

SVK-2011-2-002

a) Slovakia / b) [Constitutional Court](#) / c) Senate / d) 16-02-2010 / e) II. ÚS 348/09 / f) / g) *Zbierka nálezov a uznesení Ústavného súdu Slovenskej republiky* (Official Digest), 10/2010; www.concourt.sk / h) CODICES ([Slovak](#)).

Keywords of the Systematic Thesaurus:

[05.01.04.02](#) Fundamental Rights - General questions - Limits and restrictions - **General/special clause of limitation.**

[05.01.04.03](#) Fundamental Rights - General questions - Limits and restrictions - **Subsequent review of limitation.**

[05.03.28](#) Fundamental Rights - Civil and political rights - **Freedom of assembly.**

Keywords of the alphabetical index:

Chilling effect / Just satisfaction.

Headnotes:

A general court may not vitiate the (possible) legality of an assembly, which was originally banned by a local authority, by the fact that it does not review that ban in the three-day period required by the Law on Assembly.

If there is an assembly for a unique event and the notifier submits notification to the municipality in good time and the municipality also decides in time, then a decision of the regional court concerning the legality of the event after the event takes place has radically lower, almost hollow meaning. In itself, even a late decision may have some legal significance but it cannot fulfil the principle of the presumption of legality of an assembly.

Summary:

In 2009, the applicant as an organiser notified a local council in Bratislava of a public assembly there in support of human rights in China. The mayor of the municipality banned the holding of that assembly.

The applicant challenged this decision and sought judicial review at the regional (administrative) court in Bratislava on 15 June 2009. Two days later he asked for an interim measure to suspend the decision banning the assembly. The interim measure was rejected. The first hearing of the regional court was held on 25 June 2009. The regional court issued its decision at its second hearing held on 14 July 2009 and quashed the decision of the municipality as breaching the law.

According to Section 11.3 of the Law on Assembly, a regional court must decide on an appeal against the decision of a municipality within three days, but in this case the regional court decided after 29 days.

The applicant argued that the regional court had violated the right to peaceful assembly, the right to fair trial and the right to have his case tried without unreasonable delay, because it

decided on the legality of the assembly too late, after the event had taken place. If the regional court had decided in time, the purpose of the assembly would have been fulfilled.

The regional court argued that because it had to respect the constitutional principles of a public hearing, of proceedings without unreasonable delay and of reasoned, non-arbitrary decision-making, it could not decide within the three-day period as required by the Law on Assembly.

The Constitutional Court initially stressed the importance of freedom of assembly for the development of an open society, its links with the freedom of association and the freedom of expression.

The Constitutional Court stated that although the applicant finally took part in the assembly, the regional court had interfered with his right to assembly, because the principle of the presumption of legality of an assembly is implied in the freedom of assembly as such and the applicant took part in the assembly in a state of uncertainty as to its legality. Therefore the regional court had interfered with the freedom of assembly.

If there is uncertainty as to whether holding an assembly is legal, this could have a chilling effect on potential participants. In general, some people might be discouraged from participating in the assembly, for example because of safety reasons.

Interference must be lawful. Although the regional court claimed that procedural rights had to be fulfilled, the Constitutional Court stated that the three-day period must be respected. The Constitutional Court continued that in this case the classical argument of *lex specialis* and the constitutional argument overlap.

The Constitutional Court stated that, if there is an assembly for a unique event and the notifier submits notification to the municipality in good time and the municipality also decides in time, then a decision of the regional court concerning the legality of the event after the event takes place has radically lower, almost hollow meaning. In itself, even a late decision may have some legal significance, but it cannot fulfil the principle of the presumption of legality of an assembly.

Finally the Constitutional Court stated that because the regional court had not decided within the three-day period set in the Law, the interference with the freedom of assembly had not been lawful.

The Constitutional Court argued that the violation of the Law (i.e. unlawful interference with the freedom of assembly) caused by the regional court fell outside the usual limitation of limited freedoms. There is no room for balancing the procedural rights preferred by the regional court on the one side and the freedom of assembly on the other side, because this balancing was already carried out by the legislator in adopting the three-day period. Accordingly, the instant case did not concern the lawfulness of the interference under Article 28.2 of the Constitution, which permits interference with the freedom of assembly where the freedom has to be balanced against other rights and public interests; rather, the case concerned a direct interference with the freedom of assembly as guaranteed in Article 28.1 of the Constitution. Timely decision-making in this type of case is a direct component of substantive freedom, namely, the freedom of assembly.

The Constitutional Court added that the regional court must use all legal means to decide within the three-day period.

The Constitutional Court also remarked that many historical milestones in Slovak and Czechoslovak history have been closely related with the freedom of assembly. So from this point of view it is very important to protect the freedom of assembly. The Constitutional Court also referred to the Guidelines on Freedom of Peaceful Assembly issued by the Organisation for Security and Co-operation in Europe (OSCE).

The applicant claimed just satisfaction of one euro. Although the European Court of Human Rights usually rejects such a claim, arguing that the declaration of violation is enough, the Constitutional Court awarded this sum. According to the Constitutional Court this sum of symbolic nature represents the applicant's interest in the protection of human rights and should not be considered as a kind of disrespect toward the regional court.

Cross-references:

European Court of Human Rights:

- *Baczowski and others v. Poland*, Application no. 1543/06, Judgment of 03.05.2007;
- *Fortum corporation v. Finland*, Application no. 32559/96, Judgment of 15.07.2003, §§ 47-49;
- *Papastavrou and others v. Greece*, Application no. 46372/99, Judgment (Just satisfaction), 18.11.2004, §§ 18-20;
- *Katsoulis and others v. Greece*, Application no. 66742/01, Judgment (Just satisfaction), 24.11.2005, §§ 23-25.

Court of Justice of the European Union:

- C-112/00, *Eugen Schmidberger, Internationale Transporte und Planzüge v. Republic of Austria*, § 69.

Supreme Administrative Court of the Czech Republic: