

Czech Republic Human Rights Review



Dear readers,

It is a great pleasure to present you the second issue of the English version of the Bulletin of the Czech Centre for Human Rights and Democratization. While we publish our newsletter on human rights from all over the world in Czech monthly, you will find an overview of main developments in the Czech Republic and Slovakia in the English Bulletin bi-annually (unfortunately, our initial goal of a quarterly proved to be too ambitious).

Communist rule has been gone for more than twenty years; however, its ghosts continue to haunt Czech courts. To publish or not to publish information about membership of judges in the Communist Party, that is the question with which the Constitutional Court dealt recently and which it might deal with again soon. Another sensitive case concerns a protracted trial with 1989 revolution student leaders who criticized their professor, a head of a local communist organization, and who lost their case to the professor, with the court proclaiming that their words were unfounded.

Two highlights of the issue include our interview with the tragic hero from Rwanda – Lieutenant-General Roméo Dallaire – and a report from Petr Preclík, an

observer of the election in the Republic of Guinea. Moreover, our Centre joined the initiative calling on Hungary to refrain from destroying archives from the times of the authoritarian regime.

The Centre for Human Rights and Democratization has only been established recently, yet we are the first institution of its kind in the Czech Republic, publishing on the topic and organizing conferences and seminars. If you are 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 pleasant reading,

Sincerely,

The Czech Centre for Human Rights and Democratization



International Institute of Political Science
of Masaryk University in Brno



Mezinárodní politologický
ústav Masarykovy
univerzity v Brně

Content

Hero who Shook Hands with the Devil	3
Interview with Lieutenant-General Roméo Dallaire Monika Mareková	
Dealing with Ghosts of the Past	5
Hubert Smekal	
You Cannot Be Rude to a Communist	7
Hubert Smekal	
Mentally Disabled and their Right to Vote	8
The Case of the Czech Republic Ladislav Vyhnánek	
Judge Fremr joins ICTR	10
Lubomír Majerčík	
Czech Centre for Human Rights and Democratization Supports the Petition to Save Hungary's Archives	10
Katarína Šipulová	
Guinea: Unfolding the Weaknesses of Democratization	11
Petr Preclík	

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.

Hero who Shook Hands with the Devil

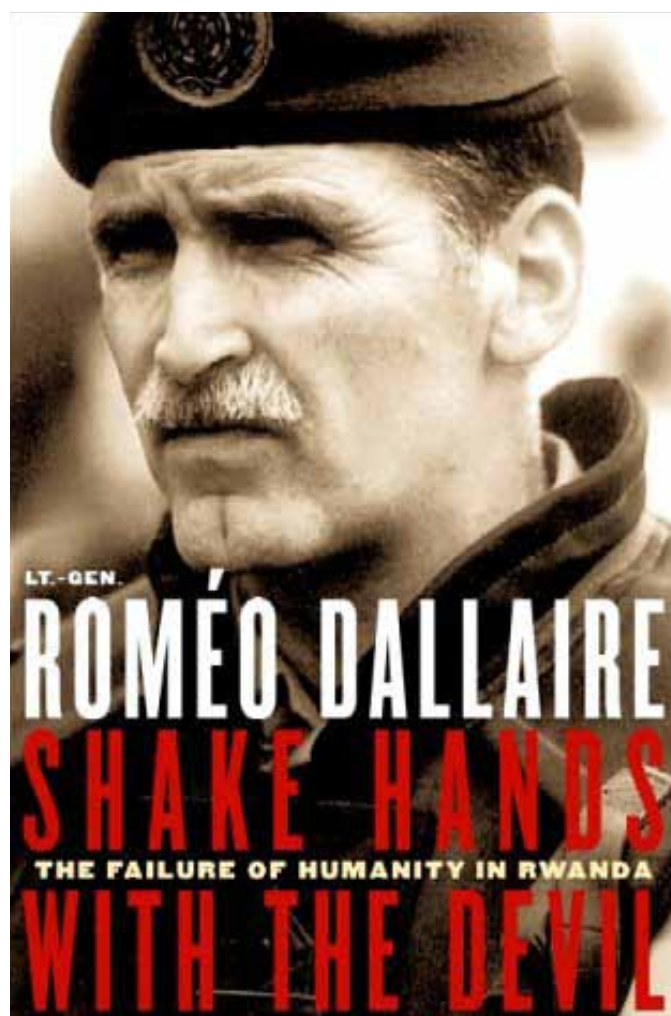
Interview with Lieutenant-General Roméo Dallaire
Monika Mareková

Lieutenant-General Roméo Dallaire was a Force Commander of the United Nations' UNAMIR peacekeeping mission in Rwanda between 1993 and 1994. During his mission, conflict between the Hutu and Tutsi ethnic groups escalated, followed by the genocide of the Tutsis and Hutu moderates. Even though the UNAMIR peacekeeping force was not able to prevent the genocide due to low support and reinforcements from the international community, Dallaire continued in commanding his mission and helped to save thousands of human lives. The conflict lasted less than one hundred days, yet according to various estimates, approximately one million people were killed. After the conflict, Dallaire suffered from post-traumatic stress disorder, which he managed to overcome. Today he serves as a Canadian Senator, he has authored a famous book on his mission in Rwanda entitled *Shake Hands with the Devil: The Failure of Humanity in Rwanda*, he is a member of the United Nations Secretary General's Advisory Committee on Genocide Prevention, he promotes the concept of responsibility to protect (R2P), and he works to bring attention to the use of child soldiers as well as war veterans' mental health. Dallaire has received numerous honors and awards for his distinguished work.

I had the opportunity to meet Lieutenant-General Dallaire and interview him through the Rights & Democracy Student Network, a Canadian human rights center I co-operate with while studying as an exchange student in Canada at Laurentian University in Sudbury. Roméo Dallaire delivered a public lecture at the university on the problems of human rights violations and R2P.

MM: *Is today's international community more sensitive and international organizations better equipped to deal with ethnic violence than in the past?*

RD: We are definitely more sensitive to looking for factors that would lead to ethnic and other violence. The work isn't perfect, but there are many good organizations using early-warning models to highlight situations of potential concern.



Do you think that there are any special characteristics according to which it might be possible to discover the threat of genocide and avoid it in advance?

In fact, genocides follow a very distinct, discernible pattern – displaying predictable risk factors, stages, and triggers. These risk factors can be predicted with enough precision that policymakers can take steps to avert genocides. Genocides do not occur by accident. They are caused by human will, and can be prevented by human will.

Barbara Harff, for example, has shown that six risk factors correlate with high probability of genocide or politicide:

1. Unpunished past genocides or politicides (impunity);
2. Totalitarian or authoritarian government;
3. An exclusionary ideology among the ruling elite that excludes whole groups from fundamental human rights;

4. Rule by an ethnically exclusive elite;
5. Systematic persecution of scapegoat groups through torture, discrimination, and other violations of basic human rights;
6. A closed society – to outside trade and outside ideas.

Other observable events can trigger the alarm bells: the disbanding of military, radicalization of politics, spread of hate speech, issuing of racial identity cards, etc...

According to the reports of the Special Adviser on the Prevention of Genocide - Mr. Francis Deng – the responsibility to protect (R2P) is the key component of genocide prevention. Do you think that the concept of R2P has the potential to be successful and that it brings UN members to participate?

R2P has opened the door to stop the use of sovereignty as our absoluter. This is the greatest reform to advance human rights in the world.

According to your opinion, what are some successful examples of applying the R2P concept in the world?

Some might consider Kofi Annan's personal intervention in Kenya to end that country's violent, post-election crisis in 2008, as R2P's "best case" application.

What can mid-sized countries like the Czech Republic or Slovakia do to prevent genocides in the world even though they are not great powers?

Hungary is a phenomenal example of this. The government of Hungary recently launched the Budapest Center for the International Prevention of Genocide and Mass Atrocities, the first objective, state-authorized center dedicated entirely to genocide prevention – and one that needs the support of the entire EU, not just Hungary.

Other critical work that can be done is to support regional organizations like the EU, NATO, the African Union, or ECOWAS, which may be well-positioned in

some cases to deploy their own mechanisms for genocide prevention.

How do you perceive a situation when the ICC, presumably the most ambitious project of international criminal justice, operates with a considerably restricted membership – without the main great powers. Can this situation be changed in the near future?

Unfortunately, beneficial efforts towards international human rights-promotion often become victims of politicization. This is a situation that requires addressing, but one that must also be attuned to realistic political constraints. For example, one highly worrisome situation is the number of African leaders (including some court members) who continue to undermine the International Criminal Court's indictment of Sudan's president. Nonetheless, where acts of genocide occur in a state that is a party to the Rome Statute, the Court may step in and issue arrest warrants, as it did very recently for a leader of the mass rapes in the Eastern Congo, who was arrested at his home in France.

How do you view the attempts to prosecute George Bush, Donald Rumsfeld, etc. as war criminals? Is not that rather repelling the USA and other countries from joining the international criminal justice movement?

I have absolutely no comment on this at all.

You are a member of the United Nations Secretary General's Advisory Committee on Genocide Prevention, how do you evaluate its activities? Is the work of the Committee effective and how would you better it?

The Committee is currently under a re-organization and awaiting the Secretary General's decisions.

Mr. Dallaire, thank you very much for your time.

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.



Dealing with Ghosts of the Past

Hubert Smekal

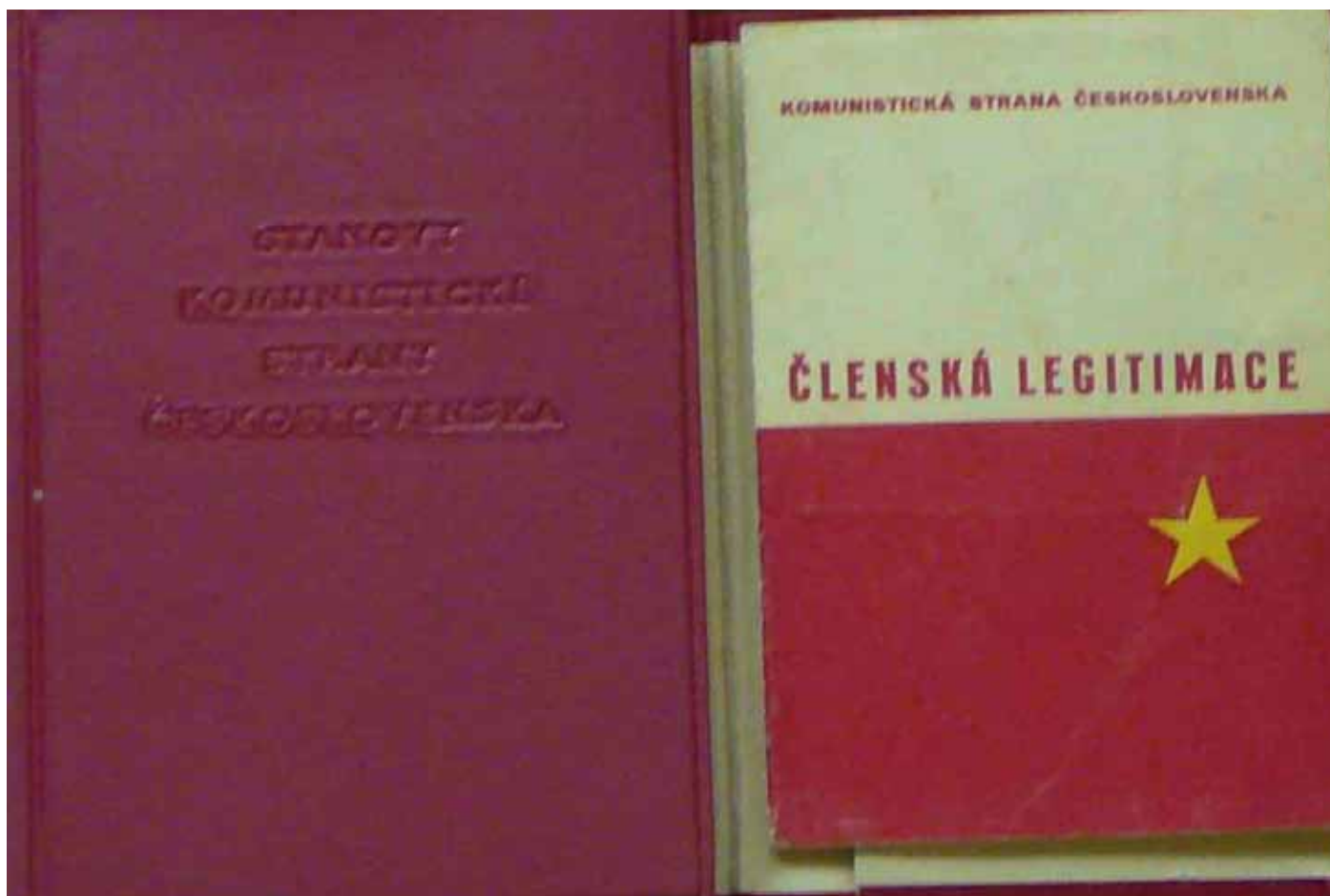
Problems of the totalitarian past still haunt the Czech Republic even more than two decades after the fall of the communist regime. After the Czechoslovak 'Velvet Revolution' in November 1989, the new President Václav Havel carried his motto 'We Are Not Like Them' which should have contrasted a new era to the cruelties and dreariness of totalitarian times. Indeed, no executions of communist leaders took place as for example in Romania, handing over of power occurred without greater violence. The former political elite has not been a subject of criminal retributions; instead, "Lustration" laws were enacted, which prevented communist functionaries and collaborators of the secret police from holding sensitive positions in public service.

The Czech democratic transition and consolidation is widely considered a success story. Despite cooling a bit, the initial enthusiasm by dissolution of Czechoslovakia three years after the revolution, the Czech Republic has moved quite rapidly on its way 'back to Eu-

rope.' It has become a member state of various international organizations, joined NATO in March 1999 and the European Union in May 2004. Nowadays, the country is deeply entrenched in the Western democratic world, enjoys good relations with its neighbors (though not completely unproblematic, spoiled with some issues dating as far as World War II) and performs quite well in economic terms.

Communists among Us

The general public does not seem to be much concerned with retrospective contemplations. The Communist Party¹ still exists, unlike parties of the same kind in other post-communist Central and Eastern countries which transformed into social-democratic (and other types of left) parties, and moreover it attracts considerable amount of voters in general elections – around 11 %. The Communist Party thus consistently wins seats in the Parliament, despite its very low coa-



A membership card of The Communist Party member. foto: www.anthkvariat-benes.cz

lition potential – other parties still consider it taboo to openly form a government together with Communists; however, this has slowly become a common scenario in local politics.

In contrast to a generally disinterested public, some individuals, especially former dissidents, continue in their fight against alleged totalitarian elements in our society. Any attempts to ban the Communist Party have proved unsuccessful so far, but they keep trying. Well, part of the problem is that you would ban a party representing more than 10 % of voting population and moreover, a few days after the dissolution a new party with a new name but with the same personal composition would be established. I am doubtful about a moral benefit of such a move 20 years after a date when it should have been done. Nowadays, almost nobody is interested in such a spectacular, yet pointless development.

From time to time we learn about former prison guards being sentenced for their cruel decades-old behavior towards inmates – often prisoners of conscience. Then we witness situations before the bench, when sick people in a very advanced age are sent to prisons (and subsequently pardoned by President Václav Klaus). However, despite the general indifference there exist relentless efforts in some circles to make communists pay for their sins. The judiciary examines a delicate question in the Czech Republic nowadays – should courts report about membership of judges in the pre-1989 Communist Party? The controversial issue appeared before the Constitutional Court which ruled in November 2010 that not providing a petitioner with information concerning membership of a judge in the Communist Party of Czechoslovakia is in breach of the right to information. Thus far, this information was considered, even by the Supreme Administrative Court whose judgment the Constitutional Court overturned, sensitive personal data. Nevertheless, an activist webpage was created to list former communists in Czech courts.² Moreover, the language of the judgment implies that the three-member senate which issued the decision objects not only to the concealment of communist history of judges, but to the very fact that such judges still hold their positions in the judicial branch. The ruling extensively cites from philosophical works, with Karl Jaspers being evidently one of the most influential sources.

The scenario in which courts are staffed with people having close ties to a totalitarian regime has been by no means rare. Various studies show that majority of judges in postwar Germany sympathized with Nazis. However, the continuous functioning of courts is preferred over a rupture in deciding disputes.

The recent decision of the Constitutional Court has not been accepted entirely with euphoria and it is possible that the Constitutional Court will deal with the issue again (but this time in the full plenum, instead of a senate of three judges). Even the President of the Court Pavel Rychetský criticized the judgment, namely its ideological diffuseness and insufficient constitutional argumentation.³ Nevertheless, the Constitutional Court has recently made public that four judges were members of the Communist Party, but three of them, including Mr Rychetský, left the party after only a few years of membership in 1960s.

More Hurdles Ahead

But not all presidents of courts seem to be inclined to publishing such lists, and point to the Labor Code which reportedly prevents them from seeking information about judges' political leanings. Moreover, given the notoriously slow Czech courts, it is questionable if they have enough disposable personnel to search for information on membership of judges in the Communist Party. Meanwhile (on 7 January 2011), the Ministry of Justice published a list of judges and prosecutors who have been members of the Communist Party; unfortunately the list is incomplete and what's more, some names made the list by mistake – they have never been Communist supporters. Czech legal expert Michal Bobek points to another problematic aspect – you cannot automatically draw



The Czech Constitutional Court, foto: wiki.

an equation: a former Communist means a bad judge, while a non-Communist means a good judge.⁴

The Constitutional Court's judgment has already brought first practical effects. One district court judge in Prague recused herself in a case of eight Neo-Nazi extremists after she had received several requests for information concerning her membership in the Communist Party. This case exposes other questions which can arise as consequences of the Constitutional Court's judgment. What does follow from the fact that the public knows that an individual judge has been a member of the Communist party before November 1989? Does it disqualify her from deciding a certain group of disputes as in the aforementioned Neo-Nazi case? Should e.g. those judges be excluded from all cases dealing with politics or with dealing with the past? Oftentimes, more ambitious people joined the Communist Party from sheer opportunism, not from a strong belief in the communist ideology. Therefore, we can surely feel moral reservations towards them, but hardly any professional objections. The problem arises in borderline cases when law and morality merge and law requires also moral evaluation. Probably everyone can feel unease when former communist judges decide on cases of former communist prison wards. For those reasons, it is surely important to know more from the CVs

of the older judges. I only remain unconvinced about ordering presidents of courts to examine individual judges' history as the correct way. I would rather encourage historians and other people interested to do their work in archives. In sum, I support the scenario in which courts cannot order holding the information concerning membership in the Communist Party secret (i.e. to forbid publication by others), while at the same time courts would not have the active duty to seek and publish the information. Courts have other things to do than screen their employees.



Notes

- 1) See: <http://www.kscm.cz/>.
- 2) See: <http://www.pecina.cz/soudci>.
- 3) Pavel Rychetský. I já žil v iluzi, že parlament smí vše, *Lidové noviny*, 3 January 2011, http://www.lidovky.cz/i-ja-zil-v-iluzi-ze-parlament-smi-vse-d72-/ln_noviny.asp?c=A110103_000106_ln_noviny_sko&klic=240624&mes=110103_0.
- 4) Michal Bobek. Justiční knížky rudé, *Jiné právo*, 7 June 2010, <http://jinepravo.blogspot.com/2010/06/justicni-knizky-rude.html>.

You Cannot Be Rude to a Communist

Hubert Smekal

The Brno Municipal Court delivered a new judgment in one of the most embarrassing trials in the entire post-communist history of the Czech Republic. After almost twenty years of protracted legal ping-pong among various courts, three former local student leaders of the Velvet Revolution were ordered to deliver a letter of apology to their then-professor and communist functionary Jan Snášel and pay his court expenses. In January 1990, students of architecture, lead by the trio of defendants, expressed their non-confidence in Snášel, calling his behavior demagogic, arrogant, and careerist. Students refused to visit the professor's lectures; eventually the university fired this former head of a local communist organization. He sued the three students, who signed a petition against him in the name of a broader body of university students, claiming that the document was capable of harming his reputation and bringing him citizen and health injuries.

Over the course of the 1990s, the Brno Municipal Court repeatedly ruled in favor of the students and the appellate court again and again returned the case with instructions favoring the professor. Finally, in December 2010 the Brno Municipal Court yet again granted Snášel's action holding that it is necessary to examine individual activities (attitudes) and it is unjust to infer personal qualities solely on the ground of the membership in a political party or from a postitio in a political group. The student leaders, now almost twice as old as they were when the case first went to court, have remained determined and want the case to be heard by the Constitutional Court. A 20-year court saga is going to be continued.

Notes

- 1) Snášel has already won a case against the university that his dismissal was unfair.

Mentally Disabled and their Right to Vote – The Case of the Czech Republic

Ladislav Vyhnanek

In July 2010, the Czech Constitutional Court delivered a judgment concerning the right to vote of persons deprived of their legal capacity. The Czech Charter of Fundamental Rights and Freedoms in art. 21 para. 3 states that “The right to vote is universal and equal, and shall be exercised by secret ballot. The conditions for exercising the right to vote shall be provided for by law.” Acting according to the second sentence of that provision, the Czech Parliament adopted a law [n. 247/1995 Coll., § 2 b)] which provides that deprivation of legal capacity presents an impediment to the exercise of right to vote.¹ It means that, strictly speaking, the person which is deprived of legal capacity has the constitutional right to vote but can not exercise it as long as the deprivation (proclaimed by the court) lasts. It is, however, needless to say that the actual consequences are the same.

The constitutional complaint in case n. IV. ÚS 3102/08 was brought by an individual deprived of his legal capacity who nevertheless wished to vote. The Czech Constitutional Court² held that the principle of universal suffrage, although being one of the most important principles in a democratic society, was not an absolute one and that it could be subject to some proportionate restrictions (citing the case law of the ECHR). According to the Constitutional Court, the restriction of the right to vote could only be considered proportionate if it could be narrowly tailored to fit the pursued legitimate aim.

The Court held that there had been a legitimate aim of ensuring that only citizens capable of understanding the meaning, purpose, and effects of elections have the right to vote.³ However, the condition of narrow tailoring (proportionality) could only be fulfilled if the courts decision about the deprivation of legal capacity would examine – in each individual case – one’s ability to understand the meaning, purpose, and effects of elections. In fact, the Constitutional Court went even further and used this opportunity to express its views on the nature of deprivation of legal capacity. It stated that, while deciding on deprivation of legal capacity, the ordinary courts had to bear in mind all practical limitations on fundamental rights resulting from the deprivation. The courts must – according to the Constitutional Court – separately examine (and justify) whether each of the limitations⁴ is inevitable with regard to the

mental state of the individual in question. A contrary approach would be inconsistent with the principle that limitations on fundamental rights must be individualized (narrowly tailored). The Constitutional Court thus challenged the very nature of deprivation of legal capacity as a general instrument, bring with it far-reaching consequences. In order to establish whether the ordinary courts respected the aforementioned principles, the Constitutional Court reviewed the relevant judicial practice; not surprisingly, it discovered that the approach of the lower courts had been disproportionate in virtually all cases.⁵

The Constitutional Court thus ordered the ordinary courts to follow the reasoning of its judgment in the future (i. e. to separately examine and justify all implications for fundamental rights and the consequences of their decision).⁶ Following the decision of the Constitutional Court, any court deciding on deprivation or limitation of one’s legal capacity must then examine whether the person understands the meaning, purpose, and effects of elections. If she does, she may not be deprived of legal capacity; the person’s legal capacity in such a case may be at the utmost partially and proportionately limited.

The Czech Constitutional Court explicitly expressed their opinion that a restriction of the right to vote of persons deprived of legal capacity pursued a legitimate aim but that the provisions in question had not been narrowly tailored to fit the aim.⁷ Both of these conclusions are extremely important for future development.

The assertion that the state pursues a legitimate aim if it restricts the voting rights of mentally disabled individuals was criticized by many non-governmental organizations and academics. For example the *Amicus Curiae Brief* sent to the Czech Constitutional Court by the Mental Disability Advocacy Center⁸ argued that fears of the irrational, incompetent, or manipulated vote were unfounded. According to the *Brief*, most votes cast are a mix of the rational and the irrational, and it is impossible (or even impermissible) to read the mind of the electorate to screen out votes that were in part or wholly founded on an irrational basis. Moreover, there is no test to measure the capability to vote and having a blanket prohibition on a category of persons (i. e. people restricted or deprived of legal capacity) is inhe-

rently discriminatory. The *Brief* also pointed to the fact that mentally disabled persons are not the only ones who can be influenced or “manipulated” in the voting process; it mentioned the role of electoral campaigns and the natural level of interdependency among persons in each society.

Nevertheless, it was accepted that there may be a legitimate aim in ensuring that only citizens capable of assessing the consequences of their decisions and making conscious and judicious decisions should participate in public affairs; this view was shared by both constitutional courts in the cited decision.

The question of “measurability” of one’s capacity to vote probably can not be answered purely by lawyers; even in the scientific community, there is disagreement over the answer. It is, however, almost undisputed that the people with serious mental retardation or severe dementia are not capable of understanding the voting process.⁹

It is crystal clear that those legal orders, which categorically disenfranchise all persons deprived of legal capacity (placed under guardianship, etc.) of the right to vote and do not allow a separate examination of the voting capacity, are inconsistent with the principle of proportionality.

The question remains how the legislature should comply with the Court’s demands. One of the possibilities is, of course, to abolish all restrictions related to the mental disability of a person (like in Ireland, United Kingdom of Austria); but it does not seem very likely that the states would pass from disproportionate restrictions to no restrictions. In the Czech case (as in many other countries) it is more likely that the “American” approach would be preferred.

The U. S. District Court for the District of Maine ruled in case *Doe v. Rowe*¹⁰ that only persons who lack the capacity to understand the nature and effect of voting so that they cannot make an individual choice, may be considered incompetent to vote. Following the decision, “efforts have been made to operationalize the relevant legal criteria in assessment instruments that can be applied in a reliable fashion. With regard to voting, such a process not only will help to limit the number of persons excluded from voting by the courts but will also permit election officials and caregivers to decide when a person has become incapable of voting.”¹¹ Appelbaum, Bonnie, and Karlawish have proposed an efficient (3 to 4-minute-long) questionnaire which 1) uses the *Doe v. Rowe* criteria¹² and 2) seems to be far less restrictive than the treatment of the persons under guardianship as a single class.



The Czech Constitutional Court, foto: www.concourt.cz

Notes

- 1) The same applies, for example, to Slovakia [Act n. 333/2004 Coll., § 2/2 let. b)].
- 2) This is similar to the Slovenian court in a judgment of 10 July 2003, n. U-I-346/02, available at www.us-rs.si. Compare also the ECHR’s decision in *Kiss v. Hungary*, 20 May 2010, n. 38832/06.
- 3) This is the basis for excluding children from elections.
- 4) I. e. not only disenfranchisement, which was at stake in this case.
- 5) The separate examination of individual limitations on fundamental rights was not present in any of the known cases. Moreover, about 25,000 persons were deprived of legal capacity at the end of 2009, whereas only about 4,000 of them were subject to the more proportionate limitation of legal capacity. This is a striking imbalance, which indicates that it is probably more convenient (for the courts) to deprive the person of legal capacity than to examine his status carefully and with regard to the principle of proportionality. The quality of reasoning of the decisions in most cases supports this assertion.
- 6) Needless to mention, the courts are also obliged to provide proper reasoning of a conclusion regarding the right to vote.
- 7) Such a conclusion is implicitly present even in the decision of the Dutch Council of State, *supra* note n. 26.
- 8) Available at <http://www.mdac.info/amicus-curiae-brief-czech-constitutional-court>. The Brief was signed by many other NGOs and academics including Michael Stein, Luke Clements, Renáta Uitz and many others.
- 9) For example see APPELBAUM, P. S., BONNIE, R. J., KARLAWISH, J. H. *The Capacity to Vote of Persons with Alzheimer’s Disease*. *American Journal of Psychiatry*, 2005 (162), p. 2097. The authors state that there is a strong correlation between dementia severity and the capacity to vote and that the “*Doe voting capacity standard*” (see *infra*) is suitable for deciding on the capacity. This does not necessarily apply to those with mental illnesses, such as schizophrenia.
- 10) *Doe v Rowe*, 156 F Suppl 2d 35 (D Me 2001).
- 11) APPELBAUM, P. S., BONNIE, R. J., KARLAWISH, J. H. *The Capacity to Vote of Persons with Alzheimer’s Disease*. *American Journal of Psychiatry*, 2005 (162), p. 2094.
- 12) The *Doe* criteria are practically the same as the criteria of the ECHR and the already-cited European constitutional courts.

Judge Fremr joins ICTR

Lubomír Majerčík

Czech Supreme Court Judge Robert Fremr joined the International Criminal Tribunal in Rwanda as ad litem judge in September 2010. Judge Fremr worked as a judge for almost 20 years at the domestic level; from 2006 to 2008 he had also already served as a judge of the ICTR, where he dealt with the Bikindi and Nchamihigo cases.

In January 2011, the high-profile Nizeyimana case commenced in Trial Chamber III, where Judge Fremr sits. Idelphonse Nizeyimana, who served as second-in-command and head of intelligence at Rwanda's elite military training school, and who was viewed as a member of the „inner circle“ has been charged with genocide and crimes against humanity. The prosecution rested its case and the accused

plead not guilty to the charges. The trial was adjourned to May when the defense will commence its case.

Besides his current mandate with the ICTR, Judge Fremr is also the Czech candidate for the elections of the judges to serve on the International Criminal Court. In this capacity, he gave a speech at a side event during the 9th session of the Assembly of State Parties to the Rome Statute of the ICC on the elimination of the hurdles in the proceedings before the international criminal tribunals. In May 2010, he presented his views at a conference organized by the Czech Centre for Human Rights and Democratization focusing on the upcoming Review Conference of the ICC.

Czech Centre for Human Rights and Democratization Supports the Petition to Save Hungary's Archives

Katarína Šipulová

In December 2010, the Hungarian government announced their intention to adopt a law enabling the destruction of original archival documents recounting the operations of former communist regime's state security, police, and Ministry of the Interior. According to the State Secretary (Ministry of Justice) Bence Rétvári, “a constitutional system cannot preserve documents collected through anti-constitutional means, as these are the immoral documents of an immoral regime.”

The documents pertaining to the Hungarian communist regime and its crimes are currently stored at the Historical Archives of the Hungarian State Security and the State Archives of Hungary. The former contains documents and data in connection with operations of state security between 21 De-

cember 1944 and 14 February 1990. The detailed documentation of the crimes of totalitarian and undemocratic regimes is one of the basic preconditions for a successful transition and national reconciliation. The access to archives has irreplaceable value for further scientific research and historical analysis of the communist period. Therefore, the Czech Centre for Human Rights and Democratization is one of the institutions which supported the international petition against the destruction of the Archive.

In March 2011, the Centre wrote an open letter to Hungarian Ambassador László Szóke in Prague, in support of Hungary's endangered archival collections and to convince the Hungarian government to change course on their planned legislation.

For more information, see [Save Hungary's Archives](#).



Guinea: Unfolding the Weaknesses of Democratization

Petr Preclík

Information about upcoming elections in the Republic of Guinea did not get much attention by the Czech media. The country is small, poor, complicated, and difficult to understand. However, using the example of Guinea, one can demonstrate the contemporary ethos, weaknesses, and forecasts of the global democratization project worldwide.

On Sunday, November 7, 2010, after long four months, Guinea undertook a second round of presidential elections. It took an additional week thereafter for the Central Electoral Commission to publish the preliminary results. Professor Alpha Conde, the opposition leader, won 52.5% of the valid votes and defeated Cellou Dalein Diallo, the former prime minister of this poor West African country. Positively surprised, the world watched Diallo accepting the ruling of the High Court on the results and conceding his defeat peacefully, a thing rarely seen in contemporary Africa.

The whole election race was wrapped in a dense institutional cobweb, where none of the actors was able to convincingly secure a clear upper hand. Between the first and second round, two ad hoc committees tasked with revision of the electoral process were set up. The work of the original Commission was halted after its chairman died, and a race to succeed the late chairman heated up. The commission resumed only when an army general stepped in as acting chairperson. The interim government remained silent and only hoped the army would stay in the barracks. Meanwhile, there were reports of the first clashes between police and the nervous supporters of both sides.

Problematic democratization

Does this picture look familiar to you? The process in Guinea showed almost all features typical for elections in poor developing countries. Way too simi-



Czech president V. Klaus (in the middle), photo: Prague Castle web page

lar scenarios took place in Kenya, Madagascar, and Zimbabwe. Election processes are too expensive and complicated, voters identify with their candidates almost exclusively through ethnicity, particular candidates are missing any ability to accept defeat and even a small provocation serves as an excuse to mobilize their supporters in the streets. A final decision about the election results very often rests in the hands of national judicial institutions which have no tradition, legitimacy, continuity, or even at the very least genuine independence.

The Supreme Court held significant leverage. Almost a quarter of the votes were annulled after the first round because of irregularities in several election districts. However, the Court chose to somewhat mute its voice after the second round, where the margin between the two candidates was only 5% and a purely legalistic application of the Court's powers could have led to massive civil unrest and maybe even war.

A stable government is what Guinea needs now. Fifty years of experiments with Communist ideology brought Guinea down to among fifty least developed countries in the world (LDCs). Gross national product in the country shrunk to under 750 USD per capita. The huge amount of natural resources (Guinea controls almost 50% of world bauxite resources) has been of no help insofar as they fueled only corruption, never development. Moreover, the population is plagued by illiteracy and malaria. A military regime was ousted only recently, after mass demonstrations in September 2009.

Necessary elections

Elections are inevitable in all parts of the world. Article 21 of the Universal Declaration of Human Rights states that elections are fundamental for the legitimacy of any political power. Similarly, the International Covenant on Civil and Political Rights from 1966 (article 25) and the European Declaration of Human Rights (Additional Protocol 1, article 3) reiterates the same notion. The UN General Assembly regularly approves resolutions to this end (most recently A/RES/64/155). Elections have become the only acceptable means for international legitimization of governments.

However, even the UN realizes that many developing countries use the most expensive election methods

and procedures which, in the end, they are unable to adequately finance. The cost of elections rises with each item: the state has to secure a voter registry, divide country into election districts, deliver necessary equipment, train all election staff, organize elections itself, count the votes, and publish the results. It is also necessary to put mechanisms in place to manage post-election disputes and conflicts. Where entire transport and communication infrastructures are missing, even a simple distribution of election materials and ballots prove problematic, not to mention the necessary collection of all election materials after voting has finished.

In established democracies, election costs vary between one and three US dollars per voter. The same model, if transferred to the developing world, costs government about twice as much. If transferred to post-conflict countries, the cost climbs up to 45 US dollars per each voter – more than 25 times more than in stable and developed democracies!

Strict controls and ethnic preference

In case of Guinea, the scenario described above was completely applicable. Each voter had to get a special biometric voting card with all basic information such as a photo, fingerprints, and the name and place of the election district where the voter belonged. Not only did Guinea not own any equipment for checking the fingerprints, but many listed voters got identification cards with different photos and even basic information wrong. But the biggest problem appeared when the Central Electoral Commission decided, following criticism from international organizations that people would have to travel long distances to vote, to set up 1600 completely new polling stations. As a result, most of the election cards were rendered useless.

Election results in Guinea were influenced by extremely high illiteracy. More than 19% of all votes had to be annulled – four times more than the difference between the candidates in second and third place after the first round. Another key influence was the identification with different African ethnic groups. As a result, political platforms, proposed policies, personal preferences, or ideological position were almost absent. All that mattered was ethnic consideration. The victory of Alpha Conde over his rival did not represent the victory of a better platform, but of a better ability to create ethnic coalitions with the other defeated candidates.

However, despite all the problems mentioned above, elections in Guinea constituted an important historical turn for the country. Election participation reached almost 80%, and according to a majority of Ghanaians, all logistic and institutional problems were successfully overcome – all in all, it was the first time in its fifty years of independence that Guinea held its own democratic elections.

Sources

- Huntington, Samuel P. *Third Wave: Democratization in the late twentieth century*, Brno: Centrum pro studium demokracie a kultury, 2008.
- Reuters Africa, *Guinea president-elect Conde calls for calm, unity*, Nov 16.
- UNGA, *Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization: Report of the Secretary-General, A/64/304*, 14 August 2009.



Elections in progress, photo: Petr Peadlík

The Czech Centre for Human Rights and Democratization

The Czech Centre for Human Rights and Democratization is an independent academic center focusing on impartial scientific research within the field of human rights and democratization.

Members of the Centre: Hubert Smekal, Lukáš Hoder, Lubomír Majerčík, Ladislav Vyhnánek

The Czech Centre for Human Rights and Democratization



Visit our profile at the Facebook and join our daily round-up of human-rights news from all over the world.

Authors of the Bulletin

Editor-in-chief

Lukáš Hoder – Ph.D. Candidate at the Department of International Relations and European Studies at the Faculty of Social Studies, Masaryk University; Co-founder of the Czech Centre for Human Rights and Democratization at Masaryk University and former lawyer at the Office of the Government of the Czech Republic.

Authors of texts

Hubert Smekal – Assistant Professor at the Department of International Relations and European Studies at the Faculty of Social Studies, Masaryk University; Assistant to the Director of the E.MA in Human Rights and Democratization for Czech Republic; Co-founder of the Czech Centre for Human Rights and Democratization. 2010–2011 Fulbright–Masaryk Post-Doc Visiting Scholar, Centre for the Study of Law and Society, UC Berkeley.

Ladislav Vyhnanek – Lecturer at the Department of Constitutional Law, Faculty of Law of Masaryk University; Law clerk at the Constitutional Court of the Czech Republic. Co-founder of the Czech Centre for Human Rights and Democratization.

Katarína Šipulová – Ph.D. Candidate at the Department of International Relations and European Studies at the Faculty of Social Studies, Masaryk University; Intern at the Czech Centre for Human Rights and Democratization and intern at the Supreme Court of the Czech Republic.

Petr Preclik studied International Relations at the Faculty of Social Studies at the Masaryk University and the E.MA program in Human Rights and Democratization in Venice. In 2009, he worked as Adviser for Human Rights at the Permanent Mission of the Czech Republic to the UN in Geneva and later at the Delegation of the European Union in New York. In 2010, he was a member of the EU election observation team in Guinea.

Monika Mareková – Master student of Law at Masaryk University; 2010–2011 Exchange student at Laurentian University; Intern at the Czech Centre for Human Rights and Democratization; Ethics, Equality and Diversity Delegate of Rights & Democracy Student Network for Laurentian University; Research assistant at Laurentian University; Former intern at the Office of Czech Public Defender of Rights – Ombudsman.

Lubomír Majerčík is a case-lawyer in Registry of the European Court of Human Rights. He is also PhD Candidate at the Department of International Relations and European Studies at the Faculty of Social Studies, Masaryk University and co-founder of the Czech Centre for Human Rights and Democratization at Masaryk University.