2010/04/13 - II. ÚS 485/10: GENUINE REASONS FOR A PARENT´S LACK OF INTEREST

HEADNOTES

The proceedings according to the provisions of § 180a of the Civil Procedure Code, in connection with the provisions of § 68 of the Family Act, are a serious infringement of parental rights, and the subject of the same is restriction of parental responsibility, as an early stage of the parent being deprived of the same (adoption of the child). The same conclusion must be arrived at also when using the teleological method of interpretation, when the purpose of adoption is to compensate, for the minor, the lack of a stable family environment in instances when the consanguineous parents are not able or willing to provide the same; the originating relation between the adoptee and the adopter is the same as that between the parents and children. Even though these proceedings are, according to the hierarchy of the Civil Procedure Code, classified as separate, it is indubitable that such proceedings, due to their subject and consequences, must be considered a special type of proceedings on granting, restricting or depriving parental responsibility pursuant to the provisions of § 176 of the Civil Procedure Code.
Should the Constitutional Court admit the interpretation adopted by the ordinary courts, this being that in the case of proceedings pursuant to the provisions of § 180a of the Civil Procedure Code, the principle that the circumstances at the time when a judgment is pronounced are decisive for the judgment is broken, the period of time for filing a petition under the provisions of § 180b of the Civil Procedure Code would be non-proportionally extended, such a period of time being, compared to the period according to the provisions of § 180a of the Civil Procedure Code, twice as long anyway. The above-specified facts are supported also by the circumstance that, with respect to the complexity of interpersonal relationships and the crisis situation which come into consideration, it is not possible to determine in gross a "term" for the parent to commence proper exercise of their parental rights, when such a term is rather of a subsidiary nature, but it is necessary to carefully and sensibly assess their conduct and possible reasons for not showing interest, and weigh up the various measures which come into consideration; in this, adoption (deprivation of parental responsibility) is the last resort.
The Constitutional Court expresses regret that, under the conditions of a modern democratic law-based state of the 21st century, acknowledging the principles of social solidarity and pursuing increased protection of parenthood and family, resulting not only from the fundamental legal norms of the Czech Republic and international commitments (see, for example, the Convention on the Rights of the Child, adopted on 20 November 1989 in New York, promulgated through Notification by the Federal Ministry of Foreign Affairs of the Czech and Slovak Federative Republic No. 104/1991 Coll.), but in particular from the generally shared value framework of society, lack of funds may be the cause of such a draconic separation of a parent and child when the very lack of resources is, in comparison with other reasons, a problem which is effectively solvable by the state. Every person in their life may find themself, through no fault of their own or partly through their own actions, in a situation which they

are not able to solve and which temporarily keeps them from properly taking care of their own child. In addition to the family and institutions of civic society, it is then primarily the state which should play the key role in such cases (paragraph 24) and should take and must take active steps to renewing the bond between the biological parent and their child.

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

A Panel of the Constitutional Court, consisting of Chairman Jiří Nykodým and Justices Stanislav Balík and Eliška Wagnerová (Justice Rapporteur), adjudicated on 13 April 2010 the matter of a constitutional complaint filed by complainants (1) L. S. and (2) M. S., a minor in foster care, represented by Mgr. David Strupek, an attorney at law with a registered office at Jungmannova 31, 110 00 Prague 1, against a resolution by the Supreme Court, dated 20 November 2009, file No. 30 Cdo 4096/2009, and a judgment by the Regional Court in Prague, dated 23 April 2009, file No. 24 Co 138/2009; this with the participation of the Supreme Court and the Regional Court in Prague as parties to the proceedings; upon **approval by the parties to the proceedings without an oral hearing; as follows:**

I. By not respecting the principles contained in Article 2 para. 2 of the Charter of Fundamental Rights and Basic Freedoms and in Article 8 para. 2 of the Convention on the Protection of Human Rights and Fundamental Freedoms, the resolution of the Supreme Court, dated 20 November 2009, file No. 30 Cdo 4096/2009, and the judgment of the Regional Court in Prague, dated 23 April 2009, file No. 24 Co 138/2009, have violated the fundamental rights of the complainants guaranteed by Article 36 para. 1 of the Charter of Fundamental Rights and Basic Freedoms and Article 8 para. 1 of the Convention on the Protection of Human Rights and Fundamental Freedoms.

II. Therefore, these decisions shall be annulled.

REASONING

I.

1. By a constitutional complaint sent to the Constitutional Court on 17 February 2010, that is within the term of 60 days from the delivery of the contested decision [the provisions of § 72 para. 3 of Act No. 182/1993 Coll. on the Constitutional Court, as amended by later regulations (hereinafter referred to only as the "Act on the Constitutional Court")], the complainants demanded that the decisions by the Supreme Court and the Regional Court in Prague, as specified above in this document, be annulled, this based on the statement that the same violated their fundamental rights guaranteed in Article 6 and Article 8 of the Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to

only as the “Convention”).

2. The constitutional complaint was appended with a petition for postponement of enforceability of the contested decisions. By a resolution dated 2 March 2010, ref. No. II. ÚS 485/10-12, pursuant to the provisions of § 79 para. 2 of the Act on the Constitutional Court, the Constitutional Court granted the same and postponed the enforceability of the decisions specified above until the time the Constitutional Court decides on the constitutional complaint.

3. The complainants considered that the violation of the right to a fair trial claimed in the constitutional complaint consisted of the fact that complainant (2), as a minor, had been represented in the proceedings by a guardian ad litem who was, at the same time, the person proposing the measures which, in a crucial way, infringed the family life of the complainants. In the complainants’ opinion, a conflict of interests occurred when the person making the proposal and the guardian ad litem – being one and the same person – undertook, in the name of complainant (2), procedural acts in such way that the same reflected the opinion of the person making the proposal/the guardian, such opinion being specified in the proposal. The law presumes that the body for social and legal protection of children acts in the best interest of minors – persons not of legal age – involved in proceedings but the correctness of the procedural standpoint of such a body, prior to issuing a judicial decision, is not incontestable, and the parties are not deprived, even in non-adversarial proceedings, of the rights resulting from the principles of the adversarial nature of the proceedings. The fact that the person proposing such a vital decision [note: adoption of a child without the approval of the parent; hereinafter referred to also as “adoption”] is at the same time a procedural representative of the child anticipates, even prior to the judicial decision, that the decision is in the best interest of the child. In the proceedings, the child then acts, formally and procedurally, as a person who accedes to the petition; a dissonant procedural position of the child is effectively disallowed. In connection to this, the complainants referred to the Judgment of the European Court of Human Rights in the case of Havelka and others v. the Czech Republic, dated 21 June 2007, where the European Court of Human Rights stated that it is regrettable that minor children were represented, in proceedings on the imposition of an upbringing administered by a relevant educational institution (“an institutional upbringing”), by the body for social and legal protection of children proposing the same. The complainants believe that if this principle is valid in the case of an institutional upbringing, which is an educational measure of a temporary nature, then, a fortiori, it must also be valid in the instance when a measure is being proposed which would tear apart a family in an irreversible manner. The complainants further stated that a similar conclusion, this being that a body for social and legal protection of children – as a party proposing an institutional upbringing for minors – cannot be at the same time the guardian ad litem of the children, was reached paradoxically by Panel 24 Co of the Regional Court in Prague itself in a resolution by the same dated 15 August 2008, file No. 24 Co 332/2008.

4. In the complainants’ opinion, the infringement of the right to family life occurred through the positivistic and formalistic approach of the Regional Court to the wording of the provisions of § 68 of Act No. 94/1963 Coll. on Family, as amended by later regulations (hereinafter referred to only as the “Family Act”),

which not only disallows individual assessment of circumstances in a case, but it is in conflict with modern trends in the sphere of the legal arrangement of the right to family life and with its constitutionally conforming interpretation. Since this is the most serious form of infringement of the right to family life, which is definitive and irreversible, it is necessary to assess in a much stricter way the compliance with all requirements prescribed by law and constitutional order, i.e. to determine a genuine lack of interest by parents in minors with respect to specific circumstances, so that the tearing apart of family's bonds actually represents a rightful interference under Article 8 para. 2 of the Convention; formal compliance itself with the factual attributes of the case, pursuant to the provisions of § 68 para. 1, clause a) of the Family Act, cannot suffice. In this connection, the complainants referred to the Judgment of the Constitutional Court, dated 28 January 2004, file No. I. ÚS 669/02 (N 11/32 SbNU 97; all decisions of the Constitutional Court are available at http://nalus.usoud.cz), in which the Constitutional Court specified that the conditions established in the provisions of § 68 para. 1, clause a) of the Family Act must be met completely, and there must not remain the slightest doubt that the same are not met in the given specific case; also the limits of the possibilities of the parents, their social status, their social orientation, the level of general intelligence and education must all be taken into consideration. However, in the given case, the ordinary courts have in no way assessed the statement of complainant (1) that the considered interval of passivity on her part was contributed to by an unbearable social situation, which did not make it possible for this complainant to travel for visits for a certain period of time. Furthermore, the ordinary courts, in their reasoning for the contested decision, completely inaptly overvalued the significance of phone calls for a child of the age of 1.5 to 2 years, when their meaningfulness is somewhat dubious.

5. According to the complainants, another lapse on the part of the ordinary courts in their determining whether approval of the child's parent is necessary as regards adoption of the child consists of non-compliance with the positive obligations of public power as were determined by the European Court of Human Rights in their Judgment, dated 8 July 1987 in the case of W. v. the United Kingdom. In said decision, the European Court of Human Rights stated that when making a decision concerning whether approval by a parent for the adoption of the child is required, maximum protection against arbitrariness is necessary. The relevant deliberations by the authorities of public power must contain deliberations concerning the standpoint and interests of the consanguineous parents, and such authorities must also properly deal with the same. This may take place on the basis of continuous monitoring, as well as on the basis of regular contact and communication between the employees of the relevant authority and the parents. In the given case, the European Court of Human Rights declared a violation of Article 8 of the Convention, as the consanguineous parents had not been notified and warned about the consequences of their actions, including adoption (they were only notified of the possibility of placing the child into long-term foster care). In the complainants' opinion, the body for social and legal protection of children should have notified complainant (1) of the possible consequences of her "lack of interest" and actively discussed and monitored the reasons for the same with her. Filing the petition should have been preceded by a firm warning on possible adoption occurring without the approval of the parent. Permanent and irreversible breakage of the bond between the biological parent and the child cannot be, in the opinion of the

complainants, supported by the principle that ignorance of the law is no excuse, or by the principle of vigilantibus iura, this also with respect to the fact that the right to family life here also works to the benefit of the child, who should not suffer detriment to their rights only due to the potential negligence or ignorance of the parent. The complainants have concluded that, with respect to the issue specified above and the fact that parents from a problematic social environment or with minimal education are often unaware of the considerable degree of risk they expose themselves to through a period of six month's passivity, proper instructions and a warning are necessary.

6. That is why the complainants proposed, with respect to the above facts, that the Constitutional Court, by its Judgment, annul the decisions of the Regional Court in Prague and the Supreme Court quoted above. With respect to this, the complainants stated that the constitutional complaint is also formally aimed against the decision by the court of appeal on a point of law, even though the decision is actually correct, since, as expected, the appeal on a point of law filed by the complainants was rejected as inadmissible. The complainants, however, on the basis of instructions in the judgment of the Regional Court, for reasons of being cautious, filed an appeal on a point of law in the given case, even though from the outset they had material doubts concerning the admissibility of the same (see the Resolution of the Constitutional Court, dated 21 August 2009, file No. II. ÚS 1902/09). If, however, cassation would take place only with respect to the decision of the court of appeal, the resolution of the court of appeal on a point of law would be left in a procedural vacuum.

7. The Constitutional Court requested the parties to the proceedings to supply their opinions on the constitutional complaint. The Supreme Court, through the chairman of panel 30 Cdo, JUDr. Karel Podolka, fully referred to the reasoning of the contested decision and stated that its correctness was actually not doubted by the complainants; the Court has not submitted a proposal as a participant for the decision of the Constitutional Court. The Regional Court in Prague, through the chairwoman of panel 24 Co, JUDr. Šárka Kamenická, with respect to reasons for which it was established that adoption of the minor complainant (2) does not require approval of the mother, complainant (1), fully referred to the reasoning of the contested decision. As for the alleged infringement of the right to a fair trial (see paragraph 3), the Regional Court stated that with respect to the provisions of § 68 para. 3 of the Family Act, the case law quoted by the complainants is inappropriate since the body for social and legal protection of children, as the party putting forward the proposal is, by law, in proceedings pursuant to the provisions of § 180a of Act No. 99/1963 Coll., the Civil Procedure Code, as amended by later regulations, also the child's guardian. The Regional Court, just like the Supreme Court, did not file a proposal as a participant for the decision of the Constitutional Court.

8. Furthermore, the Constitutional Court asked the secondary party (the Municipal Office in Dobříš, as the body for social and legal protection of children, which was the guardian of the minor in the proceedings) to submit a statement, within the prescribed term, concerning the constitutional complaint, and instructed them that should the Constitutional Court not receive such a statement within the established term, the Constitutional Court would consider that the Municipal Office has waived

its position of a secondary party (the provisions of § 28 para. 2 of the Act on the Constitutional Court). The secondary party has not delivered its opinion within the prescribed term, therefore it has waived its being a party to the proceedings.

9. Pursuant to 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, if further clarification of the matter cannot be expected from such a hearing. The parties provided such approval and the Constitutional Court dispensed with an oral hearing.

II.

10. Firstly, the Constitutional Court dealt with the formal requisites of the constitutional complaint filed, and, in this connection, particularly with the active standing or capacity to procedural acts of the minor. Settled decision-making practice of the Constitutional Court indicates that in situations when a person not of legal age is a secondary party to proceedings and when the Constitutional Court does not reject the constitutional complaint, such a person is regularly provided with a procedural guardian (see, for example, Judgment file No. III. ÚS 1206/09, dated 23 February 2010). The basis for this consists, in accordance with the provisions of § 63 of the Act on the Constitutional Court, of the provisions of § 20 in connection with the provisions of § 29 para. 1 of the Civil Procedure Code and in connection with the provisions of § 83 para. 1 of the Family Act. However, this practice cannot serve as a basis in this case, as the position of the minor is different (even though, with respect to the facts specified below, proceedings on limitation of parental responsibility are de facto concerned). Not even the case solved by Judgment file No. II. ÚS 125/98 (N 105/12 SbNU 87), dated 24 September 1998, which involved minors as the only complainants in a case of regulation of contacts with their father, is inspirational. At that time, the minors were, on one hand, granted capacity to procedural acts in proceedings before the Constitutional Court with respect to their ages (11 and 12 years) and intellectual level ascertained by the ordinary courts, but, on the other, a children care body was appointed to them as their guardian in these proceedings.

11. It is necessary to proceed from the fact that any natural person to whose benefit the claimed constitutionally guaranteed fundamental right or freedom operates, this irrespective of their legal capacity or age, may be a complainant. The constitutional complaint is directed against a decision in proceedings pursuant to the provisions of § 180a of the Civil Procedure Code, which was initiated upon the petition by a body for social and legal protection of children, which in such cases should be, by law, the guardian of the child (see the provisions of § 68 para. 3 of the Family Act). In addition to the minor, also her mother filed the constitutional complaint, and authorised an attorney at law to represent also the minor. In the case under consideration, the Constitutional Court, without feeling any need to consider another possible guardian for the minor for the proceedings before the Constitutional Court, when such guardian was given the proper latitude for submitting an opinion (paragraph 8), and in particular due to the fact that in the given case there is no risk of a clash between the procedural interests of the complainants mutually (note: the father of the minor is not identified in the birth

certificate), and with respect to the nature of the proceedings before the Constitutional Court (see provisions of § 48 para. 1 of the Act on the Constitutional Court), inclined to the opinion held by theory. According to such opinion, if the complainant does not have full legal capacity due to the absence of age, the constitutional complaint may be filed, in their stead, by their legal guardian, who will also grant the power of attorney to an attorney at law (see Wagnerová, E., Dostál, M., Langášek, T., Pospíšil, I.: Zákon o Ústavním soudu s komentářem / The Act on the Constitutional Court with Commentary. Prague: Aspi, 2007, page 404, clause 9). Therefore, the Constitutional Court concludes that complainant (2), with the approval of complainant (1), her 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 (similarly in Judgment file No. II. ÚS 1945/08, dated 2 April 2009).

III.

12. In order to evaluate the objections and statements of the complainants, the Constitutional Court requested the file from the District Court in Příbram, file No. 5 P 36/2008, from which the Constitutional Court ascertained the following facts decisive for the proceedings on the constitutional complaint.

13. The Constitutional Court discovered, from a report by the Municipal Office in Kralupy nad Vltavou, the social care department (page No. 5), dated 22 January 2007, that on the basis of a suggestion by the minor's physician, a visit was conducted to the household of the complainants in April 2006, and the mother was informed by the social worker that it was necessary to improve the condition of the household; but the minor herself seemed in good order, and necessities for her were provided. The same report indicates that, in the course of repeated visits, considerable improvement was witnessed in the household, as well as in the approach of the mother to caring for the child (May 2006). In January 2007, another visit was paid to the household of the complainants, when, with the assistance of the Municipal Police, it was ascertained that the mother's boyfriend (note: the alleged father of the child) was aggressive, and often used physical violence against the mother, who was afraid that he would also act violently towards the minor. The mother subsequently approved of the voluntary stay of the minor in a facility for immediate aid that was offered, to which the minor was transported on the same day (for more details, see a report dated 9 January 2007, page No. 36). In the conclusion of the report it is stated that the mother had an interest in the child and wanted to alter circumstances in her life so the minor could return to her care. The Municipal Office, however, reached the conclusion that the mother was not a person capable of providing proper care for the minor. By a resolution dated 1 March 2007, ref. No. 42 P 22/2007-24, the District Court in Mělník initiated, on the basis of the report specified above, proceedings on ordering an institutional upbringing for the minor. The Constitutional Court discovered, from the report of the Municipal Office in Slaný, the social and health care department (page No. 33), dated 14 May 2007, that the mother visited this department in March 2007 and announced that she wanted her daughter back under her care. She was informed that her new housing conditions were not suitable (note: a house at the address of Ž.) for a little child. The report further

indicates that perhaps the mother should move from there to “a place in Moravia”. During a meeting on 24 May 2007, the mother stated that she did not approve of the petition to order an institutional upbringing for the minor, that she had improved her familial circumstances and wanted the minor back under her care; she was again living with the father of the minor and together they visited her every two weeks. By a judgment of the District Court in Mělník, dated 24 May 2007, ref. No. 42 P 22/2007-40, the minor was entrusted to the care of Fond ohrožených dětí (The Fund for Children in Need) – Klokánek Hostivice (hereinafter referred to also as the “FOD” or “Klokánek centre”).

14. The Constitutional Court ascertained, from a report by the FOD (page No. 48), dated 22 January 2008, that the mother “sometimes” visited the minor, the last time being on 11 August 2007, and since then showed no interest in the minor in any way and “therefore, according to the provisions of § 68 para. 1, clause a) of the Family Act, a ‘qualified lack of interest’ has been demonstrated over time.” The FOD further stated that following the expiry of such a term, i.e. 11 February 2008, they intended to ask the competent body for social and legal protection of children to file a petition for declaring a “half year’s genuine lack of interest on the mother’s part in the child” to the relevant court of justice so that, in co-operation with the Regional Office of Central Bohemia, the minor could be handed to substitute family care in the form of adoption. The Constitutional Court found out, from a report by the FOD (page No. 52), dated 8 July 2008, that in the decisive period only one phone call was registered (on 17 January 2008), and that the mother did not contact the minor even at Christmas time and on her birthday. For this reason, the FOD on 12 February 2008 filed with the Municipal Office in Kralupy nad Vltavou an application for filing a petition to a court of justice for declaring a lack of interest and, therefore, also legal release of the child to be put up for adoption (page No. 54). Together with this announcement, the FOD asked the District Court in Mělník for “assistance in dealing with the future of the child”, when, through such release, that is by passing a judgment on declaring a half year’s lack of interest, a possibility would be given for putting the child up for adoption. On 27 March 2008, the Municipal Office in Dobříš, the social care department, filed with the District Court in Příbram a petition for the issue of a decision on the lack of interest on the part of the mother in the child (page No. 53), pursuant to the provisions of § 68 para. 1, clause a) of the Family Act. This petition specified that the phone call mentioned above, from 17 January 2008, included a query by the mother concerning the condition of the child, and information that the mother could not travel to visit her since she had no car. The Constitutional Court discovered, from a report by the FOD (page No. 90), dated 8 January 2009, that other visits by the mother to the minor at the Klokánek centre took place on 15 May 2008 and 17 May 2008, and then the mother and her partner (note: a person different from the child’s father) visited the child on 16 August 2008, 12 October 2008, 26 October 2008, 9 November 2008, 15 November 2008, 18 December 2008 and 22 December 2008. This report further states that the mother did not co-operate with the FOD, and did not call or write to the minor. The Constitutional Court ascertained, from a report from the Municipal Office in Dobříš, the social care department (page No. 92), dated 2 February 2009, that the mother then lived with her partner and another minor daughter of theirs, and they wanted the minor under their care, and that they had been visiting her regularly since May 2008. The Office, however, insisted on its petition, since as to the date of filing the

same, the mother had shown no interest in the child. A report by the FOD (page No. 94), dated 2 February 2009, shows that the FOD carried out an examination of the place of residence of the mother and concluded that it was not an environment suitable for the permanent residence of the minor, and the mother and her partner were looking for a new home.

15. At a meeting held on 4 February 2009, the mother stated that she had not been able to visit the minor in the decisive period, she had had no money and been homeless. She had not contributed to the support of the minor since she "was not told anything about it". The guardian of the minor specified that placement of the same in foster care, to which the mother would be a party and would contribute towards supporting the minor, is a given. The guardian was asked by the court whether she insisted on the petition so filed, when adoption was not an option, after which the guardian stated that she still insisted on the petition filed. By a judgment dated 4 February 2009, ref. No. 5 P 36/2009-99, the District Court in Příbram decided on establishing "that the mother, L. S., born ....., showed no genuine interest in the minor, M. S., born ....., from 12 August 2007 to 1 April 2008." As for reasons for its decision, the District Court stated that the report by the FOD proven that the mother visited the minor for the last time on 11 August 2007 and, until the filing of the petition, i.e. until 1 April 2008, she had shown no interest in the minor and visited her as late as 15 May 2008. Therefore, she did not show, from 12 August 2007 to April 2008, consistent interest in the minor through telephoning or writing, she demonstrated no concern for the condition of her health, behaviour or development. She did not voluntarily fulfil her statutory maintenance duty, even though she could have done so, she could have worked or been registered at the employment office, have co-operated with them and collected social security benefits. Furthermore, the mother did not inform the relevant offices of the place of her residence, and her then place of residence was completely unsuitable for bringing up a minor. That is, from 9 January 2007 to April 2008, she in no way improved her familial, social and housing conditions, and did not co-operate with social care departments in such a way that her situation could improve and that she might become able to take over the care of the minor. In conclusion, the court stated that it had assessed the conditions pursuant to the provisions of § 68 of the Family Act as to the date of filing the petition.

16. The Regional Court in Prague decided on the appeal filed by the mother of the minor via a judgment dated 23 April 2009, ref. No. 24 Co 138/2009-113 in such a way that the Court changed verdict I. of the judgment of the District Court, since that verdict did not agree with the statutory arrangement pursuant to the provisions of § 68 para. 1, clause a) of the Family Act in connection with the provisions of § 181 of the Civil Procedure Code, and determined that the mother's approval is not necessary for putting the minor up for adoption. The Regional Court, beyond the argumentation contained in the judgment by the District Court, stated that one phone call (on 17 January 2008) cannot be considered as consistent and genuine interest on the part of the mother in the minor. The mother in the proceedings did not even declare any objective circumstances which would in the decisive period of time prevent her from being consistently interested in the minor: "[b]esides, the mother herself, during the proceedings before the court of appeal, upon a request for her to possibly provide statements and evidence of such statements concerning the fact that she, from 12 August 2007 to 1 April 2008, did

show interest in the minor, Monika, of what such interest consisted and how such interest was demonstrated, since the contents of the file clearly shows that she did not show any such interest, explicitly stated that at that time she had had no place to live and she had had no way of travelling to see the minor, and so she had not taken interest in her" (page 4 of the judgment). The court of appeal further specified that the mother had started a family with L. V. (working for over 11 years as a labourer with a single company, with an income of over CZK 13,000) and cares for her second-born daughter Denisa (the mother receives a family allowance of CZK 7,500), but she lives in a house to which she has no right of ownership or lease (note: the house is owned by an uncle of L. V.), in other words, during the decisive period of time and essentially until the present time, the mother has not improved her social conditions, in particular relating to housing (note: for description of her present housing conditions, see page 3 of the judgment), sufficiently so that she could personally resume caring for the minor. In instructions concerning the judgment, the court of appeal stated that an appeal on a point of law against the judgment may be filed to the Supreme Court, within a term of two months from the delivery of the same.

17. The Municipal Office in Dobříš, the social care department, in its statement concerning the mother's appeal on a point of law (page No. 124), dated 23 July 2009, specified that with respect to the interest of the mother in the minor, they had reassessed their position, with substitute family care for the minor in the form of adoption not being feasible, and substitute family care in the form of foster care in which the mother would actively participate was agreed on with the mother. The complainant's appeal on a point of law was rejected as inadmissible by a resolution of the Supreme Court dated 20 November 2009, ref. No. 30 Cdo 4096/2009-135, since the given case concerned neither restriction or deprivation of parental responsibility or suspension of the exercise of the same, nor irrevocable adoption [the provisions of § 237 para. 2, clause b) of the Civil Procedure Code].

IV.

18. The Constitutional Court declares that the constitutional complaint is admissible (§ 75 para. 1 a contrario of the Act on the Constitutional Court), was duly filed and meets other requirements under law [§ 30 para. 1, § 72 para. 1, clause a) of the Act on the Constitutional Court]. The Constitutional Court proceeded to dealing with the merits of the same and concludes that the constitutional complaint is justified.

19. The task of the Constitutional Court is solely the protection of constitutionality, not control of "common" lawfulness [Article 83 of the Constitution of the Czech Republic (hereinafter referred to only as the "Constitution")]. The Constitutional Court is not called to review the correctness of the application of "ordinary" law. The Constitutional Court is entitled to intervene in the decision-making activities of ordinary courts when a legally effective decision of such bodies of public power has violated the complainant's fundamental rights or freedoms protected by the constitutional order of the Czech Republic, since fundamental rights and freedoms define not only a framework of normative content of the applied legal norms, but also a framework of their constitutionally conforming interpretation and

application.

20. Article 2 para. 3 of the Constitution and Article 2 para. 2 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter referred to only as the "Charter") determine that state power may be asserted only in cases, within bounds, and in the manner provided by law, naturally, respecting the principle of proportionality resulting from the requirements of the state governed by the rule of law (Article 1 para. 1 of the Constitution). If it is not so, an action or an act of the state power is a manifestation of arbitrariness. As has repeatedly been emphasised by the Constitutional Court, not each violation of norms of ordinary law when the same are being applied or interpreted also causes violation of a fundamental right of an individual. However, violation of a norm of ordinary law as a result of arbitrariness (exercised, for example, through not respecting a norm of an imperative nature) or as a result of an interpretation which is in extreme contradiction with the principles of fairness, may be capable of infringing the fundamental right and freedom of an individual [cf., for example, Judgment file No. III. ÚS 346/01, dated 14 March 2002 (N 30/25 SbNU 237)]. The Constitutional Court intervenes at all times when the Constitutional Court discovers that there is an element of arbitrariness in the course of action of the ordinary courts. For example, in Judgment I. ÚS 534/03, the Constitutional Court stated: "[t]his violation of the complainant's fundamental rights and freedoms is concerned also when an ordinary court fails to see the constitutional-law significance of the ban on arbitrariness, that is a resource from the perspective of which it is necessary to proceed to interpretation of all procedural principles and rules given by ordinary law. The Constitutional Court reviews the decisions of ordinary courts also under the situation when the Constitutional Court finds out that ordinary courts have interpreted regulations in such an extreme manner that the same strays from the confines of constitutionality. This is the case also in the situation when the ordinary courts interpret certain statutory provisions so extensively that they consequently establish an obligation of an individual to act in excess of the law, whereby Article 4 para. 1 of the Charter is violated. The Constitutional Court has already adjudicated (for example, by Judgment file No. I. ÚS 546/03) that the provisions of Article 4 para. 1 of the Charter have two dimensions. The first of them defines the impact of the provisions of Article 2 para. 2 of the Charter on individual persons, whilst the second represents a structural principle of a democratic law-based state, according to which state power may be exercised only in cases and within bounds provided by law, and in a manner prescribed by law. In the same way, establishing obligations by a court is limited by law, upon simultaneously preserving fundamental rights and freedoms." In the opinion of the Constitutional Court, arbitrariness is concerned also in instances when ordinary courts do not fulfil the obligation to substantiate properly their decisions in the given respect, that is in an adequate, rational and logical way [for example, Judgment file No. I. ÚS 534/03, dated 13 September 2004 (N 126/34 SbNU 285)]; also in cases when a decision shows extreme disagreement between legal conclusions and the evidence presented and the factual conclusions inferred from the same; and additionally in the case when interpretation and application of "ordinary" law is in extreme contradiction with the principles of fairness [for example, as a result of exalted formalism – see, for example, Judgment file No. III. ÚS 94/97, dated 26 June 1997 (N 85/8 SbNU 287)].

21. The Constitutional Court has repeatedly emphasised in its decision-making practice that from the viewpoint of examining the contents of a legal arrangement, it is not possible to rely solely on a linguistic interpretation of the provisions being applied; relevance particularly pertains to the purpose and meaning of the legal norm applied, and possibly to other acknowledged methods of interpretation. In Judgment file No. Pl. ÚS 21/96, dated 4 February 1997 (N 13/7 SbNU 87; 63/1997 Coll.), the Constitutional Court stated that the "[c]ourt is not absolutely bound by the verbatim wording of statutory provisions, but may and must deviate from the same in situations when the same is required for serious reasons by the purpose of the act, history of origination of the same, systematic nexus or any of the principles which are based in a constitutionally conforming legal order as a meaningful whole. In relation to this it is necessary to eschew arbitrariness; a decision of the court must be based on rational argumentation." The Constitutional Court has commented on the issue of tension between literal and teleological interpretation in a number of other judgments or opinions [see Opinion file No. Pl. ÚS-st-1/96, dated 21 May 1996 (ST 1/9 SbNU 471), Judgment file No. Pl. ÚS 33/97, dated 17 December 1997 (N 163/9 SbNU 399; 30/1998 Coll.)]. The Constitutional Court has formulated the primary proposition in connection with this in Judgment file No. Pl. ÚS 33/97. The Constitutional Court stated that an unsustainable aspect of the utilisation of law consists of its application based solely on linguistic interpretation; linguistic interpretation represents merely a primary approximation to the legal norm applied, it is a basis for clarifying and explaining its meaning and purpose (which is also served by a number of other procedures, such as logical and systematic interpretation, interpretation e ratione legis, etc.). This approach of interpretation and application has also been emphasised by the Constitutional Court, for example, in Judgment file No. III. ÚS 258/03, dated 6 May 2004 (N 66/33 SbNU 155), as well as Judgment file No. III. ÚS 288/04, dated 16 September 2004 (N 132/34 SbNU 331), in which the Constitutional Court also referred to the relevance of the teleological method directed at finding the meaning and operation of the law. In relation to these propositions, it is possible to say that, on the general basis of deliberations on acceptance of a conclusion concerning the contents of a legal norm (legal regulation), the Constitutional Court thus accentuated the importance of the teleological method of interpretation as an interpretative approach which must not be omitted from the viewpoint of constitutional law and which is eligible, in the context of rational argumentation, to represent a significant corrective in identifying the contents of the legal norm (see Judgment file No. II. ÚS 3201/08, dated 6 February 2009).

22. Above the scope of rationis decidendi, the Constitutional Court, in Judgment file No. III. ÚS 1206/09, dated 23 February 2010, pointed to the fact that the Constitutional Court is, in cases according to the provisions of § 237 para. 2, clause b) of the Civil Procedure Code, bound to undertake, in necessary cases, correction of legal opinions which would otherwise pertain to the Supreme Court. The present system of proceedings on an appeal on a point of law acknowledges neither a means of correction of a judicial decision nor a means of unifying case law on the issues in question other than a constitutional complaint, which is undoubtedly an undesirable situation and one which does not correspond to the principles of execution of justice in a law-based state. In Judgment file No. IV. ÚS 128/05, dated 10 May 2005 (N 100/37 SbNU 355), the Constitutional Court stated that a court of appeal on a point of law must, in interpreting and applying conditions for admission

of an appeal on a point of law, be aware of the fact that through the same, a party to the proceedings always pursues protection for their own subjective rights, and thus it is necessary to seek a relationship of adequate balance between restricting the right of access to a court, and the purpose of the given type of proceedings on an appeal on a point of law (which at the same time represents public interest). Then, the conditions for admission of an appeal on a point of law under § 237 para. 2, clause b) of the Civil Procedure Code must be interpreted in such a way that both the obligation determined by the Constitution on the part of the courts to provide individuals with protection for their fundamental rights (Article 4 of the Constitution), and the purpose of the given type of proceedings on an appeal on a point of law (see clause 21), are fulfilled.

23. When interpreting the provisions of Article 10 para. 2 of the Charter and the provisions of Article 8 of the Convention, relating to protection of family life and respect for family life respectively, the Constitutional Court, in Judgment file No. II. ÚS 838/07, dated 10 October 2007 (N 157/47 SbNU 53), emphasised that the basis of family relations traditionally consists of the biological bond of consanguinity between family members, even though the traditional concept of family has undergone certain changes over time [cf. Judgment file No. II. ÚS 568/06, dated 20 February 2007 (N 33/44 SbNU 399)]. The basic constituent of family life continues to be the coexistence of parents and children (Judgment of the European Court of Human Rights in the case of Kutzner v. Germany, dated 26 February 2002), since in this very framework, care and upbringing by the parents, to which the children have a right under Article 32 para. 4 of the Charter, should take place. As a result of the entitlement of the legislature to determine details in accordance with Article 32 para. 6 of the Charter, this fundamental right cannot be restricted. Pursuant to Article 32 para. 4 of the Charter, the rights of parents may be limited and minors may be removed from their parents' custody against the parents' will only by a decision of a court on the basis of the law. In this, according to Article 8 para. 2 of the Convention, the material compliance of infringement of fundamental rights and freedoms with the law occurs when such infringement pursues any of the legitimate objectives, and if the same is necessary in order to attain such objectives; that is, in particular, if the same is proportional to the pursued objective (see the Decision of the European Court of Human Rights in the case of Couillard Maugery v. France, dated 1 July 2004). In the Judgment in the case of Klass and others v. Germany, dated 6 September 1978, the European Court of Human Rights stated that exceptions regulated by Article 8 para. 2 of the Convention require restrictive interpretation, and their necessity in the given case must be conclusively proven. This means that only such a course of action by the courts in decision making on rights and obligations to a minor, which is in accordance with the Family Act at its formal and material level [cf. resolution file No. I. ÚS 471/97, dated 15 April 1998 (U 32/10 SbNU 459)], cannot be considered as illegitimate interference. In other words, it is necessary to examine the correlation between the public good, represented by the purpose of adoption, and the fundamental right to family life, which is formally restrictable by law, but only under the material pre-condition that it is a measure necessary in a democratic society, and when the pursued objective cannot be achieved through a more moderate means. It is true also in this case that the law, or the restriction of the fundamental rights anticipated by law, must be interpreted in a constitutionally conforming manner; that is, in particular, in such a way that the application of

such law passes the test of proportionality.

24. Infringement of the right to family life, including deprivation or restriction of parental responsibility, represents a very serious infringement of fundamental human rights, and, therefore, it must be supported by sufficiently potent arguments motivated by the interests of the child (see the Decision of the Grand Chamber of the European Court of Human Rights in the case of Scozzari and Giunta v. Italy, dated 13 July 2000). A lack of funds may be considered to be one of these, but only in connection with other circumstances (see Judgment file No. II. ÚS 838/07, or the Judgment of the European Court of Human Rights in the case of Wallová and Walla v. the Czech Republic, dated 26 October 2006). In other words, the possibility to place a child in an environment more suitable for their upbringing cannot in itself justify the violent removal of the child from its biological parents; such an infringement of the right of the parents to enjoy family life with their child must, in addition, be "necessary" with respect to other circumstances [the Judgment of the European Court of Human Rights in the case of Havelka and others v. the Czech Republic, dated 21 June 2007]. The bodies of public power also have positive commitments which are closely related to effective respect for family life. Therefore, as soon as the existence of a family bond is proven, the bodies of public power must in principle act in such a way that such a relation may develop, and adopt suitable measures for the purpose of reuniting a parent and child (Kutzner v. Germany, or Judgment file No. II. ÚS 838/07); these positive obligations include, in addition to active aid regarding personal, social, health and financial troubles, the obligation to inform parents and properly instruct them on the possible consequences of their actions (see the Judgment of the European Court of Human Rights in the case of W. v. the United Kingdom). The fundamental right to an undisturbed family life as a subjective public right, then, in accord with the case law of the European Court of Human Rights, also protects the right of a parent to have measures adopted by state bodies that focus on renewed coexistence with the child (see Judgment of the European Court of Human Rights in the case of Eriksson v. Sweden, dated 22 June 1989), this in as short a time as possible, with respect to the fact that the simple passage of time may result in irreparable consequence to relationships between children and a parent not living with them (see Judgment of the European Court of Human Rights in the case of Ignaccolo-Zenide v. Romania, dated 25 January 2000).

25. Conclusions contained in Judgment file No. I. ÚS 669/02 then correspond to the above mentioned facts: "[w]ith respect to the fact that a decision pursuant to the provisions of § 68 para. 3 of the Family Act is a considerable infringement of the relationship between parents and children and of the parental responsibility of the complainants, the conditions established in § 68 para. 1, clause a) of the Family Act must be met completely, and not a slightest doubt may exist that they are not satisfied in a specific case. What ensues from the text of the specified provisions is that an ordinary court must ascertain whether there is a genuine lack of interest in the child on the part of the parents, and must always take into consideration the efforts made by the parents and limits of their possibilities. When deciding on the non-existence of a genuine interest by parents in the child, the court must primarily evaluate whether the parents have a genuine inner bond with the children, and if so, which kind of bond. The court must thus assess also the external manifestations of parents towards children, towards bodies making

decisions in the case and so on, all this taking into consideration their efforts and possibilities, their social status, social orientation, level of general intelligence and education."

V.

26. As an introduction, and to justify the admissibility of the constitutional complaint, the Constitutional Court believes it necessary to define the nature and purpose of the proceedings pursuant to the provisions of 180a of the Civil Procedure Code; that is proceedings on determination whether approval by the parents of a child is necessary for putting the child up for adoption, since the very misunderstanding of such provisions is the basis for the lapses by the ordinary courts specified below.

27. Pursuant to the former legal arrangement, the fact whether the approval of a parent is necessary for putting a child up for adoption was decided upon within the scope of adoption proceedings, when such a decision was of a prejudicial nature and was dependent on the result of evidence, but in such a way that the purpose of adoption was not circumvented. This legal arrangement, however, collided with the principles of a fair trial, when the same, in consequence, resulted in denial of the proper protection of rights of the persons involved, in particular the right of the parents to have the opportunity to exercise their parental rights as an exercise of parental responsibility, but also the right of the minor to be taken care of, through the exercise of parental rights, in the first place, by their consanguineous parents and to grow up as part of their own family. The new legal arrangement established the independence of proceedings on whether approval by a parent for putting a child up for adoption is necessary, and thus established legal safeguards "so that the fundamental right of a parent to the exercise of their parental rights, as part of their parental responsibility towards a minor, ceases to be accepted and respected only after it is ascertained, in a proper – just – trial, that is in particular with complete participation by the parent themself, that a court found reasons for such a conclusion, when such reasons are determined by law and thus socially and morally acknowledged" (Hrušáková, M. et. all: Zákon o rodině. Komentář. / The Family Act. Commentary. 3rd edition. Prague: C. H. Beck. 2005, page 301). As for the nature and consequences of such proceedings, literature states that "[w]ith respect to the magnitude of legal consequences of such findings, since adoption of a child without approval of their parents is a very serious infringement of their parental responsibility, the law determines that verification of the fact whether the legal conditions for adoption of a child without approval of the parents are established shall be undertaken in the form of separate 'incidental proceedings'" (Holub, M., Nová, H., Sladká Hýklová, J.: Zákon o rodině. Komentář. / Act of Family. Commentary. 8th edition. Prague: Linde Praha. 2007, page 232). At a general level, parental responsibility means the sum of rights and obligations regulating child care, the administration of the child's assets and representation of the child in legal relationships with necessary expression of the obligation to protect the interests of the child (see Article 32 para. 4 of the Charter).

28. From the above facts it may be concluded that the proceedings according to the provisions of § 180a of the Civil Procedure Code, in connection with the

provisions of § 68 of the Family Act, are a serious infringement of parental rights, and the subject of the same is restriction of parental responsibility (see also paragraph 25), as an early stage of the parent being deprived of the same (adoption of the child). The same conclusion must be arrived at also when using the teleological method of interpretation, when the purpose of adoption is to compensate, for the minor, the lack of a stable family environment in instances when the consanguineous parents are not able (in a very restrictive sense, paragraph 24) or willing to provide the same; the originating relation between the adoptee and the adopter is the same as that between the parents and children (or, the parental responsibility of a consanguineous parent as a sum of their parental rights and obligations in relation to the minor is, through adoption, legally annulled; such parental responsibility passes to the adopter, see Hrušáková, M., page 272); in principle, approval of a legal guardian for the child being adopted, usually the consanguineous parent, is required for said adoption (see the provisions of § 67 para. 1 of the Family Act). Therefore, it is the right of the parent, within the scope of the exercise of their parental responsibility, to grant or not approval of such adoption; such a parent may be deprived of this right only following compliance with conditions prescribed by law by a decision of a court in proceedings pursuant to the provisions of § 180a of the Civil Procedure Code. In other words, even though these proceedings are, according to the hierarchy of the Civil Procedure Code, classified as separate, it is indubitable that such proceedings, due to their subject and consequences, must be considered a special type of proceedings on granting, restricting or depriving parental responsibility pursuant to the provisions of § 176 of the Civil Procedure Code.

29. With respect to the above, the Constitutional Court must state that the Supreme Court made a mistake when, proceeding from a simple designation of the proceedings according to the provisions of § 180a of the Civil Procedure Code and their independence within the scope of taxonomy of the procedural regulation, irrespective of the purpose of such proceedings (paragraphs 21 and 22), it purely formally rejected an appeal on a point of law by the complainant for inadmissibility pursuant to the provisions of § 237 para. 2, clause b) of the Civil Procedure Code, since, in its opinion, this was not a case of restriction or deprivation of parental responsibility or suspension of exercise of the same, or a case of irrevocable adoption. However, this opinion does not stand up in light of the facts specified above (paragraph 28), and the Constitutional Court thus inclined towards cassational action [similarly in Judgment file No. III. ÚS 405/03, dated 23 February 2006 (N 45/40 SbNU 373)], in relation to the resolution of the Supreme Court contested by the constitutional complaint (even though the complainant considered the same as correct, paragraph 6), when such a resolution does not comply with the requirements of constitutionality, and, in consequence, is related to the fact that the complainant was barred from claiming “in a determined procedure” their right at a court of justice (denegatio iustitiae), which, according to the constant case law of the Constitutional Court, established a violation of the fundamental right of the complainant to a fair trial pursuant to Article 36 para. 1 of the Charter.

30. As for the course alone of proceedings pursuant to the provisions of § 180a of the Civil Procedure Code, the Constitutional Court states that the Court does not identify itself with the conclusions of the ordinary courts and the doctrine on the court making a decision on compliance with conditions according to the provisions

of § 68 para. 1, clause a) of the Family Act as to the date of filing the petition [see paragraph 15 in fine, or "in this, the court makes a decision on compliance with these conditions always as to the date of filing the petition (an exception to the otherwise valid principle determined in § 154 para. 1 of the Civil Procedure Code)…", in Hrušáková, M., page 298)]. The above-specified conclusion is based on a mistaken interpretation of the period of continual genuine lack of interest on the part of the parent in the child pursuant to the provisions of § 68 para. 1, clause a) of the Family Act as a certain quasi term of forfeiture, when upon the expiry of six months without demonstrating an interest in the child, the parent "loses" a part of their parental responsibility to the scope of the right to grant or not approval of adoption (paragraph 28), when it is not necessary to examine reasons for such lack of interest, since such a period of time is sufficient for solving personal problems. Such an interpretation, however, is constitutionally non-conforming as it leads to non-proportional restriction of the right to family life of a parent and a child (paragraph 23). The Family Act determines that approval of a parent to adoption of a child is not required when, for a period of at least six months, the parent continually has not shown genuine interest in the child. It is evident even from a linguistic interpretation of the provisions in question that such a period was established by the legislature as a minimal term ("for a period of at least six months") and it must be applied as such when examining compliance with the conditions pursuant to the provisions of § 68 of the Family Act. This in consequence means that, from the petition of the child's guardian, it must be clear that the alleged lack of interest in the child by the parent lasts at least six months, and such a period of time expired at the earliest as to the date of filing the petition, otherwise the court automatically dismisses the petition. If such a condition is met, the court proceeds to ascertaining the qualified lack of interest in the child, and the court must also examine the conduct of the parent from the filing of the petition to the time of the issue of the decision, so that infringement of the fundamental rights of the parties to the proceedings is minimised to the greatest possible degree. Furthermore, the wording of the provisions of § 180b para. 1 of the Civil Procedure Code, which makes it possible for a parent to apply the rebus sic stantibus proviso, this at the earliest after the expiry of one year from legal effectiveness of the judgment, corresponds to such a conclusion. Should the Constitutional Court admit the interpretation adopted by the ordinary courts, this being that in the case of proceedings pursuant to the provisions of § 180a of the Civil Procedure Code, the principle that the circumstances at the time when a judgment is pronounced are decisive for the judgment is broken, the period of time for filing a petition under the provisions of § 180b of the Civil Procedure Code would be non-proportionally extended, such a period of time being, compared to the period according to the provisions of § 180a of the Civil Procedure Code, twice as long anyway. The above-specified facts are supported also by the circumstance that, with respect to the complexity of interpersonal relationships and the crisis situation which come into consideration, it is not possible to determine in gross a "term" for the parent to commence proper exercise of their parental rights, when such a term is rather of a subsidiary nature, but it is necessary to carefully and sensibly assess their conduct and possible reasons for not showing interest, and weigh up the various measures which come into consideration; in this, adoption (deprivation of parental responsibility) is the last resort.

31. As for the reasons for the decision by the ordinary courts, the Constitutional

Court states that the courts concluded that the complainant had not shown a continual genuine interest in the minor, when she did not visit the minor, did not phone her, did not write to her, was not interested in the state of her health and development, did not contribute to her support, and, furthermore, in no way solved her personal situation, especially regarding housing and property conditions (for more details see paragraphs 15 and 16). The Constitutional Court deems it proven that during the time considered by the ordinary courts (paragraph 30), the mother attempted only one instance of telephone contact, which, in harmony with the opinion of the court of appeal, cannot be considered a qualified interest in the child pursuant to the provisions of § 68 of the Family Act. However, the files (paragraph 13) make it absolutely clear that placement of the child at the Klokánek centre (30 kilometres from the place of residence of the mother) took place upon approval by the mother for reasons of the provision of the necessary period of time for solving her personal problems (domestic violence) and worries for the safety of the minor. At the time of placing the minor at the Klokánek centre, the mother lived with her boyfriend (the alleged father of the minor), on whom she depended in terms of alimentation and housing, and who committed physical and psychological violence against her. Furthermore, the files make it apparent that the complainant at first kept visiting the minor, the last time being on 11 August 2007 (paragraphs 13 and 14), and repeatedly declared that she had an interest in the child and that she wanted the minor back under her care after solving her personal problems. During the time of qualified lack of interest examined by the ordinary courts, the mother was changing address repeatedly, and for a considerable part of such a period of time she was, according to her own statement, completely lacking resources and without lodging. From May 2008, she again started to regularly visit the minor and made endeavours for her return to the complainant's care. The Constitutional Court has nothing left than to state that the ordinary courts have completely ignored the argumentation of the complainant, through which she repeatedly explained her passivity in the relationship to the minor; in addition to this, the ordinary courts not only did not deal with this argumentation, they even considered the same to be some "confession" and thus evidence proving the complainant's lack of interest in the child (paragraph 16). According to the Constitutional Court, the argumentation of the complainant is sufficient for proving objective reasons for which she could not visit the minor during the decisive period of time, and to a sufficient degree questions the compliance with the conditions anticipated in the provisions of § 68 of the Family Act (paragraph 25). The Constitutional Court does not share the rather evasive statement of the court of appeal, that the mother in no way adapted her personal situation when she actually established a new and properly functioning family, she provided herself, within the possibilities available to her, with housing, and has attempted, according to the instructions of social workers, to establish adequate housing suitable for bringing up the minor (sic!, oddly enough, such an environment is ineligible for the upbringing of a four-year-old minor, while the same is unobjectionable for the upbringing of an infant), this in addition to regularly visiting the minor.

32. In the opinion of the Constitutional Court, the conclusions of the ordinary courts on the necessity of declaration of a qualified lack of interest on the part of the complainant in the child, and thus legal release of the child for adoption, do not respect the conditions defined by constitutional law for infringement of the

fundamental right of the complainants to their family life, as are specified above (paragraph 23), or they lack a meaningful interconnection with any constitutionally protected purpose, when such conclusions formally correspond to the wording of the Family Act, but do not pursue any of the objectives specified in paragraph 2 of Article 8 of the Convention, and such an infringement is not, for the attainment of such objectives, "necessary in a democratic society." In addition, the necessity of infringement of the fundamental right of the complainants (a decision pursuant to the provisions of § 68 of the Family Act) is, in the given case, practically eliminated by the declaration by the guardian of the minor, when the guardian herself stated that in the case of the complainant, with respect to the change of her attitude, the release of the minor for adoption is not given consideration (paragraphs 15 and 17). The ordinary courts have thus committed acts of arbitrariness (paragraph 20), when they examined compliance with the conditions according to the provisions of § 68 of the Family Act only as to the date of filing the petition (paragraph 30); they have in no way dealt with the argumentation of the complainant (paragraph 31) and have not taken into consideration the subsequent conduct of the complainant towards the minor, whereby they violated the fundamental right of the complainants to a fair trial, which, in consequence, has lead to an infringement of her right to family life pursuant to Article 8 para. 1 of the Convention.

33. The whole case under consideration (including the proceedings pursuant to the provisions of § 180a of the Civil Procedure Code, ordering an institutional upbringing, entrusting the minor into foster care, and the intended adoption) is interwoven with the essential problem of the complainant, that is her poverty and resultant problematic housing situation. The Constitutional Court expresses regret that, under the conditions of a modern democratic law-based state of the 21st century, acknowledging the principles of social solidarity and pursuing increased protection of parenthood and family, resulting not only from the fundamental legal norms of the Czech Republic and international commitments (see, for example, the Convention on the Rights of the Child, adopted on 20 November 1989 in New York, promulgated through Notification by the Federal Ministry of Foreign Affairs of the Czech and Slovak Federative Republic No. 104/1991 Coll.), but in particular from the generally shared value framework of society, lack of funds may be the cause of such a draconic separation of a parent and child when the very lack of resources is, in comparison with other reasons, a problem which is effectively solvable by the state. Every person in their life may find themself, through no fault of their own or partly through their own actions, in a situation which they are not able to solve and which temporarily keeps them from properly taking care of their own child. In addition to the family and institutions of civic society, it is then primarily the state which should play the key role in such cases (paragraph 24) and should take and must take active steps to renewing the bond between the biological parent and their child, the more so in a situation when the complainant from the beginning expressed her efforts to cope with her burdensome personal situation under which she found herself not through her own fault. The Constitutional Court, not doubting the genuine intentions of the FOD and the bodies for social and legal protection of children, however, in this connection, must state that had these bodies devoted the same effort to actively aiding the mother as they made when obdurately taking a number of steps in order to restrict her parental rights, the minor would not have had to be in foster care today, and the possibly irremovable infringement of the relationship between the mother and the child need not have happened.

34. Even though it is superfluous with respect to what has been said above, the Constitutional Court wishes to emphasise that, in accordance with the case law of the European Court of Human Rights, it is necessary to infer, from the positive obligations of the state (paragraph 24) and from the necessity of restrictive interpretation of conditions for limitation of the right to family life (paragraphs 23 and 25), the obligation of the state to not only inform parents of the options for solving their burdensome personal situation and forms of potential help, but also to notify them of the consequences of their conduct, including the possibility of restricting parental responsibility or depriving them of the same (paragraph 28).

35. In conclusion, the Constitutional Court states that the Court proceeded to the cassation of the decisions contested by the constitutional complaint for the reasons specified above, and, therefore, the Constitutional Court has not further dealt with the objection of the complainant regarding the position of the body for social and legal protection of children as both the person putting forward the proposal and the guardian (paragraph 3). To this, the Constitutional Court stated that it fully identifies itself with the conclusions of the decision the European Court of Human Rights in the case of Havelka and others v. the Czech Republic quoted by the complainant; nevertheless, these do not completely apply to the case now under consideration, when, in proceedings pursuant to the provisions of § 180a of the Civil Procedure Code, the body for social and legal protection of children is not a party to the proceedings, but, under law, holds the position of guardian of a minor (see the provisions of § 68 para. 3 of the Family Act). Furthermore, the Constitutional Court believes it apt to add that they have considered the possibility of annulling merely the decision of the Supreme Court, this for reasons specified in paragraphs 26 to 29, but then, with respect to the nature of the case in which time plays an important role, proceeded to annulling all contested decisions.

36. Therefore, the Constitutional Court, for the reasons specified above, granted the constitutional complaint pursuant to the provisions of § 82 para. 2, clause a) of the Act on the Constitutional Court, and annulled the decisions contested by the constitutional complaint pursuant to § 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).