

II.ÚS 3626/13 of 16 December 2015

Right of Person Reporting a Crime to Effective Investigation

**CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT**

IN THE NAME OF THE REPUBLIC

HEADNOTES

In cases of suspicion of the especially serious crime of human trafficking or other serious crimes against liberty and human dignity, which the Czech Republic is bound to prosecute under its international obligations, at a constitutional law level one can conclude that there is a positive obligation on state bodies to effectively clarify the criminal matter. Breach of this obligation is interference in the constitutionally guaranteed rights of persons who declare themselves to be victims of such crimes and seek protection and satisfaction by reporting the crime to state bodies.

We must begin with the assumption that for the victims of human trafficking the protection provided in a criminal proceeding is the direct and most effective way to ensure their fundamental rights arising from Art. 8 par. 1, Art. 9 and Art. 10 par. 1 of the Charter of Fundamental Rights and Freedoms and from Art. 4 par. 1 and 2 and Art. 5 par. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Therefore, purely formal, or grossly incorrect and ineffective procedures by law enforcement bodies will not survive constitutional law review, and establish the need to annul the decision that ended the criminal proceeding by suspending the matter.

JUDGMENT

A Panel of the Constitutional Court, composed of the Chairman Radovan Suchánek (the judge rapporteur) and judges Vojtěch Šimíček and Jiří Zemánek ruled in the matter of a constitutional complaint by complainants 1) Jozef Blaško, 2) Ján Čečko, 3) Ján Lenka, 4) Robert Lukáč, 5) Jozef Matús, 6) František Mořingl, 7) Miroslav Mořingl, 8) Erik Oravec, 9) Marek Panoc, 10) Ján Roth, 11) Zdeno Trst'án, 12) Farkas Sándor, 13) Nagy Attila, 14) Tapasztó József Zoltan, represented by JUDr. Štěpánka Miková, attorney, with her registered office at 28. října 1001/3, 110 00 Prague 1, against a decision by the Police of the Czech Republic, District Directorate of Police for Prague I, Criminal Police and Investigation Service of 12 July 2013 file no. KRPA-43249/TČ-2013-001193-DŠ, and against a decision of the District Public Prosecutor's Office for Prague I of 30 September 2013 file no. 0 ZN 1423/2013-99, with the participation of the Police of the Czech Republic, District Directorate of the Police, Prague 1, Criminal Police and Investigation Service, and the District Public Prosecutor's Office for Prague 1, as parties to the proceeding, as follows:

VERDICT

I. The decision of the Police of the Czech Republic, District Directorate of Police for Prague I, Criminal Police and Investigation Service of 12 July 2013 file no. KRPA-43249/TČ-2013-001193-DŠ, and the decision of the District Public Prosecutor's Office for Prague I of 30 September 2013 file no. 0 ZN 1423/2013-99, violated the complainants' fundamental right to effective investigation, arising from the fundamental rights in Article 8 par. 1, Article 9 and Article 10 par. 1 of the Charter of Fundamental Rights and Freedoms and Article 4 par. 1 and 2 and Article 5 par. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

II. The decision of the Police of the Czech Republic, District Directorate of Police for Prague I, Criminal Police and Investigation Service of 12 July 2013 file no. KRPA-43249/TČ-2013-001193-DŠ and the decision of the District Public Prosecutor's Office for Prague I of 30 September 2013 file no. 0 ZN 1423/2013-99 are annulled.

REASONING

I.

1. Through their petition under § 72 par. 1 let. a) of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations (the “Act on the Constitutional Court”), the complainants seek the annulment of the abovementioned decisions of the Police of the Czech Republic, District Directorate of Police for Prague I, Criminal Police and Investigation Service (also referred to as the “police body”) and the District Public Prosecutor’s Office for Prague I, because they see them as interfering in their constitutionally guaranteed fundamental rights and freedoms.

2. As indicated in the reasoning of the constitutional complaint and the file materials, the contested decision by the police body, under § 159a par. 1 of the Criminal Procedure Code, postponed the matter of suspicion of committing the crime of fraud under § 250 par. 1, 3 let. b) of the Criminal Code committed jointly under § 9 par. 2 of the Criminal Code, which could have been committed by Ing. David Mrkos, born 17 July 1965, as the chairman of the board of directors of Affumicata a.s., company ID number 28432401, with its registered office at Praha 1, Senovážné náměstí 1463/5, Prague 1 in the period from September 2008 to 10 April 2009, and with its registered office at Na Příkopě 958/25, Prague 1 from 10 April 2009 to 19 April 2010, and Jindřich Martínák, born 7 July 1974, as the business manager of Affumicata a. s., and as representatives of the company Wood Servis Praha s. r. o., company ID number 29223831, with its registered address at Příkop 838/6, Brno, and Luboš Dobrovolný, born 7 April 1968, as a representative of Wood Servis Praha s. r. o., during 2009 and 2010 at the registered address of Affumicata a. s. at Senovážné náměstí 1463/5, Prague 1, or Na Příkopě 958/25, Prague 1, and at various other places in the Czech Republic, by concluding written contracts for forestry work throughout the entire Czech Republic with foreign workers originally from Vietnam, Romania and Slovakia, even though they knew that after the work was performed they would not pay the workers the agreed wages in full, or at all, whereby they misled them, and through these actions they could have caused a total of 66 victims damages totaling CZK 820,983 and EUR 22,800.

3. The complainants, as the persons reporting a crime, filed a complaint against the cited police body decision, which, however, was denied as unjustified by the public prosecutor’s decision indicated above under § 148 par. 1 let. c) of the Criminal Procedure Code.

4. In the reasoning of the constitutional complaint, the complainants emphasize that they originally filed a criminal complaint on suspicion that they had become victims of the crime of human trafficking under § 232a par. 2 of Act no. 140/1961 Coll., the Criminal Act, as amended by later regulations, and only alleged in the alternative, as victims, that by their actions the entrepreneurs Ing. Mrkos and Martínák committed the crime of fraud. For completeness, they also cited other crimes that the named persons were alleged to have committed concurrently with the crime of human trafficking. Together with the complainants, several dozen other people, citizens of foreign states, filed criminal reports. In the reasoning of their petition, the complainants describe in detail their version of events, according to which they were lured by false promises from the accused entrepreneurs, Ing. Mrkos and Martínák and subsequently held in unbearable conditions in remote locations in the forest in the Czech Republic, where they had to work 12 to 14 hours a day, seven days a week, without being paid wages. The complainants describe in drastic detail how the suspects threatened to physically liquidate them if they did not continue their work, and systematically humiliated them. They point out that they were forced to take on debts with the suspects, which the suspects then used to justify keeping the complainants and other persons in a similar situation at work without entitlement to wages. The complainants also emphasize that the accused entrepreneurs abused the fact that the victimized foreign workers generally did not even have the means to return to their homelands from the place where they worked in the Czech Republic. The complainants extensively emphasize what serious effects the alleged exploitation and other mistreatment had on them and their families, who remained without funds for a lengthy period, had to face court execution [of their property], etc. They also point to alleged effects on their health as the consequences of mistreatment by the fraudulent employers in the Czech Republic.

5. In the constitutional complaint the complainants also describe how the criminal reports were verified by law enforcement bodies. They point out that, in view of the seriousness of the suspicion, they intentionally filed their reports directly with the Supreme Public Prosecutor's Office in Prague. However, the law enforcement bodies quite nonsensically and inconsistently with the principles of criminal procedure divided the criminal case by the individual legal classifications made by the representatives of the parties reporting the events under investigation.

6. As further indicated by the reasoning of the constitutional complaint and its appendices, on 24 March 2011 the District Directorate of Police for Prague I, Criminal Police and Investigation Service, 3rd Department for Economic Crimes, passed the suspicion of commission of the crime of trafficking in human beings as a finding for further action to the Police of the Czech Republic, Organized Crime Unit, Criminal Police and Investigation Service, Human Trafficking and Illegal Migration Department (the "OCU"). On 10 June 2011 the District Directorate of Police for Prague I, Criminal Police and Investigation Service, 3rd Department for Economic Crimes divided the case further, and passed it on to two other bodies of the Police of the Czech Republic: the Regional Directorate of Police in Brno, Territorial Department Brno-City, Criminal Police and Investigation Service, Economic Crimes Department and the District Directorate of Police for Prague IV, Criminal Police and Investigation Service, Economic Crimes Department.

7. As a result of this division what was originally one criminal case of all the victims was split into two basic branches: investigation of the actions committed against the Slovak and Romanian victims (investigated by the District Directorate of Police for Prague I) and investigation of the actions committed against the Vietnamese victims (investigated by the District Directorate of Police for Prague IV). The District Directorate of Police for Prague I and the Regional Directorate of Police for Brno then also separately investigated whether the entrepreneurs Ing. Mrkos and Martiňák committed the crime of tax evasion or non-payment of taxes.

8. Nonetheless, the OCU subsequently passed the matter to the District Directorate of Police for Prague IV, on the grounds that it involved suspicion of the crime of fraud, dangerous threatening and extortion, with an express instruction to investigate the matter further. The OCU also suggested that the criminal case be passed on to the Regional Directorate of the Police of the Czech Republic for the City of Prague, because of the extensive scope and seriousness of the criminal activity.

9. The complainants point to what they consider to be chaotic procedure, when the Regional Directorate of the Czech Police for the Capital City of Prague then passed the matter on to the District Directorate of Police for Prague IV, on the grounds that this police body has jurisdiction by place and subject matter. On 16 January 2012, the District Directorate of Police for Prague IV passed the matter on to the District Directorate of Police for Prague I, on the grounds that the crime of fraud did not take place in the territory of the District Directorate of Police for Prague IV and the crimes of extortion and dangerous threatening had not been proved. However, the District Directorate of Police for Prague I did not find that it had jurisdiction by place and subject matter, on the grounds that jurisdiction for the criminal matter of fraud vis-a-vis the Vietnamese workers belongs to the District Directorate of Police for Prague IV, and the places where crimes of extortion and dangerous threatening took place (Most, Děčín, Ústí nad Labem, Železná Ruda, Zruč nad Sázavou) are not in the service region of the District Directorate of Police for Prague I. Therefore, on 22 February 2012 the District Directorate of Police for Prague I passed the criminal matter back to the District Directorate of Police for Prague IV.

10. On 28 November 2011, the District Directorate of Police for Prague I filed "ad acta" investigation of the criminal matter of fraud vis-a-vis the Slovak and Romanian victims. The complainants filed a complaint against this step, and on 20 August 2012 it was granted by the District Public Prosecutor's Office for Prague 1. The public prosecutor ordered the police body to conduct further investigation and begin the steps of a criminal proceeding. Subsequently, on 30 October 2012, the steps of a criminal proceeding were begun. The complainants point to the fact that up until that date all steps were taken under Act no. 273/2008 Coll., on the Police of the Czech Republic. After a year of investigation under the Criminal Procedure Code, when, according to the complainants the police body again took virtually

no steps (allegedly it took no relevant steps aimed at clarifying the matter), on 15 July 2013 the criminal matter was suspended. The complainants have filed the present constitutional complaint against that decision of the Police of the Czech Republic, District Directorate of the Police for Prague I, Criminal Police and Investigation Service of 12 July 2013 file no. KRPA-43249/TČ- 2013-001193-DŠ and the subsequent decision of the District Public Prosecutor's Office for Prague 1 of 30 September 2013 file no. 0 ZN 1423/2013 – 99, denying the complaint against the abovementioned police body decision.

11. The complainants point, in particular, to the terse and general reasoning of the contested decisions, which, in their opinion, overlook a number of fundamental factual circumstances that testify to the fact that they were the victims of serious crime. The complainants consider the actions by the police and the public prosecutor's office to be an expression of arbitrariness, as, in their opinion, the cited bodies de facto refused to consider their complaints. The complainants believe that the Czech Republic has, from its international obligations, an obligation to take appropriate and, especially, effective measures to protect the victims of human trafficking. In the complainants' opinion, one can also draw from the case law of the European Court of Human Rights (the "ECHR") a direct obligation for the state to effectively investigate and punish all conduct consisting of human trafficking, slavery, and forced labor. States are obligated to begin investigation ex officio immediately upon learning of the danger that human trafficking might occur. The complainants emphasize the indifference of the Czech bodies in this matter, even though they received numerous notifications, including from the Romanian authorities.

12. The complainants criticize in detail the actions by the police in this matter. They emphasize that in a case of suspicion of commission of the crime of human trafficking three things have to be reviewed, on the one hand the conduct of the suspects, the means used, and finally the purpose of the conduct: The conduct often consists of taking actions that, separated from other components appears to be legal activity (e.g. hiring or employing persons, housing them, transporting them, etc.). The activities used to achieve the aim, that is the means used, are usually in and of themselves capable of fulfilling the elements of a crime (e.g. fraud, injury to health, threatening, etc.). However, the decisive aspect is review of the purpose of the conduct. Therefore, it is necessary for the law enforcement bodies to examine each case comprehensively, as it can happen that they "can't see the forest for the trees," i.e. they address only the level of the means used. According to the complainants, in this case there are evidently two purposes, forced labor and other forms of exploitation, which, according to the complainants, the police and the public prosecutor's office ignored, despite considerable evidence.

13. The complainants cite the extensive case law of the ECHR. In particular, they cite the decision *Siliadin v. France*, in which the ECHR stated that in interpreting Art. 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention") it is necessary to take into account the conventions of the International Labour Organization (the "ILO"). ILO Convention no. 29 concerning Forced or Compulsory Labour (no. 506/1990 Coll.) defines forced labor as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (Art. 2 par. 1). The complainants also argue on the basis of the decision *C.N. and V. V. France*, where the ECHR stated that "menace of a penalty" must be understood as not only violence or threats of death, but also, e.g., threats to denounce someone to the authorities if the worker is in the country illegally, shaming someone within the community, collection of debts that the worker incurred to the employer during work, or threatening to confiscate identity documents. In the same decision, the ECHR also addressed the voluntariness of work, and stated that it is always necessary to consider the nature of the victim's consent, in particular the form of the consent, external and indirect pressure, and the possibility of freely revoking consent, and expressly stated that, "Initial consent may be considered irrelevant when deception or fraud has been used to obtain it."

14. The complainants believe that the inactivity or arbitrary conduct by law enforcement bodies also violated their right to equal dignity and rights under Article 1, first sentence, of the Charter of Fundamental Rights and Freedoms (the "Charter"), their right to personal liberty under Article 8 par. 1 of the Charter, their right not to be subjected to forced labor under Article 9 par. 1 of the Charter, their right to respect for human dignity under Article 10 par. 1 of the Charter and their employee right to fair remuneration for work and satisfactory work conditions under Article 28 of the Charter.

II.

15. Pursuant to § 42 par. 3 of the Act on the Constitutional Court, the Constitutional Court invited the Police of the Czech Republic, District Directorate of Police for Prague I, Criminal Police and Investigation Service and the District Public Prosecutor's Office for Prague 1, as parties to the proceeding, to submit statements. The statements from these bodies were brief, and basically contained only a recapitulation of the proceedings so far and the contested decisions, or a direct reference to their content. Nevertheless, the Constitutional Court sent these statements to the complainants for a response, in which the complainants further developed their factual and legal arguments and described the consequences of the crimes that they were allegedly victims of.

16. For purposes of reviewing the constitutional complaint, the Constitutional Court also requested the file maintained by the District Public Prosecutor's Office for Prague 1, ref. no. 0 ZN 1423/2013-99. It also requested the file materials maintained by the OCU, Department of Human Trafficking and Illegal Migration, file no. UOOZ-2244/ČJ-2010-30.

III.

17. The constitutional complaint is justified.

18. The Constitutional Court points out that it is not part of the court system (Art. 91 of the Constitution of the Czech Republic – the “Constitution”), but a special judicial body responsible for the protection of constitutionality under Art. 83 of the Constitution. The authority of the Constitutional Court is established exclusive for the review of decisions in terms of observing constitutionality, i.e. whether a party's rights and freedoms protected by constitutional regulations were violated in a proceeding, whether a proceeding was conducted in accordance with constitutional principles, and whether a proceeding can, as a whole, be considered fair.

19. In its decision making practice, the Constitutional Court always took a position of restraint to petitions from persons reporting crimes who seek to use an individual constitutional complaint to reverse the decision by a police body to suspend a matter. The starting point is the assumption that the reporting person's fundamental right to a fair trial cannot be infringed in that situation. As stated in numerous Constitutional Court decisions (see, e.g. file no. III. ÚS 2064/10 of 12 August 2010), in the phase of investigation under § 158 to 159b of the Criminal Procedure Code there is not yet a criminal procedure relationship with a specific defendant, which is a necessary prerequisite for a victim to be able to exercise his claims in an adhesion proceeding under § 43 par. 3 of the Criminal Procedure Code. Thus far there is not even a higher degree of probability that a crime was even committed that allegedly injured the victim's health, or caused property, moral or other detriment under § 43 par. 1, first sentence, of the Criminal Procedure Code.

20. The Constitutional Court maintains the doctrine that a criminal proceeding is only a relationship between the offender and the state, that is, that there is no constitutionally guaranteed right of a third party (the person reporting a crime, or the victim) for another person to be prosecuted and convicted. However, at the same, it cannot be overlooked that the state has a clear obligation to ensure the protection of fundamental rights, in particular the rights guaranteed by the Charter and the Convention, including through effective criminal proceedings, or that in certain cases we can speak of effective protection (of victims) only through criminal law. A state's failure in this obligation, in connection with ECHR case law, depending on the circumstances, can typically be a violation of the relevant articles of the Convention that protect individual fundamental rights (in the present matter, Article 4 par. 1 and 2 and Article 5 par. 1, possibly Article 8 of the Convention come into consideration). The Constitutional Court also emphasizes that the requirement of effective investigation is “only” a procedural obligation of “due care,” and not an obligation in relation to its outcome. Thus, effective investigation does not guarantee any specific outcome, but only proper procedure by the body in question.

21. In cases of arbitrary action by a public authority there is always the option for the Constitutional Court to annul the contested decision on the basis of the general maxim of lawfulness under Article 2

par. 3 of the Constitution and Article 2 par. 2 of the Charter, or a finding of violation of the right to a fair trial under Article 36 par. 1 of the Charter. Of course, the Constitutional Court is always bound by the principle of self-restraint, which must be exercised particularly emphatically precisely in relation to law enforcement bodies in the early phases of a criminal proceeding. It would be completely inconsistent with the purpose of a constitutional complaint if the Constitutional Court were to become a third instance in cases of suspended reports of crime in trivial matters.

22. The Constitutional Court considered the abovementioned principles carefully when it reviewed whether it should use its power to reverse the decision in the adjudicated matter. The Constitutional Court reached a clear conclusion that the contested decisions cannot survive a constitutional law review only after finding that in this specific case it is not possible to give priority to the principle of self-restraint by the Constitutional Court vis-à-vis law enforcement bodies. The Constitutional Court's restraint here was not proportional in view of the extraordinary importance of the protected interests, even in view of the high number of persons who were to be provided protection by state bodies. The Constitutional Court reached the conclusion that here the consequences of the incorrect procedures by the police body and the public prosecutor's office could conflict with the international obligations of the Czech Republic (Art. 1 par. 2 of the Constitution) concerning effective protection from gross trampling of human liberty and dignity, which could have occurred on a long term basis, and on a greater scale with whole groups of people. The Constitutional Court considers it intolerable for the investigation of the suspicion that a group of entrepreneurs systematically violated the fundamental rights of a number of foreign workers in the Czech Republic for a lengthy period of time to end in suspension of the matter with only very general justification, without the appropriate bodies having considered the substance of the suspicion even fleetingly.

23. The Constitutional Court here relies *mutatis mutandis* on its previous case law, in which it adopted ECHR doctrine as regards the state's positive obligations as regards the right to life (cf., in particular, the resolution of 29 October 2013, file no. I. ÚS 2886/13, and the judgment of 2 March 2015, file no. I. ÚS 1565/14). In line with the petitioner's arguments, the Constitutional Court believes that in cases of serious crimes against liberty and human dignity, in particular in cases of various kinds of serious conduct that approaches the use of another person for slavery, serfdom, forced labor, or other forms of exploitation, it is necessary to review whether the law enforcement bodies conducted an effective investigation. Out of the requirements stated in, e.g., the ECHR decision in the case of *Isayeva, Yusupova and Bazayeva v. Russia* of 24 February 2005 (no. 57947/00, § 209-213), in the present matter the Constitutional Court finds lacking the aspect of thoroughness and adequacy of investigation. In the present matter we also cannot overlook the significant obligations arising for the Czech Republic from European Union law at the time of the contested decisions, in particular European Parliament and European Council Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. The preamble of the Directive states: "Trafficking in human beings is a serious crime, often committed within the framework of organised crime, a gross violation of fundamental rights and explicitly prohibited by the Charter of Fundamental Rights of the European Union. Preventing and combating trafficking in human beings is a priority for the Union and the Member States." (par. 1); "More rigorous prevention, prosecution and protection of victims' rights, are major objectives of this Directive. This Directive also adopts contextual understandings of the different forms of trafficking and aims at ensuring that each form is tackled by means of the most efficient measures." (par. 7); "This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably human dignity, the prohibition of slavery, forced labour and trafficking in human beings, the prohibition of torture and inhuman or degrading treatment or punishment, the rights of the child, the right to liberty and security, freedom of expression and information, the protection of personal data, the right to an effective remedy and to a fair trial and the principles of the legality and proportionality of criminal offences and penalties. In particular, this Directive seeks to ensure full respect for those rights and principles and must be implemented accordingly." (par. 33). In accordance with this, the Directive contains measures "[t]o ensure the success of investigations and prosecutions of human trafficking offences" (par. 15). The obligations in this area arising for the state from international law were recently expanded, as the United Nations Convention on Transnational Organized Crime (no.

75/2013 Coll. of International Treaties) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplements the Convention (no. 18/2015 Coll. of International Treaties) went into effect for the Czech Republic.

24. The Constitutional Court also points to its judgment of 12 August 2014, file no. I. ÚS 3196/12, in which it stated: “Various requirements must be imposed on the actions of law enforcement bodies, depending on the seriousness of a particular case of interference in the rights and freedoms of the victim, or of the crime committed against him. In the case of less serious interference, which, in terms of general law, will generally correspond to the category of “mere” offences (under § 14 par. 2 of the Criminal Code) intervention by the Constitutional Court would be possible only in quite extraordinary situations, in extreme cases of flagrant error with intensive, continuing consequences for the victim. In this regard it is also appropriate to take into account whether the victim has an opportunity to file a civil law complaint against the alleged perpetrators that would have a realistic chance for success leading to protection of his rights. If that is the case, intervention by the Constitutional Court will be possible only in quite extraordinary situations, even with more serious crimes, although it is also necessary to add that not with some of the most serious crimes (in terms of general law, generally corresponding to the category of especially serious crimes), where the seriousness is so high, that addressing them only through civil law means, even though they were available, would appear grossly inadequate. (...) Finally, we must add that even if the case is not one where, in the spirit of the foregoing, intervention by the Constitutional Court would be possible only quite exceptionally, it is still, of course, true, that the Constitutional Court can take this step, in view of the settled principle of restraint in the Constitutional Court’s decision making, only given the existence of very serious errors that violate the complainant’s constitutionally guaranteed rights.” The Constitutional Court considers the conditions for intervention by the Constitutional Court, thus defined, to have been met in the present matter. The crime of human trafficking (§ 232a of the Criminal Act, or § 168 of the Criminal Code), especially if it is committed with the use of force, threats of force or other heavy detriment, or deceit, or with the abuse of error, duress, or the victim’s dependence, for purposes of using him for slavery or serfdom, or for forced labor or other forms of exploitation, is exceptionally serious interference in the fundamental rights to personal liberty and security, the prohibition of holding someone in slavery or serfdom or subjecting him to forced labor or services, and the preservation of human dignity, guaranteed in Art. 8 par. 1, Art. 9 and Art. 10 par. 1 of the Charter and in Art. 4 par. 1 and 2, Art. 5 par. 1 of the Convention, as well as in a number of other international treaties. The seriousness and danger of this interference are increased by circumstances such as committing the crime in an organized group or with the intent or obtaining considerable benefit or great benefit for oneself or for another. This applies analogously to the crimes of extortion (§ 235 of the Criminal Act, or § 175 of the Criminal Code), oppression (§ 237 of the Criminal Act, § 177 of the Criminal Code) and dangerous threatening (§ 353 of the Criminal Code). These constitutionally guaranteed rights are – just like the right to life – among the fundamental human rights (Chapter Two, Division One of the Charter) and belong to every person, regardless of his state citizenship (Art. 42 par. 2 of the Charter).

25. In the Constitutional Court’s opinion, the police body and the public prosecutor were bound by the principle of lawfulness and principles governing evidence in criminal proceedings, including the investigative principle and the principle of material truth. It was inconsistent with these principles if the cited bodies did not try, as official duties, to more closely investigate the suspicion that serious crimes had been committed against liberty and human dignity, whether they be the crime of human trafficking or extortion, oppression, or dangerous threatening. The Constitutional Court sees signs of arbitrariness in the fact that the relevant bodies only focused on the question of whether the facts must be seen as the crime of fraud, while they a priori ruled out a more serious legal classification from their deliberations. This happened in a situation where the suspicion that the matter could involve a case of serious organized crime under § 232a of the Criminal Act, or § 168 of the Criminal Code arose from the testimony or explanations provided by several tens of persons. In the Constitutional Court’s opinion, it was inconsistent with the prohibition on arbitrariness in the exercise of public power if the police body and the public prosecutor in fact refused to address the objections of the reporting persons, who, as victims, sought protection from serious criminal activity affecting their fundamental human rights and dignity.

26. The parties could not be absolved of the obligation to consider all aspects of the events under investigation and to include the findings in the reasoning of their decisions even by the fact that the matter was passed on to them by a specialized body – the OCU - which itself did not find a suspicion that the crime of human trafficking had been committed. Without wanting to make a binding evaluation of the matter itself as regards criminal law, the Constitutional Court must agree with the petitioners' objection that the opinion of the OCU cannot stand, according to which the legal classification under § 168 of the Criminal Code can be ruled out if the victims "could always leave the job." In the Constitutional Court's opinion, this interpretation does not correspond to the meaning and purpose of the cited provision, the basis of international obligations, or the criminology findings about the cited type of crime (cf., e.g. the ECHR decision in the case *Rantsev v. Cyprus and Russia*, application no. 25965/04, of 10 May 2010). There is no question that precisely in cases that meet the elements of the crime of human trafficking the actual opportunity for the victim to leave the place of work is illusory, because the victim is put under pressure in ways other than direct supervision and direct violence (through indebtedness, threats, or the very acceptance of the situation where the victims cannot leave, due to lack of funds). Nevertheless, it cannot be overlooked that the OCU, as a specialized body (in contrast to the District Directorate of Police for Prague I), questioned tens of witnesses and victims, and collected extensive file materials (a file of about 2,000 pages). In its assessment of the file, the OCU stated the suspicion that, even despite the ambiguous conclusion concerning the fulfillment of the elements of a crime under § 232a of the Criminal Code, the crimes of fraud, extortion, and threatening danger may have been committed. The last two legal classifications are not at all ruled out in the contested decisions, and the results of the investigation conducted by the OCU are not taken into account in the parties' arguments. The complainants make an apt objection when they point to the fact that the police body's complete factual and legal arguments are contained in one brief paragraph (after a purely positivist statement of the content of some pieces of evidence) and completely fails to correspond to the attention first given to the matter by the specialized body (OCU) which, among other things, also collaborated with police bodies in Romania, where suspicions against the entrepreneurs Ing. Mrkos and Martinák are also being investigated.

27. The Constitutional Court must admit the complainants are right, insofar that they claim that the parties, as law enforcement bodies, did not follow the procedures proposed by the OCU and addressed the results of its investigation in a most formalistic manner. The Constitutional Court finds that the reasoning of the contested police body decision appears superficial and inconsistent, as it practically only states the content of the testimony given by the entrepreneurs Mrkos and Martinák, without in any way evaluating this evidence, especially in the context of suspicion of crimes against liberty. The police body did this despite the fact that the testimony itself contains indications that actually confirm the suspicions that were raised, as regards the crime under the now valid § 168 of the Criminal Code. We can point at random just at those places in the testimony where the suspects themselves confirm that they did not pay the workers any wages, because their earnings were allegedly insufficient to cover deposits and accommodation. These actions indicate the typical *modus operandi* of persons committing the crime under § 168 par. 2 let. e) of the Criminal Code (previously, cf. the relevant provisions of § 232a of the Criminal Act). In terms of criminal law, the Constitutional Court here believes that the police body was obligated to investigate the state of duress claimed by the persons reporting the crime, or the complainants, where they were *de facto* forced to remain at work in intolerable conditions by the fact that they did not have funds for the trip home, and moreover the entrepreneurs under suspicion knew, or could have known, their bad economic situation. Apart from the fact that the contested decision practically does not take into account at all the testimony of the victims, or the persons reporting the crime, the question arises why the police body, in its factual findings, did not take into account, e.g. the contest of the testimony of members of the board of directors of the company *Affumicata a.s.*, who themselves openly admitted that they were "planted" there. The same applies for the other findings concerning the suspicious entrepreneurial activities of this company, including the concurrently running proceedings against Ing. Mrkos et al. on suspicion of commission of the crime of damaging creditors under § 222 par. 1 let. a), par. 3 of the Criminal Code. All these findings were relevant *indicia* for deliberations on the overall context and interconnectedness of the actions by the suspects Mrkos and Martinák that could possibly be evaluated as a single event with the features of an extension of a crime or a continuing crime. Finally, the Constitutional Court has serious reservations concerning the manner

in which the police body handled the reports from the labor inspectorate, which are included in the file materials. The Constitutional Court points out that in a question of guilt of a crime, a law enforcement body cannot, without further evaluation or evaluation, simply state the findings of other public authorities. This also applies to the area of inspecting the observance of labor law regulations, which is conducted by the labor inspectorates. It cannot be overlooked that the activities of these bodies do not apply criminal law principles or the inquisition principle in the criminal procedure sense.

28. Analogously, the Constitutional Court considers inadequate and purely formal the manner in which the public prosecutor handled the complainants' arguments in the contested decision on the complainants' complaint against the police body decision to suspend the case. Here the public prosecutor actually only states the complainants' objections, and without debating them in more detail, maintains her own line of argument, limited only to the provability of intent to defraud when concluding contracts with the foreign workers. The Constitutional Court shares the reservations of the complainants, who very appropriately reject the public prosecutor's nonsensical and inappropriate interpretation that it was the victims themselves who were at fault in the resulting situation, because some of them "without anything further, at an undetermined level of quality, carried out forestry work without have their employment relationship and financial remuneration properly confirmed in writing, and without taking any interest in whether they had the necessary work permits." Such an approach by the body conducting public prosecutions is truly curious in a case of suspicion of systematic exploitation of foreign workers (regardless of the criminal law classification it could have fulfilled). The public prosecutor's arguments are generally burdened by a virtually blind effort to evaluate the entire matter consistently as an issue of suspicion of a virtually trivial property offence. The context of exploitation, suspicion of intimidation, restricting the personal liberty of the victims, who de facto could not travel away from the place of work without being paid their wages, and who were alleged to be forced to continue in their work under completely intolerable conditions through a mixture of threats, fraud, and manipulation, is completely lost in the public prosecutor's deliberations in the contested decision.

29. The Constitutional Court considers it important to emphasize at this point that the principle of subsidiarity of penal repression under § 12 par. 2 of the Criminal Code cannot under any circumstances be understood to allow law enforcement bodies to overlook any criminal activity that also has a private law dimension and where it comes into consideration that the victims of the criminal activity will seek compensation of damage or other compensation through a civil trial. In cases of human trafficking and other forms of criminal exploitation of workers, it is also necessary to take into account that the victims' economic and social situation usually does not enable them to effectively seek protection in a civil trial. This fact is taken into account in the current Act no. 45/2013 Coll., on the Victims of Crimes, which, among other things, identifies the victims of human trafficking under § 168 of the Criminal Code as being especially vulnerable victims [cf. § 2 par. 4 let. c) of that Act]. The Constitutional Court finds it necessary to accept the hypothesis that in cases of human trafficking and other very serious crimes, which affect a number of fundamental rights, it may be too difficult, or even factually impossible for the victims to exercise their rights in a civil trial without a preceding criminal trial.

30. The Constitutional Court also agrees with the complainants' arguments as regards their component objections concerning the procedures followed in investigation the reports of crimes as a whole. It did not correspond to the scope, nature, or seriousness of the suspicions being investigated, that the matter was quite inorganically split between several police bodies, even within the various regional directorates of the Police of the Czech Republic. When investigating the matter it was appropriate to take into account the nature of human trafficking which, as a crime, generally includes an entire interlinked aggregate of various fraudulent, violent, and extortionist conduct, as well as conduct that in and of itself appears blameless. The Constitutional Court is of the opinion that this procedure made it impossible to effectively investigate criminal activity that could have affected the fundamental rights of tens of foreign citizens; moreover, there is a suspicion that it was going on for a long period of time. In this situation, the Constitutional Court considers it completely unacceptable for the testimony of such a large number of victims to not be reflected at all in the resulting decisions of the police body and the public prosecutor's office. In conclusion, the Constitutional Court also notes that the investigation of the case

suffered considerable delays, including as a result of the cited non-comprehensive approach by executive branch bodies, which are then not reflected in the degree of clarity in the matter.

31. For the foregoing reasons, the Constitutional Court concluded that the contested decision of the Police of the Czech Republic, District Directorate of Police for Prague I, Criminal Police and Investigation Service, of 12 July 2013 file no. KRPA-43249/TČ-2013-001193-DŠ, and the decision of the District Public Prosecutor's Office for Prague 1 of 30 September 2013, file no. OZN 1423/2013-99 violated the right of the complainants to effective investigation arising from fundamental rights under Article 8 par. 1, Article 9 and Article 10 par. 1 of the Charter, as well as Article 4 par. 1 and 2 and Article 5 par. 1 of the Convention.

32. Therefore, the Constitutional Court granted the complainants' petition and annulled the contested decisions pursuant to § 82 par. 3 let. a) of the Act on the Constitutional Court.

Instruction: Decisions of the Constitutional Court cannot be appealed.

Brno, 16 December 2015