

IV.ÚS 463/12 of 11/ 6/ 2012**Czech Republic
RESOLUTION
of the Constitutional Court**

The Constitutional Court of the Czech Republic ruled, in a senate composed of Chairperson Vlasta Formánková and Justices Miloslav Výborný and Michaela Židlická without holding an oral hearing and without the parties being present, in the constitutional complaint of the complainant - the civic association "V havarijní zóně jaderné elektrárny Temelín" company ID No 265 29 084, registered office Všemyslice, Neznašov 122, represented by Ing. V. H., CSc., legally represented by Mgr. Martin Šíp, lawyer with registered office Advokátní kanceláře Korbel, Tuháček, Šíp, Kadlec, s.r.o., Tábor, Převrátílská 330, against the judgment of the Supreme Administrative Court of 27 October 2011, ref. 7 As 90/2011-144, as follows:

The constitutional complaint is rejected.

Justification:

The complainant, through a constitutional complaint filed in a timely manner and also meeting other requirements for filing pursuant to Act No 182/1993, on the Constitutional Court, as amended (hereinafter the "Act on the Constitutional Court"), sought annulment in the title of the cited decision as it considers that it violated its constitutionally guaranteed right to a fair hearing and the right to a favourable environment enshrined in Article 35 of the Charter of Fundamental Rights and Freedoms (hereinafter the "Charter"), the right to an effective remedial measure enshrined in Article 36(1) and (2) and in Article 38(1) of the Charter of Fundamental Rights and Freedoms (hereinafter the "Charter"), as well as in Article 6(1) of the European Convention on Human Rights.

By resolution of 6 December 2007, ref. 29299/2007/OHJZ/44; ref. 32699/2007, the State Office for Nuclear Safety, Section for Nuclear Safety, decided that the complainant was not a party to the administrative proceedings. Through the decision on the remonstrance of 5 March 2008, ref. SÚJB/PrO/5156/2008, the chairperson of the State Office for Nuclear Safety rejected the remonstrance and upheld the contested decision. Through the judgment of 25 November 2010, ref. 9 Ca 182/2008-96, the Municipal Court in Prague dismissed the complainant's administrative petition. The Supreme Administrative Court rejected the subsequent cassation complaint through the contested judgment.

In the constitutional complaint, the complainant stated that it sought participation in the proceedings of the State Office for Nuclear Safety in the case of the permit (its extension) for the operation of Block 3 of the Dukovany Nuclear Power Plant. The complainant justified its participation by reference to the provisions of the Aarhus Convention and the EIA Directive in conjunction with Section 70 of Act No 114/1992, on nature and landscape protection, as amended. However, with reference to the nature of the proceedings and the relevant provisions of Act No 18/1997, on the peaceful use of nuclear energy and ionizing radiation (Atomic Act) and on amendments and supplements to certain other laws, as amended, the administrative body did not admit the complainant's participation. Nevertheless, the complainant expressed an interest in participation, also with regard to the fact that the operation of the Dukovany Nuclear Power Plant had never been assessed in terms of its environmental impact, meaning the procedure under Act No 100/2001, on environmental impact assessment, as amended (the EIA process), did not take place. Therefore, the complainant infers the direct applicability of the Aarhus Convention to the present case, with regard to the case law of the Supreme Administrative Court ref. 2 As 13/2006-110, according to which there is direct applicability if a single administrative procedure is sufficient to put a nuclear power plant into operation. At the same time, the complainant disagrees with the Supreme Administrative Court, according to whose contested decision the extension of the operation of an existing facility cannot have an impact on the environment. The Aarhus Convention should therefore be directly applied in the present proceedings. It therefore proposed that the Constitutional Court annul the contested decision.

The Constitutional Court, after becoming acquainted with the content of the constitutional complaint about the contested decision and the file of the Municipal Court in Prague, ref. 9 Ca 182/2008, concluded that the constitutional complaint was manifestly unfounded for the following reasons.

The Constitutional Court is a judicial body for the protection of constitutional rule (Article 83 of the Constitution of the Czech Republic). It is not a general court of next instance and is not a part of the general courts, to which it is not even superior in terms of instance. The Constitutional Court is not another instance in the general justice system, does not assess the overall legality of issued decisions, nor does it replace the assessment of evidence with its own assessment. It does not address possible violations of the ordinary rights of natural or legal persons, unless such violation is concurrently a violation of a fundamental right or freedom guaranteed by constitutional law.

From the file of the Municipal Court in Prague, the Constitutional Court primarily established the course of the proceedings before administrative courts. From the content of the court file and the complainant's annexes, it stated that the complainant was repeatedly submitting the same argument, apparently from the moment it registered as a party to the administrative proceedings of 29 November 2007. The objections raised in the remonstrance, in the administrative petition, and in the cassation complaint are identical with the objections and arguments of the complainant in the constitutional complaint. However, the complainant has repeatedly been presented with a constant opinion by administrative bodies deriving from the decision-making activities of administrative courts and the Constitutional Court on the issue, as well as reference to Section 14(1) of the Atomic Act, according to which the applicant is the sole party.

The complainant has thus repeatedly been confronted with the conclusions of the public authorities which, also in the present case, found no reason to deviate from established practice. In the present case, the complainant has not presented any new circumstance which would indicate that the actions of the administrative courts, or rather the decisions of the Supreme Administrative Court, resulted in the alleged interference with its fundamental rights. As is clear from the contested decision, the Supreme Administrative Court assessed the similarities to, and differences from, previous proceedings, however once again did not reach the conclusion that the international convention is directly applicable. This conclusion was made on the basis of proceedings in which the Constitutional Court did not find the alleged error and thus any reduction in the complainant's guaranteed rights.

Pursuant to Section 43(2)(a) of the Act on the Constitutional Court, the senate, without holding an oral hearing and without the parties being present, must reject a petition by resolution if the petition is manifestly unfounded. In the present case, the senate of the Constitutional Court did not find the alleged errors by the ordinary courts, and therefore had no choice but to reject the constitutional complaint pursuant to this provision.

Note: No appeal against a decision of the Constitutional Court is admissible.

In Brno, 11 June 2012

Vlasta Formánková m.p.
Chairperson of the IV Senate of the Constitutional Court