

Chapter 5. Czech Constitutional Law and the Protection of Human Rights

5.1 The Czech Constitution in General

The Czech Constitution was adopted in December 1992 and **came into force** on the 1 January **1993** when Czechoslovakia split up into two independent states, the Czech Republic and the Slovak Republic. Since its adoption two major amendments to the Czech Constitution were adopted. The first one concerned the possibility of delegating powers to an international organization prior to our membership in the European Union. The second major constitutional amendment changed the way of appointing the Czech president. Under the original wording of the Czech constitution, the Czech president was elected on a common session of both chambers of the Czech Parliament. Currently, the Czech president is elected directly by Czech citizens.

Compared to other European constitutions, the Czech one is rather short, leaving the regulation of detailed provisions to implementing acts which can be amended more flexibly than the constitution that has been construed as a **rigid** one. A rigid constitution requires qualified majority in the Parliament in order to be amended. Some countries opted for a **flexible** constitution which can be amended by simple majority.

Selected provisions of the Czech Constitution in English can be found in the Annex to this textbook.

5.2 Division of Powers under the Czech Constitution

The political system of the Czech Republic constitutes a parliamentary democracy, although the President of the Republic, who is the head of the state, is directly elected under Art. 54 (2) of the Constitution. The Constitution defines the Czech Republic as a sovereign, unitary, and democratic state governed by the rule of law, founded on the respect for rights and freedoms of a person and citizen (Art. 1 (1) of the Constitution).

The legislature, the head of state and most of the executives are located in the capital city of Prague. Supporting the idea of separation of powers both Supreme courts (the Supreme Court as well as the Supreme Administrative Court) and the Constitutional Court are located in Brno. Brno is also the seat of some related institutions, such as the Czech Ombudsperson.

The functions of the head of state are mostly representative; the genuine executive power is vested in the government, which is in turn politically responsible to the Parliament (or more precisely to its lower chamber called the Chamber of Deputies).

5.2.1 The Legislative Power

The **legislative power** is exercised by the Parliament of the Czech Republic, consisting of the lower chamber (the Chamber of Deputies) and the upper chamber (the Senate).

The Chamber of Deputies has 200 members elected for a period of four years. The Chamber holds standing sessions. Members of the Chamber of Deputies are elected according to the principle of proportional representation.

The second chamber, the Senate is a permanent body composed of 81 senators elected for a six-year term of office. Every second year elections for one third of the senators are held providing for a partial renewal of the Senate every two years.

The Senate has a stabilizing role in the constitutional system, since it hold a permanent session; if the Chamber of Deputies is dissolved the Senate is empowered to adopt legislative measures on matters, which cannot be delayed and would otherwise require enactment of a statute (Art. 33 of the Constitution).

Ordinary statutes (zákony) are the universal form of legislative decision making adopted by the Parliament. For a statute to be adopted, the simple majority of the present members in the Chamber of Deputies and the simple majority of present senators (i.e. simple majority in both houses) are required (Art. 39 (1) and (2) of the Constitution).

Senate's legislative measure (zákonné opatření senátu) is a special type of legislation with the force of a statute. Its objective is to keep the legislative power of the Czech Republic operational even when the Chamber of Deputies has been dissolved. Should such a situation arise, the Senate is empowered to adopt legislative measures concerning matters of urgency and which would otherwise require the adoption of a statute. The legislative measures of the Senate must be approved by the Chamber of Deputies at its first meeting after the election. Should they not be ratified, they cease to be in force.

5.2.2 The Executive Power

The **executive power** is composed of the head of state (the president of the Republic) and the government. The government is divided into specialized ministries, the number of which is not laid down in the Constitution, but may vary depending on the government, as the number and the powers of the individual ministries are specified in a legislative act that can be amended more flexibly than a constitution.

The President of the Republic is elected directly by citizens for a term of office is five years, which is renewable once in a row.

The government is the highest body of executive power. It consists of the Prime Minister, deputy prime ministers and ministers.

The government is politically responsible to the Chamber of Deputies. Following a general election, the President of the Republic designates the Prime Minister. Upon the proposal of the designated Prime Minister, the President of the Republic appoints other members of the government and entrusts them with the management of the respective portfolios. Within 30 days of the appointment, the government as a collegiate body shall ask the Chamber of Deputies for a vote of confidence (see Art. 68 of the Constitution).

It is customary for the Czech Government to be composed by the party, which won the general elections. Alternatively, the chairperson of the second largest party is to be asked to form the Government. The Government is, however, has to be set up in such a way as to secure its support by the Lower chamber of the Parliament.

In the Czech Republic statutes can be proposed by the government, by a single member of the lower chamber of the Parliament, by a group of members of the upper chamber of the Parliament and by a regional council. The legislative initiative is exercised by the Government most often since the government has specialized civil servants working for different competent ministries at its disposal who are in charge of drafting legislation. Also, preparing the transposition of EU directives into the Czech legal order has been entrusted to the Czech government who shall propose statutes by which EU directives are to be implemented in the Czech Republic.

Apart from adopting legislation, the Czech Parliament is also in charge of adopting international treaties. All the international treaties by which the Czech Republic is bound must be published in the Collection of International Treaties, where the authoritative foreign version, as well as the Czech version, is published simultaneously.

Acts are published in the Collection of Laws (Sbírka zákonů, abbreviated in Czech as “Sb.”), published in a printed version by the Ministry of Interior Affairs. The English wording of some most common statutes is available at the official web site of the Ministry of Justice (such as the Civil Code, and the Business Corporations Act).

5.2.3 The Judicial Power

The **judicial power** is concentrated in the hands of the courts of general/ordinary jurisdiction (civil and criminal), administrative courts and the Constitutional Court.

The judiciary in the Czech Republic is organized as a four tier system being comprised of

- District courts
- Regional courts
- High courts and
- Supreme Courts

District courts are usually the courts of first instance in civil and criminal matters. Appeals against the decisions of district courts are lodged with regional courts. There are two high courts in the Czech Republic, one covering the territorial jurisdiction of Bohemia has its seat in Prague, and the other, covering the territorial jurisdiction of Moravia has its seat in Olomouc. There are two Supreme Courts in the Czech Republic, both having their seat in Brno. The Supreme Court covering the jurisdiction in civil and criminal matters hears extraordinary remedies against the decisions of high courts, whereas the Supreme Administrative Court is in charge of deciding extraordinary remedies in administrative cases.

Specialized administrative chambers operate at regional courts (there are 14 regions but only 8 regional courts, since the regional courts follow the old structure of regions existing prior to the accession of the Czech Republic to the EU, where the size of the regions had to be adapted to NUTs).

The judicial system in the Czech Republic is organized as a professional career judiciary. Hence there is no trial by jury. Judges are appointed by the President of the Republic. They must be at least 30 years of age at the time of the appointment, must have completed their graduate degree in law and a three-year period of specialized training within the courts. Except for constitutional

judges who are appointed for a period of 10 years, judges of general courts are appointed for life and can be only removed following disciplinary proceedings conducted by a special judicial ethics panel, composed of senior judges.

The **Constitutional Court** is based in Brno and lies outside the system of general courts. It has the authority to protect constitutionality under Article 83 of the Constitution. It deals with both, a **concrete**, and an **abstract review of constitutionality**.

The “abstract” review concerns the review of a compatibility of an international treaty with the Czech constitution before ratifying such a treaty. The “concrete” review is based on decisions on constitutional complaints against final court decisions infringing constitutionally guaranteed fundamental rights and basic freedoms. In this proceeding, any type of act or omission of a public authority including a judicial decision can be challenged, if the applicant claims that his/her constitutionally guaranteed rights and freedoms have been violated by the preceding act by public authority and after he/she has exhausted all available remedies.

The jurisdiction of the Constitutional Court also comprises ruling on impeachment of the President of the Republic based on charges of the Senate brought with the consent of the Chamber of Deputies.

5.3 Three Systems of Protecting Human Rights in the Czech Republic (national system, Council of Europe and the European Union)

Apart from the Czech Constitution (Act No. 1/1993), the **Czech Charter on Fundamental Rights** (Act No. 2/1993) is part of what is called the constitutional order of the Czech Republic, having the same legal rank as the Constitution. The Charter on Fundamental Rights is one of the three major human rights documents binding for the Czech Republic. The other two include the European Convention on the Protection of Human Rights adopted by the Council of Europe (a different international organization than the European Union, which was set up in 1949 having its seat in Strasbourg). The **European Convention** enables citizens and business to lodge direct actions against their Member States to the **European Court of Human Rights in Strasbourg** if an article of the said convention is believed to have been breached. However, individuals bringing a claim against their Member State need to have exhausted judicial remedies in their state to obtain access to the European Court of Human Rights in Strasbourg. If a Member State is found to have breached the European Convention, it has to compensate the person whose fundamental rights have been violated. Also, if the violation of fundamental rights has been systemic, a more in-depth change to the legal system or administrative practice of that state is required. An assembly of Ministers of the Member States oversees the implementation of the judgments delivered by the European Court of Human Rights in Strasbourg. With respect to the Czech Republic, the right to a fair trial (Article 6 of the European Convention) is the most violated provision by the law courts of the Czech Republic due to an excessive duration of judicial proceedings. As mentioned above, also the rights of businesses can be breached by a Member State, including an unfair expropriation of property, and the right to a fair trial.

The following box shows which rights guaranteed by the European Convention were breached by the Czech Republic in the past with respect to businesses. Interestingly enough, even the Czech Constitutional Court can be found to have breached the fundamental rights of a business:

1. Credit and Industrial Bank v. Czech Republic

21.10.2003

Decision of compulsory administration imposed on the applicant bank.

Violation of Article 6 § 1 - lack of full judicial review in the administrative proceedings

2. Vodárenská akciová společnost v. Czech Republic and Faltejsek v. Czech Republic

24.02.2004 and 15.02.2008

Excessive formalism of the Constitutional Court

Violation of Article 6 § 1

Source: Council of Europe, European Court of Human Rights, Press Country Profile – Czech Republic

The **third system** protecting fundamental rights in the Czech Republic has been enshrined in the **EU's European Charter of Fundamental Rights** which obtained its legally binding nature in December 2009 when the Lisbon Treaty came into effect. The European Charter of Fundamental Rights is **binding on EU Member State whenever they apply EU law**. This is to say that EU Member States do not need to observe the European Charter of Fundamental Rights in all their activities, particularly, when they apply national law only. Individuals have no direct recourse to the Court of Justice of the European Union if they believe that an EU Member State has breached their rights under the EU Charter. Only national courts may, on their own discretion, refer a case to the Court of Justice of the EU if they have doubts about the compliance of the State's activity with the wording of the European Charter of Fundamental Rights.

Instances where EU Member States have breached the EU Charter are being monitored by a specialized agency established in Vienna, Austria, the European Union Fundamental Rights agency, which publishes annual reports on Member States' compliance with EU Human Rights standards.

The following box shows an example of selected passages from a judgment in which the Court of Justice of the European Union found a violation of the EU Charter on grounds of unauthorized discrimination:

Judgment in Case C-68/17 IR v JQ (a preliminary reference made by a German Court)

Dismissal of a Catholic doctor from a managerial position by a Catholic hospital due to his remarriage after a divorce may constitute unlawful discrimination on grounds of religion.

The requirement that a Catholic doctor in a managerial position respect the Catholic Church's notion of marriage as sacred and indissoluble does not appear to be a genuine, legitimate and justified occupational requirement, which is nevertheless a matter for the German Federal Labor Court to determine in the present case.

*In that regard, the Court states that the **prohibition of all discrimination on grounds of religion or belief, now enshrined in the Charter of Fundamental Rights of the European Union, is a mandatory general principle of EU law and is sufficient in itself to confer on individuals a right that they may actually rely on in disputes between them in a field covered by EU law.***

Source: Court of Justice of the European Union, Press Release No. 127/18

5.4 Summary

This chapter surveyed the Czech constitutional system and three different systems of protection of human rights applicable in the Czech Republic.

Under the Czech Constitution, the Czech Republic is considered a parliamentary democracy, where the role of the president is mainly of a representative and a ceremonial nature. The state powers follows the classical division into the legislature, the executive power and the judiciary. The judiciary system is based on career judges.

The Czech Constitutional Court oversees the respect of the Czech Constitution, including the respect for fundamental rights and freedoms. Having exhausted their national remedies, Czech citizens and foreign residents in the Czech Republic may also lodge a complaint against the Czech Republic to the European Court of Human Rights in Strasbourg, which is the judicial authority of the Council of Europe. Finally, also the European Union has its own system of protecting human rights in place, however, individuals have direct recourse to the General Court of the Court of Justice of the European Union only if their fundamental rights have been breached by EU institutions. If national bodies breached the rights of citizens or businesses protected by the EU's Charter on Fundamental Rights, it is up to the national courts to decide if the EU Charter was violated and should doubts arise, national courts can make a preliminary reference to the Court of Justice of the EU to obtain its binding interpretation on the legal matters.

The following table summarizes the differences between the three human rights protection systems in place in the Czech Republic.

Czech Charter of Fundamental Rights – In Czech „Listina základních práv a svobod“– Act No. 1/2013 = rank of constitutional law	European Convention for the Protection of Human Rights – binding for the Czech Republic Author: Council of Europe, 1950	EU Charter of Fundamental Rights Binding as of December 2009; for EU Member States only when they implement EU law
Czech Constitutional Court (CCC) in Brno	European Court of Human Rights (ECHR) in Strasbourg	Court of Justice of the EU in Luxembourg
Individuals have direct access to the CCC by means of a „constitutional complaint“ – in Czech: ústavní stížnost; No complaint form available	Individuals have direct access to the ECHR in Strasbourg by filing a complaint; Complaint form available	Individuals have very limited direct access to the EU court by means of the action for annulment (strict time limit of 2 months for filing the action from the publication/notification of a legislative/non- legislative measure of the EU that breached the Charter);
legal representation necessary	legal representation necessary if complaint considered admissible	legal representation necessary; very strict formal rules for admissibility
Public database: NALUS available at www.concourt.cz	Public database: HUDOC, available at http://hudoc.echr.coe.int/	Public database: curia.europa.eu
Most frequent breach: unfair trial (extensive duration of proceedings)	Article 6 of the Convention: unfair trial	Too early to tell – The European Commission regularly monitors references made to the EU Charter by the CJEU

Source: Own compilation of data available in public databases

5.5 Self-assessment questions

1. What is the difference between a rigid and a flexible constitution? Is the Czech Constitution rigid or flexible?
2. Who can propose legislation in the Czech Republic and who does so most frequently?

3. What is the difference between concrete and abstract constitutional review carried out by the Czech Constitutional Court?
4. Which right protected by the European Convention adopted by the Council of Europe has been breached most often by the Czech Republic?
5. Is the EU Charter of Fundamental Rights binding on EU Member States in all their activities?
6. Do individuals have direct recourse to the General Court of the Court of Justice of the European Union if an EU Member State has breached their rights protected under the EU Charter of Fundamental Rights?

5.6 Further reading/listening

Selected provisions of the Czech Constitution in English in the Annex to this textbook

Craig, P.; de Búrca, G., Text, Cases and Materials, 5th ed., Oxford: OUP, 2011, pp. 465-498

Link to an institutional video on the functioning of the European Court of Human Rights:

<https://www.youtube.com/watch?v=EPWGdhgQlgk>