

Czech Republic Human Rights Review



Dear readers,

It is a great pleasure to present to you the third issue of the Czech Republic Human Rights Review. The clear highlight is the interview of Petr Příbyla with one of the most influential world philosophers of the last decades – Peter Singer. The renowned professor of the Princeton University discusses his approach to ethics and human rights and also touches on controversial issues of abortion, assisted suicide and animal rights.

The second interview, however, could be considered as tough competition in terms of its interestingness. Monika Mareková questioned Mukhtar Mai, a respected Pakistani activist for woman rights, who talked about her life after being gang-raped. Instead of committing suicide, as is usual in her culture, Mukhtar Mai announced the crime to the police and stood up for woman rights in Pakistan.

You can also read about the experience of a Czech election observer from his missions in Africa. Sometimes, they might get really dangerous... The Czech Republic was elected to the UN Human Rights Council in May 2011. We bring a description of its campaign and goals. Furthermore, an overview of important human rights cases from Czech courts and from Czech cases before the European Court of Human Rights is provided. Lastly, we have an article discussing the difficulties, which await new international human rights treaties in the Czech Republic and how the country performed in the Rule of Law Index 2011.

The Czech Centre for Human Rights and Democratization was established in January 2009, we are the first institution of its kind in the Czech Republic, focusing on the topic of human rights and organizing conferences and seminars. While we publish a monthly newsletter on human rights from all over the world in Czech, you will find the overview of main developments in the Czech Republic and Slovakia in the English Bulletin bi-annually. If you were interested in human rights developments and questions both in the Czech Republic and Slovakia, we would be happy to assist you with our expertise.

We wish you a pleasant reading,

On behalf of the Czech Centre for Human Rights and Democratization

Sincerely,

Hubert Smekal.



**International Institute of Political Science
of Masaryk University in Brno**



Mezinárodní politologický
ústav Masarykovy
univerzity v Brně

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The Czech Centre for Human Rights and Democratization

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

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

On Global Poverty, Human Rights and Ethical Questions

Interview with Peter Singer, Ira W. DeCamp Professor of bioethics at Princeton University

Petr Přibyla

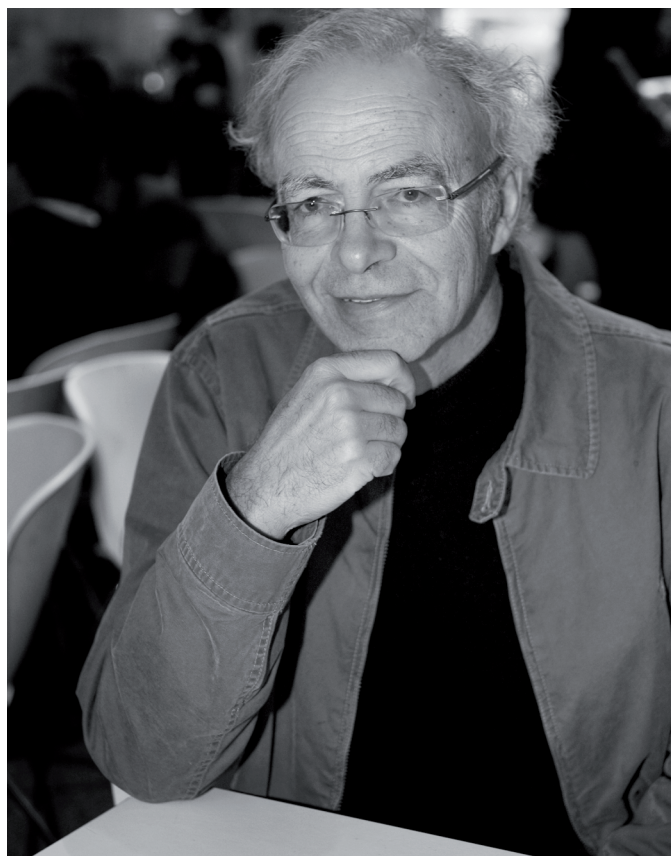
Where are the boundaries of our moral obligations in eradicating global poverty? At what point can we speak of a foetus as a human being? Are we capable of reaching objectivism in ethical questions? For what reason is it necessary to reach reassessment of our view of human rights concept?

Peter Singer, Ira W. De Camp professor of bioethics in a Centre for Human Values at Princeton University and Laureate Professor at University of Melbourne, has been standing at the forefront of debates about our ethical obligations and approaching global poverty, euthanasia, abortions and animal rights for more than three decades.

The *Animal Liberation* (1975) book is widely considered as a bible of modern animal rights movement, therefore it is not a surprise that *The New Yorker* labelled Peter Singer as „the most influential living philosopher“ and in 2005 *Time Magazine* included him amongst 100 most influential people in the world. From the other publications we should mention: *The expanding circle: ethics and sociobiology* (1981), *Practical Ethics* (1979), *A Companion to Ethics* (1991), *Rethinking life & death: the collapse of our traditional ethics* (1994), *A Companion to Bioethics* (1998), *One World: The Ethics of Globalization* (2006), *The Way We Eat: Why Our Food Choices Matter* (2006), and *The Life You Can Save: Acting Now to End World Poverty* (2009).

While giving a lecture „*Animal Liberation: Retrospect and Prospect*“ at the University of Melbourne, Peter Singer agreed to provide the exclusive interview to the Czech Centre for Human Rights and Democratization.

PP: *Within political philosophy you have been standing at the forefront of utilitarianistic perspective towards global poverty, saying that we have the same moral obligation to help someone who is standing right next to us as someone being thousands miles away from us. Can you explain your utilitarianistic approach?*



Peter Singer

PS: What I am criticising is the argument that distance morally makes a difference. In the past distance has made the difference because it has not really been possible to help people in the distance, but today it is.

PP: *One specific group of authors within political philosophy have been defending the argument that human beings have only a negative obligation, e.g. don't cause a pain, do not let anyone suffer etc. Therefore, anything that goes above our negative obligation, as for example a positive obligation to help someone in need, is simply a secondary matter.*

PS: That is why I started an article I wrote already in the 1970s with the example about rescuing a child drowning in a pond right in front of you. Virtually everybody would agree that you do have a moral obligation towards that child. If you are passing by a pond and see a small child drowning and you can save the child's life but there is something crossing your mind like ruining a nice pair of shoes, people would think, that it would be

wrong to walk on and say I do not want to ruin my shoes and I have no obligation to save that child. So the view, which you suggested, is far outside the mainstream. That alone does not say it would not be defensible. But you start with a burden of proving that there is no obligation to rescue not even the child, which is so easily rescued. There is a kind of libertarian view that you mentioned represented by people like Robert Nozick, who are saying that there is no obligation, but I am simply on the grounds of thinking that everybody's interest matters and you can't give thousands and thousands times more weight to your own interest than you give to those strangers. That is obviously, what you are doing if you reject the idea that you have no obligation to help somebody else.

PP: *According to the UN statistics more than 1.2 billion people – one in every five on Earth – survive on less than \$1 a day and on the other hand the top 1 % of the world's richest people earn as much as the poorest 57 %. Is it morally justifiable to have such a wealth?*

PS: The problem is not whether the wealth is morally justifiable, but the problem is that those who are having the wealth are doing nothing to help the poor. This is not justifiable and that's what I object to. It is fine if people have wealth because it is not a zero-sum game. It is not that if some people have wealth it means that others are poor, but the thing is, if they are not helping the poor and they are not doing the things that they could do. Then there is a problem in justifying the wealth.

“The discussion about Asian values does not do justice to Asian tradition.”

PP: *Within the last decades, most of discussions about global justice and solving global poverty have tightened themselves with a concept of existing universal human rights. What is the relation of your approach of practical ethics towards the concept of universalism of human rights?*

PS: The concept of practical ethics is based on moral obligations that do not have to go through arguments about human rights that are true.

PP: *However, even there we have to face questions dealing with objectivism and particularism. There have been lively discussions about an existence of so-called Asian values concerning human rights, which are implying relativism in minimal standards of human rights as consequences of specific differences between western and eastern traditional values. Thus, if we step up into the discussion of global justice through concept of practical ethics, are we then able to reach any objectivism in moral questions? I.e. aren't the ethics and ethical question, at the end, a purely subjective matter, for individuals to choose, or perhaps relative to the culture of the society in which one lives?*

PS.: Yes, I do think that some objectivism in ethics exists and that there are values that by careful reflection and consideration people from any culture can reach. The discussion about Asian values does not do justice to Asian tradition. Certainly, what we have been discussing you can find in work of Asian philosophers like Mencius who thinks there is an obligation of wealthy and powerful to help the poor. Thus, I do not see any fundamental difference between western and eastern traditional values on ethical questions.

PP: *International organizations and international systems as such are usually blamed from a political utilitarianistic position for its ineffectiveness, illegitimacy and being responsible for the situation of global poverty. Shouldn't we try to solve directly the ineffective international system, rather than continue donating through charity? We can quite often come across an argument saying that individual direct donations provide only a short-term solution and simply postpone additional problems.*

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



PS: I am not interested in short-term solutions. There are all kinds of assistance that we can get and those which, are providing short-term solutions, are not as good as the ones that are providing a long-term sustainable solutions. But the question is what a long-term sustainable solution is. And I think that we have to give, from the wealth that we have available, to those most effective organizations providing long-term solutions. There are a huge number of different aid organizations following different strategies and we, as responsible donors, are obliged to find those who are doing it. Fortunately, there are organizations that are examining that. I have mentioned some in my book *The Life You Can Save* and I talked about organizations like GiveWell (www.GiveWell.org) who are trying to find out which organizations are the most effective.

PP: *For example well-known political philosopher Brian Barry says that natural resources provide a relatively straightforward application of the idea that what nobody can make any special claim on everybody has an equal claim on. In this view, citizens of countries, like the United Arab Emirates which are flourishing through the access to oil have no more rights to drill for them than citizens of countries, which may not be as abundant in resources. Therefore, Brian Barry defends an argument that there should be an international income tax on countries above a certain threshold of GDP per person where the money would go to poor countries.*

PS: That would be fine if countries would do that. That is a sort of social welfare's theme on a global level rather than on a national level. The money would have to be used effectively and it is not that we want to get money to every government no matter how effective it is in helping its people. What we want to do is to raise the money as we just said and provide long-term solutions. That's what we have to do and if governments would tax their citizens for this purpose, that would be fine, but since they do not, it is up to us as individuals to do that job.

PP: *If we look at the on-going economic crisis, is it too naive to expect any reassessment of our moral obligations towards the poor?*

PS: When the global financial crisis started, there were

only a few people who said that we have to reassess what is important. I do not really see that a lot reassessment is going on. Unfortunately, the global financial crisis affected that some nations give less than otherwise they would give. That is a pity, because people all of a sudden felt that they are not so wealthy. But all together I do not see that it is a huge impact. People are gradually starting donating again and I hope it will continue.

Euthanasia is something people want

PP: *You have been also extensively covering the euthanasia issues in the last decades. If we look at Europe, since Netherlands started allowing euthanasia, a few other European countries such as Belgium, Switzerland and recently Luxemburg joined in. How do you see these changes in European societies and how do you approach the euthanasia questions in general?*

PS: I suppose that people should be able to decide to end their lives, if they are incurably ill and they do not wish to go on living. I do not see that it is in the interest of state or anyone else to force them to live in conditions, which they regard as unacceptable. The way in which the laws work in Netherlands, Belgium and Luxemburg and other countries you mentioned generally shows that euthanasia is something people want. I have to admit that I am surprised that it spreads only slowly. But I do think it is spreading.

PP: *Let's think of a situation of someone being in a coma, for many years, no chances to get out of that condition and thus she is not able to decide if she wants to go on living. Then, are we allowed to make that decision instead of her?*

PS: I think that patients should be able to decide whether they want to go on living or not, once they are fully informed about their condition. Of course, when they are in a coma they cannot decide, but maybe they will sign a declaration beforehand that they would like to end their life in some situation or maybe they have given power to some friend or relative to make that decision for them. I believe that in these cases the decision should be respected.

PP: *If we stay with the autonomy of a person, let's say that an adult, who wants to commit a suicide, is fully*

aware of the consequences and is rationally thinking. Is it morally justifiable to commit a suicide?

PS: It can be morally justifiable, especially as you say, if they are fully aware of the consequences and in a rational frame of mind, then it can be morally justifiable. Especially if people are incurably ill, then, it is clearly justifiable. So, the problem is to simply make sure that people are not temporarily depressed by something that has happened and when there is nothing seriously wrong with them.

Abortion – what is wrong with killing a human being?

PP: If we step out of euthanasia, you have also been writing extensively about abortions, which you have been defending. But if we look at the debates about abortion in general, the discussions are circulating about one side defending an individual right of a mother to decide what to do with her body and on the other side stands the interest in protecting prenatal life. How should we deal with those conflicting rights?

PS: First, you have to decide what the moral status of foetus is. I do not think that either of the sides, as you mentioned, are right on their own terms. The crucial question really is whether the foetus has a right to live. I argue that a foetus is not the kind of being that has an absolute right to live, it does not have any conscious awareness of its own life, and therefore it is not wrong to end its life before it properly begins. Thus, I do not see a problem in ending a life of a foetus.

PP: However, usually the decisions of highest and supreme courts are mainly focused on finding answer to a question: when the foetus is becoming a human being? In Europe abortion is usually allowed within first 12 weeks of pregnancy, however the threshold varies from country to country. Thus, is the question “when” really the right sort of question we should be looking for answers to?

PS: I do not think you can answer the question of when, unless you ask a question of what is wrong with killing a human being. That is the basic question and that is what you have to ask first. And if you are asking that question, the answer really is that killing a being becomes most serious when the being has some self-

conception, some self-awareness of its own life, and of living over time. A foetus never has that; therefore, I do not see any problem with killing a foetus if that is what the mother wants. And my view also implies that it is less serious to end the life of a new-born infant than of an older child.

PP: So if we stay with the new-born baby, we can think of a situation where a child is born and diagnosed with an incurable disease with no perspective of a decent life as such, and his parents do not want to go on in his living and better letting him to die?

PS: Yes, I think that it can be justifiable. It will depend on the condition of a child and if other people would want to care of that child and the amount that child would suffer. But I certainly think that the child has not any kind of absolute right to life which would make it wrong to kill that child at the early stage, speaking still about new-born infants.

Animal Liberation

“What gives a being rights and what makes it wrong to treat being in a certain way is not what species it belongs to but what capacities it has. And the most fundamental of those capacities is to suffer or to enjoy life.”

PP: For more than four decades you have stood at the forefront of advocating of animal rights. Your book Animal Liberation from 70’s has become a bible of various animal liberation movements. On which presumptions do you conclude that animals are having the same rights as human beings?

PS: We have to ask the fundamental question, which is why we think that there are human rights in a sense of rights that all members of the species homo sapiens have but no members of any other species have? When you start thinking about that than it becomes rather peculiar. Because why should membership of a certain species give you rights? If there were beings from another planet who could suffer in exactly the same way that we can, would it be right to say that because they are from another species we do not need to care about their suffering, and can treat them as we treat animals today just because they are not members of our species? I think that the answer is clearly not, it would not be right.

What gives a being rights and what makes it wrong to treat a being in a certain way is not what species it belongs to but what capacities it has. And the most fundamental of those capacities is to suffer or to enjoy life. Since there are many billions of non-human animals that can suffer or enjoy life, then we do wrong if we ignore their interests in not suffering or enjoying life simply because they happened not to be a member of our species of *Homo sapiens*.

PP: Recently, the British House of Commons passed a motion directing the government to impose a ban on the use of wild animals in circuses. At the same time, the lower house of the Dutch parliament passed a law giving the Jewish and Islamic communities a year to provide evidence that animals slaughtered by traditional methods do not experience greater pain than those that are stunned before they are killed. How do you see the progress, which has been done in protecting animal rights within last decades?

PS: I think that they are actually very small ones. What you should have mentioned and what is a million times more important than those things in fact, is in farming. On the 1st January next year across the entire European Union the standard of conventional battery cages becomes illegal. That will be affecting hundreds of millions of animals, not the very small number of animals that will be affected by the two pieces of legislation you mentioned. And in a year and a half, in January 2013 it will be illegal to keep pregnant sows in individual crates, as they are standardly kept now. This is actually an enormous progress as compared how things were twenty or thirty years ago since I have started writing about those issues. But at the same time I would like to obviously go a lot further because these reforms, important as they are, do not stop widespread cruelties at the farms and cruelties to rise for food, to rise for fur as many other animals are facing. So, we still have a long way to go but there is an encouraging progress being made.

Landmark Convention of Council of Europe

Czech Republic not among signatories

Lenka Lakotová

On April 11 2011, the new Convention on preventing and combating violence against women and domestic violence was opened for signature in Istanbul, Turkey. The Convention is a landmark document when it comes to the protection of women, because it is the first internationally legally binding instrument aimed at preventing violence and protecting its victims. Furthermore, it defines various forms of violence.

Despite the fact that seventeen countries have already signed the Convention (among them the Slovak Republic), the Czech Republic has still not joined them. Although, the Czech Parliament discussed the issue in June 2011, Prime Minister Petr Nečas stated that the signature of the Convention was not planned in the near future. Nečas claimed that a thorough analysis of the Convention's impact on the legal order must first be prepared, followed by an adjustment of the Czech legal order.

At the same time, PM Nečas referred to the negotiation process of the treaty, when the Czech Republic, together

with the Netherlands and few other states, pushed for the inclusion of other possible groups of victims of violence into the Convention. These included, for example, men, children and seniors. According to Nečas, the Convention in its current form does not cause problems. Nečas expressed his opinion that even if it is primarily aimed to protect women, the parties are called to apply it on all victims of domestic violence.

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This time, we were fortunate not to be gunned down

About the experience from the observation mission to South Sudan

Lubomír Majerčík – Hubert Smekal

Jan Kamínek served as an observer of the referendum on the secession of South Sudan in January 2011. We bring excerpts from our interview, which gives an idea about the job of a member of an EU observation mission in one of the poorest regions in the world with a dreadful health situation. Its population overwhelmingly supported the independence of South Sudan, where a staggering 99 % of voters decided in favour of the secession from Sudan. This result forced President Omar Al-Bashir, still desperately wanted in Hague by the International Criminal Court for his alleged involvement in genocide, to accept the division of the country. South Sudan declared the independence on 9 July 2011 and five days later became a new UN member state.

EU observation missions usually consist of three categories of observers. These are the central team assisted by long-term and short-term observers. The central team operates on the spot from two months before the voting day. They remain up until one month after the elections. Long-term observers usually arrive a month before and stay two weeks after the elections, while the short-term observers are present one week before and a week after the elections. Mr Kamínek calls his experience in January “relaxed”, at least when compared with the elections in April 2010. At that time, a group of EU election observers had to be evacuated by a UN airplane, because the Governor of the state of Eastern Equatoria ordered the elimination of the burdensome European intruders. Fortunately, Mr Kamínek and his colleagues were warned by their local contacts and did not arrive at the trap waiting at the polling station.

This time, the result was clear long in advance, so there was no drama expected. The only uncertainty concerned the percentage of voters in favour of the secession. In these circumstances, South Sudan could have refrained from the mass campaign for the separation and from the intimidation of the few supporters of united Sudan. Relative calm during the referendum was also the result of the simplicity of the voting – you could choose only from two possibilities – either unity or dissolution. What a sharp contrast to the April 2010 elections when voters had to

deal with six ballot boxes and even twelve ballot papers.

The observers have to get familiar with the environment, especially with the election commission, but also with the army, police, and local observers. They visit various polling stations during the referendum, including their opening and closing; talk with members of polling commissions and with voters. Afterwards, they oversee the counting of votes and submit comments and reports.

Mr Kamínek described interaction with the Southern Sudanese as very touching. Almost every family lost someone during the long and cruel civil war and the referendum was broadly perceived as the end to the war misery. The optimism has been widely felt and plenty of donors offered programs directed at education. This is promising and in contrast to the old-style aid – give and that is it. However, the poorest country in the world faces a long road. For the time being, for example, South Sudan imports bananas from Uganda, because they do not know how to grow them on their own. Similarly, the new country's leadership largely consists of former soldiers who have not yet adapted their style of thinking. Hopefully, the new country will enjoy a similar success story as in the case of the well managed referendum.



A man waiting outside a polling centre in South Sudan. Photo by: Al Jazeera English.

World Justice Project Rule of Law Index 2011

Czech Republic in Comparison with Other Countries in The World

Zuzana Melcrová

World Justice Project Rule of Law Index (WJP Index) is a document of World Justice Project assessing the rule of law in selected states of the world. In 2011, in contrast to the previous year, Czech Republic became one of them.

The first question that should be answered at the beginning of this article is what does the rule of law mean and why is important to “measure”? According to the WJP Index, the rule of law consists of nine indicators – limited government powers, absence of corruption, order and security, fundamental rights, open government, regulatory enforcement, access to civil justice, effective criminal justice and informal justice. In other words, WJP Index shall show whether government officials are accountable under the domestic law, whether the legal institutions protect fundamental rights and whether the ordinary people have realistic and practical access to justice. The assessment of these features provides a comprehensive and telling picture of the situation in given countries. The degree of the adherence to the law has an impact on other social functions and services in the society, for example on the quality of the health care, economic opportunities, problems with corruption in the public sphere or equal opportunities between men and women. As a result, WJP Index can induce involved states to enhance the rule of law in concrete areas and help them to set preferences in state policies.

The WJP Index was worked out on the basis of actual and new information gained from independent sources – experts and the general public. This excludes politically affected and non-objective information from the governments. The experts who contributed to the elaboration of WJP Index in the Czech Republic were, for example, two professors of the Law Faculty of Masaryk University, Jan Filip and Jan Hurdík.

The World Justice Project was designed to strengthen the rule of law in the world by identifying the core problems and consequently by stimulating governments to enhance the rule of law in their countries. The WJP works on a multinational and multidisciplinary basis



and carries out its activities through three complementary and mutually reinforcing program areas – Mainstreaming, the Rule of Law Index, and Scholarship.

There is still space for improvement in the Czech Republic

The Czech Republic was assessed in the WJP Index 2011 with 65 other states and awarded 20th best position among all the countries involved. In the protection of fundamental rights, the Czech Republic placed in 9th position globally. It was also very highly assessed in the area of effective criminal justice (ranking 12th). On the other hand, the Czech Republic gained the mediocre score in the field of open government (28th) and in the area of the regulatory enforcement (28th). According to the WJP Index, Czech courts work too slowly (ranking 58th); but at least, they were assessed as independent state agencies. Other

Czech Republic

Prague, Brno, Ostrava

1. WJP Rule of Law Index

Income High	WJP Rule of Law Index Factors		Score	Global Ranking	Regional Ranking	Income Group Ranking
Region Eastern Europe & Central Asia	Factor 1:	Limited Government Powers	0.67	21/66	3/12	19/23
	Factor 2:	Absence of Corruption	0.69	23/66	3/12	22/23
	Factor 3:	Order and Security	0.81	23/66	4/12	20/23
	Factor 4:	Fundamental Rights	0.81	9/66	2/12	9/23
	Factor 5:	Open Government	0.53	28/66	3/12	21/23
	Factor 6:	Regulatory Enforcement	0.57	25/66	3/12	21/23
	Factor 7:	Access to Civil Justice	0.64	20/66	2/12	19/23
	Factor 8:	Effective Criminal Justice	0.76	11/66	1/12	11/23

Population

11m (2010)
74% Urban
17% in three
largest cities

problems indicated by the WJP Index were corruption among administrative officers (ranking 34th) and lack of effective sanctions for misconduct (ranking 33rd). Also, the crime rates are quite high in comparison with other high-income countries and would therefore need increased attention from the Czech government. Despite this critique, the Czech Republic belongs to the highest rated countries. In the East Europe and Middle Asia region, the Czech Republic ranged approximately on the second to third position among the twelve states in this geographical area. Estonia was ranked the best and Poland second in the region. In the last three positions were Kazakhstan, Kyrgyzstan and Ukraine.

Rule of law globally

Among the best-rated countries in the world are Norway, Sweden, New Zealand, the Netherlands, Australia, Austria, Canada and Japan. The worst ranking countries were Venezuela, Pakistan, Cambodia, Cameroon, Ethiopia, Kenya, Kyrgyzstan, Liberia and Ukraine. The most criticized big states were Russia, China and India. Russia has severe deficiencies in checks and balances among the different branches of government. Problems occur also in civil justice, as the civil courts are corrupt and inefficient, and in the protection of fundamental rights, especially freedom of opinion, freedom of association, and arbitrary interference with privacy. The protection of fundamental rights also encounters serious problems in Russia's neighbour, China whose adherence to the freedom of assembly and freedom of speech is the weakest in the world. India, on the contrary, got quite a high ranking position in the protection of the freedom of

speech, in an independent judiciary, open government and functioning of checks and balances. However, India has significant problems with maintaining order and security, corruption and access to justice. Worldwide, the strongest protection of fundamental rights exists in Sweden, Norway, New Zealand, Netherlands and Austria. The most effective criminal justice system and the best access to civil justice are in Norway. This country also gained the first ranking position in the functioning of limited government powers. New Zealand is the best in fighting against corruption. Order and security are very well maintained in Hong Kong, Singapore, Norway and Japan. Sweden has the best open government and regulatory enforcement. The worst ranking positions in the field of protection of fundamental rights belongs to Iran, Pakistan, China and El Salvador. The biggest problems with order and security and the worst access to civil justice are in Pakistan. Venezuela was the worst ranking nation in the area of effective criminal justice and limited government powers. The biggest problems with corruption exist in Cambodia, and open government and regulatory enforcement are the weakest in Liberia.

Sources

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The Czech Republic was elected to the UN Human Rights Council

Kristina Horňáčková

The year 2011 marks a five-year anniversary for the United Nations Human Rights Council. The fifth anniversary is an apt time to re-evaluate the Council's work and look back at lessons learned. The future of the institution can be shaped by its members among whom the Czech Republic was elected in May 2011.

The HR Council is the primary universal institution dealing with the promotion and protection of human rights. Within the Council, the countries tend to vote according to regional groups, which lead to the politicization of the Council. Another criticism points out that even countries with a poor human rights record like Cuba or China can serve their term.

The elections of new members take place annually since 2006, when the Council replaced the infamous and defunct Commission on Human Rights. In the first years of its existence, the member states divided the mandates in Council to one-year, two-year and three-year long periods. Nowadays, the mandate is three years long, with possibility of re-election for two consecutive terms. The Council consists of 47 seats divided in to five regional groups; Eastern European states were allocated six seats. New members of HR Council for the period from 2011 to 2014 were elected at the General Assembly meeting in New York on 20th May 2011. A member is elected when obtaining more than 97 votes in a secret ballot.

The Czech Republic candidacy reflected the prominence of the promotion of human rights in its foreign policy. The delegation could build on the valuable experience gained in 2007 when the Czech Republic succeeded in the first HRC elections, getting hold of a one-year term. This year, the Czech government presented

a much more sophisticated and elaborated list of pledges divided into international and national efforts. Part of the pledges only restates the already existing international obligations; part of them however, proves that the Czech Republic keeps fingers on the pulse – assistance to the drafting of the Optional Protocol to the Convention on the Rights of the Child or the support of the newly created UN Entity for Gender Equality and Empowerment of Women, for example. As for the national efforts, they focus on implementation of international treaties and on Roma-related activities.

Ultimately, the Czech Republic gained 148 votes in the first round and was elected along with Romania with 131 votes in the Eastern European regional group. The Czech Minister of Foreign Affairs Karel Schwarzenberg commented after the elections that the clear vote for the Czech Republic was deserved thanks to its long-term interest in human rights issues, but also warned that now comes the part when it is necessary to start the real job. During the special session convened in August, the Czech Republic already voted for the resolution on a commission of inquiry to investigate human rights abuses in Syria.

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Candidate states and the number of vacant seats in each group:

African states (4)	Asian states (4)	Eastern European states (2)	Latin America and Caribbean states (3)	Western Europe and others states (2)
Benin	India	Czech Republic	Chile	Austria
Botswana	Indonesia	Georgia	Costa Rica	Italy
Burkina Faso	Philippines	Romania	Nicaragua	
Congo	Kuwait		Peru	

Mukhtar Mai – Crusader in the Name of Honour

Monika Mareková

Mukhtar Mai, called also Mukhtaran Bibi, is a Pakistani activist for women's rights and for the equal access of girls and boys to education. She comes from a rural area of Pakistan, where the everyday life of people is ruled by traditions. In 2002, Mukhtar Mai was a victim of a gang rape done by the members of an enemy clan, because Mukhtar's brother offended them, when he supposedly fornicated with one girl of the clan. According to the traditions, most of the women who are gang-raped commit suicide, because they have been dishonoured. Mukhtar Mai, instead, announced the crime to the police and after a trial received compensation which she used to build a school for girls. Later on she built another school for girls and one for boys, because their education in the respect of women is very important as well. In 2005, she established the Mukhtar Mai Women's Organization. She raised worldwide awareness about how violence on women, terrible crimes of gang rapes, forced marriages of minor girls, abductions or acid attacks was socially accepted. As a result of her work, she became the recipient of several prizes and honorary doctorates in recognition as well as earning the appreciation and respect of many world personalities.

I had a chance to meet Mukhtar Mai while I was studying at the Laurentian University in Sudbury, Canada where she was awarded an honorary doctorate in October 2010. From the first meeting, I could feel her distrustfulness, timidity and fear behind which were hidden a warm heart, great courage, enormous charisma and embodiment of goodness.

MM: Mukhtar Mai, you were raised in a traditional way in a rural area of Pakistan and you were told not to resist to male authorities and not to resist to traditions. Thus how did you come to the idea of human rights and the rights of women?

Bibi: I think that it's really thanks to God. I am really thankful to God that I could have done great and hard work. I had already been working in my community before I established my organization for the promotion



Mukhtar „Bibi“ Mai

and protection of woman's rights, because I had already been known in my community after the events in 2002 and I had very good contacts with people and I loved to work for the protection of rights. Women used to come and to talk to me and then in 2004 some women told me that it would be much better if I had my own organization, so I could work specifically for women's rights. After that, I registered my organization in 2005 for the women's rights, I provide them with shelter, and legal advises.

MM: And how did you gain the power to resist old traditions and to bring the law suit in 2002? Where did you get the courage to resist the pressure of the society forcing you to commit suicide, but to stand up for your rights?

Bibi: After this heinous incident, I was also one of those women that attempted to commit suicide. I was

also one of them, but thanks to my parents that waited for months beside my bed when I used to sleep and thanks to my mum that gave me courage and especially thanks to Allah that supported me a lot, I was able to get over it. My brother threatened me that if I were to go and register the crime to the police, the people from other clan would kill me. And at that time I thought that it would be the easier way than attempting to commit suicide. It will be better if they kill me than if I killed myself. Then I purposely went to the police station to register the crime, but I wasn't able to do that alone at that time and my father went to the police station with me and soon after that I got a bit better.

MM: Talking about your family I would like to ask, what is your family's attitude towards your work now? Are your parents proud? Do they still support you? And what about the males in the family, how was their attitude towards you in 2002 and nowadays? Has it changed? Or are some of your family members still against your work?

Bibi: My brothers admit now that I took a really good and encouraging step, which they were not aware of at that time and they were against me. They were not able to guide me properly because of the traditions. Now they are really proud of me. As far as it comes to independence, I am financially independent. I am completely able to live on my own and I am sustaining myself.

MM: I know that few years ago you were not allowed to travel outside of the country and you were put on a black list and the government was against you. Is it better now or do you still have problems with the government? Are they fighting against you in a certain way?

Bibi: No, it is much better now. I can move easily without needing the permission of the government.

MM: And then are you still threatened by the local traditional people who do not like your work?

Bibi: Yes, I have been subject to some threats, but I always think that death and life are in the hands of God. It is really bad just to sit in the corner of my home, because of fear that they might kill me or something else. If they

want to kill me, ok, but I prefer to do something good, not to stay bounded at home.

MM: Do you think that human rights and especially the women's rights are compatible with Islam?

Bibi: Yes, these are the basic lessons from my religion. Islam teaches that males and females are equal in rights, everyday and wherever they are. They are two creations of the same God. But people living in traditional areas just follow the customs and traditions and they have amended those things according to them. And that's why I actively work against those things.

MM: And what is the biggest human rights problem in Pakistan according to you? And how would you solve it?

Bibi: The biggest problems are in rural areas where we lack education for girls and boys on an equal basis. And that is why people do not have enough awareness there and they tend to be influenced by some negative aspects of community which persist. And how can we change it? By doing awareness campaigns and by education, but the change comes very slowly and it is a continuous process.

MM: How did you start with the first school? At the beginning there were four students and one of them were you. How did you find the first teacher? Who was the first teacher? Was the teacher doing the job for salary or voluntarily? And was this teacher a woman? How did you find somebody in a rural area?

Bibi: I visited a small doctor's clinic in a neighbour town where I met her and asked for teaching. I worked with her for seven years, but then she got married, left the job and became a housewife. When she was teaching she has received a monthly salary right from the beginning. At that time, there was no concept of the organization, I was making and selling some clothes for my neighbours and earned some money from which I paid the teacher. The rest was spent on books and other expenses.

MM: I suppose that the first lectures were taking place at your house. How did you manage to build the first school and then the second?

Bibi: The first school building, which is from grade one to grade ten, was financed from the royalties of my book *In the Name of Honour*. I supported the other two buildings from the money that I was awarded in the lawsuit. I denied taking them and I thought that it would be much better to construct a school here for the education of girls. From the money I paid for two rooms for the school.

MM: Does the government sustain you nowadays? Does it help you in the promotion of education? What is the attitude of the government towards the schools and your organization?

Bibi: The Government is neither opposing me, nor helping. It is like with all other NGOs, the government is not funding any of them. They register, work and search for donations for themselves. It is not the responsibility of government to do that.

MM: I understand. It has been already eight years now since the first school was established and five years since the women's centre was created. Are the first changes visible there? Is the thinking of people in this area changing? Are the first alumni promoting human rights? Or does it need longer time?

Bibi: Numbers of students are increasing every year. We have 600 girls in one school now, 200 girls in another and 300 boys in the third school. Regarding the changes in the organization for the protection of women's right – in the beginning, when I started with the organization, there was a large number of cases with which I had to deal with, but now they are very rare and very few. There are maybe only 5 to 10 % of the cases, which are, moreover, not as terrifying as they used to be. The village, where I am living has the population of almost 20 000 people and we haven't heard of any cases of a very heinous crime for a very long time now. The number of these crimes decreases.

MM: That is really great. It is not such a long time when there has been another strong woman in Pakistan – Prime Minister Benazir Bhutto. Did she bring a change to your country in the way of treating the women? Is she an inspiration for you as well?

Bibi: She quoted my good examples in various TV programs and I appreciated her efforts very much. She

invited me to meet her for a number of times, but it could not happen due to some other engagements. We have not met together, but she is an inspiration for me.

MM: And do you have aspirations to become a politician in future? You are becoming famous, would you like to lead your country? Or would you rather stay in your village in your school and educate people there?

Bibi: No, I am happy to do a lot of worthy work on my own level. I do not want to go for something like that.

MM: There is a lot of talk across Europe about banning wearing burqas. In France, only few months ago, politicians passed the law that prohibited wearing burqas in public places which was justified as a measure of protecting women's rights. What do you think about it? Do you perceive wearing burqas as a violation of women's rights? Is it a good idea how to treat women in Europe?

Bibi: There is no rigidity in Islam regarding burqas. Islam just says that you should wear a scarf to cover yourself, not to cover your face or something like that. If it was like that, the people going for Hajj in Saudi Arabia would cover their faces, but they do not. And this is a really big example, right at the home of God. It is up to human beings if they want to wear them, it is only the tradition, but it is truly upon them.

MM: And what do you think about that if it is forbidden to wear burqa for the women who want to wear them? They want to cover themselves and the government in France has forbidden it. What do you think about this?

Bibi: If we are forcing them to do something, then it is really bad. That should not happen.

MM: Are there any males working in your women's organization?

Bibi: Yes, approximately 50 % are males and 50 % females.

MM: And are the males respecting women?

Bibi: Yes, and I am very strict about that. Any misconduct is unacceptable since I have 50 % of males at the spot.

MM: Are there any adult women being educated at your school? Are there women that would like to be educated at higher age?

Bibi: No, only younger girls. We are also educating adult women, but not in the way of traditional study. We educate them with occasional training, like making clothes and we have an occasional training centre.

MM: And how are “normal” students-girls educated, only with classic studies or do they have a training how to care about a household?

Bibi: No, not like that. Basically, they are provided education which helps them to sustain themselves.

MM: If you can say one thing for women who undergo violence, because there are women facing violence in Europe as well, what would you tell them? Do you have any message for them?

Bibi: My message would be that courage is a very bold tool and they should go for it and they should raise their voices for their rights.

MM: Thank you very much for this interview.

Supreme Court of the Czech Republic: Poor Living Conditions of Family Alone do not Justify Placing Child into Institutional Care

Lenka Popovičová

The Civil and Commercial Division of the Supreme Court (hereinafter “the CCD”) issued a unifying opinion on the question of placing children under institutional care (into the children homes). The opinion came as a reaction to a non-uniform and in some cases erroneous jurisprudence of the civil courts.

The CCD held that a family’s poor financial situation (and especially poor housing conditions) could not itself substantiate placing a child under institutional care. Taking the child from his parents is an interference with the right to respect for their family life as guaranteed by Art. 8 of the European Convention and Art. 32 (4) of the Czech Charter of Fundamental Rights and Basic Freedoms; as such it needs to be in accordance with the law, it must pursue a legitimate aim and must be necessary in a democratic society. Otherwise, it would constitute a violation of the aforementioned articles.

The legal basis for removing a child from his parents lies in paragraph 46 of the Family Act. The court can place a child under institutional care provided that the upbringing of the child is seriously endangered or impaired and no other measures have improved

the situation. According to the Court, poverty alone cannot justify the care order. It can nevertheless be one of the factors taken into consideration (together with for example psychical instability of the parents, alcoholism, abuse, lack of interest, etc.).

The Supreme Court emphasized the need for the use of alternative measures, such as cautionary advice or placing of minors under the supervision of the authorities, before issuing the care order. It also stressed the positive obligations of the state – to cooperate with the family and to offer adequate support (in the form of material help or advice) in order to solve the unsatisfactory situation.

Within the European Union, the Czech Republic ranks among the countries with the highest number of children in public care. For the very same reason it has been criticized by the UN Committee on the Rights of the Child in May this year. The Supreme Court is not the only judicial body trying to improve the unpleasant situation. In 2010, the Constitutional Court held that the authorities should not take children from their parents unless it is absolutely necessary. Now, there is time for the practice “on the spot” to catch up with judicial decisions...

Czech Republic in Strasbourg

Ladislav Vyhnanek

We chose two recent decisions of the European Court of Human Rights (hereinafter „ECHR“) which found breaches of the Convention by the Czech Republic. Although none of the two can be described as a breakthrough, both of them are very important not only in their individual aspects but also (and maybe even more) because of their future consequences.

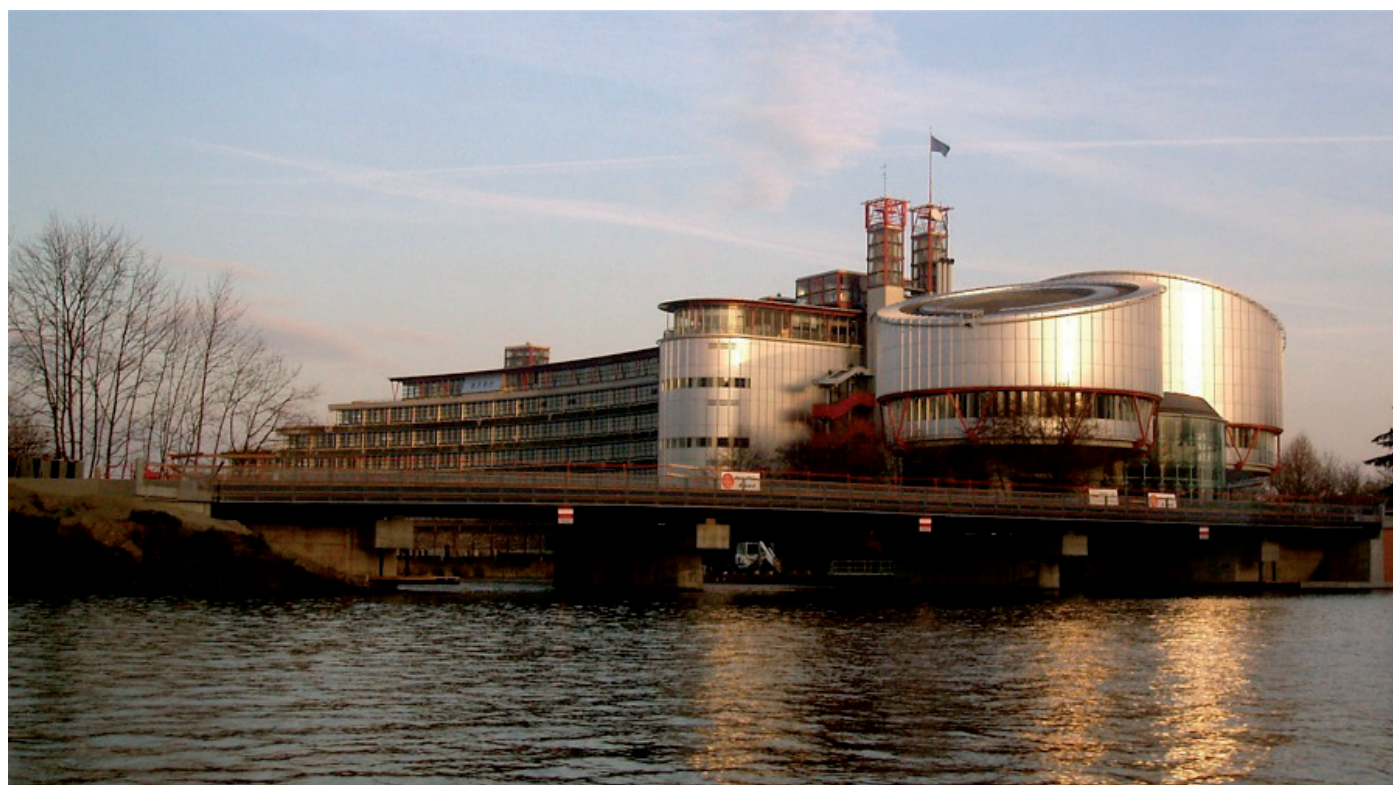
Beware of involuntary detention

In May 2011, the ECHR delivered a judgment in case *Župa v. Czech Republic* (n. 39822/07) concerning the detention of a person who was allegedly of unsound mind. On 4 January 2007, the police came to Mr. Župa's house with a doctor and took him against his will to Jihlava Psychiatric Hospital. Four days later the hospital informed Jihlava District Court of this detention. On the same day, a court clerk at the District Court went to the hospital to interview Mr. Župa and his doctor. A very short record of this interview indicated that Mr. Župa had been institutionalized based upon the recommendation of his general practitioner who had asserted that the applicant had suffered from hallucinations and

paranoia for about a year and even threatened to kill his brother. The doctor at the hospital confirmed that Mr. Župa lacked logical thinking and indeed had paranoid visions. A few hours later in a decision, which was later upheld by a regional court, the Jihlava District Court decided that the involuntary detention could have been considered a necessary measure to protect Mr. Župa's health and life; it was thus proclaimed lawful. As regards the evidence, the decision relied solely on the interview.

Mr. Župa was released from the hospital two months later and no domestic remedy (including a constitutional complaint) proved successful. The ECHR had to solve two legal questions – one of a rather procedural nature and one concerning the merits of the detention.

The procedural problem was connected to the procedural safeguards contained in the Czech Charter of Fundamental Rights and Freedoms and the Code of Civil Procedure. According to them, a hospital that admits a patient against her will must inform the competent court within twenty-four hours. This court must then review the lawfulness of the involuntary detention



European Court of Human Rights building. Photo by: Cédric Hüster

within seven days. In this case, the hospital had breached the 24-hours rule (it only informed the competent court after four days), however the court decided almost immediately, so that the following detention could not be considered unlawful solely on the procedural grounds. However, there remained an even more important question to answer – whether the mental state of Mr. Ťupa and the situation as a whole was serious enough to justify the involuntary detention. The ECHR reiterated that in cases of persons of “unsound mind”, several conditions must be met in order to justify an involuntary detention. These conditions are that 1) it must be reliably shown by an objective medical expertise that the person is of unsound mind, 2) the mental disorder must be of a kind or degree warranting compulsory confinement, and 3) the disorder must be pertinent in order to justify continuing detention.

In case of Mr. Ťupa, the ECHR questioned even the fulfillment of the first condition. It argued that the record of an interview by a court clerk with the doctor and the applicant cannot substitute a thorough medical examination and criticized domestic courts for not having used other sources of evidence.

As regards the second condition of the Winterwerp test, the domestic courts have breached the implicitly contained requirement of proportionality; the ECHR pointed out that nothing in the decisions or files indicates that the domestic courts considered less severe measures than detention.

As a conclusion, the ECHR stated that the domestic courts did not pay enough attention to the fundamental right at stake and failed to subject the detention to a thorough scrutiny as required by Article 5 § 1 (e) of the Convention. Mr. Ťupa was also awarded just satisfaction in respect of the non-pecuniary damage he suffered.

Hear the witness abroad!

The second decision we would like to share with our readers was delivered in the case *J. B. v. Czech Republic* (n. 44438/06). J. B. was a Dutch national living in Romania. Before his conviction, he ran a nightclub called “Hot Cat” in Dolní Dvořiště, a small town on the border with Austria. The club got under the police investigation, because of the suspicion for the forced prostitution. J. B. left the Czech Republic and the authorities were not aware of his whereabouts.

The police, in the presence of a judge, questioned five women (all Romanian nationals) who worked in the club. The questioning was conducted as an urgent measure pursuant to § 158a of the Code of Criminal Procedure, because the alleged prostitutes desired to leave Czech Republic and return to Romania.

Some of the witnesses testified that J.B. lured them to the Czech Republic where he promised them jobs as bartenders or cleaning ladies. Later – they testified – they were forced into prostitution under threats, their passports were confiscated and they had to give the applicant half of their earnings. Moreover, the applicant threatened their families. Neither the applicant, nor his lawyer, was present during the questioning and the applicant did not even know about it before he was charged. The applicant did not have any possibility to cross-examine the witnesses at any stage of the proceedings.

Later, a sixth witness was questioned in presence of the applicant’s lawyer.

The applicant was charged with trafficking in human beings and procuring prostitution. After he was arrested in Bulgaria and extradited to the Czech Republic, the District Court ordered his pre-trial detention.

In addition to the testimonies of the workers from the pre-trial stage, other witnesses were questioned during the proceedings before the court, even though they were not able to confirm the accounts of human trafficking included in the previous testimonies. Moreover, the court had in their possession police reports, which stated that the club was locked when the police had tried to search it.

The applicant testified that the girls living in the club stayed there voluntarily, they could move freely and leave the club whenever they wanted. The club was locked only because of security reasons. They worked as companions, dancers and strippers. Any other activities they engaged in must be regarded as their own initiative, according to the applicant.

The regional court (whose decision was later upheld on several occasions) found the applicant guilty of the crime of trafficking in human beings and of procuring prostitution as regards some of the workers who have testified according to § 158a of the Code of Criminal procedure.

J.B. criticized the approach of the domestic courts as regards the testimonies in the pre-trial stage and claimed that the fact that he could not have cross-examined the first five witnesses breached his right to fair trial.

The Czech Government and even the domestic courts argued that the circumstances of the case justified such an approach. Firstly, the Czech Government pointed out that the prosecution of human trafficking is considered as a positive duty in the ECHR case law. In this case, it was necessary to question the witnesses without presence of the applicant or his lawyer as they wished to return to Romania urgently. Moreover, their testimonies were not the only evidence leading to the applicant's sentence.

The ECHR pointed out that the right to adversarial proceedings is one of the cornerstones of a fair trial. It admitted that the Government's objections did indeed have merit, but stated that the problems could have been resolved otherwise.

Particularly, the ECHR understood that the victims of human trafficking in the present case wanted to return home to Romania as soon as possible, but it criticized that the domestic courts made no effort to secure their presence at the trial or to interview them in their home country.

The ECHR also made it clear that other evidence used was not sufficient to sentence the applicant in the cases regarding the first five witnesses. Therefore, the „tainted“ evidence issue was a key one. Consequently, the Czech Republic had breached the applicant's right to fair trial.

This restrictive implementation of urgent measures under the Code of Criminal Proceedings may certainly affect many future cases in the Czech Republic. Moreover, it is very likely that this case will be reopened before the Constitutional Court of the Czech Republic.

Provisions Implementing the EU Data Retention Directive Are Unconstitutional

Monika Mareková

The Constitutional Court of the Czech Republic held in its decision Pl. ÚS 24/10 of March 2011 that part of Law No. 127/2005 Coll. on Electronic Communications and the whole of Decree No. 485/2005 Coll. on the Extent of Traffic and Location Data, were unconstitutional. Their provisions required that persons, providing a public telecommunications network or a publicly accessible service of electronic communications, retain the data on entire telephone communications, entire communications via e-mail and SMS or data on the access of websites. The minimum period of data retention was 6 months and the maximum was 12 months. Upon request, the data had to be provided to the authorised bodies. These requirements were introduced into Czech law by implementation of the EU data retention directive – 2006/24/EC Directive of the European Parliament and the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services

or of public communications networks and amending Directive 2002/58/EC. The Czech legal provisions were, however, broader in the extent of the retained data compared to the EU data retention directive. A group of 51 Deputies of the Czech Parliament filed the petition which sought to annul these provisions. The companies providing the telecommunications and electronic communications were not required to retain the content of the communication, but only the information on it. Particularly, data was retained on incoming and outgoing calls, namely telephone numbers, date, time and length of the communication, location and motion of the mobile phone etc. In terms of electronic communication, data retained included the data on the connection to network (e.g. time, place and length of the connection), data on users and their accounts, the volume of transferred data, data relating to the access to electronic mailboxes and the transfer of electronic mail messages. This includes address identification, the volume of the transferred data

and others, and data on the server services. For example, entered URL address, data on using chat and IP telephony, including the identification of the communicating parties and length and service used (e.g. file transfer or transaction). Even though the telecommunications and electronic communications providers did not have to retain the content of the data, thanks to the broad extent of the retained data it was possible to compile detailed information on social or political affiliation and personal activities or weaknesses. The retention of location and traffic data is unconstitutional according to the Czech Constitutional Court and interferes with the right to privacy since the extent of the right to privacy does not include only the content of the communication, but also the location and traffic data on this communication.

Interference? Yes. Proportional? No.

Further, the Constitutional Court examined whether interference with the right to privacy was proportional. Because the provisions required global and

preventive data collection and the interference concerned unforeseeable number of individuals, its justification would be possible only by the fulfillment of a set of very strict criteria. According to the Constitutional Court, these were not fulfilled. The contested provisions did not specify which bodies and under which circumstances were they authorised to request the data on the communication. Thereby the provisions did not meet the requirements of foreseeability and clarity necessary in the democratic state.

Moreover, the provisions did not specify the purpose of the disclosure of the retained data to the authorised bodies. Even though the EU data retention directive specifies its purpose as the investigation, detection and prosecution of criminal offences, the Czech legislation did not contain the requirements for the provision of the data to the authorised bodies. The use of the data was not conditioned with the existence of reasonable suspicion or with further notification of the persons that they were under surveillance. Because of these facts, the authorised bo-



The ruling provides for more anonymity on the internet. Photo by: anroir.

dies overused the request of the data and disproportionately interfered with the right to privacy of the suspicious persons, which was confirmed by the statistics data.

Furthermore, the contested legal provisions did not contain the minimum requirements for the security of the stored data against the access of unauthorised third parties. Individuals were not provided with enough guarantees against the misuse of the data and arbitrariness. Since the legal provisions were not clear enough, they did not have the possibility of the following judicious control.

Thus, the Czech Constitutional Court unanimously declared that the provisions implementing the EU data retention directive did not conform to the Constitution because they did not comply with the requirements arising from the principles of the rule of law. Moreover, they were in collision with the requirements concerning the restrictions imposed on the fundamental right to privacy in the form of the right to information and self-determination in the sense of the Czech Charter of Fundamental Rights and Freedoms.

Not the First Time

The Constitutional Court of the Czech Republic was not the first court that annulled the implementation of the EU data retention directive for its unconstitutionality and its disproportional interference with fundamental rights. The Constitutional Court of Germany deci-

ded on 2 March 2010 that the requirement of preventive data retention on the communication violates the inviolability of the secrecy of letters correspondence and telecommunications. The Romanian Constitutional Court held the implementing provisions unconstitutional on 8 October 2009 and the Supreme Court of Cyprus decided in the same manner on 1 February 2011. At the moment the provisions implementing the EU data retention directive are being contested in Poland and Hungary.

The EU data retention directive was criticized by many member states and non-governmental organizations for its disproportional interference with the right to privacy. Moreover, time has shown that according to statistical data, the global preventive data retention does not reduce criminality and thus does not help to improve public safety. The companies, who are responsible for providing the telecommunications and electronic communications, welcomed the decision because the expenses, which they had to spend on the data retention, will now decrease.

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