2009/08/18 - I. ÚS 557/09: LIMITATION OF LEGAL CAPACITY

HEADNOTES

G. Dürig formulated the famous theory of the object. According to this theory, human dignity is violated in a case where the state power places a specific individual into the role of an object, where he becomes merely a means, and is reduced to the form of an interchangeable quantity. We can conclude that a person is thus not only an object of social "relationships," but also becomes an object of law, if he is forced to conform to it completely in the interpretation and application of the law, i.e. without taking into account his individual interests or fundamental rights.

The individual is the starting point for the state. The state and all its bodies are constitutionally bound to protect and preserve the rights of the individual. However, the concept of our constitutionality is not limited to protection of the fundamental rights of individuals (e.g., the right to life, a guarantee of legal subjectivity), but in accordance with the post-war change in the understanding of human rights (which found expression in, for example, the UN Charter or the General Declaration of Human Rights) has become the fundamental basis from which arises the interpretation of all fundamental rights, human dignity, which, among other things, forbids treating a person as an object. In this conception questions of human dignity are understood as a component of the quality of a human being, a component of his humanity.

The concept of human dignity defined above must also be projected into the sphere of capacity to have rights, and it has strong implications in the area of legal capacity, because it is through the capacity to perform legal acts (conduct) and procedural capacity that the constitutional guarantee of an individual's legal subjectivity is brought to life (Art. 5). Rights or entitlements that lack a means for protecting them would only be empty proclamations.

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Constitutional Court ruled on 18 August 2009 in a panel consisting of chairman Vojen Güttler and judges Ivana Janů and Eliška Wagnerová (the judge rapporteur) in the matter of a constitutional complaint from the complainant M. H., represented by her guardian M. H., legally represented by JUDr. Jiřina Jiráková, attorney with her registered office at Třebízského 175, Slaný, against a decision by the Supreme Court of 16 December 2008 ref. no. 30 Cdo 1948/2008-421, a decision by the Regional Court in Prague of 20 December 2007 ref. no. 27 Co 568/2007-394, and a decision by the District Court in Kladno of 6 September 2007 ref. no. 42 P 111/94-351, with the participation of the Supreme Court, the Regional Court in

Prague, and the District Court in Kladno, as parties to the proceedings, with the consent of the parties without a hearing, as follows:

I. The resolution of the Supreme Court of 16 December 2008, ref. no. 30 Cdo 1948/2008-421, the judgment of the Regional Court in Prague of 20 December 2007, ref. no. 27 Co 568/2007-394, and the judgment of the District Court in Kladno of 6 September 2007, ref. no. 42 P 111/94-351 violated the complainant's fundamental rights guaranteed in Art. 5 and Art. 10 par. 1 of the Charter of Fundamental Rights and Freedoms.
II. Therefore, these decisions are annulled.

REASONING

I.

1. In her timely filed constitutional complaint, the complainant sought annulment of the above-cited decisions of the Supreme Court, Regional Court in Prague, and District Court in Kladno. In the constitutional complaint, the complainant claimed that the contested decisions violated her fundamental rights and freedoms, "in particular the right to capacity to possess rights, the right to her human dignity, personal honor, good reputation, and protection of her good name, as well as the right to protection from unjustified intrusion in her private and family life, guaranteed primarily by Art. 5 and Art. 10 par. 1 and 2 of the Charter."

2. Violation of the complainant's rights is found in several aspects. In the complainant's opinion, the general courts, when ruling on whether to reinstate her full legal capacity, did not consider all the decisive facts. In particular, the general courts did not take into account the circumstances under which her legal capacity was removed, as that proceeding was conducted on the basis of administrative powers, quickly and simply, the complainant was subsequently placed in an institution against her will, which she has still not recovered from, and since 2002 she has been living in the harmonious environment of the family of her cousin, who is also her guardian. During their decision making, the courts did not hear the evidence of the medical expert, MUDr. O. R., whose conclusions are different from the conclusions of the court-appointed medical expert, MUDr. M. H., and did not appoint a new expert to prepare a revised expert opinion. Also, in their decision making, the courts relied on only one expert opinion, but they had a differing expert opinion at their disposal, as well as other documents and statements demonstrating the complainant's legal capacity. The general courts also did not take into account the complainant's own opinion; during the entire course of the proceedings before the general courts she expressed her wish to have her full legal capacity returned. The complainant believes that in view of her health, age, knowledge and skills she fully "deserves to return to normal life" (p. 3 of the constitutional complaint).

3. In the complainant's opinion, the general courts assessed the entire matter incorrectly, did not admit all the proposed evidence, and evaluated the evidence that they did admit completely incorrectly, from a factual and legal viewpoint, to

her detriment. In her opinion the contested decisions are sharply inconsistent with the Constitutional Court's conclusions expressed in its judgment of 7 December 2005, file no. IV. ÚS 412/04. The appeals court provided practically no reasoning for its decisions, as it merely stated that it did not find the guardian's objection, that the decision by the first level court is inconsistent with settled case law and violates the ward's fundamental rights, to be justified.

4. Based on the foregoing, the complainant proposed that the Constitutional Court annul the decisions of the general courts cited above.

5. The Constitutional Court called on the parties to the proceeding to respond to the constitutional complaint. The Supreme Court, represented by the appropriate panel chairman, JUDr. Karela Podolka, referred to the reasoning of the contested decision and proposed that the constitutional complaint be denied. Similarly, the Regional Court in Prague, represented by the appropriate panel chairman, JUDr. Věra Provazníková, referred to the reasoning of its decision and proposed that the constitutional complaint be denied as unjustified. The District Court in Kladno did not respond by the deadline.

6. Under § 44 par. 2 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, the "Act on the Constitutional Court," the Constitutional Court may, with the consent of the parties, waive a hearing, if the hearing cannot be expected to further clarify the matter. The parties gave their consent, and a hearing was waive.

II.

7. In order to evaluate the complainant's objections and claims, the Constitutional Court requested the file from the District Court in Kladno, file no. 42 P 53/2009, from which it determined the following facts that are decisive for the constitutional complaint.

8. The file indicated that decision of the District Court in Louny of 15 October 1982, ref. no. 10 Nc 637/82-16 (sic!, it is not clear to the Constitutional Court how a decision to remove a person's legal capacity can be decided in a file of a mere 16 pages), at the request of her uncle, removed the complainant's legal capacity; she was subsequently placed in an institution together with her sister, and her bank account was blocked in the name of the District Court in Kladno. In 2002 the complainant moved in with the family of her cousin, her guardian, M. H. The abovementioned decision was subsequently, at the guardian's proposal, amended by decision of the District Court in Louny of 18 September 2003, file no. P 79/2003 to the effect that the ward is capable of independently handling property up to a value of CZK 500. The remainder of the petition to reinstate her full legal capacity was denied.

9. On 28 June 2006 the guardian filed another petition seeking reinstatment of his ward's legal capacity. The District Court in Kladno, by resolution of 19 October 2006, ref. no. 42 P 111/94-293, appointed JUDr. S. G. as the complainant's guardian for that proceeding. On 5 February 2007 the District State Prosecutor's

Office in Kladno joined the proceeding.

10. Based on a resolution by the District Court in Kladno of 6 February 2007 ref. no. 42 P 111/94-306, a psychiatric expert, MUDr. M. H., was appointed to prepare an expert opinion. The expert concluded that the complainant suffers light mental retardation at a level in the middle of the light range, and her condition is permanent; the positive influence of a family environment allows her to make full use of her intellectual and personal abilities, but her health has not improved sufficiently since the last examination (note: expert opinion prepared in 2003 by the expert MUDr. Š.) to constitute grounds for reinstating her legal capacity or reducing the existing limitations. In conclusion, the expert stated that one might consider increasing the amount of money that the complainant is allowed to handle on her own, but she is not capable of other acts without endangering herself (see expert opinion pp. 309 to 319).

11. The guardian filed objections (pp. 328 and 329) against this expert opinion, and submitted another expert opinion, prepared by the expert MUDr. O. R. (pp. 336 to 342). This expert concluded that the complainant does not suffer from any mental illness, but merely mild mental retardation. He also stated that through training it would be possible for her to improve in certain areas, in particular practical and social intelligence, reading, writing, and arithmetic. The expert concluded that the complainant is capable of handling the amount of her disability pension and to perform other legal acts, such as receiving mail, or submitting written forms to offices or courts, but she is not capable of performing legal acts of a more complicated nature. Both experts (the expert H. in a hearing – see pp. 348, the expert R. in the written opinion, as he was not questioned at a hearing, although the complainant's attorney proposed this) confirmed the complainant's close bond to her guardian and his wife and the positive influence of her living with them in a family environment.

12. The guardian also submitted confirmation from the District Office P. that the complainant is a citizen who causes no problems; she goes shopping by herself, communicates normally with others, and behaves politely and normally in public (pp. 301).

13. On 6 September 2007 the District Court in Kladno issued judgment ref. no. 42 P 111/94-351, denying the guardian's petition to reinstate her full legal capacity and amending the decision of the District Court in Louny of 18 September 2003, ref. no. P 79/2003-173, to the effect that the complainant is not capable of handling property with a value over CZK 1,000. The District Court provided fragmentary reasoning for its decision; in five and a half pages of the judgment it summarizes the proceeding and the evidence, and sets forth its deliberations and evaluation of the evidence that was the grounds for its decision in the final half page (pp. 357). The District Court believes that it is obvious from the expert opinion of MUDr. H. that the complainant was acting under the strong influence of her guardian, that without him she was uncertain, frightened, and incapable of making her own decisions. The reasoning section of the judgment lacks justification of the verdict that set the limitation on the ward as regards the amount or property that she is able to handle on her own.

14. On 19 October 2007 the guardian filed an appeal against this judgment. The court-appointed guardian, JUDr. G., also filed an appeal. That appeal was directed only against verdict II of the judgment, i.e. it challenged the amount that the ward was allowed to handle on her own. The appeals court, the Regional Court in Prague, ruled in a judgment of 20 December 2007, ref. no. 27 Co 568/2007-394, as amended by a supplemental resolution of 20 December 2007, ref. no. 27 Co 568/2007-399, and fully confirmed the contested judgment by the District Court in Kladno. The appeals court justified its decision by saying that it agreed fully with the conclusions of the first level court, that it was sufficiently proved in the proceeding that the complainant's health had not changed, and therefore there were no grounds to reinstate her legal capacity. Taking into account the expert opinion of MUDr. H., it was appropriate to consider inflation and increase the amount that the complainant was authorized to handle, to CZK 1,000. In contrast, the appeals court did not agree with the guardian's opinion that the contested judgent by the District Court was inconsistent with the conclusions of the Constitutional Court stated in its judgment of 7 December 2005 file no. IV. ÚS 412/04. Therefore, it concluded that the contested judgment did not interfere in the complainant's fundamental right guaranteed by Art. 10 par. 1 of the Charter of Fundamental Rights and Freedoms (the "Charter").

15. The guardian filed an appeal on point of law against this decision with the Supreme Court, and presented the same arguments as in the present constitutional complaint. The appeal on point of law was denied by Supreme Court resolution of 16 December 2008, ref. no. 30 Cdo 1948/2008-421, under § 243b par. 5 first sentence and § 218 let. c) of Act no. 99/1963 Coll., of the Civil Procedure Code (the "CPC"), because the Supreme Court concluded that the contested decision of the first appeals court had no fundamental legal significance, and therefore an appeal under § 237 par. 1 let. c) of the CPC (pp. 422) could not be admitted.

III.

16. After conducting the proceeding, the Constitutional Court concluded that the constitutional complaint is justified. The Constitutional Court is authorized to protect constitutionality, not to review "ordinary" legality (Art. 83 of the Constitution of the CR). The Constitutional Court does not review mere correctness of interpretation and application of "simple" law by the general courts. It will intervene in their activities only if one of their decisions violated a complainant's (in this case the ward's) fundamental right or freedom that is guaranteed by the constitutional order of the Czech Republic, because the fundamental rights and freedoms not only define the framework of normative content of the applied legal norms, but also set the framework for constitutional interpretation and application of them.

17. The Constitutional Court will always intervene if it finds an element of arbitrariness in the actions of the general courts. For example, in judgment I. ÚS 534/03 it stated: "There is also such violation of the complainant's fundamental rights and freedoms when the general court overlooks the constitutional law importance of the ban on arbitrariness, the starting point from which one must approach interpretation of all procedural principles and rules provided by the simple law. The Constitutional Court also reviews decisions of the general courts if

it finds that their interpretation of legal regulations is so extreme that it deviates from the bounds of constitutionality. That also occurs if the general courts interpret a certain statutory provision so expansively that they establish an individual's obligation to act above the scope of the law, which violates Art. 4 par. 1 of the Charter. The Constitutional Court has already ruled (e.g. in judgment file no. I. ÚS 546/03), that Art. 4 par. 1 of the Charter has two dimensions; the first specifies the effects of Art. 2 par. 2 of the Charter on individual persons, and the other represents a structural principle of a democratic law-based state, under which state authority can only be exercised in cases and within the bound set forth by law, and in a manner provided by law. Likewise, a court's imposition of an obligation is limited by the law to require that the fundamental rights and freedoms be preserved." In the Constitutional Court's opinion, there is arbitrariness in a case where the general courts do not fulfill their obligation to properly, i.e. adequately, rationally, and logically, justify their decisions in the relevant aspects (e.g., I. ÚS 534/03); this is also true in a case where a decision demonstrates extreme inconsistency between its legal conclusions and the evidence presented and conclusions of fact made on that basis; it is also true in a case where the interpretation and application of "simple" law is extremely inconsistent with the principles of justice (e.g., as a result of excessive formalism) – see, e.g., judgment III. ÚS 94/97.

18. As the Constitutional Court has already stated in the past: "The Constitution of the CR accepts and respects the principle of legality as a component of the overall concept of a law-based state; however it does not tie positive law only to formal legality, but subordinates the interpretation and application of legal norms to their substantive meaning" (see, e.g., judgment of 4 July 2000, file no. Pl. ÚS 7/2000). Where there is potential violation of the classic fundamental rights of complainants tied to the very essence of their "humanity" (including the right to human dignity, the right to a guarantee of a comprehensively understood legal personality, etc.), which are issues connected to judicial rulings to remove or limit a person's legal capacity, the abovementioned conclusions have particularly fundamental importance. Both human dignity and the capacity to have rights in the broad sense of the word (substantive and procedural, expressed in the language of civil law) legally define the individual that state authority has an obligation to respect. Without acknowledging this postulate, the other fundamental rights and freedoms guaranteed by the constitutional order of the CR would only be empty phrases. G. Dürig [G. D., Der Grundrechtssatz von der Menschenwürde, Archiv des öffentlichen Rechts 81 (1956), p. 127] formulated the famous theory of the object that was adopted by the case law of the German Constitutional Court, connected to questions of human dignity. According to this theory, human dignity is violated in a case where the state power places a specific individual into the role of an object, where he becomes merely a means, and is reduced to the form of an interchangeable quantity. We can conclude that a person is thus not only an object of social "relationships," but also becomes an object of law, if he is forced to conform to it completely in the interpretation and application of the law, i.e. without taking into account his individual interests or fundamental rights.

19. We must also add that "the source of the constitutional order of the Czech Republic is the individual and his rights guaranteed by the constitutional order of the CR. The individual is the starting point for the state. The state and all its

bodies are constitutionally bound to protect and preserve the rights of the individual. However, the concept of our constitutionality is not limited to protection of the fundamental rights of individuals (e.g., the right to life, a guarantee of legal subjectivity), but in accordance with the post-war change in the understanding of human rights (which found expression in, for example, the UN Charter or the General Declaration of Human Rights) has become the fundamental basis from which arises the interpretation of all fundamental rights, human dignity, which, among other things, forbids treating a person as an object. In this conception questions of human dignity are understood as a component of the quality of a human being, a component of his humanity. Guaranteeing the inviolability of human dignity allows a person to fully make use of his personality. These deliberations are confirmed by the preamble to the Constitution of the CR, which declares human dignity to be an inviolable value, standing at the foundation of the constitutional order of the CR. Likewise, the Charter guarantees that people are equal in dignity (Art. 1) and guarantees the subjective right to the preservation of human dignity (Art. 10 par. 1). The Constitutional Court considers the legal personality of a free individual and the guarantee of the de facto exercise of that personality to be extremely important constitutional values with a central position in the constitutional order (Art. 1, Art. 9 par. 2 of the Constitution of the CR and Art. 5 of the Charter). The Constitutional Court is bound (Art. 83 of the Constitution) to protect these components of the comprehensively understood dignity of the individual (preamble to the Constitution, Art. 1 and Art. 10 par. 2 of the Charter) – see similarly judgment file no. IV. ÚS 412/04.

20. That decision stated, among other things: “The concept of human dignity defined above must also be projected into the sphere of capacity to have rights, and it has strong implications in the area of legal capacity, because it is through the capacity to perform legal acts (conduct) and procedural capacity that the constitutional guarantee of an individual’s legal subjectivity is brought to life (Art. 5). Rights or entitlements that lack a means for protecting them would only be empty proclamations. It is only the rights thus understood that the state power must take into consideration when interpreting simple law. As the Constitutional Court has already stated in the past: ‘The constitution of the CR accepts and respect the principle of legality as a component of the overall concept of a law-based state, but it does not tie positive law only to formal legality, but subordinates the interpretation and application of legal norms to the meaning of their substantive content.’ (cf., e.g., judgment of 4 July 2000, file no. Pl ÚS 7/2000 in Coll. of Decisions, vol. 19, p. 45 of no. 261/2000 Coll.). The constitutional order recognizes and guarantees, in Art. 5 of the Charter, everyone the capacity to have rights, i. e. it guarantees everyone a legal personality.

21. On the level of sub-constitutional law, the capacity to have rights and obligations and acquire them through one’s own acts is governed by civil law, generally expressed for the purpose of ensuring certainty in relationships between members of civil society. This right of every person is applied as a public subjective right in the area of public law, in vertical relationships, i.e. relationships between the state and the individual, where it protects the individual from interference by the state, or the state power, in his personality. As the Constitutional Court already concluded in judgment file no. IV. ÚS 412/04, a vertical relationship can also describe the position of a party in a so-called “non-disputed” proceeding,

which can be opened without a petition, which also includes a proceeding to restrict legal capacity. This is a proceeding in which the legislature made a person an "object" of the law, because it believed that the matter involved a strong public interest. Nevertheless, this public interest cannot always and completely, sort of automatically, outweigh the interest of the individual and deprive him of the cited fundamental rights. In vertical relationships all fundamental rights are exercised as directly applicable rights, which directly bind the state power (here, the court), and prohibit dealing with a human being as with a mere object of objective law without taking his fundamental rights into account. The interests or fundamental rights of the person whose legal capacity is limited must be taken into consideration in the courts decision making, which cannot be conducted through automatic inclusion of the facts under a statutory norm. Generally, and especially in addressing this issue, a legal norm that permits limiting the fundamental rights must be interpreted and applied with awareness of the significance and breadth of relationships that cover the fundamental rights being limited. The legal norm can be applied only after a careful determination of which conflicting fundamental rights of third parties, or which public interests, are in conflict with the fundamental rights of the person whose rights are being limited, and that determination must be stated in the reasoning of the decision. In other words – a limitation on fundamental rights must be strictly proportional. Therefore, the Constitutional Court previously stated that "limiting legal capacity is always serious interference in the personal integrity of the person being limited. Such interference must be reviewed in terms of the potential interference in the fundamental rights of the affected person guaranteed especially by Article 5 and Article 10 par. 1, 2 of the Charter, interpreted in a scope that is limited by human dignity. Because the Charter guarantees these rights as so-called "absolute" fundamental rights, they may be limited only for purposes of protecting the fundamental rights of other persons or for purposes of protecting a public interest that is a principle or value contained in the constitutional order (so-called "immanent" limitation of fundamental rights, see judgment of 11 November 2005, file no. I. ÚS 453/03, published at www.judikatura.cz, or judgment of 26 March 2003, file no. Pl. ÚS 42/02 published on the same website or in Coll. of Decisions, vol. 29, p. 389 or no. 106/2003 Coll.). However, the possible limitation of these fundamental rights for that purpose must always be done proportionately." (judgment file no. IV. ÚS 412/04)).

22. In that judgment the Constitutional Court also addressed the test of proportionality, which should contain the following three steps, which must be applied both to the statute that limits these fundamental rights, and to interpretation and application of the statute reflected in the individual decision that is issued:

a) Is the aim pursued a legitimate one? Is the aim that is pursed and promoted necessary in a free, democratic society?

b) Is there a rational connection between the aim and the means selected to promote it?

c) Are there alternative methods for achieving the aim, use of which would make the interference in the fundamental right less intensive or avoid it entirely?

23. In judicial decisions to limit legal capacity, it will always be necessary to diligently see to it that the legal capacity not be limited in a scope greater than what is absolutely necessary to protect the fundamental rights of third parties and other constitutionally protected values, for the benefit of which the fundamental rights of the affected person are to be diminished; as the extreme limit (which, of course, cannot always be reached, in terms of the principle of proportionality), it is necessary to respect the limit set by Art. 4 par. 4 of the Charter. From that point of view, the institution of removal of legal capacity, which is an obvious relic of the old regime, is constitutionally considerably problematic. [It is surely significant, that the legal orders of our western neighboring states, Austria and Germany, do not recognize removal of capacity to perform legal acts, or removal of capacity to manage one's own affairs, and as of 1 January 2009 this institution has also disappeared from the French Code Civil, where, from the late date, we can conclude that this a result of the (somewhat delayed) French acceptance of the normative effect of fundamental rights on the activity of the legislature] The general courts must always weigh all the milder alternatives [point 23 let. c)], that could achieve the pursued aim in terms of protection of specific, identified competing rights or public interests derivable from the constitutional order, and limitation of legal capacity must always be considered the most extreme means. The fact alone that a person suffers from a mental illness is not yet grounds for limiting his capacity to perform legal acts, or, stated in the language of fundamental rights, for limiting his fundamental rights (the right to legal personality and human dignity); rather, it must always be specifically stated, who, or what, is endangered by the full legal capacity (preservation of legal personality) of the affected person, and it is also necessary to justify why the situation cannot be addressed using milder means. In other words – when deciding to limit a person's capacity to perform legal acts (or the scope thereof) the subsidiary of that measure must always be applied thoroughly (the new codification of civil law now being prepared also takes into account this constitutionally normative principle, arising from the very essence of a substantive law-based state – see points 19, 20, 21).

24. As already indicated in the previous points, in cases of deciding to limit a person's legal capacity, the court is required to identify, in the particular case, the competing right or value or interest protected by the constitutional order because of which the limitation of the abovementioned fundamental rights of the affected person is to take place. In connection with this requirement, the court is obligated to ensure complete and reliable findings on the personal situation of the affected person, i.e. how he handles himself in social contact with members of the civil society, how he takes care of his and his family's needs, how he manages money, how he conducts himself at his workplace, etc.. In this type of proceeding an expert opinion is credible evidence, but it may not be the only evidence, and may not make up for a lack of findings of fact. Before the fall of communism, the judiciary believed that removal or limitation of legal capacity was a measure that was to protect, not damage or endanger interests in the capacity of the affected citizen (further, see From the Report on the Level of Proceedings and Decision Making by Courts of the Czech Socialist Republic in Matters of Legal Capacity, discussed and approved by the civil law collegium of the Supreme Court of the CSR, Cpj 160/76 of 18 November 1977, R 3/79). In the present legal environment,

formed by the Czech constitutional order, this idea (which then arose from the achieved unity of the interests of the individual, the whole society, and the state, as that unity of interests was presumed to exist by the Constitution of the CSSR of 1960, demonstrating thereby the achievement of socialism – on this issue, see Wagnerová E.: Základní práva [Fundamental Rights], in Komunistické právo v Československu, Kapitoly z dějin bezpráví [Communist Law in Czechoslovakia: Chapters from the History of Lawlessness], M.Bobek, P.Molek, V.Šimíček (eds.), Masarykova univerzita, 2009, pp. 330-363) must be modified by separation the interests of the individual, the society, and the state (as is standard in the constitutional law theory of democratic, liberal states), and also to take as a starting point the priority of a fundamentally free, autonomous individual, whom the state may not prevent from pursuing his idea of happiness by forcing upon him state protection where the individual, perhaps with the help of his family, can take care of himself (the principle of subsidiarity, derived from recognizing the dignity of the individual, first expressly defined as a principle in the encyclical of Pope Pius XI. Quadragesimo anno, in 1931).

IV.

25. As stated above (points 14 and 15), the judgment of the District Court in Kladno of 6 September 2007 ref. no. 42 P 111/94-351 changed the judgment of the District Court in Louny of 18 September 2003 ref. no. P 79/2003-173 to the effect that M. H. is not capable of handling property with a value over CZK 1,000 (verdict II. of the judgment), and the petition to reinstate the complainant's legal capacity was denied (verdict I., pp. 351). In contrast, the District Court in Louny chose for its verdict on limiting the complainant's legal capacity a so-called "positive" definition of the scope of limitation, when it limited her capacity to the effect that she is entitled to handle property not exceeding an amount of CZK 500 (i.e., she does not have legal capacity in other acts). The District Court in Kladno then changed that judgment, with the justification that the conditions for limitation still exist, but for the verdict of the decision it used a so-called "negative" definition of legal capacity, when it stated that M. H. lacks capacity to handle property whose value exceeds CZK 1,000. With reference to the dogma of fundamental rights in a democratic, law-based state (under which the fundamental rights exist as fundamentally unlimited rights, while statutory or statutorily-permitted limitation of them, and interpretation and application of them by a court must be implemented so that it is possible to review both the justification for the limitation in terms of the existence of conflicting rights and values and the need for the limitation in terms of its intensity, i.e. in terms of observance of the proportionality principle), that arises from the principles set forth in part III of this decision, the contested decisions cannot be accepted in terms of constitutional law, because they lack both an express specification of the constitutionally guaranteed rights and values that are to be protected by limiting the fundamental rights of M. H., through very drastic limitation of her legal capacity, and also lack an explanation of why any conflict between the rights of M. H. with the rights of third parties, or other values, cannot be resolved using milder means. Beyond the framework of what is necessary, the Constitutional Court adds that the original verdict in the decision by the District Court in Louny was completely defective in terms of fundamental rights, as it "granted" the complainant the fundamental right

to property in a limited extent, although this right is hers without limitation, and a court may, if the necessary conditions exist (see point 21), only limit it, and, as already stated, while carefully respecting the principles of subsidiarity and proportionality.

26. The general courts obviously acted based on an opinion, contrary to the constitutional order, that nothing prevents them from annulling, through their verdict, the autonomous discretion of M. H. to exercise her own personality, and leaving her only the ability to handle an insignificant amount of property. Thereby they failed to respect the complainant's sphere of autonomy, defined, among other things, by her abovementioned fundamental rights (see points 19, 20, 21) in their negative function, which prevents the state power from entering into the thus-defined sphere without finding quite fundamental grounds (the conflicting rights of third parties and values assumed by the constitutional order), or, literally usurping it. The general courts did not realize at all that their task is only to set appropriate limitations on the complainant's fundamental rights, if they find grounds therefore in conflicting rights and values, or general interests contained in the constitutional order. However, the courts did not find any such conflicting rights, values, or interests, and so of course did not identify them either, and subsequently could not evaluate them or weigh them against the complainant's fundamental rights guaranteed by Art. 5 and Art. 10 par. 1 of the Charter in terms of the proportionality principle.

27. The general courts erroneously assumed that it is not necessary for them to again review and decide on the quite obviously excessive limitation of M. H.'s legal capacity, despite the fact that, according to both the experts consulted in the matter, the "evaluated person suffers light mental retardation" only, (pp. 355, p. 5 of the decision of the fact-finding court) and the expert MUDr. R., in his evaluation (pp. 336 to 342) stated that, in addition to handling property in amounts corresponding to her pension, the complainant is also capable of other acts that would exercise her rights. Here, of course, the Constitutional Court points out that the court must also evaluation this opinion, not accept it word for work, because the court may not provide rights to M. H., but only, if it finds grounds therefore in conflicting rights and values (which, however, it must find itself, and not rely on experts for), proportionately limit her rights. The courts will also have to draw appropriate conclusions from the fact that the decision of the District Court in Louny of 18 September 2003, ref. no. P 79/2003-173, already removed the impediment under § 2 let. b) of Act no. 247/1995 Coll., on Elections to the Parliament of the Czech Republic, and Amending and Supplementing Certain Other Acts, for m. H. to exercise her voting rights (active and passive), because the impediment to the exercise of voting rights is only removal of legal capacity, not merely limitation of legal capacity, and they must weigh whether they are grounds, in the form of conflicting rights and values, to maintain the limitation of other fundamental political rights (the right to petition, freedom of association and freedom of assembly), precisely with the background, or in the context, of the cited legislative decision. The file also shows no basis for deciding on limiting the complainant's rights arising from family law relationships, protected at the constitutional level by the fundamental right to family and private life, etc.

28. The Constitutional Court adds that the proceeding did prove that the

complainant suffers mild mental retardation, at a level in the middle of the light range. However, that finding does not automatically give rise to a conclusion that the complainant's legal capacity must be considerably limited, virtually removed. A mild intellectual disability, which, moreover, is not even mental disability in the true sense of the word, cannot and must not, in and of itself, be grounds to deprive a person of the opportunity to express her will in ordinary life situations, and perform legal acts in accordance with her will. Grounds for limiting legal capacity may be only an interest in the protection of the rights and freedoms of third persons or protection provided to values or interests arising from the constitutional order.

29. As regards the actions of the second appeals court, the Constitutional Court states that it considers incorrect the narrow interpretation the court used for the permissibility of an appeal on point of law under § 237 par. 1 let. c) of the Civil Procedure Code (the "CPC"). The second appeals court is also called upon, in its decision-making activity, to protect the complainant's fundamental rights and freedoms (Art. 4 of the Constitution), and therefore the scope of its deliberations on the permissibility of an appeal on point of law under § 237 par. 1 let. c) of the CPC is not unlimited from a constitutional perspective. In the present matter the second appeals court was content to state that the decision of the first appeals court cannot be considered fundamentally significant, legally speaking, and it denied the appeal on point of law. Moreover, in the reasoning of its decision it states that the objections of the appellant (the guardian) are aimed against the conclusions of fact and incomplete findings of fact, and are therefore not objections to the legal evaluation. As was already stated above (points 21, 22, 23), deciding to limit or remove legal capacity is a sensitive and fundamental interference in the fundamental rights and freedoms of persons. It is also obvious from the reasoning of this judgment that the decisions of the trial court and appeals court offered up for review a whole series of legal issues tied to effective judicial protection of the complainant's fundamental rights and freedoms, which the Supreme Court completely overlooked. Therefore, we cannot agree with the conclusions of that court, which said in the reasoning of its decision that: "however, in formulating the legal issue, the appellant overlooks the fact that this proceeding did not review the issue he formulated, whether the claimed protection of the evaluated person is consistent with the laws and with the Charter, in other words, whether the removal of M. H.'s legal capacity is consistent with the laws, but addressed the issue of whether there was such a change in the state of M. H.'s health as would justify the change in the limitation of her legal capacity, which had been made in the past" (p. 3 par. 1 of the decision). In the Constitutional Court's opinion, this conclusion is quite inappropriate and erroneous, because whether a citizen's legal capacity was limited or removed, i.e. whether his fundamental rights were limited in accordance with the constitutional order, must always be a question to be addressed by every court in the Czech Republic, if a person turns to it with a petition to provide protection for his fundamental rights. That is because Art. 4 of the Constitution of the Czech Republic sets protection of the fundamental rights under the protection of the judicial power, i.e. first of all under the protection conducted by the general courts, regardless of their position in the court system.

30. In this regard, we cannot omit to state the alarming statistics on the number of

persons whose legal capacity has been removed or limited; as of 30 July 2007 records showed 3,893 persons with limitations on their legal capacity and 23,283 persons deprived of legal capacity. Based on these numbers, the conclusion about the decision making practice of the general courts is clear. It is obvious that the general courts too often make use of the constitutionally problematic removal of legal capacity. Therefore, the Constitutional Court, beyond the framework of the reasoning of this decision, calls on the general courts, especially the Supreme Court, one of whose main functions is unifying case law in a constitutional manner, in proceedings before them to reverse the unfortunate trend arising in communist times and still persisting, and thus ensure judicial respect for the fundamental rights and freedoms of individual persons so that the maxims expressed in this and other decisions of the Constitutional Court will be maintained (see, e.g., judgment file no. II. ÚS 303/05 of 13 September 2007, file no. II. ÚS 2630/07 of 13 December 2007, file no. IV. ÚS 412/04 of 7 December 2005 and others).

31. For the reasons cited above, the Constitutional Court granted the constitutional complaint. Under § 82 par. 2 let. a) the Act on the Constitutional Court, it identified in its verdict which fundamental rights and freedoms were violated by the contested decisions and proceedings preceding them, and it annulled the decision of the Supreme Court of 16 December 2008, ref. no. 30 Cdo 1948/2008-421, the decision of the Regional Court in Prague of 20 December 2007, ref. no. 27 Co 568/2007-394, and the decision of the District Court in Kladno of 6 September 2007, ref. no. 42 P 111/94-351, under § 82 par. 3 let. a) the Act on the Constitutional Court.

Instruction: Decisions of the Constitutional Court cannot be appealed (§ 54 par. 2 the Act on the Constitutional Court).

Dissenting Opinion of Justice Ivana Janů

I disagree with the reasoning of judgment file no. I. ÚS 557/09, and am submitting a dissenting opinion to it pursuant to § 22 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations.

I must state first of all that I am not addressing all the problematic points in the reasoning of the judgment, but only those points in the reasoning that I consider fundamental. Thus, I am not addressing issues that had nothing to do with the adjudicated matter, but which nevertheless appear in the reasoning [e.g. references to removing legal capacity, although the complainant merely had her capacity limited; the obviously incorrect description of removal of legal capacity as a relic of the old regime (see point 23.; cf. Sedláček-Rouček: Komentář k československému obecnému zákoníku občanskému [Commentary on the Czechoslovak Civil Code], volume I., pp. 1069 and 1073); there is no doubt, of course, that until 1989 the totalitarian regime abused removal and limitation of legal capacity for political purposes].

Apparently I diverge from the majority opinion starting with the basic view of

limiting legal capacity. I believe that the purpose of limiting legal capacity is, first of all, protection of the person whose legal capacity is concerned. Therefore, I consider as still valid the conclusion stated in R 3/1979, that the purpose of limiting ore removing legal capacity "is primarily to provide protection to persons who, because of a mental disability that is not merely temporary are not able to perform any or some legal acts; it is also necessary to consistently prevent legal capacity being limited in a greater scope than is absolutely necessary, and that this not unnecessary burden the living situation of these persons." This conclusion cannot be faulted even from the contemporary constitutional law viewpoint.

The majority opinion also states that the decision to limit legal capacity granted the complainant the fundamental right to property (see point. 25.) However, I cannot agree in this regard either, because limitation or removal of legal capacity does not result in the removal of any subjective rights, including the right to property. All that is limited or removed is the ability to take on rights through one's own legal acts and to bind oneself to obligations; however, in the scope in which this capacity is affected, the rights and obligations of the person are performed by his guardian, in that person's name and on his account. For example, a person whose legal capacity has been removed cannot by himself manage his property rights, but that does not mean that he is deprived of his property, or that the decision limiting legal capacity granted or removed property rights, etc.

I also cannot agree with the description of the proceeding on legal capacity as a proceeding "in which the legislature made a 'person' an object of the law." A natural person, whose capacity is at issue, is not an object, but a party to the proceeding (§ 94 par. 1 of the CPC), i.e., a procedural subject. The conclusion that the examined person is a mere object is also ruled out not only by the fact that the Civil Procedure Count grants him, as a party, a number of procedural rights (and an object cannot have rights), but also by the special regulation of his procedural capacity (in contrast to § 20 par. 1 of the CPC, based on § 186 par. 3 of the CPC a person whose legal capacity has been completely removed also has procedural capacity).

I also cannot agree with the conclusion that the limitation of the complainant is "very drastic" or "obviously excessive." Here the majority opinion quite obviously does not fully appreciate the different consequences of a positive or negative formulation of the verdict limiting legal capacity; of course, I must acknowledge that the inadequate and incomprehensible reasoning of the contested decisions contributes to that. While, according to the 2003 decision the complainant was "capable of independently handling property with a value of up to CZK 500," according to the decision contested by the constitutional complaint the complainant "is not capable of handling property whose value exceeds CZK 1,000." The first mentioned decision chose a positive definition, as a result of which the complainant could perform only the legal acts stated in the verdict, i.e. only to handle property of up to CZK 500; the second decision is based on a negative definition, and therefore the complainant is capable of all legal acts except those that are stated in the verdict, i.e. she can perform any legal acts except handling property exceeding the value of a thousand crowns. Thus, using a negative formulation instead of a positive list has far-reaching consequences, due to which the present scope of the limitation cannot be seen as very drastic or obviously

excessive.

I also cannot pass over the fact that the majority opinion considers the expert opinion of MUDr. Rotter to be evidence through an expert opinion. An expert opinion under § 127 of the CPC is only an opinion that has been prepared by an expert appointed by the court. but MUDr. Rotter was not. He prepared his evaluation at the request of the complainant's guardian, so it is evidence through a private document (§ 129 of the CPC), and not expert evidence.

I agreed with the verdict of the majority opinion only because the decision of the first level court and that of the appeal court contains completely inadequate justification, which is inconsistent with the settled case law of the Constitutional Court, stating the obligation of courts to provide justification for their decision in a legally provided manner (e.g. file no. III. ÚS 290/96, III. ÚS 703/06). Every decision to limit legal capacity must be based on an unambiguous factual finding that the person whose capacity is at issue suffers a mental disability that is not only temporary, and that, as a result, he is not able to correctly assess the consequences of his legal acts and be responsible for such acts, or a statement regarding to what extent that ability is affected. The court must set forth these conclusions in the reasoning of its decision. The reasoning of the first level court completely lacks justification for why there was a change in the scope of limitation of legal capacity and why the limit is now the one that is stated in the verdict; the appeal court decision devotes one sentence to this question. Such reasoning cannot generally be considered sufficient, or even comprehensible in relation to the verdict. This applies all the more so with an issue as serious as limiting a person's legal capacity.