

# V4 Human Rights Review



Dear Readers,

We are delivering the winter issue of the online journal V4 Human Rights Review, which reports on developments in the areas of human rights and democracy in the Czech Republic, Hungary, Poland and Slovakia.

We start with a report from the V4 conference on democracy, rule of law and human rights written by Pavel Doubek. The main focus of the conference was on judicial independence, as well as on hate speech and discrimination. What are the opinions of each country's experts on recent developments in these areas?

In the Czech section, Eliška Hronová discusses the gender pay gap, as the Czech Republic is one of the countries with the highest gender pay gap in Europe. In her article she focuses on how pay transparency could contribute to the reduction of pay inequality.

In the Hungarian section, Péter Kállai explains the recent developments with regard to the disruption of the largest

Hungarian news portal. What are its consequences for media freedom in Hungary?

In the Polish section, Łukasz Szoszkiewicz provides an insight into the situation of the LGBT+ community. The matter gained attention this summer after an LGBT+ activist was arrested, which triggered various reactions not only in Poland.

In the Slovak section, Erik Láštík reflects on how the judges of the Constitutional Court are selected and focuses on events that took place over the last two years, including the recent developments that give rise to optimism.

We hope you enjoy this issue!



Jan Lhotský

Editor of the V4 Human Rights Review  
Head of the Czech Centre for Human Rights and Democracy

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Photo on the front page: David Kosař in the Faculty of Law, Masaryk University, source: David Kosař, edits: photo cropped

## CZECH CENTRE FOR HUMAN RIGHTS AND DEMOCRACY



The Czech Centre for Human Rights and Democracy is an independent academic institution monitoring human rights developments both domestically and worldwide, issuing a monthly human rights journal (in Czech), as well as organizing conferences and discussions.

[www.humanrightscentre.org](http://www.humanrightscentre.org)

In 2019 the Czech Centre launched a new quarterly V4 Human Rights Review with partnering human rights institutions from Hungary, Poland and Slovakia.

[www.v4humanrightsreview.org](http://www.v4humanrightsreview.org)

## V4 Human Rights Conference: Judicial Independence, Hate Speech and Discrimination



Pavel Doubek

On Friday, 23 October, a group of experts from the Visegrad countries (Czech Republic, Hungary, Poland and Slovakia, together titled as V4) gathered online to discuss legal issues related to human rights and democracy. Distinguished scholars and legal practitioners made many valuable observations about the current situation in their respective V4 countries, with particular emphasis on judicial independence, hate speech and discrimination. What are the results of the conference? And should we be worried about democracy in our region?

The conference was part of an academic project mapping the current development and threats to democracy and human rights in V4 countries. As Jan Lhotský [1] explained at the beginning of the conference, rapid changes had been taking place in the Central European region, many of them very complex and difficult to grasp. This is the reason why leading human rights institutions of all V4 countries established academic cooperation and created the quarterly publication "V4 Human Rights Review". Their members recently met at an online conference, which was supported by the Visegrad Fund.

### How to understand judicial independence?

The keynote speaker **David Kosař** [2] introduced the topic of judicial independence by conceptualizing the term and classifying the recent attack on judicial independence in Central and Eastern Europe.

According to Kosař, there are three categories of judiciary lacking independence. First, the "dependent judiciary", i.e. judiciary that systematically favors a powerful actor who controls the branch through formal powers (such threats exist in Hungary, Poland and Romania). Second, the "rigged judiciary", which is systematically controlled through informal channels, e.g. by politicians, senior judges, or oligarchs (such threats have been present in Ukraine). Third, the "biased judiciary", which systematically favors a particular social group without any pressure (a typical example is the apartheid-era South Africa or Franco's and partly also post-Franco's Spain).

Conference on democracy, rule of law and human rights in the Czech Republic, Hungary, Poland and Slovakia

**FRIDAY 23/10/2020**

**V4 COUNTRIES:**  
JUDICIAL INDEPENDENCE  
HATE SPEECH AND DISCRIMINATION



**Keynote speaker:** David Kosař, Czech Republic

Panel 1 (10-12 am)

**Judicial independence**

- Katarína Šipulová, Czech Republic
- Ágnes Kovács, Hungary
- Hanna Wiczanowska, Poland
- Erik Láštík, Slovakia

Panel 2 (1.30-3 pm)

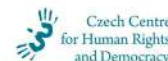
**Hate speech and discrimination**

- Monika Hanych, Czech Republic
- Alíz Nagy, Hungary
- Julia Wojnowska-Radzińska, Poland
- Barbara Láštíková, Slovakia

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• Visegrad Fund

**ONLINE**



The project is co-financed by the Governments of Czechia, Hungary, Poland and Slovakia through Visegrad Grants from International Visegrad Fund. The mission of the fund is to advance ideas for sustainable regional cooperation in Central Europe.

V4 Human Rights Conference poster [1]

The judiciary often faces a number of attacks (personal attacks against particular judges, attacks on court presidents, attacks on chief justices, institutional attacks, procedural attacks, and financial attacks). Kosař made clear that in practice, it is often very challenging to identify the attacks that undermine judicial independence. In his opinion, it is necessary to assess the whole context of judicial reforms and perceive them as a chess game where one measure in itself may not be problematic but cumulatively and contextually, it reveals the real motives behind the changes in the judiciary.

### A threat to judicial independence in V4 countries

The speakers of the first thematic panel discussed the current problems of judicial independence in their respective countries. **Katarína Šipulová** [3] highlighted the absence of a Judicial Council in the Czech Republic and its impact on independence.

She explained that so far there is no consensus among the elites to establish a Judicial Council. She further identified a number of factors that make the Czech judiciary fragile and vulnerable to interferences, such as the dominance of the Minister of Justice, the problematic selection of





Flag of Poland [2]

court presidents and Constitutional Court judges, internal dependence, flimsy rules on case assignment, etc. Additionally, there are also several informal entry points for political interference.[4] From her point of view, the Judicial Council can address these problems, provided it is properly designed. Several questions need to be answered in this regard. What shortcomings should the Judicial Council solve? Which guarantees should be introduced to protect the judiciary against interference from the inside? Who will select its members and whose interests will these members represent?

**Ágnes Kovács** [5] followed the discussion with the recent developments at the Supreme Court (*Kúria*) in Hungary and the threats it is currently facing. She explained that the Supreme Court has a strong position in the Hungarian judicial system as it delivers uniformity decisions and since 2020 its published judgments have binding force. Furthermore, the Supreme Court President has broad administrative powers within the top court of Hungary.

Despite the recent attacks on the Supreme Court [6] and the increasing efforts by state elites to capture it, the professional leadership of the Supreme Court has remained relatively independent. However, in 2019, new legislation changed the eligibility criteria for the President of the Supreme Court, resulting in the election of Mr Zsolt Andras Varga as the Supreme Court President in October 2020. Varga had been working as a judge in the politicised Constitutional Court since 2014 and was nominated by Viktor Orban's Fidesz party for this position. Ágnes Ko-

vács considers these changes and the election of Varga as the new President of the Supreme Court as a threat to the internal independence of the judiciary (a less visible threat) and, of course, to the whole Hungarian judicial system.

In a similar context, **Hanna Wiczanowska** [7] presented the evolutionary development of the concerns regarding the Polish judiciary and compared them with the standards of the EU and the Council of Europe. One of the most visible attacks has been the lowering of the retirement age for Supreme Court judges. This initially also applied to judges who had been appointed before this provision came into effect. The reform was heavily criticized by the Court of Justice of the European Union, which stated in its judgment of June 2019 that the measures violated the principle of irremovability of judges.

Wiczanowska also referred to problematic selection of members of the National Council of the Judiciary (NCJ). Its judicial members are elected by the lower chamber of the Polish Parliament (Sejm); six other members of the NCJ are parliamentarians and four others are *ex officio* members.[8] Such regulation inevitably leads to increasing political influence of the composition of the NCJ. Moreover, the enactment of the new Law on the National Council of the Judiciary provided for an early termination of mandates of all sitting judicial members of the NCJ at the moment of the election of its new members.

The final words in the panel on judicial independence were made by **Erik Láštík** [9], who focused on the practical

aspects of “clientelism” inside the judiciary in Slovakia. He demonstrated these problems with reference to the relationship between Judge Monika Jankovská and the former Minister of Justice Štefan Harabin, who was directly responsible for her career and the careers of many other judges. During his tenure, he engaged in various disciplinary proceedings directed against his critics and set in motion a promotion system favoring loyal judges.

Erik Láštic further highlighted the changes after the 2010 parliamentary elections launched by the Ministry of Justice Žitňanská. Since her term, the judiciary has become more transparent, but retained the old problems of multiple centers of power and a loyalty system with an “accountability mechanism” where allies were promoted (for example via remuneration) and critics punished (for example via disciplinary measures).

### Hate speech and discrimination in V4 countries

**Monika Hanych** [10] started the second thematic panel by analyzing two well-known cases of Facebook online hate speech in the Czech Republic, which both concerned Roma people. The first case contained hate comments on Facebook addressed to famous Czech Roma singer Radek Banga. The second case referred to hate comments posted under the picture of mostly Roma pupils of the Primary

Radek Banga [3]



School Plynárenská. Hanych showed that in both instances, the police were unable to investigate the majority of hate speech comments and let them be prosecuted under criminal legislation. In the end, a very limited number of mild criminal sanctions were delivered. Moreover, the sanctions differed fundamentally regarding the penalty imposed.

Hanych further pointed to the research conducted by the Public Defender of Rights concerning the case law of Czech courts dealing with internet hate speech.[11] In her opinion, the most pressing problems of the Czech criminal law with regard to online hate speech is the length of the criminal proceedings (one year or more) and the difficulty in proving the liability for the hate comments, which also results in a low number of prosecuted commentators. She further stressed zero or low experience of courts with adjudicating on this kind of criminal activity and the absence of any protection provided to victims of these crimes.

**Alíz Nagy** [12] continued with an alarming speech about anti-Roma sentiments in Hungary. She started with background information on Roma segregation in the northern and north-eastern parts of the country, particularly in the cities of Miskolc and Gyöngyöspata. Roma segregation and discrimination was prevalent in Hungary, but at the time Jobbik gained power and the paramilitary group “Hungarian Guards” were formed, also violent incidents against Roma took place.

She pointed to the largest anti-discrimination lawsuit that had appeared before the Supreme Court of Hungary. It concerned various municipal ordinances which had introduced discriminatory measures that resulted in forced eviction and homelessness. The second case concerned school segregation in the city of Gyöngyöspata. The latter case led to a Supreme Court ruling which awarded compensation to Roma children. Despite the success of both cases, the situation of Roma in Hungary has not improved. To the contrary, the compensation was argued by the Prime Minister Viktor Orbán as an undeserved benefit given to Roma, which further heightened anti-Roma sentiments. Orbán criticized the Supreme Court ruling, noting it “harms people's sense of justice”.

The problem of hostile behavior, prejudice, discrimination and racism against Roma (antigypsyism) was analysed by **Barbara Lašticová** [13]. In her presentation, she introduced her research study that investigated the links between political discourse, antigypsyism and antigypsyism action in five EU countries (Hungary, Slovakia, Romania, Ireland and France) and analyzed the effectiveness of interventions to counter antigypsyism. Additionally,



her study also aimed to create a toolkit for policymakers and practitioners to give them an idea of how to combat antigypsyism.

Respondents of her survey were asked several questions concerning their prejudices against the Roma, such as criminality, laziness, etc., as well as their willingness to be involved in pro-Roma collective actions, such as signing a petition, donating clothing, etc. The research shows that most people identify with hostile political discourse against the Roma and very few were willing to join the pro-Roma collective action. It is interesting to note that most Slovaks agree with the negative attitude towards Roma but they do not think that Slovaks are involved in discrimination. The study has further proved that antigypsyism predicts hostile political discourse endorsement.

## Conclusion

Regrettably, the limited extent of this article cannot cover all the interesting points discussed by the experts. However, all cases and studies discussed share one thing in common: negative stereotyping of minorities, especially Roma people, in V4 countries. As Monika Hanych pointed out in her closing remarks: *“Our countries deal with very similar problems, foremost strong anti-Roma sentiments. [...] What is, moreover, very striking in these cases is that the legal success is somewhat bittersweet since even if the victims win the case, the punishment of the perpetrator is often mild and politicians or leaders of the country refuse to respect the judgments, e.g. by declining to pay the compensation as we could observe in Hungary.”*

*Pavel gained a PhD degree in law from the Faculty of Law, Masaryk University. He worked for the Public Defender of Rights and the Office of the Government of the Czech Republic. In 2019 he received postdoctoral research fellowships focused on the implementation of the Convention against Torture and its Optional Protocol in Taiwan.*

## Notes

- [1] Jan Lhotský is the Head of the Czech Centre for Human Rights and Democracy
- [2] David Kosař is the head of the Judicial Studies Institute of Faculty of Law, Masaryk University, Czech Republic
- [3] Katarína Šipulová is a member of the Judicial Studies Institute of Faculty of Law, Masaryk University, Czech Republic
- [4] For example, alleged attempt(s) to influence the outcome of the judicial decision concerning the Czech President (Mynář case)
- [5] Ágnes Kovács is an assistant professor at the Eötvös Loránd University (ELTE) in Hungary
- [6] See especially attacks of PM Victor Orbán concerning the case of Gyöngyöspata

- [7] Hanna Wiczanowska is a PhD candidate at the Faculty of Law and Administration, Adam Mickiewicz University in Poznań, Poland
- [8] The First President of the Supreme Court, the Minister of Justice, the President of the Supreme Administrative Court and an individual appointed by the President of the Republic
- [9] Erik Láštík works at the Department of Political Science, Faculty of Arts, Comenius University, Slovakia
- [10] Monika Hanych works at the Office of the Government Agent before the ECtHR and is member of the Czech Centre for Human Rights & Democracy, Czech Republic
- [11] Public Defender of Rights, Hate speech on the Internet and decision-making of Czech courts, 2020 ([https://www.ochrance.cz/fileadmin/user\\_upload/DISKRIMINACE/Vyzkum/Hate\\_speech\\_on\\_the\\_Internet\\_and\\_decision-making\\_of\\_Czech\\_courts\\_\\_Survey\\_2020\\_.pdf](https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Hate_speech_on_the_Internet_and_decision-making_of_Czech_courts__Survey_2020_.pdf))
- [12] Alíz Nagy works at the Department of Human Rights and Politics, Eötvös Loránd University (ELTE), Hungary
- [13] Barbara Lašticová works at the Institute for Research in Social Communication, Slovak Academy of Sciences, Slovakia

## Photographs

- [1] Czech Centre for Human Rights and Democracy, V4 Human Rights Conference (conference poster).
- [2] Flag of Poland, author: 3005398, 24 July 2017, source: Pixabay, CC 0
- [3] Radek Banga, Svět knihy 2013 8938, author: Matěj Bařha, 16 May 2013, source: Wikimedia Commons, CC BY-SA 3.0, edits: photo cropped
- [4] Štefan Harabin, SF-IMG 0153-vyrez, author: Slavomír Frešo, 28 January 2019, source: Wikimedia Commons, CC BY-SA 4.0, edits: photo cropped.

Štefan Harabin [4]



# Czech Republic



Section editor: Lucie Nechvátalová  
Czech Centre for Human Rights and Democracy

## Pay transparency - A tool for the reduction of the gender pay gap



*Eliška Hronová*

**The Czech Republic violates the right to equal pay and equal opportunities in the workplace because of the persisting gender pay gap. How could pay transparency contribute to the reduction of (pay) inequality and what is the pay transparency practice in other countries?**

### **Decision *University Women of Europe v. the Czech Republic***

In June 2020, the European Committee of Social Rights (“ECSR”) published decisions on collective complaints of the University Women of Europe (“UWE”) submitted against 15 European countries.[1] The complainant organisation alleged violations of the right to equal pay and the right to equal opportunities in the workplace,[2] stressing the persisting gender pay gap in Europe [3] and the under-representation of women in decision-making positions within private companies.

The ECSR found a violation of various aspects of the above-mentioned rights not only in the Czech Republic, but in the vast majority of countries. Only Sweden was found to be fully compliant with the European Social Charter.

Nevertheless, the Czech Republic is still a country with one of the highest gender pay gaps in Europe on a long-term basis; currently, it comes third in the ranking, just after Germany and Estonia. The ECSR concluded that the Czech Republic violates the right to equal pay for work of equal value due to the lack of pay transparency. Furthermore, in the ECSR’s view, there is insufficient measurable progress in promoting equal opportunities in terms of equal pay. The ECSR noted that the gender pay gap dropped by only 0.5% in the observed seven-year period.[4] Therefore, pay transparency as a tool for the reduction of the gender pay gap deserves more attention.



Illustration image [1]

### **Transparency and the Czech work culture**

Before speaking about the statistics, it is interesting to highlight the specifics of the Czech work culture.

When did you last ask somebody directly about his or her salary? In the Czech society a conversation on remuneration is usually deemed a taboo. Speaking about money is uncomfortable. Many people consider the question about their salary impolite.

The outcomes are obvious. If we do not know the data, we cannot compare. Consequently, it is more difficult for employees to bargain on a fair individual salary or to identify pay discrimination. Moreover, it is easy for employers to hide the absence of any wage-setting policy and possible unequal pay.

Furthermore, some companies still incorporate a confidentiality clause into employment contracts which prohibits employees from disclosing their salary. However, information regarding a salary is considered to be personal data, therefore, everyone is legally allowed to disclose personal data related to their own remuneration. Therefore, confidentiality clauses are legally non-existent and unenforceable. Unfortunately, the general public is not

aware of this. On top of that, despite the illegal nature of confidentiality clauses, employees might fear losing their job for breaching such clauses.

### How can pay transparency be reached?

The opponents of pay transparency tend to argue that it violates personal data protection. Naturally, salary falls under the category of personal data and as such possesses special protection. However, pay transparency does not imply any disclosure of salaries of individual workers. When we speak about transparency or monitoring of pay, we mean anonymized data.

Many European countries have recently adopted various policies and regulations on the monitoring of salaries. Some countries, such as Denmark, oblige employers to prepare annual gender-segregated statistics and make them available to employees.[5] The United Kingdom opted for the “naming and shaming” policy. It means that employers (with more than 250 employees) are required to collect data on the gender pay gap and publish them on their own as well as governmental websites.[6] Another approach was adopted by Germany where an employee can ask the employer for information about median remuneration based on at least six colleagues of the opposite sex in the same or a comparable position.

### European Commission's recommendation

The problem of the gender pay gap has also been in the spotlight of the European Commission for the last decade. In 2014, the Commission adopted a recommendation

Pay transparency may increase chances of women for promotion to higher-paid positions [2]



(2014/124/EU) on strengthening the principle of equal pay between men and women through transparency. The Commission recommended Member States to adopt at least one of its four suggested measures. The states should firstly ensure the right of employees to obtain information on pay levels broken down by gender for categories of employees doing the same work or work of equal value. Secondly, they should impose an obligation on employers with at least 50 employees to regularly inform employees, workers' representatives and social partners of average remuneration broken down by gender. Thirdly, states should also require an employer with at least 250 employees to conduct a pay audit. Finally, they should ensure that equal pay is discussed during collective bargaining.

In 2014, the Government of the Czech Republic adopted a resolution expressing its intent to enact the reporting obligation; however, the promise was not followed by any action.[7]

### The impact of the pay transparency legislation

Since the pay transparency legislation has been enacted only recently there are not many thorough studies on its impact available yet. Detailed studies have been published only in the United Kingdom and Denmark so far.

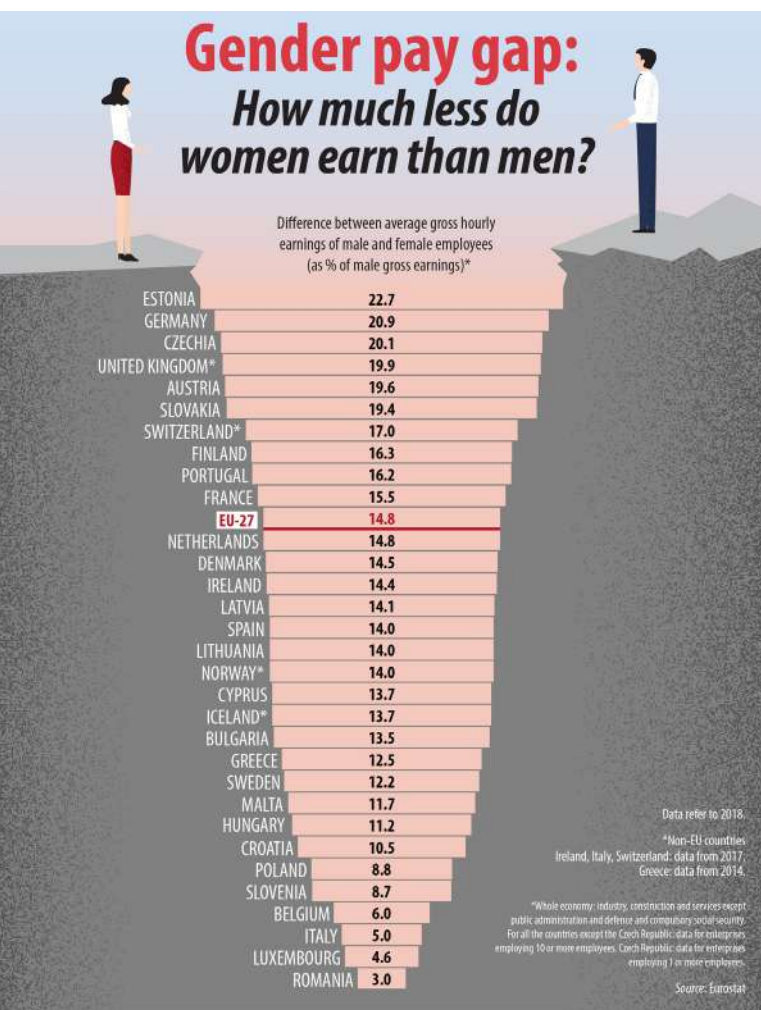
A current report assessing the UK policy is not very optimistic. It concludes that gender pay gap reporting has shed light on the inequalities and the overall trend is positive. However, the progress is too slow. The average pay gap in 2019 was 14.19%, compared to 14.12% in 2020.[8] At this extremely slow rate of just 0.07% per year, it would take 200 years to close the gap among the UK's leading companies.

On the other hand, the above described Danish legislation has already had a tangible impact. In reaction to the law, the gender pay gap declined by approximately 2% from 2006 to 2008. Additionally, it had another positive effect in relation to equal opportunities. The study proves that the chances of women being promoted to higher-paid positions within firms have increased.

### Conclusion

With regard to the British experience, we might ask whether pay transparency is an effective and necessary measure. Despite the discrepancies on its impact in the studies (for the time being a limited number), it is meaningful and important for other reasons as well.





[ec.europa.eu/eurostat](https://ec.europa.eu/eurostat)

Czech Republic is currently the third country in Europe regarding the level of gender pay gap [3]

Firstly, it highlights the problem of gender pay gap which is widely overlooked in the Czech Republic. Therefore, statistics could stimulate a desirable public debate regarding the taboo surrounding salaries, especially lower salaries for women, and hopefully lead to a cultural shift. Secondly, pay transparency enables women to compare their salaries with others. Based on the disclosed differences, anyone can potentially argue for an equal salary or detect discrimination cases and claim equal pay.

And last but not least, passing legislation on pay transparency would also be a message for companies that the government takes gender equality seriously and that they should follow its lead.

*Eliška Hronová graduated from the Faculty of Law at Charles University where she teaches at the Centre for Legal Skills as an external lecturer. She works at the Office of the Czech Government Agent before the European Court of Human Rights. Her areas of interest are ill-treatment and gender equality. She is currently on maternity leave.*

## Notes

- [1] The complaint was submitted against all countries which ratified the 1995 Additional Protocol providing for a system of collective complaints.
- [2] The rights are guaranteed by Article 1, Article 4(3) of the European Social Charter and Article 1(c) and (d) of the 1988 Additional Protocol.
- [3] The gender pay gap is the average difference between the remuneration of working women and men. It must be distinguished from unequal pay, which refers to the pay of men and women who do the same or similar work and which is considered to be a form of discrimination.
- [4] Gender pay gap dropped in the Czech Republic from 21.6% in 2010 to 21.1% in 2017.
- [5] According to the Act No. 562/2006 Coll., an employer with a minimum of 35 employees and at least 10 employees of each gender in a comparable professional position shall each year prepare gender-segregated statistics to consult and inform the employees of pay gaps.
- [6] The reporting obligation of employers with 250 or more employees was stipulated by the Equality Act of 2010 Regulations 2017.
- [7] The intent was expressed in the Appendix "Updated measures of Priorities and procedures of the government in promoting gender equality" to the Resolution of the Government No. 930 of 12 November 2014.
- [8] In 2019, 10,828 companies reported on their gender pay. Due to COVID-19, the British Government waived the obligation to report in 2020. As a consequence, the reporting rate fell by almost a half, with 5,453 companies complying with this obligation.

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- Public Offender of Human Rights, 'Annual Report on Protection against Discrimination 2019', [https://www.ochrance.cz/fileadmin/user\\_upload/DISKRIMINACE/Vyrocní\\_zpráva/VZ\\_DIS\\_2019\\_EN.pdf](https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyrocní_zpráva/VZ_DIS_2019_EN.pdf).
- The decision of the European Committee on Social Rights, University Women of Europe v. The Czech Republic, collective complaint no. 128/2016.

## Photographs

- [1] Illustration image, author: Anastasia Shuraeva, 24 March 2020, source: Pexels, CC0, edits: photo cropped.
- [2] Pay transparency may increase chances of women for promotion to higher-paid positions, author: Free-Photos, 2 August 2016, source: Pixabay, CC0, edits: photo cropped.
- [3] Czech Republic is currently the third country in Europe regarding the level of gender pay gap, Eurostat, 2018, edits: photo cropped.

## The President of the Czech Senate in Taiwan



*Lucie Nechvátalová*

**At the end of August and beginning of September 2020, the President of the Czech Senate, Miloš Vystrčil, made an official trip to Taiwan with a delegation of 90 Czech representatives. What was the aim of this visit? What was the exact agenda? And why did the Chinese authorities overreact to this trip?**

### Preparation of a trip to Taiwan

At the end of 2019, the former President of the Czech Senate, Jaroslav Kubera, announced that he would make an official visit to Taiwan during the following year. After his sudden death in January 2020, a new President of the Senate, Miloš Vystrčil, was elected.

The new President confirmed that he would follow the plans of his predecessor and arrange an official visit to Taiwan at the end of August and beginning of September 2020 with a 90-member delegation including politicians, entrepreneurs, scientists and journalists.

The reasons for this trip were to establish closer business relations with Taiwan as it is considered one of the most technologically developed countries in Asia and due to the country's tradition of human rights policies and democracy.

### Problematic attitude of China

Miloš Vystrčil proclaimed that besides the official goals, there was another reason for the accomplishment of the scheduled trip; concretely, a warning made to his predecessor by the Chinese embassy. After announcing his intention to visit Taiwan, the Chinese authorities warned Jaroslav Kubera that the Czech business companies operating in China would face sanctions.

China considers Taiwan to be its (breakaway) province, without any right to establish independent diplomatic relations with other countries. Any attempt to develop relations with Taiwan is considered by the Chinese authorities as an interference into its "one China policy" and the sovereignty and territorial integrity of the state.



Miloš Vystrčil [1]

The truth is that there are only fifteen countries in the world which have officially recognized Taiwan as an independent state on an international level.[1] Other states (including the Czech Republic) have more or less established relations with Taiwan at the business level, without developing official diplomatic relations through the most senior state officials in order to appease China.

The new President of the Czech Senate, however, made a clear statement that the Czech Republic is an independent democratic state and would freely develop relations in business, science and culture with other democratic countries of its own choice.

### Reaction of Czech politicians

Czech foreign policy senior officials such as the President, the Prime Minister and the Minister of Foreign Affairs criticized Miloš Vystrčil for his decision. The Czech Republic is not one of the countries which has recognized Taiwan officially and the Czech foreign policy adheres to the "one China policy". Therefore, these senior officials expressed their concerns over Vystrčil's trip, as it could break diplomatic relations with China and undermine the future political and business cooperation between the countries.

On the other hand, several Czech (and also foreign) politicians endorsed the official visit. They appreciated that the

President of the Czech Senate opposed China's intervention into the foreign affairs of the Czech Republic and was building new business and scientific opportunities which may help the Czech Republic to become one of the European leaders in these areas.

### Meeting Taiwanese leaders

Due to the COVID-19 pandemic, members of the Czech delegation had to undergo tests for COVID-19 before entering Taiwan and also upon arrival. Taiwanese people observe strict health measures and that is probably the reason why Taiwan is one of the states which has managed to prevent the spread of the COVID-19 pandemic with a minimum number of infected persons and casualties as well as with a marginal impact on its economy. The successful combat against the disease was also one of the topics on Vystrčil's agenda.

During his visit, Miloš Vystrčil met numerous Taiwanese leaders, such as the President, Prime Minister, President of the Taiwanese Senate and several Ministers. He also delivered a speech in the Taiwanese Parliament which ended with the proclamation "I am Taiwanese" (referring to John F. Kennedy's famous speech in West Berlin). Furthermore, he received a medal for parliamentary diplomacy.

Former President of the Senate of the Czech Parliament  
Jaroslav Kubera [2]



### Conclusion

In Miloš Vystrčil's opinion, his trip was a major success because he managed to establish economic and cultural relations between the two nations and showed that the Czech Republic is an independent democratic state. As a consequence of the trip, the Czech President, Zeman, announced he would stop inviting Miloš Vystčil to meetings of the state's top foreign policy officials and Chinese authorities announced that they would not pursue any co-operation with the companies of those who travelled to Taiwan. On any account, the impact of the visit will have on the Czech Republic itself remains to be seen.

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## Development of the accessibility of the right to a favourable environment and its practical consequences



Sára Mirabell Hátlová

Although the Czech Charter on Fundamental Rights and Freedoms contains the right to a favourable environment, until recently the right has been enforced quite rarely in Czech courts. This trend is, however, gradually changing over time. A positive influence may also be attributed to the improvement of the procedural aspects of this right and its accessibility.

The right to a favourable environment has gained constitutional recognition and protection in more than 100 states,[1] the Czech Republic being one of them. The Czech Charter on Fundamental Rights and Freedoms (“the Charter”) has contained this right since the very beginning of its existence, as of 1993. Recognition of the right reflects the emergence of international environmental law, which has been evolving since the 1970s and is gaining more importance every year. As the theory of environmental law continues to advance, its real-life effects become important as well.

The right to a favourable environment has rarely been enforced in Czech courts. Even though this trend is changing, since 1993 there have been only a few dozen cases of a complainant claiming a breach of this right before the Czech Constitutional Court. The reason for such a small number of claims before the courts is the limited accessibility to this right.

### Who is this right addressed to?

Article 35 of the Charter contains three subsections. The first stipulates that “*everyone has the right to a favourable environment*”. The second subsection states that “*everyone has the right to timely and complete information about the state of the environment and natural resources*”. Finally the third subsection sets out that “*no one may, in exercising their rights, endanger or cause damage to the environment, natural resources, the wealth of natural species or cultural monuments beyond the extent set by a law.*”

The first limitation is connected to the interpretation of the word “everyone”. Generally, the most frequently ad-



Illustration image [1]

ressed question by the courts was which subjects have the right to a favourable environment and which subjects are entitled to claim it. The main reason was the courts’ overly restrictive interpretation of the relevant provisions of the Administrative Procedure Code, governing the right to bring an action of individual entities. For many years, the Constitutional Court advocated the view that it had recognised the subjective right to a favourable environment only to natural persons. Legal entities were not allowed to claim this right on the grounds that they are not biological organisms and as such cannot perceive the negative effects of the environment.[2]

### Restrictions in the proceedings

The second problem concerned the strict limitation of the right to initiate proceedings in environmental matters. At first, the Czech legislation did not provide access to administrative and judicial proceedings regarding the right to a favourable environment to a sufficiently wide extent. This concerned both natural and legal entities. As a consequence, they could not apply to the administrative courts as the administrative judiciary required the fulfillment of the condition of one’s own rights being affected in order to satisfy the conditions for having a standing in court.

The cause for this could also be seen in the fact that there is no implementing law which would set out the rules for bringing a claim before the court in relation to a breach of the right to a favourable environment. Article 35 of the Charter falls within the regime of the subsequent Article 41 of the Charter, enabling addressees to enforce certain rights only within the limits of the laws that implement these provisions.

The accession of the Czech Republic to the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was to be a fundamental impetus for a change in the approach of the courts to claims submitted by civic associations. Unfortunately, the Czech Republic had not adequately implemented the Convention in its national laws for a long time and the real change in the approach thus occurred only much later.

### What has improved?

The first signs of a shift were marked by the decision of the Supreme Administrative Court [3] which recognized the right of a civic association to initiate proceedings with the help of the direct application of Directive 2011/92/EU on the assessment of the effects of certain public and

private projects on the environment (“EIA Directive”). The Supreme Administrative Court failed to apply the EIA Directive correctly, using the EIA procedure on a measure of general nature, so the impact of this judgement on the procedural aspect of Article 35 is not very clear.

The underlying judgement was issued by the Czech Constitutional Court in 2014 where the Court overcame the current practice and expressed an opinion that natural persons cannot be burdened if they associate in a civic association in order to enforce their right to a favourable environment.[4] However, the Constitutional Court still refused to extend this right to legal entities.

The legislation has gradually changed for the better as well. In 2015, due to imminent sanctions by the European Union, the EIA Act and the Building Act were amended and many shortcomings of these laws were brought into line with the EIA Directive and thus with the Aarhus Convention. This step improved the conditions for active public participation in environmental decision-making and public access to justice in two ways.

First, it set out the conditions for the participation of environmental associations in administrative proceedings concerning environmental protection more favourably, by clearly defining the follow-up procedure in which the

The Constitutional Court of The Czech Republic [2]





participation of environmental associations is now *a priori* enabled. Second, the amendment to the EIA Act introduced the possibility for environmental associations to take an administrative action against a permit issued in subsequent proceedings.

## Conclusion

The shift in the perception and construction of the right to a favourable environment seems to be very promising. It opens up the possibility for environmental associations to invoke the right to a favourable environment and provides the chance that courts will now proceed to comment on the essence and content of this right.

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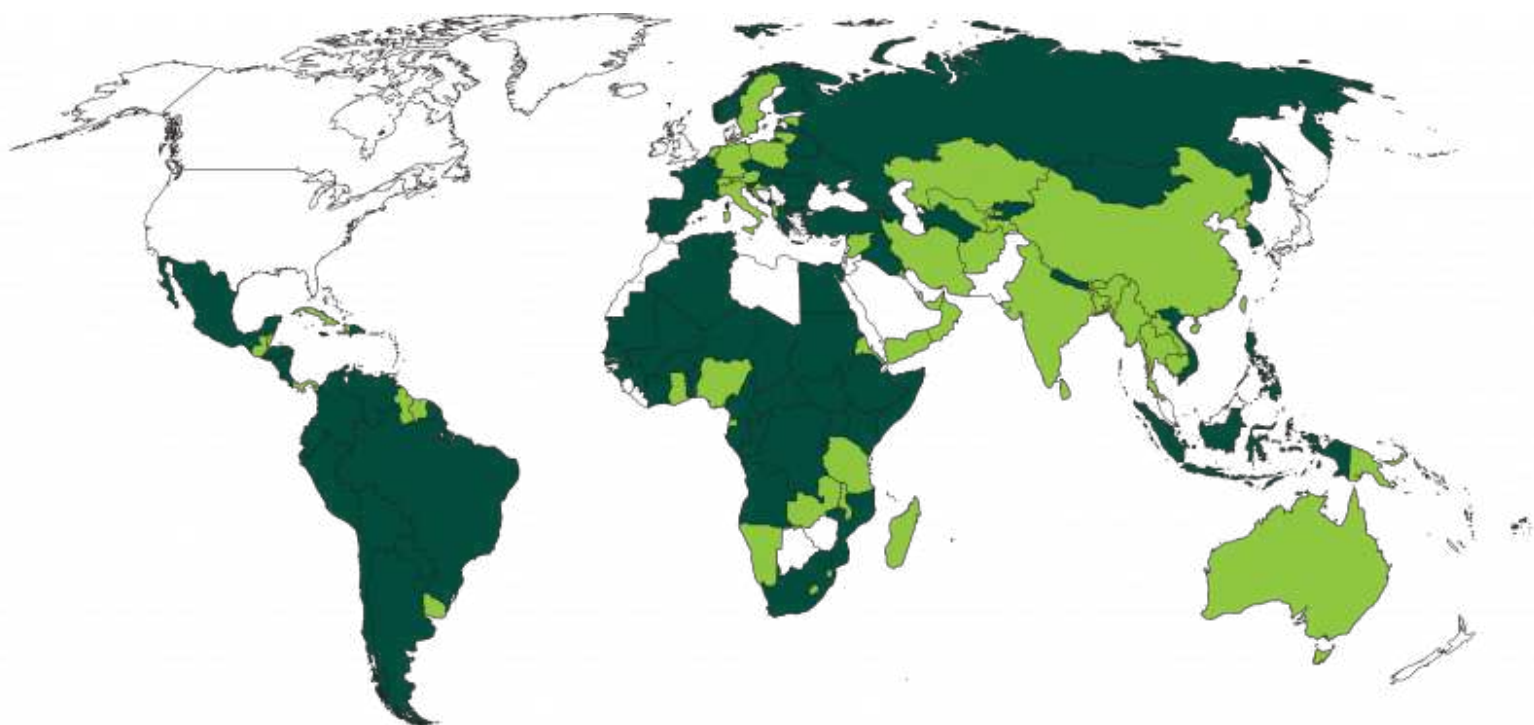
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Countries with the constitutionally protected right to a healthy environment Dark green: Countries with the constitutionally protected right to a healthy environment Light green: Countries with constitutional provisions for a healthy environment [3]





# Hungary



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## How the largest Hungarian news portal has ended as we knew it



Péter Kállai

One of the Hungarian government's most frequent arguments is that the largest news portal [index.hu](https://index.hu) also publicly expresses opinions critical to the Hungarian authorities, which means that the freedom of the press is allegedly flourishing in Hungary. With the recent disruption of the portal, this position became difficult to defend.

### Practices of the government regarding media freedom

The Hungarian Fidesz-KDNP-led government, with its decade-long, almost incessant two-thirds majority in Parliament, has developed several techniques to influence the press in Hungary, significantly reducing its freedoms in multiple areas.

The Hungarian authorities have three main strategies in this regard. Two of them were already discussed in the V4 Human Rights Review, namely how the government-friendly media have been reorganized to ensure that hundreds of media outlets convey only the government's and Fidesz's message, and how the public National Television serves the purposes of propaganda.[1]

As to the third method, while government-friendly outlets are supported enormously by advertisements of governmental companies or directly by the government, the few remaining independent media enterprises are trapped in an economically dependent situation. This means that governmental advertisements do not appear in these outlets, and also that independent companies are reluctant to advertise in these due to their potential exposure to the government, resulting in minimal income and in a barely sustainable economic situation for these companies.

The model based on free content consumption on the Internet has been experiencing a crisis all around the world and makes survival for online media challenging. The



Banner reading: "Without Index it does not even count as a hybrid regime!" [1]

advertising market has been further subverted by the Covid-19 pandemic situation. However, this already difficult setting is particularly exposed to governmental influence in Hungary.

### The story of [index.hu](https://index.hu)

Despite the general trend that online content consumption is streamlined through large global companies such as Facebook and Google, [index.hu](https://index.hu) [2] was the most read portal in Hungary for decades, by virtue of being the default starting page in browsers for many Hungarians. Even in recent years, despite the circumstances, it was able to increase its advertising revenues on a continual basis.

However, regarding the ownership structure of the portal, it had long been surrounded by figures close to the government. According to rumors from the sector,

Lajos Simicska, formerly the most powerful oligarch in Hungary, had a secret option to buy the portal. When he surprisingly ruptured his close ties with Prime Minister Viktor Orbán in 2014, his new political interest was to preserve the formal independence of index.hu and he managed to do so by exercising the secretly signed option to purchase index.hu and immediately transferring ownership rights to a foundation led by the portal's former lawyer, László Bodolai.

This move led to a very delicate balance. While most journalists trusted the new owner and continued to work independently, clearly government-affiliated figures showed up among the owners of index.hu's most important partner company, CEMP (later called Indamedia). This firm oversees partner-portals, the index.hu-related blog service, technical services of the portal and most importantly also its advertisements. This setting means that despite being the most visited portal, index.hu does not have direct, independent access to its income. The main consequence of this model is that the editorial staff had to repeatedly ask readers for financial support in the past.

This delicate balance started to collapse when a pro-government media-businessman Miklós Vaszily bought a large stake in Indamedia, the advertisement-controlling partner company. Vaszily, who (ironically, in a completely different

Waiting for resignation [2]



era had already been a manager of index.hu) is famous for being the manager of the company which controlled the main competitor of index.hu, Origo, and after another political scandal during which the editor-in-chief and other journalists left, he led the transformation of Origo from a critical portal to a governmental propaganda-outlet. Subsequently, he became general manager of the National Television for a short period and then chairman of the TV2 group, a company controlling one of the largest commercial television stations with a clear pro-government agenda.

### Dismissal of the editor-in-chief and the resignation of journalists

The scandal leading to the resignation of all of the journalists emerged when a reorganisation proposal arrived from the board and was rejected by the editor-in-chief, Szabolcs Dull. After the proposal to outsource several columns of the portal and thus the harm to the unity of the editorial staff became public, the portal's owner László Bodolai dropped Dull from the board, accusing him of leaking information to competitors. Dull rejected the allegations and warned readers that the newspaper's independence was at stake. At that point no further steps were initiated and Bodolai stated that as Dull was not a member of the board, he would still stay as editor-in-chief; however, one month later Dull was unexpectedly fired.

As a response, the entire editorial staff left. Following the editor-in-chief's dismissal (and after his requested but refused reinstatement), all the journalists left index.hu, and in total more than 90 staff members resigned.

In their view, there are two major ways of violating the independence of an editorial staff. One way is to directly influence the content of the outlet. The other, apparently more sophisticated way is when the composition of the editorial staff is dictated from the outside. That is the case now, and this also violates freedom of the press without directly influencing the content.

### Everybody plays innocent

Many actors in the story, new members of index.hu, the managerial board, pro-government journalists, and even governmental politicians denied political intervention in the fate of index.hu. The most interesting statement was, however, made by Miklós Vaszily who claimed that there was "*no intention of making a second Origo*", thereby conceding ex post facto that Origo's earlier takeover was indeed politically motivated.





Vera Munk, deputy editor-in-chief of Index.hu and editor-in-chief of telex.hu [3]

### What's next?

Szabolcs Dull received the M100 Media Award in Germany for supporting freedom of the press and independent journalism. Intervention into freedom of the press by economic means evoked a reaction at the European level as well, and generated protests and solidarity acts, but the harm cannot be undone.

The leaders of index.hu managed to recruit around 30 (and counting) journalists to continue the portal and immediately hit a slightly more friendly tone towards the government. On 23 November Indamedia bought Index.hu, thus eliminating even the formal independence of the portal from the government friendly Indamedia and Miklós Vaszily. Despite the fact that the new CEO-editor-in-chief, Pál Szombathy and two of his deputies also left only after four months of the full staff-change, and despite the fact that Bodolai stays just as a lawyer at the company, they started a new advertising campaign with the catchphrase “ugyanott, ugyanúgy” meaning ‘at the same site, in the same way’.

The leaving staff, or as they are known the “leaving indexers”, are collecting donations to start a new, self-owned

news portal called telex.hu,[3] which went online on 2 October with 70 of them. The initial number of supporters seems encouraging and even the owner of Economia, one of the largest Czech media groups, has pledged to donate 200,000 euros to telex.hu. It is, however, still questionable whether one can build a portal with readers from every side of the political spectrum, as index.hu used to do, and become the new “home page for the country”.

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- [3] Vera Munk, deputy editor-in-chief of Index.hu and editor-in-chief of telex.hu, author: János Bódey, 24 July 2020, source: Index.hu Facebook page, edits: photo cropped.



## A victory for Hungarian civil society? CJEU condemns Hungary for its attack on civil society



Veronika Czina

In a judgement delivered in June 2020, the Court of Justice of the European Union (CJEU) ruled that Hungarian regulations regarding foreign donations to civil society organizations were discriminatory and unjustifiable.

### Restrictions introduced against NGOs

For the past few years, Hungary has been at the center of attention of several EU institutions and international organisations due to certain measures of the government that allegedly violate democratic values or endanger the rule of law (such as “Lex CEU” or the government’s migration policy during the refugee crisis). Among the contested issues, one that put Hungary into the spotlight was the situation of NGOs, whose operation became extremely difficult due to budgetary restrictions.

The fundamental rights of NGOs operating in Hungary have been gradually hampered, starting already in 2011 with the Act on the Right to Association and the Legal Status of Civil Organizations and Public Utility Status (Act CLXXV of 2011). This Act restricted the conditions for acquiring legal personality by NGOs and the accession to a non-profit status.

In addition to the difficulties introduced by the Act CLXXV of 2011, Hungarian authorities launched an illegitimate state audit into the use of the EEA/Norway Grants NGO fund by the NGOs in the period between 2013-2015.

In the summer of 2017, the Hungarian Parliament adopted a new legal act called the ‘Transparency Law’ (Act LXXXVI of 2017 on the Transparency of Organizations Supported from Abroad), targeting primarily foreign-funded NGOs, which introduced a series of measures that indirectly discriminated and disproportionately restricted donations to civil society organizations from abroad. The provisions of this law apply to foreign sources of capital, thus putting a huge administrative burden on the recipient of donations, and stigmatizing both the recipients and donors. This way, making donations from abroad to civil society organisations in Hungary became quite difficult,



Syrian refugees at Budapest Keleti railway station [1]

which seems to endanger the free movement of capital, one of the four fundamental freedoms of the single market of the EU.

As a result, the European Commission launched an infringement procedure against Hungary in the summer of 2017. As the Hungarian government refused to repeal the contested law, the Commission referred Hungary to the CJEU in December 2017 as a third step of the proceedings.

The anti-NGO Act of 2017 was criticized by several international organizations, such as the Venice Commission of the Council of Europe, the OSCE, and the UN.

### An overarching campaign against foreign-founded organizations

The ‘Transparency Law,’ however, was only the tip of the iceberg. It was part of a broader campaign targeting organizations that were accused of “supporting migration” and which were allegedly linked to George Soros, the Hungarian-American philanthropist billionaire.

After 2017, Soros started to become depicted by the Hungarian government as the primary conspirator responsible for the refugee crisis and an enemy wanting to destroy the Europe of nation-states (see, for example, the case of the Central European University in Budapest). In 2018, a law curtailing the rights of NGOs, which was enacted by the Hungarian Parliament in June that year, even became part of the “Stop Soros” Act. The Stop Soros Act made possible the legal prosecution of persons “organizing migration”, and was therefore directed against those organizations that support migration.

It does not come as a surprise that the Venice Commission adopted an opinion after the adoption of the Act, criticizing its effects and urging Hungary to repeal it.

### The judgement of the CJEU and its implications

The CJEU delivered its judgement on the Transparency Law in June 2020, stating that the Hungarian restrictions on the financing of civil organisations by persons established outside that Member State violate EU law. The CJEU argued that the Transparency Law introduced discriminatory and unjustified restrictions regarding both the organizations at issue and the persons granting them any support.

As a result, through these measures, Hungary violated its obligations under Article 63 of the Treaty on the Functioning of the European Union (free movement of capital) and Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union. If the Hungarian government intends to comply with the CJEU’s decision, it

will have to initiate the withdrawal of the “Transparency Law” by the Hungarian Parliament.

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The building of the Hungarian Parliament [2]





## #freeSZFE – Another university deprived of its autonomy



Alíz Nagy

In recent years, the Hungarian government changed the operational model of several public universities to a private, foundation-based model. This change was also introduced at the University for Theater and Film Arts (SZFE) without any consultation, while also stripping the senate of its competences. Unlike other universities, members of the SZFE started with organized resistance and rejected the new model as illegitimate and a violation of academic freedom and university autonomy.

### 'Privatization' of Hungarian universities

A private university can ensure autonomy since it can function without financial or any other influence of the government. Usually, these institutions still receive some support from the state in the form of tax breaks, grants, student loans and other financial relief. In Hungary, a new model of private universities was introduced first at Corvinus University, one of the leading educational institutions in business administration and economics in Hungary.

The "Corvinus model" is the reform of higher education institutions that is planned to be introduced at several universities in the future. Since 2019, the university's finances have been covered by blue-chip stocks. A Foundation, the Maecenas Universitatis Corvini Foundation, has been established to manage the stocks and administer the financial means for the university's functioning.

Once this model is introduced, the university's everyday operations are controlled by the foundation. Eight further universities have been privatized so far and become subordinated to different foundations, with their board members appointed by the Innovation and Technology Ministry. One of these universities is the University of Theater and Film Arts (*Színház- és Filmművészeti Egyetem*, SZFE). SZFE students immediately launched protests, using several innovative methods to express their resentment towards these "reforms".

### #freeSZFE – the University of Theater and Film Arts

In his blog post titled '*Aux armes, comédiens!*', Viktor Kazai provides an overview of a series of events that he



Demonstration in front of SZFE [1]

identifies as elements of the attacks on academic freedom in Hungary. The limitations introduced for the autonomy of the SZFE squarely fit into the "government's culture war" narrative.[1] Kazai lists different measures regarding how the government has been taking over culture: theater managers of smaller cities, as well as the head of the National Theater, have been replaced by trusted people from Orbán's administration and new institutions (for example the Hungarian Academy of Arts) have been created to replace the previously existing ones.

Now, SZFE seems to be successfully resisting the government's plan to control this facet of culture in Hungary. During the summer, it was announced that the university should move to the Corvinus model at the beginning of the new academic year. Demonstrations started almost immediately as both the university leadership and students found the decision unacceptable, especially since it had been adopted without any prior consultations.

In response, the entire leadership of the university resigned and several emblematic lecturers, including famous directors, announced the discontinuation of their classes (among others Ildikó Enyedi and Gábor Máté). The members of the university's leadership also announced that they would not take up any further functions unless the



university's autonomy was restored. Several national and also international actors, musicians, institutions and organizations expressed their solidarity with the SZFE.[2]

### The new leadership of the university and their first measures

The newly established foundation's board members were recruited exclusively from persons favored by Viktor Orbán's administration. Although the SZFE nominated its own candidates, none of them made it into the leadership. The curatorium of the foundation is now led by Attila Vidnyánszky, who is known for his good relations with Orbán's government and for supporting its idea to reshape the arts to comply with its nationalistic and Christian ideals.[3]

The first steps introduced by the board deprived the senate (previously the university's highest decision-making body) of its right to decide, among others, on any operational, financial and infrastructural matters. Furthermore, the senate is not entitled anymore to elect the rector or any other leading lecturers and directors of the university. These rights now belong to the foundation.

### Innovative methods of demonstration

As a response, students started occupying their university campus. Among other requests, they demanded the

Entrance of the ELTE Lágymányos Campus [2]



restoration of the university's autonomy, resignation of the new board and reinstatement of the democratically elected senate.[4]

The university's entrance was closed with red-white ribbon, which became the symbol of the protest. Furthermore, the freeSZFE hashtag spread across various platforms, starting with a Hungarian photographer posing at the Venice Film Festival with a #freeSZFE T-shirt. Subsequently, several renowned actors used the hashtag to express their solidarity.

During their protests, students came up with innovative protest methods. Thousands of people created a human chain connecting the university with the Parliament. Additionally, they issued a charter that was forwarded by the people to the Parliament, listing the genuine principles of university life. On another Sunday, famous professors of the university held open lectures and seminars in the streets of Budapest. On the one hand, these innovative forms of protest help maintain attention while on the other hand they seem to be the new creative ways in which demonstrations can be held safely in the time of Covid-19.

Vidnyánszky claimed that Amnesty International instructed students to organise the demonstration. This accusation fits well into the government's anti-NGO agenda.

The students occupied their university buildings until November, calling for the university's autonomous operation and rejecting the newly introduced model and the curatorium. The academic year was opened by László Uppor, one of the leaders of the university who had resigned, with a one week delay. Despite the fact that lecturers are on strike, they launched an alternative format of teaching classes, a so-called "Republic of Education".

The university's new chancellor was prevented from entering the building, with students publicly criticising the new leadership as illegitimate. In response, the new leadership declared the "Republic of Education" to be illicit and at the beginning of November they announced that the university was being closed. Still, students and faculty were committed to move on with their alternative methods of keeping education going.

The pandemic seems to be the one thing that stops students' blockade. The government announced new restrictions on 9th of November, which stop students from occupying their buildings any further. They reported that as of 10th of November they are considering further alternative methods of demonstration, but they have to abandon their campus which they had defended for more than two months.



Uránia Filmszínház [3]

Most recent developments might lead to further distress. The Commissioner for Educational Rights declared that students' constitutional right to education cannot be limited by the maintainer, meaning that the new leadership cannot close the university or suspend education. At the same time, the government issued an ordinance that enables the maintainer to invalidate the semester under exceptional circumstances (i.e. public health, or public safety concerns).

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# Poland



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## Rights of LGBT+ persons in Poland



*Łukasz Szoszkiewicz*

**In August 2020, the Polish police arrested the LGBT+ rights activist Margot Szutowicz for an alleged attack on a pro-life truck. The judicial order on placing Szutowicz in a pre-trial detention for two months was eventually reversed but the incident has fueled discussions on the deteriorating situation of the LGBT+ community in Poland.**

The arrest of Margot Szutowicz has triggered a cascade reaction in Poland and beyond. Solidarity with the LGBT+ community in Poland and protests against excessive use of force were expressed by international media, NGOs (e.g. Human Rights Watch), artists (e.g. Pedro Almodovar, Margaret Atwood and Olga Tokarczuk) and international bodies (e.g. the European Parliament). Although Szutowicz's case is an issue itself, most critical voices highlight the rapidly deteriorating situation of the whole LGBT+ community in the entire country.

## Politicization of LGBT+ rights in Poland

The enjoyment of human rights by the LGBT+ community is one of the issues that has been used instrumentally by the ruling majority (Law and Justice party) since 2016. This practice was most evident in the recent presidential elections. Before the first round, the incumbent President Andrzej Duda gave a series of homophobic speeches, hoping to mobilize his traditional conservative electorate. Before the second round, however, he also had to seek the support of more liberal voters and therefore decided to invite one of the organizers of the Pride March to visit the Presidential Palace. Balancing between the conservative and liberal electorates, the President did not apologize for the homophobic rhetoric but conveniently hid himself behind the freedom of speech.

The President as well as other politicians of the ruling party cut themselves off from accusations of discrimination by pointing out that they do not refer to LGBT+ persons but rather to the "LGBT ideology", which is supposedly a political project against traditional Catholic values. This



Anti-LGBT rally in support of homophobic speech given by the Archbishop M. Jedraszewski [1]

narrative is supported by a part of the clergy that blames the "LGBT+ ideology" and its advocates for pedophilia in the Polish Catholic Church.

Accusations repeated by high-ranking politicians and clergy have translated into a gradual increase in negative attitudes of society towards LGBT+ persons, which is reflected in studies conducted, among others, by the European Union Agency for Fundamental Rights (FRA) and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), accredited by the United Nations.

## Findings from the EU-wide LGBT+ survey

In an LGBT+ survey conducted by the FRA in 2019, Poland scored below the EU average in all of the 17 indicators measuring discrimination. The largest divergences from the average scores were observed in the area of intoler-



ance. Two in three respondents said that prejudice and intolerance had risen in the last five years (EU average was 36%) whilst only 4% believed that their government effectively combatted intolerance against the LGBT+ community (33% in the EU).

When asked about the main reasons for this increase, 88% of respondents from Poland referred to the negative stance and discourse advocated by politicians. Although the negative attitude of politicians was stated as the main factor by respondents from several countries (e.g. Estonia, Hungary or Italy), in no other country was it mentioned as often as in Poland. One should not forget that the results of the survey had been published before the incumbent President and the ruling party deployed their hateful rhetoric as an election strategy in the presidential campaign in 2020.

### Discrimination at the local level

The homophobic narrative presented by the high-ranking members of the Polish Government and clergy has translated into countless incidents and initiatives at the local level, including anti-LGBT+ rallies, sermons and declarations. According to the Atlas of Hate [1], as many as 97 local authorities in Poland have adopted resolutions

Pride March in Poland, 2018 [2]



“against LGBT+ ideology” or proclaiming “LGBT+ free zones” since March 2019. This trend is a reaction to the declaration by the Mayor of Warsaw in support of LGBT+ rights following the WHO guidelines.

As of September 2020, four of these discriminatory resolutions (adopted by the municipalities of Istebna, Kłwów, Serniki and Osiek) were challenged in courts and found to be unlawful. The respective courts ruled that the resolutions violated the Polish Constitution (in particular its anti-discrimination clause along with the right to privacy, freedom of expression and right to education) and that local authorities were acting beyond their competence.

The discriminatory resolutions have been also widely criticized in the European media and the European Union. In December 2019, the European Parliament adopted a resolution that condemned “LGBT+ free zones” and urged Polish authorities to revoke these discriminatory policies. There has been no reaction from the Polish government so far; however, resolutions against LGBT+ people have not been adopted since. In September 2020, Věra Jourová, the Vice President of the European Commission, warned that violations of fundamental rights of LGBT+ persons could result in limited access to EU funds.

### Poland's place in the global picture

In the light of the above circumstances, it comes as no surprise that Poland was ranked as the least LGBT+ friendly EU country in the Rainbow Map 2020, published annually by the ILGA. Amongst 46 countries covered under the project, only seven non-EU countries were ranked lower than Poland, namely Armenia, Azerbaijan, Belarus, Monaco, Russia, San Marino and Turkey. The ILGA highlighted numerous violations of the freedom of assembly, freedom of expression and freedom of association. For this reason, its experts recommended that Poland introduce legislation that would allow for the recognition and protection of same-sex couples as well as regulations that would explicitly prohibit hate speech based on sexual orientation and gender identity.

### Silver lining

The homophobic rhetoric can be a double-edged sword as it mobilizes voices of protest in society, including in the clergy. For instance, Father Adam Boniecki, the senior editor of the Roman Catholic Magazine “*Tygodnik Powszechny*”, has openly demonstrated his support for the LGBT+ community. Similarly, Szymon Hołownia, the presidential candidate in the 2020 elections (having gained more than





MPs dressed in the rainbow colours during the presidential inauguration of Andrzej Duda in 2020 [3]

13% of votes), who used to be a member of the Dominican monastic community, expressed his support for the legalization of same-sex unions. Liberal mayors of some cities participated in Pride Marches (e.g. Poznan) and adopted political declarations in support of the LGBT+ community (e.g. Warsaw). Also Poland's Nobel laureate Olga Tokarczuk called for a better protection of LGBT+ rights.

These voices and actions give some hope that the rights of LGBT+ persons will be defended by both liberal and conservative public figures and thus effectively counter the anti-LGBT+ narrative of the Polish Government.

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## Poland to withdraw from the Istanbul Convention on Combatting Domestic Violence Against Women



Hanna Wiczanowska

The current Polish ruling party Law and Justice has been known for its lack of support for the Istanbul Convention. The Polish Government has publicly criticized the Convention as “*neo-Marxist propaganda that turns our world of values upside down*”.

### Ruling majority's opposition to the Convention

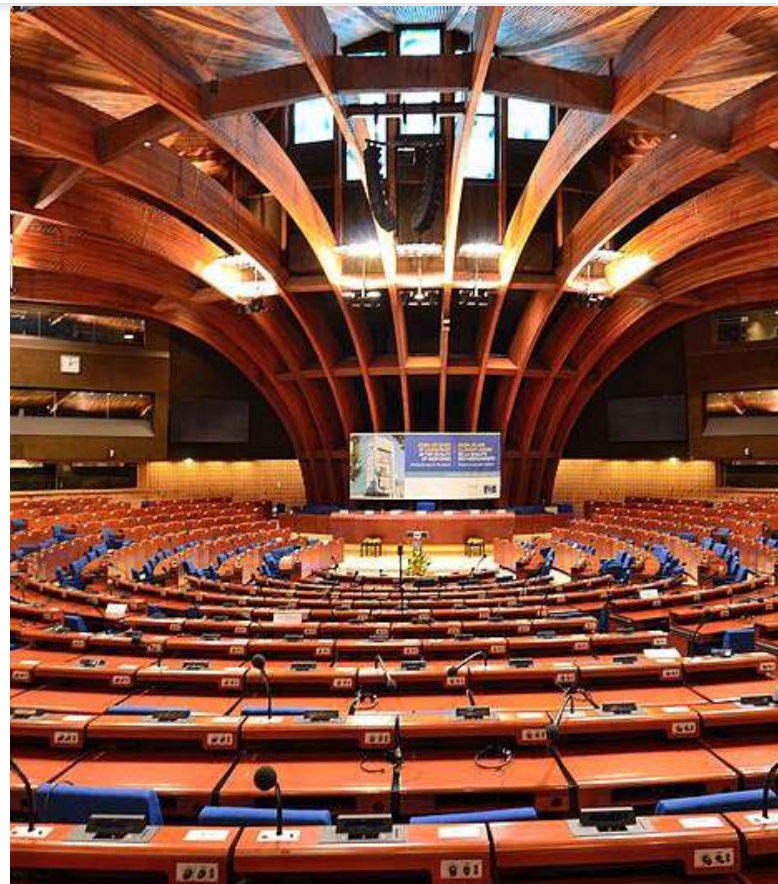
In July 2020 the Minister of Justice, Zbigniew Ziobro submitted a formal motion to the Ministry of the Family to undertake action to denounce the Council of Europe Convention on Preventing and Combatting Violence Against Women and Domestic Violence (Istanbul Convention).

In January 2017, in response to his inquiry, Polish Ombudsman Adam Bodnar received a message that the Ministry of Justice had sent a preliminary request for a withdrawal from the Istanbul Convention to the Government Plenipotentiary for Civil Society and Equal Treatment, Adam Lipiński. A. Lipiński confirmed having received the draft motion to denounce the Convention from the Ministry of Justice on 28 November 2016. However, as a result of the publicity given to the case, the Government temporarily postponed the plan, as the spokesman for the Ministry of Justice Sebastian Kaleta purported in his interview with *OKO.press*.

### Intensifying efforts to denounce the Istanbul Convention

The issue of Poland's withdrawal from the Istanbul Convention was officially reopened in May 2020 by the Deputy Minister of Justice Marcin Romanowski who publicly advocated the need “*to leave this gender gibberish*”. In response, the Ministry of Justice stressed that the statement reflected only the view of Romanowski's political party *Solidarna Polska*, but not the official position of the Polish Government.

Nevertheless, in July 2020, Minister for Family, Labour and Social Policy Marlena Maląg confirmed that efforts had been carried out to withdraw from the Istanbul Convention, stating: “*Poland has filed objections to the Con-*



Council's Parliamentary Assembly hemicycle [1]

*vention, and we have time until the end of the year to clarify our intentions. We will be working with the Ministry of Foreign Affairs and the Ministry of Justice in order to prepare an appropriate legislation.*” In this context, it should be underlined that by virtue of Article 89 of the Polish Constitution, a withdrawal from the Istanbul Convention, which falls within the competences of the President of the Republic of Poland, would require prior consent expressed by the Parliament in the form of the statute.

At the same time, the Catholic Social Congress and the Ordo Iuris institute announced that they would be collecting signatures for a petition titled “*Yes to the family, no to gender*”, which aims at Poland's denouncing of the Istanbul Convention and adoption of the International Convention for Family Rights instead.

### Istanbul Convention to be examined by the Polish Constitutional Court

On 30 July 2020, the Prime Minister of Poland, Mateusz Morawiecki, decided to submit a motion to the Constitutional Tribunal to examine the compatibility of the Istanbul Convention with the Polish Constitution and the consistency of its translation published in the Polish Journal of Laws with the authentic text.



The Polish Ombudsman joined the case. As he stressed, the Polish Constitutional Tribunal has no competence to assess the compliance of the text of a ratified international treaty with its translation. Moreover, the Prime Minister's motion did not meet the formal requirements arising from the Act of 30 November 2016 on the organization and procedure of proceedings before the Constitutional Tribunal. In particular, the Prime Minister did not indicate the provisions of the Convention that were to be mistranslated, nor did he duly substantiate the allegations that the provisions of the Convention are unconstitutional.

### Threats to Poland in the event of termination of the Convention

At first, it is vital to emphasize the compatibility of the Istanbul Convention with the Polish Constitution. In this regard it is worth referring to the opinion of the Helsinki Foundation on Human Rights on the Polish draft law on the ratification of the Istanbul Convention, i.e. that the Convention constitutes specification and realization of the norms of the Polish Constitution.

In the light of these remarks, it should be stressed that denunciation of the Convention would mean weakening the implementation of constitutional standards and those adopted by the United Nations Organization. The latter observation is confirmed by the recommendation of the UN Human Rights Council from 2019, which indicated

that the Polish Government should ensure a comprehensive approach to combatting gender-based violence against women, in line with the Istanbul Convention, by including a gender-sensitive focus on the specific concerns of women, and the implementation of effective emergency barring orders.

### Reactions to Polish withdrawal

In her statement, Secretary General of the Council of Europe, Marija Pejčinović Burić stressed the key role of the Istanbul Convention in combatting violence against women and domestic violence at the international level. Moreover, she also expressed her readiness to clarify any misconceptions or misunderstandings regarding the Convention in a constructive dialogue.

Such a withdrawal might be especially dangerous during the COVID-19 pandemic, which President of the European Free Alliance Lorena López de Lacalle noted: *"Women have been uniquely affected by the pandemic, particularly in terms of domestic violence, as lockdowns have meant that many have been trapped inside with their abusers"*.

On 17 September 2020 the European Parliament adopted the Resolution on the rule of law in Poland. The aforesaid resolution states that the situation has deteriorated since the activation of the EU Treaty triggering Article 7 measures against Poland over breaches of the rule of

Premises of the Polish Ministry of Justice on the Aleje Ujazdowskie in Warsaw [2]







European Parliament in Strasbourg [3]

law, and recommends that the European Commission and the EU Council should take decisive steps in the matter. Among the grounds for adoption of such a document, it is vital to mention: violence against women (and the announced withdrawal of Poland from the Istanbul Convention), drastic limitations on abortion and domestic violence.

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## Presidential elections in Poland: Polarised society votes in times of pandemic



Artur Pietruszka

In May 2020, Andrzej Duda's presidential term was coming to an end in unprecedented circumstances; on the one hand, the COVID-19 pandemic, and on the other hand, the legal chaos caused by the ruling majority. Two months later, the elections finally took place but the course of the campaign and voting was far from ordinary.

### Failure of postal voting in May and the aftermath

The Polish Constitution states that the presidential election shall be ordered by the Marshal of the Sejm to be held on a day no sooner than 100 and no later than 75 days before the expiry of the term of the serving President. Andrzej Duda's term was due to expire on 6 August 2020. Hence, according to the Constitution, the elections could have taken place between 27 April and 22 May.

Originally, the presidential election day was set for 10 May 2020. However, due to the COVID-19 pandemic and the attendant political turmoil, the elections were to be conducted by universal postal voting. As we reported previously, ultimately the voting was not organized as a result of a decision by the ruling Law and Justice party (see V4 Human Rights Review Autumn 2020, p. 28).

### Opposition changes the contender

Initially, the elections were viewed as a two-horse race between the incumbent President Andrzej Duda and the major opposition candidate, Małgorzata Kidawa-Błońska, with the TV-host-turned-politician candidate Szymon Hołownia trying to win the favour of voters seeking an alternative to the main political parties (see V4 Human Rights Review Summer 2020, p. 35).

However, the closer the elections, the less and less favourable the polls to Kidawa-Błońska, with support rates hitting a low of 2% at the beginning of May. On 15 May 2020, following the decision to postpone the elections, Kidawa-Błońska withdrew her candidature. The Civic Coalition (*Koalicja Obywatelska*) substituted her with the mayor of Warsaw Rafał Trzaskowski.



President Andrzej Duda [1]

The candidates that were registered for the 10 May 2020 elections were not required to collect 100,000 voters' signatures again, as the primary requirement to contest the elections. However, Trzaskowski did have to do so, and at an unprecedented pace. The elections were scheduled on 3 June 2020, giving the new contestant only seven days to secure his spot on the ballot paper. Despite the tight deadline, Trzaskowski's committee managed to gather over 1.5 million signatures.

### First round results

The voting took place on 28 June 2020 with a turnout of 64.51%, the second highest in any popular vote after 1989. Andrzej Duda won the first round, having received 43.5% of the votes. As suspected, Rafał Trzaskowski came in second with roughly 30.5% and Szymon Hołownia ended up third, gaining the support of nearly 14% of voters. Quite surprisingly, the fourth spot was landed by the far-right nationalist Krzysztof Bosak.

The results were particularly disappointing to the candidates of the United Left (*Lewica Razem*), Robert Biedroń, and the Polish People's Party (*Polskie Stronnictwo Ludowe*), Władysław Kosiniak-Kamysz, who earned 2.22% and 2.36% respectively, a strong decline in comparison to their parties' outcomes in the 2019 parliamentary elections.



## Two candidates, two debates

Since 1989, in every presidential campaign, the two final contestants would meet in a direct, televised debate. However, this year, an offer to debate on a private-owned TVN network was rejected by Andrzej Duda, who said that *“some private TV network of Mr. Trzaskowski’s sets a date for the debate and forces me to appear – this is dictate.”*

As an alternative, the President suggested that three main TV networks, TVN, Polsat (another private-owned medium) and the public broadcaster TVP, should hold a joint debate. Such an event did not happen, reportedly due to an objection from Jacek Kurski, the TVP chairman and former MP from the Law and Justice party.

Eventually, each candidate took part in separate events at the same time. Andrzej Duda appeared on TVP while Rafał Trzaskowski participated in a debate with journalists from various newsrooms, televised by TVN and Polsat. Both politicians put up an empty stand for their opponent as a symbol of each other’s unwillingness to discuss. The pictures from the debates were commonly viewed as yet another proof of deep political divisions in Polish society.

Rafał Trzaskowski [2]



## Public media involvement in the electoral campaign

TVP largely supported the incumbent President’s campaign, dubbing Trzaskowski a *“threat to Polish values”* who would withdraw social benefits programmes. Reporting on the campaign, the public broadcaster did not manage to maintain independence, praising Duda’s activity in office.

The Office for Democratic Institutions and Human Rights concluded in its post-electoral report that *“in an evidently polarized and biased media landscape, the public broadcaster failed to ensure balanced and impartial coverage, and rather served as a campaign tool for the incumbent.”* According to the media monitoring website press.pl, 97% of news stories broadcasted on TVP’s main news service devoted to Duda were positive while almost 87% of those on Trzaskowski were negative.

## Final results and the Supreme Court resolution

With the turnout even higher than in the first round at 68.18%, the voting results on 12 July 2020 were as close as expected. For the first time the pollsters were not able to call a winner immediately after polling stations were closed.

Ultimately, Andrzej Duda managed to secure his second term in office with 51.03% of the votes, leaving Rafał Trzaskowski with a support of 48.97%. In absolute numbers, the difference between the two candidates was a mere 422,000 votes from a total of over 20.5 million. Studies show that Trzaskowski got nearly all the support from other opposition candidates while Duda relied on his own electorate, reinforced only by Krzysztof Bosak’s supporters.

On 3 August 2020, the Supreme Court confirmed that the elections were valid, in spite of nearly 6,000 electoral protests. Approximately 88% of the protests were left without further actions, mostly due to the lack of presented evidence or other formalities.

The judges who ruled the elections valid were chosen with the participation of the politically-dependant National Council of Justice, which has raised questions as to the impartiality of the judges (see V4 Human Rights Review Spring 2020, p. 26 and Summer 2020, p. 28).

## Conclusion

The presidential election was yet another clash of the ruling majority and the exceptionally united opposition, putting all their faith and votes in Rafał Trzaskowski who



Public broadcaster TVP building in Warsaw [3]

challenged not only the opponent, but also his distorted image presented by the public broadcaster.

Nonetheless, the outcome of the elections proves that the ruling majority with Andrzej Duda as President still has significant support of Polish society. Given that the next popular vote is set to be in 2023, the Government can continue its reforms with hardly any possibilities for the opposition to take effective action against them.

Above all, the strong political polarisation remains a crucial challenge for all political forces since the current situation shows great divisions in Polish society. However, given the course of the campaign, there is little hope that the re-elected president will be a nation-uniting figure.

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# Slovakia



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## The politics of judicial selection: Searching for constitutional justices in 2019 Slovakia



*Erik Láštík*

A new constitutional amendment, proposed by the Minister of Justice M. Kolíková in October 2020, is the most extensive revision of the constitutional provisions regarding the Constitutional Court since 2001. The amendment reacts to the increased polarization in the selection of constitutional justices, which culminated in vacant judicial positions at the Constitutional Court during its last term.

### The 2019 selection under time constraints

The selection process of candidates for the Constitutional Court took place under various time constraints. First, the Parliament set the deadline for nominations on January 7, 2019, leaving just over a month to select and for the President to choose and appoint suitable candidates before the Constitutional Court would be left with only four out of 13 justices.

Secondly, President Andrej Kiska's term was coming to an end. His earlier decision not to run for reelection meant that the campaign before the presidential election taking place in March 2019 included a debate on what types of justices would-be presidential candidates would select if they were to be elected. Furthermore, the Parliament's term was coming to an end with just a year left before the elections, with loosening political alliances among the coalition and opposition parties.

Exactly 40 candidates were nominated for the first selection in the Parliament. The extensive list included several high-profile candidates, including the former PM and leader of the biggest political party SMER R. Fico, two State Secretaries of Justice, the President of the Supreme Court, the President of the Special Criminal Court, and the President of the Slovak Judges Association. For the first time, the Constitutional Committee of the Parliament planned for open public hearings with the



The Constitutional court of Slovak republic [1]

candidates, with a representative of the President joining parliamentarians as well.

### The selection marathon

The public hearings with candidates started on January 23, 2019 and took several days to complete. For the first time in history, the hearings were aired live on Facebook and closely followed by the media and NGOs, who produced minute-by-minute reports on individual candidates' performances, questions, responses, and controversies.

The most significant discussion was related to Mr. Fico. His comments on the Constitutional Court's political nature opened a debate on the relation between politics,



Slovak President Andrej Kiska [2]

politicians, and judicial independence. More importantly, one of the Committee members, the opposition MP Ondrej Dostál (SaS), questioned Fico's legal experience of 15 years, which was one of the conditions for applying for this post.

After the ruling coalition's disagreement over joint candidates on February 12, 2019, a few hours before the vote, R. Fico had removed his name from the ballot, threatening junior coalition partners and demanding, unsuccessfully, a secret ballot. In the end, only 66 ballots were valid, with 67 votes needed for election. No candidates were selected.

Two days later, the Parliament voted again, failing to elect a single candidate due to disagreements among the ruling coalition. The largest coalition party Smer-SD argued that the appointment of new constitutional judges should be left to the new President, with presidential elections scheduled for March, as expected its presidential candidate Maroš Šefčovič to be successful.

### A provisional Constitutional Court

Meanwhile, the term of nine justices expired on February 16, 2019. With only four judges left, the Court operated in a provisional arrangement under the updated version of the Court's work schedule, unable to decide on most of its cases.

The coalition parties tried to reach an agreement on the secret ballot and on several joint candidates during March. They succeeded and elected six candidates on April 3,

with an additional two candidates elected on April 4. The media, NGOs, opposition parties, but also President A. Kiska criticized the Parliament's inability to elect all 18 candidates and condemned the politicization of the selection process.

To "restart" the Constitutional Court, the President was expected to select and appoint four judges. In a surprise move, the President appointed only three justices out of eight approved candidates on April 17. One of them, I. Fiačan was named the Chief Justice. The President argued that the Parliament had failed to comply with its obligations. His decision to appoint only three justices was an extraordinary measure to create a working plenum at the Constitutional Court and allowed the Court to hear all motions. Kiska also reiterated his position that the Parliament was obliged to provide all (ten) remaining names to complete a list of candidates.

When repeated votes in May produced only four additional candidates, President Kiska left the appointments to the newly elected President Zuzana Čaputová, who took office in mid-June. President Čaputová followed her predecessor's decision and announced that she would appoint six new judges *"only after the Parliament gets its homework done and elects the remaining candidates."* The Parliament produced only two additional names during votes in June and recessed for summer.

In September, the negotiations between the coalition and the opposition led to a public ballot return on the remaining candidates. After months of voting, the Parliament successfully elected the last four candidates on September 25.



On October 10, 2019, President Z. Čaputová selected and appointed the remaining six judges to the Constitutional Court, bringing the conflict regarding the Constitutional Court to an end.

The 2019 (s)election saga prompted a discussion on re-defining two-decade-old rules for the selection of constitutional justices. After the 2020 parliamentary elections, which produced a coalition government with a constitutional majority, the current Minister of Justice M. Kolíková pushed for a new design that would address the shortcomings of the existing system.

The first change makes an explicit reference to candidates' moral authority, which will be tested in public hearings during the selection. Also, a "moral credit" clause [1] may become a reason for disciplinary proceedings whose result may even strip a judge of their position at the Constitutional Court. Second, the quorum for a candidate's elec-

Robert Fico [3]



tion increases to an absolute majority, i.e. 76 votes. This change creates pressure for a broader political agreement on candidates, increasing their legitimacy. Third, in a direct reaction to the Parliament's repeated failings to elect candidates in the past, the new proposal creates a possibility for the President to appoint candidates even if the Parliament fails to elect the necessary number of nominees to keep the Constitutional Court functioning.

And lastly, addressing the polarization at the Court during its third term under Chief Justice I. Macejková, the amendment introduces a mechanism that prevents the concentration of power in the hands of ruling parties when (s) electing judges. In such a scenario, if the Parliament elects a majority of judges during one election term, their tenure will be halved.

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- [1] The proposed change to article 134 section 4 stipulates that a candidate's life and moral characteristics have to ensure that s/he will serve in a rightful manner.

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## Health workers' right to conscientious objection to abortions in the case law of the European Court of Human Rights



Metod Špaček  
Tomáš Grünwald

The Amendment of the Act on Health Care and on Services related to Health Care regulating the field of abortions has recently resonated within the frame of legislative activity in Slovakia. Unlike the Amendment, no attention has been paid to the recent case law of the European Court of Human Rights, which significantly changed the view on health workers' right to conscientious objection in relation to abortions. What approach can be identified in the Strasbourg court's case law?

### Right to conscientious objection from the perspective of the Council of Europe

Conscientious objection with respect to health workers generally emerges from a personal conviction and ethical or religious values which this targeted group professes. The exercise of the objection results in many consequential practical and legal issues, e.g. cases of denial of access to medical services of patients for the very reasons of health workers exercising the right to conscientious objection. Moreover, the issue is very complex as there is no legal framework in the Council of Europe by which member states of this the oldest European organization, primarily focused on the protection and promotion of human rights, would be guided in the case of health workers exercising the right to conscientious objection. The lack of any legal regulation may thus have a negative impact on an individual's health despite the fact that states have a positive obligation to secure provision of health care to everyone within their jurisdiction.[1]

Article 9 of the European Convention on Human Rights ("ECHR") guarantees in paragraph 1 the right to freedom of thought, conscience and religion. These rights protected by the ECHR are absolute. This results in the impossibility of public authorities interfering with the exercise of these rights which constitute an exclusively internal matter for every human being. There is, however, a limitation clause which emerges from paragraph 2, allowing a state to restrict the exercise of these human rights if the individual



Health Workers [1]

decides to manifest his thought, conscience or religion outwardly. These restrictions, which must be prescribed by law and are necessary in a democratic society, are based on grounds of public safety, protection of public order, health or morals or protection of the rights and freedoms of others. On the basis of the aforementioned, a conclusion can be drawn that Article 9 of the ECHR *expressis verbis* does not contain a right to conscientious objection.

### Right to conscientious objection in the case law of the European Court of Human Rights

The existence of the right to conscientious objection was confirmed by the European Court of Human Rights ("ECtHR") in the case *Bayatyan v. Armenia*. The ECtHR stated that although Article 9 itself does not contain the right to conscientious objection, it may be violated.[2] As regards the right to conscientious objection with respect to health workers in relation to abortions, the ECtHR dealt with this issue in the case *R.R. v. Poland*. [3] In this case, the ECtHR stated that "[s]tates were obliged to organize their health services to ensure that an effective exercise of the freedom of conscience of health professionals in a professional context did not prevent patients from obtaining access to services to which they were legally entitled." From this legal opinion we can come to two conclusions. First, the ECHR guarantees the right to health workers' conscientious objection, and second, its exercise cannot be to the exclusion of health care, which must be secured by the state on the ground of its positive obligation in the area of human rights.



### Decisions of the European Court of Human Rights in *Grimmark v. Sweden* and *Steen v. Sweden*

The two applicants were employed as nurses within the Swedish healthcare system. They applied for and were granted a leave of absence to study to become midwives. During their studies, they informed their employers that they would be unable to assist in carrying out abortions. Due to this approach, the applicants were informed by the employers that they could not work in this post if they did not change their mind. As the applicants refused to participate in abortion procedures, they were prevented from working as midwives. After exhausting domestic remedies, with the Swedish courts confirming that the employers had the right to request the applicants to perform all the tasks, including those relating to abortion procedures, the applicants filed a complaint to the ECtHR also complaining of a breach of Article 9 of the ECHR. The ECtHR declared the application inadmissible.[4]

At the outset, the ECtHR noted that the ECHR does not guarantee a right to be promoted or to occupy a post in the civil service. The ECtHR continued that according to its settled case law, the ECtHR leaves to the States Parties to the ECHR a certain margin of appreciation in deciding whether and to what extent an interference regarding Article 9(2) is necessary. The ECtHR likewise observed that Sweden provides nationwide abortion services in such a way as to ensure that the effective exercise of freedom of conscience of health professionals in the professional

context does not prevent the provision of such services. [5] The requirement that all midwives should be able to perform all duties inherent to the vacant posts was according to the ECtHR not disproportionate or unjustified. The employers have, under Swedish law, great flexibility in deciding how work is to be organized as well as the right to request that their employees perform all duties inherent to the post.

### Commentary

Unlike in the previous case *R.R. v. Poland*, the ECtHR was faced with the task of unequivocally answering the question whether Sweden had the obligation to guarantee the right to conscientious objection according to the ECHR with respect to two nurses. The ECtHR adopted a negative stance, concluding that the health workers' right to conscientious objection to abortions does not come under the framework of human rights guaranteed by the ECHR. Applying the rule of interpretation of the ECHR in the form of margin of appreciation, the ECtHR declared in its decision that the state is in the best position to address this issue.

In terms of their practical impact, these decisions are of fundamental importance. Referring again to the recent legislative activity in Slovakia, if the legislator hypothetically decides to amend the legislation in such a way as to abrogate the right to conscientious objection and at the same

[European Court of Human Rights \[2\]](#)





Prayer [3]

time the relevant international treaty, under which the right to conscientious objection is guaranteed in very general terms were to terminate, [6], there is no right to health workers' conscientious objection in relation to abortions guaranteed under the ECHR. Even if this possibility ever existed in the prior case law, the ECtHR in its recent decisions concerning Swedish nurses disproved it. However, it is not excluded that this legal opinion will be overcome by the ECtHR itself in the future as the ECtHR regards the ECHR as a living instrument that must be interpreted according to present-day conditions.

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## Notes

- [1] Although the ECHR contains only human rights of the first generation, the obligation to secure the right to health with access to health care emerges for member states of the Council of Europe from other inter-

national treaties adopted on the regional or universal level, such as the International Covenant on Economic, Social and Cultural Rights or the European Social Charter.

- [2] The case did not concern the provision of health care but a performance of compulsory military service. According to the ECtHR, there may be a breach of the right to conscientious objection if an opposition to the military service is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or their deeply and genuinely held religious or other beliefs.
- [3] The case did not address Article 9 but Article 8 of the ECHR, which guarantees the right to respect for private and family life.
- [4] Based on Article 35, sub-paragraph 3(a) of the ECHR.
- [5] The ECtHR thus expressed a similar opinion as in the case *R.R. v. Poland* which concerned Article 8 of the ECHR. In this vein, it is possible to state that claiming a breach of Article 8 or 9 of the ECHR depends on the position of the applicant. In the Polish case, the applicant claimed the right to access to health care while in the Swedish cases, the applicants refused to provide health care.
- [6] As regards Slovakia, the relevant legal instruments are Act No. 578/2004 Coll., on healthcare providers, health workers and professional organizations in the health and the Basic Treaty between the Slovak Republic and the Holy See.

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## Right to information in V4 countries: Up to international and regional standards?



Ivan Novotný

When one thinks about the freedom of speech guaranteed in numerous international agreements, the right to information usually does not come to mind. This right is, however, crucial for public control of policy makers and governments. Not only is it essential to secure open governance and transparency but data show that a broader right to information also secures a more prosperous society. How is the right to information guaranteed in Human Rights Law and in the V4 countries?

In spring 2020, while the whole world and Europe was dealing with an unprecedented spread of the new coronavirus, Slovakia was also dealing with a transition of power after the general elections had taken place in late February. Among the many goals in the rather ambitious governmental programme for the next four years, the self-proclaimed anti-corruption coalition pledged to fight for more transparency. The key measure to ensure transparency is supposed to be a comprehensive amendment to broaden the right to information via the Act on Free Access to Information, building on the strict enforcement of the principle “*what is not secret, is public*”.

Illustration image [1]



V4 Group [2]

### International and regional protection of the right to information

The right to information is included in many human rights international conventions and is recognized as a political right. The right is universally recognized, for example, in Article 19 of the International Covenant on Civil and Political Rights. Regionally, the right is guaranteed in Article 10 of the European Convention on Human Rights and in Article 11 of the Charter of Fundamental Rights of the European Union.

In all of the above mentioned documents, the right to information is a part of the freedom of speech, which is a bedrock of all political rights and has been subject to intense lay and expert discussions. However, far less attention is being paid to a specific part of this freedom, i. e. the right to information.

### Right to information in V4 countries

Moving to the region of the V4 countries, all of them have the right to information embodied directly in their constitutional orders. The following analysis focuses only on the contemporary legal orders after the fall of the communist regimes in the Constitutions of Slovakia, Poland, Hungary and Czechia.

The Slovak Constitution guarantees the right to information in its Article 26(1) with freedom of speech as the first listed political right. Moreover, the Constitution separately elaborates in Article 26(4) and (5) on the conditions for limitation of the right to information, acknowledging its different legal nature from the freedom of expression. The concrete tools and measures are set in other Slovak statutes.

The Polish Constitution in its rich Article 61 incorporates the right to information in four separate paragraphs, independent from the freedom of speech and even delivering a brief list of mandatory subjects providing public information.

Moving to the Constitution of Hungary, the right to information is guaranteed by a brief mention in Article 9(2). Together with the freedom of speech and freedom of press, free dissemination of information necessary to form a democratic public opinion shall be ensured and other tools and measures for enforcement are set in statutory acts.

Finally, Czechia, with its different constitutional order from the other countries, guarantees the right to information in the Charter of Fundamental Rights and Free-

doms and not directly in the Constitution. Article 17 of the Charter ensures the right to information together with freedom of speech, freedom of the press and prohibition of censorship. Similarly to the Polish regulation, the Charter explicitly mentions that a self-government as part of the public sector is also a mandatory subject and sets out basic limitations for the right to information, stipulating further that the concrete measures and tools shall be specified in Czech statutory acts.

By a comparative analysis of the constitutional regulations of the V4 countries it is clear that all four constitutional orders fulfil the international and regional standards set out in the Human Rights Law. Putting aside the concrete legal acts on the free access to information of the V4 countries which are essential to analyse the actual quality of the right to information, it may be observed that the Polish Constitution guarantees the right most broadly and it devotes a whole provision to it. The Slovak and Czech constitutional frameworks also acknowledge the right to information separately, including the list of conditions for a limitation of the right. The most brief, while up to the set standard, is the Hungarian Constitution, guaranteeing the right to Information, although it is mentioned together with other political rights and without any detailed specification.

Illustration image [3]

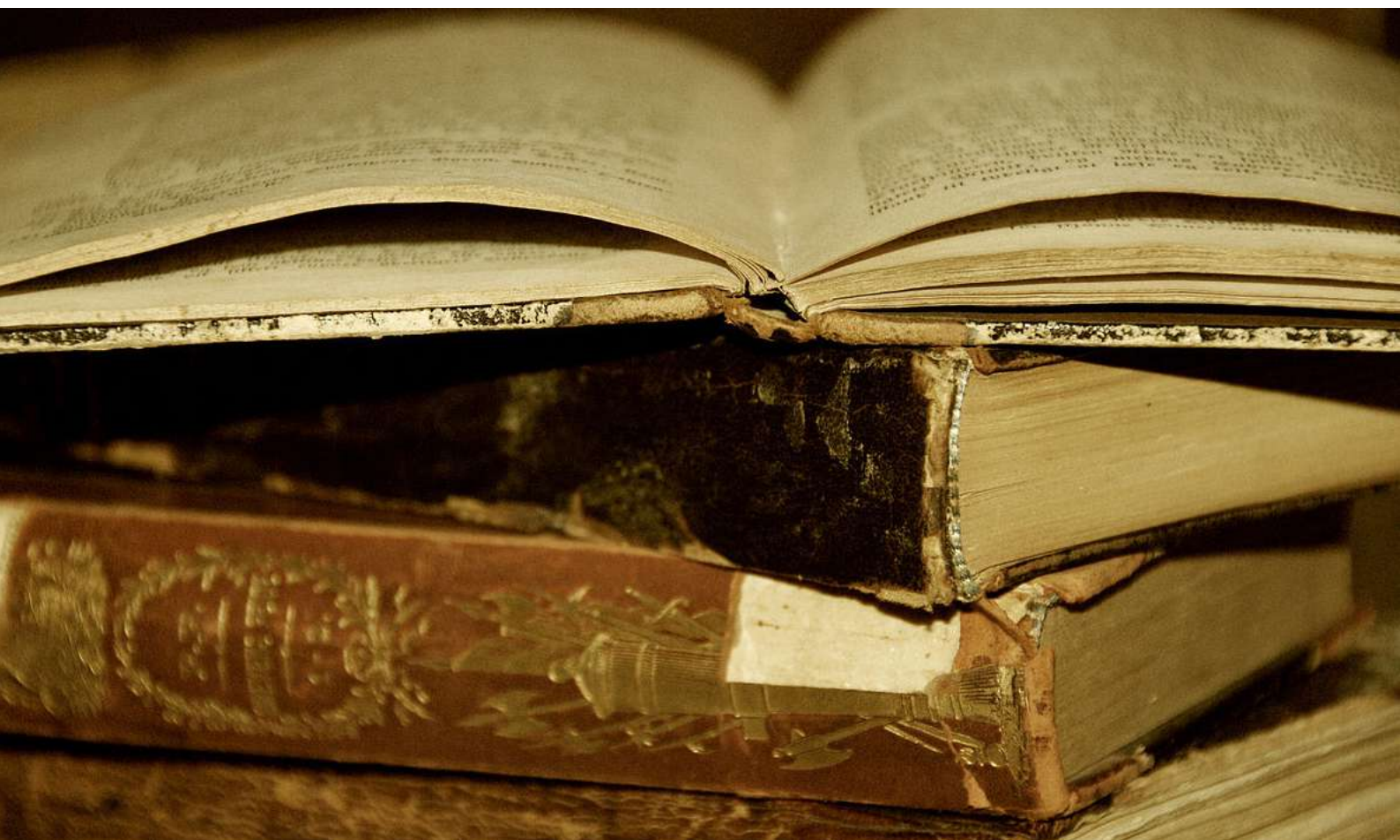






Illustration image [4]

### Why is the right to information so important?

Apart from the traditional perception of the right to information, i. e. as a means of public control, another less obvious advantage has been proven to exist. Research done by many institutions shows a causal nexus between the right to information and the economic prosperity of the respective states.

A crucial goal of each government of any state is, or should be, to secure prosperity for its peoples (ideally while keeping up with the principle of sustainability). When focusing on the V4 countries and their specifics, it is a fact that every single ruling party and coalition has been elected for its anti-corruption programme backed by enormous popular demand. An unequivocal part of the prevention of corruption is transparency, public control, open governance and general prosperity, all of which can be reached, among other ways, by strengthening the right to information.

Besides the new Slovak government, it should be an aim of each V4 country's government to strengthen and broaden the right to information. They definitely have a solid basis for that in their Constitutions.

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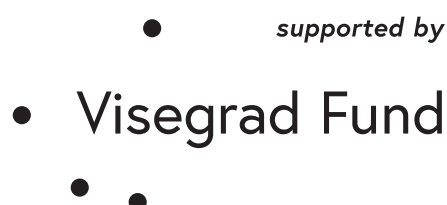
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