

ISSUE 7
WINTER 2012

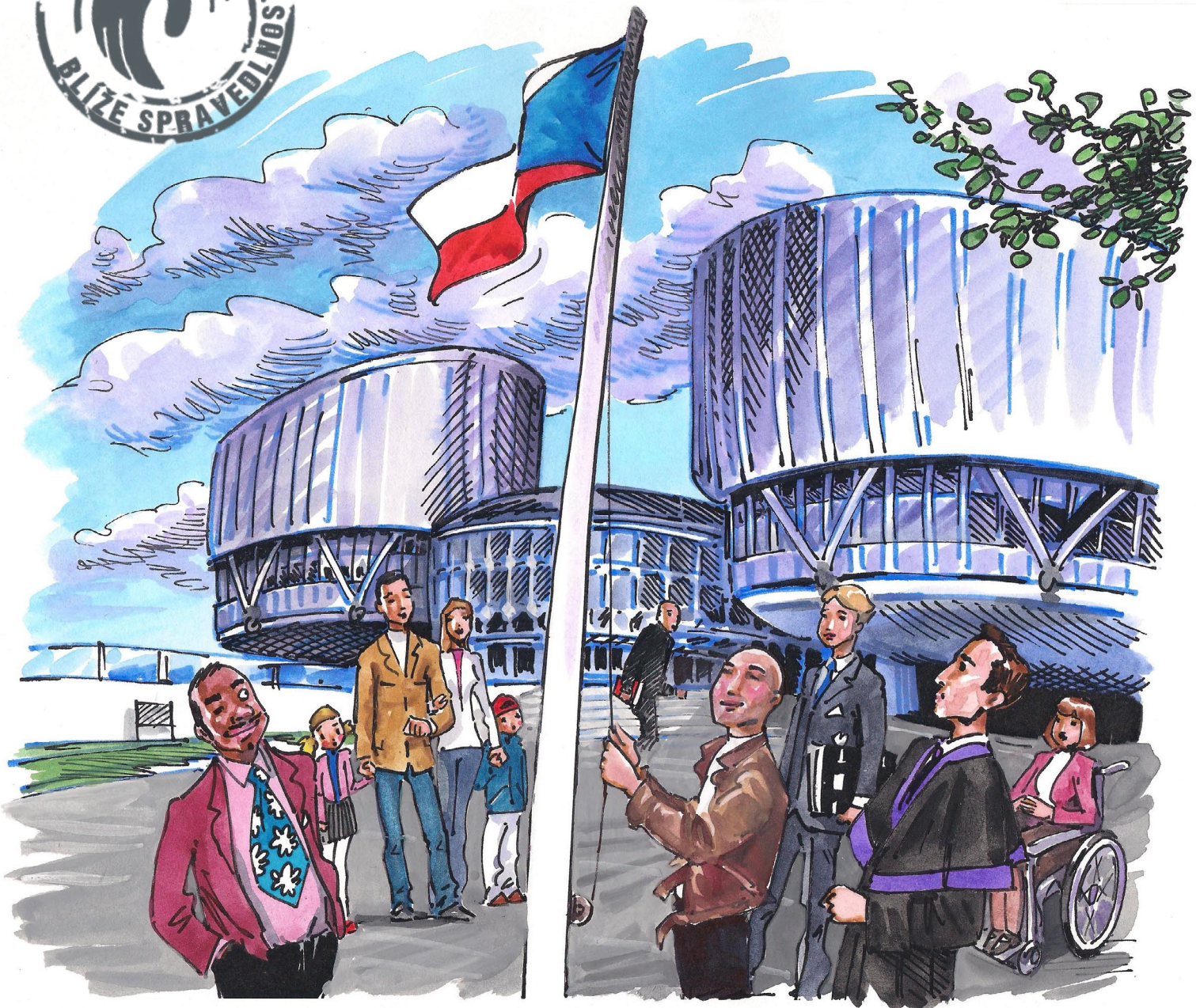
extra league papers



LIGA LIDSKÝCH PRÁV

topic

the power of czech stories in strasbourg





Zuzana Durajová,
League of Human Rights and MDAC lawyer

a good story is more powerful than a thousand legal arguments

The year 2012 was marked with a number of successful strategic cases. The years of hard work put in by our current and former employees have finally borne fruit in form of three verdicts of the European Court of Human Rights. And these were not just any verdicts.

The Czech Republic have been convicted of the most serious violations: violation of the right to life (the case of Mr. Pecha), the right to not be subjected to torture or inhumane or degrading treatment (the case of Mr. Bureš) and the right to personal freedom (the cases of Mr. Bureš and Mr. Sýkora). By retelling stories of three people the League of Human Rights managed to point to loopholes in the human rights defense system.

More significantly however, thanks to the unyielding strategic litigation a change has been finally achieved. A new law on General Inspection of security forces should prevent cases similar to that of Mr. Pecha from remaining unresolved. A workgroup appointed by the Ministry of Justice pushed through the introduction of additional legal guarantees against arbitrary removal of personal freedom as had happened with Mr. Bureš and Mr. Sýkora. Furthermore, at the end of year 2012 the Ministry of Health presented its intention to transform psychiatric care in the Czech Republic.

The power of the League of Human Rights lies in its ability to tell stories. Tell stories of common people who are pushed by the society to the very edge of an abyss. Many of them pay the highest price – their health or even their lives. These “common” heroes however do not give up, they try to actively face these problems. The role of the League of Human Rights is then not only to defend their rights, but also to make sure these stories are not forgotten and spread among people, to achieve a positive change. It is no coincidence that in year 2012 the League has started a new project “Anyone can be a hero” which assembles 101 faces and stories of people who are determined to fight for their rights. Because human rights are not only a record in laws and international treaties, they are written in everyday stories.



Zuzana Candigliota,
League of Human Rights lawyer

czech republic did not learn from the death on police station

In January 2012 The League of Human Rights have achieved its first verdict at the European Court of Human Rights in Strasbourg, which convicted the Czech Republic of violating the right to life. This was ruled in a case of death of a young Roma man, who in unclear circumstances fell out the window of a Brno police station and as consequence died.

What happened ten years ago? The police arrested a man suspected of robbery and

brought him to a police station in Brno – Královo pole. Firstly he spent four hours at interrogation, finger prints and a criminal charge. After that the man asked to use a bathroom, and he was accompanied to a bathroom on a ground floor by two police officers. The police version of subsequent events is as follows: during the journey back to the second floor, the subtle man broke away from the police officer, hit his shoulder, smashed the glass of a closed window with his head, jumped out and fell on concrete ground from height of eight meters. He died in the hospital the next day as a result of his injuries caused by the fall.

As much as this story sounds odd at first sight, it cannot be ruled out that this is actually what happened – for example the arrested man, while attempting to escape, did not realize the height of the window. The problem is that the subsequent investigation was led under odd circumstances too.

Criminal acts committed by the police have to be investigated by an independent institution.

According to the Strasbourg court, the Czech state has committed two violations. Firstly, the police did not take appropriate measures to prevent the incident, more importantly however they did not provide an investigation which would have been effective, impartial, independent, adequate, thorough and fast. These characteristics have to be fulfilled when dealing with a case of a person arrested in a good condition and released injured or even dead.

Many things have formally changed since the death of Mr. Pecha. An institution which was set up to investigate suspicions of the police force has changed from The Ministry of Internal Affairs Inspection to The Police Inspection and eventually to the wannabe independent General Inspection of Security forces. However, their practices have remained unchanged. Even now when facing a suspicion of police treatment, the inspection still uses erroneous processes sharply criticized by the Strasbourg court.

How to sweep suspicion of police violence under the carpet?

First, it is important to appoint the right person to the position of an investigator. It cannot be anyone truly independent of the police; on the contrary it is optimal

First, it is important to appoint the right person to the position of an investigator. It cannot be anyone truly independent of the police; on the contrary it is optimal to pass the investigation to colleagues of the suspected policemen.

to pass the investigation to colleagues of the suspected policemen. From the very beginning it is important to work with such a version which suggests least mistakes on the part of the police, for example with version of suicide without any consideration of other alternatives and possible explanations of causes of death. It is necessary to provide the policemen, both suspects and witnesses, with a plenty of time so they can prepare their testimonies and come up with an agreed and coherent version of events. Certainly do not interrogate immediately after the incident. Even if there is, despite the time provided, a case of inconsistency in the policemen’s testimonies, it is best to simply ignore them.

It is also fundamental to omit to secure some of the proofs, such as reconstruction of the crime, expert opinions, or securing and examining clothes of the victim. When it is unavoidable to request an expert opinion, after the complaints from the prosecutor, make sure to choose an expert closely connected to the police.

It is possible to annoy the victim’s family effort to supervise the investigation by not allowing them to look into the police records, preferably repeatedly.

Investigators are even cheekier

The League of Human Rights has a profound experience with the processes written above on how not to investigate possible criminal acts of the police force, and it is these practices for which the Czech Republic have been criticized by the European Court of Human Rights.

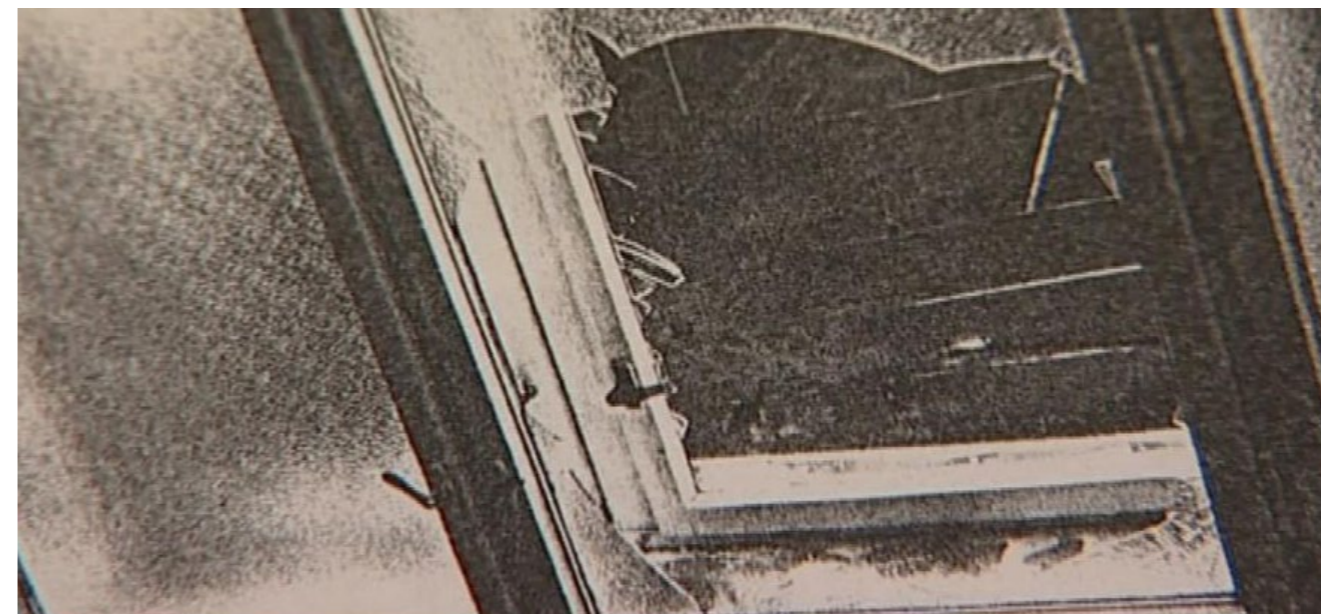
Who believes that there has been a change in police practices after the court verdict, is naive. Even though it is clear now that the processes mentioned are legally unacceptable, authorities investigating a case of suspicion of inhumane and degrading treatment still remain to use them. That can only be understood as arrogance.

Specifically, it is necessary to mention the General Inspection of Security Forces, whose members “investigated”

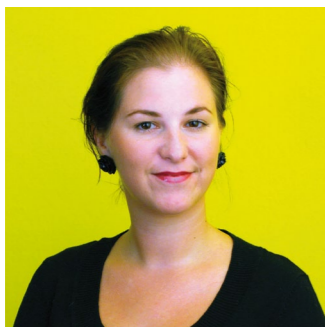
a suspicion of brutal use of police force in such a manner that at first they used technical difficulties as an excuse for not writing down a criminal charge with the victims, instead they only took the victims’ contact information to never contact them. When few months later the Inspection received a criminal charge filed through the prosecutor, the crime was without any further investigation sent to the police, stating that it has to be first determined by the police whether it was an actual criminal act. So back to square one – colleagues are again investigating on their own colleagues.

Positive and revolutionary solution

Not to finish in a completely depressive manner and to make the reader feel less like we are somewhere more to the east, I will attempt to offer one positive solution to our current negative situation. It is not necessary to change the laws, it is essential to change the personnel (especially the management) of the General Inspection of the Security Forces. Its Head should be, just like in the case of an ombudsman a trustworthy and competent personality, who does not have any connections to the police, has the will to investigate serious crimes committed by the police force and has the capability to create an effective and professional team of inspectors. Mainly however it should be a personality who has the will to respect the judiciary of European Court of Human Rights.



A photography from the investigation records



Zuzana Durajová,
League of Human Rights and MDAC lawyer

strasbourg criticizes treatment of psychiatric patients

What can happen when you go out in winter to a local shop without your pants on? If you happen to be in Brno you might end up in a sobering-up station with your arms and legs tied up by leather straps to bed for hours without being allowed to drink, go to the bathroom or call a relative. You will be left completely at will of nurses without any chance to complain.

At least that is the result of a verdict issued by the European Court of Human Rights in Strasbourg in November 2012. The Court emphasized that what has happened to Mr. Bureš in a psychiatric hospital in Brno-Černovice was not only a momentary lapse of the hospital personnel. Degrading and inhumane treatment was, at least in year 2007, a daily routine.

Lukáš Bureš, then a twenty-two year old music academy student, was returning from Italy where he was visiting his mother. In Italy he was treated by a psychiatrist, but decided that a Czech doctor would understand him better and therefore provide him with a better treatment. He did not imagine that the "treatment" he would receive in Brno will affect negatively his health, mind and career for upcoming years. From Italy he travelled by bus and while boarding he put his bag

into the luggage area, unfortunately along with his medication he was meant to take during the journey. After arrival he started to feel the negative impact of discontinuing the medicine, shivering and tingling in his fingers. Immediately he took the forgotten dose and when it did not kick in he took another and another.

Instead of the hospital he was taken to the sobering-up station

He cannot remember how he got to the counter. He only knows he wanted to buy a soda. After the cashier saw him standing there in only a sweater in the middle of winter, she called the police. Lukáš was not afraid of the police, on the contrary, he cooperated with them the whole time. He was glad they wrapped him into a blanket as he was cold. Lukáš assumed the police will take him to a doctor who will help him. Instead he was taken to a sobering-up station on a suspicion of an illegal drug abuse. At the station he was tied up to a bed without a debate, his attempts to defend were assessed as acts of aggressive behavior, which in turn justified the use of restrictive measures. Exhausted and dehydrated Lukáš fell unconscious and woke up hours later. He was alone, his wrists burnt and he was thirsty.

But none came to help. When a few days later his mother learnt that her son is in a psychiatric hospital, she immediately returned to the Czech Republic. After Lukáš, still involuntarily hospitalized, explained how he got into the hospital, she filed a criminal charge. The police despite obvious inconsistencies in medical records put the case ad acta. Therefore Lukáš and his mother turned to the League of Human Rights, who in their name filed a complaint to the European Court of Human Rights.

The Court: Tying up as a punishment was not adequate

After nearly five years the Strasbourg court has issued a verdict which has engraved itself into Czech history of human rights. For the first time in history the Czech Republic was convicted of violating the right to not be subjected to torture, inhumane and degrading treatment or punishment. The court acknowledged that a stay in the sobering-up station and tying up caused a significant stress and physical suffering. This was even amplified by the position Lukáš was in, as he was a person with a mental handicap under a strong influence

of medication and in detention. The psychiatric hospital had in this case not attempted to use any other, less restrictive measures to calm Lukáš down, but automatically moved to straps, which represent the most repressive measures in restricting one's freedom of movement. Tying up which lasted for several hours could not be according to the court considered adequate given the circumstances. Besides the fact that the state have allowed something like this happen, the court criticized the Czech Republic and its bodies active in criminal proceedings for not being able to effectively investigate, punish the offender or repair the caused damage.

It is essential to change the psychiatric system

After the years Lukaš's wounds on his wrists have healed. At that time he did not have the chance to apply to the music academy, but now he has dusted off his violoncello and begun to play again. He lives mainly alone, sometimes with his mother, he likes to travel and reads many books. The psychiatric hospital in Brno-Černovice has not accepted its responsibility for what had happened to him. Whether the hospital changed its attitude towards new patients we do not know. However, the most important message of the Strasbourg court is that in case of Lukáš Bureš it was not a failure of an individual but of the entire system.

It was a failure of the Czech psychiatric system, which is set upon repression and massive institutionalization of people with mental handicaps. This system interferes with basic human rights of a patient and provides a wide space for its abuse. The only way to prevent similar failures is the transformation of this archaic to a system of prevention, individual treatment and most importantly human dignity. ■

Lukáš Bureš



Maroš Matiaško,
League of Human Rights and MDAC lawyer

also a legally incapable person has a right to refuse hospitalization

In the Czech Republic a strongly paternalistic attitude endures towards patients with a health handicap, which is fully reflected in legal proceedings on legal capability. The proceedings, according to current legal documents, can be led without one being informed about the proceeding and it even accepts the possibility of not delivering the final decision to the concerned at all.

The Mental Disability Advocacy Center (MDAC) and The League of Human Rights have continuously been criticizing this bizarre legal practice, which in the spirit of imaginary "protection" of the state of health, removes fundamental rights and basic freedoms from a very vulnerable group of people and denies them autonomous access to justice. Furthermore, according to current Czech legislation, consent for hospitalization and possible treatment of a legally incapable person is given by their guardian. All in all, our legal documents can very easily create situations, which can look as a plot from a Ridley Scott film. And this is exactly what happened to Mr. Sýkora from Brno, whose case reached the European Court of Human Rights.

In year 2000, Mr. Sýkora was made legally incapable on a proposal of the City of Brno, which was also appointed as his guardian. The proceedings on legal capability took place without his presence, the Court of the City of Brno did not summon him, neither

did it deliver the decision on removal of his legal capability. A civil service officer was appointed as a prosecutor in the proceeding, however she did not attend the proceeding and did not defend Mr. Sýkora's rights. Mr. Sýkora found out about his legal incapability accidentally a year later and immediately called for an appeal to the Regional Court in Brno. This court allowed his appeal, cancelled the verdict and the entire case was sent back to the City Court.

The story repeats

For unclear reasons the entire situation was repeated at the City Court in Brno. The court again did not summon Mr. Sýkora to the proceeding, he was again made legally incapable and the decision was not delivered to Mr. Sýkora. The European Court of Human Rights has therefore stood up against this paternalistic attitude and emphasized the right of a mentally handicapped person to participate in a proceeding on their legal capability. The Court reproached the Czech Republic for not personally familiarizing with Mr. Sýkora and not delivering him the legal decision. The Court of the City of Brno has thus violated the European Convention and the right to a private life of Mr. Sýkora.

Mr. Sýkora learnt that he was made legally incapable for the second time in November 2005 when he was hospitalized against his will at the psychiatric hospital in Černovice. A situation had arisen when his guardian, whom he never met, gave consent for his hospitalization. Mr. Sýkora was considered as a voluntary patient, even though he fundamentally disagreed and he was not provided with any protection from the state authorities.

Illustrative photo



To place a person into psychiatric hospital only a guardian's signature is needed

This process had a legislative support, because for legally incapable persons their guardians give consent for hospitalization and treatment in their stead. Therefore a legal fiction existed whereby guardian's consent was given, hospitalization was voluntary and it was not considered a violation of personal freedoms. Mr. Sýkora had to suffer through months of hospitalization at a psychiatric hospital, only because his guardian signed a prefilled form. This has been criticized by the European Court of Human Rights, which claimed that in case of Mr. Sýkora his personal freedoms were removed. According to the court, consent given by a guardian cannot automatically substitute for consent of the person under guardianship. This story has a happy ending. Mr. Sýkora does well in personal life. Concerning legal documentation some of the deficiencies will be removed by a new civil law, which will not allow a person to be made legally incapable and if there is a limitation, the judge will have to personally familiarize themselves with the person concerned. Equally, thanks to the initiative of the Ministry of Justice, which has realized the gap between Czech legal documentation and the international standard of human rights protection, the civil code of procedure was amended. The amendment has among other things prevent people under guardianship from being hospitalized based on a consent of a guardian. The League cooperated with the Ministry on the amendment and colleagues heard the League out and accepted a number of our comments. We believe that thanks to this work our society will be somewhat more just towards people with a health handicap. ■



questions for...

...Eliška Wagnerová, senator and emeriti vice-chairman of the Constitutional Court

The League of Human Rights has reached three significant verdicts from the European Court of Human Rights. What do you think makes these verdicts so outstanding?

Thanks god for these. I welcome the verdicts because there is so little of these meritorious ones. Most of the cases which the Czech Republic have been losing in Strasbourg were of a procedural character and lots of it was only about a competition of appeals, constitutional complaints, deadlines and so on. These are technical issues. Of course, the state should give some thought even to that and change things so it does not happen. But these concern basic tangible rights. Lets look at them.

The case of Mr. Pecha is interesting as the suit was entered by his family and yet the court reached a violation of the victim's right to life. Additionally, the court did not interpret the right to life as a negative right, meaning that the state has to respect this right, but it interpreted the right in a positive sense. It means that, the state has responsibilities which arise from people's rights to life - that is to take adequate measures in order to preserve that right.

Some people, for example people around Mr. Joch (former adviser to the Prime Minister Mr. Nečas) interpret basic rights only as negative rights. They don't believe that these rights lead to a responsibility of the state. However in this case, the Strasbourg court has clearly inferred these responsibilities and that is a great contribution of this case. I believe this should lead to a deep contemplation and specific

consequences. You know, not everything is solved legislatively. This specific case shows that it is not only a matter of legislative, but also a matter of behavior of all involved in the case – the police officers and investigators. All of them have to act in such a way which protects basic human rights, including the right to life.

Can the newly established General Inspection of Security Forces help with investigation of similar cases?

Sure, it certainly is a move forward to increase the control. Nevertheless I believe the police officers should be trained to realize what their responsibilities are and which way to think. I am convinced the policemen involved had no idea they should go as far as to consider the possibility that the young man might want to commit a suicide and thus to protect him from falling out the window.

Another two cases concerned rights of people with a handicap. In the first the court tackled an issue of maltreatment under an involuntary hospitalization and in the second the issue of decisions on legal incapability.

I welcome these verdicts as well and they are encouraging. I have to say that I led my work at the Constitutional Court to that very direction. I have interpreted the case of Mr. Bureš, which the European Court has assessed as inhumane and degrading treatment, as an attack on human dignity. I think that human dignity is a value upon which the entire law structure should be built. That is better shown on those people who are the weakest. That is the people who are placed to psychiatric hospitals or made partly or even completely legally incapable. Which is a relict and it could be questioned whether it is an institute which can be constitutionally approbated. I myself have contemplated this in one of my findings and I criticized that in our country there are too many people made legally incapable and relatively few people who are partly limited in their legal capability. Even the partial limitation itself is done in a very problematic and simplistic way. Concerning the last case, I would argue that the decision points to loopholes and a complete inappropriate procedural treatment of people who are involved in a legal capability process. The critique of the Strasbourg court is directed in the right way. In that direction the Czech Republic should quickly change its procedural law.

What are the chances that these verdicts will bring an effective change and not only increase the state expenses on fines? For example this year we have a five year anniversary of the verdict of the European Court in the case of D. H. according to which in the Czech Republic an indirect discrimination against Roma children occurs by assigning them into special schools and until this day nothing significant has changed.

These years' verdicts, including the one on integrating Roma children, are verdicts which do not resonate with the public opinion. Let's admit that. The general public is not interested in fates of Roma children or people who are limited in their legal capabilities. Unfortunately the majority of the Czech society is that way. The League of Human Rights is one of the very few organizations which put pressure on politicians. And in the past a very popular minister of justice has stated that instead of changing certain laws in this country he'd rather pay a fine to the Strasbourg Court. Unfortunately that is the way it is.

Nevertheless I believe that if more verdicts like these could be achieved at the European Court and if the Czech Republic would be repeatedly fined, more and more the pressure would appear. Because that would cost us money. In a situation when it's about money, everybody understands. Unfortunately that is how Czech journalists think.

Therefore it cannot be relied on the support of the public to move things forward. These are simply questions, which represent weak concerns and the public is not interested – the economy is not failing, life goes on. On its own, these concerns will not stand for themselves and I repeat the work of non-governmental organizations it is necessary to rouse the public.

Why do courts have different views on human rights?

Firstly, an understanding still prevails which has been rooted, that the courts ought to apply and interpret the law, which focuses on the particular issue and thus should be applied without the concern of human rights. They do not look them up. The constitutional court has said this many times and I have emphasized that in cases which go to courts, first the judges need to ask the question: "What basic right is on the side of whichever participant?" This is important to bear in mind and interpret the law regarding



basic rights which can be at stake and which can be influenced by a certain type of verdict. If the courts do not realize this, it could cause a problem. But that is not enough. The courts must also consider, in a case they face a competition of basic rights on both sides, how to interpret the law. There the Constitutional court has borrowed a formulation from Germany, claiming that both these rights have to be maximized and if that is not possible to show why one of them is favored.

If it is a case of criminal procedure, it is simpler in the sense that on one side it is not the basic rights but the state. But then a public interest can play a significant role. In my opinion, not every public interest should limit the basic right, but only those which are protected by a constitutional order. Why? Because if we allowed any public interest, not mentioned in the constitutional order, then basic rights could be subjected to any limitation and it could be said to their refutation.

The courts have not however embraced this kind of thinking yet. Some of the better judges at least respect the judiciary of the Constitutional Court and in the better case the judiciary of the Strasbourg Court as well. As an example we can look at a case, which outraged me. It is the decision of the Highest Court in the case of Mr. Smetana, the "antennae driver". When deciding about impartiality of the judge chairing the case, the continual Strasbourg judiciary was completely ignored. According to the convention,

perception of the judge themselves is not sufficient, but also requires an external observer. If there are things which could be a reason for trepidation. And here, I am sorry, when the judge is a wife of the aggrieved, it is simply a reason which should make the judge, without asking the accused, withdraw from the case and say that she cannot be considered impartial, even though she might feel otherwise and does it to protect the good name of judiciary.

What is the situation in seeking human rights in courts in the Czech Republic compared to other countries? Is it getting better more quickly?

That is an assessment I do not dare to make, because I do not know the situation in other countries that well. I would say that the Czech Republic is not doing particularly badly, if we look at countries like Russia or other post-soviet countries or even Hungary. But you know, it is too slow for my liking.

Which area of human rights would deserve more attention from experts and the public?

These days a widely discussed issue is the freedom of speech in connection with the internet and social networks. Of course that is not settled in any country in the world. What should get more attention though is the question of privacy protection. Czech politics puts

greater emphasis on order and security than respect for privacy. This could pay off badly given that technology progresses fast. And there are a great number of things which present a threat already and we should actively face them. For many people though security is a bigger concern than protection of privacy and then it might be too late to do anything. Privacy is latently a great topic. Recently, I have read that a regulation is being prepared on European level saying that from 2015, every car has to have a device which turns on only in a case of an accident and it will itself report what and where happened. Which means that the device will contain other data, just like mobile phones. And that is very, very exploitable. Or another example – recently I received a letter which was concerning recording devices for paying tolls on highways. The author virtually says that from what is being recorded a great amount of information is exploitable and it should be thought how to use this information. I nearly fainted when I read this. Toll gates should have only one purpose and now the range of purposes should unpredictably extend to all sorts of things. All the central registers mean a great danger for misuse. Ultimately the Constitutional Court has touched on this in its last verdict on public service when it warned that central registers are not entirely alright. Attacks on privacy are now the most massive in the history of our civilization. ■

liga's people

thanks to you we can...



...answer patients' questions



...integrate all children into ordinary schools



...advocate clients in courts



...help to employ people with disabilities



please support our work with a regular or one time donation at www.lidiligy.cz

about us

The League of Human Rights

We are a non-profit organization which has for ten years been upholding rights and freedoms of Czech citizens. We help people to know their rights and to actively enforce them. In the long term, we aspire for system changes to improve quality of life. Our vision is a free, just and engaged society for all.

acknowledgment



*Petr Jeřábek,
donations co-ordinator*

Dear friends of the League,
I would like to thank all of you for your help and support of our work in the year 2012. For ten years we have been fighting for better conditions in the Czech Republic, we help the weaker, we point at problems and we create system solutions to improve the lives of all of us. Thanks to you our voice has power.

Thank you.

Imprint

EXTRA LEAGUE PAPERS
Issue 7, December 2012

Issued by:

The League of Human Rights
Burešova 6, 602 00
Brno, IČ: 26600315
Register MK ČR E 19103

Contact:

The League of Human Rights
Burešova 6, 602 00 Brno
tel.: +420 545 210 446
fax: +420 545 240 012
e-mail: brno@llp.cz
www.llp.cz

Editor and typography:

Dan Petrucha

Graphics:

Nikola Spratek Poláčeková

Title page picture:

Aleš Čuma

EXTRA League Papers are financially supported by Open Society Foundations.



The League of Human Rights is supported by:

