

Decision of the Czech Constitutional Court – US 19/93 ‘Lawlessness’

In the beginning of the ninety's, forty-one Deputies of the Parliament of the Czech Republic submitted a petition seeking the annulment of Act No. 198/1993 Coll., regarding the 'Lawlessness of the Communist Regime and Resistance to It' on the ground of its inconsistency with the Constitution, the Charter, Act of the Czech National Council No. 4/1993 Coll., on Measures connected with the Dissolution of the Czech and Slovak Federal Republic, and certain international treaties. The petition was rejected.

The Constitutional Court *classified* the raised *objections* into three groups:

1. Objections to Art. 1-4 of Act No. 198/1993 Coll. on the Illegality of the Communist Regime and Resistance Against It.

In *Arts. 1-4 of Act No. 198/1993 Coll.*, elements of the communist regime and methods which it used are defined, particularly the fact that it denied citizens any possibility whatsoever of free expression of political will and forced them to publicly state their agreement with what they considered a lie or a crime (Art. 1(1)), and the Act provides which persons are jointly answerable for this regime (Art. 1(2)); the Act also provides that the regime founded on communist ideology in the period from 25th February 1948 to 17th November 1989 was criminal, illegitimate, and is contemptible (Art. 2(1)) and the Communist Party of Czechoslovakia was a criminal and contemptible organization (Art 2 (2)); citizens' resistance against this regime was legitimate, just, morally justified, and deserves respect (Art. 3); everyone who was unjustly punished and persecuted by the communist regime deserves participation and moral satisfaction (Art 4).

2. Objections to Art. 5 of Act No. 198/1993 Coll. on the Illegality of the Communist Regime and Resistance Against It.

Art. 5 of Act No. 198/1993 Coll. provides that the statute of limitations period for crimes shall not include the period from 25th February 1948 to 25th December 1989 if a legally effective conviction or acquittal from an accusation did not take place due to political reasons incompatible with the basic elements of the legal order of a democratic state.

3. Objections to Arts. 6 and 8 of Act No. 198/1993 Coll. on the Illegality of the Communist Regime and Resistance Against It.

Art. 6 of Act No. 198/1993 Coll. provides that, in response to a motion, a court shall cancel or reduce a sentence imposed for a crime which is not subject to rehabilitation under Act No. 119/ 1990 Coll, on Judicial Rehabilitation, if it is proved during the proceedings that the conduct of the convicted person was aimed at protecting fundamental human and civil rights and freedoms by means that are not clearly disproportionate.

Art. 8 of Act No. 198/1993 Coll. provides that the government is authorized to, by decree, correct certain crimes committed against opponents of the communist regime and against persons who were affected by its persecution in the social, health, and financial areas.

The Decision No. 11/1992 of the Constitutional Court

The new democratically elected governing coalition *introduced retroactive legislation into the Parliament* in 1991. The effect of this legislation was to amend the Criminal Code to revive the period of statutory limitation during which offences occurring in the massacres and after could be prosecuted. The *new limitation period* would run from 2nd May 1990 and would apply to offences of treason, manslaughter and infliction of bodily harm resulting in death committed in the period from 21st December 1944 to the date of the legislation.

The *President* of the Hungarian Republic, Árpád Göncz, did not, however, promulgate the law. Instead he referred it to the Constitutional Court. In his petition, the President *asked* a number of *questions*:

- Was the recommencement of the statute of limitations consistent with Art. 2 (1) of the Constitution, from which the rule of law is enshrined, and the legal certainty in the Hungarian Constitution? So, did the legislation offend the rule of law by undermining the requirement of legal certainty?
- Did the legislation contravene the legal doctrine that no person should be charged with an offence unless it is defined in law? The violation of the doctrine: *nullum crimen sine lege*. Reason: the statute of limitation for acts criminalized by the Act might have already expired according to the Criminal Code in force at the time the acts were committed.
- Did the overly general provisions and vague concepts violate the principle of legal certainty?

How would the Constitutional Court decide?

Decision of the Czech Constitutional Court – US 19/93 ‘Lawlessness’

In the beginning of the ninety's, forty-one Deputies of the Parliament of the Czech Republic submitted a petition seeking the annulment of Act No. 198/1993 Coll., regarding the 'Lawlessness of the Communist Regime and Resistance to It' on the ground of its inconsistency with the Constitution, the Charter, Act of the Czech National Council No. 4/1993 Coll., on Measures connected with the Dissolution of the Czech and Slovak Federal Republic, and certain international treaties.

1. Objections to Art. 1-4 of Act No. 198/1993 Coll. on the Illegality of the Communist Regime and Resistance Against It.

In *Arts. 1-4 of Act No. 198/1993 Coll.*, elements of the communist regime and methods which it used are defined, particularly the fact that it denied citizens any possibility whatsoever of free expression of political will and forced them to publicly state their agreement with what they considered a lie or a crime (Art. 1(1)), and the Act provides which persons are jointly answerable for this regime (Art. 1(2)); the Act also provides that the regime founded on communist ideology in the period from 25th February 1948 to 17th November 1989 was criminal, illegitimate, and is contemptible (Art. 2(1)) and the Communist Party of Czechoslovakia was a criminal and contemptible organization (Art 2 (2)); citizens' resistance against this regime was legitimate, just, morally justified, and deserves respect (Art. 3); everyone who was unjustly punished and persecuted by the communist regime deserves participation and moral satisfaction (Art 4).

2. Objections to Art. 5 of Act No. 198/1993 Coll. on the Illegality of the Communist Regime and Resistance Against It.

Art. 5 of Act No. 198/1993 Coll. provides that the statute of limitations period for crimes shall not include the period from 25th February 1948 to 25th December 1989 if a legally effective conviction or acquittal from an accusation did not take place due to political reasons incompatible with the basic elements of the legal order of a democratic state.

How would the Constitutional Court decide?

The Decision No. 11/1992 of the Constitutional Court

The new democratically elected governing coalition *introduced retroactive legislation into the Parliament* in 1991. The effect of this legislation was to amend the Criminal Code to revive the period of statutory limitation during which offences occurring in the massacres and after could be prosecuted. The *new limitation period* would run from 2nd May 1990 and would apply to offences of treason, manslaughter and infliction of bodily harm resulting in death committed in the period from 21st December 1944 to the date of the legislation.

The *President* of the Hungarian Republic, Árpád Göncz, did not, however, promulgate the law. Instead he referred it to the Constitutional Court. In his petition, the President *asked* a number of *questions*:

- Was the recommencement of the statute of limitations consistent with Art. 2 (1) of the Constitution, from which the rule of law is enshrined, and the legal certainty in the Hungarian Constitution? So, did the legislation offend the rule of law by undermining the requirement of legal certainty?
- Did the legislation contravene the legal doctrine that no person should be charged with an offence unless it is defined in law? The violation of the doctrine: *nullum crimen sine lege*. Reason: the statute of limitation for acts criminalized by the Act might have already expired according to the Criminal Code in force at the time the acts were committed.
- Did the overly general provisions and vague concepts violate the principle of legal certainty?