

# 2006/12/07 - III. ÚS 693/06: CRIMINAL PROCEEDINGS OPENING

## HEADNOTES

It is not a violation of the right to a fair trial if a state prosecutor uses his authority under § 174 par. 2 let. e) of the Criminal Procedure Code and, based on a defendant's complaint, annuls a previous decision by a police body to open criminal prosecution and replaces it with his own decision to open criminal proceedings, against which decision a complaint is not permissible.

The principles of fair process expressed in the Charter and the Convention do not generally include a right to two-level proceedings. The principle of two-level review proceedings, enshrined in Article 2 par. 1 of Protocol no. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, and in Article 14 par. 5 of the International Covenant on Civil and Political Rights, applies only to the verdict concerning guilt and punishment contained in a decision to convict, but not to a decision to open criminal proceedings.

The Constitutional Court applies the principle of restraint and minimizing interference in the decision-making activities of other public bodies, especially where a decision on the merits has not yet been made. A decision to open criminal proceedings under § 160 par. 1 of the Criminal Procedure Code is an act with serious consequences for the defendant, and it may be issued only within the bounds of the law (Art. 2 par. 3 of the Constitution, Art. 2 par. 2 of the Charter). However, such a decision is basically only of a preliminary nature, and its purpose, in relation to the defendant, is to give notice that he is being prosecuted for a particular act, which is a condition for further procedural acts in criminal proceedings. The justification for, and legality of, criminal proceedings will be reviewed by the relevant bodies as part of their official duties during the entire course of the proceedings.

## CZECH REPUBLIC CONSTITUTIONAL COURT JUDGMENT

### IN THE NAME OF THE CZECH REPUBLIC

A Panel of the Constitutional Court, composed of its chairman Jan Musil and judges Vladimír Kůrka and Jiří Mucha, decided, on 7 December 2006, in the matter of a constitutional complaint from R. H., represented by JUDr. L. P., attorney, against a decision of the District State Prosecutor's Office in Louny, dated 17 August 2006 file no. ZT 560/2006-148, as follows:

The constitutional complaint is denied.

## REASONING

### I.

The petitioner, in a constitutional complaint that was properly and timely filed, seeks the annulment of the decision referenced in the introduction, as it is alleged to violate his right to a fair trial under Art. 36 par. 1 of the Charter of Fundamental Rights and Freedoms (the “Charter”), under which everyone may assert his rights before an independent and impartial court.

Criminal proceedings were opened against the petitioner (the “defendant” in the criminal matter) by decision of the commissioner of the Police of the Czech Republic, SSČK, SKPV note Ústí nad Labem, workplace Louny, ČTS: PSV - 183/HK - An - 2006, dated 1 August 2006, under § 160 par. 1, for the crimes of violating regulations on the circulation of goods in relations with foreign countries under § 124 par. 1, par. 2 let. b) of the Criminal Code and handling dangerous waste under § 181e par. 1, par. 2 of the Criminal Code. The crimes are supposed to be (briefly stated) the illegal import of about 4,000 tons of dangerous waste from the Federal Republic of Germany to the Czech Republic (to the municipalities of Libčeves and Prague 5 - Lahovičky).

The petitioner filed a complaint against that decision, based on which the state prosecutor of the District State Prosecutor’s Office in Louny annulled the contested decision by the police body, and, under § 149 par. 1 let. a) of the Criminal Procedure Code, himself began prosecution of the petitioner for the cited crimes. In the reasoning of his decision, contested by the present constitutional complaint, the state prosecutor stated that the facts determined by investigation under § 158 par. 3 of the Criminal Procedure Code justify opening criminal prosecution of the petitioner on the basis of the same legal definition, but that the decision by the police body must be annulled because it does not meet the requirements of § 160 par. 1 of the Criminal Procedure Code (the verdict of the contested decision was too general, and did not contain a detailed description of the defendant’s conduct related to the manner in which the crimes were committed and to causation; the verdict did not even contain the motive for the defendant’s conduct, or the consequences which ensued, etc.). The state prosecutor cured these defects in his own decision to open criminal prosecution of the petitioner. The petitioner was taken into custody by decision of the District Court in Louny of 3 August 2006 file no. 0 Nt 139/2006, on the grounds cited in § 67 let. b), c) of the Criminal Procedure Code.

### II.

In the reasoning of his constitutional complaint, the petitioner stated that, in his opinion, the state prosecutor did not want to allow the petitioner to be released from custody after the defective decision by the police body was annulled. For that reason, in the petitioner’s opinion, the state prosecutor did not apply the cassation principle, but, with reference to § 149 par. 1 let. a) of the Criminal Procedure Code, again decided to open criminal prosecution of the petitioner, and yet he quite fundamentally changed the description of the crime, references to blanket

norms, etc. In the petitioner's opinion, the state prosecutor thus decided fully like a body of the first instance, but, in view of the reference to § 141 par. 2 second sentence of the Criminal Procedure Code, the petitioner does not have an opportunity to file an appeal against that decision. The petitioner believes that this procedure by the State Prosecutor's Office violates his "right to access to a higher level court and his right to fair process."

The petitioner raises extensive objections against the actions taken by the state prosecutor, whose decision-making on the complaint against the police body's decision, in the petitioner's opinion, should have had a cassation effect. The petitioner believes that an appeal in the matter of a complaint is permissible only in less serious decisions; in other cases one must follow cassation principles. The petitioner states that current Czech proceedings on criminal complaints and appeals proceedings are based on the principle of cassation with elements of an appeal. However, if a higher body, in the course of its review, concludes that the manner in which the first level body, in its decision, evaluated substantial facts, is fundamentally flawed, it can not rule otherwise than to annul the decision of the first level and return the matter for new proceedings and a new decision. In the petitioner's opinion the body deciding on an appeal in such a case is generally not authorized to substantially change the fact situation determined by the first level body, even in the event of considerable supplementary presentation of evidence, because it would thereby impermissibly replace the activity of the first level body.

The petitioner also provides an extensive analysis of the nature and permissibility of appeals in Czech criminal proceedings and the application of the cassation, or appellate, principle.

### III.

The Constitutional Court reviewed the contested decision and determined that the constitutional complaint is clearly unjustified.

In its case law, the Constitutional Court has repeatedly emphasized that its decision-making is based on the principle that proceedings on constitutional complaints are subsidiary, that they must be seen as extraordinary proceedings. The Constitutional Court applies the principle of restraint and minimizing interference in the decision-making activities of other public bodies, especially where a decision on the merits has not yet been made. A decision to open criminal proceedings under § 160 par. 1 of the Criminal Procedure Code is an act with serious consequences for the defendant, and it may be issued only within the bounds of the law (Art. 2 par. 3 of the Constitution, Art. 2 par. 2 of the Charter). However, such a decision is basically only of a preliminary nature, and its purpose, in relation to the defendant, is to give notice that he is being prosecuted for a particular act, which is a condition for further procedural acts in criminal proceedings. The justification for, and legality of, criminal proceedings will be reviewed by the relevant bodies as part of their official duties during the entire course of the proceedings.

As regards the petitioner's arguments, the Constitutional Court states that they are based primarily on an incorrect understanding of the role of the state prosecutor and his decision-making on complaints against decision by police bodies in preparatory criminal proceedings. In the pre-trial stage of the Czech criminal process the state prosecutor acts as *dominus litis*, and the fate of the criminal prosecution is fully in his discretion in that phase of the proceedings. This principle is also applied through the state prosecutor's oversight of the decision-making activity of police bodies. The relationship between the state prosecutor's office and police bodies is, within the bounds of the laws and other related regulations, a relationship of the superiority and subordination of bodies of the executive branch (note the inclusion of Art. 80 in Chapter Three of the Constitution), qualitatively different from, for example, the relationships of courts of the various levels. The nature of this relationship also gives a state prosecutor breadth and a certain freedom in exercising his authority *vis-à-vis* decisions made by police bodies under § 160 par. 1 of the Criminal Procedure Code.

Under § 174 par. 1 of the Criminal Procedure Code the state prosecutor performs oversight of legality in preparatory proceedings; the concept of violation of legality includes all shortcomings due to which the actions of bodies active in criminal proceedings can come into conflict with its fundamental principles under § 2 of the Criminal Procedure Code. Decision-making on appeals against decisions by a police body in preparatory proceedings, including the possibility of replacing police decisions by one's own decisions, is one of the ways the state prosecutor performs oversight of legality in preparatory proceedings. This authority to replace an illegal or unjustified decision by a police body with one's own decision, based on an entitled person's complaint against a decision by a police body, arises expressly from the relevant provision of the Criminal Procedure Code [§ 174 par. 2 let. e) third sentence after the semicolon]. The new decision by the state prosecutor will, by the nature of the matter, necessarily differ from the original decision by the police body, whether in the verdict or in part of the reasoning. The cited statutory provision *a contrario* also gives rise to the impermissibility of a complaint against such a decision [§ 174 par. 2 let. e) in fine]; for completeness the Constitutional Court points out that the principles of fair process expressed in the Charter and the Convention do not generally include a right to two-level proceedings. The principle of two-level review proceedings, enshrined in Article 2 par. 1 of Protocol no. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, and in Article 14 par. 5 of the International Covenant on Civil and Political Rights, applies only to the verdict concerning guilt and punishment contained in a decision to convict, but not to a decision to open criminal proceedings.

It is not a violation of the right to a fair trial if a state prosecutor uses his authority under § 174 par. 2 let. e) of the Criminal Procedure Code and, based on a defendant's complaint, annuls a previous decision by a police body to open criminal prosecution and replaces it with his own decision to open criminal proceedings, against which decision a complaint is not permissible.

Moreover, in the present case the Constitutional Court found the actions taken by the state prosecutor to be fully consistent with the principle of legality (§ 2 par. 3 of the Criminal Procedure Code), and also, in particular, with the principle of

speedy and efficient proceedings under § 2 par. 4 of the Criminal Procedure Code.

Based on the foregoing facts, the Constitutional Court was forced to deny the constitutional complaint, without a hearing, without the presence of the parties, under § 43 par. 2 let. a) of Act no. 182/1993 Coll., on the Constitutional Court, as clearly unjustified.

Note of translator: SSČK = Administration of Northbohemian Region, SKPV = Criminal Police and Investigation Service.

**Instruction: This decision can not be appealed.**

Brno, 7 December 2006