

LEGITIMACY AND AUTHORITY OF THE CONSTITUTIONAL COURT AS KEY FACTORS IN IMPLEMENTING LANDMARK DECISIONS

Prepared by Ms. Kateřina ŠIMÁČKOVÁ, Judge of the Constitutional Court of the Czech Republic”

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In this paper about execution of decisions of Constitutional Courts, I would like to share the Czech Constitutional Court’s experience regarding this issue. I will also comment on how the Court itself can contribute to acceptance and adequate enforcement of its decisions.

I will first present several Czech Constitutional Court’s decisions in which particular laws that interfered with political competition and the life of political parties were declared unconstitutional. I will then describe the response of the Parliament, including the political parties concerned, to these decisions.

In a truly democratic state where trust between the authorities exists, decisions of the Constitutional Court are respected not only as to their interpretation but also by executing them efficiently. It matters whether the reasons why the Constitutional Court held a challenged statute unconstitutional are taken seriously so the decision can be implemented correctly into the law. Respecting these reasons when drafting new legislation ensures good execution of the Court’s decisions and is not only essential for protection of human rights, but also favors good governance and enhances the rule of law. Good implementation of decisions depends on the Court’s authority and respect for it demonstrated by other institutions and authorities, and also on the Court’s legitimacy and respect for it in society. The media also play a major role in building this respect. The more the society respects the Court, the more complicated it is for political actors to disregard its decisions.

Based on these observations, I claim that, besides quality decision-making supported by persuasive reasoning, the Court’s role is also to communicate, if necessary, directly with the public and convince people that the decisions of the Court are significant and right. This is particularly important in countries where political actors are not sufficiently respectful of the judiciary and there are not enough good journalists with legal training who could explain and endorse judicial decisions.

To support this idea, I will present three cases decided by the Czech Constitutional Court.

In the first case I chose, the Czech Constitutional Court annulled a part of the Act on Association in Political Parties and Political Movements regarding financing of political parties.¹ According to one of the challenged provisions, political parties would receive a financial contribution of 1.000.000 CZK per mandate of a deputy or a senator. The Court found this provision unconstitutional because it interfered with the free competition of political parties, disproportionately disadvantaged small political parties compared to the bigger political parties represented in the Parliament and prevented new political actors from entering the political competition. The legislator responded to the judgment by lowering the amount of the financial contribution to 900.000 CZK. Thus, the judgment was complied with, but the way it was done seemed, in a symbolic way, like “a slap in the face” for the Constitutional Court.

In another case, the Czech Constitutional Court annulled a constitutional act which shortened the term of office of the Chamber of Deputies to enable early elections.² The Court found a violation of the Constitution’s material core because the challenged act was unconstitutionally individual and retroactive. Politicians then even considered adopting a new constitutional act so they would not have to comply with the Court’s judgment. However, it was clear that the Court had a strong public support. The Court also actively communicated its decision in the media - for example, there were interviews with the judges, including the usually rather shy judge rapporteur, or a TV program about the background of the Court’s decision. Eventually, the politicians complied with the judgment because they understood that disrespecting it would reduce their popularity among the public.

Last but not least, the Czech Constitutional Court in a recent case annulled several provisions of the Act on Parliamentary Elections containing the election formula and electoral thresholds for coalitions.³ The Court held that read as a whole the law deviates too much from the proportionate electoral system required by the Constitution and violates voting equality. The judgment provoked some criticism from the political actors, especially because it was delivered quite shortly before the upcoming elections. The Court again actively explained the judgment to the public, but this time the dissenting judges were very confrontational which might have negatively affected the public opinion. Fortunately, everything ended well because politicians behaved constructively and managed to adopt a new law in time. Although the solution they eventually chose might not have been the best one, it was good enough to comply with the Court’s judgment.

Generally, when the Court reviews norms on elections or political parties financing, it is important that the Court protects the political competition and

¹ Judgment no. Pl. ÚS 53/2000, 27. 2. 2001 (N 36/21 SbNU 313; 98/2001 Sb.).

² Judgment no. Pl. ÚS 27/09, 10. 9. 2009 (N 199/54 SbNU 445; 318/2009 Sb.), available in English at <https://www.usoud.cz/en/decisions/2009-09-10-pl-us-27-09-constitutional-act-on-shortening-the-term-of-office-of-the-chamber-of-deputies>

³ Judgment no. Pl. ÚS 44/17, 2. 2. 2021 (49/2021 Sb.).

rights of political minority. The Court enters a terrain in great part occupied precisely by representatives of political parties that are directly subject to this legislation, which might be dangerous. But the Court has to do so, because otherwise there would be a risk that the parliamentary political parties could tailor the legal rules on elections and financing of political parties to best suit their interests.

To sum up, in a well-functioning democratic state with strong human rights and rule of law guarantees, the political actors naturally respect decisions and reasoning of the Constitutional Court. However, in states where this is problematic, the Constitutional Court must actively explain its decisions and seek support in the society. It is the public legitimacy and authority of the Court that forces political actors to implement and enforce the Court's landmark decisions, even if they affect interests of the currently ruling politicians and political parties.