

Czech Republic Human Rights Review



Dear readers,

Once again, after a long period of time focusing on publications in the Czech language, the Czech Centre for Human Rights and Democracy is able to present a brand new double issue of the Czech Republic Human Rights review examining the period of 2016.

We are opening the issue with a piece from a guest writer Jan Kozubík, an LGBT activist and a Ph.D. candidate in sociology at Charles University, who offers a description of the 2016 developments in the Czech LGBT policy areas. Following are articles by the members of the Centre or former members that focus on specific Czech human rights related issues taking place in 2016. Specifically Šárka Dušková brings a comprehensive outlook on changes undertaken in the field of inclusive education, Petr Pospíšil discusses the very serious, yet controversial

asylum proceedings with the “Chinese Christians” and Kateřina Šimonová describes how the Constitutional Court dealt with a contested conflict between the right to protection of personal data and the right of access to information.

These articles are followed by a piece from Michal Oščipovský who writes about a high profile criminal case concerning Dr. Rath, which has resonated throughout the Czech public since 2012. The issue is closed by an article from Marek Jahn, who sums up how the Czech Republic’s Human Rights situation is perceived by the US State Department.

Please enjoy this lookback and stay tuned for the 2017 issue.



Kateřina Studecká

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NEWS AND COMMENTS ABOUT HUMAN RIGHTS

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The screenshot shows the Facebook interface for the Czech Center for Human Rights and Democratization. On the left is the profile picture/logo. The main feed shows two posts. The first post, dated 16. března v 8:18, is titled 'Czech Center for Human Rights and Democratization sdílel odkaz' and includes a map of Africa and Asia with labels for Nigeria, India, Pakistan & Bangladesh, and Malaysia. The second post, dated 23. prosinec 2016 v 21:52, is titled 'Womens Rights' and contains text about the International Court of Justice. The right sidebar shows interaction options like 'To se mi líbí', 'Sdílet', and 'Navrhnout úpravy'.

Gay rights in the Czech Republic – current struggles



Jan Kozubík

The current situation regarding rights of gay people in the Czech Republic could be defined as ambivalent. Even though the country is, along with Slovenia, considered to be the most liberal of the former communist states and Prague is sometimes referred to as the gay capital of Central Europe, the rights of gays and lesbians are still rather limited.

A bill legalizing registered partnerships (civil unions), with some rights of marriage (inheritance, hospital rights, spousal privilege), was rejected four times, in 1998, 1999, 2001 and 2005. However, in 2006, the Chamber of Deputies overturned the veto of president Václav Klaus and the law came into effect.[1] However, the law does not grant parenting rights (adoption by a couple or second-parent adoption), widow's pension or joint property rights. Furthermore, the legal category is not recognized as a family (but as “other”) and is not included in the new Civil Code.

In addition to the Registered Partnership Act, a comprehensive Anti-Discrimination Act was passed in 2009 which explicitly prohibits discrimination on the basis of sexual orientation and gender identity in employment, education, housing and access to goods and services.

Recent legislative developments

Around 2012, Czech activists started lobbying for an amendment of the Registered Partnership Act, which would enable second parent adoption. The amendment would allow a same-sex parent to adopt his or her spouse's biological or adoptive child without terminating the first parent's legal status as a parent. The bill was eventually introduced to the Parliament by a group of MPs in 2013, however the Parliament was dissolved soon after and new elections took place. [2] The bill was introduced once again in 2014 by a group of 27 MPs from all parties apart from the Christian Democratic Union, with Radka Maxová from the ANO political movement, chair of Permanent Commission on Family Issues,



Prague Pride 2016 [1]

Equal Opportunities and Minorities, leading the group.[3] However, the Chamber (and its Steering Committee) has repeatedly not allowed any discussion on the bill to take place. When the bill was once permitted for a short period of time on the agenda, an MP from the Czech Social Democratic Party, Pavlína Nytrová, caused a huge controversy. She said the bill was only the first step and homosexuals would soon after try to legalize pedophilia. [4] She was then heavily criticised by all parties of the political spectrum and eventually quit the party.

Nevertheless, the process of the bill was stuck once again. Consequently, Minister for Human Rights, Jiří Dienstbier, along with Minister of Justice, Robert Pelikán, decided to introduce the bill to the Parliament as a governmental proposal.[5] Governmental bills usually get to the agenda much easier as they have priority. Despite severe opposition from the smallest governmental party, Christian Demo-

cratic Union, the Government approved the bill. However, contrary to expectations, the situation has remained the same and none of the attempts to put the bill on the agenda were successful. Due to upcoming parliamentary elections in October 2017, the successful adoption of the bill is rather unlikely.

The position of Czech political parties towards the rights of gay people is rather unclear and complicated. Many politicians still consider gay rights as too controversial. Unlike parties in Western countries, not one of the Czech political groups, except for non-parliamentary ones such as the Greens, have gay rights in their political manifestos. The ANO political movement founded by a tycoon and the second wealthiest man in the Czech Republic, Andrej Babiš, is the only party strongly in favour of the bill. Above mentioned MP, Radka Maxová, ministers of the party and the overwhelming majority of MPs support the issue. Andrej Babiš also openly supports same-sex marriage. Social Democrats, who are traditionally main defenders of gay rights in the West, are split into two sub-groups. The liberal one, similar to Western social democrats, supports the rights of gays and lesbians. On the other hand, the conservative one is strongly against. Prime Minister

Bohuslav Sobotka, who is personally in favour of the bill, used to side with the liberal group. However, the conservative opposition within the party is getting stronger and stronger and Sobotka recently dismissed the liberal Minister for Human Rights Dienstbier from the office. His successor, Jan Chvojka, does not seem to be willing to actively fight for the cause. Roman Sklenák, the chairman the Czech Social Democratic Party parliamentary group, said: *"It's a matter of priorities. For me, there are more important bills to discuss"*. [6] The situation is similar within the Communist party. About half of the MPs are in favour, the other half against. TOP 09 party, with most liberal electorate, does not vote in accordance with their voters and also opposes the bill. The Civic Democratic Party also does not support the bill.

The role of the judiciary

Apart from the political path, gay people and gay activists also use strategic litigation cases to further improve their rights. In the Czech Republic, anybody is eligible to adopt a child individually, regardless of their sexual orientation. However, pursuant

LGBT flag map of the Czech Republic [2]





Prague Pride 2016 [3]

to Sec. 13(2) of the Registered Partnership Act, an ongoing registered partnership created a legal impediment for individual adoption. In June 2016, the Constitutional Court ruled to abolish Sec. 13(2) of the Registered Partnership Act. The Court considered that any person, heterosexual or homosexual, was legally eligible to adopt a child as an individual. But once such a person enters into a legally recognized registered partnership (which indicates an intention to live in a stable and long-term relationship), the state would prevent the concerned partner from adopting individually. The provision was thus held illogical, irrational, discriminatory and inconsistent with the right to human dignity and respect for private life.[7] According to the media, the first registered gay partner will soon adopt a child.[8] However, step-parent adoption or joint adoptions still remain illegal.

Other litigations aim to break the uncertainty about the recognition of same-sex couple adoptions undertaken abroad. In 2015, the District Court in Prostějov granted full parental rights to a Czech-French gay couple who adopted a child in California, USA.[9] Both fathers are now official parents of the child. This is the first case of its kind, i.e. the first baby with two same sex parents officially recognized in the country. However, Czech birth certificates still only have two boxes, “mother” and “father.” Instead of changing the form, the Ministry of Interior instructed the registry offices to leave those boxes blank and to write two fathers as a footnote. Contrary to this encouraging ruling, in 2016, the Czech Supreme Administrative Court refused to recognize a different Czech-USA gay couple as fathers of a baby from a surrogate mother from the US (as the court in Los Angeles did). The court only recognized the Czech father as a parent and said it was not possible to recognize the second one since it is inconsistent with public order as the Czech law does not allow parenting of two same-sex persons. The couple decided to turn to the Constitutional court and the case is now pending.[10]

As described above, there are still many struggles for the equality and recognition of gay rights in the Czech Republic, mainly regarding parenting rights and same-sex marriage. However, unless something extraordinary occurs, it seems that a bright future is lying ahead for gay people. Since the 1990’s, the public support for the rights of gay people has been steadily rising. Updated results of the Public Opinion Research Center (CVVM) from 2016 are 74 % in favour of registered partnership, 51 % in favour of gay marriage (45 % in 2014) and 62 % in favour of second parent adoption (58 % in 2014).[11] One can assume that politicians will sooner or later begin to positively reflect developing social attitudes on the issue. The only question is when.

Jan Kozubík has graduated from International Relations and Political Science at Masaryk University in Brno, continuing as a joint Ph.D. candidate in political science/sociology at the University of Antwerp and Charles University in Prague now. From 2015 to 2017, he worked, as a senior official, at the Department of Human Rights of the Government of the Czech Republic. He has also been a human rights activist for many years and is now a member of the political-lobbying group of the Czech same-sex marriage campaign “We are fair”.

Sources

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- [10] On 29th of June 2017, the Constitutional Court overturned the decision, ruling that abstract principles cannot be preferred to the best interests of a child. The Court considered that in the concerned situation family life was in fact existing and was legally constituted between the same-sex couple and the child, therefore the decision of the Supreme Administrative Court was contrary to the best interests of the child protected by Article 3 (1) of the Convention on the Rights of the Child. Decision of the Constitutional Court of the Czech Republic no. I. ÚS 3226/16. (Available at: https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezky/2017/I._US_3226_16_an.pdf).
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Photographs

- [1] Prague Pride 2016. Wikimedia Commons, author: Aktron. CC BY-SA 4.0.
- [2] LGBT flag map of the Czech Republic, author: PavelID. Public Domain.
- [3] Prague Pride 2016. Wikimedia Commons, author: Aktron. CC BY-SA 4.0.
- [4] Prague Pride 2017. Wikimedia Commons, author: Catherine Shifflett. CC BY-SA 4.0.

Prague Pride 2017 [4]



Steps towards inclusive education



Šárka Dušková

Inclusive education was one of the hottest topics of 2016 in the Czech Republic, inducing both lively professional discussion and stormy public reaction. Misunderstanding of the concept as well as public disagreement regarding collective education of all children, including those with special educational needs, in local schools, contributes to persisting discrimination. This year, however, was a move in the right direction of achieving equal education for all children.

International development

The year 2016 was very important in the fight for inclusive education internationally. In April, the European Court of Human Rights reached a decision in the case *Cam v. Turkey* (no. 51500/08), where the Court stated inclusive education as the appropriate standard for equal education under the European Convention on Human Rights. In September, the UN Committee on the Rights of Persons with Disabilities („UN CRPD“) adopted its general comment no. 4 on inclusive education – the first ever comprehensive interpretation of the concept, including its implementation on all levels; towards the pupil/student, teachers, school management, school environment and the education system itself.[1]

Local development

Unfortunately, neither of the two documents were published when the Czech Ministry of Education was preparing the new School Act amendment no. 82/2015 Coll., often referred to as the „inclusive education amendment“. The amendment introduced the primacy of mainstream education over special education. From now on, a child can only be placed into a special school in exceptional and well-founded circumstances. The amendment also introduced a system of support measures, which will be financed by the Ministry of Education and which should be legally enforceable by the child or the school. The support measures are listed in Article 16 § 2 of the School Act and include the help of a support teacher, an individual study plan, special text books and other aids. At the time of its



Children in classroom during lunch break [1]

implementation however, the ministry downplayed other very important aspects of inclusive education, which were emphasized, inter alia, in the UN CRPD general comment no. 4. These include a safe school environment, trained teachers and prepared school management. The implementation also lacked an overall strategy of transition to the new system. Despite these reservations, the law certainly is an important step in ensuring accessible education for all children.

Discrimination in access to education

Inclusive education is deemed to be the most effective way to ensure equal access to education.[2] In this respect, the Czech Republic is regularly criticized by various international bodies, as many Roma children and children with disabilities remain involuntarily segregated.[3] Despite this fact, according to data of the Public Defender of Rights, only three antidiscrimination lawsuits had been filed between 2009-2015, none of which was successful.[4] There-



A classroom [2]

fore, 2016 marks an important step in this regard. In March, a municipality was held responsible by a District Court in Vyškov for the discrimination of a child with disability and not ensuring an appropriate support (reasonable accommodation) in his education. Effective access to justice for victims of discrimination in education can be another formative aspect of the implementation of the right.

Future prospects

We have yet to evaluate the impact of the new developments in the Czech education system and there is certainly still a lot to be done. Future developments could include training and evaluation of teachers, diversification of teaching methods, democratization of the school environment, as well as allocating the necessary financial resources. At the same time, 2016 marked an important step for access to education for all children both worldwide and in the Czech Republic. We can only hope the trend will continue.

Sources

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Photographs

- [1] Children in classroom during lunch break. Wikimedia Commons, author: Arrecife. CC BY 3.0.
- [2] A classroom. Wikimedia Commons, Flickr. Author: f_a_r_e_w_e_l_l. CC BY 2.0.

The case of the Chinese asylum seekers in the Czech Republic



Petr Pospíšil

In mid-2016, the attention of the Czech media was drawn to the nearly seventy asylum-seekers from China who had been allegedly subjected to persecution due to their Christian beliefs. Compared to the previous years, this amount represents an unprecedented upsurge in the number of asylum applications ever received from China. However, in times of strengthening economic ties with the Asian country, the decision of the Czech asylum authorities is especially delicate, having to deal with the concurrent interests and prolonging the asylum proceedings.

In 2014, the Czech Ministry of Interior, i.e. the body in charge of asylum proceedings, received 15 applications for asylum filed by Chinese citizens. In 2015, the number decreased to a mere four applications. This has been in great contrast with last year's figures, according to which 68 Chinese people applied for asylum in the Czech Republic. This makes China the 4th largest source of would-be refugees coming to the Czech Republic (behind Ukrainians, Iraqis and Cubans).[1]

Christians within the Chinese population create a cohort consisting of approximately 25 million people. According to the scholars specialized in sinology, they have been exposed to discrimination or even persecution.[2] This can be displayed by workplace dismissals and imprisonments. As a religious minority, Chinese authorities do not embrace them due to their representation of the opposition to the official Chinese ideology.

This case has been particularly delicate because it emerged in times of the intensifying bilateral economic and trade relations between the countries. In past years, China has invested extensively in the Czech Republic, e.g. buying the brewery Lobkowicz or the top-level football club Slavia Prague. The economic rapprochement has been accompanied by strengthening political ties, with both the Czech President and the Prime Minister having visited China twice in the past years.



Ministry of Interior in Prague [1]

If the Czech authorities granted asylum to the Chinese asylum seekers, it would technically send a message that the Czech government officially recognizes that there has been human rights violations occurring in China. This would very likely result in the outrage of the Chinese authorities who have proven themselves to be very sensitive to similar affairs. Last year, the Chinese ambassador in Prague heavily criticized the Czech Republic for allowing The Dalai Lama to visit the Czech capital. In light of that criticism, several Czech politicians cancelled their scheduled meetings with the Tibetan leader. Only the Minister of Culture, Daniel Herman, dissented.

There has been little doubt that Chinese representatives are tentatively observing the asylum issue. Even the pro-government Chinese tabloid, *Global Times*, reported about this case in December 2016, denoting the asylum-seekers as “*illegal immigrants who merely pretend to be Christians*”.[3] Nonetheless, when asked in Parliament, the Czech PM Bohuslav Sobotka ruled out that economic or political interests could have any influence on the outcome of the ongoing asylum proceedings.

Despite this assurance, the difficulties faced by the Ministry of Interior might have contributed to the excessive length of the proceedings. Originally, the rulings were expected to come in late 2016. However, the Ministry repeatedly postponed the date,



“Refugeess Welcome” Rally in 2015 in Prague, Czech Republic [2]

with the subsequent deadline in mid-March 2017 passing by without any decision being made.[4]

Nevertheless, in the spring of 2017, the first of the asylum-seekers were given the opportunity to review their files, thus indicating that a decision will probably be issued by mid 2017.[5] Indeed, its result is hardly predictable at the moment, with human rights advocacy representatives being rather skeptical.

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Photographs

- [1] Ministry of Interior in Prague, Czech Republic. Wikimedia Commons, author: Gampe. CC BY-SA 4.0.
- [2] “Refugeess Welcome” Rally in 2015 in Prague, Czech Republic. Wikimedia Commons, author: Chmee2. CC BY 3.0.

Right to respect for private life versus reconciliation with a state's totalitarian past



Kateřina Šimonová

On December 20th, 2016, the Constitutional Court of the Czech Republic delivered a decision emphasizing that in terms of the fundamental right to protection of personal data, under the contested provision mere viewing of archival records containing information about the activities of the security services of the totalitarian regime is legal, legitimate and proportional interference in that right, balanced vis-à-vis the fundamental right to access to information and justified in view of the significant social interest in authentic knowledge of the past.

Background and beginning of the proceedings before the Constitutional Court

During the communist regime, which held power over many European states, including the Czech Republic, for a large part of the twentieth century, the fundamental human rights and freedoms of many people were seriously violated. As we mark nearly three decades after the collapse of communism, many former communist and socialist countries are still dealing with the totalitarian “heritage.” These countries must now face the problems arising from the communist era and its human rights infringements. Most of these countries are continuously trying to find some answers to the persisting question: How to deal with the past? And very similar question was, among others, answered by the Constitutional Court of the Czech Republic (hereinafter “the Constitutional Court”) in its plenary decision No. Pl. ÚS 3/14 on December 20th, 2016.

The relevant case concerned a man, the plaintiff, who claimed that one journalist who accessed sensitive information about him in the archive files, violated his personality rights and privacy. The journalist, from Czech TV, was searching for certain information in the archive regarding the plaintiff for the purpose of a TV program. Even though it is true that she has viewed the relevant files on him, later on, she did not publish or use any of the information obtained. On March 4th, 2014, the Constitutional



[Institute for the Study of Totalitarian Regimes \[1\]](#)

Court received a decision from the Supreme Court, which suspended appeal proceedings in the above mentioned case because the Supreme Court believed that § 37 par. 6 of Act no. 499/2004 Coll., on Archiving and Records Management, as amended by later regulations, was inconsistent with Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Right to respect for private and family life) and thus, the matter was submitted to the Constitutional Court.

In its petition, the Supreme Court stated that generally unlawful use of personal data as a rule leads to interference in personality rights; such unlawful use of personal data includes the publication of sensitive data. According to the Supreme Court, the statutory exception contained in the text of the contested provision led to the removing of sensitive data from protection. Due to the wording of the provision, protection, in particular the prior consent of the affected person, does not apply to archival records created prior to January 1st, 1990 by

the activities of the security services, further regulated by the Act no. 181/2007 Coll., on the Institute for the Study of Totalitarian Regimes and on the Security Services Archive and Amending Certain Acts, as amended by later regulations (hereinafter “Act no. 181/2007 Coll.”).

The Supreme Court was not sure if making sensitive personal data accessible, broadly defined by the Act, can really be considered proportional and additionally, if a more sensitive approach could be selected without thwarting the legitimate aim of the statute. The Supreme Court was aware of the fact that introducing one of the instruments for protecting personal data (for example anonymization or obligatory consent from a living individual), could lead to a certain limitation of access to information. However, it believed that such limitation would be proportional and the archived files will not lose their informative value regarding the practices of the communist regime in repressing human and political rights.

On the other hand, the Government noted that the purpose of the provision in question is to make it possible to study, without limitation, the majority of archive collections created by the activities of the former security services, courts, and state prosecutor's offices of the communist regime. Additionally,

they hoped to learn as much as possible about the practices of the communist regime in repressing human and political rights and freedoms between the years 1948 to 1990, as well as archival records created through the activities of the German occupation administration bodies in the years 1938 to 1945.

The Government highlighted that the framework contained in the contested provision is a reflection of the legislature's attempt at reconciliation with the consequences of the totalitarian and authoritarian regimes in the 20th century. Therefore, the contested provision plays an important role in uncovering the totalitarian past through a study of archive collections created through the activities of former security services and other bodies of totalitarian regimes operating in the Czech Republic. It allows not only scholars, but the wider public as well, to learn as much as possible about the practices of these regimes. The Government was also convinced that declaring the contested provision unconstitutional would fundamentally limit, or even stop the accessibility of preserved materials that document the activities or specific persons who represented or collaborated with the totalitarian regimes. As a result, this would hinder the objectives that the legislature pursued by adopting Act no. 181/2007 Coll., with which the contested provision is closely related.

The Constitutional Court of The Czech Republic in Brno [2]



jméno: Charvátová		Číslo foto: 1817 1573
Příjmení: Vlasta		Fotogr. dne: 8.6.1949
Datum narození: 19.10.1925 v Praha		Čj. OStB. Praha: 19947/49
Místní přísl.: Praha		Oddělení: 5
Adresa: Praha XIX., Fochova 4		Proces: akce Anton
		Zvláštní znamení:



Victims of communism: arrest photo of Vlasta Charvátová [3]

Moreover, the chairwoman of the Office for Personal Data Protection also pointed out in her submission the need to distinguish between two methods for processing personal data foreseen by the Act; making accessible or providing documents based on an individualized application, and the publication of personal data. When the Archiving Act uses the term “view,” it is understood as “providing or making accessible upon application.” Nothing indicates that it could be subordinated under the broad concept of “publication.” As mentioned, in this case there was no publication of data of the affected person because further processing, which would clearly have been invasive to privacy, was not performed.

Comparison with other countries

The predominant opinion in academic literature is that archives should be opened and the truth should be disclosed to the public concerning the past repressive regimes in the defense of human rights. Some scholars argue that the formation and preservation of archives is in the interest of the state and it is in the position to control access to various documents, that is, the state is given wide discretion. However,

we have to generally admit that there is certain conflict in such a case between the right to access and the right to privacy. This must also be balanced with a public interest in transition towards a democratic state and a rule of law. Notwithstanding different opinions, truth and the right to know this truth are related to the effective implementation of state obligations to ensure human rights and play an important role in providing remedies for victims of these violations. Therefore, there is a high demand for disclosure of truth as a means of ensuring the obligation of the state in the sphere of human rights.

The analysis of the practice in European countries (which faced the communist regime in the past) reveals that states differ in the ways they have dealt with the files, especially concerning the disclosure of these files, and thus could be divided into two categories: the countries providing full access, or those providing limited access. Full access to the files is provided in such post-communist countries as Bulgaria, the Czech Republic, Germany and Slovakia. Conversely, access with various limitations is imposed in such countries as Estonia, Hungary, Latvia, Lithuania, Poland and Romania.

Germany is usually presented as a positive example in dealing with the files. In Germany, immediate and full access to the files after the collapse of the communist regime was provided in 1991. However, in other countries of this group, full access was provided only after a certain period of time. The aims of such policy were the rebuilding of confidence in the state and its institutions, vindication of victim's rights, provision of the tool for lustration, information and education about the past.

As also the Constitutional Court of the Czech Republic summed up, in the view of these examples, the model for access to archival records regarding the activities of the former security services, chosen by the Czech legislature, is the most open. Nevertheless, this comparison is somewhat deceptive because it attempts to compare the incomparable, and does not clearly express the appropriateness of each particular model in relation to the nature and length of application of instruments for persecuting those who resisted totalitarian regimes. The experience with totalitarian regimes in every single country is absolutely non-transferable. Thus, also the methods and means of understanding it must correspond to this fact.

Reasoning and conclusion

The Constitutional Court concluded that the “*de-humanization of history*,” as the result of actually limiting the access to the identification of historical actors, would lead to distortion and misunderstanding of the historical context. Thus, thwarting the understanding of the past in the context of understanding the fates and connections from stories of the resistance and opposition of particular people, which can have a liberating effect in relation to one's own story. Tolerating interference in one's privacy consisting merely of learning data about the affected person from the totalitarian period, accom-

panied by the ability to limit their dissemination, is not disproportionate and thus, a constitutionally unacceptable requirement. Therefore, according to the Constitutional Court, in terms of the fundamental right to the protection of personal data, under the contested provision mere viewing of archival records containing information about the activities of the security services of the totalitarian regime is legal, legitimate and proportional interference in that right, balanced vis-à-vis the fundamental right to access to information and justified in view of the significant social interest in authentic knowledge of the past. This interference does not attain to the intensity of damaging human dignity, honor and good name because it is not connected with the researcher's authority to publish the obtained information or otherwise process it without the prior consent of the affected person.

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High Court holds that the use of wiretapping devices in the case of David Rath was illegal



Michal Oščipovský

The High Court in Prague in its October 2016 decision in the high profile case concerning former Central Bohemian Governor David Rath, said that the reason for the annulment of the verdict of previous Courts was illegal, due to the use of wiretaps in the preliminary proceedings.

Former Central Bohemian governor and deputy David Rath was accused in 2012, among several other people of corrupt behavior (manipulation with public procurements and taking bribes). For this offense he was given a sentence of unconditional imprisonment of eight years and six months and the forfeiture of property in the amount of twenty million CZK. After the verdict, all defendants in the case, which among other people included a former deputy chairman of the Civic Democratic Party Pavel Kott, appealed to a higher court.

The main arguments of the defendants were associated with procedural errors made by the prosecution during the preliminary proceedings and the fact that the court ruling in the preliminary proceedings was situated in Ústí nad Labem (North Bohemia), contrary to the location where the crime happened (Central Bohemia). Although the latter argument was not the basis for the verdict of the High Court (appellate court) for annulment, the former arguments were indeed enough to overturn the first decision. The High Court held that the use of wiretapping devices was illegal. Therefore all evidence obtained through the wiretaps should be ignored in further court hearings.

According to the verdict of the High Court, the judgment of the Regional Court contains errors that are contrary to the Criminal Procedure Code.[1] Judge Petr Zelenka, who delivered the reasoning of the High Court, stated that the main problem was that the court deciding to permit of use of wiretaps in the preliminary proceedings did not receive enough reasons to permit them and uncritically accepted the arguments of the prosecutor's office. Unsurprisingly, this statement provoked critique,



Dr. David Rath during campaign [1]

for instance from the Chief High Prosecutor, Lenka Bradáčová. In her opinion the decision of the court is overly formalistic and moreover inconsistent with earlier decisions of the High Court. Therefore, it seriously undermines the principle of predictability of the application of the law.[2]

However, Lenka Bradáčová was not the only critic of the reasoning of the verdict. Minister of Justice, Robert Pelikán, shares the same opinion. He stated that he is not sure whether the District Court indeed made a mistake when permitting the use of wiretaps and added that the court at this stage of criminal proceedings has no evidence and methods to justify this type of investigation. Also, he claimed that the use of wiretapping devices is a common practice in these types of cases, as using these methods is the only way of collecting evidence.[3]

Return to the start?

Even though the use of listening devices is usually in conflict with the right to privacy and therefore the question of their use is highly sensitive, a senator and a former high representative of Transparency International, Václav Láska, claims that their use in this and other cases is a common practice.[4]

Even after the verdict of the High Court, which ordered the case to be returned to the previous decision, thus forbidding the use of wiretaps in the re-newed proceedings, the question of whether a case of David Rath and other defendants is once again on the starting line is not answered, because Minister of Justice Robert Pelikán claimed, that he will submit a complaint to the Supreme Court. However, it is not expected to affect this case, because according to the High Court judge, Petr Zelenka, the ruling of the Supreme Court on this issue can only affect future cases and not the case of Dr. Rath. Nevertheless, even if the Supreme Court ruling will not affect this case, it can establish a unified practice for the future.

High Court in Prague, Czech Republic [2]

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Discrimination of the Roma minority and Muslims in the Czech Republic



Marek Jahn

The annual Country Report on Human Rights Practices issued by the US Department of State, known as the Human Rights Report, covers internationally recognized individual, civil, political, and worker rights, as set forth in the Universal Declaration of Human Rights and other international agreements. The Human Rights Report for 2016 on the Czech Republic, contains concerns about the human rights of the Roma minority. Furthermore, statements of several political leaders regarding immigration crises and migrants are being scrutinized.

It is not the first time that a report criticizing the Czech Republic for discrimination of the Roma minority has emerged. However, this is the first time that criticism of the intensification of anti-Islamic rhetoric and sentiment has been acknowledged.

Regarding the discrimination of the Roma minority, the report states that: *“approximately 300,000 Roma in the country faced varying levels of discrimination in education, employment, and housing and have high levels of poverty, unemployment, and illiteracy.”*^[1] Furthermore, the report comments on the public opinions. Public surveys have revealed that there is a large degree of prejudice against this minority. E.g. a poll conducted by the Center for Research of Public Opinion (CVVM) in March 2016, found that 82 % of respondents considered the Roma people “unlikeable” or “very unlikeable.”

According to the report, societal discrimination against the Roma population can be seen in education, housing and employment. A former Czech Minister for human rights, equal opportunities and legislation, Jiří Diensbier, admitted that the government was aware of the problematic situation of Roma discrimination. At the same time however, he noted that the situation of the Roma minority has significantly improved in the last decade.^[2]

With the increased numbers of refugees and migrants coming to Europe in the recent years, mostly from Muslim countries, anti-Muslim and anti-immigration rhetoric of some politicians has become



Seal of the United States Department of State [1]

more obvious. Also, demonstrations against accepting migrants and refugees organized by both political and nonpolitical actors are more frequent than in previous years. Activities of groups, such as the “Bloc against Islam,” “Úsvit” (Dawn) and “Islám v ČR nechceme” (We Don’t Want Islam in Czech Republic), which organized most of the demonstrations, have been noticed by the report’s authors. On the other hand, the report also mentions that there were several demonstrations in support of migrants and refugees.

The government itself is trying to moderate anti-Islamic heading in the country and has publically condemned this behavior. On the contrary, President Miloš Zeman, seems to be moving in the opposite direction through his statements and support of the anti-Islamic movements. The report also mentions Czech deputy Prime Minister and Finance Minister Babiš and his repetitive statements about the impossibility to integrate Muslim refugees into Czech society.

In the end, according to the report, the Czech Republic is dealing with a wave of racial and religious intolerance. From the contents of the 2016 report it seems that Czech society is largely fragmented and disunited. Sadly, this is not only when it comes to public opinion but also in the political field. That could serve as an important mirror for the Czech society, which should be embraced rather than rejected.



Anti-immigration rally called “For our culture and safe country” in Prague [2]

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