

Council of Europe
European Commission



Conseil de l'Europe
Commission européenne



Strasbourg, 14 June 2002

<cdl\doc\2002\cdl-ju\034-e>

CDL-JU (2002) 34
English only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**Organisation and Procedure of the
Constitutional Court of the Czech Republic**

**Report by Mrs Eliska Wagnerova
Vice-President of the Constitutional Court
of the Czech Republic**

**Seminar on “Constitutional Control:
Basic Problems of Legal Proceedings, Organisation and Practice”**

(Batumi, 3-4 June 2002)

The Constitutional Court of the Czech Republic is established directly by the Constitution and does not form part of the system of ordinary courts. Its organization, proceedings at the Court, disciplinary infractions and disciplinary proceedings are stipulated in the Act on the Constitutional Court (hereinafter referred to as ACC).

The Constitutional Court is independent on any constitutional or other state bodies and consists of independent Justices. The Court administration is directed by the President. Each Justice has her own staff made up of at least one legal assistant and a secretary, in fact there are 3 assistants by each Justice at present.

The Court acts in the Plenum, which is composed of all Justices, or in four Panels of three members. The president and the vice-presidents may not be a permanent member of a Panel.

However, on my own request in my capacity as the vice-president I am assigned submissions according to rules laid down by the Plenum. The Plenum is composed of all Justices and if not stipulated otherwise by the ACC, it may act and take decisions when at least ten Justices are present. The law determines the cases when the agreement of at least nine present Justices is necessary.

The Plenum of the Constitutional Court decides in the following matters:

Cancellation of Acts or of their individual provisions, annulment of other legal regulations or their individual provisions, impeachment by the Senate of the President of the Republic, the Presidential proposal to repeal a decision of the Parliamentary Chamber of Deputies and the Senate, determination whether a decision on the dissolution of a political party or another decision regarding the activity of a political party conforms with constitutional or other laws, other matters listed in Art. 87, paragraph 1 of the Constitution, if the Panel has not resolved them due to the fact that no proposed resolution received a majority of votes, determination of the standpoint of the Court towards the legal opinion of the Panel, which differs from the legal opinion of the Constitutional Court expressed in its ruling, decision on other matters, if they are reserved for this level, regulation of its internal relations, establishment of Panels and of the rules for the distribution of agenda among them.

All other matters are decided by the Panels (i.e. the constitutional complaints filed by the bodies of local government against illegal intervention by the State, constitutional complaints filed against decisions in legal force and other interventions of public authorities, which violate the constitutionally guaranteed fundamental rights and freedoms, appeals against the decisions in the matters of confirmation of the election of a Deputy or a Senator, cases of doubts on the loss of eligibility to be elected and on the incompatibility of carrying out the offices of a Deputy or a Senator according to Art. 25 of the Constitution, the measures that are essential for the implementation of a ruling by an international court, which is binding for the Czech Republic, unless it can be implemented differently, and the disputes regarding the scope of powers of state authorities and local government, unless such disputes are under the jurisdiction of a different body). The Panel can adopt resolutions when all its members are present. The resolution is adopted by the majority of votes.

All petitioners must be represented by an attorney.

The proceedings at the Constitutional Court commence on the day the petition is delivered to the Court. The vice-president of the Constitutional Court determines "confused submissions". These submissions are written in the special register and they are dealt by president and vice-presidents.

All submissions are given to the registrar where they are registered and lustrated according to the name of a petitioner and his/her adversary. On the first page is also written, if it is the first submissions or a repeated one.

The registrar determines the subject of the proceedings. She arranges alphabetically all submissions delivered daily, distributes them among Panels according to a work schedule. She ensures the inviolable right of the petitioner to a lawful judge and determines the Justice Rapporteur.

The submission is then given to the person responsible for the appropriate Panel. She also arranges alphabetically all submissions. She establishes a registration number, prepares a file, files a survey of the file and a cover for enclosures. Subject index and the relation to legal rules/regulations are entered.

The secretary of the Chairperson of the Panel writes the case in her register for the Panel. The Chairperson of the Panel hands over the case to the Justice Rapporteur that is a Justice from the Plenum or a permanent member of the Panel. His secretary also has her own register. The task of the Justice Rapporteur is to prepare the case for decisions. He prepares the case for a hearing, sends notices of defects in a petition, summonses to an oral hearing and other notification, then he sees to the gathering of documentary evidence and the examination of witnesses.

Justices may assign to their assistant the task of refusing submissions, if they are manifestly not a petition worthy of instituting proceedings. Assistants collaborate with the Justices. Practice is different. For some Justices, they prepare the whole decision by themselves and the Justices consent to the draft or repairs it or otherwise. Other Justices study the cases, then they discuss it with their assistants and instruct them how to decide. Assistants prepare the written draft of a judgment or a resolution and secretaries draft the decision.

Based on the reasons stipulated by law, the Justice Rapporteur may reject the petition by means of a resolution, without holding an oral hearing and in the absence of the parties if the petitioner did not eliminate the vices in the petition within the period determined thereto, or if the petition was submitted after the proper deadline, or if the petition was submitted by a person clearly not authorised to do so, or if the said petition does not belong to the jurisdiction of the Constitutional Court, or if the submitted petition is inadmissible.

The Panel will reject the petition by means of a resolution without oral hearing and in the absence of the parties if the petition is clearly unjustified/manifestly ill-founded, or if the Panel finds in the petition, submitted pursuant to § 64, Art. 1 to 4, i.e. in the proceedings for cancellation of Acts or other legal regulations or their individual provisions, the reasons for refusal pursuant to Article 1 or item a). The resolution must be decided unanimously. The vast majority of constitutional complaints are dismissed in this initial examination.

Otherwise the Rapporteur prepares the matter for the Plenum or for the Panels. In the matters dealt with pursuant to Art. 87, § 1 of the Constitution the hearing that takes place is oral. If not stipulated otherwise by the law the Court with the agreement of the parties may refrain from the oral hearing. The oral hearing is public. The Court may limit or exclude attendance by the public, if this is required due to important interests of the state or of the parties to the proceeding or because of maintaining morality.

The summons for the oral hearing must be delivered so that the party has enough time to get prepared for the hearing, usually at least five days in advance.

A party to the proceedings may declare at the latest at the beginning of the first oral hearing that he does not accept such Justice whom he considers to be biased.

The Plenum acts always upon a petition proposing the annulment of a statute or other enactment. The Justice Rapporteur checks first whether all requirements for a proper submissions, as laid down in the ACC, have been met and then asks the Parliament or other body for their standpoint. He also checks, if a petition is admissible or if there are not reasons for discontinuance of a proceeding. If he/she does not find such reasons, he acts upon it and resolves the matter/decides on the merit of the matter. The result of the proceeding is a judgment .

If the Court comes to the conclusion that does not exist grounds for invalidation, it rejects the petition on the merits.

If the Court comes to the conclusion that a statute is not in conformity with a constitutional act or an international Treaty stipulated by Article 10 of the Constitution, it annuls this statute or other enactment or individual provisions thereof.

In some cases the Court has decided that an act is constitutional only on a certain interpretation /constitutionally has effect ex n conforming interpretation/.

Generally, the provision shall be annulled on the day the judgment is published in the Collection of Laws. In some cases the Court has decided to postpone the date of annulment of an act. It is theoretically possible that the Constitutional Court annuls an act ex tunc; however the Constitutional Court has not yet come to such a decision.

If it is necessary, the Court decides which of the implementing regulations loses force and effect simultaneously with the act.

As concerns as constitutional complains, the Court decides on the merit by a judgment.

It grants or rejects the constitutional complaints in its entirety or grants or rejects it in part.

In the granting judgment it declares which of the constitutionally guaranteed rights or freedoms and which provision of a constitutional act or an international Treaty stipulated by Article 10 of Constitution was infringed or which activity or behavior of a public authority causes infringement in fundamental rights of a petitioner.

If a complaint is aimed against a decision in legal force, the Court annuls the contested decision of a public authority. The Court annuls mostly only a final decision and not a foregoing one. The Constitutional Court implements a principle of minimalisation of interference in the execution of powers of other authorities or ordinary courts.

If a complaint is aimed against an activity or a behavior of a public authority, the Court forbids the authority continuing to infringe this right or freedom and order it, to the extend possible, to restore the situation that existed prior the infringement.

After pronouncing of a finding, written judgments, rulings and resolutions are sent/delivered to the parties, to secondary parties and to the lawyers. The original determined subject of the proceeding is checked and corrected according to the final decision/judgment, resolution/. Judgments and resolution on manifestly unfounded submission are published on Internet. The file is then given to registry.

The Constitutional Court decides the matter itself by judgment and all other issues by ruling or resolution. Judgments shall be announced publicly in the name of the Republic. This applies also in the case when the Court decided without an oral hearing.

All judgments, in which it was decided on the proposals to cancel an Act or other legal regulation or an individual provision thereof, on the constitutional action against the President of the Republic, and on the proposal to cancel the resolution of the Chamber of Deputies or the Senate, are published in the Collection of Laws of the Czech Republic. In this Collection can be published judgments on the constitutional complaints, if the Plenum decides so. The publication includes the statement and the part of the reasoning, from which it is clear,

what is the legal opinion of the Constitutional Court.

A Justice who disagrees with the decision of the Plenum or of the Panel has the right to have his dissenting or his concurring opinion that forms a part of the decision. Such opinions are published in the Collection of Judgments, Ruling and Resolutions of the Constitutional Court.

The judgments on the cancellation of Acts are enforceable as of the day of their publication in the Collection of Laws, if not decided otherwise by the Constitutional Court, as mentioned above. The judgments on the constitutional action against the President of the Republic, on the proposal to cancel the resolution of the Chamber of Deputies or the Senate, on the remedial action against the decision in the matter of election of a Deputy or a Senator and in the case of doubts on the loss of the eligibility to be elected and on the incompatibility of executing the functions of a Deputy or a Senator are enforceable by its publication. Other judgments are enforceable by the delivery of their written copy to the parties.

All judgments adopted by the Constitutional Court during the calendar year are published in the Collection of Laws and Resolutions of the Constitutional Court. The resolutions may be published here as well, if the Plenum decides so.

Numbers of submissions, by year

Year	Total number of submissions	Petitions to annul statute or other norm	Constitutional + other complaints
1993	523	49	474
1994	862	33	829
1995	1277	48	1229
1996	1511	41	1470
1997	2024	46	1978
1998	2221	30	2191
1999	2576	24	2522
2000	3140	59	3081
2001	3049	39	3010

The number of completed submissions according to the nature of the decisions

Numbers in **bold** are not final, because all cases from this year have not yet been decided

Year	Judgment	Put aside as noncapable of proceedings	Ruling, resolution
1993	41	91	368
1994	75	193	564
1995	129	192	905
1996	189	270	1001
1997	192	338	1417
1998	187	309	1607
1999	176	268	2035
2000	171	257	2451
2001	83	239	1902

record of submission

Registration No. Date of sub. relation to dec. No. standpoint	number [_____] / [_____]	year [_____]	panel/plenum [_____]
petitioner:	[_____]	[_____]	[_____]
Address :	surname [_____]	name [_____]	title [_____]
	town [_____]	street [_____]	PSČ [_____]
rapporteur	[_____]		
manner of resolution date of resolution	[_____] [_____]		
date of pronouncement	[_____]	[_____]	[_____]
date of the last entry	[_____]	entered:	[_____]
subject proceedings	[_____] [_____] [_____] [_____]		
subject index			
[_____] [_____] [_____]			
relation to. legal regulations	[_____] [_____] [_____] [_____]		
adversary	[_____] [_____] [_____] [_____]		
Secondary party Address	[_____] [_____] town street PSČ [_____] [_____] [_____]		
filed	[_____]		
notes	[_____] [_____] [_____]		