



3rd Congress of the World Conference on Constitutional Justice
'Constitutional Justice and Social Integration'
28 September – 1 October 2014
Seoul, Republic of Korea

Questionnaire by
the Czech Constitutional Court

A. Court description

The Court has already provided a description for the CODICES database.

B. Social integration

1. Challenges of social integration in a globalised world

1.1 What challenges has your Court encountered in the past, for example in the field of asylum law, taxation law or social security law?

The Constitutional Court of the Czech Republic (hereinafter “the Court”) has so far encountered basically no issues of social conflict or integration in the field of **asylum** or **taxation law** as the majority of cases heard by it concerned mainly extradition proceedings (in asylum law cases) or tax control and extinction of the tax assessment right (in taxation law cases). Certain challenges of social integration might be found in the field of **execution law**; nevertheless, even in such cases the Court has dealt mostly with the issues of procedural nature, for instance with the commissions of executors, reimbursement of the costs of execution and the discontinuance of the proceedings.

Quite different is the situation in the field of **social security law** where social conflict related issues have risen in several spheres. Typically, **equality of men and women** represents one of these potential cleavages. In this context, the Court has dealt with the question of different retirement ages for men and women – whereas the retirement age of women was basically dependent on the number of children taken care of, the retirement age of men was set differently, irrespective of the number of children they had raised (this rule applied even to the sole fathers). The Court didn't find the contested measure disproportionate and thus unconstitutional as in its view there were objective and reasonable grounds for the preferential approach towards mothers. See in this context Court decision no. II. ÚS 2365/08 of 30 October 2008 and the follow-up judgment of the European Court of Human Right in case *Andrle v. the Czech Republic* of 17 February 2011, application no. 6268/08, available in the HUDOC database or Court judgment of 16 October 2007 case no. Pl. ÚS 53/04, CODICES database no. CZE-2007-3-013.

Another potential cleavage can be seen in respect of the **system of old age pensions**. In judgment of 23 March 2010 case no. Pl. ÚS 8/07 (available in English on the website of the Court under the following link: http://www.usoud.cz/en/decisions/?tx_ttnews%5Btt_news%5D=460&cHash=e25394dd3b7a147e5e9e1ed98b62a490), the Court dealt with the amount of the old age pension on one hand and the income level and pension insurance contribution of perspective pensioners on the other hand. In the Court's view, the disputed legislative measure interfered with the right to adequate material security in old age and was in breach of the prohibition of

discrimination. The Court has also repeatedly dealt with a highly specific issue of the so-called Czechoslovak pensions, i. e. old age pensions of Czech nationals who – during the existence of Czechoslovakia – had worked on Slovak territory and thus receive Slovak pensions whose amount is lower than the one paid under the Czech system of old age pensions. In the judgment of 31 January 2012 case no. Pl. ÚS 5/12, CODICES database no. CZE-2012-1-002), the Court held that Czech nationals could not fall victims to dissolution of the Czechoslovak federation and could not obtain pensions in the amount which is substantially lower than the ones paid to nationals who – during the existence of Czechoslovakia – had worked solely on the Czech territory, as such system interferes with the right to adequate material security in old age and violates the principle of non-discrimination.

Lastly, the Court has recently dealt with the issue of **forced labour or service** of job seekers – in case no. Pl. ÚS 1/12 of 27 November 2012, CODICES database no. CZE-2012-3-012) the Court entertained the application of a group of deputies of the Parliament regarding, *inter alia*, the amendment to the Act no. 435/2005 Coll., on Employment. Its contested provision of § 30 par. 2 let. d) enabled the regional branch of the Labour Office to strike out a jobseeker who had been listed in the register of job seekers for more than 2 consecutive months and who refused to perform unpaid public service of up to 20 hours a week without serious reason from the register of job seekers, as a result of which the respective job seeker was not entitled to any monetary support in unemployment. The Court held that the acceptance of the offer to perform public service in order to obtain monetary support in unemployment (which is a social right granted to citizens under Art. 26 par. 3 of the Charter of Fundamental Rights and Freedoms) represents a disproportionate burden for the affected job seeker and also borders on prohibited forced labour or service within the meaning of Art. 9 par. 1 of the Charter and Art. 4 par. 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

1.2 How were issues of social integration or conflict transformed into legal issues?

As an introductory remark, it is appropriate to mention that the population of the Czech Republic is very homogenous (the country's Gini index is one of the lowest ones in the world) and therefore typical examples of social conflict occur very rarely, if ever. A similar statement can be made in respect to social integration, even though several issues arose in the past in this field. One of such issues is **segregation of Roma population in terms of education**. In case no. I. ÚS 297/99, decision of 20 October 1999, the Court dealt with a constitutional complaint of number of pupils of special primary schools (for pupils with learning disorders and/or mental retardation) who had allegedly been denied access to ordinary primary schools both by having been transferred from ordinary primary schools to special primary schools without sufficient grounds and by lack of review of the need to keep attending the special primary school. The Court partly dismissed the complaint on procedural grounds and partly found it manifestly ill-founded due to lack of evidence of discriminatory conduct of the principals of the special primary schools in questions. However, the above-mentioned case resulted in the judgment of the Grand Chamber of the European Court of Human Rights in case of *D. H. and others v. the Czech Republic* (application no. 57325/00, judgment of 13 November 2007, available in the HUDOC database) in which violation of the principle of non-discrimination in conjunction with the right to education was declared by the European Court of Human Rights.

In a recent decision of 18 March 2014 case no. II. ÚS 365/14, the Court has tackled **right to education of disabled or mentally handicapped pupils and students**. The applicant was a mentally handicapped primary school pupil who alleged breach of his right to education as the school authority refused to pay a full-time special assistant for him (the relevant Regional School Authority funded a part-time assistant). The Court didn't find violation of the right to education (guaranteed by Art. 33 of the Charter of Fundamental Rights and Freedoms) as

this social right is guaranteed within conditions stipulated by statutes and the Education Act enables (not orders) school authorities to establish the office of assistant to pupils and students with special educational needs. Similarly, in the Court's view there was no breach of the principle of non-discrimination.

Naturally, it is very difficult to draw any conclusions from the few cases mentioned above, but it can be said that **inclusive education** represents an issue of social integration which was and still is being transformed into a legal issue.

1.3 Is there a trend towards an increase in cases on legal issues relating to social integration? If so, what were the dominant questions before your Court in the past and what are they at present?

It follows from the above-mentioned that this question must be answered rather in the negative or – more precisely to say – that the Court is not the principal body to entertain legal issues relating to social integration. A major group of such cases is dealt with by the Office of the Public Defender of Rights (the Ombudsman) or by various NGOs which also prompt strategic litigation.

2. International standards for social integration

2.1 What are the international influences on the Constitution regarding issues of social integration/social issues?

Under the Constitution, the Czech Republic shall observe its obligations resulting from international law. International treaties form a part of the Czech constitutional order. For these reasons the Constitutional Court is open to international influences, mainly to international treaties or decisions of international courts or the UN treaty bodies. It regularly refers to them and reflects these documents in its case-law. Most frequently the Court invokes the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

When it comes to issues of social integration, the Court has already referred to the International Covenant on Economic, Social and Cultural Rights and instruments of the International Labor Organization (e.g. the Court ruled for instance on the issue of forced labour or service of job seekers (case no. Pl. ÚS 1/12 of 27 November 2012, CODICES database no. CZE-2012-3-012 or case no. Pl. ÚS 34/02 of 5 February 2003, CODICES database no. CZE-2003-1-002) or the Convention on the Rights of Persons with Disabilities (case no. II. ÚS 365/14 of 18 March 2014 on the right to education of disabled or mentally handicapped pupils and students).

However, the strongest influence comes from European regional documents either adopted at the European Union level or the Council of Europe. These are either directly applicable or recognized as a part of the Czech constitutional order. In the context of social integration the Constitutional Court has referred to the European Social Charter (case no. Pl. ÚS 40/02 of 11 June 2003 on the collective agreement, CODICES database no. CZE-2003-2-009) or to the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (case no. II. ÚS 365/14 of 18 March 2014 on the right to education of disabled or mentally handicapped pupils and students). The Constitutional Court referred to the judgments of the European Court of Human Rights in more than 2500 instances.

2.2 Does your Court apply specific provisions on social integration that have an international source or background?

Yes, the Court applies provisions of international treaties, such as the European Social Charter or treaties of International Labor Organization. It may also refer to decisions of

international bodies or foreign courts that deal with issues of social integration. See question 2.1.

2.3. Does your Court directly apply international instruments in the field of social integration?

Yes, it does, see question 2.1.

2.4. Does your Court implicitly take account of international instruments or expressly refer to them in the application of constitutional law?

Yes, it does, see question 2.1.

2.5. Has your Court ever encountered conflicts between the standards applicable on the national and on the international level? If so, how were these conflicts solved?

The Court seeks to interpret domestic laws in accordance with international treaties which are understood as a part of the Czech constitutional order. That means that any domestic law may be annulled if it conflicts with international standards.

3. Constitutional instruments enhancing/dealing with/for social integration

3.1. What kind of constitutional law does your Court apply in cases of social integration – e.g. fundamental rights, principles of the Constitution (“social state”), “objective law”, *Staatszielbestimmungen*, ...?

In terms of applicable law, the Czech Constitutional Court does not draw any lines between different types of cases. In all of them, the Court is bound to apply the Constitution and Charter of Fundamental Rights and Freedoms (which form part of a broader concept of the constitutional order). The only sub-constitutional statute that the Court is bound by is the Constitutional Court Act. Nonetheless, the Court often applies the general constitutional principles such as the “social state”. These principles form an unwritten part of the Czech Constitution and they serve as important interpretational principles in reviewing constitutionality of statutes and interferences with constitutionally guaranteed rights and freedoms. In addition, it is noteworthy that Justices of the Court are under oath to protect the inviolability of natural human rights. For that reason, even so-called natural law has an important role in constitutional protection provided by the Court. All these sources of constitutional law may be applied in cases of social integration.

3.2. In cases where there is access of individuals to the Constitutional Court: to what extent can the various types of constitutional law provisions be invoked by individuals?

In case a constitutional appeal is filed, the applicant may actually rely only on constitutional provisions. The Czech Constitutional Court is a judicial body protecting constitutionality and therefore it is principally not its role to interpret and apply sub-constitutional law. In theory, a constitutional appeal which would rely solely on interpretation and application of sub-constitutional law would be rejected as manifestly ill-founded. Constitutional appeals must have constitutional relevance in order for the Court to decide on their merits.

However, there are certain limits. For instance, several social rights may only be enjoyed by the citizens of the Czech Republic (e. g. right to adequate level of material security, right to free medical care on the basis of public health insurance etc.). On the other hand, Article 14 (5) of the Charter (right to be expelled only in cases specified by the law) provides protection only to aliens. The underlying principle is that aliens enjoy the human rights and fundamental

freedoms guaranteed by the Charter, unless such rights and freedoms are expressly extended to citizens alone (see Art. 42 (2) of the Charter).

Corporations may also lodge a constitutional appeal but they may only rely on rights and freedoms whose nature allows for protection of corporations (notably the right to protection of property, right to a fair trial etc.). Naturally, rights and freedoms which do not allow for protection of legal entities (e.g. right to life, prohibition of torture etc.) cannot be relied on by them.

3.3. Does your Court have direct competence to deal with social groups in conflict (possibly mediated by individuals as claimants/applicants)?

The Court may deal with these issues in two main sets of proceedings. First, it may occur that an individual files a constitutional appeal which concerns a conflict between different social groups. Second, the same may happen if those who have standing (notably the President of the Republic and members of the Parliament) request the Court to annul legislation which is related to social groups in conflict.

But in both occasions, an interesting issue arises concerning justiciability of social rights. These rights will ordinarily be at the center of a social conflict. As in other European constitutions, certain social rights may be claimed only in the extent defined by sub-constitutional legislation. This very extent is traditionally regarded as a political question which the parliamentary majorities at relevant times ought to decide on, not the courts. But the Court held in case no. Pl. ÚS 2/08 of 23 April 2008 on the social security that even social rights cannot be “emptied” by an ordinary statute which cannot deny the very existence of such a right, available on: http://www.usoud.cz/en/decisions/?tx_ttnews%5Btt_news%5D=488&cHash=f1a49b3af9a48356e646118193999e45.

. In addition, it must be borne in mind that an achieved standard of fundamental rights' protection should not be reduced, unless it is unavoidably necessary.

3.4. How does your Court settle social conflicts, when such cases are brought before it (e.g. by annulling legal provisions or by not applying them when they contradict the principle of equality and non-discrimination)?

The Court has two options depending on the kind of proceedings before it. In cases of review of legislation which is related to social conflicts, it may decide to annul the respective legal provisions if they are found unconstitutional (i.e. even if they contradict the principle of equality and non-discrimination). In the Czech Republic, the constitutional judiciary is a specialized and concentrated one. For that reason, the Court is the only body with a power to declare certain legislation unconstitutional. The review may be either abstract in case it is initiated upon a motion by the President of the Republic or the MPs (see above). Or it may be concrete, in case an ordinary court comes to the conclusion that a statute, which should be applied in a particular case, is unconstitutional. If it does, then the ordinary court has a duty to initiate proceedings before the Court in order for it to hold whether the statute truly is/is not unconstitutional. Unlike the diffuse judicial review typical for common law systems, ordinary courts do not have the option of simply not applying the statute deemed unconstitutional. They may do so only with respect to sub-statutory (implementing) regulations, such as ordinances and decrees. That is generally the first possibility of how the Court may deal with social conflicts in cases before it.

The second one is its adjudication on constitutional appeals. The constitutional appeal may be lodged if the applicant claims that his constitutionally guaranteed rights were violated by a decision or a different kind of interference of the public power. Constitutional appeals are

usually filed against court decision(s). In case the contested court decision concerns a social conflict and the Court finds it unconstitutional, it may annul it and remit the case back to the inferior court which is bound by the reasoning of the Court.

3.5. Can your Court act preventively to avoid social conflict, e.g. by providing a specific interpretation, which has to be applied by all state bodies?

Under Article 83 of the Constitution, the Czech Constitutional Court is the judicial body responsible for the protection of constitutionality, which means that only the Court may provide the binding interpretation of the Constitution. Binding nature of the Court's case law has an explicit legal basis in Article 89 § 2 of the Constitution, which reads: "Enforceable decisions of the Constitutional Court are binding on all authorities and persons." Furthermore, the binding nature of those decisions stems from the rule of law principles such as legal certainty, equality before the law and the consequent requirement that similar cases have to be decided similarly (Article 1 § 1 of the Constitution).

Firstly, the decisions of the Court are binding on parties in a particular matter. However, decisions of the Court (especially in proceedings regarding constitutional review of norms and proceedings on constitutional appeals) have generally binding character (i.e. case no. IV. ÚS 301/05 of 13 November 2007 on the "Slovak pensions" and III. ÚS 252/04 of 25 January 2005 on the "Slovak pensions").

According to Article 54 of the Constitutional Court Act the Court shall decide the merits of the matter by a judgment and all other issues by a decision. The above mentioned conclusions about the general binding character of Constitutional Court decisions, however, only apply to judgments (rulings on merits) rather than decisions (rulings on admissibility), including those, which are rejected as manifestly ill-founded (i.e. case no. I. ÚS 643/06 and I. ÚS 670/05). It follows that only the enforceable judgments are found generally binding by the Court.

Not just a verdict of the judgment has binding nature but also *ratio decidendi* contained in its justification (*tragende Gründe*). The remaining part of the reasoning (*obiter dictum*) itself is not binding, but it is often a problem to distinguish these parts from each other.

3.6. Has your Court ever encountered difficulties in applying these tools?

The thesis about the general binding character of Constitutional Court case law was initially criticized both by doctrine and by ordinary courts. The criticism was directed especially against the very general binding character of judgments, or more precisely against the binding nature of *ratio decidendi* contained in the reasoning of the judgment, alleging that the only binding part of the judgment is the verdict and its justification may not be respected. It should be noted that this is a minority opinion.

Otherwise the case-law is respected when it comes to individual applications. Still, the ordinary courts may not always align their case-law in similar matters concerning different persons.

3.7. Are there limitations in the access to your Court (for example only by State powers), which prevent it from settling social conflicts?

The main limitation in the access to the Court is that according to Article 30 of the Constitutional Court Act a natural or a legal person who is a party or a secondary party to a proceeding before the Court must be represented by an attorney. This means that all individuals and private entities must be represented by an attorney in proceedings before the Constitutional Court. Public entities involved in such proceedings (not as applicants) may not

be represented in principle, but they can be represented if they find it necessary. On behalf of a state body or a government agency a person may act which is authorized to do so and on behalf of a court a president of the panel may act.

This obstacle becomes more important when it comes to a party that is indigent and cannot afford a lawyer. According to its settled practice, the Constitutional Court does not appoint a lawyer to indigent applicants (case no. III. ÚS 296/97).

In such cases, the Constitutional Court shall refer the unrepresented party to the Czech Bar Association, which may appoint a lawyer to a person not fulfilling requirements to have a lawyer appointed by court under special legislation to act in his or her case¹, and who is neither entitled to be provided with legal services under the Bar Act. The Bar may, in its decision, identify conditions for the provision of legal services, including the duty to provide services free of charge or for a reduced fee if the property and income situation of the applicant suggest so.

On the other hand proceedings before the Court are not subjected to any court fees under the Constitutional Court Act. The general rule is that the costs of a proceeding arising from the taking of evidence before the Court and the costs of interpreting shall be charged to the budget of the Court and parties bear legal costs they had incurred for a proceeding before the Court. In justifiable cases according to the results of the proceeding, the Court may by decision impose upon a party or a secondary party the obligation to pay, in whole or in part, the legal costs incurred by another party or a secondary party in the course of a proceeding. Awarding the reimbursement of costs, is an exception to the above mentioned rule, that parties bear their own costs themselves, the reimbursement of costs is rather a procedural penalty that is imposed to a party for abuse of its right to file a submission to the Constitutional Court.

There is another exception to the above mentioned rule pursuant to Article 83 of the Constitutional Court Act connected to applicant. If the personal situation or financial means of the applicant justify such an approach, especially if she has insufficient financial means to pay the costs connected with his or her representation, and if the constitutional appeal was not rejected, then on the basis of the applicant's motion submitted prior to the first oral hearing, the Rapporteur shall rule that the applicant's attorney's fees shall be paid by the state, in whole or in part.

4. The role of constitutional justice in social integration

4.1. Does your Constitution enable your Court to act effectively in settling or avoiding social conflict?

The Constitution provides for two main sets of proceedings before the Court which can be regarded as effective also in relation to cases of social conflict (for details see parts 3.3. and 3.4. above).

4.2. Does your Court *de facto* act as „social mediator“, or/and has such a role been attributed to it?

It cannot be said that the Court is seen in the Czech Republic as a „social mediator“ as there are other bodies which are in this respect better placed such as especially the Office of the Public Defender of Rights (similarly see part 1.3. above).

¹ Article 33§ 2 of Act no. 141/1961 Coll., Criminal Procedure Code; Article 30 of Act no. 99/1963 Coll., Civil Procedure Code; Article 35 § 8 of Act no. 150/2002 Coll., Code of Administrative Justice.

4.3. Have there been cases, when social actors, political parties could not find any agreement, they would „send“ the issue to your Court which had to find a „legal“ solution, which normally should have been found in the political arena?

Generally, it is not unusual that a disagreeing part of the political spectrum resorts to the Court after it has been outvoted in the Parliament on a specific issue, thus making it *de facto* the third Chamber of Parliament. Therefore there have been several cases when a parliamentary minority (i.e. a group of deputies or senators) filed a motion to the Court requesting it to annul the respective legal act or its provision(s) which they regarded as unconstitutional. Often, the Court has granted such a motion. However, it has repeatedly emphasized that it is not competent to decide on political questions.

Nevertheless the Court has rarely been asked to deal with applications concerning social integration. Recently, the Court ruled for instance on the issue of forced labour or service of job seekers (case no. Pl. ÚS 1/12 of 27 November 2012, CODICES database no. CZE-2012-3-012), a motion filed by a group of deputies (for details see part 1.1. above). Another example concerns the stabilization of public budget, rulings issued by the Court in proceedings initiated by several groups of deputies and senators. Namely, cases no. Pl. ÚS 24/7 of 31 January 2008 (part relating to taxes), available in English on the website of the Court under the following link:

http://www.usoud.cz/en/decisions/?tx_ttnews%5Btt_news%5D=492&cHash=85cce4b048daa94484513d554382c042, no. Pl. ÚS 1/08 of 20 May 2008 (medical care), available on: http://www.usoud.cz/en/decisions/?tx_ttnews%5Btt_news%5D=486&cHash=5f71b939f66bb64b10b5e57efa3d343f and no. Pl. ÚS 2/08 of 23 April 2008 (social security), available on: http://www.usoud.cz/en/decisions/?tx_ttnews%5Btt_news%5D=488&cHash=f1a49b3af9a48356e646118193999e45. However, so far the Court has not dealt with any core issue relating to social integration which would arise upon a motion of a group of members of Parliament.