

2010/04/20 - PL. ÚS 6/10: OBLIGATION TO RELEASE DEFENDANT FROM CUSTODY

HEADNOTES

In order to ensure respect to and protection of the fundamental right to personal liberty, the European Court of Human Rights developed a “doctrine of accentuated reasons”. According to this doctrine, the ordinary courts must respect the requirement of the indispensability of the existence of accentuated reasons for continuing to restrict personal liberty, otherwise it is not possible to approve the continuing restriction of personal liberty, even when custody might have been imposed on the basis of a justified suspicion. When assessing the proportionality of restriction of personal liberty, the ordinary court must deal in particular with the issue whether the suspicion of committing a criminal act for which the defendant is criminally prosecuted is being strengthened or weakened.

From the viewpoint of constitutionality, it is hardly acceptable that the continuity of restriction of personal liberty through custody is not impaired by a judgment of exoneration in any way. According to the opinion of the Constitutional Court, this statutory arrangement of the Criminal Procedure Code, empowering the public prosecutor to file a complaint with effects of deferral, contravenes the narrow interpretation of Art. 5 para. 1, clause c), in connection with Art. 5 para. 3 of the Convention.

Continuing restriction of personal liberty after the delivery of a judgment of exoneration ceases to be justifiable from the viewpoint of public interest in the effective prosecution of criminal activities, since the requirement of the presence of accentuated reasons for further continuance of custody is not fulfilled.

CZECH REPUBLIC CONSTITUTIONAL COURT JUDGMENT

IN THE NAME OF THE REPUBLIC

On 20 April 2010, the Constitutional Court Plenum, composed of Stanislav Balík, František Duchoň, Vlasta Formánková, Vojen Güttler, Ivana Janů, Vladimír Kůrka, Dagmar Lastovecká, Jan Musil, Jiří Nykodým, Pavel Rychetský, Miloslav Výborný, Eliška Wagnerová (Justice Rapporteur) and Michaela Židlická, adjudicated on a petition by the Second Panel of the Constitutional Court for annulment of the provisions of § 74 para. 2, second sentence, the section following the semicolon, of Act No. 141/1961 Coll. on Criminal Proceedings (the Criminal Procedure Code), as amended by later regulations; with participation by 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; as follows:

I. The provisions of § 74 para. 2, second sentence, the section following the semicolon, including the semicolon, of Act No. 141/1961 Coll. on Criminal Proceedings (the Criminal Procedure Code), as amended by later regulations, which read as follows: “; if release from custody following pronouncement of a judgment of exoneration is concerned, then a complaint by a public prosecutor shall have an effect of deferral only when the public prosecutor also files an appeal against the judgment”, shall be annulled as of the date this Judgment is published in the Collection of Laws.

II. Always following the delivery of a judgment of exoneration, the defendant shall be released immediately. A complaint by a public prosecutor against the decision on release of the defendant from custody following delivery of a judgment of exoneration shall not have an effect of deferral.

REASONING

I.

I. A) Definition of the case and recapitulation of the petition

1. In proceedings on a constitutional complaint administered under file No. II. ÚS 331/10, M. Z., the complainant, demanded the annulment of a resolution of the High Court in Prague, dated 22 December 2009, file No. 10 To 125/2009, as he deemed that through such a resolution the High Court violated a constitutionally guaranteed right stipulated in Art. 8 paragraphs 1, 2 and 5 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter referred to only as the “Charter”), as well as rights established in Art. 5 para. 1, clause c); Art. 5 paragraphs 3 and 4; and Art. 6 para. 1 of the Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to also as the “Convention”). The resolution by the High Court in Prague annulled the resolution of the Regional Court in Pilsen, dated 7 December 2009, ref. No. 34 T 3/2008-9891, whereby the complainant was released from custody. On the basis of a complaint by a public prosecutor of the Regional Public Prosecutor’s Office in Pilsen, the High Court annulled the Regional Court’s resolution on release, kept the complainant in custody, and rejected his application for release.

2. The essence of the constitutional complaint consists of the complainant’s doubt concerning the fact that the court of complaint decided on a complaint by a public prosecutor, who at the same time also filed an appeal against the judgment of exoneration, in terms of keeping the complainant in custody, this after the judgment of exoneration was passed concerning the complainant and his release from custody was ordered by the court of first instance. This course of action is, according to the complainant, in contradiction with Art. 5 para. 3 of the Convention in an interpretation adopted by the European Court of Human Rights in 1968 (the decision in the case of Wemhoff v. FRG, dated 27 June 1968). The complainant further saw violation of the fundamental rights in the fact that the High Court did not make it possible for him to be personally heard within the scope

of decision making on the continuance of custody. Also, according to the complainant, the decision by the High Court was practically non-reviewable due to its broad reasoning.

3. The Second Panel of the Constitutional Court did not consider the section following the semicolon of the second sentence of § 74 para. 2 of Act No. 141/1961 Coll. on Criminal Proceedings (the Criminal Procedure Code), as amended by later regulations, to be constitutionally conforming, since the same contravenes the requirement for proportionality of restriction of personal liberty through custody, when it does not respect the requirement for proving the presence of accentuated reasons for further restriction of personal liberty through custody, which requirement results both from the case law of the Constitutional Court [Judgment of the Constitutional Court file No. IV. ÚS 689/05, dated 12 December 2005 (N 225/39 SbNU 379)] and from the case law of the European Court of Human Rights (Wemhoff v. FRG, dated 27 June 1968; Labita v. Italy, dated 6 April 2000; Rokhlina v. Russia, dated 7 April 2005, available at <http://www.echr.coe.int>), or indeed literally negates this requirement. Therefore, the Second Panel of the Constitutional Court submitted to the Plenum of the Constitutional Court a petition for annulment of the above-quoted provisions.

I. B) Statements by the parties to the proceedings

4. The Constitutional Court, pursuant to the provisions of § 42 para. 4 and § 69 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”), sent said petition for annulment of the contested provisions to the Chamber of Deputies and the Senate of the Parliament of the Czech Republic.

5. The Chamber of Deputies of the Parliament of the Czech Republic, represented by its Chairperson, Ing. Miloš Vláček, in its statement dated 12 March 2010, only recapitulated the course of the legislative process resulting in adoption of the valid wording of the contested provisions of § 74 para. 2, second sentence, the section following the semicolon of the Criminal Procedure Code. In addition, the Chamber of Deputies expressed its approval of dispensation of an oral hearing.

6. The Senate of the Parliament of the Czech Republic, represented by its President, MUDr. Přemysl Sobotka, in its statement dated 12 March 2010, also described the legislative procedure of adopting the valid wording of the contested provisions of § 74 para. 2, second sentence, the section following the semicolon of the Criminal Procedure Code (an amendment to the Criminal Procedure Code made by Act No. 265/2001 Coll.) by the Senate. They further stated that the entire amendment under discussion had represented alterations to criminal proceedings with the intention of reform, and as a whole pursued - both factually and legally - a progressive trend as regards the feasibility and enforceability of the law. Discussion of the amendment in the Senate did not directly concern said section of the legal arrangement; however, debate was held concerning another, partially comparable matter from the given amendment, that is concerning the new entitlement of the public prosecutor to prolongation of custody during preparatory proceedings. In the end, the Senate, after a critical debate in committees as well

as the plenum, did not revise such a proposal for a stronger competence of the public prosecutor. From the context of holding the debate, it may be presumed that the Senate tended towards the opinion of the sponsor, in that it was necessary to properly reflect the altered position of the public prosecutor in criminal proceedings additionally in the instrument of custody. The Senate also expressed its approval of dispensation of an oral hearing.

II.

Conditions for the active standing of the petitioner

7. The petition for annulment of the second sentence, the section following the semicolon of § 74 para. 2 of the Criminal Procedure Code, for its contradiction with the constitutional order of the Czech Republic was filed by the Second Panel of the Constitutional Court within the scope of the proceedings on a constitutional complaint of the complainant M. Z., administered under file No. II. ÚS 331/10, when the essence of the constitutional complaint consisted of an opinion that any continuance of custody following pronouncement of a judgment of exoneration by a court of first instance is in contradiction with the Convention, and the possibility of continuing custody is supported by said section of the provisions of the Criminal Procedure Code being contested. Therefore, it is a petition filed under § 64 para. 1, clause c) of the Act on the Constitutional Court, and the conditions for active standing for filing the same have consequently been fulfilled.

III.

Wording of the contested provisions

8. The contested provisions of the second sentence, the section following the semicolon of the provisions of § 74 para. 2 of Act No. 141/1961 Coll. on Criminal Proceedings (the Criminal Procedure Code), as amended by later regulations, read as follows:

“if release from custody following pronouncement of a judgment of exoneration is concerned, then a complaint by a public prosecutor shall have an effect of deferral only when the public prosecutor also files an appeal against the judgment”

IV.

Description of legislative procedure of adopting the contested provisions of the act

9. In accordance with the provisions of § 68 para. 2 of the Act on the Constitutional Court, the Constitutional Court is further obliged, in proceedings on annulment of acts and other legal regulations, to assess whether the contested act or part of the same was adopted and issued within the confines of the powers set down in the Constitution and in a constitutionally prescribed manner. The provision in question was adopted as early as prior to 1993, that is prior to the validity and effectiveness of the Constitution of the Czech Republic (hereinafter referred to only as the “Constitution”) which represents a reference criterion for evaluating the

constitutionality of the legislative procedure of adopting legal regulations [see Resolution of the Constitutional Court Plenum, file No. Pl. ÚS 5/98, dated 22 April 1999 (U 32/14 SbNU 309)]. Since alterations adopted later were merely formal or considered merely aspects of language, as they related in particular to replacement of the institution of the state attorney with the institution of public prosecution, the Constitutional Court did not review the legislative procedure of adopting such provisions of the act.

V.

Reference criteria for assessment of the petition

V. A) Relevant provisions of the Constitution and the Convention

10. Under Art. 1 para. 1 of the Constitution, the Czech Republic is a state governed by the rule of law, founded on respect for the rights and freedoms of man and of citizens. At the very core of a state governed by the rule of law there is a “principle according to which freedom of an individual is presupposed and its restriction by the state is an exemption” (cf. C. Schmitt. *Constitutional Theory*. Durham and London: Duke University Press, 2008, p. 204). The idea of a state governed by the rule of law is thus a logical basis for the entire concept of criminal proceedings. These must, to a maximum degree, preserve the rights and freedoms of an individual, since belittling the purpose and methods of administration of criminal proceedings may result in unjustified and inadequate infringement of private liberty of an individual (cf. Judgment of the Constitutional Court file No. II. ÚS 1975/08, available at <http://nalus.usoud.cz>). From the viewpoint of constitutional law it is always significant to assess to what extent public interest, as defined in the Criminal Code by the purpose of punishment, may (still) legitimately restrict the fundamental rights of a specific defendant in the course of criminal proceedings (cf. Judgment of the Constitutional Court file No. I. ÚS 1305/09, available at <http://nalus.usoud.cz>); the very right to personal liberty being an example and a core one of these.

11. By the provisions of Art. 8 para. 1 of the Charter, everybody is guaranteed personal liberty which holds a key place in the catalogue of fundamental rights and basic freedoms [cf. clause 25 of Judgment file No. Pl. ÚS 63/06, dated 29 January 2008 (N 21/48 SbNU 223; 90/2008 Coll.)]. The latitude and confines for constitutionally approved restriction of the right to personal liberty are then established in particular by the provisions of Art. 8 para. 2, and Art. 8 para. 5 of the Charter [cf. Judgment of the Constitutional Court file No. IV. ÚS 689/05, dated 12 December 2005 (N 225/39 SbNU 379)]. A similar, indeed even more detailed, arrangement is contained in the Convention on the Protection of Human Rights and Fundamental Freedoms. According to Art. 5 para. 1 of this document, no one shall be deprived of their liberty save in exhaustively specified cases. A person may be deprived of personal liberty only in accordance with a procedure prescribed by law. According to Art. 5 para. 1, clause c) of the Convention, an individual may be deprived of liberty for the reason of lawful arrest or detention of a person effected for the purpose of bringing them before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent their committing an offence or fleeing after

having done so. Art. 5 para. 3 of the Convention then says that everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial.

V. B) Restriction of personal liberty through custody

12. The Constitutional Court has several times commented on the nature of custody which, together with detention and arrest, is one of the most serious procedural infringements of rights of a defendant. The contents of the legal instrument of custody represent a definition of constitutionally acceptable reasons for restricting the personal liberty of a defendant, with the objective of precluding obstruction or hindrance of achieving the purpose of criminal proceedings [cf. Judgment of the Constitutional Court file No. Pl. ÚS 4/94, dated 12 October 1994 (N 46/2 SbNU 57; 214/1994 Coll.), Judgment file No. I. ÚS 40/04, dated 24 February 2004 (N 28/32 SbNU 261), file No. IV. ÚS 689/05, dated 12 December 2005 (N 225/39 SbNU 379)]. Temporary restriction of personal liberty through custody must, according to the opinion of the Constitutional Court, comply with several conditions [cf. clause 25 of Judgment of the Constitutional Court file No. Pl. ÚS 63/06 (see above)]: “The basic principles of restriction of personal liberty through custody (which sub-constitutional law must reflect) include the indispensability of committing a person to custody and keeping the same in custody merely for a certain legitimate purpose, the proportionality between the personal liberty of an individual and interests of society in restricting such liberty, the indispensability of the restriction of personal liberty due to the absence of another means of achieving the same objective, balancing the benefits of restricting personal liberty with respect to detriments resulting from the same, and, finally, the exclusive powers of a court to make decisions.”

13. Due to the fact that custody may represent an enormous infringement of the personal domain of an individual, the case law of the Constitutional Court has paid peculiar attention to it. In the opinion of the Constitutional Court, custody “represents an extraordinary measure relating to restriction of personal liberty and should be imposed only when there is no other eventuality for allaying a particular misgiving for which custody may be ordered” (cf. Judgment of the Constitutional Court file No. II. ÚS 897/08, available at <http://nalus.usoud.cz>). The exceptional nature of this securing instrument is given by the fact that custody has serious negative consequences: that is it confines “a person presumably innocent, prior to definite determination of guilt, it isolates the defendant from their family and social environment, has serious social and psychological consequences, may serve as a means of duress to a defendant in order to obtain their confession” (Repík, B. *Evropská úmluva o lidských právech a trestní právo / European Convention on Human Rights and Criminal Law*. Prague: Orac, 2002, p. 228). Since custody may significantly encroach upon the personal liberty of an individual, it, as a legitimate statutory exception to the general rule of inadmissibility of infringement of personal liberty of an individual, must always be interpreted solely in a restrictive way, as is additionally confirmed by the case law of the European Court of Human Rights. According to such case law, the list of exceptions to the right to liberty is of

an exhausting nature, and, therefore, only a narrow interpretation is compatible with the objective of provisions of Art. 5 of the Convention (*Giulia Manzoni v. Italy*, 1997, *Quinn v. France*, 1995). Application of this procedural instrument must be always measured from the viewpoint of proportionality of the infringement of the fundamental rights of a defendant.

14. Infringement of personal liberty must always be evaluated from the viewpoint of time; as custody is an extraordinary instrument, it may last only for an absolutely necessary period of time. If it lasts for a period longer than is absolutely necessary, it becomes a measure which is inadequate and which inadmissibly infringes the fundamental right to personal liberty of an individual, guaranteed by Art. 8 para. 1 of the Charter, which must be, under the given situation, granted priority. According to the European Court of Human Rights, “continuance of restriction of personal liberty” is then “justified only in the case that there are specific indications of a true need in terms of public interest, which, irrespective of the presumption of innocence, outbalance the principle of respecting personal liberty” [cf. for example a decision in the case of *Letellier v. France*, dated 26 June 1991, *Muller v. France*, dated 17 March 1997, *Punzelt v. Czech Republic*, dated 25 April 2000, or *Jecius v. Lithuania*, dated 31 July 2000; cf. also Judgment of the Constitutional Court file No. IV. ÚS 689/05, dated 12 December 2005 (N 225/39 SbNU 379)]. Continuing restriction of personal liberty through custody must be in proportional relation to the constitutionally conforming public interest in effective prosecution of criminal activity. With the passage of time, to the contrary, the legitimacy of restricting fundamental rights for the benefit of public interest in fulfilling the purpose of criminal proceedings decreases, and the need for renewing respect for the fundamental rights of an individual increases.

15. In order to ensure respect to and protection of the fundamental right to personal liberty, the European Court of Human Rights developed a “doctrine of accentuated reasons”. According to this doctrine, the ordinary courts must respect the requirement of the indispensability of the existence of accentuated reasons for continuing to restrict personal liberty, otherwise it is not possible to approve the continuing restriction of personal liberty, even when custody might have been imposed on the basis of a justified suspicion. When assessing the proportionality of restriction of personal liberty, the ordinary court must deal in particular with the issue whether the suspicion of committing a criminal act for which the defendant is criminally prosecuted is being strengthened or weakened. Specifically speaking, ongoing existence of the suspicion is “a condition sine qua non for the lawfulness of continuance of custody, but after a certain period of time, such ongoing existence is in itself no longer sufficient. In such cases, the court must determine whether there exist also other (relevant and sufficient) reasons submitted by the bodies involved in criminal proceedings that would justify such continuing confinement” (a decision dated 7 April 2005 in the case of *Rokhlina v. Russia*). The domestic court must thus determine whether other reasons submitted by the bodies involved in criminal proceedings may justify the continuing confinement of the person involved (cf. Hubálková, E. *Evropská úmluva o lidských právech a Česká republika / European Convention on Human Rights and the Czech Republic*. Prague: Linde, 2003, p. 131).

16. Since the European Court of Human Rights always evaluates the proportionality

of the length of restriction of personal liberty through custody, they in many decisions have commented specifically on when, from the viewpoint of time, custody may still be considered proportional, and when custody begins to represent an infringement of the right to personal liberty guaranteed by the Convention. According to the European Court of Human Rights there actually is a certain time limit which confinement through custody must not exceed. The European Court of Human Rights says, and the Constitutional Court emphasises the same opinion (clauses 13 and 14), that custody is an extraordinary instrument, limited in duration to an absolutely necessary period of time. While it is usually not a problem to determine the commencement of such a period, a vital issue is then to determine the end point of custody, such as would still be in accordance with the Convention. The case law of the European Court of Human Rights shows that such a period starts at the moment when a person is actually deprived of liberty, and ends upon pronouncement of a judgment by a court of first instance, even though such a judgment has not become legally binding (cf. Repík, B. *Evropská úmluva o lidských právech a trestní právo / European Convention on Human Rights and Criminal Law*. Prague: Orac, 2002, p. 228).

17. This rule was pronounced by the European Court of Human Rights in the decision in the case of *Wemhoff v. Germany*, dated 27 June 1968. According to this, custody ends, with respect to Art. 5 para. 3 of the Convention, on the day when the indictment is decided upon, be it only by a court of first instance. The European Court of Human Rights confirmed this legal opinion in its decision in the case of *Labita v. Italy*, dated 6 April 2000, in which they declared that the end of custody, with respect to Art. 5 para. 3 of the Convention, is the date when a decision is made on the justification of the indictment, even when only at the first instance. These decisions clearly show that detaining a person after the same has been exonerated can no longer be covered by the exemption permitted by Art. 5 para. 1, clause c) of the Convention. The European Court of Human Rights admitted that a certain period of time to effect the decision on release is often inescapable, but such a period must be reduced to a minimum (Guilia Manzoni, dated 1 July 1997). An important consequence of such a legal opinion is that the term of continuance of custody may not be prolonged by the effects of deferral pertaining to executing the judgment of exoneration. The point is that in similar cases the reason for confining a person pursuant to Art. 5 para. 1, clause c) of the Convention has ceased to exist. The case law of the European Court of Human Rights makes it possible to infer a conclusion according to which it is true that if a court of first instance pronounced a judgment of exoneration, the defendant must be immediately released, even though the public prosecutor appeals immediately afterwards (cf. Repík, B. *Evropská úmluva o lidských právech a trestní právo / European Convention on Human Rights and Criminal Law*. Prague: Orac, 2002, p. 229). Should the defendant not be released, it must be declared that the right to personal liberty guaranteed by Art. 5 para. 1 of the Convention is thus being violated. Another case of restriction of personal liberty may occur when conditions presupposed by Art. 5 para. 1, clause a) of the Convention are fulfilled, when the same makes possible lawful detention after conviction by a competent court. A person who objects, after the conviction, that their custody had lasted for an unnecessarily long time due to delays in the proceedings on their appeal, may not resort to Art. 5 para. 3 of the Convention, but may only claim and prove violation of rights guaranteed by Art. 6 para. 1 of the Convention.

V. C) Inspiration from elsewhere: the practice in the Slovak Republic

18. The Constitutional Court notices that the above-described practice of the European Court of Human Rights has created a response in the Slovak Republic. Slovakia has adopted an extensive amendment to the Criminal Procedure Code, which was to ensure respect for the fundamental rights of individuals in accordance with their interpretation by the Slovak Constitutional Court and in particular the European Court of Human Rights. Case law of the European Court of Human Rights concerning Art. 5 paragraphs 1, 3 and 4 of the Convention has been comprehensively implemented in the Criminal Procedure Code of the Slovak Republic. Thus Slovakia fulfilled the commitments imposed on them by the Convention. The explanatory report of the Slovak Ministry of Justice from 2007 names specific alterations towards which such an amendment was directed. One of these alterations consists of the unconditional release of a defendant from custody following their acquittal by a court of first instance. At that point, the Ministry of Justice referred to the main principles of the decision of the European Court of Human Rights in the case of *Wemhoff v. Germany* from 1968 (cf. p. 4). The explanatory report has also referred to a decision in the case of *Labita v. Italy*, which says that further continuance of custody following a judgment of exoneration can no longer be justified by an exception admissible under Art. 5 para. 1, clause c) of the Convention. In other words, custody following pronouncement of a judgment of exoneration loses support in terms of the provisions of clause c) of Art. 5 para. 1 of the Convention, as far as the procedural safeguards of Art. 5 para. 3 of the Convention, which guarantees the right to a trial within a reasonable time, linked to these provisions of the Convention, have been accomplished. That it why it is not further possible to hold a person in custody when the righteousness of such a person's charges has already been decided upon. The explanatory report explicitly points out that, in accordance with the decision in the case of *Wemhoff*, the day of termination of custody is the day when the charges are being decided upon, even though only by a court of first instance (cf. p. 23).

VI.

The actual review

19. In light of the above-specified aspects of constitutional law, the Constitutional Court thus had to evaluate whether said sections of the contested provisions meet requirements resulting from the above-specified principles, and concluded that it is not so.

20. The provisions of § 74 para. 2, second sentence, the section following the semicolon of the Criminal Procedure Code regulate the effects of deferral of a complaint by a public prosecutor following the pronouncement of a judgment of exoneration, if an appeal is filed at the same time. The judgment of exoneration is delivered under the condition that, on the basis of evidence submitted, the guilt of a defendant is not proven, be it (a) due to the fact that it has not been proven that the act for which the defendant is prosecuted has actually happened; or (b) due to the fact that the act designated in the proposed judgment is not a criminal act; or

(c) due to the fact that it has not been proven that such an act was committed by the defendant (see § 226 of the Criminal Procedure Code, wherein some other reasons are established). In connection with the delivery of the judgment of exoneration, the court of first instance must examine whether reasons for custody continue or whether they have changed (cf. § 72 para. 1 of the Criminal Procedure Code). Since the defendant was, by the decision of the court, completely acquitted of the indictment, it is at the given moment evident that reasons for custody are no longer given and that further continuance of custody is no longer justified. This is the very reason for which the ordinary court, immediately after delivering a judgment of exoneration, delivers also a resolution on release from custody. The present wording of the provisions of § 74 para. 2, second sentence, the section following the semicolon of the Criminal Procedure Code then, in principle, represents the entitlement of a public prosecutor to reverse a decision of a court on release from custody, be it for a limited period of time, until the time of the decision of the court of complaint.

21. From the viewpoint of constitutionality, it is hardly acceptable that the continuity of restriction of personal liberty through custody is not impaired by a judgment of exoneration in any way. According to the opinion of the Constitutional Court, this statutory arrangement of the Criminal Procedure Code, empowering the public prosecutor to file a complaint with effects of deferral, contravenes the narrow interpretation of Art. 5 para. 1, clause c), in connection with Art. 5 para. 3 of the Convention. The point is that the wording of the contested section of said provisions of the Criminal Procedure Code is completely unambiguous, and its deficits cannot be overcome by a constitutionally conforming interpretation.

22. The Constitutional Court has, therefore, concluded that the contested section of the provisions of § 74 para. 2 of the Criminal Procedure Code is in direct contradiction with the requirements resulting from the principles contained in the case law of the European Court of Human Rights (clauses 14 to 17), which are thus not respected by the Czech legal arrangement. Continuing restriction of personal liberty after the delivery of a judgment of exoneration ceases to be justifiable from the viewpoint of public interest in the effective prosecution of criminal activities, since the requirement of the presence of accentuated reasons for further continuance of custody (clause 15) is not fulfilled. When the case law of the European Court of Human Rights requires that reasons that could legitimate the ongoing continuance of custody become stronger with the passage of time, it is apparent that the contested section of the provisions of the Criminal Procedure Code cannot honour such a requirement. The delivery of a judgment of exoneration in fact causes that such reasons vanish. In other words, the acquittal of an indictment represents that moment in the scope of criminal proceedings when reasons for keeping a person in custody have disappeared or are diminished to a minimum level, since the charges have proven to be unjustified by a verdict of a court, and, therefore, there is no public interest in continuing custody which could outweigh the requirement for respecting personal liberty. When an obligation is imposed on the court to deal with whether the suspicion of committing a criminal act is strengthened or diminished (clause 15), then in connection to the delivery of a judgment of exoneration, the legitimacy of the suspicion is disproved by the very decision of the court on the unjustified nature of the charges. Release of the defendant cannot be considered to be premature, even though there is a possibility

that the appeal by the public prosecutor to the detriment of the defendant will be granted by the court of appeal. As the Constitutional Court declared in Judgment file No. IV. ÚS 689/05, dated 12 December 2005 (N 225/39 SbNU 379), a reason for prolonging custody consisting of a totally unjustified hypothetical conclusion on the possibility of an appeal being granted by the court of appeal “is completely arbitrary, conflicting with Art. 8 para. 2, para. 5 of the Charter not only by its extending the reasons for restricting personal liberty beyond the statutory framework, but also by placing to the detriment of the complainants the implicitly assumed inability of the court of first instance to disprove their defence.”

23. The effects of deferral of the complaint by a public prosecutor establish a condition when a greater sacrifice is required from an individual than may be reasonably required from a person who benefits from the presumption of innocence, in this case confirmed by a court of justice. The Constitutional Court, therefore, cannot accept the concept of the Czech legal arrangement, according to which further continuance of custody is, in the given moment, allowed. When the powers granted by the contested provisions of the Criminal Procedure Code to public prosecutors are put into practice, it leads to an inadmissible and unconstitutional infringement of the fundamental right to personal liberty, which, however, must be respected by the state even when formulating norms of criminal law. Therefore, there is nothing left but to conclude that continuance of custody cannot be prolonged through the effects of deferral of a decision on release from custody activated by a complaint by a public prosecutor, since such a concept leads to an inadmissible infringement of the constitutionally guaranteed right to personal liberty of the defendant.

24. In a number of its decisions, the Constitutional Court has commented on the interpretation of Art. 89 para. 2 of the Constitution [cf. Judgment of the Constitutional Court file No. Pl. ÚS 2/03, dated 19 March 2003 (N 41/29 SbNU 371; 84/2003 Coll.); Judgment file No. Pl. ÚS 41/02, dated 28 January 2004 (N 10/32 SbNU 61; 98/2004 Coll.); Judgment file No. Pl. ÚS 45/04, dated 22 March 2005 (N 60/36 SbNU 647; 239/2005 Coll.)], according to which “not only a verdict of a judgment is binding, but also its reasoning, specifically those parts of the same as contain ‘main’ reasons”. After derogation of the contested section, the provisions of § 74 para. 2 of the Criminal Procedure Code shall read as follows: “Effects of deferral shall pertain solely to a complaint by a public prosecutor against a decision on release of a defendant from custody and a complaint by the parties against a decision on allocation of bail to the state. However, when the public prosecutor is present at the pronouncement of such a decision, then their complaint shall have effects of deferral only provided that the same is filed immediately following pronouncement of the decision.” Such provisions will have to be interpreted in a constitutionally conforming manner in such a way that this norm cannot be applied in the instance that a judgment of exoneration is delivered in the given case. A result of the annulment of the given section of the Criminal Procedure Code must consist of the defendant always being released immediately following the delivery of a judgment of exoneration. A complaint by a public prosecutor against a decision on release of a defendant from custody following delivery of a judgment of exoneration shall have no effects of deferral. The Constitutional Court is aware of the fact that a certain time for the execution of the decision on release is necessary, however, the Court wishes to remark that in

the case of Labita v. Italy (clause 17) it was found by the European Court of Human Rights that a delay in the process of release from custody, due to the indispensability of undertaking administrative technicalities, of approximately 10 hours was disproportionately long.

Notice: Decisions of the Constitutional Court cannot be appealed.