

Czech Republic Human Rights Review



Dear readers,

In autumn, the Czech Center for Human Rights and Democratization has celebrated its five years of existence. While still being a baby among other European human rights centres, it is moving forward and evolving into a solid institution with a good reputation. The Center attended annual Conference of the Association of Human Rights Institutes (AHRI) in Copenhagen and tweeted online from this event. AHRI provides Center with platform for coordination in research projects and networking with other likeminded centres across Europe. The Center cooperates with the Graduate Institute of International and Development Studies on research project on the impact of BITs on human rights in their state parties.

Further Center organized the Jessup Moot Court Competition national round and provided one judge to the panel of judges. Moreover it has successfully organized a number of seminars for example the seminar Human Rights for the Vulnerable, the workshop on money laundering with Judge Hrdličková of the Special Tribunal for Lebanon, the conference on International and National Prosecution of International Crimes, the conference on the Crime of Aggression with Judge Fremr of the International Criminal Court and the public debate on Homosexual Adoptions in the Constitutional Democracy. Members of the Center are also regularly

invited to comment on the subject of asylum politics and foreign jurisprudence in the TV.

In this issue of the Czech Republic Human Rights Review you might find articles dedicated to moving cases of segregated education of Roma children in both Czech Republic and Slovakia and the polemic on whether it is necessary to vote on the Church Restitutions in the Referendum. You can also read about recent jurisprudence on controversial Solar Tax that was introduced by the Czech legislator to relieve the abrupt growth of solar power stations and on the next step in the Kinsky restitution case. You might be also interested into reading on the emergence of new statutory laws on criminalization of grow shops, exploitation of foreign lumberman in the Czech Republic, and last but not least about crossroads of business and human rights with respect to Czech arms industry and international politics towards China.

The Czech Center for Human Rights and Democratization was established five years ago, as the first institution of its kind in the Czech Republic, publishing monthly Bulletin on human rights in Czech and organizing conferences and seminars. If you are interested in human rights developments and questions both in the Czech Republic and Slovakia, we would be happy to assist you with our expertise.

We wish you an enjoyable reading
Monika Mareková and Martin Bobák

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Author: Jeroen Moes, www.flickr.com.

Front page photo: Old and modern tram meeting in Brno Česká street. Author: Aktron, Wikimedia Commons.

New Case Law Developments on the “Choking Effect” of the Solar Tax

Petr Suchánek

The „Solar Arbitration” lawsuit, which concerns the controversial solar tax, was filed against the Czech Republic by PhotoVoltaic Investors Club (IPVIC) at the Permanent Court of Arbitration and was then split into seven smaller lawsuits.[1] The Ministry of Finance presented this development as a success that should help the Czech Republic defend the tax before the Court. In addition to international arbitration, dozens of investors are privately resisting the solar tax in the Czech national court system. According to the Constitutional Court, the solar tax has potentially unconstitutional effects in that it violates the solar electricity producers’ right to own property. The continually evolving case law of the Supreme Administrative Court concerning the solar tax is notable in this context because the Constitutional Court delegated the duty to mitigate the unconstitutional effects to the general courts. However, the new case law developments highlight the importance of the Ministry of Finance stepping in to prevent violations of the solar electricity producers’ right to property.

Everything for a Just Solution

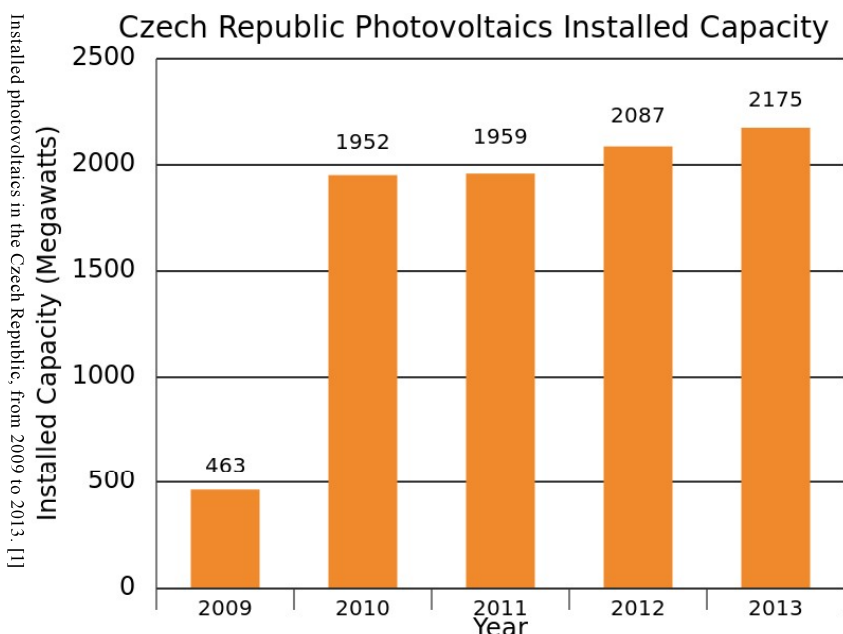
The solar tax was introduced to the Czech legal order in 2010 in reaction to the boom of photovoltaic power plants brought on by the increased affordability of solar panels and solar electricity. The Czech Parliament amended the legislation (Act No. 180/2005 Coll. on the Support of Production of Electricity from the Renewable Sources of Energy) to include a new 26%

tax on the purchase price of electricity for solar power plants that began operation between 2009 and 2010. This amendment was intended to mitigate the negative economic impacts of the public support of numerous power plants.

In March 2011, a group of senators submitted a proposal to the Constitutional Court to repeal the amended provisions of Act No. 180/2005 Coll. According to the senators, the amended provisions were in violation of the Czech Constitution and the Charter of Fundamental Rights and Freedoms of the Czech Republic, particularly the right to own property as established in Article 11 of the Charter. The Constitutional Court rejected the proposal in a judgment on May 15, 2012, ruling that the law was not inherently unconstitutional. However, in its obiter dictum it stated that the solar tax could potentially have a choking effect on individual solar electricity producers which could constitute a breach of Article 11 of the Charter. The Constitutional Court held that the constitutionality of such potential effects on individual solar electricity producers cannot be considered in an abstract context; it has to be addressed through individual complaints. It is the duty of the general courts to do “*everything for a just solution, however difficult it might appear*” in order to mitigate this choking effect where appropriate.

In reaction to the judgment of the Constitutional Court the solar electricity producers started to object to the choking effect of the solar tax by means of the taxpayer complaint established under Article 237 of the Tax Code. The rejection of the complaint, and the

consequent administrative appeal, gave the producers an avenue to file a judicial complaint before the administrative court. They subsequently lodged a cassation complaint to challenge the verdict of the Court of First Instance before the Supreme Administrative Court. However, all such actions were rejected. In a resolution of December 17, 2013, the extended bench of the Supreme Administrative Court declared the cases following such procedure to be inappropriate in general. The Court held that the effects of the solar tax on solar electricity producers cannot be evaluated by the courts in the taxpayer complaints or the following judicial proceedings. The instruction of the Constitutional Court in its May 15, 2012 ruling to consider the potentially unconstitutional effects of the solar



tax in individual cases is only possible through tax exemption under Articles 259 or 260 of the Tax Code.

Easier Said than Done

The problem with the solution proposed by the Supreme Administrative Court is its unenforceability. The provisions of Article 259 of the Tax Code concerning individual tax exemption were written under the presumption that the claim for exemption, and the authority to grant it, would be specified in individual Articles or the Tax Code itself. However, there are currently no such provisions in relation to the solar tax, and the electricity producers do not have the option to apply for the exemption. Using this provision, therefore, depends on the activity of the legislator which the Supreme Administrative Court acknowledged. If the legislator takes no steps to amend the law, Article 260 of the Tax Code allows the Minister of Finance to grant a tax exemption to a certain range of subjects in case of irregularities in the application of tax laws. However, this provision leaves the decision to grant the tax exemption purely to the Minister's will, and as such, it cannot be enforced.

The solar electricity producers started to raise claims that the current situation, where they have no option to initiate a tax exemption to protect their rights in any other way, constitutes a denial of justice. In a resolution of January 21, 2014 (ref. no. 1 Afs 101/2013), the Supreme Administrative Court held that the principle of separation of powers and the role of the administrative court did not allow it to substitute for the legislative or executive power. The legislator and the Minister of Finance are to be given time to react to the requirements laid down by the Constitutional Court and the Supreme Administrative Court. The Court stated that: *"The administrative courts would be required to act in defense of the petitioner and other affected persons only in case these elements of state power remained inactive for a long time and this inactivity reached a constitutional importance."* And following, the Court stated that the lack of a means to protect the rights of electricity producers does not constitute a denial of justice under current circumstances.

The news about the solar arbitration brought by MF DNES, a newspaper owned by the current Minister of Finance

and the head of the second largest government party, suggest that neither the legislative nor executive power intends to enact a solution suggested by the Supreme Administrative Court. Therefore, the question is what the court could do to protect the solar electricity producers in case the legislative and executive powers remain inactive. If the instruction of the Constitutional Court to take the effects of the solar tax into account in individual cases is only applicable through tax exemption, the courts have their hands tied. However, the Constitutional Court might express a different opinion in future proceedings relating to the solar tax in accordance with its conclusion that the courts have a duty to do *"everything for a just solution, however difficult it might appear."*

The Constitutional Court could proceed in a similar fashion to the judgment (ref. no. Pl. ÚS 15/09) in which it annulled the inappropriately short period for denying paternity and forced the legislator to pass a new piece of legislation. However, the regulation of the solar tax has changed since the original complaint. The current regulation affects solar power plants that began operation in 2010, and the solar tax decreased to 10%. It is therefore unclear whether the Constitutional Court could still find the regulation unconstitutional.

Notes:

[1] Jan Brož. Giant Solar Arbitrage Crumbled into Seven Smaller Disputes; companies are fighting separately. *iDNES.cz*, 19 April 2014, http://ekonomika.idnes.cz/solar-ni-arbitraz-se-droli-firmy-musi-bojovat-zvlast-f9q/-ekonomika.aspx?c=A140418_210903_ekonomika_zt

Photo:

[1] Installed photovoltaics in the Czech Republic, from 2009 to 2013. Author: Delphi234, Wikipedia Commons.

[2] Photovoltaic power plant near Brno. Author: Petr Opletal, Wikipedia Commons.



Photovoltaic power plant near Brno. [2]

End of “Kinsky Saga” before the ECHR?

Ladislav Vyhnánek

In February 2013, the European Court of Human Rights (“ECHR”) adopted a decision (Decision of February 19th 2013, application no. 21547/06 et seq.), that is perhaps going to bring closer to the end one of the longest judicial sagas of the modern Czech history.

The complainants, Franz Ulrich Kinsky and his son, argued that their right to a fair trial and right to peaceful enjoyment of property have been breached in civil proceedings which they initiated to recover their historical property. They also claimed that the treatment of their case by the Czech judiciary was discriminatory. In this regards, Mr. Kinsky claimed that he had been discriminated against on the basis of his origin (both national and family) because the courts had rejected his actions even though they had ruled in favour of other claimants with the same actions.

In earlier related cases (also concerning the restitution of Mr. Kinsky’s property), the ECHR indeed declared that Mr. Kinsky’s right to fair trial has been breached (cf. judgement of February 9th 2012, application no. 42856/06), particularly because of statements made by Czech politicians, the interference by the Ministry of Justice with the proceedings and the context of Mr. Kinsky’s criminal prosecution.

The involvement of the Czech politicians in the case of Mr. Kinsky was almost unprecedented; his restitution claims – besides being reviewed by the Czech courts, were considered a major political topic. Petr Nečas (then an MP and later the Czech Prime Minister), for example, stated: *„I do not know how we as legislators can do anything about the absolutely insane rulings of judges that suggest that they are independent, but in this instance independent of common sense. Questioning the seizure of property of persons who were demonstrably Nazis simply on the basis of completely formal administrative details, such as that a document from 1946 lacks a stamp or that the stamp is square instead of round, gives rise to misgivings about the*

train of thought of the judge involved.” [1] Similar comments were made by then Minister of Culture, Pavel Dostál: *„I oppose attempts to return property to active Nazis or their children, as happened in the case of Mr Oldřich Kinský.”* [2]

Because these comments and other relevant factors were related even to the rest of the cases of Mr. Kinsky still pending before the ECHR, Czech government – evading an otherwise inevitable loss – issued a declaration which admitted the violation of Mr. Kinsky’s right to a fair trial as described by the judgment of 2012 and offered payment of 25.000 EUR to settle the case. Despite the complainants’ objections, the ECHR struck the application out of the list of the cases (as regards the right to a fair trial) and declared it inadmissible in the remaining part.

This, however, did not end the disputes of Mr. Kinsky with the Czech Republic. As of January 2015, proceedings concerning Mr. Kinsky are still pending before the Czech Constitutional Court; after Mr. Kinsky’s death, the Czech Constitutional Court is awaiting the result of Mr. Kinsky’s inheritance proceedings in Argentina.

Notes:

[1] Judgement of the European Court of Human Rights, 9 February 2012, no. 42856/06, para. 15.

[2] Ibid., para. 16.

Photo:

[1] Kinsky villa, Praha Smíchov. Author: prasopestience, Wikipedia Commons.



Kinsky villa, Praha Smíchov. [1]

Segregated Education: Slovakian *dejá vu*?

Miroslav Knob

Discrimination against Roma children in the Czech educational system is not an entirely new topic, especially for our readers, since it was covered in the last issue of the Czech Republic Human Rights review. Despite the prolonged exposition of this issue, the Czech Republic still struggles to comply with the breakthrough ruling by the European Court of Human Rights (“ECHR”) in the case of *D. H. v. the Czech Republic*, [GC], 13 November 2007, no. 57325/00.

However, the Czechs are not the only ones in the region to have a hard time ensuring non-discriminatory access to education for Roma children. Recently, the Slovakian public was confronted with the results of the research conducted by the Slovak ombudsperson, Jana Dubcová. The research was conducted in July 2013 and it concerned the problem of the Roma minority’s access to education. For a reader acquainted with the Czech situation, the problems encountered by the Slovaks evoke a strong feeling of *dejá vu*.

Even though it is unnecessary to compare the Slovak study with the Czech case in great detail, it is interesting to note that the Slovak research was considerably more extensive. It did not focus only on the ethnic composition of classes at the elementary (and even pre-school) level, it also focused on the use of Roma language, the employment of Roma teaching assistants, and the knowledge of Roma language by the teachers. The techniques of conducting the research were, however, quite similar in some aspects. In both cases, the ethnic composition was determined based on plain “observation” by an independent third party. The em-

ployees of the Slovakian Ombudsperson’s office visited 21 elementary schools. They found that Roma children are often placed in schools where they form a majority, and thus are discriminated against (the “Roma schools” phenomenon). Just as in the Czech case, the Slovakian Roma children are disproportionately placed in “special schools” designed for students with mental disabilities.

Slovakian society thus faces a similar challenge as the Czechs. The first step to improving the situation is to acknowledge the mistakes that were, and are being, made. In this regard, the research constitutes a small but important contribution. In the Czech Republic, the research was heavily criticized by concerned teachers. It remains to be seen how the Slovak public will receive the results. In any case, both countries are still at the beginning of a difficult journey.

Photo:

[1] Romanian boy. Author: Marc Swenker, Wikipedia Commons.



Romanian boy. [1]

The Path of the Tree Workers Case through the Czech Judicial System

Lenka Pičová

During the seminar titled *The Challenges of Human Trafficking and the European Response*, held in December 2013 by the Faculty of Law at Masaryk University, a topical Czech case relating to human trafficking was discussed: the so called Tree Workers Case [1].

The case pertains to the exploitation of foreign workers. It has been in the courts since 2009, and has been repeatedly commented on by Czech media [2]. The case is currently pending in the Constitutional Court, and organizations that focus on migration and human rights issues are eagerly awaiting the verdict. Paradoxically, people standing behind this probably fraudulent employing of tree workers continue in their activities and are still hiring workers mainly from Balkan states to work in Czech forests. The involvement of the state-owned company Lesy ČR raises also suspicion since the tree workers worked for this company through questionable subcontractor companies.

The whole story began with number of foreign workers who lost their job due to the outbreak of the economic crisis. They were looking for another job and wanted to get employed fast. The Affumicata Company took an advantage of this situation and started to hire Vietnamese workers for forest works on a large scale. Later on, the same entrepreneurs under names of other companies (Madera servicio, Wood servis Praha and others) hired also workers from Romania or Slovakia. During the recruitment, the companies concurrently benefited from of the inability to speak Czech language or financial stringency. Under these circumstances, the foreign workers were willing to get employed encouraged by the visions of promised income. Afterwards, the foreigners were employed in forests administered by the state-owned company Lesy ČR. However, the conditions under which they worked were completely different from those which were promised to them. In some cases, they had to work for twelve hours a day, seven days a week, without rest and under any weathers conditions. They also did not get paid in the long term. They were not allowed to quit the

forest work because of the ignorance of language and environment, lack of finances or even under the threat of violence or expulsion from the country. The Romanian workers were not only threatened, but in this case the supervising personnel of the employer forced them to obedience using violence.

In the end, most of the workers didn't get paid partially or at all, and because their visas expired they had to return to their home countries. Among the workers prevailed the impression that it was hopeless to try to rectify the situation, and that the Czech authorities were not interested in their situation. Moreover, the attitude of the Czech entrepreneurs made them feel like second grade citizens despite the fact that except the Vietnamese all of them were citizens of the EU Member States.

In 2010 the law firm Prague Attorneys took charge of the case and filed a criminal complaint



Lesy České republiky, Teplice. [1]

in High Public Prosecutor's Office in Prague implying violation of Czech Criminal Code by the criminal act of human trafficking as defined therein [3]. However the case was stage by stage transferred, and after it was previously divided into separate parts it eventually ended up at the District Public Prosecutor's Office. Subsequently, despite the series of complaints against conduction of the investigation, the police concluded that the case is of civil character and the merit lies in unpaid wages. The investigation was deferred, and the Public Prosecutor's Office refused the prosecution too. The Prague Attorneys filed a Constitutional Complaint against resolutions of the Police of the Czech Republic and Public Prosecutor's Office in December 2013. The Constitutional Complaint was filed on behalf of mainly Slovakian and a few Romanian workers.

Even though the complainants are expecting denial of the complaint by Constitutional court and simultaneously are preparing an application to the court in Strasbourg, it is not excluded that, on the basis of the *Eremiášová and Pechová v. Czech Republic* decision [4], the Constitutional Court might rethink its attitude towards the constitutional requirement of effective investigation in criminal cases. As another impulse to Constitutional Court to act, could be accounted that the ECHR has defined in its judicial practice the

term "forced labour" and positive obligations of state to protect victims of human trafficking and to punish the responsible individuals. In September 2013 the Czech Republic also ratified the Convention against Transnational Organized Crime and the Palermo protocol [5]; documents of the United Nations dealing with actions against human trafficking and smuggling of migrants created as a part of fight against transnational organized crime. Also, the term "forced labour" has already been clarified in judicial practice of the Constitutional Court [6]. Therefore, hope for domestic solution of the case of exploited foreigners is still alive.

Notes:

[1] See also documentary *Treeworkers Case* (2012) directed by Daniela Agostini.

[2] For example: iDnes.cz. The Case of exploited "treeworkers" is at a standstill, the suspicious companies are delaying the investigation. 11 December 2011 (http://zpravy.idnes.cz/pripad-vykoristovanych-zahranicnich-delniku-vazne-fh4-/domaci.aspx?c=A111205_174914_domaci_jj).

[3] Under the Section 168 para 2 of Criminal Code human trafficking is induction, mediation, engagement, luring, seduction, concealment, detention or handing over persons to the other person who will benefit from their work, use them for forced labor or other forms of exploitation. To the mediation of victims of human trafficking who are adults another means of coercion shall be used which are listed in the Criminal Code, violence, threats of violence or other serious harm or deceit, abuse of error, distress or addiction..

[4] *Eremiášová and Pechová v. Czech Republic*, European Court of Human Rights, 16 February 2012, application n. 23944/04.

[5] OSN. *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime*. (<http://www.unodc.org/unodc/treaties/CTOC/>).

[6] Plenary finding Pl. ÚS 1/12, Constitutional Court, 27 November 2012.

Photo:

[1] Lesy České republiky, Teplice. Author: Takmocsekretovanej!, Wikipedia Commons.

[2] Nature Reserve U spálené in Litovelské Pomoraví protected landscape area in okres Olomouc. Author: Michal Mañas, Wikipedia Commons.



Nature Reserve U spálené in Litovelské Pomoraví protected landscape area in okres Olomouc. [2]

Economic Interests of Czech Republic in Conflict with Human Rights Policy

Lenka Píčová

The issues arising from the conflict between business and human rights are getting more and more topical; after all, the Czech Center for Human Rights and Democratization has a separate section devoted to this subject. Another example of the growing significance of this conflict is the debate from the “Masaryk debates” cycle which took place at the Faculty of Social Studies in Brno [1]. The resolution for the debate read as follows: *“The economic interests of Czech republic shouldn’t be endangered by human rights policy.”* The subject ignited a lively discussion. The goal of this article is a brief summary of two recent cases in which the economic interests of the Czech Republic conflict with its proclaimed respect for human rights. Firstly, the export of Czech arms to Egypt will be described, and following, an analysis of the Czech Foreign Minister’s visit to China will be offered.

A substantial contract for arms intended for Egyptian armed forces was awarded to Czech companies, but was delayed due to a European Union embargo on the export of arms to this region. Nonetheless, the Czech government insisted on carrying out the contract which was objected by a group of non-governmental organizations. Inter alia, they pointed out the hypocrisy of the Czech political representation since the political representatives of the Czech Republic, along with delegates from other states, criticized violations of human rights by the Egyptian regime during the United Nations Human Rights Council’s session.[2] However, the profit from the arms contract was too lucrative, and the Czech government bodies entered a stalemate. On one hand, the Czech government was criticizing Egypt for the repressive methods of its government, and on the other hand, they intended to supply the repressive regime with a substantial amount of arms from Czech factories. Despite the protests of non-governmental organizations, the criticized contract was carried out, and thousands of arms and millions of pieces of ammunition were transported from the Czech Republic to Egypt as new weaponry for police forces.

On another front pertaining to the business-human rights conflict, the Minister of Foreign Affairs of the Czech Republic, Lubomír Zaorálek, went for an official visit to China to strengthen relationships with the Empire of the Middle. It was the first visit of the Czech Minister of Foreign Affairs to China in fifteen years. Lubomír Zaorálek stated that the restoration of normal relations with China doesn’t mean



Lubomír Zaorálek. [1]

that the Czech Republic would give up on defending human rights in this country. However, the most significant element in the development of mutual relations is the withdrawal of formal criticism of Chinese policies towards Tibet, and a cessation of the challenging of the present state borders of China on behalf of the Czech government. The Czech government has already earned criticism from opposition political parties for giving preference to business matters over human rights. Nonetheless, Minister Zaorálek defended governmental policy by pointing to an official declaration on human rights protections that was signed by the Czech and Chinese governments. It is questionable what impact the “mandatory” notice on the human rights situation in the aforementioned declaration will have. It was signed primarily as a gesture through which the Czech Republic will openly seek the creation of new economic opportunities and investments in China. Prime Minister Bohuslav Sobotka, in response to the questions of journalists, blamed the previous cold relations with China on former governments and the Civic Democratic Party, and also indirectly on friendly relations between Václav Havel and the Dalai Lama of Tibet.

From to the two aforementioned cases, it seems that today's governmental status quo is to act in favor of economic profit when it directly conflicts with human rights interests. The question is, for how long will the political elites be satisfied with superficial commitments to human rights for the sake of investment opportunities?

Notes:

[1] 30 April 2014

[2] Denmark And 26 Other Countries Addresses Human Rights Situation in Egypt at HRC25. Permanent mission to the UN in Geneva, Ministry of Foreign Affairs of Denmark, 7 March 2014, <http://fngeneve.um.dk/en/news/newsdisplaypage/?newsID=EB280696-2F4F-427A-A721-5963916F2CB2>.

Sources:

Stop the export of guns to Egypt, called European organizations on Czech ministers. NESEHNUTÍ, 16 April 2014, <http://nesehnuti.cz/vystupy/zastavte-vyvoz-zbrani-egypta-vyzvaly-evropske-organizace-ceske-ministry/>.

Open letter of NESEHNUTÍ regarding the export of Czech handguns and ammunition to Egypt. NESEHNUTÍ, 16 April 2014, <http://zbrane.nesehnuti.cz/index.php/open-letter-of-nesehnuti-egypt-04-2014/>.

Reply of Ministry of Foreign Affairs on our open letter about Egypt. NESEHNUTÍ, 31 May 2014, <http://zbrane.nesehnuti.cz/index.php/odpoved-ministerstva-zahranicnich-veci-na-nas-otevreny-dopis-k-egyptu/>.

Zaorálek: We don't criticize the occupation of Tibet, but we defend human rights in China. Česká televize, 23 April 2014, <http://www.ceskatelevize.cz/ct24/domaci/270728-zaoralek-nekritizujeme-okupaci-tibetu-ale-hajime-lidska-prava-v-cine/>.

Czech Republic is restoring relations with China because of business, Zaorálek is heading to Beijing. iDnes, 23 April 2014, http://zpravy.idnes.cz/zaoralek-zamiri-do-ciny-vlada-chce-vzkrisit-vztahy-s-ni-pid-domaci.aspx?c=A140423_151719_domaci_kop.

Photo:

[1] Lubomír Zaorálek. Author: Foreign and Commonwealth Office, Wikipedia Commons.

[2] Gun CZ 75. Author: Sgaba, Wikipedia Commons.



Gun CZ 75. [2]

Referendum on Church Restitutions and the Right to Property

Is it possible to revoke the church restitutions by way of referendum?

Miroslav Knob

The Act on Church Restitutions that governs compensations for the historical property of the Czech churches (expropriated during the communist regime in Czechoslovakia) has already been a cause of controversy in the Czech Republic. The judgement by the Constitutional Court that declared its constitutionality was considered one of the biggest legal blockbusters of 2013. However, this decision did not bring the church restitutions issue to an end.

The political parties that did not agree with the restitutions in general (or disagreed with particular conditions of the restitutions) decided to invoke the issue on the campaign trail for parliamentary elections. The Communist party was the most outspoken in this regard as it explicitly demanded a referendum on the future of church restitutions. The Social Democrats did not explicitly call for a referendum, but they did state that a revision of the church restitution policy is necessary (they mainly hinted at lowering the compensations and limiting the extent of property to be returned).

In light of these considerations, it is necessary to assess whether the revision, or a revocation of church restitutions, can be subject to a referendum. The obligation of the state to transfer property to churches that is regulated by the Act on Church Restitutions gives rise to a legitimate expectation of the churches to receive such property. The legitimate expectation enjoys protection both under the Czech constitution (art. 11 of the Charter of Fundamental Rights and Freedoms) and under the European Convention on Human Rights (art. 1 of the Protocol 1). In a state based on the rule of law, it is quite obvious that an act of the Parliament (and moreover an act that

has been declared constitutional by the Constitutional Court) creates a strong and legitimate expectation that it will be adhered to by the state. After the Czech state – by statutory means – introduced a system of restitutions, it is impossible to change the system without simultaneously encroaching upon the legitimate expectations of the Czech churches.

The protection of legitimate expectations (as well as the protection of property rights in general) is not absolute, but the state is bound by its mandate once it has expressed its will to return the property in question. The referendum would quite likely result in the revision or revocation of the restitutions, considering the general social consensus on the issue. If revised or revoked, the question would become whether such a change could be considered proportionate and consistent with the system of fundamental rights protections in the Czech Republic. We can only express our hopes that, should the referendum ever take place, there would be a debate about this particular facet of the dispute. So far, the aforementioned political parties do not seem eager to pay any attention to the possibility that fundamental rights are at stake.

Photo:

[1] Church of St. Vitus. Author: Stanislav Ferzik, Wikipedia Commons.



Church of St. Vitus. [1]

Criminalization of Grow Shops

Miroslav Knob

On February 20th, 2014, the Czech Constitutional Court decided an important case concerning “grow shops”. Czech criminal courts have previously stated that owners as well as employees of grow shops (shops providing the necessary equipment for growing marijuana) can be held criminally liable under the Czech Criminal Code, namely under Section 287 (supporting and inducing the abuse of an addictive substance). Based on this case law, the Czech authorities raided many grow shops in the Czech Republic.

Two men who were arrested in the raids and later convicted filed a constitutional complaint against the conviction. The activity for which they were held liable consisted mainly of selling the seeds of “female” marijuana plants, distributing advertisement leaflets and catalogues, and selling growing equipment and paraphernalia for smoking marijuana (pipes, papers, filters or grinders). According to the Czech criminal courts’ case law, the combination of these factors promotes a certain lifestyle which is inseparably connected to the abuse of marijuana.

The complainants claimed that the conviction was unconstitutional for three reasons. Firstly, they argue that it is improper to classify grow shops under the criminal code’s definition of supporting or inducing the abuse of an addictive substance. Secondly, the information contained in leaflets and catalogues is readily and publicly accessible. And thirdly, the convicted men pointed out that criminal prosecution should be reserved for the most severe and dangerous conduct (a subsidiarity of criminal prosecution).

The Constitutional Court did not deal with the first two claims in any significant way, and for the most part it upheld the approach of the lower courts. However, it paid some attention to the requirement of subsidiarity criminal prosecution. Even though the Czech Constitutional Court did not rule in favour of the complainants, it agreed with some of their arguments. The subsidiarity principle – in the Court’s opinion – means that the lawmaker is obliged to tolerate (and not criminalize) behavior that is non-conformist or unconventional. Thus, even if the majority of society despises certain conduct, it is not entitled to impose its opinions on the minority by means of criminal law, unless it is absolutely necessary. The Court hinted that there is an ongoing debate in society concerning marijuana; however, in this case it decided not to intervene. This



Cannabis: [1]

can be partly ascribed to the fact that the complainants’ punishments were annulled by president Klaus on January 1st, 2013. Therefore, the complainants’ rights have not been affected in a severe way, and the Constitutional Court’s reasoning was quite minimalistic.

In our opinion, however, the reasoning of such an important decision should have had more depth. The future importance of the decision lies in the fact that it permits the raids of grow shops conducted by the police (whereas not all grow shops offer such a broad range of products as the complainants’). The minimalistic approach utilized by the Czech Constitutional Court deserves criticism due to the social debate over decriminalizing medical marijuana. The ruling exposes some inconsistencies in the state’s approach towards marijuana. The Constitutional Court decided to remain silent.

Photo:

[1] Cannabis. Author: de:Benutzer:Michael_w, Wikipedia Commons.

Dismissal of Government Commissioner for Human Rights

Lenka Pičová

On 15 October 2013 the head of the Office of the Government's Section for Human Rights Monika Šimůnková was dismissed from her office by the Head of the Government's Office. The Office of Government justified this act by pointing out her long-term bad working attitude and conflicts with subordinates. Šimůnková herself denied such information as unfounded. As a follow-up to her removal, she resigned also from her position of Government Commissioner for Human Rights. She commented on her decision with a statement that this position is marginalized, has no powers and no employees. According to the new Rules of Procedure, the Commissioner cannot even attend the government meetings. A provisional head of the Section for Human Rights is now Martin Šimáček; head of Government's Agency for Social Integration [1] [2].

One of the reasons for this change in the office could also be that Šimůnková engaged especially in child's and women's rights instead of probably the most urgent Czech problem – the existence of Roma ghettos and increasing racist tendencies and radicalism in society [3]; these are also some of the main chapters of Czech Helsinki Committee's Report on Human Rights Conditions in the Czech Republic [4].

Worthy of attention is also the debate that ran through media along with this affair which questioned whether the issues of national minorities would be transferred to Ministry of the Interior any-time soon [5]. That would definitely mean a heavy intervention in existing concept of human rights agenda and its fragmentation that would downplay the human rights problem in government's policy even more.

But since the parliamentary elections which took place in October 2013, there seems to be some human rights progress. The newly formed government restored the Minister for Human Rights

post which was dissolved by the previous government in 2010? The new Minister for Human Rights is Jiří Dientsbier, a social-democratic politician who is popular among general public [6]. He has been rather notable figure ever since his appointment and has been helping to promote the human rights agenda. Lately, he has promoted a very topical issue: adoption of children by same-sex couples [7].

However the Government's Commissioner for Human Rights post is still vacant and the government takes its time to decide who is going to be the most suitable person to be appointed and when is the right time to do so going to come [8].

Notes:

[1] *Press releases*. Government of the Czech Republic, 26 October 2013, <http://www.vlada.cz/cz/media-centrum/tiskove-zpravy/>.

[2] Šimůnková: *Reasons for My Dismissal Were Humiliating and Ridiculous*. ČT24. 26 October 2013, <http://www.ceskatelevize.cz/ct24/domaci/246658-simunkova-duvody-pro-me-odvolani-byly-dehonestujici-a-smesne/>.

[3] Třešňák, Petr. *Alone and Quiet*. Respekt 43/2013, p. 17-18.

[4] *Report on Human Rights Conditions in the Czech Republic in 2012*. Czech Helsinki Committee, 26 October 2013, <http://helcom.cz/ke-stazeni/zpravy-o-stavu-lidskych-prav-v-cr/>.



Monika Šimůnková. [1]

[5] Šimůnková: *Reasons for My Dismissal Were Humiliating and Ridiculous*. ČT24. 26 October 2013, <http://www.ceskatelevize.cz/ct24/domaci/246658-simunkova-duvody-pro-me-odvolani-byly-dehonestujici-a-smesne/>

[6] *Approval Rating of Politicians in January*. STEM, 7 February 2014, <http://www.stem.cz/clanek/2875>.

[7] Kopecký, Josef. *Dienstbier: I Would Support Adoptions Regardless of Sexual Orientation of the Couple*. iDNES.cz, 17 January 2014, http://zpravy.idnes.cz/rozhovor-s-budoucim-ministrem-jirim-dienstbierem-fsz-/domaci.aspx?c=A140117_161141_domaci_kop.

[8] Jiříčka, Jan. *Sobotka: We Will Preserve the Post of Commissioner for Human Rights but For Now It Will Be Kept Vacant*. iDnes.cz, 9 February 2014, http://zpravy.idnes.cz/post-zmocnence-pro-lidska-prava-se-zatim-nebude-obsazovat-p3o-/domaci.aspx?c=A140205_125151_domaci_jj.

Photo:

[1] Monika Šimůnková. Author: Lmacku, Wikipedia Commons.

[2] Jiří Dienstbier. Author: user:Petr Vilgus, Wikipedia Commons.



Jiří Dienstbier. [2]

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