

# Hate speech on the Internet and decision-making of Czech courts

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2020 survey conducted by the Public Defender of  
Rights

(abridged version in the English language)

# Introduction

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For several years now, the Public Defender of Rights has been focusing on the issue of hate speech – various forms of hate-motivated verbal and non-verbal attacks directed against certain vulnerable groups of the population.

In 2019, the Public Defender of Rights decided to conduct a survey on decision-making of Czech courts in criminal proceedings concerning hate speech on the Internet. Apart from the data included in this summary, the full report in the Czech language also contains an overview of laws and regulations and a qualitative content analysis of court decisions; the full report is available on the website of the Public Defender of Rights.<sup>1</sup>

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<sup>1</sup> Specifically, it can be accessed in the website's "Diskriminace/Výzkum" (*Discrimination/Research*) section: [https://ochrance.cz/fileadmin/user\\_upload/ESO/47-2019-DIS-PZ-Vyzkumna\\_zprava.pdf](https://ochrance.cz/fileadmin/user_upload/ESO/47-2019-DIS-PZ-Vyzkumna_zprava.pdf).

# Summary

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1. According to the information received from the presidents of individual courts, district courts issued decisions in a total of 47 cases concerning hate speech on the Internet over the monitored period from 2016 to June 2019. In the respective period (2016 to mid-2019), only a minority of district courts (25 out of 86, i.e. 29%) dealt with cases concerning hate speech on the Internet. Furthermore, for most of these twenty-five courts, this constituted a rare experience. Prosecution of hate speech in the on-line environment often follows on from specific cases publicised in the media and does not seem to be a result of regular and systematic monitoring of illegal on-line content. The number of court decisions issued in relation to hate speech on the Internet is clearly growing year-on-year.
2. In most cases (60% of the decisions), hate speech dealt with by Czech courts was directed against whole groups of people defined based on their nationality (*národnost*), ethnicity, skin colour, religion, sexual orientation, etc. In approximately a third of the decisions, these expressions were aimed against a specific person or a group of concrete persons. Roma people and Muslims (49% and 23% of decisions, respectively) were the most common victims.
3. In almost all cases concerning hate speech heard by Czech courts, the perpetrators were male (94% of cases), with no indications of being members of a minority (94%) and with no history of convictions (91%). Most incidents (83%) adjudicated by the courts took place on Facebook.
4. Where a case concerning online hate speech was heard before a court, the perpetrator was convicted, at least in the first-instance proceedings: as many as 43 out of 47 cases (91%) resulted in conviction of the perpetrator. The most frequent punishment (27 decisions) was a suspended sentence (10 months on average) with a probationary period (24 months on average), followed by a fine (10 decisions; CZK 15,800, i.e. approximately EUR 640, on average) with specification of an alternative sentence (two months on average). In some of the cases, the courts also ordered community service or forfeiture of a thing.
5. The most common cases involved *incitement to hatred against a group of persons or to restriction of their rights and freedoms (Section 356 of the Criminal Code)* – the courts qualified the acts committed in this way in nearly half of the decisions analysed (49%). In about one fifth of the decisions, the offence was *defamation of a nation, race, ethnic or another group of persons (Section 355)*, *violent criminal offences against a group of persons and against an individual (Section 352)* and *manifestation of sympathy for a movement aiming to suppress personal rights and freedoms (Section 404)*. Other offences were less frequent.
6. For victims of crime, hate speech on the Internet often becomes a heavy burden and sometimes even a source of fear. People who publicly take a clear stance against perpetrators of hate speech or speak up for its victims often end up being targeted themselves in an exceptionally aggressive manner.

7. The fact that the data are incomplete, difficulties encountered in finding the decisions as well as a lack of uniformity across registers not only complicated work on this survey, but also prevent preparation of an appropriate analysis and adoption of solutions at both executive and legislative levels.

# Examples of court decisions

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## Status of the aggrieved party in criminal proceedings<sup>2</sup>

In November 2016, the Facebook profile of singer Radek Banga was flooded with hundreds of hateful and racist posts and death threats. All this in reaction to the singer's attitude expressed during the 2016 edition of Český slavík (*Czech Nightingale*) awards, a traditional Czech poll awarding the nation's favourite singers and bands. When Ortel won the award for the second most popular band (with its lead singer, Tomáš Hnídek, winning the award for the second most popular male singer), Radek Banga left the ceremony in protest. Some of Ortel's lyrics are seen as xenophobic, while the band itself is often associated with members of the far right.

The public prosecutor indicted one of the perpetrators for the criminal offence of manifestation of sympathy for a movement aiming to suppress personal rights and freedoms pursuant to Section 404 of the Criminal Code<sup>3</sup>. The criminal prosecution was conducted in respect of the following statement:

*"Yeah, Nazism used to be applauded like this, now we just need to spread it as much as we can, 'cause such dickheads, blacks, Jews etc... must leave our motherland, white motherland, Europe, and must fuck off, or better, should be gassed like before -:)."*

The District Court in Kladno found the perpetrator guilty and sentenced him to 100 hours of community service. During the criminal proceedings, Radek Banga already exercised his right to be treated as the aggrieved party. He deemed the respective statements to be threats and attacks against himself and also claimed compensation for intangible damage. However, the district court did not grant the rights of the aggrieved party to the singer and did not allow him to participate in the trial. The court stated that Banga "was admittedly not entitled" to be granted the rights of the aggrieved party. In the court's opinion, the perpetrator's conduct was not aimed directly against the complainant and it had not been proven that the perpetrator had threatened the singer directly.

Radek Banga lodged a complaint with the Constitutional Court against this resolution of the district court, because that is the only remedy available under Czech law. The Constitutional Court concluded that the district court had violated Radka Banga's right of access to the courts pursuant to Art. 36 (1) and (4) of the Charter of Fundamental Rights and Freedoms in defending his rights pursuant to Article 1 and Art. 10 (1) and (2) of the Charter.<sup>4</sup> In its

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<sup>2</sup> Judgment of the District Court in Kladno of 24 August 2017, File No. 26 T 116/2017-96; Resolution of the District Court in Kladno of 24 August 2017, File No. 26 T 116/2017-94; Judgment of the Constitutional Court, File No. III. ÚS 3439/17 of 2 April 2019.

<sup>3</sup> Act No. 40/2009 Coll., the Criminal Code, as amended.

<sup>4</sup> Article 1 of the Charter of Fundamental Rights and Freedoms. "All people are free and equal in their dignity and in their rights. Their fundamental rights and freedoms are inherent, inalienable, unlimitable, and irrepealable."

judgment, the Constitutional Court emphasised that information on the impact of criminal conduct on the life of its victims was an important criterion in terms of punishment and, in some cases, could be related to assessment of the defendant's guilt. According to the Constitutional Court, the presence of aggrieved parties in the trial is indispensable and the court is to assess the nature of hate attacks also from the perspective of their potential specific victims.

In the opinion of the Constitutional Court, the conclusion of the district court to the effect that Radek Banga "was clearly not entitled" to be granted the rights of the aggrieved party was incorrect. The Constitutional Court stated that when deciding on the rights of the aggrieved party in criminal proceedings, the court's task is to assess whether the aggrieved party could have incurred tangible or intangible damage in causal connection with the perpetrator's conduct. In cases of doubt, the rights of the aggrieved party should be granted. On the one hand, the district court had noted that "it does not question, not even to the slightest, that the quality of the complainant's life must have suffered due to numerous users of social networks, or otherwise," but, on the other hand, it had not granted the singer the status of the aggrieved party and had not even considered possible assessment of a harm to his legal sphere.

The Constitutional Court also stated that verbal or written attacks on social networks were "technically specific, yet inadmissible means of political struggle, easily comparable to older instruments used by totalitarian ideologies. It is necessary to examine to what extent such a post on a Facebook profile differs, for example, from a case when a person defaces the window of a shop owned by a member of a different social minority group." In the Constitutional Court's opinion, the dreadful experience of the past concerning stigmatisation of social minorities cannot be reflected only through mere adoption of "generally protective" criminal legislation. To acquire a deeper understanding of the harm incurred by people targeted by hate attacks, we need to focus on how an individual attack manifests itself in the individual sphere of the specific person (e.g. as a result of threats, concerns, harm to reputation, etc.) and to what extent this merely constitutes an inadmissible and non-specific political campaign.

In addition to the conclusion that Radka Banga's rights had been violated, the Constitutional Court also cancelled the resolution of the district court refusing to grant Banga the status of the aggrieved party in the criminal proceedings. According to the Constitutional Court, it was no longer possible to quash the convicting final judgment itself. Thus, the judgment of the Constitutional Court will mainly affect future decision-making of courts concerning the status of the aggrieved party in criminal proceedings.

### **Attacks on a historian due to his statements on migration<sup>5</sup>**

In January 2017, a historian and member of the academic staff of Charles University's Faculty of Arts became another victim of a wave of hateful comments. The attacks came after he

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Article 10 (1): "Everybody is entitled to protection of his or her human dignity, personal integrity, good reputation, and his or her name."

Article 10 (2): "Everybody is entitled to protection against unauthorised interference in his or her personal and family life."

<sup>5</sup> Judgment of the District Court in České Budějovice of 20 June 2018, File No. 31 T 64/2018.

had given an interview to the Týden magazine, in which he had, besides other things, positively evaluated certain aspects of migration. Subsequently, he faced insults and threats on social networks. One of the perpetrators commented on the interview published on the social network as follows:

*“For me, the only good Muslim is a dead Muslim. I hope that I will meet you somewhere so that I can spit in your face. And if there is a terrorist attack in the Czech Republic, I shall take care of you personally. For being a traitor to your own country, I will hang you on a tree.”*

In the article’s comment section, the perpetrator then shared an invitation to a seminar organised by the Institute of Contemporary History, which clearly indicated the seminar’s venue and also the information that the historian would be present, accompanied by the following comment:

*“I already know how to meet (...the historian’s name...) – tick-tock – a tree, branch and a rope, a swing for one.”*

In the court proceedings, the perpetrator defended himself by asserting that criticism of Muslims constituted his personal opinion. He claimed that he was being tried for his personal opinion and that he was treated as under the Communist regime. According to the perpetrator, the statement regarding hanging was a dark humour, which he interpreted as hanging the historian on (i.e. attaching him to) a tree by braces (suspenders).

In its judgment, the court concluded that although everyone had the right to an opinion, one’s personal freedom ended where another’s freedom began. Therefore, it was not possible to call for violence against a group of persons, a nation, a certain religion or call for restriction of the rights of their members.

For misdemeanours of making dangerous threats and incitement to hatred against a group of persons, the court sentenced the perpetrator to imprisonment of 30 months, which was conditionally suspended for a probationary period of 4 years. The court also imposed on him the duty to undergo a suitable psychological counselling programme consisting in prevention of aggressive behaviour and management of stress situations.

This punishment was specific, because the perpetrator had already been found guilty before by another judgment of the same court for misdemeanours of bodily harm, damaging property of others and disorderly conduct. At the time when the act at hand was committed, the perpetrator was serving his probationary period in connection with his previous punishment. In the previous judgment (of 11 January 2017), the perpetrator was sentenced to imprisonment of two years, which was conditionally suspended for a probationary period of four years. By virtue of this judgment, the court also imposed on him the duty to subject himself to supervision and undergo a suitable psychological counselling programme consisting in prevention of aggressive behaviour and management of stress situations. Considering that the perpetrator had been compliant with the supervision by a probation officer and in view of the time elapsed since the previous act, the court, again, decided not to impose a custodial sentence.

The judgment is final.

### **Large number of hateful statements made by a single perpetrator<sup>6</sup>**

Within a period of several years, the perpetrator commented on and shared various articles and videos on social networks, while attacking the Roma, Jews and other groups of people in his comments. In total, there were more than 50 statements of the following type:

*“We must exterminate this fucking inferior scum”*

*“Worthless gypsy vermin, anywhere they go, they freeload like parasites!!!!  
What normal person would let a parasite live in their body? No one”*

*“We’re the only way, not some militia wanting to co-operate with gypsy trash!  
Shame on you, you are an enemy to me equal to all the niggers and vermin of  
this nation! Unfortunately, I feel behaviour of a Jew in this.”*

According to the court, the perpetrator thus committed a continuing misdemeanour of defamation of a nation, race, ethnic or another group of persons.

The court then assessed further posts of the perpetrator as a continuing misdemeanour of incitement to hatred against a group of persons or to restriction of their rights and freedoms. In this category, the court included statements such as:

*“Bloody gypsy carcass, only producing more whores and parasites”*

*“One day, we shall make them pay – for the gypsies, it’ll be fatal”*

*“Niggers and parasites must be shown that this is not their home, and this goes  
for whole Europe”*

*“Not even God’s power can do anything about the gypsies, only way is a 9mm”*

*“Blow their brains out”*

Furthermore, by sharing texts and symbols of neo-Nazi organisations, the perpetrator also committed a manifestation of sympathy for a movement aiming to suppress personal rights and freedoms. The last group of his statements was assessed by the court as denying, disputing and justifying a genocide. The court sentenced the perpetrator to an aggregate sentence of 12 months and conditionally suspended the sentence for a probationary period of 36 months.

The criminal order is final.

### **Hate speech in reaction to a photograph of first graders<sup>7</sup>**

In the autumn of 2017, the Teplický deník daily published photographs of first graders from various local schools. The photograph of the pupils of the Plynářská Elementary School in Teplice was subsequently shared on social networks, where some of the commenters

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<sup>6</sup> Criminal Order of the District Court in Příbram of 20 September 2018, File No. 2 T 20/2018.

<sup>7</sup> Criminal Order of the District Court in Tachov of 10 September 2018, File No. 9 T 76/2018.



reacted by hateful comments in response to the children's different ethnic or racial origins – the class was mostly composed of Roma and Arab children.

One female commenter commented on the social network by writing “Directly...” and adding a symbol depicting a firearm – a revolver.

The District Court in Tachov found the perpetrator guilty of misdemeanour of incitement to hatred against a group of persons or to restriction of their rights and freedoms. The court punished her by a suspended sentence of 8 months. The service of imprisonment was conditionally suspended for a probationary period of 18 months. Furthermore, the court imposed a fine on the perpetrator in the amount of CZK 20,000 (approximately EUR 810). In case the perpetrator failed to pay the fine, the court imposed an alternative sentence of imprisonment for two months.

The criminal order is final.

### **Disputed identity of the perpetrator<sup>8</sup>**

This case also concerned the photograph of first graders from the Plynářská Elementary School in Teplice and verbal attacks directed against their nationality or ethnicity. From his Facebook account, the defendant publicly commented on the photograph as follows: “Good they're from the elementary school at Plynářská (*literally “Gasworks Street” in Czech – trans.*). The solution is quite obvious. Don't tell me you haven't thought of that!!!” In his case, the court also assessed other acts. Through his Facebook profile under the name “Vita K.”, he had published, among others, Nazi symbols and photographs of Hermann Göring and Adolf Hitler wearing a swastika armband and doing the Nazi salute. He commented on this photograph as follows: “Sweet white dreams, my Friends.”

According to the indictment, he committed a misdemeanour of incitement to hatred against a group of persons or to restriction of their rights and freedoms, as well as a misdemeanour of a manifestation of sympathy for a movement aiming to suppress personal rights and freedoms.

The defendant excused himself from the trial stating that he did not want to attend it. Therefore, the hearing took place in his absence. In its judgment, the court provided justification as regards the substance of the respective criminal offences. The court concluded, *inter alia*, that in his comment under the photograph of first graders, the perpetrator hinted at mass killings of Jews in gas chambers during the World War II. The court also described the role of Hitler and Göring during World War II and their current popularity with Nazi movements.

However, the defendant was acquitted because the evidence taken had not proven that it was him who had committed the act. While it was clear from the evidence that said statements, symbols and photographs had been published on the profile under the name “Vita K.”, it had not been proven, however, that this Facebook account was connected with the defendant. The profile's name resembles the defendant's name and the account also contained a photograph of the defendant. Yet, according to the court, technical data (e.g.

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<sup>8</sup> Judgment of the District Court in Teplice of 29 April 2019, File No. 1 T 39/2019; Resolution of the Regional Court in Ústí nad Labem of 29 August 2019, File No. 7 To 312/2019.

IP address) were lacking, based on which the court could identify its user without any doubts. Not even the operator of the Facebook network managed to obtain data leading to identification of the person using the account. Facebook stated that the user using the “Vita K.” account was outside the jurisdiction of the Czech Republic and it was therefore necessary to contact the prosecuting bodies of the Kingdom of Denmark where the user was staying. The court subsequently found that the defendant had, indeed, worked in Denmark for a certain period of time. However, in the court’s opinion, it was not possible to prove, beyond any reasonable doubt, that it was him who had committed the described acts.

The Regional Court in Ústí nad Labem quashed the decision of the district court and referred the case back to it for a new hearing. According to the appellate court, the conditions for permitting a hearing in the absence of the defendant had not been met. Apart from that, the appellate court also criticised the fact that the district court had not exhausted all the options to eliminate doubts as to the identity of the perpetrator, e.g. by summoning Facebook friends of the Vita K. profile, whose list had been available to it. The regional court ordered the district court to examine the defendant, supplement evidence and render a new decision.

The proceedings are again held before the district court.

#### **“Hussite” anti-Muslim appeals<sup>9</sup>**

In the middle of 2018, in an open discussion on a social network, the perpetrator published the following post:

*“It’s about time we stem the tide of this ...We’re Czechs, for Christ’s sake, so let’s bring out our Hussite blood and drive and wipe out these f\*cking unadaptable Muslim monkeys!! C’mon, we can’t wait for the politicians, they won’t do a sh\*t about it anyway! We won’t let anyone to take away from us what we and our ancestors have built here over the centuries!! So, let’s grab pitchforks, flails etc. and let’s chase away the stinkin’ vermin to where it came from...”*

The court assessed the conduct as incitement to hatred against a group of persons or to restriction of their rights and freedoms. The perpetrator was punished by a fine in the amount of CZK 8,000 (approximately EUR 320). In case the perpetrator failed to pay the respective amount, the court imposed an alternative sentence of imprisonment for two months.

The criminal order is final.

#### **Determining the boundaries of free speech<sup>10</sup>**

The perpetrator was accused based on the fact that, using his Twitter account, he had written the following:

*“...hopefully shoot these Islamist and gypsy rats as well as thieving and traitor politicians together with their families, ...I wonder what would ordinary people*

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<sup>9</sup> Criminal Order of the District Court in Jindřichův Hradec of 31 January 2019, File No. 7 T 3/2019.

<sup>10</sup> Resolution of the District Court in Liberec of 29 May 2017, File No. 3 T 71/2017; Resolution of the Regional Court in Ústí nad Labem, Liberec Branch, of 29 August 2019, File No. 7 To 312/2019.

*say if someone started shooting politicians, would they consider this person a murderer, a terrorist, a hero?, @Slavek S undermines democracy and according to Article 2, 1, I'm supposed to protect democracy by any means, i.e. including by shooting these motherfuckers, @ Slavek S is a thief and traitor to the nation deserving to be executed together with his family, @Slavek S you shall soon be singing: "Hang him higher so he can swing", @CSSD I thought you were only thieves, insatiable, greedy pigs and traitors to the nation and the only thing every politician deserves is a bullet in the liver, not in the head."*

The indictment accused the perpetrator of committing a misdemeanour of incitement to hatred against a group of persons or to restriction of their rights and freedoms.

The district court discontinued the criminal prosecution on the grounds that the act was not a criminal offence and that there was no reason to refer the case to another authority. The court stated that the above-cited tweets of the perpetrator clearly indicated his deeply negative attitude towards the Roma, Muslims and politicians. However, in the court's opinion, these were very vague and general statements, which, in itself, did not contain any incitement element. The court assessed the perpetrator's tweets to be a reflection of the current direction of thought present in certain groups of society, where the members of these groups responded to their frustration and dissatisfaction by setting themselves against the Roma minority, Muslims, immigrants or politicians. Although the court considered this to be an extreme, personally biased and controversial method, "reflecting their mental potential", it believed it to be legitimate in a democratic society. According to the court, these statements could not be criminalised. The court also stated that although the right to the freedom of speech had its boundaries and was limited by the rights of others, it could not be inferred from the above that any deviation from the rules of decency recognised in a democratic society should be criminalised. The court emphasised that the freedom of speech was an important asset and only an extreme deviation could be criminalised. In the court's opinion, the tweets discussed in these criminal proceedings were not of such intensity and were not so specific as to enable criminal punishment of their author. The court also found no reasons for referring the case to infraction proceedings, because, in the court's opinion, no harm was caused to other persons, which would be necessary for an infraction against civil cohabitation to be committed.

The regional court was subsequently called on to decide on an appeal lodged by the public prosecutor. In her appeal, the public prosecutor stated that the perpetrator had used wording calling for shooting of certain persons with their families. In her opinion, such calls could not be merely considered an expression of frustration over the recent developments in society. According to the public prosecutor, the perpetrator had committed a misdemeanour.

The regional court quashed the contested resolution and referred the case to the Liberec City Hall, because the perpetrator's conduct could be assessed as an infraction.

As regards the reasoning of the district court's resolution, the regional court concluded that the part of the perpetrator's statements expressing opinion on conduct of politicians and political party members could be considered an expression of certain frustration over political and social developments. Nevertheless, the perpetrator had also clearly called for shooting of certain persons, including their family members, on grounds of their political activities, membership in a certain ethnic group and religious beliefs. In the regional court's

opinion, such expressions could no longer be seen as part of the freedom of speech; rather, they constituted insulting and extremely inappropriate expressions at variance with proper civil cohabitation. Administrative authorities could perceive such conduct as an infraction within the meaning of the Infractions Act<sup>11</sup>.

The resolution of the regional court is final.

#### **Threats against a state award laureate** <sup>12</sup>

The perpetrator participated in a discussion concerning awarding of the Order of Tomáš Garrigue Masaryk, a Czech state award, on the occasion of public holiday on 28 October 2016. In a Facebook discussion group, he published the following post:

*“Kill the Jew finally :-) Pity that the Germans didn’t finish him off and they fucked around when dealing with his family :-)”*

*“Should I meet XY in person, I would kill him as well; I’ll finish what the Germans began and haven’t finished :-)”*

This post was seen by over 20,000 persons.

The court found the perpetrator guilty of committing a misdemeanour of denying, disputing, approving and justifying a genocide. The court sentenced him to six months of imprisonment, which was conditionally suspended for a probationary period of two years.

The criminal order is final.

#### **Attack against a newborn**<sup>13</sup>

Photographs of newborn children were published on the Facebook profile “Zprávy.cz”. The perpetrator participated in an online discussion under the photograph of one of the children whose name hinted that the child’s ethnicity or nationality might be other than Czech. Together with the photograph and date of birth, other information usual in this context (height, weight, etc.) was also published. In response to the photograph, the perpetrator published the following statement:

*“It’s trash, it’s in the genes. It’ll only continue to reproduce itself, how many offspring will a nigger like this have in 25 years? So, if you ask me, stamp on the neck”*

*“We believe that small children are innocent; that they are created with love and passion. This is a general European phenomenon. In some places, children are created by a single god, elsewhere they are created to outnumber adversity of the family. Congratulations to the parents on the new life of (the child’s name). An adequate response to this would be three newborn Jan Nováks (Jan Novák is a typical Czech name – trans.). Let’s #DOIT, people! #FertileSummer.”*

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<sup>11</sup> Act No. 251/2016 Coll., on certain infractions, as amended by Act No. 178/2018 Coll.

<sup>12</sup> Criminal Order of the District Court in Šumperk of 30 October 2017, File No. 2 T 148/2017.

<sup>13</sup> Criminal Order of the District Court for Prague 6 of 21 November 2018, File No. 2 T 98/2018.

According to the court, in his post, the perpetrator made a public incitement to hatred against an ethnic group and committed the act through a publicly accessible computer network; the court sentenced him to 100 hours of community service. The court also ordered the perpetrator to pay to the mother of the child, as the aggrieved party, the amount of CZK 5,000 (approximately EUR 200).

The criminal order is final.

### **Boundaries of the freedom of political expression<sup>14</sup>**

On various websites and social networks, the perpetrator published a number of speeches, comments (both spoken and written), in which, according to the indictment, he attempted to stir up or strengthen prejudices towards Jews, pointed out the need to solve the “Jewish question” and also denied the Holocaust. In addition, he published or offered for sale books with similar contents. Apart from that, in his speeches and comments, he also presented a negative view of immigrants, mostly of Muslim faith. He only attributed negative qualities to them, speaking and writing about them as parasites, intruders, barbarians, and calling for an armed defence against them, e.g. in the following way:

*“Blank shells have been fired; as I said, guns have fired into the air, a token gunfire has taken place. Until now. And I would like to stress the ‘until now’. We can’t stop the black invaders without weapons. And as regards our own traitors to the nation, also in their case force is the only way....”*

*“How to avoid doom? Shoot at the intruders! 10 out of 10 national democrats recommend this”*

*“We’ve been saying this for a long time. Shoot at them. This has nothing to do with refugees.”*

The perpetrator also shared a post about the fire of a building of the Austrian Red Cross planned to become an asylum facility for refugees, which was deliberately set on fire, and commented on the post as follows: *“Better a burnt-out area than a building full of parasites.”* Considering the high number of speeches, statements and comments published, the description of the acts was very extensive (in the judgment, this section is three pages long).

According to the court, the perpetrator committed the following misdemeanours:

- defamation of a nation, race, ethnic or another group of persons;
- incitement to hatred against a group of persons or to restriction of their rights and freedoms;
- denying, disputing, approving and justifying a genocide;
- approving a criminal offence.

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<sup>14</sup> Judgment of the District Court for Prague 1 of 26 January 2018, File No. 5 T 41/2016; Resolution of the Municipal Court in Prague of 1 November 2018, File No. 5 To 219/2018; Resolution of the Supreme Court of 24 June 2019, File No. 6 Tdo 674/2019-3135.

For these acts, as well as for the concurrent misdemeanours for which he had been found guilty by an earlier judgment rendered by another district court, the court sentenced the perpetrator to an aggregate sentence of imprisonment of two years. The sentence was conditionally suspended for a probationary period of three years. Furthermore, the court punished the perpetrator by forfeiture of things – books (hundreds of items), computers, external disks and other computer equipment, cameras, a percussion pistol and ammunition. The first-instance court also imposed on him the punishment of loss of copyright to the publications published or distributed by the perpetrator.

In the proceedings, the perpetrator pointed out that in a democratic regime, it was inconceivable that someone could be punished solely for publishing or distributing books. He referred to the freedom of expression and drew a parallel between his case and prosecution of dissidents during the Communist era.

In a voluminous, 74-page judgment, the first-instance court emphasised, referring to the case-law of the Constitutional Court, the importance of the freedom of expression but, at the same time, added that the activities of the defendant (books, speeches, articles, posts on social networks) exceeded the boundaries of free expression. This is because they encouraged aggression, racism, xenophobia and, in many cases, also violent behaviour towards entire groups of persons. The court compared his rhetoric to the Nazi rhetoric, which had also called for a radical suppression of the freedoms and rights of certain groups, describing them as degenerated and inferior.

In the court's opinion, the defendant's freedom of expression came into serious conflict with Article 3 of the Charter of Fundamental Rights and Freedoms – i.e. a guarantee of the same fundamental rights and freedoms for everyone, irrespective of their origin, race, religion, etc. The defendant's way of expression was characterised by discriminatory and aggressive diction; abuse of the right to freedom of expression was at variance with democracy and human rights. Freedom of expression could not be invoked in cases of Holocaust denial, promotion of Nazism, racism or similar hateful ideologies.

The perpetrator appealed against the decision of the first-instance court. He objected that this was a political indictment the State should be ashamed of. He emphasised that the court had failed to take evidence by reading the books for which the defendant had been brought before the court and that the expert report drawn up by the appointed expert only covered a fraction of the texts that were the subject of the indictment. He also objected against the loss of copyright on grounds that copyright was an exclusive personal attribute that could not be lost in any way.

In the appellate proceedings, the appellate court assessed how the first-instance court had dealt with the requirement of the defence that evidence be taken by reading all the books and listening to all recordings of the respective statements that the perpetrator was accused of. According to the appellate court, extensive evidence had been taken in the first-instance proceedings (listening to recordings of the defendant's public speeches and reading of the respective printed materials, especially newspaper articles and various communications and comments, or reading of selected passages from the books). The procedure of the first-instance court in taking the evidence was appropriate with regard to the specific nature of the case. The appellate court found a formal defect in the fact that the first-instance court

had failed to take evidence by reading the books in their material form as *corpus delicti*. This piece of evidence was taken by the appellate court itself.

The appellate court summarised that:

*“by its intensity, degree of vulgarity and lavish spectacularity, through which the perpetrator popularised the programme of racial hatred and xenophobia at his public meetings, the hateful conduct of the perpetrator, designed to appeal to the lowest human instincts and darkest aspects of human nature, is undoubtedly harmful to society to such an extent that, in a conflict of legally protected interests or values – a conflict between freedom of speech and political expression on the one hand, and the interest in preserving peace, peaceful civil cohabitation, as well as preventing ‘wilful’ mass and individual violence, on the other hand, we must definitely prioritise the interest of protecting society by preventing racial and nationalist strife over the interest of protecting freedom of speech and political expression. The defendant was convicted on the grounds of his above-mentioned comprehensive and repeated conduct in conformity with the constitutional order by the statutory means of criminal law.”*

The appellate court confirmed the extent of the punishment with the exception of forfeiture in respect of the copyright to the publications – this part of the punishment was cancelled. The judgment and the resolution are final. The Supreme Court rejected an application for appellate review filed in the case; the Constitutional Court will decide on a complaint against the decisions of the common courts.