2010/04/19 - IV. ÚS 1403/09: LOCAL REFERENDUM ON SEPARATION OF PART OF A CITY

HEADNOTES

1. The Constitutional Court thus concludes that the condition that a newly formed municipality must have at least 1,000 inhabitants is completely legitimate, supported by rational arguments and, in addition, comparatively relatively common.

2. The course of action taken by the Regional Court which has not addressed the issue of whether "a citizen" for the purposes of § 21 paragraph 1 of the Municipal Constitution means a person registered as permanent resident in the part of the municipality being separated only if such a person is a citizen of the Czech Republic, or whether such a person may be a citizen of the European Union, must be considered unconstitutional. The contested decision accepted, without sufficient argumentation, the former interpretation; in the Constitutional Court's opinion, however, the interpretation ignored by the Regional Court is more suitable. The above-quoted provisions must be interpreted in such a way that the term "citizen" includes also citizens of the European Union registered as permanent residents in the part of the municipality being separated. The point is that the Treaty on the Functioning of the European Union as well as the Municipal Constitution alone grant to such persons the right to participate in the self-government of municipalities (for example, to elect and to be elected to municipal councils or even cast votes in the actual local referendum on separation of the municipality); it would thus be completely irrational not to take the same into account for the purpose of ascertainment of the number of "citizens" necessary for compliance with statutory conditions for separation. Such an interpretation undoubtedly satisfies the purpose of the above-quoted provisions, such a purpose being securing the formation of municipalities capable (in terms of human resources) of properly executing self-government; at the same time, this interpretation is EU-conforming, providing citizens of the European Union with a share in the self-government of municipalities.

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

On 19 April 2010, a Panel of the Constitutional Court, consisting of Chairman Miloslav Výborný and Justices Vlasta Formánková and Michaela Židlická, adjudicated on a constitutional complaint by Přípravný výbor pro konání referenda o oddělení Březhradu od statutárního města Hradce Králové (The Preparatory Committee for Holding a Referendum on the Separation of Březhrad from the Statutory City of Hradec Králové), address for service at Mgr. A. B., Ph.D.,

represented by JUDr. Stanislav Kadečka, Ph. D., attorney at law, a law firm with a registered office at Gočárova tř. 1000, 500 02 Hradec Králové, against a resolution of the Regional Court in Hradec Králové, dated 30 March 2009, ref. No. 30 Ca 23/2009-41, associated with a petition for annulment of § 21 paragraph 1 of Act No. 128/2000 Coll. on Municipalities, as amended by later regulations, with participation by the Regional Court in Hradec Králové as a party to the proceedings, and the statutory city of Hradec Králové, with a registered office of the Municipal Authority at Tř. Československé armády 408, 502 00 Hradec Králové as a secondary party to the proceedings, as follows:
I. The Resolution of the Regional Court in Hradec Králové, dated 30 March 2009, ref. No. 30 Ca 23/2009-41 shall be annulled, since such a resolution and the procedure preceding the issue of the same have violated the fundamental rights of the complainant guaranteed by the provisions of Article 36 paragraph 1 of the Charter of Fundamental Rights and Basic Freedoms, and Article 6 paragraph 1 of the Convention on the Protection of Human Rights and Fundamental Freedoms.

II. The petition for annulment of § 21 paragraph 1 of Act No. 128/2000 Coll. on Municipalities, as amended by later regulations, shall be rejected.

REASONING

I.

1. By a timely constitutional complaint, the complainant demanded annulment of the above-specified judicial decision, claiming that the fundamental rights established by Article 1, Article 2 paragraph 3, Article 6, Article 8 and Article 100 paragraph 1 of the Constitution, and by Article 1, Article 2 paragraph 2, Article 3 paragraph 1, Article 4 paragraphs 2 and 4, Article 21 paragraphs 1 and 4, Article 22 and Article 36 paragraphs 1 and 2 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter referred to only as the "Charter") were violated.

2. By the contested decision, the Regional Court in Hradec Králové (hereinafter referred to also as the "Regional Court") dismissed the petition for announcing a local referendum on the following issue: "Do you approve of the separation of a part of the statutory city of Hradec Králové, demarcated by the cadastral area of Březhrad, from the statutory city of Hradec Králové, and of establishment of a new municipality within the given area?"

3. In the complainant's opinion, the provisions of § 21 paragraph 1 of Act No. 128/2000 Coll. on Municipalities (hereinafter referred to only as the "Municipal Constitution"), which form the main support for the contested decision, are unconstitutional in such a part where a condition is set that the municipality following the separation must have at least 1,000 citizens.

4. This condition, in the complainant's opinion, constitutes an improper restriction of the right to self-government, or its constitutional foundations, and thus creates unjustified inequality between large and small communities of citizens. This restriction is in no way derivable from the constitutional order as such and has no support in the actual arrangement of local self-government in the Czech Republic.

In this context the complainant points out that, according to Malý lexikon obcí ČR 2008 (The Compact Encyclopaedia of Municipalities in the Czech Republic 2008), there are (or, according to the number at the time the Encyclopaedia was published, there were) 1,566 municipalities with fewer than 200 inhabitants and approximately 80% of all municipalities even have fewer than 1,000 citizens.

5. In the opinion of the complainant, the constitutionally guaranteed right to self-government cannot be associated only with self-governing entities which already exist; such an interpretation would lead to absurd conclusions, for example, in the case of an illegitimate dissolution of a municipality, the municipality's objections could then be rejected on the basis of the argument that such a municipality, as a non-existent entity, cannot benefit from the right to self-government.

6. In the opinion of the complainant, the contested provisions of the act are in conflict also with Article 19 paragraph 1 of the Treaty Establishing the European Community (note: now Article 22 paragraph 1 of the Treaty on the Functioning of the European Union in a consolidated version), since the same do not take into account (thus discriminate against) the citizens of the European Union, to whom the above-quoted provisions of primary law grant the right to participate in self-government.

7. The complainant emphasised that they had claimed unconstitutionality of the provisions of § 21 paragraph 1 of the Municipal Constitution in the section "after separation, the same must have at least 1,000 citizens" previously in proceedings before the Regional Court in Hradec Králové. However, the Court did not grant the complainant's petition for submitting the statutory provisions to the Constitutional Court pursuant to Article 95 paragraph 2 of the Constitution, and did so without properly explaining and justifying its steps.

8. In the instance that the Constitutional Court would not share their conviction on the unconstitutionality of the contested provisions, the complainant objected that the provisions of § 21 paragraph 1 of the Municipal Constitution had been interpreted and applied in an unconstitutional manner. The unconstitutionality of their interpretation and application was seen by the complainant in two aspects. Firstly, the complainant did not agree with the opinion of the Regional Court, according to which compliance with the condition of one thousand citizens is assessed as at the date of session of the municipal council making the decision on announcing or otherwise a local referendum. Furthermore, they levelled the criticism that the Regional Court basically had not commented on the objection included in the action, according to which it is necessary, when interpreting the provisions of § 21 paragraph 1 of the Municipal Constitution, to take into consideration the number of all inhabitants, i.e. not only citizens of the Czech Republic, but also foreign nationals registered as residents in the given municipality. The complainant supported this objection of theirs also by referring to the commentary on the Municipal Constitution.

II.

9. In its statement dated 10 June 2009, the Regional Court in Hradec Králové

specified that the complainant had repeated the objections included in the action; therefore, the Regional Court merely referred to the reasoning for the contested decision. The Regional Court also expressed approval of dispensing with an oral hearing.

10. The secondary party has not provided a statement on the constitutional complaint within the determined term; consequently, the complainant has not made use of their right to reply to the statement of the Regional Court in Hradec Králové.

11. The complainant has not provided a statement on their disapproval of dispensing with an oral hearing within the term specified by the Constitutional Court.

III.

12. The Constitutional Court did not expect further clarification of the matter from an oral hearing and, therefore, the Court, upon approval by the parties, dispensed with the same pursuant to the provisions of § 44 paragraph 2 of Act No. 182/1993 Coll. on the Constitutional Court, as amended by later regulations (hereinafter referred to only as the "Act on the Constitutional Court").

IV.

13. The Constitutional Court requested the file from the Regional Court in Hradec Králové, file No. 30 Ca 23/2009, from which the Court ascertained the following.

14. By a resolution of the Council of the Statutory City of Hradec Králové, No. Z1VV2009/1299, dated 24 February 2009, a decision was taken that the Council of the Statutory City of Hradec Králové would not announce in the territory of the city of Hradec Králové demarcated by the cadastral area of Březhrad a local referendum on the following issue: "Do you approve of the separation of a part of the statutory city of Hradec Králové, demarcated by the cadastral area of Březhrad, from the statutory city of Hradec Králové, and of establishment of a new municipality within the given area?" The reason for this decision consisted of the opinion of the Council, according to which the result of the local referendum might be in conflict with legal regulations.

15. Consequently, the complainant applied to the Regional Court in Hradec Králové with a petition pursuant to the provisions of § 91a of Act No. 150/2002 Coll., the Code of Administrative Justice, as amended by later regulations, for announcing a local referendum. Also this Court, by a judgment dated 30 March 2009, ref. No. 30 Ca 23/2009-41, dismissed the petition. The Regional Court justified its decision as follows: pursuant to the provisions of § 13 paragraph 1, clause b), and § 7 clause d) of the Act on Local Referenda, a local referendum on the proposed issue cannot be held if the result of the referendum might be in conflict with legal regulations. The Regional Court then saw a possible contradiction in the fact that, at the time of decision-making by the Council of the Statutory City of Hradec Králové, the part of the municipality demarcated by the cadastral area of Březhrad had fewer than

1,000 citizens, which is the number required by the imperative provisions of § 21 paragraph 1 of the Municipal Constitution. The term “citizen” was interpreted by the Regional Court pursuant to the provisions of § 16 paragraph 1 of the Municipal Constitution, according to which a citizen of a municipality is a natural person who is a citizen of the Czech Republic and is registered in the municipality as a permanent resident. The Court has not dealt with other possibilities of interpretation, in spite of the fact that the complainant in their action, or appendices thereto, pointed out that the part of the municipality demarcated by cadastral area of Březhrad would satisfy the condition of 1,000 citizens if foreign nationals registered in the territory of the part of the municipality as permanent residents were taken into account.

16. The Regional Court did not identify itself – though for very vague reasons – with the complainant’s conviction on the unconstitutionality of the provisions of § 21 paragraph 1 of the Municipal Constitution (with which the result of the referendum allegedly could be in conflict); therefore, the Regional Court refused to submit to the Constitutional Court the petition for a decision on the constitutionality of the above-quoted provisions pursuant to Article 95 paragraph 2 of the Constitution.

V.

17. The constitutional complaint – a formally faultless one – was filed timely by a person competent and properly represented. The Constitutional Court has repeatedly dealt with the issue of whether a preparatory committee for holding a local referendum is or is not entitled to file a constitutional complaint. The Constitutional Court stated that, in accordance with the provisions of § 72 paragraph 1, clause a) of the Act on the Constitutional Court, a constitutional complaint may be filed only by a natural person or a legal entity, and it is clear that a preparatory committee is not a legal entity. However, the Constitutional Court concluded that the preparatory committee, for which the representative acts, is authorised to all procedural acts related to the local referendum, i.e. not only those acts which are directly established by the Act on Local Referenda, but also to the possible filing of a constitutional complaint, if the representative believes that constitutionally guaranteed fundamental rights or freedoms have been violated in the course of the judicial review of the decision by the municipal council not to announce a local referendum (Judgment of the Constitutional Court file No. IV. ÚS 223/04, Collection of Judgments and Rulings, Volume 36, page 319).

18. The Constitutional Court is competent to hear the constitutional complaint and the petition is admissible. The Constitutional Court reviewed the contested verdict of the decision from the viewpoint of the alleged violation of constitutionally guaranteed rights of the complainant and concluded that the constitutional complaint is justified.

19. Despite the Constitutional Court’s conclusion on the fact that the constitutional complaint is justified, the Constitutional Court did not concur with all the objections raised by the complainant. The Constitutional Court’s conclusion on the unconstitutionality of the contested resolution was thus supported predominantly by the fact that the Regional Court in Hradec Králové has not sufficiently addressed

the issue concerning whether it is necessary to subsume under the term “1,000 citizens”, used in the contested provisions, also foreign nationals registered in the municipality as permanent residents.

20. The key argument resulting in dismissing the petition for announcement of a local referendum consisted of the conclusion of the Regional Court, according to which the decision on the issue “Do you approve of the separation of a part of the statutory city of Hradec Králové, demarcated by the cadastral area of Březhrad, from the statutory city of Hradec Králové, and of establishment of a new municipality within the given area?” might fall into conflict with legal regulations. In the opinion of the Regional Court, the separated part of the municipality had, at the decisive time (the date of decision making of the Council of the Statutory City of Hradec Králové), fewer than 1,000 citizens, as is required by the provisions of § 21 paragraph 1 of the Municipal Constitution.

21. The first of the complainant’s objections questions the very constitutionality of the first sentence after the semicolon in the above-quoted provisions, which reads as follows: “The part of the municipality which wishes to separate must have a separate cadastral area neighbouring at least two municipalities or one municipality and a foreign country and forming an unbroken territorial whole; and, after separation, the same must have at least 1,000 citizens. The same conditions must also be met by the municipality following the separation of the part of the same. Separation of a part of a municipality must be approved through a local referendum of citizens living in the territory of that part of the municipality which wishes to separate.”

22. However, the Fourth Panel of the Constitutional Court [which is, with respect to the wording of Article 1 paragraph 2, clause c) of the decision of the Constitutional Court Plenum on the jurisdiction of the panels being taken over by the plenum, published on http://www.usoud.cz/clanek/2020, competent to evaluate this issue] assessed the complainant’s petition for annulment of such provisions as manifestly unfounded.

23. Even though the constitutional arrangement of the right to self-government is relatively laconic, self-government of municipalities (as well as higher self-governing regions) is indubitably one of the pillars of Czech constitutionality. However, this does not mean that the legislature is denied the power to regulate the exercise of this right by enactments; on the contrary, establishment of rational conditions, pursuing a legitimate objective, for the exercise of the right to self-government seeks to ensure that self-government is able to actually and effectively discharge the tasks entrusted to the same.

24. It is surely possible to agree with the complainant that the right to self-government cannot be strictly associated only with currently existing self-governing entities; such an interpretation could lead to the absurd consequences mentioned by the complainant (for example, to the impossibility on the part of an illegally abolished municipality to defend itself against its dissolution). In the opinion of the Constitutional Court, though, the determination of rational and non-discriminatory conditions for the origination of new municipalities is a sovereign right vested in the legislature; the contested provisions of the Municipal Constitution in no way

deviate – for reasons detailed below – from the constitutional framework.

25. According to the statistics to which the complainant (accurately) refers, the majority of municipalities in the Czech Republic have fewer than 1,000 inhabitants. From this fact the complainant infers that the legislature, without a legitimate reason and in contradiction with the real arrangement of self-government, and thus unconstitutionally, restricts the formation of new municipalities.

26. In the Constitutional Court's opinion, however, differentiation between already existing municipalities and newly formed municipalities has a rational basis; the existence of small municipalities is historically preconditioned. It must be mentioned that in the new arrangement of the position of municipalities after 1989, the legislature took into account the historical existence of municipalities (c.f. § 1 of Act No. 367/1990 Coll.), but at the same time they made it possible for the municipalities alone to make decisions, to a certain degree, on their existence and the form of the same (c.f. § 10 to § 12 of Act No. 367/1990).

27. The Constitutional Court does not consider the subsequent decision by the legislature, whereby the existing state of the municipalities has been partially conserved (by determining more strict conditions for the origination of new municipalities), to be an arbitrary restriction of the right to self-government. Legitimacy and rationality of such a measure may be supported by several arguments. The period of effectiveness of Act No. 367/1990 Coll., wherein more moderate conditions for the formation of municipalities were established, may be, from the viewpoint of the position of municipalities and the exercise of the right to self-government, considered to be a period of transition, in which the form of local self-government was only settling. It is not possible to a priori protest against the fact that the legislature at a certain point in time decided to make possible only the formation of such municipalities in the future in which proper exercise of the right to self-government will be, with great probability, ensured. The decision by the legislature to restrict the formation of new municipalities by the number of inhabitants was without any doubt guided by certain experience regarding the functioning of smaller municipalities, and by the interest of the state that self-government as well as the exercise of delegated jurisdiction by municipalities meet certain standards (this is in no way changed by the fact that the condition of 1,000 citizens – instead of the original 500 from the Print of the Chamber of Deputies No. 422/1 – was entered into the text of the enactment as late as on the basis of a proposed amendment by a member of the Chamber, Radim Chytka). The Constitutional Court considers a certain degree of "centralisation" of self-government, reflected in the establishment of conditions for the origination of municipalities, to be the principally acceptable regulation of the right to self-government. If the Municipal Constitution from the year 2000 wished to attain this objective through dissolving existing small municipalities, it would surely represent a serious and excessive infringement of rights already acquired; however, prescriptive (pro futuro) restriction of the origination of municipalities cannot be considered an unconstitutional infringement of the right to self-government.

28. The opinion that existing conditions for the origination of municipalities are rational and legitimate, and that there is no need to dispute their constitutionality, is affirmed also by the arrangement of the origination of municipalities in

comparable countries.

29. In the Slovak Republic, a condition of as many as 3,000 inhabitants is established for the separation of municipalities (§ 2a paragraph 5 of Act No. 369/1990 Coll. as amended by later regulations).

30. As for the situation in the Federal Republic of Germany, the issue of municipal constitution falls under the powers of the federal states. The constitutional guaranties of self-government of municipalities are rather detailed and completely comparable with guaranties contained in the Constitution of the Czech Republic (the existence of self-governing municipalities, the minimum scope of their powers, for example, in the financial sector and the like, are thus secured at a constitutional level – c.f. Article 28 paragraph 2 of Basic Law). Then, for example, the Bavarian municipal constitution, bound by this constitutional arrangement, determines on principle, in the case of origination of a new municipality, a condition of 2,000 inhabitants (§ 11 paragraph 3, clause 2, Gemeindeordnung für den Freistaat Bayern); an exception is established only for municipalities which are members of "Verwaltungsgemeinschaft" – an administrative community). Municipal constitutions of a whole number of other federal states (Brandenburg, Mecklenburg-Vorpommern and others) actually do not mention the separation of municipalities at all.

31. A similar situation can be found in Austria. The constitutional arrangement (also rather extensive) is contained in the provisions of Articles 115 to 120 of the Austrian Constitution, and the adoption of municipal constitutions falls under the powers of federal states. Not even comparison with Austrian municipal constitutions shows that the contested arrangement in the Czech Municipal Constitution would impermissibly restrict the right to self-government. For example, according to the Tyrolean municipal constitution, separation of a part of a municipality requires the adoption of a provincial act (§ 5 of Act dated 21 March 2001, Über die Regelung des Gemeindewesens in Tirol); a similar situation is seen also in other federal states (c.f. § 8 paragraph 1 of the Salzburger Gemeindeordnung). The municipal constitution in Lower Austria (Niederösterreich Gemeindeordnung 1973) then entrusts the power to make decisions on the division of municipalities to the provincial government by an order; in this it is established that for any alterations to the territory (separation or the merging of municipalities and suchlike) it must be taken into account whether the municipalities so formed will be able to execute self-government properly (§ 6 paragraph 2 of the lastly quoted act).

32. Self-government in Poland, even though the Polish Constitution from 1997, in the provisions of Articles 15 and 16, guarantees the right to self-government, is entrusted to large municipalities (gmina; their number is more than two times smaller than the number of Czech municipalities), while small villages fall under their self-governing district and actual self-government does not pertain to the same (c.f. Act dated 8 March 1990, O samorządzie gminnym). According to § 4 paragraph 1 of this act, the origination of new municipalities is decided on by the government by an order which may be adopted upon request by the municipality; in this, objective (planning, technical, social, cultural, etc.) aspects must be taken into consideration.

33. The Constitutional Court thus concludes that the condition that a newly formed municipality must have at least 1,000 inhabitants is completely legitimate, supported by rational arguments and, in addition, comparatively relatively common; additionally, in comparison with the above-quoted legal arrangements, it is perhaps one of the most generous with regard to the origination of self-governing entities.

34. Although the Constitutional Court, for the reasons explained above, does not consider the contested condition to form an unconstitutional infringement of the right to self-government, the Court cannot accept the approach taken by the Regional Court in Hradec Králové with respect to the interpretation of the term "1,000 citizens" contained in the provisions of § 21 paragraph 1 of the Municipal Constitution. The Regional Court, without further consideration and apodictically, concluded that this condition must be interpreted in such a way that the same requires that the municipality following separation has 1,000 citizens of the Czech Republic registered in the territory of the municipality as permanent residents (c.f. page 5 of the contested decision).

35. In the Constitutional Court's opinion, however, the Regional Court had two options for interpreting the term "1,000 citizens" available. In the first, strict interpretation, a "citizen" for the purposes of § 21 paragraph 1 of the Municipal Constitution is considered to include merely a person who is a citizen of the Czech Republic and is at the same time registered in the municipality as a permanent resident. This conclusion is supported by the grammatical interpretation of the provisions of § 16 of the Municipal Constitution. However, this is not the only possible interpretation. According to the settled case law of the Constitutional Court (for example, Judgment file No. III. ÚS 384/08, available at http://nalus.usoud.cz), "linguistic interpretation represents merely a primary approximation to the application of a legal norm. It is merely a basis for clarifying and explaining its meaning and purpose (which is also served by a number of other procedures, such as logical and systematic interpretation, interpretation e ratione legis, etc.)". Even in the case under examination it is not clear, without further consideration, that the interpretation of the term "citizen" used in the provisions of Article 21 paragraph 1 of the Municipal Constitution must be, without further consideration, restrictively adapted to the legal definition contained in the provisions of Article 16 paragraph 1 of the Municipal Constitution.

36. Room remains open also for the second option, the broad interpretation of the term "citizen" pursuant to § 21 paragraph 1 of the Municipal Constitution, of which the Regional Court was reminded by the complainant (c.f. page 3 of the contested judgment, in which the complainant stated that the separated municipality, including foreigners registered therein as permanent residents, would meet the condition of 1,000 citizens), and which is also supported by the Constitutional Court. According to this interpretation, the term "citizen" being interpreted must include also persons mentioned in § 17 of the Municipal Constitution, according to which "rights specified in § 16 belong also to a natural person who has reached the age of 18, is a foreign citizen and is registered in the municipality as a permanent resident, should the same be determined by an international treaty by which the Czech Republic is bound and which has been promulgated." Such an international

treaty consists of the Treaty on the Functioning of the European Union (in consolidated wording), specifically the provisions of its Article 22 paragraph 1 (guaranteeing the right to elect and be elected in local elections; published in the Official Journal of the European Union, dated 9 May 2008, C 115/57); further c.f. also Article 40 of the Charter of Fundamental Rights of the European Union. This option of interpretation is thus supported by the fact that the Municipal Constitution in connection with the international treaties grants the right to participate in self-government also to some foreign nationals. Commentaries interpret the rights of foreigners according to § 17 of the Municipal Constitution rather extensively, since it would be "imbalanced if citizens, foreign nationals, had the opportunity to run, for example, for municipal council, but would not have, for example, the right to file suggestions to the municipal bodies." [Vedral, J., Váňa, L., Břeň, J., Pšenička, S. Act on Municipalities (Municipal Constitution), 1st edition, Prague 2008, p. 138].

37. This interpretation may be supported also by the purpose of the provisions of § 21 paragraph 1 of the Municipal Constitution. If these provisions are to secure that in the future only such municipalities originate as are capable of fulfilling the tasks prescribed by law (c.f. the text above), then there is no reason for ignoring, for the purpose of meeting the condition of 1,000 citizens, persons who may themselves actively participate in the exercise of self-government. The unsustainable nature of the interpretation adopted by the Regional Court is best illustrated by the fact that despite, according to such interpretation, the persons specified under § 17 of the Municipal Constitution would be entitled to cast votes in the local referendum on separation of the given municipality (§ 2 of the Act on Local Referenda), the same persons would be legally irrelevant for the purpose of ascertaining conditions for announcing a referendum.

38. The Constitutional Court further emphasises that, pursuant to the settled case law of the Constitutional Court, also the constitutional order, and sub-constitutional law even more so, must be interpreted in an EU-conforming manner (c.f. Judgment file No. Pl. ÚS 50/04, No. 154/2006 Coll.). In the given case, the EU-conforming interpretation is formed by the legal opinion held by the Constitutional Court, which is more open to the possibility on the part of citizens of the European Union (that is citizens of member countries of the European Union – c.f. Article 20 paragraph 1 of the Treaty on the Functioning of the European Union in the consolidated wording) of taking part in self-government pursuant to the above-quoted provisions of the Treaty on the Functioning of the European Union, the associated regulations of secondary law, and related domestic regulations. Besides, also the doctrine tends towards the broad interpretation of the term "citizen", including also some foreign nationals – c.f. Vedral, J., Váňa, L., Břeň, J., Pšenička, S. Act on Municipalities (Municipal Constitution), 1st edition, Prague 2008, p. 154.

39. The Constitutional Court has thus concluded that the term "citizen" must be, for the purposes of the provisions of § 21 paragraph 1 of the Municipal Constitution, interpreted in a broad manner. The Regional Court in Hradec Králové has not properly dealt with this issue, which was in fact absolutely vital for its decision in the case, this in spite of the complainant's objection, and thus burdened its decision with a defect; at a constitutional-law level, the course of action taken by

the Regional Court may be designated as a violation of the complainant's right to a fair trial pursuant to Article 36 paragraph 1 of the Charter and Article 6 paragraph 1 of the Convention on the Protection of Human Rights and Fundamental Freedoms. According to these provisions and pursuant to the settled case law of the Constitutional Court, the court is obliged to address all legally relevant objections raised by a party (c.f., for example, Judgment I. ÚS 1561/08, http://nalus.usoud.cz).

40. The Constitutional Court, however, cannot concur with the objection of the complainant, according to which the Regional Court erred when identifying the point in time as at which the condition of the number of the citizens of the separated part of the municipality is to be fulfilled. The reasoning for the decision of the Regional Court, according to which compliance with all conditions for announcing a referendum must be assessed at the time when the relevant body takes a decision on the same (that is as at the date of session of the municipal council or the Regional Court, if a petition pursuant to § 91a of the Code of Administrative Justice is filed to such a court), is considered by the Constitutional Court to be convincing, constitutionally conforming and additionally, when consistently taken, the only feasible one. For the purposes of holding a local referendum on separation of a part of the municipality it is indubitably necessary to set a date as to which the conditions for holding the same will be examined. Should such a date be the very holding of the referendum, as is proposed by the complainant, verification of conditions and decision making on announcing such a referendum would not have any practical sense, as each referendum on separation of a municipality (even if, for example, the newly formed municipality should have, at the time of decision making of the municipal council or a court, only a fraction of the required number of inhabitants) would have to be announced, and only after it is held it would be made clear whether the statutory conditions following the separation were actually met. Even for this reason, the interpretation proposed by the complainant is unsustainable. The Constitutional Court refers to other possible practical problems (mentioned by the Regional Court) that such an interpretation would be capable of bringing about – that is holding "mock" or not seriously meant referenda without any chance of success, or the recruitment of citizens that would take place between the decision on announcing a referendum and holding the same.

41. Therefore, the Constitutional Court summarises that even though the Constitutional Court does not consider the contested provisions of the Municipal Constitution unconstitutional, and the Constitutional Court does not even have constitutional-law objections against the opinion according to which compliance with conditions for announcing a local referendum is ascertained as at the date of decision making of the relevant body, the Constitutional Court found some objections raised by the complainant to be justified. The course of action taken by the Regional Court which has not addressed the issue of whether "a citizen" for the purposes of § 21 paragraph 1 of the Municipal Constitution means a person registered as permanent resident in the part of the municipality being separated only if such a person is a citizen of the Czech Republic, or whether such a person may be a citizen of the European Union, must be considered unconstitutional. The contested decision accepted, without sufficient argumentation, the former interpretation; in the Constitutional Court's opinion, however, the interpretation

ignored by the Regional Court is more suitable. The above-quoted provisions must be interpreted in such a way that the term “citizen” includes also citizens of the European Union registered as permanent residents in the part of the municipality being separated. The point is that the Treaty on the Functioning of the European Union as well as the Municipal Constitution alone grant to such persons the right to participate in the self-government of municipalities (for example, to elect and to be elected to municipal councils or even cast votes in the actual local referendum on separation of the municipality); it would thus be completely irrational not to take the same into account for the purpose of ascertainment of the number of “citizens” necessary for compliance with statutory conditions for separation. Such an interpretation undoubtedly satisfies the purpose of the above-quoted provisions, such a purpose being securing the formation of municipalities capable (in terms of human resources) of properly executing self-government; at the same time, this interpretation is EU-conforming, providing citizens of the European Union with a share in the self-government of municipalities.

42. For the reasons above, the Constitutional Court granted the constitutional complaint and annulled the contested decision pursuant to § 82 paragraph 3, clause a) of the Act on the Constitutional Court. The petition for annulment of a part of the provisions of § 21 paragraph 1 of the Municipal Constitution was then rejected by the Constitutional Court as manifestly unfounded pursuant to the provisions of § 43 paragraph 2, clause b) in connection with § 43 paragraph 2, clause a) of the Act on the Constitutional Court.

43. In new proceedings following the cassation of the contested decision, the Regional Court will be obliged, in relation to proper ascertainment of conditions for announcing and holding the referendum, to verify whether the foreign nationals mentioned by the complainant truly are permanent residents in the territory of the part of the municipality which is to be separated, whether these persons are citizens of the European Union, and whether their number together with the citizens of the municipality pursuant to § 16 of the Municipal Constitution exceeds 1,000. Only on the basis of such findings will the Court be able to reach a conclusion on compliance or non-compliance with the condition of the number of “citizens” of the part of the municipality striving for separation and thus for announcing a referendum.

Note: Decisions of the Constitutional Court cannot be appealed.