

CASE BRIEF

Parties: Plaintiff JUDr. Petr Langer vs. defendant President of the Czech Republic

Facts: Plaintiff Petr Langer, a judicial candidate, wanted to become a judge after his field experience and had legitimate expectations that he would really become one. He was recommended and made his studies and work experience with perfect results and the Government of the Czech Republic nominated him and another 54 candidates. But President Václav Klaus didn't appoint him and another 33 ones because of law age. There was a restriction in the statute that judges must be over 30 but this restriction was enacted after Langer started his field experience as a judicial candidate and it shouldn't be held for him. President promised that he would appoint them next time but didn't do anything.

Legal issue: Petr Langer filed an action against the president in two issues:

- 1) Not being appointed to the bench – because of low age which means discrimination because of the age and breach of his legitimate expectations
- 2) Inactivity of the president for longer than usual time – president as a body of the executive power should act according to the law

The questions raised by the case are whether a president can choose the candidates regardless of the opinion of the Government and can change the terms of appointment of judges and whether it is possible if his decision making is so long even when its length is not established by law.

Procedural history: The plaintiff filed a lawsuit against the president to the court of first instance – district court in Prague. It was a lawsuit against his inactivity, his decision and unlawful interference. The court refused the lawsuit. The plaintiff filed a cassation complaint.

The highest administrative court remanded the case back to the lower court for further proceeding. The lower court ordered to the president a 6 month term to decide. The defendant filed a cassation complaint in which he said his right to a free holding office was breached

The plaintiff filed also a constitutional complaint but the Constitutional court refused to deal with this case when administrative courts handle it.

Reasoning of the court: The highest administrative court ruled that it should handle this case because the president is a body of executive power. He also should act according to law. But nobody can force him to decide in term which is not stated in the statute.

Appointment of judges is a constitutional custom and should be done according to the constitution and law and legal conditions that every candidate must discharge. The president cannot add, differ or reduce the conditions. The government contributes a significant role in this proceeding.

The president must sustain why he decided not to appoint the candidate and the reason must be acceptable. The discrimination of any reason is unacceptable. The age can sometimes not be taken as a discrimination (you can reach it but later) but it is not important for this case.

The court draw the decision that it can't make any decision instead of the president or even force him to decide but recommends him to do so as a moral roll call. President also has to decide if he appoints the candidate or not and if not he has to render the meaning why he decided so.

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