

# Human Rights in the Czech Republic



Dear readers,

It is our great pleasure to introduce you the inaugural issue of the English version of the Bulletin of the Czech Centre for Human Rights and Democratization. While we publish monthly news on human rights from all over the world in Czech, you will find an overview of main developments in the Czech Republic and Slovakia in the quarterly English Bulletin.

The Czech Republic held a parliamentary election in the last week of May 2010. We have examined how much space was devoted to human rights in the programs of the main political parties and what their preferences were concerning human rights. We have also analyzed the Czech “opt-out” from the EU Charter of Fundamental Rights and concluded that, similarly as has been pointed out in the cases of the UK and Poland, the opt-out might not have the effects their proponents hoped for. The Supreme Administrative Court dissolved the xenophobic Workers’ Party in one of its most elaborated judgments; we offer a summary of the decision and fragments of our interview with the head of the court’s chamber dealing with political parties. Also some problematic issues that have spoiled the human rights reputation of the Czech Republic and Slo-

vakia – the sterilization of Roma women and the *Labsi* case in which Slovakia has not followed an interim measure of the European Court of Human Rights.

The Centre for Human Rights and Democratization was only established recently, but it is the first institution of its kind in the Czech Republic, publishing on the topic and organizing conferences. If you are interested in human rights developments and questions both in the Czech Republic and Slovakia, we will be happy to help you with our expertise.

Sincerely,  
Czech Centre for Human Rights and Democratization  
International Institute of Political Science  
Masaryk University, Brno



International Institute of Political Science  
of Masaryk University in Brno



Mezinárodní politologický  
ústav Masarykovy  
univerzity v Brně

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### **The Czech Centre for Human Rights and Democratization**

The Czech Republic was lacking an academic center whose goal would be to conduct an impartial research on human-rights-related topics. Despite of the fact that the Czech Republic often presents itself as a country which values human rights and also tries to incorporate them into its foreign policy, social science research on this topic is not well developed here. The Czech Centre for Human Rights and Democratization (CCHRD) represents an independent academic institution dedicated to analyzing human rights from both social science and international law points of view.

The Czech Centre for Human Rights and Democratization has been founded to fill this gap and create an independent academic environment for human rights research. The Centre operates under the aegis of the International Institute of Political Science of Masaryk University, and cooperates with other academic institutions. Both the Faculty of Social Studies and the Faculty of Law of Masaryk University are to be found among partner institutions of the Centre. It also cooperates with non-governmental institutions and judicial institutions – the Constitutional Court of the Czech Republic, the Supreme Administrative Court of the Czech Republic, and the European Court for Human Rights.

## The UN, Human Rights, and the Czech Presidency of the EU - Interview with Petr Preclík



*Petr Preclík is a graduate of International Relations at the Faculty of Social Studies at Masaryk University in Brno and he also graduated from the Human Rights and Democratization E.MA program in Venice.*

*Last year he worked as an advisor for human rights during the Czech Presidency of the EU at the UN in Geneva and in the delegation of the European Commission in New York. Petr Preclík is mainly concerned with the issue of human rights in the Russian Federation and the theme of his Master thesis was primarily focused on the Russian Federation. The topic of his thesis was „Culture Re-introduced: Contestation of Human Rights in Contemporary Russia“.*

We have asked Petr questions mainly about his experiences while working at the UN as well as a few questions about the Czech Republic Presidency of the European Union in 2009 concerning human rights issues.

**How has the transformation of the Commission for Human Rights to the Council for Human Rights been evaluated?**

It is believed that the Council is powerless, polarized, and often blocked, which prevents it from reacting to a human rights crisis. The existence of the sole Council subordinated directly to the General Assembly, not to the Economic and Social Council as the Commission used to be, threatens the existence of the Third Committee of the General Assembly, which deals with human rights as well. Some states argue that there is a duplication of the organs of UN and are in favor of cancelling the Committee. On the other hand, currently the UN is undergoing a long-term process, and as a part of the process the issue of human rights has become a part of the agenda of all UN organs, including the Security Council. The potential of human rights and discussion dealing with this issue at the UN have definitely the different qualitative level than it used to be in case of the former Commission. The audit in 2011 is going to have a relevant impact on evaluation of the work of the Council for Human Rights.

**What steps could be made for the Council for Human rights to be less politicized?**

The Council does not need to be depoliticized. Human rights are always politics! Probably you might have meant polarization of the Council and voting based on the geographic key rather than according to issues being discussed. But this is not a procedural problem but political. In all groups there are some moderate members and these states need to be negotiated first and as soon as possible. The polarization of the Council is always used as an excuse that is supposed to cover the inability of the Western countries to react and negotiate with the countries mentioned above. The EU believes that it is necessary to cooperate more with the countries of Latin America and Africa. But then the EU discusses behind closed doors, sometimes even for a period of two months, and a day before an important vote it remembers its (again not kept) resolution. Most of the countries do refuse the concepts, defended by the radical members of the Council, for example defamation of religion. The voting about the resolution concerning Sudan last year, proved that a lot of small African states are willing to vote against the geographical key if they are involved in the process soon enough.

**It seems that the USA has been losing its influence in the debates concerning human rights and also the powers first obviously pro – American (India or Brazil) have recently voted with China or Russia rather than with the USA. Is it true? Is it more difficult either for the USA or the EU to find an ally?**

I would say that the USA and the EU have missed an important shift in the understanding of human rights. The EU has been still emphasizing the same issues, but at the present time other issues have been more urgent. European unwillingness to find a compromise on the topics such as development, migration, climate and international trade makes hard for it to find any partners, and not just at the UN. At the same time the EU obviously overestimates the inner coordination among 27 EU members, which to a particular extent causes the EU to open further discussions with other actors too late. Therefore, many states have a feeling that they are left out from any discussions and are introduced to a pre-ordained conclusion when time is almost up.

## How do you evaluate the effectiveness of the UN concerning human rights?

The UN is the only platform where the human rights are discussed in a worldwide sense and all countries, even those with the worst human rights records, participate in the discussion. This makes the UN unique and needed.

## What is the main problem of the UN mechanisms?

The main problem of the UN in the human rights field has always been the problem of non-interference in the internal affairs of a state that is granted to all countries by Article 2 of the UN Charter. The problem is how to discuss and comment on the situation in a particular country without a direct interference into its internal affairs. The mechanisms that are able to do it are considered to be successful. At present there is a Universal Periodic Review of Human Rights which has proven to be successful. On the other hand, special sessions of the Council and their geographically focused rapporteurs, who are almost dying out, have been less successful.

## What practices of states have attracted your interest most?

Many states have understood that that the UN will never get rid of some practices. As a good example the NGOs can be used. States such as China, Cuba, Sudan or Sri Lanka have recently started to bring to Geneva NGOs that actually pretend to be NGOs. These “governmental non-governmental organizations” are, however, on a “neutral” side, defending their country of origin and are actually preventing other “genuine” NGOs from criticizing their governments by taking too much time in the discussions, so there is little time left for other NGOs which want to bring more critical views on the issue at hand. Some diplomats started to bring the representatives of these NGOs by their cars at night time which enables them to be put on the list much earlier than the representatives of other NGOs who are let into the building of UN no earlier than 8 am. This means that during the meeting, claims such as “Havana is in the avant-garde of human rights” can be heard!

## How was the Czech Presidency of the European Union in 2009 evaluated concerning human rights?

I can only evaluate the mission in Geneva which I have experienced. From my point of view it was a success. The Czech Republic managed two main meetings and three special sessions: the Durban Revision Conference and also the negotiations of Revision Reports about human rights in Cuba, Russia, and China.

## Is there any event that can be considered to be a great success or on the other hand one that was not a success at all?

Among the biggest successes we can count the achievement of a consensual resolution on Myanmar as well as an extension of the mandate of an independent expert for Sudan. On the other hand, the special session about Sri Lanka, which turned out to be a one man show of this island, is considered to be a shame for the EU. The Western countries themselves chose some controversial methods in their attempt to fight terrorism and therefore the criticism of Sri Lanka was based on weak arguments and the opinion of the other side seemed to be stronger. The claim that the defeat of terrorists, after almost 25 years of lasting conflict, is needed to be celebrated and that there is no need for further analysis of the methods used to achieve the victory, dominated the discussion.

## Is EU considered to be a coherent actor by the other delegations?

In some areas we can say that it is. For example in cases of issues such as racism, its relation to Palestine or the right to development – it is harder to come to an agreement and find a common position. Most countries take advantage of this. In these areas, the negotiation potential of the EU is quite weak. In case of other issues – such as migration – the common opinion is based on tight compromise, which gives the countries just a small space for further negotiations. There are some topics such as freedom of speech, the death penalty, the geographic mandate, where the EU is coherent and its position is strong.

**The International Institute of Political Science of Masaryk University** is an independent research body established in 1990. Since then, it has focused on the topics of political, social, economic and legal development of society. As a university interdisciplinary institution, it contributes to the cultivation and development of social science fields of study and their accessibility to the wider public. The Institute is having an impact on contemporary political science through initiating and realization of its own research projects. It also regularly publishes the outcomes of its research in both periodicals and non-periodicals, and coordinates and organizes scholarly conferences and lectures.



## The Czech Opt-out from the Charter of Fundamental Rights of the EU: Really an Opt-out?

Helena Bončková

On 3rd November 2009 the President of the Czech Republic signed the Treaty of Lisbon. Due to this act the long process of ratification was completed not only in the Czech Republic but also in the European Union as a whole. The president reacted to the positive ruling of the Czech Constitutional Court from the same day regarding the compliance of the Treaty of Lisbon with the Czech constitutional order. The President had earlier conditioned his signature on the adoption of the so called opt-out from the Charter of Fundamental Rights of the European Union. Other member states promised the adoption of the opt-out for the Czech Republic on the summit of the European Council in Brussels in October 2009. The opt-out is to be included in the text of the founding treaties when the next Accession Treaty is concluded.<sup>1</sup> The nature and effects of the opt-out for the Czech Republic have been under discussion in the Czech media as well as in political disputes. The ongoing di-

scussions have unfortunately showed entirely erroneous ideas of some actors concerning the meaning of the Charter of Fundamental Rights and the relevant case law of the Court of Justice.

First of all, the label “opt-out” is completely misleading in relation to the content of the Protocol No. 30 on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom which should also apply to the Czech Republic once the amendment is included in primary law. The Protocol does not state anything about possible exclusion of the application of the Charter of Fundamental Rights in the relevant member states. From the text of the Protocol, only some limitations could be deduced as far as the application of the Charter is concerned. Article 1, Paragraph 1 of the Protocol states: “*The Charter does not extend the ability of the Court of Justice of the European Union,*



Czech president V. Klaus (in the middle), photo: Prague Castle web page

*or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.*" The key wording in this paragraph is the formulation "does not extend the ability." When the member states are implementing EU law, the Court of Justice is competent to consider whether the measures in a question comply with fundamental rights.<sup>2</sup> The Protocol does not exclude this competence of the Court of Justice; it states only that the ability given to the Court of Justice in this regard is not further *extended*.<sup>3</sup>

Article 1, Paragraph 2 of the Protocol stipulates that "*in particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law.*" It is not true, therefore, that rights included in the Title IV of the Charter (social rights) will not be guaranteed to Czech nationals as some Czech media and politicians have suggested. On the contrary, Title IV of the Charter will apply as long as the rights encompassed in this Title are provided by national law. For the Czech Republic, it means that social rights will be applicable with almost no exception.<sup>4</sup>

Finally, the Article 2 of the Protocol provides that "*to the extent that a provision of the Charter refers to national laws and practices, it shall only apply to Poland or the United Kingdom to the extent that the rights or principles that it contains are recognized in the law or practices of Poland or of the United Kingdom.*" This article again does not state anything about the relevant rights or principles not to be applicable in the Czech Republic. The article provides that the rights or principles contained in the relevant provisions of the Charter will be recognized only to the extent in which they are recognized in the national law or practices.

To sum up, the Czech "opt-out" in fact does not represent any opt-out from the application of the Charter of Fundamental Rights of the EU as such. The negotiated limitations only correct possible effects of the Charter to some extent. The European Committee of the House of Lords came to the same conclusion in its extensive analysis of the Treaty of Lisbon as it refers to Protocol No. 30 mainly as to the interpretative protocol.<sup>5</sup>

Moreover, the future of the Czech "opt-out" is not certain at all. It will depend on the position of the Czech negotiators at the time of the conclusion of the next Accession Treaty as they could come to the conclusion that it is not necessary to persist on the necessity of the "opt-out" any more. The key player could also become the Czech Constitutional Court as according to its case law it is not possible to lower the established level of protection of human rights. Protocol No. 30 could represent exactly such a kind of lowering of the level of protection; therefore, the Czech Constitutional Court might come to the conclusion that the next Accession Treaty is not in compliance with the constitutional order of the Czech Republic. However, the ratification of international treaties is the competence of the president. Would President Klaus be willing to sign the Accession Treaty without the "opt-out?" There are still many questions raised by the negotiated "opt-out" which will have to be answered in future.



#### Notes:

1) See Brussels European Council 29-30 October 2009. *Presidency Conclusions*, on-line text ([http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/110889.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/110889.pdf)).

2) See Craig, P. – Búrca, G. de (2007): *EU law: Text, Cases, and Materials*, Oxford University Press, Oxford, pp. 395–402.

3) The same is stated for the courts or tribunals of Poland and the United Kingdom which are given on the grounds of their national laws certain ability to consider the compliance of the laws, regulations or administrative provisions, practices or action with the fundamental rights. The Protocol states therefore that such ability of the national courts will not be extended by the Charter of Fundamental Rights as well.

4) These rights are guaranteed by the Charter of Fundamental Rights and Basic Freedoms which constitutes a part of the constitutional order of the Czech Republic. They are also guaranteed in other laws, as well as they result from many international obligations of the Czech Republic, especially from the European Social Charter.

5) European Union Committee, House of Lords (2008): *The Treaty of Lisbon: an impact assessment*, on-line text (<http://www.parliament.the-stationery-office.co.uk/pa/ld200708/ldselect/lddeucom/62/62.pdf>), pp. 101–107.

## Czech Workers' Party Dissolved by the Supreme Administrative Court

Ladislav Vyhnanek

On February 17th, the Czech Supreme Administrative Court dissolved the Workers' Party ("Dělnická strana"); it was the first case of dissolution of a political party due to the nature of its political activities in Czech history (hereinafter also case *Workers' Party II*).

Such a decision of course inevitably involved human rights aspects. The freedom of association is guaranteed by many modern human rights catalogues, including the Czech one, but on the other hand we must take into account the rights of individuals or even entire groups of people whose fundamental rights may be threatened by activities of a political party. The Supreme Administrative Court made it clear that if a political party abuses the right of association (see Article 17 ECHR) and threatens the rights of others, it is necessary to limit its right to associate.

We have discussed our observations concerning this breakthrough judgment directly with Vojtěch Šimíček, the chairman of the "political parties" Chamber at the Supreme Administrative Court. In his opinion, the previous decision known as *Workers' Party I* was even more important, although the Government's proposal to dissolve the Workers' Party was then rejected. He explained this seemingly paradoxical view as follows: "While the first decision set out

the conditions – the Czech Republic as a democratic state based on the rule of law – for a dissolution of a political party, the second "only" applied pre-existing criteria in the specific situation."

In *Workers' Party II*, the Supreme Administrative Court concluded that all conditions for the dissolution of the Workers' Party were met: 1) it observed that the activities of the Workers' Party were illegal, 2) that they were attributable to that party, 3) that there was an imminent and sufficiently grave threat to the Czech political system (democracy, rule of law), and 4) the dissolution was a proportional measure.

According to Šimíček, a very rigorous debate had taken place before the case was decided. But some of the matters were literally undisputed. It was completely clear that many activities of the Workers' Party were illegal and attributable to the party. Here, the court relied primarily on evidence which showed that the Workers' Party cooperated with various neo-nazi groups (long parts of the judgments dealt with just describing relationships on the Czech extreme right-wing scene), whose representatives were, for example, top candidates of the Workers' Party in elections to the European Parliament. Regarding illegal activities, the Court noted that mere words (national socialist program, articles and speeches with racist, anti-semitic, xenophobic and homophobic content etc.) or symbols (i.e... symbols linked to the German national socialism) would not be enough to justify the dissolution of the party. On the other hand, the Court paid attention to some violent actions (the so called "Battle of Janov") and warned that words and symbols were accompanied and "finalized" by actual violent acts. Thus, in the Court's opinion the Workers' Party showed its readiness to bring the national socialist and racist program to life. However, it was difficult to determine whether illegal activities of the party constituted an imminent (and sufficiently grave) threat to democracy. The Supreme Administrative Court concluded that the Workers' Party, encompassing essentially all relevant extreme right and neo-nazi organizations can – at least at the local level – encourage violence against certain truly vul-



nerable groups (Šimíček cited the “Battle of Janov” which would have probably ended up in bloodshed if there had not been hundreds of police officers to protect local citizens).

The question of proportionality was – according to Šimíček – quite controversial as well. But in the end, the Supreme Administrative Court came to the conclusion that the dissolution of the party was necessary and that other measures (such as assigning individual criminal responsibility in cases of violent attacks) would be insufficient to protect democracy and public order.

The decision has already been reviewed by the Constitutional Court of the Czech Republic which rejected all arguments put forward by the Workers’ Party and agreed with the reasoning in *Workers’ Party II*. If the Workers’ Party decides not to drop the case, the issue will most likely be subjected to review by the European Court of Human Rights. The outcome of these proceedings is quite difficult to predict. The European Court of Human Rights has so far approved dissolution of only two political parties (in the cases *Refah Partisi v. Turkey* and *Batasuna and Herri Batasuna v. Spain*). There is a question whether judges in Stras-

bourg will be willing to share the view of their Czech colleagues that the dissolution of the Worker’s Party was comparable to the Spanish case. Answering that question would be probably crucial for the outcome of the case, since the chamber of the Supreme Administrative Court led by Vojtěch Šimíček extensively cited the *Batasuna* case in its decision.



Tomáš Vandas, president of the Workers' Party; photo: archive

## The Czech Centre for Human Rights and Democratization

The Czech Centre for Human Rights and Democratization is an independent academic center focusing on impartial scientific research within the field of human rights and democratization. The Centre specializes in several areas which have been selected taking into account courses taught at the Dept. of International Relations and European Studies and at the Faculty of Law. They also reflect the academic interests of its members.

1. International Criminal Justice
2. The European System of Human Rights Protection
3. Foreign Policy and Human Rights
4. The Czech Republic and Human Rights

### Members of the Centre

**Hubert Smekal** – Assistant Professor at the Dept. of International Relations and European Studies at the Faculty of Social Studies, Masaryk University; Assistant to the Director of the E.MA in Human Rights and Democratization for Czech Republic.

**Lukáš Hoder** – PhD Candidate at the Dept. of International Relations and European Studies, FSS MU; Editor-in-Chief of the Global Politics Magazine, former lawyer at the Secretary of the Government Council for Human Rights of the Czech Republic.

**Lubomír Majerčík** – Legal Assistant at the European Court for Human Rights in Strasbourg; PhD Candidate at the Dept. of International Relations and European Studies, FSS MU.

**Ladislav Vyhnánek** – Assistant Professor at the Department of Constitutional Law and Political Science, Faculty of Law, Masaryk University; Assistant to the Judge at the Constitutional Court of the Czech Republic.

## Slovakia vs. Strasbourg

### Slovakia Ignores an Interim Measure of the European Court of Human Rights

Hubert Smekal, Katarína Šipulová

Slovakia has experienced a protracted judicial saga which ended in an executive intervention contravening an interim measure of the European Court of Human Rights. Mustafa Labsi, an Algerian citizen, was convicted *in absentia* in his own country of involvement in terrorist activities and sentenced to life imprisonment. After military training in Afghanistan, Labsi moved to Europe, specifically to Germany, where he obtained a falsified passport, entry visa, and other documents.

In April 2006, Labsi was detained by Slovakian police, while trying to enter the country from Austria without any official documents, and then arrested. His application for asylum, motivated by fear of being tortured in his home land and by personal ties to Slovakia, was dismissed and the county court conceded extradition to Algeria. After the case before the Supreme Court, the Constitutional Court ruled out the possibility of extradition with explicit reference to Article 3 of the European Convention of Human Rights (prohibition of torture). In addition, the European Court of Human Rights issued an order for interim measures in accordance with Rule 39 of the Rules of Court, requiring the Slovak Republic to refrain from extraditing Labsi until further notice.

Consequently, Mustafa Labsi was released, but Slovakian police arrested him immediately for not having a visa and official documents. He applied for asylum for a second time, but again without any success which was confirmed by the Supreme Court on 30 March, 2010. The Supreme Court emphasized the danger of organizing criminal activities from the Slovakian territory and also pointed to diplomatic guarantees concerning torture given by Algeria. Labsi's legal advisor received the judgment on 16 April, 2010 and did not even manage to file the constitutional appeal because the Minister of the Interior Robert Kaliňák decided on immediate extradition.

Slovakia knowingly disregarded the interim measure of the European Court of Human Rights, which relied on its settled case law concerning principle of

non-refoulement to countries where fundamental rights of person are at stake, especially the right not be subjected to torture and inhuman treatment.

To sum up the whole complicated case – despite some judicial efforts, the executive branch intervened and the Minister of the Interior approved Labsi's refoulement. The ECHR has issued thousands of interim measures since 2005. Slovakia has become only one of a few cases which showed complete disregard to the measure.

*The Czech Centre for Human Rights and Democratization sent the Slovakian Ministry of Interior its reservations on the settlement of the situation.*



*Avenue of Thoughts (Jean-Michel Folon), photo: Council of Europe*

## Three Guantanamo Prisoners to be Transferred to Slovakia. Why not to the Czech Republic?

Tereza Kubíčková

In January 2010 the Slovak government took a surprising step. Although it had signaled its intention not to join the group of states such as France, Denmark, Hungary, Italy and other European countries that had accepted Guantanamo prisoners or at least had expressed their positive attitude on this issue, on January 20 the Slovak Minister of Foreign Affairs Miroslav Lajčák announced that Slovakia would accept three Guantanamo detainees. “The Slovak Republic has decided to react positively to the request of the US government which is looking for the destination for persons ready to be released from Guantanamo detention camp,” the Slovak Ministry of Foreign Affairs announced on their website in January 2010.

Slovakia endorsed the European Union and the United States of America joint statement from June 15 2009 on the closure of the Guantanamo Bay detention facility and future counter-terrorism cooperation. The principles of the extradition of Guantanamo inmates were

negotiated by EU foreign policy ministers in April 2009 while the Czech Republic was holding the EU Presidency. Every EU member state has the right to decide whether it accepts some detainees or not. The number of transferred persons should not exceed fifty. Germany in particular has insisted on a categorical refusal of Guantanamo inmates. The Czech Republic has not been willing to undergo the security risks that the “new transatlantic counter-terror strategy” entails. The EU-US joint statement is considered to be a refusal of the former US counter-terror policy represented by George W. Bush’s administration and it is also understood as the bilateral commitment to apply international law principles to the “War on Terror.” The Slovak ministry stated that this was a “gesture of solidarity” in support of President Barack Obama’s foreign policy. According to the Slovak Ministry website, Lajčák said, “Slovakia also expresses its support to the policy of the new American President B. Obama who has brought a new atmosphere into international relations and a new approach of his administrative to its foreign partners.”

The Slovak government has applied a well-proven foreign policy method of strengthening partnership through the counter-terrorism cooperation. The American side has reacted immediately. The US Embassy in Slovakia released a following statement: “The United States welcomes the announcement today by Slovak officials that the Government of Slovakia will accept three Guantanamo detainees for resettlement. The United States appreciates this act as a productive step in realizing President Obama’s vision of closing the Guantanamo Bay detention center once and for all. We have had fruitful cooperation with Slovak authorities on this issue and will continue to collaborate as called for by our Slovak allies.”

It seems that the main Slovak reason for accepting Guantanamo detainees is to promote the partnership between Slovakia and the USA. The Czech Republic has been presenting itself to be a long-term American partner, yet, it is not planning the same political gesture as Slovakia. What are the reasons for the Czech negative answer to the US request?



photo: archive

The problem of accepting the Guantanamo inmates became a political issue in the Czech Republic in January 2009 after President Obama presented his project of closure of Guantanamo Bay detention center in one year. The Czech political representatives reacted to this agenda quite promptly, arguing that the Czech Republic has never protested against the Guantanamo detention center. In media as well as on the scholarly level, the discussion took on a more defined shape. The pros and cons are well summed up in articles by Daniel Anýž and Tomáš Němeček in *Hospodářské noviny* as well as the *Politica Mundi* blog, which gives the views of Lubomír Majerčík. All articles are available in Czech language.

But even after the change of the government, the new Czech Minister of Interior Martin Pecina still refused accepting the Guantanamo detainees, stating “We have no information that the people there could possibly have any relation to the Czech Republic, for example that they are Czech citizens or they have their family here. That is why we don’t want to play the activist part and enthusiastically claim that we are ready to accept someone that we know nothing about and who knows nothing about the Czech Republic”. (*Hospodářské noviny*, 2009)

This means that usually inconsistent Czech foreign policy has proven to have an unprecedented continuity. Is it possible to perceive this unity in approach of the Czech former and current representatives as a reaction on the “insult” – the decision not to build the radar base in the Czech Republic? Michal Kořan from the Czech Institute of International Relations does not think so. He assumes that the task of radar base is not linked to the Guantanamo issue. By contrast, the Czech EU presidency actually facilitated the above-mentioned compromise of isolated decisions by individual EU member states in the task of accepting detainees. In addition, the Czech Ministry of Interior had been against the Guantanamo inmates in Czech prisons before the Americans stopped the Czech radar base project. Reasons for these coherent Czech positions are not perfectly clear but nevertheless, this shared opinion of the Czech representatives on this sole foreign policy issue presents a remarkably unique situation.

By its positive attitude, Slovakia in some way continues a consistent foreign policy as well. The Guantanamo detainees transfer can be regarded as a follow-up to the earlier placement of Veselin Šljivančanin, the former Yugoslav People’s Army commander, who was found guilty of war crimes by the International Criminal Court for the Former Yugoslavia. Šljivančanin has been placed in the Slovak prison of Leopoldov.

Despite pragmatic reasons that Slovakia could have, the country has been broadcasting a signal (perhaps an unintended one) that it is aware of its commitments to international law. The probability that we will be witnessing transfers of those sentenced by the ICTY, the IRTY, or the ICC to Slovakia is negligible. But it is still definitely much more probable than that the detainees will be transferred to the Czech Republic.

#### Resources

- 1) “United States Transfers Three Guantanamo Bay Detainees to Slovakia.” US Department of Justice. 25 Jan 2010 (online text <http://www.justice.gov/opa/pr/2010/January/10-ag-078.html>)
- 2) “Guantanamo: Gesto podpory voči B. Obamovi a pomoc pri riešení problému.” 20 Jan 2010 (online text [http://www.mzv.sk/ser-vlet/content?MT=/App/WCM/main.nsf/vw\\_ByID/ID\\_C0B1D-004B5A332B2C1257627003301E7\\_SK&OpenDocument=Y&LANG=SK&PAGE\\_NEWSVIEWMAINJDRK-7X8F93=2&TG=Blank-Master&URL=/App/WCM/Aktualit.nsf/%28vw\\_ByID%29/ID\\_4D-CFD22DCF808E8CC12576B1002FBE7A](http://www.mzv.sk/ser-vlet/content?MT=/App/WCM/main.nsf/vw_ByID/ID_C0B1D-004B5A332B2C1257627003301E7_SK&OpenDocument=Y&LANG=SK&PAGE_NEWSVIEWMAINJDRK-7X8F93=2&TG=Blank-Master&URL=/App/WCM/Aktualit.nsf/%28vw_ByID%29/ID_4D-CFD22DCF808E8CC12576B1002FBE7A))
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- 4) Embassy Statement on Slovak Decision to Accept 3 Guantanamo Detainees. (online text <http://slovakia.usembassy.gov/embassy-statement-on-slovak-decision-to-accept-3-guantanamo-detainees-january-19-2010.html>)
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## Human Rights and Elections

### Programs of Czech Political Parties in the 2010 Parliamentary Elections

Ladislav Vyhnánek

For the May 2010 elections to the Chamber of Deputies we prepared a brief review of Czech political parties' programs concerning human rights. A mere reference to a program framed for one election will of course not be enough to make any long-term conclusions; on the other hand, inclusion (or absence) of human rights aspects in the program can suggest whether the party and its supporters consider these issues to be important or not. To avoid accusations of partiality, we try not to comment on specific ideas of parties, though the authors had to muster every effort to hold back some quips. We chose parties that had already been represented in the Chamber, along with some with a real chance of election success and surpassing the 5% threshold. Taking into account that some of our anticipations were wrong, we can see after elections that we had omitted some parties and some on the other hand lost their support so much, that they have no longer seats in the Chamber. Election turnout reached quite high levels; nearly 63% of those able to vote exercised their suffrage. Parties are introduced in alphabetical order.

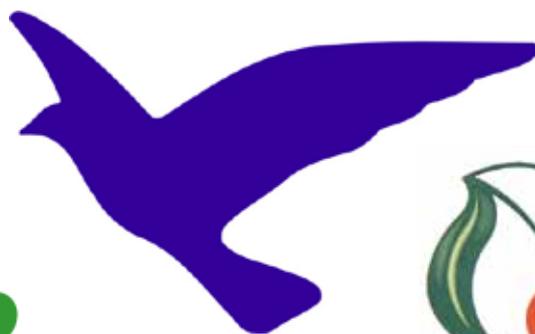
#### The Czech Social Democratic Party (ČSSD)

ČSSD included a chapter called "Protection of life, freedom, and other rights" which addresses mainly issues of the judicial system. Apart from universal statements and a traditional emphasis on shortening the duration of legal proceedings, ČSSD's program contains some concrete ideas for reforms: broad-

ening access to free legal help (but it is not further stated if this includes assisting *pro bono* projects etc.) and lowering court fees. ČSSD's program traditionally emphasizes social rights (free education, health and social services), and this has been continued. Special attention is devoted to the fight against extremism and discrimination (concepts for novelization of antidiscrimination law, free legal help for victims of discrimination). ČSSD shared one of main issues of this year's elections: they supported introduction of some aspects of (semi) direct democracy (direct election of the president, referenda). The party experienced a Pyrrhic victory when it received the most seats in the lower chamber (56 of 200 mandates, 22.09% votes), but it lost 18 seats compared to the last election and had little chance to build a governing coalition. Consequently, the chairman of ČSSD resigned.

#### The Christian Democratic Union – Czechoslovak People's Party (KDU-ČSL)

KDU-ČSL stresses protection of social rights and of the family as such in its program. The Christian Democrats also underscored their adherence to protection of human rights and stated that they wouldn't take part in any government that would "cease to support human rights in the Czech Republic and in the world." Concerning specific ideas, KDU-ČSL considered health care "as a public service and a right to health care as given by the Charter of Basic Rights



and Freedoms.” In the field of justice and human rights, KDU-ČSL presented an innovative concept, according to which a judge would pay all expenses made by improper judgements which caused defeats of the Czech Republic in front of international courts or similar institutions (any notion of the principle of judicial independence was omitted). The traditional parliamentary party began its slip towards irrelevance because they lost all of their 13 seats and they are no longer represented in the Chamber of Deputies.

### **The Communist Party of Bohemia and Moravia (KSČM)**

The part of KSČM program called “Democracy and human rights – KSČM as a guarantor of democracy” contained some specific notions of human rights and democracy, especially those related to the participation of the public in decision-making (referendum, direct presidential elections). Special attention was paid to social rights, rights of employees and unions, and to the status of women’s organizations. KSČM also fought (albeit not bothering with providing any details) for freedom of speech, scientific research, and artistic expression. The position of the Communist Party did not record any dramatic changes; it remains a strong fraction in the Lower Chamber holding 26 seats, based on the preferences of 11.27% voters.

### **The Civic Democratic Party (ODS)**

ODS touched the issue of human rights briefly, but quite directly: “[H]uman rights will always be a sum of rights and freedoms of individuals enabling them to live their lives in accordance with their own preferences and to seek their own way to happiness. We won’t let human rights be changed by demands of various minority groups against the majority, we won’t let human rights be mistaken for demands against others. We will never support so-called positive discrimination.” ODS has also supported special protection for rights of ownership and a narrow definition of “the public interest” for the purposes of expropriation. Civic Democrats also did not forget (as almost all the parties in every election) the issue of direct presidential elections.

After bitter internal disputes, the Civic Democrats experienced a loss in popularity, votes of 20.22% of participating of voters brought 53 seats, which is 28 less than in the previous term. ODS still prevailed as the leading governmental party, with a new and promising chairman.



### **Citizen’s Rights Party (SPO)**

SPO focused on two aspects concerning human rights: stronger participation of citizens (direct elections for positions of the president, regional officers and mayors) and maintaining social rights standards. This new party led by ex-PM Miloš Zeman failed to reach the minimum 5% threshold for entering the Chamber of Deputies.

### **Public Affairs (Věci veřejné)**

VV’s program was focused on the hot issue of direct democracy. The Public Affairs Party refused the concept of “positive discrimination” and emphasized completion of the restitution of agricultural property as well as protection of the environment and public lands. One particularly remarkable statement is the degree to which VV considers human rights to be universal and its goal of strengthening the role of human rights in foreign policy. The Public Affairs Party earned 24 seats after convincing 10.88% voters.

### **Green Party (Zelení)**

The most detailed program concerning human-rights issues was issued by the Green Party. Besides popular issues widely promoted by other parties as well (e.g. social rights and direct democracy), the Green Party voiced its opposition to an anti-free speech “muzzle” law (and it was apparently the only party that referred to the case law of European Court of Human Rights in its program). Special subchapters were also dedicated to the rights of children, consumer protection and help to immigrants. The Greens experienced the same fate as Christian Democrats and lost all six of their mandates, because the 2.44% of votes cast for them was not enough to gain a seat in the Chamber.

## Compensation for Non-pecuniary Damages Caused by Illegal Sterilization

Ivan Prouza

In October 2009, the Constitutional Court of the Czech Republic decided on one of the most scrutinized cases of the year. Just after giving birth to her second child, Mrs. H. F. was sterilized by physicians at Vítkovice Hospital in Ostrava. She claimed that due to the impossibility of having more children, there was a breach of her dignity and she demanded compensation of one million CZK.

The Constitutional Court agreed with previous decisions of civil courts and found that adequate consent for the surgical intervention was missing. Mrs. H. F. appealed after 3 years and therefo-



The Constitutional Court, photo: archive

re the right for monetary satisfaction as a material claim had expired, according to Czech legal order. She only had a right to an apology. Though there is no legal remedy against decisions of the Constitutional Court, attorneys from the League of Human Rights, an NGO who represent her, are preparing a complaint to the European Court of Human Rights in Strasbourg.

It is worth mentioning that there have been additional cases of sterilization in the Czech Republic. According to the ombudsman's investigation, there have been at least 58 cases of such mistreatment of women. Roma activists also reported similar procedures in Hungary, Bulgaria, and Romania, but the most widespread use of sterilizations was recorded in the Czech Republic and Slovakia.

Only one woman has been awarded compensatory damages of 200,000 CZK so far. The Czech Government expressed compassion and the Minister for Human Rights added that it is only the first step and more measures, such as changes in legislation, focusing on informed-consent requirements and possible financial compensation, will be implemented.

## Czech Racial Discrimination Report for the UN

Ivan Prouza

The Office of the Minister for Human Rights recently submitted a periodic report concerning the obligations enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination to the UN. The Report covers the term between 1 April 2005 and 31 July 2009. It will be presented and discussed before the UN Committee on the Elimination of Racial Discrimination.

The report deals with the internal situation in the Czech Republic, but also highlights the efforts to integrate Roma people during the Czech Presidency of the EU. The role of the Minister for Human

Rights is emphasized, as well as recent legislation efforts (e.g. a new Criminal Code or Antidiscrimination Law), improvements in police officers' treatment of members of national minorities, and a strengthened fight against rising extremism.

The report contains data on rates of racially motivated or extremist crimes, and subsequently analyzes the specific human rights situation. Finally, means of protection and prevention are described. In addition, the report presents statistics concerning numbers of immigrants, accepted asylum seekers, and their countries of origin.

## Authors of the Bulletin

### Editor-in-chief

**Lukáš Hoder** – PhD Candidate at the Department of International Relations and European Studies at the Faculty of Social Studies, Masaryk University; Co-founder of the Czech Centre for Human Rights and Democratization at Masaryk University and former lawyer at the Office of the Government of the Czech Republic.

### Authors of texts

**Hubert Smekal** – Assistant Professor at the Department of International Relations and European Studies at the Faculty of Social Studies, Masaryk University; Assistant to the Director of the E.MA in Human Rights and Democratization for Czech Republic; Co-founder of the Czech Centre for Human Rights and Democratization.

**Ladislav Vyhnanek** – Lecturer at the Department of Constitutional Law, Faculty of Law of Masaryk University; Law clerk at the Constitutional Court of the Czech Republic. Co-founder of the Czech Centre for Human Rights and Democratization.

**Helena Bončková** – Legal Researcher to the International Department of the Supreme Court of the Czech Republic; PhD Candidate at the Department of International and European Law at the Faculty of Law, Masaryk University; Master student of European Studies at the Faculty of Social Studies, Masaryk University; Intern at the Czech Centre for Human Rights and Democratization.

**Katarína Šipulová** – Master student of Law and European Studies at Masaryk University; Intern of the Czech Centre for Human Rights and Democratization. Former intern at the Constitutional Court.

**Tereza Kubíčková** – Master student of International Relations and Russian Language Translation at Masaryk University; Intern at the Czech Centre for Human Rights and Democratization.

**Ivan Prouza** – Master student of Law at Masaryk University; Intern at the Czech Centre for Human Rights and Democratization.



Joshua's Battle, J. H. Schöngeld, photo: Prague Castle

**The Czech Centre for Human Rights and Democratization**  
International Institute of Political Science of Masaryk University - [www.iips.cz](http://www.iips.cz)



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