

CZECH CENTRE FOR HUMAN RIGHTS AND DEMOCRACY

Czech Republic Human Rights Review



Dear readers,

We are pleased to present the latest issue of the Czech Republic Human Rights Review.

We begin with "Thirty Years of Czech Independence: A Journey of Sovereignty, Democracy, and Unity," in which Adéla Hrdá reflects on three decades of an independent Czech state and its evolution into a democratic society. Next, Karolína Vejmolová examines how the current criminal justice system addresses past injustices, with a focus on the accountability of communist officials for deaths at the Czechoslovak border.

In the following section, the authors delve into the fascinating case law of the Czech judiciary. Adéla Hrdá explores the electoral jurisprudence of the Supreme Administrative Court in the context of elections to the upper chamber of the Czech Parliament. Jakub Dubják then analyzes the Constitutional Court's ruling on the wrongful placement of a child in a children's home without due process. In his next article, Jakub explores the Constitutional Court's stance on the "Do Not Resuscitate" order, raising the question: Should doctors consult patients in end-of-life situations? Barbora Headlandová offers a thorough examination

of the Supreme Administrative Court's ruling on gender change. Finally, Jakub Dubják provides a detailed analysis of general court rulings on the alleged torture of a prisoner who was handcuffed to a window bar.

In "Czech Republic before the European Court of Human Rights in 2023", Klára Popelková highlights the European level of human rights protection and offers an overview of Czech cases brought before the Strasbourg Court. Karolína Vejmolová returns with "A Sniper Fighting on the Side of Pro-Russian Separatists Sentenced to 21 Years", a chilling account of the prosecution of a Czech sniper responsible for multiple deaths during the conflict in Ukraine.

In conclusion, we pause to reflect on the tragic events of the mass shooting at Charles University in Prague. Daniela Skácelíková revisits the incident and examines its broader implications for public safety and the national psyche.

We wish you an engaging and insightful reading experience.



Pavel Doubek

Editor of the Czech Republic Human Rights Review

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Thirty Years of Czech Independence: A Journey of Sovereignty, Democracy and Unity



Adéla Hrdá

The arrival of 1 January 2023 marked not only the start of a new year, but also the dawn of a new decade for the Czech Republic. Throughout 2023, the country celebrated three decades of sovereignty, freedom, and democracy - an achievement unparalleled in modern Czech history.

The Dissolution of Czechoslovakia: A Historic Turning Point

The dissolution of Czechoslovakia in 1992 marked a significant turning point. Following the fall of the communist regime, the growing divide between Czech and Slovak interests became apparent. Tensions escalated into conflicts such as the “hyphen war”, where the two nations could not even agree on the country’s official name.

On 17 July 1992, the Slovak National Council adopted the Declaration of Independence of the Slovak Nation, which was shortly followed by President Václav Havel’s resignation. A symbol of the division was the historic meeting between Czech Prime Minister Václav Klaus and his Slovak counterpart, Vladimír Mečiar, in the garden of the Tugendhat Villa in Brno.

Ultimately, negotiations led to the peaceful separation of Czechoslovakia into two independent states: the Czech and the Slovak Republics. On 1 January 1993, the Czech Republic emerged as a sovereign entity with Václav Havel assuming the presidency shortly after. Thus, a new era began.

The Birth of Democracy

It is not just the birth of the country that is worth commemorating. Among the crucial documents celebrating their 30th anniversary is the Constitution of the Czech Republic adopted on 16 December 1992. This foundational document established the Czech Republic as “a sovereign, unitary, and demo-



First Czech president, Václav Havel [1]

cratic state governed by the rule of law”. It enshrined principles of human rights, democracy, and the separation of powers, laying the groundwork for the country’s democratic institutions.

Another significant document is the Charter of Fundamental Rights and Freedoms. With its origins in 1991, it had already been part of Czechoslovakia’s legal framework, but its future in the new country was uncertain. Its incorporation into the constitution faced opposition from the Civic Democratic Party (ODS) and the Civil Democratic Alliance (ODA), and a compromise had to be reached, introducing the concept of “constitutional order”. As a result, the Charter was seamlessly integrated into the legal system, distinct from the Constitution, but holding an equivalent legal standing.

Both documents, as well as other laws adopted after the dissolution, are the cornerstones of Czech democracy and mark a significant departure from the past regime.

Key Milestones

Over the past three decades, the Czech Republic has made remarkable progress. From strengthening

democratic institutions and fostering economic growth to asserting its presence on the international stage, several key milestones stand out.

In 1993, the Czech Republic became a member of the United Nations and affirmed its status as a sovereign state. Joining NATO in 1999 and the European Union in 2004 further underscored a commitment to collective security and strengthened cooperation with European neighbors.

The establishment of the Senate, the upper house of the Parliament, followed by the first elections in 1996 meant a significant step towards enhancing representation and diversifying the legislative process. In 2000, the creation of administrative regions (“kraje”) aimed at decentralizing governance and empowering local authorities.

Fast forward to 2013, the Czech citizens got the chance to directly elect their president for the first time ever. All these landmarks show us what a remarkable journey the Czech Republic has undergone.

Anniversary Celebrations in 2023

The year filled with festivities culminated in a ceremony held on 30 June 2023 at the Spanish Hall of Prague Castle under the auspices of the President, Petr Pavel. It was attended by representatives from various sectors of society, including senior constitutional officials, representatives of security forces, academics, and cultural figures. The event featured speeches by prominent figures and a musical performance by the Band of the Castle Guards.

Other activities included exhibitions and trade fairs showcasing the defence and security industries. These events highlighted the Czech Republic's achievements and contributions to international security. Notable among these exhibitions were IDEX in Abu Dhabi, DEFEX in Athens, IDET in Brno, and EDEX in Cairo.

As the Czech Republic reflects on 30 years of independence and democracy, it also looks towards the future with optimism. The country remains committed to upholding democratic values and contributing to international peace.



Czech Republic as a member of the EU [2]

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- [1] First Czech president, Václav Havel. Velvet Revolution anniversary 2010, author: David Sedlecký, 17 November 2010, source: Wikimedia Commons, CC BY-SA 3.0 Deed.
- [2] Czech Republic as a member of the EU. Members discussed priorities of the Czech Presidency with Prime Minister Fiala, author: European Parliament, 6 July 2022, source: Flickr, CC BY 2.0 Deed.

Justice for Past Crimes: Ex-Minister Faced Charges for Fatalities on the Czechoslovak Border



Karolína Vejmolová

Former Czechoslovak Interior Minister Vratislav Vajnar faced charges of abuse of official authority. As this offense is considered particularly serious, the court could sentence Vajnar to imprisonment for up to 10 years. However, Vajnar did not live to see the outcome of the criminal proceedings, as he passed away at the age of 92.

Before 1989, several Czechoslovak residents were killed or injured in failed attempts to emigrate from the country. Although Czechoslovakia was already one of the contracting parties to the International Covenant on Civil and Political Rights (hereinafter “the ICCPR”) [1], the communist regime used all means to prevent people from leaving the country freely. Thus, fundamental human rights under the ICCPR were systematically violated.

In September 2017, the Platform of European Memory and Conscience [2] filed a notification of suspicion of a criminal offense against 17 members of the Bureau of the Central Committee of the Communist Party of Czechoslovakia. This action was taken because these members had kept in force the regulations allowing the Border Guard to take action against such persons, potentially leading to their deaths. Subsequently, in November 2019, the Office for Documentation and Investigation of Crimes against Communism launched a criminal prosecution of former members of the Communist Party of the Czechoslovak Communist Party, namely Miloš Jakeš [3], Lubomír Štrougal [4], František Kinc [5] and Jan Fojtík [6].

Similarly to Vajnar, the prosecution was discontinued due to the deaths of Miloš Jakeš and Lubomír Štrougal. In the cases of the accused, Kinc and Fojtík, the prosecution was halted due to a deterioration in their mental health.

The course of Vajnar’s prosecution

In September 2020 District State Prosecutor's Office for Prague 1 (hereinafter “District State Prosecu-



Miloš Jakeš was accused in the case of deaths on the Czechoslovak border [1]

tor's Office”) halted the prosecution of Vajnar due to the mental illness from which the accused suffers. Although the District State Prosecutor's Office and Štrougal admitted joint responsibility for the crime under Section 329 of the Criminal Code [7], due to the inability of the accused to understand the meaning of the criminal proceedings, it ceased to prosecute the accused.

However, the wounded opposed the dismissal of the prosecution, and the victims' survivors filed a complaint with the Constitutional Court. The complainants described the forensic experts who prepared the report on the defendant's mental state as biased due to their party affiliations and career histories, a claim that the Constitutional Court later upheld. In November 2021, the Court found a violation of the right to an effective investigation related to the right to life (Article 6 of the Charter of Fundamental Rights and Freedoms), leading to the reopening of the criminal prosecution.

The District Court for Prague 1 set a court hearing for April 25 and May 24, 2023. This marks a signifi-



Top officials of the Czechoslovak Socialist Republic [2]

cant milestone, as no similar case concerning transitional justice has previously reached this advanced stage in the criminal proceedings. The survivors viewed the criminal proceedings as serving the interests of society as a whole. The Constitutional Court echoed this sentiment in its earlier judgment, stating that *"the core of a criminal case encompasses the broader question of the legality and legitimacy of the border protection regime enforced by the armed forces during the non-democratic regime."*

Nevertheless, Vajnar was unable to attend the scheduled hearing due to health issues. Shortly thereafter, in June 2023, he passed away from health complications. As prosecuting a deceased individual is not legally permissible, the prosecutor discontinued the prosecution.

Miroslav Lehký, a former investigator with the Office for Documentation and Investigation of Crimes of Communism (ODI), recognizes the investigation of crimes of communism as problematic. He believes that there are still former members of the Communist Party who should face punishment. As time goes on, it raises the question of whether justice for the deaths at the Czechoslovak border will ever be achieved

Remarks

- [1] The International Covenant on Civil and Political Rights was effective for Czechoslovakia from 23 March 1976.
- [2] The Platform of European Memory and Conscience is a non-governmental, non-profit organization operating at the international level, and among its main objectives is to raise awareness of the crimes committed by totalitarian regimes to promote human rights rights and dignity. The Platform's website: is www.memoryandconscience.eu/.

- [3] Miloš Jakeš was Secretary General of the Central Committee of the Communist Party of the Czech Republic from 1987 to 1989.
- [4] Lubomír Štrougal served as Minister of the Interior (1961-1965) and later as Prime Minister of the Czechoslovak Socialist Republic (1970-1988).
- [5] František Kincl served as Minister of the Interior of the Czechoslovak Socialist Republic between 1988 and 1989.
- [6] Jan Fojtík is the former Secretary of the Central Committee of the Communist Party of Czechoslovakia (1971-1989).
- [7] This is a criminal offense of abuse of authority of an official.

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Pictures

- [1] Miloš Jakeš was accused in the case of deaths on the Czechoslovak border. M Jakeš 2014, by David Sedlecký, 1 May 2014, Wikimedia Commons, CC BY-SA 3.0 DEED.
- [2] Top officials of the Czechoslovak Socialist Republic. State leaders of the 1970 MS V. Tatry, by Tatransky, 30 January 2019, source: Wikimedia Commons, CC BY-SA 4.0 DEED.

Senate Election Results Challenged: Supreme Administrative Court Considers Four Motions for Annulment



Adelá Hrdá

Senate elections were held at the end of September 2022, which means that one third of the Parliament's upper house was to be replaced. Which party is left with only one mandate even though it enjoyed a majority in the Senate just twelve years ago? And can defamation against a candidate lead to the nullity of elections?

Summary of Senate Elections

Voters across the Czech Republic went to the polls on Friday, 23 September and Saturday, 24 September 2022 for the local elections. Additionally, the first round of the Senate elections took place in 27 constituencies.

Three candidates secured an absolute majority in the first round, Jiří Růžička (independent candidate) in Prague 6, Petr Fiala (Společně pro kraj) in Ústí nad Orlicí, and Ladislav Václavec (independent candidate) in Bruntál. These three candidates secured a senatorial seat and saved their voters a trip to the polling stations for the second round.

Nevertheless, a second round had to take place in the remaining 24 constituencies one week later, on

[Interior of the Senate building \[1\]](#)



[2022's Senate elections were held together with local elections in 27 constituencies \[2\]](#)

30 September. The turnout for the second round was 19.44%, which made it the highest turnout in a Senate runoff election since 2010.

A thrilling duel in Jihlava (constituency no. 52) managed to mobilize double the average number of voters. Miloš Vystrčil (ODS), the President of the Senate, faced his rival Jana Nagyová (ANO) and confirmed his mandate by winning a 60% majority.

Overall Results: ANO May Have its First Caucus while ČSSD is Left with Just One Senator

Although ANO did not win a senatorial seat in Vysočina, three other candidates from the party

succeeded in the elections. As a result, a total of five senators from Andrej Babiš's political party (ANO) appeared in the Senate and were able to form their own caucus for the first time. The overall winner of the elections was ODS, which won eight seats, while SPD remained in the losers' camp and will have to wait for its representation in the Senate.

Klub Starostů defended only one of its six seats. However, the most crushing defeat was experienced by ČSSD, which did not secure a single seat despite having boasted a Senate majority twelve years earlier. After the 2022 elections, it is left with a single senator, Petr Vícha.

Only Four Complaints to the Supreme Administrative Court

As is common after elections, complaints were filed with the Supreme Administrative Court (hereinafter "the SAC"). A seven-member Chamber for the Electoral Manners has jurisdiction over these complaints and it received a staggering 210 complaints after the 2021 Chamber of Deputies elections. The 2020 Senate elections brought about nine complaints, but the SAC dismissed them all.

After the 2022 election, four complaints were filed with the SAC. Three of them had a really short journey through the Court - they were rejected. One was rejected as untimely, another complaint did not indicate which constituency it concerned and the third had been filed by a person who was clearly not entitled to do so.

Libel as a Reason for Invalidating an Election?

The only complaint that was not rejected on formal grounds concerned Karlovy Vary (constituency no. 1). The petitioner complained that he had allegedly lost his senatorial seat because of libel. An unknown person had posted false information on social media with the alleged purpose of harming the petitioner. The petitioner objected to these defamatory statements in paid advertisements in regional newspapers and also filed a criminal complaint. None of this helped and he lost the first round.

In his motion to the SAC, the petitioner sought a declaration that the election was invalid because of a dishonest and unfair campaign. He also poin-



Supreme Administrative Court [3]

ted out that he had been only 580 votes away from advancing to the second round.

Potential to Influence Elections is Not Enough

According to the SAC, the amendment to the Election Law changed the perception of campaign violations. It is now necessary that the violation of the Election Law actually affect the outcome of the election; a mere possibility of influencing the results is insufficient.

The SAC, citing a finding of the Constitutional Court, emphasizes the principle that the decision of the electorate can be overturned by the judiciary only in exceptional cases where the defects in the electoral process have demonstrably caused the electorate to decide otherwise and elect a different candidate.

In its findings, the SAC did not dispute that the documents provided by the petitioner demonstrated a campaign against his person, specifically against his re-election to the Senate. In any event, it pointed out that the courts must distinguish between the concepts of honesty and integrity in everyday life and in the case of electioneering. The SAC cites another finding of the Constitutional Court, which states that a campaign "*is nothing more than a struggle for the votes of the electorate, which it seeks to win at all costs*".

An important point emphasized by the SAC is the petitioner's opportunity to comment on, respond to and refute the allegations made against his person.

This gives him the opportunity to leave the decision to the electorate “*to be the arbiters of the persuasiveness of the allegations contained in the negative campaign against him*”, not the Supreme Administrative Court.

The Court also noted that the results could not be considered close, as the plaintiff finished only fourth by a margin of almost 2% behind the second-place finisher.

The Supreme Administrative Court ultimately decided to reject the complaint. The Senate election is thus definitely valid. All that remains is to observe the work of the newly elected senators and anticipate the next election.

Review of Presidential Elections

In January 2023, the voters were invited to the polls once again - this time to vote for the new president. The elections were won by Petr Pavel and the SAC received around 400 motions from the citizens challenging the results. The SAC stated that the vast majority of the submissions were virtually identical in form and content.

However, the Court had to deal with some of the motions. These included complaints regarding the presidential candidates' election campaigns and a faulty recount of votes in a district where the commission mistakenly assigned votes to the opposing candidate in the second round.

The majority of the complaints were rejected in their entirety, except two complaints challenging the wrong recount of votes. The Court determined that both petitioners correctly identified the errors in the recount. Where possible, it counted the missing votes and corrected the figures. It ordered the Czech Statistical Office and the State Electoral

Ballot box present in every polling station [4]



Commission to re-publish the corrected figures. Nevertheless, it dismissed the motions for the annulment of votes in the districts concerned since such intervention would not have been proportionate to the degree of defect found. As a result, the outcomes of the presidential election remain valid.

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- [1] Interior of the Senate building. Senat 2833, author: Krokodyl, 4 October 2011, Wikimedia Commons, CC BY-SA 3.0. Edited: cut.
- [2] 2022's Senate elections were held together with local elections in 27 constituencies. Senate and Regional election in Adamov (2016) 1, author: Lasy, 8 October 2016, Wikimedia Commons, CC BY-SA 4.0.
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- [4] Ballot box present in every polling station. Volba prezidenta 2018-01-26, hlasovací schránka (3956), author: autor: Martin Strachon / Wikimedia Commons, 26 January 2018, Wikimedia Commons, CC BY-SA 4.0.

Constitutional Court: The court violated the child's constitutional right to participate in legal proceedings by placing him in a children's home



Jakub Dubják

The Constitutional court annulled the resolution of District court for Prague 8 and Regional court in Prague. This presented another opportunity for the court to address the issue of removing children from their parents' care and placing them in children's homes. What led the court to this decision, and what challenges did it face? What arguments did the parents present, and what errors did the lower courts make?

Lower courts decisions prior to the Constitutional Court's ruling

Before the finding of the Constitutional court [1] preceded a judgement of District court in Prague 8 (District court) regarding joint custody, a resolution of District court regarding an initiation of proceedings on institutional care [3], a resolution of the Regional court in Prague (Regional court) regarding a nomination of a guardian of children [4] and at last a resolution of Regional court regarding appeal against the resolution of the District court.

In 2020 the district court placed two minors, a boy and a girl, into the custody of both their parents.[2] The children's care was supervised by the Agency for the Social and Legal Protection of Children (agency) due to the extraordinary conflicting relationship of their parents. During the court's proceedings, the agency did not record any positive progress regarding the parents' relationship. District court held that parents had not paid appropriate attention to the negative impact of their relationship on their children.

Two years later, the agency submitted a report to the district court indicating that its supervision was insufficient to minimise risks in the family to an acceptable level. The agency reported that there were no visible improvements regarding the parents' ongoing conflict, which kept on deteriorating.



Right to judicial protection springs from Art. 36 para. 1 of the Charter [1]

The agency recommended to the district court to impose another educational measure or other appropriate measure. According to the agency's report, a temporary removal from parent's custody seemed to be in the best interest of the children. According to the pediatrician's medical opinion, the joint custody arrangement negatively affected the boy, who was also endangering his younger sister.

The children were represented in court proceedings by their public guardian, the Municipal Office of the City District Prague 18. It represented them in judicial proceedings regarding the deprivation of parental responsibility and imposition of institutional care. The guardian opposed the decision to place the children in institutional care, perceiving



One of the Prague's children's homes [2]

it as potentially harmful. Therefore, he recommended the proceedings for the deprivation of parental responsibility to be halted.

On November 15, 2022, the district court issued a resolution initiating proceedings to place the boy in institutional care and ordered the parents to transfer their son to a children's home.

The district court referred to the agency's report, which describes the ongoing conflict between the parents. Both accused each other of abuse; the father questioned the mother's sanity, while the mother failed to comply with court decisions. Additionally, their son faced constant and excessive physical punishment. The district court thus concluded that these circumstances posed a significant danger to the children.

The District Court further noted that the parents had been causing long-term harm to the boy, as no stabilisation of circumstances had occurred since the previous decision. The parents were not communicating with each other, their son was exhibiting inappropriate behaviour, and, moreover, he imposed a threat on his younger sister. The parents appealed this resolution to the regional court. The father disagreed with the length of time his son was to remain in the children's home, while the mother opposed the resolution itself. The Regional Court upheld the District Court's decision, stating that based on the available facts, „*an interim solution by preliminary ruling is the right approach*”.

What was the outcome of the Constitutional Court's decision?

The Constitutional Court determined that the actions taken by the lower courts were in violation of the fundamental rights of the mother, and by extension, those of her son, as guaranteed by the Constitution.

The district court did not appropriately evaluate what was in the boy's best interest and also failed to inform him sufficiently during the proceedings. As a result, the district court thus violated both mother's and son's right to judicial protection as well as their rights to protection against unlawful intervention in family life and to parenting.

The Regional Court violated the boy's right to participate in the proceedings by failing to communicate appropriately with him regarding his placement in a children's home. State authorities did not inform the boy about the possibility of being placed in such an institution, and the court made no effort to ascertain his opinion, effectively leading to his lack of participation in the proceedings. Additionally, the Regional Court did not take into account the mother's reference to the findings of the Constitutional Court [6], which she cited in her arguments. The court also failed to give proper consideration to the father's motion to shorten the duration of the preliminary ruling.

The Constitutional Court's reasoning

The Constitutional Court held that the temporality of a preliminary ruling is significant, as its purpose is not to permanently determine the rights and obligations of the participants.

It declared that a child cannot be removed from their parents' custody solely on the grounds that they could be placed in a better environment for upbringing. If it was that easy to remove a child from their biological family's custody without serious and specific reasons, it would allow for the arbitrary removal of children and their placement with so-called 'better' parents.

Children can only be removed from their parents' custody temporarily, until a more adequate arrangement can be found. Separation of children from their parents is a solution of the last resort. [7] It is thus acceptable only if “it is necessary for ensuring

of protection of some of the child's absolute rights against his parents“.[8] These rights include a right to life, freedom from torture and other ill-treatment and freedom from any kind of violence.

The Constitutional Court criticised the district court for failing to assess the proportionality of the violation of the boy's fundamental rights or to consider what would be in his best interest. It did not explore potential alternatives, such as placing him in the custody of his father or a third party. Additionally, the district court seemed oblivious to the possibility of improving the family situation.



Right to family life is vested in Art. 10 of the Charter and Art. 8 of the Convention [4]

Remarks

- [1] Finding of the Constitutional court delivered on 25th of April 2023, case no. III. ÚS 484/23. Available from https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezky/2023/3_484_23_AN.pdf.
- [2] Judgement of the District court in Prague 8 delivered on 16th of June 2020, case no. o P 277/2018-844.
- [3] Resolution of the District court in Prague 8 delivered on 15th of November 2022, case no. o P 277/2018-1347.
- [4] Resolution of the Regional court in Prague delivered on 5th of September 2022, case no. Co 297/2022-1158.
- [5] Resolution of the Regional court in Prague delivered on 21st of December 2022, case no. 70 Co 419/2022-1420.
- [6] Finding of the Constitutional court delivered on 29th November of 2022 f. n. IV. ÚS 412/22.
- [7] See for example judgement of ECHR delivered on 26th of February 2002 No. 46544/99 in *Kutzner vs. Germany*.
- [8] See Finding of Constitutional court delivered on 13th of September 2022 r. n. III. ÚS 3146/21.

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Police got involved repeatedly [3]



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- [1] Right to judicial protection springs from Art. 36 para. 1 of the Charter. Cudrefin-justice, author: Roland Zumbuehl, 19 April 2006, source: Wikimedia Commons, CC BY-SA 3.0 DEED.
- [2] One of the Prague's children's homes. Zbraslav, dětský domov Charlotty Masarykové, author: ŠJů, Wikimedia Commons, 18 June 2014, source: Wikimedia Commons, CC BY 4.0 DEED.
- [3] Police got involved repeatedly. Škoda Octavia Policie České republiky, author: Reise Reise, 30 May 2019, source: Wikimedia Commons, CC BY-SA 4.0 DEED. Edit: cut.
- [4] Right to family life is vested in Art. 10 of the Charter and Art. 8 of the Convention. Happy family (1), author: Catherine Scott, 16 March 2012, source: Wikimedia Commons, CC BY-SA 2.0 DEED.

Do Not Resuscitate Order: Should doctors ask the patient? What stance did the Constitutional Court take?



Jakub Dubják

The Constitutional Court decided the case of a breach of doctors' information duty. There is no consensus on who, when and by which measure can give the order „*Do Not Resuscitate*“. Medical intervention may only be performed when a patient has full legal capacity, is aware of their surroundings and is capable of making decisions regarding their own fate, only with the patient's informed and free consent. With due diligence towards the legal institute of the prior expressed wish it is necessary to prevent possible conflicts.

The background of the case

Mother of two children (complainants) had been hospitalised for approximately ten days, where she also died on 6th of July 2013. She was an elderly woman with a long lasting disease. Doctors unanimously issued the medical order „*Do Not Resuscitate*“ (DNR) for her.[1] Neither the complainant's mother nor her family (her children) were informed that a DNR order had been issued in her case.

What had to be decided by the Constitutional Court

The Constitutional Court (CC) concluded that the case raised a legal question regarding whether a hospital could be held liable for the death of a patient with a long-term illness if the doctors issued a unanimous "*Do Not Resuscitate*" (DNR) order without informing either the patient or their family..

Decision of the District court

Claimants sought damages before the general courts for harm caused over manslaughter according to Art. 444 of the Civil Code of 1964 (Civil Code).



Supreme court pointed at plausible prolonging of suffering by a resuscitation [1]

Pardubice District court (District court) complied with the lawsuit. District court found that the hospital breached its legal duty [2] by not informing the patient that the DNR was ordered in her case which led to her precocious death. The District Court therefore established the necessary causal link between the patient's death and the breach of the hospital's legal duty, which triggered liability under Article 420, paragraph 1 of the Civil Code.[3]

District court concluded that on 6th of July 2013 the patient was still capable of independent acting on her behalf. In other words, she was able to express her opinion clearly after the previous explanation.

Decision of the Appellate court

Regional court in Hradec Králové – branch office in Pardubice (Appellate court) had not complied with the District court's decision and dismissed the

claimants' lawsuit. Appellate court agreed with the conclusion that the hospital breached its legal duty, but it had not found the alleged causal link between the DNR order and the patient's death.

Appellate court concluded that based on the audit opinion the patient's resuscitation was going to be unsuccessful due to the state of the patient's cardiorespiratory system. With information from the audit opinion, the Appellate court also found that even if the patient's resuscitation had been successful, it is likely that her survival would have only been possible through intensive medical care and organ support.

Regional court pointed out that on 6th of July 2013 the patient already suffered from a consciousness disorder. The court thus concluded that the patient fulfilled the criteria stated by the Recommendation of the board of directors of the Czech Medical Chamber No. 1/2010 regarding the procedure of decision making on the change of intensive medical care to palliative medical care in cases of patients in a terminal state, who cannot express their will.[4]

Decision of the Supreme court

The Supreme court (SC) partly dismissed the claimants' appeal and rejected the remainder of it. The court emphasized that based on the audit opinion the patient would most probably stay alive only for a short period of time, and only with the support of medical devices.[5]

The SC found that the medical intervention performed without the patient's consent constituted a breach of legal duty. SC concluded that the hospital had not fulfilled its information duty appropriately, however SC also concluded that the hospital is not obligated to provide damages for the loss of a relative. According to SC "*damages over the loss there [by inappropriate fulfilment of the information duty] caused in autonomy of the patient and manifested through unwanted informational deficit*" were not claimed by claimants.[6]

The legal institute of "previously expressed wish"

The CC dismissed complainants' constitutional complaint. CC declared that a medical interventi-



One sided order DNR is not provided in Czech law [2]

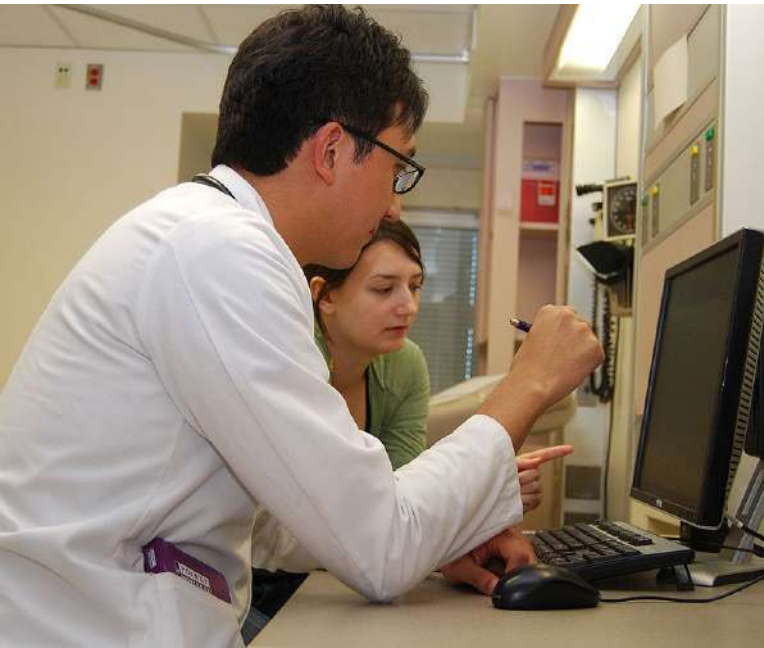
on, if the patient has full legal capacity, is capable of perceiving their surroundings and is capable of making decisions about their life, shall be used only with the patient's free and informed consent. [7] This conclusion is relevant even if it leads to the patient's death.

According to CC, patients can use the institute of a previously expressed wish in the case of a DNR order. Yet, in this particular case, a written form is mandatory, and it must be included, along with the patient's reasoning for their decision in the patient's clinical documentation.

The legal institute of the previously expressed wish plays a key role in situations when the patient is not capable of expressing their informed and free consent. Then it is necessary to consider whether the patient had already expressed their will about some kind of medical intervention, hence preventing future conflicts and misunderstandings concerning the interpretation of the patient's lastly expressed will.

Informed consent in the end-of-life situation

According to CC it is doctors' duty to inform the patient about the possibility of a non-providing meaningless, useless and merely the moment of death delaying health services. The patient shall be informed while they are still capable of giving a consent, in other words while the patient still can understand the outcomes of their decision. The consent must be free and informed. If the DNR is ordered, the patient's kin shall be informed too.



Consent with health services must be informed and free [3]

Assuming that the patient is not capable of giving an informed and free consent, the decision shall be made after a broad consultation of doctors while the patient and their kin have a right to participate. This must be done to ensure that the best solution, in the best interest of the patient, is ultimately chosen. To avoid a violation of these fundamental rights, an appropriate level of communication between doctors, the patient and their kin is undeniably necessary. CC concluded that ordering the DNR is not only advisable but rather mandatory to communicate with the patient's kin.[9]

Right to live, protection of health and a right to die with dignity

According to CC, the patient's right to life does not inherently imply an unconditional duty to perform resuscitation, at least not directly, even if such intervention might delay the patient's death. In a case where a death is inevitable „the aim of the doctor's actions shall not be to prolong the life at any cost“.[10] Nonetheless, as mentioned above, „if the patient has full legal capacity, is aware of their surrounding and may formulate own decisions regarding their fate, medical intervention must only be performed with their informed consent“ although a death will be the result of this decision.[11]

The CC found no justification for the doctors ordering the DNR without informing the patient or her

family. According to the Court, this action could not only be seen as a violation of the patient's right to participate in decisions regarding her treatment, but also as an infringement on her right to personal inviolability and the right to respect for her family and private life.[12]

Damages claimed by survivors

The CC also paid attention to the difference between forms of damages according to Art. 13 para. 2 [13] and Art. 444 para. 3 [14] of the Civil Code. Whereas Art. 13 of the Civil Code provides regular non-pecuniary damages, provision Art. 444 para. 3 according to general courts provides survivors with the right to seek compensation for the unexpected death of a family member.[15] According to them, this particular provision does not grant a claim for compensation for the violation of the patient's and her family's right to participate.

According to the CC, the Appellate court had not violated survivors' fundamental rights by dismissing their lawsuit if it informed them appropriately about the difference between these two claims.

It is rather surprising that claimants had not been awarded non-pecuniary damages over their emotional harm caused by their mother's death according to Art. 13 of the Civil Code. It is all the more puzzling due to the fact that CC had not included this rebuke to its reasoning. The CC had stated (para 85) that it had previously addressed the legal question regarding the distinction between claims based on Article 13 and Article 444 of the Civil Code. It referred to its ruling on May 4, 2005 (case No. Pl. ÚS 16/04), in which it concluded that, in the context of Article 444, paragraph 3 it “is not excluded that aggrieved party, if one-off damages are not satisfactory over occurred harm to their personal rights, might seek additional satisfactory damages according to the provisions regarding the protection of personality rights“. However, CC had not reproached ordinary courts for not leading the claimants to this solution.[16]

Remarks

- [1] DNR (“Do Not Resuscitate”) order is a medical order that a patient should not receive a cardiopulmonary resuscitation if a respiratory arrest and cardiac arrest occurs. Some recent protocols together with CC prefer a term “Allow Natural Death“.
- [2] District court particularly pointed at provisions Art. 28 para. 1 and Art. 31 para. 1 of the law NO. 372/2011 Coll., on health services and conditions of their providing, as amended.

- [3] Art. 420 para. 1 of the Civil Code states, that “everyone is liable for harm which they caused by breaching their legal duty”.
- [4] Art. 5 letter c) of the Recommendation of the board of directors of the Czech Medical Chamber No. 1/2010 states that “Initiation or continuing with any medical treatment which is not professionally reasoned, where is no reason to foresee its positive effect onto the course of a disease and if risk of complications, starving, sorrows and pain overweighs over real clinical benefits is contrary to principles of medicine and to Charter of the Rights of the Dying. There is a duty to begin with a pointless and unreasonable medical treatment or to continue with it if the current one is considered as complying with these criteria”.
- [5] In this context SC pointed at principles “beneficent” (a principle of benefit) and “nonmaleficence” (a principle of avoiding of harm), i. e. to perform a medical procedure which is not in the patient’s benefit is contrary to *lege artis* (para. 12 of the finding). The legal definition of the term “*lege artis*” can be found partially in Art. 4 of the Convention on Human Rights and Biomedicine and in Art. 4 para. 5 and Art. 28 para. 2 of the Health services law. It is a procedure when a certain level of professionalism is demanded together with due diligence paid to current medical protocols and modern medical procedures; the objective side of the case is also important, mainly individual conditions and options.
- [6] SC also pointed at the necessity of distinguishing between a harm caused by a loss of a kin and a harm caused by non-delaying of the closing end of the kin’s life (para. 11 of the finding).
- [7] Art. 5 of the Convention on Human Rights and Biomedicine states that: “An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it. This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks”.
- [8] For more information see the judgement of ECHR delivered on 10th of June 2010 in case of *JEHOVAH’S WITNESSES OF MOSCOW AND OTHERS v. RUSSIA*, Application no. 302/02: „Many established jurisdictions have examined the cases of Jehovah’s Witnesses who had refused a blood transfusion and found that, although the public interest in preserving the life or health of a patient was undoubtedly legitimate and very strong, it had to yield to the patient’s stronger interest in directing the course of his or her own life” (para. 136).
- [9] CC found that incapability to communicate about the closing end is a cause of conflicts and misunderstandings regarding prior expressed wishes.
- [10] For aficionados see the Ethical Codex of the Czech Medical Chamber available from: <https://www.lkcr.cz/stavovske-pred-pisy-ckl>.
- [11] CC here works with three flagships of the human rights’ legal

To prior expressed wishes must be paid attention [4]



Doctors unanimously gave the DNR order [5]

acts together. CC thus concludes that based upon the art. 7 para. 1 of the Charter of the Fundamental Rights and Freedoms (protection from any unauthorised intrusion into private and family life), Art. 8 Convention on Human Rights (respect for private and family life) and Art. 5 of the Convention on Human Rights and Biomedicine (General rule on a patient’s free and informed consent).

- [12] Right to inviolability of the person and of their privacy is guaranteed by Art. 7 para. 1 of the Charter of the Fundamental Rights and Freedoms. Right to protection against any unauthorised intrusion to family and private life is guaranteed by Art. 10 para. 2 of the Charter of the Fundamental Rights and Freedoms and by Art. 8 para. 1 of the Convention on Human Rights.
- [13] According to Art. 13 para. 2 of the Civil Code “If satisfaction according to para. 1 shows insufficient [...] then a physical person can claim monetary non-pecuniary damages”.
- [14] According to Art. 444 para. 3 of the Civil Code “Survivors deserve one time compensation over manslaughter [...]”.
- [15] On page 528 of a commentary to Art. 444 of the Civil Code written by an author’s collective lead by Milan Holub we can read that „Causality between an unlawful action based on fault and occurrence of damage to one’s health must be surely proved; mere plausibility is not enough; yet it cannot be excluded only because the unlawful conduct of the wrongdoer finished already unfavourable state of the harmed”.
- [16] SC made a relevant conclusion to this, which is that „a court during his decision making is not bonded by the legal opinion of the partitioner to the proceedings”, to which SC referred in his two resolutions; first was delivered on 19th of November 2013 f. n. 22 Cdo 2237/2013 and the second on 25th of January 2018 f. n. 22 Cdo 5561/2017 and also in his judgement delivered on 29th of November 2011 f. n.28 Cdo 3545/2010.

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- [1] Supreme court pointed at plausible prolonging of suffering by a resuscitation. Vchod do budovy Nejvyššího soudu focená zpoza stromu, author: Jakub Dubják. Edited: cut.
- [2] One sided order DNR is not provided in Czech law. socha, bronz, umění, sochařství, spravedlnosti, rovnováhu, zákon, autor: pixel2013, 15th of August 2018, source: Pixnio, CCo.
- [3] Consent with health services must be informed and free. Michigan Physician with Patient 2014, author: Akiyao from the university of Michigan medical School, 29th of September 2014, source: Wikimedia Commons, CC BY-SA 4.0 DEED.
- [4] To prior expressed wishes must be paid attention. Edison Peña (5077817877), author: Secretaria de Comunicaciones from Chile, Hugo Infante/Government of Chile, 12th of October 2010, source: Wikimedia Commons, CC BY 2.0 DEED.
- [5] Doctors unanimously gave the DNR order. Resuscitace za použití AED (02), autor: PrPom, 2nd of November 2017, source: Wikimedia Commons, CC BY-SA 4.0 DEED.
- [6] The patient was not informed about the doctors' decision. NemocnicaScreenshot, author: AngryBiceps, 7th of March 2022, source: Wikimedia Commons, YouTube - Televízia JOJ, CC BY 3.0 DEED.

The patient was not informed about the doctors' decision [6]



Supreme Administrative Court Ruling on Gender Change



*Barbora Headlandová
(translated by Klára Popelková)*

In August 2023, the Supreme Administrative Court rejected a cassation complaint of an individual who was denied an official gender change without undergoing surgical intervention. The Court emphasized that legislative change regarding forced sterilization should be addressed by lawmakers rather than the courts.

The plaintiff, born female, requested a change of name and surname, a change of personal identification number (to match the male gender format), and a change of official gender from "F" to "M" in 2019. These requests were denied by the Municipal District Authorities of Prague 2 and Prague 4, citing the lack of a certificate confirming the completion of gender reassignment treatment.

According to Czech law, namely Section 29 Paragraph 1 of Act No. 89/2012, the Civil Code, as amended, to change one's gender it is necessary to undergo a gender reassignment - a surgical procedure that simultaneously prevents reproductive functions.

After unsuccessful appeals, the plaintiff filed a lawsuit with the Municipal Court in Prague. The proceedings were suspended as there were simultaneous proceedings before the Constitutional Court, which resulted in the judgment ref. Pl. ÚS 2/20. Based on this judgment, the Municipal Court dismissed the lawsuit.

Cassation complaint and arguments of the Supreme Administrative Court

The plaintiff subsequently filed a cassation complaint against the judgment of the Municipal Court to the Supreme Administrative Court (SAC), stating that the necessity of surgical intervention for an official gender change constitutes "an infringement



The transgender flag complements the rainbow LGBT flag [1]

of his human dignity and private and family life, as well as a violation of the prohibition of torture".

The SAC primarily based its arguments on existing legal regulations by which the municipal office was bound and therefore could not decide otherwise. While acknowledging the usual irreversibility and risks associated with this legal requirement, the SAC declined to suspend proceedings and refer the matter to the Constitutional Court, citing its prior decision on the same issue.

Judgment of the Constitutional Court

The long-awaited decision by the Constitutional Court ref. Pl. ÚS 2/20, concerning the constitutional

complaint of individual T. H. and the associated proposal to repeal the requirement of surgical intervention for official gender change, proved to be disappointing in the end (see Czech Republic Human Rights Review Vol. 13, 2022, p. 27).

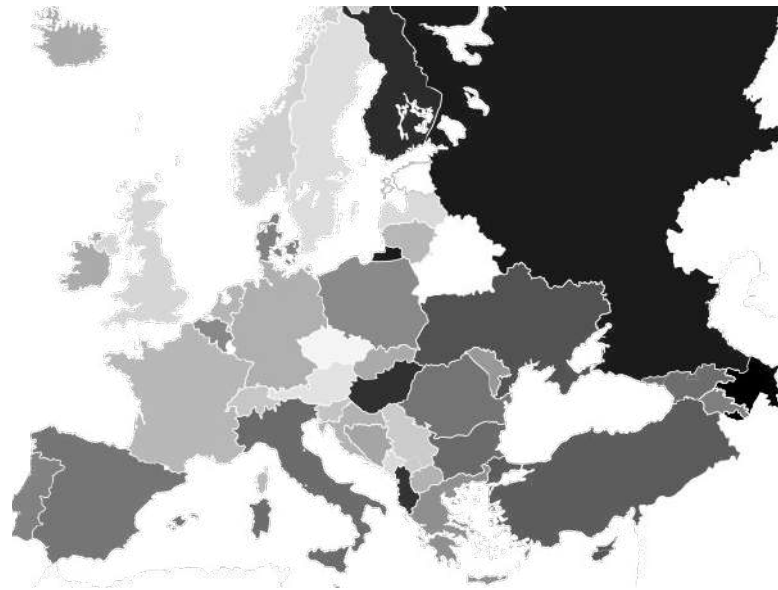
To overturn the statutory condition, a qualified majority of nine constitutional judges was required. However, as only eight voted in favor of the repeal, the provision remained unchanged.

Resolution of status issues should be left to legislators

In its ruling, the SAC also expressed its opinion on protecting the basic attributes of family and parenthood, i.e., a child has a father (man) and a mother (woman who gave birth). If a gender change was possible without affecting reproductive function, there could be a situation where a man would give birth to a child, but according to the law, he could not become the mother. Therefore, when addressing the issue of gender change, courts should be cautious and leave it to legislators.

Similar situations were addressed by the European Court of Human Rights (ECHR) in the cases of *A. H. v. Germany* and *O. H. and G. H. v. Germany*. In the former case, it concerned registering an individual, initially biologically male, as the second mother due to the utilization of her sperm, which occurred after her gender transition to female. On the contrary, the latter case involved a situation where a person, originally biologically female but now identifying as male, gave birth to a child and sought registration as the father. Both complaints were dismissed.

The Supreme Administrative Court rejected the cassation complaint of a transgender person [2]



mandatory sterilization no longer a necessary condition for gender change.

Currently, the Czech Republic exhibits a resistant stance towards such liberalization. However, there is potential for change in the foreseeable future. The spokesman of the Ministry of Justice Vladimír Řepka has indicated that the Ministry is in the process of drafting an amendment to address this issue.

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- [1] The transgender flag complements the rainbow LGBT flag. 2019.11.20 Transgender Day of Remembrance, Washington, DC USA 324 03014 (49099845852), author: Ted Eytan, November 20, 2019, source: Wikimedia Commons, CC BY-SA 2.0 DEED, modifications: photo rotated. Edited: cut.
- [2] The Supreme Administrative Court rejected the cassation complaint of a transgender person. Brno-Nejvyšší správní soud ČR, author: Millenium187, June 11, 2017, source: Wikimedia Commons, CC BY-SA 3.0 DEED.
- [3] The amount of implemented judgments of the ECHR in 2021 (white = 100%, black = 0%). Implementation of European Court of Human Rights verdicts as of August 2021, author: Buidhe, September 25, 2021, source: Wikimedia Commons, CC BY-SA 4.0 DEED.
- [4] The Ministry of Justice is preparing an amendment to the gender change law. Ministerstvo spravedlnosti, author: VitVit, October 26, 2022, source: Wikimedia Commons, CC BY-SA 4.0 DEED.

Handcuffing of the Prisoner to a Window Bar: Torture or Standard Disciplinary Practice?



Jakub Dubják

A female prisoner was handcuffed to a window bar and left hanging there for nearly four hours in Světlá nad Sázavou prison. The prison guards denied the prosecutor's allegations that they had committed the crime of torture. The case led to a prolonged judicial Ping Pong between the district and regional criminal courts. What was the outcome? Were the prison guards found guilty of torturing the prisoner, or did the criminal courts determine that no misconduct had occurred?

What happened in the prison?

On January 8, 2020, a convicted woman (the inmate) was taken to a training center where she was scheduled to participate in educational activities. However, issues arose immediately, as she arrived late, resulting in an unexcused absence from her training.

According to witness testimonies, the inmate behaved inappropriately at the training center. For example, she reportedly tampered with a heater's controls without permission and refused to follow instructions from her educator.

At approximately 1:40 PM, the inmate was escorted back to the prison's sentence-serving department (C1/1). During the transfer, she allegedly displayed aggressive behavior, such as kicking a handrail in the corridor and verbally assaulting the prison guards. Upon arrival at the department, her aggression reportedly escalated, manifesting in actions such as kicking mattresses on the floor and rapidly advancing toward one of the prison guards.

Due to her alleged aggression, she was restrained for nearly four hours, from approximately 1:55 PM to 5:30 PM. She was initially restrained at 1:55 PM but



The position resembled the crucifixion of Jesus Christ [1]

was untied shortly afterward, only to be restrained again at 3:54 PM. The final restraint occurred at 4:24 PM, during which her position resembled the crucifixion of Jesus Christ. According to the prison, this restraint was necessary due to her continued aggressive behavior.

The most painful position was described as the "crucifixion-like" posture. The inmate's hands were handcuffed to window bars behind her back, with her palms positioned at head height and her arms stretched horizontally as far as possible. According to the indictment, she believed her release was contingent upon offering an apology. Witnesses testified that she ultimately apologized during the ordeal.

When the inmate was finally untied, witnesses reported that she had urinated on herself. She was not immediately examined by a doctor, and any visible injuries were only briefly noted in some witness testimonies. Additionally, the indictment alleged that she was exposed to freezing air from an open window during the restraint.

It was further claimed that the prison guards visited her while she was restrained, mocking her and observing her suffering. These actions allegedly caused her significant physical pain and psychological distress.

Authorities' response

The case came to light through the prison's Department of Prevention and Complaints, which received a written complaint in early January 2020. This authority subsequently forwarded the case to the Inspectorate General of the Security Forces of the Czech Republic (IGSF).

On January 21, 2020, the IGSF launched a criminal investigation. The prison received a resolution from the IGSF in 2021 and subsequently forwarded all relevant documentation to the inspectorate. On February 11, 2021, the IGSF initiated prosecution against seven prison guards.

The investigation was completed on November 29, 2021, and the IGSF recommended proceeding with legal action. On December 20, 2021, the prosecutor from the Public Prosecutor's Office in Hradec Králové filed an indictment. The prison guards were accused of committing the crime of torture and other inhuman or cruel treatment [1], in complicity [2].

Overview of the Case before Criminal Courts [3]

On June 27, 2022, the District Court in Havlíčkův Brod acquitted the prison guards. The prosecutor appealed immediately. The Appellate Regional Court in Hradec Králové overruled the District Court's decision and ordered a new hearing.

On January 11, 2023, the District Court delivered its second acquittal. The prosecutor appealed once again, arguing that the District Court had failed to consider all relevant evidence, had not properly evaluated the evidence, had drawn incorrect



Regional court decided three times [2]

conclusions, and had not followed the instructions of the appellate court. On May 30, 2023, the Regional Court returned the case to the District Court for a second time. The Regional Court upheld the District Court's decision to acquit one of the prison guards, leaving the case involving only six accused prison guards.[4]

The District Court issued its third judgment on September 6, 2023. It found all six defendants guilty of the crime of abuse of office, as they intentionally

caused both physical and psychological suffering to the inmate by unlawfully tying her to the window bars. The prison guards appealed against this judgment.

In a surprising turn, the Regional Court annulled (in its fourth judgment) the District Court's guilty verdict, acquitted the prison guards and returned the case to the prison in order to initiate a disciplinary proceedings.

A Closer Look at the Third Decision of the Regional Court

The Regional Court held that the inmate was tied to the window bars for over three hours without physically attacking anyone, with only a brief break (para. 60 of the judgment). Based on this fact, as well as the fact that she had urinated on herself during the incident, the court found that she likely

Prosecutor had repeatedly appealed in situ [3]



perceived the entire situation as a severe violation of her personal space, involving brutal, excruciating, and degrading treatment (para. 78 of the judgment). The Regional Court emphasized that, based on the camera footage, it could be concluded that the inmate was not aggressive at all and had followed all instructions when she was being escorted to the department for serving disciplinary sentences.

According to the Regional Court, the use of restraints must be justified by the immediate circumstances and not by the prisoner's prior behavior (para. 61 of the judgment). The court found it most critical that the inmate had not given any reason through her conduct for the use of such a coercive measure. Based on the established facts, the Regional Court concluded that she was unlawfully tied to the window bars, and the legal conditions for such a measure would not have been met, even if she had refused to stand still for a moment before being restrained (para. 65 of the judgment).

The Regional Court concluded that it was necessary to reconsider whether the legal conditions for such measures were met and also questioned the reasonableness of repeatedly restraining the inmate. The court revoked the District Court's decision and returned the case for further review.

Guilty Verdict of the District Court: A Crime of Abuse of Office

The court found all six defendants guilty of abuse of office, as they intentionally caused physical and psychological suffering to the inmate by unlawfully restraining her to window bars.

The District Court stated, „it must had been obvious to the defendants that their conduct with attention paid to the method and time of bondage [...] was capable of causing a harsh and strong physical pain together with worries about her health“.[5] However, the court dismissed the allegation of complicity, finding that a shared intent was not proven during the trial. It determined that each defendant acted only within the scope of their duties, doing so because they were required to, rather than out of mutual agreement.

The District Court imposed a suspended sentence on all six defendants and prohibited them from working in any capacity within the Czech Republic's Prison Service or Security Forces for two years. The court primarily focused on whether the legal

conditions for restraining the inmate were met and concluded that they were not.

The defendants appealed against the judgment. They disputed the credibility of the inmate and pointed out that the court had incorrectly assessed her increasing aggression. They insisted that their actions did not deviate from established practices in the prison and could not, therefore, constitute a crime. According to the prison guards, the only relevant factor in assessing the justification for using coercive measures was whether they were applied within the bounds of their training. They concluded that if they had acted in a manner which is “*common and standard in the prison service, they could not have committed the crime of abuse of office, regardless of the fact that this common practice, in itself, is contrary to the law.*”^[6] The prosecutor also filed an appeal, arguing that the inmate's right to an effective investigation had been violated. He further criticized the inconsistency between the severity of the restraint and the approval of the guards' actions. As a result, he deemed the verdict to be “completely unreviewable.”

Surprising Outcome at the Regional Court: It was cruel...

The Regional Court found that there was no reason to restrain the inmate. It was deemed to be “*cruel and degrading treatment.*” The court concluded that the inmate did not physically attack any of the guards. Ultimately, the court determined that the use of restraint in this case amounted to an abuse of the practice as a form of punishment for the inmate's prior inappropriate behavior. Her behavior could have been grounds for initiating disciplinary proceedings, but not for the use of restraint of that kind.

...but in compliance with established practice

Nevertheless, the Regional Court found that the inmate was restrained to the window bars in a manner that was common at the time in the prison and approved by its management. The court then assessed the subjective aspect of the guards' actions and concluded that “*it cannot be stated with certainty or without doubt that the guards were aware of the unlawfulness and illegal nature of their actions, and thus, the subjective element required for classifying the behavior as a criminal offense was not fulfilled*”. The court there-

fore acquitted the defendants and referred the case for disciplinary proceedings.

Neither torture, a criminal offense, nor a disciplinary misconduct

The Prison Service, in response to requests for information, provided further details regarding the events following the issuance of the judgment.

On February 27, 2024, the case was referred to the director of the prison for further review and decision. Disciplinary proceedings were initiated for three of the guards, but these were eventually discontinued. The director concluded that, for these three guards, the alleged incident either did not occur or the behavior in question did not constitute a disciplinary offense. For the remaining two guards, proceedings were initiated. However, even this proceeding was consequently discontinued.

The director of the prison concluded by stating that she fully agrees with the earlier conclusion of the District Court, which found that it was not proven that the incident constituted a criminal offense or a disciplinary violation.

The fact that no one faced criminal or disciplinary consequences for the torturous restraint, repeatedly described and affirmed by decisions of two judicial instances, prompts the question of what purpose the lengthy court proceedings ultimately served.

Remarks

- [1] Art. 149 para. 1 and 2 let. a) and d) of the law No. 40/2009 Coll., Penal Code, as amended.
- [2] Art. 23 of the law No. 40/2009 Coll. Penal code, as amended.
- [3] To get more information I filed requests for information according to law No. 106/1999 Coll., on free access to information, as amended to IGSF, Prison service of the Czech Republic, Regional Prosecutor's office in Hradec Králové and to District court in Havlíčkův Brod. This article is mainly based on answers to these requests.
- [4] One of the prison guards was acquitted because the Regional Court determined that his level of involvement in the alleged crime was too minimal compared to the others to meet the threshold for criminal conduct (para. 75 of the judgment).
- [5] Somehow contrasting is the District court's evaluation of the inmate's testimony, which the court found as “*untruthful, intentional, having only one aim to avenge herself against particular members of the Prison service, but also against authorities as such*”.
- [6] The guards admitted that their conduct may not have been the most appropriate, and if it had been excessive, it should have been subject to disciplinary proceedings, in line with the principle of subsidiarity in criminal enforcement.

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Photographs

- [1] The position resembled the crucifixion of Jesus Christ. As the passion of Jesus Christ on the cross in the sacristy in the cathedral of Granada in Spain - famous Holmstad 2016, author: Øyvind Holmstad, 30 May 2016, zdroj: Wikimedia Commons, CC BY-SA 4.0 DEED.
- [2] Regional court decided three times. Budova krajského soudu v Hradci Králové focená z levé strany, author: Jan Bouzek.
- [3] Prosecutor had repeatedly appealed in situ. Budova krajského státního zastupitelství v Hradci Králové, author: Jan Bouzek. Edit: cut

Czech Republic before the European Court of Human Rights in 2023



Klára Popelková

Ten judgments concerning cases involving the Czech Republic were delivered by the European Court of Human Rights in 2023. The judgments cover various legal issues, including family law, property rights, fair trial, and the right to life. Additionally, two of the judgments were selected as of particular importance.

In 2023, the European Court of Human Rights (ECtHR) passed ten judgments in cases regarding the Czech Republic. Four cases pertained to family law. In the case of *Pejřilová v. the Czech Republic*, the Senate of the Fifth Section of the Court (the Senate) unanimously ruled that there was no violation of Article 8 of the Convention which guarantees the right to respect for private and family life (Article 8). This decision stemmed from the denial of the complainant's request for artificial insemination after her husband's death.

Another case, *X v. the Czech Republic*, was a revision of the former judgment from May 2022. The former Fifth Section of the Court unanimously concluded that Article 8 had not been violated in proceedings related to returning the complainant's daughter to the United States of America. In the case *Jírová and others v. the Czech Republic*, the Senate ruled that the domestic court's decision to restrict contact between foster parents and the child did not breach Article 8. In both judgments, ECtHR emphasized the child's best interests and compelling evidence against the complainant's claims.

Lastly, in the case of *P. N. v. the Czech Republic*, the Senate concluded that there was no violation of Article 8 either. This decision pertained to a situation where the complainant's former spouse relocated with their children to the United States without the complainant initiating proceedings for their return under the Hague Convention on the Civil Aspects of International Child Abduction. Subsequently, the mother obtained a court order replacing the complainant's consent regarding the children's relocation.



Ten cases involving the Czech Republic were dealt by the ECtHR [1]

Mixed outcomes

In both *Pařízek v. the Czech Republic* and *Kubát and others v. the Czech Republic*, the ECtHR unanimously ruled in favor of the Czech Republic. In *Pařízek*, the court upheld the retroactive payment of deregulated rent, finding it compliant with Protocol No. 1, while in *Kubát*, it found no violation of the right to a fair trial or the right to property enjoyment regarding state interventions in judicial salaries. Additionally, both cases saw unanimous dismissal of objections related to discrimination under Article 14 of the Convention.

However, in *Janáček v. the Czech Republic*, the Senate unanimously found a violation - namely of the right to a fair trial under Article 6 due to the failure to provide requested written opinions from ordinary courts. Similarly, in *V v. the Czech Republic*, the Senate ruled a violation of the right to life under Article 2, linked to a patient's death in a psychiatric clinic following police taser use and hospital medication administration and also due to errors in the investigation of the incident.

Two judgments were selected as of particular importance (also referred to as key cases), both ruled by the Grand Chamber of the Court (the Chamber) on 1. 6. 2023 - *Fu Quan s.r.o. v. the Czech Republic* and *Grosam v. the Czech Republic*. The Grand Chamber's decisions replaced those of the First Section of the Court, emphasizing the importance of correctly formulating complaint grounds in both domestic and Court proceedings.

Fu Quan s.r.o. v. the Czech Republic

In the first one, *Fu Quan, s.r.o. v. the Czech Republic*, a business company's assets were seized during criminal proceedings against its partners, who were later acquitted. The company sought compensation, but its lawsuit was dismissed for lack of legal standing.

The Chamber initially found a violation of property rights and awarded compensation since the seizure of assets in criminal proceedings against business partners was inadmissible.

The Chamber also addressed alleged violations of access to court and property rights, finding the complaint unfounded under Article 6 due to lack of legal argumentation and noting the need for exhausting domestic remedies for compensation under Article 1 of Protocol No. 1.

Grosam v. the Czech Republic

In *Grosam v. the Czech Republic*, the Chamber unanimously ruled on the inadmissibility of a complaint regarding disciplinary proceedings against a judicial executor. The complainant contended that these proceedings violated the right to an independent and impartial tribunal as outlined in Article 6 of the Convention. However, the Chamber found the complaint inadmissible, primarily due to its failure to adhere to the six-month time limit and other procedural shortcomings.

In its ruling, the Chamber also addressed the procedural requirements for formulating complaint objections both within domestic proceedings and

European Court of Human Rights in Strasbourg [2]

before the ECtHR. Additionally, the Chamber clarified the extent of a review conducted by the Chamber and outlined the criteria for determining the admissibility of complaint objections.

In conclusion, the Chamber's ruling not only affirmed the importance of procedural adherence but also provided valuable insights into the criteria governing the admissibility of complaints brought before the ECtHR.

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Photographs

- [1] Ten cases involving the Czech Republic were dealt by the ECtHR. Strasbourg- European Court of Human Rights, author: Adrian Grycuk, 8 October 2014, source: Wikimedia Commons, CC BY-SA 3.0 PL DEED.
- [2] European Court of Human Rights in Strasbourg. European Court of Human Rights, author: Vanessa Wu, 28 September 2009, source: Flickr, CC BY-NC 2.0 DEED.



A sniper fighting on the side of the pro-Russian separatists was sentenced to 21 years for killing at least four people



Karolína Vejmolová

On September 1, 2023, the Municipal Court in Prague found Alojz Polák guilty of killing at least four Ukrainian soldiers while fighting on the separatist side in Donetsk and Luhansk. He joined the Russian-backed forces in December 2016 and was actively involved in the fighting until at least 2020. The verdict was subsequently upheld by the Supreme Court, even though Polák is on the run or may no longer be alive.

The public prosecutor charged Polák with participation in a terrorist group, a terrorist attack, and, more recently, the killing of four people, and proposed to sentence him to 25 years in prison. However, the defense counsel contested the court's decision, filed an appeal, and presented several pieces of evidence that he asserts will confirm Polák's death. He defended his client by arguing that if he had been dead, the prosecution was inadmissible.

Two main trials have been held in the past, resulting in the municipal court's sentence of 20 years imprisonment. In both cases, however, the court did not take into account the killing of persons, to which Polák later admitted himself on his Facebook post. The hypothesis that Polák was the perpetrator was supported by the then chief of the Military Police, Otakar Foltýn, who, after expert examination, stated that he was present at the time of the battle. According to his expert opinion, he was even present in the territory at the beginning of the summer months of this year, when he participated in the fighting. Since, according to the information available^[1], Polák is still alive, the court concludes that the prosecution is admissible.

However, the case of Alojz Polák is not the only one the courts have dealt with the war in Ukraine. For example, one of the former soldiers who fought between 2014 and 2018 on the side of pro-Russian separatists, Martin Sukup, faced a twenty-one-year sentence for a terrorist attack and participation in a terrorist group. Nevertheless, the Prague High



The prosecutor proposed that Alojz Polák be sentenced to 25 years in prison ^[1]

Court, to which it was appealed, later lowered Sukup's sentence to four years as it reclassified the offence from those mentioned above to a crime called participation in a non-state armed group, which is punishable by a maximum of five years. Finally, in December 2023 the Supreme Court overturned the verdict and the High Court confirmed Sukup's 21-year prison sentence. Vladimír Stibořík, Chairman of the Appellate Court declared that *“the sentence imposed in this amount is the correct sentence, a lawful sentence”*.

Pavel Botka, Martin Kantor, and Jiří Urbánek have also been sentenced to 20 years for their involvement in fighting the pro-Russian separatist forces. Lukáš Nováček was originally given the same sentence, but the court eventually reduced it to six years because it failed to prove Nováček's direct participation in the fighting.

In March 2023, Supreme State Prosecutor Igor Stříž informed the media that in the more than a year since the war in Ukraine began, nine final verdicts have been handed down in Czech courts and fifty-eight charges have been brought. These were primarily the offences of approval of a crime, the offence of denying, questioning, approving and justifying genocide, the offence of incitement to hatred and dangerous threats, and others.

Remark

^[1] According to Polák's inactivity on social media since April 2022.

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Photographs

- [1] The prosecutor proposed that Alojz Polák be sentenced to 25 years in prison. Anti-terrorist operation in eastern Ukraine (War Ukraine), author: Ministry of Defense of Ukraine, January 2, 2018, source: Flickr, CC BY-SA 2.0 DEED.
- [2] Polák joined the Russian-backed forces in December 2016. A Russia-backed rebel observing Ukrainian army positions through firing port at his position near Donetsk, Eastern Ukraine, May 17 2015, by Mstyslav Chernov, source: Wikimedia Commons, CC BY-SA 4.0 DEED. Edit: Cut.

Polák joined the Russian-backed forces in December 2016[2]



The End of the Year 2023 Marked by the Shooting at Charles University



Daniela Skácelíková

What was supposed to be one of the last calm days of the year turned into a tragedy unprecedented in the Czech Republic, commonly considered as one of the safest countries in the world. The events which took in total seventeen lives struck the whole nation and raised questions about the security of Czech society and the preparedness of the police for this kind of unpredictable attacks.

Events of December 2023

The incident, which might most probably be classified as a mass shooting [1] committed by an active shooter falling into the category of lone wolves [2], took place on 21st December 2023 afternoon at the main building of the Faculty of Arts of Charles University in Prague. The perpetrator, who was a student of the faculty, killed 14 people and injured another 25. As the police has confirmed, he also killed his father at his home in the village of Hostouň ahead of the attack at the university, as well as a man and his two-month-old daughter in Klánovice Forest in the east of Prague on 15th December.

Evaluation of the Police Intervention

According to official statements of the police and State authorities following the attack, the police acted professionally, effectively and in accordance with internal protocols, which prevented a worse outcome of the event. As it was released after the act, the attacker was among the many suspects in connection with the broad investigation of the murders in Klánovice, and when the police received a notification of his possible suicidal plans after the assassination of his father, they preventively evacuated the building of the university where he was supposed to attend a lecture.

Nevertheless, the shooting then burst out in another building of the faculty, the main one situated at Jan Palach Square. The intervention was shortly after the event submitted to the internal control



Shooting happened inside the faculty building [1]

of the police, which altogether confirmed its professionalism – reaction of the police corresponded to the information available to them at the time of the events, during the attack, they acted appropriately to the fact that they had to get oriented in an environment they never were in before, and at the same time they had to bear in mind the persisting threat of potential accomplices or another attacks.

The assessment of the intervention continues, besides the police internal control also by the General Inspectorate of Security Forces, just as the investigation itself. An important piece of evidence in this investigation might be for example the letter left by the shooter, which might clarify his motivations behind the attack, and thus contribute to the knowledge of how similar events could possibly be forestalled in the future.

Furthermore, the police had to deal with cases of approvals of the shooting and threats of its imita-

tion, or on the contrary of denials of its credibility, most often on social networks. In the course of one month after the incident, the police registered more than 200 such cases – however, these are only the most serious cases in which the police decided to take action. These cases are rightly of great concern, as nowadays, radicalisation and acceptance of violent stances take place in large part on the Internet. Moreover, according to accessible information about mass shootings and their motives, it seems that the effect of copying and imitating other attacks not rarely plays a role in other subsequent incidents.

Concerns about the Safety of Czech Society

The incident also raised debates about the rules of possession of arms and the security of public areas and soft targets [3] in Czechia. The pertinence of these two issues is apparent in the light of the latest attack.

On the one hand, the shooter at Charles University possessed eight firearms, according to available information all of them held legally and acquired in 2023. According to the statistics of the police, the amount of legally possessed firearms in the Czech Republic is constantly rising – as the published data for the period from 2016 to 2023 show, the number of registered firearms in Czechia during that time rose from around 825,000 to more than one million. Lightly growing trend is noticeable on the quantity of firearms licences too, in 2023 there were around 315,000 bearers of this permit, 15,000 more than in 2016. While the law making the acquisition of a firearm more difficult, submitted already before the shooting in December, continues its way through the Parliament, further discussions about how to reach a reasonable compromise in gun legislation will most likely continue.

On the other hand, the insufficient communication between the police and the administration of the faculty, as the body responsible for the soft target, was identified as the weakest point of the operation of the police, although not decisive for the outcome of the operation. The prevention of mass shootings and other similar attacks is very hard due to the unpredictable nature of these events, but safety measures such as security cameras, plans of evacuation, or security entrances might potentially ameliorate the



The main building of the Faculty of Arts [2]

situation, and will also be subjects of public debates in the next months.

Similar Recent Incidents in Czechia and Central Europe

Mass shootings, in public awareness generally associated rather with the United States with their liberal legislation regarding possession of arms and with terrorist and extremist attacks, are very rare in the Czech Republic and in Central Europe, yet they are not completely absent in the region. For example, according to a recent study carried out by Alexei Anisin, lecturer at the Anglo-American University in Prague specialised in mass shootings and political violence, there have been at least 25 mass shootings in Central and Eastern Europe (excluding Russia) between 1993 and 2021.[4] More importantly, Anisin points out the increasing tendency of these incidents in the region and the change of their pattern in recent years towards shootings committed by younger perpetrators, not rarely just in educational institutions.

The shooting at Charles University was the worst such event in the history of the Czech Republic. The previous incidents falling under the common definition of mass shooting comprise the shooting at a family celebration in Petřvald in 2009 (four victims), the shooting at a restaurant in Uherský Brod in 2015 (eight victims), and the shooting in a hospital in Ostrava in 2019 (seven victims). In all these cases, the shooters committed suicide after the act.

The Month for Faculty as a Way of Overcoming the Tragic Event

However horrendous the events of the end of the year 2023 were, they again showed how Czech society can unite and prove its charity. The collections launched in support of the victims and their families reached remarkable amounts, as well as the candles and other memorial objects brought to the buildings of Charles University and other memorial sites.

The process of coping with the distressing memories and coming back to the faculty was in large part initiated by students themselves, in cooperation with the staff of the university. They brought academic life back to the Faculty of Arts through the initiative called the Month for Faculty, which besides other things marked the beginning of the creation of a work of art serving as a memorial to this event, where everyone will have the opportunity to commemorate all affected by this event, while hoping that places like this one will still remain rare exceptions in the Czech Republic.

Notes

- [1] Mass shootings are most frequently characterised as acts of violence causing at least three or four deaths (excluding the perpetrator) with the use of a firearm and occurring outside armed conflict, gang violence or robbery, often committed in a public area.
- [2] Lone wolves are active shooters who act without a connection to any terrorist or extremist organisation. They prepare their attack individually, usually after a process of self-radicalisation, nowadays happening largely by means of the Internet, often simultaneously with a search for solution to their unsolved mental issues, such as feelings of alienation, frustration, or generalised hostility. They can be divided into lone wolves terrorists and lone wolves killers, only the former being driven by political or ideological motives.
- [3] Soft targets are places with high concentration of people and low level of protection. For their vulnerability and high number of potential victims, they are frequently selected as targets of violent actions such as terrorist attacks or mass shootings.
- [4] Dataset of mass shootings in Central and Eastern Europe compiled by Anisin altogether counts 76 mass shootings in 15 countries (all of them former communist States) and includes attempted and completed mass shootings (attempted meaning commenced but not reaching the required number of fatalities, completed meaning resulted in at least three fatalities excluding the perpetrator – following the logic that uncompleted but initiated mass shootings also merit attention in order to monitor the tendencies of this phenomenon). However, a large majority of these cases, 51 out of 76, were committed in Russia. 11 out of these 76 events took place in schools or universities.

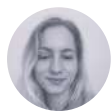
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Photographs

- [1] Shooting happened inside the faculty building. FF UK int chodba 3, author: VitVit, 11 May 2016, source: Wikimedia Commons, CC BY-SA 4.0 DEED.
- [2] The main building of the Faculty of Arts. Faculté arts Université Charles Prague 1, author: Chabe01, 13 November 2016, source: Wikimedia Commons, CC BY-SA 4.0 DEED.

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