2009/07/28 - PL. ÚS 1/09: REHEARING FOLLOWING THE ECHR JUDGMENT

HEADNOTE

Under § 119b para. 3 of the Act on the Constitutional Court, after granting the rehearing, the Constitutional Court in its new Judgment proceeds from the legal opinion of the international court, in this given case from the Judgment of the European Court of Human Rights.

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

On 28 July 2009, the Constitutional Court Plenum, composed of Pavel Rychetský, Chairman of the Constitutional Court, and Justices Vlasta Formánková, Pavel Holländer, Vladimír Kůrka, Dagmar Lastovecká, Jan Musil, Jiří Nykodým, Miloslav Výborný, Eliška Wagnerová and Michaela Židlická, adjudicated in reopened proceedings in the case of a constitutional complaint by 1) Lubor Melich and 2) Martin Beck, both represented by Mgr. David Strupek, an attorney at law, the law firm with a registered office in Prague 1, Jungmannova 31, against a resolution of the Municipal Court in Prague dated 18 December 2002, file No. 5 To 427/2002; with participation by the Municipal Court in Prague as a party to the proceedings, and the Municipal Public Prosecutor's Office in Prague, with a registered office in Prague 2, Legerova 13, as a secondary party; an oral hearing having been dispensed with upon consent of the parties; as follows:

The Resolution of the Municipal Court in Prague dated 18 December 2002, file No. 5 To 427/2002, shall be annulled, since the fundamental right of the complainants established by Art. 6 para. 1, para. 2 and para. 3 clause d) of the Convention on the Protection of Human Rights and Fundamental Freedoms was violated in proceedings prior to issue of the same.

REASONING

1. By a petition sent by post on 27 March 2003, Lubor Melich and Martin Beck (hereinafter referred to also as the "complainants" or "defendants") claimed that the Constitutional Court should annul by judgment the decision specified in the heading issued by the Municipal Court in Prague (hereinafter referred to only as the "court of appeal") regarding their criminal case administered by the District Court for Prague 1 (hereinafter referred to only as the "court of first instance") under file No. 1 T 169/2001.

Circumstances of the case:
2. The factual and legal circumstances of the case are summarised in paragraphs 5

to 30 of the Judgment of the European Court of Human Rights (hereinafter referred to only as the "European Court") (dated 24 July 2008, in the case of Melich and Beck v. the Czech Republic, Application No. 35450/04) as follows.

3. The complainants were born in the years 1978 and 1977 and reside in Prague.

4. On 28 January 1999, around 10:00 p.m., an incident took place between the complainants and three police officers, B., L. and P., which turned into a scuffle. The description of the events given by the complainants differs from that of the police officers.

5. According to an official record developed on the same day by the three previously mentioned police officers, these events took place during an identity check initiated following the police officers' attention being attracted by a group of five persons allegedly smoking marihuana. Both complainants, using vulgar expressions, refused to follow the order to produce their identity documents, consequently police officer B. requested them to accompany him to the police station. Following this, the complainants produced their identity documents. Afterwards, the first complainant began to move away towards a tram stop, and police officer L. instructed him to stay at the site of the check and approached him. As soon as they were close enough together, the first complainant struck L. with his left arm and knocked him down. When police officer B. wanted to hamper him, the first complainant attempted to strike him with his fist in the face. B. and L. overcame the opposition of the first complainant, immobilised him on the ground and handcuffed him. After this, the first complainant attacked B. with his shackled arms and left foot. During this conflict, police officer P. prevented the second complainant from taking part in the scuffle, to which this complainant responded with punches; afterwards, P. with the help of L. handcuffed him. Two persons present, V. D. and I. D., voluntarily registered as witnesses. At 10:20 p.m., these witnesses and the complainants were transported to the police station. The record included that many persons had been standing at the tram stop near the venue of the check and disturbing the course of the check with their remarks, and thus the police officers did not feel safe.

6. According to the complainants, the group consisted of only four persons, comprising themselves and their girlfriends P. V. and J. J. They followed the order by the police officers to produce their identity documents without making any vulgar comments. Then they were requested to follow the police officers to the police station. When they were about to do so, the second complainant handed over to J. J. the keys from his flat, but when the first complainant moved to hand over his keys to P. V., police officer L. grabbed him, hit him and knocked him down. Police officer B. also engaged in the scuffle. At the same time, police officer P. kept the second complainant from engaging in the scuffle. Even though the second complainant admitted that he had come into physical contact with police officer P., he denied hitting him with his fist. According to the complainants, the bystanders did not approve of the actions of the police officers, except for one man who encouraged them and later participated in the proceedings as witness I. D. As for P. V. and J. J., the police officers refused to take them to the police station; both women attempted in vain to deliver their testimonies. Indeed, making a statement before a police body was only made possible to them as late as when

the parents of the complainants appeared at the police station, which was on 29 January 1999 at 3:00 a.m. The statements by P. V. and J. J. depicted the events in the same way as the complainants, even though they had had no chance to confer with the complainants about their depositions. Amongst other points, J. J. stated that the bystanders had considered the actions to be brutal and that a woman had even lent her a mobile phone so that she could call the police. Under Czech law, such explanations given prior to charges being brought against complainants were not possible to accept as evidence in subsequent criminal proceedings.

7. On 29 January 1999 at 6:00 p.m., the complainants were informed of being charged with the criminal act of assault on a public official and were interrogated. Affected by a night spent in a police cell, they declared that the incident had happened needlessly and expressed regret for the same, however, they denied having attacked the police officers. The first complainant only admitted that, after being handcuffed, he had struck one of the police officers with his head and knocked him to the ground, this after the police officer had forbidden him from handing over the keys to P. V. After the interrogation, the complainants were released.

8. With respect to the fact that police officer L. no longer served in Prague, he was examined elsewhere on 30 March 1999 following a request to such effect. The defence counsel of the complainants excused themselves from this examination. Subsequently, however, they stated that whole sections of the record from this deposition are identical to the wording of the official record dated 28 January 1999. During this examination, L. admitted that when the first complainant was moving away from the site of the check, the same went to approach one of the young women standing at the tram stop.

9. On 8 April 1999, the investigator examined witness I. D. in the presence of the defence counsel of the complainants. The complainants stated that this witness's deposition was in favour of the police officers, but that his version of the events differed from the version given by the police. However, he stated that he had overheard the police officers' request for the complainants to accompany them to the police station.

10. On 12 April 1999, the examination of P. V. and J. J. was held, both P. V. and J. J. confirming the statements of the complainants. The deposition of P. V. was interrupted with a warning that in the case of giving false testimony, criminal prosecution might follow. Amongst other points, she stated that she had contact information for another person who had been present at the given events, specifically for Z. Š. However, the investigator dismissed the proposal by the defence counsel for examining said person on the grounds of the expectation that Z. Š. would actually testify in favour of the complainants. J. J. specified that during the incident, she had called the police using a mobile phone belonging to one of the persons present. On the basis of a proposal by the defence counsel of the complainants, another witness, M. H., was obtained. This witness, in her deposition on 16 April 1999, specified that she had not seen the beginning of the scuffle; afterwards there perhaps was some physical conflict but not violence; that the conduct of the police officers was quite proper and that the complainants responded with sneers and provocative gestures.

11. On 16 April and 23 April 1999, the investigator examined police officers P. and B. in the presence of attorneys at law of the complainants. The complainants stated that neither P. nor B. had been able to explain why the first complainant should move away from the site of the check when his identity document was in the hands of the police officers.

12. On 25 May 1999, the complainants were indicted for the criminal act of assault on a public official.

13. During the trial held on 18 August 1999, the court of first instance heard both defendants and police officers L. and P. These police officers denied that they had requested the complainants to accompany them to the police station; according to P. such a request would have been nonsense when identity documents were being shown. The court also heard witnesses P. V., J. J., M. H. and Z. Š. The witness for the defence, Z. Š., said that the police officers had requested that the complainants accompany them to the police station, and that the complainants had definitely not attacked them. The deposition of witness I. D., who was, on the basis of § 209 para. 1 of the Criminal Procedure Code, heard in a separate room as he was afraid of vengeance by the complainants, was brought to the courtroom via sound transmission.

14. Police officer B. was heard during the trial on 29 September 1999. According to him, the complainants had been requested to make an appearance at the police station. He did not remember when exactly this had taken place, but declared that this request had definitely not been made before the complainants showed their identity cards.

15. In the closing argument, the defence counsel of the complainants pointed out that the statement by the police officers was confirmed only by the deposition of I. D., which, however, contains a number of false statements, and that it would not be logical for the first complainant to move away from the site of the check after handing over his identity card to the police officer. Furthermore, they stated that the police officers by requesting the complainants to follow them to the police station had proceeded in contravention of the Act on the Police of the Czech Republic, and thus no longer held the position of public officials.

16. By a judgment dated 29 September 1999, the court of first instance found the complainants guilty of committing the criminal act of assault on a public official and imposed on them a suspended sentence of imprisonment for two months. In particular, the court stated that the version of events by the police was confirmed at least in its major points by the deposition of an impartial witness, I. D., as well as the deposition by M. H., who confirmed the provocative behaviour of the complainants. As for the depositions of P. V. and J. J., the court reached the opinion that the same could be, to some degree, influenced by the fact that they are the girlfriends of the complainants. The court also expressed certain doubts on the deposition of Z. Š., as she was in contact with P. V. and J. J.

17. The second complainant filed an appeal in which he contested the assessment of the evidence, which he claimed to be incorrect, and questioned the balance in

the assessment of the reliability of witnesses. The second complainant pointed out that due to a lapse on the part of the police officers, who had failed to obtain at least several witnesses from the approximately 30 to 50 onlookers, the facts of the case could not be ascertained sufficiently. The complainant also reproached the court for not addressing the motives of the conduct which had been imputed to him. Furthermore, he deemed that the police officers, who had violated the Act on the Police of the Czech Republic, were not covered by the protection pertaining to public officials during the incident.

18. After the end of the open court session, which took place on 13 March 2000, the court of appeal dismissed the appeal by the second complainant. The court found that the proceedings before the court of first instance had not suffered from any material defects which could affect clarification of the case or exercise of the rights of the defence. According to the court, all available pieces of evidence were presented and assessment of the same was logical and sufficiently justified. The court of appeal also concluded that the procedure of the police officers had been in accordance with the law.

19. On 16 October 2000, the second complainant contested the decision dated 13 March 2000 through a constitutional complaint, referring to his right to a fair trial, presumption of innocence and the principle in dubio pro reo, guaranteed by Article 6 para. 1 and para. 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to only as the “Convention”). He stated that the bodies involved in criminal proceedings had proceeded from conviction on his guilt constructed a priori, that the only objective of the criminal proceedings was to secure his conviction, and that the police officers intentionally failed to obtain other witnesses, since those persons present at the site of the incident deemed their actions to be inappropriate. The complainant finally claimed that the witnesses for the defence had been considered unreliable and that the Municipal Court had failed to deal with his objections.

20. By a Judgment dated 4 October 2001, file No. III. ÚS 617/2000, the Constitutional Court granted the constitutional complaint filed by the complainant and annulled the decisions of both courts in charge of adjudicating in previous proceedings. The Constitutional Court reached the opinion that the conclusions of the court of appeal were not convincing, that lapses had occurred prior to the commencement of the proceedings (witnesses had not been obtained), and that the decision by the investigator not to examine Z. Š. was in contravention of the principles of a criminal trial, since the same was equal to the preliminary selection of evidence. In addition, the court of appeal, when assessing the depositions of P. V., J. J. and Z. Š., did not respect the principle of free evaluation of evidence, and did not justify their conclusion concerning their being unreliable. Besides, also the description of events submitted by the police officers and by I. D. lacked accuracy, which could only in part be explained by the fact that various phases of the incident might have been perceived by the parties involved in different ways, or possibly not witnessed at all. The Constitutional Court stated that the deficiencies in the evidence, or merely gaps in the factual basis of the case, cannot be to the detriment of the defendants, and that a certain version of the facts cannot be taken as proven by omitting evidence which does not support the same. According to the Constitutional Court, the investigation was certainly influenced by the fact

that the police officers, however they deemed the behaviour of the complainants to be unlawful, had not secured sufficient evidence in order to describe the facts of the case in as much detail as possible, including circumstances testifying in favour of the complainants, this despite some persons present offering themselves as witnesses.

21. In accordance with the principle beneficio cohaesionis, the contested decisions were annulled also in relation to the first complainant, even though he had not filed any constitutional complaint.

22. On 13 February and 10 April 2002, two trials were held before the court of first instance, during which pieces of evidence were newly presented. The majority of persons heard made identical depositions as before or referred back to their previous depositions; the first complainant added that the police officers, before handcuffing him, had used restraining grips on him. I. D. was again heard in a separate room, regardless of the objection by the defence that the statutory conditions for making this procedure possible were not met, in relation to which the defence counsel in particular stated that there had been no attempt at vengeance and that they had personal data concerning I. D. available. Police officer L. declared, with respect to the flagrant similarities between his deposition following a request to such effect on 30 March 1999 and the official record dated 28 January 1999, that he simply had read the record before being examined.

23. On 3 June 2002, the court of first instance delivered the second judgment, whereby they found the complainants guilty of committing the criminal act of assault on a public official and imposed on them a suspended sentence of imprisonment for two months. The court stated that the deposition of the first complainant made on 13 February 2002 raised certain doubts as previously he had not mentioned any use of restraining grips, and this circumstance had not resulted from the deposition of the second complainant either. To the contrary, the police officers presented mutually congruent versions, confirmed by the testimonies of I. D. and M. H. The court of first instance stated that they did not trust the depositions of P. V. and J. J., since they were girlfriends of the defendants, who could be influenced to depose in their favour; in addition, M. H. stated that one of these women had acted in a considerably hysterical way and verbally assaulted the police officers.

24. The complainants appealed, stating that the court of first instance did not follow the conclusions declared by the Constitutional Court in their Judgment dated 4 October 2001 regarding the lapses which had occurred prior to the commencement of the proceedings, and regarding the unreliability of P. V. and J. J. The complainants also pointed out that two pieces of evidence were presented in contradiction with the law. Firstly, everything seemed to indicate that police officer L. had the text of the official record available during his preparatory examination; secondly, conditions for examining I. D. in a separate room were not met, and I. D. did not want to be confronted with the complainants because he was not speaking the truth. Finally, the complainants contested the assessment of the evidence.

25. The court of appeal amended the evidence with an examination of I. D.

conducted in the courtroom in the presence of the defence counsel of the complainants, but in the absence of the complainants themselves.

26. At the conclusion of the public hearing held on 18 December 2002, the court of appeal denied the appeal by the complainants. The court of appeal considered as proper the procedure employed by the court of first instance which did not believe the defendants whose depositions were conflicting in part. In this respect, the court of appeal particularly referred to the examination of the first complainant dated 29 January 1999, when the same declared that he had struck L. with his head; according to the court, the complainant thereby unambiguously confessed that he had assaulted the police officer. With respect to the fact that P. V., J. J. and Z. Š. did not mention what had happened before the first complainant was handcuffed, i.e. the above-mentioned physical assault, their depositions seemed to be unconvincing. According to the court of appeal, it was not proven that the given official record was read to police officer L. prior to his examination; and hearing I. D. in a separate room was not in contradiction with the law, when his identity was known and he was examined in the presence of the defence counsel of the defendants prior to the commencement of the proceedings. According to the court of appeal, I. D. was not obliged to justify his application for the examination being held in the absence of the defendants, and the chairperson of the panel could grant such an application in accordance with § 209 para. 1 of the Criminal Procedure Code, when such a chairperson deemed the same reasonable. The court of appeal eventually stated that the procedure of the police officers on the day when said events happened had been in accordance with the law and that the complainants were not requested to appear at the police station after producing their identity cards; as was stated by police officer B. himself, such a request would have been nonsense at the given moment. If I. D. indeed overheard such a request, he perhaps did not hear it completely or misinterpreted the same. Even though it is not possible to rectify lapses which took place prior to the commencement of the proceedings, which the Constitutional Court pointed out, the evidence secured was, according to the court, sufficient to express a conclusion on the guilt of the complainants.

27. On 26 March 2003, the complainants filed a constitutional complaint. With reference to Article 6 of the Convention, they declared that the criminal proceedings as a whole had not complied with the criteria of a fair trial and that the courts had not respected the principles of presumption of innocence and in dubio pro reo. In their opinion, a cumulation of a whole number of lapses is indicative of bias by ordinary courts, the conclusions of which were in extreme contradiction with the ascertained facts of the case. In particular, the complainants objected that the court of appeal, referring to the examination conducted on 29 January 1999, fabricated a confession by the first of them. In such a deposition, the first complainant declared that he hit the police officer only after being handcuffed, that is after the end of the scuffle, while the court interpreted this event as occurring at the beginning of the affray, in order to be able to cast doubt on the reliability of witnesses P. V., J. J. and Z. Š. In addition, the file contains nothing to support the conclusion that the complainants were not, after producing their identity cards, requested to appear at the police station; in fact, on 29 September 1999, police officer B. allegedly declared the opposite. The complainants also repeated their objections concerning the examination of L. held

on 30 March 1999, and concerning that of I. D. As for the latter, they objected to the argument pronounced in the decision of the court of appeal dated 18 December 2002, according to which the court was allowed to arbitrarily assess whether or not the witness was to be heard in the absence of the defendants. They also insisted on their declaration that the police officers intentionally had not obtained more witnesses to the given incident.

28. By a decision dated 25 March 2004, file No. I. ÚS 184/03, which was delivered to the attorney at law of the complainants on 2 April 2004, the Constitutional Court rejected the constitutional complaint as manifestly unfounded. The Constitutional Court stated that the objections of the complainants had been particularly aimed at the facts of the case as ascertained by the court and on the presentation and assessment of evidence. According to the Constitutional Court, however, the proceedings were administered in a proper and expeditious manner and in accordance with procedural rules. The evidence gathered unambiguously testified to the guilt of the complainants, and the courts sufficiently explained their deliberations as well as the opinion on the reliability or otherwise of P. V., J. J. and Z. Š. The rights of the defence were not violated by examining I. D. pursuant to § 209 of the Criminal Procedure Code, and the facts of the case were ascertained to the degree necessary to allow a judgment to be passed. The Constitutional Court finally stated that the objections contained in the complaint are equal to the objections specified in the appeal; therefore, the Court referred to the reasoning of the judgment of the court of first instance and to reasoning of the decision of the court of appeal dated 18 December 2002.

29. The complainants filed a complaint (application) to the European Court against this resolution, or against the Czech Republic as a signatory to the Convention. The European Court, in the above-specified judgment dated 24 July 2008, declared, amongst other facts, that the proceedings resulting in the conviction of the complainants violated Article 6 para. 1, para. 2 and para. 3, clause d) of the Convention.

30. On the basis of this, using § 119 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 filed a petition for a rehearing. The Constitutional Court stated that the conditions for dealing with such a petition were met, and decided on the same by a resolution dated 28 April 2009, file No. Pl. ÚS 1/09 as follows: the Constitutional Court granted a rehearing in the case of a constitutional complaint by the complainants adjudicated under file No. I. ÚS 184/03 (verdict I), annulled its resolution dated 25 March 2004, file No. I. ÚS 184/03-27 (verdict II), and decided that the case originally decided upon under file No. I. ÚS 184/03 shall continue under file No. Pl. ÚS 1/09.

Argumentation of the complainants contained in the constitutional complaint and the petition for the rehearing:

31. In the constitutional complaint originally dealt with under file No. I. ÚS 184/03, the complainants stated that the criminal proceedings administered against them as a whole did not fulfil the criteria for a fair trial pursuant to Art. 6 of the Convention, or Art. 36 et seq. of the Charter of Fundamental Rights and Basic

Freedoms (hereinafter referred to only as the "Charter") even after the proceedings following the Judgment of the Constitutional Court dated 4 October 2001 had been further elaborated. The procedure of the ordinary courts of both instances violated the principle of presumption of innocence, since the courts clearly proceeded from an anticipatory conviction on their guilt, and doubts were not interpreted in favour of the complainants; they referred to the Judgment of the European Court dated 6 December 1988 in the case of Barberá, Messegué and Jabardo v. Spain (Application No. 10590/83), and a publication by Bohumil Repík, "Evropská úmluva o lidských právech a trestní právo / European Convention on Human Rights and Criminal Law", Orac, 2002, p. 182.

32. They criticised the court of appeal also for the most crucial lapse, when the court "on purpose fabricated the confession of the first complainant, which since then became entwined around the decision as a whole, and, in a similar way, they essentially distorted the deposition of witness B. in the part decisive for assessing the lawfulness of the actions by the patrol of the Police of the Czech Republic."

33. In addition, the complainants criticised the ordinary courts for their violation of principles of a fair trial in other particulars, which, in themselves, seem to be less important, however, as a whole they raise doubts on the impartiality of the courts and on compliance with the principle of presumption of innocence. Defects were not remedied as per the previous Judgment of the Constitutional Court. Furthermore, the complainants referred to two cases (that is the "confession" of the first complainant and the deposition of witness B.) in which, in their opinion, the conclusions of the court of appeal were in extreme contradiction with the ascertained factual circumstance. They also referred to other cases (the deposition of witness L. in preparatory proceedings, the deposition of witness D., lapses by the police officers prior to the proceedings and the assessment of evidence), when, in their conviction, the principles of a fair criminal trial were violated.

34. In the petition for the rehearing, the complainants repeated argumentation already applied in the application to the European Court and in the preceding constitutional complaint. They expressed the opinion that the Constitutional Court should, in the reopened proceedings, deal with the constitutional complaint to the full extent of the same, including such part thereof with which the European Court has not dealt.

The legal opinion of the European Court expressed in its Judgment dated 24 July 2008:

35. The provisions of § 119b para. 3 of the Act on the Constitutional Court bind this Court to base its new Judgment on the legal opinion of the European Court. In the case under examination, this legal opinion was contained in paragraphs 47 to 50 of the above-quoted Judgment of the European Court dated 24 July 2008 as follows.

36. In the introduction, the European Court noted that the requirements of Article 6 para. 3 of the Convention express special aspects of the right to a fair trial that is generally guaranteed by paragraph 1 (Judgment dated 2 October 2001 in the case of G. B. v. France, Application No. 44069/98, para. 57), and that the presumption of innocence established in paragraph 2 of Article 6 of the Convention is one of the

constituents of a fair criminal trial required by paragraph 1 of Article 6 of the Convention (Judgment dated 23 July 2002 in the case of Janosevic v. Sweden, Application No. 34619/97, para. 96). With respect to the fact that the objections applied in terms of Article 6 para. 1, para. 2 and para. 3, clause d) of the Convention overlap, the European Court deemed it appropriate to deal with the same from the viewpoint of all these three provisions together.

37. The European Court also noted that in a case to which no arbitrariness is attributed, the European Court is not to replace the domestic courts in interpreting the law and assessing factual circumstances and evidence. The point is that the European Court cannot itself examine the factual circumstances which led the domestic court to adopt this or that decision, since, in such a case, the European Court would elevate itself to a position of a court of third or fourth instance and thus exceed the limits of its mission [Judgment dated 24 November 1994 in the case of Kemmache v. France (No. 3), Application No. 17621/91, para. 44]. Furthermore, the presentation of evidence is governed, first of all, by the norms of national law. The domestic courts are thus principally competent to assess evidence collected by them and decide on the relevance of evidence proposed by the defendants (Judgment of the Grand Chamber dated 6 May 2003 in the case of Perna v. Italy, Application No. 48898/99, para. 29). Pursuant to the Convention, the task of the European Court is to examine whether the proceedings under examination were fair as a whole, i.e. including the manner of submitting evidence [G. B. v. France, see above, para. 59; Judgment of the Grand Chamber dated 25 March 1999 in the case of Pélissier and Sassi v. France, Application No. 25444/94, para. 46].

38. The European Court also stated that the principle in dubio pro reo, being a specific expression of the principle of presumption of innocence (Judgment dated 27 September 2007 in the case of Vassilios Stavropoulos v. Greece, Application No. 35522/04, para. 39), requires that judges do not proceed from an a priori held conviction that the defendant committed the act which is imputed to them, so that the burden of evidence rests on the prosecution, and that possible doubts are employed to work to the benefit of the defendant (Judgment dated 28 November 2002 in the case of Lavents v. Latvia, Application No. 58442/00, para. 125).

39. In the given case, it was not the task of the European Court to comment on the guilt of the complainants or on whether the domestic bodies had correctly assessed the facts of the case and correctly applied the law. The Court’s task was to review the statement of the complainants that the proceedings as a whole were not in accordance with the guarantee of a fair trial (see, mutatis mutandis, Judgment dated 22 February 2007 in the case of Perlala v. Greece, Application No. 17721/04, para. 25).

40. The European Court firstly stated that the Constitutional Court in its first decision dated 4 October 2001 discovered certain violations of the principle of fairness. One of its admonitions directed to the ordinary courts related to the lack of evidence, in particular the fact that the police officers had not obtained more witnesses, which negatively affected the subsequent investigation. Nobody denied that such a lapse was not rectifiable. However, no consequence ensued from the opinion of the Constitutional Court that a lack of evidence or the insufficiently

ascertained facts of the case cannot be employed to the detriment of the defendants. In this connection, the European Court stated that the Government did not at all deal with the fact that witness V. D., whose identity was ascertained on the day of the incident, has never been examined, even though her examination, according to the complainants, was determined to take place on 18 December 2002.

41. Another criticism voiced by the Constitutional Court applied to insufficient reasoning for the unreliability of witnesses P. V., J. J. and Z. Š. In proceedings which followed the announcement of the Judgment dated 4 October 2001, the court of first instance nevertheless maintained its previous reasoning, i.e. that P. V. and J. J. were girlfriends of the defendants. The court of appeal amended these deliberations with the fact that these witnesses had not mentioned any physical assault on police officer L., which the first complainant had allegedly made before being handcuffed. This statement, however, brought vigorous disagreement from the complainants, who declared that it was a distortion of the deposition of the first of them made on 29 January 1999. Even though such an objection was one of the main arguments raised by the complainants before the Constitutional Court, in addition to being one relating to the "rights and freedoms" guaranteed by the Convention, thus requesting a specific and clear response (see, mutatis mutandis, Judgment dated 28 June 2007 in the case of Wagner and J. M. W. L. v. Luxembourg, Application No. 76240/01, para. 96), the Constitutional Court, in its decision dated 25 March 2004, restricted itself to the statement that the explanation of the unreliability of witnesses, submitted by the ordinary courts, had sufficed.

42. The European Court further stated that even though the Convention does not prohibit the possibility of examining a witness in the absence of the defendant if the defendant's attorney is present, such an exception from the guarantees established by Article 6 of the Convention must be interpreted restrictively. However, the ordinary courts did not explain satisfactorily why they applied, in the given case, § 209 para. 1 of the Criminal Procedure Code, when they first heard I. D. in a separate room and then in the courtroom but in the absence of the defendants. The opinion of the court of appeal that I. D. was not obliged to justify his application for being examined in the absence of the defendants, and the lack of communication by the courts regarding the statement of the complainants that they had in no way whatsoever intimidated the witness, appear to be, in this respect, incompatible with the principle of fairness and transparency. Such procedure creates an impression that the judges acted on the basis of an a priori accepted conviction of the guilt of the defendants.

43. The European Court finally stressed the importance which must be placed on how matters appear from the outside, and the increased sensitivity by the public regarding guarantees of a proper judiciary (Judgment dated 30 October 1991 in the case of Borgers v. Belgium, Application No. 12005/86, para. 24; Judgment of the Grand Chamber dated 12 May 2005 in the case of Öcalan v. Turkey, Application No. 46221/99). At the same time, the European Court noted that as regards the issue of fairness, the contracting parties have less leeway for discretion in the area of criminal prosecution than in the area of civil litigations (Judgment dated 27 October 1993 in the case of Dombo Beheer B.V. v. the Netherlands, Application No.

14448/88, para. 32). With respect to these circumstances, the European Court deemed that the effects of all the above-specified difficulties were, in entirety, so restricting in terms of the rights of the defence that the principle of a fair trial established in Article 6 was violated. Therefore, the European Court did not consider it necessary to comment on other objections applied by the complainants.

44. In its conclusion, the European Court stated that in the case under examination, Article 6 para. 1, para. 2 and para 3, clause d) of the Convention were violated.

Substantive examination of the constitutional complaint in the reopened proceedings

45. The Constitutional Court further appended the requested file developed by the court of first instance, file No. 1 T 169/2001, and its own files III. ÚS 617/2000 and I. ÚS 184/03. With respect to the so ascertained factual and legal basis specified above, the Court had no other option than to state that the conditions for the procedure pursuant to § 82 para. 2, clause a) in connection with § 119b para. 2 to para. 5 of the Act on the Constitutional Court had been met and the constitutional complaint within the reopened proceedings must be completely granted. In relation to this, the Court proceeded from the provisions of § 119b para. 2 of the Act on the Constitutional Court and decided on the original petition; that is on the constitutional complaint dated 26 March 2003 (delivered to the Court on 28 March 2003), not on a new formulation of the proposed verdict of the same stated in the petition for the rehearing dated 21 January 2009. The petition for the rehearing serves to ensure that the original petition can possibly be decided upon again from the viewpoint of the legal opinion expressed by the international court, not that a new petition should be filed. Therefore, only the decision of the court of appeal dated 18 December 2002 (cf. Judgment dated 8 July 2008 in case file No. Pl. ÚS 13/06, para. 25; http://nalus.usoud.cz) was the subject of decision-making. The Constitutional Court did not accept other petitions by the complainants for a new "comprehensive" dealing with the constitutional complaint specified in the petition for granting the rehearing, with a reference to its case law, according to which, in reopened proceedings, it is not necessary to re-assess other circumstances of the case, since this would further augment an already exceptional intervention into the final decision made by a body of a sovereign country (cf. the above-quoted Judgment dated 8 July 2008 in case file No. Pl. ÚS 13/06; http://nalus.usoud.cz).

46. Under § 119b para. 3 of the Act on the Constitutional Court, after granting the rehearing, the Constitutional Court in its new Judgment proceeds from the legal opinion of the international court, in this given case from the Judgment of the European Court of Human Rights dated 24 July 2008 in the case of Melich and Beck v. the Czech Republic, Application No. 35450/04, which declared a violation of the fundamental right of the complainants to a fair criminal trial under Art. 6 para. 1 of the Convention, a part of which is formed by the principle of presumption of innocence established in Article 6 para. 2 of the Convention, and the right to have adequate time and facilities for the preparation of defence under Art. 6 para. 3, clause b) of the Convention.

47. Therefore, the Constitutional Court, in the reopened proceedings, without an

oral hearing after the parties agreed to dispense with the same, completely granted the constitutional complaint, which means that the case is returned to the court of appeal for the appeal to be dealt with anew. It will be the task of the court of appeal to assess, within new proceedings, the appeal by the complainants against the judgment by the court of first instance dated 3 June 2002, file No. 1 T 169/2001-218 in such a manner that would respect Art. 6 of the Convention.

Note: Judgments of the Constitutional Court cannot be appealed.

In Brno on 28 July 2009

Pavel Rychetský
Chairman of the Constitutional Court