

# 2004/06/23 - III. ÚS 209/04: EFFECTIVE PROTECTION OF RIGHTS

## HEADNOTES

The Constitutional Court considers the fact that the complainant elected the route of a civil law proceeding for the protection of his rights of personhood, which were allegedly violated in the course of a criminal proceeding, as a defective and inefficient means of proceeding, giving rise to future complications and delays. A criminal proceeding, governed by Act No. 141/1961 Coll., on Criminal Judicial Proceedings, as subsequently amended (hereinafter „Criminal Procedure Code“ or „CPC“) is an independent type of proceeding. The Criminal Procedure Code contains a sufficient number of legal instruments by which a person, who considers himself to be affected in his rights by the steps taken by bodies acting in the criminal process, can seek the protection of his rights. As examples of such institutes can be given the remedial measure against decisions of bodies acting in the criminal process (for example, the complaint - § 141 and following of the CPC), the petition for the review of steps taken by police organs and state attorneys (§ 157a of the CPC), etc. As far as concerns the level of legal protection accorded, the legal provisions governing these institutes in the Czech Criminal Procedure Code corresponds to the standard which is usual in other mature democratic law-based states.

The Constitutional Court observes that delays occurring in this civil court proceeding were, among other things, due to the fact that the complainant elected to assert his allegedly infringed rights by procedural proposals and steps that were evidently inappropriate and ineffective, the resolution of which nonetheless (unnecessarily) complicated and dragged out the proceeding. If concurrently with the ongoing criminal proceeding, the complainant initiated a civil law proceeding by submitting an action for the protection of personhood, future procedural steps are made significantly more difficult, since this brings about the need for various state bodies (courts in civil proceedings, courts in criminal proceedings, police bodies, state attorneys) to request file material from each other, the duplication of procedural steps and excessive formalism in general, which undermines the economy and efficiency of the proceeding. In such cases, the negative consequences arising therefrom, especially delays in the civil court proceeding, cannot be attributed to the fault of state bodies. The Constitutional Court also considers as inappropriate and bordering on obstruction the complainant's constantly repeated and unwarranted objections of bias and requests to have excluded judges who were hearing the case under consideration, as well as the proposals to amend the complaint. Smooth progress in hearing the matter was also impeded by the repeated failure to appear for court hearings, on the part either of the complainant or his legal council.

**CZECH REPUBLIC**  
**CONSTITUTIONAL COURT**  
**RESOLUTION**

**IN THE NAME OF THE CZECH REPUBLIC**

On 23 June 2004, the Constitutional Court, sitting as a panel composed of its Chairperson, JUDr. Jan Musil, and of Justices JUDr. Miloslav Výborný and JUDr. Pavel Holländer, decided, without holding a hearing and without the parties being present, in the matter of the constitutional complaint of complainant, Tomáš Hanzel, residing at Šárovo kolo 2/981, 153 00 Prague 5, legally represented by Mgr. Anna Větrovská, attorney AK Štěpánská 633/49, 110 00 Prague 1, against the 20 February 2004 ruling of the High Court in Prague, file no. Nco 10/2004-231, and further for delay in the proceeding conducted before the Municipal Court in Prague in the matter .32 C 44/94, as follows:

**The constitutional complaint is rejected on preliminary grounds.**

**REASONING**

I.

In his constitutional complaint, which was delivered to the Constitutional Court on 6 April 2004 and supplemented by a submission delivered on 8 April 2004, the complainant seeks the quashing of the 20 February 2004 ruling of the High Court in Prague, action no. Nco 10/2004-231, due to the violation of his right to judicial protection enshrined in Art. 36 para. 1 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter „Charter“). In his constitutional complaint the complainant further requests the Constitutional Court to declare that the means by which the Municipal Court in Prague proceeded in the matter heard before that court, under file no. 32 C 44/94, constituted a violation of his fundamental right to have his case considered within a reasonable time and without unnecessary delay, guaranteed by Art. 38 para. 2 of the Charter, as well as by Art. 6 para. 1 of the Convention for the Protection of Human rights and Fundamental Freedoms (hereinafter „Convention“), and further that the Constitutional Court forbid the Municipal Court in Prague from continuing in the violation of the complainant’s basic rights in the manner stated above.

The complainant asserts in his constitutional complaint that by the action filed in 1994, which the Municipal Court in Prague has been considering already for nine years without yet the presenting the action or admitting evidence, the complainant seeks the protection of his personhood and misuse of his given name and surname in the files of the Czech Republic Police and against the unauthorized conduct of a house search and photographing

of the complainant in his residence without his consent, without statutory basis and, above all, without a lawful warrant to conduct such action.

The complainant asserts in his constitutional complaint that on 20 October 2003 he made a motion to admit as evidence witness testimony of JUDr. Jaroslava Lobotková, who was hearing this matter as case no. 32 C 44/94. The complainant substantiate his motion by the fact that the given matter has been under consideration already for longer than nine and one-half years, without the court even getting at least to the presentation of the action, while, from the manner in which the judge is conducting the matter, the complainant judges that the judge is consciously bringing the proceeding „to a loss“. Since, according to the complainant, the judge has learned more about the case than solely that which is contained in the file, the complainant proffers as evidence the questioning of this judge, and in particular with a focus on the issue of whether she spoke with anybody outside of the courtroom concerning the matter under consideration, whether she has or has not been influenced (in whatever manner) in this matter, how (not) to proceed and in reference to further issues which, as the complainant stated, he would not announce in advance, so as not to spoil this evidence. The court has competence to decide whether to admit proffered evidence; it is the complainant's view, however, that, with regard to the requirement of impartiality and non-bias, it is incompatible for the very judge whose witness testimony is proposed would herself decide on the motion proposing that witness testimony be taken. Without the High Court in Prague in any way in the reasoning of its decision dealing with the merits of the matter, that is, with the reason for which the objection of bias was raised by the complainant which consists in the incompatibility of the status of judge and, at the same time, witness, it decided that the mentioned judge would not be excluded from hearing and deciding in the matter. According to the complainant, the High Court, by its decision, created a situation in which the judge, JUDr. Jaroslava Lobotková, would herself decide on whether evidence, consisting of her witness testimony, would or would not be taken. According to the complainant, the High Court in Prague did not concern itself with these reasons at all and satisfied itself with a routine declaration by the judge that she did not feel herself to be biased, and neglected the merits of the complainant's motion.

In order to judge the constitutional complaint, the Constitutional Court requested the files kept at the Municipal Court in Prague as nos. 32 C 44/94 and Spr 4564/94.

At the Constitutional Court's request, a judge of the Municipal Court in Prague, JUDr. Jaroslava Lobotková, in a memorandum delivered to the Constitutional Court on 24 May 2004, gave her views on the submitted constitutional complaint. In her statement of views, the judge asserted that the complainant had repeatedly made objections of bias, most recently by a submitting which reached the court on 20 October 2003. The submission did not meet all requirements, in particular, the grounds upon which the judge is alleged to be biased were not stated therein. By its 27 October 2003 ruling, the court called upon the complainant to cure the defects in his submission, and included a notice concerning the consequences should he fail to comply with the request. Even though the complainant failed to comply with the request, the High Court in Prague did not reject his submission in accordance with § 43 para. 2 of the Civil Procedure Code, rather merely decided that the judge would not be excluded. In the judge's view, it is evident from the

text of the submission that the plaintiff was deliberately creating a situation when he proposed the questioning of the judge, without giving any grounds of bias, and by these means attempts to create such grounds. The judge of the Municipal Court in Prague stated that he has repeatedly drawn out the proceeding by making similar such submissions, by changing the petit he is attempting, by means of an action for the protection of personhood, to get the civil law court to modify part of a criminal file or to review the legality of the conduct of bodies acting in the criminal proceeding. He has excused himself from scheduled hearings at the last moment, requested a continuance, and made other submission which have lead to the postponement of a decision.

## II.

The Constitutional Court does not form a part of the ordinary court system and does not possess a right of supervision over the decision-making of ordinary courts. The Constitutional Court is authorized to intervene into the decision-making of ordinary courts only in the case that the final decision of one of those courts results in the violation of a constitutionally guaranteed fundamental right or basic freedom.

The Constitutional Court first of all reviewed the contested 20 February 2004 decision of the High Court in Prague, no. Nco 10/2004-231, as well as the proceeding leading up to it, from the perspective of the objections put forward by the complainant in his constitutional complaint. With regard to the fact that it may engage in review solely as concerns the constitutionality of a proceeding, it came to the conclusion that this part of the constitutional complaint is not well-founded.

By its 20 February 2004 ruling, action no. Nco 10/2004-231, the High Court in Prague decided not to exclude JUDr. Jaroslava Lobotková, judge of the Municipal Court in Prague, from taking part in and deciding on the matter being heard before that court as file no. 32 C 44/94. In the reasoning of its decision, the court stated that, in the case under consideration, the plaintiff did not raise such objections as would, in the sense meant by § 14 para. 1 of the Civil Procedure Code, justify the exclusion of the judge of the Municipal Court in Prague from taking part in and deciding on the matter.

A judge can be excluded from taking part in and deciding on an already matter only in exceptional and on genuinely serious grounds which truly prevent her from deciding in conformity with the law, impartially and fairly.

In order to reach a conclusion on a violation of the constitutional safeguards of the purity of a judicial proceeding and the observance of the principles of fair process (Art. 36 and following of the Charter), the complainant's merely general or subjective conviction does not suffice (judgment no. III. ÚS 230/96). The subjective perspective of the parties to the proceeding, or possibly of the judges themselves, functions as an impetus for decision-making on potential bias, however, decisions on this issue must be taken exclusively on the basis of an objective point of view. That means that it is not admissible to proceed solely on the basis of doubts as to the judges' relation to the matter under consideration or to the persons which the transactions affects, rather also from a substantive law analysis of the facts which gave rise to these doubts.

A judge can be excluded from taking part in and deciding on a matter only in a case where it is evident that the relation of the judge to the given matter, the parties, or their representatives attains such a nature and intensity that, even despite the statutorily prescribed obligation, they would not be able or capable to decide independently and impartially (judgment no. II. ÚS 105/01).

In his constitutional complaint, the complainant refers to the Constitutional Court's judgment in matter no. I. ÚS 167/94, in which it stated that the „condition of § 14 para. 1 of the Civil Procedure Code provides for the exclusion of judges from taking part in and deciding on a matter not solely due to any actually demonstrated bias, but even in the case that it is possible to entertain doubts concerning their lack of bias.“ The complainant did not, however, go on to cite the following sentences from that judgment, where it is stated: „It is not a matter merely of assessing the judge's subjective feelings as to whether she does or does not feel biased, or the assessment of her personal relations to the parties to the proceeding, rather it concerns objective considerations as to whether - with regard to the circumstances of the case - it can be considered that the judge could be biased.“

With regard to what is stated above, the Constitutional Court did not find as well-founded the complainant's objections directed against the above-mentioned ruling of the High Court in Prague.

### III.

In his constitutional complaint, the complainant also made objections to delay in the proceeding conducted before the Municipal Court in Prague in matter no. 32 C 44/94.

The Constitutional Court has already, in a host of its decisions, dealt with the issue of delay in proceedings before ordinary courts. Justified delays in a proceeding represent „some other encroachment“ upon the complainant's fundamental rights (Art. 87 para. 1, lit. d) of the Constitution of the Czech Republic, and further § 72 para. 1, lit. a) of Act No. 182/1993 Coll., on the Constitutional Court, as subsequently amended), enshrined in Art. 38 para. 2 of the Charter of Fundamental Rights and Basic Freedoms. This provision guarantees to everyone the right to have her case considered without unnecessary delay (or within a reasonable period), and a conflict with this provision naturally results if there has been undue delay in the proceeding in a concrete case before an ordinary court. The Constitutional Court has repeatedly adjudged that delay in a proceeding cannot be justified even by the courts' general overburdened state, since „it is up to the State to organize its judiciary in such a way that the principles of the judiciary, enshrined in the Charter of Fundamental Rights and Basic Freedoms, be respected, and any possible inadequacies in this regard cannot work to the detriment of citizens who justifiably expect from the courts the protection of their rights within a reasonable time“ (compare Constitutional Court judgments nos. IV. ÚS 55/1994, III. ÚS 70/1997).

In assessing unnecessary delays in a proceeding and the unreasonable length of a proceeding, it is not decisive whether delays are caused by a subjective factor standing on the side of the ordinary court (that is, primarily the conduct of the judge deciding the matter) or an objective factor consisting in the amount of matters submitted to the courts, in the legal regulation of the judicial organization, or in the insufficient administrative and technical background of the ordinary courts. It is the State as a whole, without regard to its division into individual units, which should guarantee the protection of an individual's rights, while timeliness is also an indispensable attribute of such protection.

In the complainant's case, the proceeding before the ordinary courts has lasted more than 9 years, which could hypothetically be interpreted as an encroachment upon his fundamental rights. Nonetheless, for the purposes of adjudging delays in a proceeding, a decisive issue is whether the delays are attributable solely to the state authority (the court) or whether they are also by the conduct of a party to the proceeding or even by the complainant directly (I. ÚS 600/03).

Following a comprehensive analysis of the file of the Municipal Court in Prague, no. 32 C 44/94, the Constitutional Court is constrained to declare that it is the complainant himself who bears the decisive share of blame for the delays which have occurred and are still occurring in this case, who by his obstructive behavior and inappropriate procedural tactics prevented the proceeding from being completed within a reasonable time. The complainant's legal representative in the civil law proceeding, the Independent Trade Union Commission (with its headquarters in Prague 5 - Radotín, Šárovo kolo 2/981), is also in part to blame for the delays that were caused. It should be said, in addition, that the judicial bodies are in part to blame for the delays that have occurred, due to several incorrect steps, as noted in the attached file of the Municipal Court in Prague, no. Spr 4564/94; nonetheless, the length of the proceeding was not in any substantial way prolonged by the manner in which they proceeded.

Since the Constitutional Court is not competent to review in detail ordinary courts' procedural steps on the level of „ordinary“ law, it is not necessary, in the reasoning of this judgment, for it to concern itself with a comprehensive analysis of all steps taken in the given civil law proceeding, conducted under file no. 32 C 44/94. Merely examples will be given of those steps taken by the complainant which contributed to delays in the proceeding.

This civil law proceeding was initiated by the complainant's „action for the protection of personhood and desisting of the harassment of the plaintiff, with a motion seeking the issuance of preliminary measures“ submitted to the Municipal Court in Prague on 18 March 1994. The subject of the lawsuit was the improper conduct of the Czech Republic Police - Office of Investigations of the Capitol City of Prague in the criminal proceeding, conducted under file no. ČVS: MVV-33/103-93, by which the plaintiff considered himself to be affected in his rights of personhood. For example, the plaintiff asserts that the police organs in an ongoing criminal proceeding have made unauthorized entries onto land in the plaintiff's use, took photographs while there, and examined items which were found there, incorrectly designated the names of the persons involved in the criminal proceeding, improperly detained the plaintiff, etc.

The Constitutional Court considers the mere fact that the complainant elected the route of a civil law proceeding for the protection of his rights of personhood, which were allegedly violated in the course of a criminal proceeding, as a defective and inefficient means of proceeding, giving rise to future complications and delays. A criminal proceeding, governed by Act No. 141/1961 Coll., on Criminal Judicial Proceedings, as subsequently amended (hereinafter „Criminal Procedure Code“ or „CPC“) is an independent type of proceeding. The Criminal Procedure Code contains a sufficient number of legal instruments by which a person, who considers himself to be affected in his rights by the steps taken by bodies acting in the criminal process, can seek the protection of his rights. As examples of such institutes can be given the remedial measure against decisions of bodies acting in the criminal process (for example, the complaint - § 141 and following of the CPC), the petition for the review of steps taken by police organs and state attorneys (§ 157a of the CPC), etc. As far as concerns the level of legal protection accorded, the legal provisions governing these institutes in the Czech Criminal Procedure Code corresponds to the standard which is usual in other mature democratic law-based states.

If concurrently with the ongoing criminal proceeding, the complainant initiated a civil law proceeding by submitting an action for the protection of personhood, future procedural steps are made significantly more difficult, since this brings about the need for various state bodies (courts in civil proceedings, courts in criminal proceedings, police bodies, state attorneys) to request file material from each other, the duplication of procedural steps and excessive formalism in general, which undermines the economy and efficiency of the proceeding. In such cases, the negative consequences arising therefrom, especially delays in the proceeding, cannot be attributed to the fault of state bodies.

In the case under consideration, such delays, called forth by the „dual-track“ nature of the proceeding, did in fact occur. As an example, the court in the civil law proceeding quite naturally could not do without the criminal file, thus on 28 March 1995, the court requested the file (no. 1. 49). However, at that point in time, the criminal proceeding has not yet been finally completed; therefore, the requested file was not sent until 10 October 1995 (no. 1. 54).

The Constitutional Court observes that delays occurring in this proceeding were also due to the fact that the complainant elected to assert his allegedly infringed rights by procedural proposals and steps that were evidently inappropriate and ineffective, the resolution of which nonetheless (unnecessarily) complicated and dragged out the civil court proceeding. For example, on 18 March 1994, together with his lawsuit the complainant submitted a request for the ordering of provisional measures by which the Police of the Czech Republic should refrain from carrying out a number of criminal procedural steps pursuant to § 158 of the Criminal Procedure Code. In the 27 October 1995 ruling (file no. 32 C 44/94) of the Municipal Court in Prague, this request was properly rejected on the merits with the persuasive reasoning that the conditions laid down in § 102 and § 74 para. 1 of the Civil Procedure Code were not met because the investigation in the criminal matter has already been completed, so that the plaintiff was not threatened with the repetition of the conduct from which he asked them to refrain; in addition, the court came to the conclusion that the steps prescribed in § 158 of the Criminal Procedure Code could not be reviewed in a civil law dispute. The complainant appealed this negative ruling;

however, by its 17 March 1997 ruling (file no. 1 Co 467/95), the High Court in Prague turned his appeal down. By employing evidently ineffective instruments, which in this matter was the unwarranted request for the ordering of provisional measures, the complainant contributed to the delay of the proceeding.

The Constitutional Court also considers as inappropriate and bordering on obstruction the constantly repeated and unwarranted objections of bias and requests to have excluded judges who were hearing the case under consideration, as well as the proposals to amend the complaint, for example:

- in his 10 November 1995 appeal (no. l. 61), he objected that the single judge, JUDr. Naděžda Žáková, was biased (rejected on the merits in the 27 October 1995 ruling of the Municipal Court in Prague, file no. 32 C 44/94);

- in his submission of 16 November 1995 (no.l. 63) he requested that the matter be assigned to the Regional Court in Prague; in his 27 April 1998 motion (no.l. 100) he withdrew this proposal;

- in his 21 April 1998 proposal (no. 1. 92) he withdrew the complaint against the Police of the Czech Republic and proposed the dismissal of the proceeding; after the Municipal Court in Prague, in its 22 September 1998 ruling - file no. 32 C 44/94 (no. l. 102), granted this proposal and dismissed the proceeding in this part, on 20 October 1998 the complainant submitted an appeal for which, however, he gave no reasons until being called upon to do so by the court on 26 January 1999; subsequently, in its 22 March 1999 ruling, file no. 1 Co 165/98, the High Court in Prague did not grant his appeal in this part;

- in the course of the 28 June 1999 hearing before the Municipal Court in Prague (no. l. 128v), the complainant raised the objection of bias against judge JUDr. Jaroslava Lobotková, but gave no written reasons supporting that claim until his 10 July 1999 submission; on 7 December 1999, the High Court in Prague rejected it as unfounded - file no. Nco 228/99 (no. l. 141 and following);

- by his 20 October 2003 memorandum (no. l. 220), the complainant raised a further objection of bias against judge JUDr. Jaroslava Lobotková, but in its 20 February 2004 ruling, no. Nco 10/2004-231, the High Court in Prague decided not to exclude the judge; that decision was contested by means of the present constitutional complaint and for this reason, in the course of the oral hearing, held on 7 April 2004, judge JUDr. Jaroslava Lobotková suspended the proceeding and adjourned the hearing indefinitely, as the submitted constitutional complaint called the judge's impartiality into doubt, which impedes further action by the court.

The Constitutional Court cannot disregard the fact that smooth progress in hearing the matter was impeded by the repeated failure to appear for court hearings, on the part either of the complainant or his legal council. For example, the file contains written excuses from the complainant and his legal council and requests for a continuance of hearings which were scheduled to take place on 8 January 1998 (no. l. 83), 12 February 1998 (no. l. 86), 21 April 1998 (no. l. 96), 7 October 2000 (no. l. 145), dále dne 17 January 2001 (no. l. 149), and 27 October 2003 (no. l. 220). The Constitutional Court cannot, and does not intend to, scrutinize whether the complainant's excuses (explained by his health problems) were or were not valid. Nonetheless, it is certain that these excuses were often



submitted at the last moment prior to the start of a hearing, which, as an objective matter, makes it difficult for the trial court to ensure the smooth course of the proceeding. In the circumstance where the complainant was represented in the proceeding by his legal council, it is warranted to presume that, if the complainant had been more willing to cooperate, the further course of the proceeding could have been sped up markedly.

The Constitutional Court concurs with complainant's objection that there were some procedural errors in the way in which the ordinary courts proceeded in the case, which also contributed to the delay in the proceeding. As is substantiated in the file, already on the occasion of the first hearing before the Municipal Court in Prague, on 31 October 1994, the panel chairman made a mistake in preparing the record in that it was written there that, in the course of the hearing, the complaint was read out and views expressed upon it, even though it had not in fact been read out. In reaction to the complainant's complaint to the chairman of the Municipal Court in Prague, which was found to have merit, the panel chairman was reproached for this error (see the supplemental file of the Municipal Court in Prague under file no. Spr 4564/94, č. l. 9). The Constitutional Court has no intention of trivializing this error but considers that it could have easily been corrected and did not, in and of itself, have to result in further delays. The fact that the complainant and his legal council submitted a criminal notice against the panel chairman and that notice was fully investigated by the police (file of the Local Division of the Police of the Czech Republic on Vyšehradská Street in Prague 2, file no. OR 2 520/94/MP 1-TČ 95), resulted in further time consuming and inefficient procedures, which held up the course of the civil law proceeding.

The unwillingness of the complainant's legal council to contribute, by his cooperation, to the successful progress of the civil law proceeding is substantiated, as well, by his attitude during the 28 June 1999 hearing before the first instance court (no. l. 128): after being requested by the panel chairwoman to present the case, he refused and designated the ongoing court proceeding as „tomfoolery“, and made an objection of bias against the penal chairwoman. The Constitutional Court is compelled to observe that such conduct is unbecoming, degrades the dignity of court proceedings, and kindles an undesirable atmosphere which can, as well, have an effect on in the smooth running of the proceeding.

The Constitutional Court thus came to the conclusion that (undesirable) delay in the proceeding that has occurred was caused for the most part by the complainant himself. To the extent that certain error can be seen in the court's manner of proceeding, it was not of such a character as to entail a violation of constitutionally guaranteed fundamental rights or basic freedoms, in the matter under consideration the violation, specifically cited by the complainant, of Art. 36 para. 1 or Art. 38 para. 2 of the Charter, or Art. 6 para. 1 of the Convention.

Pursuant to § 43 para. 2 lit. a) of Act No. 182/1993 Coll., as subsequently amended, without holding an oral hearing and without the parties being present, the Panel shall by preliminary ruling reject the petition, if the petition is manifestly unfounded.

On the basis of these facts, the Constitutional Court has, pursuant to § 43 para. 2 lit. a) of Act No. 182/1993 Coll., as subsequently amended, rejected the constitutional complaint as a manifestly unfounded petition, without holding an oral hearing and without the parties being present.

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

Brno, 23 June 2004