

2004/10/25 - I. ÚS 668/04: END OF DEADLINE

HEADNOTE

The deadline for submitting a petition for review of a decision under Act No. 130/2000 Coll., on Elections to the Representative Bodies of the Regions and on the Amendment of Certain other Acts, can be given a constitutionally conforming interpretation such that the moment of its fictional delivery (the third day following the display on the bulletin board) is important for calculating the objective endpoint of the period for the submission of the petition, not however its beginning.

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Constitutional Court, in a senate composed of JUDr. Vojen Güttler, its Chairperson, and Justices, JUDr. František Duchoň and JUDr. Ivana Janů, on the constitutional complaint of the complainant, U.S. - D.E.U. . . . against the 27 September 2004 ruling of the Regional Court in Pilsen, file no. 57 Ca 20/2004-36, with the participation of the Regional Court in Pilsen as a party to the proceeding and the the Regional Office of the Karlsbad Region . . . as a secondary party to the proceeding, decided as follows:

I. The 27 September 2004 ruling of the Regional Court in Pilsen, file no. 57 Ca 20/2004-36, resulted in the violation of the complainant's fundamental right to seek court review of the legality of a decision of a public authority (Art. 36 para. 2 of the Charter of Fundamental Rights and Basic Freedoms).

II. The 27 September 2004 ruling of the Regional Court in Pilsen, file no. 57 Ca 20/2004-36, is quashed.

REASONING

In its timely submitted constitutional complaint, the complainant contests the above-mentioned decision of the Regional Court in Pilsen (hereinafter „Regional Court“). As regards formal matters, the complaint also meets further requirements laid down in Act No. 182/1993 Coll., on the Constitutional Court, as amended (hereinafter „the Act on the Constitutional Court“). In its constitutional complaint, the complainant requested that its matter be heard as a priority matter. Therefore, the Constitutional Court considered first the urgency of this matter and, after due consideration of all circumstances, came to the conclusion that the requirements of § 39 Act on the Constitutional Court have been met. The matter is urgent as, in the proceeding preceding the submission of the constitutional complaint, the Regional Court adjudged whether there is an obligation to register the candidate list for the election to the Representative Body of the Karlsbad Region, which is to be held on the 5-6 November 2004. A decision on the merits as regards that obligation could affect the course of the preparations for the election.

In its submission, the complainant stated that it has an interest in engaging in the competition of political parties, both at the national and at the regional level. For this reason, it prepared a candidate list for the elections to the Representative Body of the Karlsbad Region, but this list was rejected on formal grounds by the secondary party's 16 September 2004 decision, file no. 4587/LS/KJ/PI/04. On 16 September 2004, this decision was displayed on the official bulletin board; on the day the decision at issue was announced, that is 16 September 2004, the complainant took delivery of it. In order to protect its rights, on 17 September 2004 the complainant submitted to the Regional Court a petition requesting that it impose upon the Regional Office of the Karlsbad Region the duty to register the submitted candidate list. In the ruling that is contested in this proceeding, the Regional Court rejected the complainant's petition on formal grounds with the reasoning that the petition was submitted already before the time period to seek the court's protection had begun to run. The complainant objects to the Regional Court's interpretation, whereby it is appropriate to dismiss as prematurely initiated a remedial procedure which, although submitted prior to the time period for its submission has begun to run, was still submitted after the actual in person delivery of the decision. The complainant considers this interpretation as so formalistic and dogmatic, that the positivistic approach contained therein predominates over fundamental legal principals to such a degree that these principles are entirely refuted, which results, in its view, in the contested decision being unconstitutional.

The complainant objects that, as a result of the Regional Court's means of proceeding and of the contested decision, it was denied, in particular, the rights enshrined in Art. 36 paras. 1 and 2 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter „Charter“) and that there was also a violation of its rights established in the constitutional order in the area of the exercise of political rights in the broad sense of the word. The contested decision purportedly also resulted in the infringement of Art. 4 of the Constitution of the Czech Republic (hereinafter „Constitution“), since the complainant was allegedly denied the protection of the judicial power, and Art. 5 of the Constitution, as the

complainant was not able to engage in the competition of political parties.

The wording of the relevant Articles of the Charter and Constitution which regulate the fundamental rights to whose infringement the complainant has objected, is as follows:

Art. 36 para. 1 of the Charter:

Everyone may assert, through the legally prescribed procedure, his rights before an independent and impartial court or, in specified cases, before another body.

Art. 36 para. 2 of the Charter:

Unless a law provides otherwise, a person who claims that her rights were curtailed by a decision of a public administrative authority may seek court review of the legality of that decision. However, judicial review of decisions affecting the fundamental rights and basic freedoms listed in this Charter may not be removed from the jurisdiction of courts.

Art. 4 of the Constitution:

The fundamental rights and basic freedoms shall enjoy the protection of judicial bodies.

Art. 5 of the Constitution:

The political system is founded on the free and voluntary formation of and free competition among those political parties which respect the fundamental democratic principles and which renounce force as a means of promoting their interests.

Pursuant to Art. 42 para. 4 of the Act on the Constitutional Court, within the framework of the evidence taking carried out by the Constitutional Court, it is necessary to request the parties, or even secondary parties, to give their views on the constitutional complaint.

In its statement of views, the Regional Court emphasized that § 52 para. 1 of Act No. 130/2000 Coll., on Elections to the Representative Bodies of the Regions and on the Amendment of Certain other Acts (hereinafter „Electoral Act“), lays down the right of parties to seek protection against a decision rejecting its candidate list and also sets the conditions and details for the assertion of this right, where it provides that protection can be sought within two days of the delivery of the decision, while it is stated in § 22 para. 4 that a decision rejecting a candidate list is considered to be delivered on the third day following its display upon the regional office’s official bulletin board. It draws attention to the fact that the term, „delivery“, is defined entirely unequivocally and that, in light of § 65 of the Electoral Act, which excludes the application of the Administrative Procedure Code, any other interpretation of this term is ruled out. In a further passage of its statement, the Regional Court draws attention to the fulfillment of the procedural conditions for the assertion of the right in question, which flows from Act No. 150/2002 Coll., the Administrative Court Procedure Code (hereinafter „ACPC“). In this respect it stated that the court must review whether the petition was submitted prematurely or late, for in either case it is obliged, pursuant to § 46 para. 1 lit. b) of the ACPC, to reject the

petition on preliminary grounds. The court determines whether the submission is premature or late in reference to the day it was submitted. In the Regional Court's view, the complainant was entitled to submit the petition either on 20 or 21 September 2004. In view of the fact that it was submitted on 17 September 2004, it was submitted prematurely; therefore, pursuant to § 46 para. 1 lit. b) of the ACPC the court rejected it on preliminary grounds. The Regional Court added that the two day time period for performing an act is in no sense unusual in the Electoral Act. In its view, the Electoral Act cannot be interpreted in any other way, for the Act is worded unequivocally. In reviewing the timeliness of a petition, a court proceeds from § 52 para. 1 of the Electoral Act, which delimits the moment in which an electoral party is authorized to submit a petition to the court. Should an electoral party submit it earlier, then it was a prematurely submitted petition. The Regional Court affirms that the complainant was represented by an attorney already on 16 September 2004. It is solely the electoral party who, cognizant of the Electoral Act and the ACPC, the enactments which lay down the conditions for political parties to assert the right of judicial protection against decisions rejecting a candidate list, decides at which time to submit a petition to a court. In the Regional Court's view, it could not accept the complainant's arguments based on the 18 September 1973 judgment of the Supreme Court of the SSR [the Slovak Socialist Republic], case no. 1 Cz 84/73, as the Civil Procedure Code did not then, and still does not now, contain the concept of a premature application. The Regional Court is convinced that the complainant was not affected in its constitutional rights, in a case where it did not yet have the right to seek the judicial protection against the decision rejecting its candidate list. On those grounds the Regional Court proposed that the Constitutional Court reject the complaint as manifestly unfounded.

The Constitutional Court did not consider it necessary to ascertain the secondary party's position.

The Constitutional Court ascertained from the Regional Court's file that on 17 September 2004 the complainant had submitted against the secondary party a petition (complaint) seeking a declaration of its duty to register the candidate list. It stated that it had prepared the candidate list for the election to the Karlsbad Region Representative Body, and submitted it, in the statutorily prescribed form and before the deadline therefor, to the registry of a contributory organization, the Directorate of Freeways and Highways of the Czech Republic, the Karlsbad Administrative Office. On 16 September 2004, the secondary party issued a decision rejecting the complainant's candidate list, in principle due to the fact that it was submitted late. In its statement of views on the complaint, the secondary party proposed it be dismissed as unfounded with reference to § 22 para. 3 of the Electoral Act, which provides the basic conditions for the registration of candidate lists, namely their submission to the regional office (not merely their preparation). It further remarked that the candidate list was submitted at 10:30 a.m. on 1 September 2004 and that the Electoral Act does not intend for the submission of the candidate list to some other subject (i.e., Directorate of Freeways and Highways of the Czech Republic, the Karlsbad Administrative Office) to have any legal effect. In taking evidence, the Regional Court ascertained that the secondary party's decision was issued and displayed on the official bulletin board on 16 September 2004; the complainant took delivery of the decision on the same day. In conformity with the legal fiction contained in the last sentence of §

22 para. 4 of the Electoral Act, the decision rejecting the candidate list was delivered on the third day following its display, that is, on 21 September 2004; therefore, the complainant was entitled to submit the petition on either the 20th or 21st of September 2004. In view of the fact that the complainant submitted its petition on 17 September 2004, thus earlier than the time period for the possibility to seek judicial protection had begun to run, the Regional Court concluded that the petition was submitted prematurely; thus, in the contested ruling it rejected the petition on procedural grounds, without considering the merits of the matter.

After taking evidence, the Constitutional Court has come to the conclusion that the complainant's petition is well-founded. In a proceeding before the Constitutional Court the condition for a complaint to be well-founded is that the complainant's fundamental rights or basic freedoms were infringed in the contested decision.

In its jurisprudence, the Constitutional Court has repeatedly emphasized that, in principle, it is not authorized to intervene into the ordinary courts' decision-making, as it does not stand at the summit of their court system (compare Art. 81 and Art. 90 of the Constitution). As long as the courts proceed in accordance with the content of Part Five of the Charter (Art. 83 of the Constitution), the Constitutional Court cannot arrogate to itself the right of review over their activities. On the other hand, it has repeatedly acknowledged that quite often the interpretation and application of legal enactments by ordinary court can be extreme to such a degree that it oversteps the bounds of Part Five of the Charter and intrudes upon one of the constitutionally guaranteed basic rights. In such cases, however, the Constitutional Court has jurisdiction.

With respect to the content of the constitutional complaint, the Constitutional Court dealt primarily with the constitutionality of the manner in which the court interpreted and applied § 46 para. 1 lit. b) of the APC in conjunction with §§ 52 para. 1 and 22 para. 4 of the Electoral Act, that is, the norms regulating the procedure for the registration of candidate lists and the rules for judicial review of decisions by the competent bodies of public administration. According to these provisions, it applies that the regional office shall without delay prepare decisions on the rejection of candidate lists for formal reasons and send them on to the person who is authorized to seek protection before a court, for example, the political party. At the same time, it shall without delay display the decision on the regional office's official bulletin board. The decision is considered to be delivered on the third day following its display on the bulletin board (§ 22 para. 4 of the Electoral Act). Pursuant to a separate act (§ 52 of the Electoral Act), the political party may, within 2 days of the delivery of the decision, seek protection before a court against the decision rejecting the candidate list on formal grounds. With effect from 1 January 2003, that separate act has been the Administrative Procedure Code. One of the conditions for granting judicial protection is the submission of a complaint within the designated time period as, pursuant to § 46 para. 1 lit. b) of the APC, the court shall reject the petition on formal grounds if it was submitted either prematurely or late.

The purpose of the institute of untimeliness rests on the aim of limiting the submission of petitions in situations where the complainants could not as yet become sufficiently familiar with the statement of decision and its reasoning; equally, the content of the

remedial procedure (that is, also a complaint) might not be of sufficient quality, and the court would be excessively burdened with the procedure laid down for the curing of defects.

The electoral process, including the preparation for elections, represents an extraordinarily complex set of interlaced stages and transactions. Accordingly, in framing the legal regulation of the electoral process, it is appropriate for the legislature to make use of such institutes as are expected to exclude doubts, delays, obstruction, etc. Such institutes include the institute of delivery by display on the official bulletin board, the laying down of precise deadlines for subjects to take action and for relevant state bodies to take decisions, or the inadmissibility of cassational complaints in electoral matters. Emphasis on precision, however, does not give free rein to an excessive attachment to limiting formal conditions; in particular, the possibility for subjects effectively to seek the protection of their individual rights cannot be excluded. Among the features peculiar to the Electoral Act is the fiction of delivery of a decision with a parallel „sending“ of it to the party. It is evident that such a decision is written up, is binding on the deciding body, and is addressed to the parties. The function of the fiction of delivery is to act as an impediment to any possible difficulties with the decision becoming final and enforceable. At the same time, regardless of finality, it is clear that the body which issued such a decision may no longer on its own revise it. This certainty gives to the parties the opportunity to formulate their objections to the decision and duly to assert them. The legislature is authorized to limit the period for submitted objections, made within the formal framework of a remedial procedure. This can be done by designating the time line for submitting such a petition. In the case under consideration, the legislature limited the period for submitting the petition by designating a deadline „within two days“ of the delivery of the decision. In conjunction with the fiction of the delivery, this deadline expires at the end of the second day following the end of the third day from the date of the decision’s display on the bulletin board. Thus, the deadline for the submission of the petition to review a decision under the Electoral Act can be given a constitutionally conforming interpretation such that the moment of the fictional delivery (the third day following the display on the bulletin board) is important for calculating the objective endpoint of the period for the submission of the petition, not however its beginning. In consequence thereof a party to the proceeding pursuant to the Electoral Act has the opportunity to seek judicial protection within the time interval between the delivery of the petition by „posting“ up until the second day following the third day after its display on the bulletin board. The formalistic interpretation adopted by the Regional Court, namely, that the petition could be submitted after the completion of the fictional delivery at the earliest, leads in consequence to the restriction of the complainant’s right to petition a court for review of the decision of a public administrative body. In the matter under consideration, this could lead to the consequent restriction of its right enshrined in Art. 22 of the Charter. The Constitutional Court recalls the significance of this provision, according to which, any statutory provisions relating to political rights and freedoms, as well as the interpretation and application of them, must make possible and protect the free competition among political forces.

For the given reasons, due to the violation of Art. 36 para. 2 of the Charter, the Constitutional Court has, pursuant to § 82 para. 2 lit. a) of Act No. 182/1993 Coll., on the

Constitutional Court, as amended, granted the constitutional complaint and, pursuant to § 82 para. 3 lit. a) of that Act, quashed the contested ruling. It reached its decision without an oral hearing, as the parties to the proceeding consented thereto and it is evident that further clarification of the matter cannot be expected from such a hearing (§ 44 para. 2 of the cited Act). The Constitutional Court did not seek the consent of the secondary party to dispensing with the oral hearing, since the grounds upon which the contested ruling are being quashed are different from those for which the secondary party refused to register the complainant's candidate's list.

Notice: Decisions of the Constitutional Court cannot be appealed.

Brno, 25 October 2004