CZECH REPUBLIC

RESOLUTION

of the Constitutional Court

The Constitutional Court has decided, in a senate composed of Chairperson Kateřina Šimáčková and Justices David Uhlíř (Rapporteur) and Ludvík David, on the constitutional complaint of the complainant Jihočeské matky, z.s., registered office Karla Buriana 1288/3, České Budějovice, represented by Mgr. Jaroslav Kadlec, lawyer, registered office Tyršova 521, Tábor, against the judgments of the Supreme Administrative Court of 29 January 2020, ref. 4 As 267/2019-35, and the Municipal Court in Prague of 7 June 2019, ref. 3 A 106/2017-30, as follows:

The constitutional complaint is rejected.

1. The complainant sought through the constitutional complaint the annulment of the judgments of the Supreme Administrative Court and the Municipal Court in Prague specified in the title. According to the complainant, by not allowing it to participate in the administrative proceedings, the general courts violated its constitutionally guaranteed right to a fair hearing enshrined in Articles 36 and 38 of the Charter of Fundamental Rights and Freedoms (hereinafter the "Charter"). Article 90 of the Constitution and Article 6(1) and (3)(c) of the European Convention on Human Rights were also violated.

2. In the administrative proceedings, the complainant (from the position of a civic association established for nature and landscape protection) sought participation in the administrative proceedings for the granting of a permit to operate a nuclear facility, namely Block 2 of the Dukovany Nuclear Power Plant, and participation in the administrative

proceedings for the approval of documentation for the licensed activity within the meaning of Section 24(3) of Act No 263/2016, the Atomic Act, setting limits and conditions for safe operation A004a, revision No 4 also for Block 2 of the Dukovany Nuclear Power Plant.

3. The State Office for Nuclear Safety ruled in its resolution of 2/ 2/ 2017, ref. SÚJB/OSKŘaE/2243/2017, that the complainant is not a party to the administrative proceedings for the granting of a permit to operate a nuclear facility and also not a party to the administrative proceedings for the approval of documentation for the licensed activity. Subsequently, the chairperson of the State Office for Nuclear Safety rejected the complainant's appeal by its decision of 25/ 4/ 2017, ref. SÚJB/PrO/7610/2017.

4. The complainant then turned to the administrative courts. However, the Municipal Court in Prague rejected the action against the administrative decision through the decision specified in the title. It referred to the previous case law of the Supreme Administrative Court (the judgment of 9/ 10/ 2007, ref. 2 As 13/2006-100), stating that the subject of the present case is the extension of the validity of an operating permit for an existing facility. Within the meaning of the case law and valid legislation, it cannot therefore constitute an intervention in which the interests of nature and landscape protection could be affected within the meaning of Section 70 of the Act on Nature and Landscape Protection, respectively that such interests will be considered in other proceedings. It noted that it is appropriate to distinguish between administrative proceedings for the extension of operation and proceedings for the expansion or change of operations. According to the Municipal Court, the subject of the assessment in the given proceedings was only whether continued operation would be safe in the event of such extension, i.e. not whether it would represent a threat to the environment.

5. The Supreme Administrative Court reviewed the correctness of the conclusions of the Municipal Court in terms of the complainant's complaint. It considered the reasoning of the Municipal Court to be sufficient and factually correct. After reviewing the cassation complaint, the Supreme Administrative Court concluded that the cassation complaint was unfounded. It had previously addressed a similar legal and factual issue in its judgment of 19/ 5/ 2011, ref. 2 As 9/2011 - 154, while in the present case it found no reason to depart from its earlier conclusions. It therefore referred to previous case law, stating that putting a new nuclear facility into operation may naturally constitute an environmental impact and the public concerned may comment on it in appropriate proceedings (in particular in the EIA process or as part of the building permit proceedings). In addition, there is also a procedure under the Atomic Act in which the interests of the environment are not separately affected, and so it is consistent with national and international law that the only party is the applicant for the permit, as follows from the clear rule contained in Section 19(1), second sentence, of the Atomic Act. If, on the other hand, the facility is already in operation, then after a specified time it is necessary to check that the facility is still safe, yet the mere continuation of its existence does not affect nature and landscape protection in a way that would justify the need for the public to have the right to directly participate in the proceedings in the manner provided for in Section 70 of the Act on Nature and Landscape Protection. The Cassation Court concluded that, pursuant to Section 24(3) of the Atomic Act, the sole party to the procedure to extend the operating license for the nuclear facility was the applicant, ČEZ a.s. The complainant's right to participation cannot be inferred from either the Aarhus Convention or the Act on Nature and Landscape Protection.

6. In its constitutional complaint, the complainant raised the same objections it raised in the proceedings before the administrative courts, as it believes that the administrative courts had

not addressed its arguments at all, or at least not sufficiently. In the present case, it was appropriate to apply the Aarhus Convention directly, since there is only a single procedure for the renewal of a license to operate a nuclear facility (within the meaning of the cited judgment of 19/ 5/ 2011, ref. 2 As 9/2011-154). The complainant does not consider the settlement using previous case law by the Municipal and Cassation Court to be factually correct. The essence of the complainant's complaint is that ensuring safe operation is also essential from the perspective of the interest in nature and landscape protection. Without the participation of the public concerned, it is not possible to verify that the nuclear facility is in fact operated in the same and safe manner over a long period of time. The impacts of failing to ensure the safe use of nuclear facilities can be observed in Fukushima and Chernobyl. By their nature, nuclear facilities are only intended to operate for a limited time, which is why a permit is only granted for a certain period of time. The impact of a nuclear power plant on nature and the landscape is not constant, meaning that it may improve or worsen over time. It is precisely thanks to the participation of the public concerned that the issues in question can be properly assessed, since the renewal of an operating permit must not be a mere formal act, as the general courts suggest.

7. The Constitutional Court has jurisdiction to hear a constitutional complaint and it is also an admissible petition as it is directed against decisions of the Supreme Administrative Court and the Municipal Court. The constitutional complaint was filed in a timely manner, has no procedural defect, and was filed by an authorized person duly represented.

8. According to Section 43(2)(a) of Act No 182/1993, on the Constitutional Court, as amended (hereinafter the "Act on the Constitutional Court"), the senate shall reject a petition by a preliminary ruling without holding an oral hearing and without the parties being present if the petition is manifestly unfounded.

9. Pursuant to Section 43(3) of the Act on the Constitutional Court, a preliminary ruling dismissing a petition must be in writing and brief reasoning is to be provided for dismissal, and it must include the notice that an appeal against it is not permissible.

10. First of all, the Constitutional Court emphasizes that, according to Article 83 of the Constitution of the Czech Republic, the Constitutional Court is a judicial body charged with protection of constitutional rule, so it is not part of the system of general courts and is not called upon to review their decisions. If a constitutional complaint is directed against a court decision issued in court proceedings, an objection regarding its factual inaccuracy is not in and of itself significant. The jurisdiction of the Constitutional Court is based exclusively on reviewing decisions from the perspective of compliance with constitutional principles, meaning whether the rights or freedoms of a party to the proceedings were violated in the proceedings or in the final decision, whether the proceedings were conducted in accordance with constitutional principles, and whether they can be considered fair as a whole.

11. In other words, the Constitutional Court assesses contested decisions using the criterion of constitutional order and the fundamental rights and freedoms it guarantees. It is therefore not its job to pedantically examine a case from the perspective of sub-constitutional law. The Constitutional Court is not primarily called upon to interpret legal regulations in public administration, but *ex constitutione* to protect the rights and freedoms guaranteed by the constitutional order. On the other hand, the Supreme Administrative Court is the body

responsible for the interpretation of constitutional law in public administration and the unity of decision-making by administrative courts, using the mechanism provided for in Section 12 of Act No 150/2002, the Code of Administrative Justice. During the exercise of this power by the Supreme Administrative Court, even this public authority is naturally obliged to interpret and apply individual provisions of constitutional law, primarily from the point of view of the purpose and meaning of protection of constitutionally guaranteed fundamental rights and freedoms [cf. finding ref. II. ÚS 369/01 of 18/ 12/ 2002 (N 156/28 SbNU 401)]. In the context of its existing case law, the Constitutional Court considers it is entitled to interpret sub-constitutional law in public administration only if the application of sub-constitutional law in a particular case by the Supreme Administrative Court was the result of an interpretation that significantly deviated from the safeguards guaranteed in chapter five of the Charter, and could therefore be qualified as an application of law resulting in a violation of fundamental rights and freedoms [cf. finding ref. III. ÚS 173/02 of 10/ 10/ 2002 (N 127/28 SbNU 95), finding ref. IV. ÚS 239/03 of 6/ 11/ 2003 (N 129/31 SbNU 159) and others]. However, the Constitutional Court did not reach such a conclusion in the complainant's case.

12. The content of the complainant's constitutional complaint is only an argument with the conclusions of the administrative courts and a repetition of the objections already raised in previous proceedings. However, this argument is made at the level of sub-constitutional law, and the complainant incorrectly assumes that on its basis the Constitutional Court will subject the contested decisions to a routine "instance" review. In the context of the criteria of constitutional review explained above, it should be noted that this is not the role of the Constitutional Court [see, for example, the judgment of 26/ 5/ 2014 ref. I. ÚS 2482/13 (N 105/73 SbNU 683), finding of 25/ 9/ 2014 ref. I. ÚS 3216/13 (N 176/74 SbNU 529) or the resolution of 15/ 3/ 2016 ref. I. ÚS 247/16]. The answers to the questions raised (relating to the filed cassation complaint) were however reliably clarified by the Supreme Administrative Court to the complainant.

13. The complainant objected to the inadequate settlement of the objections, especially in the case of the judgment of the Court of Cassation. However, the Constitutional Court considers that it addressed them in a constitutionally compliant manner and duly substantiated its conclusion in a proper, logical and comprehensible manner. The scope of the grounds for the judgment by the Court of Cassation did not deviate from the limits of the right to a fair hearing. In this regard, it can be stated that the scope of the court's response to specific objections by parties is always linked, in terms of the breadth of the reasoning, to the question of degree. It is usually therefore sufficient - if at least the basic objections of a party to the proceedings are settled, potentially under reasonable conditions in view of the context - that implicit answers can also be accepted, which the case law of the Constitutional Court admits [see e.g. resolution ref. II. ÚS 2774/09 of 18/ 11/ 2011 (paragraph 4), resolution ref. II. ÚS 609/10 of 11/ 3/ 2010 (paragraph 5), resolution ref. II. ÚS 515/09 of 7/ 5/ 2009 (paragraph 6)].

14. The fact that the complainant does not agree with a court's legal assessment alone does not make a constitutional complaint justified. Failure in litigation cannot in itself be considered a violation of constitutionally guaranteed rights and freedoms [e.g. resolution ref. III. ÚS 44/94 of 27/ 10/ 1994 (U 18/2 SbNU 241)].

15. The administrative courts correctly applied the judicial conclusions resulting from the judgment of the Supreme Administrative Court of 19/ 5/ 2011, ref. 2 As 9/2011-154, No 2399/2011 SAC, to the present case. According to this decision, the only party to the procedure

for a permit to operate a nuclear facility pursuant to Section 9(1)(d) of the Atomic Act is the applicant (in this case ČEZ, a. s.). This also applies to proceedings for a permit to operate a facility that is already operated based on a previous permit, for which the time-limited validity is to expire. Although such proceedings are not followed by any other proceedings in which the public concerned could assert its interests, this is not contrary to the Aarhus Convention or Section 70 of the Act on Nature and Landscape Protection, as repeat permits to operate an already operated facility do not affect nature and landscape protection in a way that would give the public the right to participate directly in the proceedings. These conclusions appear rational to the Constitutional Court and it found no reason to interfere in them.

16. In addition, the Constitutional Court also noted that the setting of a permit for a certain period of time is intended to ensure the regular assessment of whether the current requirements of the parties to atomic legislation are being met. It can be plausibly argued that if there were changes with an impact on nature and landscape protection, they would be caused by a change to the nuclear facility, which is addressed, for example, through proceedings on a change in the use of a structure under Section 127 of the Building Act, and possibly also through a change to the zoning decision. The subject of the administrative proceedings for a permit to operate a nuclear facility and for the approval of documentation is then an assessment of whether the applicant is able to meet the requirements of atomic legislation for the operation of a nuclear facility (Section 207(1) of the Atomic Act). A link to nature and landscape protection, as defined in Section 2 of the Act on Nature and Landscape Protection (and as it establishes the legitimacy of associations in proceedings under other laws), is not directly established in these proceedings. In the case of a nuclear facility and its operation, these interests are assessed in other proceedings, such as the zoning procedure, the building permit procedure, and the EIA process. Associations focusing on nature and landscape protection are also permitted to participate in them.

17. In view of the above, the Constitutional Court concluded that the decisions of the Supreme Administrative Court and the Municipal Court contested through the constitutional complaint did not violate the complainant's constitutionally guaranteed rights guaranteed by Articles 36 and 38 of the Charter, Article 90 of the Constitution, and Article 6 of the European Convention on Human Rights.

18. The Constitutional Court rejected the constitutional complaint against the contested decisions pursuant to Section 43(2)(a) of the Act on the Constitutional Court as a manifestly unfounded petition.

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

In Brno, 08 September 2020

Kateřina Šimáčková m.p.
chairperson of the senate

Responsible for correctness:
Jana Drdlová

Mgr. Jana Drdlová Digitally signed by Mgr. Jana Drdlová Date: 2020.09.11 11:32:48 +02'00'