

CZECH CENTRE FOR HUMAN RIGHTS AND DEMOCRACY

# Czech Republic Human Rights Review



Dear readers,

The Czech Centre for Human Rights and Democracy is proud to present a new issue of the Czech Republic Human Rights Review.

The year 2022 was marked by significant international events to which Czech law and policy had to respond. Most notably of which included Russian aggression in Ukraine and the consequential refugee influx and energy crisis. In our opening essays, Veronika Nováková introduces the newly adopted sanction act, known as the Czech Magnitsky Act, and investigates the legal ramifications of the Russian-Ukraine war. For example, changes in asylum law and criminal liability for war crimes before national courts.

In the following pieces, Veronika examines the Czech presidency of the Council of the European Union, and Kateřina Ochodková sheds light on the Czech endeavor in the UN Human Rights Council, first as its member, then as the presiding State.

Continuing, in analyzing the global climate crisis, Marie Gavendová probes into Czech commitments to reduce emissions and limit the use of coal-fired resources. Kateřina Ochodková then discusses a particular cross-border environmental case of the Turów Coal Mine in Poland.

Regarding the development in the Czech judiciary, Marie Gavendová analyzes intriguing discrimination cases

before the Supreme Administrative Court. Do children and foreign nationals face discrimination in access to accommodation and restaurant services? Moreover, Kateřina Ochodková investigates a controversial “transgender” judgment of the Constitutional Court. Did it find the sterilization surgery, a statutory requirement for official change of one's gender, unconstitutional?

Marie Gavendová then scrutinizes an ongoing debate on same-sex marriage in the Czech Republic and illuminates the proposal for an amendment to the Civil Code that would introduce same-sex marriage before the law. Why are same-sex marriages still not permitted?

A positive change arrived in January 2022 when the compensation act for unlawful sterilization of women was finally adopted. Dominika Šudová probes into this long-awaited law and discusses its strengths and weaknesses. Dominika further explores the development in the area of rights of people with disabilities and explains how the Czech Republic monitors the commitments under the Optional Protocol of the UN Convention on the Rights of People with Disabilities.

We wish you a stimulating and enjoyable reading



*Pavel Doubek*

Editor of the Czech Republic Human Rights Review

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Front page photo: A demonstration in support of Ukraine (Brno, February 2022), author: Tomáš Dokulil.

## NEWS AND COMMENTS ON HUMAN RIGHTS

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## Magnitsky Act: the Czech Republic will not tolerate human rights violations abroad



Veronika Nováková

On 1 December 2022, the Czech parliament adopted Act No. 1/2023 Coll., on restrictive measures against certain serious acts in international affairs (Sanctions Act). The Sanctions Act, known also as “the Czech Magnitsky Act”, entered into force on 3 January 2023 and added the Czech Republic to the UN and EU sanctions regimes. It should serve as a national instrument for protecting human rights and freedoms, combating terrorism, and contributing to international peace and security. It applies to all perpetrators, regardless of their country of origin.

### The Magnitsky case: the impetus to prosecute perpetrators of human rights violations

The impetus for the so-called Magnitsky Act was the death, or rather the circumstances surrounding it, of the Russian lawyer Sergei Magnitsky. He drew attention to corrupt officials in the Russian state administration, whom he accused of billions of dollars of fraud. The corrupt officials did not keep this money in Russia but instead invested it in the West. For example, they used it to buy houses in Karlovy Vary. After Sergei Magnitsky became actively involved in the investigation of these machinations, he was taken into custody, where he eventually died in 2009 after alleged torture committed by prison guards. After his death, a wave of activity was launched in society calling for the punishment of human rights violators, regardless of where they come from. They were led by Magnitsky's own client in the case, Bill Browder, who is considered to be the “spiritual father” of the Magnitsky Act.

Browder commented on the creation of the Magnitsky Act: *“The Russian government absolutely refused to do justice in the case of Sergei Magnitsky. It wanted to cover up the murder. It valued the people who worked on it. It gave them state honors. Vladimir Putin himself was personally involved in the retelling of the case. So I said, if we can't get justice in Russia, we have to try outside Russia.”*



Senators in Ottawa, Canada, passed the Magnitsky Act<sup>[1]</sup>

In 2012, the United States became the first country to pass the Magnitsky Act,<sup>[1]</sup> which allowed for financial and visa sanctions on Russian officials responsible for human rights abuses. Subsequently, other states around the world have adopted it, including Canada, the UK, Norway, Estonia, and Australia. Today, a total of 34 countries around the world are applying this law, including the Czech Republic.

### EU position on the Magnitsky Act

In 2017, the European Parliament called for the Magnitsky Act to be adopted at EU level as soon as possible. In 2020, the EU Foreign Affairs Council adopted the EU's global human rights sanctions regime, inspired, among other things, by the Magnitsky Act. In doing so, the EU has expressed that the promotion and protection of human rights remains a priority for its external action.

The EU sanction regime, however, does not have “The Magnitsky Act” as its title. Some were of the opinion that the legislation should not give the impression that it is primarily directed against Russia. Nevertheless, as Browder himself said, *“everyone knows it is the Magnitsky Act. Journalists put it in the headlines, politicians call it that. I don't even remember the official bureaucratic name myself.”*



In a nutshell, there are currently uniform sanctions at the EU level in the form of the freezing of funds or denial of visas for people around the world who have committed crimes against humanity, such as unjustified imprisonment, forced kidnapping, or enslavement. To this end, the EU also maintains a list of persons subject to sanctions. It should be added, however, that decisions on sanctions policy are taken by the EU Council, in principle unanimously, which could be a lengthy process. Moreover, unanimity may not be achieved despite the fact that the human rights violations are obvious.

*"One of the problems created by the unanimity condition is that the killers of Sergei Magnitsky have not yet been sanctioned in the European Union. They can no longer travel to Lithuania, Latvia or Estonia, but they are not facing any sanctions here in the Czech Republic," Browder previously said. For these reasons, the adoption of the Czech Magnitsky Act is an important message to the international community, and more importantly, to perpetrators of international crimes.*

### Sanctions law in the Czech Republic successfully passed the House of Commons

*"When Russia detained Ukrainian sailors during the Kerch crisis in November 2018, I recapitulated what foreign policy tools the Czech Republic has at its disposal in such cases. The murder of Jamal Khashoggi was also shocking to me. At least Canada applied sanctions in this case on the basis of the Magnitsky Act. I found out that we do not have any such sanction mechanisms. This led*

The impact on the Russian Federation is being discussed at the World Economic Forum [2]



*me to probe into this problem in more detail", said Jan Lipavský, a minister of foreign affairs of the Czech Republic.*

However, the Russian invasion of Ukraine hastened these preparations, and therefore, the draft law was submitted in June 2022. *"It will be a national sanction mechanism against persons who violate human rights or commit acts of terrorism. The law will also include cyber-crimes, and after the Russian aggression, we have included the act of state aggression",* Lipavsky explained.

In June 2022, the government approved the sanctions act, a Czech version of the Magnitsky Act. Subsequently, on 14 October 2022, the bill successfully passed the Chamber of Deputies and on 1 December 2022 was approved by the Senate. Upon the signature of the president on 7 December 2022, nothing stood in the way for the Czech Magnitsky Act to enter into force.

Thanks to the approval of the Magnitsky Act, the Czech Republic has succeeded in achieving the possibility of imposing sanctions on countries and other entities that commit illegal acts in the international arena.

### How is the sanctions law applied in practice?

The Government of the Czech Republic is entitled to decide whether to submit a proposal to include a person on the EU sanctions list or the national sanctions list. The Ministry of Foreign Affairs prepares and submits said proposal for inclusion of a person on the aforementioned lists, which is available on the Ministry's website. However, this procedure applies only in cases where the Ministry of Foreign Affairs has actual verified information that the person has committed an act sanctioned by EU law.

The above mechanism does not lack the guarantees of a fair trial. If a person disagrees to be included in the sanction list, he or she may appeal against this decision and even ask the court for a judicial review.

The actual implementation of the Sanctions Act in practice does not have a significant impact on the state budget of the Czech Republic. Even though a new department has been established within the Ministry of Foreign Affairs to deal with the inclusion of persons on the sanction list, it does not require a substantial increase of public funds.

## An opportunity for the Czech Republic to confirm its reputation as a human rights defender

One of the reasons the Czech Foreign Ministry decided to take the step of adopting the Magnitsky Act is that it will give it more power to place certain individuals and entities on its own sanctions list; hence, to better respond to various threats to international security.

The adoption of the Magnitsky Act and its implementation into the Czech legal system is certainly a welcome message to human rights defenders worldwide. It is also be a good reminder of the former Czech President Václav Havel's human rights oriented policy. Additionally, it is important to reaffirm the Czech policy of defending human rights and freedoms globally.

### Remarks

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## Russian invasion of Ukraine: How does it affect the Czech Republic?



Veronika Nováková

**The Russian aggression in Ukraine has affected the whole world, including the Czech Republic. What is our approach to the Russian invasion? How do we help and what are the challenges we have to face?**

### The Russian aggression has been condemned across the Czech political spectrum

On 24 February 2022, Prime Minister Petr Fiala condemned the actions of Russian President Vladimir Putin and described the incursion of Russian troops into Ukraine as *"an act of aggression against a sovereign state"*. On the same day, MPs expressed their support for Ukraine. At an extraordinary session, the Chamber of Deputies adopted a resolution condemning Russia's *"barbaric, inexcusable and unprovoked aggression against Ukraine"* and supporting Ukraine's *"territorial integrity and sovereignty"*. The wording of the resolution was agreed upon by all parliamentary groups and all 166 members that were present voted in favour of its adoption. The following day, senators also expressed their support for Ukraine and adopted a similar resolution. [1]

In a speech to the citizens of the Czech Republic, President Miloš Zeman condemned Russia's actions, saying of Russian President Vladimir Putin that *"the madman must be isolated and not defended against with words alone, but also with concrete measures."* However, in early March, eight former politicians and signatories of Charter 77 spoke out against Zeman and called for his resignation due to his long-standing support of the "Putin dictatorship".

It was not only politicians who expressed support for Ukraine. In many places across the Czech Republic, Ukrainian state flags were flown, and demonstrations were held in support of Ukraine. The largest of these was held by the association, the Million Moments for Democracy (Milion chviliek pro demokracii) in Prague's Wenceslas Square, with thousands to tens of thousands of people taking



Lex Ukraine to speed up refugee intake [1]

part. Five thousand people took part in a demonstration on Dominikánské náměstí in Brno.

### Visa to stay in the Czech territory

Ukrainian refugees who arrived in the Czech Republic before 21 March 2022, were granted visas to stay for more than 90 days for the purpose of tolerating their stay in the territory pursuant to Section 33 (1) of the Act on the Residence of Foreign Nationals.[2]

The visa for stays over 90 days was granted by the Ministry of the Interior and in the case of refugees from Ukraine, it was granted on a waiting basis,

without an administrative fee. Until 7 March it was granted for four months. After 7 March, the visa was granted for one year. The visa granted included registration for health insurance. The visa was granted at the centre in Vyšné Lhoty or at the Regional Assistance Centres for Ukraine[3] and was only valid for the territory of the Czech Republic. Hence it does not allow its holder to use it as a travel document.

On 4 March 2022, a state of emergency was declared in the Czech Republic. As a result, the police (in addition to the Ministry of the Interior of the Czech Republic) were given the competence to issue visas. This measure was intended to make the system more transparent and faster.

### The war in Ukraine and criminal liability in the Czech Republic

Since the beginning of the war in Ukraine, supporters of Russian aggression have begun to emerge. They express their support in various ways - by visibly wearing the letter Z, representing the abbreviation of the slogan "za pobedu" (for victory) or by public calls on social networks such as "...Let's cheer for the Russians, let's hope they will come this far. If they get here, let's help them just like that, bring them food, bring them water, shower them with flowers." These speeches have been actively dealt with by police authorities and prosecutors from the very beginning in order to assess whether their nature is beyond the limits of freedom of expression.

In a press release dated 26 February 2022, the Supreme State Prosecutor's Office warned that if someone publicly expresses approval of Russia's attacks on Ukraine, expresses support or praises Russian representatives, he or she could be committing the offence of endorsing a crime, or even the offence of denying, questioning, approving, or justifying genocide. In order to prosecute the above-mentioned crimes, the Supreme State Prosecutor's Office has also prepared an expert opinion to instruct prosecutors working in this area.

At the same time, the Ministry of the Interior has been preparing a methodological manual for the Czech Police on how to address the use of the Z symbol in support of the Russian invasion. Presumably, this symbol should be treated similarly to the Nazi swastika. However, this is a new symbol and therefore any criminal offence will be very difficult



War crimes can also be prosecuted in the Czech Republic [2]

to prove. This was confirmed by the ministry's spokeswoman Hana Malá, who said: *"Our legal system does not contain a list of prohibited symbols, the context is always important. The authorities do not prosecute the use of symbols or letters themselves, but the specific actions and intent."*

Criminalizing support for Russian aggression is a controversial topic in the Czech Republic. Indeed, some lawyers take a more cautious approach and see the prosecution of any acts of support for Russian aggression as a very strict interpretation of criminal law. In the opinion of some Czech lawyers, this would mean that all endorsements of certain attacks would then have to be prosecuted, which could lead to a denial of the purpose of criminal law and an interference with freedom of expression.

### War crimes and crimes against humanity committed in Ukraine can be prosecuted in the Czech Republic

The Czech Criminal Code enshrines certain crimes under international law, such as war crimes.[4] The Czech Republic is entitled to prosecute such crimes on the basis of so-called universal jurisdiction at the national level. The Criminal Code states that the Czech Republic can prosecute the following as war crimes: the deliberate targeting of civilian targets, the encirclement of Kiev, failure to allow the transport of humanitarian aid to the civilian population, and mass killings in Bucha near Kiev.[5]



A logical question arises as to whether Russian President, Vladimir Putin, could also be prosecuted in the Czech Republic. Given that the criminal code does not stipulate a crime of aggression, Vladimir Putin cannot be prosecuted for that crime before Czech judicial bodies. However, it is possible to prosecute this crime in other countries (e.g., The United States or Germany). Nevertheless, there is still a possibility to prosecute Putin for war crimes and crimes against humanity in the Czech Republic.

Chief State Prosecutor Lenka Bradáčová said in general terms, *"The aim of the proceedings is to secure evidence of war crimes through witnesses, victims who are seeking protection from the war on the territory of the Czech Republic."* The prosecutor's office also said it is actively cooperating with the European Union Agency for Judicial Cooperation in Criminal Matters (Eurojust).

### Czech citizen's fight in the Ukrainian army: aiding and abetting under threat of prosecution

Although Czech citizens support Ukraine materially with various donations, some are directly involved in the fighting. Even Ukrainian President Volodymyr Zelensky has called on people from all over the world to join the Ukrainian army. In the Czech Republic, however, citizens face up to five years in prison for a crime of joining a foreign army. The Criminal Code qualifies such an act as a crime against the defense of the state.[6]

If a Czech citizen wishes to legally join the Ukrainian army, he or she must first submit an application to the Ministry of Defense. The Ministry of Defense, together with the Ministry of Foreign Affairs and the Ministry of the Interior, then have to examine such an application and forward it to the Czech President, who assesses each application individually. Be it as it may, former President Miloš Zeman has already spoken in favor of immunity of such "individual warriors" stating that he is prepared to pardon them in a case of criminal prosecution. Czech Prime Minister, Petr Fiala, shares a similar attitude stating that *"if you ask me whether I would recommend to the President that he be lenient and allow it in individual cases, I would say yes."*

Members of the Czech Senate, Václav Láška and Lukáš Wagenknecht, went further and prepared an amendment to the law that would allow Czech citizens to legally join the armed forces of another State



Building of the Ministry of Defence [3]

without the exception of the President of the Republic. The amendment was supported in the first round by 40 of the 53 senators present. Its opponents point out, for example, that the amendment lacks a more precise definition of conditions and parliamentary control, which could jeopardize the constitutional and legal framework of the amendment. Senator Václav Láška commented on the criticism: *"If in the meantime the government comes up with a solution that works, we will withdraw our amendment."* A promise given by the Czech president and prime minister not to constitute a criminal prosecution of Czech combatants fighting in Ukraine finally moved the Senate to vote against the proposed amendment.

### There is no specific guidance for dealing with all the legal issues that arose in the context of Russian-Ukraine war

Lawmakers, prosecutors, judges, lawyers, police, NGOs and other experts are currently actively addressing a number of legal issues that they have not experienced before. Although the Czech authorities have already dealt with the consequences of wars and refugee crises in the past, such as the war in Yugoslavia in the 1990s, the current situation is more complex.

Initially, a huge wave of solidarity was apparent across the Czech Republic. People were actively helping refugees, or at least showing solidarity by



displaying Ukrainian flags. However, this unprecedented wave of support and understanding has been cooling down and pro-Russian (anti-Ukrainian) stances started to appear. Let's hope that overall support of Czech people to Ukrainians will prevail, the war will end soon, and the aggressor will be defeated and subjected to international justice.

## Notes

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- [4] Section 321(i) of the Criminal Code states that "A citizen of the Czech Republic who performs service in the military or armed forces of another State in violation of another legal provision shall be punished by imprisonment for up to five years."
- [5] These acts could be punishable under sections 405a - 417 of the Czech Criminal Code.
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## Photographs

- [1] Lex Ukraine to speed up refugee intake. Ukrainian children are fleeing Russian aggression. Przemyśl, Poland 27/02/2022, by Mirek Pruchnicki, 27 February 2022, source: Flickr, CC BY 2.0 DEED.
- [2] War crimes can also be prosecuted in the Czech Republic. Ukrainian diaspora in Brussels protests the Russian invasion, by Bartosz Brzezinski, 27 February 2022, source: Flickr, CC BY 2.0 DEED.
- [3] Building of the Ministry of Defence. Dejvice MO 2, by VitVit, 3 September 2016, source: Wikimedia Commons, CC BY-SA 4.0 DEED.
- [4] A Czech citizen joining the Russian army can be prosecuted in the Czech Republic. SETC17: Ukraine, by 7th Army Training Command, 10 March 2022, source: Flickr, CC BY 2.0 DEED.

## The Czech Presidency of the Council of the European Union amidst Russian Aggression and the Energy Crisis



*Veronika Nováková*

Between July 1 and December 31 2022, the Czech Republic assumed the Presidency of the Council of the European Union. The priorities of its six-month presidency were determined mostly by ongoing Russian aggression in Ukraine. They include the management of the refugee crisis, the post-war reconstruction of Ukraine, energy security, the strengthening of European defense capabilities, security of cyberspace, the strategic resilience of the European economy and the resilience of democratic institutions. What have been the major outcomes of the Czech presidency?

The Council of the European Union ("the Council") has the power to adopt the EU legislation and its budget. It also coordinates certain national policies and conducts the EU's foreign and security policy. It is made up of ministers from the Member States and meets according to the subject under discussion. For example, finance ministers deal with economic and financial matters. The country holding the presidency sets the topics to be addressed by the Council. In addition, it chairs and organizes meetings of the Council and its preparatory bodies and represents the Council before other EU bodies.

### Sanctions against Russia and aid to Ukraine

The Council suspended an agreement on facilitating the issuance of visas to citizens of the Russian Federation. For Russians wishing to enter European countries, this results in a fee increase from 35 to 80 euros, the obligation to submit additional documents, an extension of the visa processing time and stricter rules. Meanwhile, the Czech Republic suspended the issuance of visas for Russian citizens in February and, as of 25 October, denied entry to Russians with Schengen visas who come to the Czech territory for tourism, sport or cultural purposes.



Prime Minister Fiala on the priorities of the Czech Presidency [1]

The Council also approved two more sanctions packages against Russia, which are intended to increase pressure on the Russian Government and economy. The measures include, for example, a ban on the import of Russian gold, the export of steel products from Russia and the provision of architectural, engineering, and legal services to Russia. The Council expanded the sanctions list to include additional entities and increased the list of goods subject to restrictions that could contribute to strengthening Russia. The duration of the restrictive measures was extended until September 2023.

Regarding assistance to Ukraine, the EU decided in the spring to donate 9 billion euros to Ukraine in order to ensure the functioning of its critical infrastructure. Of this financial package, six billion euros has already been disbursed. The remaining amount will be part of a new 18 billion euros package for 2023.

In addition to financial aid, the informal meeting of Justice Ministers, which was also attended by a representative of Eurojust, the Prosecutor of the International Criminal Court in The Hague, and the Ukrainian Minister of Justice, addressed the issue of collecting and preserving evidence of crimes committed in connection with Russian aggression. The representatives assessed the steps taken so far and discussed the path forward.





Northern Macedonia has agreed a compromise with Bulgaria [2]

### The energy crisis and its solutions

The Council has repeatedly addressed the energy crisis caused by the restriction of gas supplies from Russia to Europe. The most significant outcome of the discussions is the adoption of a regulation 2022/1854 of 6 October 2022 on an emergency intervention to address high energy. Energy ministers also agreed on measures to introduce a mechanism for joint gas purchases, strengthen solidarity measures in the event of gas shortages and limit energy price fluctuations.

*"The Council's agreement to adopt the RePowerEU investment package worth almost half a trillion crowns is a clear success of the Czech Presidency, for which this new chapter of the financial strengthening of national recovery plans is a key priority, particularly considering our 97% dependence on Russian gas at the beginning of this year",* commented Finance Minister, Zbyněk Stanjura, on the outcome of the negotiations.

### Access negotiations

During the Czech presidency, Croatia's accession to the euro area was finally approved. The country started using the euro from 1 January 2023, but the kuna is still available during a transitional period in 2023. Accession negotiations have also officially started with North Macedonia and Albania, which applied for membership in 2004 and 2009 respectively.

The opening of accession dialogues with North Macedonia was blocked by Bulgaria due to disputes over language and history. Now the Macedonian Parliament has confirmed the agreement and all the procedural steps have been completed. The EU has a strong interest in the integration of the Western Balkans in order to ensure peace and stability in the region.

### Environment and regulation of the online space

In November, the Czech Republic represented the EU at a UN climate change conference aimed at negotiating terms to reduce greenhouse gas emissions and achieve the goal of keeping global warming to 1.5°C. The EU is on track to become the first climate-neutral continent by 2050. The most significant outcome of the summit was an agreement to set up a fund to finance drought, flood, fire and other global warming impacts for particularly vulnerable, developing countries.

In the second week of December, the UN Conference on Biodiversity, where the Czech Republic represents the EU, began. It discussed the Global Biodiversity Framework beyond 2020, a key strategy for conserving and restoring the world's biodiversity and ecosystems for the next decade. Among the proposed targets are restoring at least 20% of degraded ecosystems and reducing the introduction of alien species.

On the negotiating table is the "Fit for 55" package, which introduces initiatives to reduce net greenhouse

The EU has proposed measures to address the energy crisis [3]



se gas emissions by at least 55% by 2030 compared to 1990 levels. The Czech Presidency has been very successful in the negotiations, with preliminary approval already achieved in three of the five key areas, such as new rules for better use of forests as natural CO<sub>2</sub> sinks. It is expected that the whole package will be approved before the end of the Czech Presidency.

Noteworthy, some development has also been made in the area of digital policy. The "Digital Decade" policy programme, which sets out the objectives the Union wants to achieve by the end of this decade, has been formally approved. These objectives relate, for example, to sustainable digital infrastructures, digital transformation of businesses or digitization of public services.

In addition, a Digital Services Act was approved to curb the spread of illegal content and protect users' fundamental rights. The law sets out obligations and creates responsibilities for providers of intermediary services such as social media, online marketplaces and internet search engines, with stricter rules applying to larger providers. For example, online marketplaces will now have to fight against the sale of illegal products, and services and platforms will not be allowed to offer targeted advertising based on the use of minors' personal data.

### Europe is a task: the motto of the Czech EU Presidency

The motto of the Czech Presidency of the EU Council was "Europe is a task", which was a call to accept responsibility and act on the basis of values of conscience. The Presidency sought to live up to its motto by addressing a number of challenges such as the refugee crisis and post-war reconstruction in Ukraine, energy security, cyberspace security, the resilience of Europe's economy, and democratic institutions.

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## Czechia's 2022–2023 Success in the UN Human Rights Council



Kateřina Ochodková

The Czech Republic has a long-term reputation as a state striving for respect for human rights worldwide. Last year, it succeeded in the very heart of human rights protection, the UN Human Rights Council.

The UN Human Rights Council (hereinafter “the Council”) is the pivotal human rights body of the United Nations (hereinafter “the UN”). It is an intergovernmental body based in Geneva, Switzerland, whose main task is to prevent and address human rights violations, cooperate in international law development, and conduct the Universal Periodic Review.[1]

Established in 2006, the Council comprises 47 UN member states. Members of the Council are elected by the UN General Assembly for a three-year term, with a maximum of two consecutive terms. In addition to its current membership, the Czech Republic was a member of the Council in the years 2006–2007, 2011–2014, and 2019–2021. The meetings of the Council are convened and chaired by its president, who is elected by the Council members for a term of one year. The president also appoints special rapporteurs, members of commissions of inquiry, and represents the Council in the UN before the media and the public.

### Czech Republic's support of Ukraine in the UN

Soon after the Russian invasion of Ukraine at the end of February 2022, the Czech Republic immediately stood up for Ukraine. Its political leaders strongly condemned the Russian aggression and began to take steps to support Ukraine.

At the end of February and the beginning of March of 2022, the Czech Republic supported the Permanent Mission of Ukraine in Geneva's request to hold an emergency meeting of the Council. Czech Minister of Foreign Affairs, Jan Lipavský, condemned Russia's actions in his speech to the Council as a “*flagrant violation of international law and the core principles of the international rules-based global security*



Václav Bálek, the Council's President for 2023 [1]

*framework*”.[2] He repeated these words and supported Ukraine at the Conference on Disarmament.

Together with 140 other member states, the Czech Republic voted at an extraordinary special session of the UN General Assembly to adopt a resolution condemning Russia's aggression against Ukraine and demanding the withdrawal of Russian troops from Ukraine.

### Replacing Russia in the Council

In its April 2022 meeting, the UN General Assembly voted to suspend Russia from the Council. Hence an empty place was left in the Council, which needed to be filled by one of the Group of Eastern European States.[3]





The Seat of the UN Human Rights Council, Geneva, Switzerland [2]

On the 10th of May 2022, the Czech Republic was elected to the Council by the UN General Assembly. One hundred fifty-seven members voted for its membership; 23 members abstained. The Czech membership started immediately with the election and will last until the end of 2023.

Both the Czech Prime Minister and Czech Minister of Foreign Affairs welcomed the election. Prime Minister Petr Fiala stated: *“I consider it important that our country advocates for respect for human rights, and I welcome the opportunity to do so on the international*

*stage”*.<sup>[4]</sup> Minister Lipavský saw the replacement of Russia as a symbolic act.

In addition to addressing human rights violations connected to the war in Ukraine, the Czech Republic intended to address media freedom, freedoms of assembly and association, and support for non-governmental organizations within the Council.

### Intention to Preside over the Council

In the summer of 2022, Minister Lipavský decided the Czech Republic would apply for the presidency of the Council. Concerning this application, the minister has stated that *“the Czech Republic traditionally plays a very active role in the Council. A successful candidacy would further strengthen the Czech Republic’s significant human rights profile”*.<sup>[5]</sup>

### Historic Success of the Czech Republic in the UN

At the beginning of December 2022, the status of the Czech Republic as one of the leading human rights drivers was confirmed. The intention of the Minister Jan Lipavský proved to be successful, as the Council elected Václav Bálek, Czech ambassador, to be its 2023 president.

Václav Bálek, who has been the Permanent Representative of the Czech Republic to the United Nations Office and other international organizations in Geneva since August 2021, replaced Federico Villegas from Argentina in the function.

### Czech Presidency over the Council

In his acceptance speech,<sup>[6]</sup> Václav Bálek has announced three key priorities for his presidency (“three P”). With the first “P” (prevention), he pointed to the Council’s preventive mandate, consisting of its task of participating in the prevention of human rights violations. The second “P” (participation), emphasized the importance of supporting the involvement of all relevant actors in the Council’s activities, e.g., small states or civil society. Lastly, through the third “P” (progress in efficiency), he expressed his determination to contribute to the greater efficiency of the Council’s work.

Czech people sometimes call our country “small”. However, the immediate steps taken by Czech diplomacy after the Russian aggression towards Ukraine and its confident and decisive work in the Council prove this label wrong. I believe that the Czech Republic currently belongs with the world leaders in human rights protection and is a reliable democratic partner. This proves that even a small country in size can play a big role on the international stage.

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## The Czech Republic and Climate Change



*Marie Gavendová*

**Climate change has been accelerating in recent years and its effects are becoming increasingly visible. As the Earth heats up, humanity and other species will feel more adverse consequences. Countries are trying to slow down global warming by reducing emissions. How does the Czech Republic manage this challenge?**

If major changes do not occur, the average global temperature is expected to drastically rise. The risks of the increased temperature are grave as heat waves can affect agriculture, tourism, reduce labor productivity, cause premature deaths, flooding, lack of clean drinking water, and associated economic losses.

The Czech Republic, along with 196 other countries, is a party to the UN Framework Convention on Climate Change, which sets out the basic principles for cooperation between States. It has been followed by the Paris Agreement, which implements its provisions.

The main objective of the Paris Agreement is to hold the increase in the global average temperature to well below 2 °C compared to the pre-industrial period (before 1750) and to pursue efforts to limit the increase even further to below 1.5 °C. However, under current projections, a temperature increase of 1.5 °C can be expected as early as between 2030 and 2052. By the end of the century, the temperature is anticipated to rise by 4 to 4.4 °C.

The temperature rise is significantly affected by greenhouse gas ("GHG") emissions, e. g. carbon dioxide, methane, and nitrous oxide. These GHGs occur in the atmosphere naturally but their concentration is increasing due to human activity.

GHGs contribute to the so-called greenhouse effect. The Earth's surface absorbs some of the energy from the Sun, while the rest of it is reflected in space. However, some of this reflected energy is trapped by GHGs, stays in the atmosphere, and continues to heat the Earth. The occurrence of GHGs and the rise in temperature are directly linked. Therefore, one of the most important measures to reduce the increase in temperature is to limit GHG emissions.



The government plans to phase out coal by 2033 [1]

### Plans of the European Union

As a member state of the European Union, the Czech Republic must comply with European legislation. Under the Paris Agreement, the EU committed to reducing GHG emissions by at least 40% (when compared to 1990) by 2030. However, the EU has increased the target to at least 55% and intends to achieve climate neutrality by 2050, which means zero net GHG emissions. It is therefore preparing new policies to take account of this stricter commitment.

The European Commission has proposed changes to the emissions trading system, which should reduce emissions in sectors concerned by 61% by 2030, when compared to 2005. It wants to achieve this, for example, by including maritime emissions in the trading system or by putting an end to the free allocation of emission allowances to aviation.

The EU also plans to revise the Renewable Energy Directive which requires that the share of energy from renewable sources in the EU is at least 32 %

by 2030. The revised version should increase the share to at least 40%. The European Commission has also proposed an amendment to the Energy Efficiency Directive – it intends to increase the target for energy efficiency to 36% (currently 32.5%) for final energy consumption and 39% for primary energy consumption.

Other changes are being considered in the field of transport. From 2035, it will no longer be possible to place cars or vans with an internal combustion engine on the EU market. Also, the deployment of infrastructure for recharging vehicles with alternative fuels will be accelerated. The EU aims to reduce aviation emissions by introducing advanced biofuels and electric fuels. They will also promote the use of cleaner fuels in shipping.

### How successful is Czechia in reducing emissions?

In 2020, the Czech Republic emitted 113 million tons of GHGs. This is the best result Czechia has achieved since the data has become available (1990), however, it is still the seventh worst result in absolute numbers compared to other EU countries.

In terms of emissions per capita, the results were the best since 1990 as well. Compared to other EU members, however, Czechia ended up being the third worst country. Only Luxembourg and Ireland were worse. On the other hand, these two States had very good results when compared to the gross domestic product. In terms of gross domestic product, the Czech Republic had the third worst count, being followed by only Bulgaria and Poland.

### Is the end of coal near? [2]



### Plans of the Czech Republic

With the share of industry (including energy) reaching approximately 30% of gross value added, the Czech Republic is one of the most industrialized countries in the European Union. In addition, the share of heavy industry such as metallurgy or engineering is quite large. The strategic documents which address climate change and the energy industry are the Climate Protection Policy and the State Energy Policy.

Regarding industry, according to the Climate Protection Policy, there is *"a significant scope for reducing the consumption of heat and electricity in production technologies, for example through heat recovery (recuperation), the introduction of combined production of electricity, heat and cooling (trigeneration), speed control of industrial engines or the modernization of electro-mechanical equipment"*.

The measures phased in the industry include the introduction of the best available technologies and products with a more favorable impact on the environment. Low-emission, low-waste, and energy-efficient technologies should be promoted. Programs for wastewater treatment and purification and treatment and disposal of waste should be equally supported.

Another means would be to reduce emissions of pollutants into the air and water, to avoid polluting watercourses with industrial water and waste chemicals, and to improve wastewater treatment. It also involves reducing the production, import, and use of hazardous chemicals and replacing them with alternative products.

Some measures to reduce emissions are eligible for funding. Entrepreneurs can use subsidies for the introduction of low-carbon technologies, renewable energy sources, increase in energy savings, combined heat and power generation, smart technologies in the industry, and reducing losses in heat distribution systems.

### The end of coal in the Czech Republic

Domestic resources account for the major share of total primary energy resources, thanks to the high use of domestic lignite and black coal in electrici-





### Temperature increase means a risk of flooding [3]

ty generation. According to 2015 data, the Czech energy sector is dominated by coal-fired resources, which supply almost 60% of electricity and a large part of heat through both district and individual heating.

However, this is about to change. According to the Policy Statement of the Government, “[They] *will create the conditions for energy transformation and development of coal regions to allow for a shift away from coal by 2033*”.

The goal by 2040 is to increase the use of renewable energy sources and nuclear power. It is also planned to gradually reduce the share of coal and increase the efficiency of its use with the help of clean coal technologies.

Under the optimized scenario, carbon dioxide emissions from combustion processes are expected to fall by 38% between 2010 and 2040. Coal should be replaced by solar, wind, and biomass energy. There is a plan to construct new nuclear power plant units and to extend long-term use of the current four units at the Dukovany Nuclear Power Station.

### Assessment of the UN Committee on Economic, Social and Cultural Rights

The Czech Republic is a party to the International Covenant on Economic, Social and Cultural Rights, which is dedicated, among other things, to the protection of the environment. The Committee on Economic, Social and Cultural Rights (“Committee”) issues periodic reports assessing the situation in member states and makes recommendations where appropriate.

The Committee has assessed that GHG emissions have declined significantly, but it is concerned that this decline has virtually halted in recent years. It also criticizes the fact that the Czech Republic has a carbon-intensive economy, which exposes the population to highly polluted air. It recommends promoting alternative and renewable energy sources, for example, by restructuring coal regions.

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## The Czech-Polish Agreement on Turów Coal Mine: Unsettling Settling?



*Kateřina Ochodková*

Czechs and Poles are like Central-Eastern European cousins. Having been on the same side of the Iron Curtain in the past, their relationship has been mostly full of understanding. However, the legal dispute over the Turów coal mine undermined the seemingly solid foundations of their relationship. Although the “cousins” eventually settled, not everyone has been settled.

### Mining in the Mine

Not so far from the Czech-German-Polish tripoint is Turów, an open pit lignite mine. The state-owned public power company, PGE Group’s excavators, was supposed to cease operations at the end of April 2020 when the company’s mining license was set to expire. Nevertheless, the Polish authorities allowed the company to continue mining (for a total of six years), sparking tension between the Czech Republic and Poland.

The mine supplies coal to a nearby power plant in Bogatynia. If mining ceased, the power plant would have to shut down. This would lead to a loss of electricity and heat supplies for thousands of Polish households and people. In addition, local municipalities would lose mining fees.

The Czech side of the border has been negatively affected by the consequences of mining. Locals have complained about the dust and noise caused by mining. Particularly problematic, they have seen a loss of groundwater, which started to drop in the mid-80s. Nowadays, some municipalities do not have any of their own water sources.

### By Hook or By Crook

The first steps against the prolongation of mining were taken by two Czech municipalities, the Liberec Region and NGO Greenpeace, in the form of a pe-



Turów coal mine [1]

tition sent to the European Parliament. Its Petition Committee agreed with the Czech side and instructed Poland to address the problem in July 2020.[1]

In September 2020, the Czech Republic brought an interstate complaint under Article 259 of the Treaty on the Functioning of the European Union (hereinafter “TFEU”) before the European Commission (hereinafter “the Commission”), claiming that Poland infringed upon EU law.

The Commission adopted its opinion in December 2020. It confirmed the validity of some of the allegations.[2] Concretely, it found that Poland still needs to transpose the access to justice provisions of the EIA Directive.[3] The Polish authorities also incorrectly applied this directive’s provisions, the Access to Information Directive,[4] and the principle of loyal cooperation.[5] However, the Commission decided not to refer the case before the ECJ, leaving this option to the complainant.



The Czech Republic referred the case before the ECJ in February 2021,[6] making it the first action under Article 259 TFEU over a breach of environmental laws. The ECJ's final judgment would therefore represent a landmark ruling, the outcome of which could prejudge the resolution of other similar cases.

### Steps by the European Union

Given the expected length of the proceedings, the Czech Republic also requested an interim measure against Poland, ordering it to stop mining immediately. In May 2021, the ECJ granted the request.[7]

Since Poland did not comply with the order and continued mining, in September 2021 the ECJ ordered Poland to pay a fine of half a million euros each day it continued mining.[8] Poland refused to comply with this ruling. This led the European Commission to subtract the fine from the European Union's subsidies designated to Poland.

### Turów coal mine [2]

A significant moment in the dispute was the issuance of the opinion of the ECJ Advocate General Priit Pikamäe in February 2022.[9] According to Pikamäe's legal analysis, Poland violated the EIA Directive by adopting national legislation allowing the authorities concerned to extend mining without carrying out an EIA.

### The End of Dispute?

At the same time, in February 2022, the Prime Ministers of the Czech Republic and Poland, Petr Fiala and Mateusz Morawiecki, concluded an intergovernmental agreement [10] ending the dispute. Following the agreement, the Czech Republic withdrew the action. The Polish side then paid the Czech Republic a financial compensation of 45 million euros. Nonetheless, it should also have built measures to mitigate the impact of mining, such as a sealing barrier to groundwater flow or an embankment of trees.

Politicians have presented the agreement as a success, but it has also found its critics, especially





from NGOs and locals. According to critics, the promised measures could not mitigate the impacts of mining. The isolation barrier that had already been built did not work, as agreed by Czech hydrogeologists and the mining company PGE. The Czech side also received criticism for lack of transparency. The Czech Ministry of the Environment only published the agreement's text after pressure from civil society.

### The Agreement Before the Constitutional Court

Animosity with the agreement's content led locals of Uhelná, Czech and German NGOs to file a constitutional complaint with the Czech Constitutional Court (hereinafter "the Court") in April 2022. The agreement, according to them, infringed on their right to protection of property, as the value of their property was falling due to mining and the right to protection of the environment.

Nevertheless, the Court did not deal with the alleged violations in substance. It rejected the complaint on procedural grounds, finding it did not have jurisdiction to consider the merits.<sup>[1]</sup> The agreement – the government's resolution – was an internal act of the executive branch, which the Court could not review. Regarding international treaties, the Court can only deal with important treaties which, for example, regulate the rights and obligations of individuals or delegate the powers of the Czech authorities to an international organization. This was not the case for the agreement in question.

### Different Actors, Same Problems

In October 2022, the dispute was again moved to the EU level when Czech and German NGOs filed a complaint to the Commission arguing that, among other things, the Czech side had agreed to illegal mining. By pledging not to take any action against Poland, it has also abdicated its duty to defend the rights of Czech citizens.

The German side has also spoken out against the continuation of the mining. The deepening negative impacts of mining have particularly affected the village of Zittau, which is threatened by land subsidence. The German side has therefore started to demand improvements to the isolation wall.



Petr Fiala and Mateusz Morawiecki, Prime Ministers of the Czech Republic and Poland [3]

### A Year Later

Measures to reduce the impacts of mining are still being evaluated. Tests carried out so far show that the sealing barrier meets the agreed parameters. In addition, the data show that the decline in groundwater is slowing down. Nonetheless, it still needs to be determined whether this will be enough for the locals' quality of life and the environment's protection.

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## Access to accommodation and restaurant services: Do children and foreign nationals face discrimination in the Czech Republic?



*Marie Gavendová*

In 2021, the Czech Supreme Administrative Court issued a decision concerning the differential treatment of children and adults in the access to hotel services. However, it has not been an isolated case and various allegations of unequal treatment appear frequently before Czech courts. How did the Supreme Administrative Court adjudicate this case and how does it differ from previous case-law?

### What does the law say about discrimination?

The Anti-Discrimination Act [1] prohibits discrimination in the case of (among other things) access to goods and services. The same law also defines direct discrimination as an act where one person is treated less favorably than another person in a comparable situation on particular grounds, such as age, sex or nationality. Differential treatment is permissible and in compliance with anti-discrimination law [2] if it is objectively justified by a legitimate aim and the means for achieving this aim are proportionate and necessary.

The Consumer Protection Act [3] prohibits an entrepreneur from discriminating against consumers when providing services. It forbids this act in a general manner, without specifying the prohibited grounds.

The relationship between the Anti-Discrimination Act and the Consumer Protection Act needed to be addressed first, because they stipulate discrimination grounds in a different way. According to the Supreme Administrative Court, the Anti-Discrimination Act and the Consumer Protection Act should be treated equally, i.e., one act should not take priority over the other. Therefore, the prohibition of discrimination against consumers should



The Supreme Administrative Court [1]

not be narrowed to the discriminatory grounds set out in the Anti-Discrimination Act. However, in general, discrimination grounds stipulated in the Anti-Discrimination Act should always be taken into account and should be treated with greater caution as they are the "strongest" criteria.

The Constitutional Court has further developed other criteria for the assessment of whether a certain act constitutes discrimination. It has explained that if the reason for denying services is hateful or willful, or if it infringes on the consumer's dignity, the action is likely discriminatory. The fact that the difference in treatment is based on a discriminatory ground listed in the Charter of Fundamental Rights and Freedoms or in the Anti-Discrimination Act also plays a significant role in the assessment of discrimination. Conversely, the predictability of the entrepreneur's behavior (e. g., displaying the information that services are not provided to a certain



group of people on its website) and substitutability of services indicate that the act is likely not discriminatory.

### Entry ban for children in a hotel with a nudist zone: Proportionate measure or a discriminatory practice?

A wellness hotel with a nudist zone refused to accommodate children under the age of 15 in order to provide undisturbed relaxation for its other guests. The Czech Trade Inspection Authority ("CTIA") fined the wellness hotel as it allegedly discriminated against its consumers.

There was no dispute between the CTIA and the wellness hotel regarding the legitimacy of the aim; providing a calm environment suitable for hotel clients. At the same time, it wished to protect children's morality because of the nudist zone. The parties, however, took opposite views as to whether the wellness hotel had used appropriate means to achieve this goal.

According to the Supreme Administrative Court, the motive for the differential treatment was not "*hateful, arbitrary or infringing on the consumer's dignity, but was a standard business plan*" that was rational and economically justified. The wellness hotel acted transparently by displaying the information on its website and in its promotional material.

In the previous proceeding, the CTIA had proposed more lenient measures to achieve the goal of a calm environment such as excluding children when they start disturbing others or children that are expected to be noisy. Nevertheless, the Supreme Administrative Court did not accept these as valid options.

### A hotel refused to accommodate Russians[2]

As for the protection of morality, the CTIA suggested less stringent means, such as dividing nudist premises into male and female sections. However, the Supreme Administrative Court held that such measures would not allow adult couples to relax together.

The Supreme Administrative Court concluded that although the means suggested by the CTIA may "*appear to be more lenient, they cannot achieve the desired goal*". In addition, these measures would substantially alter the declared business plan. The wellness hotel had acted reasonably; therefore, the Supreme Administrative Court dismissed the appeal as unjustified.

### Exclusion of children from a hotel restaurant

In a specific case, a restaurant prohibited all children under the age of 6 from entering the restaurant. Moreover, older children could only access the restaurant when accompanied by their parents.[4] The restaurant justified the exclusion of children on the grounds that the food service was primarily offered to hotel guests. The hotel regularly accommodates foreign visitors, including associates of the largest Czech automobile manufacturer. These guests use the restaurant for business meetings and expect the environment to be quiet. Prior to this restriction, children used to move around uncontrollably, which bothered the hotel's guests.

The Supreme Administrative Court questioned whether the goal of arranging a quiet environment for the business clientele is legitimate. It held that a mere declaration that the restaurant focuses on a particular group of guests does not justify differential treatment. On the contrary, "a children ban" could be legitimate if the restaurant's premises are not suitable for them (e.g., due to difficulty navigating with a baby carriage) or if the restaurant sells goods which are prohibited to children.

Even if the restaurant's aim to preserve a calm environment for its guests could be regarded as legitimate, a general ban on children is not reasonable. The restaurant could have used more lenient measures, such as the expulsion of children who are already disturbing others or who are likely to do so soon.



## Exclusion of Russians who do not sign a statement criticizing the occupation of Crimea

Another discrimination case took place in 2014 and was related to the Russian occupation of Crimea. The hotel decided to provide accommodation to Russian citizens only if they sign a statement reading, *"I hereby declare that as a citizen of the Russian Federation, I do not agree with the occupation of Crimea, which contradicts all norms that should apply in the 21st century. Name and surname, address and signature."* Consequently, the hotel was given a fine by the CTIA.

The Supreme Administrative Court sided with the CTIA, however, the Constitutional Court overruled the decision. According to the Constitutional Court, the fine infringed upon the right to freedom of (political) expression and the right to own property, in particular the right to conduct a business.[5]

The Constitutional Court based its reasoning on the criteria described above. The reason for the restriction of Russian citizens was rational and it was not based on despicable motives. The hotel did not treat them differently based on discriminatory grounds listed in the Charter of Fundamental Rights and Freedoms or the Anti-Discrimination Act.[6] The service was substitutable, as the hotel was located in Ostrava, a city with a population of nearly 300,000, so potential guests could choose from several other hotels. Moreover, the denial of the hotel's service did not pose a threat to one's life or health.

## Implications for practice?

The case-law of the Czech highest courts in the field of discrimination is rather unsettled and unpredictable for entrepreneurs. For example, a "preventive selection" of children is appropriate one time, but a misguided measure another time. The same goes for unequal treatment based on one's age. Banning children under the age of 6 from entering a restaurant was deemed unreasonable generalization, whereas banning children under the age of 15 from a hotel was regarded as appropriate.

The Constitutional Court believes that such an ambiguity is not a real problem in practice and noted that *"whether the reason for discouraging guests is ra-*

*tional and not primarily motivated by hatred is not as difficult as it may appear at first sight, since these limits are usually obvious even to an average observer"*.

## Notes

- [1] Act No. 198/2009 Coll. on Equal Treatment and on the Legal Means of Protection against Discrimination and on Amendments to some laws (the Anti-Discrimination Act).
- [2] Hence, a person affected by discrimination cannot pursue claims under the Anti-Discrimination Act. However, this does not affect the liability under other laws. For example, an entrepreneur who committed the discriminatory act against consumers may be fined under the Consumer Protection Act.
- [3] Act No. 634/1992 Coll., on Consumer Protection.
- [4] Judgment of the Supreme Administrative Court, no. 4 As 1/2014 - 28, dated 30 October 2014.
- [5] Judgment of the Constitutional Court, no. II ÚS 3212/18, dated 17 April 2019.
- [6] Indeed, neither the Anti-Discrimination Act nor the Charter of Fundamental Rights and Freedoms mentioned citizenship as a prohibited discriminatory ground at that time. However, the Charter of Fundamental Rights and Freedoms is based on an open-ended list of discriminatory grounds, as it guarantees fundamental human rights and freedoms "to everybody irrespective of sex (...) or other status". The judiciary may therefore find other discriminatory grounds. The Constitutional Court did not deal with the argument why the term "other status" should not include citizenship.

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## The Minority of the Constitutional Court: People Are Divided into Women and Men in the Czech Republic



*Kateřina Ochodková*

At the end of March 2022, a long-awaited decision was announced by the Czech Constitutional Court (hereinafter “the Court”). The Court dealt with the constitutional complaint of a transgender person known as T. H. At the same time, the Court considered her proposal for the annulment of the statutory requirement of the sterilization surgery which is needed to officially change one's gender.

The majority of eight Justices of the Court believed that the provision of the Czech Civil Code (hereinafter “the Civil Code”),<sup>[1]</sup> according to which *“the alteration of a person’s sex is executed by a surgical procedure with simultaneous disabling of reproductive function and transformation of the genitals,”* is unconstitutional.

However, votes of nine Justices were needed for the annulment of the contested statutory provision.<sup>[2]</sup> Given that the majority of nine Justices was not established, the contested provision of the Civil Code remained in force. Another Justice was then tasked to write the Court's judgment representing the views of the so-called relevant minority of six Justices.<sup>[3]</sup> Seven Justices of the Court added their dissenting opinions

### Who is T. H. and why did she turn to the Court?

The complainant, who turned to the Court, was born as a male but identified as a non-binary person.<sup>[4]</sup> She had not undergone the surgical procedure required for official gender reassignment and was, therefore, still officially considered a man. Her birth number also remained in the male form.

She applied to the competent administrative authorities to change the form of her birth number from male to female form, but the authorities rejected her request. Next, she filed a complaint before Czech administrative courts, but to no avail.



The Constitutional Court [1]

Consequently, she challenged the constitutionality of the said provisions before the Court. She also asked the Court to annul a provision of the Act on Civil Registers<sup>[5]</sup>, which regulates the manner of assigning birth numbers, as well as the provisions of the Act on Specific Health Services, which stipulates details concerning gender reassignment surgery.<sup>[6]</sup>

### Instead of surgical sterilization, the minority dealt with birth numbers

According to the minority of the Court, there was no need for the Court to address the alleged un-

constitutionality of the obligation of surgical sterilization for the official gender reassignment, as the complainant's proposal arose out of an administrative proceeding concerning the issue of change of her birth number.[7]

The minority interpreted the complainant's arguments in a way that his objections concern the regulation of birth numbers, in particular the administrative distinction between male and female forms. Based on this assessment, the Court came to believe that the complainant actually asked to abolish the female form of the birth number and ordered the competent administrative authority to assign the neutral or eventually female form of the birth number to him. The minority of the Court then noted pointedly that *"the complainant finds unconstitutional that he does not have a birth number in the form he finds unconstitutional."*

### Dissenting opinion of Justice Šimáčková

Justice Kateřina Šimáčková, who originally served as a Justice-Rapporteur to the case, criticized the Court's minority for reviewing an incorrect statutory provision. According to her, the procedural prerequisites for the constitutional review of the provision of the Act on Records of Population [8] regulating the form of birth numbers had not been met since the authorities had not applied this particular provision and a new birth number had not been assigned to the complainant. According to

### European Court of Human Rights [2]



Justice Šimáčková, it was irrelevant for the present case what categories of sex are recognized by the Czech legal order.

Instead, the constitutionality of section 29 para 1 of the Civil Code had to be reviewed by the Court because this was the only provision that *"necessarily had to be applied."* This provision, i.e., the provision establishing the obligation of surgical sterilization as a condition for official gender reassignment, should have been found unconstitutional and annulled by the Court.

Šimáčková believed that such invasive surgery could *"cause unacceptable suffering and humiliation to the individuals concerned"*. Moreover, it was not necessary, as there were less severe (yet still objective) means available, such as expert assessment or less invasive surgical procedures.

Nevertheless, the relevant legislation requires the applicants to undergo significant surgery to remove the uterus or testicles. No exceptions are permitted, even to infertile applicants or applicants unable to undergo surgery for health reasons.

Šimáčková further brought up a major critique against the minority of the Court because it failed to address the applicable case law of the European Court of Human Rights (hereinafter *"the ECtHR"*). The minority of the Court refused to apply it without stating a single reason for doing so.

Šimáčková noted that according to the well-established case law of the ECtHR, the State parties have a very narrow margin of appreciation in this matter. See, for example, the case of *A.P., Garçon and Niçot v. France*, a landmark decision that forbids surgeries leading to sterilization in case of gender reassignment.[9]

### Joint Dissenting Opinion of Six Justices

Another six Justices of the Court also dissented. [10] In a joint dissenting opinion, they argued that the provision of Section 29 para 1 of the Civil Code contradicted Article 7 para 1 of the Charter of Fundamental Rights and Freedoms as it failed to meet the proportionality test. They found the obligation of surgical sterilization to be disproportional.



They pointed to the possibility of using more appropriate means of assessing applications, such as time tests or expert reports. Such standards would “*demonstrate the irreversibility of the belief of the individual concerned regarding his or her reassignment*” and exclude the possibility of abuse.

The six dissenting Justices saw an important reason for the repeal of the provision as the need for the genuine protection of the fundamental rights of a minority. Although they shared the Court's minority more restrained approach to the “judicialization of fundamental questions concerning man as a biological species,” they insisted that the Court had to intervene in the present case.

### Assessing the Case

Czech scholars did not hesitate to make a critical assessment of the present judgment. First, Zuzana Vikarská and Sarah Ouředníčková presented an article titled “Evasive, Insensitive, Ignorant, and Political.” Pavel Doubek followed with a blog post where he considered “a worrying judgment” of the Constitutional Court.

Most of their critical remarks, with which I agree, concerned the poor quality of the reasoning of the minority opinion, the failure to consider the case through the lens of the settled case law of the ECtHR, and its insensitivity to the complainant. Ironically, the Court's judgment was announced on International Transgender Day of Visibility.

*This article was originally published in Czech in the Bulletin of Human Rights (Bulletin lidských práv) No. 4 Vol. 14, May 2022.*

### Notes

- [1] Section 29 para 1 of Act No. 89/2012 Coll., the Civil Code, as amended.
- [2] Section 13 of Act No. 182/1993 Coll., on the Constitutional Court, as amended.
- [3] Decision of the Constitutional Court of 9 November 2021, ref. No. Pl. ÚS 2/20.
- [4] The complainant wished to be addressed in a feminine. Hence, I do so, except in the next part of the article.
- [5] Section 13 para 3 of Act No. 301/2000 Coll., on Civil Registers, as amended.
- [6] Section 21 para 1 of Act No. 373/2011 Coll., on Special Health Services, as amended.
- [7] The minority addressed the complainant in a masculine. Hence, I do so in this part of the article.
- [8] Act No. 133/2000 Coll., on Records of Population and Birth Numbers and on Amendment of Some Other Laws (Act on Records of Population)



The decision was announced on International Transgender Day of Visibility (31st March) [3]

- [9] Judgment of the European Court of Human Rights of 6 April 2017, Case of A.P., Garçon, and Nicot v. France, application nos. 79885/12, 52471/13, 52596/13.
- [10] Justices Ludvík David, Jaromír Jirsa, Pavel Šámal, Vojtěch Šimíček, David Uhlíř and Jiří Zemánek.

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### Photographs

- [1] The Constitutional Court. Pohled do sněmovního sálu z předsálí. Author: Aleš Ležatka, source: Ústavní soud.
- [2] European Court of Human Rights. European Court of Human Rights, 2010, 6 October 2010, author: Alfredovic, source: Wikipedia, CC BY 3.0 DEED.
- [3] The decision was announced on International Transgender Day of Visibility (31st March). NPP NATIONAL PROGRESS PARTY FLAG 4, 20 December 2012, author: National Progress Party, source: Wikimedia Commons, CC BY-SA 3.0 DEED, edit-cut.

## Same-sex Marriage in the Czech Republic



Marie Gavendová

Last year a group of members of Parliament submitted a proposal for an amendment to the Civil Code that would introduce same-sex marriage in the Czech Republic. What changes does the proposal bring and what reactions has it provoked?

### Different status of spouses and partners

In Czechia, a bill legalizing registered partnership was adopted in 2006 but it does not offer the same rights as it does for marriage. There are significant differences between a marriage and a registered partnership. First, as for the symbolic nature, a marriage ceremony is public, solemn, and performed in the presence of two witnesses. It can also take place at almost any registry office. On the other hand, entering into a registered partnership is a mere administrative act during which witnesses are not present, and it can only take place at one of the 14 designated registry offices.

The second difference relates to relations with children, in particular, the conditions for adoption. A child can be adopted by the spouses jointly or by only one spouse. The latter relates to a situation when a child from the previous relationship is adopted by the new spouse. However, for a registered partnership, the law provides only an "exceptional" possibility for a child to be adopted by another person than a spouse. This means that the State does not typically legally recognize the relationship between the child and his or her parent's partner ("*de facto parent*").

The lack of such a relationship has a significant impact on the child's legal status. For example, the child is not entitled to an orphan's pension if the *de facto* parent dies. Further, the *de facto* parent cannot deal with certain matters regarding healthcare. For instance, a child has the right to the constant presence of his or her "legal" parents when health services are provided. This, for example, rules out



Jozef Bernard, a proposer of the same-sex marriage bill [1]

the possibility for the *de facto* parent to be present during the child's hospitalization. If the *de facto* parent wishes to stay with a child, he or she needs to be designated by the child's "legal" parent first.[1]

Other important differences in relation to children concern inheritance. If the *de facto* parent does not make a will, the child may not be able to inherit from them or may inherit a smaller share.[2] Even if the *de facto* parent makes a testament, the child does not have the privileged status of a forced heir.[3]

Registered partners also have a less advantageous position when dealing with practical problems. For example, the law does not enable the creation of community property between registered partners, so they acquire the property in their sole ownership or, if contractually agreed upon, in co-ownership. Part-



ners are not entitled to widow's and widower's pensions and various benefits (e. g. pension, sickness benefits) do not pass on to the other partner if one of them dies.

### What are the proposed changes?

The drafters of the law promise that the amendment will bring equality. They emphasize that people of the same sex deserve equal treatment and dignity. However, equality could not be safeguarded in the current system of different categories of unions between people. The explanatory report of the bill also assumes that the legalization of marriage could have a positive effect on the mental health of homosexuals and bisexuals.

An important benefit of the amendment should be to guarantee a stable environment for raising children. The explanatory report looks in detail at whether same-sex couples can provide a suitable environment for raising children. Based on research and opinions from psychologists, pediatricians, and

The bill would allow adoption by same-sex couples [2]

other experts, it concludes that the parents' sexual orientation or gender does not affect the development of children and that same-sex couples can be as equally competent parents as their heterosexual counterparts.

As previously stated, there are legal differences between children growing up with registered partners and those raised in a so-called traditional family. The forthcoming amendment does not introduce any new institutes (e. g. a new way of acquiring parenthood), it only intends to remove these differences. By allowing adoption by same-sex couples, the child will have a legal relationship with both parents. This will also protect the child, for example, in the event of the breakdown of a marriage. A *de facto* parent will also have the same rights regarding the child's healthcare as the "legal" parent.

Another situation when the emancipation of the child's status comes into play is the death of his or her parents. If the legal parent dies, a court proceeding to determine the caregiver will not be necessary and the child will automatically remain with the *de facto* parent. In the event of the death of the *de facto* parent, the child will inherit on the same terms as current children of married heterosexual couples, and will also be entitled to an orphan's pension.

Regarding practical issues, same-sex couples will receive the additional benefits that come with marital status. For instance, the community property gives couples an advantage in obtaining a mortgage and simplifies the disposal of assets. Another practical matter is that when the marriage is concluded, the spouses can agree to use a common surname (under current legislation, registered partners must apply to the registry office to change their name for serious reasons). Same-sex couples will also be entitled to a widow's or widower's pension if their spouse dies.

Couples who enter into a registered partnership before this amendment comes into force will have the option to remain partners, or to enter into marriage. The bill also considers a gender transition. Under the current legislation, when one of the spouses or registered partners reassigns their sex, their union ends, however, some couples wish to remain married. It is therefore proposed that the union should continue to exist. This does not, of course, exclude the possibility of divorce.



### The Government has taken a neutral position

The government has neither rejected nor endorsed the bill. However, it points out some legislative shortcomings that should be addressed in the legislative process. Some provisions are not amended in the new version of the Act on Offices of Vital Records, Names and Surnames. These imply that same-sex couples will continue to be able to enter into registered partnerships on the territory of a foreign state.

The government also points out that the form of registration of parents on birth certificates is unclear. The Civil Code is based on the principle that a child has only one mother, so it will need to be amended. The government also criticizes some technical legislative deficiencies such as the use of incorrect terminology – for example, a widow of a deceased wife is entitled to a "widow's" pension, not a "widower's" pension.

The government is reluctant to accept the idea that a marriage should not be terminated if one of the spouses undergoes a sex transition. It explains that in such a case the other spouse finds him or herself in a union that is probably very different in their eyes. Instead, the government proposes a joint declaration by the spouses for the continuation of the marriage. If they fail to provide such a declaration, the marriage would be dissolved.

Joint property would allow people to get better mortgages [3]



### Opinions of ministries and other authorities

Five ministries, one minister, and the Government Commissioner for Human Rights have expressed a positive opinion on the adoption of the bill. Another eight authorities have taken a neutral position.

The Czech Episcopal Conference and the Ministry of Labor and Social Affairs have expressed a negative opinion. The ministry points to the cultural and historical aspects of marriage, the excessive interference in the organization of society, and the fact that there is no broad political or social consensus for this change.

### Marriage as a union between a man and a woman

In response to the same-sex marriage bill, a group of members of Parliament submitted an amendment to the Charter of Fundamental Rights and Freedoms ("Charter") in part where the Charter stipulates that "parenthood and the family are under protection of the law." This proposed amendment extends the aforementioned and provides that "marriage as the union of a man and a woman" is protected by law as well.

The drafters of this proposal believe that marriage between a man and a woman is the cornerstone of the family, hence such an amendment will elevate the protection of the marriage to the constitutional level. In addition, they seek to enshrine the concept of marriage as a union between a man and a woman, since raising children in this environment should be the best option. The document bases this idea on a study which compares the growth of the children in heterosexual families and in the care of single mothers; it does not focus at all on same-sex couples.

The government has taken a neutral position on the proposal. It stressed that amendments to the Charter should be treated exceptionally, and proposals should be preceded by the widest possible social debate. Moreover, the Charter generally does not contain definitions of terms.

In addition to the Czech Episcopal Conference, the Ministry of the Environment and the Ministry of Justice have taken a positive stance on the amendment to the Charter. Five ministries, one member of the Government, the Government Commissioner



for Human Rights, and the Secretary General of the Constitutional Court took a negative position. The remaining seven ministries were neutral on the proposal.

The amendment was criticized as the intended change is non-conceptual and that nothing would change in practice, since the marriage is already protected by law. According to some ministries, the new wording of the Charter would "only" guarantee that marriage between a man and a woman would not be deprived of legal protection but would not, in itself, lead to the prohibition of the same-sex marriages. The discriminatory nature of the proposal, the unprofessional drafting of the text, and the lack of social consensus on the issue were also repeatedly mentioned in the debate.

In my opinion, marriage for same-sex couples is not a legal issue, but a political or social issue. It is difficult to justify in legal terms why marriage and registered partnerships have different property regimes or why there are differences in the way in which these unions are concluded. Given that same-sex marriage is supported by 65 percent of the Czech population, I see no reason for not approving the bill.<sup>[4]</sup> Society is ready for it.<sup>[5]</sup>

## Notes

- [1] Section 28(3)(e)(i) of Act No. 372/2011 Coll., on Health Services and Conditions of their Provision.
- [2] If the deceased has a child of their own, their estate is divided between the child and their partner; the stepchild receives nothing. If they do not have a child of their own, the estate shall be divided between the partner, the parents and the stepchild as a person in the same household, provided that they fulfill the conditions under Section 1636 of the Civil Code.
- [3] For example, a forced heir is entitled to a part of the inheritance even if the deceased has omitted to mention it in their will.
- [4] Obviously, the legislative shortcomings should be eliminated first. In regards to the marriage after a gender transition of one of the spouses, a joint declaration from them wishing to remain married seems to be a more appropriate solution to me.
- [5] Forthcoming parliamentary discussion of the bill is scheduled for the 86th session of the Chamber of Deputies. Further developments of the bill can be tracked from Chamber of Deputies's websites: <https://www.psp.cz/sqw/historie.sqw?o=9&t=241>.

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Marek Výborný, proposer of the Charter amendment <sup>[4]</sup>

*se mění Listina základních práv a svobod, ve znění ústavního zákona č. 162/1998 Sb. a ústavního zákona č. 295/2021 Sb. (sněmovní tisk č. 276), č.j. MSMT-21398/2022-1.* Retrieved from Electronic Library of Legislative Process for Public: <https://odok.cz/portal/services/download/attachment/KORNCH6J22EX/>.

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The bill intends to legalize same-sex marriage [5]

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## Photographs

- [1] Jozef Bernard, a proposer of the same-sex marriage bill. CoR Members portraits, author: European Union Fred Guerdin, 11 February 2020, source: Flickr, CC BY 2.0 DEED.
- [2] The bill would allow adoption by same-sex couples. IMG\_0789, author: MYD Photos, 11 October 2009, source: Flickr, CC BY 2.0 DEED.
- [3] Joint property would allow people to get better mortgages. Mortgage Rates, author: 401(k) 2012, 2 February 2012, source: Flickr, CC BY-SA 2.0 DEED.
- [4] Marek Výborný, proposer of the Charter amendment. EPP Summit, 20 June 2019, author: European People's Party, 20 June 2019, source: Flickr, CC BY 2.0 DEED.
- [5] The bill intends to legalize same-sex marriage. Bridal session , same sex marriage, author: Tom Leuntjens, 19 February 2011, source: Flickr, CC BY-NC-ND 2.0 DEED.
- [6] The amendment would emancipate same-sex couples. Wedding in New Orleans, November 11, 2017, author: Jami430, November 11, 2017, source: Wikimedia Commons, CC BY-SA 4.0 DEED.

The amendment would emancipate same-sex couples [6]





## The Intervention that has Changed Their Lives: Women Can Seek Compensation from the State for Illegal Sterilizations



*Dominika Šudová*

The Act No. 297/2021 Coll. on one-time compensation for women sterilized in violation of the law (“The Compensation Act”), came into force in January 2022. Thanks to this Act, women unlawfully sterilized between 1966 and 2012 can claim compensation of CZK 300 000 from the State.

### A State's responsibility for illegal sterilization

The Explanatory Report to the Compensation Act clarifies that illegal sterilizations constitute a serious interference with human rights and freedoms. The State's liability for these acts is given because it failed to establish a sufficient regulation of the informed consents to sterilization surgeries.

The former Ombudsman also expressed his opinion on the State's liability for illegal sterilizations in his 2005 opinion, finding that in the majority of cases of illegal sterilization, informed consent for the intervention was not given. He also highlighted the fact that during the Communist regime till 1991, the State social-care institutions had interfered with women's reproduction rights by coercing and motivating them to undergo sterilization. By this method, the state-run social policy sought to reduce the birth-rate of “problematic” and “undesirable” social groups of the Czech population.

### Who is entitled to receive compensation?

The Act applies to people who were sterilized between the 1st July 1966 and 31st March 2012 in healthcare facilities in the Czech Republic. The compensation claim is addressed to The Ministry of Health, which then decides whether a person is entitled to compensation on the ground of evidence. Victims are provided with a three-year period, starting from 1st January 2022, to submit their applications.



*Elena Gorolová works with sterilized women [1]*

It is estimated that around four hundred people are entitled to compensation. However, it is not expected that all women will seek compensation. For example, in Sweden, only 5 % of victims have made such a claim.

The problematic issue of the Compensation Act is that it only applies to women who have been unlawfully sterilized in the Czech Republic. Therefore, if women were sterilized on the Slovak territory of the former Czechoslovakia, they are not entitled to compensation. In this regard, Slovakia has not yet taken any steps to provide compensation for these women. A solution of this lacuna may be to conclude an international agreement between the Czech and Slovak Republics. However, according to the available information, such an agreement has not yet been reached.

### Is the sum of CZK 300,000 a sufficient compensation?

Women who have undergone forced sterilization suffer from both psychological and physical problems. Some were abandoned by their husbands;

others were unable to have other children. Some were even excluded from the community as a result of their sterility. On top of that, physical problems such as the premature onset of menopause or the loss of menstruation appeared in some cases.

Is it then an adequate solution to set a one-off amount of CZK 300 000 when the surgery caused a lifetime of problems and each person may have suffered in a different way?

The Explanatory Report to the Compensation Act states that women may only claim an amount of CZK 300 000. The lump sum was chosen because it fulfills the principle of equality in human dignity and rights. In principle, the loss of reproductive function caused the same harm for all victims. The second reason is that the unified level of compensation facilitates the relevant procedures.

The Explanatory Report also provides that the amount of the lump sum is based on the established case-law of the Czech and international courts. While victims are usually granted higher compensation before international courts, the compensation awarded before the Czech Court is commonly around CZK 300 000. The legislator thus found the amount of CZK 300 000 to be adequate to the seriousness

Deputy of Ombudsman Monika Šimůnková [2]



Some women suffer from various diseases after sterilization [3]

of the violation of the victims' human rights.

Considering the seriousness of the illegal interventions into a person's physical integrity that have been routinely carried out in Czechoslovakia and the Czech Republic, I find the above justification of the said amount of compensation to be tenuous. I believe that the total amount should take into account the fact that each woman has suffered in a different way, i.e., sterilization has very different physical, psychological and social consequences. Moreover, given that women were already waiting a long time for this Compensation Act, the State should guarantee an appropriate support for the handling of claims, so the reparation process is not further prolonged.

### A human rights victory of 2021 or an empty gesture?

The U.S. Embassy acknowledged the campaigners for compensation of sterilized women with the Alice G. Masaryk Human Rights Award and stated in a press release that the adoption of the respective legislation "culminated a 10-year effort of many people and secured one of the most important human rights victories of 2021." [1] However, some victims have already voiced that the state's compensation is more of an empty gesture and only covers the expenses of treatment. It can only be hoped that this is not the outcome and that the victims will finally obtain an adequate satisfaction for the suffering they have experienced.



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Some women have been abandoned by their husbands or have been excluded from the community [4]



Some women wished to have more children, but they remained [5]

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- [1] Elena Gorolová works with sterilized women. Elena Gorolová SJK 2019 0-50, author: Jan Kraus Show, FTV Prima, 5 January 2019, source: Wikimedia Commons, CC BY 3.0 DEED.
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## Monitoring the Rights of Persons with Disabilities: A Year after Ratification of the Optional Protocol



*Dominika Šudová*

We are celebrating the one-year anniversary of the Optional Protocol to the UN Convention on the Rights of People with Disabilities in the Czech Republic. Since the implementation of the Convention in the Czech Republic is supervised by the Czech Ombudsman, I set out to examine where we stand in terms of the implementation of our human rights commitments. I spoke with Romana Jakešová, a head of the Department for the Protection of the Rights of Persons with Disabilities of the Ombudsman's Office. The information in this article is mainly based on the findings of the interview.

### Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (hereinafter “the Convention”) was signed by the Czech Republic in 2007 and entered into force in October 2009. The Optional Protocol to the Convention (hereinafter “Optional Protocol”) was also signed in 2007 but it took more than a decade until it was finally ratified and entered into force in September 2021.

The Convention aims to encourage, promote, and protect the full and equal realization of all human rights and fundamental freedoms by all people with a disability. It also declares a will to foster respect for the inherent dignity of persons with disabilities[1]. People with disabilities are those who have long-term mental, psychological, intellectual or sensory handicaps that may hinder their full participation in society on an equal basis with others[2].

### Importance of the Optional Protocol

The Optional Protocol[3] provides a right to every individual to lodge a complaint to the UN Committee on the Rights of Persons with Disabilities (hereinafter “the Committee”).[4] Each individual's complaint is subsequently reviewed by the Committee.[5]



*The ombudsman [1]*

According to Mrs Jakešová, the Committee has not yet recorded any complaint filed by an individual from the Czech Republic. This could be explained by the simple fact that each complaint must first exhaust all domestic remedies. Considering the recent ratification of the Optional Protocol and the length of proceedings before administrative and judicial bodies in the Czech Republic, it is very likely that no complaints will be filed for some time.

Mrs Jakešová also underscored that the Optional Protocol is not yet well known in the Czech Republic. Although the CRPD Department of the Ombudsman Office (hereinafter “the CRPD body”) regularly publishes information about its activities on the Ombudsman’s website, the experts concluded that there is a need to start a more extensive public information campaign. Therefore, the CRPD body holds a series of workshops and translates and summarizes relevant Committee resolutions which have been addressed to other countries. This will constitute a collection of decisions which will



be published and updated regularly. The CRPD body also runs a podcast on the topic of the Optional Protocol and the right to lodge a complaint and currently prepares a special issue of the Optional Protocol, which will be translated into an easy-to-read version.

### About the CRPD body

The Ombudsman has set up a team to monitor compliance with the Convention's obligations in 2018[6]. The team consists of 10 employees who are mostly lawyers. It also includes one assistant who provides interpretation in sign language. Their main task is to highlight systemic deficiencies, carry out research and analyze relevant legislation.

The Ombudsman is entitled to report to the Committee on the human rights situation of people with disabilities. This report is regarded as a response to the state report which must be submitted by the Czech government periodically to the Committee. In 2020, the Czech government submitted a report to the Committee, however, it did not fulfill the formal requirements for submission, hence the Czech Republic had to revise it. This has delayed its discussion before the Committee as well as the ombudsman's parallel report. The revised report has not yet been submitted (September 2023).

### The Advisory Body

A specialized advisory body was established to provide the CRPD body with necessary expert assistance. It is chaired by the Ombudsman and currently has 19 members. The members of the advisory body are appointed by the Ombudsman for the period of his or her tenure (six years). The members are not selected according to formal criteria, but the selection process takes into account their commitment to the rights of people with disabilities, their experience and their expertise.

The advisory body meets at least five times a year. In addition to regular meetings, each member of the advisory body may propose to monitor a particular issue on an ongoing basis.

### Working groups

The ombudsman also establishes particular working groups, which are dedicated to a specific topic or



The organisation deals with complaints [3]

area. Currently, there is a working group dealing with the accessibility of schools and educational facilities. Another working group is the so-called self-advocacy group. This is composed of people who have learning difficulties (often mental or psychosocial disabilities) and wish to help share their experiences.

### Visits to social care facilities

The CRPD body also carries out visits to facilities to examine the human rights conditions of people with disabilities. It focuses on all areas of the lives of people with disabilities; from employment to education and support for their development. The CRPD body has developed its own work methodology which draws on the WHO Toolkits[7]. This ensures that overall work of the CRPD body is clear, transparent and provides an understanding of what standards are required for the facilities.

After each visit, the CRPD drafts a visit report which is then sent to the visited facility. In the report, the Ombudsman evaluates the current state of the facility, makes several recommendations, and outlines what would have to change for a facility to meet the standards that have been set. Considering the seriousness of the findings, the Ombudsman may also turn to the facility's founder, the Social Services Inspection Authority and, finally, the prosecution authorities (if shortcomings reach the threshold of a criminal act).

During their visits, it cooperates with healthcare experts, social workers and other professionals. After approximately two years, it returns to the visited

facility to review if the facility has fulfilled the Ombudsman's recommendations.

The CRPD body conducts both, general visits and thematic visits. As a point of interest, in 2019, a specialized series of visits to residential homes for people with disabilities was conducted focusing on the exercise of the right to vote. After this series, the Ombudsman issued, among other things, a recommendation to residential service providers, which was very positively received and providers started to use it as a methodological tool. Consequently, a follow-up visit was carried out and it was found that those providers who were willing to work with the recommendation had significantly improved their services.

### CRPD Newsletter

The CRPD body also informs the general public about developments in the area of people with disabilities through a bulletin, which is addressed to people with disabilities and organizations working on the human rights of people with disabilities[8].

The most recent bulletin focused on people with disabilities escaping the Ukrainian war. The Ombudsman has cooperated with refugee centers and educated them about the needs of people with disabilities to make sure that the reception process of refugees will be applied to all on an equal basis.

Currently, the CRPD body focuses on people with disabilities who fled from Ukraine and are in need of social services.

### European network of monitoring bodies

The CRPD body is a member of a network of monitoring bodies in Europe. Information exchange among human rights watchdogs elsewhere is crucial because the Czech CRPD body is still very young and needs to learn from more experienced monitoring bodies. Communication with others is valuable as it advises on how to better monitor human rights. The CRPD body has, for example, visited German and Spanish monitoring bodies.

### Prospects for the future

The CRPD body is still working hard to improve the situation in the Czech Republic for people with



The self-advocates' meeting in June [4]

disabilities. As Mrs Jakešová stated, they are succeeding in fulfilling their tasks, monitoring the system and drawing attention to deficiencies. However, they hope that in the future people with disabilities will have equal rights as people without disabilities and that the Czech Republic will successfully fulfill its obligations under the Convention.

I would like to thank Mrs Jakešová for her willingness to share with us information on the implementation of the Convention in the Czech Republic and I wish the CRPD body many successes in this responsible work.

### Notes

- [1] Convention on the Rights of Persons with Disabilities, Article 1.
- [2] Convention on the Rights of Persons with Disabilities, Article 1.
- [3] Optional Protocol to the Convention on the Rights of Persons with Disabilities.
- [4] Optional Protocol to the Convention on the Rights of Persons with Disabilities, Article 34.
- [5] Optional Protocol to the Convention on the Rights of Persons with Disabilities, Article 1.
- [6] More about the CRPD body and its members here: <https://www.ochrance.cz/pusobnost/monitorovani-prav-osob-se-zdravotnim-postizenim/>.
- [7] More about the WHO Tools and toolkits here: <https://www.who.int/tools>
- [8] Online bulletin here: <https://www.ochrance.cz/vystupy/bulletin/>

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- [1] The ombudsman, source: Kancelář veřejného ochránce práv.
- [2] Self-advocates at the judicial academy, source: Kancelář veřejného ochránce práv.
- [3] The organisation deals with complaints, source: Kancelář veřejného ochránce práv.
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