2008/02/29 - II. ÚS 2268/07: SIGNATORY OF CHARTER 77

HEADNOTES

The principle of a law-based state, also comprising the principle of the rule of law, requires utter dominance of rights as opposed to influences exerted by an arbitrarily exercised power. This principle eliminates the existence of arbitrariness and, naturally, prerogatives; it even eliminates broadly conceived competences on the part of bodies holding executive power, when such bodies exercise the functions of state administration, partially formed by the police.

Order in a law-based state is preconditioned by the state monopoly of power, which is to serve to enforce the right to protection of citizens and to ensure their freedoms. In a law-based state, merely the power established and bounded by law legitimates the monopoly of power. Thus state power may only be exercised with respect to the limits imposed on it by the fundamental rights and freedoms of individuals.
Human dignity as a value is intrinsic to the foundations of the entire scheme of fundamental rights as contained within the constitutional order. The entitlement of every individual to enjoy respect and recognition as a human being is related to human dignity, implying a prohibition of rendering a man a mere object of a state's will, or prohibition of exposing a person to such actions which cast doubts on such a person's quality as a subject.

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

A Panel of the Constitutional Court of the Czech Republic, consisting of Chairman Jiří Nykodým and Justices Stanislav Balík and Eliška Wagnerová (Justice Rapporteur), adjudicated on 29 February 2008 in the matter of a constitutional complaint filed by Mgr. Jan Šimsa, represented by JUDr. Jiří Machourek, an attorney at law with a registered office at No. 3, Moravské Sq., Brno, against a decision by the Supreme Court of 28 June 2007, file No. 4 Tz 47/2007, as follows:

I. The decision by the Supreme Court of 28 June 2007, file No. 4 Tz 47/2007 violated a fundamental right of the petitioner guaranteed by Art. 10 para. 1 of the Charter of Fundamental Rights and Basic Freedoms.
II. Therefore, this resolution shall be annulled.

REASONING

I.

1. In the constitutional complaint delivered to the Constitutional Court on 30 August 2007, the petitioner sought the annulment of the above-specified resolution, asserting that by such a resolution the Supreme Court violated his fundamental right guaranteed by Art. 36 para. 1 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter "Charter").

2. The constitutional complaint is admissible (§ 75 para. 1 a contrario Act No. 182/1993 Coll. on the Constitutional Court, as amended by later regulations (hereinafter "Act on the Constitutional Court")), was filed timely and meets other particulars required by law [§ 30 para. 1, § 72 para. 1 clause a) of the Act on the Constitutional Court].

3. The petitioner claims that the violation of his right to a fair trial, such violation being proclaimed in the constitutional complaint, consisted particularly of the fact that the Supreme Court did not discharge its reviewing obligations under the provisions of § 267 para. 3 of the Criminal Procedure Code in several aspects.

4. In the petitioner's opinion, the Supreme Court has failed to review sufficiently, and from all aspects, the objection of absence of a material attribute in accordance with § 3 para. 2 of the Criminal Code regarding a criminal act of assault on public officials in accordance with § 155 para. 1 of the Criminal Code, contained in the complaint on the violation of the law, that is i.a. from the viewpoint of circumstances under which the act was committed. The petitioner believes that while the criminal prosecution against him was conducted for the criminal act of assault on public officials, the case was actually a political one. This results not only from the fact that the domiciliary search was undertaken on the basis of commencement of criminal prosecution for the criminal act of subversion of the state in accordance with § 98 of the Criminal Code in the wording then in force, but also from preserved materials secured by the Office of Documentation and Investigation of the Crimes of Communism. The petitioner further stated that both he and his wife, within the first-instance proceedings, futilely demanded that a file from the State Police investigator, containing a decision made by an investigator of the Investigation Administration of the State Police in Prague of 6 January 1977, be appended. On the basis of such decision this criminal prosecution in accordance with § 160 para. 1 of the Criminal Procedure Code in the wording then in force, for the criminal act of subversion of the state in accordance with § 98 para. 1 of the Criminal Code (see the copy of the decision of the Regional Administration of the National Security Corps, State Police Branch in Brno of 31 May 1978, investigation file No. VS-3/120-77), was commenced against him. The petitioner is convinced that the criminal prosecution for the criminal act of subversion of the state was in fact commenced in connection with the issue of Charter 77, after which all the signatories thereof were subjected to domiciliary searches, and the institute of commencement of a criminal prosecution 'in general case' was abused for the political persecution of persons the regime found an inconvenience. Such persecution particularly took place on days of various anniversaries or during various visits by Communist functionaries, during which the appearance of anti-

socialist protestors could be expected. According to the petitioner, this was true in his case, since he, alongside many other inconvenient persons, was detained one day prior to a visit to Prague by L. I. Brezhnev, Secretary General of the Communist Party of the Soviet Union. Within the scope of this detention, the domiciliary search in question was conducted. The petitioner emphasised that such a procedure was in conflict even with the Criminal Procedure Code valid at the time, since the State Police investigator was obliged to commence a criminal prosecution against a specific person or to suspend the case. In the given instance, however, on the basis of commencement of criminal prosecution "in general case" on 6 January 1977, charges in accordance with the then valid provisions of § 163 of the Criminal Procedure Code were never brought against him, which according to the petitioner must also have been known to the Regional Court – see leaf number 145 of the file. Nevertheless, he was detained and domiciliary search at the petitioner's flat was conducted in the period of one year and five months from the date of the commencement of criminal prosecution 'in general case'. The petitioner thus assumes that, in the context of Act No. 198/1993 Coll. on the Lawlessness of the Communist Regime, with respect to the circumstances of the case specified above, and with respect to the contents of the filing of the petitioner and his wife within the first-instance proceedings, the Supreme Court must have known that the petitioner had been subject to persecution for a considerable period under the Communist regime and, for this reason, the process was a political one. (For a more apposite description of the situation at the time, the petitioner has amended his constitutional complaint with a Notification of Charter 77, as published in 1978 in Information on Charter 77).

5. An additional circumstance of the case which, according to the petitioner, the Supreme Court has not taken into account at all, consisted of lapses by courts in both instances which concluded that within a domiciliary search a person has to be neither called on to voluntarily surrender an object nor instructed of the consequences of failure to do so. In the case of forfeiture of an object under the conditions of § 82 of the Criminal Procedure Code in the wording then in force, the person holding the object in question had to be called upon to hand it over. This error has never been rectified, not even by a court of appeal. Additionally, the petitioner claims the conclusion of the first-instance court that the medical report proved a National Security Corps officer was struck in the face, cannot stand, since light concussion was diagnosed solely on the basis of subjective information from the aggrieved, and the haematoma and damage of oral mucosa could have been caused by a fall of the aggrieved on a bed. The fact that the aggrieved M. Bata sought medical care as late as the second day following the incident is also of interest.

6. The last aspect in which, according to the petitioner, the Supreme Court has failed to discharge its obligation to review, and thus violated the petitioner's right to a fair trial, is the fact that the Supreme Court has not acknowledged as justified the objection relating to the inadequacy of the unconditional sentence of imprisonment awarded. On the contrary, the Supreme Court stated that the court of the first instance proceeded, in the assessment of evidence, strictly in accordance with § 2 para. 6 of the Criminal Procedure Code, assessed the evidence according to inner conviction based on careful consideration of all the circumstances of the case separately and in combination, coming to logically

reasoned findings of a complete and factual nature. In connection to this, the petitioner expressed surprise at hearing that in the year 2007, the Supreme Court may state that the punishment could have been considerably harsher, since the actions of the petitioner might minimally have been defined as the criminal act of attempted assault on public officials, according to a stricter definition as specified under para. 2. The petitioner was astonished by the word minimally, from which it may be concluded that the Supreme Court could be considering that significantly harsher elements under the then valid Criminal Code might have been fulfilled, such as the criminal act of subversion of the state.

7. Upon notice from the Constitutional Court, the Supreme Court, represented by JUDr. Jiří Pácal, supplied a statement concerning the constitutional complaint, which referred to reasoning pertaining to the contested decision and the arguments contained therein. Moreover, the Supreme Court noted that by stating that, with respect to the circumstances of the case, the act in question could minimally have been defined as the criminal act of attempted assault on public officials in accordance with § 155 para. 1, para. 2 of the Criminal Code, the Court meant that even a legal definition in accordance with § 8 para. 1, § 155 para. 1 and para. 3 of the Criminal Code was called into question. Therefore, the Supreme Court concluded that since it can not be considered that the contested resolution might have violated the right of the petitioner to a fair trial, the review of the decision of the Supreme Court from the viewpoint of the legal opinion stated therein is inadmissible, and proposed that the constitutional complaint be denied by a decision as clearly unjustified.

8. Under the provisions of § 44 para. 2 of the Act on the Constitutional Court, the Constitutional Court may, upon approval by the parties, dispense with an oral hearing, unless such a hearing is expected to clarify the case further. The parties granted their respektive approvals and an oral hearing was not held.

II.

9. In order to assess the objections and statements of the petitioner and the party to the proceedings, the Constitutional Court requested a file from the Municipal Court in Brno, file No. 5 T 195/98, and a file from the Supreme Court, file No. 4 Tz 47/2007, from which the Constitutional Court ascertained the following facts.

10. By judgment of the Municipal Court in Brno, dated 30 August 1978, file No. 5 T 195/78 (leaf numbers 81-84 of the Municipal Court file), the petitioner was found guilty of “assaulting Lt. M. Bata, an officer of the National Security Corps, on 31 May 1978 at approximately 3.30 p.m. in Šimsa’s flat in Brno, No.12 Volfova Street, during a domiciliary search which was held on the basis of a decision made by an investigator of the Regional Administration of the National Security Corps in Brno, by knocking him on the bed and punching him in the face, i.e. violence was used with the intention of affecting powers being exercised by the public official.” This act was defined as the criminal act of assault on public officials (§ 155 para. 1 clause a)) of the Criminal Code in the wording then in force), and a sentence of imprisonment for eight months was imposed on the petitioner. Within their reasoning, the Municipal Court included that “(…) defence of the defendant was

positively refuted by testimonies by witnesses M. Bata and J. Domínek, who were heard by the court in the trial. No contradictions were found in the testimonies of these witnesses. Their testimonies and those of other witnesses – J. Kratochvíl, V. Krystínek, and J. Žáček – were utterly consistent (…). Therefore, the court fully believed the testimonies of the witnesses, becoming evidence of an integral and clear nature. The evidence specified above has neither been refuted nor queried by witness testimonies by family members of the defendant – the defendant's son M. Šimsa and his wife PhDr. M. Šimsová. In this respect, both of these witness testimonies stood alone in the light of other evidence, and the Court has not taken the same into account as a consequence." (p. 3 of the judgment). Furthermore, the Court stated that the witness testimonies clearly show that "the defendant, although he knew Lt. M. Bata to be an officer of the Public Security Corps (since the court believed the testimonies of witnesses concerning the fact they had all proven their identities to the defendant at the defendant's request prior to the commencement of the domiciliary search), used violence against this officer in order to prevent and affect the exercise of his powers (…)." (p. 3 of the judgment). Therefore, the Court concluded the domiciliary search of the petitioner's flat was ordered in accordance with the Criminal Procedure Code, and "it was the defendant who improperly tried to obstruct the purpose of the same. Additionally, his actions resulted in violence, which he used against one of the public officials; this action exceeds not only the scope of the legal order, but also of principles of decent conduct in general. In addition, the attitude of the defendant within the trial has shown that he is not at all aware of the inappropriateness of his behaviour." (p. 4 of the judgment).

11. The Municipal Court took this decision under circumstances when, on the basis of a decision by an investigator of the Investigation Administration of the State Police in Prague, criminal prosecution for the criminal act of subversion of the state in accordance with § 98 para. 1 of the Criminal Code in the wording then in force, was commenced against the petitioner on 6 January 1977. Within this criminal prosecution, a domiciliary search of the petitioner's flat at No. 12, Volfova Street in Brno was ordered by decision of the Regional Investigation Administration of the State Police on 31 May 1978, investigation file No. ČVS-3/120-77 (leaf number 29 of the file), and by a decision of the Investigation Administration of the State Police on the same date, file No. VS-3/120-77 (leaf number 28 of the file). The order for the domiciliary search was accounted for by a suspicion that the petitioner "at his home and other rooms of the family house holds papers and materials which result from and are connected with such activities." Similarly, M. Bata testified "it [the search] was ordered for the purpose of securing such items as printed materials and similar objects bearing evidence of potential criminal activity by J. Šimsa" (leaf number 8 of the file). In the course of said domiciliary search, an incident allegedly took place at approximately 3.30 p.m., when the petitioner allegedly "assaulted Lt. M. Bata, the officer of the Regional Administration of the National Security Corps, by rushing at him, punching him on the right jaw, and even tried to assault him further." (leaf number 2 of the file).

12. For this reason, criminal prosecution for the criminal act of assault on public officials was commenced against the petitioner by decision of the Municipal Public Prosecutor's Office in Brno of 1 June 1978, file No. 2 Vp 59/78 (leaf number 2 of the file), and on the same day the petitioner, on the basis of decision file No. 3 Pv

524/78, was taken into custody in accordance with § 68 of the Criminal Procedure Code (leaf number 23 of the file). Details on the decision and the testimony of the petitioner and witnesses (leaf numbers 5-22 of the file) show that the domiciliary search was attended by the petitioner (after being brought from a preventive custody cell (!)), his wife PhDr. M. Šimsová; the son of the petitioner M. Šimsa; J. Domínek and V. Krystínek, officers of the State Police in Brno; and M. Bata, J. Kratochvíl, J. Žáček, and M. Dvořák, officers of the Regional Administration of the National Security Corps in Brno. Furthermore, M. Loukotková, an employee of the District National Committee in Brno 5, and R. Sojka, chairman of the Civic Committee No. 55 were present as disinterested parties; however, the latter had to leave the scene for reasons of work prior to the incident. All persons testified in accord that the subject of the incident consisted of a private letter from Prof. Jan Patočka, dated 19 January 1977, addressed to the petitioner; the investigators wished to dispossess the petitioner of the letter in spite of his objections that the letter in question was private correspondence. However, the testimonies differ when it comes to the description of subsequent events. Testimonies by the investigators and M. Loukotková, the employee of the District National Committee, are congruent to such extent that the letter was seized by the petitioner and consequently handed to the petitioner's son; after the son was dispossessed of the letter and it had been placed on a table, the wife of the petitioner seized it; in the course of an attempt to take the letter from her, one of the investigators, M. Bata, was thrown down onto a bed by the petitioner and assaulted. However, their testimonies differ as to the description of the way in which the son and then the wife of the petitioner were dispossessed of the letter, that is whether or not they were subject to violence or coercive grips; and as to the intensity of the assault on M. Bata by the petitioner, that is whether the petitioner hit him once or a number of times. On the contrary, the testimonies of the petitioner, his wife and son diverge completely from the above-specified testimonies of the investigators as to the description of the following events. The petitioner, his wife and son congruently state that after the son had been violently dispossessed of the letter, and the letter subsequently being seized by the wife of the petitioner, the wife was cruelly and painfully assaulted by the investigators attempting to seize the letter. The petitioner, attempting to protect his wife with his own person, pushed investigator M. Bata in such way that they both fell on the bed. However, they deny that physical assault and punches took place thereafter. The petitioner also stated that he had been informed neither of the reasons for the domiciliary search nor of the materials and papers to be dispossessed, and thus believes that the actions of the investigators were not consistent with regulations.

13. The protocol on the domiciliary search dated 31 May 1978 (leaf numbers 30-33 of the file) states that over forty papers, magnetic tapes, and other movable items of property were dispossessed. From the nature of the papers it is clear that the property in question principally involved letters and typescripts, the contents of which consisted of materials relating to Charter 77, as well as interviews with P. Landovský and P. Kohout, letters from J. Patočka, lyrics by J. Hutka or typescripts from V. Havel, L. Hejdánek, L. Chloupek and others.

14. On 24 July 1978, the Municipal Public Prosecutor's Office in Brno brought an indictment (leaf numbers 48-50 of the file), according to which the petitioner through his actions was alleged to have fulfilled, both in terms of objective and

subjective aspects, the elements of the criminal act of assault on public officials in accordance with § 155 para. 1 clause a) of the Criminal Code in the wording then in force, since he physically assaulted an officer of the National Security Corps on duty in the course of the exercise of his powers. Furthermore, it states that "our socialist society is concerned in protecting citizens who, in the course of the exercise of their powers, protect our socialist order, and the actions (of the petitioner) were a gross infringement against this society's protected interest." (leaf number 50 of the file).

15. The Municipal Court in Brno, by a decision made on 31 July 1978, file No. 5 T 195/78 (leaf numbers 56-57 of the file) returned the criminal case in question to the prosecutor for additional examination in accordance with § 188 para. 1 clause f) of the Criminal Procedure Code in the wording then in force, but, in accordance with § 67 clause b) of the Criminal Procedure Code, it was ruled that the petitioner would remain in custody. The court justified its resolution to return the case for additional examination by the fact that the case had not been properly clarified. In particular, clarity is lacking as to when exactly the petitioner was detained, since the testimonies make it apparent that he was brought to the domiciliary search from a preventive custody cell. In addition there are discrepancies between the testimonies of witnesses, which suffer from being very brief, rather vague and incomplete, this is despite the relatively short time that has passed since the incident. Therefore, the court concluded that it would be necessary to re-interrogate in detail the defendant as well as all persons present at the domiciliary search, since "(…) only in such a way it would be possible to carefully ascertain the facts of the case, to properly clarify the same and, through all available evidence, explain away contradictions which were not dealt with during the preparatory proceedings." The court also stated that the provisions of § 36 para. 1 of the Criminal Procedure Code on necessary defence (with reference to a resolution of the Supreme Court of the Czechoslovak Socialist Republic, published in the Collection of Judgments and Rulings under No. 2/78) were violated, since the defendant was interrogated on 1 June 1978 immediately following his detainment, even though his defence counsel was elected by his wife as late as 5 June 1978; these investigative acts having been thus administered early.

16. Both the Municipal Public Prosecutor and the petitioner filed complaints against this decision. The Municipal Public Prosecutor reasoned his complaint (leaf numbers 66-67 of the file) by the fact that the return of the case is unnecessary and uselessly lengthens the preparatory proceedings, and that the evidence presented sufficiently justifies the indictment brought. With respect to the unclear determination of the time when the petitioner was taken into custody, the prosecutor stated that following the commencement of the criminal prosecution of the petitioner on 6 January 1977 for the criminal act of subversion of the state, "on 30 May 1978, Šimsa was secured, since it was an act in accordance with § 23 of Act No. 40/1974 (Act on National Security Corps), when the officers of the National Security Corps are entitled, for the purposes of carrying out necessary acts of service, to detain a person for a maximum period of 48 hours." The petitioner filed a complaint to claim release from custody, since in terms of § 67 of the Criminal Procedure Code, there were no specific circumstances to justify a concern that he would obstruct the proces of clarifying important facts.

17. The Regional Court in Brno by its decision dated 17 August 1978, file No. 6 To 305/78 (leaf numbers 69-70) annulled the contested decision of the Municipal Court and imposed on them, in accordance with § 149 para. 1 clause b) of the Criminal Procedure Code in the wording then in force, to re-try and adjudicate the case. In their reasoning, the Regional Court concluded that all the witness testimonies presented sufficiently justified the bringing of the indictment. As for the reproached procedural error in the form of absence of legal representation of the petitioner at the time of interrogation, the Regional Court stated that "(…) reference of the first-instance court to the opinion of the Supreme Court No. 2/78 Coll. is not justified. If other witnesses were heard prior to a defence counsel being elected, it forms a formal error, that is a violation of procedural regulations, although without any detriment to proper clarification of the case (§ 2 para. 5 of the Criminal Procedure Code)." The petitioner's complaint about the decision to take him into custody was denied. (His release was subsequently attempted by the petitioner, his wife and several friends of the petitioner by way of a number of filings containing requests for his release from custody, in particular on the grounds of a deteriorating health condition (ablation of kidney, allergy); however, all were denied as not being justified). The Regional Court backed up this resolution by stating that "during the domiciliary search, the defendant demonstrated in a way more than evident, in connection with the scuffle over the given letter from Dr. Patočka, that he does not wish to allow the absolute truth to be ascertained." As for health of the petitioner, they stated that custody may be served directly in a medical centre determined for such purposes.

18. Subsequently, by the above-cited judgment (see clause 10), the Municipal Court in Brno passed a verdict concerning the guilt and punishment of the petitioner. The protocol on the trial dated 30 August 1978 (leaf numbers 71-80) then states that the petitioner and witnesses M. Bata, J. Domínek, and M. Loukotková gave testimony in person there. Upon a proposal by the prosecutor and upon approval by the petitioner, statements by witnesses J. Kratochvíl, V. Krystínek, M. Šimsa, Dr. M. Šimsová, R. Sojka, and M. Žáček were read. At the conclusion, the petitioner again emphasised that he neither hit nor intended to hit anybody and was not aware M. Bata was an officer of the National Security Corps since he had not presented any identification.

19. Immediately following the delivery of the judgment, both the Municipal Public Prosecutor and the petitioner, and subsequently his wife, filed an appeal. The Municipal Public Prosecutor justified his appeal (leaf number 94 of the file) i.a. by stating that the judgment of the Municipal Court imposed a mild punishment on the petitioner and failed to sufficiently consider all the circumstances of the petitioner's criminal actions. "The actions of the defendant pose a considerable degree of danger to the public, since his actions significantly injured the interests of our socialist society (…). The motives of the defendant were aimed directly against the very nature of our order, which is also proven by the fact that after the defendant was taken into custody, his family and friends informed both citizens of our country and foreign subjects on the matter incorrectly and untruthfully." Therefore, the prosecutor proposed that the Municipal Court impose a stricter punishment of unconditional imprisonment to the extent of one half of the penal rate (18 months). The petitioner's appeal (leaf number 89 of the file) stated discrepancies in the testimonies of the witnesses, and the fact that his actions had

definitely not been conducted with criminal intent, since he had only protected his wife and thus he should be cleared of the indictment. The petitioner concluded that, due to the fact he had been led his entire life to an ideology designated by Marxism as pseudoscientific, he is a victim of repression and lives with a sense of injustice since he was not granted a state permit for religious practice. The petitioner, in an amendment to his appeal dated 10 September 1978 (leaf number 96 of the file), added that the reasoning of the contested judgment is contradictory to the actual situation, in particular with respect to the allegation of assaulting Lt. Bata, since this was clearly not the case and was not technically feasible. The petitioner's wife, in her appeal dated 13 September 1978 (amended by addendum dated 27 September 1978) (leaf numbers 100-103 of the file), presented that no order was given until then regarding forfeiture of the given letter from Prof. Patočka in accordance with § 79 of the Criminal Procedure Code, and when Lt. Bata during the domiciliary search dispossessed the letter in spite of the above fact, he thus exceeded his powers, and such forfeiture of the letter failed to comply with the Criminal Procedure Code. She also did not agree with the procedure of the court of the first instance, which did not carefully examine the causal nexus between the injuries of Lt. Bata specified in the medical report (which, in addition, was only issued as late as the following day) and the actions of the petitioner. Furthermore, during the trial, the court read her testimony and that of M. Šimsa merely in an abbreviated form and skipped any such circumstances referring to the use of violence by Lt. Bata. She then described the broader context of the case of her husband, who was subjected to repression on the grounds of his activities and for signing Charter 77, in the form of withdrawal of the state permit for religious practice, domiciliary searches, shadowing, preventive detentions, and suchlike. On the basis of the above, she believes that the first-instance court arrived at its verdict on incompletely ascertained facts on the case, and did not examine all the objective and subjective circumstances which preceded and accompanied the search.

20. The Regional Court in Brno by its decision of 5 October 1978, file No. 6 To 353/78 (leaf numbers 115-119) refused all appeals filed as unjustified. The court of appeal first stated that the preparatory proceedings were commenced against the petitioner correctly for a specific criminal act, and that other provisions of the law providing for ascertainment of the actual facts of the case in the course of further stages of the same were complied with, as well as the right of the defendant to defence. Furthermore, the court examined whether the act considered to constitute the criminal act was actually committed, and whether said criminal act had been committed by the defendant; the court concluded that "(…) if the court of the first instance evaluated all the witness testimonies in such way so as to believe the same, then the court of appeal finds no reason to change such a process in any way whatsoever." In particular, the court emphasised that there was no reason to cast doubts on these testimonies, "since a completely objective medical report has proven that physical violence against the aggrieved actually occurred." The court of appeal also found no point in changing anything with respect to the finding that "the above-specified physical assault took place under circumstances of the exercise of powers (…)." As for the manner in which the defendant's wife was dispossessed of the letter in question, "(…) the court of the first instance also explained why they did not trust the wife or son of the defendant as witnesses, but did believe the other witnesses (…). If the court of the

first instance evaluates witness testimonies in a certain manner and the incorrectness or inconclusiveness of such an evaluation cannot be inferred, then by law the court of appeal cannot force the court of the first instance to believe one group of witnesses and not another." As for the objection of the petitioner concerning the domiciliary search being in conflict with the Criminal Procedure Code, the Regional Court stated that this objection cannot stand since "(…) the testimony of security bodies, and to some extent also the testimony of the defendant, above all doubts mean that the defendant knew what was in fact happening. If then, in the course of the domiciliary search, the security body put aside i.a. a letter written by some (!) Patočka, provided only following the collection of all the materials would it be decided which items would be returned and which would not (…), then in this connection it was not necessary to issue any separate resolution on surrender of an object or forfeiture of the same. The order for surrendering the object had already been stated as part of the order for the domiciliary search, the purpose of which included the very forfeiture of objects of relevance for criminal proceedings." Therefore, the court of appeal stated that even in this respect there was no deviation from the scope of powers of the public officials when the defendant's wife was dispossessed of the letter in question. "The claim that some violence was used against her is, in the light of the above-specified testimonies of witnesses, completely unjustified." The court of appeal then summed up by aligning itself with the conclusion of the court of the first instance, i.e. the circumstances of the case did not allow for a conditional sentence, additionally stating "if the defendant were truly interested in finding the truth of which he was speaking, then surely he would not have any reservations to the criminal proceedings being familiarised with the contents of the letter concerned in the given case. However, he neither acted in such way nor influenced his wife and son to make it possible for the security bodies to study the contents of the given letter (…)." Subsequently, execution of the punishment was ordered and the petitioner was removed for such purpose to a penitentiary in Pilsen, from which he was, having served a sentence of imprisonment for 8 months, released on 1 February 1979.

21. On 18 May 2007, JUDr. J. Pospíšil, the Minister of Justice of the Czech Republic, filed a complaint on the violation of the law against this decision of the Regional Court, in favour of the petitioner (leaf numbers 1-4 of the Supreme Court file), since he believed that this decision violated the law in terms of the provisions of § 256 of the Criminal Procedure Code, and with respect to the proceedings prior to the given decision, in terms of the provisions of § 2 para. 6 and § 254 para. 1 of the Criminal Procedure Code, and § 3 para. 2, para. 4, § 23 para. 1, § 31 para. 1, § 58 para. 1, and § 155 para. 1 clause a) of the Criminal Code. Within his reasoning, he also stated that even though the evidence collected in the course of the criminal proceedings sufficiently justified the conclusion that a physical conflict took place between the defendant and the aggrieved, proper assessment of all circumstances of the case gives ground for stating that the courts of both instances had not assessed the case in a completely comprehensive manner in the framework of legal provisions cited above. "In particular within the scope of the evaluation of the degree of public danger posed by the defendant's actions, the fact the domiciliary search was conducted in quite an excited atmosphere and in a condition of high emotion was not taken properly into account, this emotive situation resulting in such an action by the defendant which could be described as

rash. The motivation for such conduct was especially based on the fear felt by the defendant for his wife and son, as the defendant believed they were in imminent danger. The fact the defendant and his family members tried to prevent confiscation of the letter, which for them represented an important remembrance of their family friend, was also of considerable importance." In the Minister's opinion, the circumstances above should have been taken into account by the court in the assessment of the case from the viewpoint of the provisions of § 3 para. 4 of the Criminal Code. In connection to this, the consequence of the defendant's actions, by which an injury of minuscule extent occurred that in no way caused incapacity to work, should have been taken into account. If the court of the first instance did not take the above-specified objections into account when deliberating on a verdict on the guilt in the criminal case in question, then such a procedure must be considered to have constituted a violation of the law as regards the provisions of § 2 para. 6 of the Criminal Procedure Code and § 3 para. 2, para. 4, and § 155 para. 1 clause a) of the Criminal Code.

22. The Minister concluded that another error by the first-instance court is contained in the sentence of punishment, specifically in that the court passed an unconditional sentence of imprisonment. "Upon careful evaluation of all the conditions and circumstances required for a resolution on the punishment, it is clear that in the given case it was not necessary to burden the defendant with a direct execution of the punishment." If the court, with respect to the issue of evaluation of guilt, concluded that the criminal act had been committed, the court should have proceeded in accordance with the provisions of § 58 para. 1 clause a) of the Criminal Code in the wording then in force, and impose a conditional sentence or a different kind of punishment not related to direct execution of punishment. "The imposed unconditional sentence of imprisonment for 8 months was clearly disproportionate to the degree of danger posed by the act to society, and to the personal condition of the perpetrator."

23. The Minister then reproached the court of appeal for failing to discharge the obligations to review imposed on them by the provisions of § 254 para. 1 of the Criminal Procedure Code, as the appeal court expressed an opinion consistent with that of the Municipal Court. Upon careful review of the procedure and deliberation of the court of first instance, the court of appeal should have ascertained that the court of first instance did not proceed correctly in evaluating the body of evidence in the framework of the provisions of § 2 para. 6 of the Criminal Procedure Code. Consequently, incorrect conclusions were inferred from the evidence presented, in addition to which the appeal court did not evaluate to a relevant degree all issues relating to the deliberation of guilt and type of punishment administered. With respect to the above, the Minister of Justice proposed that the Supreme Court adjudicate that the contested verdict of the Regional Court violated the law to the detriment of the petitioner and, therefore, the Supreme Court should annul said verdict and all other decisions related thereto, including the prior judgment of the Municipal Court, and what is more that the Supreme Court itself should adjudicate the case.

24. Upon request from the Supreme Court, the petitioner and the Supreme Public Prosecutor's Office, represented by JUDr. Y. Antonínová, submitted their opinions concerning the complaint on the violation of the law, and expressed their approvals

of the same.

25. The Supreme Court decided on the complaint on the violation of the law by a verdict contested by the constitutional complaint by denying the same in accordance with § 268 para. 1 clause c) of the Criminal Procedure Code, and justifying their conclusion as follows. As for the objection by the Minister that the court of the first instance, within the assessment of the degree of public danger posed by the petitioner's action, did not carefully consider some circumstances of the case, the Supreme Court stated that no errors relating to the merits of the case may be pointed out with respect to the factual findings of the judgment of the first-instance court, such findings implying that the petitioner's actions corresponded to all the elements of the criminal act of an assault on public officials. When considering whether the petitioner also met the material attribute of the criminal act, i.e. whether the act amounted to a level of public danger greater than a minuscule level (§ 3 para. 2 of the Criminal Code), the Supreme Court concluded that the petitioner fulfilled the conditions increasing the level of danger posed so that the same in the given case is greater than minuscule, and added that "the Municipal Court in Brno, on the basis of factual findings, correctly defined the level of public danger posed by the act and designated the act as a criminal act of assault on public officials (…). Mgr. Jan Šimsa hit the aggrieved with a fist to his face, thus attacking the aggrieved's head with a fist, and further continuation of the assault by the defendant was prevented by the police officers present." (p. 4 of the decision).

26. As for the Minister's objection regarding an apparent disproportion between the imposed sentence of imprisonment and the degree of public danger posed by the act, the Supreme Court repeated the arguments of the Municipal Court, which – with respect to the circumstances referred to above intensifying the public danger of the criminal act and to the interest in effectively applying general prevention of the imposed sentence – inferred that an unconditional sentence of imprisonment was necessary in order to achieve the purpose of punishment on the defendant, despite the fact that the defendant had previously led a decent life of a working man. Furthermore, the Supreme Court stated that the Municipal Court had justified its resolution in a detailed and apposite way and based the same on principles for imposing punishments in accordance with § 31 para. 1 of the Criminal Code, and the sentence of imprisonment was imposed on the defendant within the lower third of the legal penal rate, which corresponds to the given degree of public danger of the act. "(…) in their deliberation over the punishment, the court had properly evaluated the personal and family background of the defendant, and also justified why the circumstances of the case did not allow for a conditional sentence, in accordance with § 58 para. 1 clause a) of the Criminal Code" (p. 5 of the decision). Moreover, the Supreme Court remarked that the petitioner did not confess to the criminal act and denied that he had hit the aggrieved. "In the case under consideration, neither clear disproportion to the degree of public danger of the act, nor clear disproportion to the background of the perpetrator is demonstrable." In addition, the Supreme Court inferred that "with respect to the enumerated circumstances of the given case – attacking the head of the aggrieved with a fist, and further continuation of the assault by the defendant having been prevented – the possibility existed of legally defining the defendant's action as the criminal act of attempted assault on public officials, in accordance with § 8 para. 1, § 155 para.

2 of the Criminal Code."

27. When reviewing the factual conclusions drawn by the courts of both instances on the basis of evidence presented, the Supreme Court stated that the Municipal Court had assessed the presented evidence properly and in accordance with the provisions of § 2 para. 6 of the Criminal Procedure Code, and based their conclusion on the guilt of the petitioner on such evidence. When presenting evidence, the court of the first instance particularly adhered to the principle of oral proceedings (§ 2 para. 11 of the Criminal Procedure Code) and immediacy (§ 2 para. 12 of the Criminal Procedure Code). "The court expressed their evaluative considerations and results of the same in a detailed and convincing reasoning of the judgment, in which they presented the facts they considered proven, the evidence serving as a basis for their factual findings, and the considerations which governed their assessment of the evidence presented; this was also amended with the arguments of the court of appeal. Thus neither viewpoint makes it possible to determine any violation of the law by the contested resolution." (p. 6 of the decision).

28. At the conclusion, the Supreme Court added to the opinion of the petitioner that the decision to order the domiciliary search on leaf number 28 of the file was backed up by approval from the General Public Prosecutor's Office of the Czechoslovak Socialist Republic. Additionally, the protocol on informing the defendant of the results of the investigation on leaf number 41 of the file indicates that Mgr. J. Šimsa, the defendant, was, on 19 July 1978, acquainted with the criminal file, which the defendant confirmed by his signature. The assault on the aggrieved M. Bata by the hand of Mgr. J. Šimsa, the defendant, was then confirmed by witnesses J. Domínek, V. Kristýnek (investigators of the State Police, Brno), J. Kratochvíl, J. Žáček (officers of the Regional Administration of the National Security Corps), and M. Loukotková (a disinterested party – an employee of the District National Committee in Brno 5) (p. 7 of the decision). The Supreme Court concluded from the above that neither the factual findings of the given case nor legal conclusions deduced from the same diverged from legal limits of the principle of the free evaluation of evidence, hence it cannot be concluded that law was violated. Therefore, the Regional Court in Brno did not err when they denied as unjustified the appeal of the petitioner by a decision in accordance with § 256 of the Criminal Procedure Code, which is now being contested.

III.

29. The Constitutional Court obtained a publicly accessible document from the Office of Documentation and Investigation of the Crimes of Communism – Dinuš, P.: Českobratrská církev evangelická v agenturním rozpracování StB (The Evangelical Church of Czech Brethren in STB Agency Elaboration), Office of Documentation and Investigation of the Crimes of Communism 2004 (available at http://www.mvcr.cz/policie/udv/sesity/sesit11/cirkev.doc). This study deals with documentation of the fight of the Communist secret police against the Evangelical Church of Czech Brethren (ECCB) and provided the Constitutional Court with the following facts.

30. The Evangelical Church of Czech Brethren (ECCB) was the largest Protestant church in the territory of the then Czech Socialist Republic. Elaboration of the ECCB as an internal enemy of the state commenced after February 1948 and ended with the fall of the Communist regime at the close of 1989. The State Police ranked the ECCB as one of the most "reactionary" and most dangerous churches: "Until the present time, the Evangelical Church of Czech Brethren has not ceased to apply its traditional orthodoxy, at some points exalted to extreme anti-socialist forms. It has been a bastion of resistance against the socialist order in the Czechoslovak Socialist Republic, has relations to right-wing and anti-socialist subjects in order to jointly instigate and support negative campaigns related to internal policy and aimed against the Communist Party. Out of all the movements existing within the Evangelical Church of Czech Brethren, 'New Orientation' – a formation of clergy and laymen – is a proponent, bearer and promoter of hostile attitudes against the state." (p. 20 of the document). New Orientation (NO) came into being in 1960-1962, as a result of secular changes within the ECCB. To begin with the NO criticised the conformity of opinions of church leaders with the then political situation. Later it proceeded to criticise the management of the church and its Senior. The activities of the NO focused on organising meetings for its members and issuing various declarations, memorandums, resolutions, and letters aimed against the practices of the State Police and church secretaries, against atheism, against the monopolist position of the Communist Party of Czechoslovakia, church regulations, against breaking off diplomatic relations with Israel, Soviet occupation, discrediting innocent people, arrests, political purges relating to individuals after 1970, and suchlike. "Opposition activities which were, within the Evangelical Church of Czech Brethren, conducted by members of New Orientation, were considered by the State Police to form one of the significant aspects of the security situation in the Czechoslovak Socialist Republic. The active campaign by the State Police against 'anti-socialist' tendencies and their demonstration in the church is, and logically must be, a part of the accomplishment of a prospective mission to gradually liquidate these capitalist anachronisms, otherwise it would not be possible to consider the effectiveness and perspective of work in the given area." (p. 20 of the document). The State Police formally undertook operative elaboration of the Evangelical Church of Czech Brethren on the basis of the following political criminal acts: subversion of the state (§ 98), sedition (§ 100), misuse of religious office (§ 101), damnification of interests of the state abroad (§ 112), and obstruction of supervision over church and religious institutions (§ 178) (p. 21 of the document). "To elaborate cases and persons important to the State Police, use was made of operative and technical means of the Monitoring Department, as well as of co-operation with sections of the Public Security Corps (inspecting motor vehicles, searching such vehicles and verifying persons, inspecting registered persons with an emphasis on identifying oppositional activities and their influence on other citizens). Furthermore, co-operation existed with motorised patrols of the Municipal Administration of the National Security Corps (in particular at night when checking 'persons of special interest', church units, and suchlike)." (p. 25 of the document).

31. Jakub Trojan, Alfréd Kocáb, and Jan Šimsa (the petitioner) were considered by the State Police to be "the most active and most reactionary" persons involved in New Orientation." (p. 12 of the document). "In 1966, Jan Šimsa, Jan Dus, Jakub Trojan and other members of the NO accused officers of the State Police of forcing

evangelical preachers to collaborate through psychological pressure and threatening the use of weapons." (p. 13 of the document). In 1973, A. Kocáb, J. Trojan, and J. Šimsa were expelled by church leaders from the Peace Department of the Synodal Council.

32. On the basis of an analysis of the 'operative situation' in the early 1970s, destructive measures were implemented, including repressions against leaders of the NO. On the grounds of organising a pamphlet campaign focused against elections, members of the NO were convicted, on 25 July 1972, by the Municipal Court in Prague – J. Dus in accordance with § 98 (subversion of the state) for 15 months, L. Hejdánek in accordance with § 100 (sedition) for 9 months, both unconditional; H. Hejdánková and J. Jirásek for shorter and conditional sentences, also in accordance with § 100. At the end of February 1972, the Analytical Department of the II Administration of the Federal Ministry of the Interior submitted to the leaders of the Federal Ministry of the Interior its "Information on the present situation in the Evangelical Church of Czech Brethren", in which the Department, "in the interests of assisting the healthy elements of the church, and to reach final settlement of the critical situation in the ECCB" recommended the following measures be taken towards the leaders of the church: "(…) to take Jan Šimsa, a minister of church, into custody and, according to local jurisdiction, bring against him by way of the relevant Public Prosecutor's Office charges for a criminal act in accordance with § 100 of the Criminal Code for distribution of illegal printed matter entitled 'Facts, Comments, Events', documented by testimonies of defendants L. Hejdánek, H. Hejdánková, and J. Jirásek." (p. 31 of the document).

33. As at 1 July 1974, the Administration of Counterintelligence for Fighting External Enemies (II Administration of the Federal Ministry of the Interior) and the Administration of Counterintelligence for Fighting Internal Enemies (X Administration of the Federal Ministry of the Interior) were established and managed by the First Deputy of the Minister of the Interior. Issues related to churches were organisationally placed under the 5th Department of X Administration of the Federal Ministry of the Interior, while issues related to non-catholic churches, sects, and religious societies fell under the 2nd Division of the same Department. At the level of regions, 2nd Counterintelligence Departments were in charge.

34. The "Report on activities and meeting the targets of the Administration of the State Police in Brno for 1973" states that anti-regime opinions were in particular held by the priest M. Heryán from Brno (codename: Orient Mission) and J. Šimsa, a priest without the state permit required for religious practice (codename: Ideolog Mission). "The objective of the Ideolog Mission was to prevent, using any means possible, the continuation of activities by Jan Šimsa, in particular by interrupting such activities and 'bringing disharmony' to the group he formed around himself." (p. 60 of the document). On 1 January 1977, the Declaration of Charter 77 was released, which was also signed by six ministers of the ECCB deprived of the state permit for religious practice. In addition, the NO started to centralise its activities around the precepts of Charter 77 and VONS (Výbor na obranu nespravedlivě stíhaných – The Committee for the Defence of the Unjustly Persecuted). "L. Hejdánek, M. Rejchrt, J. Šimsa, B. Komárková, P. Brodský, J. Trojan, T. Bísek, M. Balabán, and J. Dus were considered by the State Police to be the most active

members of the NO to sign the Charter. (…) According to the materials of the State Police, J. Šimsa, after being deprived of the state permit for religious practice in 1973, maintained broad liaisons with the signatories of Charter 77, and participated in issuing documents relating to the Charter." (p. 17 of the document). "With respect to all the above-named persons, the State Police, through the agency or using technical means (eavesdropping, secret technical searches, covert observation and photography, monitoring of correspondence) discovered contacts to foreign countries." (p. 18 of the document).

35. According to the plan of operations and the chief tasks of the Administration of the State Police in Brno for the year 1978, "Jan Šimsa, a minister of the church and signatory of Charter 77, the object of Ideolog Mission, was targeted in 1978. As a result, Šimsa was convicted to an unconditional sentence of imprisonment for eight months." (p. 60 of the document). According to the plans for the years 1980 and 1981, within the scope of the Ideolog Mission "conflicts should be introduced to the circles of liaisons of Jan Šimsa, and his 'contact base' should be disturbed by disinformation; the objective of this being to 'disintegrate negative influence'." (p. 60 of the document).

IV.

36. The Constitutional Court proceeded to adjudicate on the merits of the matter, employing the following maxims:

37. An essential condition for the existence of an independent judiciary is the trust of the public in the judges seeking just decisions adopted on the basis of law. Without public trust in the judge's procedure being fair and in compliance with high moral standards, the judiciary cannot function properly. The trust of the public in the judiciary is the most precious value the judiciary has; such a trust is also one of the most valuable virtues for each citizen of a state. H. de Balzac said: "Lack of trust in a judicial system is the beginning of the end for society." However, the trust of the public is not given freely, it must be earned. Maintaining it is more difficult than losing it. Years of hard work and endeavour may be thrown away due to one lapse in judgment. Each and every judge must bear this in mind when taking a decision in a case; a judge, unlike the legislature, does not enforce their own will, but should always enforce the law through a constitutionally conformable interpretation.

38. In the words of Justice Douglas: "The more transparent and outright the manner of argument, the closer one is to democracy. This is reflected in Cardozo's 'openness'. The principle of complete openness has the same substantiation in state institutions' agenda as in economy. A judiciary discovering reasons for their choosing a course of action earns understanding. Trust based on understanding is more permanent and resolute than that based on fear and forced respect." (Douglas, W.: Stare Decisis, 49 Colum. L. Rev. 735, 754 [1949]).

39. The principle of a law-based state, also comprising the principle of the rule of law, requires utter dominance of rights as opposed to influences exerted by an arbitrarily exercised power. This principle eliminates the existence of arbitrariness

and, naturally, prerogatives; it even eliminates broadly conceived competences on the part of bodies holding executive power, when such bodies exercise the functions of state administration, partially formed by the police.

40. Paraphrasing L. Fuller (Reason and Fiat in Case Law, 59 Harv. L. Rev. 376 [1946]), the judiciary's objective should be to attain changes through elementary value stability in such a way as outlines of the same are contained in the core of a new constitutional order, and in such way as was in the past defined by the Constitutional Court in relation to the law and legal acts (cf. Judgments No. Pl. ÚS 19/93, published under No. 14/1994 Coll., or file No. Pl. ÚS 42/02, published under No. 106/2003 Coll.).

41. When a state administration, as conceived by a formal law-based state, was strictly bound to the law in its formal sense, the material law-based state is characterised by affirming super-positive values (as is implied by Article 9 para. 2 of the Constitution of the Czech Republic) such as human dignity, freedom, and justice, which represent the essential requisites of a democratic law-based state. Upholding respect and protection for human dignity and freedom is the greatest and most universal function of the law.

42. Order in a law-based state is preconditioned by the state monopoly of power, which is to serve to enforce the right to protection of citizens and to ensure their freedoms. In a law-based state, merely the power established and bounded by law legitimates the monopoly of power. Thus state power may only be exercised with respect to the limits imposed on it by the fundamental rights and freedoms of individuals.

43. Human dignity as a value is intrinsic to the foundations of the entire scheme of fundamental rights as contained within the constitutional order. The entitlement of every individual to enjoy respect and recognition as a human being is related to human dignity, implying a prohibition of rendering a man a mere object of a state's will, or prohibition of exposing a person to such actions which cast doubts on such a person's quality as a subject.

44. In Judgment file No. IV. ÚS 412/04 (Collection of Judgments and Rulings, Volume 39, Judgment No. 223, p. 353), the Constitutional Court stated: "The focal point of the constitutional order of the Czech Republic is the individual and their rights guaranteed by the constitutional order of the Czech Republic. The individual is the base of the state. The state and all its bodies are constitutionally bound to protect and be considerate to the rights of the individual. The concept of our constitutionality is not limited to the protection of fundamental rights of individuals, such as a right to life or guarantee of a right to a legal personality, but in accordance with the post-war change in understanding human rights (as expressed e.g. by the UN Charter or Universal Declaration of Human Rights), human dignity has become the foundation for interpreting all fundamental rights; this i.a. excludes a human being treated as an object. In this concept, issues of human dignity are understood to be a part of the quality of a human being, part of their humanity. The guarantee of inviolability of human dignity makes it possible for people to develop their personalities fully. These considerations are confirmed by the Preamble to the Constitution of the Czech Republic, which declares human

dignity to be an inviolable value and the very core of the constitutional order of the Czech Republic. Equally, the Charter of Fundamental Rights and Basic Freedoms guarantees equality of people in dignity (Art. 1) and guarantees the subjective right to maintain human dignity (Art. 10 para. 1)".
45. The dignity of a man as a person acting of their own volition and responsibility is also the basis for the maxim nulla poena sine culpa – no punishment without culpability (similarly see resolution of the German Federal Constitutional Court BVerfGE 57, 250).

V.

46. Within the contested resolution, the Supreme Court stated that there is nothing to object to the factual findings contained in the original judgment of the first-instance court. The court allegedly respected the principle of oral proceedings and principle of immediacy, which allegedly made it possible to carefully assess each piece of evidence as well as the evidence in aggregate. The alleged complicated conditions of evidence in the case under review did not allow the Supreme Court to cast doubts on the previous assessment of the body of evidence without repeating the same.

47. The Constitutional Court ascertained from the file of the Municipal Court in Brno that the court directly heard only the petitioner, witness M. Loukotková (an employee of the District National Committee, Brno 5, who was brought by officers of the National Security Corps – leaf number 7 of the criminal file), witness J. Domínek (officer of the State Police), and witness M. Bata (officer of the Regional Administration of the National Security Corps in Brno) (see clause 18). Other witness testimonies were read out, including those confirming the petitioner's version. It is completely clear from the above that the petitioner found himself in a procedural situation unfavourable for him, despite the fact that formally legal conditions were established for reading out said testimonies. In this situation it can hardly be emphasised that the principle of oral proceedings and the principle of immediacy were adhered to, since if they were complied with, then only in relation to the testimonies of witnesses unfavourable for the petitioner.

48. Another fact not to be overlooked is that the trial took place after the first-instance court assessed the evidence collected within preparatory proceedings to be insufficient for hearing the criminal case, and returned the case to the prosecutor for additional examination (see clause 15). In their annulling resolution, the court of appeal accepted the fact that witnesses had been heard in the case even before the petitioner elected his defence counsel, and such a counsel thus could not be present at their examination; also, the court of appeal considered dismissible when and why the defendant had actually been detained. Thus, all that had been done by the state power against the petitioner previously was de facto approved, in particular the fact that as early as January 1977, a criminal prosecution was commenced for the criminal act of subversion of the state, without the petitioner being informed of the charges. Another approved fact was that only as late as 31 May 1978, a domiciliary search was ordered within the scope of this criminal prosecution, without the petitioner being heard in the case previously and without the petitioner being informed of the reasons for holding

such a domiciliary search in advance, and without the petitioner being informed of which materials and papers “he should be dispossessed of” (see clause 12); the lawfulness of the permit for the domiciliary search was not examined. From the decision of the court of appeal, each reasonable and unbiased reader, even without a legal education, understands that for the court of appeal the guilt of the petitioner was actually proven as early as when the case was returned to the first-instance court. The new deliberation of the first-instance court, which conformed to the completely clear, however tacit, opinion of the court of appeal, must also be evaluated within this context.

49. The Supreme Court was in error when, whilst evaluating the complaints on the violation of the law with respect to the contested resolution, it was satisfied merely with the criminal file and the statement of the public prosecutor and the petitioner. From the reasons specified above, it should have been clear that the case must be clarified within an even broader context, which for understandable reasons cannot be delineated merely from the original criminal files. This broader context is constituted by data which the Constitutional Court procured from public sources (see Section III, clauses 29-35). Findings from these sources complement the criminal file in terms of clarifying such gaps in knowledge which were not (and could not have been) closed with evidence in the original criminal proceedings, as the intentions of the State Police were not even in compliance with the valid legal regulations then. This broader context indicates that in fact any reason was sought out to constrain the personal freedom of the petitioner, so as to preclude his activities within the ECCB. This purpose of the complete action against the petitioner seriously collides with the principles specified under Section IV, and, first of all, represents a massive assault on the petitioner’s human dignity, when the petitioner, not covertly identified as ‘an object’ of measures taken by the state power (see clause 35), was deprived i.a. of his own responsibility, since irrespective of his own culpability he was to become, in one way or another, a subject of repression of the state power, this due to his conscience and civic conviction. The Constitution then valid (Constitutional Statute No. 100/1960 Coll.) did not guarantee human dignity as a fundamental right explicitly, however, this does not mean that the state at the time was not obliged to honour it. Requirement for respect to human dignity is part of the very foundations of European civilisation, being formed from Antiquity through to Christianity and Enlightenment, to the conclusions of the necessity of respecting human rights arrived at following the bitter experience of Nazism. When the Supreme Court did not annul the resolutions contested by the complaint on the violation of the law, they continued to infringe the petitioner’s human dignity, even though protection of fundamental rights is a duty imposed on the Supreme Court by Article 4 of the Constitution of the Czech Republic, and human dignity as a subjective right is explicitly guaranteed today by Article 10 of the Charter.

50. All this occurred despite the fact that the Constitutional Court with their Judgments (see clause 40) in the past repeatedly called upon the Supreme Court to change their attitude to interpretation of the law. By applying long-held, but no longer constitutionally acceptable, formalist approaches in evaluating cases, as well as the same attitude of the Supreme Court to the interpretation of law, the trust of the public is undermined as regards fair verdicts being passed based on law (see clause 38). In the same way, this trust is also undermined by the Supreme

Court literally hiding behind the provisions of procedural regulations (in this case the Criminal Procedure Code), without expressing their true opinion and clarifying their attitude to acts which were, prior to 1989, assessed to be criminal acts.

51. The Constitutional Court did not deal with other violations of the fundamental rights and freedoms objected to, since the findings presented above fully sufficed in order to annul the contested resolution.

52. Therefore, 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, the Constitutional Court in their verdict defined the fundamental rights and freedoms which were violated by the contested resolution and proceedings preceding the same, and annulled the resolution of the Supreme Court in accordance with the provisions of § 82 para. 3 clause a) of the Act on the Constitutional Court.

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

Brno, 29 February 2008