2009/04/02 - II. ÚS 1945/08: RIGHT OF A CHILD TO BE HEARD

HEADNOTES

For the child, the family environment is a space of freedom and, therefore, no other environment may be considered a space of personal freedom for the child. The latter is especially true for facilities established by the bodies of public power, in particular institutional facilities, which (necessarily) have their own way of operating that is (in accordance with the law) enforced upon their residents. It is essential that in a case of infringement of personal freedom, there is a general fundamental right to be heard before a court which makes a decision on the limitations of freedom, and this at any time such decision making takes place (file No. Pl. ÚS 45/04, N 60/36 SbNU 647; judgment of the European Court of Human Rights in the case of Husák v. the Czech Republic No. 19970/04, dated 4 December 2008 and others). In principle, there is no reason for a child not to have the fundamental right to be heard directly before a court when a decision is being passed on restricting their personal freedom whilst an adult has such a right in the same circumstances. A relevant reason for denying the right of a child to be heard surely occurs when the child is not capable, with respect to the level of their development, of forming an opinion and evaluating the bearing of the measures relating to them. When taking into account the specific situation (see file No. III. ÚS 495/03, N 117/34 SbNU 223), it is necessary to proceed from the fact that a man matures, in terms of intelligence, between the ages of 11 and 12 (Piaget, J.: Psychologie inteligence /Psychology of Intelligence/. Prague: Státní pedagogické nakladatelství /Educational Publishing House/, 1970. pp. 105-128), and peak performance is seen at 16 years of age. Therefore, in the case of decision making on imposing institutional upbringing on a child older than 12 years of age, there is in principle no reason for denying the right of a child to be heard directly by a court. Thus, alternatives provided by law were always to be considered as exceptions which must be properly substantiated by the court in its decision.

In the case under consideration, the ordinary court was thus obliged to allow the petitioner-son, with respect to his intellectual development, to exercise his right to be heard directly before the court, and should not have settled for merely a statement that the petitioner-son's opinion was known to the court, which is what actually took place.

Therefore, the Constitutional Court has completely granted the constitutional complaint, since the ordinary court, by not hearing the petitioner-son, violated his fundamental right to judicial protection pursuant to Art. 36, para. 1 of the Charter, in connection with Art. 12, para. 2 of the Convention on the Rights of the Child, Art. 3, clause b) of the European Convention on the Exercise of Children's Rights, and Art. 8, para. 1.

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

A Panel of the Constitutional Court, consisting of Chairman Stanislav Balík and Justices Dagmar Lastovecká and Jiří Nykodým, adjudicated the matter of a constitutional complaint filed by 1) I. O. and 2) J. O., both represented by Mgr. David Strupek, an attorney at law with a registered office in Prague, against a judgment of the Regional Court in Prague, file No. 28 Co 239/2008, dated 27 May 2008, with participation by the Regional Court in Prague, as a party to the proceedings, as follows:

Judgment of the Regional Court in Prague, file No. 28 Co 239/2008, dated 27 May 2008, shall be annulled.

REASONING

I.
Recapitulation of the petition

1. In the constitutional complaint, sent by post on 1 August 2008, the petitioners sought the annulment of the judgment specified above, whereby, following an appeal by the mother as one of the petitioners (hereinafter only "petitioner-mother"), judgment of the District Court for Prague-West, file No. 11 P 156/2007-85, dated 17 March 2008, was confirmed, in which a petition by the mother concerning cancellation of upbringing of the other petitioner (hereinafter only the "minor" or "petitioner-son") by an institution was dismissed. The petitioners object that the contested decision and the proceedings prior to the same violated Art. 10 para. 2 and Art. 32 para. 4 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter only the "Charter"), Art. 8 of the Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter only the "Convention"), and Art. 9 para. 1 and para. 2 and Art. 12 of the Convention on the Rights of the Child.

2. Firstly, the constitutional complaint, with respect to the petitioner-son being a minor, contains arguments derived from various decisions of the European Court of Human Rights, stating that a biological parent is entitled to represent a child not of legal age. In addition to this, it is stated that the petitioner-son decided to file a constitutional complaint of his own volition; and granted, at the age of sixteen, a power of attorney for this purpose.

3. Within the merits of the case, the petitioners specifically state that the decision was not issued in accordance with the law since the petitioner-son had not been heard in the proceedings prior to the given decision, and thus his opinion was not taken into account. The petitioners do not question the conclusion of the court that the wish of the petitioner-son to return home was indubitable even without

hearing this petitioner, but they believe that discussion with the petitioner-son could have been held within the scope of examinations concerning the reasons for ordering the minor to be placed in an institution. Furthermore, inquiries could have been made concerning other potential solutions, plus the seriousness and trustworthiness of his declared commitments could have been evaluated, impacts of his upbringing administered by a relevant educational institution ("institutional upbringing") on his attitude could have been assessed by direct contact, and so on. The petitioners criticise the absence of any deliberation on why family care in an establishment for children requiring immediate help was not preferred. In connection with this, the petitioners also believe that the ordinary courts did not have access to sufficiently thorough data for making a decision on the hitherto effects brought by the institutional upbringing on the petitioner-son, and the trustworthiness of his commitments in such a respect. What is particularly unconvincing (as it is basically absent) is the evaluation of a report by the diagnostic institute, which discourses on the motivation of the petitioner-son and his growing activities. It must be added that, by contrast, the result of the contested proceedings frustrates the petitioner-son and discourages his motivation. The court of appeal took its decision seven months after the institutional upbringing was imposed, and its deliberations on the prematurity of the petition for cancelling the same are thus in conflict with the above-stated principles of temporariness of the institutional upbringing, necessity for regular revisions, and preference for alternative solutions, with positive obligations on the part of the state to make active steps towards an as expeditious as possible reunification of the family.

4. The petitioners further object that their family life was not respected, and that infringement of the same by the court was not necessary, even though it pursued a legitimate objective. They consider unquestionable that the institutional upbringing was imposed due to the truancy of the petitioner-son and subsequent lack of cooperation by this petitioner in a therapeutic solution attempted. There is no doubt on their part of the importance of education, i.e. the social need for at least practical education to be provided in order to enhance one's position in the labour market, which is, in a liberal society, a precondition for any future self-realisation, in particular in light of the fact that the petitioner-son may be disadvantaged in the labour market due to his ethnicity. They admit that the petitioner-son's detriment – defects in education – is more serious than that in the case of W. and W. v. the Czech Republic (judgment of the European Court of Human Rights, No. 23848/04, dated 26 October 2006), and in the case of H. and others v. the Czech Republic (judgment of the European Court of Human Rights, No. 23499/06, dated 21 June 2007), where defects were only found in insufficient financial conditions. In spite of this, they believe that the social need is not pressing enough to justify breaking up the family. At the time when the decision of the court of appeal became finally legally binding, the petitioner-son was about to complete compulsory education, and the court of appeal itself substantiated that the institutional upbringing continue solely and exclusively due to the need to ensure regular attendance by the petitioner-son at an apprenticeship college. The petitioners are convinced that the need to ensure regular attendance in order to guarantee a practical education is not pressing enough to make up for the detriment caused in emotional bonds between the petitioners and other family members. They also refer to consequences of being brought up by an institution as

described in specialised literature, especially “emotional deprivation” or showing considerable deviations from common standards of development of personality and the challenges of gaining social acceptance at an older age (all, for example, in Matějček, Z., Bubleová, V., Kovařová, J.: Pozdní následky citové deprivace a subdeprivace /Late Consequences of Emotional Deprivation and Sub-deprivation/, Prague: Psychiatrické centrum /Psychiatric Center/, 1997. pp. 57, 58; or Langmeier, J., Matějček, Z.: Psychická deprivace v dětství /Psychological Deprivation in Childhood/, Prague: Státní zdravotnické nakladatelství /State Medical Publishing House/, 1963, p. 42).

5. The petitioners refer to the fact that panels 23 Co and 24 Co of the same Regional Court reached, in connection with the time of the contested decision, absolutely contradictory general conclusions in evaluating the proportionality of the measures taken. In cases 23 Co 482/2007 (29 November 2007) and 24 Co 469/2007 (13 March 2008) they decided that not even profound truancy by minors gaining compulsory education constitutes a social need pressing enough to make it appropriate to sever well-functioning emotional bonds between children and (especially) their mother, which were acknowledged as unquestionable.

6. The petitioners, referring to judgment “H. and others” consider it regrettable that the minor petitioner was, within the proceedings, procedurally represented by a body for social and legal protection of children, that also held the position of a party to the proceedings, which (in the prior proceedings) proposed the institutional upbringing. Representation of the child by an entity not previously involved would definitely have been more appropriate, since the secondary party, a body for social and legal protection of children, has maintained neither a level-headed perspective of the situation nor professional neutrality, and looked upon the proceedings as a matter of pride. Beyond the scope of the relevant facts, the petitioners note that this body and the Children’s Home in Ledce at present restrict the stay of the petitioner-son with his family during holiday period and assert the same due to the necessity of his adapting to the new environment. They stated that the very proceedings specified above, which related also to children from the settlement called “Kolonie” in Libčice nad Vltavou and in which parents were counselled in terms of social and legal matters by the same non-profit organisation, were the reason for escalation of the attitude of the body for social and legal protection of children in other cases too.

II.
Formal requirements

7. The Constitutional Court firstly dealt with the formal requirements concerning the filed constitutional complaint and, like the petitioners in this connection, in particular with the active standing, or capacity of the minor (born 16 June 1992) for procedural acts. It is a fact that in settled decision making by the Constitutional Court, in situations when a minor is a secondary party to the proceedings and the Constitutional Court does not deny the constitutional complaint, a procedural guardian is regularly appointed for such a person. This is supported, in accordance with § 63 of Act No. 182/1993 Coll. on the Constitutional Court as amended by later regulations (hereinafter only the “Act”), by § 20 in connection with § 29, para. 1 of

the Civil Procedure Code, and in connection with § 83, para. 1 of the Family Act. However, this practice cannot be utilised in this case as the position of the minor differs. Even the case resolved by Judgment file No. II. ÚS 125/98 (N 105/12 SbNU 87), in which minors were the only petitioners in the case of regulating visits with their father, cannot serve as an example. In that instance, the minors were admitted capacity for procedural acts in the proceedings before the Constitutional Court with respect to their age (11 and 12 years) and intellectual level ascertained by the ordinary courts, a child-care body was also appointed as a guardian with respect to the given proceedings.

8. It is necessary to start from the point that any natural person may be a petitioner, when such a person is a beneficiary of the asserted constitutionally guaranteed fundamental right or basic freedom, irrespective of such a person's capacity for legal acts or age. The constitutional complaint is aimed against a decision in the case of an institutional upbringing imposed on the basis of a proposal by a body for social and legal protection of children – while under these circumstances, such a body is to be appointed as a guardian who insists on the continuance of the same. In addition to the minor, the constitutional complaint was also filed by his mother, who, concurrently with the minor, empowered the attorney at law to represent the minor. Thus, without feeling the need to deliberate on another possible guardian for the minor in the proceedings before the Constitutional Court in the case under examination, in particular due to the fact that in the given case there was no risk of a clash between procedural interests of the petitioners mutually, or between the individual parents or between the parents on one part and the minor on another, and since the petitioner-son has nearly come of age, the Constitutional Court inclined towards opinion held by legal theory. According to the same, if the petitioner does not have full capacity for legal acts due to their youth, a constitutional complaint may be filed in the stead of such a person by his or her legal guardian, who also grants power of attorney to an attorney at law (Wagnerová, E., Dostál, M., Langášek, T., Pospíšil, I.: Zákon o Ústavním soudu s komentářem /Annotated Act on the Constitutional Court/. Prague: Aspi, 2007. Page 404, clause 9). Therefore, the Constitutional Court concludes that the petitioner-son, with approval of the petitioner-mother, his legal guardian, empowered an attorney at law to file a constitutional complaint, and thus the formal requirements for the constitutional complaint were met in the given case.

III.
Facts of the case

9. The Constitutional Court requested from the District Court for Prague-West their file, No. 11 P 156/2007, from which the Constitutional Court ascertained that the Department of Social and Medical Affairs of the Černošice Municipal Office proposed, by a filing dated 19 September 2007, an imposition of institutional upbringing on the minor, this for the minor's repeated unexcused absence from school (since the third year) under circumstances when the minor's mother could no longer cope with the minor. It must be added that the minor has been recorded in the files of the body for social and legal protection of children since 2003, when, together with a friend of his, he set fire to a mobile toilet. By a judgment of the

District Court for Prague-West, file No. 11 Nc 126/2007-40, dated 22 October 2007, institutional upbringing of the minor was imposed, and the mother was ordered to contribute to his upkeep. The mother, who was present when the judgment was proclaimed, waived (as did all parties present) the right to file an appeal, and such a waiver was recorded in an official protocol. Yet, on 16 November 2007 she filed an appeal, which was then dismissed by a resolution of the Regional Court in Prague, file No. 28 Co 859/2007-49 for subjective inadmissibility. The institutional upbringing was then implemented by way of a judicial execution of the decision on 11 January 2008. The mother, by a filing dated 29 February 2008, proposed that the institutional upbringing be invalidated. Such a petition was denied and, upon an appeal filed by the mother, the judgment of the court of the first instance was confirmed by a judgment of the court of appeal, which was then contested by the constitutional complaint.

10. Taking into account the arguments included in the constitutional complaint, decisions in cases administered by the District Court for Prague-West, file No. P 23/2002 and file No. P 70/2002, relating to proceedings concerning imposition of institutional upbringing on other parties, were also requested.

IV.
Recapitulation of subsequent statements

11. Subsequently, the Regional Court in Prague was asked to give their opinion on the constitutional complaint. The Regional Court stated that in order to cancel the imposed institutional upbringing, it is necessary to infer a significant change in circumstances. However, such a change could not happen, be it solely for reasons of time, since the minor was sent to the given institution in January 2008, and the contested judgment was issued in May 2008. The Court stated that the interests of the minor consisted of stabilising the upbringing measure effected under circumstances when his mother failed in her duties as a parent, since she did not manage to influence the minor, in terms of his upbringing, in a desirable way as regards preparing him for his future occupation. In the long term, the minor has shown no respect to anybody and began to slip into a lifestyle of idleness, exhibiting no sense of responsibility for himself, which was, especially with respect to his age, particularly serious. The Regional Court also pointed out that the mother had been previously sentenced due to a failure by herself which led to a criminal act of endangering moral upbringing of children pursuant to § 217 of the Criminal Act. The Court has thus proposed that the constitutional complaint be denied, since the rights of the petitioners were not violated in a manner gross and intense enough to constitute a violation of their fundamental rights.

12. In a reply to the above specified statement, the petitioners stated that the institutional upbringing of the petitioner-son was cancelled in the meantime following a judgment by the District Court for Prague-West dated 16 January 2009. The petitioners, however, continued to insist on the constitutional complaint filed, since the judgment dated 16 January 2009 constituted a modification in the verdict of the judgment on imposition of an institutional upbringing, which was not contested by the constitutional complaint. They insist on the constitutional complaint filed in particular due to the fact that the institutional upbringing was

terminated since it no longer fulfilled the objective for which the same had been ordered (the petitioner-son finished his studies at the apprenticeship college), and not for reasons claimed by the petitioners. The ordinary courts of both instances thus continue to insist on their opinions, these being that they passed decisions in a constitutionally conforming manner. That is why the petitioners propose that the Judgment of the Constitutional Court, in addition to a repealing verdict, also contain a declaratory verdict that the contested judgment and proceedings prior to the same have violated the rights of the petitioners defined under Art. 10, para. 2, and Art. 32, para. 1, and para. 4 of the Charter, under Art. 8 of the Convention, and under Art. 9, para. 1 and 2, and Art. 12 of the Convention on the Rights of the Child. They deem the declaratory verdict to be desirable in order for them to shed their feeling of being victims of a violation of fundamental rights or basic freedoms.

V.
Actual evaluation

13. As for the merits of the constitutional complaint, the Constitutional Court wishes to preface that the Court is not a part of the system of ordinary courts, and thus it is not its duty to examine the way in which ordinary courts deal with the power defined by constitutional law to make decisions in connection with the provision of protection to rights. Consequently, the Constitutional Court is entitled to take on such powers of the ordinary courts only in the case that their decisions (or procedure prior to the same) constitute a violation of fundamental rights and basic freedoms.

14. From the petitioners' objections, both in terms of procedure and merits, the Constitutional Court firstly dealt with the issues of administration of the proceedings which resulted in the issue of the contested decision. Specifically, the objection that the petitioner-son was not heard at all within the proceedings, even though, according to law, he should have been. Both the ordinary court and the petitioners agree that the petitioner-son was truly not heard by the court of justice.

15. The right of a child to be heard in any proceedings in which a decision is to be passed concerning the child's matters is explicitly established, at the level of instruments relating to human rights, under Art. 12, para. 2 of the Convention on the Rights of the Child, under which a child shall be provided the opportunity "to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law". Furthermore, Art. 3 of European Convention on the Exercise of Children's Rights establishes that a child considered by internal law as having sufficient understanding, in the case of proceedings before a judicial authority affecting them, shall be granted the right to be consulted and express their views.

16. Procedural rules of national law referred to by Art. 12, para. 2 of the Convention on the Rights of the Child are contained in § 31, para. 3 of the Family Act, according to which "a child who is capable, with respect to the level of his or

her development, of forming his or her own opinion and evaluating the bearing of measures relating to him or her, shall have the right … to be heard in any proceedings in which such matters are decided upon". At the time of the issue of the contested decision, procedural rules were also contained in § 100, para. 3 of the Civil Procedure Code, according to which "in proceedings to which a minor is a party, such a child being able to formulate their own opinions, the court shall proceed in such a way so that their opinion on the matter is ascertained. The minor's opinion shall be ascertained by the court either via his or her guardian or the relevant body for social and legal protection of children, or through examining the child."

17. The point in question here is the right of a child to freely express their own opinion on all matters which affect them, which makes it possible for a child (be it only to a certain degree) to balance his or her unequal position in relation to parents, or possibly a guardian ad litem. Due to this right, the court is better able to ascertain the facts of a case and, in particular, may, when the court itself examines a child, in a suitable way admonish the minor [§ 43, para. 1, clause a) of the Family Act] and provide them with all necessary information prior to taking any other measure concerning their upbringing under Head II, Section II of the Family Act, that is, in an ideal case, this instead of another measure concerning their upbringing. Even the court is a body of the state, which as a whole has a positive commitment to act in such a way that the relation between parents and a child may develop (Judgment file No. II. ÚS 828/07, dated 10 October 2007 and others). That is why upbringing measures separating a child from his or her parents are only proper when the pursued objective cannot be achieved in any other way, and must always be limited to a necessary period of time. The right to be heard is important for the child in that it allows the child to sense that they are not an object and passive observer of events, but an important subject of rights (Kristková, V: Práva dítěte a procesní praxe českých soudů /Rights of Children and Procedural Practice of Czech Courts/ in Via iuris 2005, p. 73) as well as a party to the proceedings. With respect to everything mentioned above, the right of a child to be heard has clear separate worth among the fundamental procedural rights.

18. With respect to the then valid domestic procedural rules (see clause 16), the right of a child to be heard under Art. 12, para. 2 of the Convention on the Rights of the Child did not have the same meaning as the right to be heard in accordance with Art. 6, para. 1 of the Convention, as was inferred by settled decision making of the European Court of Human Rights. This is given by the fact that, unlike the latter, Art. 12, para. 2 of the Convention on the Rights of the Child, and subsequently the domestic procedural rules, allow for a choice between examining a child by a court and ascertaining the opinion of a minor by way of his or her guardian or a body for social and legal protection of children. With respect to the hierarchy of legal regulation, according to which specifications of procedural rights and obligations in civil proceedings are particularly contained in the Civil Procedure Code, then § 31, para. 3 of the Family Act may not be interpreted in such a way that there are no alternatives to the direct examination of the child by a court. The said provision of the Civil Procedure Code was established as late as 1 January 2001 by Act No. 30/2000 Coll., while the provision of the Family Act was established as early as 1 August 1998 by Act No. 91/1998 Coll. Therefore, § 31, para. 3 of the Family Act may not be viewed from the aspect of posteriority or,

with respect to its general meaning also permitting regulations of the Civil Procedure Code within the period under consideration, from an aspect of speciality.

19. Nevertheless, uprooting a child from the existing family environment represents not only an infringement of private and family life, but also, to some degree, an infringement of private freedom. This is certain in a situation when a child does not agree with their removal from the family environment, and it is irrelevant to which degree the family environment is beneficial for the interests of the child, and these interests must be privileged by the state. In any case, the child is uprooted from an environment in which they are used to living and expressing themself, and it is possible to expect that they will have an interest in continuing to live and develop in such an environment. Thus, for the child, the family environment is a space of freedom and, therefore, no other environment may be considered a space of personal freedom for the child. The latter is especially true for facilities established by the bodies of public power, in particular institutional facilities, which (necessarily) have their own way of operating that is (in accordance with the law) enforced upon their residents. It is essential that in a case of infringement of personal freedom, there is a general fundamental right to be heard before a court which makes a decision on the limitations of freedom, and this at any time such decision making takes place (file No. Pl. ÚS 45/04, N 60/36 SbNU 647; judgment of the European Court of Human Rights in the case of Husák v. the Czech Republic No. 19970/04, dated 4 December 2008 and others). In principle, there is no reason for a child not to have the fundamental right to be heard directly before a court when a decision is being passed on restricting their personal freedom whilst an adult has such a right in the same circumstances. A relevant reason for denying the right of a child to be heard surely occurs when the child is not capable, with respect to the level of their development, of forming an opinion and evaluating the bearing of the measures relating to them. When taking into account the specific situation (see file No. III. ÚS 495/03, N 117/34 SbNU 223), it is necessary to proceed from the fact that a man matures, in terms of intelligence, between the ages of 11 and 12 (Piaget, J.: Psychologie inteligence /Psychology of Intelligence/. Prague: Státní pedagogické nakladatelství /Educational Publishing House/, 1970. pp. 105-128), and peak performance is seen at 16 years of age. In any case, prior to achieving the necessary level of development, this right is not granted to a child by any instrument relating to human rights, as was explained above (clause 15). Therefore, in the case of decision making on imposing institutional upbringing on a child older than 12 years of age, there is in principle no reason for denying the right of a child to be heard directly by a court. Thus, alternatives provided by law were always to be considered as exceptions which must be properly substantiated by the court in its decision.

20. Besides, with effectiveness from 1 October 2008, § 100, para. 3 of the Civil Procedure Code was amended by Act No. 295/2008 Coll. so according to the now valid § 100, para. 4 of the Civil Procedure Code, a court shall ascertain the opinion of a minor by examining them and, in exceptional cases, may ascertain such an opinion via the child's guardian, through expert opinion or the relevant body for social and legal protection of children. The explanatory report commented on such a modification as being a specification of the present wording, with the priority option for ascertaining a child's opinion via examining him or her. According to this

explanatory report, such exceptional cases consist, in particular, of situations when a court has ascertained that a child is not capable of formulating their own opinions and that their presence at judicial proceedings would evidently have no procedural importance or could be detrimental to the child. Therefore, it may be concluded that the regulation valid at present is truly a mere specification of duties which pertained to ordinary courts at even an earlier date.

21. In the case under consideration, the ordinary court was thus obliged to allow the petitioner-son, with respect to his intellectual development, to exercise his right to be heard directly before the court, and should not have settled for merely a statement that the petitioner-son's opinion was known to the court, which is what actually took place.

22. Therefore, the Constitutional Court has completely granted the constitutional complaint, since the ordinary court, by not hearing the petitioner-son, violated his fundamental right to judicial protection pursuant to Art. 36, para. 1 of the Charter, in connection with Art. 12, para. 2 of the Convention on the Rights of the Child, Art. 3, clause b) of the European Convention on the Exercise of Children's Rights, and Art. 8, para. 1 and Art. 10, para. 2 of the Charter. Consequently, the contested decision of the ordinary court has been annulled.

VI.
Accessories

23. The conclusions which led the Constitutional Court to take their decision relate to the petitioner-son in particular. However, they may – with respect to family relations between the petitioners, and to the importance of the decision for the petitioner-mother – mutatis mutandis be applied also to her. That is why the constitutional complaint has been granted also in relation to the petitioner-mother.

24. Since the conclusion on the objection that the petitioner-son was not heard by the court was the reason for granting the constitutional complaint and for annulling the contested decision of the ordinary court, the Constitutional Court has not dealt with the other objections of the petitioners. Assessing such objections would not be able to change anything in the conclusion adopted.

25. The contested decision may remain manifest within the legal sphere of the petitioners, be it due to the petitioners feeling like victims, as they state, or with respect to possible other proceedings administered by bodies of public power against the petitioners, or for other reasons, and, therefore, it is irrelevant that the institutional upbringing of the petitioner-son has ceased (cf. Opinion Pl. ÚS -st. 25/08 dated 6 May 2008).

26. Specification of which constitutionally guaranteed right or freedom were violated, and which action of the bodies of public power caused such a violation, forms part of the Judgment even without any petition to such an effect (pursuant to § 82, para. 2 clause a) of the Act). In the case under consideration this was fulfilled in clause 22 of the Reasoning, which cannot be considered to be inconsistent with the settled decision making process of the Constitutional Court.

27. It was not expectable that an oral hearing would bring about any further clarification of the matter and, therefore, the Constitutional Court, in accordance with § 44, para. 2 of the Act, dispensed with an oral hearing.

Note: Decisions of the Constitutional Court cannot be appealed.