

1994/10/12 - PL. ÚS 4/94: ANONYMOUS WITNESS

HEADNOTES

1. The purpose of the right to have one's case conducted in public, in connection with the right to give one's view on all admitted evidence, is to provide the accused in a criminal trial the chance to test incriminating evidence in the presence of the public. In the case of witness testimony, there are two parts to this process: the first is the examination of the accuracy of factual assertions, the second is then the chance to test the credibility of the witness. Therefore, the practice of using anonymous witnesses restricts the accused's opportunity to test the credibility of witness testimony that incriminates him, since it excludes the possibility of his addressing the witness personally and of commenting on his credibility. Therefore, the accused's right to present a defense is restricted, a fact which does not conform to the principle of the accusatorial process or the principle of the equality of parties.

2. Fundamental rights and basic freedoms may be restricted, despite the fact the constitutional text makes no provision therefor, only in the case that two such rights come into conflict with each other. There is a rudimentary maxim that a fundamental right or basic freedom may be restricted only for the sake of another fundamental right or basic freedom. Should the Court reach the conclusion that it is reasonable to give priority to one of the two conflicting fundamental rights, it is necessary, as a condition of the final decision, to take all possible steps to minimize the impingement of one upon the other. This principle can be inferred from Article 4 para. 4 of the Charter of Fundamental Rights and Basic Freedoms,¹⁾ namely to the effect that fundamental rights and basic freedoms must be preserved not only when applying provisions on the limits of the fundamental rights and basic freedoms, but also analogously in the case that they are bounded as the result of a conflict between two rights.

3. When impinging seriously upon the right of the accused to present a defense, and thus upon the principle of fair procedure, it was the duty of the legislators, therefore, to seek to minimize this impingement.

4. The goal of a criminal proceeding is not merely the "just punishment of a perpetrator"; the goal of a criminal proceeding is also to have a fair procedure. The existence of due process is an indispensable condition of the existence of a democratic, law-based state.

5. A statutorily defined time period, limiting the permissible duration of custody, consequently must be considered as an indispensable period of time during which limitations are placed upon the personal freedom of the accused (or the defendant), to whom the presumption of innocence applies, which bodies active in criminal proceedings are allotted for the completion of the proceeding. It follows from this that, in the absence of statutorily defined grounds for prolonging custody, before a body active in criminal proceedings may do so, it must show that, due to serious reasons, the proceeding could not have been completed within the allotted time period.

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

of the plenary session of the Constitutional Court of the Czech Republic of 12 October 1994 file No PL ÚS 4/94 relating to the petition of a group of 44 members of the House of Deputies of the Parliament of the Czech Republic for the annulment of § 55 Para 22) of the provision expressed in § 74 Para 14) in words "(§ 68, 69, 72, 73, 73a), except for the decision about its prolongation (§ 71 Para 2, 5)," and the provision § 209 Act No 141/1961 Coll., on criminal procedure (Code of Criminal Procedure),³⁾ in the wording of later regulations (the finding was published under No 214/1994 Coll.).

As of the day of March 1, 1995, § 55 Para 2,2) § 2093) and § 74 Para 14) in words "(§ 68, 69, 72, 73, 73a), except for the decision about its prolongation (§ 71 Para 2, 5)," of Act No 141/1961 Coll., on criminal procedure (Code of Criminal Procedure), in the wording Act No 57/1965 Coll., Act No 58/1969 Coll., Act No 140/1969 Coll., Act No 49/1973 Coll., Act No 29/1978 Coll., Act No 43/1980 Coll., Act No 159/1989 Coll., Act No 178/1990 Coll., Act No 303/1990 Coll., Act No 558/1991 Coll., Act of the Czech National Council No 25/1993 Coll., Act No 115/1993 Coll., and Act No 292/1993 Coll.

REASONING

1. On 23 February 1994 the Constitutional Court of the Czech Republic received a petition of 44 members of the House of Deputies of the Parliament of the Czech Republic to commence the proceedings for the annulment of § 55 para 2,2) of a part of § 74 para 14) expressed by words "(§ 68, 69, 72, 73, 73a), except for the decision about its prolongation (§ 71 Para 2, 5)," and the provision of § 209 of the Code of Criminal Procedure,³⁾ in the diction of Act No 292/1993 Coll.

2/a. (1) In connection with § 55 para 22) and § 2093) of the Code of Criminal Procedure, in the wording of Act No 209/1993 Coll., the petitioners object against its being contradictory to Art. 38 para 2 of the Charter of Basic Rights and Freedoms,⁵⁾ and further Art. 14 para 3 e) of the International Convention of Citizens Rights and Political Right, and finally, to Art. 6 para 3 d) of the Convention on the Protection of Fundamental Rights and Basic Freedoms. In the opinion of the petitioners the quoted provisions of the Code of Criminal Procedure are at variance with the mentioned provisions of the Charter of Human Rights and Freedoms and international conventions according to Art. 10 of the Constitution of the Czech Republic,⁶⁾ since "an anonymous examination of a witness rules out evidence by bringing the accused face to face with the witness, if his testimony does not correspond with the testimony of the witness concerning serious circumstances and if there is no other way of clarifying the difference... Excluding this testimony means restricting the finding of the factual state of things and a careful elucidation of the circumstances testifying in

favour of the accused or incriminating him (according to the revised § 2 para 5 of the Penal Code7))." The petitioners point further, in support of their basic argument, to the uncertainty of the differentiating feature of the unacceptability of anonymous evidence, as expressed by the adverb "obviously", and namely to the possible misuse of the assaulted provisions of the Penal Code. In connection with the objected discrepancy regarding the Convention on the Protection of Human Rights and Basic Freedoms, the petitioners argument also in using case law of the European Court of Human Rights.

The Chairman of the House of Deputies of the Parliament of the Czech Republic expressed his opinion concerning the petition for reasoning of the objected provisions of the Code of Criminal Proceedings: "According to the reasoned statement the sense of the drafted revision of the Code of Criminal Procedure resides, among others, in offering a better protection to the witnesses that can be exposed to verbal and brachial attacks for their testimony, or only for their decidedness to testify. In accordance with the prevailing tendency in the European legal orders the contradictory aspect of the proceedings in the process of submitting evidence is being strengthened and more stress is laid upon the principle of equality of the parties before the court.... It follows from the above that the adopted legal regulation expresses the effort to tune in the mutual rights and the position at the side of the witness, and on the other side that of the accused. The Act is based upon the fact that a witness should be offered sufficient protection in case he may be threatened by obvious danger for having met his legal duty without, however, having impaired the right of the accused to defense, on the other hand.

(2) Since the petition arguments that the cited provisions of the Code of Criminal Procedure are at variance not only with the Charter of Fundamental Rights and Freedoms, but also with international conventions according to Art. 10 of the Constitution of the Czech Republic,⁶) it should be pointed, first of all, to the existing international case law to the given problem:

In cases where the submitter was condemned upon the basis of the testimony of anonymous witnesses that the defense had no way of hearing [Kostowski v. Netherlands (1989), Windisch v. Austria (1990)], the European Court of Human Rights repeatedly stated the violation of Art. 6 para 3 d) of the Convention on the Protection of Human Rights and Basic Freedoms.

In these cases a condemning judgment upon the basis of the testimony of an anonymous informer took place on national level, such testimony that was cardinal for the statement of the Court, however, was not executable during oral hearing. The mentioned judgments of the European Court of Human Rights, accordingly, allow two-fold interpretation: the first is the refusal of anonymous testimony in the position of possible convicting evidence for its discrepancy with the right for defense and the principles of fair procedure expressed in Art. 6 of the Convention on the Protection of Human Rights and Basic Freedoms, the second is the application of the general principle of oral proceedings conducted in the public, obliging the execution of all evidence in oral proceedings, allowing the accused to put forth his rights according to Art. 6 pare 3 d) on the Convention on the Protection of Human Rights and Basic Freedoms.

(3) The development of rights and freedoms giving guarantee of inviolability of personal freedom, has been inseparably connected with the development of their procedural

guarantees. This development has led to the establishment of procedural principles of impartial proceedings (right for fair trial).

The constitutional framework of procedural rights is comprised both within the Charter of Fundamental Rights and Freedoms, and in the international conventions according to Art. 10 of the Constitution of the Czech Republic.⁶⁾

§ 55 para 22) and § 2093) of the Code of Criminal Procedure, in the wording of Act No 292/1993 Coll., introduce the possibility of using an anonymous witness as convicting evidence into the criminal proceedings.

The purpose of the right to have one's case conducted in the public, in connection with the right to give one's view to all submitted evidence, is to offer the accused in the criminal process the possibility of verifying incriminating evidence against himself, and namely before the public. In case of witness testimony this verification contains two component parts: the first is the verification of the truthfulness of the factual assertions, the other the chance to test the credibility of the witness. The institution of anonymous witnesses, consequently, restricts the accused's opportunity to express his view on the witness person and to comment upon his credibility. Therefore, it restricts the accused's right to present a defense, and it does not conform with the principle of the accusatorial process, the principle of equality of parties, as it does not introduce the same restriction for the plaintiff and is therefore contradictory to the principles of fair process.

The constitutional arrangement of a basic right or freedom, in some instances, literally empowers the legislator to restrict the basic right or freedom by law under certain conditions, or from the viewpoint of constitutionally described aims. In the case of Art. 37 para 38) and Art. 38 para 25) of the Charter of Fundamental Rights and Freedoms, as well as in case of Art. 14 para 3 e) of the International Agreement on Citizens and Political Rights and Art. 6 para 3 d) of the Convention on the Protection of Human Rights and Basic Freedoms, however, this is not the case. This means that the cited provisions of the Constitution of the Czech Republic and of the International conventions according to Art. 10 of the Constitution of the Czech Republic⁶⁾ do not offer the legislator room for restricting the basic rights and freedoms contained in them.

A restriction of basic rights or freedoms, although the constitutional arrangement may not anticipate their restricting, can occur in case that two such rights come into conflict with each other. In such situations it is necessary to determine conditions under which one basic right or freedom is prioritized, and under what conditions some other may have priority. In this connection there is a rudimentary maxim according to which any basic right or freedom may be restricted only for the sake of an other fundamental right or basic freedom.

When considering the possibilities of restricting a basic right or freedom for the benefit of another basic right or freedom the following conditions can be stipulated governing the priority of one basic right or freedom:

The first condition is their mutual comparison, the other is the requirement to examine the substance and the sense of the fundamental right or freedom being restricted (Art. 4 para 4 of the Charter of Fundamental Rights and Freedoms¹⁾).

The mutual comparison of colliding fundamental rights and freedoms is based upon the following criteria:

The first is the criterion of applicability, i.e. a reply to the question whether the institute restricting a certain basic right allows the achievement of the desirable aim (the protection of another basic right). In the given case the legislator can be affirmed in that the institute of anonymous witness allows to achieve the aim, i.e. to guarantee the inviolability of his person.

The second criterion for measuring basic rights and freedoms is the criterion of necessity residing in the comparison of the legislative means restricting some basic right or freedom with other provisions allowing to achieve the same objective, however, without impinging upon fundamental rights and freedoms. The reply to the fulfilment of the criterion of necessity in the second case is not unambiguous: in addition to the legislative construction allowing the anonymity of the witness the government can use also other means for his protection (such as the utilization of anonymous testimony as a criminalistic means for further examination, offering protection to the witness etc.).

The third criterion is the comparison of the importance of both conflicting basic rights. In the case under consideration one of them is the right of fair trial ensuring the right for personal freedom, the other is the right of personal inviolability. These basic rights are *prima facie* equal.

The comparison of the importance of colliding basic rights (after having fulfilled the condition of appropriateness and necessity) resides in weighting empirical, systemic, contextual and value oriented arguments. As an empirical argument the factual seriousness of a phenomenon can be understood that is connected with the protection of certain fundamental right (in the case under consideration this is the increasing number of cases of threatening and terrorising of witnesses by organized crime). A systemic argument means considering the sense and the classification of the respective fundamental right or freedom within the system of basic rights and freedoms (the right to fair trial in this connection is part of the general institutional protection of basic rights and freedoms). As contextual argument also further adverse impacts of the restriction of one fundamental right due to the favouring another right can be understood (in the given case the possibility of misusing the institute of anonymous witness in the criminal procedure). The value argument represents considering the positive aspects of the conflicting fundamental rights as regards the accepted hierarchy of values.

Part of comparing the relative weight of the conflicting basic rights is also considering the utilization of legal institutes minimizing the intervention into one of them, supported by arguments.

For instance an argument disfavouring the restriction of one basic right due to the possibility of misusing such arrangement can be eliminated by minimizing such adverse impact in establishing further procedural conditions for deciding about the same.

Therefore it can be stated that in case of a conclusion about the well-foundedness of the priority of one of two conflicting basic rights a necessary condition for the final judgment is also having applied all possibilities of minimizing the impingement upon one of them.

Such conclusion can be derived also from Art. 4 para 4 of the Charter of Fundamental Rights and Freedoms,¹⁾ and namely in the sense that the basic rights and freedoms should be preserved not only when applying provisions on the limits of basic rights and freedoms, but also, in analogy, in case of their restriction due to their conflicting with one another.

In the case under consideration a number of arguments testify in favour of the institute of anonymous witnesses, especially the empirical argument (the increase of organized crime and, in connection with it, of the cases of deterring the witnesses), the systemic (impairment of the ability of the justice to act due to the witnesses being threatened), and the value related argument (protection of life and property of citizens).

Concerning a serious intervention into the right of the accused for defense and eo ipso also into the principles of fair trial, the legislator was also obliged to seek ways for minimizing such intervention and to establish corresponding instruments for the same. Examples of such instruments can be the already mentioned procedural mechanisms or providing exceptions from the general principle of free assessment of evidence by the judge through imposing the duty of the court to carry out special examination when assessing the testimony of an anonymous witness, and namely whether the court and the participants had been given sufficient opportunity to deal with the credibility of the witness and the evidentiary strength of his statement etc. These examples document the fact that the legislator has room to arrange instruments minimizing the impingement upon the right for defense and the rights derived from fair trial in the framework of the arrangement of the institute of anonymous witness. The choice of an instrument minimizing the impact upon a fundamental right or freedom is within the authority of a democratic legislator.

Therefore it can be stated that the restriction of right of defense in § 55 para 22) and § 2093) of the Code of Criminal Procedure, in the wording of Act No 292/1993 Coll., does not meet the conditions that should be required for restricting one of two conflicting fundamental rights, especially the requirement to minimize the intervention and, consequently, it is contrary to Art. 4 para 4,¹⁾ Art. 37 para 3,⁸⁾ Art. 38 para 25) of the Charter of Fundamental Rights and Freedoms.

For this reason the Constitutional Court of the Czech Republic determined the term of annulment of § 55 para 22) and § 2093) of the Code of Criminal Procedure, in the wording of Act No 292/1993 Coll., to be 1 March 1995, thus giving the legislator time to revise the Code of Criminal Procedure, complementing it by a mechanism chosen by himself minimizing the impingement upon the right of the accused of defense while enabling the criminal procedure not to remain without an institute for the protection of the witness after the abrogating judgment of the Constitutional Court of the Czech Republic.

2/b. (1) In connection with § 74 para 1 of the Code of Criminal Procedure,⁴⁾ in the wording of Act No 292/1993 Coll., the petitioners object its controversy with Art. 38 para 2 of the Charter of Fundamental Rights and Freedoms,⁵⁾ further with Art. 14 para 3 e) of the International Convention on Citizen and Political Rights and further with Art. 6 para 3 d) of the Convention on the Protection on Human Rights and Fundamental Freedoms. In the opinion of the petitioners the cited provision of the Code of Criminal Procedure is contrary to the above provisions of the Charter of Fundamental Rights and Freedoms and Art. 10 of the Constitution of the Czech Republic⁶⁾ since the Charter of Fundamental Rights and Freedoms "does not permit in any of its provisions, especially in Art. 8 guarantting

personal freedom, or in Art. 41 delegating restrictions of some fundamental rights and freedoms into the legal sphere, the restriction of the right of the accused to lodge appeals against a judgment of a court depriving him from personal freedom. Successive decisions on prolonging the custody, resulting in doubling the period of custody or even in eight times the 'indispensably necessary' custody of six months at the longest, are equivalent to a decision about imposing custody, as the court is obliged to examine whether the reasons for custody pertain or have changed also when judging about the prolongation of custody." In this connection the petition further arguments with the right to appropriate legal protection, or judicial protection derived from Art. 2 para 3 b) of the International Convention of Citizen and Political Rights and from Art. 5 para 4 of the Convention on the Protection of Human rights and Fundamental freedoms.

(2) The diction of § 74 para 1 of the Code of Criminal Procedure⁴) before the revision was: "An appeal against a decision on custody is acceptable." Its interpretation regarding decisions on prolonging custody was given by the Supreme Court of the Czech Republic in its judgment of 6 March 1992, file 2 Tz 21/92, published under No 57 of the Collection of Judiciary Judgments and Opinions 1992, with the conclusion that a decision on prolonging custody was not a judgment on imposing custody, and therefore an appeal against it was not permissible:

"The decision concerning the request of a prosecutor about prolonging a custody is a decision either to prolong the custody, or a decision not to prolong the custody, or a decision to reject the request of the prosecutor concerning the prolongation of the custody. Both mentioned ways of decision anticipate that the reasons for custody are given according to § 67 of the Code of Criminal Procedure, and in this sense the existence of the reasons of custody is not a criterion on which the one or the other decision concerning the request of the prosecutor depends. Such criterion is solely the consideration whether the releasing of the accused due to the termination of the legal time period for which the custody is acceptable can counteract or handicap the achievement of the purpose of the criminal proceedings.

It should be added that the request of the prosecutor concerning the prolongation of custody is not a request to revise the reasons of custody. If the court, in meeting its official duty stipulated in the first sentence of § 72 para 1 of the Code of Criminal Procedure, finds that there are no reasons for custody, it shall release the accused from custody and namely again out of official duty according to the third sentence of § 72 para 1 of the Code of Criminal Procedure, and not on impulse of the request of the prosecutor for prolonging custody. In such case no judgment on not prolonging the custody is issued.

It is obvious from the above that the judgment of the court relating to prolonging custody according to § 71 para 1 of the Code of Criminal Procedure, in the diction of Act No 558/1991 Coll., is not a judgment on custody in the sense of § 74 para 1 of the Code of Criminal Procedure⁴). Therefore this is not a judgment against which a complaint according to § 74 para 1,4) § 141 para 2 of the Code of Criminal Procedure would be permissible".

The revision of the Code of Criminal Proceedings in the new diction of § 74 para 1,4) consequently, expresses explicitly the interpretation conclusions of the judicature.

These conclusions are supported by the deduction according to which the examination of the reasons of custody is only a necessary condition for judging about the prolongation of custody, however, not a sufficient condition: This is only the consideration "whether by releasing the accused due to the legal term of acceptable custody having elapsed the achievement of the purpose of criminal proceedings could have been counteracted or handicapped". It is a question whether, if the reasons for custody have been met, it is possible to arrive to the opinion that the achievement of the purpose of criminal proceedings can not have been counteracted or handicapped. In other words: whether a conclusion is acceptable according to which the reasons for custody are given, but simultaneously there is no fear of counteracting or hampering the purpose of criminal proceedings.

The contents of the legal institution of custody is defining the constitutionally acceptable reasons for the restriction of personal freedom (after having communicated the accusation, see § 68, 160 of the Code of Criminal Procedure) with the objective to disable the accused from counteracting or handicapping the achievement of the purpose of criminal proceedings by way of this indispensable restriction of personal freedom. It can be inferred from the above that the allegation on the compatibility of simultaneous existence of reasons for custody and non-existence of fears from counteracting or handicapping the purpose of the criminal proceedings represents a contradiction.

The purpose of criminal proceedings is not only "just punishment of a perpetrator" the goal of a criminal proceeding is also to have a "fair" process. The existence of fair process is an indispensable condition for the existence of a democratic, law based state.

The legal term defining the duration of custody, accordingly, shall be considered to be the term of indispensable restriction of personal freedom of the accused (or the defendant) to whom the presumption of innocence applies, and which bodies active in criminal proceedings are allotted for the completion of the proceeding. It follows from this that, in deciding on the prolongation of custody, in addition to the existence of statutorily defined grounds, serious reasons must be shown for which the proceeding could not have been completed within the allotted time period.

The judgment on prolonging custody (i.e. on further restrictions of the personal freedom of a person against whom a criminal proceeding is pending and who shall be considered from the viewpoint of the presumption of innocence) therefore is a judgment for which higher requirements apply than for judging on custody. For such decision-making, considering the principle of equality, therefore all shall apply that is in force for judging on custody as such and, accordingly, also the right of review.

The European Court of Human Rights, when applying Art. 5 para 4 of the Convention on the Protection of Human Rights and Fundamental Freedoms, repeatedly stressed the right of the involved person for having the judgment on custody reviewed.

In this connection also the possible question should be solved whether the authorization to request the review of the justification of custody can be considered as a review of the judgment concerning the prolongation of custody. A negative answer, and therefore the conclusion on the absence of the possibility of reviewing a judgment on prolongation of custody by submitting an appeal to examine the justification of custody can be seen in the

fact that both these institutes pertain to different subjects of review. The review of the judgment on prolongation of custody, under the existence of grounds for custody, can be substantiated by the absence of important reasons in consequence of which the proceeding could not have been completed within the allotted time period.

It can be derived from the above that § 74 para 1 of the Code of Criminal Procedure, 4) in the diction of Act No 292/1993 Coll., excludes the possibility of reviewing the judgment on custody for which also the decision about its prolongation shall be considered, thus being contradictory to Art. 5 para 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The consequence of the deletion of a part of § 74 para 1 on the Code of Criminal Procedure, 4) in the diction of Act No 292/1993 Coll., and accordingly, the annulment of the exception restricting the appeal against the judgment on the prolongation of custody, is the absence of decision making mechanism in the cases in which the Supreme Court decides about the prolongation of custody according to § 71 para 3 of the Code of Criminal Procedure. For the purpose of allotting a certain time period to the legislator for complementing such mechanism, in analogy with the case of annulling § 55 para 22) and § 2093) of the Code of Criminal Procedure, in the diction of Act No 292/1993 Coll., the Constitutional Court of the Czech Republic decided also in the case of the annulment of a part of § 74 para 14) of the Code of Criminal Procedure, in the diction of Act No 292/1993 Coll., about delaying the effectivity date of the finding onto 1 March 1995.

Pl. US 4/94

Overview of the most important legal regulations

1. Art. 4 par. 4 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that in employing the provisions concerning limitations upon the fundamental rights and basic freedoms, the essence and significance of these rights and freedoms must be preserved; such limitations are not to be misused for purposes other than those for which they were laid down.
2. § 55 par. 2 of Act no. 141/1961 Coll., the Criminal Procedure Code, as amended by of Act no. 292/1993 Coll., reads: If there is apparently danger of detriment to health or other serious danger to a witness or persons close to him in connection with giving testimony, the first and last name of the witness and his other personal data shall not be entered into the record, but
3. recorded separately from the criminal file, and may be viewed only by bodies active in the criminal proceedings. The witness shall be informed about his right to sign a protocol of the questioning using an assumed first and last name, under which he is then recorded. If the reasons for separate recording of the witnesses' personal data cease to exist, these data shall be attached to the criminal file.
4. § 209 of Act no. 141/1961 Coll., the Criminal Procedure Code, as amended by of Act no. 292/1993 Coll., reads: The panel chairman shall see to it that a witness who has not yet given testimony is not present during the questioning of the defendant and other witnesses. If there is concern that the witness will not tell the truth in the presence of the

defendant, or if there is danger of detriment to health, death or other serious danger to the witness being questioned or persons close to him or if the witnesses' identity must remain secret for serious reasons, the panel chairman shall take measures appropriate to ensure the safety or secrecy of identity of the safety, or shall order the defendant out of the courtroom during the time that such witness is being questioned. However, after his return to the courtroom, the defendant must be informed about the content of the witnesses' testimony, may respond to it, and, without meeting the witness, may pose questions to him through the panel.

5. § 74 par. 1 of Act no. 141/1961 Coll., the Criminal Procedure Code, as amended by of Act no. 292/1993 Coll., reads: A complaint may be filed against a decision on custody (§ 68, 69, 72, 73, 73a) with the exception of a decision to extend it (§ 71 par. 2,5).

6. Art. 38 par. 2 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that everyone has the right to have his case considered in public, without unnecessary delay, and in his presence, as well as to express his views on all of the admitted evidence. The public may be excluded only in cases specified by law."

7. Art. 10 of Act no. 1/1993 Coll., the Constitution of the Czech Republic, provides that international treaties concerning human rights and fundamental freedoms which have been duly ratified and promulgated and by which the Czech Republic is bound are directly applicable and take precedence over statutes.

8. § 2 par. 5 of Act no. 141/1961 Coll., on Criminal Court Procedure (the Criminal Procedure Code), as amended by later regulations, provides that bodies active in criminal proceedings proceed so that the facts of the matter are determined about which there are not reasonable doubts, in the scope necessary for their decision. Without a motion from the parties, they shall carefully clarify circumstances to the benefit and the detriment of the accused. A confession by the accused does not absolve the bodies active in criminal proceedings of the duty to review all circumstances of the case.

9. Art. 37 par. 3 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that all parties to proceedings are equal.