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Scope of parliamentary indemnity in relation to statements made by an MP on Facebook

Note: The abstract and legal sentences are not part of the Constitutional Court's decision; their meaning is merely annotative and informative. The abstracts of selected decisions are prepared by the Analytical Department of the Constitutional Court. The legal sentences are formulated by the Judge-Rapporteur or his office for decisions published in the Collection of Findings and Resolutions of the Constitutional Court.

ABSTRACT

Analytical legal theorem

The basic idea of parliamentary immunity is to provide elected representatives of the people with certain safeguards so that they can effectively carry out their democratic mandate without fear of being persecuted, harassed or otherwise challenged for their actions by the executive, the courts or political opponents. Speech is protected by indemnity within the meaning of Article 27(2) of the Constitution, regardless of its content, if it is in a permissible form, is made in one of the 'protected forums' (a meeting of the Chamber of Deputies or the Senate, their committees, subcommittees or commissions, including commissions of inquiry, or a joint meeting of the Chamber of Deputies and the Senate or these bodies) and is directly addressed to at least one participant in a parliamentary debate.

Application and proceedings before the Constitutional Court

By its ruling of 16 June 2015, the First Chamber of the Constitutional Court rejected the petition of the complainant Otto Chaloupka for the annulment of the Supreme Court's order No. 3 Tcu 33/2014-26 of 25 June 2014 in proceedings under Article 87(1)(d) of the Constitution.

Narrative part

The complainant is a former Member of Parliament. In June 2013, in response to an attack on a married couple in Duchcov by a group of Roma, he posted several texts on his Facebook profile responding to a statement by a representative of the Roma in Duchcov about the incident. On 4 March 2014, a criminal prosecution was initiated against the complainant for the offence of incitement to hatred against a group of persons or to restriction of their rights and freedoms, which the complainant was alleged to have committed by publishing those texts; subsequently, an indictment was filed with the District Court. The complainant applied to the Supreme Court for a decision on the exclusion from the jurisdiction of the law enforcement authorities under Article 10(2) of the Code of Criminal Procedure. By the impugned order, the Supreme Court held that the complainant was not exempted from the jurisdiction of the prosecuting authorities. According to the Supreme Court, none of the exceptions set out in Article 27 of the Constitution applied to the complainant; in particular, the complainant's texts posted on his Facebook profile could not be regarded as speech made in the Chamber of Deputies or the Senate or in their bodies, for which a Member of Parliament could not be prosecuted under Article 27(2) of the Constitution. The complainant claimed that the contested order infringed his freedom of expression and his parliamentary immunity.

Justification of the Constitutional Court's ruling

In reviewing the contested decision, the Constitutional Court focused on the immunity and indemnity of MPs and Senators, in particular the criminal law indemnity enshrined in Article 27(2) of the Constitution. In that connection, it stated that the basic idea of parliamentary immunity is to provide elected representatives of the people with certain guarantees so that they can effectively exercise their democratic mandate without fear of being persecuted, harassed or otherwise reprimanded for their actions by the executive, the courts or political opponents. Parliamentary immunity thus has two functions - firstly, it ensures that parliament is operational, and secondly, it guarantees that its members are able to express their views freely. However, it belongs to the parliament as a whole, not to its members, thus also contributing to the preservation of the separation of powers and the protection of parliamentary autonomy. Parliamentary immunity is an exception to the principle of equality before the law, which is one of the fundamental principles of the rule of law. It reflects the tension between the principle of a democratic state, manifested in the protection of free debate in parliament, and the rule of law. Neither of these principles can completely prevail, and therefore, according to the Constitutional Court, a reasonable balance must be struck between them.

The Constitutional Court also focused on answering the questions of what constitutes "speech" protected by Article 27(2) of the Constitution, which forums are protected, and whether only speech made in connection with the exercise of a mandate is protected. With regard to the concept of "speech", the Constitutional Court stated that it is the communication of information or the expression of an opinion in words, writing, pictures or any other manner, which includes expressive speech; in assessing whether an act or conduct is

Source: the NALUS database of Constitutional Court decisions

"speech" takes into account both the objective criterion (how the action is interpreted by the addressees) and the subjective criterion (the purpose or intention of the person acting).

With regard to the so-called protected forums within the meaning of Article 27(2) of the Constitution, according to the Constitutional Court, these are primarily committees and commissions of the Chamber of Deputies and the Senate, regardless of whether they are held at the seat of one of the chambers of Parliament or elsewhere (i.e., including, for example, retreat sessions), and only speeches made only during the proceedings of these bodies are protected under Article 27(2) of the Constitution. Furthermore, the so-called protected forums include the Chamber of Deputies or the Senate. At the same time, indemnity under Article 27(2) of the Constitution protects only forums where there is an open and free exchange of views between deputies or senators - Article 27(2) of the Constitution does not protect, for example, speeches made in backrooms, restaurants, election meetings, etc.

Finally, the Constitutional Court addressed the question of whether the indemnity protects only speech made in connection with the performance of a deputy's or senator's mandate, concluding that if a deputy's or senator's speech is directed exclusively outside Parliament, it is not protected by the indemnity under Article 27(2) of the Constitution, even if it was made during a meeting of the Chamber of Deputies or the Senate. It is also a condition for a speech by a deputy or senator to be protected that the person concerned participates in the formation of political will in parliament and that the speech is part of an autonomous system of parliamentary debate.

The Constitutional Court concluded that speech is protected by the indemnity within the meaning of Article 27(2) of the Constitution, regardless of its content, if it is in a permissible form, is made in one of the "protected forums" and is directly addressed to at least one participant in the parliamentary debate. In the present case, the complainant's speech fulfilled only the first condition and therefore did not fall within the scope of indemnity under Article 27(2) of the Constitution. The Supreme Court did not err in holding in the impugned order that the complainant was not covered by the exemption from the jurisdiction of the prosecuting authorities and the constitutional complaint was therefore dismissed.

Kateřina Šimáčková was the Judge-Rapporteur in the case. No judge dissented.

LEGAL MATTERS

Parliamentary immunity belongs to Parliament as a whole, not to its members. Thus, in the case of indemnity, it is primarily Parliament as a debating forum between MPs and Senators that is protected, and not the individual freedom of speech or the personal privileges of an individual MP or Senator. Therefore, in order for the indemnity of deputies and senators to be triggered within the meaning of Article 27(2) of the Constitution, the following conditions must be cumulatively met: 1. the communication of information or expression of opinion in words, writing, pictures or other means; 2. the speech must be made at a meeting of the Chamber of Deputies or the Senate, their committees, subcommittees or commissions, including commissions of inquiry, or at a joint meeting of the Chamber of Deputies and the Senate or these bodies; and 3. the speech made during the proceedings of the chamber or its bodies must not be directed exclusively externally, i.e. it must be directed towards other participants in the parliamentary debate in a broader sense, which are deputies, senators and other persons who have the right to participate in the proceedings of the chamber or its bodies (for example, the President of the Republic or an external expert who is a member of a committee of a chamber of the Parliament).