

SVK-2009-2-001

a) Slovakia / b) [Constitutional Court](#) / c) Plenum / d) 11-02-2009 / e) PL. ÚS 6/08 / f) / g) *Zbierka nálezov a uznesení Ústavného súdu Slovenskej republiky* (Official Digest) / h) CODICES ([Slovak](#)).

Keywords of the Systematic Thesaurus:

- [02.01.01.04.04](#) Sources - Categories - Written rules - International instruments - **European Convention on Human Rights of 1950.**
- [02.01.03.02.01](#) Sources - Categories - Case-law - International case-law - **European Court of Human Rights.**
- [04.09.05](#) Institutions - Elections and instruments of direct democracy - **Eligibility.**
- [04.09.07.02](#) Institutions - Elections and instruments of direct democracy - Preliminary procedures - **Registration of parties and candidates.**
- [05.02.01.04](#) Fundamental Rights - Equality - Scope of application - **Elections.**
- [05.03.41.01](#) Fundamental Rights - Civil and political rights - Electoral rights - **Right to vote.**
- [05.03.41.02](#) Fundamental Rights - Civil and political rights - Electoral rights - **Right to stand for election.**

Keywords of the alphabetical index:

[Prisoner.](#)

Headnotes:

Election deposits to both the national and the European Parliament at the present level is constitutionally acceptable. Preventing those serving prison sentences from exercising the right to stand for election does not breach the Constitution. Preventing prisoners from exercising the right to vote in elections to both the national and the European Parliament is not in conformity with the Constitution, but preventing them from voting in elections to local and regional councils is constitutionally acceptable.

Summary:

The Prosecutor General filed a petition with the Constitutional Court challenging the duty of political parties to pay a sum of money (election deposit) as a necessary precondition to stand for election to the European Parliament or to the national Parliament. It was suggested in the petition that the system of deposit infringed the principle of equality, the right to stand for election and the right to vote. It was also argued that it hampered the principle of free competition of political parties.

The rationale behind the Prosecutor General's argument that the election deposit restricts the right to stand, the principle of equality and thus the right to vote was that only citizens supported by economically strong political parties could participate in political competition. This also affects the right to vote and violates the principle of equality because it prevents the electorate from voting for candidates not supported by rich parties. Lack of resources does not automatically mean lack of voters. The final election results themselves show how each

political party is represented, so every political party should have the possibility of being elected. The minimum vote clause (electoral threshold) is a sufficient measure to secure the integrity and functionality of both the national and the European Parliament. There is no need for an election deposit in this sense.

Under the Law on Elections the electoral threshold is 5% and if a political party gains at least 2% of the vote, the government repays the election deposit.

The Court found the election deposit to both the European and the national Parliament to be in conformity with the Constitution. The Court took the position that the principle of free competition is not absolute and the right to stand for election may be subject to legitimate restriction. The official explanation for the governmental bill stated as a reason for election deposits the bad experience with the previous system of candidacy based on verifying the number of members or supporters of non-parliamentary political parties. This aim of the election deposit (to eliminate the previous problems) was not considered as legitimate by the Court.

Nevertheless, election deposits have several other purposes. Contribution to election expenses is not legitimate, due to the public interest in democratic elections. Securing integrity and functionality was not fully accepted as a legitimate aim, because less intrusive means (such as a minimum vote clause) are available. The Court found that the main and fully acceptable legitimate aim for election deposits is to prevent political parties that are not serious contenders from participating in the elections. The deposit should serve as a motivating factor for political parties which genuinely wish for power and which have a real chance of success, as opposed to parties which merely wish to publicise themselves or undermine others. The Court also took into consideration the sum of money required as election deposit. Election deposit for the European Parliament is 1670 Euro, which the Court found completely acceptable. The deposit for the national Parliament is 16 600 Euro, which the Court considered to be almost too much, but still acceptable.

The Prosecutor General also challenged provisions preventing those serving prison sentences from exercising their right to vote or the right to stand for election to the European Parliament, national Parliament, or local and regional councils. He suggested that these provisions resemble the penal sanction of losing political rights, which is no longer part of the Slovakian legal order. He went on to observe that whilst service of a prison sentence may prevent a prisoner from carrying out public office, it should not prevent him or her from competing for such office or supporting a candidate for such office through voting. From the technical point of view, there are no obstacles to the exercise of the right to vote in prison. Ultimately laws adopted by Parliament are also binding on prisoners.

The Court decided that preventing prisoners from exercising the right to stand for any type of election conforms to the Constitution. This prevention is implicit in their restriction of personal liberty. For practical reasons prisoners cannot compete in electoral campaigns. Candidacy for and membership of Parliament cannot be practically exercised by prisoners. The Court also pointed out that under Article 81a.f of the Constitution, a prison sentence will result in a Member of Parliament losing his mandate. Thus it is a *minore* and *maius rationale* to prevent prisoners from exercising the right to stand for election.

The Court decided that preventing prisoners from voting in election to national and the European Parliament is not in conformity with the constitutional right to vote, with basic

electoral principles, the principle of a state governed by the rule of law and the principle of democracy. The Court noted that there is no legitimate aim for such restriction. The territory of the Slovak Republic is one constituency for the parliamentary elections. There are no obstacles to organising these elections in prison. Ultimately Parliament adopts laws which are binding on everyone under Slovakian jurisdiction including prisoners. The Court adopted a similar approach to elections to the European Parliament. It pointed out that the European Parliament has some effect on prisoners. The Court applied the European Court of Human Rights Decision *Hirst v. the United Kingdom* in this part of its reasoning.

The Court decided that denying prisoners the right to vote for both local and regional elections conforms to the Constitution, principally because while serving their sentences, prisoners are not part of their local community and local governments does not affect their lives in prison.

Supplementary information:

A dissenting opinion was expressed regarding the part of the decision relating to election deposits by Justice Mészáros. He stressed that post-totalitarian countries should be more careful when restricting political rights. This is the reason for Article 31 of the Constitution. Preventing political parties that are not «serious contenders» is not a legitimate aim. All registered parties fulfil the criteria for elections. Their level of success in Parliament should be a matter of popularity rather than sponsorship. Election deposits are not helpful to small and non-parliamentary parties. Although the European Court of Human Rights allows for election deposits, a margin of appreciation should have been applied in this case. Although some Eastern European Constitutional Courts have recently upheld election deposits [UKR-2002-1-002, EST-2002-2-006, EST-2003-2-001, ROM-2008-1-001], the dissenting judge concurred with the opposite stance of the Czech Constitutional Court in PL. ÚS 42/00 [[CZE-2001-1-001](#)].

Cross-references:

European Court of Human Rights:

- *Hirst v. the United Kingdom* (no. 2) [GC], no. 74025/01, 06.10.2005, *Reports of Judgments and Decisions* 2005-IX, *Bulletin* 2004/1 [[ECH-2004-1-003](#)].

Foreign case-law:

- *Bulletin* 2002/1 [[UKR-2002-1-002](#)];
- *Bulletin* 2002/2 [[EST-2002-2-006](#)];
- *Bulletin* 2003/2 [[EST-2003-2-001](#)];
- *Bulletin* 2008/1 [[ROM-2008-1-001](#)];
- *Bulletin* 2001/1 [[CZE-2001-1-001](#)].