

# 2011/03/13 - PL. ÚS 43/10: RESTRICTIONS ON LEGAL CAPACITY

## CZECH REPUBLIC CONSTITUTIONAL COURT JUDGMENT

### IN THE NAME OF THE REPUBLIC

#### HEADNOTES

Provision Section 33 para. 3 first sentence of the Act 150/2002 Coll., the Administrative Code of Justice, according to which “The party is competent to act independently to in the proceedings (hereafter only as “the procedural capacity”) only provided he/she enjoys full legal capacity.” is inconsistent with the proportionality principle, as well as with the maxim according to which any interference with rights must reflect the particularities of every single case.

The Constitutional Court holds that the unlawful situation persists, consisting in the fact that persons who have been restricted in their legal capacity are prevented from exercising their procedural capacity within administrative court proceedings pursuant to Act No. 150/2002 Coll., even though the restriction on their rights does not at all concern the court proceedings in question. Undoubtedly, this conclusion also arises from the role of the administrative judiciary, one of whose most important missions includes the protection of the rights of an individual in dealings with administrative bodies.

#### JUDGMENT

On April 13, 2011, the Constitutional Court Plenum consisting of Stanislav Balík, František Duchoň, Vlasta Formánková, Vojen Güttler, Ivana Janů, Vladimír Kůrka, Dagmar Lastovecká, Jiří Mucha, Jiří Nykodým, Pavel Rychetský, Miloslav Výborný, Eliška Wagnerová, and Michaela Židlická in file no. Pl. ÚS 43/10 held on the petition lodged by Supreme Administrative Court seeking to annul provision Section 33 Paragraph 3 of the first sentence of Act No. 15/2002 Coll. of Code of Administrative Justice with the participation of the Chamber of Deputies of the Parliament of the Czech Republic and the Senate of the Parliament of the Czech Republic as parties to the proceedings:

Provision Section 33 par. 3 of the first sentence of the Act No. 150/2002 Coll., of the Code of Administrative Justice is annulled as of the date of publication of this Judgment in the Collection of Laws.

#### REASONING

I.

Subject Matter of the Proceedings and Arguments of the Petitioner

1. On October 12, 2010 pursuant to Article 95 Section 2 of the Constitution of the Czech Republic (hereafter only “the Constitution”) and pursuant to Section 64 par. 3 of the Act No. 182/1993 Coll. on the Constitutional Court in the wording of its latest reading (hereafter only “the Act on the Constitutional Court”) the Constitutional Court was served a petition of the Supreme Administrative Court (hereafter only as “the petitioner”) represented by the President of the Extended Chamber JUDr. Josef Baxa seeking to have annul Section 33 par. 3 of the first sentence of the Act No. 150/2002 Coll., the Code of Administrative Proceedings.

2. The petitioner stated in its petition that it was under file number 4 Ads 93/2009 conducting proceedings regarding the cassation complaint of the plaintiff S.M. (hereafter only as “the plaintiff”) represented by his guardian JUDr. P. J., an attorney, against the resolution of the Regional Court in Ostrava (hereafter only as “the Regional Court”) dated May 19, 2009 file number 38 Cad 15/2005-162. The above resolution of the Regional Court appoints an attorney as a guardian to the plaintiff for the proceedings regarding action filed against the Regional Office of the Olomouc Region as the defendant (hereafter only as “the defendant”) contesting the decision of the defendant dated May 2, 2005 file number KUOK/9881/05/OSV-DS/7025/SD-80. The Regional Court relied on Section 33 par. 3 of the first sentence of the Act No. 150/2002 Coll. (hereafter only as “the contested provision”) since on September 16, 1987 the plaintiff was restricted on his legal capacity by a decision of the District Court in Olomouc file number Nc 1565/86-42 (17 Sen 16/87) in a manner as “to be able to independently conduct all legal acts with the exception of legal acts in the area of employment law when he is not able to independently conclude employment contracts and engage in employment of such nature when refusal to comply with an order for illness-related reasons might result in a threat against his own health or the health of others or in material damage”.

3. The above resolution of the Regional Court on the appointment of a guardian was contested by the plaintiff as the complainant in his cassation complaint in which the act of appointment of the guardian was referred to as grossly offensive against his person alleging the resolution was issued by an incompetent person with no educational qualification in the field of law and is contrary to the Constitution and thus the matter should be referred to the Constitutional Court.

4. It follows from the file of the Regional Court file no. 38 Cad 15/2005 that by the decision of the Municipal Authority in Zábřeh, namely of the Social and Health Department of March 25 2005 reference no. Soc/552/2695/2005/Dv the complainant was not awarded a social security allowance due to his failure to meet the statutory conditions. The decision issued by the first instance body was overturned in the appeal proceedings by the defendant and the application was dismissed. The reasoning behind the decision emphasized that the complainant (the plaintiff) failed to meet the conditions decisive for the award of the allowance and failed to enable an inquiry required for the assessment of his overall social and financial background, furthermore, he refuses to allow for an increase of his income by not undergoing a medical examination required to facilitate the award of a partial disability pension, he was removed from the jobseekers list and refuses to cooperate with the administrative body in the administrative proceedings. In the action against the decision the plaintiff alleged violation of his constitutional

rights; he further requested the payment of the social security allowance in the amount of 7.300 Czech Crowns a month and sought to have the contested decision quashed as well as seeking compensation for both material and immaterial damage suffered.

5. The fourth Chamber of the petitioner did not identify with the opinion presented in the current case law/adjudication of this Court and expressly stated in its Judgment of March 12, 2008 file no. 6 Ads 97/2007-133 (available at [www.nssoud.cz](http://www.nssoud.cz)), pursuant to which “should the party be limited in legal capacity in employment matters such party does not need to be represented by a guardian in proceedings on action directed against the decision of an administrative body” (§ 65 and subsequent of Code of Administrative Justice). Such legal opinion is contrary to the unambiguous wording of the contested provision pursuant to which procedural capacity in judicial administrative proceedings is only granted to the parties to the proceedings in no manner limited by their legal capacity. Thus the fourth chamber referred the matter to the Extended Chamber of the petitioner.

6. The Extended Chamber of the Petitioner found that the facts set forth by Section 17 par. 1 of the Act No. 150/2002 Coll. were met. It further assessed whether the contested provision enables for the consideration of the court on the necessity of the appointment of a guardian for a party to proceedings who lacks full procedural capacity and whether such consideration is founded at all in the matter of the pursuit and the purpose of the representation by a guardian in relation to the protection of rights of such a party to proceedings. The Extended Chamber of petitioner followed the legal provisions of a variety of procedural regulations, international treaties and case law of a variety of other courts.

7. Regarding the provisions governing procedural capacity the petitioner maintained that procedural capacity represents a part of legal capacity and is governed by both Act No. 99/1963 Coll., Civil Procedure Code as amended and by Act No. 150/2002 Coll.

8. The Civil Procedure Code sets forth in § 20 that everyone may act independently before the Court as a party to proceedings (procedural capacity) in the extent in which the person is competent by their own acts to assume rights and incur liabilities. Pursuant to § 29 Section 1 of the Civil Procedure Code should a natural person who acts as a party to proceedings not be able to act independently before court the presiding judge shall appoint a guardian to such a person should a danger of delay occur. Pursuant to Section 4 an attorney may be appointed as a guardian. Another entity may only be appointed as a guardian with the consent of the party concerned. Should the Court not hold otherwise the guardian then acts before courts in all instances. The appointed guardian has a position identical to the one of a legal representative acting on the basis of granted power of attorney and should the appointed guardian be an attorney his position is identical to the one of an attorney appointed by the party by power of attorney (§ 31 Section 1 and 2 of the Civil Procedure Code)

9. Contrary to that a party to the court administrative court proceedings is competent to act independently solely in the event such party has full legal capacity (§ 33 Section 3 sentence one of the Act No. 150/2002 Coll.).

10. Legal provisions governing procedural capacity within Act No. 150/2002 Coll. are thus independent and much stricter since they do not allow regard to be taken of the fact whether or not the party restricted on his legal capacity within substantive law might be capable of acting before a court in matters unrelated to the above restriction. The reasoning fails to provide any further interpretation regarding the provisions referred to above. Provision § 64 of Act No. 150/2002 Coll. enables the application of the Civil Procedure Code only unless stipulated otherwise by the Law. Pursuant to Civil Procedure Code both the circle of persons who may be appointed as guardians and the extent of representation may be assessed, however, not the circumstances for appointment of a guardian related to the capacity of the party.

11. Procedural capacity represents a prerequisite for personal access to courts and thus a prerequisite for the application of the right to judicial protection pursuant to Article 36 Section 1 and 2 of the Charter of Fundamental Rights and Basic Freedoms, published under no. 2/1993 Coll., (hereafter only as “the Charter”). The purpose in the appointment of a guardian undoubtedly lies in ensuring that a physical person who is not able to duly defend their rights before court as a result of their limitations is not disadvantaged by their restrictions and limitations.

12. On the other hand appointment of a guardian may not be too formalistic so as to exclude a physical person restricted in their capacity from direct participation in court proceedings unless such exclusion is unavoidable and necessary. Such course of action would represent an interference with the rights guaranteed by the above mentioned Article 36 Section 1 and 2 of the Charter and by Article 5 of the Charter (“Everyone has the capacity to possess rights.”) and in Article 10 Section 1 of the Charter (“Everyone has the right to demand that her dignity be respected...”).

13. The petitioner referred, for comparative purposes, to provisions governing legal capacity in Act No. 141/1961 Coll., on Criminal Proceedings (Criminal Procedure Code) as amended. The Code assumes appointment of a defense counsel in the event the accused is either deprived or restricted in his legal capacity [§ 36 Sec. 1 let. a) and b)] or whenever it appears necessary due to physical or mental impairment giving rise to doubts on the accused’s capacity to appropriately defend himself (§ 36 Section 2). Pursuant to § 33 Section 1 of the Code of Criminal Procedure, however, all rights conferred onto the accused are conferred onto a person even in the event he is deprived of or restricted in his legal capacity and a legal representative of the accused merely represents the accused restricted in or deprived of legal capacity pursuant to § 34 of the Criminal Procedure Code without the represented person being deprived of his rights.

14. National provisions governing procedural capacity must in the opinion of the petitioner petitioner be perceived in light of the European Convention on the Protection of Fundamental Rights and Freedoms published under No. 209/1992 Coll. /hereafter as “the Convention”), which guarantees human dignity and access to courts. It is in the case law of the European Court of Human Rights (hereafter as “European Court”) where conditioning access to courts by a guardian is thus

deemed to represent restriction of direct access to courts unless such condition is not tied to convincing grounds. The Convention on Rights of Persons with Disabilities (hereafter only as “the UN Convention”) that was adopted by the General Assembly of the United Nations Organization on December 13, 2006 in New York (declared under No. 10/2010 Coll. in the wording of the amendment declared under No. 44/2010 Coll. int. treaties) cannot be omitted. The Convention protects persons with disabilities from all types of discrimination and covers civil, political, economic, social and cultural rights. It binds parties to the Convention not only to adopt statutes and regulations compliant to the above principle but also to ensure better every day life integration of people with disabilities into the society as well as their access to courts. The key article is Article 12 conferring the right of persons with disabilities to be recognized as persons before the law and Article 13 governing access of people with disabilities to justice. People with disabilities must be deemed to include also people with long-term mental disability that may in interaction with other obstacles prevent their full and effective integration into society as a standard and in the extent equal to others.

15. The Recommendation of the Committee of Ministers of the Council of Europe No. R (99)4 on Principles Concerning the Legal Protection of Incapable Adults (hereafter only as “the Recommendation”) stating that legal provisions should be flexible and should enable “made-to measure” legal response in each individual case is also relevant.

16. The petitioner equally referred to the case law of the European Court of Human Rights that in the cases of Shtukaturov versus Russia (judgment dated March 27, 2008, application No. 44009/05), H. F. versus Slovakia (judgment dated November 2005, application No. 54797/0) and Alajos Kiss versus Hungary (judgment dated May 20, 2010, application No. 38832/06), all available at <http://www.echr.coe.int>, the HUDOC database had already emphasized that such principles, although they do not have the power of the statutes, do define the common European standard in this particular area, and thus promoted the above principles from the soft law area onto principles binding in interpretation for the course of action adopted by bodies of public authority. Principle 2 Section 1 of the quoted Recommendation embedded the flexibility within legal response in the application of protective measures and other legal arrangements available for protection of the personal and economic interest of incapable adults. Principle 3 then stipulates that the statutory framework should, as far as possible, recognize the fact that different degrees of incapacity may exist and incapacity may vary from time to time. Thus the measures of protection should not result automatically in a complete removal of legal capacity. Restriction of legal capacity should be possible only in cases when it is shown to be necessary for the protection of the person concerned.

17. In the view of the petitioner in order to assess whether the legal provisions governing procedural capacity contained in the contested provisions are not contrary to fundamental rights, the perceptions of the concerned tenet and of the function of a guardian as reflected in case law is crucial. The judgment of the Constitutional Court file no. IV. ÚS 412/04 of December 7, 2005 (N 223/39 SbNU 353) is vital to the assessment of the instant question. The Court formulated similar opinions in judgment file no. II. ÚS 2630/07 dated December 13, 2007 (N 224/47



SbNU 941) when it assessed the petition seeking annulment of § 10 Section 1 of Act No. 40/1964 Coll., of the Civil Code as amended (the possibility of deprivation of legal capacity). Here the Constitutional Court emphasized that it is through legal capacity, (conduct) and procedural capacity that the constitutional guaranties of legal subjectivity of an individual guaranteed by Article 5 of the Charter are exercised. The rights and entitlements lacking a genuine tool for protection of their maintenance would represent nothing more than empty proclamations. The Constitutional Court had not annulled the contested instrument of deprivation of legal capacity itself but emphasized the necessity of its application being in conformity with the constitutional order.

18. The European Court of Human Rights in its judgment in *Ashingdane versus United Kingdom* (Judgment dated May 28, 1985, application No. 8225/78), *Klass and others versus Germany* (Judgment dated September 8, 1978, application No. 5029/71) and *Salontaji-Drobnjak versus Serbia* (judgment dated October 13, 2009, application No. 36500/05) expressed its view that the right to access to court is not an absolute one and may be restricted. Such interference, however, cannot restrict the access to court in a manner as to threaten the very substance of the access to court. The restrictions will not be deemed in compliance with Article 6 para. 1 of the Charter unless such restrictions pursue a legitimate objective and the instruments applied are not proportionate to the pursued objective. In *Zehentner versus Austria* (judgment dated July 16, 2009, application No. 20082/02) the European Court dealt directly with the procedural capacity of the petitioner before this court and did not admit the objection of the government that the application should have been dismissed due to the absence of representation by a guardian; the Court however, draw upon the fact that in proceedings before this Court the need for representation does not need to be as obvious as in the cases of restrictions applied within the national laws aimed inter alia at ensuring that the individuals restricted in their legal capacity do not exercise their rights or deal with property in a manner harmful to them. In the above-mentioned decision in *Shtukurov versus Russia* the European Court of Human Rights held that many of the states have recently modified their approach to individuals with disabilities and have either undergone or are undergoing a reform of the guardianship systems. It is namely the abolishment of the act of deprivation and restriction of legal capacity in their traditional form and subsequent replacements of such acts by measures that do not result in loss of legal capacity of an individual but lead to such an individual being provided with assistance with exercise of it that represents a significant element of such reforms. The European Court recommends a so-called functionality test pursuant to which the very presence of any kind of disability (including a mental one) does not automatically mean a loss of capacity to make decisions. What needs to be tested is what kind of action the concerned individual fails to comprehend and control, what impact the mental condition has on the social life, health, property matters and other interests of such an individual. The mere existence of a mental condition, and not even of a severe one, may not represent the sole ground justifying the deprivation of legal capacity. Similarly the factual capacity matters were addressed in other judgments of the European Court (such as judgment dated October 24, 1979 in *Winterwerp versus the Netherlands*, application No. 6301/73; judgment dated July 7, 7. 2008, *X versus Croatia*, application No. 11223/04; and the above quoted judgment *Alajos Kiss versus Hungary*).

19. The case law of the Supreme Court related to the provisions governing the procedural capacity within Civil Procedure Code both emphasises the link of the procedural capacity to restriction of a substantive nature (i.e. opinion dated May 23, 1979 file no. Cpj 301/77, published under no. R 34/85), and also stresses another aspect of the matter, namely that in the event a guardian is appointed without the proper conditions being met, an impermissible deprivation of a right to be heard occurs. In its judgment file no. 23 Cdo 107/2009 dated May 18, 2009 (available at <http://novyweb.nsoud.cz>) the above court appointed a guardian to a party to the proceedings who was unable to attend the hearing due to his health condition for a temporary period of time and the court stated that: "Should a guardian be appointed to the party to proceedings without the requirements set forth in Section 29 para. 3 of the Civil Procedure Code having been satisfied and the aforementioned fact lead to the court not hearing the party to the proceedings or other representative, the case amounts to the party to the proceedings being deprived of the right to be heard in court in the course of the proceedings by erroneous course of action adopted by the court." A similar conclusion was arrived at by this court in Judgments file no. 20 Cdo 2850/99 dated August 23, 2001 and file no. 30 Cdo 1072/2005 dated August 31, 2005 (available at <http://novyweb.nsoud.cz>).

20. In conclusion the petitioner reminded the court that the appointment of the guardian is of a protective nature and its very purpose is to provide a party to proceedings lacking full legal capacity to the necessary extent a legally competent individual who will assist them in court proceedings so that neither their substantive nor their procedural rights are interfered with. On the other hand, shall the party to the proceedings not be allowed to turn to court and actively participate in the proceedings although he is able to do so, such a circumstance amounts to restriction or deprivation of a right. This is especially the case when the restriction on rights does not relate in any way to the concerned court proceedings. The individual partially restricted in capacity regarding employment law acts thus cannot be deprived of procedural capacity without further grounds and without putting regard on the actual abilities of such an individual. The contested provision, however, assumes such course of action by excluding from procedural capacity those individuals who do not possess full legal capacity. The court must, nevertheless, guard that the interests are balanced and due process is ensured even in the case that the communication with the party to the proceedings is a difficult one and rights of such an individual are not to be interfered with. The provisions in question are unique within the national law and cannot be justified by any specific feature of administrative judiciary. The petitioner thus arrived at the conclusion that the contested provision is contrary to the commitments following from Article 6 Section 1 of the Convention and Article 12 and 13 of the UN Convention and provisions of Article 5, Article 10 Section 1 and 2 and Article 36 Section 1 and 2 of the Charter. In the view of the petitioner this inconsistency is irremovable by a constitutionally conforming interpretation since such an interpretation may not be of contra legem nature. And yet, annulment of the quoted provisions does not give rise to any difficulties since in the event of its removal from the Civil Procedure Code (§ 64 of Act No. 150/2002 Coll.) may be followed as its provisions will stand the test of the concerned aspects.

21. Relying on the aforementioned reasons the petitioner sought to have the contested provisions annulled by the Constitutional Court in its judgment upon conduct of the proceedings.

## II.

### **Summary of Substantial Parts of Opinions of the Parties to the Proceedings**

22. Pursuant to provisions of Section 42 par. 4 and Section 69 of the Act of the Constitutional Court the Constitutional Court sent the concerned application to the Chamber of Deputies of the Parliament of the Czech Republic and to the Senate of the Parliament of the Czech Republic. The Chairwoman of the Chamber of Deputies of the Parliament of the Czech Republic Miroslava Němcová in the opinion dated January 2011 described the legislative procedure of the enactment of the Act No. 150/2002 Coll. and stated that the legislative body acted upon its conviction that the enacted Act is in compliance with the Constitution and our legal order. As far as the contested provisions are concerned the explanatory memorandum accompanying the Bill merely states in a general manner that: "...The introductory general provisions on proceedings define the time of the actual commencement of the proceedings and the parties to the proceedings; regarding the latter the provisions in a common manner define the capacity of the parties and their procedural capacity" (parliamentary print 1080, explanatory memorandum, special part, commentary to sections 31 to 38).

23. The President of the Senate of the Czech Republic Milan Štech in the opinion dated December 22, 2010 equally described the legislative procedure of the enactment of the Act No. 150/2002 Coll., noting that the Senate proceeded within the scope of authorities defined by the Constitution and in a manner prescribed by the Constitution. Furthermore, he stated that the Code of Administrative Procedure had been a long expected act of the legislature and was presumed to have replaced the not as flawless legislative provisions of the administrative judiciary, regulated by part five of the Civil Procedure Code in the wording applicable at the given time. The ambition of the Act No. 150/2002 Coll. was to remove the constitutional deficiencies of the legislative provisions, and at the tenet level to embed the role and position of the administrative courts and judges as far as necessary in relation to a general regulation [Act No. 6/2002 Coll., on Courts, Judges, Lay Judges and Administration of Courts and on Amendment of Certain Further Laws (Law on Courts and Judges)] and to set forth in a complex manner the regulations of proceedings before administrative courts. In course of the discussion of the reform material of a codex-like nature the Senate is not awarded space to focus in great detail on the individual provisions mainly at times when truly controversial or questionable issues appear at the very centre of everyone's attention. This was the case in course of the discussion of the Code of Administrative Justice when the senators discussed the deficiencies of the legislative provisions as a result of the disapproval of the "new" code of administrative procedure; preference was given to the issues related to absence of the accompanying amendment of the Constitution, and the choice of seat of the Supreme Administrative Court was another frequently discussed matter. Nevertheless, even within the laws of a codex-like nature having been debated by the Senate in the above-described manner, certain details of the Code of Administrative Justice were addressed, inter alia the question of procedural capacity of the party to proceedings. The Vice President of the Senate, Jan Ruml,



noted in the debate that although “the proposed legislation is a necessary regulation, thus its enactment should be treated as a priority”, there were, nevertheless, “certain minor reservations”. The speaker in this case included among the aforementioned reservations namely the concerned matter covered by the contested provision when he informed the plenum what his opinion was using the following words: “...I do not see it as necessary to resist and depart from the already verified procedural practices of the Civil Procedure Code and I do not know why several instruments are regulated again and furthermore with merely minor differences. A situation may thus occur of a deteriorated position of a party to proceedings as this position is in this statute - the Code of Administrative Justice - more strictly viewed than in the Civil Procedure Code.” J. Ruml did not, however, rely on the argument of unconstitutionality of such provisions neither did he submit any proposals for amendments accordingly. He merely urged the “proponent to hear his reservations and to possibly work on them within any further legislative activities. The minister Jaroslav Bureš on behalf of the proponent responded as follows: “Relation to the Civil Procedure Code offered two options. What Senator Ruml has just said is an entirely legitimate view. The prevalence was awarded in such a manner so that the readers are offered the fundamental procedural instruments in an amendment needed for the administrative judiciary. If there, thus, is certain divergence, it is determined by the nature of the proceedings before regional administrative courts, or the Supreme Administrative Court.” Having heard all speakers in the debate the Senate voted and approved the Bill in its wording approved by the Chamber of Deputies of the Parliament of the Czech Republic. The contested provision has thus represented in an unamended form from the very beginning an inseparable part of the Act No. 150/2002 Coll. The President of the Senate concluded by stating that it is entirely at the discretion of the Constitutional Court pursuant to the Constitution and the Act on Constitutional Court to determine the constitutionality of the contested provision.

### **III.**

#### **Dispensing with Oral Hearing**

24. Pursuant to provisions Section 44 para. 2 of the Act No. 182/1993 Coll. the Constitutional Court may dispense with oral hearing should further clarification of the matter not be expected of the hearing. As both the petitioner and the parties to the proceedings expressly consented to the oral hearing being dispensed with, the hearing was indeed dispensed with in the instant matter.

### **IV.**

#### **Conditions of the Petitioner’s Standing**

25. The Constitutional Court initially tested whether the formal prerequisites for factual determination of the application had been satisfied and it further observed whether the petitioner in the instant case has the standing to lodge such an application.

26. Pursuant to Article 95 Section 2 of the Constitution which the application relies upon, should a court come to the conclusion that the statute that should be applied in the resolution of a matter is in conflict with the constitutional order, it shall submit the matter to the Constitutional Court. The Constitutional Court notes that in the tested case direct application of the contested provision by the

petitioner is necessary. Thus the application was lodged by a petitioner entitled to do so.

## V.

### **Constitutional Conformity of the Legislative Procedure**

27. Pursuant to Section 68 para. 2 of the Act on the Constitutional Court the Constitutional Court - apart from testing the compliance of the contested provision with the constitutional order - ascertains whether the statute was adopted and issued within the confines of the powers set down in the Constitution and in the constitutionally prescribed manner.

28. Since the petitioner did not contest either a fault of legislative procedure or action outside the statutory competencies of the legislature it is not necessary, with regards to the principles of procedural economy, to address this matter in more detail and apart from taking regard to the opinions submitted by the Chamber of Deputies of the Parliament of the Czech Republic and by the Senate of the Parliament of the Czech Republic a formal verification of the course of legislative procedure based on publicly accessible source of information at <http://www.psp.cz>. will suffice.

29. Act No. 150/2002 Coll. was approved by the Chamber of Deputies of the Czech Republic on February 15, 2002 and by the Senate of the Czech Republic on March 21, 2002. The President signed the Act on March 28, 2002 and the Act was published on April 17, 2002 in the Collection of Laws of the Czech Republic in part 61 under number 150/2002 Coll. The Constitutional Court finds that the Act was adopted and issued within the confines of the powers set down in the the Constitution and in a constitutionally prescribed manner.

30. Having tested the above the Constitutional Court proceeded to test the content of the contested provision from the view of its compliance with the constitutional order of the Czech Republic [Article 87 Section 1 Letter a) of the Constitution].

## VI.

### **Wording of the Contested Provision**

31. Provision Section 33 para. 3 sentence of the Act No 150/2002 Coll. reads as follows:

“The party is competent to act independently to in the proceedings (hereafter only as “the procedural capacity”) only provided he/she enjoys full legal capacity.”

## VII.

### **Compliance of the Contested Provision with the Constitutional Order**

32. The Constitutional Court proceeded to the review of the contested provision from the perspective of its compliance with the constitutional order of the Czech Republic, mainly with the rights and principles set out in Art. 5, Art. 10, Section 1 and 2 and Art. 36, Section 1 and 2 of the Charter, Art. 6, Section 1 of the Convention and Art. 12 and 13 of the UN Convention.

33. The petitioner concluded that on the basis of the comparison of the legal regulation concerning the procedural capacity contained in Act No. 150/2002 Coll. with the corresponding regulation contained in the Civil Procedure Code and

Criminal Code, while perceiving the current issues from the perspective of the Charter, the Convention, the UN Convention, the quoted Recommendation, as well as with reference to the case law of the Constitutional Court, the European Court, the Supreme Court, and the petitioner, it may be concluded that the contested provision excludes, in collision with the constitutional order, persons who do not enjoy full legal capacity from the procedural capacity. The petitioner also pointed out the unfounded uniqueness of the given regulation within the Czech judiciary, maintaining that: “striking down the contested provision is not bound to cause any difficulties since upon its removal, the Civil Procedure Code can be followed (Section 64 of Act No. 150/2002 Coll.), whose regulation will stand the test from the perspectives mentioned above.”

34. Previously, the Constitutional Court held that “the Constitution accepts and respects the legality principle as part of the overall concept of the state governed by the rule of law, yet it does not associate the positive law with formal legality only, subordinating the interpretation and application of legal norms and regulations to their content and material sense” (for instance, cf. judgment file reference Pl. ÚS 7/2000, issued on 4 July 2000, published under No. 261/2000 Coll., N 106/19 Collection of judgments 45). Similarly, in its judgment file reference IV. ÚS 412/04, also referred to by the petitioner, and its judgment file reference I. ÚS 557/09, issued on 18 August 2009 (N 188/54, Collection of judgments 325, see also <http://nalus.usoud.cz>), the Constitutional Court held that “the core of the constitutional order of the Czech Republic is the individual and his/her rights guaranteed by the constitutional order of the CR. The individual is the starting point for the state. The state and all its bodies are constitutionally bound to protect and preserve the rights of an individual. However, the concept of our constitutionality is not limited to protection of the fundamental rights of individuals (e.g., the right to life, a guarantee to be recognized as persons before the law), but in accordance with the post-war change in the understanding of human rights (which found expression in, for example, the UN Charter or the General Declaration of Human Rights) has become the fundamental basis from which arises the interpretation of all fundamental rights; human dignity, which, among other things, forbids treating a person as an object. Within this concept, questions of human dignity are understood as a component of the quality of a human being, a component of his/her humanity. Guaranteeing the inviolability of human dignity allows a person to fully make use of his/her personality. These deliberations are confirmed by the Preamble to the Constitution of the CR, which declares human dignity to be an inviolable value, standing at the foundation of the constitutional order of the CR. Likewise, the Charter guarantees that people are equal in dignity (Art. 1) and guarantees the subjective right to the preservation of human dignity (Art. 10 para. 1). The Constitutional Court considers the right of a free individual to be recognized as a person before the law and the guarantee of the de facto exercise of such right to represent extremely important constitutional values with a central position in the constitutional order (Art. 1, Art. 9 para. 2 of the Constitution of the CR and Art. 5 of the Charter). The Constitutional Court is bound (Art. 83 of the Constitution) to protect these components of the comprehensively perceived dignity of the individual (Preamble to the Constitution, Art. 1 and Art. 10 Section 2 of the Charter).”

35. In general, any legal norm allowing the restriction of fundamental rights must be interpreted and applied with the awareness of the importance and width of relations covering the fundamental rights subject to the restriction. This legal regulation may be applied only after a careful determination, which must be expressed in the reasoning behind the decision itself, what colliding fundamental rights of any third persons or what public interests are in collision with the fundamental rights of the person subject to the restriction of his or her rights. In the instant case, there is a collision of the subjective right to the preservation of human dignity and the right to judicial protection with the individual's capacity to undertake legal acts and thus the procedural capacity.

36. The constitutional order, in Art. 5 of the Charter, recognizes and guarantees everyone the capacity to possess rights, i.e. it guarantees the right to be recognized as person before the law to everyone. For this reason, any intervention must be examined from the perspective of the potential interference with the fundamental rights of the person subject to such restriction, as guaranteed, above all, by Art. 5 and Art. 10, Section 1 and 2 of the Charter, interpreted in the extent limited by human dignity. Since the Charter guarantees these rights as so-called absolute fundamental rights, they may be restricted only for the purposes of protecting the fundamental rights of any other persons or the purposes of protecting the public interest which is contained, in the form of a principle or value, in the constitutional order as a whole (constitutionally immanent restriction of the fundamental rights and freedoms). On condition that no such purpose has been established, it is impossible to apply the statutory provisions which would interfere with the fundamental rights and freedoms of the person subject to such restriction (cf. judgment file reference Pl. ÚS 42/02, issued on 26 March 2003 and published under No. 106/2003 Coll., N 42/29 Collection of judgments 389, also available on <http://nalus.usoud.cz> ).

37. In the light of the purpose and implications of the contested provision, it is obvious that this provision does not pursue any legitimate goal, i.e. it is not a case of promoting a goal which is essential to free and democratic society, since there is no guarantee of a fair balance between ensuring the interests of society on the one hand and respect to the guaranteed rights and freedoms of an individual on the other hand. A person defined by means of their right to be recognized as person before the law has the right to freedom of action, and therefore, provided that the public authority hinders the exercise of their procedural capacity by applying the contested provision, such procedure may not be found in line with the goal indispensable in a free and democratic society.

38. At present, the question of disability is an important issue of human rights and freedoms. This is also evidenced by the UN Convention, quoted by the petitioner, which is the first legally binding international instrument in the sphere of human rights, by which the European Union and its Member States are bound [cf. the Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (in the Official Journal of the European Union published on 27 January 2010, L 23/35) and the European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, published on 15 November 2010 in <http://eur-lex.europa.eu>], as well as the growing case law of the European Court

of Human Rights in the area of disability law. For instance, in the case of *Glor v. Switzerland* (Judgment issued on 30 April 2009, No. 13444/04 in <http://www.echr.coe.int>, HUDOC database; Decisions and judgments of the ECHR No. 4, Vol. 2010, p. 235, and the summary of judgments of the European Court in ASPI under No. JUD 190926CZ), the European Court examined the question of the availability of reasonable alternatives to military service for persons with disabilities. It is the first case in which the Court established a violation of the prohibition of discrimination against individuals with disabilities (Art. 14 of the Convention) and in which it applied the principle of so-called “reasonable regulations” with respect to the UN Convention, i.e. a broader definition of this concept in order to guarantee the compliance with Art. 1 of this Convention (editor’s note: UN Convention), consisting in promoting, protecting and providing the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and promoting respect to their natural dignity.

39. Taking into account the current perception of the issue of the procedural capacity by the Constitutional Court and the European Court of Human Rights, the comparison of the current legal regulation of the procedural capacity in the individual regulations of the sub-constitutional law, as well as the analysis of the whole case conducted by the petitioner, it is obvious that the contested provision is inconsistent with the proportionality principle, as well as with the maxim according to which any interference with rights must reflect the particularities of every single case. Given the situation in which it is impossible to provide any constitutionally conforming interpretation of the contested provision, the Constitutional Court holds that the unlawful situation persists, consisting in the fact that persons who have been restricted in their legal capacity are prevented from exercising their procedural capacity within administrative court proceedings pursuant to Act No. 150/2002 Coll., even though the restriction on their rights does not at all concern the court proceedings in question. Undoubtedly, this conclusion also arises from the role of the administrative judiciary, one of whose most important missions includes the protection of the rights of an individual in dealings with administrative bodies.

40. From the considerations outlined above and with respect to the implications of the contested provision on the public subjective rights of an individual, it is obvious that it is necessary to agree with the petitioner’s opinion included in the petition, i.e. that the application of the contested provision would violate the fundamental rights guaranteed by the constitutional order of the Czech Republic, particularly those included in Art. 5, Art. 10, Section 1 and 2, and Art. 36, Section 1 and 2 of the Charter, Art. 6, Section 1 of the Convention, and Art. 12 and 13 of the UN Convention. Pursuant to Section 70, Section 1 of the Act on the Constitutional Court, the Constitutional Court thus annulled the contested provision.

Note: No appeal from a decision of the Constitutional Court is permissible (Section 54 of the Act on the Constitutional Court).