2009/01/07 - I. ÚS 2477/08: PROTECTION OF PRIVATE AND FAMILY LIFE – THE SCHWARZENBERG VAULT

HEADNOTES

It may be stated that family and family life represent a community of persons connected with biological and emotional links, and, as an implication, also with property connections. It is a set of these links and connections maintained not only between living individuals, but also links and connections which, by contrast, transcend human life. They represent a line which connects individuals alive today with their predecessors as well as descendants.

An indisputable part of the right to family life is formed by a relationship of a living family member to their late predecessors, a typical and socially provable content of which consists of a respect for the memory of predecessors, or a requirement for reverent attendance of predecessors.

In this, it is true that the way of handling the dead, and the form and location of placing their mortal remains are to be decided on by the individuals themselves. A special bond of an individual is thus bound not only to dead predecessors, but also to their place of eternal rest which they selected and built with their own means. Therefore, such reverence relates not only to the dead alone, but also to the place of reverence. Reverent and emotional relationship to such a site may be, in such a case, even stronger than ownership relations to this place.

For human dignity, it is essential that also the death of an individual is viewed with respect related (at the least) to noting that the person has died and announcing it to close individuals, and, furthermore, it involves the considerate handling of the remains and designation of the grave, this being a traditional interest of an individual or their relatives. (…) Such rights originate from the respect for general human nature, in both ways, meaning in relationship to deceased persons and survivors."

Naturally, it holds that the right to respect for private and family life, as well as other fundamental rights, may be subject to certain limitations which are constitutionally approved, determined by law, pursue a legitimate objective and are proportionate to such a right. In the case of the right to the respect for family life, reasons for limitations result from Art. 8 para. 2 of the Convention.

CZECH REPUBLIC

CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE REPUBLIC

A Panel of the Constitutional Court, consisting of Chairman Vojen Güttler and Justices František Duchoň and Eliška Wagnerová (Justice Rapporteur), adjudicated on 7 January 2009 the matter of a constitutional complaint filed by A. P., represented by Mgr. Jan Dáňa, an attorney at law with a registered office at Na Ořechovce 4, 162 00 Prague 6, against a resolution by the Supreme Court dated 1 July 2008, file No. 28 Cdo 1743/2008, a judgment of the Regional Court in České Budějovice dated 12 December 2007, file No. 7 Co 2573/2007, and a judgment of the District Court in Jindřichův Hradec dated 25 July 2007, file No. 9 C 401/2006; connected with the petition for annulment, or declaration of ineffectiveness, of Act No. 143/1947 Coll. on Transfer of Ownership of Property of the Hluboká Branch of the Schwarzenberg Family to the Province of Bohemia; with participation by the Supreme Court, the Regional Court in České Budějovice and the District Court in Jindřichův Hradec as parties to the proceedings, as well as the National Monument Institution represented by JUDr. Irena Chmelíková, an attorney at law with a registered office at Nám. Přemysla Otakara II. 34, 370 01 České Budějovice, and the Czech Republic represented by the Office of the Government Representation in Property Affairs, as secondary parties to the proceedings, as follows:

I. By a resolution of the Supreme Court dated 1 July 2008, file No. 28 Cdo 1743/2008, by a judgment of the Regional Court in České Budějovice dated 12 December 2007, file No. 7 Co 2573/2007, and by a judgment of the District Court in Jindřichův Hradec dated 25 July 2007, file No. 9 C 401/2006, the fundamental right of the petitioner to be protected from any unauthorised intrusion into private and family life in accordance with Art. 10 para. 2 of the Charter of Fundamental Rights and Basic Freedoms, and the right to respect for private and family life in accordance with Art. 8 para. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms were violated.

II. Therefore, the above-specified decisions shall be annulled.

III. The petition for annulment, or declaration of ineffectiveness, of Act No. 143/1947 Coll. on Transfer of Ownership of Property of the Hluboká Branch of the Schwarzenberg Family to the Province of Bohemia shall be denied.

REASONING

I.

1. By a constitutional complaint filed in due time and properly as for other preconditions, the petitioner contested the decisions of the ordinary courts designated in the heading hereof. The judgment of the District Court in Jindřichův Hradec dismissed the action by the petitioner requesting that the court establish that the "Schwarzenberg vault", located on parcels of land Nos. 72, 73, 487/1, 488/1, 498/1, 498/2, 498/4, 498/5, 498/6, 498/7, 498/9, 498/10, 498/11, 498/12, 498/13 and 498/14 in the cadastral area of Domanín u Třeboně, all registered in Property Deed No. 37 with the Cadastral Office for the Region of South Bohemia, Cadastral Workplace in Třeboň, is part of the inheritance left by the late Dr. Adolf Schwarzenberg. The contested judgment by the Regional Court in České Budějovice subsequently confirmed the judgment of the court of first instance, and the contested resolution of the Supreme Court then dismissed as impermissible the appeal on a point of law by the petitioner.

2. The petitioner, within her constitutional complaint, objected that the contested decisions violated her constitutionally guaranteed right to a fair trial in accordance with Art. 36 of the Charter of Fundamental Rights and Basic Freedoms and Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, in connection with Art. 13 of the Convention. This was based on the reason that the petitioner has long been prevented from accessing relevant documents which relate to the loss of property of the petitioner's legal predecessor, Dr. Adolf Schwarzenberg, this in spite of the fact that the state bodies were aware of a number of relevant facts, particularly in respect of whether the property of Dr. Schwarzenberg was confiscated on the basis of the "Beneš Decrees" (Decrees No. 12/1945 Coll. and No. 108/1945 Coll.), or later on the basis of Act No. 143/1947 Coll. on Transfer of Ownership of Property of the Hluboká Branch of the Schwarzenberg Family to the Province of Bohemia. In this manner, the petitioner's restitution claim was negated in the past, and at present her pressing legal interest in ascertaining ownership rights, which she claimed following her failure in the matter of restitutions, is paradoxically negated in the same way. Furthermore, the petitioner believes that Art. 2 para. 2 of the Charter in connection with Art. 2 para. 3 of the Constitution, pursuant to which the objective and task of state power is to serve citizens, were violated. In addition, Art. 11 of the Charter was allegedly violated, since the Opinion of the Constitutional Court Plenum, file No. Pl. ÚS - st. 21/05, dated 1 November 2005, was applied by the ordinary courts to the case of the petitioner, but the conditions reflected by the Opinion are not met in this case. The ordinary courts thus retroactively interfered with the ownership rights of the petitioner by negating the existence of the legal interest. At the same time, Art. 3 para. 1 of the Charter was also allegedly violated, this Article guaranteeing equality of individuals without regard to gender, race, colour of skin, language, faith and religion, political or other conviction, national or social origin, property, birth, or other status. The petitioner objected that in cases of other persons who were affected by illegal confiscation of property without compensation, restitution of property rights eventually took place (e.g. in the case of the Walderode family). To this the petitioner added that Dr. Adolf Schwarzenberg made a considerable contribution to the integrity of the

Czechoslovakian state by no small financial investment into the defence of the country in 1937, and by further support of the struggle for liberation of the country when in exile in the USA.

3. The petitioner further elaborated this basic framework of argumentation in her constitutional complaint by raising several objections. The petitioner stated that possession of all property was taken by the Czechoslovakian state in May 1945 from the German Gestapo. In June, national administration was unreasonably and unlawfully imposed on the property and, in October 1945, agricultural property was confiscated by a Notice by the District National Committee issued on the basis of "Beneš Decrees". By the issue of Act No. 143/1947 Coll., confiscation was extended to cover all business and commercial property which, following the termination of national administration as of 31 May 1948, passed to a newly established unit under the ownership of the Province of Bohemia. Extensive personal effects belonging to Dr. Adolf Schwarzenberg were consequently handed over to this unit, without any legal cause, insofar as the same were not retained, in a similarly unlawful manner, by the Czechoslovakian Republic.

4. Following the issue of Act No. 143/1947 Coll., the District National Committee issued, on 12 February 1948, an assessment whereby they annulled the confiscation in accordance with Decree No. 12/1945 Coll. In the petitioner's opinion, this was done ineffectively and in contravention of the Decree itself, as the Decree did not imply that it would be at all possible to annul or discontinue an expropriation which had already been administered. In connection with this, the petitioner referred to a document which was delivered to her by the Ministry of Finance on 6 September 2007, implying a legal opinion of the state bodies dated 7 September 1981, specifying that the property of Dr. Schwarzenberg was confiscated in accordance with Decrees of the President of the Republic No. 12/1945 Coll. and No. 108/1945 Coll., and that Act No. 143/1947 Coll. was merely confirmation of the confiscation, not a confiscatory measure.

5. The petitioner stated and objected that if the property had conceivably been confiscated on the grounds of Act No. 143/1947 Coll., then such confiscation could not have been achieved upon such an Act becoming effective, but only upon intabulation of the right of ownership. According to the petitioner, historical records in the land register show that the state administration bodies construed the condition of intabulation in connection with Act No. 143/1947 Coll. as a precondition necessary for the transfer of the given property. All records of ownership rights were made only after 25 February 1948, i.e. within "the qualifying period" for the origination of a claim pursuant to restitution regulations. According to the petitioner, in this context it is irrelevant that the petitioner in the past did not submit a restitution petition in accordance with Act No. 87/1991 Coll. Such a non-submission was due to the fact that until the expiry of the term for filing the restitution petition, the existence of relevant files was concealed from the petitioner, and instructions which were given to her by the state bodies were incorrect. By not accepting the claims now being exercised in accordance with § 126 and § 451 of the Civil Code with reference to the opinion of the Constitutional Court adopted in the case of Kinský, the fundamental rights of the petitioner are again violated. The petitioner deems such conduct to be in contravention of good

morals, as the state acts mala fide when the same refers to its own unconstitutional conduct in order to be able to again repudiate existing claims.

6. In this given specific case, the petitioner is of the opinion that whether the majority of property of Dr. Adolf Schwarzenberg was confiscated in accordance with Beneš Decrees or on the basis of Act No. 143/1947 Coll., the Schwarzenberg family vault has never been governed by either of these regulations.

7. Ownership over the vault and adjacent land could not be affected by confiscation in accordance with Decree No. 12/1945 Coll. since the same was not agricultural property, but immovable property of a personal nature important only to the members of the Schwarzenberg family and their descendents. In addition, the confiscation notice does not imply that the vault is part of the confiscation in accordance with the above-mentioned regulation. Moreover, the vault was not confiscated on the basis of Decree No. 108/1945 Coll. This was due to the fact that in the case of the Schwarzenberg vault, no decision on confiscation was issued in accordance with such a Decree. Finally, the vault could not be assigned to the Province of Bohemia on the basis of Act No. 143/1947 Coll. since the wording of § 1 para. 2 of the Act implies that confiscation is to affect immovable property relating to agriculture, forestry, ponds and lakes, industry, commerce and trade, including all buildings and chateaux and furnishings therein. However, the Act did not and could not include articles and immovable property of a personal nature of representatives of the Hluboká branch of the Schwarzenberg family, such as, according to the petitioner, the very vault in question, i.e. immovable property of a highly personal nature, which is of significance to the members of the Schwarzenberg family and their descendents.

8. In addition, the petitioner stated that she herself evidenced before the ordinary courts that the Czechoslovakian state administration bodies acknowledged the inviolability of the vault in terms of ownership, as the same was not deregistered from the property of JUDr. Schwarzenberg from the land register before 1950; and the vault with adjacent land was assigned to the ownership of the Czechoslovakian state – probably for purely administrative reasons – as late as the 1960s.

9. The petitioner emphasised that the vault and particularly the mortal remains of her predecessors could not be confiscated by any of the regulations, since the same would be in conflict with the Czech ordre public. A vault is a rei extra commercium, to which conclusions resulting from Opinion of the Constitutional Court Pl. ÚS -st. 21/05 cannot apply, since the same is not affected by the interests pursued in such an Opinion. To this the petitioner added that the legislature surely did not intend to enact a global legalisation of theft when adopting restitution regulations. Such approval, which would turn restitution legislation into that serving as justification of any injustice, would have to be at least intentional on the part of the legislature, and would have to be objectively formulated, which in fact did not take place. The issue whether or not there is a legitimate precondition for further continuance of possession of illegitimately confiscated property is, according to the petitioner, governed by circumstances of any given case. However, in this one, specific circumstances were not examined by the courts.

10. According to the petitioner, ownership is, according to its very nature, non-prescriptible and in civilised countries exists permanently. A law-based state with a democratic legal order is characterised by the fact that the property of a citizen is not subject to state arbitrariness, but is protected by the Constitution. In a corresponding manner, it is necessary to proceed from the fact that in the Czechoslovakian Republic where the Constitution from 1920 was valid, a proven owner has a legitimate expectation that their right of ownership will be acknowledged, irrespective of the period of time expired. Only special circumstances, such as cessation of the state, which interrupts constitutional and legal continuity, may abort such a legitimate expectation. The petitioner stated that her legitimate expectations were, in addition, strengthened by the Czechoslovakian state and later Czech state. In June 1945, a note by the Czechoslovakian Republic was produced and addressed to the Soviet Union, in which Dr. Schwarzenberg was described as a well-known anti-Fascist against whom reparations cannot be enforced; the reasoning to the decision by the Provincial National Committee in Prague dated 5 March 1946 stated that Adolf Schwarzenberg was of Czech nationality, always acting as a Czech, and due to imminent persecution had had to flee from the Germans, and it was not possible to treat him as a German or traitor; and thus his property was not subject to confiscation, and suchlike.

11. Therefore, the petitioner objected that she did not agree with the opinion of the court of appeal on a point of law, according to which, with reference to the opinion of the Constitutional Court, it is true that legitimate expectation of restitution of alienated property is not established. Throughout the 1990s, the Czech Republic via its bodies obstructed the objective handling of restitution petitions by the petitioner, through concealing the existence of confiscation files and providing untrue information to land registration offices. An analogous application of Opinion of the Constitutional Court Plenum Pl. ÚS -st. 21/05 would mean nothing but the fact that the Czech Republic continues to violate fundamental rights and basic freedoms, which violation started during the times of non-liberty.

12. With respect to the circumstances above, the petitioner proposed that the Constitutional Court by their Judgment annul all contested decisions of the ordinary courts and return the case to the District Court in Jindřichův Hradec to be re-heard.

13. At the same time, the petitioner filed a petition for annulment of Act No. 143/1947 Coll., as the same has fundamentally violated the generally acknowledged fundamental rights and basic freedoms of the legal predecessor of the petitioner, and the purpose of the same consisted solely of political persecution. With respect to this, the petitioner believes that this legal regulation is in conflict with constitutional statute No. 23/1991 Coll., whereby the Charter of Fundamental Rights and Basic Freedoms was proclaimed, and according to which legal regulations in conflict with the Charter became legally ineffective as of 31 December 1991; this Act was also in contravention of the then valid Constitution of 1920.

14. On the basis of a request from the Constitutional Court, parties and secondary parties to the proceedings submitted their statements concerning the constitutional complaint.

15. In his statement, the President of a Chamber of the Supreme Court stated that he did not share the opinion of the petitioner declared in the constitutional complaint as regards the violation of constitutionally guaranteed fundamental rights. Furthermore, he stated his agreement with the conclusions of basic level courts, i.e. that the transfer of property "of the Hluboká Branch of the Schwarzenberg Family to the Province of Bohemia" took place on the basis of Act No. 143/1947 Coll., and this prior to 25 February 1948. According to the Supreme Court, the evaluation of this legal matter is covered by the fundamental interpretative legal conclusions contained in Opinion of the Constitutional Court Plenum dated 1 November 2005, file No. Pl. ÚS -st. 21/05 (published as Notice No. 477/2005 Coll.). The ordinary courts proceeded in this legal matter on the basis of the same. Therefore, the Supreme Court stated that they do not consider the constitutional complaint as justified.

16. The President of a Chamber of the Regional Court in České Budějovice stated that she based her decision on the conclusion that the court of the first instance correctly inferred that property of JUDr. Adolf Schwarzenberg was not confiscated by Decree of the President of the Republic No. 12/1945 Coll. but that the transfer was implemented by Act No. 143/1947 Coll. This Act has been valid ever since and the case cannot be assessed otherwise. The Regional Court in its decision making allegedly also proceeded from the fact that the petitioner claimed by action that the legality of process in accordance with Act No. 143/1947 Coll. should be reviewed, or that she stated that this Act could not serve as the basis for transfer of the right of ownership. However, according to the Regional Court, the powers to review this Act do not pertain to ordinary courts; through an action requiring that ownership rights be ascertained by the court ("declaratory action"), it is not possible to demand that an act be declared invalid. It is also not possible to evaluate whether such an Act was or was not in accordance with the law, or to decide whether property could have passed to the state when the confiscation of the same property had already been decided upon in accordance with the Decree of the President of the Republic. The Regional Court, therefore, concluded that since Act No. 143/1947 Coll. is even today a part of the legal order of the Czech Republic, the petitioner may not, by filing the action, circumvent restitution regulations and claim that such an Act should not have been used as the basis for procedure. In connection with this, the Regional Court referred to the fact that even the Constitutional Court, by Resolution dated 16 October 2008, file No. II. ÚS 2491/08, denied the petition for annulment, or declaration of ineffectiveness, of Act No. 143/1947 Coll. As for details, the Regional Court referred to their judgment and the judgment of the court of first instance.

17. In her statement, the President of a Chamber of the District Court in Jindřichův Hradec referred to her judgment which – as was pointed out by the court – has not been changed by any decision of the higher level courts; furthermore, she stated that she leaves the decision on the constitutional complaint to the Constitutional Court to consider.

18. In their statement, the Office of the Government Representation in Property Affairs stated that the constitutional complaint is completely unsubstantiated, since both the ordinary courts and the Constitutional Court in several cases have made decisions in similar matters, i.e. in restitution cases of the petitioner, and also with respect to her petitions for ascertaining ownership to the property of the Hluboká branch of the Schwarzenberg family, and it has always been concluded that, on the basis of Act No. 143/1947 Coll., a change took place in the identity of the owner of the property and that the above-specified Act dispossessed ownership in one step from the owners named in the Act. The property specified in the Act was transferred to the state in one step ex lege to the date of effectiveness of the Act, i.e. 13 August 1947, whereby the transfer was accomplished once and forever. Therefore, the petition by the petitioner for declaration of ineffectiveness of such an Act as at 31 December 1992 is completely irrelevant. The Office of the Government Representation in Property Affairs further denied the statement of the petitioner that the courts had not dealt with the fact that the vault is property of a personal nature; the Office stated that, to the contrary, a conclusion was pronounced within the proceedings that the vault, including the adjacent immovable property, formed part of an agricultural property called "The Třeboň Estate". With respect to this, the Office of the Government Representation in Property Affairs proposed that the constitutional complaint be denied.

19. Another secondary party, the National Monument Institution, firstly doubted the active standing of the petitioner for filing the action before the ordinary courts, this for the reason that she was declared, within inheritance proceedings, to be merely one of the legal successors of Dr. Jindřich (Heinrich) Schwarzenberg, who was an heir of JUDr. Adolf Schwarzenberg, and, therefore, according to the secondary party, she cannot exercise exclusive right of ownership to the entire possible subject of the inheritance. At the same time, the National Monument Institution pointed out a discrepancy resulting from the constitutional complaint, in which the petitioner incorrectly stated that JUDr. Adolf Schwarzenberg was her grandfather. The National Monument Institution further stated that the property was seized as early on as during the life of JUDr. Adolf Schwarzenberg, and thus he, as the testator, on the date of his death on 27 May 1950, did not actually own the immovable property in question, and thus such property cannot form part of his inheritance. In addition, the immovable property in question was transferred to the state prior to the "qualifying period". In connection to this, the secondary party pointed out the case law of the Supreme Court relating to other property of the Hluboká branch of the Schwarzenberg family, according to which their property was affected by Act No. 143/1947 Coll., prior to which no confiscation on the basis of Decree No. 12/1945 Coll. occurred.

20. The National Monument Institution further denied the allegedly biased statement of the petitioner that the vault was actually "purely private property and the vault did not fall under the wording of Act No. 143/1947 Coll." The Institution pointed out that, in 1995, the opinion of the petitioner was completely different since she, in her request delivered to the Monument Institution in České Budějovice concerning the release of immovable property, stated this immovable property is predominantly property of an agricultural nature, and the family vault is always an indivisible part of the manor, whether the nature of the same is agricultural or not. To this the National Monument Institution added that it was

proven before the court of first instance, by a statement from Land Tables, Entry No. 1540 “The Třeboň Estate”, a statement from Land Registers, Entries No. 34, 47, 1182 and 1307 for the cadastral area of Třeboň, that the immovable property in question was owned (before the ownership rights were registered in the name of the Province of Bohemia) by JUDr. Adolf Schwarzenberg. Ownership rights in the name of the Province of Bohemia were recorded on the basis of Act No. 143/1947 Coll. with effectiveness as of 13 August 1947. The court of appeal then in their judgment did not share the petitioner’s opinion that the vault and the adjacent land is property of a personal nature to which the above-specified Act could not apply, and the court of appeal explicated their opinion in the reasoning. According to the National Monument Institution, two buildings and 16 parcels of land are involved, and, therefore, it is hardly possible to speak of immovably property of a highly personal nature and status, as is claimed by the petitioner.

21. In the case of the Schwarzenberg vault, it is not a vault which served only to entomb the mortal remains of members of the Schwarzenberg family. This structure, from the very time it was erected, has not been a funereal building of single purpose, as is the case with other vaults of important or wealthy persons. Typologically, this is an ecclesiastical building, the interior layout of which features all the sections inherent to a church or chapel (presbytery, nave, choir and sacristy), which were also used for such purposes following the completion of construction work. Services were regularly held and mostly attended by religious parishioners; when important anniversaries were celebrated, also by Schwarzenberg family members when they were staying at Třeboň. In order to secure public services, a nearby former gatehouse in the park was adapted and became a rectory. Similarly, the external architectural form of the building is in the shape of a sanctuary, as it primarily and regularly served such a purpose. A monumental double-flight stairs converges at the landing of the porch of the chapel; the building features a typical belfry, and is dominated by a centrally arched nave with external and internal sculptures. The vault itself forms a partially buried basement section of the building as a crypt. This concept is a standard one for all ecclesiastical buildings which were used, in addition to liturgical purposes, as a place of burial. The clear majority of urban and convent churches and chapels may serve as examples.

22. As for the adjacent land, the National Monument Institution believes it must be stated that the park in Domanín has been – since its establishment by the landscape architect Wácha in 1875, which was one year after the commencement of building the chapel – conceived as a natural landscape park of Romantic style, and was also associated with economic usage. It has never been enclosed by a wall or separated in any manner from neighbouring land, as was common for cemeteries or spiritual places. A number of public roads led through the park, one of them being the main central route leading directly to the church of St. Jiljí and its cemetery. The park was farmed, in terms of agriculture and forestry, which was also made possible by its uninhibited connections to the surrounding landscape, including commercial access to the Svět Lake.

23. The National Monument Institution concluded that the person who claims a right after many dozens of years cannot legitimately expect to be successful with a proposed judgment which only abuses the institute of declaratory action in order to

evade special acts. Property, the restitution of which the state intended to make possible, was included in special restitution acts. In other cases, it is not possible to misuse general legal instruments to make long-term ownership relationships insecure. With respect to this, the National Monument Institution proposed that the constitutional complaint be denied as clearly unsubstantiated.

II.

24. Furthermore, the Constitutional Court, in order to evaluate the constitutional complaint, has requested the file from the District Court in Jindřichův Hradec, file No. 9 C 401/2006. From this, the Constitutional Court ascertained that the petitioner claimed, before the ordinary courts, that it be determined the Schwarzenberg vault, located on parcels of land Nos. 72, 73, 487/1, 488/1, 498/1, 498/2, 498/4, 498/5, 498/6, 498/7, 498/9, 498/10, 498/11, 498/12, 498/13 and 498/14 in the cadastral area of Domanín u Třeboně, all registered in Property Deed No. 37 with the Cadastral Office for the Region of South Bohemia, Cadastral Workplace in Třeboň, pertains to the inheritance of Dr. Adolf Schwarzenberg. She supported her pressing legal interest with the fact that she is a rightful heir of JUDr. Adolf Schwarzenberg, more specifically his adopted son Dr. Jindřich (Heinrich) Schwarzenberg, and the immovable property forms “hereditas iacens”. She further stated that the vault is incorrectly registered in the Cadastre of Real Estate in the name of the Czech Republic. The individual parcels of land were re-registered to the Czechoslovakian state during 1961, on the basis of a Notification of the Ministry of the Interior dated 20 May 1957, file No. 132897/1957-232-VI; according to the petitioner, this was an arbitrary assignment of the property made after more than ten years from the death of Dr. Adolf Schwarzenberg. Furthermore, the petitioner raised objections in her action which are contentually identical to those the petitioner stated in the constitutional complaint. A part of the file is formed by copies of statements from the Land Register, Entry No. 154, cadastral area of Domanín, the statement being entitled “Family vault – confiscation”. This statement includes, in addition to immovable property listed in the action, also other items of immovable property, for example, the Church of St. Jiljí and its cemetery. Immovable property to which the action relates is designated as a chapel with a vault, park and garden. At the very end, it contains an entry saying “Filed on 22 November 1961 No. 1078. In accordance with § 1 para. 1 and 2 of Act dated 10 July 1947 No. 143/47 Coll. on Transfer of Ownership of Property of the Hluboká Branch of the Schwarzenberg Family, and in accordance with this petition: a) a note on confiscation to the benefit of the German Reich, item B7 appurtenant, shall be deleted, b) a note on national administration under item B-10 appurtenant, shall be deleted. Right of ownership shall be registered for: to be continued on page 21." Page 21 contains a conclusion of the preceding text as follows: the Czechoslovakian state – District National Committee in Jindřichův Hradec.”

25. From the file, the Constitutional Court further familiarised itself with the reasonings of the individual contested decisions by the ordinary courts. The reasoning of the judgment of the District Court in Jindřichův Hradec implies that they deemed the petitioner to be a legal successor of JUDr. Adolf Schwarzenberg, who was the owner of the property covered by the action filed. The court of first instance also concluded that the petitioner has a pressing legal interest in the

required determination of legal relationships. Substantively, however, the court concluded that ownership of this property passed to the Province of Bohemia upon Act No. 143/1947 Coll. coming into effect, that is as of 13 August 1947. According to the court of first instance, the assignment took place ex lege, since such an Act did not specify that the assignment would take place by entering the same into the Land Register. The court of first instance further stated that in accordance with § 1 para. 2 of the Act, the property in question means immovable property relating to agriculture, forestry, ponds and lakes, industry, commerce and trade, registered in books in the name of Josef (Joseph) Adolf, the Prince of Schwarzenberg, Jan (Johann), the Prince of Schwarzenberg, and Dr. Adolf Schwarzenberg, this including all buildings and chateaux and furnishings therein, together with all rights and obligations, plus livestock and deadstock, along with all supplies and all working capital. For assessing which items of property pass to the Province of Bohemia, their status as on 9 May 1945 was decisive. The court of first instance concluded that the immovable property – the subject of the proceedings – passed, on 13 August 1947, to the ownership of the Province of Bohemia, this during the lifetime of the legal predecessor of the petitioner. Therefore, at the date of his death, 27 February 1950, such real estate was not his property.

26. The reasoning of the contested judgment of the Regional Court implies that the judgment of the court of first instance was confirmed as correct in terms of the matter itself. However, the court of appeal did not identify itself with the conclusion of the court of first instance that the petitioner has a pressing legal interest in the declaration. On the contrary, they referred to the Opinion of the Constitutional Court Plenum, published as a Constitutional Court Notice under No. 477/2005 Coll., which states that by declaration of right of ownership, in particular such a right which requires entry in the Cadastre of Real Estate, in the case of absence of legitimate expectation on the part of the petitioner, the preventive function of action pursuant to § 80 clause c) of the Civil Procedure Code is not fulfilled, and thus the pressing nature of the legal interest is not given; and that the action for declaration of ownership rights may not be used to evade the meaning and purpose of restitution legislation. The court of appeal paraphrased the contents of the Opinion of the Constitutional Court Plenum, i.e. that outside the scope of restitution regulations, it is impossible to claim the release of property (and according to the court of appeal, it is also impossible to claim that it be declared that such property is included in inheritance after a person who died in the interim), when the property was taken over by the state prior to the qualifying period, that is prior to 25 February 1948.

27. Within its reasoning, the court of appeal further dealt with the objection by the petitioner that the vault is property of a personal nature to which Act No. 143/1947 Coll. did not apply. They stated that this vault was not one that served only for entombing the mortal remains of persons from the Schwarzenberg family, but it was a building serving for the administration of public church services for parishioners from the Třeboň Estate. The fact that this was not only a building serving as a burial place is, according to the Regional Court, also derivable from the fact that the petitioner calls for not only this structure to be released, but also a number of parcels of land of an agricultural and forestry nature, which were in the past utilised for such purposes.

28. The Supreme Court, within the contested resolution, concluded that the issue dealt with in the judgment of the court of appeal is not an issue of a material legal importance, since vital interpretation was provided earlier by the judgment of the Grand Panel of the Civil Committee dated 11 September 2003, and in the Opinion of the Constitutional Court Plenum dated 1 November 2005, file No. Pl. ÚS -st. 21/05, whereby ordinary courts are bound.

29. The Constitutional Court further administered evidence via publicly accessible text found on the Regional Information Server of the Třeboň Area (http://www.trebon.cz/hrobka.html; verified on 20 November 2008). From this it is implied that "since 1784, members of the main branch of the Schwarzenberg family were buried in the nearby cemetery of the Church of St. Jiljí, first mentioned in 1515. However, in the second half of the 19th century, this church was full and also did not meet relatively strict hygiene regulations, which required that the rooms of the vault be separately ventilated and bodies be embalmed prior to being placed in a two-shell coffin." The contents of this text is basically equal to another publicly accessible text (http://cs.wikipedia.org; verified on 20 November 2008): "Prior to the building of the vault, members of the main branch of the Schwarzenberg family were buried – following 1784 – at the St. Jiljí Church in Třeboň; this church, however, no longer met, in terms of dimensions and hygiene, new regulations stating that it is obligatory to bury in the ground unless the vault is consistently separated from the sacred areas of the church, and also that it is necessary to embalm the bodies prior to their resting in two-shell coffins […] Works on the building started on 14 July 1874. A complex draining system for the vault was built, buried under the level of the surface […] The vault was consecrated on 29 July 1877 by Bedřich (Friedrich) Schwarzenberg, the Archbishop of Prague, brother of Prince Jan (Johann) Adolf II. […]. In 1888, a rectory was built in the vicinity, and the adjacent areas landscaped as an English park […] The vault itself […] has, according to the regulations then valid, a separate entrance, small non-transparent windows, and internal air circulation […] Even though bodies of the Schwarzenbergs are resting in the vault, their hearts are located in special receptacles in Český Krumlov, with the exception of the heart of the daughter of Princess Eleonora."

30. Furthermore, the Constitutional Court, in accordance with the provisions of § 44 para. 2 of Act No. 182/1993 Coll. on the Constitutional Court as amended by later regulations, asked the parties to the proceedings for approval of dispensing with an oral hearing. The petitioner, by a note dated 19 November 2008, informed the Constitutional Court of her disapproval. Therefore, the Constitutional Court ordered that an oral hearing be held on 7 January 2009, and summoned all parties to the proceedings to the same.

31. In the course of the oral hearing held on 7 January 2009, the legal representative of the petitioner referred to facts resulting from the contents of the constitutional complaint, and only in relation to the petition for annulment, or declaration of ineffectiveness, of Act No. 143/1947 Coll. appended the arguments included in the constitutional complaint with a statement that the Act referred to cannot be considered valid, since the same lacks generality and the only purpose of the same was to confiscate property of the petitioner's predecessor. Legal representatives of the secondary parties in accord referred to the contents of their

statements concerning the constitutional complaint, which they considered unsubstantiated, since the fundamental rights of the petitioner were not affected.

III.

32. Following the proceedings administered, the Constitutional Court concluded that the contested decisions violated the constitutionally guaranteed fundamental rights of the petitioner, however, not those which the petitioner designated in her constitutional complaint. The settled case law of the Constitutional Court specifies that the Constitutional Court is, in its decision making, bound by the proposed verdict of the petition, not by its reasoning, and is entitled to examine whether constitutionally guaranteed fundamental rights other than those referred to by the petitioner within the constitutional complaint were violated.

33. Therefore, in spite of the fact that the petitioner within her constitutional complaint objected that her right of ownership and the right to a fair trial were violated, the Constitutional Court concluded that the fundamental right which was violated by ordinary courts consists of the right to respect for private and family life in accordance with Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and Art. 10 para. 2 of the Charter of Fundamental Rights and Basic Freedoms.

III.A

34. In Judgment file No. II. ÚS 568/08, the Constitutional Court stated, in relation to the right to respect for private and family life, that provisions of Art. 10 para. 2 of the Charter as well as provisions of Art. 8 of the Convention speak, at a general level, of protection of family life, or respect for family life, however, without defining – in legal terms – the meaning of the term "family life". When interpreting such provisions it is therefore necessary to commence from the fact that a family primarily represents a factual biological link and a social institute which is only subsequently anticipated by legal regulation.

35. The scope of the interpretation of the term "family life" is thus determined, in particular, by social experience which may change in the course of social development. It may be definitely stated that family and family life represent a community of persons connected with biological and emotional links, and, as an implication, also with property connections. It is a set of these links and connections maintained not only between living individuals, but also links and connections which, by contrast, transcend human life. They represent a line which connects individuals alive today with their predecessors as well as descendants, even though it is expectable that intensities of such links differ when it comes to relationships among living members of the family and relationships with long-deceased predecessors. In such a sense, family represents a spiritual home, one's roots and a sense of shared identity (Peschke, K.-H.: Křesťanská etika /Christian Ethic/. Vyšehrad, Prague 2004, p. 479).

36. An indisputable part of the right to family life is formed by a relationship of a living family member to their late predecessors, a typical and socially provable content of which consists of a respect for the memory of predecessors, or a

requirement for reverent attendance of predecessors. The same conclusion is also held by the case law of the European Court of Human Rights, according to which the methods of burying and handling buried remains fall under the scope of Art. 8 of the Convention, and this right may be claimed by survivors (cf. judgment dated 17 January 2006 in the case of Elli Poluhas Dödsbo v. Sweden).

37. In other words, a part of family life is also indubitably formed by the manner of treating deceased predecessors, by the form of reposing their mortal remains, and the place where such remains are located. This is a right to protection of reverence of personality, which, for that matter, is not only an accomplishment of a liberal or a law-based state, but has its historical archetype in Christian morals or theological teachings (cf. Kotrlý, T.: Pohřbívání v kostele /Burial in Church/. Revue církevního práva /Church Law Review/, No. 3/2007, pp. 233 - 235). In this, it is true that the way of handling the dead, and the form and location of placing their mortal remains are to be decided on by the individuals themselves. A special bond of an individual is thus bound not only to dead predecessors, but also to their place of eternal rest which they selected and built with their own means. Therefore, such reverence relates not only to the dead alone, but also to the place of reverence. Reverent and emotional relationship to such a site may be, in such a case, even stronger than ownership relations to this place, or the feeling of "absolute legal rule" over the property – a place of eternal rest of predecessors.

38. Also, the European doctrine of human rights accentuates a specific relationship to dead predecessors. "The death of a human being is a private matter. Like birth, death is an existential change, through which an individual cannot be accompanied by another. Yet death holds a central position in interpersonal relationships. All civilizations hold funeral rites by which an individual is mourned. Death as well as life are related to human existence in its individual dimension, and as such must be acknowledged in relation to any person. However, human beings do not live and die only for themselves. Both human nature and the environment in which a man lives are social categories, since we all number among a small or large group of friends, family or community. For human dignity, it is essential that also the death of an individual is viewed with respect related (at the least) to noting that the person has died and announcing it to close individuals, and, furthermore, it involves the considerate handling of the remains and designation of the grave, this being a traditional interest of an individual or their relatives. (…) Such rights originate from the respect for general human nature, in both ways, meaning in relationship to deceased persons and survivors." (Greve, H. S.: "What's in a Name?" - The Human Right to a Recognized Individual Identity. In Human Rights, Democracy and the Rule of Law. Liber Amicorum Luzius Wildhaber. Dike Verlag, Nomos Verlagsgesellschaft, Zürich, Baden-Baden 2007, p. 310).

39. Naturally, it holds that the right to respect for private and family life, as well as other fundamental rights, may be subject to certain limitations which are constitutionally approved, determined by law, pursue a legitimate objective and are proportionate to such a right. In the case of the right to the respect for family life, reasons for limitations result from Art. 8 para. 2 of the Convention, according to which legitimate reasons for limitations of such a fundamental right consist of measures in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of

health or morals, or for the protection of the rights and freedoms of others. Only the existence of such reasons may legitimate restriction of a fundamental right, in the given case, the above-specified reverence for mortal remains of predecessors and a place where they rest. Typically, such measures may consist of the existence of hygiene or building and technical restrictions, possibly also right of ownership of a private person to a place (land, structure) where the mortal remains are placed. Nevertheless, priority of an emotional bond to the place of rest of predecessors (family life) over absolute legal rule (ownership) over such place is not given once and forever. In the specific case, the competition of fundamental rights is subject to the test of proportionality.

40. The state is not endowed with fundamental rights and, therefore, its ownership may not be subsumed under limitations specified under Art. 8 para. 2 of the Convention, or under the cause of "the protection of the rights and freedoms of others". Not even the present legal regulation of funeral services in the Czech Republic, in accordance with Act No. 256/2001 Coll. on Funeral Services and on Alterations to Some Acts, requires that graves are owned by the state (or public law corporations); it allows for the existence of private or non-public burial sites, including existing family vaults (§ 3 para. 1 of the Act) (cf. Kotrlý, T.: Pohřbívání v kostele /Burial in Church/. Revue církevního práva /Church Law Review/, No. 3/2007, pp. 233 - 243 et seq.).

41. The condition that the grave, vault and land on which the same are located would have to be necessarily owned by the state cannot be subsumed, in accordance with the conviction of the Constitutional Court, under the provision of the economic well being of the country pursuant to the above-quoted Art. 8 para. 2 of the Convention; the Constitutional Court cannot see in which aspect ownership of the vault would bring about such a benefit to the state, upon which the well being of the country would depend.

III.B

42. In one of its first Judgments (file No. Pl. ÚS 19/93), the Constitutional Court set up limits which must be respected when interpreting legal standards, no matter how old these legal norms may be. Even though the present democratic law-based state is built on the basis of a formal legal continuity with preceding legal and political systems, the interpretation of law, which has its historical origin, cannot neglect the present principles of a material law-based state. The Constitutional Court further developed these ideas in its Judgment file No. Pl. ÚS 42/02, in which they stated that the interpretation of criminal law norms, however ancient they may be, if the same is performed by a court today (due to usable procedural means) with impacts on evaluating criminal sanction over a person, that is with effects interfering with the personal domain of such a person, cannot be administered regardless of today's valid constitutive values and principles of a democratic law-based state as they are expressed in the constitutional order of the Czech Republic. Continuity with the "old law", the application (lawfulness) of which is the subject of contemporary proceedings, may be understood only in such a limited way, discontinual in terms of values.

43. In Judgment file No. I. ÚS 137/03, the Constitutional Court related these conclusions not only to the field of criminal law and private freedom of an individual, but also to other domains of public law regulation and infringement of other fundamental rights of an individual. In other words, it is indubitable that the conclusions firstly declared by the Constitutional Court in Judgment file No. Pl. ÚS 19/93 are universal postulates which apply to interpretation and application of any legal standards, should they be implemented at the present time with current consequences on the legal standing of an individual.

III.C

44. The First Panel of the Constitutional Court is aware of the fact that the Constitutional Court dealt with the issues of the confiscation of the property of the Hluboká branch of the Schwarzenberg family in its case law repeatedly, most recently in its Resolution dated 16 October 2008, file No. II. ÚS 2491/08, which was presented to the Second Panel by the Justice Rapporteur, who is a Rapporteur also in this case. In such case law, the Constitutional Court reached the same conclusion as the ordinary courts in the case being at present assessed, i.e. that the case of the petitioner is covered by considerations treated in the Opinion of the Constitutional Court Plenum dated 1 November 2005, file No. Pl. ÚS - st. 21/05 (published under No. 477/2005 Coll.). According to this Opinion, "restitution acts in fact legalised ownership by the state over the property which the state acquired through confiscation, nationalisation and other property measures, irrespective of the fact that without existence of the same, it would have been possible, in some cases, to apply ownership rights over such property in accordance with general regulations. Thus, they at the same time excluded the possibility of applying such rights in any other way, that is in accordance with general norms, since such legal regulation represents special arrangements specifying the general regulations. […] Even though the property injustice which the [legislature] meant to mitigate (not to rectify completely) occurred essentially in conflict with principles of a law-based state in the past, neither the Constitution nor any other legal regulation requires that this property be returned or compensation for the same provided, or that any alterations in the legal order be made for such purpose. It was free will of the state whether or not to allow former owners of the property in question to make endeavours for return of the same […] The very establishment of restitution claims was then a beneficium of the state – specifically defined from the viewpoint of time and material aspect. Any questioning of such a definition effectively results in disputing the act of the state as such." Therefore, the Constitutional Court in such previous resolutions stated that the conclusions of the Opinion make it impossible for the petitioner successfully to claim protection of her alleged right of ownership to the property which was allegedly confiscated outside the qualifying period, and which the state did not restitute by way of special restitution acts.

45. The First Panel of the Constitutional Court does not intend at all to deviate from such conclusions, since the Opinion of the Constitutional Court Plenum pursuant to § 23 of the Act on the Constitutional Court is binding for all its Panels. However, it cannot be overlooked that the Opinion of the Plenum was dealing with the consequences of the fact that some categories of property were not included within restitution regulations, this in relation to ownership rights of individuals. The Opinion did not deal with issues of respect or protection of the right to family

life, even when the same is in the specific case expressed through property. In other words, the right to private and family life may be only mediated through ownership right to property. Therefore, the Opinion of the Plenum will not be applied in such a situation.

IV.

46. The Constitutional Court, guided by the deliberations mentioned above, evaluated the specific circumstances of the petitioner in the case presently under consideration, and reached the following conclusions.

47. The Constitutional Court does not identify itself with the assessment of the court of appeal, this being that the structure of the vault is not a matter of a purely personal or family nature. To the contrary, from the evidence examined, it was shown that the motive for the petitioner's ancestors or legal predecessor to build the vault was a lack of burial sites in the adjacent Church of St. Jiljí, where the members of the Schwarzenberg family had previously been buried, as well as the adoption of new hygiene regulations which required separation of the vault from the area of the church. Therefore, it is not possible to accept the opinion that the vault is not a funeral building, but it is, in principle, an ecclesiastical building. On the contrary, the primary purpose of this structure was to create a new location, approved by the public law regulation then valid, for entombing the mortal remains of family members; its ecclesiastical role was only secondary (originally for the purposes of the burial rite, and later for rites for a larger range of local parishioners), which is, from a historical point of view, completely logical. According to the Constitutional Court, the building of the vault is thus a place to which protection of reverence applies, such protection – as was explained above – being part of the right to family life of the petitioner.

48. The Constitutional Court, therefore, believes that the nature of this structure does not make it possible that the same be included in the categories of property in accordance with § 1 para. 2 of Act No. 143/1947 Coll., as was, in accordance with § 1 para. 1, subject to the transfer to the Province of Bohemia.

49. Interpretation according to which this provision applied generally to the property of the Hluboká branch of the Schwarzenberg family, does not preserve, in the case of the vault including the mortal remains placed therein, the nature of protection of family life. The purpose of this Act was not to deprive the family members of purely personal property, which is particularly of importance to the members of the family. The purpose of the Act was to sequester from the predecessors of the petitioner objects serving economic activities (revenue for such operations was to be replaced with a pension in accordance with § 5 para. 2 of the Act). In this respect, the ordinary courts did not take into account the proven fact that the alteration in the record in the land registers took place as late as 1961, that is under the totalitarian regime, when the ownership rights were registered to the Czechoslovakian state. From this it may be deduced that the Czechoslovakian state, until the Communist coup d'état in 1948, had not striven after such property, and such property was arbitrarily alienated as late on as during the period of the totalitarian state.

50. If the subsequent Communist state truly promoted the interpretation now held by the ordinary courts, and on the basis of the same the state "misappropriated" right of ownership additionally to this property through which the right of the petitioner to family life is exercised, then it may be considered that such an act was only proof of a policy aimed against certain "hostile" groups of inhabitants (in this case, aristocratic dynasties), the objective of which was not only confiscation of property of such inhabitants, but basically their absolute liquidation, including depriving them of their family identity, i.e. the above-mentioned transcendental bonds between predecessors, contemporaries and descendants, forming the fundaments of life of a family and dynasty. Such measures, the nature of which exceeds simple infringements of the property domain of an individual, are naturally unacceptable under the conditions of a democratic law-based state, and cannot be provided with protection by the judicial power at the present time.

51. As specified above, the Opinion of the Constitutional Court Plenum file No. Pl. ÚS - st. 21/05 did express a conclusion according to which the restitution regulations had the consequence of legalisation of ownership right of the state over the property which the state seized, be it through simple physical occupation, but the Opinion cannot be used to infer that the same would apply to usurpation of property of a purely personal nature, such as a family vault with mortal remains of family predecessors, when such an act affects, also through infringement of right of ownership, the fundamental right to family life. Therefore, in the given case, the Constitutional Court considers the reference by the ordinary courts to such an Opinion to be inappropriate. This is also based on the fact that the petitioner before the ordinary courts did not bring an action for declaration of her right of ownership or an action for release (eviction), but action for declaration that the vault and the adjacent land form part of the inheritance left by Dr. Adolf Schwarzenberg. Therefore, the decisions of the ordinary courts in themselves would not pronounce and declare the ownership rights of the petitioner, nor would they impose on the state the obligation to evict the immovable property, they would only declare which immovable property forms part of the inheritance left by the legal predecessor of the petitioner. On the contrary, the Constitutional Court, therefore, identifies itself with the conclusion of the court of first instance concerning the fact that the petitioner has a pressing legal interest in such a declaration, since decisions of the ordinary courts are a precondition for continuing inheritance proceedings, in which the ownership rights of the petitioner are to be proven.

52. At the same time, the Constitutional Court is of the opinion that the conclusion on violation of the right to family life may affect only the place of eternal rest of the members of the Schwarzenberg family, that is the vault, including all its parts and appurtenances and the land beneath it. Protection of reverence is only related to such places, as are the above family ties of special importance solely for family members. It is possible to agree with the ordinary courts that the adjacent lands were historically always registered as parks or gardens, and this designation did not change even following the erection of the vault.

53. Therefore, for reasons specified above, due to violation of Art. 8 para. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and

Art. 10 para. 2 of the Charter of Fundamental Rights and Basic Freedoms, the Constitutional Court has granted the constitutional complaint in accordance with the provisions of § 82 para. 2 clause a) of Act No. 182/1993 Coll. on the Constitutional Court as amended by later regulations, and annulled the contested decisions of the Supreme Court, of the Regional Court in České Budějovice, and of the District Court in Jindřichův Hradec.

54. The objection by the secondary party concerning the active standing of the petitioner to bring an action to the ordinary courts was not addressed by the Constitutional Court, since this issue was not dealt with by the ordinary courts, and thus the courts could not have infringed the fundamental rights of the petitioner by possible defective interpretation of the sub-constitutional right.

V.

55. The Constitutional Court also addressed the petition of the petitioner for annulment of Act No. 143/1947 Coll. on Transfer of Ownership of Property of the Hluboká Branch of the Schwarzenberg Family to the Province of Bohemia, due to its conflict with the Czechoslovakian Constitution of 1920, or petition for declaration of its ineffectiveness.

56. Firstly it is necessary to state that the Constitution of 1920 is not a reference criterion for the Constitutional Court, since constitutional norms contained in Act No. 121/1920 Coll. whereby the Constitutional Charter of the Czechoslovakian Republic is introduced, are not a valid part of the present constitutional order of the Czech Republic, which is the only relevant criterion which could be used by the Constitutional Court in proceedings on annulling acts and other legal regulations to assess the constitutionality of the contested act.

57. As specified above, the Constitutional Court did find a violation of the fundamental rights of the petitioner; however, this infringement occurred as a result of a constitutionally non-conforming interpretation of Act No. 143/1947 Coll. The Constitutional Court thus asserted unconstitutionality not in the existence of the Act as such (which was not reviewed in terms of its merits), but only in its unconstitutional interpretation by the ordinary courts, according to which this Act also applied to the family vault. On the contrary, with respect to the above-mentioned facts, alienation of the vault by the state represented a violation of the right to respect for family life and, therefore, in the past or present, the above-mentioned Act cannot be applied to the same at all. If such an Act is not to be applied, the petitioner does not hold any active standing to file a petition for annulment thereof. For this reason, the Constitutional Court denied the accessory petition of the petitioner for annulling Act No. 143/1947 Coll., in accordance with the provisions of § 43 para. 2 clause b) in connection with the provisions of § 43 para. 1 clause c) of Act No. 182/1993 Coll. on the Constitutional Court as amended by later regulations, as a petition filed by a person clearly unauthorised therefor.

Note: Decisions of the Constitutional Court cannot be appealed.