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extra league papers



LIGA LIDSKÝCH PRÁV

topic

slander – your entry ticket to prison?



introduction



Pavel Molek, assistant at the Law Faculty of Masaryk University in Brno and judge's assistant at the Supreme Administrative Court

taste of europe

On 18th March the Grand Chamber of the European Court of Human Rights gave a decision in the case of Lautsi and others vs. Italy. According to the media, the ECHR decided that “crosses can be on walls of Italian classrooms.” Certainly. But principally, the court stated that it cannot be them who forbid Italy from hanging crosses in classrooms. And if we take it one abstract level higher, the court stated that it is not up to them to forbid European countries from clinging to symbols of national cultural identity. And all this as long as those who are offended by the presence of any such symbols in a public area do not start exposing these symbols to indoctrination, discrimination, religious recruitment or other – actual – violation of rights on the part of public authorities. Thank God.

If the ECHR had decided otherwise, that would tell the European countries that their traditional symbols have to be automatically taken away if anyone is offended by their presence in a public space. And that “anyone” would very often be – as it was the Lautsi case – immigrants, either from a different European country or from an altogether different cultural region. An opposite decision would make European countries face a dilemma: either they accommodate immigrants and remove from public spaces all the traditions that are in contradiction to the newcomers’ traditions (from crosses in Italian or Bavarian classrooms through prophet Muhammad’s caricatures in public media – freedom of humour is also part of European identity – up to Eater violence inflicted on Czech women and girls for public eating of pork). The other possibility is to restrict immigration – either completely or only to those who “conform” to domestic traditions.

The ECHR decision has spared European countries this Sophie’s choice: they did not make them either close borders or turn the varied European cultural “tastes” into a homogenous mash of political correctness and vague cultural sterility that would neither offend nor please anybody. Europe can remain a diverse continent on which I can choose whether to live in “atheistic” Czech Republic, catholic Ireland, socialistic Scandinavia, striking France, liberal Netherlands or orthodox Greece, whilst all the traditions end where actual fundamental rights of individuals (be they domestic or foreign) begin, and not where their taste begins. The choice of taste is therefore up to both the domestic majority society and the foreign incomers, who know, when choosing their destination country, that their arrival will add a new flavour to the current society without compromising the original flavour. Europe will conserve its various flavours, even though they may offend some people. Which is often the case of spicy meals.

Bon appétit!



David Záhumenský, Chair of the League of Human Rights, a lawyer

boundaries of sanctions against opinions and expressions

Does criminal law protect or restrict our freedoms?

The freedom of expression is one of the fundamental pillars of democratic society. It is the totalitarian and authoritarian regimes that carefully watch what can and what cannot be publicly expressed. The *Article 19* organization, which has chosen its name after the article of the Universal Declaration of Human Rights that protects the freedom of expression, publishes information on criminalization of journalists and other people all over the world.

Should slander be a criminal offence?

One of the subjects, which is repeatedly cri-

ticized by international organizations, is the penalization of slander. Why is it so? Everyone is of course entitled to defend their honour if any false information is passed on about them. A victim of defamation can file a lawsuit under the Personality Protection Act, which should help them get due compensation. In a state governed by the rule of law, criminal law should play the role of the last resort; slander penalization is very easily abused to intimidate critics or those who report any dishonest practice.

The Human Rights Committee, the world’s most significant human rights authority, is currently considering a suggestion concerning the attitude which the Committee encourages the States to adopt towards the protection of freedom of opinion and expression.

The Committee also suggests that each State consider the decriminalization of defamation and emphasizes that *“in any case criminal law should be applied only in the most serious cases and that imprisonment can never be considered an adequate sanction.”*

Criminal slander in the Czech Republic – an ever living article

In the Czech Republic, according to Art. 184 of the Criminal Code, anyone who publishes information considered to be defamatory can be sent to prison for 12 or 24 months. One of the most striking attempts to abuse this subject matter was made in October 2001, when Miloš Zeman’s government decided that the Director of the Office of the Government should bring a complaint against Petr Holub, Respekt magazine executive editor, regarding an article about corruption published in Respekt. In 2003, partly in reaction to this case, a group of deputies tried to enforce the removal of slander from the Criminal Code but to no avail. Unfortunately, the motion was rejected on first reading.

In 2004, defamation got a little closer to being decriminalized, when the members of Parliament discussed a motion concerning the new Criminal Code which would not classify slander as a criminal act. After a tedious two-year long discussion the Code was not accepted, which meant that slander has remained a criminal act. The amended Criminal Code, which came into effect in 2010, again included slander. Professor Šámal put it back in order to prevent the Code from being rejected. This means that slander is still used in practice and according to statistics of the Ministry of Justice, in 2010, forty people were convicted of slander. In most cases the convicted were put on probation but it also occurred that some people were sent to prison. This was the case of Petr Partyk, a lawyer from Prague, who was sentenced to prison in 2006 for posting a comment on an Internet forum – this was considered slander. In 2001, the former executive editor of the Nové Bruntálsko papers was sentenced to 16 months in prison for his words concerning Mr Krejčí, the mayor of Bruntál, Mr Palas, a deputy for the

Socialistic party and the executive editor of another paper in the region.

Probation for criticizing state care institutions

In March 2011, Mr and Mrs Ľubo were another two who were convicted. They got a 5-month sentence, which is yet ineffective, with a conditional delay of 14 months. And for what?

According to the prosecution Mr and Mrs Ľubo published unverified information that the deputy director of a state care institution in Nový Jičín hit a minor boy and that children got bitten by his dog.

Liga repeatedly provided information about the two-year long proceedings. Nevertheless, the result took us by surprise. Mr and Mrs Ľubo did not in the least deny that they informed state authorities and media of the supposed actions of the deputy director and that while Mrs Ľubo still worked in the institution, they did so anonymously. In their defence they said that it was only the children's well-being they had in mind. However, the court did not think their motivation plausible and assumed that they wanted revenge on the deputy director.

But how come that the court reached the guilty verdict even though several witnesses testified that the minor boy said that he got beaten up by the deputy director? And even though it was proved that one child was undoubtedly bitten by an instructor's dog, and even though two minor incidents were mentioned before the court as well? After all, a little inaccuracy or misinterpretation is acceptable in cases of intervention in personal rights in civil proceedings. Should not the police automatically put off the case if it is then proved that the information was exaggerated at most, but not untrue?

The guilty verdict in the case of Mr and Mrs Ľubo can be good news after all, because we can at least get the decision of the appeal court (and if the appeal court confirmed the verdict, the we could probably get the Constitutional Court's decision), which can more clearly define the limits of slander criminalization. But this is not good news for Mr and Mrs Ľubo, who have been going from court to court for two years now and are forced to pay for a lawyer.

You approve? You alarm?

However, slander is not the only verbal criminal act that can get you in prison in the Czech Republic. No less controversial is the widely interpreted approval of a criminal act. On basis of this, Filip Rössler was to be prosecuted for publicly displaying a poster approving of the terrorist attacks against the USA. And the Brno police had no trouble interrogating several people about their approval of an act committed by animal rights activists abroad.

Spreading alarming information is also often mentioned as a typical example of a verbal act that should be condemned. After all, it is

clear that if someone falsely and on purpose shouts "FIRE" in a crowded movie theatre, thus causing panic to break out, they should be punished. But, here also, it is necessary to consider each case individually. In 2008, the court considered the actions of the artistic group Ztohoven who slipped fictional shots of a nuclear explosion into a TV broadcast. The public prosecutor suggested a penalty, but the District Court in Trutnov freed all seven accused people of all charges, stating that the fictional explosion could not possibly frighten anyone so much that it could be considered as spreading of alarming information. In this case, common sense triumphed.

Fighting extremism "at any price"?

A special category of verbal criminal acts are those that are to be penalized in order to protect the democratic state and rights of minorities. These are mainly defamation of nation, race, ethnic or other group of persons (Art. 355 of Criminal Code), provocation of hatred towards a group of persons (Art. 356 of CC), establishment, support and promotion of movement aiming at suppressing human rights and freedoms (Art. 403 of CC), manifestation of support for any such movement (Art. 404 of CC). While in the USA such acts are not criminalized, in Europe similar subject matter is included in criminal codes for reasons of the European historic experience of two world wars.

We can agree with former Strasbourg judge Bohumil Řepík that *"racism is an attack on human dignity and if it is aimed at a group, minority or ethnic group, it is a threat to the solidarity of the society and its democratic foundations."* On the other hand, we should be careful not to automatically consider every politically incorrect discourse as racism. As the European Court of Human Rights has repeatedly stated, we must protect the freedom of expression. The public has to have all necessary facts in order to form individual opinions and reach consensus over matters of public interest, it is therefore necessary to ensure a free exchange of information, ideas and opinions, both complimentary and critical.

Therefore the crucial question concerning the fight against extremism is not whether to fight

extremism but rather what means should be used in the fight. Lately, the discussion has been started with regard to neo-Nazi processions through Czech towns or with regard to proceedings which led to the prohibition of the Labour Party. Another incident which led to a discussion involved a raid on the supposed organizers of neo-Nazi concerts, during which ten people were arrested in June 2009 (the case has still not appeared before court). The case of Patrik Vondrák, who was placed in detention for posting www.odpor.org stickers in public, has also been provocative.

What about the neo-Nazis?

Some people say that neo-Nazis and right-wing extremists should simply get scared in our country and this can be done only by means of repressions. On the other hand, some people point out that extreme attitudes and opinions will always be present in the society, and that their supporters will express, spread and promote them, either in public or in private. If these opinions are not subject to confrontation in a public discussion, it can actually be to the extremists' advantage. The League of Human Rights maintains that it is not possible to look the other way if someone's rights are being violated, be that someone a "radical", "Nazi" or "extremist". That is why we stood up for the supporters of the newly prohibited Labour Party whose spontaneous demonstration was unlawfully dispersed by the police.

But when the fight against extremism is concerned, there is no "either/or". Penalization is justifiable, even though we think it should be the last resort – used mainly in cases where not words but actions are involved, that is in fights against racially motivated violence. If our politicians were able to offer a reasonable solution to problems of growing Roma ghettos, to avoid populism in the manner of Řápková and Janáčková, and to clearly denounce the actions of neo-Nazis and nationalists, could it be that we would not need court cases with all the labour parties and their supporters at all?





Boyko Boev, autor působí jako právník v organizaci ARTICLE 19

central europe should defend free speech values

Last week I emailed a quote by Vaclav Havel to the London office of ARTICLE 19. As the quote related to freedom of expression - the focus of ARTICLE 19's activities - I thought it could give authority to a freedom of media campaign. While the quote was popular, some younger colleagues admitting to not knowing who Vaclav Havel is.

Judging from their international free speech reports, ARTICLE 19 and other free speech organisations have forgotten not only Havel but Central Europe as well. The nations of the region have been ignored because the region is widely considered a success story of democratic reforms. Their legislation and media policies are now in line with international human rights standards.

As a result, the lives and physical integrity of Central European journalists are much safer than those in Mexico or Azerbaijan, for example. The last physical attack against a journalist from Central Europe, according to Reporters without

Borders, took place four years ago when the Hungarian investigative journalist **Iren Kar-men** was badly beaten by two men and left unconscious along the Danube in Budapest. The media market in Central Europe is vibrant and pluralistic. Government control over media has been limited due to the transformation from state to public broadcasting. In short, the key indicators of media freedom have been met in all Central European states.

The focus of international attention has also shifted to other parts of the world since the countries in Central Europe joined the European Union in 2004. Since then, ARTICLE 19 has issued only 5 statements of concern about media freedom in Central Europe.

But despite the general perception that all is well with Central European media, a more careful study of the situation reveals worrisome developments. The concerns arise from few recent instances in which the governments in the region have abandoned their obligation to respect and protect journalists' rights.

In 2008 the Criminal Code in the Czech Republic was amended to stop the media from publishing information obtained through wiretapping with prison sentences of one to five years and fines of up to five million crowns (more than 200,000 euros). Several months after the amendment came into force, journalist **Sabina Slonkova** was sentenced to a fine of the equivalent of 700 Euros for „damaging private life“ of officials following the publication of photos taken by a surveillance camera of a meeting between the head of the President's office and an influential political lobbyist.

In Slovakia amendments to the media law adopted in 2008 imposed excessively broad restrictions on the content of what may be published to possibly cover a wide range of perfectly legitimate speech. This problem is exacerbated by the fact that the power to impose penalties for breaching these provisions has been given to the Minister of Culture rather than the courts. The media is also obliged to publish a reply in response to any factual statement impinging on a person's honour, dignity or privacy, whether or not a correction has already been provided or whether or not the statement is true or even in the public interest.

In violation of international norms, defamation

law in Poland continues to provide members of parliament, government ministers and other public officials with excessively high protection from public insult or libel. For publicly insulting the president, the maximum sentence is three years' imprisonment. In 2009 the President used this law to punish a member of the Sejm who in his blog referred to him as a "runt". In addition, the Polish media are prohibited from promoting activities that are against government policy, morality or the common good. All broadcasts must respect the religious feelings of the audiences and, in particular, respect the Christian system of values.

In contrast to the mild national and international responses evoked by these laws hostile to media freedom, the entry into force of Hungary's new media law at the beginning of 2011 caused a significant public outcry. The European Parliament, Council of Europe and the Organisation for Security and Cooperation in Europe all criticised the government of the ruling Fidesz Party for violating media freedoms. The new Hungarian media regulations have many serious problems. The hierarchical media regulatory system falls under the control of the government. There is a number of information content requirements which can be used to restrict legitimate expression. The government has control over public service broadcasters. The government Media Council has the power to force internet service providers to block any internet-based news outlets and can levy high fines. The law offers no protection for journalists' sources.

The worrisome trend of restricting media freedoms in Central Europe calls for the mobilisation of national and international efforts in their support. Hence the quote of Vaclav Havel which I sent to my colleagues last week is timely and should be brought to the attention of the governments of Hungary, Poland, the Czech Republic and Slovakia:

„Freedom of expression is the cornerstone of democratic life. It is by the free exchange of ideas among citizens about how they should live together and how they should be governed that we create and sustain the democratic society. So the rights to free association and expression are scarcely less important than the right to live in peace and free from want.“

vocabulary

- wiretapping** - odposlouchávání
- surveillance camera** - sledovací kamera
- amendment** - pozměňovací návrh
- exacerbate problem** - zhoršit problém

- breach a provision** - porušit předpis
- impinging** - dopadající
- dignity** - důstojnost
- violation** - znesvěcení
- defamation law** - zákon o pomluvě
- libel** - urážka na cti

- runt** - zakrslík
- public outcry** - veřejný poprask
- levy** - vymáhat
- cornerstone** - základní kámen



Eliška Holubová, post gradual student at the Law Faculty of Charles University and assistant to the President of the Supreme Administrative Court

freedom of expression and caricature: Březina vs. Reflex

Where does the freedom of expression end as far as political caricatures are concerned?

In 2002 the Reflex magazine published four controversial caricatures of the then Minister Březina. The caricatures showed him “naked, in inappropriate positions and in the company of naked women and a naked man, all of which was accompanied by vulgar expressions (“Hard and filling”, “I prefer oral”) and inappropriate expressions: “And I’m your doggie, B.” Březina filed an action against the company Ringier, which publishes the Reflex weekly as well as the Green Raoul comic. Both the City Court and the High Court acknowledged the action and Ringier had to apologize. In 2003 this decision was supported by the Supreme Court who rejected the appeal brought by Ringier and confirmed that Reflex has to apologize.¹

In this case the City Court assumed that the criticism contained in the comic crossed the line of acceptability and represented interference in individual rights, especially in personal privacy. The court of appeal confirmed this statement and added that the caricature “has objective characteristics of pornography, which means it violates the complainant’s rights...”² The Supreme Court accepted the problematic proposition concerning “objective pornography” as well as the statement that caricature does not allow the use of vulgarities. But this restrictive definition only approves of kind, politically correct portraits. Caricature is a literary genre which works with hyperbole, irony and biting sarcasm, and therefore it has a special regime. The sharp criticism, which is one of its significant features, does not aim at being a realistic description; it contains distortions, generalizations, condensation and other literary techniques that would be seen as out-of-bounds in a common article. But

an average reader is able to understand that a caricature uses hyperbole and humour, they do not perceive presented situations as an exact reflection but more likely as a crooked mirror. The published caricature is a part of a satirical comic series, which uses hyperbole for commenting on public life – the narrator-commentator is an alien. The Reflex readers are used to such literary techniques, from its very beginning the Green Raoul is ruthlessly critical of politics and its tone is very often skirting on the edge of decency.

Another aspect, which cannot be overlooked, is the theory of public person, as it was used by the Constitutional Court in the case of Rejžek vs. Vondráčková. This doctrine, which is based on the thesis that public persons have to tolerate greater interference in their private life, first appeared at the US Supreme Court in the case of *The New York Times vs. Sullivan*³, and as it was later taken up by the European Court of Human Rights, it found its steady place in the Continental practice of courts. Karel Březina, who, at the time, was a Minister without Portfolio in Miloš Zeman’s government, was living a public life, the centre of media attention. Without a doubt he could have been described as a public person. Moreover, none of the courts ever made any difference between the facts of the statement and the individual judgements⁴, and none of the courts ever took into consideration how much the afore-mentioned caricature was inspired by the complainant’s own actions. Minister Březina made an appearance on television, saying how many sexual partners he had, and he also cherished his image of a sexual athlete in tabloids. A minimum factual basis was confirmed by his appearances, which contributed to his image of a political playboy, a picture he painted himself and one that the caricature in question satirized. A politician, who bares his private life in such an extreme way, must understand that the sphere of protection is defined not only by their public status but also by their public behaviour. It goes without saying that in case of an obvious excess, which has nothing to do with their public appearances, politicians have to have the possibility to effectively defend themselves. After all, it is not a primary public concern to watch the private life of a politician through a telescopic lens, and some paparazzi practices represent a brutal abuse of the freedom of the press. But in the case of Březina, there was no question of interfering with his privacy, the caricatures were not aimed at his private life but they were aimed at his media excesses⁵, which inspired the authors.

The Green Raoul is sometimes perceived as a controversial satire, but to take seriously a comic, which shows Karel Gott consorting with Maya the Bee, points at a lack of insight. It is somehow understandable as far as the ridiculed person is concerned, but it is lamentable, when independent courts fail to decide difficult cases of collision of fundamental rights in accordance

CASE

with the European legislation. Nevertheless, in recent years the situation has significantly improved. For example, the Constitutional Court (in the case of Šlouf vs. Respekt) and the City Court in Prague (in the case of Petra Paroubková’s caricatures) decide the cases of caricatures as a specific type of freedom of expression in accordance with the ECHR’s interpretation of Article 10.

Eight years later: Constitutional Court epilogue. Nevertheless, this case is an exception to the positive trend towards liberalization of freedom of expression. In November 2010, that is nearly eight (!) years after the Supreme Court’s decision, the second senate of the Constitutional Court rejected the constitutional complaint and decided that all the courts – the City Court, the High Court and the Supreme Court – thoroughly considered all circumstances of the case and that they rightly decided that the caricature exceeded the limits of acceptable criticism. In their brief resolution the Constitutional Court came to a somewhat paradoxical conclusion that one of the reasons was the fact that the comic was published in a serious social magazine and not in a porn magazine, where it should belong, given its tone.⁶

Quo vadis, caricature?

In cases when a caricature affects a person’s privacy and good reputation, the court must consider all kinds of criteria – they have to carefully distinguish between a private and a public person, they have to analyze whether there is a minimal connection between the image and the facts and whether there is a rightful public interest in the image, they also have to examine whether the depicted object contributed to their insulting picture by their own actions. Another aspect to consider is the context: the time and place of publication, the type of paper, the accompanying text. It is also necessary not to omit the principle of damage. And last but not least the courts have to consider the caricature from a stylistics point of view: they have to pay attention to the presence of satire, hyperbole or parody and view the contents through the eyes of an average reader of the paper in question.

The satirical humour of caricatures makes use of a relativist, subjective view of the world; it is a space without a complex vaccination against offence or without a universal sense of humour. It strains freedom, tolerance and humanity, sometimes with inhuman means, it provokes ideas and in a very condensed manner it can question civilization taboos, religious dogmas and political ideologies. In the sphere of freedom of speech the caricature has its own vital place, it is the unguided missile, which does not care about the hermetic language of political correctness.



questions for...

...Zdeněk Kühn, judge of the Supreme Administrative Court and associate professor at the Law Faculty of Charles University

The Czech Republic is one of those European countries that have slander included in their criminal code. In your opinion, is it necessary or could slander be just a matter of the civil code?

Personally, I think that slander as a criminal offence basically replaces civil settlement of an argument. If the civil courts acknowledged reasonable amounts as a compensation for purposeful and malevolent slander, it wouldn't be necessary to solve cases of slander in criminal proceedings. And in any case, a reasonably interpreted civil compensation for interference in personal rights has a certain "punishing" or preventive function. Criminal law should only deal with those issues which cannot be solved by means of civil law. Unfortunately, in this country, people are more likely to file a criminal notice rather than a civil complaint.

What do you think about the new criminal code with regard to freedom of expression?

In this regard the new criminal code continues in the same spirit as the previous one. As regards the freedom of expression, I see no significant changes.

In your opinion, how did the sphere of freedom of expression change in the context of antiterrorist measures introduced after 11th September 2001?

In the USA, the atmosphere in the society did, especially shortly after 2001, restrict the freedom of expression, but I think that the situation is slowly getting back to normal. This has also been supported by the case law of the US Supreme Court in the recent years, and not only with regard to freedom of speech (e.g. the rights of detainees at Guantanamo prison, etc.).

Do you think it is necessary to severely punish such symbolic manifestations as Nazi stickers?

This question is slightly suggestive. Obviously, it is nonsense to "severely" punish such manifestations, but the question is whether to punish them at all. I myself rather take the American liberal attitude, but I realize we live in Europe and not in the US. Manifestations of Nazi ideology as well as Holocaust denial are not an innocent dispute over academic subjects. Verbal offences, such as approval of crime, praising a criminal for his crime, or provoking someone into committing a crime, undeniably did and still do belong to the sphere of criminal law. The denial of Holocaust and totalitarian crimes is a variation on the same subject matter. It is not a question of subduing discussion among scholars, which could lead to revealing a more precise number of victims of the Nazi regime or which would ask the question whether the Palestinians were harmed by the establishment of the Israeli state. It's about something else. In reality, it's like excusing the culprits by saying that they didn't actually commit any crime because there was no such thing as gas chambers.

But I understand that at the core of these verbal criminal offences is the fear that what happened seventy years ago can happen again. The denial of what happened can make it easier for those who deny the events to repeat the past actions in the future.

On the other hand, these verbal offences cannot be the focus of attention of criminal law authorities. That would be rather cheap. Sometimes I ask whether the American attitude of ignoring such extremists isn't actually better. The Czech extremist is sure to be in the centre of media attention, his American colleague is plainly ignored.

It is often discussed that the multicultural model of society is in crisis. This brings up the question of conflict between the freedom of expression and religious freedom, as was the case with Danish caricatures of the Prophet Muhammad. What's your opinion of the solution of the conflict between blasphemy/religious dogmas and freedom of expression in the European civilization context?

The incessant call for respect for these or those religious specialties seems a little hypocritical to me. If we're in Europe, the constitution guarantees us the freedom of speech, which also includes the right to criticize any religion, just like R. Dawkins does (and he knows no mercy). One thing is to stir up hatred against Islam, but the caricature of Muhammad is another thing. A caricature can be good, less good or stupid, but it doesn't mean that we should be afraid to use our freedom, whoever's the target. If it is possible to make such movies as *The Last Temptation of Christ* and *Life of Brian*, then I don't understand why it shouldn't be possible to write *The Satanic Verses* and make it into a movie. If the *Green Raoul* comic

published a caricature of Jesus Christ (a very stupid one, by the way), then I don't understand why the prophet of a different religion shouldn't be caricatured.

Another topic currently discussed in the Czech society is the political extremism. In your opinion, where are the boundaries of a so-called hate speech, and where can they be moved?

It's a general question, so I'll give only a general answer. The issue of punishment of opinions is always very sensitive. In general, I think we should sanction only those opinions that are really dangerous and that directly lead to violence against others or that lead to justification of culprits.

The Czech legislation concerning the dissolution of political parties is deficient in efficiency. Do you think that there is a better way – for example, implementation of individual responsibility?

I don't think anyone would doubt that the primary concern always is the punishment of individual culprits. On the other hand, I don't see why a political party that deliberately fails to reach its goals in a democratic way through political discussion and instead resorts to violence shouldn't be dissolved. This was true in the case of Basque extremists in Spain, and it is true for Czech neo-Nazis as well.

The efficiency of such legislation, it's true, doesn't have to be high, I agree with that. But the question is how we can modify the legislation without corrupting the principles of a democratic state. The dissolution of a political party is therefore more of a symbolic act rather than an efficient obstacle to spreading of violence and aggression against other people. So in other words, I'm getting back to the beginning of your question, back to individual sanctions.

What do you think of WikiLeaks?

WikiLeaks is a typical product of the Internet age. But notice that in reality we didn't get to much of the scandalous information concerning the most interesting part of the project, that is the American diplomatic communication. Today, the discussion centres on the question to what extent the WikiLeaks information could have contributed to the Arab revolt. Personally, I think that what influenced the Arab revolution were more likely the actual actions of the local politicians rather than the reports on their actions presented by American diplomats.

ten tips on freedom of expression and privacy protection

Written by Eliška Holubová.

internet: paradise limited

Ever since its beginning the Internet is known as an absolutely free media, a cyberspace unrestrained by law and a jungle without any rules. This is no longer true, as the following tips prove as well.

1. Freedom of expression in the virtual universe

The freedom of expression applies to the Internet as well. Whereas in the USA this was affirmed already in 1997 by the US Supreme Court that decided in the case of *Reno vs. ACLU*, in the Czech Republic a big Internet case involving the freedom of expression appeared only in 2010, and it was the case of *Prolux* concerning protection of good reputation of legal personality against critical comments on an Internet forum. Although it may seem that the Internet is nearly boundless, there are certain restrictions and rules to follow – and in different legal contexts users can behave differently.

Whereas an American citizen browsing an American website has the right to deny the Holocaust and adore Hitler, on the Czech Internet it is necessary to observe the boundaries of freedom of expression just like in any other area in the Czech Republic. An interesting issue concerns the disputes as to which courts in which countries should be deciding. For example, the French section of American Yahoo lost a dispute both in the USA and in France – the dispute was over an auction of Nazi articles, which were also available in France (where such trade is forbidden). The company had to conform to the regulation and prevent French users from participating in the auction. The Internet is a relatively new phenomenon; therefore we may expect that many of the questions will have to be answered by courts in particular cases.

2. Anonymity is a myth

It is advisable to behave on the Internet as if you have put your signature and photograph to your every Internet activity. The concept of anonymous Internet is a fairly widespread and dangerous myth. In reality, the free Internet is more like the imaginary Big Brother, due to the individualized IP address and many electronic traces it is a perpetual witness to your life. That does not mean that you should exclude the Internet from your life and become a paranoid loner, but you should rather become aware of the risks and bear in mind that anything you write can be used against you. Especially if you plan to become a public person.

3. Watch (and delete)

With great power comes great responsibility. The responsibility of an Internet provider for a discussion is given by the Act No. 480/2004

Coll., on services of information society. It is necessary to remove any comments promoting Nazism, racism or comments denying Nazi and communist genocide and any other constitutional and legal exceptions to the freedom of expression. If the provider is verifiably informed (e.g. by an affected user) that some comment in the forum is unlawful, they should immediately delete it.

In February 2011 the Czech High Court decided the case of *Prolux* and stated that the provider is obligated to moderate the discussion and remove obviously unlawful posts but they cannot remove the whole thread containing the problematic commentary. But in spite of the liberal practice of the European Court of Human Rights, the court adopted a conservative attitude and decided that vulgar expressions do not represent acceptable criticism. In particular, it concerned the phrase “lying like a bitch”, which the discussion participant used to describing his experience with an infamous real estate agency.

4. Internet Watergate or protection of sources

Traditionally and with only a few exceptions, journalists have the right not to reveal their source but with the development of the so-called civil journalism, this right is granted to bloggers as well. Czech Courts have not dealt with any such case yet, but a blogger's choice to protect their source has been affirmed by several foreign courts, for example the California court of appeal decided in the case of *Apple vs. Does*.

5. Closely watched emails?

Is it possible to check your employees' emails? The European Court of Human Rights expressed disagreement with the monitoring of web activities of employees in the case of *Copland vs. Great Britain*. The court do not think that Internet monitoring is out-of-bounds in cases when democratic values of the society are in danger, but it could be done only under strictly defined circumstances. In this case the court decided that the school violated the privacy according to Article 8 of the European Convention.

Czech courts have to decide cases in compliance with the European Convention and case law of the European Court of Human Rights, it is therefore probable that the decision of a Czech court would be similar. The most important issue concerns the decision whether it is ne-

cessary to break the protection in a democratic society. This could be the case of monitoring electronic communication between terrorists or other criminals.

6. The unbearable lightness of cyber-bullying

Words are powerful, especially on the Internet, which can turn into a weapon of mass destruction considering the possible damage to the victim. The freedom of expression does not include cyber-bullying, although the diving line between a silly joke and bullying is very thin and hard to define. Web bullying has the same goal as normal bullying – to hurt and humiliate, but it also has precious advantages to the aggressor.

Aggressors can hide behind the curtain of (seeming) anonymity; cyber-bullying is not limited by time because the Internet, unlike schools, does not have opening and closing hours, it can affect a great number of people and physical power is unimportant, which means that the victim can be physically stronger than the aggressor. Consequences of systematic bullying can be highly traumatic and sometimes even tragic (e.g. sending sensitive photographs on a social network led to the victim's suicide). But there is a way to defend oneself: Facebook contains a button to report a user, projects like *internethotline.cz* or *horka-linka.safeinternet.cz* cooperate with the police in reporting cyber-bullying or any illegal content.

7. Spam - annoying virtual bugs

Spam or unsolicited mail is one the most burning problems of the Internet universe. According to the statistics, approximately 45 to 75% of all email communication is junk mail. In the Czech Republic, spam is dealt with by the Act on services of information society. Spamming is a criminal activity, therefore it is not protected by the freedom of expression, not even in the traditionally liberal American system. The only exception was the case of *Jeremy Jaynes*, a notorious spammer, who was supported by the Virginia Supreme Court, which stated that the wording of the anti-spam act is in contradiction with the freedom of expression. But that does not mean that spamming is permitted, it is rather an objection that not all unsolicited mail must be spam.

Continued on Page 8.

8. The phantom menace of social networks

Facebook is not just your friend. It is very easy to become the metaphorical fly caught in the social spider web. It is therefore necessary to follow basic rules, to read through the privacy settings (still unavailable in Czech) and to realize into what kind of contract you are entering. In the case of Facebook, whose founder claims that the time of privacy is over, it was a deal with the devil until 2010 – among other things it said that all data you upload to you account, including photographs, are the property of Facebook. Since then, the rules have changed, but some privacy violation issues have remained. In a few years, this company has become the largest database of personal data, over which there is no public control, because it is not a state authority. If it were, it would have to go by strict rules regarding handling of information. At the same time, Facebook is the best source for the

police, lawyers and secret services, because the information they would have to complicatedly obtain using a warrant Facebook users voluntarily and happily share.

9. "You shall not steal" in the 21st century – yes to download, no to sharing

Whereas it is legal to download and copy data for personal use (with a few exceptions, e.g. software), it is unlawful to share data in so called pee-to-peer networks, because the user who wants to download some data has to share some other data at the same time. Therefore it is unwise to share links to such illegal torrents in online discussions.

10. Data haven – a cyber mirage?

The data haven has already been foreseen in science fiction. Just like money goes to a tax haven, information and data go here. A data haven is a space with absolute freedom of expression (with the exception of spam and children por-

nography) working under a favourable legal regime. Therefore it also covers data that would be elsewhere considered criminal and that are anonymous here. Very often it is a coastal state with an ambiguous legal system or an open sea area. Until 2008, the Sealand platform, off the coast of England, housed a functioning data haven called HavenCo. The Freenet network runs on the same principle as well.

The League of Human Rights

We are an independent non-profit organization that defends fair and honourable conditions for life in the Czech Republic. Every day our lawyers help people orientate themselves in the jungle of acts, articles and paragraphs. We win legal disputes on the part of the disadvantaged, thus proving that law can be a good thing. On a long-term basis we enforce such changes in the system that help improve the work of health care workers, teachers and police officers.

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Freedom of speech is a fundamental pillar of democracy. In a society where people are being made shut up, it is impossible to initiate discussion as well as to report and properly investigate any unfair practice of authorities. The cases of convicted "slanderers" have shown that it is necessary to defend the freedom of expression even at the beginning of 21st century. And with your help we can do it.

David Zahumenský, Chair

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