

III. ÚS 3844/13 of 30 October 2014

Nature of Social Network Facebook

**Czech Republic
JUDGMENT
of the Constitutional Court
in the Name of the Czech Republic**

HEADNOTES

The nature of the social network Facebook is not in the opinion of the Constitutional Court explicitly public or private. It always depends on specific users and the level of privacy set by them on their profiles or as to individual posts. Theoretically, the user can communicate over the network with only one other user, without other users being able to see or participate in the communication. Such communication could certainly be regarded as a purely private, albeit made through the social network used by billions of users. The procedures applied by the competent authorities in identifying the information must comply with the framework established by law and must respect the general principles which the activities of public authorities are based on, particularly to ensure the constitutionally guaranteed rights and freedoms of the persons concerned to the maximum extent possible. If the law enforcement authorities within the procedure before prosecution are forced in order to detect a criminal offence and punish the offenders justly to restrict the fundamental human rights and freedoms of the parties to the proceedings to the extent necessary (e.g. custody, house search, interception and recording of telecommunications traffic), it is their duty to proceed strictly in accordance with the Criminal Procedure Code and within the limits set out therein, while preserving these rights to the maximum extent. Where it is not the case, such information cannot be used to the detriment of the complainant, as it was in the present matter.

The purpose of imposing a disciplinary fine is to ensure the uninterrupted and dignified course of the criminal proceedings procedural acts and the observance of the instructions given by the Criminal Procedure Code. Imposing a disciplinary fine upon the complainant would have been appropriate if the complainant acted in an offensive manner towards the police authority within the criminal proceedings, e.g. within the submission of an explanation or interrogation of the accused.

VERDICT

The Constitutional Court has decided through the panel composed of its presiding judge Jan Filip, judge Vladimír Kůrka, and judge-rapporteur Jaroslav Fenyk in the case of the constitutional complaint filed by the complainant: Dmitri Vesselovski, represented by Mgr. Štěpán Janáč, lawyer based at Na Poříčí 12, Prague 1, against the resolution of the Police of the Czech Republic, District Police Directorate Prague III, Criminal Police and Investigation Service, Department of General Crime, of 8 October 2013, ref. No. KRPA-127944-104/TČ-2013-001373-TMAZ, and against the resolution of the District Court for Prague 9, of 22 November 2013, file No. 20 Nt 1686/2013, with the participation of the Police of the Czech Republic and the District Court for Prague 9 as parties to the proceedings, as follows:

I. The resolution of the District Court for Prague 9 of 22 November 2013, file No. 20 Nt 1686/2013, in connection with the resolution of the Police of the Czech Republic, District Police Directorate Prague III, Criminal Police and Investigation Service, Department of General Crime, of 8 October 2013, ref. No. KRPA-127944-104/TČ-2013-001373-TMAZ, have violated the fundamental rights of the complainant enshrined in Articles 13 and 36 of the Charter of Fundamental Rights and Freedoms.

II. The mentioned decisions are therefore annulled.

REASONING

I.

1. Through his constitutional complaint filed in a proper and timely manner, the complainant contested the decisions of the police authority and the District Court specified above.

2. The complainant was imposed a disciplinary fine of CZK 10,000 through the resolution of the Police of the Czech Republic, District Police Directorate Prague III, Criminal Police and Investigation Service, Department of

General Crime, of 8 October 2013, ref. No. KRPA-127944-104/TČ-2013-001373-TMAZ, pursuant to Section 66 (1) of Act No. 141/1961 Coll., the Criminal Procedure Code, as amended (hereinafter referred to as the “Criminal Procedure Code”), on the grounds that he disparaged the reputation of the police authority, endangered the confidence in its activity, and disparaged the importance and dignity of its office based on its conduct on a social network in front of other witnesses and aggrieved parties.

3. The complainant filed a complaint against the above-mentioned resolution, which was decided by the resolution of the District Court for Prague 9 of 22 November 2013, file No. 20 Nt 1686/2013, annulling the contested resolution in its entirety pursuant to Section 149 (1) (a) of the Criminal Procedure Code while applying Section 146a (2) of the Criminal Procedure Code and deciding to impose a disciplinary fine of CZK 5,000 upon the complainant pursuant to Section 66 (1) of the Criminal Procedure Code.

II.

4. The complainant claims that the procedure of the police authority in the form of the unlawful and unauthorised monitoring of the communication between two users of the Facebook network and a subsequent decision imposing a disciplinary fine and the procedure of District Court for Prague 9 that did not deal properly with the reasons for the complainant’s complaint have violated the complainant’s fundamental rights and freedoms guaranteed by the Czech constitutional order.

Specifically, the complainant claims that Article 2 (2) of the Charter of Fundamental Rights and Freedoms (hereinafter referred to as the “Charter”), Article 4 (4), Article 7 (1), Article 10 (2) of the Charter, and Article 13 of the Charter have been violated.

5. In his constitutional complaint, the complainant points out that any limitation of fundamental rights and freedoms must not be misused for purposes other than those for which they have been provided. In this case, in the opinion of the complainant, the instrument of a disciplinary fine has been misused by the police authority and the ordinary court, because the purpose of a disciplinary fine is to deal with those who hinder and obstruct the criminal proceedings or act in an offensive manner towards law enforcement authorities. However, according to the complainant, the private communication between two users of a social network does not constitute the conduct within criminal proceedings and, moreover, in his opinion, it is not an act or a conduct that could be considered as addressed to the police authority either. In a situation where a disciplinary fine was imposed upon the complainant on the basis of a completely private communication that was not conducted in criminal proceedings, and, in particular, was not addressed to any of law enforcement authorities, including the police authority, such communication, according to the complainant, cannot fulfil the conditions set out in Section 66 of the Criminal Procedure Code.

6. The complainant argues that the communication between him and L. K. is a purely private matter of these persons, while the complainant did not grant the police authority his consent to providing the data concerning the telecommunications traffic within the meaning of Section 88a (4) of the Criminal Procedure Code. The police authority monitored such communication and, uninvited by anyone, regarded itself as a recipient of this communication without being authorised to do so pursuant to the applicable provisions of the Criminal Procedure Code concerning the possibilities of monitoring and controlling the telecommunications traffic, whereby the police authority violated, according to the complainant, the complainant’s right to privacy and private communication.

7. Further, the complainant states that the police authority also failed to explain how it came to the conclusion that the messages cited in the contested resolution were actually written by the complainant as it is not possible to exclude within the Internet network Facebook that messages and communications on that network could be manipulated by third parties. The complainant believes that the police authority also failed to state why the specific messages were offensive.

8. Last but not least, the complainant argues that also its right to a fair trial enshrined in Article 36 of the Charter has been violated because the complainant has not been provided with protection by the District Court for Prague 9, which thus cannot be considered impartial pursuant to Article 36 (1) of the Charter. The complainant claims that the District Court ignored that the posts concerned were the communication conducted between two natural persons and were neither intended for nor addressed to the police authority and that the District Court did not address the matter of the legitimacy of the use of data collected within the telecommunications traffic part of which is also the operation of the communications network Facebook. In the complainant’s opinion, the court has succumbed to the impression systematically constructed by the police authority about the alleged homosexual orientation of the complainant as the cause of his interest in L. K. (born on 1998), and the alleged

abuse of L. K. by the complainant. However, this suspicion was and is unfounded and, moreover, L. K. has expressly excluded such possibility.

9. In this context, the complainant's constitutional complaint was accompanied also by the resolution of the public prosecutor of the District Public Prosecuting Office for Prague 9 of 13 December 2013, file No. 2 ZT 318/2013, which implies that pursuant to Section 149 (1) (b) of the Criminal Procedure Code and upon the complainant's complaint against the resolution which initiated the criminal prosecution pursuant to Section 160 (1) of the Criminal Procedure Code and notified the complainant of the charge of an offence of corrupting morals of a child pursuant to Section 201 (1) (a) of Act No. 40/2009 Coll., the Criminal Code (hereinafter referred to as the "Criminal Code") the contested resolution is annulled and the police authority is required to reopen and decide on the case.

III.

10. With respect to the character of the objections raised by the complainant and the content of statements of the interveners (see following Item IV), the Constitutional Court considers it appropriate to specify now the content of the resolutions contested by the constitutional complaint.

11. The complainant was imposed a disciplinary fine of CZK 10,000 through the resolution of the Police of the Czech Republic, District Police Directorate Prague III, Criminal Police and Investigation Service, Department of General Crime, of 8 October 2013, ref. No. KRPA-127944-104/TČ-2013-001373-TMAZ, pursuant to Section 66 (1) of the Criminal Procedure Code, on the grounds that using the social network Facebook and as a response to the aggrieved party L. K. who wrote: "Greetings for Lt. Assh. M. (footnote No. 1) :-)))", the complainant wrote on 3 September 2013: ":-)))", and then: "F*** him"; the minor witness T. B. replied to this post of the complainant by writing: "Hee hee, good, Lt. Assh. :-) :-) :-)". On 17 September 2013, the complainant uploaded on the social network Facebook a picture of the bus with the title: "L. K. Copyright (c) All Rights Reserved", which was commented by the aggrieved party L. K. as follows: "I will sue for millions under copyright :-))", which was commented by the complainant: "I see... Bring a criminal charge M. :-)". Later on, on 25 September 2013, the complainant uploaded on the social network Facebook a picture of the bus door with the text: "Invention of the workshop for the opening of 3501... Now, anybody can fit in :-)", which was commented by the witness T. B. as follows: "Even M.". According to the resolution of the police authority, the complainant acts in an offensive manner towards the police authority, as he is investigated in the matter of corrupting morals of a child pursuant to Section 201 (1) of the Criminal Code and the criminal proceedings were initiated on 12 April 2013.

12. The reasoning of the resolution contested by the constitutional complaint implies that the complainant allegedly attacked verbally the police authority on Facebook, namely the lieutenant M. M. who investigates him in the matter, and allegedly acted in an offensive manner towards the law enforcement authority. His conduct on the social network allegedly disparaged the reputation of the police authority, endangered the confidence in the activity of the police authority, and disparaged the importance and dignity of the office of the police authority in front of other witnesses and aggrieved parties. Moreover, his conduct has allegedly made the minor witness T. B. and the aggrieved party L. K. to believe that it is normal to talk about the police authority this way. The reasoning of the resolution further states that if the complainant is not satisfied with the investigation of his case by the police authority, he can exercise and could have exercised his rights under the Criminal Procedure Code and the law, e.g. by filing complaints with and submitting suggestions to the senior police authority rather than by expressing his opinions through the social network Facebook. Further, the complainant was notified in the contested resolution that pursuant to Section 66 (1) of the Criminal Procedure Code, it is possible to impose a disciplinary fine of up to CZK 50,000, even repeatedly, and that is why he should refrain from this activity and acting in an offensive manner towards law enforcement authorities.

13. The reasoning of the resolution of the District Court for Prague 9 of 22 November 2013, file No. 20 Nt 1686/2013, then implies that the district court concluded in the appeal proceedings that the police authority acted in accordance with the law when it imposed a disciplinary fine upon the complainant. According to the court, it is evident from the file documents that the complainant conducted in an offensive manner towards the police authority repeatedly, namely through his posts on the social network Facebook. According to the court, the messages could hardly be posted on the social network by another person, when it is evident from them that they could only be posted by the person who is thoroughly familiar with the whole case. Moreover, posting messages is connected with a specific Facebook account user and it is evident from the file documents that it was an account of the complainant, while each Facebook account is password protected. According to the court, it is then evident from all the circumstances of the given case that the respective messages were posted on Facebook by the complainant.

14. The court did not agree with the complainant that the posts alone are not offensive at all. In this case, the court argues that the words or concepts used do not have to be offensive on their own and that it is sufficient that their context implies that they are an insult. The District Court therefore concludes that the messages posted on the social network along with the context from which they come are offensive and disparaging towards the police authority.

15. As to the complainant's argument that posts on the social network Facebook are of private character and the messages in question were not used within the criminal proceedings, the court stated that the application of measure under Section 66 (1) of the Criminal Procedure Code does not require that the offensive conduct towards law enforcement authorities be used in the criminal proceedings, but in order to apply the said measure, it is only sufficient that a particular person acts in an offensive manner, while disparaging the importance and dignity of an office might certainly be regarded as an offensive conduct. Moreover, at the same time, the District Court did not agree with the complainant's opinion that the social network Facebook was intended for private communication. The court argues that Facebook is defined as an online social networking service whose main aim is especially the communication between users, creating and maintaining relationships between users, and data sharing, while it is declared that for this purpose it is currently used by over a billion active users, and these are generally known facts. If the complainant decided to use the social network Facebook and communicate through it, it is also up to him to bear the consequences of his conduct, including the imposition of a disciplinary fine.

16. In view of the above, the District Court has concluded that the procedure of the police authority was entirely in accordance with the law. The Court disagreed only with the amount of disciplinary fine, with respect to the amount of disciplinary fines which are usually imposed within the criminal proceedings. The court took into account the possible income of the complainant who makes a living as a bus driver and then found a disciplinary fine of CZK 5,000 to be adequate, while such amount of fine should be a sufficient fine from which the complainant should draw a lesson as regards his conduct towards law enforcement authorities.

IV.

17. To assess the justification of the constitutional complaint, the Constitutional Court requested statements from the parties to the proceedings and interveners.

18. The District Court for Prague 9, as a party to the proceedings, referred in its statement of 24 July 2014 entirely to the file documents and the justification of the constitutional complaint of the contested resolution of the District Court.

19. On 25 July 2014, the Constitutional Court received an extensive statement from the Police of the Czech Republic, District Police Directorate Prague III, Criminal Police and Investigation Service, Department of General Crime, 3rd department, as a party to the proceedings.

20. The police authority stated that he learned of that someone commented on him on Facebook from the witness F. N. (year of birth 1995), in connection with the submission of his explanation pursuant to Section 158 (6) of the Criminal Procedure Code of 26 September 2013, who then voluntarily gave the police authority access to his Facebook profile so that the concerned communication could be secured. The communication was secured in the form of print screens, i.e. capturing the computer screen into an image file. According to his statement, the police authority did not inquire into those offensive messages on its own initiative, but he was notified of them during the ongoing criminal proceedings. The procedure pursuant to Section 88a of the Criminal Procedure Code could not be followed according to the police authority as the company Facebook has its registered office in the USA (Facebook Inc., 1601 Willow Road, Menlo Park, CA 94025, United States of America), and, therefore, the only other possibility of obtaining such data would be through legal assistance.

21. The offensive conduct punished by the disciplinary fine was not according to the statement of the police authority done in the course of criminal proceedings, but it was done in connection with the criminal proceedings at a time when the proceedings were pending and it was likely to affect the reputation of the police authority. The police authority thus holds that the conduct of the complainant fulfilled the elements under Section 66 (1) of the Criminal Procedure Code, specifically "who acts towards a ... police authority in an offensive manner".

22. The police authority did not justify in the reasoning of the resolution the fact whether the complainant is actually the author of the cited messages because the police authority considered it as undisputed as the relevant messages were sent from the Facebook account "Facebook.com/dimo.6523" and contained the name of the

complainant. Each Facebook account is protected by a password which the user chooses itself and, therefore, any other person cannot login to the account according to the police authority. According to the police authority, it is evident from all these facts that the author of the post is the complainant.

23. As regards the offensive manner of the cited posts, the police authority in its statement stated that the complainant “liked” (in Czech “odlajkoval”, see footnote No. 2) the message of L. K. “Greetings for Lt. Assh. M. M. :-)))”, while the abbreviation Assh. is apparently an abbreviation of a vulgarism, and further in the conversation states “F*** him”, which is again considered by the police authority as a vulgarism although some letters of the word are replaced with asterisks. According to the police authority, the above-mentioned vulgarisms used in the given context are offensive and disparaging and influenced the subsequent conduct of the aggrieved parties and witnesses in the criminal proceedings (especially of the minor L. K.).

24. The police authority concludes that it holds that it in no way infringed upon the fundamental rights and freedoms of the complainant as a result of gaining only the public data from the network Facebook, as well as the data provided voluntarily by the witness F. N. within the submission of his explanation. The instrument of imposition of a disciplinary fine under Section 66 (1) of the Criminal Procedure Code was used in this case based on the legal opinion of the police authority, which was subsequently confirmed by the judge of the District Court for Prague 9.

25. On 11 August 2014, the Constitutional Court received a reply from the complainant to the statement of the police authority. The complainant refers in the reply to the fact that the accounts of the application Facebook are not subject to any registration or authentication based on which it would be possible to identify clearly individuals who make their posts on that site. It is worth pointing out according to the complainant that the police authority concentrates in its statement out of various messages only on: “Greetings for Lt. Assh. M. :-)))” and : “F*** him”. If the police authority interprets the abbreviation “Lt. Assh.” as a vulgar expression, it is according to the complainant a purely subjective interpretation. In the case of the second message, the police authority does not state expressly what the word is abbreviated in fact. The complainant points out that the police authority itself confirms that the first of these messages were not written by the complainant.

26. The complainant also argues that the police authority gained access to the concerned communication only through F. N. who reportedly granted the police authority the access to the communication within the submission of his explanation pursuant to Section 158 (3) of the Criminal Procedure Code. In this context, the complainant expresses strong doubts about the voluntary disclosure of the communication by F. N. with respect to his own experience with the conduct of the police authority. The complainant finds unacceptable the argument of the police authority that the procedure under Section 88a of the Criminal Procedure Code could not be used because it would be necessary to request the information through legal assistance.

27. The complainant believes that in this case the instrument of disciplinary fine was de facto misused in order to punish the complainant in a situation where the police authority, who was reportedly convinced subjectively of the alleged criminal offence, did not have any relevant evidence of the criminal offence of the complainant and misused the instrument of disciplinary fine to penalise the complainant, which could not otherwise be achieved due to the fact that the complainant did not commit any criminal offence in connection with the minor L. K. or other persons.

V.

28. The Constitutional Court requested the file of the Police of the Czech Republic, District Police Directorate Prague III, Criminal Police and Investigation Service, Department of General Crime, 3rd Department, file No. KRPA-127944/TČ-2013, and the file of the District Court for Prague 9, file No. 20 Nt 1686/2013.

29. The Constitutional Court took into account all the statements submitted by the complainant, considered the content of the decisions contested by the constitutional complaint and of the relevant file documents, reviewed the procedure of the law enforcement authorities, took into account the statements of the parties to the proceedings, and concluded that the constitutional complaint was justified.

30. The Constitutional Court is pursuant to Article 83 of the Constitution of the Czech Republic (hereinafter referred to as the “Constitution”) a judicial body protecting the constitutionality and exercising this power by, inter alia, deciding within the meaning of Article 87 (1) (d) of the Constitution on constitutional complaints against final decisions and other interventions of public authorities affecting the constitutionally guaranteed fundamental rights and freedoms [cf. also Section 72 (1) (a) the Act on the Constitutional Court]. However, the Constitutional Court is not part of the system of ordinary courts and its powers do not include the review of their

decisions at any instance. The powers of the Constitutional Court are established solely for the purpose of review of decisions in terms of their compliance with constitutional principles, i.e. whether the proceedings (and the decisions rendered within them) have violated the constitutionally guaranteed rights of the parties to the proceedings, whether the proceedings were conducted in accordance with constitutional principles, and whether the proceedings can be considered as fair on the whole.

31. It is necessary to consider the fact that the purpose of criminal proceedings is not only the “just punishment of the offender” but also “fair” trial. The law enforcement authorities failed to comply with this fundamental requirement in the case of the complainant as they acted arbitrarily in such manner and to such an extent that in the opinion of the Constitutional Court result in that the complainant’s constitutional complaint is assessed as justified.

VI.

32. Section 66 of the Criminal Procedure Code provides that: “The person who, despite previous warnings disturbs the proceedings or who acts towards a court, public prosecutor or police authority in an offensive manner or who without sufficient excuse disobeys an order or does not comply with the request made under this Act, may be imposed by the presiding judge or a public prosecutor or police authority within the pre-trial a disciplinary fine of up to CZK 50,000”.

33. The imposition of a disciplinary fine is one of extreme means of maintaining the authority of law enforcement authorities, ensuring respecting their orders, and maintaining the dignity of proceedings before them. The disciplinary fine enables ensuring the undisturbed and dignified course of the criminal proceedings and observance of the instructions given by the Criminal Procedure Code (Section 1 (1) of the Criminal Procedure Code). When using coercive means, it is always necessary to be done only in situations and within the limits prescribed by law and in the manner prescribed by law. The Constitutional Court previously concluded that it must always be surely and clearly demonstrated that the events listed in Section (66) (1) of the Criminal Procedure Code occurred so that the consideration on imposing a disciplinary fine by a law enforcement authority does not contradict the principle of constitutional protection of human rights and freedoms (see e.g. the judgment, file No. IV. ÚS 1594/10, of 14 October 2010, the judgment, file No. IV. ÚS 31/05, of 1 August 2005, or the judgment, file No. III. ÚS 766/2000, of 21 June 2001, while all the decisions are available at <http://nalus.usoud.cz>).

34. In connection with the circumstances of the particular case, it is necessary to address the question what is the nature of communication on the Internet social network Facebook. The Constitutional Court does not assume that it should define the nature and functioning of the social network Facebook as a whole, but the court considers necessary with regard to the specificity of the case to explain, for the purposes of this judgment, in a very simplified way what this social network is used for and how it is possible to use it.

35. Facebook is a large multifunctional Internet social network. It is a communication platform that is used primarily to establish and maintain relationships online and for the dissemination of information. Facebook especially allows the creation of a network of social contacts, communication between users, sharing a wide variety of multimedia content, organisation of events and presentation of users, as well as many other features. After registration, the user can search for other users of the networks who he/she would like to contact and ask them for the “friendship” (confirmation of mutual interest in the contact).

36. Apart from other things, the user can adjust individually the extent of sharing the published information and, using the tools of privacy protection, has the opportunity to choose who can see the content published by or concerning the user and how he/she can be searched and contacted. In other words, the user profile on a social network can work openly (it is public for all other Facebook users or even all internet users) or in a closed manner (the complainant chooses generally what range of users will have access to his/her information or may choose this for individual posts and information separately).

37. Simply put, the communication on Facebook may be conducted through the so-called “chat” (discussion), by means of messages (which can be sent to a single user or a certain group of users) or through a profile (personal) page of each user where the posts can be made by the user or other users if allowed by the individual setting of the user. Based on the user-selected privacy settings, the content of the user profile page may be made accessible only to his/her friends, selected groups of friends, all persons registered in the network Facebook or even persons not registered in the network Facebook who used the Internet (see www.facebook.com).

38. In this context, the Constitutional Court cannot agree with the conclusions of the District Court for Prague 9, namely that the social network Facebook is not intended for private communication, since it is a widespread social web system used for communication between users and multimedia data sharing, which is actively used by more than billion users. In addition, the opinion of the District Court consisting in the fact that “if the complainant decided to use the Facebook social network and communicate through it, it is also up to him to bear the consequences of his conduct,” is not shared by the Constitutional Court completely.

39. The nature of the social network Facebook is not in the opinion of the Constitutional Court explicitly public or private. It always depends on specific users and the level of privacy set by them on their profiles or as to individual posts. Theoretically, the user can communicate over the network with only one other user, without other users being able to see or participate in the communication. Such communication could certainly be regarded as a purely private, albeit made through the social network used by billions of users; any e-mail communication of two persons carried out e.g. through the e-mail service Gmail (www.gmail.com) which is also used by millions of users (similarly in the Czech Republic, e.g. the e-mail service available on the website www.seznam.cz) may be regarded as private in the same manner. The user of the social network Facebook may make his/her profile also completely public and thus accessible to all the users of the social network Facebook, or even to all the users of the Internet network. This option is widely used e.g. by political parties, interest groups, artists, service providers, vendors, and others whose aim is to present themselves through the social network Facebook to the widest number of Internet users. However, this setting is chosen also by some “normal” users.

40. It is obvious that given the ever-increasing importance and extent of use of the Internet, social networks, and various mobile applications in everyday life, it is an area which also law enforcement authorities direct their attention to. It is undeniable that while detecting criminal offences the information from the Internet may be very helpful and for some criminal offences even necessary. The Internet is the source of much publicly available information which is thus readily available to the law enforcement authorities, but equally contains a great deal of information of a private nature. The procedures applied by the competent authorities in identifying the information must comply with the framework established by law and must respect the general principles which the activities of public authorities are based on, particularly to ensure the constitutionally guaranteed rights and freedoms of the persons concerned to the maximum extent possible.

VII.

41. Neither the resolution of the police authority to impose a disciplinary fine nor the following resolution of the District Court specifies in any manner how the police authority has gained the information on which it based its decision to impose a disciplinary fine or how the communication in question has come into the sphere of the police department and what has been the purpose of the measure. The information is not implied either by the file documents which were the basis for such decisions.

42. It is evident from the statements of the police authority concerning the constitutional complaint that the police authority is aware that the Criminal Procedure Code stipulates the ways of constitutionally consistent interference with the fundamental rights, namely the right to the protection of secrecy of records kept private. The way in which these conditions are treated, however, is not in accordance with the constitutional order.

43. The police authority in its statement on the constitutional complaint mentions the possibility of securing the content of electronic communications following the procedure under Section 88a of the Criminal Procedure Code, i.e. the release of data on the telecommunications traffic under a court order. In the case of the complainant however, this procedure cannot be applied. The criminal proceedings were conducted for an offence of corrupting morals of a child pursuant to Section 201 (1) (a), while this offence does not fall into the range of criminal offences to which the procedure pursuant to Section 88a of the Criminal Procedure Code may be applied.

44. Notwithstanding this mandatory condition, also the argumentation of the police authority, according to which the necessity to request the legal assistance abroad is a hindrance to the application of Section 88a of the Criminal Procedure Code, is unconstitutional (Article 2 (2) of the Charter), because the Criminal Procedure Code directly envisages such procedure.

45. An order pursuant to Section 88a (1) of the Criminal Procedure Code is not necessary if the consent to the provision of data is given by the user of telecommunications equipment to which the data on the telecommunications traffic is related (Section 88a (4) of the Criminal Procedure Code). Neither the resolution to

impose a disciplinary fine nor the file documents imply that the complainant (or anyone else) has agreed with securing his communication and activities on the social network Facebook in this manner.

46. The police authority in its statement addressed to the Constitutional Court notified that the information on the communication of the complainant on the social network Facebook was acquired through an explanation submitted by witness F. N. after F. N. gave the police authority access to his Facebook profile and the police authority downloaded the information about the communication of the complainant from the account in the form of image files. However, this statement of the police authority is not sound either.

47. On 26 September 2013, F. N. came to submit his explanation pursuant to Section 158 (6) of the Criminal Procedure Code (page 472 of the file). The official record of the explanation submitted implies that in relation to the complainant's communication on the social network Facebook F. N. stated the following: "I am aware of the fact that Dmitri is the subject of police investigation, there was a post about a lieutenant on Facebook. There was some message posted concerning the photo, that they do not like the lieutenant. It was posted by T. and L." (page 475 of the file).

48. However, this is all the information that is mentioned in the official record as regards the complainant's communication on the social network Facebook. The official record (or the rest of the file documents) does not contain any indication that F. N. voluntarily gave the police authority access to his Facebook profile and made available the specific content of the concerned communication and its security in the form of print screens, i.e. capturing the computer screen into an image file, as stated by the police authority in its statement on the constitutional complaint when explaining that after offensive messages he did not search on his own initiative but he was warned of them in the ongoing criminal proceedings.

50. The above-mentioned procedure chosen by the police authority is an obvious circumvention of the applicable provisions of the Criminal Procedure Code concerning the interception and recording of telecommunications traffic.

51. If the law enforcement authorities within the procedure before prosecution are forced in order to detect a criminal offence and punish the offenders justly to restrict the fundamental human rights and freedoms of the parties to the proceedings to the extent necessary (e.g. custody, house search, interception and recording of telecommunications traffic), it is their duty to proceed strictly in accordance with the Criminal Procedure Code and within the limits set out therein, while preserving these rights to the maximum extent. Where it is not the case, such information cannot be used to the detriment of the complainant, as it was in the present matter.

VIII.

52. The Constitutional Court also considered whether the communication declared by the police authority in the resolution to impose a disciplinary fine fulfilled the elements as set out in Section 66 of the Criminal Procedure Code.

53. The purpose of imposing a disciplinary fine is to ensure the uninterrupted and dignified course of the criminal proceedings procedural acts and the observance of the instructions given by the Criminal Procedure Code. In relation to the specific circumstances of the case, the Constitutional Court holds that the police authority when imposing a disciplinary fine upon the complainant impermissibly extended the conditions of the application of Section 66 of the Criminal Procedure Code.

54. Imposing a disciplinary fine upon the complainant would have been appropriate if the complainant acted in an offensive manner towards the police authority within the criminal proceedings, e.g. within the submission of an explanation or interrogation of the accused. However, this was not the case. It is evident from the file documents that the complainant conducted absolutely correctly within the submission of his explanation and during the later interrogation towards the police authority and cooperated with the police authority (i.e. he gave the police authority his mobile phone voluntarily for the purpose of criminal proceedings) and did not impair the dignity of procedural acts.

55. In this context, the Constitutional Court when reviewing the resolution imposing a disciplinary fine also focused in detail on the content of messages which were allegedly offensive towards the police authority. Upon the detailed evaluation of the resolution to impose a disciplinary fine, the Constitutional Court has however found that the complainant is the author of only some of the posts mentioned in that resolution. The Constitutional Court holds that the context of the communication between and posts from L. K. and T. B. may not be used to the detriment of the complainant as the police authority did.

56. According to the Constitutional Court, the posts from the complainant are not of such intensity that requires the imposition of a disciplinary fine. The first post is a pictogram expressing smile. The second post contains a possible vulgar word, but “unsaid”, and the vulgarity of such post is thus rather a speculation of the police authority. The third post then only encourages to bring a criminal complaint (although in relation to a specific policeman), which, however, does not constitute anything objectionable.

IX.

57. Although the Constitutional Court has decided to annul the concerned resolution to impose a disciplinary fine and the related resolution of the District Court, it does not mean that it wants to support through this judgment any inappropriate conduct on the part of any of the parties to the proceedings towards the law enforcement authorities. In this respect, the Constitutional Court agrees with the opinion of the District Court for Prague 9 that the communication between the complainant and L. K. and T. B. in the overall context may seem relatively inappropriate and that the complainant should set an example to minors and should not support them in their potentially socially defective conduct. The Constitutional Court holds, however, after evaluating all aspects of this case, that the imposition of a disciplinary fine, in many respects outlined above, was not in accordance with the applicable provisions of the Criminal Procedure Code and it was an inadequate response on the part of the police authority.

X.

58. Based on the arguments above, the Constitutional Court concludes that the contested resolution has violated the constitutionally protected rights of the complainant enshrined in Articles 13 and 36 of the Charter. Therefore, the Constitutional Court upholds the constitutional complaint according to Section 82 (2) (a) of the Act on the Constitutional Court and annuls the contested resolutions of the Police of the Czech Republic and the District Court for Prague 9 pursuant to Section 82 (3) (a) of the cited Act.

59. The complainant also requires in his constitutional complaint that the Constitutional Court award the reimbursement of the costs of proceedings. Pursuant to Section 62 (3) of the Act on the Constitutional Court, the costs of proceedings conducted before the Constitutional Court incurred by a party to the proceedings or an intervener shall be borne by a party to the proceedings or an intervener. In justified cases and depending on the results of proceedings, the Constitutional Court may impose through its resolution upon any party to the proceedings the obligation to reimburse the other party for its costs of proceedings (Section 62 (4) Act on the Constitutional Court). As it is implied by the cited provisions, the reimbursement of the costs of proceedings conducted before the Constitutional Court is not automatic. In the present case, the Constitutional Court has found no reason for such procedure and does not award the complainant the reimbursement for the costs of proceedings.

Appeal: No appeal is permissible against the judgment of the Constitutional Court.

In Brno on 30 October 2014

Note 1 - The surname of the policeman is anonymised in the quotations by the Constitutional Court.

Note 2 - The word is derived from the English word “like” (“líbit se,