



Strasbourg, 8 August 2005

CDL-JU(2005)023  
Engl. only

CCS 2005/05

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**in co-operation with**  
**THE CONSTITUTIONAL COURT OF LITHUANIA**

**INTERNATIONAL CONFERENCE**  
**LAW AND FACT IN CONSTITUTIONAL**  
**JURISPRUDENCE**

30 June-1 July 2005  
Vilnius, Lithuania

**REPORT**

**Law and facts in cases pertaining to the constitutionality  
of activities of political parties**

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The theme of my paper, although it seems very attractive from the title, places me, as a judge of the Constitutional Court, in the position of a theoretician rather than a practitioner, who might be able to present a wealth of interesting jurisprudence.

I assume that, in the given framework, I will mention certain historical connections, I will briefly cover substantive law regulating association within political parties and political movements, and ultimately I will discuss the procedural aspects, paying particular attention to the jurisdiction of the Constitutional Court of the Czech Republic.

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The Czech Republic is a sovereign, integrated, and democratic state that abides by the rule of law, based on respect for the rights and freedoms of humankind and citizens (Article I(1) of the Constitution of the Czech Republic, i.e. Act No 1/1993, hereinafter referred to as 'Constitution'). It is worth recalling that until recently this could not be said of the state occupying the erstwhile Czech Lands.

In the period prior to November 1989, the Czechoslovak Socialist Republic was a state which only pretended to accept a plurality of political parties. Article 4 of the Constitution of 1960 established the leading role of the Communist Party of Czechoslovakia; other political parties that wished to be admitted had to be grouped into the 'National Front', the membership base of which was limited and the activities of which were influenced by the Communist Party. At that time, there was no Constitutional Court, although formally the Constitutional Act on the Czechoslovak Federation from 1968 counted on the establishment and composition of this institution. Elections were a demonstration of strength by the Communist Party; most of the electorate went to the poll booths with a feeling of coercion, and the almost 100% success of the single National Front candidate did not reflect the true will of the public. Those who, like myself, are from the former Soviet Bloc have had the misfortune of experiencing this recent history, in more or less the same form, at first hand. It just remains to add that the dominant role at the level of state authorities in the field of political parties belonged to the executive, or specifically the Ministry of the Interior.

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Political plurality was one of the main demands of the Velvet Revolution in November 1989. The amendment to the then Constitution the very next spring revoked the provision on the leading role of the Communist Party, and soon Act No 15/1990, on political parties, was adopted.

Today, legislation in force in the Czech Republic is based primarily on Article 5 of the Constitution, according to which the political system is based on the free and voluntary establishment and open competition of political parties respecting fundamental democratic principles and rejecting violence as a means of asserting their interests. Under Article 22 of the Charter of Fundamental Rights and Freedoms (2/1993) (hereinafter referred to as 'Charter'), the legislation of all political rights and freedoms and its interpretation and application must permit and protect free competition of political forces in a democratic society.

The baseline legal regulation of this simple right is Act No 424/1991 of 2 October 1991 on the right of association of political parties and political movements (hereinafter referred to as 'Political Parties Act'). Over the years that this law has been in force, it has been amended fourteen times, although its guiding principles have remained the same.

The Political Parties Act regulates the legal scope and limits applicable to the establishment and activities of political parties, the procedure for the registration of political parties, the suspension of the activities of parties and movements, the resumption of their activities, the dissolution, winding-up, and cancellation of political parties, and the legal limits related to the financing and management of political parties. Legislation on the activities and financing of political parties and movements also includes the individual voting laws.

The substantive-law provisions of the Political Parties Act stipulate that, in their activities, these parties must respect the constitutional principles of democracy, the plurality of power in society, civil and human rights, and the equality of citizens. On the most general level, these are the principal aspects which the bodies of the executive, the general courts, and the Constitutional Court of the Czech Republic take account of in their decision-making practices in relation to political parties and movements.

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The power and physical competence to make decisions in matters related to the establishment, suspension of activities, and dissolution or winding-up of a political party and in matters related to the management and financing of political parties is laid down in the Constitution, the Political Parties Act, procedural regulations, i.e. in particular the Code of Administrative Procedure, the Judicial Code of Administrative Procedure, and – for our theme the most fundamental – the Constitutional Court Act (Act No 182/1993), as amended (hereinafter referred to as 'Constitutional Court Act').

As regards the proceedings and decision-making process before a case reaches the Constitutional Court, I will just briefly mention that the procedure for the registration of political parties and movements is managed by the Ministry of the Interior of the Czech Republic. If the preparatory committee disagrees with notification from the Ministry that a registration application has defects, it may turn to the regional court. This court makes a decision in the scope of the administrative judiciary as the court of first instance. The regional court also examines, if petitioned, the decision rejecting the registration of the political party.

Proposals to suspend the activities and to dissolve a political party may be submitted by the Government; if it fails to do so despite receiving an instigation, the proposal may be submitted by the President of the Republic. A party's activities cannot be suspended, and a party cannot be dissolved, in the period from the date on which the elections to the Chamber of Deputies, the Senate, or the corporation of a municipality or region until the tenth day after the final date of these elections. It is possible to seek the dissolution of a political party or movement, or the suspension or resumption of its activities, by petitioning a court. The court with jurisdiction in such proceedings is the Supreme Administrative Court.

The Supreme Administrative Court, in the scope of these proceedings might, for example, rule that, based on the principle of the conforming interpretation of legal regulations, the provision on the protective period must be interpreted in such a manner that it is not possible to suspend the activities of a political party even in the case of national elections to the European Parliament. A small share of the jurisprudence of the Supreme Administrative Court has covered

issues related to the suspension of the activities of a political party due to its failure to present an annual financial report. Because the political parties have generally been successful in these proceedings, the case has not reached the Constitutional Court of the Czech Republic.

The court may decide to wind up a political party for failure to present an annual financial report to the Chamber of Deputies, or for breach of general principles for the activities of political parties regulated by the Charter or the Political Parties Act. These might include activities aimed at a breach of the Constitution or laws, or directed at the removal of the State's democratic foundations, and parties which would not have democratic rules or democratically appointed bodies and are intent on grasping and wielding power that would prevent other parties and movements from seeking to gain power through constitutional means, or intent on suppressing the equality of citizens, and parties whose programme or activities are a risk to morals, the public order, or the rights and freedoms of citizens. In the most recent Czech history, there is no case law related to these provisions.

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Under Section 87(1)(j) of the Constitution, the Constitutional Court has the jurisdiction to issue verdicts on whether a decision to dissolve a political party or another decision concerning the activities of a political party complies with constitutional or other bodies. The Constitutional Court makes such rulings, in accordance with Section 11(2)(e) of the Constitutional Court Act, in a plenary session. The general provisions on proceedings before the Constitutional Court apply to these proceedings. The plenary session makes a decision by a simple majority of those judges present. Again, there is no case-law of the Constitutional Court related to the application of this provision of the Constitution.

One of the interesting rulings of the Constitutional Court of the Czech Republic concerning the activities of political parties in the time of Communist totalitarianism in foreign exile is the Senate verdict in the case of the assets of the public limited company Cíl, a.s. the shareholder of which before February 1948 was the Czechoslovak Social Democratic Party.

The Constitutional Court inter alia concluded that 'if part of the political representation, a political party violently suppressed in its own country after difficulties and disagreements normal in cases of exile activities, manages to establish this party abroad, and if it ultimately manages to establish and maintain diverse international relations such as political parties acknowledged outside the sphere of power of the USSR, it is evident that in this activity (as in its own political activities) this political party in exile conducted itself in various relations not only as an independent political, but also independent legal entity, which, in accordance with the national law in force at the time, would have been acknowledged to have legal personality ad hoc within the meaning of the doctrine and jurisdiction of general courts from the time before the violent upheaval of February 1948, while otherwise the status and relations of political parties until the promulgation of the Political Parties Act (Act No 15/1990) were not regulated under Czech (Czechoslovak) law.

A political entity banished from its homeland and carrying out activities abroad in accordance with its political beliefs, with the aim of achieving an upheaval in domestic relations, should, from the aspect of Czech (Czechoslovak) law, be viewed as an entity which, in the scope of its activities, was capable of entering into rights and obligations stemming from these activities.'

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The Constitutional Court encounters the problems of political parties and movements more frequently in connection with the financing of political parties, their management, and the constitution to the activities of political parties based on election results.

Formally, in these cases the decision-making of the Constitutional Court is often carried out as a 'negative legislator', i.e. in the framework of proceedings on the annulment of laws and other legal regulations in accordance with Part II, Chapter II, Section I of the Constitutional Court Act, or Section III in proceedings on constitutional complaints.

For example, in Verdict Pl. ÚS 53/2000, the Constitutional Court ruled that the 'constitutional order in the legislation of the Czech Republic contains the guiding principles of a political system, among which open competition of political parties is a guarantee of political pluralism, it carries with it the prohibition of discrimination, especially the inadmissibility of giving one political party favourable treatment over another, ensures that equal opportunities are respected in political competition, especially in elections, and influences the conditions and structure of financing of political parties, including the forms of direct state financing.

The free and open competition of political forces is based in particular on the fact that all political entities are governed by the same preset rules, which are based on these guiding principles. There can be no doubting the fact that direct state financing in particular is in the hands of the legislature, which has an immediate impact on the amount and focus of financing. This is no arbitrary choice on the part of the legislature, as constitutional criteria featuring among the guiding principles of the political system – which is constitutionally guaranteed – must be respected. If this risk of arbitrariness were not excluded and it were possible to circumvent the above-mentioned principles, this would clearly lead in all cases to a violation of constitutional order, its purpose and meaning, and would provoke the intervention of the Constitutional Court, which under Section 83 and Section 87 is the judicial body competent to protect constitutionality and legality.'

Those provisions of the Political Parties Act which did not grant political parties and movements which had failed to gain at least 3% of the votes in the elections to the Chamber of Deputies a claim to a permanent contribution to their activities were subsequently repealed, as were provisions which differentiated the amount of the contribution per mandate in the case of an MP's and Senator's mandate on the one hand and the mandate of a member of a regional corporation on the other.

In contrast, in 2004 the Constitutional Court rejected a petition to repeal the provision of the Political Parties Act making the claim to a permanent contribution contingent on the fact that a party or movement gained at least 3% of the votes in elections to the Chamber of Deputies.

Not least – and this could perhaps be a theme in its own right in the future – the Constitutional Court intervenes in the competition of political parties as a court of election which has the jurisdiction to review the rulings of the Supreme Administrative Court.

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What to say in conclusion?

The fact that the agenda of the Constitutional Court of the Czech Republic in relation to political parties has been sparse in the Czech Republic in the period since November 1989 is

indicative evidence that legislation in force which should be applied in such cases is essentially expedient, and that social relations in the country comply with the express determination of the citizens of the Czech Republic to 'respect all the proven principles of the rule of law', as stipulated in the preamble of the Constitution of the Czech Republic.'