THE SLOVAK REPUBLIC

JUDGMENT

Of the Constitutional Court of the Slovak Republic

On behalf of the Slovak Republic

I. ÚS 313/2012-52

The Constitutional Court of the Slovak Republic, having deliberated on 28 November 2012 in private, in a chamber composed of the chamber president Marianna Mochnáčová and judges Peter Brňák and Milan Ľalík, about the complaint of E.T., represented by his guardian E.T., both residing in B., and by the counsel JUDr. Z. S., practicing in B., concerning the alleged violation of his fundamental rights under Art. 14; Art. 16, para. 1; Art. 19, para. 2; and Art. 46, para. 1 of the Constitution of the Slovak Republic; under Art. 6(1), Art. 8, and Art. 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; as well as rights under Art. 12 of the UN Convention on the Rights of Persons with Disabilities, by the procedure of the Bratislava V District Court in the proceedings no. 22 Ps 18/2009 and its judgment of 6 October 2011, and by the procedure of the Bratislava Regional Court in the proceedings no. 20 CoP 3/2012 and its judgment of 28 March 2012,

h e l d :

1. The fundamental rights of E.T. to have legal capacity under Art. 14 of the Constitution of the Slovak Republic, to integrity of the person and privacy under Art. 16, para. 1 of the Constitution of the Slovak Republic, to protection against unlawful interference in his private and family life under Art. 19, para. 2 of the Constitution of the Slovak Republic, to judicial protection under Art. 46, para. 1 of the Constitution of the Slovak Republic; to a fair trial under Art. 6, para. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; to respect for private and family life under Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and to be free

from discrimination under Art. 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the right to equal recognition before the law under Art. 12 of the UN Convention on the Rights of Persons with Disabilities, have been *violated* by the procedure of the Bratislava Regional Court in the proceedings no. 20 CoP 3/2012 and its judgment of 28 March 2012.

2. The judgment of the Bratislava Regional Court no. 20 CoP 3/2012 of 28 March 2012 shall be *quashed* and the case shall be *remitted* for further proceedings and decision.

3. E. T. shall be *awarded* financial satisfaction in the sum of 3.000 € (three thousand euro), which shall be payable by the Bratislava Regional Court within two months after this judgment becomes final.

4. The Bratislava Regional Court shall be obliged to pay E. T. the costs of the proceedings in the sum of 269,58 € (two hundred sixty nine euro fifty eight cents) to the account of his counsel JUDr. Z. S. within one month after delivery of this judgment.

5. The remainder of the complaint is *dismissed*.

The Court's reasoning:

I.

6. On 11 June 2012, the Constitutional Court of the Slovak Republic (hereinafter the "Constitutional Court") received the complaint of E.T. (hereinafter the "applicant"), represented by his guardian E.T. (the applicant's mother). On 22 June 2012, the Constitutional Court received the addendum to the complaint, concerning the alleged violation of fundamental rights under Art. 14, Art., 16 para. 1; Art. 19, para. 2; and Art. 46, para. 1 of the Constitution of the Slovak Republic (hereinafter the "Constitution"); under Art. 6, para. 1; Art. 8, and Art. 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the "European Convention"); as well as rights under Art. 12 of the UN Convention on the Rights of Persons with Disabilities (hereinafter the "UN Convention") by the procedure of the Bratislava V District Court (hereinafter the "District Court") in the proceedings no. 22 Ps 18/2009 and its judgment of 6 October 2011, and by the

procedure of Bratislava Regional Court (hereinafter the "Regional Court") in the proceedings no. 20 CoP 3/2012 and its judgment of 28 March 2012 (hereinafter the "challenged decision", or, together, the "challenged decisions").

7. As stipulated in the complaint, addendum, and annexes, on 23 November 2009, the applicant's mother filed a motion with the District Court to deprive the applicant of legal capacity. On 18 October 2010, she withdrew the motion and requested that the proceedings be discontinued. By decision no. 22 Ps/18/2009-62 of 26 October 2010, the District Court granted her motion and discontinued the proceedings. Upon appeal of the Bratislava V District Prosecution Office (hereinafter the "District Prosecution Office") the Regional Court, by decision no. 20 CoP 86/2010 of 31 December 2010, quashed the decision of the first instance court and remitted the case for further proceedings. The applicant was deprived of legal capacity by the District Court's judgment no. 22 Ps 18/2009-130 of 6 October 2011. Upon appeal of the applicant and his mother, the Regional Court confirmed the judgment of the first instance court by judgment no. 20 CoP 3/2012 of 28 March 2012.

8. The applicant argues that the *"decision on deprivation of legal capacity constitutes a disproportionate and therefore unlawful interference in his fundamental rights and freedoms. It is primarily contrary to … the right to respect for private and family life under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, contrary to the prohibition of discrimination under Art. 14 of the European Convention, and contrary to the right to equal recognition before the law under Art. 12 of the UN Convention on the Rights of Persons with Disabilities."* Furthermore, the applicant challenged the practice of deprivation of legal capacity (which he considers *de lege lata* unconstitutional *per se, note*). He referred to the jurisprudence of the European Court of Human Rights (hereinafter the "ECtHR") and concluded that he believes that *"the practice of deprivation of legal capacity violates international law and the obligations of the Slovak Republic flowing from its ratification of international conventions on human rights."*

9. In the following part of the complaint, the applicant – against the background of (mainly) the jurisprudence of the Constitutional Court of the Czech Republic (IV. 412/04, II. ÚS 2630/07, I. ÚS 557/09) – claimed that the Slovak court decisions on deprivation of legal capacity are disproportionate. He submitted that in his case the concerned courts *"did not consider any other alternative to the full deprivation of legal capacity,"* as a result of which

the applicant *"does not even have the legal capacity granted to a 5 year-old child. The courts excluded the applicant from public and private life through their decisions. He has no right to enter legal relationships because he has been deprived of legal capacity; he cannot marry …, he is excluded from parental rights and obligations …, he cannot vote because according to the relevant laws of the Slovak Republic the deprivation of legal capacity is an impediment to the exercise of the right to vote … The courts did not examine whether the applicant is or is not capable of performing particular acts …, e.g. to exercise parental rights, to decide to marry or to vote. The applicant has been deprived of legal capacity despite the fact there are other less restrictive measures of infringement of his fundamental rights and freedoms. According to the challenged decisions of the first and second instance court, the main purpose of depriving the applicant of legal capacity was the protection of other persons. Specifically, they were to ensure that the applicant undergoes ambulant psychiatric treatment because he had attacked his mother in the past and had been convicted for this attack. The applicant maintains that this purpose should have been achieved by the tools of public law, in particular tools of criminal and administrative law, and not tools of the civil law. He further argues that as, this purpose of protection could have been achieved by restricting his legal capacity or by appointing him a guardian under Section 29 of the Civil Code.*[1] *Deprivation of legal capacity is extremely restrictive and affects the whole spectrum of legal capacity with no exceptions… the applicant maintains that there was a disproportionate interference with his fundamental rights and freedoms because the intended purpose of protection could have been achieved by tools of the criminal and administrative law, or by less restrictive measures of the civil law, specifically by restricting legal capacity or by appointing a guardian under Section 29 of the Civil Code."*

10. As far as proportionality of the interference into private and family life is concerned (Art. 16, para. 1 and Art. 19, para. 2 of the Constitution), the applicant stressed that the decisions *"have unreasonably restricted his rights and freedoms, as well as his private and professional development. The deprivation of legal capacity constitutes a serious infringement of … the right to identity and personal development and the right to establish and develop*

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[1] Translator's note: Section 29 of the Civil Code (Act no. 40/1964 Coll., as amended): "*The court may appoint a guardian also to a person of unknown residence if it is necessary for protection of his or her rights or if it is required by a public interest. Under the same conditions, the court may appoint a guardian also for other serious reasons.*"

relationships with close persons and with the outside world. The court decision depriving the applicant of legal capacity constituted a serious infringement of the dignity of the applicant … he has to rely on third persons or courts in decision-making concerning his privacy. The court decisions infringed upon the personal integrity of the applicant; the applicant perceives his status as degrading. The court decisions also deprived the applicant of the protection in the sphere of correspondence and confidentiality. Despite the fact that he is capable of understanding the meaning of letters and court decisions that are sent to him, these can be accepted only by his guardian. Despite the fact that he is capable of understanding the meaning of such correspondence, his letters became an object of censorship regardless of their confidential or official content.

The decision of where the applicant should live is in the hands of his guardian; his guardian also makes decisions about managing his finances, bank accounts and rent which constitutes a serious infringement of the protection of the applicant's property rights. The protection of family life also includes the right to exercise parental rights, rights connected to marriage and the right to a family life. One of the basic meanings and purposes of the right to family life is the upbringing of children, decisions about matters related and necessarily connected to children, for example decisions about the child's name, school, healthcare and other official actions. As a result of the challenged court decisions, the applicant was deprived of the right to enter into a marriage, to found a family, to have his free will respected as a partner with regards to his choice of number of children. The applicant stated in his testimony during the court hearing that he has a girlfriend and wishes to marry her and found a family. He has presented this intention clearly and with all due respect for and awareness of the responsibility it entailed."

11. In the next part of the complaint, the applicant claimed violation of his procedural rights (Art. 46 para. 1 of the Constitution and Art. 6, para. 1 of the European Convention). Given the character and nature of the dispute and the court's duty to conduct an inquisitorial proceeding, the court was obliged to ascertain the facts of the case and to carry out all necessary evidence from their official power, regardless of proposals by the parties to the proceedings (Section 120 para. 2 of the Act no. 99/1963 Coll., Civil Procedure Code, as amended, hereinafter the "CPC"). The applicant stressed that *"in the present case the applicant was… represented before the court by the guardian only formally, and the applicant did not take part in any of the hearings… The District Court… in its decision referred mainly to the conclusions of the expert opinion prepared by the court expert – the psychiatrist MUDr. M. H., whereas the*

court stated on page 6 of the judgment that 'the court could not take into account the argument of applicant's legal representative that the health condition of the applicant has stabilized, he is not aggressive and there is no problem in relation to his mother, because the court considered as decisive the findings of the expert that the mental disorder of the applicant is not temporary and that as a result of this disorder he is not capable of taking legal actions.' The applicant emphasizes that thanks to his education, skills and abilities, he is capable of living and working independently despite his mental health. He also wishes to found a family, which he confirmed in his court testimony at the hearing of 6 October 2011 … the courts failed to take this testimony or the written submissions into account and failed to substantiate in the judgment why they purposefully ignored them … in the proceedings on deprivation of legal capacity an expert opinion is not the 'absolute truth'… courts are obliged to examine a 'mental disorder', which is not temporary, in all its complexities, and not equate the existence of a mental disorder to incapacity to take legal actions…

The findings of the appointed expert were not weighed against other evidence, in particular the testimony of the applicant, the medical report of MUDr. S., the testimony of the applicant's mother, the written submissions of the applicant's and his mother's legal representatives, which the courts completely omitted to take into account. The psychiatric expert opinion shall not substitute for the lack of factual findings in the proceedings on deprivation of legal capacity… In this type of proceeding, the court has to focus on the detection of the health condition of the concerned person; this is a factual determination which cannot be decided without cooperation with medical experts. The court has to find out whether the concerned person is capable of independently taking care of his own affairs; in this area the court shall rely on the findings of expert opinions in the context of other evidence (R 6/1964)... it is not suitable to appoint an expert and ask for execution of expert opinion at the very beginning of the proceedings or during preparation of a hearing, hence before the court procures other support for its decision… the courts are in error when they are satisfied with only an expert opinion, or if they uncritically adopt or fail to verify an expert's findings with other evidence, despite having doubts about its accuracy. It is true that an expert opinion is very serious evidence in this type of proceeding, however, it cannot be considered as exclusive evidence capable of filling in the gaps of factual findings (R 3/1979)... The courts failed to accept the evidence of a change in behaviour of the applicant. Evidence presented in the proceedings demonstrated that the applicant was undergoing medical treatment, that he tolerated it over a period of time, and that he felt good. His stabilized condition had enabled him to exist independently, as he confirmed. The applicant proved these facts through a

medical report of MUDr. K.S. Considering these facts, the court violated the principle of Section 154 of the Civil Procedure Code which provides that the judgment shall be rendered on the basis of the situation existing at the time of its pronouncement. In relation to this the applicant refers to the decisions (R 1/1981, R 22/89) according to which the opinions prepared by the experts on request of the parties to the proceedings (i.e. those not requested by the court) do not have the weight of expert opinions but have the weight of documentary evidence. Unlike the expert appointed by the court, the author of the opinion prepared on request of a party to the proceedings cannot be summoned to the court and give testimony. However, the court is obliged to deal with such evidence in its decision." Based on the above arguments, the applicant pointed to the fact that the courts relied on the expert opinion which was not up to date. The expert opinion was prepared on 9 September 2010 and the district court decided on 6 October 2011 (the regional court only on 28 March 2012, note). The applicant referred to the decision of ECHR in *H. F. v. Slovakia* in which the court found a violation of Art. 6, para. 1 of the European Convention (*inter alia*) on the ground that the applicant was deprived of legal capacity one year and four months after execution of the expert opinion.

12. On the basis of these facts the applicant proposed that the Constitutional Court decide as follows:

"1. The fundamental right of the applicant to have legal capacity under Art. 14 of the Constitution…, to integrity of his person and privacy under Art. 16, para. 1 of the Constitution…, to protection against unlawful interference in his private and family life under Art. 19, para. 2 of the Constitution…, to judicial protection under Art. 46, para. 1 of the Constitution… and to a fair trial under Art. 6, para. 1 … to respect for private and family life under Art. 8 … and prohibition of discrimination under Art. 14 of the European Convention…, his right to equal recognition before the law under Art. 12 of the UN Convention…, were violated by judgment of the District Court… on deprivation of legal capacity no. 22 Ps 18/2009-130 of 6. 10. 2011 and the judgment of the Regional Court... no. 20 CoP 3/2012-167 of 28. 3. 2012.

2. The judgment of the District Court... no. 22 Ps 18/2009-130 of 6. 10. 2011 and the judgment of the Regional Court... no. 20CoP 3/2012-167 of 28. 3. 2012 shall be quashed and the case remitted for further proceedings.

3. The applicant shall be awarded adequate financial satisfaction in the amount of 5000 € (five thousand euro), payable by the District Court… within fifteen days after the

judgment becomes final. After the lapse of the 15-day period, the late interest shall be added in the amount, corresponding with the lowest interest rate of the European Central Bank during the delay period increased by three percent.

4. The applicant shall be awarded the costs of proceedings in the sum of 269.58 euros (two hundred sixty nine euros and fifty eight cents), payable by the District Court... to the account of his counsel JUDr. Z. S... within two months after this judgment becomes final."

13. The applicant based awarding financial satisfaction on the *"importance of proceedings for the applicant. The applicant substantiates the amount of the financial satisfaction by the fact that the challenged decisions caused him not only pecuniary, but also non-pecuniary damages. His personal identification card bears the record of a 'person deprived of legal capacity', which the applicant finds degrading and which hinders him from independently entering into legal relationships. He is well and clearly aware of this and it caused him anguish and stress since the time the court decision became final. A violation of human dignity cannot be excused."*

14. Under Section 25, para. 3 of the Act of the National Council of the Slovak Republic No. 38/1993 Coll. on the Organisation of the Constitutional Court of the Slovak Republic, in the Proceedings before the Constitutional Court and the status of its Judges, as amended (hereinafter the "Act on the Constitutional Court") the Constitutional Court by the decision no. I. ÚS 313/2012-23 of 27 June 2012 accepted for further proceedings the complaint of the applicant, by which he complained about the violation of his fundamental rights under Art. 14; Art. 16, para. 1; Art. 19, para. 2; and Art. 46, para. 1 of the Constitution; rights under Art. 6, para. 1, Art. 8, and Art. 14 of the European Convention, as well as rights under Art. 12 of the UN Convention by the of the District Court in the proceedings no. 22 Ps 18/2009 and its judgment of 6 October 2011 and by the procedure of the Regional Court in the proceedings no. 20 CoP 3/2012 and its judgment of 28 March 2012.

15. Upon the request of the Constitutional Court, the District Court submitted written statements by letter dated 23 July 2012 (no. Spr 3380/2012), the Regional Court by letter dated 31 July 2012 (no. Spr 3438/12) and applicant's legal representative submitted a response to these statements on 24 August 2012.

15.1 The president of the District Court in the statement said: *"In this concrete case the court*

relied on the examined evidence, expert evidence, and the expert testimony of 9. 6. 2011and the decision is, in my view, in accordance with the provisions of Section 10 of the Civil Code. In support of this, I point to the fact that the decision on deprivation of legal capacity is not irreversible and valid for the entire life of the disabled person; on the contrary, if circumstances change, the disabled person can file an application to change this decision… In my view, the reasoning of the decision of the District Court, as well as that of the Regional Court, which confirmed the judgment of the District Court… is well substantiated."

15.2 The deputy president of the Regional Court, authorised to substitute for the president of the Regional Court in the statement, said that he substantially agrees with the statements of the chamber president: *"The president of the chamber 20CoP (the chamber deciding applicant's case, transl. note) agreed with the reasons stated in the appeal of the Bratislava V District Prosecution Office, that it is in the public interest to decide the case. The fact that the mother, from fear of her son (which she had stated in the criminal proceeding) withdrew the submitted motion and maintained her withdrawal of it cannot be considered as a reason not to proceed with the case."*

At the same time it is necessary to refer to the criminal order of the Bratislava V District Court… no. 2T 102/2010 of 15. 10. 2010, by which applicant E.T. was found guilty of the crime of 'battering a relative and a person entrusted into one's care'… and sentenced to 3 years of imprisonment; at the same time he was ordered not to approach or be within five meters of the injured E.T., and was also ordered to undergo protective institutional psychiatric treatment… Considering the content of the court file, the examined evidence and conclusion of the expert evidence, in order to decide the case, expert knowledge was necessary. The court lacked this, so therefore appointed an expert. After evaluating the evidence, the court of first instance decided in accordance with the law and respective jurisprudence, and the appellate court agreed with the conclusion of the court of first instance… The facts submitted in the complaint are to be considered ill-founded, inter alia, because it was the mother E.T. who had initiated the case and requested her motion to be granted and after the court decided the case she has lodged the constitutional complaint and claimed that the court decided incorrectly.

Thus, it can be clearly inferred that she is afraid of intimidation and attacks of her son, because she herself had claimed that there were reasons to deprive him of legal capacity, and therefore the decision of this, appellate court, is to be considered as factually correct."

15.3 In response to the statements of the District Court and Regional Court, the applicant's legal representative said: *"The applicant agrees with the argument of the District Court…, that the deprivation of legal capacity is not 'irreversible and valid for the person's entire life' and that it is possible to submit a motion for restoration of legal capacity. But he would like to stress that in his case a substantial change of circumstance already occurred during the proceedings, and thus the decision on the deprivation of legal capacity did not reflect conditions existing at the time of initiation of the case.*

The applicant does not agree with the arguments of the Regional Court. The applicant has never put his mother under pressure, he did not threaten her nor did he force her to withdraw the motion. His mother strongly denies that she was motivated by fear to withdraw the motion... The applicant's mother had submitted the motion for deprivation of legal capacity only because she was advised to do so by the doctor. Unfortunately, this is still a very common practice. Parents often submit motions for deprivation of legal capacity on the basis of the 'good' advice of a doctor or social worker, who have no legal education, do not understand the legal consequences of this drastic measure, and are not familiar with the constitutional and human rights discourse. The applicant's mother has no legal education and did not understand the concept of deprivation of legal capacity and its consequences. She decided to withdraw the motion after she found a lawyer who explained what deprivation of legal capacity would mean for her son.

The argument of the Bratislava Regional Court is contradictory because applicant's mother was appointed as his guardian and the Regional Court did not dispute this fact. If the applicant's mother feared that the applicant would psychologically or physically threaten her, it would have been meaningless to appoint her as his guardian. A guardian is a legal representative of the person deprived of legal capacity. It is assumed that there is a certain relationship based on trust between the guardian and the person under guardianship. If the Bratislava Regional Court really understood the mother's motive for withdrawing the motion as fear of her son, it should have changed the decision of the first instance court appointing her as guardian.

Furthermore, the applicant would like to emphasize one issue which is repeated in the argumentation of the Bratislava V District Court and Bratislava Regional Court. It concerns confusion of civil law concepts and criminal law concepts. The courts understood the concept of deprivation of legal capacity as providing a certain safety net to prevent the applicant's repeating the offence. However, according to the applicant this concept cannot be perceived

in this way. If we use, for example, an argument reductione ad absurdum, we could propose that all persons undergoing protective treatment should be automatically deprived of legal capacity because thereby we can prevent them from repeating offences. Of course, this makes no sense. The deprivation of legal capacity affects capacity to take legal actions and is not related to the capacity to take illegal actions. For example, the deprivation of legal capacity is not related to liability under the civil code which is governed by separate rules, and similarly is not related to insanity under the provisions of the criminal code.

If, according to the courts, there is a concern that the applicant will not follow the treatment, as a result of which he could potentially be dangerous, deprivation of legal capacity does not address this problem. Treatment and eventual hospitalisation is a question of informed consent. According to the jurisprudence of the European Court of Human Rights, deprivation of legal capacity would not authorize applicant's mother to grant informed consent on his behalf so long as he has so-called factual capacity to make independent decisions (see in particular Shtukaturov v. Russia, application no. 44009/05, judgment of 27. 3. 2008, para. 108, or judgment of the Grand Chamber in Stanev v. Bulgaria, application no. 36760/06, judgment of 17. 1. 2012, para. 118 and 130, and D. D. v. Lithuania, application no. 13469/06, judgment of 14. 2. 2012, para. 150). Had the applicant not agreed to the treatment, the measure of involuntary hospitalization under Section 191 et seq. of the Civil Procedure Code could have been used.

The applicant would like to remind the court that his mother, as his guardian, could not in practice force him to take medication because taking medication is not a legal action. She could act as guardian only in case of the informed consent. At this point, it is necessary to refer to the above mentioned jurisprudence of the ECtHR, which implies that the consent of the guardian cannot substitute for that of the person under guardianship who is in disagreement with the treatment. The eventual hospitalisation would mean the regime of deprivation of liberty under Art. 5, para. 1, (e) ECHR and the obligation to secure review of such measure under Art. 5, para. 4 ECHR."

16. The Constitutional Court with the consent of the parties to the proceedings dispensed with a hearing under Section 30 para. 2 of the Act on the Constitutional Court. After being informed of the parties' views on the merits of the complaint, it concluded that further clarification of the matter of the alleged violation of rights under the identified articles of the Constitution and the European Convention could not be expected from such a hearing. Given the nature of the subject under consideration which is determined by the nature of the

fundamental right, the Constitutional Court did not consider a hearing for the purpose of discussion of the complaint an appropriate or necessary procedural tool to establish facts necessary to decide the case on the merits (e.g. I. ÚS 157/02, I. ÚS 66/03).

II.

17. In accordance with paragraph 7, the Constitutional Court established that on 23 November 2009 applicant's mother delivered to the District Court a motion requesting deprivation of legal capacity of the applicant, which she fully withdrew on 18 October 2010 and requested to discontinue the proceedings. By decision no. 22 Ps/18/2009-62 of 26 October 2010 the District Court discontinued the proceedings. Upon appeal of the district prosecution service, the Regional Court quashed the first instance decision and remitted the case for further proceedings by decision no. 20 CoP 86/2010 of 31 December 2010. By judgment of the District Court no. 22 Ps 18/2009-130 of 6 October 2011, the applicant was deprived of legal capacity. The Regional Court confirmed the first instance judgment by its judgment no. 20 CoP 3/2012 of 28 March 2012.

18. The challenged decisions of the District Court and the Regional Court were preceded by the motion of applicant's mother to deprive the applicant of legal capacity delivered to the District Court on 5 April 2007 (registered by the district court under file no. 22 Ps 6/2007, *note*); these proceedings were discontinued by the District Court as a result of withdrawal of the motion by applicant's mother (no appeal was lodged against this decision, *note*).

19. The applicant was in the past found guilty of the crime of 'battering a relative and a person entrusted into one's care' (his mother, *note*) by decision of the district court no. 2 T 102/2010-115 of 15 July 2010 and sentenced to 3 years imprisonment with conditional suspension for a probation period of 4 years that included probation supervision, and an order not to approach his mother or her vicinity, and an order to undergo institutional psychiatric treatment.

20. The District Court in the challenged decision of 6 October 2011, by which the applicant was deprived of legal capacity in substance stated:

"The court duly examined evidence including expert evidence in this case. The expert appointed by the court performed their job properly and comprehensively. The court

established from the expert opinion that the person to be deprived of legal capacity suffers from brain damage which is medically impossible to remove. On the contrary, with time the disorder slowly progresses. Even with adequate treatment it will only be possible to achieve a partial temporary improvement in the sense of certain pacification. Correction ad intergrum cannot be expected. The health condition fluctuates according to the cooperation of the applicant and medication use but the disorder cannot be essentially affected by the treatment and restoration is not possible. The deprived person is capable to assess certain things, but cannot draw adequate conclusions from them and therefore adequate action cannot be expected. Although he currently undergoes treatment based on the criminal order, his illness continues. The legal representative of the claimant requested a second expert opinion and challenged the expert opinion due to the expert's failure to consult with a psychologist. The court did not grant this request and considered the preparation of a second expert opinion redundant because the findings of the expert were unambiguous. The expert confirmed that he prepared the expert opinion without consulting a psychologist but the findings in his expert opinion would not have been affected even if he had consulted with a psychologist. The court would not take into account the argument of claimant's legal representative that the condition of the incapacitated person is currently stabilized, he is not aggressive and there was no problem in relation to his mother, because the court considers as decisive the findings of the expert that the mental disorder suffered by the deprived person is not temporary and that as a result of this mental disorder, he is not capable to take legal actions. Because the incapacitated person is restricted from approaching his mother closer than a distance of 5 meters and to reside at her residence, it is not likely that a conflict between them would occur. Thanks to the treatment ordered by the court, the applicant's health condition is not worsening. He is stabilized as was assumed by the expert when he stated that in his case only a partial temporary improvement in the sense of certain pacification could be achieved. The claimant is afraid that her son will end up in an institution where it is terrible. However, the fact that the court deprives her son of legal capacity does not automatically mean placement in a institutional facility. From the statements of the claimant one can feel that she fears her son as when in the motion she claimed his aggression was directed against her; however, during the proceedings she stated that she never cried to the expert, that her son only punched her twice and she had only two bruises. This statement is not based on truth because her son was found guilty in the criminal proceedings of battering her, causing her physical and psychological suffering by beating, punching, stalking, threatening, causing fear and stress and other behaviour which endangered her physical and mental health. The requirements for

deprivation of legal capacity are: that a natural person suffers from a mental disorder, that the mental disorder is long-term, that it is not only temporary, and that as a result of mental disorder a natural person is not capable of taking legal actions at all. It has been established by the expert evidence that E.T. suffers from a long-term mental disorder, it is not temporary and as a result of the mental disorder he is not capable of taking any legal actions; this is why the court deprived him of legal capacity and could not grant the motion of the deprived person to appoint him a guardian under Section 29 of the Civil Code only in the area of medical actions considering the unequivocal conclusions of the expert opinion. The decision of the court is in the public interest, it contributes to the protection of the public and it is also in the interest of the deprived person because it protects his personality as a human being who needs to ongoing treatment. With the finding of incapacity he will not discontinue his treatment and his mother will be protected from his unpredictable aggressive behaviour. A person deprived of legal capacity will be protected from the influence of strangers who could abuse him or force him for example to sign contracts which would be not in his favour. The incapacitated person is, according to the expert findings, capable of understanding certain facts but he cannot adequately evaluate them."

21. Upon appeal of the claimant, the Regional Court confirmed the judgment of the District Court (paragraph 20) and stated in substance after describing the course of the proceedings:

"The claimant appealed against the judgment and requested to alter the challenged judgment and dismiss the motion as unfounded, and if the appellate court considers it necessary to secure care of the deprived person regarding his adherence to the treatment procedures, she proposed to appoint him a guardian under Section 29 of the Civil Code and to determine the extent of the guardian's authority to decide on the applicant's treatment. In the appeal the claimant stated that in the motion for initiation of the proceedings she requested the court to deprive her son E.T. of legal capacity because his mental health had deteriorated, in particular his behavioural disorder; he had begun to be aggressive and was damaging things. She lodged the motion for deprivation of legal capacity upon advice of the doctor attending her son. The problems in behaviour of her son began after he failed to regularly take his prescribed medication. E.T.'s behaviour reached such intensity that he endangered his mother's life and destroyed furniture and from that she lodged the motion. Because of the improvement in the health condition and the family situation she fully withdrew the motion for initiation of the proceedings on deprivation of legal capacity and made a request to discontinue the proceedings. The prosecutor lodged an appeal against the

decision to discontinue the proceedings… The prosecutor requested the court to continue the proceedings and to decide ex officio on deprivation of E.T.'s legal capacity. The appellant stated that the health condition of her son had considerably improved, that he was taking his medication and visiting his doctor regularly, and that his health condition had stabilized. In the appeal she claimed that the decision of the court was incorrect because the court of first instance insufficiently established the factual basis of the case. According to her, the abilities and intellectual and mental maturity of E.T. suggested that he was capable of controlling his actions and understood his legal actions. The court of first instance had the possibility to form a personal opinion on this issue at the hearing of 6 October 2011 during the testimony of the applicant, about his way of life and his ability to communicate and answer unpredictable questions, about his life opinions, existential questions and his approach to different life situations. For these reasons, proceedings on deprivation of legal capacity ceased to have meaning because E.T. lives completely independently, undergoes treatment voluntary without the intervention of his mother, which has been proved by medical reports of the attending psychiatrist MUDr. K.S. He is capable of managing his finances independently, he can take care of his own affairs and in case of need he can take care of his mother, e. g. when she is hospitalized. The fact that a person suffers from mental disorder does not automatically mean that he is not capable of making decisions. According to E.T.'s mother, the appellant, it is not possible to draw absolute conclusions from the results of expert evidence over all other evidence. She further claimed that the court failed to evaluate findings of the expert evidence in relation to other evidence, such as the testimonies of the parties to the proceedings and further documentary evidence. The court of first instance elevated the expert opinion to absolute truth, whereas the expert opinion is only one part of the evidences and the court is not bound by this expert opinion.

The factual finding which has been the basis for the decision is incorrect because it cannot be implied from the executed evidence…

The district prosecutor commented on the submitted appeal and requested to confirm the challenged judgment as factually correct…

The appellate court deliberated… without ordering an oral hearing… and concluded that it was not possible to grant the appeal…

Legal capacity is the capacity of a natural person to acquire rights and bear obligations through his or her own actions and thereby validly enter into legal relations, conclude contracts, and take generally binding legal actions having certain legal

consequences. If a natural person due to mental disorder is not capable of taking legal actions, the court can deprive him or her of legal capacity.

Deprivation or restriction of legal capacity is understood as a measure in the interest of those who have no possibility of controlling their actions or of understanding the consequences of such actions. The purpose of the decision on deprivation or restriction of legal capacity of a natural person is to provide protection not only to the person concerned but also to other natural or legal persons in contact with them. The court, in deciding on legal capacity, shall base its decision on the opinion of expert doctors in relation to other results of evidence-taking. The court shall carefully examine the impact of the mental disorder on the family, social contact with the outside, with regard to personal, family, property, income and other circumstances. It is necessary to assess the ability of the person suffering from a mental disorder to take legal actions with regard to all individual circumstances of the person, as well as the social aspect of the environment in which she exists. One can determine whether the conditions for deprivation or restriction of legal capacity are met only by the summary assessment of all circumstances related to the mental disability identified by the expert opinions.

The evidence examined by the court of first instance revealed that… (the Regional Court repeated the course of the criminal case registered under file no. 2 T 102/2010 and the conclusions of the expert opinions executed by MUDr. M. H., *note*)... *The documentary evidence submitted by the attending doctor. K. S. - psychiatric examination of 21 November 2009 reveals that the patient E. T. has been in psychiatric care for many years for organic delusional disorder and mental disability due to frequent return of the illness; patient does not follow the treatment, refuses to take medication, lacks insight into his illness, was often hospitalized in various psychiatric facilities. He is aggressive in the domestic environment, does not accept the advice of his mother. He is physically and mentally aggressive towards his mother, having eruptions of anger. The patient's cooperation with the doctor is difficult; he lacks insight into his illness, refuses medical care, and is not capable of taking care of himself, so the doctor recommends deprivation of legal capacity...*

At the oral hearing of 9 June 2011 the court heard the expert who confirmed previous findings of the expert opinion and added to his previous findings that he carried out two expert opinions concerning the examined person, the first in 2008 and the second was delivered to the court on 13 September 2010. He insisted on the findings in his expert opinions, stating that from the medical point of view the findings had not changed. According to the second expert opinion, prepared at the time when the deprived person was prosecuted

and held in pre-trial detention, the health condition of the examined person fluctuates according to his cooperation and use of medication, but the disorder cannot be essentially affected by treatment and a cure is impossible. The expert opinion incorporated several years' of the development of the examined person; his mental condition has gradually deteriorated. The expert insisted on his findings in which he recommended full deprivation of the applicant's legal capacity.

The court of first instance sufficiently established the facts of the case. It evaluated and correctly established the factual situation, by basing its decision on the conclusions from the expert opinions and the testimony of the expert at the hearing. In relation to other results of the evidence-taking, the court came to the conclusion proposed by the expert– that E.T. should be fully deprived of legal capacity. It is necessary to agree with the prosecutor's statement that the mother is afraid of her son and it is for that reason she withdrew from her motion. Serious facts were established and proven during the proceedings on the deprivation of legal capacity and these, without doubt, justify the decision by the court of full deprivation of legal capacity. The illness of the applicant has a permanent character, is medically untreatable and only a partial improvement of the condition can be achieved with continual treatment. The appellate court agrees with the conclusion that it is in the public interest to decide the case, and therefore to contribute to the protection of the public from an untreated patient who, as had been proven in the criminal proceedings, can be very dangerous, in particular towards his mother who takes care of him, and also towards his surroundings, family, and the environment in which he lives. It is also in the interest of the deprived person to undergo psychiatric treatment which he refuses and which he needs, and therefore to enable him to improve his quality of life to the greatest possible extent.

Referring to Section 219 para. 2 of the Civil Procedure Code, (the appellate court) fully agrees with the correct conclusion of the court of first instance as said in the reasoning of the challenged judgment, which meets all requirements of Section 157 para. 2 of the Civil Procedure Code and to which (the appellate court) fully refers. Therefore, the appellate court confirms the judgment of the court of first instance as factually correct according to Section 219 para. 1 of the Civil Procedure Code. The decision of the court of first instance is correct also in the related verdicts on appointment of the guardian and award of legal costs..."

III.

22. To the violation of rights and liberties invoked by the applicant:

Under Art. 14 of the Constitution, every person shall be entitled to his or her rights.

Under Art. 16, para. 1 of the Constitution, the integrity of the person and his or her privacy is guaranteed. It can be restricted only in cases specifically provided by law.

Under Art. 19, para. 2 of the Constitution, everyone shall have the right to be free from unjustified interference in his or her private and family life.

Under Art. 46, para. 1 of the Constitution, everyone may claim his or her right by procedures laid down by law before an independent and impartial court or, in cases provided by law, before another public authority of the Slovak Republic.

Under Art. 6, para. 1 of the European Convention, in the determination of a person's civil rights and obligations or of any criminal charge against him or her, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Under Art. 8 of the European Convention, everyone has the right to respect for his private and family life, his home and his correspondence.

Under Art. 14 of the European Convention, the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Under Art. 12, para. 1, 2 and 3 of the UN Convention, persons with disabilities have the right to recognition everywhere as persons before the law (para. 1). Persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life (para. 2). States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity (para. 3).

23. In the circumstances of the present case and with regard to the above cited provision of Art. 12 of the UN convention the Constitutional Court notes that the National Council of the Slovak Republic approved the UN Convention by resolution no. 2048 of 9 March 2010 and under Art. 7, para. 5 of the Constitution decided that this international treaty shall take precedence over the laws. The Convention was ratified by the president of the Slovak Republic on 28 April 2010. The instrument of ratification was deposited in the depositary of the Secretary General of the United Nations on 26 May 2010. The Convention entered into force in respect of Slovak Republic on 25 June 2010. Article 12 of the UN Convention is listed under the title "Equal recognition before the law" and in connection with legal capacity the provision guarantees *inter alia* supported (assisted) decision-making, principle of equality,

prohibition of discrimination, (principle) of adequacy, proportionality… In relation to this, the UN Convention in Article 12, cited above, (also in its paragraphs 4 and 5, *note*) calls upon/binds State Parties to adopt measures which would not result in the exclusion of persons with disabilities from life in society but rather in their inclusion.

IV.

24. Under Art. 127, para. 1 of the Constitution, the Constitutional Court shall decide on complaints of natural persons or legal persons if they are pleading the infringement of their fundamental rights or freedoms, or human rights and fundamental freedoms arising from an international treaty which has been ratified by the Slovak Republic and promulgated in the manner laid down by a law, save if another court is deciding on protection of these rights and freedoms. Under Art. 127, para. 2 of the Constitution, if the Constitutional Court accepts a complaint, it shall hold in its decision that the rights or freedoms according to paragraph 1 were infringed by a valid decision, measure or by other action and it shall cancel such a decision, measure or other action.

25. After thorough consideration of the complaint, the challenged court decisions, the content of the requested court file, the related files (file no. 22 Ps 6/2007 and file no. 2 T 102/2010) and the parties' submissions to the complaint, the chamber the Constitutional Court in its closed session concluded that the complaint is in its substance substantiated [see reasons stated in paragraph 28(ii) and (iii) and related reasoning of this judgment, *note*].

26. The Constitutional Court shall be an independent judicial authority vested with the mandate to protect the constitutionality (Art. 124 of the Constitution). It is a guarantor of constitutionality and a judicial authority which is obliged to protect the observance and respect of the Constitution by all public authorities, including general courts. However, the observance of the Constitution by public authorities cannot be understood as a mere respect of its individual articles. The general interpretation and implementation clause provides that constitutional and general laws and other generally binding legal regulations shall be interpreted and applied in conformity with the Constitution (Art. 152, para. 4 of the Constitution). The interpretation of every legal norm (legal regulation) shall be in conformity with the Constitution which is the fundamental law of the state with the highest legal force. If a case allows for different interpretation, the body applying law in a particular case is obliged to follow the constitutionally conforming interpretation.

27. The Constitutional Court has, in its jurisprudence, constantly stressed with regard to the boundaries of its interference into the decision-making process of general courts that it cannot judge the correctness of factual conclusions or the legal assessment of a case by general courts because it is not a review court, nor a subordinate court nor a guardian of the law. The judicial power in the Slovak Republic is divided between the general courts and the Constitutional Court which is evident from the internal structure of the Constitution (title seven has two sections – the first governing constitutional judiciary and the second general judiciary). When applying its power of the independent judicial authority vested with the mandate to protect the constitutionality, the Constitutional Court cannot substitute for general courts which are primarily responsible for the interpretation and application of law. General courts as "guardian of laws" are primarily responsible to protect principles of a fair trial at the level of laws. When deciding upon complaints that allege a violation of the fundamental right to judicial protection, the role of the Constitutional Court is limited to the examination of compatibility of the effects of interpretation and application of legal norms with the Constitution or an international treaty on human rights and fundamental freedoms, in particular to determine whether the conclusions of general courts are sufficiently substantiated, and whether they are not arbitrary with direct impact on some of the fundamental rights and freedoms (e.g. I. ÚS 19/02, I. ÚS 27/04, I. ÚS 74/05).

28. The substance of applicant's claims in relation to the challenged decisions of the District Court and Regional Court are that:

(i) the concept of deprivation of legal capacity is *per se* in contradiction with the constitutional order of the Slovak Republic,

(ii) the courts have fully deprived the applicant of legal capacity and failed to examine and in the reasoning of their decisions failed to react on his claims that he is capable to take certain legal actions independently (e.g. to exercise parental rights, to decide for marriage, to exercise his right to vote…). Therefore, the applicant has been deprived of legal capacity despite the existence of less restrictive measures of interference of his fundamental rights and freedoms, for example restriction of legal capacity,

(iii) findings of the expert opinion were not questioned and other evidence was not taken into account by the courts (e.g. the testimony of the applicant, medical report of MUDr. S., testimony of applicant's mother, the written submissions of the applicant's and his mother's legal representatives, etc.). The expert opinion was outdated at the time of the court

decision [this was prepared on 9 September 2010 and general courts decided on 6 October 2011 (District Court) and 28 March 2012 (Regional Court), *note*.].

29. The Constitutional Court briefly states to the reasons submitted by the applicant in paragraph 28 (i) that within the proceedings on individual complaint under Art. 127, para. 1 of the Constitution the Constitutional Court has no jurisdiction to examine the conformity of law provisions on deprivation/restriction of legal capacity of a natural person (Section 10 paras. 1 and 2 of the Act no. 40/1964 Coll., the Civil Code, as amended) with the constitutional order of the Slovak Republic. Such conformity can be examined only in the proceedings under Art. 125, para. 1, letter a) of the Constitution. Moreover, the applicant has no standing to submit such motion [Art. 130 of the Constitution in connection with Section 37 para. 1 and Section 18 para. 1 letters a) - f) of the Act on the Constitutional Court], and is therefore certainly an ineligible applicant.

30. Besides reasons stated in the previous paragraph the applicant also disputed the lack of reasoning of the challenged decisions, in particular that they had been one-sided and not persuasive [paragraph 28(ii)] and that the deciding evidence in the proceedings had been outdated [paragraph 28(iii)].

31. The substantive and procedural legal framework

Under Section 10 paras. 1 and 2 of the Civil Code, if due to mental disorder, which is not temporary, a natural person is not capable at all to take legal actions, the court shall deprive him or her of legal capacity (paragraph 1). If due to mental disorder, which is not temporary, or due to excessive consumption of alcohol or narcotics or drugs, a natural person is capable of taking only some legal actions, the court shall restrict his/her legal capacity and shall determine the extent of the restriction in the decision (paragraph 2).

Under Section 120 para. 2 CPC, besides the evidence adduced by the parties, the court shall be under an obligation to take additional evidence when such evidence is necessary to establish the facts in the proceedings such as proceedings concerning the permission to contract marriage, determination or denial of paternity, adoption, registration of a company and certain issues related to companies or cooperatives. This can be initiated on the court's own motion (Section 200e).

Under Section 132 CPC, the court evaluates evidence at its discretion, evaluating each item of evidence separately and in its entirety, while taking due account of everything that has transpired in the proceedings, including statements made by the parties.

Under Section 154 para. 1 CPC, the judgment shall be rendered on the basis of the situation existing at the time of its delivery.

Under Section 157 para. 2 CPC, in the reasoning of the judgment, the court shall sum up the statements, give a concise and clear description of the facts that it considers proven or not proven. The court shall note the evidence on which it based its findings of fact and the deliberations in the examination of evidence, the reasons for not admitting additional evidence, and shall give its evaluation of the ascertained factual situation in the light of relevant applied legal provisions. The court shall ensure that the reasoning of the judgment is conclusive.

32. With regard to the very concept of deprivation of legal capacity, it is necessary to emphasize that within the constitutional review of applicant's case, the Constitutional Court has not so much reflected legal regulations and the present practice of general courts but rather constitutional and international obligations (*see* paragraphs 22 and 23) which is essential for the operation of the Constitutional Court (Art. 7, para. 5 and Art. 124 of the Constitution). However, this principle is not (shall not be) essential only for the Constitutional Court, as judicial authority vested with the mandate to protect the constitutionality, but also for general courts, because it is not possible to restrict the interpretation of Section 10 of the Civil Code (cited in paragraph 31) only to the text of the law, but it is necessary to always take into account the constitutional dimension of deprivation/restriction of legal capacity, particularly the respect of human dignity.

33. The present jurisprudence of the Constitutional Court has touched upon the concept of deprivation of legal capacity only marginally, and more within its procedural framework. For example in decision no. II. ÚS 61/93 of 8 July 1993, the Constitutional Court rejected the complaint of the applicant (with restricted legal capacity, *note*) who requested restoration of his legal capacity for not having standing, because according to the decision of the general court, the applicant could have requested restoration of his legal capacity only after the passage of three years from when the judgment became final. This period had not passed at the time when the complaint was lodged with the Constitutional Court (similarly II. ÚS

139/93). The Constitutional Court changed its approach in the case no. II. ÚS 10/95 (decision of 28 March 1995), where the Constitutional Court *inter alia* stated that "a person without legal capacity or with limited legal capacity is not… a person without standing to lodge a motion for initiation of proceedings before the Constitutional Court if she seeks protection of a fundamental human right and if it is obvious from the submission that the invoked right may be endangered." In the subsequent cases (II. ÚS 60/98, III. ÚS 45/00) the Constitutional Court dismissed the complaint of the applicant to be deprived/deprived of legal capacity for not being represented by a counsel.

34. The disability as well as rights of persons with disabilities is perceived by the current professional public differently than in the past (in Slovakia rather by legal science and theory, *note*). Nowadays, disability is no longer understood only in a medical (individual) framework but more significance is given to social and legal frameworks which increasingly integrate the values of human rights - such as respect and protection of dignity (*see*, e.g. article by Jana Marečková and Maroš Matiaško, "Legal capacity abroad; time for a reform?" published in v Justičná Revue, 2009, no. 5. p. 690).

35. Within the constitutional significance of rights of a person, the Constitutional Court in particular puts forward that their deprivation/restriction *ex contitutione* primarily considers the interest of the very (concerned) person, and only after that the interest of the public or of third persons. Unfortunately, past and even current practice of the general courts shows prioritising of the public interest and interest of third persons at the expense of the interest of the concerned person. The deprivation of legal capacity of a person (his legal death) shall be a measure of last resort (*ultima ratio*), i.e. it may be applied only if all less restrictive measures (e.g. of criminal law, administrative law or 'only' their restriction) cannot be used, or become ineffective. It then follows that a complete deprivation of legal capacity is out of the question when the disabled person has partial capacity (in certain not negligible spheres of life). The court is obliged to examine whether the person has such partial capacity *ex officio* (Section 120 CPC), despite the lack of such a proposal by a party to the proceedings. This shall be all the more valid if the concerned person and his legal representative expressly so requested. In other words, had the mental disorder not completely excluded the capacity to take legal action, only the restriction of legal capacity shall be applied, and not the deprivation of legal capacity. At the same time, the practice of mechanically accepting the findings of expert opinions, still deep-rooted in court practice, is not sufficient in relation to all partial components of legal capacity. The Slovak Republic can draw inspiration from the approach

of, for example, the Czech Republic, with which we share a common legal history, within the framework of its new legal regulation of the Civil Code (Section 55 of the Act no. 89/2012 Coll., *de lege ferenda*, *note*), as well as the practice of its Constitutional Court (e.g. IV. ÚS 412/04, II. ÚS 2630/07, *de constitutione lata*, *note*).

36. The very finding that a person suffers from mental disorder, which is not temporary– primarily a question for an expert, does not suffice for a finding of deprivation of legal capacity. Deprivation of legal capacity further requires that the permanent mental disorder excludes the capacity of a person to take legal actions. In principle, it will not be possible to answer this question only on the basis of an expert opinion without examining further evidence (proposed or *ex officio*) in accordance with Section 120 para. 2 CPC. In order to solve this question, the court shall rely on factual findings not only from the expert opinion but also in relation to other results of evidence-gathering. In the proceedings on legal capacity courts shall - in addition to using an expert opinion from the psychiatric field – also hear other evidence, in particular the testimony of the potentially affected person, and evidence directed at examination of his multi-layered social, legal, property, family or political interactions (the relations between the affected person and others, e.g. society). Courts shall not look at the expert opinions uncritically, but shall evaluate them in the context of other evidence. Expert opinions shall always be up to date, shall be derived from a personal examination of the person and shall be formulated in a way not exceeding boundaries of expert assessment. As stipulated by e.g. the Constitutional Court of the Czech Republic (III. ÚS 299/06), *"to leave unnoticed the factual accuracy of the expert opinion, to blindly trust the findings of the expert would mean in its result a denial of the principle of free evaluation of evidence by the court under its inner conviction, to privilege the expert evidence and transfer the responsibility for factual accuracy of judicial decision-making to the expert; such approach cannot be accepted from a constitutional point of view."*

37. It is not evident from the last judgment of the District Court of 6 October 2011 and the challenged (confirming) judgment of the Regional Court of 28 March 2012, that the courts besides executing evidence of expert opinion (which was outdated in relation to both challenged decisions), or taking into account the criminal order or previous statements of the attending doctor, dealt sufficiently with the relevant claims of the applicant and his legal representative, for example the argument that the applicant should not have been deprived of

legal capacity completely, but if some restriction was necessary, then only partially. To this end, the courts failed to carry out further evidence gathering despite being obliged to do so (Section 120 para. 2 CPC). It is striking that the appellate (Regional) Court was aware of the need of the above mentioned method for considering evidence, when it stated (paragraph 21) that *"the court deciding on legal capacity shall base its decision on the opinion of experts - doctors in relation to other results of evidence-taking. The court shall carefully examine the impact of mental disorder on actions and acts in the family, social contact with the outside, with regard to personal, family, property, income and other circumstances. It is necessary to assess the capacity to take legal actions with regard to all individual circumstances of a person suffering from mental disability, as well as the environment in which he or she exists. One can conclude whether the conditions for deprivation or restriction of legal capacity are met only by an assessment of all circumstances related to the mental disability identified by expert opinions."*

Nothing else remains for the Constitutional Court but to agree with the aforesaid. At the same time, however, it should be added that neither of the courts had so proceeded. Further, the Regional Court stated: *"The court of first instance sufficiently established the facts of the case, it evaluated correctly the factual situation, whereby it based its decision on the conclusions of the expert opinions and the testimony of the expert at the oral hearing. In relation to results of the examination of other evidence (here the court apparently had not considered the evidence produced by the party of the affected person, as it remains silent in relation to it and did not evaluate it, note), the court came to the conclusion proposed by the expert that E.T. should be deprived of legal capacity to the full extent."*

At last, the Regional Court has emphasized public interest and protection of third persons (see paragraph 35) – *"The appellate court agrees with the conclusion that it is in the public interest to decide the case, and therefore to contribute to the protection of the public from an untreated patient who, as had been proven in the criminal proceedings, can be very dangerous, in particular towards his mother who takes care of him, and also towards his surroundings, family, the environment where he lives."* The Regional Court viewed the interest of the affected person (which should have been primary, *see* paragraphs 34 and 35, *note*) only in the need to undergo treatment (*"It is also in the interest of the incapacitated person to undergo psychiatric treatment which he needs but refuses, and therewith to enable the improvement of his quality of life to the greatest extent possible"),* which cannot *prima facie* constitute a constitutional reason for deprivation of legal capacity, if, in any case, the

criminal court had already ordered the applicant to undergo such treatment (paragraph 19 *in fine*).

38. The reasoning of the general courts' decisions is a frequent subject of consideration in the jurisprudence of the Constitutional Court as well as Strasbourg organs of rights protection, resulting in relatively rich jurisprudence explaining its meaning from the view of the right to judicial protection under Art. 46, para. 1 of the Constitution and the right to a fair trial under Art. 6, para. 1 of the European Convention. In the reasoning part of the decision the general court shall answer particular claims of the party to the proceedings, i.e. to give a clear and comprehensible answer to all key legal and factual questions related to the subject of judicial protection. The Constitutional Court reminds the general court that it must not answer all questions raised by the parties to the proceedings but only those having essential importance for the case, or those sufficiently clarifying the factual and legal basis of the decision without going into all details of the dispute stipulated by the parties to the proceedings (I. ÚS 241/07). Similarly, the ECtHR has stated that judicial decisions shall sufficiently state reasons on which they are based (García Ruiz v. Spain of 21 January 1999). The ECtHR jurisprudence does not require giving an answer in the reasoning of the decision to every argument raised by the party. However, if a decisive argument is concerned, a specific answer to this argument is required (Georiadis v. Greece of 29 May 1997, Higgins v. France of 19 February 1998). The right to a fair trial also encompasses an obligation of the court to effectively deal with the claims, arguments and proposals of the parties for treatment of evidence in the reasoning of the decision save those which are not important for the decision (Kraska v. Switzerland of 29 April 1993, II. ÚS 410/06).

39. When deciding upon an applicant's complaint, the Constitutional Court has taken into account that he had claimed *inter alia* a violation of his fundamental right to judicial protection, which in a democratic society is of such importance that any restrictive interpretation or formal interpretation methods resulting into its unjustified (arbitrary) restriction or denial are out of question (from the side of the courts).

40. In the present case, the Regional Court failed to sufficiently reason the decision, and this defect could not be remedied by the content of the reasoning of the first instance decision (from the same reasons, *note*). In the circumstances of the present case, the Regional Court had been obliged as an appellate court to deal in the reasoning of its decision with the

evidence produced not only by the state representatives (the expert, prosecutor, criminal court) but also by the affected person and his legal representative. The Regional Court confirmed the first instance judgment depriving the applicant of legal capacity without proper reasoning justifying why had it not carried out further evidence gathering (*see* in particular paragraphs 35 and 36). It did not take into account the claims of the applicant, that he disposes of (at minimum) partial legal capacity, as well as the circumstances whether the decisive evidence (the expert opinion) had been up to date at the time of rendering the decision. The Regional Court proceeded inconsistently and arbitrarily, and thus violated the applicant's right to judicial protection (Art. 46, para. 1 of the Constitution in connection with Art. 6, para. 1 of the European Convention). As a result of this violation, it has also violated other related rights, as invoked by the applicant (Art. 14; Art. 16, para. 1; Art. 19, para. 2 of the Constitution, Art. 8 and Art. 14 of the Convention and Art. 12 of the UN Convention). In the circumstances of the present case, the 'substantial' importance of these rights shall be perceived through the lens of what has been stated in paragraphs 32 to 36.

41. As a result of these findings and conclusions of the Constitutional Court, it shall be stated that the decision violated the rights invoked by the applicant, and therefore it was necessary to decide upon their violation as stipulated in paragraph 1 of the operative part of this judgment.

42. Under Section 56 para. 2 of the act of the Constitutional Court, should the fundamental right or freedom be violated by means of a decision or measure, the Constitutional Court shall quash such a decision or measure. On the basis of the cited provision of the act of the Constitutional Court, the Constitutional Court quashes the challenged decision of the Regional Court and remits the case for further proceedings, in which the court is bound by the legal opinion of the Constitutional Court pronounced in this judgment [Section 56 para. 3 letter b) and para. 6 of the Act on the Constitutional Court], as stipulated in paragraph 2 of this judgment.

43. The Constitutional Court has not upheld the part of the complaint directed against the District Court (paragraph 5 of the operative part), guided by the principle of moderation, self-restraint (PL. ÚS 3/09, I. ÚS 76/2011, PL. ÚS 95/2011, I. ÚS 316/2011) and subsidiarity. Despite the fact that in its last judgment the District Court (like the Regional Court in the challenged decision) failed to proceed in the applicant's case in conformity with the Constitution. The Constitutional Court so decides, respecting in particular

(i) the state of the previous proceedings in applicant's case when the District Court was forced to continue the proceedings which it had discontinued by its decision of 31 December 2010 due to the Regional Court's quashing that decision and remitting the case to the District Court. In this decision the Regional Court highlighted its legal opinion for the District Court (page 5 of the reasoning), *"because in the given case there are reasons why it is necessary to continue the proceedings on the deprivation of E.T.'s legal capacity, also considering the expert opinion as well as facts deriving from the file, in particular from the claimant's motion… based on the facts which she had stated in the submitted motion and which had been proved by the expert opinion",*

(ii) the full jurisdiction of the Regional Court - as an appellate court - in the applicant's case and

(iii) the fact that an appeal was possible against the first instance decision (subsidiarity).

44. Under Art. 127, para. 3 of the Constitution, the Constitutional Court may, by the decision by which it allows a complaint, according to paragraph 1, award the one whose rights were infringed adequate financial satisfaction. Under Section 50 para. 3 of the Act of the Constitutional Court, should the applicant claim appropriate financial compensation, he or she shall specify the extent he or she demands, and give reasons for such a claim. Under Section 56 para. 5 of the Act of the Constitutional Court, should the Constitutional Court decide to award adequate financial satisfaction the authority which has breached a fundamental right or freedom should be liable to pay the complainant within two months after the decision of the Constitutional Court becomes final.

45. The applicant requested an award of adequate financial satisfaction in the sum of 5 000 € for the reasons stipulated in his complaint. He pointed out (*see* paragraph 13) *"the importance of the proceedings for the applicant"* and the circumstance that *"the challenged decisions have caused him not only pecuniary but also non-pecuniary damage … anguish and stress. A violation of human dignity cannot be excused."*

46. The aim of adequate financial satisfaction is to complete the protection of the violated fundamental right in those cases where the infringement occurred in a way requiring not only declaration of infringement or an order for further action. The Constitutional Court is of the opinion that the award of financial satisfaction shall be afforded in this case. When determining financial satisfaction, the Constitutional Court relied on principles of equity

applied by the ECtHR, which affords just satisfaction under Art. 41 of the European Convention with regard to the particular circumstances of the case. The aim of adequate financial satisfaction is to complete the protection of violated fundamental right in those cases where the infringement occurred in a way requiring not only declaration of infringement or an order for further action (IV. ÚS 210/04). With regard to what is at stake for the applicant and taking into account the particular circumstances of the case (paragraphs 31 to 41), the Constitutional Court considered it reasonable to award the sum of 3 000 € as adequate financial satisfaction under Section 56 para. 4 of the Act of the Constitutional Court.

47. Finally, the Constitutional Court has also decided to cover costs of the proceedings of the applicant which arose due to legal representation before the Constitutional Court by the attorney JUDr. Z.S. which were quantified as the sum of 269.58 €. Under Section 36 para. 2 of the act of the Constitutional Court, in substantiated cases according to the results of proceedings, the Constitutional Court may by ruling impose upon a party the obligation to pay in whole or in part the costs of proceedings incurred by another party. Because the attorney of the applicant quantified the costs of the proceedings in the sum not exceeding the incurred costs of the applicant, the Constitutional Court afforded their reimbursement as stipulated in paragraph 4 of the operative part.

48. Considering Art. 133 of the Constitution, under which there is no possibility of lodging an appeal against a decision of the Constitutional Court, this judgment shall be understood as 'final' after its delivery to the parties of the proceedings.

Instruction: There is no possibility of lodging an appeal against this decision.

In Košice, 28 November 2012