CZECH CENTRE FOR HUMAN RIGHTS AND DEMOCRACY

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Czech Republic Human Rights Review

Dear Readers,

The Czech Centre for Human Rights and Democracy is happy to present a new issue of the Czech Republic Human Rights Review.

In the opening piece, Laura Haiselová discusses the recodification of private law on limiting legal capacity of natural persons and presents the latest case-law of the Czech Constitutional Court.

In January 2018, the Czech Republic held the presidential elections. Lukáš Novák in his article discusses the alleged shortcomings in the process of registering candidates and the subsequent case-law of the Supreme Administrative Court and Constitutional Court.

Kristýna Šulková in her piece presents the judgment of the Municipal Court of Prague which ruled on the unlawfulness of the police intervention and its order to remove the flags of Tibet and Taiwan during the visit of the Chinese President to the Czech Republic.

Sometimes an unusual first name of a child can be a problem, at least according to the Registry Office. Barbora Antonovičová recalls the administrative saga concerning the registration of the name "Thymian" and discusses the subsequent judgment of the Constitutional Court.

Furthermore, in the article written by Barbora Antonovičová and Lucie Nechvátalová, you can learn about the case concerning the conditional release of a person sentenced to life imprisonment.

Finally, Aneta Frodlová analyses the judgement of the Constitutional Court concerning the vaccination obligation and participation rights of a child in a dispute between parents.

We wish you an enjoyable reading

Helena Bončková

Editor of the Czech Republic Human Rights Review

Content

When Courts Don't Want to Decide on Legal Capacity of Natural Persons

Laura Haiselová

Recodification of private law also brought significant changes in the approach to legal capacity of natural persons. Courts now have a duty to rule again on all natural persons whose legal capacity has been restricted under the earlier legislation. During this ruling process, an undesirable trend appeared among the courts, leading to several Constitutional Court rulings.

The Civil Code, effective from 1st January 2014, brought substantial changes in the area of ruling on limiting legal capacity. In the spirit of current knowledge of medicine, psychology, and in accordance with the development of human rights and emphasis on human dignity, the current Civil Code does not provide for the possibility of removal of legal capacity. The aim of the new regulation is to maximize the involvement of natural persons with limited legal capacity in the decision-making of their own affairs. This objective is helped by the new institutes, such as supportive measures or the obligation of the court to always see the person being limited in their legal capacity.

Despite this shift, the professional community is critical of its compliance with the Convention on the Rights of Persons with Disabilities. Under Article 12 thereof, persons with disabilities, on an equal basis with others, have legal capacity in all areas of life. According to some, even the limitation of legal capacity can be considered to be inconsistent with the international obligations of the Czech Republic. An essential requirement of the Civil Code is to review the situation of all persons whose capacity to perform legal acts (now legal capacity) was removed or limited under the older legislation. According to the Civil Code, this review should have taken place within three years of its effectiveness, i.e. by the end of 2016. This period was extended by the first amendment to the Civil Code by two years due to the high demands of this task.

A comprehensive review of the limitation of legal capacity affects 36,000 people and it has been underway since early 2014. The practice of 29 general courts in these reviews has many interesting

Signing of a contract [1]

aspects. During the reviews of the limitations of legal capacity, incorrect proceedings of general courts occurred in several very similar cases, which were ultimately dealt with by the Constitutional Court.

Regaining Legal Capacity after 35 years

The cases brought before the Constitutional Court had very similar developments. To illustrate this, one will be used. A court of first instance ruled on continuing to limit the legal capacity of a woman born in 1952, whose legal capacity was removed for 35 years. According to an expert report prepared for the purpose of the proceeding, this woman was affected by mental retardation on the border of light and medium-heavy zones. Moreover, according to the expert, the assessed woman rather kept losing her acquired skills and kept getting worse. The expert assessed the disorder of the assessed woman as congenital, permanent, unchangeable, and not influenceable by treatment. In fact, the woman spent her entire life in institutional care, unable to take care of her affairs and, according to the expert, she could cause serious harm to herself by acting independently.

The court of first instance, despite of the facts described by the expert opinion, granted the woman to be fully competent. This decision was appealed by the guardian of the assessed woman, i.e. the municipality. In this proceeding, the appellate court appointed a collision guardian to the assessed woman because, in its opinion, there was a conflict of

interests with the municipality as a public guardian. This collision guardian then withdrew the appeal against the ruling of the court of first instance. The assessed woman therefore remained fully legally competent and the appellate court did not deal with the ruling on the merits. The municipality filed a constitutional complaint against the resolution on the termination of the appeal proceedings.

Evaluation by the Constitutional Court

The Constitutional Court considered this appellate court procedure to be unconstitutional, specifically in violation of the right to fair proceedings. According to the Constitutional Court, the appellate court has denied justice in this case. According to the Constitutional Court, the entire course of the proceedings seemed to be a targeted effort to avoid meritorious hearing of the appeal.

In addition, the Constitutional Court noted on this occasion that it is not always possible to assume that the primary interest of the person concerned is always to limit legal capacity to the lowest extent possible. According to the Constitutional Court, the decision on limitation or non-limitation of legal capacity cannot be based on the fact that, under the conditions in which the assessed person lives at the time of ruling, there is virtually no threat of any harm to her even without the limitation of such person's legal capacity.

Therefore, it is also not possible to argue that the rights of a person could not be infringed upon unless the decision granting the person full legal capacity was properly examined. First of all, general courts are obliged to sensitively examine the circumstances of each particular case and proceed to such a limitation of legal capacity that is in the best interest of the person. Here, of course, the question arises as to whether any limitation of legal capacity may be in the interests of a person and whether it would not always be desirable to find other supporting measures.

Illustration image [2]

It will be interesting to observe further practice of general courts and the Constitutional Court when it comes to the limitation of legal capacity, i.e. its review under the Civil Code. The Constitutional Court can draw inspiration from the extensive case-law of the European Court of Human Rights, which has on many occasions expressed its negative view, in particular, on excessive limitation of legal capacity without proper evidence. The European Court of Human Rights uses the recommendation of the Committee of Ministers of the Council of Europe on "Principles Concerning the Legal Protection of Incapable Adults" as the interpretation guidelines for matters of legal capacity. This document emphasizes, inter alia, the importance of control and the possibility of appealing in matters of the limitation of legal capacity. It will also be interesting to see how the Constitutional Court will deal with the possible objection that the limitation of legal capacity under the Civil Code is in conflict with the Convention on the Rights of Persons with Disabilities.

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Translated by Helena Bončková

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[1] Signing of a contract, author: Edar, 29 September 2015, source: Pixabay, CC0, edits: photo cropped.

[2] Illustration image, author: StockSnap, 18 November 2016, source: Pixabay, CC0, edits: photo cropped.

[3] Persons with limited legal capacity need the support of their loved ones, author: PICNIC-Foto-Soest, 3 November 2017, source: Pixabay, CC0, edits: photo cropped.

Persons with limited legal capacity need the support of their loved ones [3]

Alleged Shortcomings in the Process of Registering Candidates for the Presidency of the Czech Republic

Lukáš Novák

Terezie Holovská questioned the registration of five candidates for the post of President of the Czech Republic. Following the rejection of the Supreme Administrative Court, she submitted her petition to cancel their registration to the Czech Constitutional Court (CCC), which also rejected her constitutional complaint on the grounds of insufficient locus standi.

After the entrepreneur and former vice-mayor of Prague 8, Terezie Holovská, failed to receive sufficient support of deputies so she could run for the presidency, she turned to the Supreme Administrative Court (SAC), arguing that the registration of five presidential candidates (namely Petr Hannig, Marek Hilšer, Jiří Hynek, Vratislav Kulhánek, and Mirek Topolánek) is not in accordance with the law and their registration should therefore be invalid.

Pursuant to Section 21 of the Act on the Election of the President of the Republic and on Amendments to Certain Acts, a candidate list may be submitted by at least 20 deputies or at least 10 senators, or any citizen over 18 years of age, whose proposal is supported by at least 50,000 citizens.

Terezie Holovská saw the problem in the fact that some deputies or senators expressed their support for more than one candidate. In the case of the above-mentioned five candidates, after subtracting multiple votes, these candidates did not have the necessary number of signatures of deputies or senators and their candidate list did not meet the conditions for registration.

The Electoral Chamber of the SAC dismissed Terezie Holovska's petition due to the lack of locus standi for filing such a complaint. The reason was that Holovská did not invoke her own registration for the presidential election before the court, but only questioned the candidacy of other candidates.

Flag of the Czech President ("Truth Prevails") [1]

By way of "obiter dictum"

In its resolution, the Electoral Chamber of the SAC provided, in addition to its statement of reasons, its view on whether a deputy or senator could nominate several candidates for the President of the Republic. In this part, the court criticizes the Ministry of the Interior of the Czech Republic for different opinions on the same issue. In 2013, i.e. before the first direct election of the president, the ministry clearly stated that each deputy or senator can support only one candidate. However, before the 2018 presidential election, the ministry changed its interpretation and allowed the possibility of supporting several candidates. The SAC disagrees with this opinion and points out that without limiting the number of votes that deputies can give to candidates, the legislature could send a large number of candidates to the fight for the Prague Castle (the official seat of the Czech President). This would jeopardize the effectiveness of the legal conditions for the submission of the candidate list, whose main purpose is to prevent an excessive number of candidates.

Opinion of the Constitutional Court

After Terezie Holovská did not succeed before the SAC, she filed a complaint with the Constitutional

Supreme Administrative Court of the Czech Republic [2]

Court, claiming that by its ruling, the SAC had violated her fundamental rights, particularly the right to a fair proceeding and the right to a legal judge.

The complainant disagreed with the SAC's decision, according to which she was not entitled to file the petition in the given case. She based her argumentation on the SAC's previous ruling of 13th December 2012, in the Kesner II case. Holovská pointed out the fact that in a similar situation the SAC recognized locus standi of Ing. Jiří Kesner to file a similar petition.

The Plenum of the Constitutional Court confirmed the SAC's procedure as correct when it pointed out that Ing. Jiří Kesner's petition differs from Terezie Holovská's petition in their essence. The main difference was that Kesner challenged the decision of the Ministry of the Interior on the rejection of his candidate list in court and therefore there was a chance (even though only hypothetical) of registering his candidate list. On the other hand, Terezie Holovská did not challenge the refusal of her registration but sought cancellation of the registration of the other candidates. Thus, the Constitutional Court agreed with the SAC's view that the petitioner had no locus standi to bring an action for judicial review of the registration of candidate lists.

Criticism towards the Supreme Administrative Court

In the end, the Constitutional Court criticized the part of the SAC ruling in which it gave its opinion on the merits of the case. In the given procedural situation, the Constitutional Court considered this inadmissible. However, not all constitutional judges joined this criticism. On the contrary, Vojtěch Šimíček, Ludvík David, Jaroslav Fenyk, and Kateřina Šimáčková had a different opinion. They felt that the Constitutional Court should also comment on the question of whether deputies and senators can support several candidates and thus disprove the doubts which had appeared.

After her repeated failure before the Constitutional Court, Terezie Holovská told the Czech Television that she was extremely disappointed with the result and described it as "an absolute contempt for Czech people". At the same time, she added that she did not consider the case to be over and was determined to turn to the SAC again after the election of the President of the Czech Republic, when she would have locus standi to file a petition.

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[3] Prague Castle, author: RalfGervink, 16 June 2017, source: Pixabay, CC0, edits: photo cropped.

Prague Castle [3]

Order to Remove the Flag of Tibet: Inadequate Infringement on Freedom of Expression?

Kristýna Šulková

The Prague Municipal Court ruled on the unlawfulness of the police intervention, which ordered the plaintiffs to remove the flags of Tibet and Taiwan. It was a reaction to the visit of the Chinese President to the Czech Republic. The Ministry of the Interior filed a cassation complaint against the ruling. How will the Supreme Administrative Court assess the potential violation of plaintiffs' right to freedom of expression?

At the Municipal Court in Prague (hereinafter referred to as the "Municipal Court"), the plaintiffs sought determination of unlawfulness of the police intervention. The alleged unlawfulness of the intervention consisted in the removal of the flags of Tibet and Taiwan, which the plaintiffs hung in the windows of the building opposite the hotel where the President of the People's Republic of China was accommodated. The flags were depicted on two sheets of A3-size paper, so they covered an insignificant part of the area by their size. However, the police justified this intervention by the need for snipers to see inside the building.

The prosecutors considered the conduct of the police to be inadequate, since the police did not take any action in the case of other windows covered with blinds or flowers; on the other hand, in the case of hanging the flags, the police proceeded in the aforementioned manner. The plaintiffs considered this to be an inadequate interference with freedom of expression under Article 17 of the Charter of Fundamental Rights and Freedoms (hereinafter referred to as the "Charter"), since the primary objective was not to protect the security of the Chinese President but to remove flags. The plaintiffs also argued that they were not allowed to make a video during the intervention and were "unreasonably" asked to produce their identity cards.

Based on the testimonies and expert opinion, the Municipal Court concluded that the police intervention was inadequate. In making its decision, it took into account the duty of the police to ensure the security of the protected person, but the order to

The main building of the Municipal Court in Prague [1]

remove the flags was not necessary and the purpose of the measure would have been met even without the removal of the flags.

In the opinion of the Municipal Court, it was sufficient that the police checked the premises and the identity of the persons in the building. In addition, it also took into account the fact that the police had at their disposal equipment that was able to monitor the premises of the building despite the hanging paper flags. Thus, the plaintiffs' right to freedom of expression under Article 17 of the Charter was inadequately infringed.

The Municipal Court emphasized respect for freedom of expression, given the historical experience of a country in which the political stance was dictated with lack of freedom and any other political opinion was punished. In its statement of reasons, it stated, *"Respect for the opinion of another person and their free expression must always be taken into account by the police, as the armed body of a democratic legal state, and when using legal instruments to ensure the security of the protected person, it is always necessary to consider whether this does not unacceptably interfere with this constitutional law."*

On the plaintiffs' arguments concerning the need to show the proof of identity, the Municipal Court ruled that this course of action of the police was in accordance with the Police Act. In its opinion, this was part of the entire procedure to ensure the safety of the protected person. In the case of the prohibition of making an audio recording, the Municipal Court stated that the police had chosen a wrong procedure, as there was no reason for

Rector of the Masaryk University in Brno Mikuláš Bek with Tibetan flag[2]

such a prohibition and the plaintiffs had the right to make the recording. Police said the prohibition of recording was not enforced. The Municipal Court found this argument odd because the plaintiffs immediately abandoned recording, because otherwise their behaviour would mean disobeying a police officer's order.

The Ministry of the Interior lodged a cassation complaint against the aforementioned judgment of the Municipal Court. In particular, it disagreed with the assessment that the plaintiffs' right to freedom of expression was inadequately infringed. The Minister of Interior, Lubomir Metnar, said that the police did not intend to infringe freedom of expression but intended to take the measures necessary for internal order and security. The sniper of the specialized police department was responsible for securing these goals and he made his decisions in a short time and tense situation. Considering these arguments and reviewing the adequacy of the intervention now lies with the Supreme Administrative Court.

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Compensation of parents for an unregistered child's name in the Register Office

Barbora Antonovičová

Parents wanted to name their son Thymian, but the Registry Office refused to register it because the name was not on the list of the Ministry of the Interior, nor in the guidebook of recommended names. Therefore, their son had written, for almost three years, "not identified" in the first name column of his birth certificate. In January 2015, the Supreme Administrative Court decided that the Registry Office had not proceeded correctly and now the Constitutional Court ruled that the parents are entitled to seek damages.

An unusual first name can be a problem

A father from the Czech Republic and a mother from the United States of America chose for their newborn son's first name Thymian. However, the Registry Office refused to register it. The Registry Office asked them, according to Section 62(1) of the Registries Act, to submit an expert opinion regarding the spelling of the name. Nevertheless, the parents did not order the expert opinion and only presented information from publicly available web sites, therefore, the Registry Office stopped the registration procedure.

Subsequent legal action of the parents before the Regional Court of Hradec Králové was rejected. The Court stated that the name Thymian is unusual and not commonly used in the Czech Republic, it is not on the list of names of the Ministry of the Interior, nor in the language manual. Therefore, the Court confirmed that the parents must submit the expert opinion regarding the spelling of the name. The Court did not accept either of the reasons claimed by the parents; first, that it was their free and joint choice and second, that it was a family name of the mother's ancestors.

The Supreme Administrative Court had a different opinion on the matter

Therefore, the parents submitted an appeal at the Supreme Administrative Court. In their opinion, it was necessary to examine the circumstances and

Plenary room of the Constitutional Court [1]

reasons for choosing the name of the child and the mere absence of the name in Dr. Knapp's guidebook of names, or the fact that the name had no bearer in the Czech Republic so far, could not be a reason for doubts about the correct spelling of the name or reason to request an expert opinion within the meaning of Section 62 (1) of the Registries Act. The parents also argued that this was an interference with their private and family life as their free will was affected when choosing the name for their child.

The Supreme Administrative Court ruled, in January 2015, that the administrative authorities could and should make their own evidence in this case (i.e by mother's statements or by extracts from publicly available foreign databases) and after it they should have requested the expert opinion. The fact that the name has not been specified on the list of names of the Ministry of the Interior nor in the language handbook was not sufficient for requesting the expert opinion and it has been considered as an excessive formalistic approach.

The administrative authorities were obliged to continue to collect evidence. Section 62 (1) of the Registries Act was misinterpreted and wrongly applied. Therefore, the Supreme Administrative Court annulled all decisions in the case. Subsequently, the boy's name Thymian was written in the birth certificate.

Right to just satisfaction?

As the parents were not allowed to name their son because of the aforementioned administrative procedure, they brought legal action to the District Court for Prague 7, alleging that they suffered CZK 50,000 each from non-pecuniary damage. The District Court awarded each parent CZK 15,000 to be paid by the Ministry of the Interior as defendant.

The Ministry of the Interior appealed, and the Municipal Court in Prague annulled the decision of the District Court and dismissed the action completely. According to the Municipal Court in Prague, the decision of the Registry Office to stop the proceedings was only a procedural decision by its nature, therefore, no compensation could be granted since this decision did not meet the conditions of Section 5 (a) and Section 8 (1) of the Act on Liability for Damage Caused in the Exercise of Public Authority by Decision or Maladministration.

The next step of the parents was to bring the legal action to the Constitutional Court. They pointed out the general misconduct of the lower courts in assessing their damages. They disputed, in particularly, the conclusion of the Municipal Court in Prague when judging the nature of the decision to stop the proceedings. They also pointed out the duration of the interference, which was almost three years. The Constitutional Court stated that the responsibility of the state for misconduct is an objective responsibility (i.e., without having to prove fault) and cannot be relieved. In this case, the right to a fair trial according to Article 36 of the Charter of Fundamental Rights has been violated.

Newborn baby [2]

It was not possible to conclude from the definition of the right to a fair trial that, for the purposes of damages, the decisions of the administrative authorities were differentiated according to a criterion other than their legal or unlawful nature. Judge Rapporteur, Tomáš Lichovník, stated that "it is not possible to distinguish whether there is a decision procedural or meritorious. It depends on whether it was illegal and whether the decision could have infringed rights. "

Therefore, it was not decisive how the decision was legally and theoretically labelled because the obligation to atone for damages also applied to so-called procedural decisions. In the opinion of the Constitutional Court, any unlawful decision of an administrative body always affects the rights of a person to a certain extent, given the specific case. Such intervention is subject to just satisfaction, the specific form depends on the intensity of the intervention. This might be a simple admission of error, an apology or financial compensation, which according to the Constitutional Court is appropriate in this case. In this case, the amount of money awarded to the applicants by the lower court was in accordance with the constitutional requirements.

The Municipal Court in Prague bound by the above decision of the Constitutional Court at the end of July 2018 awarded each of the parents for the unlawful intervention financial compensation in the amount of CZK 15,000 and also the costs. The Ministry of the Interior must pay awarded compensation within thirty days after the decision comes into force.

Conclusion

By this ruling, the Constitutional Court confirmed the state's strict liability for unlawful decisions of

state bodies regardless of their legal nature. At the same time, the Constitutional Court stated that for any such decision there is a just satisfaction. Hopefully, in the future, the courts will follow this ruling and will no longer be too formalistic when compensating unlawful decisions.

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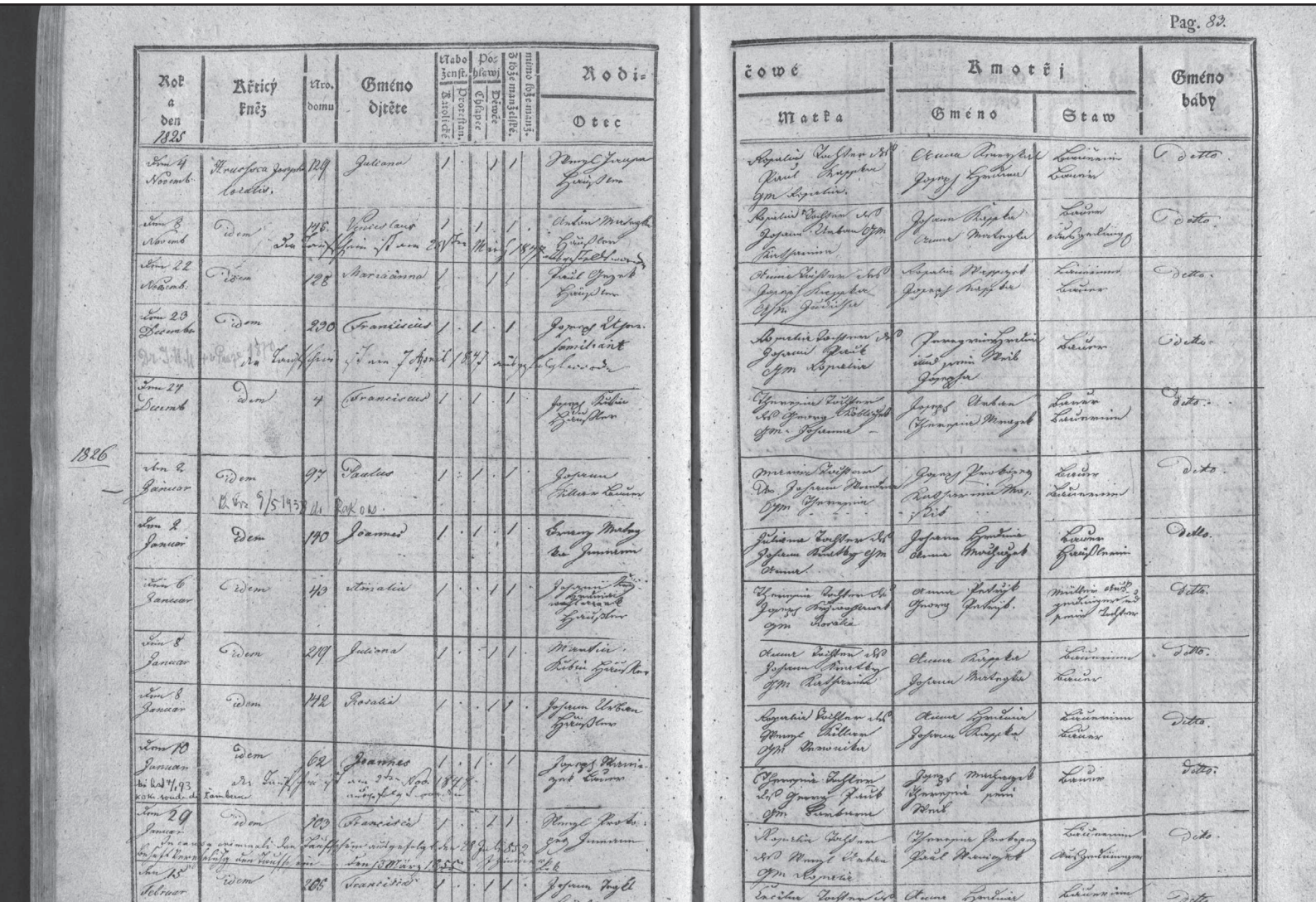
[3] Frantisek Uher matrika narozenych CZEC0004D 1072 M 00083, author: Parish of Bystřec, Czech Republic, 23 December 1825, source: Wikimedia Commons, CC0, edits: photo cropped.

Birth register [3]



The court released a person sentenced to life imprisonment for the first time


Barbora Antonovičová and Lucie Nechvátalová

At the end of August 2018, a prisoner sentenced to life imprisonment was conditionally released by a court in the Czech Republic for the first time. František Müller was sentenced in 1998 for an attempted murder of a jeweller in Germany. Among the life-sentenced prisoners, Müller was the only one in the Czech Republic who did not deprive anyone of their life.

Basic Facts of the Case

In March 1995, František Müller and his accomplice tried to rob a German jewellery store, during which the jeweller suffered a head shot. He survived only thanks to timely medical assistance, but he has permanent damages. In 1998, German courts imposed a life sentence on Müller for the attempted murder. The accomplice that caused the shot wound to the jeweller's head using Müller's weapon was tried in the Czech Republic and was sentenced to 13 and a half years in prison.

The Foreign Office in Munich subsequently issued a decision on the expulsion of Müller and the Bavarian State Ministry of Justice asked the Czech Republic to accept him for imprisonment in accordance with the 1983 Convention on the Transfer of Sentenced Persons. In its request the Ministry stated that it expects that the length of imprisonment will not be changed, with the shortest duration allowed under German law in this case being 15 years. Czech courts subsequently recognized the decisions of the German courts. After the Regional Court in Prague recognized the decision, but converted the sentence to 15 years of unconditional imprisonment, the High Court in Prague has abolished the sentence and ruled on the sentence of life imprisonment without conversion. Since 2009 the offender has served his life sentence in a Czech prison.

Firearm [1]

The First and Second Complaints to the Constitutional Court and the ECHR

František Müller first appealed to the Constitutional Court in 2008 with a complaint in which he disagreed with the recognition of German decisions by Czech courts and his transfer to the Czech Republic to serve his sentence here This was because, in Germany it was possible to apply for conditional release from life imprisonment after 15 years, while in the Czech Republic, it was after 20 years. He also pointed out different approaches to life imprisonment in the Czech Republic and Germany. Thus, the complainant alleged a deterioration of his criminal law position.

The Constitutional Court disagreed with the complainant's view and rejected the complaint. It stated, in particularly, that "the life sentence imposed by the German courts is, in terms of type and length, compatible with the law of the Czech Republic. The decision on its continuation also did not make it stricter." *Continuing, it added that "only the statement, i.e. the decision to assign the complainant to a specific type of prison in order for him to serve an unconditional imprisonment, which is a part of the decision on the «execution» of the recognized foreign decision, not the decision on the «recognition» of the foreign decision, may result in the deterioration of the offender's criminal status. The main principle for the court's decision to execute a recognized criminal judgment of a foreign state is such a change of the conditions of the service of the sentence, which must not lead to an overall deterioration of the convicted person's position.... However, as the*

appellate court correctly pointed out, conditional release is a fact which may or may not occur and taking it into account when deciding on the recognition of a foreign state's judgment and punishment is not possible. "

For the sake of completeness, it should be added that František Müller also appealed to the Constitutional Court against the subsequent decisions of the Czech courts to have him serve his life sentence in the Czech Republic and to assign him in the prison with security. However, he was unsuccessful, and the Constitutional Court rejected his complaint because in accordance with the opinion of the general courts it concluded that serving the sentence in the Czech Republic and assigning the complainant to a prison with security do not impair his procedural position. He particularly stated that the advantages of imposing certain smaller restrictions on convicted persons in the complainant's original prison in Germany compared to those imposed on convicted persons in prisons with security in the Czech Republic are, in this case, outweighed by the advantage of serving a sentence in his home country.

In view of the failure at the national level, the convicted person lodged a complaint in 2009 with the European Court of Human Rights (ECHR). He alleged that there was a violation of Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "European Convention"), i.e. primarily that he was sentenced by Czech courts to the punishment that was not imposed in the Czech Republic for the crime committed by him. He pointed out especially the fact the courts did not deal with the conditions laid down in the general part of the Criminal Code valid at that time, which must be fulfilled in order to impose an exceptional punishment and which in the complainant's view were not met. He further argued that those courts worsened his procedural position,

European Court of Human Rights [2]

because the conditions for serving the sentence in the Czech Republic are stricter, especially in terms of conditional release. The ECHR assessed that the sentence was imposed on the complainant in Germany and the Czech Republic only recognized the German decisions and decided that the sentence could be served in its territory. Thus, it did not consider the Czech courts to be the ones which ruled on the offense committed by the complainant and which imposed the punishment within the meaning of Article 7 of the European Convention. For this reason. it rejected his complaint.

Non-release from Imprisonment and the Third Constitutional Complaint

In 2014, the convicted person applied for a conditional release from prison. However, the District Court in Sokolov and subsequently the Regional Court in Pilsen did not comply with his application. In this case, the courts applied Section 88 (5) of the Criminal Code, which stipulates that conditional release of a person sentenced to life imprisonment is not possible until the convicted person has served twenty years of this sentence. At the time of submitting the application, the convicted person had served only 16 and a half years of the sentence, and therefore, the general courts considered his application premature and did not even examine it on its merits.

The complainant lodged a constitutional complaint against the decisions in which he argued that the ordinary courts had not dealt with his constitutional argument at all. He pointed out that the German decisions in his case did not contain a statement on the extraordinary heaviness of guilt that would mean reduced possibility of his correction. He also pointed out that the injured person had survived, and his accomplice was sentenced to "only" 13 and a half years in prison. He also pointed to significant differences in the legal framework of punishments in the Czech Republic and Germany.

More specifically, the convicted person stated that the German legislation provides for a life sentence in principle as a mandatory punishment for murder or attempted murder. In the Czech Republic, a life sentence is intended for offenders with other exceptional circumstances. On the other hand, in Germany, it is possible to release a life-sentenced prisoner after serving at least 15 years of imprison-

ment; the Czech legislation requires at least 20 years of imprisonment. The complainant considered the situation of stricter punishment under German law and stricter conditions for conditional release under Czech law to be contrary to the principle of equality within the meaning of Article 1 of the Charter and the prohibition of retroactivity in Article 40 (6) of the Charter, and Article 7 of the European Convention.

In its judgment, the Constitutional Court primarily dealt with the question whether the complainant had a constitutional right for material consideration of his application for conditional release before the Czech courts at the time when the 20-year deadline set by the Czech Criminal Code had not yet elapsed, which it did not find unconstitutional.

In its opinion, no international obligation (with application priority) stipulates a different time limit that the courts would be obliged to apply other than Section 88 (5) of the Criminal Code. In addition, the Convention on the Transfer of Sentenced Persons stipulates that the decision on the execution of the sentence is governed by the law of the executing State, in this case, the Czech Republic.

It further stated that the decision on the recognition or conversion of the sentence imposed by a foreign decision (which was already decided by the general courts and the Constitutional Court in 2008 and 2009 in the case of the complainant) and the decision on the conditions of the execution of the punishment are two different things. In its view, the conditions (including time-related ones) for the application of conditional release cannot be considered as part of the punishment imposed, even though they are derived from it, but instead, as part of the corrective efforts of the state's criminal policy. The legislature is entitled to modify these rules retroactively, in contrast to the regulation of punishability of the conduct and the punishment for it, taking into account the changes that occur in the area of imprisonment and execution of punishments over time (especially during the execution of many years of imprisonment).

Therefore, the complainant could not invoke the predictability and invariability of the conditions for conditional release, as this is not guaranteed by the constitutional order. And the interconnection of the overall system of criminal corrective policy in the Czech Republic excludes, i.e. the conditions of conditional release to be adapted to the German ones, unless the Czech Republic is obliged to do so by international law. The Constitutional Court concluded that the complainant had no constitutional right to apply for conditional release, and therefore rejected his complaint.

Successful Repeated Request for Conditional Release

František Müller reapplied for conditional release from prison at the end of May 2017. This time the District Court in Sokolov granted his application and conditionally released him in August 2018, while simultaneously imposing supervision for seven years. This is the first case where an offender sentenced to life imprisonment was conditionally released by a court, specifically after 21 years of imprisonment (the length of his imprisonment was calculated from his initial imprisonment at the beginning of May 1997).

The court justified his conditional release by the fact that the convicted person had achieved an appropriate level of improvement, never been disciplined and properly attended work. In the long term, he also cooperated with one of the NGOs during the execution of the sentence, which accepted a guarantee for the convicted person's correction. According to the decision, the convicted person must start employment immediately, contact the Probation and Mediation Service and refrain from excessive alcohol use. Finally, the District Court pointed out that the Criminal Code provides that a repeated conditional release from life imprisonment is not possible.

Conclusion

Several questions arise in connection with this case. First of all, whether the Czech courts should not have decided to convert the punishment (as the Regional Court in Prague originally did it), taking into account the requirements of the German ministry, different approaches to imprisonment in the Czech Republic and Germany, and the particular circumstances of the complainant's case.

Further questions arise in connection with Section 91 (4) of the Criminal Code, which states the following: *"A conditional release from the same sentence is possible after the execution of half of the rest of the sentence and in the cases referred to in Article 88 (4) after*

two thirds of the rest of the sentence. Conditional release from an exceptional life sentence is not possible". Does this mean that if a minor offense is committed at the time of the suspended sentence, the sentenced prisoner will lose the possibility of a conditional release again? Furthermore, is not there a provision that forbids the conditional release of a life-sentenced prisoner, which is in contrast to the case-law of the ECHR, namely the ruling in the "Vinter and Others v. United Kingdom" case in which the Court stated that the (legal or practical) impossibility of conditional release from life sentence violates Article 3 of the European Convention?

In conclusion, it should be noted that the case of František Müller seems to be quite specific among nearly 50 Czech prisoners sentenced to life imprisonment - it is a case of a prisoner sentenced abroad for life and transferred to the Czech Republic to serve his sentence, his conduct did not result in the loss of someone's life and he has been actively trying to mend his ways. However, at the same time, this case shows that conditional release is no longer impossible in practice even for life-sentenced prisoners.

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Translated by Helena Bončková.

Note

[1] In respect of the aforementioned topic, we recommend reading the diploma thesis of Mgr. Ondřej Klabačka from 2018, which also focused on the analysis of specific conditional release decisions; the author deals with life-sentenced prisoners in particular on pages 44-45. The work is available here: https://is.muni.cz/th/lsav9/Klabacka_DP_2018.pdf.

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Photographs

[1] Firearm. Military firearm (18542046078), author: Thomas Quine, 2 October 2012, source: Wikimedia Commons, CC BY 2.0, edits: photo cropped.

[2] Courtroom European Court of Human Rights 01, author: Adrian Grycuk, 8 October 2014, source: Wikimedia Commons, CC BY-SA 3.0 PL, edits: photo cropped.

[3] Blurry Prison, author: Shayan Sanyal, 23 March 2007, source: Wikimedia Commons, CC BY 2.0, edits: photo cropped.

Prison Fence [3]

Vaccination Obligation and Participation Rights of a Child in a Dispute between Parents about vaccination

Aneta Frodlová

The Constitutional Court dealt with a complaint from a mother who objected to the decisions of the general courts replacing her consent to the mandatory revaccination of her underage daughter. When assessing the case, the Constitutional Court found violations of the basic rights of the underage girl, namely the right to be heard in the court proceeding and the right to be present at the proceeding.

The proceeding before the general courts started in January 2017 at the request of the secondary participant of the proceeding, i.e. the father of the underage daughter. The father demanded, that the District Court in Nymburk ('hereinafter referred to as the "District Court") replaced the mother's disagreement with the revaccination of their underage daughter against infectious diseases. The mother of the underage girl (hereinafter referred to as the "complainant') disagreed with the mandatory revaccination because of her conscience and concerns with her daughter's health. The complainant also pointed out adverse effects of the vaccination, reaction after the vaccination which had occurred in her daughter at a younger age, as well as sufficient antibodies from the previous vaccination. The opinion of the underage girl who did not want to be revaccinated was also taken into account.

The underage girl was represented in the proceedings before the District Court by a collision guardian. In order to ascertain her opinion and awareness of the matter, the girl was interviewed in the judge's office in the presence of a collision guardian. As mentioned above, the girl did not agree with the revaccination, but the collision guardian stated in the next court hearing that the underage girl was frightened at the interview because she had previously been told of illnesses that might occur if she is not vaccinated.

The District Court replaced the complainant's consent and justified its decision in particular by the fact that the underage girl's right to favourable health cannot be limited based on the complainant's beliefs and opinions, which were not based on actual scientific evidence. Regarding the stance of the underage girl, the court noted: "Given her age and knowledge, she cannot yet understand the problem of vaccination, but she repeats what the complainant suggests, and therefore influencing her in very expressive manner". In conclusion, however, the District Court pointed out that revaccination of the underage girl in this situation is not feasible because of the underage girl's fear and the risk to her psychological harm.

Illustration image [1]

The applicant subsequently appealed to the Regional Court in Prague (hereinafter referred to as the "Regional Court"), which upheld the District Court's judgment. The Regional Court emphasized that the negotiated case concerns mandatory vaccination against infectious diseases, which is provided for by law. It pointed out the decision-making practice of the Constitutional Court, which was found to be in conform with the Constitution. The Regional Court also upheld the District Court's conclusions on the complainant's conscience reservation and stated that the conditions for using this institute were not met, since the parents' views were not identical, and the underage girl had undergone basic vaccination, revaccination, and non-mandatory vaccinations without negative reactions to them (contrary to the claims made in the proceedings by the girls' mother).

Subsequent Proceedings before the Constitutional Court

The complainant subsequently turned to the Constitutional Court (CC), claiming that her constitutionally guaranteed rights, such as a right to a fair trial, had been violated in the proceedings before the general courts, arguing that the Regional Court had not dealt with her arguments or with her objection to the judge's bias in the proceedings before the District Court. The complainant also demanded the use of an exception to the statutory vaccination obligation. Last but not least, she objected to a violation of her constitutional rights to freedom of thought and conscience, as well as the right to parental custody in accordance with that thinking and conscience.

However, the CC stated that the complainant's basic rights had not been violated. It stated that it was not excluded to successfully apply the reservation of conscience in the situation of parents' opinion. However, it would be necessary to consider the freedom of conscience of the opposing parent (Article 15 (1) of the Charter) not only with the public interest in health protection but also with the same freedom of conscience of the other parent, bearing in mind that both parents have the right to care for and raise their child (Article 32 (4) of the Charter).

Illustration image [2]

In this case, the complainant's reasons were not found to be urgent enough to justify the application of the institute of reservation of conscience.

Infringement of the Basic Rights of the Underage Secondary Participant in the Proceeding

In assessing the complainant's constitutional complaint, the CC concluded that the complainant's constitutionally guaranteed rights had not been violated, but stated that infringement of the basic rights of the underage secondary participant in the proceeding, namely the complainant's daughter, who was eleven to twelve at the time of the proceedings, had occurred.

In particularly, the CC concluded that the participation rights of the underage girl were infringed upon, namely the right to be heard "in any judicial or administrative proceedings concerning the child," under Article 12 (2) of the Convention on the Rights of the Child. In the opinion of the CC, this right should be perceived in a broader sense and cannot be confined to only listening to the underage child's opinion, but it is important to provide the child with relevant information so that he/she can form his/her own opinion. This is particularly important when the parents of an underage child hold conflicting opinions on the matter, taking into account the "age of the child, intellectual and emotional maturity". The CC emphasized that in order to fulfil Article 12 of the Convention on the Rights of the Child, which establishes the right of the child to be heard at the constitutional level, the judge's interview with the child is not sufficient, but it is necessary to inform the child about other issues, such as the weight of the child's opinion, find out the child's abilities and inform the child of the possibility of legal remedies.

The CC further pointed out that the underage participant was represented in the proceedings before the general courts by a collision guardian, but that representation was only formal, since the collision guardian communicated very little with the girl. The collision guardian only met the girl once to conduct an interview in the presence of the judge. He did not inform her of the proceedings before the appellate court and he also did not inform the girl of the outcome of the appeal proceedings. In her own words, the girl had the feeling "as if she wasn't at the court at all and that what she said was-

n't taken into account." The CC inferred from the response of the girl that the representation of the participant was not materially fulfilled, as a result of which her right to be present (to participate) in the hearing on her issue under Article 38 (2) of the Charter was violated.

In the end, the CC concluded that the previous decisions of the general courts will not be annulled, since the violation of the basic rights of the underage girl was subsequently rectified in the proceedings before the CC. During its course, the CC appointed a guardian for the underage girl, i.e. the Office for International Legal Protection of Children, which provided her with the necessary information on the proceedings before the general courts and on vaccination issues.

Different Opinion of Judge Vojtěch Šimíček

In the first part of his dissent, Judge Vojtěch Šimíček found this finding somewhat non-standard from a procedural point of view, since the verdict decided on the infringement of the basic rights of the secondary participant without anyone claiming their violation. The other members of the Senate supported this procedure by arguing that the CC had to intervene in such a case, as it was necessary to protect the best interests of the child. However, Judge Šimíček did not agree with this procedure.

Furthermore, he disagreed with such an extensive concept of the child's participation rights. He pointed out that if the CC decides in its verdict on the violation of basic rights, it means that the general court committed some unconstitutional procedure. In his view, however, neither Article 12 of the Convention on the Rights of the Child nor Article 38 (2) of the Charter implies that the court is obliged to inform the child in a comprehensible manner of the outcome of the proceedings, since it is the obligation of the guardian. Although the guardian undoubtedly failed to fulfil all of his statutory duties in this case, according to Judge Šimíček, it was not possible to reinterpret the role of the guardian and the court in the sense that these duties belonged to the court, because, in his opinion, the reason why guardians are appointed would then not make any sense.

Conclusion

This finding has significantly changed the view of the role of a guardian in proceedings before general courts. It explicitly made it obligatory for courts to inform minors of the outcome of proceedings affecting them in a comprehensible manner. As a result, the question of how the courts will cope with such an obligation in practice arises. It will always depend on the particular case, as well as the age of the child concerned.

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Photographs

[1] Illustration image, author: 192635, 29 March 2014, source: Pixabay, CC0, edits: photo cropped.

[2] Illustration image, author: VGC-Group, 2 February 2021, source: Pixabay, CC0, edits: photo cropped.

[3] Illustration image, authors: James Gathany, Judy Schmidt, USCDCP, source: Pixnio, CC0, edits: photo cropped.

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