about the Hradec Králové Regional Court's procedures with the Ministry of Justice of the CR, but the Ministry found the complaint groundless, and in a letter of 8 November 2001 informed the petitioner's attorney that the application for an entry in the commercial register would be - in view of the computer equipment at the commercial register in Hradec Králové - made only after the previous application was concluded with legal effect and the previous change registered. The Regional Court also refers to this position of the Ministry of Justice of the CR in its position statement on the constitutional complaint (see below). Thus, in this situation one can not justifiably think that filing a complaint with the chairman of the Hradec Králové Regional Court could be considered an effective means for the protection of the petitioner's rights, as far as the proceedings delays are concerned.

Therefore, the Constitutional Court concludes that the submitted constitutional complaint meets the statutorily provided procedural conditions and nothing prevents processing and deciding the matter on the merits.

IV.

The Constitutional Court requested a position statement on the constitutional complaint from the party to the proceedings, the Hradec Králové Regional Court. In its statement, that court primarily pointed to the fact that the reason why the registration court could not make a decision on the petitioner's application is that the registration court makes decisions on individual applications from the same company in the order in which the court received them, and that the registration court can not make a decision without the file, because facts stated in the application must be verified using documents in the file. However, the file is with the Prague High Court for purposes of handling an appeal in the petitioner's petition of 13 June 2000.

The Hradec Králové Regional Court believes that in this case there was no violation of the Charter, proposes denial of the constitutional complaint as unjustified, and states that it consents with waiving a hearing before the Constitutional Court.

V.

The Constitutional Court states that it has already considered the question of delays in proceedings before the general courts in a number of its decisions. Justifiable delays in proceedings include an "other actions" infringing the petitioner's fundamental rights? Art. 87 para. 1 let. d) of the Constitution of the CR and § 72 para. 1 let. a) of Act No. 182/1993 Coll., on the Constitutional Court?, enshrined in Art. 38 para. of the Charter and in Art. 6 para. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention"). Both of these cited provisions guarantee everyone's right to have his case heard without unnecessary delays (or in a reasonable time), and it is naturally inconsistent with these provisions if unnecessary delays in proceedings occur in a particular

case before a general court. The Constitutional Court has repeatedly ruled that delays in proceedings can not be justified even by the generally known overload on the courts, because “it is up to the state to organize its judiciary so that judicial principles enshrined in the Charter and the Convention are observed and any shortcomings in this regard can not be to the detriment of citizens who justifiably expect from the courts protection of their rights in a reasonable time” (e.g. judgment file no. IV. US 55/94, The Constitutional Court of the CR: Collection of Judgments and Resolutions, vol. 2, p. 39). It must be said that this legal opinion also conforms to the case law of the European Court of Human Rights in the interpretation and application of the Convention.

In the adjudicated matter, the Constitutional Court first of all states that proceedings in matters of the commercial register are governed by § 200a et seq. of the Civil Procedure Code. Under § 200c para. 3 of the Civil Procedure Code, the court is required to take actions directed toward deciding the matter within 15 days after an application is filed. The court decides on the content of a file by resolution, and shall make an entry within ten days after the resolution on the content goes into legal effect (§ 200d para. 3, 4 of the Civil Procedure Code). Thus, it is evident that registration proceedings are a special type of proceedings before the general courts, characterized particularly by the legislature’s interest in speedy decision making, which is possible in view of the nature of these proceedings. In other words, in deciding commercial register matters, the court generally judges only the formal conditions for the application, provided by legal regulations (§ 200d para. 1 of the Civil Procedure Code), and if these conditions are met, it is required to make the entry. Therefore, in this type of proceedings the court’s process is considerably different from other types of proceedings in which the general court is given considerably greater space for its own deliberation and where it judges often very difficult factual and legal circumstances in a particular matter.

In this case, the Constitutional Court found that the Hradec Králové Regional Court informed the petitioner that “the submitted application will be processed only after the High Court’s decision on the appeal”. The reason for this was - according to the communications from the Ministry of Justice and the court - the fact that the computer equipment at the commercial register allegedly does not permit making changes in the register without completing the proceedings on the previous application, that the registration court decides on applications in a prescribed order and that the file in question is located at the Prague High Court, so it is not possible to verify the facts stated in the application using documents in the file.

The Constitutional Court states that the cited reasons can not be used to explain the delays in the proceedings in question. Reference to the computer equipment of the registration court or to a file located temporarily at another court are not reasons which can be interpreted otherwise than as technical and organizational problems, which, however, in this regard, may not be used to the detriment of the petitioner (a private law corporation), which justifiably expects from the court protection of its rights in a reasonable time under Art. 38 para. 2 of the Charter and Art. 6 para. 1 of the Convention. The fact that the Regional Court is waiting to make its decision in the adjudicated matter for the decision of the Prague High Court in an appeal in another matter could be accepted, but only under the condition that the Regional Court decided to do so in a due procedural manner foreseen by law. If proceedings are being conducted before the Prague

High Court which are to resolve a question which may be significant for the registration court's decision, the proceedings should be interrupted (§ 109 para. 2 let. c) of the Civil Procedure Code). However, if the Regional Court is waiting to handle a petition only because it does not have the relevant file at its disposal and is thus waiting for the High Court's decisions for technical reasons and not reasons on the merits, this procedure is fundamentally unjustified, and unconstitutional in its final results. The registration court can take steps such as requesting the return of the relevant file for a short period for purposes of handling the petition in question, or making copies of those parts of it which it needs for its decision. In other words, the registration court must do all that it can so that the petitioner's fundamental rights are not violated as a result of the technical and organizational problems of state bodies.

For the sake of completeness, the Constitutional Court emphasizes that in proceedings on this constitutional complaint it is not addressing the registration court's manner of decision making, i.e. whether statutory conditions for the entry in the commercial register have been met or not. The unconstitutionality of the Hradec Králové Regional Court's procedure lies in the fact that it is not deciding in the matter and - without the relevant procedural foundation - is waiting for the High Court's decision.

For all the cited reasons the Constitutional Court granted the constitutional complaint and forbids the Hradec Králové Regional Court to continue violating the petitioner's rights under Art. 38 para. 2 of the Charter and Art. 6 para. 1 of the Convention and orders it to process the petitioner's matter under file no. Rg. C 13213 without unnecessary delays.

Finally, the Constitutional Court states that it has not found grounds to independently annul the resolution of the Hradec Králové Regional Court cited in the introduction. The substance of the constitutional complaint is directed only against part (3.), under which "the submitted application will be processed only after the High Court's decision on the appeal." Thus, it is apparent from the nature of the matter that in this regard the resolution is not a decision, but only an "other action" by a body of state power, as the contested part does not constitute or declare any rights or obligations of the petitioner, but only states that a body of public power (i.e. the general court) will not act in the matter until a certain time. Therefore, the Constitutional Court, in a situation where the verdict of this judgment forbids the Hradec Králové Regional Court to continue in the delays in the proceedings and orders it to act in the matter without delays, denied the petition to annul the cited resolution.

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

Brno, 19 February 2002