1998/04/02 - III. ÚS 425/97: BINDING FORCE OF CC JUDGMENTS

HEADNOTES

The issue of the binding nature of Constitutional Court judgments which, in the present state of the law and in spite of the fact that it represents the conditio sine qua non of the constitutional judiciary, brings no small amount of difficulties in its wake.

Both in theory and in practice, problems relating to the interpretation of that binding force, in relation particularly and above all to the jurisdiction of ordinary courts at whatever level, still remain without clarification. This is so for a number of reasons: among them are the lack of consistency of the procedural codes (in both branches of general judicial authority), which do not take into account either the jurisdiction (or the cassational authority) of the Constitutional Court so that and do not prescribe, in the case the Constitutional Court annuls the decision of an ordinary court, the direct procedural steps for subsequent proceedings in the same matter.

All of the above-indicated controversies relate exclusively to the "absolute" binding force of Constitutional Court judgments, but not to the binding force of a judgment in relation to a specific matter (merits) being adjudged (decided) by the Constitutional Court. Since enforceable judgments of the Constitutional Court are binding on all authorities and persons (Article 89 para. 2 of Constitutional Act No. 1/1993 Coll.)1), such a decision is binding even on the Constitutional Court itself, in consequence of which, in any further proceedings before it in which the same matter must be decided upon once again (even if in a divergent manner), that decision represents an unavoidable procedural obstacle in the sense of res judicata (§ 35 para. 1 of Act No. 182/1993 Coll., on the Constitutional Court)2), which naturally bars any further review of that matter on the merits whatsoever. This bar extends as well to review which might otherwise – in eventum – ensue from the Constitutional Court Plenum's adoption of a position pursuant to § 23 of Act No. 182/1993 Coll.; consequently, the requirements arising from § 23 of Act No. 182/1993 Coll. do not relate to a matter in which the Constitutional Court has already once issued a decision.

CZECH REPUBLIC

CONSTITUTINAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

On 2 April 1998, in the matter of the complainant J. Ch. against the 9 October 1997 judgment of the Supreme Court of the Czech Republic, 2 Tzn 10/96, concerning the refusal to perform civilian service, the Constitutional Court decided as follows:

The judgment of the Supreme Court of the Czech Republic of 9 October 1997, file no. 2 Tzn 10/96, is annulled.

REASONING

In his constitutional complaint, which was timely submitted and meets the legally-prescribed requirements, the complainant contests the judgment of the Czech Supreme Court of 9 October 1997 (in the matter designated by that court as file no. 2 Tzn 10/96) and asserted that this decision, against which no further appeals lie, constitutes a violation of his constitutionally guaranteed fundamental right contained in Article 40 para. 5 of the Charter of Fundamental Rights and Basic Freedoms3) due to the fact, among others, that in proceedings on the complaint of the violation of the law, which was submitted on his behalf by the Minister of Justice (§ 266 para. 1 of the Criminal Procedure Code) the Czech Supreme Court did not conform its decision to the proposition of law declared in the Constitutional Court judgment handed down on 20 March 1997 in the same matter, and that following that judgment's annulment of its preceding judgment (of 25 April 1996), while it decided anew in the matter, it decided in entirely the same fashion as it had in its preceding judgment; therefore, with reference to the violation of his constitutionally-guaranteed fundamental rights, as had previously been indicated, he proposed that the Constitutional Court issue a judgment in which it once again annul the decision contested in the constitutional complaint.

In response to the Constitutional Court's request, the Czech Supreme Court, a party to the proceeding on the constitutional complaint, expressed its views, in a submission made by the chairman of the senate from which the contested decision issued (§ 30 para. 3 of Act No. 182/1993 Coll.), to the effect that it rejected the conclusions drawn in the constitutional complaint, which it further proposed be rejected on the merits as unfounded. It made, in addition, reference to the untenability of the complainant's objection that, if the elements of the criminal offense in question (§ 272 para. 1 of the Criminal Act)4) are interpreted in the way the Czech Supreme Court has, the complainant would, in the period between his 18th and 38th year (the period during which the duty to perform military or alternative service continues), as a result of repeated convictions for his refusal to perform that service, serve more time in prison than the law allows for the criminal offense of murder.

With reference to statistical data, such as are available, and further with reference to the analogous elements in the definition of other criminal offenses [the criminal offense under § 213 or § 171 para. 1, lit. b) of the Criminal Act], it drew that conclusion that the interpretation given in the above-mentioned Constitutional Court judgment is untenable, so far as concerns the identity of acts, and it labeled that interpretation as legally unfounded. In the view of the Czech Supreme Court, the preceding judgment issued by the Constitutional Court resulted in a "situation of stalemate", one which – de lege ferenda – it has not proved possible to resolve even in joint meetings of representatives of all interested ministries (justice, defense, and labor and social affairs), with Deputies and Senators present, as well as Justices of the Supreme Court and of the Constitutional Court, present; therefore, in conjunction with its proposal to reject the complaint on the merits, it further suggested that "the panel of the Constitutional Court which will decide this new constitutional complaint distance itself from the proposition of law propounded by the Constitutional Court Panel in its judgment no. I. ÚS 184/96 even at the cost of being constrained, in view of § 23 of Act No. 182/1993 Coll., on the Constitutional Court,5) to refer the issue under consideration to the Constitutional Court Plenum".

The constitutional complaint is well founded, even if predominantly on grounds other than those to which the complainant makes reference.

It has been ascertained from the Constitutional Court's file, file no. I. ÚS 184/96, in the matter of the same complainant, that by its judgment of 20 March 1997, the Constituitonal Court annulled the 25 March 1996 Czech Supreme Court judgment, file no. 2 Tzn 10/96, after it had come to the conclusion that, in its decision, the Czech Supreme Court "had failed to abide by the fact that the principle ne bis in idem is also to be found in Article 4 para. 1 of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms6) (in addition to Article 40 para. 5 of the Charter of Fundamental Rights and Basic Freedoms3)) and that, in consequence thereof, a further conviction of the complainant constitutes a violation of the law, in particular, in relation to § 11 para. 1, lit. g) of the Criminal Procedure Code"7); this Constitutional Court judgment became final on 14 April 1997.

In acting on the constitutional complaint under consideration, one fundamental issue that could not be disregarded is that of the binding force of Constitutional Court judgments which, in the present state of the law and in spite of the fact that it represents the conditio sine qua non of the constitutional judiciary, brings no small amount of difficulties in its wake.

Both in theory and in practice, problems relating to the interpretation of that binding force, in relation particularly and above all to the jurisdiction of ordinary courts at whatever level, still remain without clarification. This is so for a number of reasons: among them are the lack of consistency of the procedural codes (in both branches of general judicial authority) which, despite attention being drawn to the fact a number of times, do not take into account either the jurisdiction (or the cassational authority) of the Constitutional Court, and do not prescribe, in the case the Constitutional Court annuls the decision of an ordinary court, the direct procedural steps for subsequent proceedings in the same matter. Similarly, the not quite clear wording of the Constitution – in relation to the binding force of constitutional judgments – gives rise to disputes, for example, as to the effects Constitutional Court judgments have (not those resulting from

the statement of judgment, rather those which result from the reasoning contained in the opinion, etc.).

It is the Constitutional Court's conviction, however, that all of the above-indicated controversies relate exclusively to the "absolute" binding force of Constitutional Court judgments, but not to the binding force of a judgment in relation to a specific matter (merits) being adjudged (decided) by the Constitutional Court. Since enforceable judgments of the Constitutional Court are binding on all authorities and persons (Article 89 para. 2 of Constitutional Act No. 1/1993 Coll.),1) such a decision is binding even on the Constitutional Court itself, in consequence of which, in any further proceedings before it in which the same matter must be decided upon once again (even if in a divergent manner), that decision represents an unavoidable procedural obstacle in the sense of res judicata (§ 35 para. 1 of Act No. 182/1993 Coll., on the Constitutional Court),2) which naturally bars any further review of that matter on the merits whatsoever. This bar extends as well to review which might otherwise – in eventum – ensue from the Constitutional Court Plenum's adoption of a position pursuant to § 23 of Act No. 182/1993 Coll.; consequently, the requirements arising from § 23 of Act No. 182/1993 Coll.5) do not relate to a matter in which the Constitutional Court has already once issued a decision.

However serious may appear the conclusions reached in the statement of views submitted by the chairman of the Supreme Court senate, as well as those which are contained in the reasoning of both Supreme Court decisions issued in the complainant's criminal matter, for the reasons already canvassed, the Constitutional Court is prevented from considering with them in a matter, such as this one, which it has already once decided.

If, therefore, the Czech Supreme Court in the complainant's criminal matter, in which its decision (of 25 April 1996, file no. 2 Tzn 10/96) was annulled by an (enforceable) cassational judgment of the Constitutional Court of 20 March 1997 (I ÚS 184/96), disregarded the arguments and conclusion resulting from this judgment in its subsequent proceedings and new decision (of 9 October 1997), without even for example supplementing factual findings on the basis of which it might possibly reach a divergent assessment of the act (the complainant's conduct), no option remains but to once again annul it as in conflict with Article 89 para. 2 of Constitutional Act No. 1/1993 Coll.,1) without it even being possible to return to the merits of the matter (adjudged merits) in any way.

In conclusion, in the interest of completeness, it is appropriate to add that the Czech Supreme Court decision in the complainants' matter – as far as concerns the binding nature of Constitutional Court judgments – is not in accord with the decision of other senates of the same court, as the Czech Supreme Court (in matter 2 Tvno 40/97) abided by the proposition of law declared by the Constitutional Court, and in subsequent proceedings (following the cassation of the preceding decision), in accord with the constitutional mandate (Article 89 para. 2 of Constitutional Act No. 1/1993 Coll.),1) decided conformably to that proposition, similarly as was the case in a further matter (2 Tzn 28/97) when interpreting the running of a statutorily prescribed time period.

II. US 425/97

Overview of the most important legal regulations

1. Art. 89 par. 2 of Act no. 1/1993 Coll., the Constitution of CR provides that enforceable decisions of the Constitutional Court are binding on all authorities and persons.

2. § 35 par. 1 of Act no. 182/1993 Coll., on the Constitutional Court, provides that a petition to open proceedings is inadmissible if it concerns a matter on which the Constitution Court has already decided by judgment.

3. Art. 40 par. 5 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that no one may be criminally prosecuted for an act for which he has already been finally convicted or acquitted of the charges. This rule shall not preclude the application, in conformity with law, of extraordinary procedures for legal redress.

4. § 272 par. 1 of Act no. 140/1961 Coll., the Criminal Code, as amended by later regulations, provides the definition of the crime of violation of personal and substantive obligations for the defense of the nation.

5. § 23 of Act no. 182/1993 Coll., on the Constitutional Court, provides that if the Senate, in connection with its decision-making activity, reaches a legal opinion which differs from the legal opinion of the Constitutional Court explained in a judgment, it shall submit the question for evaluation by the Plenum. The Senate is bound by the Plenum's decision in further proceedings.

6. Art. 4 par. 1 of Protocol no. 7 to the Convention for the Protection of Fundamental Rights and Human Freedoms provides that no one may be prosecuted or sentenced in criminal proceedings subject to the power of the same state for a crime for which he was already freed or convicted under the law and the Criminal Procedure Code of that state.