

# 2005/11/08 - PL. ÚS 28/04: PUBLIC HEARING

## HEADNOTES

Neither Art. 38 par. 2 of the Charter nor Art. 17 par. 1 establish unrestricted rights to public consideration of a case, or to information, respectively. In both cases it is up to the legislature, to what extent it restricts, by statute, the right to public consideration of a case or the right to information. In view of the fact that a number of provisions of the Charter are related to each other, they must be interpreted together, systematically, and in mutual subordination, whereby “the Charter precisely and strictly regulates the freedom of the legislature.” In evaluating whether a statute limiting fundamental rights and freedoms is constitutional or not, it is usually necessary to consider aspects of legal philosophy, legal history, and comparative law.

The Czech lands traditionally considered constitutional a legal framework based on the premise that the presence of the public is conceived as a guarantee of public review of the justice system, and at the same time that special emphasis is laid on the interests and benefit of a juvenile in cases of restricting the presence of the public in proceedings against a juvenile.

The right to a public trial is a fundamental right of the party to the proceedings, and not a fundamental right of the court or judge.

The contested provision of § 54 par. 1 of the Act on Juvenile Courts is also consistent with Art. 6 par. 1 of the Convention, which permits barring the public ... during all or part of the trial ... if required in the interests of minors, or ... if, in view of special circumstances, a public trial could be contrary to the interests of justice.

In the Constitutional Court’s opinion, it is not always necessary to relate the court’s educational activity, or the educational effect of criminal proceedings on a recipient of information, to identification of the perpetrator. For purposes of education for respect for rights and justice, the more important information is certainly that concerning the factual findings and the legal evaluation of them, which can be obtained, with the contested provisions in effect, by a public announcement of the verdict, and which can be freely expressed and disseminated without any substantive limitation. In this regard we can not overlook the right to moderate provided to the chairman of a court panel in § 54 par. 3 of the Act on Juvenile Courts.

The negative effects of the limitation on freedom of speech to the benefit of this modification of the right to privacy do not appear to be significant, compared to the positive effects provided by the potential effects of the Act in suppressing the criminal careers of juvenile delinquents.

**CZECH REPUBLIC**  
**CONSTITUTIONAL COURT**  
**JUDGMENT**

**IN THE NAME OF THE CZECH REPUBLIC**

The Plenum of the Constitutional Court, composed of Stanislav Balík (Judge-Rapporteur), František Duchoň, Vlasta Formánková, Vojen Güttler, Pavel Holländer, Ivana Janů, Dagmar Lastovecká, Jiří Mucha, Jan Musil, Jiří Nykodým, Pavel Rychetský, Miloslav Výborný, Eliška Wagnerová a Michaela Židlická decided on 8 November 2005 in the matter of a petition from the District Court in Kladno, represented by panel chairman Mgr. L. K., seeking the annulment of § 53 par. 1 and § 54 of Act no. 218/2003 Coll., on Liability of Juveniles for Illegal Acts and on Juvenile Courts and Amending Certain Acts (the Act on Juvenile Courts), with the participation of the Chamber of Deputies of the Parliament of the Czech Republic and the Senate of the Parliament of the Czech Republic, as follows:

**The petition is denied.**

**REASONING**

I.

1. On 2 June 2004 the Constitutional Court received a petition from the District Court in Kladno in which the petitioner seeks the issuance of a judgment whereby the Constitutional Court would annul § 53 par. 1 and § 54 of Act no. 218/2003 Coll., on Liability of Juveniles for Illegal Acts and on Juvenile Courts and Amending Certain Acts (the Act on Juvenile Courts), (the “Act on Juvenile Courts”).

2. The petitioner stated that proceedings are being conducted at the District Court in Kladno, file no. 4 Tm 25/2004, in the criminal matter of the defendant juvenile L. B. et al., who is charged with committing the crime of theft under § 247 par. 1 let. b), d) and par. 3 let. b) of the Criminal Code, and other crimes. In this criminal matter, the District Court in Kladno is required, in the case of the defendant juvenile L. B. and other defendants, to apply the Act on Juvenile Courts as a whole, including at the moment when it decides to order and conduct trial proceedings.

3. According to the petitioner § 54 par. 1 of the Act on Juvenile Courts is inconsistent with Art. 96 par. 2 of the Constitution of the Czech Republic (the “Constitution”), and with Art. 38 par. 2 of the Charter of Fundamental Rights and Freedoms (the “Charter”), and § 53 and § 54 par. 2, 3 of the Act on Juvenile Courts are inconsistent with Art. 17 par. 1, 4, 5 of the Charter.

4. The petitioner pointed to the fact that before § 54 par. 1 of the Act on Juvenile Courts went into effect, the regulation contained in § 200 or § 297 par. 3 let. a) of the Criminal Procedure Code applied to the presence of the public at a trial and public sessions involving juveniles. Under this regulation, the reasons when an exception from the principle of a public trial can be permitted were precisely and strictly defined. The court had to decide on the individual application of such an exception within an adjudicated matter, and this was and is a decision of a procedural nature, against which there is no remedy. The District Court in Kladno concludes, from its own experience and from other data, that before the Act on Juvenile Courts went into effect, cases in which the public was excluded “were a negligibly small number, insignificant; in comparison to other matters it would be far below one percent, and we could surely speak of tenths of a percent out of all the matters tried by a court,” whereas since the Act on Juvenile Courts went into effect, the public is absent from seven to eight percent of criminal matters tried at the District Court in Kladno. In the petitioner’s opinion, the Act on Juvenile Courts does not in the least stick to “the principles of a democratic and law-based state, and denies and endangers” one of the fundamental constitutional safeguards, consisting of the public exercise of the judicial power, and is grossly inconsistent with, in particular, Art. 96 par. 2 of the Constitution, which permits the public to be barred only in exceptional cases, and this exclusion, although “on the basis of statute, of almost a tenth of criminal matters from the regime of public trial is not in accordance with the spirit of the Constitution. The petitioner also explains that the public nature of court proceedings means the right “of any citizen, and of person who are not citizens of the state exercising the judicial power,” to take part in the trial and in public sessions.” This also declares the willingness on the part of the state to exercise the judicial power democratically, transparently, publicly, and on the basis of laws. The presence of the public in the courtroom has an informational and educational function, and is a means of public inspection of the justice system.

5. The petitioner disagrees with the fact that, as a result of applying § 53 par. 1 and § 54 par. 2, 3 of the Act on Juvenile Courts, the interest of the juvenile is given precedence over arranging that the widest possible public has direct and correct experience of the activity of the courts, in particular, that “people come into contact with it regularly, and become familiar with it, as members of the public at court proceedings, if the state defines itself as law-based and democratic (Art. 1 of the Constitution) and wants to be seen as such by the citizens who live in it.” The petitioner points to the fact that since the Act on Juvenile Courts went into effect, the courts in proceedings against juveniles are in the position of so-called “chamber justice.” The petitioner points out that Constitutional Court judgments often cite the principle of proportionality as the standard for evaluating the constitutionality of a statutory norm. In its opinion, “the legislature inappropriately and in an unbalanced manner elevated the interest of the individual above the interest of society as a whole, which, incidentally, is composed of precisely such individuals as the

defendant juvenile.” The petitioner believes that the public and the media can not be restricted in their access to information to such a wide degree, involving such a large group of persons, solely on the basis of a hypothetical possibility of a negative effect on the future life of the defendant juvenile who is being prosecuted. Based on the cases of the murder of a teacher that is being “followed by the media” it concludes that the protection from disclosure of information pursued by the Act on Juvenile Courts is “completely ineffective.”

## II.

6. In response to notice from the Constitutional Court, the Chamber of Deputies of the Parliament of the CR, through its Chairman, PhDr. L. Z., submitted a statement under § 69 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations. It stated that the Act on Juvenile Courts approaches the handling of illegal acts in the wider context of all their moral and social aspects. In contrast to the criminal codices for adults, criminal law for juveniles is oriented at the future, and the focus of its interest therefore lies in passing measures that can prevent recidivism. The legislature’s intent was to include in the Act on Juvenile Courts the starting point of a so-called “restorative” (renewing) justice system, which emphasizes society’s balanced, just reaction to a juvenile’s crime, which does not deny its joint responsibility for his failure, and draws consequences from it not only for the juvenile, but also for addressing the problems of other involved persons and groups connected with the crime. The provisions of § 3 par. 5, § 53 and § 54 of the Act on Juvenile Courts establish the special rights of juveniles to be protected from invasion of their personal privacy in order to minimize the possible stigmatizing consequences of a trial and its results in matters handled by juvenile courts. The special interest in protecting the privacy and personality of a juvenile justifies keeping information about his illegal acts confidential over the constitutionally protected principle of court proceedings being public and the right to information, for purposes of the greatest elimination of damaging effects of the proceedings on a juvenile, including effects which defame his person, and on the basis of the constitutional principle of the presumption of innocence. The specific rights of juveniles contained in § 53 and § 54 of the Act on Juvenile Courts must also be considered in relation to Art. 32 par. 1, second sentence, and Art. 32 par. 6 of the Charter. The Chamber of Deputies of the Parliament of the CR also pointed out that neither the right to information nor the principle of public court proceedings is absolute. The possibility of restricting the presence of the public in criminal proceedings against a juvenile and restricting the right to information also arises from important international treaties by which the Czech Republic is bound. It is necessary to take into consideration Art. 96 par. 2 of the Constitution, Art. 38 par. 2 of the Charter and Art. 36 par. 1 of the Convention, as well as Art. 40 par. 2.2 point vii) of the Convention. In contrast to the petitioner’s position, the Chamber of Deputies of the Parliament of the CR believes that the approved provisions of § 53 and § 54 of the Act on Juvenile Courts optimally balance the interest of the defendant juvenile on one side, and the aims that are to be achieved by the principle of public trials on the other side. In conclusion, it stated its position that the legislative assembly acted in the belief that the Act is consistent with the Constitution, the constitutional order, and the legal order of the Czech Republic.

According to the Chamber of Deputies of the Parliament of the CR, it is up to the Constitutional Court to evaluate the constitutionality of the Act in connection with the petition from the District Court in Kladno.

7. The Senate of the Parliament of the Czech Republic, through its chairman, Doc. JUDr. P. P., in its statement recapitulated the petitioner's arguments, and stated that in discussions in the committees and the full Senate there were no comments to the provisions contested by the petition. However, certain opinions from the general debate must be pointed out, which were addressed at the then-discussed draft of the Act on Juvenile Courts. The majority agreed that the aim of the Act on Juvenile Courts is to achieve better results in balancing juvenile delinquency and criminality in general, especially in terms of recidivism and delinquents' further criminal career. Negative developments can be stopped only at the age level of juveniles, using positive methods. The report of the constitutional law committee emphasized that the draft Act paid attention to ensuring the reduction of undesirable "labeling" of a young perpetrator, which is addressed by restricting the publication of information about accused and convicted juveniles, including newly implemented penalties for violating these bans. Dissenting opinions were based on the conviction that a clear and tough warning (threat) is necessary at all age levels in order to stop criminality. The Senate of the Parliament of the CR underscored that indirect constitutional support for the contested provisions can be found especially in Art. 32 of the Charter. Comprehensive protection of juveniles is contained in the Convention on the Rights of the Child of 1989, which points out, in Art. 40 par. 2, that the privacy of the child is to be fully respected at all stages of criminal proceedings. The Senate also points out that in passing the contested provisions the legislature was also encouraged by conclusions from other international documents in the field of treatment of delinquent juveniles. These were UN documents, especially the "Standard Minimum Rules for the Administration of Juvenile Justice" (the "Beijing rules" - General Assembly resolution 40/33 of 1989), but also documents from the Council of Europe, e.g. Resolution R (87) 20, on social reactions to juvenile delinquency. The appropriateness of the contested statutory provisions (exceptions from constitutional rights) must be seen through the prism of the significance of the particular regulation of juvenile courts. There is naturally a greater emphasis supporting the subjective rights of juveniles than on "collective" values, e.g. inspection of the judiciary by the people; still, the aim of the special protection given to juveniles in criminal proceedings rests in the public interest in the possibility of stopping the increase in crime. Exceptions from the constitutional right to a public hearing before a court and the right to disseminate information are directly connected to the purpose stated in § 1 of the Act on Juvenile Courts. The Senate of the Parliament of the CR also pointed out that the legislature acted within the intentions of the case law of the European Court of Human Rights. The Senate also pointed out that Art. 96 par. 2 of the Constitution and Art. 38 par. 2 of the Charter permit the existence of exceptions provided by law. The right to seek out and disseminate information can also be restricted by law consistently with Art. 17 par. 4 of the Charter. The contested provisions, § 53 par. 1 and § 54 par. 2, 3, are a "very subtle statutory restriction." The low intensity of the exception is shown by, for example, the fact that under no. 3 let. e) of the "Ethical Codex of Journalists of the CR" a journalist is called on to strictly observe the rule not to identify the relatives of delinquents or the victim without their clear consent. The Senate stressed that the contested provision, § 54 par. 3,

last sentence, of the Act on Juvenile Courts gives the court panel chairman the possibility to weigh whether, in the event of a conflict between the freedom to disseminate information and the right to protection of privacy, the priority given to one or the other right is justified. The necessity of the restriction on the right to disseminate information stated in the contested provisions brings positive effects in terms of the statute serving to dampen the criminal careers of juvenile delinquents, while the negative effects of restricting freedom of expression to the benefit of this modification of the right to privacy do not appear to be significant. In conclusion the Senate of the Parliament of the CR states that it passed the draft Act on Juvenile Courts by a majority, that the draft Act is in accordance with the constitutional order of the Czech Republic and the state's international obligations. It is up to the Constitutional Court to evaluate the constitutionality of the provisions contested by the petition and to reach a decision.

### III.

8. The Constitutional Court, in accordance with § 68 par. 2 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, considered the question whether the statute whose provisions are claimed to be unconstitutional was passed and issued within the bounds of constitutionally provided jurisdiction and in a constitutionally prescribed manner. The statute is Act no. 218/2003 Coll., on Liability of Juveniles for Illegal Acts and on Juvenile Courts and Amending Certain Acts (the Act on Juvenile Courts). In this regard, the Constitutional Court determined from the relevant parliamentary publications, shorthand transcripts, and voting records, that the Chamber of Deputies of the Parliament of the CR duly approved the draft Act at its session on 21 May 2003, and the Senate of the Parliament of the CR approved the draft in the version approved by the Chamber of Deputies of the Parliament of the CR at its session on 25 June 2006. After being signed by the president and the prime minister, the Act was promulgated in the Collection of Laws, in part 79, as no. 218/2003 Coll. The Act was thus passed and issued within the bounds of constitutionally provided jurisdiction and in a constitutionally prescribed manner.

### IV.

9. The provisions which the petitioner contests and seeks to have annulled read as follows:  
“§ 53

1) Unless this Act provide otherwise, no one may make public, in any manner, any information which provides the first name or names and family name of the juvenile, or which contains information that would make it possibly to identify the juvenile.

§ 54

1) Persons who may take part in the trial and public sessions are only the defendant juvenile, his two confidantes, his defense counsel, legal representatives, and immediate family members, siblings, spouse or companion, the victim and his authorized representative, witnesses, experts, interpreters, the relevant body for social protection of

children, officials from the Probation and Mediation Service, and the representative of the school or educational institution. At the juvenile's request the trial or public session can be held publicly.

(2) Publishing information about the trial or a public session that would lead to identifying the juvenile in the media or otherwise is forbidden. It is likewise forbidden to publish and text or any depiction concerning the identity of the juvenile.

(3) The verdict is announced publicly in the trial in the presence of the juvenile. A guilty verdict may be published in the media only without stating the name and family name of the juvenile, and with the provision of appropriate protection of the juvenile from undesirable effects of such publication. The panel chairman may, taking into account the nature and type of fault and the appropriate protection of the interests of the juvenile, decide on a different manner of publication and related restrictions. An objection against such a ruling is not permitted.”

## V.

10. The Constitutional Court first considered the question whether the petitioner - the District Court in Kladno - is authorized to file a petition to annul the contested provisions. The petitioner correctly stated that it must apply the contested provisions in criminal proceedings, because a criminal charge has been filed before it against a juvenile defendant and the next step is thus to order a trial. The Constitutional Court concluded that the contested provisions are related to the petitioner's decision-making activity, and therefore the District Court in Kladno is an authorized petitioner under Art. 95 par. 2 of the Constitution and § 64 par. 3 of the Act on the Constitutional Court.

## VI.

11. After this determination the Constitutional Court turned to evaluating the content of the contested provisions of the Act on Juvenile Courts in terms of their consistency with the constitutional order of the Czech Republic [Art. 87 par. 1 let. a) of the Constitution].

The petitioner's petitioner presented two constitutional law objections, that § 54 par. 1 of the Act on Juvenile Courts is inconsistent with Art. 38 par. 2 of the Charter (the right to public consideration of one's case) and that § 53 par. 1 and § 54 par. 2, 3 are inconsistent with Art. 17 par. 1, 4 a 5 of the Charter (the right to information). The third objection is that the contested provisions of the Act on Juvenile Courts violate the proportionality between the interest in protection of privacy of criminally prosecuted juveniles on the one hand, and the right to information on the other hand, to the benefit of protection of privacy of criminally prosecuted juveniles.

The Constitutional Court first states that neither Art. 38 par. 2 of the Charter nor Art. 17 par. 1 establish unrestricted rights to public consideration of a case, or to information,

respectively. In both cases it is up to the legislature, to what extent it restricts, by statute, the right to public consideration of a case or the right to information. In view of the fact that a number of provisions of the Charter are related to each other, they must be interpreted together, systematically, and in mutual subordination, whereby “the Charter precisely and strictly regulates the freedom of the legislature “ (cf. F. Šamalík, *Charakter ústavního pořádku a jeho ochrana* [The Nature of the Constitutional Order and Its Protection], *Právník* [The Lawyer] no. 1/1998, p. 23). In evaluating whether a statute limiting fundamental rights and freedoms is constitutional or not, it is usually necessary to consider aspects of legal philosophy, legal history, and comparative law.

12. The general legal consciousness traditionally sees the right to public consideration of a matter as an instrument of public inspection of the justice system. The purpose of public trials “is so that everyone can see for himself how justice is handled by the state, which inspection by the public makes impossible the partiality of judges” (see. the entry “Public” in: *Riegrův slovník naučný* [Rieger’s Educational Dictionary], IX, Prague 1872, p. 997). This purpose for public trials was long considered the only one in the Czech lands. The case law of the Czechoslovak Supreme Court from the First Republic repeatedly provides that “the only purpose which the law pursues by a provision on a closed public trial is for court proceedings not to be conducted without permitting public inspection of them.” In this single purpose for making trials public there is, under the law, no difference between proceedings before a jury and before a panel of judges, and even with a jury the law does not pursue the intent of having the powerful effect of the mood of the listeners in the jury chamber influence the jury” [see decision no. 4336/1932 in: F. Vážný, *Rozhodnutí Nejvyššího soudu československé republiky ve věcech trestních* [Decisions of the Supreme Court of the Czechoslovak Republic in Criminal Matters] (“Vážný”), XIII, 1932, p. 568]. The Supreme Court of the First Republic similarly concluded that “the purpose of the law is public review of the execution of justice, judging in the light of day, not in the dark secrecy of court proceedings. Thus, the concept of public hearings is presented as the antithesis of secrecy, and it is only a question of practicality to what extent access to proceedings for the public can be arranged while preserving the inviolable postulate of the unacceptability of influences which negatively affect the legal conduct of proceedings and on persons participating in them” (see decision no. 1729/1925, in: Vážný, VI, 1925, p. 549).

Czechoslovakia between the wars belonged, along with Germany (in 1923) and Austria (in 1928) to the states that passed laws on juvenile courts [cf., e.g., H. Válková, *Odpovědnost za mládež z pohledu trestní politiky* [Responsibility for Youth from the Viewpoint of Criminal Policy], in: E. Bezouška, V. Bednář (eds.), *Nečtiny 1999-2005, Plzeň 2005* (“Válková, Responsibility”), p. 128-129]. The provision of § 48 par. 1 of Act no. 48/1931 Coll. of Laws and Judgments specially regulated the barring of the public in proceedings against a juvenile, in contrast to the general regulation of criminal proceedings. Under that provision, the judge could bar the public with the consent of the defense counsel or legal representative and provided that it was “for the benefit of the defendant.” The benefit of the juvenile was also emphasized in the court’s decision to bar the public from the trial and public sessions concerning a juvenile in § 233 of the Criminal Code no.



87/1950 Coll. and in § 297 par. 3 let. a) of the Criminal Code no. 141/1961 Coll.

The Constitutional Court concluded from the foregoing legal history review that the Czech lands traditionally considered constitutional a legal framework based on the premise that the presence of the public is conceived as a guarantee of public review of the justice system, and at the same time that special emphasis is laid on the interests and benefit of a juvenile in cases of restricting the presence of the public in proceedings against a juvenile. The Constitutional Court adds that § 101 of Constitutional Charter no. 121/1920 Coll. of Laws and judgments was analogous to Art. 38 par. 2 of the Charter, because even at that time it was possible for “the public to be barred from trials only in cases provided by law.”

In the Constitutional Court’s opinion, the foregoing traditional premise is also met by the contested § 54 par. 1 of the Act on Juvenile Courts. Under that provision, it is left to the minor whether to choose the alternative provided by the last sentence of § 54 par. 1 of the Act on Juvenile Courts, i.e. to propose whether a trial or a public session be held in public, or not. Although, according to that provision, only the juvenile can formally make the proposal, it can not be overlooked that he will be able - given the mandatory defense counsel in proceedings against him - to consult his defense counsel. In contrast, the contested regulation does not permit the court to bar the public from a trial or public session without statutory grounds, and to resolve on his own the question of whether - in the petitioner’s words - “there is a documented willingness on the part of the state to execute the judicial power democratically, transparently, on the basis of laws.” Thus, the right to a public trial is a fundamental right of the party to the proceedings, and not a fundamental right of the court or judge. In its decision making practice since the Act on Juvenile Courts went into effect, the Constitutional Court has not come across a juvenile who, in connection with the application of § 54 par. 1 of the Act on Juvenile Courts, sought protection of his right to a public trial under Art. 38 par. 3 of the Charter, because the contested provisions logically narrows the incidence of such a situation considerably.

The Constitutional Court agrees with the doctrine that the Act on Juvenile Courts is consistently subject to the interests of juveniles. It does so in view of the age and intellectual maturity of juveniles. In the effort to minimize the stigmatization of juveniles as a result of court proceedings, these principles are reflected in § 54 par. 1 of the Act on Juvenile Courts. The legislature also began with the consideration that the requirement of protecting the personal privacy of juveniles during the entire proceedings also arises from the interest in protecting them from the damaging effects of the outside environment and publicity (cf. A. Sotolář, *K ochraně soukromí mladistvých podle zákona o soudnictví ve věcech mládeže* [On the Protection of Privacy of Juveniles under the Act on Juvenile courts], *Trestněprávní revue* [Criminal Law Review] no. 4/2004, p. 128-129). The contested provision of § 54 par. 1 of the Act on Juvenile Courts is also consistent with Art. 6 par. 1 of the Convention, which permits barring the public ... during all or part of the trial ... if required in the interests of minors, or ... if, in view of special circumstances, a public trial could be contrary to the interests of justice. The Constitutional Court is aware that “with a certain amount of oversimplification” we can see the two abovementioned opposite trends in contemporary criminal policy development in this area. The first trend,

which is characteristic of Great Britain and partly of Scandinavia, where, neoclassical criminal law doctrine is promoted, modeled on the USA, based on the indeterminism of individual will and the resulting consequences - the right of society to react strictly and uncompromising to any violation of criminal law norms, regardless of age, mental or moral maturity of the perpetrator. Here the degree of responsibility is determined by the degree of gravity of the crimes committed, not specifically by the person of the perpetrator. The second trend, which is applied in, e.g. Austria, Switzerland, Germany, and the Czech Republic, is based, in contrast, on the key role played by age and the closely related level of intellectual and spiritual development attained; in contrast, the significance of the particular gravity of the offense committed recedes into the background (see Válková, Responsibility, p. 132). This second trend, which is also followed in the Czech Republic, has also found support, in relation to the contested § 54 par. 1 of the Act on Juvenile Courts, in a number of international documents in the field of treatment of juvenile delinquents, e.g. the Convention on the Rights of the Child of 1989, in the so-called "Beijing Rules" - UN resolution 40/33 "Standard Minimum Rules for the Administration of Juvenile Justice" of 1989[sic, should be 1985], and not least the Recommendation of the Council of Ministers to the member states of the Council of Europe concerning new methods of dealing with juvenile delinquency and the mission of juvenile justice [volume. (2003) 20] ("Recommendation Rec (2003) 20"). Regarding the conclusion that "where appropriate in view of the age and other characteristics of the child and the circumstances surrounding the criminal proceedings, this general interest [in the open administration of justice] could be satisfied by a modified procedure providing for selected attendance rights and judicious reporting. (see decision of the European Court of Human Rights in the matter T. v. United Kingdom of 16 December 1999, Application no. 24724/94, and V. v. United Kingdom of 16 December 1999, Application no. 24888/94)).

13. In evaluating the constitutionality of the contested provisions § 53 par. 1 and § 54 par. 2, 3 of the Act on Juvenile Courts, the Constitutional Court began - as regards the general legal philosophy view - with the same consideration as when evaluating the constitutionality of § 54 par. 1 of the Act on Juvenile Courts.

The Constitutional Court also considered the issue of the right to information from several viewpoints. It took into account that in the Czech lands it is traditionally seen as logical that the public access, and thus to a certain degree also the ability to exercise the right to information directly in court proceedings, is limited. It has repeatedly been ruled that "it is a question of practicality, to what extent access to a trial can be arranged for the public" (see decision no. 1729/1925, in: *Vážný VL*, 1925, p. 549 or decision no. 4218/1932, in: *Vážný XIII*, 1932, p. 340).

The Constitutional Court is aware that on a secondary level a public trial has a potential educational role for the court (see K. Klíma, *Ústavní právo [Constitutional Law]*, Dobrá Voda (2002, p. 338). Naturally, the implementation of the right to information is also supposed to serve this aim. In this regard the Constitutional Court took into consideration the fact that recommendation Rec (2003) 20, in Art. V, point 25, last sentence, expressly states the requirement not to make public information that identifies the juvenile

perpetrator and his victim.

In the Constitutional Court's opinion, it is not always necessary to relate the court's educational activity, or the educational effect of criminal proceedings on a recipient of information, to identification of the perpetrator. For purposes of education for respect for rights and justice, the more important information is certainly that concerning the factual findings and the legal evaluation of them, which can be obtained, with the contested provisions in effect, by a public announcement of the verdict, and which can be freely expressed and disseminated without any substantive imitation. In this regard we can not overlook the right to moderate provided to the chairman of a court panel in § 54 par. 3 of the Act on Juvenile Courts.

The Constitutional Court also took into account the fact that a similar limitation on the freedom to seek out and disseminate information is also found in Art. 3 let. e) of the Ethical Codex of Journalists of the CR.

14. Finally, the Constitutional Court evaluated the contested provisions in terms of the proportionality of the relationship between the interest in protection of privacy of criminally prosecuted juveniles on one side and the right to information on the other side. It concluded that the legislature did not exceed the bounds provided for it by the Charter.

In this regard the petitioner only stated that the public has been absent since 1 January 2004 in a "mass" of seven to eight percent of cases. The Constitutional Court quite agreed with the position of the Senate of the Parliament of the CR, that the negative effects of the limitation on freedom of speech to the benefit of this modification of the right to privacy do not appear to be significant, compared to the positive effects provided by the potential effects of the Act in suppressing the criminal careers of juvenile delinquents.

15. After the parties agreed, the Constitutional Court, under § 44 par. 2 of the Act on the Constitutional Court, waived a hearing, and after conducting proceedings, it denied the petition from the District Court in Kladno to annul § 53 par. 1 and § 54 par. 1, 2, 3 of the Act on Juvenile Courts, because these provisions in abstracto are not inconsistent with Art. 96 par. 1, 2 of the Constitution, Art. 38 par. 2 a Art. 17 par. 1, 4, 5 of the Charter (§ 70 par. 2 of the Act on the Constitutional Court).

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

Brno, 8 November 2005