Dear readers,

the Czech Center for Human Rights and Democratization has since its creation in 2010, evolved into a well-established academic non-governmental organisation in the Czech Republic. Since the 2014 issue of the Czech Republic Human Rights Review the Center’s members and interns have largely focused on a monthly-issued Bulletin in the Czech language and other activities (e.g. organising of conferences, academic work etc.) and inadvertently, our English speaking supporters have been rather neglected. Now, we are proud to present to you a renewed version of the Czech Republic Human Rights Review starting with a double issue covering Czech human rights cases and developments spanning 2015, exclusively in English.

In this issue you will find a leading article from Adam Blísa who reflects on significant events or situations that occurred in 2015 in the Czech Republic, which often put Czech society’s values and morals to a challenging test. The next two articles from Kateřina Studecká (also the author of this editorial) and Michal Oščipovský describe in more detail two of these situations, concretely the detention of foreigners in the Czech Republic and a rally that took place on a significant national holiday, that incited an important public debate on the state of freedom of expression in the Czech Republic. Following this, Adam Blísa again describes the developments in discrimination cases in the Czech Republic and Veronika Bazalová brings you details about a specific discrimination case related to the Roma minority. The issue is closed by Anna Macíčková’s report on president Zeman’s state visit to Azerbaijan.

This 2015 double issue is analysing these respective situations from afar and that offers a different and insightful perspective. However, as stated above, the Czech Republic Human Rights Review is renewed, fresh and ready to be read and spread. Therefore, the following issues covering 2016 and 2017 human rights events will be ready for our English speaking audience in a much shorter time frame.

Hopefully you will enjoy this look back at 2015 and will join us in reviewing following events as well.

Kateřina Studecká
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Front page photo: “Refugees Welcome” (Pro-refugee Demonstration from November 2015). Author: Chmee2, CC BY 3.0, Wikimedia Commons.

**NEWS AND COMMENTS ABOUT HUMAN RIGHTS**

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The Values and Struggle of the Czech Society

Adam Blísa

The Czech Republic, placed in the very heart of Europe, between the West and the East, has quite short and intermittent democratic experience. It enjoyed democracy from 1918 until 1938, and again from 1989 until now. In between these two periods, the Czechoslovak society was subjected to two totalitarian regimes, and it was called to be a bridge over which the armies march from West to East and vice versa. It follows that it is not a very long time and not a suitable environment for the democratic ethos to grow and root itself in the society.

The Constitution of the Czech Republic nevertheless proclaims to follow in the humanistic footsteps of the pre-war Czechoslovakia and to uphold the democratic ideals upon which the Western world stands. Nobody doubted that it would take time to become a true part of the Western, civilized world. There was a presumption nonetheless that the Czech Republic was steadfastly headed that way. When confronted with the reality, however, one is not really certain that is the case anymore.

The struggle to come to terms with the Western values became apparent in the light of the current migrant crisis and several events connected to it. The crisis admittedly puts the whole Europe to a test, but while most of the countries in the EU focus on resolving the question of how to actually help or integrate the refugees, the Czech Republic struggles with slightly different issues.

Act One. The struggle begins with the arrival of the first refugees crossing the Czech border with Austria, who were detained pursuant to the Dublin Regulation that defines which State has the obligation to evaluate the asylum request presented by refugees arriving in Europe. The Czech police handles the first big group of refugees by writing numbers on their forearms. A particular historical connotation comes to mind immediately – and the international reaction is swift. The police, at least this time, changes its practice.

Act Two. The next stage of the refugee’s journey through the Czech Republic is detention. This detention in strenuous living conditions is possibly contrary to the international and constitutional obligations of the Czech Republic, it needs to be added, especially in relation to women and children. The Czech Republic faces severe criticism from the Council of Europe Commissioner for Human Rights, UN High Commissioner for Human Rights, the Czech Public Defender of Rights, who published a detailed report, as well as from part of Czech society.

Act Three. The other part of Czech society sees nothing wrong with the treatment of the refugees. The Czech Minister of the Interior denies that there is anything wrong with the detention facilities. Volunteers in Austria begin advising the refugees against travelling via the Czech Republic. They heed the advice and avoid travelling through Czech Republic completely. The Czech Minister of the Interior presents the drop of number of detained refugees as a successful outcome of his policy. A policy...
which he denied existed before. To spice things up a little bit, the Czech Republic refuses, along with Hungary and Slovakia, to participate in resolving the crisis on the level of the EU.

**Intermezzo.** Public debate is shifted for a short period of time to the issue of gender equality. During ‘The Week of Science’, photos of nude women with little artistic value, purported to show a special technique of photography, are exhibited at the library of the Czech Academy of Sciences. The exhibition is removed after a protest from several gender equality organisations.[1] The public outrage aimed at those organisations and everyone who tries to defend gender equality that immediately follows demonstrates that the Czech society has a long way to go in this area as well. Nevertheless, the debate swiftly shifts back to the refugee crisis. In an annual music award contest, a band affiliated with the far-right, openly outspoken about their hatred of Islam in their lyrics, wins the second and third place in two categories.

**The Last Act.** On 17th November, which is the Day of the Struggle for Freedom and Democracy and a commemoration of particular significance for Czech society, the place of the most important protest in 1989 that instigated the return to democracy is seized for a gathering by a far-right movement, Bloc against Islam, a gathering wholly unrelated to the events commemorated that day. The Czech president attends the gathering, gives a speech and sings the national anthem side by side with extremists. The opposition is barred from attending the gathering. The face of the Czech society is now unmasked completely.

**A Wholly New Play?** It seems that the Czech society was never sure in what direction it should head when it comes to values – whether the West, or the East. And in the 2015, in the light of abovementioned events and incidents, it is more than ever apparent that the search for the true identity is still ongoing, and that the values that were fought for during the Velvet Revolution may not be our fundamental values at all. We will have to work hard to make them that, but there is no mistake now that the outcome of this struggle might not be pleasant at all.

**Notes**


**Photographs**


Demonstration of Bloc Against Islam named "Together against islamisation of Europe" [2]
Ill-treatment of Foreigners in Czech Detention Centers

Kateřina Studecká

In 2015, the Czech Republic has experienced – as well as other European countries – an increase in a number of foreigners entering its territory. Although in the case of the Czech Republic we can hardly talk about a mass influx of migrants, the country still rather underestimated the situation and did not prepare its detention facility adequately before its capacity was exceeded.

The Facilities for the Detention of Foreigners are primarily intended for aliens who have been issued a decision of administrative expulsion or the criminal sanction of expulsion but also for other persons, e.g. asylum seekers who are to be transferred to another member state which is responsible for examining their application for international protection pursuant to the Dublin III Regulation.[1]

Until the beginning of fall 2015 more and more foreigners were being detained primarily for the purpose of transfer to another EU member state. The maximum capacity of the only detention facility at the time in Bělá-Jezová was less than 300 persons. During the summer and then later in October 2015 another two Facilities for the Detention of Foreigners started their operation, however, until then all detainees had to be placed in the same facility in Bělá-Jezová. The capacity of this facility therefore had to be artificially increased by tents and temporary housing cubicles. In August 2015 the facility in Bělá-Jezová held 700 persons.

At the time of this unusual excess of capacity, the Public Defender of Rights has visited Bělá-Jezová as part of her mandate to perform the function of the independent national preventive mechanism based on the Optional Protocol of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The Defender reported that she has found cases of ill-treatment of detainees in the facility. She described the situation as critical and said that facility is not prepared, in terms of its equipment, organisation and personnel, to accommodate and provide services to 700 persons when the normal capacity is 270 beds. This was testified by the fact that detainees lacked clothing, some even did not have shoes.

In general the facility was unclean and unhygienic and even a salmonellosis epidemic has broken out. Only 5 social workers (two of them employed on a part-time basis) were supposed to attend to all the 700 detained foreigners. At the time of the visit, there were 150 children in the facility whose special needs were not accommodated (lack of toys, playgrounds, overall prison-like conditions). The Defender assessed that in relation to children there was a violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms which prohibits torture or inhuman or degrading treatment or punishment.[2]

The Defender has subsequently made a follow-up visit to Bělá-Jezová in October 2015 and her findings were even more disturbing. The temporary housing cubicles were only accidentally discovered in a remote area of the facility. Detainees held in this part of the facility (56 men including minors) were in general refused freedom of movement, did not have access to telephone or sufficient capacities of hot water, were not informed that they can request a free of charge legal consultation, no social worker visits took place there etc. The Defender also
found unsatisfactory conditions in the gym where 37 persons were accommodated (as opposed to one hundred persons in August), including women and one child. Still these foreigners only had on-demand access to water and toilets (they had to ask a private security guard every time they wanted to use the facility) and the two toilets were shared by both men and women.

In relation to children, the overall situation was deemed to have improved in October primarily thanks to employees’ efforts in working with the children but many children still lacked shoes other than flip-flops or “Crocs” and the prison-like environment remained unchanged. The Defender has concluded that violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (degrading treatment) was no longer applicable only to children in the facility but also to the men accommodated in the temporary housing cubicles.[3]

After the release of the Public Defender’s reports in fall 2015, the Czech Republic was further criticized by the UN High Commissioner for Human Rights [4] and the Council of Europe Commissioner for Human Rights [5] and called upon to ensure a suspension of this ill-treatment. The Minister of Interior and also the Director of the Refugee Facilities Administration have acknowledged that there was an exceptional situation in the last few months caused by an unexpected influx of migrants which needs to be dealt with and certain systemic changes were put to practice straight away, however they both refused to accept that the conditions in the facility constituted degrading treatment or a violation of any international or national legal obligations. The Ministry has retained the same position even after the European Court for Human Rights issued an interim measure ordering the Czech Republic to transfer an Afghan family to another facility in which article 3 of the Convention is not violated.[6]

Since October 2015, there were presumably many changes introduced in the Bělá-Jezová Detention Facility. Inward fencing was taken down, the number of social workers was increased and in general the facility was made to be more children-friendly. Most importantly this particular detention facility was designated for accommodation of children and families whereas men are detained in the other two new facilities in Vyšní Lhoty and Drahonice. The total capacity of Czech detention facilities in December 2015 was indicated by the Ministry of Interior to be 1392 beds, yet for the most part it was unused. As per December 25th 2015 only 101 places were occupied in all three facilities.

Even though apparently the conditions in Bělá-Jezová have changed significantly in the course of fall 2015, the Czech Republic will likely experience some consequences caused by its (presumed) failure to uphold the aforementioned international human rights obligations. Only time will tell how serious these consequences will be, but it is possible that the policies of the Czech Republic will be questioned during processes such as the Universal Periodic Review or reporting procedures of relevant international treaties (e.g. CAT). It will be very interesting to see what the Public Defender’s assessment of the conditions in Bělá-Jezová, but also in the two new facilities, will be after future visits.
Notes

[1] Regulation (EU) no. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).


Photographs


The subsequent controversy was caused mainly by the presence of Martin Konvička, a leader of an anti-Muslim movement “Bloc Against Islam”, which is considered to be an extremist organisation in Czech political debates. Above that, Konvička was not the only controversial participant of the demonstration scheduled on the anniversary of the Seventeenth of November which commemorates the Day of the Struggle for Freedom and Democracy in the Czech Republic and which is also historically connected to Albertov, where the demonstration took place. Members of the extremist German movement PEGIDA and several other organizations were present as well.

Another problematic point was a presence of the police and prevention of entry for people who were not considered to be a part of the event by organizers. Although Albertov was properly reserved by the organizers for the purpose of the rally, the event took place in public. Moreover, it was mostly students who were not allowed access to the site even though students commemorate the victims of past terrors at Albertov. For this reason Eliska Wagnerova, a Senator (and a former judge of the Constitutional Court) has stated that all people without exception should have been let in if they were not visibly armed and therefore dangerous to participants. Wagnerová further stated that this case can be considered as an abuse of power by the police force. However, such a conclusion would require a thorough investigation.

A problematic perception of the event in the media and on social networks can also be explained by the general theme of the rally and the composition of the speakers. The president stood on the stage with persons linked to xenophobic and hateful statements about Muslims and Islam. The public debate also questions the tendentious and purposeful connection of the Day of Struggle for Freedom and Democracy with an anti-immigrant rhetoric. Another controversy arises due to the actions of the police, as described above. In this respect, there is noticeable speculation that the reason for such a police intervention was evoked by last year’s unsuccessful President’s speech and expressions of discontent towards him. However, there might have been several other potential reasons for such an intervention, namely the safety of the president. Still, in terms of freedom of association and freedom of expression, recent events present at least a warning signal for the Czech society.

**Sources**


Hana Čápová. 2015. Double standard at Albertov – How did the police manage to protect the Czech president against citizens who don’t agree with his policy. Respekt 48. 23.11. 2015.

**Photographs**

[1] Martin Konvička, IVČRN. Author: Venca24; CC-BY 4.0, Wikimedia Commons.
The Arrival of Discrimination Cases to the Czech Republic

Adam Blisa

There is no question that discrimination occurs in the Czech Republic on a daily basis, as much as in any other country, and sometimes, perhaps, more often than in some of them. Discrimination is nevertheless prohibited, not only in the Czech Constitution, but in the Anti-Discrimination Act as well.

The latter Act seems, on the paper at least, to be a powerful tool to battle discrimination. Nevertheless, the reality might be a little bit different. Even though there are no official statistics about the number of litigations that were based on the Anti-Discrimination Act, from the number of discrimination cases dealt with by the highest courts in the country we can at least assume that the Act is not utilised very often. However, this seems to be changing lately.

Anyone who at least briefly follows the decisions of the Czech Constitutional Court (hereinafter referred to as the “CCC”) could not have missed the series of decisions dealing with discrimination, as well as one case of discrimination that was decided by a lower court and enjoyed widespread media coverage and generated an extensive public debate.

The accumulation of discrimination cases before the CCC may be partly a result of a coincidence, especially when considering the time it usually takes the CCC to decide a case as well as the fact that the cases were decided by different chambers of the court. However, these cases might be considered as a signal of a shift in trend, paving the way for even more discrimination cases and, hopefully, some social progression in an area that seems to be a bit stagnant lately.

The first case, decided by a lower court, was a result of a concerted action aimed at exposing the discrimination practices of the real estate agents. This case is described in detail in a separate article [Public Defender’s Case of a Roma Woman and a Real Estate Agencies] in this issue.

The second case of discrimination, dealt with by the CCC this time, concerned housing as well.[1]

The applicants, a Roma family, alleged they were discriminated against when they were offered social housing only in a socially excluded area. The lower courts agreed that their rights were breached when they were offered unsatisfactory housing, however, they rejected the argument that the ethnicity played a role in that case. The CCC ruled that the courts did not deal with possible indirect discrimination against the applicants and ordered a renewal of the proceedings.

The third case followed shortly afterwards.[2] In this particular case, the applicant, of Roma ethnicity as well, alleged that he was discriminated against in the 1980’s when he was put into a school for children with disabilities. The case thus brings back to life the lasting problem of the Czech Republic, which came into full light with the judgment of the Grand Chamber of the European Court of Human Rights in the case of D. H. and others v. the Czech Republic.[3]
The CCC found no violation, as it argued that placing the applicant in the mentioned school was, in light of the submitted evidence containing numerous and sufficient evaluations, justified. The court however proceeded very carefully when examining all the aspects of the problem, and, most importantly, laid down detailed criteria for examining cases of indirect discrimination in the future.

The last case worthy of noticing addressed the burden of proof in a case of discrimination against a Roma applicant, who was, contrary to the fact that he had booked a room beforehand and free rooms were available, denied accommodation in a hotel. This denial was allegedly based on his ethnicity.[4] Here, the CCC asserted and emphasized that the main burden of proof in the discrimination cases lies on the defendants, not the plaintiff, and set the standard required for proving that discrimination did not occur.

Even though all these cases seem to deal with different factual situations, they cannot be viewed only as addressing particular and isolated substantial problems that are still present in the Czech Republic. They must be primarily regarded as cases setting up a framework for further litigation, and thus opening the gates of the courts for pushing through a systemic change.[5] The change surely cannot be achieved solely through litigation, but it may do a great deal of positive work. We can only hope now that more cases find their way before the courts.

Notes

Photographs
Public Defender’s Case of a Roma Woman and Real Estate Agencies

Veronika Bazalová

In 2015, the media thoroughly covered a case of a Roma woman who sued a real estate agent for alleged discrimination. The case caused an upheaval in Czech society and prompted a debate on the Roma minority, the anti-discrimination law and even on the competencies of the Public Defender of Rights (hereinafter referred to as the Ombudsman).[1]

Prior to this case, in 2012, a charity organization turned to the ombudsman looking for assistance regarding the constant discrimination against Roma in the area of housing. The charity was helping their clients to find suitable housing. However, on several occasions they encountered problems with the real estate agencies as their agents kept inquiring about the ethnicity of the clients and they were consequently refusing the Roma people, claiming it was due to the previous bad experiences of the owner.

The ombudsman opened an inquiry into the case. Considering that the charity did not have any direct evidence of the wrongful act, another non-governmental organization carried out a so called “situation testing”. This is a specific method for victims of discrimination to subsequently get evidence of suffered misconduct.[2]

In this case, the situation testing consisted of three phone calls to the estate agents. The phone calls were made by a social worker employed by the NGO, who was Roma herself. She was looking to rent an apartment and she introduced herself by a common Roma surname. In all three instances the agents asked if she was Roma and then declined to arrange a tour of the apartment or to otherwise proceed with the deal. Again the reasoning for the refusal was that the owner of said apartment had a bad experience with tenants of Roma ethnicity. The ombudsman afterwards issued a report stating that all three estate agents discriminated against the Roma client.[3]

The Czech Anti-Discrimination Act forbids discrimination against anybody based on his/her ethnic origin [4] and that applies even in the private sector, e. g. employment, housing, goods and services. The ombudsman identified the case as a direct discrimination on the part of the real estate agents and possible discrimination in the form of instruction on the part of the owners.[5]

Before the ombudsman completed the inquiry, the NGO employee brought her own case before the court. She was seeking an apology from one of the estate agents and monetary compensation for non-material damage. The judgment of the first instance was issued in August 2015. The court agreed with the plaintiff and adjudicated that the estate agent discriminated against her on the basis of her ethnicity. However, the court awarded solely an apology and not monetary compensation to the plaintiff. Neither the NGO employee nor the estate agent appealed the judgment.

Notes
[4] Other grounds are race, nationality, sex, sexual orientation, age, disability, religion, belief and opinions.

Photographs
[1] Illustrative photo. Author: E. Ferdinand, CC BY-NC-SA 2.0.
President Zeman Focused on Economic Cooperation rather than Human Rights in Azerbaijan

Anna Macičková

Global attention, especially that of human rights organizations, has focused on Azerbaijan in recent months. European non-governmental organizations blame the south-Caucasian country for repressing democratic opposition, arresting critics of the regime and restricting basic liberties. Azerbaijan was also criticized by the European Parliament and the country answered with a threat to boycott any contact with the EU institutions including its program of Eastern Partnership. In recent years, dozens of human rights defenders, political and civil activists, journalists, and bloggers have been arrested or imprisoned on politically motivated charges, prompting others to flee the country or go into hiding. [1]

The Czech president Miloš Zeman visited Azerbaijan in September 2015 and met with the Azerbaijani president Ilham Aliyev in Baku, where they signed a declaration of strategic partnership. Zeman called upon Azerbaijan to invest in the Czech Republic and expressed an opinion that Czech companies could invest in Azerbaijani infrastructure like the railway industry and could deliver locomotives and carriages. A memorandum of the Ministries of Agriculture on the development of economic, scientific and technical cooperation in agriculture was also signed there.

Many Czech activists and non-governmental organizations were dissatisfied with the president’s stay in Baku, they criticized that Zeman did not meet with representatives of the political opposition and he bowed to the monument of Azerbaijani ex-president Heydar Aliyev and invited the current president to visit the Czech Republic. They do not support this growing cooperation with a country which does not abide by democratic principles. However, president Zeman stated he talked with Ilham Aliyev about human rights in privacy.

Notes

Sources

Photographs