

I.ÚS 2078/16 of 2 February 2017

**Failure to Provide Medical Assistance to an Adult and Legally Competent Person is not
a Criminal Offence with Respect to the Person's Disagreement**

**CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT**

IN THE NAME OF THE REPUBLIC

HEADNOTES

Even in the field of health care, it is necessary to fully respect the principle of freedom and autonomy of the will and the patient's possibility to refuse care even though it would be deemed crucial for preserving their life. Physicians and other healthcare professionals may convince such persons or they may attempt to change their approach if it is manifestly harmful to them, but ultimately, they cannot prevent them from taking a decision on refusing care, made on the basis of the free and serious will of a fully competent adult person, solely due to the fact that they believe that the decision harms the person concerned. For this reason, if any person acts in accordance with these rules and does not provide the necessary care with respect to the disapproval of a fully competent adult patient, they cannot commit a criminal offence of failure to provide assistance, as it would not fulfil one of the necessary characteristics of a criminal offence, i.e. the aforementioned illegality of the conduct.

JUDGMENT

The Constitutional Court held, in the Chamber consisting of the Presiding Judge Kateřina Šimáčková (Judge Rapporteur) and Judges David Uhlíř and Tomáš Lichovník, on the constitutional complaint filed by N. H., represented by JUDr. Tomáš Sokol, attorney, with the head office at Sokolská 60, Prague 2, directed against the Judgment of the District Court of Prague 3 dated 10 August 2015, file reference 7 T 24/2015, the Resolution of the Municipal Court in Prague dated 9 October 2015, file reference 7 To 374/2015, and the Resolution of the Supreme Court dated 16 March 2016, file reference 3 Tdo 135/2016-41, under the participation of the District Court of Prague 3, the Municipal Court in Prague, and the Supreme Court as the parties to the proceedings and the District Prosecutor's Office of Prague 3, the Municipal Prosecutor's Office in Prague, and the Supreme Public Prosecutor's Office as the secondary parties to the proceedings, as follows:

I. The Decision of the District Court of Prague 3 dated 10 August 2015, file reference 25 T 24/2015, the Resolution of the Municipal Court in Prague dated 9 October 2015, file reference 7 To 374/2015, and the Resolution of the Supreme Court dated 16 March 2016, file reference 3 Tdo 135/2016-41, gave rise to a violation of the Complainant's right under Art. 39 of the Charter of Fundamental Rights and Freedoms, pursuant to which only a law may designate which acts constitute a crime.

II. For this reason, the above decisions shall be annulled.

REASONING

I. Summary of the case and the previous proceedings

1. In the constitutional complaint, the Complainant argues that his criminal conviction amounted to a violation of his fundamental right to a fair trial and a prohibition of the conviction without a statute. In the complaint, he referred to Art. 8, para. 2, Art. 36, para. 1, and Art. 39 of the Charter of Fundamental Rights and Freedoms (hereinafter only as the “Charter”) and Art. 6, para. 1 and Art. 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter only the “Convention”).

2. By means of the contested Decision of the District Court of Prague 3, the Complainant was found guilty of committing a criminal offence under § 150, para. 2 of the Criminal Code and sentenced to a suspended sentence of imprisonment of eight months, suspended for the probationary period of sixteen months. The misdemeanour was allegedly committed as follows: Even though at least for the period of one month before 8 January 2014, he was aware that his mother was in a flat in P. in a very poor hygienic but mainly very poor and deteriorating health condition, owing to which she was no longer capable of taking care of herself, and even though he was also aware that his father and the spouse of the injured person was no longer capable of providing or ensuring the necessary care, as a result of which the injured person also suffered from severe malnutrition, dehydration and decubitus ulcers in the sacrum area, in the area of the front surface of the right shoulder of 1.5 x 1.5 cm, in the area of the outer surface of the right clavicle of 4 x 1.5 cm, behind the insertion of the right auricle in the area of the mastoid process in the extent of 3 x 2 cm, defects in the area of the right side of the head, and chronic infection in the area of the right arm due to the penetration of a part of the metal fixing nail through the skin in the length of 1.5 cm externally, he failed to ensure or provide the injured person with professional medical assistance even though her health condition required that at the time and despite that fact that such a duty was imposed on him as a practitioner by Act No. 372/2011 Coll., on Healthcare Services; and it was not until 9 January 2014 when he turned to the general practitioner of the injured person for information whether he would perform a sick call to the injured person, which had been requested on 8 January 2014 by the spouse of the injured person, whereas when on 9 January 2014, approximately at 12:00 o’clock, the general practitioner performed the sick call to the injured person, then with respect to her very poor health condition described above, he immediately called an ambulance which transported the injured person to Královské Vinohrady University Hospital, where she was hospitalised until 23 January 2014, when she deceased as a result of an acute purulent inflammation of the lungs which she had developed as a deadly complication of a long-term poor health condition comprising a chronic infection in the area of the right arm, pressure sores, and significant nutritional deficiencies associated with dehydration and significant malhygiene with pathological changes of the lungs and heart, when this final deadly complication occurred precisely as a result of the long-term failure to address the serious health condition of the injured person.

3. The reasoning behind the decision of the District Court implies that the serious health changes of the injured person occurred in her flat where she lived together with her spouse and her son (the Complainant). The District Court did not believe the Complainant’s argument that he had been unaware of the significantly poor health of his mother. It considered this defence as refuted reliably through extensive evidence, including witness testimonies and an expert opinion. In addition, according to the court, the Complainant could not rely on the care provided by his father as the serious health condition of his mother required professional treatment.

4. According to the court, the Complainant could have provided the necessary assistance despite the mother's opposition:

"It is true that a number of witnesses ... mentioned, for instance, a certain indiscipline and unwillingness of the injured person ... to cooperate as a patient or, in addition, her dominance in the relationship with the defendant. The court did not doubt the credibility of the witnesses' testimonies describing this and supporting the defence in this respect, as it did not establish any reasons for doing so. However, the fact that the injured person could also in reality behave repeatedly in an inappropriate manner towards the defendant or even refuse the care offered by him could not be deemed by the court as a circumstance which would substantiate and justify the defendant's resignation to make immediate efforts leading to providing assistance to the injured person in her serious health condition and which could eventually relieve the defendant of the criminal liability. He could not have been relieved of that even in the case when the injured party did not wish to undergo treatment at the material time or if she made it clear to the family members that she refused any effective treatment. On the one hand, such circumstances could have been admitted not only taking into account the defendant's testimony. ... On the other hand, the context of the testimonies ... implied that the injured person, as for assistance being provided to her in her serious health condition, did not refuse the appropriate medical care (whether this included administering antibiotics or changing the dressings of her decubitus ulcers). Yet, one may certainly not accept that even in such a case where the injured person had made it clear that she rejected medical assistance, it could have represented an excusable reason for the defendant relieving him from the duty to provide the injured person with assistance or to arrange for the assistance."

5. By means of the contested resolution, the Municipal Court in Prague dismissed the Complainant's appeal. It held that the factual and legal conclusions of the first instance court were right. The Municipal Court did not explicitly rule on the Complainant's objection that his mother refused assistance.

6. The Complainant filed an appeal on points of law to the Supreme Court against this resolution, in which, among other things, he argued again that his mother had refused assistance. In its statement on the appeal on points of law, the Supreme Public Prosecutor's Office proposed to set aside the contested decision, as the Municipal Court had made erroneous legal conclusions. According to the Supreme Public Prosecutor's Office, the injured person was a legally competent person and refused treatment. In the event of the lack of consent with assistance, it was absolutely inadmissible and unacceptable to provide such care. The case law and the Act on Healthcare Services clearly imply the impossibility to provide care without the patient's express consent. According to the Supreme Public Prosecutor's Office, the Complainant attempted to provide assistance to the injured person, yet she refused the assistance, as a result of which he was not even allowed to provide assistance and he thus could not have committed the criminal offence of failure to provide assistance.

7. However, the Supreme Court dismissed the Complainant's appeal on points of law by means of the contested resolution. According to the Supreme Court, in the instant case, the injured party did not actually have the possibility of expressing her consent or disapproval with being provided with medical care until 9 January 2014. In addition, when she was subsequently provided with adequate medical care, she definitely did not refuse it. Furthermore, the Supreme Court held that it was aware of the provisions of § 28, para. 1 of the Act on Healthcare Services, which respect the free will of a fully competent patient to take care of their health, which is expressed in the wording that the patient may be provided with healthcare services only with

their free and informed consent. Nevertheless, even if the defendant had received from his mother a clearly and expressly formulated refusal to allow him to address her critical health condition, as a physician, he possessed such expertise that he was supposed to and could become aware of the necessity to arrange timely assistance by other medical sources regardless of the expression of will of the injured person against him. In fact, her health condition resembled a situation of extreme necessity under § 28, para. 1 of the Criminal Code. Finally, the Supreme Court noted that “in this case, the legal aspect and the moral and ethical aspect closely intertwined, while an interference with the volitional integrity of the injured person would certainly be, with respect to the criminal liability, assessed also with regard to the provisions of § 12, para. 2 of the Criminal Code on the subsidiarity of criminal repression.”

II. Arguments of the Parties

8. In the constitutional complaint, the Complainant alleges that his right to a fair trial was violated owing to the fact that there was an extreme contradiction between the facts of the case and considerations in assessing the evidence on the one hand and the legal conclusions on the other hand. The factual findings established by the first instance court and upheld by the appellate court are in extreme inconsistency with the tested evidence and are not adequately supported in the performed production of evidence. In this context, the Complainant alleges that the ordinary courts violated one of the fundamental principles of criminal law of the constitutional law dimension, namely the principle of “in dubio pro reo”. This principle was violated when assessing the evidence by ordinary courts, both by the first instance court and the appellate court. In addition, he alleges that the ordinary courts failed to appropriately address, in their decisions, the evidence presented in favour of the Complainant.

9. In the context of the alleged violation of Art. 39 of the Charter, according to which only the law may designate which acts constitute a crime, the Complainant claims that the fundamental issue which was not addressed by any of the ordinary courts consists in the question whether in a given circumstance and being aware that the injured person did not wish the Complainant to provide her with any care, took any interest in her or arranged for or provided her with medical assistance, it was the Complainant’s duty to intervene in any manner. This means whether the Complainant was imposed any duty in the given situation or based on the given situation which he violated. The Complainant points out that an omission is equated with an act only if someone failed to do something that was their legal duty. The ordinary courts failed to address the established situation in which the injured person refused the Complainant’s care offered both as a son and as a physician.

10. In its statement on the constitutional complaint, the District Court of Prague 3 claimed that it considered it to be unfounded, referring to the reasoning behind the contested decisions.

11. The Municipal Court in Prague insisted on its arguments in the contested decision and identified with the opinions of the Supreme Court contained in the contested resolution.

12. In its statement, the Supreme Court referred to the reasoning behind its decision on the matter.

13. In their observations, the District Prosecutor's Office for Prague 3 and Municipal Prosecutor's Office in Prague stated identically that there had been no violation of the Complainant’s fundamental rights and that they considered the Complainant’s allegations as unfounded.

14. The Supreme Public Prosecutor referred to its observations in the Complainant's appeal on points of law to the Supreme Court.

15. In reply to these statements of the Parties, the Complainant insisted on his constitutional complaint.

III. Assessment of the Constitutional Court

16. At the outset, the Constitutional Court states that in his constitutional complaint, the Complainant raises a number of objections in the field of the right to a fair trial, referring to Art. 36, para. 1 of the Charter. However, at this stage, his objections represent a mere disagreement with the assessment of the evidence and the conclusions of ordinary courts. Nevertheless, the Constitutional Court does not have jurisdiction to assess them unless their decisions represented a manifestation of arbitrariness or an extreme contradiction with the principles of justice (see for instance the Judgments file reference III. ÚS 224/98 dated 8 July 1999, file reference III. ÚS 150/99 dated 20 January 2000 or file reference III. ÚS 269/99 dated 2 March 2000). However, this was not the case in the instant matter, and the ordinary courts cannot be reproached any error of the constitutional dimension in the field of the right to a fair trial. In the instant case, the Constitutional Court does not even believe that there was an extreme contradiction between the established facts and the considerations in assessing the evidence on the one hand and the legal conclusions on the other hand. The ordinary courts justified, in a sufficient and convincing manner, why they believed that the Complainant must have been aware of the serious health condition of his mother. In this respect, the Constitutional Court has not found, in the contested decisions of the ordinary courts, such a deficiency that would reach the constitutional law level.

17. In terms of the Complainant's fundamental rights, the Constitutional Court finds relevant the objection that the ordinary courts erroneously and insufficiently addressed his argument that his mother had refused his assistance. The Constitutional Court is going to consider this objection now.

A. General Principles

18. Pursuant to Art. 39 of the Charter, only a law may designate which acts constitute a crime. Similarly, pursuant to Art. 7, para. 1 of the Convention, no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.

19. It is not the task of the Constitutional Court to reassess the interpretation of sub-constitutional law, not even the interpretation of the Criminal Code, as performed by the ordinary courts. The Constitutional Court has not been granted this role [see for instance the Judgement file reference II. ÚS 2258/14 dated 16 December 2014 (N 230/75 SbNU 567), paragraph 16]. Nevertheless, the case law of the Constitutional Court implies that in order for a conviction to comply with Art. 39 of the Charter, then its reasoning must clearly indicate that all the characteristics amounting to a criminal offence were established [Judgement file reference II. ÚS 254/08 dated 18 November 2008 (N 197/51 SbNU 393), Judgement file reference I. ÚS 558/01 dated 25 November 2003 (N 136/31 SbNU 205)], or Judgement file reference I. ÚS 520/16 dated 22 June 2016]. Even in this sense, however, the unconstitutionality of the decision cannot be based on a mere disagreement with how the ordinary court interpreted the norms of sub-constitutional law.

20. In the instant case, the Complainant alleges that he acted in accordance with the law, as his mother did not wish to be provided with assistance and he could not act against her will. Pursuant to § 13 of the Criminal Code, only an illegal act may be a criminal offence. Thus, the illegality of the act is the prerequisite of a criminal offence. In the event that the perpetrator acted as required in a particular situation by law, it cannot represent a criminal offence. In this situation, the ordinary courts held that the Complainant had been supposed to act despite the injured person's disapproval. In the instant case, there is a conflict between the Complainant's duty to provide assistance to a person whose life or health is in serious danger and the right of this person to refuse assistance. In general, this right is based on the right to the inviolability of the person and her privacy protected by Art. 7, para. 1 of the Charter and Art. 8 of the Convention.

21. The Complainant was convicted of failure to provide assistance under the second paragraph of § 150 of the Criminal Code, i.e. due to the fact that he is a physician. In the factual sentence of the conviction, the District Court explicitly referred to the Complainant's duty under the Act on Healthcare Services. Owing to these circumstances, the Constitutional Court also considers relevant the rules concerning the provision of healthcare, even though between the Complainant and his mother, it was not a typical doctor-patient relationship.

22. Pursuant to Art. 5 of the Convention on Human Rights and Biomedicine (96/2001 Coll. of International Treaties), any intervention in the health field may only be carried out after the person concerned has given free and informed consent to it. The Convention on Human Rights and Biomedicine allows for exemptions to this rule relating to persons who do not have the capacity to consent due to age, mental disability or disease (Art. 6 of the Convention on Human Rights and Biomedicine), treatment of a mental disorder (Art. 7 of the Convention on Human Rights and Biomedicine), and an emergency situation if the appropriate consent cannot be obtained (Art. 8 of the Convention on Human Rights and Biomedicine). The Convention on Human Rights and Biomedicine also includes a general exception that it is possible to adopt measures necessary in a democratic society in the interest of public safety, for the prevention of crime, for the protection of public health or for the protection of the rights and freedoms of others (Art. 26).

23. The case law of the Constitutional Court and the European Court of Human Rights (hereinafter only as the "ECtHR"), both based in this respect on the above rules anchored in the Convention on Human Rights and Biomedicine, then clearly implies that any interventions carried out without the free and informed consent represent an interference with the right to the inviolability of the person under Art. 7, para. 1 of the Charter or the right to physical integrity protected by Art. 8 of the Convention [Judgment file reference I. ÚS 1565/14 dated 2 March 2015 (N 51/76 SbNU 691), paragraphs 46 and 74, also containing the relevant references to the ECtHR case law] and must thus be justified in the context of the rules anchored in the Convention on Human Rights and Biomedicine.

24. As the Constitutional Court has already ruled, the institute of the free and informed consent to any medical intervention is based on the recognition of the legal personality of every individual and their freedom to decide on their own body and supports the autonomy of their moral choices. This is contrary to the paternalistic approach in which decisions on an individual are made by someone else (for instance a physician), even for good reasons or that it is for their own good and health. Ultimately, it is always the patient, as a free individual endowed with fundamental rights, including the right to respect for their physical and psychological integrity,

who should give consent to interferences with this right. At the same time, it is necessary to accept that other persons may perceive as wrong their decisions when they refuse treatment, for instance [Judgment file reference I. ÚS 1565/14 dated 2 March 2015 (N 51/76 SbNU 691), paragraph 76].

25. Similarly, pursuant to the ECtHR case law, the very essence of the Convention consists in the respect for human dignity and freedom and the concepts such as self-determination and personal autonomy are important principles on the grounds of which the Convention is interpreted. The capacity to live one's life following one's own choices includes the possibility of performing activities perceived to be physically harmful or dangerous for the person concerned. In the field of health care, even in the case that refusing treatment may result in a fatal outcome, a medical intervention without the consent of a psychologically competent adult person would be contrary to their right to physical integrity protected by Art. 8 of the Convention (see the Judgment in the case of *Jehovah's Witnesses of Moscow v Russia* dated 10 June 2010, Application no. 302/02, § 135-136; or *Pretty v United Kingdom* dated 29 April 2002, Application no. 2346/02, § 61-63).

26. These principles are also reflected at the level of sub-constitutional law. The Act on Healthcare Services, which according to the ordinary courts, implied the duty of the Complainant to provide his mother with the necessary care, prescribes, in its § 28, para. 1, that healthcare services may be provided to the patient only with their free and informed consent, unless stipulated otherwise by this Act. The subsequent exemption provided for in the statute reflect the afore-mentioned exceptions in the Convention on Human Rights and Biomedicine related to persons who, taking into account their health condition, are unable to express their consent to being provided with healthcare services (§ 34, para. 7 and § 38, para. 3, letter a) or persons whose legal capacity has been restricted (§ 38, para. 4).

27. The Constitutional Court also believes that the afore-mentioned principles of freedom and autonomy of the will are generally applicable even outside the area of providing healthcare services. The fundamental value on which the Czech constitutional order is based is the respect for the freedom of individuals (see Art. 1 of the Charter and the Preamble to the Constitution). Freedom represents an essential element of a democratic rule of law state. Respect for and protection of human dignity and freedom is the ultimate and most general purpose of law [Judgment file reference II. ÚS 2268/07 dated 29 February 2008 (N 45/48 SbNU 527), paragraph 41]. This freedom also includes the possibility of individuals to make their own decisions on their lives, thus being an active creator of their life path or creating their own life project. When respecting this autonomy of individuals, it must apply to a certain extent that everyone is responsible for their happiness. The State has only a limited opportunity to interfere with this decision-making and restrict this right.

28. In general, the Constitutional Court, for instance in the Judgment file reference Pl. ÚS 43/93 dated 12 April 1994 (N 16/1 SbNU 113; 91/1994 Coll.), held that “however, the nature of the rule of law state contains the awareness (affirmed by long-term experience of humanity) that restricting civil rights and freedoms is a neuralgic point of every society, even democratic, and that such measures thus need to be minimised”. Fundamental rights may therefore be restricted solely in order to protect the rights of others or other constitutionally protected public goods. In the case of the right to inviolability of the person, the restriction must be necessary to achieve one of these legitimate aims, while adhering to the principle of proportionality. In the case of a legally competent adult person, whose decision-making ability is not excluded by the current

situation, it is not legitimate for the State to allow interference with their integrity in order to protect the person herself.

29. In the context of providing healthcare services, it is also necessary to reflect the special position of a physician to the patient. With regard to their expertise and skills, the physician has an obvious advantage in relation to the patient. In some cases, this supremacy may lead to the situation that the physician finds themselves in the position of power in relation to the patient, namely the possibility of making decisions about the patient. Therefore, it is important to establish unambiguous rules on the relationship between the physician and the patient and define the rights of patients in order to prevent possible abuse of this power.

30. According to the Constitutional Court, the above implies that even in the field of provided health care, it is necessary to fully respect the principle of freedom and autonomy of the will and the patient's possibility to refuse care even though it would be deemed crucial for preserving their life. Physicians and other healthcare professionals may convince such persons or they may attempt to change their approach if it is manifestly harmful to them, but ultimately, they cannot prevent them from taking a decision on refusing care, made on the basis of the free and serious will of a fully competent adult person, solely due to the fact that they believe that the decision harms the person concerned. For this reason, if any person acts in accordance with these rules and does not provide the necessary care with respect to the disapproval of a fully competent adult patient, they cannot commit a criminal offence of failure to provide assistance, as it would not fulfil one of the necessary characteristics of a criminal offence, i.e. the aforementioned illegality of the conduct.

B. Application of General Principles onto the Present Case

31. In the instant case, the ordinary courts held that even though the injured person had refused the care offered by the Complainant, he still had owed her assistance. In this case, as for the possible exemptions to the possibility to interfere with the physical integrity of a person and provide care without consent, it would be possible to consider providing care to a person who does not have the capacity to consent (Art. 6 and 8 of the Convention on Human Rights and Biomedicine). However, the injured person was not restricted in her legal capacity and there is nothing that would imply that in the material period of December 2013 and the beginning of January 2014 she would not have had the capacity to grant or refuse consent to the care owing to her health condition. In any case, the ordinary courts did not examine this issue and did not base their decision on this.

32. In this case, it is not even possibly to apply the general exemption contained in Art. 26 of the Convention on Human Rights and Biomedicine, as in this matter, it could only represent the projection of a specific sick person (the injured person), rather than public interests mentioned in this provision or the rights of others.

33. If the incapacity of the injured person to grant or refuse consent with the care was not established in the proceedings, the legal regulations do not allow providing the care either. In such a case, it would be impossible to apply the exemption to providing care only with the consent for persons who are unable to express their consent owing to their health condition (§ 34, para. 7 and § 38, para. 3, letter a) of the Act on Healthcare Services).

34. The Constitutional Court thus concludes that the opinion of the ordinary courts in the contested decisions that the Complainant was obliged to provide the care despite the

disagreement of the injured person is wrong. If the injured person actually refused assistance offered by the Complainant, it was his duty to respect his mother's wish and he could not act against her will. If he had done so, he would have acted contrary to the right to respect for her personal autonomy. The approach adopted by the ordinary courts would mean that physicians (or any other persons) have a duty to provide care despite the disagreement of the psychologically competent adult person. Such an interpretation would be contrary to the above principles of the autonomy of will and self-determination of individuals arising from the constitutionally protected rights.

35. The Complainant thus, if he did respect his mother's wish, acted in compliance with the law, thus representing the absence of the element of the illegality of the conduct, which is an essential statutory condition of a criminal offence. Consequently in the contested decisions, the ordinary courts violated the Complainant's right protected by Art. 39 of the Charter, according to which only a law may designate which acts constitute a crime. In the instant case, it is not a mere disagreement of the Complainant with the interpretation of sub-constitutional law. In fact, the consequence of the contested decisions would consist in the violation of the fundamental right to respect for the free will of a person, which arises from Art. 7, para. 1 of the Charter and Art. 8 of the Convention, and it would also mean an interpretation contrary to the Convention on Human Rights and Biomedicine. For this reason, the case under consideration reaches the constitutional law level and the Constitutional Court concluded that it has the authority and duty to intervene.

36. The Constitutional Court took into consideration the argument of the District Court and the Supreme Court that the injured person had not refused the medical assistance offered by other persons than the Complainant in the end. This issue could also play a role in examining the evidence and concluding whether the injured person really refused the care offered by the Complainant. Nevertheless, the issue on its own has nothing in common with the Complainant's duty to ensure the care. Even if the sick person refuses care offered by a particular person (and not by others), this particular person must respect this wish. At the same time, the Constitutional Court does not consider as decisive the argument of the Supreme Court that the injured person did not actually have the possibility to express her consent or disapproval of being provided with medical care until 9 January 2014. In this case, the only relevant issue is the consent or disagreement of the injured person with the assistance provided by the Complainant. In fact, the Complainant was convicted of failure to provide assistance by himself, rather than failure to provide medical care by other persons. Nevertheless, the District Court admitted the existence of such disagreement of the injured person with being provided with any assistance by the Complainant. The respect for the autonomy of will and the individual's freedom must also include the respect for the decision not only to refuse the assistance of a particular person, but also the wish that this person should ensure assistance of any other third parties.

37. In addition, the Constitutional Court does not consider as relevant the reference of the Supreme Court that the act of the Complainant by which he would assist his mother would represent conduct in an emergency situation and that it would be appropriate to apply the subsidiarity of criminal repression under § 12, para. 2 of the Criminal Code and the Complainant could not be criminally punished for the act against his mother's will. The Constitutional Court will not express its opinion when such an approach (i.e. the impunity of the conduct of a person interfering with the physical integrity without the consent of the sick person) would be correct. In the instant case, it does not consider this issue as fundamental. What is essential for the case under consideration is simply to assess whether the Complainant's conduct was unlawful or not and a potential existence of criminal liability if he acted differently

is not decisive. In addition, even despite the possible absence of criminal liability, it could mean unlawful conduct and a civil law offence [see also the Judgment file reference I. ÚS 1565/14 dated 2 March 2015 (N 51/76 SbNU 691), paragraph 85].

38. For the above reasons, the Constitutional Court, pursuant to the provisions of § 82, para. 2, letter a) of Act No. 182/1993 Coll., on the Constitutional Court, allowed the constitutional complaint of the Complainant, as it found that the District Court of Prague 3, the Municipal Court in Prague, and the Supreme Court had violated the Complainant's right enshrined in Art. 39 of the Charter. Pursuant to the provisions of § 82, para. 3, letter a) of the same Act, the Constitutional Court thus annulled the contested decisions.

Instruction: Judgments of the Constitutional Court cannot be appealed.

In Brno, 2 January 2017

Kateřina Šimáčková
Presiding Judge