**Questions on the documentary video on the ECHR**

**(about 15 minutes)**

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

1. When did the Convention for the Protection of Human Rights and Fundamental Freedoms come into force?
2. What is the subject matter of the most common complaints lodged to the ECHR?
3. What are the conditions for admissibility of a complaint?
4. What are the effects of a judgment delivered by the ECHR?
5. Who oversees the implementation of judgments delivered by the ECHR?

Czech Republic Country Profile: <https://echr.coe.int/Documents/CP_Czech_Republic_ENG.pdf>

**The Czech Constitutional System**

**1. The Czech Political and Legal System in a nutshell**

The Constitution of the Czech Republic (hereinafter CCR) ([in English](http://www.concourt.cz/clanek/czech_constitution)), adopted by the Czech National Council on 16th December 1992 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) CCR).

An important part of the Constitution and constitutional order is the Charter of Fundamental Rights and Freedoms (Art. 3 and Art. 112 (1) CCR) ([in English](http://www.concourt.cz/clanek/czech_charter)). Albeit being in a separate constitutional law, it has the same legal force as the Constitution itself.

The political system is recognised as a **parliamentary democracy**, although the President of the Republic, who is the head of the state, is directly elected (Art. 54 (2) CCR). 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 first chamber, i.e. the Chamber of Deputies).

The state power is divided into the classical three powers, namely:

       legislature -the Parliament of the Czech Republic, consisting of the first chamber (Chamber of Deputies) and the second chamber (the Senate);

       executive - the head of state (the president of the Republic) and the government (as the highest body of the executive power);

       Judiciary - the courts of general jurisdiction (civil and criminal), administrative courts and the Constitutional Court.

**2. The Legislative Power**

The legislative power is vested in the Parliament (Art. 15 (1) CCR). The Parliament consists of two chambers: the Chamber of Deputies (*Poslanecká sněmovna*) and the Senate (*Senát*).

The [Chamber of Deputies](http://www.psp.cz/) has 200 members who are elected every four years. The Chamber holds standing sessions. Members of the Chamber of Deputies are elected by secret ballot on the basis of universal, equal and direct right to vote, according to the principle of proportional representation.

The second chamber, the [Senate](http://www.senat.cz/index-eng.php?ke_dni=19.03.2013&O=9) is a permanent body. It is composed of 81 senators, who are elected to a six-year term of office. Every second year elections for one third of the senators are held. There is thus partial renewal of the Senate every 2 years.

The Senate has a **stabilising role** in the constitutional system. First, because of its 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 CCR).

**3. The Executive**

The executive power is shared between the President of the Republic and the Government.

**The President of the Republic** (*prezident republiky*) is the head of the state. He/she is elected directly by citizens. The term of office is 5 years, with one re-election possible.

The powers of the president are mostly of representative and ceremonial nature. There are a number of powers the president is entitled to realise acting alone (i.e. without the consent of the prime minister or the responsible minister). These are contained in Art. 62 CCR.

Powers of the President of the Republic that are enumerated in Art. 63 CCR and those established by law do, however, require the countersignature of the Prime Minister or of a member of the government designated by him/her. In the case of the exercise of these powers, which are more numerous than those of the president acting alone, the government is politically responsible for the decisions of the President.

**[The Government](http://www.vlada.cz/)**

The government (*vláda*) 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 go in the Chamber of Deputies and ask it for a vote of confidence (for the detailed procedure and its variations see Art. 68 CCR).

It is a constitutional convention that the Government shall be formed 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, supposed to be composed of politicians who were able to secure support for their Government in the lower chamber of the Parliament.

**The Ministries**

The ministers are appointed by the President of the Republic upon the proposal of the Prime Minister. The President of the Republic will also recall a minister if the Prime Minister so proposes.

The number and portfolios of individual ministries are established by a statute (law no. 2/1969 Coll., on the Establishment of Ministries and Other Central Bodies of State Administration, as numerously amended).

**4. The Judiciary**

The judiciary in the Czech Republic is defined by the Constitution so that the courts perform their duties as independent authorities (Art. 82 CCR).

The system of ordinary courts is made up of District, Regional, High courts and the Supreme Court (Art. 91 (1) CCR). The system of general (civil and criminal) judiciary is supplemented by administrative and constitutional judiciary.

Specialized administrative chambers have been constituted 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). Special administrative matters are ruled on by the Supreme Administrative Court.

The Constitutional Court has the authority to protect constitutionality (Art. 83 CCR).

The judicial system in the Czech Republic is recognised as a professional career judiciary. There is no trial by jury. There is, however, the lay (= non-professional) participation in the administration of justice in the form of laypersons sitting as judges in chambers, hearing cases at first instance. Laypersons are elected by local councils (§ 64 and f. Judges Act 2002). Two lay judges sit with a professional judge, hearing non-specialised cases at first instance. Appellate and Supreme courts’ chambers are composed of professional judges only.

The 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 an M.A. in law and a three-year period of specialised training within the courts (Art. 60 (1) Judges Act 2002). Judges are appointed for life and can be only removed following disciplinary proceedings conducted by a special judicial ethics panel, composed of senior judges.

**4.1 Courts of general/ordinary jurisdiction**

Civil and criminal courts share the same judicial structure. Together, they form the courts of general jurisdiction (*obecné soudnictví*). They are competent in all type of disputes with the exception of those expressly reserved for the administrative courts or the Constitutional Court.

The structure of the ordinary courts is as follows:

* Supreme Court located in Brno;
* 2 High Courts/Superior Courts (one located in Prague with jurisdiction over Bohemia and the other seated in Olomouc with the jurisdiction over Moravia);
* 8 Regional courts (the regional court in the capital is called Metropolitan Court in Prague (Art. 11 Judges Act 2002);
* 86 District courts (the district court in the district Brno is called City Court, Art. 12 Judges Act 2002).

**4.2. The Constitutional Court**

The constitutional jurisdiction is represented by the specialised Constitutional Court (*Ústavní soud*), seated in Brno. Basic provisions concerning the functioning of the Constitutional Court are contained in Articles 83 – 89 CCR. Detailed provisions are to be found in the law no. 182/1993 Coll. - the Constitutional Court Act ([English translation](http://angl.concourt.cz/angl_verze/act.php)).

The contemporary Czech Constitutional Court is the judicial body responsible for the protection of constitutionality (Art. 83 CCR). It is composed of fifteen justices appointed for a period of ten years (re-appointment possible). The justices are appointed by the President of the Republic with the consent of the Senate.

There are various types of procedures before the Constitutional Court (cf. Art. 87 CCR). The most important ones are twofold: the “abstract” and the “concrete” 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 second type of review of constitutionality is the ***“concrete” review***. This is realised in the form of decisions over **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. Legislation**

**5.1. Types of legislation**

The various types of legislation are distinguished by two key elements:

* Who adopts the legislative act?
  + The Parliament – constitutional laws, ratification of some international treaties, laws;
  + The government, ministries or authorities of state administration – orders and regulations (derived/implementing secondary legislation);

Constitutional statutes (*ústavní zákony*) are legislative acts of the highest legal force. They are passed by a special majority being necessary in both Chambers of Parliament and with the agreement of both chambers (the concurrence of three-fifths of all Deputies and three fifths of all senators present – Art. 39 (4) CRR).

There is a plurality of constitutional statutes (i.e. not a single constitutional document), all the constitutional statutes form the so-called constitutional order (*ústavní pořádek*) of the Czech Republic (Art. 112 CCR).

The Czech constitution is considered to be a **rigid** one, which means that a special qualified majority is required in the Parliament to change it. The opposite of a rigid constitution is a **flexible** constitution existing in some states of the world which only requires a simple majority to be amended.

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) CCR).

Senate’s legislative measure *(zákonné opatření senátu)* is a special type of legislation with the force of statute (Art. 33 CCR). Its purpose is to keep the legislative power of the Czech Republic operational even when the Chamber of Deputies is dissolved. Should such a situation arise, the Senate is empowered to adopt legislative measures concerning matters which cannot be delayed 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 Legislative process**

Bills/acts/statutes may be proposed by

* Deputies,
* groups of Deputies,
* the Senate,
* the government, or
* representative bodies of higher territorial self-governing units (i.e. regions) (Art. 42 CCR).

In practice, the great majority of the bills are introduced by the government.

**5.3. Publication of the legislation/international treaties**

All the international treaties by which the Czech Republic is bound must be published in the Collection of Law.

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. They are also fully accessible online in a “PDF” format from 1945 onwards at the [Ministry of Interior web page](http://www.mvcr.cz/clanek/sbirka-zakonu-stejnopisy-sbirky-zakonu.aspx) or on the [Sagit Publishing web site](http://www.sagit.cz/pages/sbirka.asp?cd=76&typ=r) (access free of charge).

**6. Protection of HR** (Czech national level, EU level + Council of Europe level)

**Protection of Human Rights – comparative table**

|  |  |  |  |
| --- | --- | --- | --- |
| Name of the Court | Czech Constitutional Court | European Court of Human Rights | Court of Justice of the EU |
| Judicial body of ? |  |  |  |
| Seat |  |  |  |
| Name of the HR instrument protected |  |  |  |
| Access to the Court |  |  |  |
| Legal representation necessary? |  |  |  |
| Example of a case |  |  |  |