

# 1996/10/15- IV. ÚS 276/96: SENATE ELECTIONS II

## HEADNOTE:

The responsibility of individuals, political parties, and coalitions during elections is paired with the responsibility of the public administrative bodies to act in accordance with the purposes and objectives of a democratic law-based state, both when they are overseeing the observance of laws and other legal regulations on elections, as well as in their approach to the application of law, in this case of Act No. 247/1995 Coll., on Elections to the Parliament of the Czech Republic and on amendments and supplements to some other laws, as amended.

## CZECH REPUBLIC CONSTITUTIONAL COURT

### JUDGMENT

#### IN THE NAME OF THE CZECH REPUBLIC

The Constitutional Court of the Czech Republic, in the matter of the constitutional complaint of the Civic Democratic Party, against the October 7, 1996 resolution of the Supreme Court of the Czech Republic, file no. Ovs 53/96/Št - 8, with the Supreme Court of the Czech Republic joined as a party to the proceeding, and the Central Electoral Commission joined as a secondary party, decided, thusly:

The 7 October 1996 resolution of the Supreme Court of the Czech Republic, file no. Ovs 53/96/Št - 8, and the 25 September 1996 decision of the Central Electoral Commission, file no. ÚVK 254/1/1996, are hereby annulled.

### REASONING

This constitutional complaint contests the aforementioned resolution of the Supreme Court of the Czech Republic, which rejected the candidate Ph.D. J.G.'s application for registration in the electoral district No. 3 - Cheb for the elections to the Senate of the Parliament of the Czech Republic, scheduled to be held on 15 and 16 November 1996, and the decision of the Central Electoral Commission rejecting Ph.D. J.G.'s application for registration due to non-compliance with the requirements set down in § 61 of Act No. 247/1995 Coll.,<sup>1)</sup> as subsequently amended. In the constitutional complaint, the complainant states that the contested decisions violated his constitutionally guaranteed rights and freedoms as laid down in Article 22 of the Charter of Fundamental Rights and Basic Freedoms<sup>2)</sup> (hereinafter "Charter"), which provides that legal provisions governing all

political rights and freedoms, as well as the interpretation and application of them, shall facilitate and protect the free competition between political forces in a democratic society, in Article 36 para. 1 of the Charter, establishing the right to judicial and other legal protection, in Article 37 para. 2 of the Charter, establishing the right to legal assistance in proceedings held before courts, other state bodies, or public administration bodies from the very beginning of such proceedings, in Article 90 of the Constitution of the Czech Republic, which places upon courts the duty to afford the protection of rights in the manner provided by law, in Article 21 para. 4 of the Charter, pursuant to which citizens shall have access, on an equal basis, to any elective and other public office, in Article 4 para. 4 of the Charter, pursuant to which when the provisions on the limits of the fundamental rights and freedoms are applied, the essence and significance of these rights and freedoms must be preserved, such limits may not be used for other purposes than those for which they were instituted, as well as in Article 19 para. 2 of the Constitution of the CR, which establishes the right of any citizen of the Czech Republic who has the right to vote and has attained the age of forty, to stand for elections to the Senate. The lengthy arguments presented by the complainant in the constitutional complaint, find fault, in particular, with the opinion of the Supreme Court of the Czech Republic with respect to the fact that the document evidencing Ph.D. J.G.'s citizenship presented by it, lost its validity upon the adoption of Czech National Council Act No. 40/1993 Coll., on the Acquisition and Loss of Citizenship of the Czech Republic, because no legal provisions sets forth the date as of which the evidence of citizenship of a candidate to the Senate is to be proved, thus, the presented evidence is valid until Ph.D. J.G. would lose the Czech citizenship. For these reasons, as well as for other reasons mentioned in the constitutional complaint, the plaintiff asks that this Court grant the constitutional complaint and annul the contested resolution of the Supreme Court of the Czech Republic in relation to the decision of the Central Electoral Commission.

In its statement dated 14 October 1996, the Supreme Court of the Czech Republic confirmed its position, stating that when examining the question of the existence of citizenship of the Czech Republic, as well as the manner of providing evidence thereof, it is necessary to apply the legal rules governing this issue that are currently in force, that is, the said Czech National Council Act No. 40/1993 Coll. Up until the filing of the application, it had not been evidenced that the candidate acquired citizenship of the Czech Republic in any manner regulated by the mentioned act, that is, that he is a citizen of the Czech Republic. His application for registration did not contain any of the documents establishing citizenship of the Czech Republic pursuant to the provisions of § 20 of Czech National Council Act No. 40/1993 Coll.3) This leads to the inevitable conclusion that the candidate's application for registration in the matter did not contain a document evidencing his citizenship pursuant to the provisions of § 61 (4)(a) of Act No. 247/1995 Coll.,1) and that is one of the defects mentioned in § 62 (2)(b) of the Act.4) Therefore, the Central Electoral Commission has rightly rejected Ph.D. J.G.'s application for registration for elections to the Senate of the Czech Parliament in accordance with the applicable provisions of the Electoral Act.

The Constitutional Court is, pursuant to Article 83 of the Constitution of the Czech Republic, the judicial body for the protection of constitutionality and as such is not part of the system of ordinary courts, and it has jurisdiction over matters defined in Article 87 (1) of the Constitution of the Czech Republic. Pursuant to Article 87(1)(d) of the Constitution

of the Czech Republic, the Constitutional Court also has jurisdiction over constitutional complaints against final and enforceable decisions and other infringements by public authorities of constitutionally guaranteed fundamental rights and basic freedoms. The substance of the given matter is to answer the basic question, that is, whether the contested decision has violated the plaintiff's fundamental rights and basic freedoms, in particular, whether the decision violated Article 22 of the Charter,<sup>2)</sup> pursuant to which all legal provisions governing political rights and freedoms, their interpretation, and their application shall facilitate and protect the free competition between political forces in a democratic society. When examining this question, it is rather difficult, in the opinion of the Constitutional Court, to take a purely positivist approach, because concepts such as the free competition of political forces or democratic society, inevitably introduce elements which go beyond the scope of such an approach. Here already it should be emphasized that all political rights and freedoms are closely related to the category of responsibility as one of the decisive elements in the democratic political order. If Article 1 of the Constitution of the Czech Republic<sup>5)</sup> emphasizes the democratic and legal nature of our state, founded on respect for the rights and freedoms of human beings and citizens, then, the other side of this democratic coin is the inevitable social and political responsibility of individuals, political parties, the society, and the state, as well. The awareness of such responsibility, as well as institutional creation of such awareness, are, therefore essential in the competitive process of political forces, thus, also in the electoral process, where, on the one hand, the responsibility of individuals, political parties, and coalitions not only for the correctness and accuracy of the information presented during the elections is paired by the responsibility of the public administrative bodies to act in conformity with the purposes and objectives of a democratic law-based state when they are overseeing the observance of laws and other legal regulations on elections, as well as in their approach to the application of law, in this case of Act No. 247/1995 Coll., on Elections to the Parliament of the Czech Republic and on amendments and supplements to some other laws, as amended.

With respect to the given matter, the complainant has submitted, as the document evidencing Ph.D. J.G.'s citizenship, a certificate of the Interior Ministry of Czech Republic, dated 11 October 1990, file no. VSP/3-57/4287/90, stating that, pursuant to Article II (2) (a) of Act No. 88/1990 Coll., J.G. is a citizen of the Czech Republic and, consequently, of the Czech and Slovak Federal Republic. Although the Constitutional Court shares the opinion of the Supreme Court of Czech Republic on this particular point, that this document is not one of the documents that evidence citizenship as indicated in § 20 of the Czech National Council Act No. 40/1993 Coll., on the Acquisition and Loss of Citizenship of the Czech Republic, <sup>3)</sup> as amended, the Constitutional Court differs with the Supreme Court in the next conclusion it drew. If it ensues from the certificate submitted by the plaintiff, which undoubtedly has the nature of a public document, that the plaintiff was a citizen of the Czech Republic and, consequently, of the Czech and Slovak Federal Republic while the Czech and Slovak Federal Republic was still in existence, it can mean nothing else with respect to the provisions of § 1(1) of the Czech National Council Act No. 40/1993 Coll., other than that, on 1 January 1993, Ph.D. J.G. was a citizen of the Czech Republic. He was also considered to be a citizen of the Czech Republic by the District Electoral Commission for District 3, having its registered office in Cheb, the registrar of which stated in the confirmation certifying the receipt of the application for registration as a candidate for the elections to the Senate of the Czech Parliament, dated September

10, 1996, that the application for registration contains the requirements under § 61(4) of Act No. 247/1995 Coll.,<sup>1)</sup> as amended. In its contested decision the Supreme Court acknowledges that the reference to the provisions of § 20 of the Czech National Council Act No. 40/1993 Coll., contained in the provisions of § 61(4)(a) of the same Act,<sup>1)</sup> does not have a prescriptive nature, in respect to which the Constitutional Court adds, and considers it decisive, that if the objective of such a document is only to prove citizenship of a candidate, which the plaintiff has accomplished by the submission of the said certificate, then the failure to submit one of the documents listed under § 20 the Czech National Council Act No. 40/1993 Coll.,<sup>3)</sup> to which reference is made in the comments on this provision, is legally irrelevant, in other words, the sanctioning (censuring) the failure to submit it is, in the opinion of the Constitutional Court nothing other than an interpretation requiring a document for the sake of a document. In the opinion of the Constitutional Court on the given matter, the date on which the certificate of Ph.D. J.G.'s citizenship was issued is not material because Act No. 247/1995 Coll., does not set down any limitation on the age of the document and, thus, makes the time dimension irrelevant.

In light of all the above-stated reasons of the constitutional complaint against the violation of Article 222) and Article 4 para. 4 of the Charter,<sup>7)</sup> as well as Articles 15) and 908) of the Constitution of the Czech Republic, the Constitutional Court has, therefore, pursuant to § 82(2)(a) of Act No. 182/1993 Coll., on the Constitutional Court, issued a judgment granting the complaint and annulling the contested decisions of the Supreme Court of Czech Republic and of the Central Electoral Commission pursuant to § 82(3)(a) of Act no. 182/1993 Coll., on the Constitutional Court.

#### IV. ÚS 276/96

##### **Overview of the most important legal regulations**

1. § 61 of Act no. 247/1995 Coll., on Elections to the Parliament of the CR and on Amendments and Supplements to Certain Other Acts regulates candidates' registration applications. Par. 1 provides that candidates for election to the Senate may be registered by political parties and coalitions, only through a deputy; an independent candidate shall file his application himself; each political party or coalition may apply for registration in an election district for only one candidate; if a political party registered a candidate in a coalition, it/he can no longer apply independently or as part of a coalition. Par. 2 provides that each candidate may run for office in only one election district. Par. 3 provides that a registration application is filed with the registrar of the district election commission in duplicate no later than 60 days before the election day. Par. 4 provides the requirements for a registration application: a) the candidate's first name and last name, personal ID number, date of birth, municipality of permanent residence, occupation and a document on citizenship, b) the name of the political party or coalition which is registering the candidate or a statement that he is an independent candidate, c) the candidate's membership in a particular political party or the fact that the candidate is not a member of any political party, d) the number and name of the election district in which the candidate is standing for election, e) the candidate's statement that he agrees with his candidacy, f) data concerning the deputy of a political party, movement or coalition. Par. 5 provides that, if the registrar of the district election commission finds that the

application does not meet the requirements under par. 4 and 6, he shall inform the deputy or independent candidate. Until the expiration of the deadline under paragraph 3 the deputy or independent candidate may remove shortcomings. Par. 6 states that to the independent candidate's application must be attached a petition with the signatures of at least 1,000 authorized voters.

2. Art. 22 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that statutory provisions relating to political rights and freedoms, as well as the interpretation and application of them, shall make possible and protect the free competition among political forces in a democratic society.

3. § 20 par. 1 of Act no. 40/1993 Coll., on Acquiring and Losing Citizenship of the CR, as amended by later regulations, provides that citizenship of the CR is proved by a) a citizen ID card, b) a travel document, c) certification or confirmation of citizenship of the CR, d) certification of legal capacity to enter into marriage, if this information is stated in it.

4. § 62 governs the Processing of registration applications by the district election commission; in par. 2 letter b) provides that the district election commission shall reject a registration application if it contains incorrect or incomplete data.

5. Art. 1 of Act no. 1/1993 Coll., the Constitution of the CR, provides that the Czech Republic is a sovereign, unitary, and democratic state governed by the rule of law, founded on respect for the rights and freedoms of man and of citizens.

6. § 1 par. 1 of Czech National Council Act no. 40/1963 Coll., on Acquiring and Losing Citizenship of the CR, provides that natural person who were citizens of the Czech and Slovak Federal Republic as of 31 December 1991, are, as of 1 January 1993, citizens of the CR.

7. Art. 4 par. 4 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that in employing the provisions concerning limitations upon the fundamental rights and basic freedoms, the essence and significance of these rights and freedoms must be preserved; such limitations are not to be misused for purposes other than those for which they were laid down.

8. Art. 90 of Act no. 1/1993 Coll., the Constitution CR, provides that courts are called upon above all to provide protection of rights in the legally prescribed manner. Only a court may decide upon guilt and determine the punishment for a criminal offense.