I.ÚS 664/24 of 18. 6. 2025

Czech Republic
RESOLUTION
Constitutional Court

The Constitutional Court ruled in a panel composed of Chairman Jaromír Jirsa, Judge Rapporteur Josef Baxa, and Judge Veronika Křesťanová on the constitutional complaint of complainant AB (a pseudonym), represented by JUDr. Martin Sochor, attorney-at-law, with registered office at Veletržní 926/10, Prague 7 - Holešovice, against the judgment of the Supreme Court of 7 December 2023, file no. 25 Cdo 1055/2023-363, the judgment of the Municipal Court in Prague of 2 November 2022, file no. 39 Co 227/2022-340, as amended by the amending resolution of 6 December 2022, file no. 39 Co 227/2022-348, and the judgment of the District Court for Prague 5 of 25 January 2021, file no. 28 C 17/2014-307, with the participation of the Supreme Court, the Municipal Court in Prague and the District Court for Prague 5, as parties to the proceedings, aa) Faculty Hospital in Motol, with registered office in V Úval 84/1, Prague 5 - Motol, b) the trading company Kooperativa pojišťovna, as, Vienna Insurance Group, with its registered office at Pobřežní 665/21, Prague 8 - Karlín, and c) CD (this is a pseudonym), as secondary parties to the proceedings, as follows:

The constitutional complaint is rejected.

AND.
The facts of the case under consideration and the content of the contested decision

1. By a constitutional complaint pursuant to Article 87(1)(d) of the Constitution of the Czech Republic (hereinafter referred to as the "Constitution") and Section 72 et seq. of Act No. 182/1993 Coll., on the Constitutional Court, as amended (hereinafter referred to as the "Act on the Constitutional Court"), the complainant seeks the annulment of the decisions indicated in the heading, claiming that they violated his fundamental rights guaranteed in Articles 6(1), 7(1)
and Article 36(1) of the Charter of Fundamental Rights and Freedoms.

2. The constitutional complaint and its annexes state that the complainant and the intervener c) (mother) filed a lawsuit with the District Court for Prague 5 (hereinafter referred to as the "District Court") pursuant to Act No. 198/2009 Coll., on Equal Treatment and Legal Remedies for Protection against Discrimination (Anti-Discrimination Act), seeking an apology and compensation for non-pecuniary damage in money against the intervener a) (hospital) in connection with the death of their daughter, who was being treated with a diagnosis of epidermolysis bullosa congetina, Herlitz junctional type, also known as the so-called butterfly wing disease. The hospital allegedly treated the daughter less favorably by refusing to transfer her to the anesthesiology and resuscitation department (ARO) due to her health condition, even though the daughter's condition required it and she was thus denied the chance for treatment, which ultimately led to her death.

3. The District Court initially dismissed the action on the grounds of lack of standing, which was subsequently confirmed by the Municipal Court in Prague (hereinafter referred to as the "municipal court"). However, the Supreme Court, by its judgment of 13 December 2017, file no. 30 Cdo 2260/2017, annulled both decisions and returned the case to the District Court for further proceedings. It ordered it to address the question of whether the complainant and the mother could have been affected by possible discrimination against their daughter, although they are not persons referred to in Section 1(1)(h) of the Anti-Discrimination Act, and whether or not they have standing in the matter.

4. The District Court dismissed the action again in the contested judgment. It found that the discrimination against the complainant and the mother could possibly have occurred as a result of the discrimination against their daughter, and therefore assessed whether the daughter had been provided with health care lege artis. Since this assessment was related to a professional question, the District Court intended to prepare an expert opinion. However, the complainant and her mother objected to the only professional institution capable of preparing an expert opinion as being biased, as the hospital had consulted its procedure with a person working at that institution;

they therefore refused to grant consent to the provision of their daughter's medical records. The court therefore relied on other evidence, in particular the questioning of witnesses. Based on the evidence it had examined, it concluded that it had not been proven that the daughter had been treated differently from patients in a similar situation. The complainant and his mother did not meet the burden of proof, and therefore the hospital did not have to further prove that the alleged differential treatment was not due to a discriminatory motive.

5. The Municipal Court, on the appeal of the complainant and the mother, confirmed the contested judgment of the circuit court after supplementing the evidence, although it admitted that the circuit court had assessed the distribution of the burden of proof incorrectly. It was not proven that the hospital treated the complainant's daughter differently from other patients in similar cases. The decisive factor was not the specific diagnosis, but how the hospital treats patients in the terminal stage, whose health condition can no longer be improved by available medical means and treatment. Although the attending doctors at the hospital initially refused to transfer the daughter to the intensive care unit and begin resuscitation, they did so for medical reasons, one of which is not to prolong the patient's suffering. It was proven that the doctors would have acted similarly in other equally serious cases.

6. Regarding other objections raised in the appeal, the municipal court stated that the preparation of the expert opinion was made impossible by the complainant and the mother because they did not consent to the provision of the necessary medical documentation of the daughter, even though the bias of the established professional workplace was not found. The hospital's procedure cannot be considered passive euthanasia, because the failure to transfer to the ARO was not indicated as a result of the so-called futile treatment, i.e. the motivation was primarily not to cause the complainant's daughter further suffering if her health condition could not improve. If the treatment only unnecessarily prolongs dying, it becomes greater suffering in itself, and the doctor is not obliged to continue such treatment. Regarding the failure to introduce a new central catheter, the appellate court pointed out that this medical procedure became almost impossible as a result of the deteriorating health condition of the complainant's daughter.

7. The Supreme Court subsequently dismissed the appeal of the complainant and the mother. It dealt with the interpretation of equal treatment by the operator of the healthcare facility with all patients under Section 2(3) of the Anti-Discrimination Act. It based its decision on the factual conclusion that the reason for refusing to transfer the daughter to the ARO was not her primary diagnosis or the so-called infaust prognosis or other health disability, but her overall health condition, which consisted of multi-organ failure and chronic septic condition. The hospital doctors would have acted in the same way with other patients in a comparable situation. The comparable situation is not the existence of a rare disease, but the overall health condition of the patient, which can no longer be reversed or stabilized, and the provision of further healthcare is therefore futile. The complainant and mother's belief that further medical care could have averted their daughter's death does not correspond to the evidence provided. The hospital repeatedly consulted the complainant and the mother about their daughter's irreversible health condition and her suffering related to continued treatment. The complainant and mother's request to transfer their daughter to the intensive care unit did not correspond to the objective professional conclusion that further treatment could not benefit the daughter.

8. The Supreme Court therefore answered the question of so-called futile treatment in the context of the anti-discrimination law by stating that the refusal to provide further health care to a patient in the terminal phase of treatment, which is no longer medically indicated and which only postpones for a limited period the moment of medically unavoidable physical death, is not a violation of equal treatment or the right to protection from discrimination on the grounds of disability. Referring to the prohibition of discrimination against persons with disabilities cannot force doctors to violate the obligation to provide health care according to the best available knowledge, i.e. lege artis, or violate the principles of medical ethics.

II.
Complainant's arguments

9. In the constitutional complaint, the complainant maintained his belief that if the hospital doctors, despite his and his mother's express disagreement, refused to transfer his daughter to the intensive care unit at the moment when her vital organs began to fail, there was discrimination against the daughter, a violation of her participation rights, the right to personal integrity and respect for family and private life. He referred to the finding of 31. 7. 2023, file no. I. ÚS 1594/22. The hospital's action denied the daughter the right to life, as the hospital did not make sufficient efforts to try to reverse her adverse health condition. By delaying the transfer to the intensive care unit of the hospital, euthanasia was in fact performed on the daughter, which is not permitted by Czech law.

10. The complainant subsequently personally, i.e. not through his lawyer, sent a submission to the Constitutional Court in which he disagreed with the contested judgment of the Supreme Court. He submitted his own interpretation of its conclusions, according to which the judgment contains only subjective opinions of the Supreme Court that do not correspond to the law. He believes that according to the Supreme Court, it is not necessary to continue treating patients with an infaustic prognosis, or if doctors come to the conclusion that the patient will die anyway, despite the patient's disagreement; professional and ethical standards are more important than a person's right to life, health care and equal treatment; a dignified natural life-existence prevails over the right to life; the law does not have to be observed in the case of a terminally ill patient. According to the complainant, some of the court's formulations indicate that while the hospital was trying to free their daughter from suffering by letting her die, he and his mother were trying to do the exact opposite, which he considers a gross argumentative foul. Even MUDr. Karel Dlask indirectly admitted during his questioning that the purpose of transferring her to the ARO is not only to save the life of a patient who is terminally ill, but that the reason may also be to alleviate the pain and wishes of the patient's parents. The conclusions of the contested judgment of the Supreme Court do not correspond with another judgment of 17. 8. 2022 file no. 24 Cdo 2237/2022, which concerned the possibility of undergoing euthanasia. The Supreme Court found that the Czech legal system does not allow euthanasia, not even passive euthanasia. The complainant is convinced that the hospital's procedure in the case of his daughter meets the characteristics of passive euthanasia. This approach implies that if a patient requests euthanasia, it cannot be carried out with reference to Czech law, but if the patient does not want euthanasia, but doctors passively approach it by not continuing treatment for a terminally ill patient, such a procedure is in order according to the courts. The courts thus elevate doctors and their decisions above the rights of patients.

III.
Procedural prerequisites for proceedings before the Constitutional Court

11. The Constitutional Court assessed the procedural requirements of the proceedings and found that the constitutional complaint meets the requirements set out in the Act on the Constitutional Court and was filed in a timely manner by an authorized complainant who was a party to the proceedings in which the contested decisions were issued. The complainant is represented by a lawyer in accordance with Sections 29 to 31 of the Act on the Constitutional Court. The constitutional complaint is admissible because, before filing it, the complainant exhausted all legal procedural means to protect his rights within the meaning of Section 75(1) of the Act on the Constitutional Court. The Constitutional Court is competent to hear the constitutional complaint.

IV.
Assessment of the merits of a constitutional complaint

12. The Constitutional Court notes at the outset that it perceives a strong human dimension, which in the case under consideration comes into tension or directly into conflict with the professional medical aspect. Although these two levels must be respected to the greatest extent possible, compliance with the legal order, or rather the constitutional order, is essential for a judicial decision. The task of the general courts, but also of the Constitutional Court, is to maintain objectivity and impartiality. However, even in the case under consideration, this is not a manifestation of insensitivity to the unimaginable suffering and loss that the complainant and the mother have experienced, but rather a duty to find and ensure a (constitutionally) legally compliant solution in relation to both parties to the dispute.

13. The Constitutional Court is a judicial body for the protection of constitutionality (Article 83 of the Constitution), which stands outside the system of courts and is not subordinate to them in instances (Article 91(1) of the Constitution). Therefore, it does not review the ordinary legality and correctness of contested judicial decisions, but assesses whether the fundamental rights and freedoms of the complainants guaranteed to them by the constitutional order have been violated [cf. e.g. the Constitutional Court's ruling of 25 January 1995, file no. II. ÚS 45/94 (N 5/3 SbNU 17)]. The conduct of proceedings, the establishment and assessment of the state of facts, the interpretation of sub-constitutional law and its application in a specific case are therefore in principle the responsibility of the general courts, and the Constitutional Court may intervene in their decision-making activities only if the decision-making in question is vitiated by defects that result in a violation of constitutionality (so-called qualified defects).

14. The essence of the case is solely the question of whether the hospital discriminated in providing health care to the applicant's daughter, specifically whether it would not have continued to provide further treatment to other patients in a comparable situation in terms of their health. Only these circumstances were the subject of

proceedings before the general courts, and therefore any possible violation of constitutionality can be assessed solely in relation to them.

15. In the case of discrimination disputes, a modified distribution of the burden of proof applies. According to Section 133a(1) of the Code of Civil Procedure, the plaintiff is obliged to allege and prove facts from which it follows that he was treated differently, or that there was direct or indirect discrimination on the basis of a prohibited discriminatory ground (e.g. health condition). If he meets this obligation, it is then up to the defendant to prove that he did not violate the principle of equal treatment, or that the different treatment was justified not by discriminatory but by objective admissible grounds [cf. also, e.g., the ruling of 22 September 2015, file no. III. ÚS 1213/13 (N 172/78 SbNU 563)].

16. When assessing whether the complainant's daughter was treated in the same way as other patients in a comparable situation, the courts based themselves on the concept of so-called futile treatment, which was indicated for the complainant's daughter. The hospital's actions must then be assessed in particular on two levels - a) medical, i.e. whether the indication of so-called futile treatment was lege artis, and b) procedural, i.e. whether the hospital followed the legally approved procedure when deciding not to provide further treatment (see below). If the general requirements imposed on these two levels were met in the case under consideration, it can be concluded that the hospital would have acted in the same way in comparable cases and therefore did not act discriminatory towards the complainant's daughter.

17. The Constitutional Court has already addressed the concept of so-called futile treatment in the past (see the ruling of 31 July 2023, file no. I. ÚS 1594/22). It concluded, among other things, that "the fundamental rights to life and protection of health within the meaning of Articles 6 and 31 of the Charter and Article 2 of the Convention are not absolute and do not entail an unconditional obligation for doctors to provide treatment at the end of life in all circumstances, regardless of its benefit for a particular patient." If doctors were to perform resuscitation even when it was medically not indicated, i.e. clearly physiologically ineffective, this could result in a disproportionate interference with the dignity of patients and an unreasonable prolongation of their suffering.

18. Failure to initiate resuscitation and failure to continue further treatment under the conditions of so-called futile treatment cannot therefore be confused with any form of euthanasia (cf., appropriately, e.g., the judgment of the European Court of Human Rights (hereinafter referred to as the "ECtHR") of 5 June 2014 in the case of Lambert and Others v. France, application no. 46043/14, paragraph 141). Euthanasia is always associated with the expression of the individual's autonomy of will (decision) to die, which does not necessarily have to be related to the terminal stage of his or her health condition and the futility of further treatment [cf. appropriately, e.g., the judgment of the ECtHR of 4 October 2022 in the case of Mortier v. Belgium, application no. 78017/17, paragraphs 142-143].

19. The concept of "futile, ineffective or inappropriate treatment" as described by the Constitutional Court in the cited finding further implies that not only purely medical/clinical criteria (treatment must objectively lead to saving life) but also non-medical/subjective criteria (quality of life, tolerable level of discomfort and suffering) are relevant for assessing the suitability of care for a specific patient. The identification of the patient's best interest, dignity of life, or potential quality of life necessarily involves value judgments that depend on the individually determined goal of treatment. It is practically impossible to draw a clear conclusion about the patient's best interest without more general ideas about what constitutes a quality life worth living. This value may differ in each individual case. Instead of trying to find clear boundaries between the medical and subjective spheres of so-called futile treatment, i.e. evaluating the circumstances under which resuscitation should or should not be performed or further medical care should be provided, it is therefore necessary to establish an appropriate procedure that will enable the attending physician and the patient (or persons making decisions on their behalf) to reach an agreement on what treatment is still beneficial or appropriate for the patient.

20. From a procedural point of view, an essential part of applying the concept of futile treatment is to ensure the participation rights of the patient or his/her loved ones, who must be properly and clearly informed about the proposed future treatment procedure, i.e. also about the ineffectiveness of performing resuscitation in the event of organ failure and providing further treatment. Without complying with this requirement, it is not possible to proceed according to the concept of futile treatment. However, the participation rights of patients and their loved ones are not absolute and mainly assume their willingness and effort to participate in the decision-making process at the end of life and to reach a consensus. It is obvious that the professional opinion of doctors may be in fundamental, even insurmountable conflict with the opinion of the patient or his/her loved ones, which is naturally influenced by personal feelings and subjective wishes and beliefs about the hope (even if only hypothetical) of improving the state of health.

21. Performing resuscitation is an active action and is therefore always limited by the assessment of doctors as to whether such treatment is appropriate (indicated) from a purely medical point of view, i.e. whether it is a lege artis procedure. The chosen treatment procedure, including any resuscitation procedures, should be the result of harmonizing the wishes of the patient or his/her relatives and the objective assessment of the expert, who is bound by his/her professional duties arising, among other things, from the principles of beneficence and non-maleficence. It is not excluded that doctors may act against the will of the patient or his/her relatives, however, from the perspective of participation rights, it is appropriate that this is at least a consulted decision (see more details see the cited finding, file no. I. ÚS 1594/22).

22. In the case under consideration, the courts concluded that it had not been proven that the hospital had treated the applicant's daughter differently from other patients in a comparable situation. They explained that a comparable situation does not mean the diagnosis, i.e. the so-called butterfly wing disease, but the patient's overall health condition, which can no longer be reversed or improved by available medical means and treatment. It was proven that even in cases of otherwise diagnosed patients in the terminal stage, in whom there is no hope of reversing multi-organ failure and in whom the pain is only prolonged, doctors choose a similar procedure. The applicant and his mother were sufficiently consulted about the treatment procedure, so in this respect too the hospital's approach was no different from what it would have been (or should have been) in the case of other patients for whom so-called futile treatment would have been indicated.

23. The evidence presented showed that the health condition of the complainant's daughter had reached a stage where transfer to the intensive care unit, initiation of resuscitation and further provision of medical care was ineffective and could even lead to undue suffering for the patient and disproportionately interfere with her dignity. The signs of so-called futile treatment were met. The hospital doctors repeatedly informed the complainant and her mother about the intended procedure and, with regard to their daughter's irreversible health condition, tried to reach a mutual agreement and a solution acceptable to all parties involved, but in any case in the best interest of the patient. The complainant's participation rights were therefore also sufficiently taken into account and fulfilled, as evidenced, among other things, by the fact that his daughter was eventually transferred to the intensive care unit, although such a procedure was no longer indicated from a medical point of view, since it could no longer help or benefit her daughter in any way (regardless of whether or when the transfer would have taken place).

24. From the point of view of assessing the discrimination claim, the only decisive factor is that the hospital was not obliged to transfer the complainant's daughter to the ARO (whether sooner or later) precisely because such a procedure would not and could not have had an impact on her irreversible health condition. Other patients would not have been transferred for medical reasons either. If the complainant's daughter was eventually transferred to the ARO, it was more of a symbolic compliance with the wishes of the complainant and mother on the part of the hospital doctors, but not a medically motivated decision. The fact that the hospital doctors, despite the wishes and disagreement of the complainant and mother, did not continue with further treatment for objective reasons cannot be interpreted as performing euthanasia, as the complainant states (see point 18 of this resolution). However, this does not in any way call into question the sincere efforts of the complainant and mother to act to the best of their knowledge, conscience and conviction in the interests of their daughter and with the hope of improving her health condition, although this was no longer objectively possible.

25. The Constitutional Court did not find any constitutionally relevant shortcomings in the courts' procedure. Their decisions are based on sufficiently established facts, including with regard to the failure to provide cooperation from the complainant and the mother in securing the necessary medical documentation and the related impossibility of preparing an expert opinion. In accordance with the constitutional requirements arising from the right to judicial protection, the courts justified their considerations and conclusions logically, clearly and convincingly [cf. e.g. the findings of 22. 11. 2020 file no. IV. ÚS 1834/10 (N 231/59 SbNU 357), of 27. 3. 2012 file no. IV. ÚS 3441/11 (N 61/64 SbNU 723) or of 26. 11. 2013 file no. II. ÚS 4927/12 (N 199/71 SbNU 361)]. The mere disagreement of the complainant with the assessment of the evidence and his own view of the procedure or performance of specific medical procedures by the hospital doctors cannot be a reason for the Constitutional Court to intervene, as it is not supported by the evidence provided, which does not change the fact that the complainant's diametrically different personal view of the matter is completely understandable from a human perspective.

26. For the reasons stated above, the courts did not err in not finding the complainant's discrimination claim to be well-founded. It was not proven that the hospital doctors would have acted differently in the case of another patient whose health condition at the relevant time corresponded to the health condition of the complainant's daughter, i.e. further active provision of medical care would have met the criteria of so-called futile treatment. The complainant's

belief that it is exclusively the patient or his/her loved ones who decide on health care does not correspond to the general principles stated above. Rather than being a legal question, it is a moral, ethical, philosophical or social question. However, answering it has no effect on the assessment of potential discrimination.

27. As regards the content of the submissions made by the complainant personally, i.e. not through his lawyer, the Constitutional Court recalls that, pursuant to Section 30(1) of the Act on the Constitutional Court, natural and legal persons in proceedings on a constitutional complaint must be represented by a lawyer. Therefore, it was not possible to consider the complainant's submissions as a proper application or supplement to the objections of the constitutional complaint. It can only be noted in general terms that the complainant's interpretation of the conclusions of the contested judgment of the Supreme Court and the judgment of the same court of 17 August 2022, file no. 24 Cdo 2237/2022, does not correspond to the actual content of these decisions.

28. Although the Constitutional Court regrets the loss suffered by the applicant, it cannot help but conclude that that, based on the above reasons, it did not find the alleged violation of the fundamental rights of the complainant (see point 1 of this resolution), and therefore rejected his constitutional complaint outside the oral hearing without the presence of the participants pursuant to Section 43(2)(a) of the Act on the Constitutional Court as manifestly unfounded.

Lesson learned: An appeal against the decision of the Constitutional Court is not admissible.

In Brno on June 18, 2025

Jaromir Jirsa, vr.
president of the senate