

› CONSTITUTIONAL COURT OF THE CZECH REPUBLIC

PART ONE : GENERAL INFORMATION

The Constitutional Court of the Czech Republic was established in 1993 as one of the Constitutional institutions of new Czech Republic after the disintegration of former federal Czechoslovakia.

It is the successor of former Federal Constitutional Court that was in action since March to December 1992 i.e. only 10 months. It was composed from 12 judges partly Czechs and Slovaks. Several judges of former Federal Constitutional Court were appointed by President of the Republic V. Havel as judges of the new Czech Constitutional Court during the year of 1993.

According to article 83 of the Czech Constitution, the Constitutional Court (hereinafter the Court) is the judicial body responsible for the protection of constitutionality. The jurisdiction of the Court is regulated in Article 87 of the Constitution which contains the exhaustive list of spheres in which the Court decides. These competences of the Court could be divided into three groups:

1. Abstract constitutional review, i.e. review of compliance of the legal regulations with the constitutional regulation.
2. Concrete constitutional review, i.e. protection of constitutionally guaranteed rights and freedoms against concrete infringement made by public authorities.
3. Other matters relating to the application of the Constitution, e.g. the certification of the election of a deputy or a senator, the loss of the seat of a senator or a deputy due to the loss of the eligibility, a constitutional charge brought against the President, the constitutional review of a decision on dissolution of the political party or some other decisions relating to its activities, jurisdictional disputes between state bodies and self-governing regions etc.

The Czech Constitutional Court is composed from 15 judges (justices) i.e. from President (or Chairman) two vice-presidents and 12 justices divided into four panels. Each panel is composed from presiding justice and two justices. Presiding justice is appointed by President of the Court for the period of one year so this office is rotary. President and vice-presidents cannot be the permanent members of panels; they can be only the substitute members.



All justices of the Court are appointed by President of the Republic for the period of 10 years, with the consent of the Senate. President of Republic appoints, from justices of the Court, the President and two vice-presidents of the Court. The consent of the Senate is necessary only for appointment of the justice to the Court. It means that appointment of President and vice-presidents of the Court is completely in hands of President of Republic.

How to become the Judge of the Constitutional Court?

- age over 40
- character beyond reproach
- University degree legal education
- be active in the legal profession for a minimum of 10 years

After hearing before Committees of the Senate follows public hearing before the plenary session of the Senate. After the consent of plenary session of the Senate follows the final step – the oath of office before the President of the Republic and the appointment.

Competencies of the Court are enumerated in the article 87 of the Czech Constitution. Those competencies are rather broad and I will mention only the most important:

- to annul statutes or their individual provisions if they are inconsistent with the constitutional order,
- to annul other legal enactments or their individual provisions if they are inconsistent with the constitutional order or with a statute,
- to decide on constitutional complaints of representative bodies of self-governing regions against unlawful encroachment by the state,
- to decide on accordance of the international agreement with the constitutional order of the Czech Republic before the ratification of such agreement, as without the decision of the Court, the international agreement cannot be ratified,
- to decide on the constitutional complaint against final decisions or other actions of public authorities infringing constitutionally guaranteed fundamental rights and basic freedoms,
- to decide on remedial actions against decisions concerning the certification of the election of the member of parliament or senator,
- to decide on Constitutional charge brought by the Senate against the President of the Republic (impeachment),
- to decide on the annulment of the decision of the Parliament or the Senate on the motion of President of the Republic according to article 66 of the Constitution,
- to decide on measures necessary for execution of the decision of the International Court that is binding for Czech Republic if there is no other way of execution,

Justices of the Court are bound only by the Czech constitutional order and by the Act on the Constitutional Court. The enforceable decisions of the Court are binding for all authorities and persons.

The Court takes decisions in panels or in Plenum. Plenum is composed from all justices of the Court and may adopt the resolutions when at last 10 justices are present.

Within the competence of Plenum are the most of the competencies enumerated above. Plenum also decides on the position of the Court in the situation when the interpretation the law made by Panel differs from the interpretation of the law made by the Court (or its Panel) expressed in earlier decision. Plenum is also authorised to regulation of internal organisation of the Court, to the establishment of Panels and rules of the distribution of caseload among them.

Plenum adopts the decision if a majority of present Justices are in favour of it. But if the decisions on annulment of a statute, impeachment of President of Republic etc. are in question, at last 9 justices must be in favour.

The dissent opinion is possible and relatively often used.

Within the jurisdiction of Panels are especially decisions on individual constitutional complaints. All natural and legal persons have the right to lodge the constitutional complaint against all the final decisions or actions of any public authority under Article 87 paragraph 1 letter d) of the Constitution. Under this Article, the Court decides on constitutional complaints against final decisions or other actions made by public authorities infringing constitutionally guaranteed fundamental rights and basic freedoms.

The Court has defined the concept of "public power" in its resolution file No. II. US 75/93 of 25 November, 1993, as *"the power which decides authoritatively on the rights and obligations of parties (persons), both directly and indirectly. The parties (persons), whose rights and obligations are decided by a public authority, are not in equal position with this body and the content of such decision does not depend on the will of this person"*.

Such infringement made by a public authority can be defined not only as the decision of the courts, administrative bodies and self-governing regions and possibly of other bodies entitled to decide on rights and obligations by means of the law, but also as the actual activity (or possibly inactivity) of the above bodies.

The Act on the Constitutional Court No. 182/1993 Coll., regulating among others proceedings before the Court, has been passed on the basis of delegating provision in Article 88 paragraph 1 of the Constitution. A proceeding on a constitutional complaint is regulated in Sections 72 – 84 of this act.

A constitutional complaint may be submitted by a natural or legal person, if s/he alleges that their fundamental rights and basic freedoms guaranteed by a constitutional act have been



infringed as a result of the final decision in a proceeding to which s/he was a party. A constitutional complaint may be submitted within a period of 60 days which starts to run on the day when the decision in the final available remedy was delivered to the party or, if there is no such remedy, on the day when events which are the subject of the constitutional complaint took place.

Therefore, the proceeding before the Court is based on the subsidiary principle, i.e. it can only take effect after all procedural remedies which the complainant could assert in relevant proceedings (judicial, administration) have been exhausted. If the complainant failed to exhaust all procedural remedies afforded him by law for the protection of his rights, the Court rejects his constitutional complaint as inadmissible.

The act on the Court gives very strong right to any petitioner - moral or legal person as any complainant may submit, together with the constitutional complaint, a proposal to annul a statute or some other enactment, or an individual provision thereof, the application of which resulted in the situation, which is the subject of the constitutional complaint, if the complainant alleges it to be inconsistent with a constitutional order, or with a statute, if the complaint concerns other enactment. In such case the Panel shall suspend the proceedings and submit such a proposal to the Plenum and it is the Plenum that decides on the complaint. Many provisions of various statutes were annulled by Court on the basis of such individual complaints.

Parties to the proceeding before the Court are the complainant and the state body or another public authority, against the action of which the constitutional complaint is directed; the secondary parties are all parties to a prior proceeding.

The proceeding before the Court is governed by the principle of obligatory representation of the parties of proceeding by a counsel whose expenses are paid by the relevant parties. But if the personal situation or financial means of the complainant justify it, especially if s/he has insufficient financial means to pay the costs connected with his or her representation, the Judge - Reporter shall rule that the complainant's attorney's fees shall be paid by the state, i.e. by the Court from its budget.

Article 43 par. 1 of the Act on the Constitutional court stipulates the conditions under which the complaint can be rejected by the Judge - Reporter or by the Panel; par. 2 of this article stipulates the conditions under which the complaint can be rejected by the Panel. The constitutional complaint shall be rejected without holding an oral hearing and without the parties being present, by means of a resolution, which must present reasons justifying the reasons. No appeal is permitted against the decision of the Constitutional Court.

Provided the constitutional complaint was not rejected, an oral hearing shall be held before the Court; the oral hearing before the Court shall be public. With the consent of the parties, the Court may dispense with an oral hearing if further clarification of the matter cannot be expected from such a hearing.

The Court decides on the merit of the constitutional complaint in its judgement, which shall either grant the constitutional complaint in its entirety, reject it in its entirety, or grant it in part or reject it in part.

If the Court grants the constitutional complaint, annuls the contested decision of the public authority and pronounces, in its judgement which of the constitutionally guaranteed rights or freedoms was infringed and which action of public authority resulted in the infringement.

If a constitutionally guaranteed fundamental right or basic freedom was infringed as the result of an action by a public authority other than a decision, the Court imposes a ban to the authority from continuing to infringe this right or freedom and orders to it, to the extent possible, to restore the situation that existed prior to the infringement.

The Panel's judgements shall always be announced publicly by the Chairman of the Panel, in the name of the Republic. Judgements are enforceable upon personal delivery of a copy of their final written version to each party. Every judgement adopted by the Court shall be published in the Collection of Judgements and Resolutions of the Constitutional Court which the Court shall issue annually, for use by the public, after the end of each calendar year. The Court shall publish the statement of the judgement and such part of the reasoning that makes clear the legal principle relied on by the Court.

The decisions of Court are made :

by judge-reporter (without holding the oral hearing and without the parties being present) in cases :

- if the complainant fails to cure defects in the petition within the time limit designated by judge-reporter,
- the petition was submitted after the deadline given for its submission by the Act on the Court,
- the petition is manifestly unfounded,
- the petition was submitted by a person who is clearly not authorised to submit it,
- the petition is not within the jurisdiction of the Court,
- the submitted petition is inadmissible as the complainant failed to exhaust all procedural remedies afforded him by law for the protection of his rights.

by the Panel :

- also without holding the oral hearing and without the parties being present, in cases if the petition is manifestly ill-founded,
- in the regular oral hearings with parties being present in all other cases.

by Plenum : (in above mentioned cases).



The Plenary public oral hearings - procedures, concerning especially the petitions proposing the annulment of statutes or their individual provisions, are usually very attentively covered by TV and other medias.

According to the article 89 of Czech Constitution, decisions of the Constitutional Court are enforceable as soon as they are announced in the manner provided by the law, unless the Constitutional Court decides otherwise concerning enforcement. The enforceable decisions of the Constitutional Court are binding on all authorities and persons.

The Act on Constitutional Court has no special provisions concerning the implementation of decisions of the Court. Only according to the article 58 paragraph 1 of the Act, judgments are enforceable on the day they are published in the Collection of Laws.

In reality, publication of the judgment of the Constitutional Court on annulment of statutes or their individual provisions in Czech Collection of Laws means that this judgment has the force of law. Therefore it must be respected by everybody. In such cases the Court always fixes the date since that the law is annulled. Sometimes it is the day of publication in the Collection of laws (hereinafter "the Coll"). When the case requires new legislation, which means the work of legislative body, the Court postpones the effect of the judgment for appropriate period.

PART TWO: JUDGMENT OF THE CZECH CONSTITUTIONAL COURT ON ELECTION ACT

One of the most important judgment of the Constitutional Court is from 24th January 2001, published under the number 64/2001 of Coll. It was the proposal of President of the Republic Václav Havel to annul several provisions of the Election Act, due to conflict with articles 5 and 18 paragraph 1 of the Constitution and article 22 of the Charter of Fundamental Right and Freedoms (hereinafter "the Charter"). The similar petition was brought by the group of 33 Senators. Both proposals were jointed and decided at the same time by the same judgment.

Now the story:

After parliamentary elections in 1998 two strongest parties "Social Democratic Party" (left orientated) and Civic Democratic Party (right orientated) were practically equal. But none of them was not able to make coalition with other two small democratic parties. (Nobody wanted to enter into coalition with the Communist party). Finally they have undersigned so called "The Opposition Agreement," according to which the Civic Democratic Party tolerated (in fact supported) the minority government of Social democrats. In practice it was the hidden coalition. Civic Democrats have cynically supposed that this way they will not have any governmental responsibility and four years later (after the Social Democrats, as governing party, will fall into disrepute) they could win next elections. (The reality was different as the government of social democrats was not too bad).

The main problem of the “opposition agreement” was that there was practically no opposition as civic democrats were given some very lucrative posts in the executive and state run enterprises to be silent. It was the source of the future corruption. This way the Civic Democratic Party did not play the role of the real opposition. The lack of opposition is always dangerous for the democracy. The other democratic parties – Christian Democratic Union and Union of Freedom were too weak to play the role of the real opposition. The Communist party is in opposition permanently, but it is not considered to be the democratic party so it has no coalition potential.

Naturally as both parties had majority in Parliament, the amendment of the Elections Act (number 247/1995 Coll.) was adopted as the law no. 204/2000 of Coll. This amendment was practically the negation of the constitutional principle of proportional electoral system as it was very advantageous for those big parties and could fix the model of “the opposition agreement” (do you see that nonsense!) for the future. The most important changes that proposed amendment has brought were especially :

- the creation of 35 election regions for elections to the Chamber of Deputies, in the territory of republic, instead of former 8 election regions,
- the lowest number of mandates in an election region was fixed to 4,
- the obligation of every political party, political movement or coalition to pay the election deposit of CZK 40.000,- (about 13.300,- Euros) for every election region in which the political party... etc. submits a candidate list.

The constitutional framework

The article 5 of the Constitution says that the Political system is founded on the free and voluntary formation and free competition among those political parties which respect the fundamental democratic principles and which renounce force as means of promoting their interests.

According to article 18, par. 1 of the Constitution, election to the Chamber of Deputies are conducted by secret voting on the basis of a general, equal and direct voting right, on the principle of proportional representation. Under par. 2 of the same article, elections to the Senate are conducted by secret voting on the basis of a general, equal and direct voting right, on the principle of majority representation.

The Charter says, in the relevant article 22, that : Any 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.

Reasoning of the Court.

The court has ruled, that the model of the proportional representation can and must make the



series of concessions to the principle of integration. The purpose of voting is indisputably differentiation of the electorate. The aim of elections is not merely expressing the political will of individual voters and obtaining a differentiated mirror image of the opinion and political position of voters. As the People also exercise the state power – primarily through the Parliament and the exercise of the state power presupposes the ability to make decisions, elections and the election system must also bear in mind the ability to make such decisions, based on the will of majority. The consequential proportional image of the results of voting in the composition of the Chamber of Deputies could create political representation split into a large number of small groups with diverse interests which would considerably hinder the function of a majority or make it completely impossible. Thus in the stage of elections process in which mandates are distributed, the principle of differentiation comes into conflict with the principle of the integration, because elections should create a Chamber of Deputies, whose composition permits the creation of political majority which is capable of forming the Government and performing the legislative activity for which the Constitution authorizes it. Therefore in terms of the principle of representative democracy it is admissible to build, into the election mechanism itself, certain integrationist stimuli when serious reasons for this exist, in particularly in on the assumption that an unlimited proportional assembly would resulting in fragmenting votes between a large number of political parties in unlimited “over-multiplication” of political parties and thus in endangering the functionality and ability to act as well as continuity of the parliamentary system.

The determining element in the proportional representation system is the size of election districts. On the one hand, the larger the district, the more the election result approach the principle of proportionality, on the other hand, the smaller the election district, the more markedly the cited result becomes distant from that principle.

Moreover it is quite evident that article 18 of the Constitution has in mind precisely the election of the Chamber of Deputies according to principles of proportional representation as a whole and not in each election district. Therefore the increasing the number of election regions to 35, setting the lowest number of mandates in the election region to 4, and the method of calculating shares and allocating a mandate with modified d´Hondt formula in its aggregate represents a concentration of integration elements which result in abandoning the principle of proportional representation.

In the question of election deposits, the Court has ruled, that the provision imposing to pay such a deposit (see above mentioned sum of 40.000,- CZK), is in conflict with the Constitution and the Charter as it is the duty of the state to enable parties which were legally registered to take part in elections to the Parliament and to ensure the full implementation of article 5 of the Constitution. Setting a deposit introduces a priori the discrimination by making it impossible through the introduction of property (financial) conditions for some parties to take part in elections which are the decisive and the most watched stage for the competition of political parties and demonstrate the degree of voter support.

Effective integrationist stimuli in proportional representation systems are based on so called “restrictive clauses” which have the advantage that they do not restrict the principle of free competition between political parties in election if applied only in the stage of distributing mandates, it is after the competition has ended and the results of voting have been determined. In contrast, election deposits are a preventive and a priori measure which restricts free competition. Financial levers do not belong to elections. It was clear that only those two big parties were able to pay this deposit in every of the 35 election region. The financial discrimination of small parties was evident.

CONCLUSION

This way Czech Constitution Court has saved the existing electoral system, as practically prevented the unconstitutional change of the electoral system to the Chamber of Deputies from proportional principle to majority one.
