

1995/03/28 - PL. ÚS 20/94: FAMILY LAW

HEADNOTES

The Charter of Fundamental Rights and Basic Freedoms, which forms a part of the constitutional order of the Czech Republic, stipulates in Article 32 para. 4 of the Charter⁴⁾ that parental rights may be limited and minor children may be removed from their parents' custody against the latter's will only by the decision of a court on the basis of the law.

If, therefore, other legal regulations place upon the administrative organs the authority to carry out such measures, which can be otherwise decided only by the court on the basis of the law, or which may stipulate that the court decides on such measures subsequently, these provisions are in conflict with the constitutional acts.

CZECH REPUBLIC CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court of the Czech Republic in the matter of the petition proposing the annulment of § 46 of the Act on the Family, No. 94/1963 Coll., as amended,¹⁾ § 19 para. 1, letter a, subpara. 1 of Czech National Council Act No. 114/1988 Coll., on the Competence of Bodies of the Czech Socialist Republic in Social Security Matters, as amended,²⁾ and § 15 of Regulation of the Ministry of Labor and Social Affairs of the Czech Republic, No. 182/1991 Coll., which Implements the Act on Social Security and the Czech National Council Act on the Competence of Bodies of the Czech Socialist Republic in Social Security Matters,³⁾ on 28 March 1995 decided, thusly: As of 1 October 1995, the following shall be annulled:

1. § 46 of the Act on the Family, No. 94/1963 Coll., as amended;¹⁾
2. § 19 para. 1, letter a, subpara. 1 of Czech National Council Act No. 114/1988 Coll., on the Competence of Bodies of the Czech Socialist Republic in Social Security Matters, as amended;²⁾
3. § 15 of Regulation of the Ministry of Labor and Social Affairs of the Czech Republic, No. 182/1991 Coll., which Implements the Act on Social Security and the Czech National Council Act on the Competence of Bodies of the Czech Socialist Republic in Social Security Matters; as amended.³⁾

REASONING

On 16 February 1994, the complainant, Z. N., delivered to the Constitutional Court of the Czech Republic a constitutional complaint against the 29 November 1993 resolution of the Regional Court in Brno, which turned down his appeal from the 2 August 1993 judgment of the Municipal Court in Brno, in conjunction with which he submitted a petition proposing the annulment of the above-cited legal enactments. For this reason, the Panel suspended the proceeding on the constitutional complaint and, pursuant to § 78 para. 1 of Act No. 182/1993 Coll., on the Constitutional Court, submitted to the Plenum for its decision the petition proposing that the provisions of both statutes and of the implementing regulation be annulled.

In presenting his reasons for the petition, the complainant stated that, on the basis of a decision on provisional measures which the Municipal Office of the City of Brno - Cernovice District issued in 1991, a decision was taken placing his son under institutional care. The complainant appealed against these provisional measures to the competent appellate body, the Municipal Office of the City of Brno, Division of Social Affairs, but that office did not grant his appeal. Neither did the criminal court (which in 1993, in connection with these decisions, passed judgment on the complainant's failure to perform his duty as a father to pay fees for care provided during the period when his son was in institutional care) take into consideration the complainant's objection that these decisions constituted a violation of his rights as well as those of his child, and this in spite of the fact that Art. 32 para. 4 of the Charter of Fundamental Rights and Basic Freedoms⁴⁾ provides that parental rights may be restricted and children may be removed from the custody of their parents without the parents' consent only by decision of a court on the basis of a statute. Art. 9 para. 1 of the Convention on the Rights of the Child contains analogous provisions. In the complainant's view, at the time these decisions were made, the cited provisions of the Convention should have been given, in accordance with § 2 of the then in force Constitutional Act No. 23/1991 Coll.,⁵⁾ priority over statutes; therefore, they should have taken priority over § 46 of the Act on the Family,¹⁾ No. 94/1963 Coll., § 19 para. 1, letter a, subpara. 1 of Czech National Council Act No. 114/1988 Coll.,²⁾ and § 15 of Regulation of the Ministry of Labor and Social Affairs of the Czech Republic, No. 182/1991 Coll.³⁾ Nations which are States Parties to the above-cited Convention are, therefore, required to ensure that children may not be taken from the custody of their parents without the parents' consent, unless the competent authority decides, on the basis of a court decision, in accordance with a valid statute, and in an appropriate proceeding, that such removal is in the interests of the child.

The Constitutional Court has ascertained from the reasoning of the judgment of the Municipal Court in Brno in the criminal matter, file no. 4 T 113/93, that even though the Municipal Court in Brno did not take such measures with explicit reference to the provisions of § 46 of Act No. 94/1963 Coll.,¹⁾ in its legal deliberations, with regard to the judgment on the complainant's guilt, in particular, it conducted the case in

accordance with the contents of that act. The Constitutional Court drew from these circumstances the conclusion that the petition proposing the annulment of a portion of Act No. 94/1963 Coll., as amended, as well as portions of Czech National Council Act No. 114/1988 Coll., and Regulation of the Ministry of Labor and Social Affairs No. 182/1991 Coll., bear a close connection to the circumstances that emerge from the complainant's constitutional complaint. Therefore, the formal requirements for the consideration of a petition on the annulment of a statute (§ 74 of Act No. 182/1993 Coll.6)) have been fulfilled.

First of all, the Constitutional Court must, on the basis of the submitted petition, draw its attention to comparing the terms of the provisions which are proposed to be annulled, § 46 of Act No. 94/1963 Coll.1) (since its provisions create the foundation on which is built § 19 of Act No. 114/1988 Coll.,2) and § 15 of Regulation No. 182/1991 Coll.3)), with the terms of Article 32 para. 4 of the Charter of Fundamental Rights and Basic Freedoms.4) According to the express terms of the Charter of Fundamental Rights and Basic Freedoms, which forms a part of the constitutional order of the Czech Republic, in cases where they do not give their consent, parents' rights may be restricted and children may be removed from their custody only by decision of a court (on the basis of law). The text of Article 32 para. 4 of the Charter4) leaves no doubt on this score: "Parental rights may be limited and minor children may be removed from their parents' custody against the latter's will only by the decision of a court on the basis of the law." The Convention on the Rights of Child, which this state is obliged to implement internally, also provides similar protection to children.

If, therefore, the Charter provides that minor children may be removed from the custody of their parents without the latter's consent only by the decision of a court on the basis of the law, and the provisions of the Act on the Family (§ 46 of Act No. 94/1963 Coll.1)), just as the provisions the Act on the Competence of Bodies of the Czech Socialist Republic in Social Security Matters (§ 19 of Act No. 114/1988 Coll.2)), place upon district national committees (now district offices) the duty, in urgent cases, to take provisionally even such measures as otherwise only a court would have the authority to take (although they are obliged without delay to notify a court, which must decide on the matter subsequently), then the Constitutional Court must come to the conclusion that these provisions are in conflict with constitutional acts, as meant by § 70 of Act No. 182/1993 Coll., on the Constitutional Court, and must annul them.

The Constitutional Court concurs with the views submitted by the Assembly of Deputies' to the effect that, if a child is not receiving upbringing in his own family situation, then he has a legal claim upon the state that it ensure him upbringing in a situation substituting for that of his own family, thus, even an institutional upbringing, if it is not possible to provide him with substitute family care (§ 46, Act on the Family1)), so that it is not only the right of these bodies to take those necessary measures which are required by the interest in protecting the rights of the minor, but it is also their legal duty.

However, the Constitutional Court cannot agree with the assertion that the breadth of the state bodies' authority and their powers (for example, in § 46 of Act No. 94/1963

Coll.1)) are in conformity with the relevant norms of international law, because, as it has already stated, it has come to the conclusion that these specific provisions are in conflict with a constitutional act of the Czech Republic. For this reason, neither can it concur with the further assertion that it is enough that a court makes a decision concerning the immediate placement of children into care substituting for the upbringing of the family only subsequent to the decision by the competent administrative body to make such a placement as a provisional measure.

The above-stated reasons, which point to the annulment of the contested provisions of both cited statutes, applies to the same degree to the annulment of the provisions of the implementing regulations, that is § 15 of Regulation of the Ministry of Labor and Social Affairs of the Czech Republic, No. 182/1991 Coll.3).

As the Constitutional Court is well aware that there are urgent cases which require that, in the interests of the child, the necessary steps be taken without delay, it is delaying the entry into effect of this judgment until 1 October 1995, in order to allow for the organizational, or legislative, measures that are necessary to protect the interests of children, to be taken in harmony with the Charter of Fundamental Rights and Basic Freedoms, which forms a part of the constitutional order of the Czech Republic, as well as with the International Convention on the Rights of the Child, by which the Czech Republic is bound.

Overview of the most important legal regulations

1. § 46 of National Assembly Act no. 94/1963 Coll., on the Family, provides that if it is urgently necessary, the national committee is required to take such preliminary measures as can otherwise only be decided only by a court, which it shall inform without delay; the court shall make a supplementary decision.
2. § 19 par. 1 letter a) no. 1 of Czech National Council Act no. 114/1988 Coll., on the powers of CSR bodies in social security, as amended, provides that the District National Committee shall decide in urgent cases on the immediate placement of a child in substitute care replacing the care of parents for a period until the court makes a decision.
3. § 15 of Decree of the Ministry of Labor and Social Affairs of the CR no. 182/1991 Coll., which implements the Act on Social Security and Czech National Act on the Powers of CR Bodies in Social Security, as amended, provides that the District Office shall decide on the immediate placement of a child in substitute care replacing the care of parents if a child finds itself without any care whatsoever, e.g. as a result of the death of parents or other persons responsible for the child's upbringing or as a result of other serious circumstances where a long-term situation is anticipated. It shall also decide on the immediate placement of the child if his life, health or beneficial development are so serious endangered or infringed that regulating the child's situation cannot be delayed. The district office shall immediately enforce the decision by taking the child out of the environment in which it is found and shall inform the relevant court without delay about the decision.
4. Art. 32 par. 4 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that it is the parents' right to care for and raise their children; children have the right to upbringing and care from their parents. Parental rights may be limited and minor children may be removed from their parents' custody against the latter's will only by the decision of a court on the basis of the law.
5. § 2 of the Federal Assembly Constitutional Act no. 23/1991 Coll., which enacts the Charter of Fundamental Rights and Freedoms, provides that international treaties concerning human rights and fundamental freedoms which have been duly ratified and promulgated and by which the Czech Republic is bound are directly applicable and take precedence over statutes. Note: see Art. 10 of the Constitution
6. § 74 of Act no. 182/1993 Coll., on the Constitutional Court, provides that together with a constitutional complaint a petition can be filed for the annulment of a statute or other legal regulation or individual provisions thereof, by the application of which the circumstance which is the subject of the constitutional complaint arose.