

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 examining the year of 2019. Together with our members and trainees, we have prepared a total of 11 articles that are related to the Czech Republic.

To start the Review, we are pleased to publish a very special story. In 2019, we commemorated the 80th anniversary of Sir Nicholas Winton's trains, which saved the lives of 669 Jewish children on the brink of World War II from the occupied territory of Czechoslovakia. We asked one of the rescued children, John Karlik, to share his memories.

Aneta Frodllová discusses whether it is possible under Czech law to complete an artificial insemination process after the death of a husband. Furthermore, the concept of same-sex marriage is currently an important issue in the Czech Republic, and therefore, Gabriela Štvrtnová reviews this in an article.

Additionally, Zdeněk Nevřivý presents a judgment of the Constitutional Court of the Czech Republic concerning the Brioni Boutique Hotel in Ostrava. The hotel required Russian clients to sign a document saying they disagreed with the annexation of Crimea by the Russian Federation.

In November 2019, only 30 years after the Velvet Revolution, an anti-government demonstration by the group, Million Moments for Democracy, was held in Prague at Letná hill. According to estimates, 283,000 citizens attended the demonstration, making it the largest demonstration since the fall of the Communist regime in Czechoslovakia. Eva Dokoupilová explains what led to this event.

We wish you an enjoyable reading.



Martin Prachý

Editor of the Czech Republic Human Rights Review

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80th anniversary of Sir Nicholas Winton's trains



John Karlik

On the brink of World War II, Sir Nicholas Winton organized the transfer of 669 mostly Jewish children to England. Today, we know that the departure of the prepared trains in 1939 from the occupied territory of Czechoslovakia saved their lives. Among the children were Jan Karlik and his sister Věra.

Jan (later John) was born in 1930 and spent his adult life in Australia. He wrote a short memory about the time he spent in Prague and subsequently in Great Britain. John now lives in Sydney, has two children and two grandchildren.

Life in Prague

My parents, Ernst and Jana, owned a wholesale woollen material business in Prague, and, I believe, were quite well off, although, at age 8, I had no real idea. My sister Vera was 18 months older than I was.

My parents spent most of their days at the family business, which was only a couple of hundred metres away from home, and Vera and I were totally looked after by our nanny Nici. She was a lovely and kind lady who lived with us.

John with his mother Jana (right) and sister Anna (left) visiting Czechoslovakia in the second half of the 1940s [1]



John (rightmost) with a friend, sister Věra (left) and governess Anna ("Nici") in Prague in the second half of the 1930s [2]

My parents did not have any specific religious feelings, although some of their parents or grandparents were Jewish. Vera and I were brought up with no religion and never went to a church or synagogue.

The Germans occupied Czechoslovakia and moved into Prague in March 1939. I remember going to school with Nici, seeing the tanks rattling on the cobbled streets, and saying to Nici that the tanks can't be much good because they were so rattly.

My parents were fully aware (without my knowledge) as to what would happen to people who had Jewish heritage. They got to know a Protestant Minister, Bishop Shawe, who was head of the Moravian Brethren church in Czechoslovakia.

By the middle of the year the Germans no longer permitted any adults to leave the country, but did allow only children to leave in specific trains, called kindertransports. My parents found out from Bishop Shawe that the Moravian Brethren had schools in different countries, including a boarding school in Yorkshire, England.

My parents then arranged that, if they could get Vera and me on a kindertransport, they would send us to the school. I have never found out how much, and for how long, they paid the Moravian Brethren church.

One day in June 1939, Vera and I were taken to the Prague railway station; Vera and I knew nothing as to what was happening, my parents said goodbye with no drama attached as to how long we would be away before returning, and we were pushed on to the train.

NAME	CHRISTIAN NAME	SER. NO.	BIRTH DATE	CHILD'S PRESENT ADDRESS	GUARANTOR'S NAME AND ADDRESS	RE-EMIGRATION LIABILITY	REMARKS
KAPOSI	Dorrit Sophie	5848	9. 3.27	c/o guarantor. School at Polkestone.	Gertrude Davies, 50 York Terr., W.1.	Bank guarantee	
KARLIK	John	1633	24. 6.30	At Moravian School Fulwood, Leeds.	Moravian Church Board, 32 Fetter Lane, E.C.4.	Bank guarantee	At Moravian School Fulwood, Leeds
KARLIK	Vera	5626	29.11.28	Moravian Girls School Fulwood, Leeds.	As above	Bank guarantee	At girls' school as above

List of children from 1939 [3]

The train was absolutely packed with children, from my young age to teenagers. I presume that Vera was somewhere near me, but I have no recollection. The train went off to Holland, and I remember that a nice teenage boy looked after me during the journey.

We were put on a ship, ferried to the east coast of England and put on a train which went to London. There, Vera and I were picked up by Bishop Shawe. Neither of us could speak a word of English, but somehow we managed. We were transported up to Yorkshire and to the school; I cannot remember how.

It was July, and the school holidays had started. The boys' Science teacher and his wife lived near the school and accommodated me until the school restarted a few weeks later. I then went into the school dormitory and lived there.

I went into Year 1, and did OK as it takes very little time for 9-year-olds to learn a language. During the school holidays I went to different friends' homes and usually stayed for a week at a time.

I saw Vera during school times once a week on a Sunday, when we walked on a terrace between the boys' and girls' school. Vera had a very nice friend, Sheila, whose parents invited me to stay at their house when Vera was there with Sheila.

John with his family in 1967 [4]



I finished school early at 16, and went to London to go to University part-time, and get a job, as I had no money. I lived at the YMCA for 17/6 shillings per week, which covered lodgings and all meals. I was quite well off, as my part-time job earned me 4 pounds per week.

During all that time I had no news as to what had happened to my parents until I was informed by the Red Cross that my father was gassed at Auschwitz and my mother had survived Belsen and had gone back to Prague. The family business was gone and she emigrated to Australia in 1950.

After I finished Uni, as I had become a British citizen, I was in National Service for 2 years, during which time Vera had gone to Australia also. So, after National Service had finished I came over here as a 10 pound Pom.[1]

That's a fairly brief precis of my early times.

The contribution was originally published in the Bulletin of Human Rights (Bulletin lidských práv) no. 5/2019.

Notes

- [1] "Ten Pound Pom" is a term used in Australia and New Zealand for British citizens who arrived after World War II. The migrants were called Ten Pound Poms due to the payment of £10 in processing fees to migrate to Australia.

Photographs

- [1] John with his mother Jana (right) and sister Anna (left) visiting Czechoslovakia in the second half of the 1940s, source: family archive, edits: photo cropped.
- [2] John (rightmost) with a friend, sister Věra (left) and governess Anna ("Niči") in Prague in the second half of the 1930s, source: family archive, edits: photo cropped.
- [3] List of children from 1939, source: website of Sir Nicholas Winton (Available at: <http://www.nicholaswinton.com/WintonsList/images/list11a.gif>), edits: photo cropped.
- [4] John with his family in 1967, source: family archive, edits: photo cropped.

Annual Report of the Security Information Service for 2017. Is the Czech democracy endangered?



Zdeněk Nevřivý

The Security Information Service published its public 2017 Annual Report in the December of 2018. The report has not been published this late since 1998, which means that discussions about the content have started even before it was published.[1] What is the content of the Annual Report and against what does the Report warn us? Are these 2017 threats currently being fulfilled?

The Security Information Service (hereinafter referred to as “BIS”) is one of the three Czech intelligence services active within the Czech Republic. It has jurisdiction over intra-national matters, which means that the BIS performs counter-intelligence service.[2] The Government is responsible for its activity and it assigns tasks as it is authorised to do so by law. Subject to a notification by the Government, the President can also assign tasks to the BIS.

The BIS focuses its activity on gathering information about intents and activities aimed against the democracy and sovereignty of the Czech Republic. Furthermore, the BIS gathers information about activities of foreign intelligence institutions or other activities that could threaten the security and economic interests of the Czech Republic.

The BIS informs the Government and the President about its findings in the classified report; however, partial information is also provided to certain state authorities. The public can obtain information from the public Annual Report. Even though the Annual Report includes much interesting information, this article is going to particularly focus on the BIS findings regarding the protection of constitutionality and democracy.

Crucial threats identified by the BIS

The biggest attention in the Report is undoubtedly devoted to the activities of Russia and China in the Czech Republic. It is important to emphasize that according to the Report, only activities of these two countries are considered a threat to the interests and



Seal of the Security Information Service [1]

security of the Czech Republic. At the same time, it is not possible to relate the activities of these two countries to each other because they use different methods of work and vary in their aims.

According to the BIS, the principal aim of Russia is to internally weaken the North Atlantic Treaty Organization (hereinafter referred to as “NATO”) and the European Union (hereinafter referred to as “EU”). In this respect, Russia uses the so-called hybrid strategy. That means that Russia uses diverse and complex tools aiming to achieve the determined goal. The problem stems from the fact that these tools are comprised of a very advanced system of disinformation, propaganda, espionage, etc. Therefore, it could be very difficult for an ordinary citizen to detect what is propaganda and what is not.

An example of such strategy are pro-Russian disinformation websites, which are aimed at distracting attention from real Russian activities in the Czech Republic.[3] The BIS also presents one provocative conclusion. According to the BIS, the Czech language and the Czech view on its modern history is influenced by the Soviet propaganda persisting since the Cold War era. This could also be part of the Russian hybrid strategy.

Furthermore, the Russian diplomatic body is disproportionately bigger compared to the Czech one



National Cyber Security Center [2]

in Russia. This creates the first comparative advantage for Russia. A relatively big part of the Russian diplomatic body is composed of people who take advantage of diplomatic protection to be active in espionage. Eventually, the BIS adds that Czech citizens have a very reckless attitude towards classified, or “only” intern non-public information. Therefore, in many cases, Russian intelligence services do not have to exert a big effort to achieve their intent.

By contrast, Chinese espionage has more diverse aims. Apart from its activities against the unity of the EU. China aims for economic gains, and scientific and technical espionage. Nevertheless, in the case of China, the final two aims (scientific and technical espionage) significantly prevail, with a stress on technology, energetics, and telecommunications. In comparison with Russia, China does not focus on the quantity of intelligence services but rather on the quality. Simultaneously, China takes advantage of the mobilization of the Chinese community in the Czech Republic. A clear example could have been seen during the last visit of the Chinese president to the Czech Republic.[4] Furthermore, the BIS informs that the risk of exposure of Czech citizens to the interests of Chinese espionage is extremely high.

The Report is much more optimistic regarding the domestic development of threats to our democracy. The BIS monitored the major decline in the anti-immigrant and anti-Muslim activities as well as activities of paramilitary groups. These topics lost attractiveness for the public since the expected arrival of Muslim refugees (associated with the deterioration of security in the country) was incredibly insignificant. What remains problematic is the considerable pro-Russian orientation of these groups and their efforts to divide the society.

Other potential threats, such as right-wing and left-wing extremism, are in a long-term decline. Finally, the BIS also analysed terrorist relations. The BIS monitors potentially dangerous groups that are settled in the Czech Republic, however, threat of an attack was not discovered.[5]

Current development

Even though the Report only covers events from the year 2017, one can try to uncover whether trends, identified by the BIS, also manifest themselves today. After the publication of the Annual Report, the Czech President commented on the BIS find-

ings in an interview for TV Barrandov. He criticised the BIS, which is, in his opinion, incompetent. The director of the BIS reacted publicly following this interview and rebutted various claims of the Czech President.

The most important information is, according to the BIS director, that the BIS had been successful in destroying and paralyzing the Russian network of intelligence services in the Czech Republic in 2018. This statement, taken together with an attack on the former double agent Sergei Skripal and his daughter in the United Kingdom and the expulsion of three agents with diplomatic protection from the Czech Republic, suggests that Russian intelligence institutions have been, up to this day, enormously active in the Czech Republic and the entire EU.

However, the development regarding the current Chinese espionage is even more dramatic. Last December, the National Cyber and Information Security Agency (hereinafter referred to as “NUKIB”) published a warning concerning the threat to the Czech cybersecurity resulting from the usage of technical devices made by two Chinese companies, Huawei and ZTE. The NUKIB director stated that, *“China’s laws, among other things, require private companies residing in China to cooperate with intelligence services, therefore introducing them into the key state systems might present a threat.”* On the basis of NUKIB’s warning, a society-wide discussion about the meanings and potential impacts erupted. China is very concerned about this development, which is

Logo of Huawei [3]



especially apparent from the false statements of the Chinese ambassador following the meeting with the Czech prime minister.[6]

Further development after the NUKIB warning and the BIS Report indicates that the state should take a responsible approach to both of the security statements. Soon after the NUKIB warning, NUKIB published another report about hacker attacks targeted at EU diplomats. According to the information available, it is China that is responsible for these attacks. Other EU and NATO member states thus already introduced or are planning to introduce measures in reaction to this threat. The most recent news is coming from Poland, where an employee of the Huawei branch in Poland has been arrested and charged with espionage.

Conclusion

The above-mentioned information indicates that the biggest threat to the Czech democracy does not originate directly from the Czech citizens, but from Russia and China. Moreover, it is possible to claim, with the highest probability, that these undesirable activities described in the 2017 BIS Report currently persist.

The biggest appeal of this article, the BIS report and the NUKIB warning is directed to the high representatives of the Czech Republic and to other people who come into contact with classified information. These groups should especially reflect on all of the above-mentioned threats. This information is also important for the general public at which the disinformation campaigns are targeted. Therefore, the ability of the public to detect false information and to resist the false claims about the harmfulness of international organizations, such as NATO or the EU, is also significantly important.

As a citizen, one can most influence this situation through the right to vote. One can decide who will be the representatives: whether those, who are playing down these threats or even defend the interests of foreign entities and states, or whether people are chosen who take a responsible approach to the democracy and security.

The article was originally published in Czech in the Bulletin of Human Rights (Bulletin lidských práv) no. 1/2019.

Notes

- [1] The report has always been published in September or October at the latest. Due to reasons unknown to the public, this year the report was instead published in December.
- [2] The second intelligence service is the Office for Foreign Relations and Information whose principal goal is to carry out espionage, which means that it collects information originating from abroad. The second intelligence service is the Military Intelligence which connects counter-intelligence service with espionage tasks, however, it mainly focuses on information relating to defence.
- [3] The BIS calls this the ballast (the smoke screen) as it is meant to capture attention or provoke chaos. In other words, it is used to distract attention from the principal components of the Russian hybrid strategy.
- [4] During the 2016 visit of the Chinese President to the Czech Republic, the Chinese Embassy was involved in the organization of the welcoming events. Encounters took place between opponents to the Chinese regime and supporters of China.
- [5] It more specifically relates to the group of Maghrebians living in the Czech Republic. This part of the Muslim population is said to be easily radicalized.
- [6] The Chinese ambassador met with the Czech prime minister. The Chinese Embassy informed, in an unusual manner about this meeting, on its Facebook account. The content of this post included information, allegedly coming from the Czech prime minister, that the NUKIB warning does not constitute the official statement of the Czech government and it contains misleading information. The prime minister denied this after.

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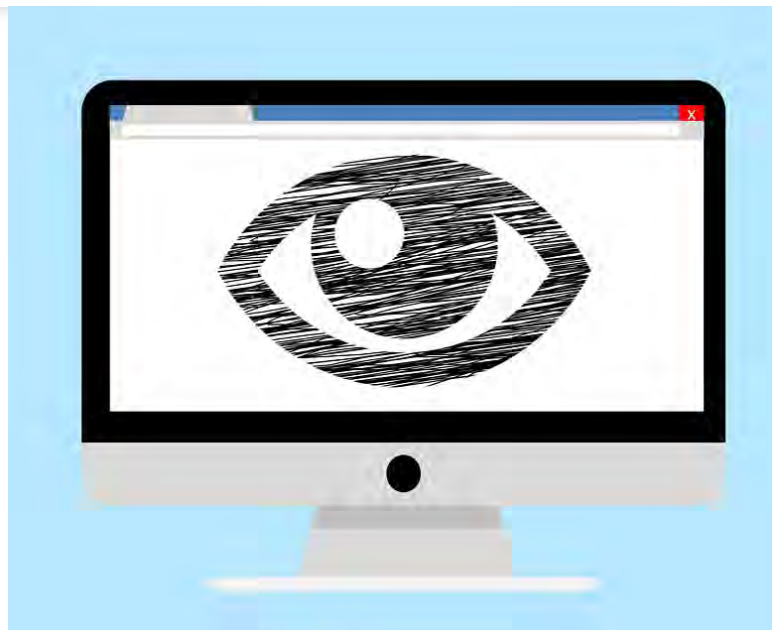


Illustration image [4]

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Photographs

- [1] Seal of the Security Information Service, author: Security Information Service, Wikimedia Commons, Public Domain.
- [2] National Cyber Security Center, author: Martin Strachoň, Wikimedia Commons, Public Domain.
- [3] Logo of Huawei, author: unknown, Wikimedia Commons, Public Domain.
- [4] Illustrative image, author: Free fotobanka, PxHere, CC0 Creative Commons, edits: photo cropped.

Completion of the artificial insemination process is not possible after the death of husband



Aneta Frodlová

Ordinary courts denied the plaintiff's action concerning the fulfilment of the duty of a medical institution to finish a process of artificial insemination. The plaintiff appealed to the Constitutional Court of the Czech Republic for violation of her right to respect her family and personal life.

The plaintiff's husband signed informed consent to cryopreserve his sperm by the medical institution, NATALART s.r.o. (the intervening party during the process before the Constitutional court), in June 2014. This was a mandatory step before beginning the infertility treatment by methods of assisted reproduction. He consented that his sperm would be preserved in a cryostasis for later insemination of the plaintiff. However, the plaintiff's husband died before the insemination could occur. The plaintiff still wanted to complete the process of artificial insemination, but the intervening party of the constitutional complaint refused to complete the process, for the reason of the absence of a valid consent of the plaintiff's husband.

The plaintiff sued the intervenor and brought legal action before the District Court of Pilsen (hereinafter referred to as "District court"). However, the District Court dismissed the lawsuit. It justified its decision through stating that the Act on Specific Health Services allows artificial insemination only for a couple, and furthermore, the District Court cannot replace the will of the husband with a court decision.

Afterwards, the plaintiff appealed to the Regional Court in Pilsen, which confirmed the decision of the District Court, because the fulfilment of the alleged duty as it was written in the civil action was not possible due to its conflict with the Act on Specific Health Services.

Opinio Iuris of the Supreme Court

The Plaintiff appealed to the Supreme Court against the decision of the Regional Court. However, the



Building of District Court of Pilsen – city [1]

Supreme Court dismissed the appeal. In its ruling, the Supreme Court compared the individual legal provisions of certain European countries, which differed from each other. It pointed out, together with a reference to the case-law of the European Court for Human Rights, that it all comes down to the legal provisions of each individual country and it is up to each member state's legislative body, whether and how they will regulate the circumstances or requirements for artificial insemination.

Furthermore, the Supreme Court commented on some of the provisions of the Act on Specific Health Services, explicitly Article 6. This provision states that it is possible to complete the process of artificial insemination only if there is an existing signed written request of both the man and the woman who want to proceed together throughout the process, and calls them the "infertile couple." According to the *opinio iuris* of ordinary courts, after the death of one member of the couple, only one of them does not make "a couple," which could undergo the treatment. The Supreme court also pointed out that informed consent to preserve the sperm contained a provision about destroying such biological material in the case of the death of the husband.

The Supreme Court also supported its decision with case-law of the European Court for Human Rights and concluded, that the right to respect "family life" does not include and protect a mere wish to begin a family, but it assumes that there is already an existing family. However, this family has ceased to exist with the death of the husband. The Supreme Court also stated that the plaintiff can still become a mother in the future, although the cryopreserved



Supreme Court of the Czech Republic in Brno [2]

sperm of her dead husband cannot be used for artificial insemination.

The constitutional complaint proceedings

The Plaintiff filed a constitutional complaint against the decision of the Supreme Court to the Constitutional Court, in which she stated that the decisions of the ordinary courts are in contradiction to Article 10 paragraph 2 of the Charter of Fundamental Rights and Freedoms of the Czech Republic (hereinafter referred to as “Charter”) and also to Article 8 of the European Convention on Human Rights.

She also submitted, together with the complaint, a written proposal to annul provisions 6 and 8 paragraph 2 of the Act on Specific Health Services because their manifested contradiction with Article 10 paragraph 2 of the Charter. The plaintiff also objected that these provisions are not meant to limit her right to artificial insemination with reproductive cells of her husband and that, *“She cannot be a hostage to the legislative lack of provisions in the Act on Specific Health Services, that would otherwise solve her issue.”*

The Constitutional Court dismissed the complaint as unsubstantiated

The Constitutional Court (hereinafter referred to as “CC”) had not found any fault in the proceed-

ing before the ordinary courts. It concluded that the ordinary courts applied the legal provisions in accordance with principles contained in the Charter. The CC also stated that it identifies with the ruling of the Supreme Court, which gave enough reasons, justified its decision, *“And throughout the entire process, the Supreme court was aware of the constitutional extent of the issue.”*

The CC found the rulings of the ordinary courts to be in accordance with the Constitution and stated that there had not been any breach of the right to respect the family and private life of the plaintiff. The basic legal precondition for the hearing in the case of annulment of the aforementioned provision had not been fulfilled since the CC dismissed the complaint.

The dissenting opinion of judge David Uhlíř

Judge David Uhlíř pointed out that the limitations, contained in the Act on Specific Health Services, need to be interpreted in such a way that they are in compliance with Article 4 paragraph 4 of the Charter and that, *“When employing the provisions concerning limitations upon the fundamental rights and freedoms, the essence and significance of these rights and freedoms must be preserved. Such limitations shall not be misused for the purposes other than those for which they were adopted.”*

Provisions, that contain the limitations, are Article 6 and 8 paragraph 2 of the Act on Specific Health

Services and there is a need to explain the reason for these limitations. According to the dissenting opinion of Judge David Uhlíř, their purpose is to prevent the insemination and conception of the child without the consent of the man, who is to be the father of the child. The ordinary courts, however, interpreted these limitations in contradiction to Article 4 paragraph 4 of the Charter, which prevented the completion of already begun medical treatment of an infertile couple after the death of the husband.

Furthermore, Judge David Uhlíř compared the situation in this case to the donorship of reproductive cells or embryos, which is done without the premise that the donor still lives. These rules should then also apply in analogy in this case. He highlighted the fact that there is no legal provision in the Czech law that would prohibit the use of a donated sperm after the death of the donor. In this case, the will of the dead husband needs to be respected, however, this will cannot be deduced from the pre-printed text of the informed consent (which contained the provision that “*the storage of the sperm will be terminated also in the case of the death of husband, if it was not unequivocally stated otherwise.*”), but the will needs to be deduced from the factual state.

Judge David Uhlíř also pointed out that the “*ordinary court is not absolutely bound by the literal wording of the law, for it may and must divert from its text if the*

purpose of the provision demands so.” Through this, he also highlighted that by allowing the plaintiff to have a child would in no way breach the rights of other subjects and the ordinary courts were simply not able, or did not want to interpret these legal provisions in such a manner that would be in accordance with the Constitution of the Czech Republic, which would also allow the plaintiff to fulfil her rightfully demanded wish.

The article was originally published in Czech in the Bulletin of Human Rights (Bulletin lidských práv) no. 1/2019.

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- [2] Act No. 373/2011 Coll., on Specific Health Services.

Photographs

- [1] Building of District Court of Pilsen – city, author: Jik jik, Wikimedia Commons, CC BY-SA 3.0, edits: photo cropped.
- [2] Supreme Court of the Czech Republic in Brno, author: Michal Klajban, Wikimedia Commons, Creative Commons 3.0, edits: photo cropped.
- [3] Illustrative image, author: Pexels, Pixabay, CC0 Creative Commons, edits: photo cropped.

Illustration image [3]



Chinese Christians applied for asylum in the Czech Republic



Eva Dokoupilová

Lawsuits of several dozen Chinese applicants for international protection are currently pending before administrative courts, claiming they are being persecuted in China for their religious beliefs. The Ministry of the Interior of the Czech Republic, against whose decisions the lawsuits are directed, exceeded the deadlines for issuing a decision by 800 days in the proceedings of these applicants, for which it was also criticized by the Ombudsman. What exactly is going on in these cases and how do they continue?

The situation of religious people in China

For many years, the Communist Party of China has had policies to combat the growth of religious communities and to eliminate certain became the general secretary of the Communist Party of China in 2012, the number of religious persecutions sharply rose. The way in which Christians are treated depends on whether they are beneficial for the communist regime or pose a threat to it. Practices to combat Christianity in China include banning Christian celebrations, limiting the number of new priests, reviewing religious leaders for political reliability, and according to Freedom House, Chinese security forces also commit torture and murder of believers.

Proceedings for international protection and approach of the Ministry of the Interior

Between the summer of 2015 and the summer of 2016, around 80 Chinese citizens who were allegedly persecuted because of their Christian faith applied for international protection in the Czech Republic. The total number of applications from Chinese citizens reached 68 in 2016, making China one of the countries with the largest amount of international protection seekers coming to the Czech Republic that year.[1]

In this context, it became problematic that, despite the statutory deadlines, the Ministry of the Interi-



Chinese Virgin Mary with baby Jesus [1]

or was assessing the applications for an unreasonably long period, in some cases exceeding the statutory deadline for issuing a decision by up to 800 days. According to the Asylum Act of the Czech Republic, the standard time limit for issuing a decision is six months, to a maximum of nine months, but can be extended to 12 months, depending on the circumstances and complexity of the case. This legislation came into force in December 2015.

However, for some Chinese applicants the previous legislation applies as they submitted their applications before the new legislation came into force. The previous legislation provided a “basic” time limit of 90 days for the decision, with the possibility to extend it indefinitely depending on the circumstances and complexity of the case. According to the interpretation of the Supreme Administrative Court, the extension of the deadline should only take place in exceptional and justified cases.

The lengthy procedure of Chinese applicants has been overseen by the Ombudsman, Anna Šaba-

tová, who initiated her own inquiry into the case. The Ombudsman requested that the Ministry of the Interior explain the procedure. However, the response of the Ministry of Interior was not considered sufficient by the Ombudsman, and therefore, the Ombudsman called on the Minister of Interior to take corrective measures.[2]

The case of Chinese Christians has also been overseen by the Czech non-governmental Organization for Aid to Refugees, which represented around 30 Chinese Christians. At the end of February 2018, the first decisions on rejecting international protection were sent by the Ministry of the Interior. Most of the requests were rejected on the grounds that although Christians in China might be in some problematic situations, there was no evidence in their particular cases that their fear of persecution was justified. The Organization for Aid to Refugees subsequently recommended unsuccessful applicants to bring legal actions against the Ministry's negative decisions.

Proceedings before administrative courts

Some applicants' actions have already been dismissed.[3] Two Regional Courts, namely the Regional Court in Hradec Králové – a branch in Pardubice and the Regional Court in Ostrava, upheld the two actions. In their rulings, the courts criticized the Ministry of the Interior for

Ministry of the Interior of the Czech Republic [2]



failing to deal with the personal stories of the applicants, which, according to the courts, were credible and consistent.

The Ministry concluded that cases of the plaintiffs do not fulfill the definition of persecution within the meaning of section 12b of the Asylum Act, without assessing the applicants' incidents with the Chinese police because of their beliefs. According to the case-law of the Czech Supreme Administrative Court, the term persecution must be interpreted in accordance with the qualification directive, which, among other things, regards the use of physical or psychological violence as persecution.

Concerning the alleged statement that an organized group of Chinese believers arrived as economic migrants, the court stated that it is necessary to evaluate the specific story of each individual applicant. This was done by the Ministry in other cases, as it granted asylum to some applicants of this organized group. Concerning the rejection of the applicants' subsidiary protection within the meaning of section 14a of the Asylum Act, the courts pointed out that the Ministry had basically only copied the justification for rejecting asylum under Section 12b of the Asylum Act, thus this part of the decision was also considered to be unreviewable. The Ministry will therefore have to deal with both cases again, and more precisely.

Conclusion

The case of the Chinese Christians uncovers the shortcomings in the approach of the Ministry of the Interior. The Ministry made two kinds of mistakes. On the procedural side, as the Ombudsman also states, it dealt with cases for a long time without giving a valid reason. Regarding the merits, the ministry was wrong in not carefully assessing the asylum stories of some of the applicants, and therefore its decisions were considered unreviewable by the administrative courts. Whether the mistakes of the Ministry were caused by a simple mistake, or by political, economic or protectionist motives, can only be questioned.

The article was originally published in Czech in the Bulletin of Human Rights (Bulletin lidských práv) no. 3/2019.

Translated by Martin Pracný

Notes

- [1] Ukraine ranked first in 2016 (507 applications), Iraq (158 applications), Cuba (85 applications) and Syria (78 applications).
- [2] The description of the investigation, its conclusions and the proposed remedial measures are set out in the *Final opinion with a proposal for remedial measures concerning delays in international protection proceedings*, 31 October 2018, file number 6741/2017 / VOP / BZ, reference number KVOP-46533/2018, available at: https://www.ochrance.cz/fileadmin/user_upload/ESO/6741-17-BZ-ZSO-1-final_01.pdf.
- [3] For example, the judgments of the Regional Court in Hradec Králové – a branch in Pardubice, 19 December 2018, reference number 61 Az 2/2018 - 146, reference number 61 Az 1/2018 - 148.

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Demonstration in Prague for reception of refugees [3]

Ombudsman: veřejný ochránce práv. 2017. *Ombudsmanka šetří nestandardní průtahy v řízení o udělení mezinárodní ochrany křesťanům z Číny*. (Available at: <https://www.ochrance.cz/aktualne/tiskove-zpravy-2017/ombudsmanka-setri-nestandardni-prutahy-v-rizeni-o-udeleni-mezinarodni-ochrany-krestan/>).

Judgement of the Regional Court in Hradec Králové – a branch in Pardubice from 19th of December 2018, reference number 61 Az 2/2018 - 146.

Judgement of the Regional Court in Hradec Králové – a branch in Pardubice from 19th of December 2018, reference number 61 Az 1/2018 - 148.

Judgement of the Regional Court in Hradec Králové – a branch in Pardubice from 7th of January 2018, reference number 61 Az 3/2018 - 144.

Judgement of the Regional Court in Ostrava from 12th of February 2018, reference number 61 Az 12/2018 - 65.

Asylum Act No. 325/1999 Coll. (Available at: <https://www.mvcr.cz/mvcren/file/asylum-act.aspx>).

Convention Relating to the Status of Refugees. (Available at: <https://www.unhcr.org/3b66c2aa10>).

Photographs

- [1] Chinese Virgin Mary with baby Jesus, author: Prayitno, Flickr, CC BY 2.0, edits: photo cropped.
- [2] Ministry of the Interior of the Czech Republic, author: Gampe, Wikimedia Commons, CC BY SA 3.0, edits: photo cropped.
- [3] Demonstration in Prague for reception of refugees, author: Aktron, Wikimedia Commons, CC BY 4.0, edits: photo cropped.

To register or to get married?



Gabriela Štortňová

The establishment of same-sex marriage in the Czech Republic seems to be more probable now than ever before. In November 2018, a motion to amend the Civil Code was discussed in the Chamber of Deputies for the first time. In April 2019, the motion was also supported by the Czech Prime Minister, Andrej Babiš. Will it succeed? What legislative developments have already been done in this area in the Czech Republic?

State governments begun to deal with same-sex marriages quite recently. Alongside the Netherlands, where same-sex marriage was legalised in 2001, twenty-seven countries have also legalised same-sex marriage, including Brazil, France, the USA, and the Republic of South Africa. The most recent one to legalise was Austria, on the basis of a decision of the Austrian Constitutional Court on the 1st of January 2019.

According to the think tank, *Queer Geography*, 46% of Europeans can enter into “equal” marriage, compared to 39% of those living in countries where same-sex partnership or marriage is not legally regulated at all. There are also countries with a legal institute for same-sex people, which does not, however, secure the same rights for same-sex marriages as for heterosexual marriages. It only guarantees a form of registered partnership (15% of Europeans live within these states, including the Czech Republic).

Registered Partnership

The Czech legislation uses the term, “registered partnership.” There is a so-called dualistic model in which the traditional form of marriage is only open to persons of the opposite sex. Same-sex people can use the possibility of the registered partnership, which is enshrined in the Registered Partnership Act. Compared to basic matrimony, this bond does not provide the same rights to its subjects.

Inequalities are then criticised by human rights defenders and same-sex partners. The most problematic are limits on property and parenthood:



The flag representing sexual minorities [1]

registered partnership does not automatically include community property, a partner is not entitled to a widow’s or a widower’s pension, nor is he or she entitled to sickness or other benefits. Furthermore, partners cannot adopt a child together, they cannot be foster partners, and a person cannot adopt a child of his partner.

In the Czech Republic, the institute of registered partnership was established in 2006. For comparison, Denmark was a pioneer in Europe, establishing same-sex marriage in 1989, later followed by Norway (1993) and Sweden (1995).

Registered partnership in the Czech Republic

The adoption of the Act on Registered Partnership was preceded by five motions. The first was dealt with by the Parliament in 1998. The following motions were discussed in 2001, 2002, 2003, and 2004. The motions often lacked requisites, such as the definition of a partners’ fundamental rights and their



The people supporting the rights of sexual minorities at a gaypride [2]

obligations. For example, in the first case, the partnership was not limited to persons of the same-sex. A potential abuse of inheritance or insurance rights was, therefore, accidentally included. All motions were rejected or withdrawn.

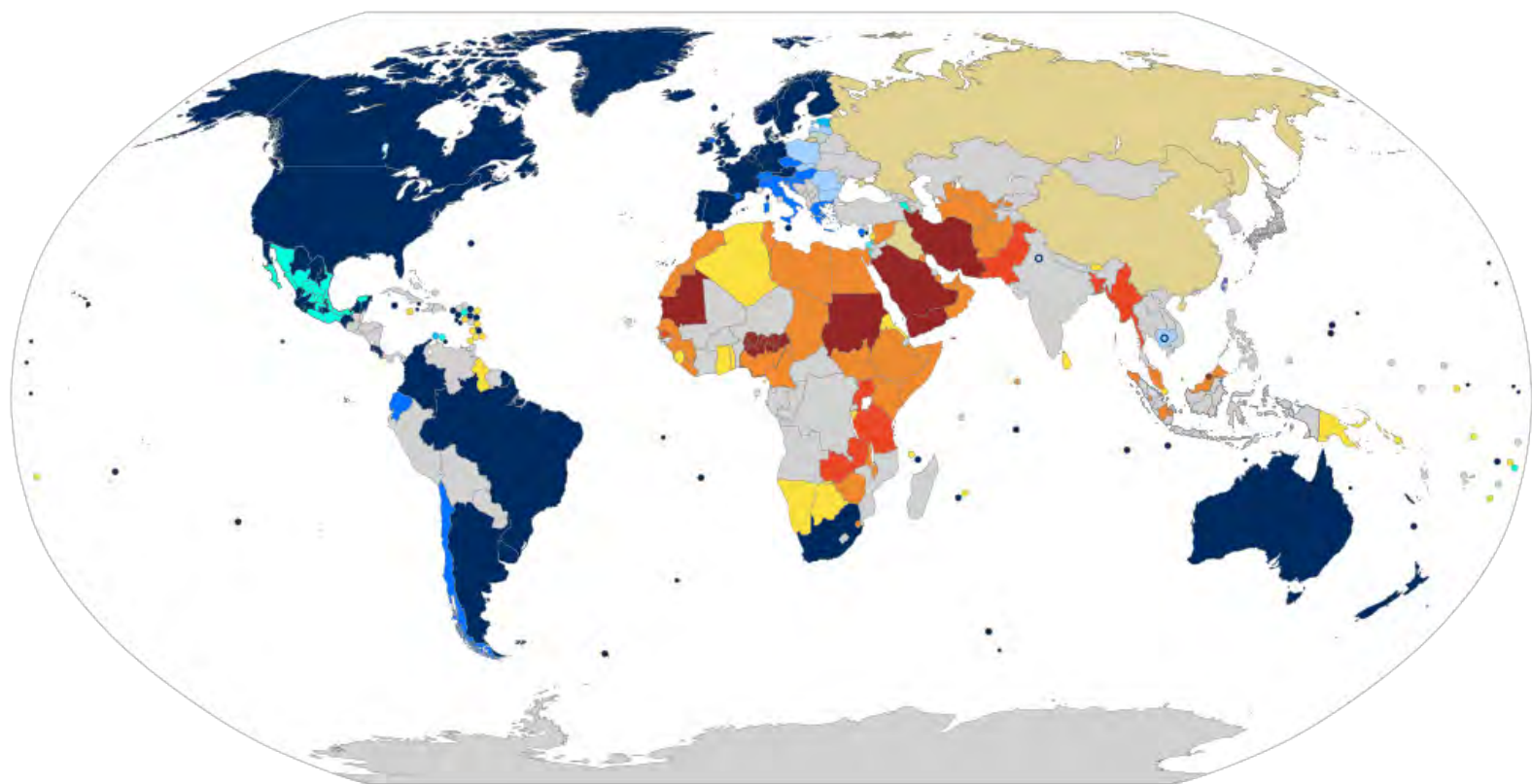
The successful Act on Registered Partnership was proposed, in 2005, by deputies from the Czech Social Democratic Party (ČSSD), the no longer existing Freedom Union – Democratic Union (US-DEU), the Civil Democratic Party (ODS), and the Communist Party of Bohemia and Moravia (KSČM). Although it was approved by the Chamber of Deputies in early 2006, the former president, Vaclav Klaus, vetoed the act. He justified his action by the necessity of approving the act by an absolute majority of all deputies, and, what is more, in his opinion, the concept of registered partnership was only an imitation of basic marriage. Nevertheless, the Registered Partnership Act was passed in March 2006, which was the third attempt. The Act came into effect on the 1st of July 2006.

Effort for equal rights and opposite tendencies

After 12 years, in 2018, the Chamber of Deputies started to draft an amendment to the Civil Code, which would secure marriage for same-sex couples. The motion was proposed in June 2018 by a group of 46 deputies, led by Radka Maxová from the ruling party, ANO 2011.

At the same time, in contrast, the Chamber of Deputies also discussed another proposal that would amend Article 32 (1) of the Charter of Fundamental Rights and Freedoms of the Czech Republic. The Deputies sought to amend the statement that, “*Parenthood and family are under the protection of the law,*” by adding the words, “*And marriage as a union of a man and a woman*” in the Article, [2] thus emphasising that marriage would be an exclusive union of a man and a woman. The discussion of both of the proposed motions was suspended and put off at the meeting in November 2018. Neither of the motions was approved, even at the meeting on the 26th of March 2019.

Nevertheless, the situation now seems more hopeful than ever before. At the beginning of April 2019, the prime minister expressed his support for the marriage of same-sex couples in an interview for the TV channel, Prima, stating that the amendment to the Civil Code needs to be “moved” to the second reading. Before that, the prime minister was asked for support by the Government Council for Human Rights. The proposed legislation is supported by several dozen deputies and mainly opposed by deputies from parties such as the Christian and Democratic Union – Czechoslovak People's Party (KDU-ČSL) and Freedom and Direct Democracy (SPD). Will the Czech Republic join other countries with already established same-sex marriage? One of the next meetings of the Chamber of Deputies will illustrate this.



The map of rights of same-sex couples (dark blue means legal marriage) [3]

The article was originally published in Czech in the Bulletin of Human Rights (Bulletin lidských práv) no. 4/2019.

Notes

- [1] The proposed amendment of the Civil Code with an explanatory report is available here: <https://www.psp.cz/sqw/text/orig2.sqw?idd=135812>.
- [2] The proposed constitutional amendment with an explanatory report is available here: www.psp.cz/sqw/text/orig2.sqw?idd=135899.

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Photographs

- [1] The flag representing sexual minorities, author: unknown, PxHere, CC0 Creative Commons, edits: photo cropped.
- [2] The people supporting the rights of sexual minorities at a gaypride. author: unknown, PxHere, CC0 Creative Commons, edits: photo cropped.
- [3] The map of rights of same-sex couples (dark blue means legal marriage), various authors (initial version by Silje), Wikimedia Commons, CC BY-SA 3.0.

The Crimea Affaire: Entrepreneur's freedom of speech or consumer discrimination?



Zdeněk Nevřivý

Hotel Brioni Boutique in Ostrava published a notice in reaction to the Crimea annexation that the hotel would not accommodate citizens of the Russian Federation unless they sign that they disagreed with the annexation. The Czech Trade Inspection Authority, together with the administrative courts, found the entrepreneur's action discriminatory. In April 2019, the decision was reversed by the Constitutional Court of the Czech Republic. What led the Constitutional Court to reach this decision?

Facts of the case

The company operating the above mentioned hotel (hereinafter referred to as "complaining party") published, on its website as well as directly at the entrance to the hotel, the following notice: *"As of March 24, 2014, we refuse to accommodate citizens of the Russian Federation because of the annexation of Crimea. Our hotel service could be used only by those citizens of the Russian Federation who sign a statement in which they express their disagreement with the annexation of Crimea which contradicts all norms which should be valid in the 21st century. Your Hotel Brioni Boutique."* The statement to be signed was as follows: *"Hereby I proclaim that I as a citizen of the Russian Federation do not agree with the annexation of Crimea which contradicts all norms which should be valid in the 21st century. Name and surname, address and signature."*

Development of the case

Later, the Czech Trade Inspection Authority (hereinafter referred to as "CTIA") performed an inspection at the premises of the complaining party. The CTIA qualified this activity as a violation of the prohibition of discrimination under the Act on Consumer Protection and imposed a 50,000 CZK fine on the complaining party. The complaining party's appeal was dismissed. In reaction, the complaining party filed a lawsuit to the Regional Court in Ostrava (hereinafter referred to as "Regional



Statue of Justice in front of the Supreme Administrative Court building [1]

Court"). The Regional Court annulled the decision of the CTIA because of an allegedly incorrect application of the law by the CTIA.[1] In reaction, the CTIA filed an appeal to the Supreme Administrative Court (hereinafter referred to as "SAC") which reversed the Regional court's decision.

In the appellate proceedings, the Regional Court confirmed the decision of the SAC and additionally lowered the fine to 5,000 CZK. The Regional Court used the so-called "discrimination test." Based on this test, the Regional Court ruled that the complaining party's measures gave preferential treatment to one group of consumers over the Russian consumers. In conclusion, means used by the complaining party according to the test were not adequate.

The complaining party filed a cassation complaint against the decision of the Regional Court. However, this complaint was dismissed. The SAC almost completely identified with the CTIA's and the Regional Court's decisions. According to the SAC, the fact that the complaining party responded to the violation of international law was not relevant. The SAC backed its decision by the extract from the novel, *The Good Soldier Švejk*, by Jaroslav Hašek: *"Guest as a guest,"* Palivec said, *"even a Turk."* *"There is no politics for the self-employed."*

The decision of the Constitutional Court

The Constitutional Court (hereinafter referred to as "CC") based its argumentation on a polemic about



ÚSTAVNÍ SOUD

Logo of the Constitutional Court of the Czech Republic [2]

freedom of expression in a democratic society and the meaning and significance of entrepreneurship in contemporary society. CC's argumentation is not primarily based on the law itself but rather uses parallels arising from life and culture. After all, the CC mentions that the legal interpretation presented by the SAC can be considered as not only correct, but also considerably above the standards required from legal argumentation. The CC does not even express objections to the SAC's application of the "discrimination test." According to the CC, opinions between these courts differ "only" in the values, which means that they each stress certain fundamental values.

Regarding freedom of expression, the CC emphasizes the variety, plurality, and diversity of human life. State interventions to freedom of expression should be as small as possible and only in the most important situations. The CC focuses especially on the right to entrepreneurship. This right includes the autonomy of an individual and certain space for self-realization. It results in the link between the right of expression and the right to entrepreneurship. The CC comes to the conclusion that the state should intervene in the right of entrepreneurship as little as possible.

Afterward, the CC focused on the content of the complaining party's expression. In the CC's view, if the different treatment is rationally justified, it

does not amount to discrimination. The CC refused SAC's comparison to the above-mentioned extract from Jaroslav Hašek's book. The CC rather used a parallel with Doctor Galén, from Karel Čapek's book: *The White disease*. Doctor Galén, thanks to his profession, actively affected political affairs in the state. In a nutshell, the CC considered the complaining party's expression about the annexation of Crimea in the form of influencing the affected persons as a legitimate reason for the different treatment. According to the CC's conclusion, an entrepreneur also has a right to participate in politics.

The fact that the refusal to accommodate Russian citizens was neither hateful nor arbitrary is another reason for the complaining party's success. It was a reaction to the specific situation of the unlawful annexation of Crimea, which had a worldwide relevance. The CC reproached that the SAC did not consider the particular circumstances of the case, stemming from the fact that the annexation was in breach of international law and that the Czech Republic openly expressed its disagreement with it. Above all, the entrepreneur's notice was expressed on its website and at the same time as when the annexation had happened. Besides, the hotel is situated in the Ostrava city center, where accommodation services are easily replaceable.

Dissenting opinion

Ludvík David, the third judge of the CC's chamber deciding this case, expressed his considerable disagreement with the judgment. Therefore, it is also suitable to mention his opinion. Moreover, his dissenting opinion led to the change in the judge rapporteur who prepares the judgment draft under Section 55 of Act. No. 182/1993 Coll., the Constitutional Court Act. Judge David expressed in his statement, disagreement with both the verdict and the reasoning.

Initially, he focused his critique on an excessively liberal attitude of the CC to entrepreneurship. Judge David perceives the core of entrepreneurship in responsibility. It means that entrepreneurs should also accept potential responsibility consisting of the CTIA's sanction for an inappropriate expression. Additionally, he found potential interference into human dignity in the complaining party's behaviour as Russian customers were just a mere subject of the complaining

party's interests, without their ability to appropriately react to this practice. Finally, Judge David contested the CC's ability to cope with the provisions regarding the consumers' rights. In his opinion, the ordinary law was completely disregarded in the case.

Final conclusion

This judgment attempts to solve a very complicated question because arguments of both parties to the case can be considered relevant and balanced in values, as admitted by the CC in its decision. According to the CC, the stress on arguments is the only dividing line that causes contradiction between the individual decisions. In this case, the right to entrepreneurship together with the right of expression were emphasized more. Nevertheless, questions associated with consumers' protection, a highly important branch of law in the Czech Republic, remained unresolved.

In compliance with both decisions, it is arguable whether the judgment “*does not serve as another step allowing even bigger animosity and hatred in the society*” [Judgment of the Constitutional Court dated the 17th of April 2019, file number II. ÚS 3212/18]. Intensity of the debate between the law society and the public indicates that it is the judgment that sparks emotions. Afterall, even the President of the CC, Pavel Rychetský, criticized it.

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Notes

- [1] The Regional Court expressed objections in this judgment that the CTIA was bounded only by the Antidiscrimination Act and not by the discrimination motives deriving from the Consumers Protection Act. The SAC concluded that the Consumers Protection Act forbids discrimination for different reasons than those explicitly mentioned in the Antidiscrimination Act. Therefore, the Consumers Protection Act is applicable in this case.

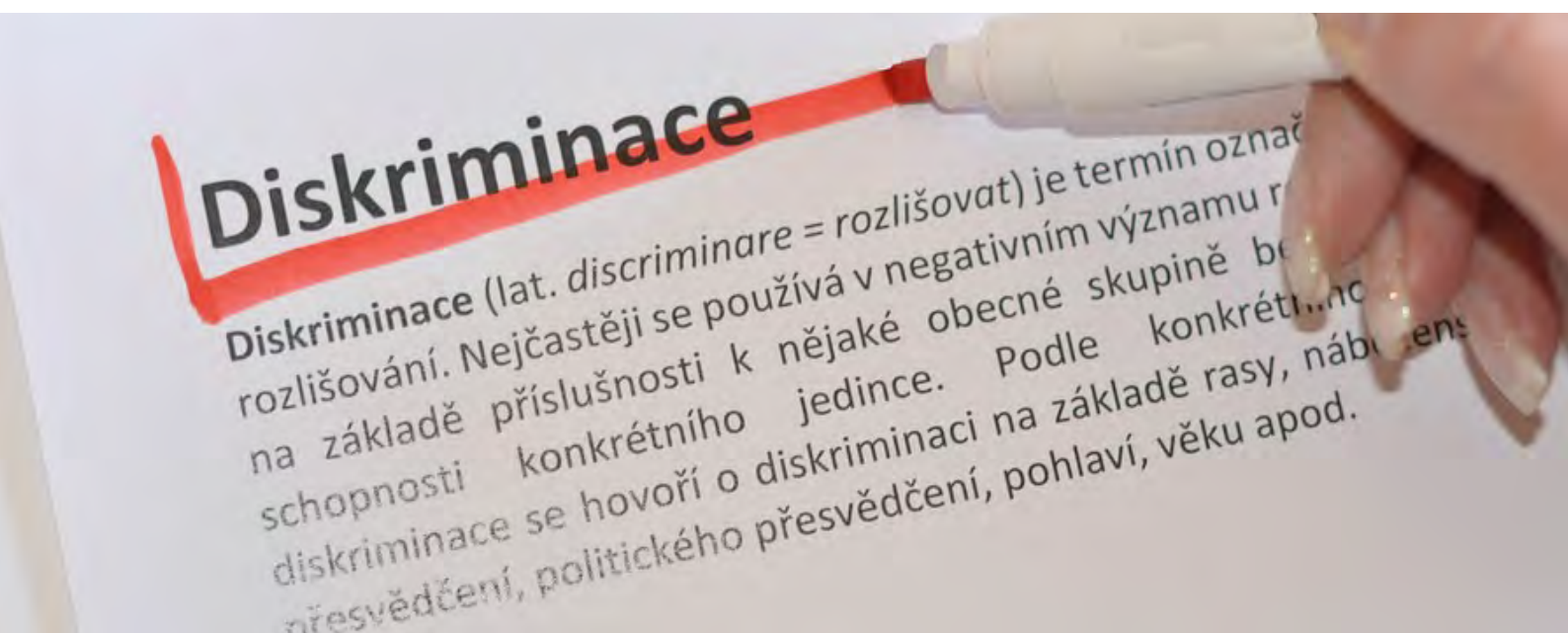
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- [1] Judgement of the Constitutional Court of the Czech Republic file number II. ÚS 3212/18 from 17th of April 2019 (Available at: https://www.usoud.cz/fileadmin/user_upload/Vedouci_OVVP/Agenda_de_Portavoz/2-3212-18.pdf).
- [2] Judgment of the Supreme Administrative Court of the Czech Republic file number 2 As 43/2018 – 27 from 28th of June 2018 (Available at: <https://iudicium.cz/268766/2-as-43-2018-27>).
- [3] ČT24. *Stydím se za rozhodnutí Ústavního soudu, který se zastal hoteliéra, uvedl Rychetský.* Podle něj šlo o diskriminaci. Česká televize. 2. 6. 2019 (<https://ct24.ceskatelevize.cz/domaci/2831738-stydim-se-za-rozhodnuti-ustavniho-soudu-ktery-se-zastal-hoteliiera-uedl-rychetsky>).

Photographs

- [1] Statue of Justice in front of the Supreme Administrative Court building, author: Michal Klajban. Wikimedia Commons, CC BY-SA 3.0, edits: photo cropped.
- [2] Logo of the Constitutional Court of the Czech Republic, author: Constitutional Court of the Czech Republic, Wikimedia Commons, Public Domain.
- [3] Discrimination, author: ivancoi, Pixabay, Pixabay License, edits: photo cropped.

Discrimination [3]



Million Moments for Democracy at Prague's Letná



Eva Dokoupilová

At the end of June 2019, the Czech Republic was resonated by a demonstration in Prague at Letná hill. Czech and foreign media have described it as the largest and most important demonstration since 1989. It was the culmination of a series of demonstrations of citizens who are dissatisfied with the government of the current Prime Minister, Andrej Babiš, from the political party, ANO 2011. What started the demonstration, who organized it, and what impact will it have for the current political situation?

The Million Moments Project

The Million Moments organization aims to “*support and cultivate democratic culture, civic engagement and public debate in the Czech Republic.*” The initial spark for its creation was a contract of Andrej Babiš with Czech citizens, which was sent to the mailboxes of Czech households before the parliamentary elections in 2017. Subsequently, members of the Million Moments organization called on the newly elected Prime Minister to keep his election promises,[1] but he rejected any dialogue. After that proclamation, “Moment for Resignation”, was launched with its initial goal to get one million signatures in support of Babiš's resignation.

In response to the failure to get the support of Babiš's first cabinet and difficulties in forming the second governmental cabinet, the Million Moments convened in April 2018 a protest assembly “For a decent prime minister and a decent government.” Babiš's upcoming second cabinet, which has the support of deputies of the Communist Party of Bohemia and Moravia, brought protesters to the streets again, not only in Prague, but in the whole state. Despite the protests, the government was appointed and for the first time since the Velvet Revolution in 1989, the Communists had the opportunity to influence the leadership of the state. Further demonstrations took place in November 2018, when new circumstances appeared in the Stork's Nest (Čapí hnízd) case



Andrej Babiš [1]

and a case involving the possible kidnapping of Babiš's son to Crimea.

Since April 2019, several dozen demonstrations took place, such as “We are not blind”, in reaction to the appointment of the new Minister of Justice, Marie Benešová. The series of demonstrations culminated in “It's up to us!” on the 23rd of June 2019 at Letná Hill, which was attended by 283,000 citizens[2], making it the largest demonstration in the history of the country since the fall of the communist regime, in 1989. Million Moments for Democracy planned their next demonstration for the 16th of November 2019, the eve of the 30th anniversary of the Velvet Revolution.

The initial aim to force the Prime Minister to keep his pre-election promises has now grown into a nationwide pressure on his resignation, mainly because of his criminal prosecution, conflict of interests of his former company, Agrofert, and according to the Million Moments, his “cutting down of democratic institutions.”



Demonstration at Letná Park [2]

The cases of Prime Minister Andrej Babiš

In 2015, a criminal complaint was filed regarding the use of a subsidy from the European Union (hereinafter referred to as “EU”) for the Stork's Nest project. According to the complaint, Agrofert received EU subsidies for small and medium-sized companies, although it did not fall into this category. Before applying for the subsidy, Babiš changed Stork's Nest shares to anonymous shares and after the expiry of the five-year subsidy period, Stork's Nest was transferred back to Agrofert holding. Later it turned out that the anonymous shares were owned by Babiš's children and his partner's brother.

In 2017, the Chamber of Deputies issued Andrej Babiš and Jaroslav Faltýnek, who is the first Vice-President of ANO 2011 and member of Agrofert Board of Directors, to the Czech Police for prosecution for suspected fraud.[3] After both regained their parliamentary immunity in the new elections to the Chamber of Deputies, the prosecution was suspended. The police had to ask the Chamber of Deputies again to permit the prosecution, which happened in January 2018.

The case was also investigated by the European Anti-Fraud Office, which in its report confirmed links between the Stork's Nest and Agrofert and confirmed that this case may be prosecuted as a violation of sections 212 and 260 of the Czech Criminal Code. There has been a breach of national and EU law and the subsidy [4] must be fully returned to the EU. Prime Minister Babiš described the case as a “*political conspiracy and campaign against him.*”

At the end of 2018, Andrej Babiš's son sent a letter to the Criminology Institute stating that he was being held in the Crimea against his will. He was sent there by his psychiatrist allegedly to not testify in the case under investigation. The abduction was investigated but was not proven after the investigation.

One other consequence of the case was also the possible constructive vote of no-confidence of Babiš's cabinet at the end of 2018. The opposition called on the Prime Minister to resign. This step was also supported by the Senate, which called for the suspension of Babiš's participation in the cabinet until the Stork's Nest case is investigated. The Czech President, Miloš Zeman, proclaimed that even if the prime minister would not have the confidence of the Chamber of Deputies, he would again entrust him with the formation of a new cabinet. Prime Minister Babiš subsequently described the whole situation as a campaign against his person and abuse of his son's mental state and said, “*I will never resign, never! Let everyone remember!*”

In the summer of 2019, information about another case concerning Andrej Babiš was published. A spokesman for the Prague police confirmed that “*criminalists have initiated criminal proceedings in the matter suspecting a crime of tax evasion.*” Criminalists investigated an advertisement in value of 280 million Czech crowns through which the Stork's Nest helped Agrofert save on taxes while ensuring its own existence. The first information about the alleged tax fraud came to the Czech Republic from the German tax office back in 2014. At that time,

however, Andrej Babiš was the head of the Ministry of Finance, under which the Financial Administration falls.

The case of Marie Benešová

Between 1999 and 2005, Marie Benešová served as the Prosecutor General. She now holds the post of Minister of Justice, to which she was appointed by Prime Minister Babiš in April 2019. She was already the Minister of Justice during the years 2013-2014 in the cabinet of Jiří Rusnok.

Prime Minister Babiš named Benešová as a replacement for Jan Kněžínek, who resigned from the position of the Minister of Justice. The reason for his resignation was unclear, so the Judicial Union called on the government representatives to clarify Kněžínek's resignation. The chairman of the Million Moments for Democracy explains why the protest event called the *“March for the Independence of Justice”* was convened. *“[The exchange] raises doubts as to whether the principle of checks and balances is respected in the Czech Republic and whether the rule of law is violated.”*

The Stork's Nest [3]



The appointment of Benešová also arouses dissatisfaction due to the fact that she is a long-time colleague of President Zeman and acts as the President's counselor in the field of justice. When she served as the Minister of Justice in the cabinet of Jiří Rusnok, she played a part in several controversial cases.[5] Benešová is also considered to be a public ally of the Prime Minister who appointed her, since in 2015 she introduced an amendment to the law that makes it easier for companies to avoid criminal prosecution,[6] which could help Babiš's Agrofert holding to avoid prosecution.

Conclusion

The appointment of Benešová as Minister of Justice, combined with the composition of the prosecution system through the intervention of President Zeman, have raised worries about interference to the independence of the judiciary system. A Million Moments for Democracy made it clear to Prime Minister Babiš that they did not intend to ease the protest rallies. On the contrary, it calls for concrete results and concessions, especially by Prime Minister Babiš.



Brno: poster Babiš into dumpster [4]

However, cases and protests do not only negatively affect the domestic policy of the state, but also the foreign policy. Throughout prestigious media the whole world was informed about the demonstrations at Letná Hill, which could, in extreme cases, also limit the influence of the Czech Republic in the international environment. As a result of solving domestic problems, the Czech Republic's involvement in foreign activities in the EU and the Visegrad Group, which the Czech Republic presides over for 2019-2020, is decreasing. The Czech Republic has also remained stagnate or declined in democratic improvement, credibility as a partner on international fora and in international bodies. Finally, the independence of the judiciary would have a negative impact on the membership of the Czech Republic in the UN Human Rights Council from 2019 to 2021.

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Translated by Martin Pracný

Notes

- [1] In his election contract, Babiš promised to “support and develop democracy in the Czech Republic and protect the freedom and dignity of every person ... I will refuse all attempts to destroy independent prosecution and justice and always fight for law enforcement and equality before the law.”
- [2] Czech media reported 283,000 demonstrators (Available at: <https://zpravy.aktualne.cz/ekonomika/na-letnou-prislo-283-tisic-lidi-uvadi-operator-a-vysvetluje/r~0c0dfddc966711e9bb450cc47ab5f122/>). Foreign media reported 250,000 demonstrators (Available at: <https://www.theguardian.com/world/2019/jun/23/czech-republic-protesters-demand-prime-ministers-resignation>).
- [3] Section 212 of Czech Criminal Code.
- [4] 1 647 676, 40 EUR corresponds to the subsidy awarded by the European Regional Development Fund.
- [5] When there was a threat of resumption of criminal prosecution in the case of Pavel Tykač, who supposedly embezzled approximately one billion Czech crowns from CS Funds, Minister of Justice Benešová filed a complaint in favor of him. Although this eventually did not occur, the complaint could have led to the expiry of the limitation period and the consequent suspension of the entire criminal proceedings.
- [6] The amendment was adopted (183/2016 Coll.) and amends Act No. 418/2011 Coll. on Criminal Liability of Legal Persons and Proceedings against Them. The law applies to companies prosecuted, for example, for corruption or manipulation in public procurement. Under Section 8 (5), it is sufficient for a company to prove that it has made “all efforts” to prevent its employees from acting illegally. Moreover, the amendment stops existing cases (such as Agrotec, Metrostav).

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- [5] Brno: March for the Independence of Justice, author: Ben Skála - Benfoto, Wikimedia Commons, CC-BY-SA-4.0, edits: photo cropped.

Brno: March for the Independence of Justice [5]



Ombudsman's annual Report on Protection against Discrimination, 2018



Gabriela Štortňová

Discrimination because of one's age, dental care for people with mental disorders or work-life balance in the public sector; these are examples of issues raised by the Ombudsman of the Czech Republic, Anna Šabatová, in the 2018 Annual Report on Protection against Discrimination. The Centre has summarized five key topics, which were discussed by the Public Defender in the last year.

Discrimination of the elderly because of their age

A woman who was working as a teacher and simultaneously receiving her retirement pension was refused by her employer to take time off to increase her qualification. The employer justified the decision by internal regulation of the school, which denied this right to teachers with retirement pension, although a pedagogical employee is legally entitled to increase their qualification.

This is one of the cases that the Public Defender of Rights dealt with. In 2018, discrimination against the elderly due to their age became the main topic for the Ombudsman's office. According to the Report, up to 2,000 persons older than 60 years turn to the Defender every year. Usually, it is because of retirement pensions, making complaints about noise, and care allowances. However, complaints also concern employment discrimination.

According to the Ombudsman, the discrimination, which happens on the basis of collective agreements which are likely to disadvantage older employees, appears to be very problematic. Attitude towards employees with retirement pension can serve as an example. As written in the Report, if there is no substantive reason for different treatment regarding the nature of work as such, it amounts to direct discrimination because of one's age.^[1]

Allocation of benefits is not the sole and arbitrary responsibility of the employer. All rewards must



Anna Šabatová [1]

be operated by the principle of equal treatment. In the Ombudsman's experience, it was, for example, the problem of the denial to provide benefits from turnovers, or to provide higher than is the statutory severance pay for employees with retirement pensions.

To solve it, the Ombudsman has decided to organise a meeting with the State Labour Inspection Office and the Czech-Moravian Confederation of Trade Unions, who are responsible for collective agreements to some extent.^[2] The aim is to discuss the causes of discrimination rooted in collective agreements. Furthermore, the Ombudsman's office also plans to debate the issue with employers' representatives.

Quality dental care for people with mental and autistic disorders

The report also summarizes the results of a survey in which the Ombudsman's Office focused on the quality of dental care for people with mental and au-



The Ombudsman's office [2]

tistic disorders. The research was then, the outcome of suggestions from previous years and experiences of non-profit organizations and dentists.

According to them, the disabled people face obstacles such as lack of information, inappropriate attitude by medics or can even be refused to get any care at all. The latter may be considered as discrimination.

Namely, the research focused on the practice of providing conservative-surgical treatment under general anaesthesia. Because of their mental condition, people with the disabilities may not be able to cooperate with dentists. Undergoing treatment is therefore only possible under anaesthesia.

In cooperation with 17 dental workplaces providing the treatment, the report showed their uneven deployment. Furthermore, workplaces vary in setting conditions that the patient must meet to undergo the treatment. There is no universal criteria. Regarding the payment for the treatment, the practice varies as well.

Because of that, the Ombudsman recommends redefining the definition of indication criteria, clarification of payment conditions as well as the systematization of the given medical treatment, which would include the definition of a network of

workplaces with sufficient capacity and specialization. Likewise, the Ombudsman's office will try to discuss and map the issue with the key institutions such as the Ministry of Health, health insurance companies and other societies.

Action against segregation of Roma pupils in schools

In 2018, the Ombudsman also focused on the education of Roma pupils and the problem of segregated schools. In the Czech Republic, there are about 4,000 elementary schools. In only 136 of them did Roma pupils exceed 1/3 of the student population. Overall, only 12 schools are attended by Roma children. Segregation brings both economically and socially negative impacts, not only to the children but also to society as a whole.

Excluded pupils have a limited chance to achieve any higher education, their social exclusion is strengthened, teachers working in segregated schools are under a lot of pressure, and the low economic activity of pupils from segregated schools results in a lower gross domestic product.

However, segregation is illegal in the Czech Republic. If school districts are established on the grounds of ethnicity, the headmaster commits direct dis-

crimination. Even if the difference in treatment is based on a seemingly neutral criteria, such as the A-levels, it can amount to indirect discrimination, if the policy has a clearly disparate effect on only a certain group of people.

In those cases, the Ombudsman proposes ten measures to help prevent the aforementioned situations. To give an example, one can include non-segregated and high-quality pre-school education, appropriate setting of school districts, teacher training or schools' conviction of the importance of non-segregated education.[3]

Different native language as a barrier to education

Equal approach in education was also addressed in the case of children with a different mother tongue. Those are foreigners and Czech citizens who have lived abroad for a long time. For them, the language of education is a barrier to finishing their studies. The Ombudsman's office concluded that the current system of language support for such children was insufficient.

Children with language difficulties need many supportive measures in schooling for which they also need further recommendations issued by a pedagogical-psychological counselling center. Since Sep-

tember 2016, when the amendment to the Education Act introducing the concept of "inclusion" came into force, the centres started to refuse examination of children. As they noted, there must be other problems besides the language barrier.

The Ombudsman turned to the Ministry of Education with a request to take measures to remedy and to issue a uniform methodology for school counselling facilities. The Ministry complied with the request, but the methodology promised to be published by March 2019 is still not available.

Work-life balance in the public sector in the 21st century

The Ombudsman's office issued recommendations to service authorities, ministries, and civil service sections to help their employees reconcile private and working life.

The recommendations vary from institution to institution and concern education or gender equality, for example. 67 service authorities have responded to the Ombudsman's requests and showed that there were significant differences of whether, and what references to take. With the help of the Deputy Minister for the Civil Service, the Ombudsman's office will keep dealing with the problem.

Illustration image [3]



The recommendations follow the 2017 research,[4] which examined the work-life balance in the public sector. To give an example, a project titled, Tailored Service, in which the Ombudsman raised awareness of equal opportunities of heads of service offices and employees, was successfully completed.

The Public Defender's office decided to act as a model and set up an employee assistance program and pass a gender audit, as a result of which the possibility to work at home was made more available.

Defence against discrimination in numbers

The Czech Public Defender of Rights has been dealing with discrimination since 2009. Between 2017 and 2018, the number of complaints about discrimination decreased from 384 to 342. However, the number is generally increasing. Only 8% of the claims are proven to be justified. In 2018, people most often complained about discrimination on the grounds of race or ethnic origins, followed by health insurance and age.

The Ombudsman's Office thus fulfils its purpose – it is a functioning state-established institution that protects citizens against discrimination and helps to spread equal treatment not only by helping individuals, but also by informing Czech society.

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Notes

- [1] Direct discrimination occurs when a person is treated less favourably than another person due to discriminatory reasons. In contrast, indirect discrimination occurs if a person is disadvantaged due to neutral provisions.
- [2] Collective agreements are established by mutual contract of employers and trade unions. Labour inspection authorities superintend.
- [3] In the case of interest, we refer to the Defender's recommendation file number 86/2017/DIS from the 12th of December 2018.
- [4] The work-life balance at ministries is part of last year's annual report on Protection against Discrimination (2017).

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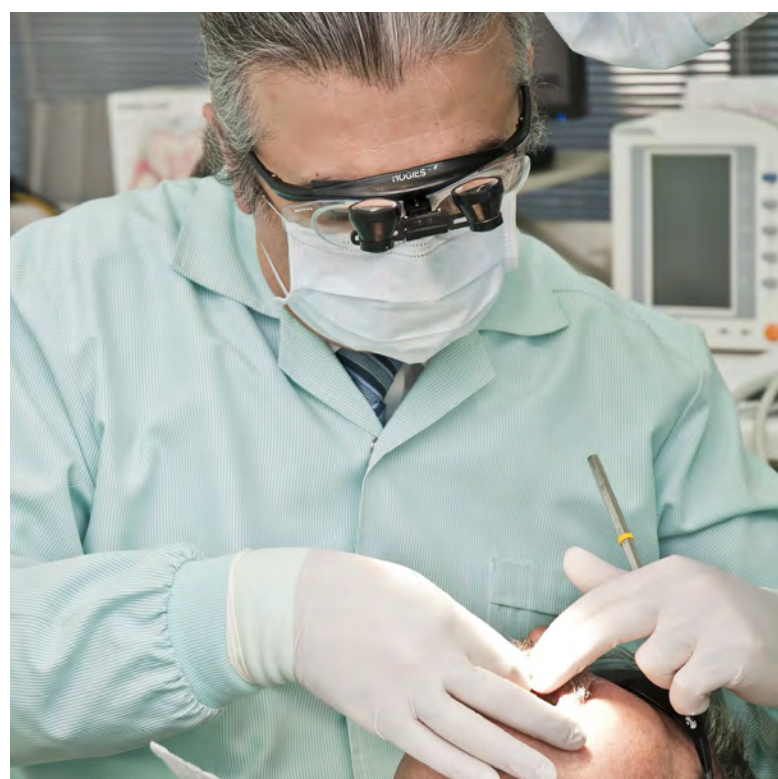
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Photographs

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- [4] The Ombudsman focused on discrimination in the field of dental care, author: drshohmelian, Pixabay, CC0 Creative Commons, edits: photo cropped.

The Ombudsman focused on discrimination in the field of dental care [4]



When does security “beat” the right of Access to Court?



Aneta Frodlová

The Supreme Administrative Court of the Czech Republic filed a proposal to annul Article 26 of the Citizenship Act, which excludes judicial examination of the decision for the reason of contradiction to the principle of the democratic rule of law, prohibition of discrimination and the right of access to court. The plenum of the Constitutional Court found the provision in question to be in conformity with the Constitution of the Czech Republic. What were the reasons for this ruling? Who gave a dissenting opinion on this case?

The plaintiff was rejected citizenship by the Ministry of the Interior for the reason of posing a threat to national security. The plaintiff appealed against the decision to the Minister of the Interior. The appeal had been dismissed because the minister confirmed that the threat to national security still lasted and for that reason the plaintiff cannot acquire citizenship.

The plaintiff then brought his case before the Municipal Court in Prague (hereinafter referred to as “Municipal Court”). However, the Municipal Court dismissed legal action because according to Article 26 of the Citizenship Act, the decision of the Ministry is in accordance with Article 22, par. 3 of the Citizenship Act, and as such, is excluded and cannot be judicially reviewed.

The plaintiff then proceeded to use Article 95, par. 2 of the Constitution of the Czech Republic (hereinafter referred to as “Constitution”) that the Municipal Court propose to the Constitutional Court to annul Article 26 of the Citizenship Act due to its contradiction with the Constitution. However, the Municipal Court stated that it had no doubt regarding the constitutional conformity of the provision, and he did not propose the annulment of the provision.

Following, the plaintiff filed a cassation complaint to the Supreme Administrative Court against the ruling of the Municipal Court. The Plaintiff stated that Article 26 of the Citizenship Act is in conflict with the Constitution for it is inadmissible that a certain group of people should be prohibited from the access to judicial protection in such a case. The



Building of The Supreme Administrative Court [1]

plaintiff pointed out that there is a place for arbitrariness by the administrative organs because their decisions cannot be, in certain cases, judicially reviewed and there is no judicial control, which may lead to the abuse of the administrative discretion.

The Supreme Administrative Court filed a proposal to annul the provision in question

The Supreme Administrative Court (hereinafter referred to as “SAC”) identified with the opinion of the plaintiff and concluded that the provision in question is in contradiction with the principle of democratic rule of law, prohibition of discrimination and also with the right to access to court.

The SAC also stated that the absence of judicial review, in this case, is unacceptable, for there is a place for legalization of absolute arbitrariness of administrative organs, which creates inequality among the applicants for citizenship. First, an applicant who is denied citizenship for the reasons of Article 22, par. 3 of the Citizenship Act is at a disadvantage contrary to the other applicants for citizenship in relation to filing a proper appeal, for there are no reasons given for the rejection of the application. Second, a rejected citizenship application for reasons other than the threat to national security can be judicially reviewed.

The SAC also stated that it is legitimate to conceal certain information from the public, however, the means chosen in this case are unproportionate. The SAC highlighted the fact that there are other rights affected by the rejection of such applications, such as the right to vote, the right to run for public office and the right of association.

Opinio iuris of the Constitutional Court

The Constitutional Court highlighted the prohibition of the exception from judicial review in cases where it affects the fundamental human rights according to Article 36, par. 2 of the Charter of the Fundamental Rights and Freedoms of the Czech Republic (hereinafter referred to as “Charter”). However, this article affects only cases where a certain fundamental right is concerned, and the decision of the administrative organ must breach such right.

According to the opinion of the Constitutional Court, this case does not fall under the scope of Article 36, par. 2 of the Charter and it is not enough that the rejection of such application affects the aforementioned rights. The law is, for these reasons, not in conflict with the prohibition of exemption from judicial review according to Article 36, par. 2 of the Charter.

Ministry of the Interior of the Czech Republic [2]

The Constitutional Court also does not consider the provision in question to be in conflict with the principle of the democratic rule of law for the purpose of Article 1, par. 1 of the Constitution. According to the Constitutional Court, the exemption from judicial review, in this case, pursues a legitimate aim and that the aim is the security of the state and protection of the sovereignty, which are above the judicial protection of subjective public rights of the individual.

In the context of the aforementioned decision of the Constitutional Court, it needs to be stressed that this opinio iuris is not sustainable in the long term as it contradicts the principle of separation of powers within the state. Security of the state is, without question, a legitimate objective, although we must also consider the fact whether this legitimate objective would be disrupted if the judicial power had access to the court files of such nature and if they reviewed the case.

The dissenting opinion of judges David Uhlíř, Vojtěch Šimíček, Ludvík David and Kateřina Šimáčková

The dissenting judges pointed out that the exemption from judicial review is factually conditioned by the decision of the Police of the Czech Republic or Secret intelligence, and that the applicant has





Constitutional Court of the Czech Republic [3]

no means with which he can view the content of this decision.

Therefore, it is not a lawmaker who decides that the decision will be exempt from judicial review, but the authority of the executive power. The executive power decides whether the application will be rejected for the reasons of national security and if the rejection will be supported by classified information. According to the dissenting opinion of the judges, this is the reason why the provision in question is not in conformity with the separation of power of the state and the principle of democratic rule of law.

The judges also stated that the provision in question is also in contradiction to the Constitution due to conflict with Article 36, par. 2 of the Charter, which permits exemptions from judicial review as long as the exemption does not affect fundamental rights and freedoms. The text of the provision “affecting the fundamental rights and freedoms” should be interpreted extensively. Even the decision and rulings which breach the fundamental rights and freedoms should be indirectly judicially reviewable. The provision in question should, therefore, according to their opinion, be annulled for its contradiction to the prohibition of exemptions from judicial review,

separation of power in the state and the principle of democratic rule of law.

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Will the Czech Republic finally ratify the Istanbul Convention?



Eva Dokoupilová

The Istanbul Convention has been rather negatively presented in the Czech media throughout the past year. What is the Convention truly about? Does it spark hatred between women and men? Is the Convention unnecessary for the Czech Republic as it does not bring anything new? The Department of gender equality of the Office of the government of the Czech Republic published a handbook which refutes myths and provides facts about the Istanbul Convention.

The Council of Europe Convention on preventing and combating violence against women and domestic violence

In 2011, the Committee of Ministers of the Council of Europe adopted the Convention on preventing and combating violence against women and domestic violence (the “Istanbul Convention” or the “Convention”) in Istanbul. Since then, 33 countries have ratified the document, 12 have signed it. Only Russia and Azerbaijan have not yet signed the Convention.[1] The Convention is an international agreement aimed at reducing violations of fundamental rights. The Convention is a response to the high rate of various forms of violence against women. According to a survey of the European Union Agency for Fundamental Rights, 32% of women in the Czech Republic experienced physical or sexual violence in their country, 12% of women experienced sexual violence and 5% of women were raped.

Apart from article 37, which deals with forced marriages, the Czech Republic has already implemented the Convention in its Penal Code. Therefore, some claim that the Convention is unnecessary and will not bring anything new to the Czech legal system. In fact, however, this view is wrong. The Convention does not only relate to criminal law but also to other branches of law. This article focuses on practical measures, in particularly on prevention, accessibility to services for victims, helplines, training of professionals and education. This is a practical area and issue in which the Czech Republic and many other countries are stumbling.



Illustration image [1]

Czech Experts – their opinion on the Convention

The Government Commissioner for Human Rights, Helena Válková, was initially very sceptical of the Istanbul Convention. However, as she publicly stated, a closer look at its content and a more accurate Czech translation of the document changed her mind. In an inter-party debate with Patrik Nacher, who opposes ratification of the Convention, Válková mentions that the Convention's benefits are undeniable: *“However, the benefits of the Istanbul Convention for our country lie in other measures, supporting the police's specialization in cases of sexual and domestic violence, ensuring the availability of programs for sexual offenders, or better addressing sexual violence in cyberspace.”*

Among the supporters of the Convention is an attorney, Daniel Bartoň, who represents victims of abuse and sexual violence. Like Válková, he points out that the implementation of the current regulation differs from its desired outcomes. According to Bartoň, the Convention is the fastest way to improve the current situation. Ratification of the Convention would also allow for the Czech Republic to express its interest in addressing domestic violence and violence against women, both domestically and internationally.

Other supporters of the Convention include Veronika Bílková, Taťána Gregor Brzobohatá, Mark Martin, and non-profit organizations such as Rosa, ProFem, Gender Studies and Nesehnutí, which are united under the network of Czech Women's Lobby or Amnesty International. Conversely, the largest opponents of ratification are the Czech Roman Catholic Church and deputies of the Christian and Democratic Union – Czechoslovak People's Party (KDU-ČSL), Civil Democratic Party (ODS) and Freedom and Direct Democracy (SPD).

Combating misinformation about the Istanbul Convention

Given the amount of misinformation that is emerging with regard to the Istanbul Convention, Válková is now actively working with the Department of Gender Equality of the Office of the Government of the Czech Republic to counter the misinformation. In cooperation with the Department of gender equality, the results of the “Impact Analysis of the Istanbul Convention in selected countries that have already ratified the document, which refute the most common Czech ratification concerns,” was published.

One such concern was the imposition of a duty of attorney-client privilege. Pursuant to Article 28 of the Convention, certain professionals, who are to maintain confidentiality, should be allowed, subject to particular conditions to report to the competent authorities any suspicion of serious violence if further acts are expected to be committed by that person. However, the analysis of the Department of gender equality showed that none of the countries surveyed noted a change in the attorney-client privilege.

Illustration image [2]



Another concern was caused by Article 6, which calls for the inclusion of a gendered perspective in the implementation of the Convention. The myth surrounding this article was based on the idea of a targeted eradication of biological differences between men and women. However, the analysis shows that a “gendered perspective” would, on the contrary, take into account the specific needs and life experiences of women and men, instead of combating them.

In particular, there is great concern regarding Articles 59 and 60 of the Convention, which deal with residence permits and asylum procedures. With regard to the residence permit procedure (Art. 59), the countries surveyed [2] usually already had the legal possibility for victims of domestic violence to submit a separate application for a residence permit if the original residence permit depended on their spouse or partner. Article 60 states that one of the reasons for granting asylum is a justified fear of gender-based persecution, or in other words, violence by the partner.

The available data show that most of the asylum seekers in the countries surveyed are male and that, after ratification of the Convention, an increase in the number of women seeking asylum can be observed in 2015. However, concerns about the impact of Article 60, such as a potentially higher number of asylums being granted on the basis of the states’ duty to protect victims of violence, have not proven true, as an increase in female asylum seekers is linked to wider migration trends, not the ratification of the Convention. This can also be illustrated by the fact that, following the conclusion of the EU agreement with Turkey on the return of illegal migrants from the Greek islands to Turkey in 2016, the number of women seeking asylum decreased.

In addition to the publication of the analysis, Válková also held several public and internal events and seminars to inform the public of the actual impact of the Convention. She also addressed Czech media and asked for help in the fight against widespread misinformation regarding the Convention.

Conclusion

Three years have passed since the Convention was signed by the Czech Republic, but the planned ratification in 2018 has not taken place. Prime Minister Babiš gave Válková a clear goal of first convincing

the Czech public of the benefits of the Convention, and only after this, promised to start steps towards its ratification. Whether Válková's step in this regard in cooperation with the Department of Gender Equality was sufficient will be decided in October this year, when the Convention is to be submitted to the Chamber of Deputies of the Czech Republic for consideration.

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Translated by Žuzana Andreska

Notes

- [1] Current status as of September 2018. The Czech Republic signed the Convention on 2 May 2016.
- [2] The countries surveyed include Albania, Montenegro, Denmark, France, Italy, Portugal, Austria, Serbia, Spain and Sweden. These are the countries that have ratified the Convention in 2013-2014 and therefore have adequate experience in meeting its requirements.

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Photographs

- [1] Illustration image, author: Photo Illustration by Lance Cpl. Michelle S. Mattei, US Marine Corps, CC0, edits: photo cropped.
- [2] Illustration image, author: unknown, maxpixel.net, CC0, edits: photo cropped.

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