

2005/09/15 - III. ÚS 606/04: SUPPORT PAYMENT

HEADNOTES

Inconsistency with good morals, as grounds for not requiring support under § 96 par. 2 of the Act on the Family, is tied to the conduct of the person who seeks the support payments and not with the conduct of other persons, whether obligated persons, i.e. those who are subject to a claim for fulfilling an obligation of support, or third persons.

In proceedings on constitutional complaints the first group of cases where the Constitutional Court intervenes in the decision making of the general courts consists of cases in which it evaluates whether the simple law norm applied in a matter, pursuing a certain constitutionally protected aim, has, in terms of the principle of proportionality, justifiably acquired priority over another simple law norm that pursues a different constitutionally protected aim. (e.g., file no. III. ÚS 256/01 and others).

Another group consists of cases which do not involve competition between the application of several simple law norms, but address the question of which one of several alternative interpretation of a particular simple law norm is to be accepted (e.g., . file no. II. ÚS 22/94, III. ÚS 114/1994 and others).

Finally, the third group of cases in proceedings on constitutional complaints consists of cases where a general court has arbitrarily applied a simple law norm, without meaningful justification or a connection with any constitutionally protected aim. In the existing case law in constitutional complaint matters (see judgment file no. III. ÚS 351/04), the Constitutional Court interpreted the concept of arbitrariness in the sense of extreme inconsistency between legal conclusions and the factual and legal determinations made, and also in the sense of failure to respect a mandatory norm, an interpretation which is in extreme conflict with the principles of justice (one example of which is excessive formalism), as well as interpretation and application of statutory terms using a meaning other than that stated in the statute and accepted by consensus in legal thinking, and, finally, in the sense of decision making without more detailed criteria or at least principles derived from a legal norm.

**CZECH REPUBLIC
CONSTITUTIONAL COURT**

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

A Panel of the Constitutional Court, composed of its Chairman Jiří Mucha, judges Pavel Holländer and Jan Musil decided on 15 September 2005 in the matter of a constitutional complaint from the minor L. D., born 17 May 2000, filed by his legal representative, D. D., represented by Mgr. R. D., attorney, against a decision by the Municipal Court in Prague of 24 June 2004 ref. no. 29 Co 494/2003-197, as follows:

The decision of the Municipal Court in Prague of 24 June 2004 ref. no. 29 Co 494/2003-197 is annulled.

REASONING

The minor's mother, as his legal representative, in a timely filed constitutional complaint, sought the annulment of the abovementioned decision, in which the Municipal Court in Prague changed the decision of the City District Court for Prague 4 of 18 September 2003 ref. no. P 340/2003-132 to the effect that the court set the support payment, which the obligated father was previously obligated to pay for the minor child, in the amount of CZK 1,000, and, as of 1 December 2000 in the amount of CZK 2,200 per month, newly at an amount of CZK 1,500 per month as of 1 August 2001; it also changed the verdict on the support payment owed and the manner of payment, and did not award either party compensation of expenses for court proceedings at either level. The minor's mother referred to the minor's state of health, which affects the amount of expenses to cover his needs, to her own earnings and the father's earning level, and stated her belief that the court set the support payment at a disproportionate level, inconsistent with the evidence admitted, with reference to § 96 par. 2 of the Act on the Family, i.e. with the provision that setting a higher level of support payment would be inconsistent with good morals. Therefore, as the child's mother and legal representative, she believes that the abovementioned decision violates her rights, enshrined in Art. 3 par. 1, Art. 36 par. 1 of the Charter of Fundamental Rights and Freedoms (the "Charter"), in Art. 6 par. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention"), in Art. 2 par. 1, in Art. 6 par. 2, Art. 18 par. 1, Art. 23 par. 1, 2 and in Art. 27 par. 1 of the Convention on the Rights of the Child, as well as in Art. 90 of the

Constitution of the Czech Republic.

The Panel Chairman of the Municipal Court in Prague, in his statement of 6 December 2004 regarding the content of the constitutional complaint, referred to the decision's reasoning and expressed the belief that the petitioner's constitutional rights had not been violated.

The minor's father did not provide a response to the constitutional complaint in response to the notice from the Constitutional Court, which he received on 15 November 2004; he also did not meet the conditions for being a secondary party, as he did not give a power of attorney to an attorney to represent him, under § 30 par. 1 of Act no. 182/1993 Coll., as amended by later regulations.

It was determined from the file of the City District Court for Prague 4, file no. P 340/2003, that at the petition of the minor's mother, she was granted custody of L. D., and the father was required to make support payments for the minor, in the amount of CZK 1,000 per month with effect from 1 July 2000 until 30 November 2000, and then in the amount of CZK 2,200 per month as of 1 December 2000, to be paid to the mother; the debt for support payments for the period from 1 July 2000 through 31 October 2002 was established in the amount of CZK 55,600, with the provision that the father was required to pay the debt in payments of CZK 2,000 per month. When the father appealed, the verdict concerning an increased support payment exceeding the amount of CZK 1,000 per month as of 1 December 2000, as well as on the amount of support payments owed was annulled, and confirmed in another section (p. 108). After supplementing the evidence on support payments, the City District Court for Prague gave a ruling in which it set the payments at the amount of CZK 2,200 per month as of 1 December 2000, calculated the support payments owed in the amount of CZK 73,800, and determined that they were to be paid in payments of CZK 2,000 per month. After a further appeal by the father, the Municipal Court in Prague changed the decision of the first-level court as is stated in the constitutional complaint - it changed the amount of the support payments exceeding the amount of CZK 1,000 per month, and beginning on 1 August 2001 set them to be CZK 1,500 per month, it changed the verdict on the amount of support payments owed, and ruled on compensation of expenses of the proceedings; based on the evidence admitted it stated that the minor's needs had increased, but with reference to § 96 par. 2 of the Act on the Family it concluded that this increase was related to an injury to the child, responsibility for which lay not with the father, but with a third person, whom the mother entrusted with caring for the child, and that therefore a decision that the father should thus bear the increased expenses for the child's needs would be inconsistent with good morals (pp. 197-198 of the file of the City District Court for Prague 4, file no. P 340/2003).

The Constitutional Court reviewed the contested decision in terms of the claimed violation of constitutionally guaranteed rights and freedoms and found the constitutional complaint to be justified.

The essence of this constitutional complaint is the petitioner's argument against the appeals court's conclusion concerning the father's obligation to share in the minor's increased needs, which are affected by his poor health resulting from an injury caused by a third party into whose care the mother entrusted the child. The Act on the Family, in § 85, imposes a support obligation on parents for children who are not capable of supporting themselves, in a scope corresponding to their abilities, possibilities, and their financial situation, after taking into account the extent to which each parent takes care of the child.

Under § 96 par. 2 of the Act on the Family, a support payment can not be required if this would be inconsistent with good morals, and it is undisputed that this provision and related findings of fact which speak in favor of applying it must be connected with the entitled party, i.e. with the behavior or conduct of the person who seeks support payments from the obligated party. The settled case law of the general courts also corresponds to the thus-formulated essence and significance of § 96 par. 2 of the Act on the Family. Thus, the Supreme Court stated, in its resolution of 14 April 2004, file no. 6 Tdo 326/2004, that "a relationship of conflict between parents, which one of the parents perceives to be a violation of his parental rights, can not be ascribed to the detriment of minor children and used to dispute their right to support payments by claiming inconsistency with good morals under § 96 par. 2 of the Act on the Family." The Regional Court in České Budějovice reached a similar conclusion in the matter file no. 5 Co 2661/1999: "If one parent is prevented from contact with minor children on a long-term basis, and subsequently feels this to be a violation of his parental rights, this consequence can not be ascribed to minor children, and requiring support from that parent is not inconsistent with good morals." In other words, inconsistency with good morals, as grounds for not requiring support under § 96 par. 2 of the Act on the Family, is tied to the conduct of the person who seeks the support payments and not with the conduct of other persons, whether obligated persons, i.e. those who are subject to a claim for fulfilling an obligation of support, or third persons.

In the proceedings conducted at the District Court for Prague 4 under file no. P 340/2003, a claim for support of a child, born 17 May 2000, was made against the father, who does not live with the mother and child, where the minor had suffered an injury due to which he has serious health disabilities. The injury was caused by J. K., a man with whom the mother shares her household. At the time when the needs of the minor, and funds used to cover these needs were assessed, i.e. at the time when the support payments were determined, this man had not been convicted with legal effect of the crime of injury to health, nor had the obligation to compensate the minor for damage caused been imposed on him (in a decision of the Municipal court in Prague of 22 April 2002, file no. 45 T 9/2001, J. K. was acquitted of the charge of the crime of attempted murder under § 8 par. 1 k § 219 par. 1, par. 2 let. e) of the Criminal Code, which he was alleged to have committed against the minor L. D., the petitioner in the proceedings before the Constitutional Court).

Based on the foregoing, the Constitutional Court concluded that, in terms of the simple law applicable to the present matter, the decision of the Municipal Court in Prague contested by the constitutional complaint violated § 96 par. 2 of the Act on the Family.

From a constitutional law standpoint it is necessary to set the conditions under which incorrect application of simple law by the general courts leads to violation of the fundamental rights and freedoms.

In proceedings on constitutional complaints the first group of cases where the Constitutional Court intervenes in the decision making of the general courts consists of cases in which it evaluates whether the simple law norm applied in a matter, pursuing a certain constitutionally protected aim, has, in terms of the principle of proportionality, justifiably acquired priority over another simple law norm that pursues a different constitutionally protected aim. (e.g., file no. III. ÚS 256/01 and others).

Another group consists of cases which do not involve competition between the application of several simple law norms, but address the question of which one of several alternative interpretations of a particular simple law norm is to be accepted (e.g., . file no. II. ÚS 22/94, III. ÚS 114/1994 and others).

Finally, the third group of cases in proceedings on constitutional complaints consists of cases where a general court has arbitrarily applied a simple law norm, without meaningful justification or a connection with any constitutionally protected aim. In the existing case law in constitutional complaint matters (see judgment file no. III. ÚS 351/04), the Constitutional Court interpreted the concept of arbitrariness in the sense of extreme inconsistency between legal conclusions and the factual and legal determinations made, and also in the sense of failure to respect a mandatory norm, an interpretation which is in extreme conflict with the principles of justice (one example of which is excessive formalism), as well as interpretation and application of statutory terms using a meaning other than that stated in the statute and accepted by consensus in legal thinking, and, finally, in the sense of decision making without more detailed criteria or at least principles derived from a legal norm.

Thus, in proceedings on constitutional complaints, we can distinguish cases of conflict between simple law norms, conflict between alternative interpretation, and finally cases of arbitrary application of simple law.

In the present matter, the Constitutional Court concluded that the interpretation of § 96 par. 2 of the Act on the Family, contained in the decision of the Municipal Court in Prague of 24 June 2004 ref. no. 29 Co 494/2003-197, is extremely inconsistent with usual methods of interpretation, with legal concepts defined by standard legal dogmatics, and with the stable case law of the general courts, for which reason the decision in question can not be described otherwise than as arbitrary application of simple law, and thereby violation of

the fundamental right to a fair trial under Art. 36 par. 1, Art. 32 par. 1 in connection with Art. 41 par. 1 and Art. 4 par. 4 of the Charter, as well as Art. 18 par. 1, Art. 23 par. 1 and Art. 27 par. 1 of the Convention on the Rights of the Child.

For the foregoing reasons, i.e. in view of the violation of Art. 36 par. 1 of the Charter, as well as Art. 18 par. 1, Art. 23 par. 1 and Art. 27 par. 1 of the Convention on the Rights of the Child, the Constitutional Court annulled the decision of the Municipal Court in Prague of 24 June 2004 ref. no. 29 Co 494/2003-197 [§ 82 par. 1, par. 3 let. a) of Act no. 182/1993 Coll., as amended by later regulations].

Notice: Decisions of the Constitutional Court can not be appealed.

Brno, 15 September 2005