



Conviction of the last surviving participant in the 1950 trial of Milada Horáková and other opponents of the communist regime was compatible with the Convention

In its decision in the case of [Polednová v. the Czech Republic](#) (application no. 2615/10) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerns a woman's murder conviction, with final effect, for having acted as a prosecutor in 1950 at the trial in which Milada Horáková and three other opponents of the communist regime were sentenced to death. Before the Court she alleged, in particular, that her conviction related to acts which had not constituted a criminal offence at the material time, and that her trial had been unfair.

Principal facts

The applicant, Ludmila Polednová, is a Czech national who was born in 1921 and lives in Plzeň (Czech Republic).

After the communist coup in February 1948, a number of political trials took place in former Czechoslovakia to consolidate the power of the Communist Party and eliminate opponents of the new totalitarian regime. The State Court and State Prosecutor's Office were established for that purpose by a special law, being subject to direct political control by the party. The most important trial was the 1950 trial of Milada Horáková and other opponents of the communist regime for high treason and espionage, and the applicant was appointed to act as a prosecutor in the case. It was later established that the trial had been manipulated in that the questions of guilt and sentencing had been determined by the political authorities well in advance of the trial and the defendants had been compelled, by means of inhuman investigation techniques, to admit to offences they had not committed. At the end of the trial, four of the defendants were sentenced to death and the others received lengthy prison sentences. Those sentenced to death were executed in June 1950. In 1968, in a climate of political détente, the convictions were quashed by the Presidium of the Supreme Court. In June 1990, after the collapse of the communist regime, the Prosecutor General ruled that there was no case to answer in respect of all those charged, who had been wrongly convicted following proceedings designed, for political ends, to eliminate opponents of the totalitarian dictatorship under the communist regime.

In 2005, and subsequently in 2007, criminal proceedings were instituted against Ms Polednová, who was accused of having contributed, by acting as a prosecutor in the above-mentioned political trial, to the murder of the four people who had been sentenced to death. On 1 November 2007 Prague City Court found her guilty of murder, committed jointly with the other prosecutors and judges involved (all of whom had since died), and sentenced her to eight years' imprisonment. The court held, in particular, that she should have known at the time that the death sentences imposed had not been a legal measure and that, jointly with others, she had contributed to conferring an appearance of legality on the political trial in question, and hence to the murder of four people on the basis of their political beliefs. Seeing that, under the 1852 Criminal Code, which had been in force at the time of the offence, murder was punishable by the death

penalty, the court held that the offence should be classified as murder under the 1961 Criminal Code, the provisions of which were more favourable to her (principle of the application of more lenient criminal legislation). The 1961 Code provided for a 20-year limitation period, but since the running of the limitation period had been suspended between 1948 and 1989 in such cases (under a 1993 law), the offences of which Ms Polednová stood accused were not time-barred.

On 4 February 2008 the Prague High Court quashed the City Court's judgment on appeal and discontinued the proceedings on the ground that the limitation period had expired. It held that the alleged offence had been incorrectly classified at first instance. In its view, Ms Polednová could not be deemed to have committed the murder as a joint principal, but at most to have had an indirect involvement in the murder. For such an offence, the law in force in 1950 was applicable (the 1961 legislation being no more lenient in respect of that offence), providing for a five-year limitation period. Even allowing for the fact that the running of the limitation period had been suspended between 1948 and 1989, the offence in question had been time-barred since 1994.

On an appeal on points of law by the public prosecutor, the case was referred to the Supreme Court. Following a hearing on 4 June 2008, to which Ms Polednová had agreed although she did not attend, being represented instead by counsel, the Supreme Court quashed the decision of 4 February 2008 and ordered the High Court to reconsider the legal classification of the alleged offence by examining Ms Polednová's involvement in the trial in the light of the timeless ethical standards required of a prosecutor.

Following a hearing on 9 September 2008, at which Ms Polednová had been present and had made oral submissions, the Prague High Court quashed the City Court's judgment of 1 November 2007, found the accused guilty of ordinary murder as a direct participant (within the meaning of the 1852 legislation) and sentenced her to six years' imprisonment.

On 19 March 2009 the Supreme Court dismissed an appeal on points of law by Ms Polednová as being ill-founded. Later that month, she began to serve her sentence.

On 16 July 2009 a constitutional appeal by Ms Polednová was dismissed as being manifestly ill-founded.

In March 2010 Ms Polednová was granted a pardon in respect of three years of her sentence, by virtue of the 1953 and 1990 amnesty laws. On 21 December 2010 the President of the Czech Republic pardoned her in respect of the rest of her sentence. She was released the same day.

Complaints, procedure and composition of the Court

Relying on Article 7 (no punishment without law), Ms Polednová submitted that her conduct in 1950 in the context of the trial of Milada Horáková and other opponents of the communist regime had not been criminal under the domestic law applicable in Czech territory at the material time, or at least that she had not been aware that it was. Relying, in particular, on Article 6 § 1 (right to a fair hearing), she further complained that, after she had intentionally waived her right to attend the hearing in the first-instance court, the court of appeal and the Constitutional Court had refused or omitted to give her a hearing (she argued that, since the courts had relied solely on written sources dating back almost 60 years, they had been unable to establish with certainty that she had been aware that the trial of Milada Horáková and the others had been manipulated, and they had not been guided by the will to establish the truth).

The application was lodged with the European Court of Human Rights on 29 December 2009.

The decision was given by a Chamber of seven judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
 Elisabet **Fura** (Sweden),
 Karel **Jungwiert** (Czech Republic),
 Mark **Villiger** (Liechtenstein),
 Isabelle **Berro-Lefèvre** (Monaco),
 Ann **Power** (Ireland),
 Ganna **Yudkivska** (Ukraine), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 7 (no punishment without law)

The Court pointed out that it was not its task to determine Ms Polednová's individual criminal responsibility, that being above all a matter for the Czech courts. Its role was to examine whether her act, at the time it was committed (1950), had constituted an offence defined with sufficient accessibility and foreseeability, in particular by the law of former Czechoslovakia. In doing so, it had regard to the following considerations, among others.

The Court noted that the Czech courts had convicted Ms Polednová of murder on the basis of the 1852 Criminal Code, which had been applicable at the time of the events. In reasoned decisions, they had held that the 1950 trial, which had resulted in death sentences being imposed and carried out in respect of those convicted, amounted to a killing mechanism, in which Ms Polednová, as a prosecutor forming part of the justice system, had been one of the joint protagonists. In the Court's view, the Czech courts' application and interpretation of the provisions of criminal law in force at the material time had not been arbitrary in any way and this strict interpretation of the relevant Czechoslovakian legislation had been compatible with Article 7.

As to Ms Polednová's argument that she had simply been obeying the instructions of superiors whom she had trusted, the Court emphasised that no one should show total, blind obedience to orders which so flagrantly infringed not only the principles of national legislation but also internationally recognised human rights, in particular the right to life.

The Court added that Ms Polednová, who had helped to create the appearance of legality in relation to the political trial of Milada Horáková and the others and had identified herself with that unacceptable practice, could not rely on the protection afforded by Article 7. To reason otherwise would run counter to the object and purpose of that provision, namely to ensure that no one was subjected to arbitrary prosecution, conviction or punishment.

The Court concluded that Ms Polednová's act, at the time it was committed, had constituted an offence defined with sufficient accessibility and foreseeability by Czechoslovakian law. The principle that only the law could define a crime and prescribe a penalty had thus been observed. Accordingly, the complaint under Article 7 was manifestly ill-founded, and as such inadmissible (see Article 35, [admissibility criteria](#)).

Article 6 § 1 (right to a fair hearing)

With regard to Ms Polednová's complaint that she had not had a fair hearing, the Court noted that although she had voluntarily waived her right to appear before the first-instance court, her lawyer had been able to follow the trial in its entirety, and to give a closing address. The rights of the defence had been preserved, since the evidence had been made available to the accused before the trial and she had been given an opportunity to comment on it through her lawyer in oral submissions.

Furthermore, Ms Polednová had appeared in person before the High Court at the hearing of 9 September 2008, during which she had been able to put forward all her arguments, objections and comments. She could not therefore maintain that the court of appeal had not granted her request for a hearing.

As to the fact that no hearing had been held in the Constitutional Court, the Court noted that there had been public hearings before the first-instance and appellate courts and the Supreme Court, at which questions of fact and law had been examined. However, since proceedings in the Constitutional Court were limited to the examination of questions of constitutionality, they did not involve a direct and full determination of the criminal charge. The lack of a hearing in the Constitutional Court had therefore been sufficiently remedied by the public hearings held at earlier stages of the proceedings.

That being so, Ms Polednová's complaint under Article 6 § 1 was manifestly ill-founded and the Court declared it inadmissible.

Other Articles

A number of other complaints were also raised by Ms Polednová. Finding that there was not even an appearance of a violation of the Convention in respect of those complaints, the Court declared them likewise inadmissible.

The decision is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.