Chapter 16

Human Rights Dimension of the Czech Foreign Policy

THE YEAR OF THE UNDERUSED POTENTIAL

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Executive Summary: In 2017, the Czech Republic went through the third round of the Universal Periodic Review and, for six months, it assumed the chairmanship in the Committee of Ministers of the Council of Europe, the main European human rights organisation. These events might help promote the Czech human rights foreign policy both inside and outside the country. Yet, they were largely overshadowed, first, by the crisis in the government coalition, and, later on, by the parliamentary elections. The elections, resulting in the victory of Andrej Babiš's ANO and the defeat of virtually all the traditional political parties, heralded potential changes in the Czech human rights foreign policy. Yet, since so far, ANO has been rather ambiguous in its approach to human rights, it is not easy to predict what direction such changes may take.

BACKGROUND AND POLITICAL CONTEXT

The main conceptual documents from which the Czech human rights foreign policy drew in 2017 had been adopted in 2014–2015 by the left-centrist government of Bohuslav Sobotka. The Policy Statement¹ adopted by this government on 12 February 2014 confirms that "the promotion of human rights [...] will be part of the foreign policy of the Czech Republic. In this, the Government starts from the assumption that human rights include both civil and political, and economic, social and environmental rights and that it is possible to effectively promote them only in an atmosphere of mutual respect and dialogue." Multilateral forums, especially the UN and the EU, offer the main platforms for an active human rights foreign policy. The promotion of a broad conception of human rights, encompassing all of the three generations of rights, and an emphasis upon the role of dialogue in promoting human rights are the characteristic features of the Sobotka government's approach. As such, this approach differs from that of the previous governments, which had primarily focussed on

civil and political rights and had seen these rights as non-negotiable and non-discussable.

On 13 July 2015, the government adopted a new Concept of the Foreign Policy of the Czech Republic.² It resulted from an inclusive process of public consultation, which, however, was also accompanied by a highly escalated public debate.3 The Concept places the promotion of human rights and democracy together with development co-operation and humanitarian assistance under a broader area of human dignity, which is, in its turn, presented as one of the three priorities of the Czech foreign policy alongside security, and prosperity and sustainable development. The Concept notes that "Czech foreign policy is based on the principles of universality and the indivisibility of human rights, within the scope of which civil, political, economic, social, and cultural rights are crucial for a dignified existence". It also stresses that "human rights and democracy can be effectively supported in a situation where mutual respect and dialogue exist, but cannot be abandoned even in less favourable circumstances". It further lists several topics which should be of priority, namely the support for human rights defenders and the support of vulnerable and marginalised groups such as women. In the Concept, multilateral forums, especially the UN, the EU and the Council of Europe, are again identified as the main platforms for an active human rights foreign policy.

The priorities, goals and instruments of the Czech human rights foreign policy are further elaborated upon in the *Human Rights and Transition Promotion Policy Concept* adopted by the Ministry of Foreign Affairs on 1 September 2015.⁴ The Concept builds on the idea that "democracy, the rule of law and the protection of human rights are inseparable and mutually reinforcing principles that contribute to ensuring human dignity. Their promotion and realisation belong among the main priorities of the Czech Republic's foreign policy". According to the document, the Czech human rights foreign policy should be proactive and should have three characteristics – coherence, credibility and openness. The Concept rejects selectivity and double standards and stresses the importance of a human rights dialogue to be conducted "both bilaterally and multilaterally, both with those embracing the principles of liberal democracy, and with those taking another path, both with governments and with civil society".

The Concept lists the main thematic, territorial and domestic priorities of the Czech human rights foreign policy. The thematic priorities have been, with one exception, taken over from older policy documents. They are the following: the support of international human rights mechanisms and human rights mainstreaming; the support of civil society, including human rights defenders; the promotion of the freedom of expression and access to information, including the freedom of media; the support of equal and full political and public participation; the support for the rule of law; the support of equality and non-discrimination; and the promotion of human rights in the areas linked to employment and the environment. The last priority is the only one which has been newly added and it is supposed to reflect the broader conception of human rights. Yet, this priority is defined in much vaguer terms than the other ones, which suggests that the will to embrace the broader conception was not accompanied by concrete ideas as to what this should entail in practice.

Territorial priorities are set only for the area of transition co-operation, where the Czech Republic wants to focus on "countries which are close to it culturally, geographically, historically or otherwise. Primarily [... those] in Eastern Europe and the Western Balkans". The list of such countries is not closed and can be changed depending on the interests of the Czech Republic and the situation in third States. The same applies to the promotion of human rights, for which the Concept merely notes that at the multilateral level, special attention should be paid to countries under survey by the UN Human Rights Council, and at the bilateral level, the selection should reflect strategies for individual regions. The domestic priorities have been included in the document for the first time in a reflection of the assumption that "the self-reflection of one's own state of the protection of human rights [...] is a necessary condition for a credible policy of promotion of human rights in the world". They encompass, for example, the Czech Republic's participation in the Universal Periodic Review and the implementation of the decisions of international human rights bodies such as the European Court of Human Rights.

The Concept also identifies several instruments that the Czech human rights foreign policy intends to use. They are, again, of three types. The first set of instruments relates to the activities at the multilateral forums. Here, special emphasis is placed on the membership in the UN Human Rights Council. The second set, pertaining to bilateral relations, includes consultations with like-minded States and tasks ensured by embassies such as the preparation of background materials for the Universal Periodic Review or the contacts with local civil societies. The third set of instruments, the most original one, is the Programme of Transition Co-operation, which will be introduced later.

The Czech Republic's human rights foreign policy did not belong among the most important topics discussed prior to and during *the elections* to the Chamber of Deputies held in October 2017.⁵ Yet, since the question of the future foreign policy orientation of the country was an issue in the elections, virtually all the political parties (with a few major exceptions) included a section related to this orientation in their election programmes. The main one which failed to do so was, quite surprisingly, the party which had pushed through the revision of the Czech human rights policy in 2014–2015, the Czech Social Democratic Party (ČSSD).⁶ Also silent on this area were the Civil Democratic Party (ODS),⁷ the Communist Party of Bohemia and Moravia (KSČM)⁸ and Freedom and Direct Democracy (SPD).⁹

Other parties were more outspoken with regard to the issue. TOP 09 promised to "bring the Czech Republic back to the position of a leading promoter of human rights, democratisation and transition policy in the world", specifying that "in the promotion of human rights, it is mainly civil and political rights, such as the freedom of expression, which are crucial for us". ¹⁰ TOP 09 would thus promote a return to the rather narrow understanding of human rights that the Czech Republic had embraced prior to 2015. ANO noted that it would "unequivocally orient itself toward the free and democratic world, while the promotion of human rights will remain an important pillar of the activities of the Czech diplomacy". ¹¹ In a similar vein, the Mayors and Independents (STAN) indicated that "the fundamental starting point for the Czech Republic's foreign policy will be the emphasis upon the respect for human rights and

democratic principles in the world". ¹² Certain parties commented only on particular aspects of human rights foreign policy. The Pirates indicated their support for providing both symbolic and concrete help to dissidents in authoritarian countries and for a free and anonymous access to the internet all over the world. ¹³ The Christian Democratic Party (KDU-ČSL) stressed the need to protect Christians prosecuted in the Middle East, Northern Africa, North Korea and China. ¹⁴

The election programmes reflect the division of the Czech political scene into several strands that could be labelled as activist internationalists, moderate internationalists, autonomists and pragmatists. Activist internationalists, currently represented by TOP 09 and, possibly, KDU-ČSL, see the promotion of human rights as an utmost goal of the Czech foreign policy. They adhere to a narrow conception of human rights limited to the first generation rights. Moderate internationalists also recognise the importance of human rights foreign policy but are ready to make concessions, if they believe this is necessary to reach other important goals. They embrace a broader conception of human rights, as reflected in the 2015 Policy Concepts. This strand used to be represented by ČSSD, which, however, seems to be less interested in the agenda now. The election programmes would suggest that ANO and STAN could replace it in this respect, but it remains to be seen how far the election rhetoric corresponds to the real orientations of these two relatively new political entities. As for autonomists and pragmatists, they both take a critical stance with respect to human rights foreign policy. The former do so on account of the value they attach to the principle of sovereignty; the latter because they favour other, primarily economic and security interests. KSČM would represent the former strand, and SPD and, arguably, ODS, the latter.

The presence on the Czech political scene of several strands differing in their outlooks on human rights foreign policy reveals that the agenda is both politicised and polarised. In this publication, politicisation denotes the presence of an agenda in the political and public space, and polarisation pertains to the level of consensus over the importance and parameters of the agenda. Over time, the degree of politicisation and polarisation of human rights foreign policy has varied. In the first years after the creation of the Czech Republic, there was a widespread consensus that the agenda in its narrow understanding was very important for the Czech foreign policy. Since the mid-2000s, however, this consensus has been gradually eroded and the four strands described above have asserted themselves in the public space. The differences between them were particularly well visible at the time of the revision of the Czech foreign policy in 2014–2015. Since then, the degree of politicisation and polarisation has somewhat dropped but human rights foreign policy remains a relevant topic of the political debate, which no longer secures a consensus across the political scene.

AGENDA AND EVENTS

The agenda of the Czech human rights foreign policy remains, despite the changes in the conceptual documents, relatively constant. It is conventionally centred on four main areas: a) the participation in the activities of international human rights bodies;

b) the implementation of international human rights obligations; c) the pursuance of thematic, territorial and domestic priorities; and d) transition co-operation. In all these areas, the Czech Republic performs as a pro-active actor which mostly operates in a co-operative mode.

Participation in the Activities of International Human Rights Bodies

From 19 May to 15 November 2017, for the second time in its history, the Czech Republic assumed the chairmanship of the Committee of Ministers of the Council of Europe. The chairmanship pursued five main priorities: protecting human rights of persons belonging to vulnerable or disadvantaged groups and promoting gender equality; strengthening the rule of law; supporting local and regional democracy and public administration reforms; promoting human rights education and linguistic skills; and co-operation and coordination with other international organisations. 15 These priorities largely overlap with the thematic priorities of the Czech human rights foreign policy. During the chairmanship, the Czech Republic organised more than twenty events related to the priorities. Among them the high-level international conference on the binding effect of judicial decisions held in Brno in June, and the international expert conference titled Immigration Detention of Children: Coming to a Close?, organised in Prague in September, attracted particular attention among experts and in the civil society. The chairmanship was, unfortunately, accompanied by the crisis in the government coalition and, at one point, by the announced, albeit finally not deposited, demission of the government of Bohuslav Sobotka.

Within the UN, the Czech Republic pursued the campaign for its re-election to the main UN human rights body, the UN Human Rights Council. The Council was established in 2006 and since then, the Czech Republic has been its member already twice: in 2006 and in 2011-2014. It now runs its candidature for the years 2019-2021, although the campaign seems to be less active or at least less public than in the 2000s. Even as a non-member the Czech Republic actively followed and contributed to the work of the Council as an observing State. In 2017, the Council held three regular¹⁶ and one special session.¹⁷ The Czech Republic intervened in the debates on the human rights situation in certain countries (Belarus, Nigeria, Sri Lanka, Syria, etc.) and on concrete human rights issues (prevention of torture, human rights defenders, etc.). It also took an active part in the Universal Periodic Review of other States. In February, the Minister of Foreign Affairs Lubomír Zaorálek addressed the Council. He reminded it of the adoption of Charter 77, demonstrating on this event, inspired by the entry into force of the International Covenant on Civil and Political Rights, the importance of international human rights instruments. 18 In September, the head of the Permanent Mission in Geneva Jan Kára recalled the initiative on the equal participation in political and public affairs that the Czech Republic together with several other countries had started in 2013. Since 2016 the guidelines for this issue have been drafted by the UN Office of the High Commissioner for Human Rights and are to be adopted by the Council in 2018 or 2019.

Implementation of International Human Rights Obligations

In 2017, the Czech Republic went through the third round of the *Universal Periodic Review* (UPR). This mechanism, established in 2006, takes place within the UN Human Rights Council. It is peer-reviewed, which means that the human rights record of a State is assessed not by the Council but by other States. The review is universal because all countries of the world are subject to it, and it is periodic because it occurs on a regular basis every four to five years. The Czech Republic has gone through the UPR in 2008, 2012 and 2017. In August 2017 the Czech Republic submitted its third national report, ¹⁹ which was complemented by a compilation of UN information²⁰ and a summary of stakeholders' submissions. ²¹ The consideration of the report took place in Geneva on 6 November 2017²² and was assisted by the so-called *troika* (three), which included Brazil, Indonesia and Nigeria. Eighty-one delegations made statements during the consideration.

As the outcome of its UPR, the Czech Republic received 201 recommendations.²³ Most of them pertain to long-term human rights issues that the Czech Republic struggles with, such as the integration of the Roma minority, equality among men and women, or the ratification of human rights instruments to which the Czech Republic has not become party yet (e.g. the 1990 *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* and the 2008 *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*). There are, however, some new human rights challenges that were identified in the recommendations too. They encompass the rising Islamophobia, the increase in hate speech, and the lack of respect for the rights of migrants and refugees in the country. The Czech Republic expressed its position on the outcome of the UPR in spring 2018. It decided to accept 178 of the 201 recommendations.

In 2017, the Czech Republic submitted to the UN the *Initial Report on the Imple*mentation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography, which was ratified by the Czech Republic in 2013.24 The report will be reviewed by the UN Committee for the Rights of the Child in 2018 or 2019. The search portal of the UN treaty bodies does not register any individual complaints against the Czech Republic that would be considered in 2017.²⁵ Over the same period, the European Court of Human Rights in Strasbourg adopted six judgments in individual cases against the Czech Republic. Three were substantive in nature, and in all of them, the Court found no violation of Article 6 of the European Convention of Human Rights (the right to a fair trial).²⁶ It should also be mentioned that on 23 October 2017, the Government adopted a new National Action Plan on Business and Human Rights.²⁷ The plan, designed for the period 2017-2022, focusses on all three pillars of the UN Guiding Principles on Business and Human Rights, which pertain to States' existing obligations to respect, protect and fulfil human rights; the role of business, which is required to comply with all applicable laws and to respect human rights; and the need for rights and obligations to be matched with appropriate and effective remedies when breached.

Pursuance of Priorities

The Czech Republic has three categories of priorities – thematic, territorial and domestic ones. The thematic priorities listed earlier found their reflection in the priorities of the Czech chairmanship in the Committee of Ministers of the Council of Europe, in the interventions of the Czech Republic in the UN Human Rights Council and/ or in the Czech Republic's bilateral relations. The territorial priorities have recently become more diverse than in the past, when the focus lay mostly on communist or post-communist countries such as Belarus, China or the DPRK. In 2017 the Czech Republic commented on the human rights situations in numerous countries, including Belarus, the Democratic Republic of Congo, Iraq, Nigeria, the Russian Federation, South Sudan and Syria. The domestic priorities in 2017 were primarily linked to the third round of the UPR procedure and to the implementation of the decisions of international human rights bodies, especially the European Court of Human Rights.²⁸

Transition co-operation is a specific part of the Czech human rights foreign policy aimed at promoting democratic changes in non-democratic or newly democratic States. The territorial focus lies, as the Human Rights and Transition Promotion Policy Concept indicates, on "countries which are close to [the Czech Republic] culturally, geographically, historically of otherwise. Primarily [... those] in Eastern Europe and the Western Balkans." These countries are Armenia, Burma/Myanmar, Belarus, Bosnia and Herzegovina, Cuba, Georgia, Iraq, Kosovo, Moldova, Serbia and Ukraine. The main instrument of the transition co-operation is the *Programme of Transition* Policy.²⁹ The programme consists of projects carried out by non-governmental organisations from the Czech Republic and from one of the priority countries falling under the thematic priorities of the human rights foreign policy. The one- to three-year projects are selected annually on the basis of an open public call of the Ministry of Foreign Affairs and funded from the budget of the Ministry. The budget allocated to twenty-six projects starting in 2018 was 38.9 million CZK. 11.6 million CZK were allocated to seven projects which had started in 2016 or 2017. Additionally, a smaller budget was used to finance small-scale projects selected by Czech embassies in the priority countries (material aid to human rights defenders, etc.).

IDENTIFICATION AND CHARACTERISTICS OF KEY ACTORS

The actors involved in the formation and implementation of the Czech human rights foreign policy remain constant over the years. The main actor is the *Ministry of Foreign Affairs*, which, since 2007, has had a special *Department of Human Rights and Transition Policy*. In 2017, the department had 13 staff members and was headed by David Červenka. Other sections of the MFA active in this area are the *Common Foreign and Security Policy Department*, the *International Law Department*, the *UN Department* and several territorial departments. Embassies of the Czech Republic in third countries and permanent missions to international organisations (in New York, Geneva, Strasbourg and Vienna) also play a role. The Minister of Foreign Affairs in Sobotka's government, Lubomír Zaorálek (ČSSD), was involved in the debates about

human rights foreign policy in the first years of his mandate but later on, possibly in reaction to the high polarisation of the agenda in 2014–2015, the disputes within the government coalition, and the then upcoming elections, he withdrew from the area. In December 2017, Zaorálek was replaced by Martin Stropnický (ANO), who confirmed that the promotion of human rights should remain one of the priorities of the Czech foreign policy.³⁰

In addition to the MFA, other state institutions contribute to the formation and implementation of human rights foreign policy. The *Ministry of Justice* hosts the *Office of the Government Agent before the European Court of Human Rights,* which, since 2002, has been led by Vít Schorm. In 2017 the mandate of this office was extended to encompass the representation before UN treaty bodies. The *Ministry of Interior* is responsible for the asylum and migration policy, which, however, has given rise to serious human rights concerns ever since the beginning of the migration crisis. Until recently, the *Minister for Human Rights, Equal Opportunities and Legislation* and the *Government Council for Human Rights* have focussed on human rights in the Czech Republic, including the implementation of international human rights obligations. At the end of 2017, despite the criticism of the human rights community,³¹ the former position was abolished by the incoming government of Andrej Babiš. This suggests that ANO's approach to human rights foreign policy might not be as uncomplicated and forthcoming as ANO's election programme would suggest.

Human rights foreign policy has traditionally benefited from an active involvement of the *non-state sector*. Non-governmental organisations were consulted during the drafting of the new conceptual documents in 2014–2015. In 2017, they assumed their standard role of watchdogs monitoring both the human rights situation within the country and human rights-related activities carried out outside it. NGOs are particularly important in transition co-operation, where they serve as the authors and implementers of the projects funded from the Programme of Transition Policy. Since 2008 NGOs which are involved in the promotion of human rights and democracy both inside the Czech Republic and, especially, outside of it have had a common platform called DEMAS (the Association for the Promotion of Democracy and Human Rights) at their disposal. DEMAS coordinates the activities of its members with respect to the state authorities, including through diplomacy, and helps advertise their events and publications.

MEDIA AND PUBLIC SPACE

In 2017, the Czech human rights foreign policy attracted only limited attention from the media, the academic community and the public. The media informed about the main relevant activities, such as the chairmanship in the Committee of Ministers of the Council of Europe³² or the outcomes of the Universal Periodic Review.³³ However, they failed to provide any deeper analysis of these events or of the Czech human rights diplomacy as a whole. Due to that the public also remained rather passive, although similarly to the previous years, some events did not go unnoticed. This was

particularly the case with the festival of human rights documentary films *One World*, which has been organised since 1999 by the biggest Czech human rights NGO *People in Need*. The festival always starts in Prague and then travels around the Czech Republic. Tens of thousands of people attended the festival in 2017.³⁴ Also, throughout 2017, the academic community, especially the AMO, the Institute of International Relations, the University Centre for Human Rights at the Faculty of Law of Charles University in Prague and the Centre for Human Rights and Democratisation at the Faculty of Social Sciences of the Masaryk University in Brno, continued to provide analyses and studies of various aspects of the Czech human rights foreign policy, and human rights more broadly.³⁵

CONCLUSION AND RECOMMENDATIONS

The year 2017, with the Czech chairmanship in the Committee of Ministers of the Council of Europe and the third round of the Universal Periodic Review, might have become quite a special year for the Czech human rights foreign policy. This, however, did not truly happen. The two events and, even more so, other activities of the Czech human rights diplomacy went largely unnoticed in the country, and the Czech Republic also failed to use its full potential to promote its human rights activities at the international level. This had mostly to do with the internal developments in the Czech Republic – the crisis in the government coalition before the summer holidays, and the elections to the parliament and the subsequent discussion about a new government during the second part of the year.

The elections at the same time confirmed that the human rights foreign policy is not an object of consensus, but that the Czech political scene hosts several strands (activist internationalists, moderate internationalists, autonomists and pragmatists) differing in their views on the role of human rights foreign policy and on the concept of human rights more broadly. In 2017, the main strand that partook in the formation and implementation of the human rights foreign policy was that of moderate internationalists, which was represented by ČSSD. At the moment it is difficult to predict whether, with ANO as the winner of the parliamentary elections, the situation will remain constant or change, as ANO sends out ambiguous signals as to what its view on human rights diplomacy is.

Based on the analysis provided in this chapter, the following recommendations can be formulated. First, the Czech Republic should not abandon the broad conception of human rights. This conception reflects the holistic nature of human beings and it makes up a part of the European legal tradition. Secondly, the Czech Republic should continue to focus on the thematic priorities identified in the 2015 Concepts. It has a long-term expertise with respect to most of them. Thirdly, the Czech Republic should be more active in promoting its human rights foreign policy both within the country and outside it. It engages in many valuable activities, but this is not always well-known among the Czech public, or in the international community.

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- Since 2015, there has been a special Collegium of Experts for the Implementation of the Judgments of the European Court of Human Rights established by the Ministry of Justice, which includes members from various state organs and the academic community.
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HUMAN RIGHTS DIMENSION OF THE CZECH FOREIGN POLICY

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