

2004/01/15 - II. ÚS 656/02: PROTECTION OF ACTUAL RIGHTS

HEADNOTES

Art. 36 para. 1 of the Charter of Fundamental Rights and Basic Freedoms, similarly as Art. 6 para. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, construct a fundamental right to the judicial protection of actual, and not hypothetical rights, or they guarantee everyone judicial protection from actual, and not merely theoretical, infringements of their rights. To the extent that, in actuality, no dispute exists between the complainants and the secondary parties, no intrusion into the right, under Art. 36 para. 1 of the Charter, to judicial and other legal protection could have occurred.

The constitutional complaint is not an ordinary legal remedy to cure formal errors by courts which practically do not affect the sphere of the rights and obligations of the parties.

CZECH REPUBLIC CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Constitutional Court, in a panel composed of JUDr. Dagmar Lastovecká, its Chairperson, and Justices JUDr. Jiří Nykodým and JUDr. Pavel Rychetský, on the constitutional complaint of complainants V.J. and S.J. . . . against the 19 August 2002 ruling of the Regional Court in Pilsen, file no. 56 Co 172/2002, in which it decided the appeal against the 11 July 2002 ruling of the District Court in Karlsbad, file no. 19 C 138/2002-8, with the participation of the Regional Court in Pilsen as a party to the proceeding, the District Court in Karlsbad as a secondary part to the proceeding and V.J. and Z.J. . . . as secondary parties to the proceeding, decided as follows:

The constitutional complaint is rejected on the merits.

REASONING

I.

In its constitutional complaint, the complainant sought the issuance of a judgment quashing the 19 August 2002 ruling of the Regional Court in Pilsen, file no. 56 Co 172/2002 (hereinafter „contested ruling“).

In the first point of the 11 July 2002 ruling of the District Court in Karlsbad, file no. 19 C 138/2002-8, the proceeding was dismissed as regards the plaintiffs' (now complainants'), V.á.J. and S.J., claim against the defendants (now secondary parties), V.l.J. and Z.J., for the payment of money owed for rent. The proceeding was dismissed due to the fact that the plaintiffs withdrew their action, as the defendants had, already before the beginning of the court hearing in the matter, paid in full the sum they owed. In the ruling's second point, the district court decided that the defendants are obliged to compensate the plaintiffs, in the amount of 10 928,- Kč for the costs of the proceeding.

The defendants (secondary parties) submitted an appeal against the second point of this ruling, proposing that the first instance court's ruling be modified in the contested part, to the effect that none of the parties had a claim to the reimbursement of the costs of the proceeding before the first instance court, due to the fact that, prior to 3 July 2002, that is, before the first instance ruling was handed down, they had already paid the plaintiffs (complainants) this amount for the costs of the proceeding.

In its contested ruling on the appeal against point II of the first instance court's ruling, the Regional Court in Pilsen modified the ruling such that it did not impose upon the defendants the duty to reimburse the plaintiffs for the costs of the proceeding. In its reasoning it asserted that, if at the time that the first instance court decided the matter the defendants had already paid the demanded reimbursement for the costs of the proceeding pursuant to the demand made by the plaintiffs' legal representative, there were no grounds for imposing upon the defendants, in the form of a judicial decision, a duty which they had already previously voluntarily fulfilled.

The complainants submitted this constitutional complaint against this ruling. They stated that, as is clear from the Civil Procedure Code (§ 151 para. 1), each court decision (apart from some statutory exceptions) must contain a statement concerning the costs of proceeding. In their view, however, the wording of the point of the contested ruling concerning the costs of the proceeding did not correspond to the provisions of the Civil Procedure Code; the law does not provide for a statement on the „non-imposition of the duty to reimburse the costs of the proceeding“ and further, as a result of the appellate court's modification to the ruling, the first instance court had not, as the law obliges it to do, made a decision concerning the costs of the proceeding. That is, to the extent that the defendants had paid the plaintiffs the costs of the proceeding already prior to the court's decision, then they did so without any legal grounds therefor, as the claim for the reimbursement of the costs of proceeding is a procedural law claim, the establishment and maturity of which is laid down only by decision of a court. The defendants' duty to reimburse the plaintiffs' costs of proceeding and the plaintiffs' right to demand the reimbursement of the costs of the proceeding only come into being once the first instance court's decision becomes final and enforceable.

The complainants see in the appellate court's manner of proceeding an infringement of the right to fair process under Art. 36 para. 1 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter „Charter“) and Art. 90 of the Constitution of the Czech Republic. In their view, the defendants could, in consequence of the contested ruling taken ad absurdum, demand back the amount paid for the costs of proceeding, since their payment of it lacked any legal grounds. The contested ruling denied the parties to the proceeding their legal certainty.

II.

The Constitutional Court called upon the parties and secondary parties to give their views on the matter and requested the judicial file, 19 C 138/2002.

In its 5 January 2004 statement of views, the District Court in Karlsbad asserted that it is possible to accept the grounds of the constitutional complaint, namely that, in consequence of the appellate court modifying its ruling, the first instance court had not yet ruled on the costs of the proceedings, as the law obliges it to do. In that court's view, however, it is not possible to accept the argument that the ruling is not in accordance with the provisions of the Civil Procedure Code, since it relates the formal and substantive enforceability of the contested point of the ruling concerning the costs of the proceeding and that point is formally and substantively enforceable, as it precisely defines the rights and duties of the parties as relates to the costs of the proceeding.

In its statement of view of 30 January 2004, the Regional Court in Pilsen merely referred to its reasoning in the contested ruling.

At the Constitutional Court's instigation, the complainants informed it in their 6 January 2004 memorandum that, as of yet, the defendants have not requested the amount paid out for expenses of the proceeding; nonetheless, the deadline for its return has still not passed and the defendants' claim therefore is not time-barred.

In their 18 May 2004 statement, secondary parties V.L.J. and Z.J. indicated that the complainants had not been injured by the infringement of their right to fair process. They asserted that, at the request of the complainants' legal representative, they had paid the demanded costs of the court proceeding and that they have never requested the return of the costs of the proceeding they had paid out. Therefore, they believe that the complainants' claims were not unfairly harmed in the proceeding before the Regional Court in Pilsen and that their fundamental rights had not been affected. They propose that the constitutional complaint be rejected.

Prior to deciding on the constitutional complaint, the Constitutional Court made the above-cited views of the parties and secondarily parties available to the complainants. In view of the fact that all parties and secondary parties consented to dispensing with an oral hearing in the matter, one was not held (§ 44 para. 2 of the Act on the Constitutional Court).

III.

The Constitutional Court found that the timely submitted constitutional complaint met all the formal requirements laid down in law, so that there is nothing to impede a hearing and decision on the merits in the matter.

According to Art. 36 para. 1 of the Charter, everyone has the right to judicial and other legal protection, everyone may assert, through the legally prescribed procedure, his rights before an independent and impartial court. Similarly Art. 6 para. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter „Convention“) guarantees to everyone the right to fair process, that is, among other things, the right of everyone to a fair hearing in his matter by an independent and impartial tribunal established by law, which determines his civil rights and obligations.

It is evident that both of these provisions construct a fundamental right to the judicial protection of actual, and not hypothetical rights, or they guarantee everyone judicial protection from actual, and not merely theoretical, infringements of their rights. As follows even from the case law of the European Court of Human Rights in Strasbourg, a complainant seeking the protection under Art. 6 para. 1 of the Convention, must first of all be capable of substantiating that the given case concerns (concerned) an actual, and not merely a hypothetical, dispute relating to civil rights and obligations (compare the words, „contestations sur ses droits et obligation de caractère civile“ in the authentic French text of the Convention or the words, „determination of his civil rights and obligations“ in the authentic English text of the Convention). The European Court gave a detailed explanation of this requirement in its decision in the matter of *Le Compte, Van Leuven and De Meyere versus Belgium* of 23 June 1981, A.43, §§ 45 - 48. The Court interpreted the requirement that an actual dispute exist such that civil rights and obligations must be the subject of the dispute between the parties and that the result of the judicial proceeding must have a directly decisive impact on the disputed right.

Analogous procedural institutes can be found even in other legal orders, institutes which should, among other things, prevent the courts from dealing with fictitious disputes and in that way dissipating their time and considerable resources to the detriment of actual disputes [compare, for example, the American law doctrine limiting judicial competence to „Cases and Controversies“ (Art. III 2 para. 1 of the Constitution of the United States of America) and the rule of ripeness derived therefrom, according to which the detriment with which the plaintiff is threatened must be actual and immediate, and not putative, speculative, hypothetical or remote].

The Constitutional Court affirms that the parties and the secondary parties do not dispute that the complainants demanded the reimbursement of the costs of the proceeding and the secondary parties voluntarily paid in full the amount demanded even prior to the first-instance court's decision to dismiss the proceeding. Even after the modification of the ruling in the point concerning the costs of the proceeding, the secondary parties have not demanded the return of the amount paid for the costs of the proceeding. Thus, in actuality, no dispute exists between the complainants and the secondary parties concerning the reimbursement of the costs of a proceeding, therefore, no intrusion into

the right, under Art. 36 para. 1 of the Charter, to judicial and other legal protection could have occurred.

The complainants make reference to the legal uncertainty into which the contested decision has thrown them, since the secondary parties allegedly could demand back the reimbursement paid for the costs of the proceeding. In this sense, however, it is a hypothetical dispute on individual rights. The Constitutional Court is not prepared at this juncture to speculate as to how the ordinary courts would adjudge a prospective claim submitted by the secondary parties for the return of the amount voluntarily paid the complainants in reimbursement of the costs incurred in connection with the assertion of the debt. Nevertheless, it is possible to consider even other interpretational variants which would lead to a just outcome consisting, for example, in the conclusion that this matter concerned a voluntary performance on the basis either of a nominate or innominate agreement of the parties with relatively clear cause („causa“). The dispute between the complainants and the secondary parties certainly was not the first, and will not be the last, dispute which ended in dismissal of the proceeding after an out-of-court settlement; therefore, it can be presumed that cases of voluntary settlement of the costs connected with the assertion of rights are not a rarity.

The complainants and the first instance court are of the view that it is possible to accept the grounds of the constitutional complaint, namely that, in consequence of the appellate court modifying its ruling, the first instance court had not yet ruled on the costs of the proceedings, as the law obliges it to do. Even should the Constitutional Court concur with that view, that would not, in and of itself, be a reason for such a serious intervention as a cassational judgment. The constitutional complaint is not an ordinary legal remedy to cure formal errors by courts, which practically do not affect the sphere of the rights and obligations of the parties.

In view of what has been stated above, pursuant to § 82 para. 1 of the Act on the Constitutional Court, the Constitutional Court rejects the complaint as unfounded.

Notice: Decisions of the Constitutional Court cannot be appealed.

Brno, 10 August 2004