

# 2023 Rule of Law Report - targeted stakeholder consultation

Fields marked with \* are mandatory.

## Introduction

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The annual Rule of Law Report lies at the centre of the European rule of law mechanism, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues. So far, three editions of the Rule of Law Report have been published in 2020, 2021 and 2022.

In the preparation of the first three editions of the Rule of Law Report, the Commission has relied on a diversity of relevant sources, including from Member States, country visits, and stakeholders' contributions collected through the targeted stakeholder consultation [1]. The information provided has informed the Commission's country-specific assessments in preparing the Report. Building on the positive experience from the first three editions of the Rule of Law Report, the Commission is now inviting stakeholders to provide written contributions for the preparation of the 2023 Rule of Law Report through this targeted consultation.

The contribution to be provided should include (1) information on measures taken to implement the recommendations addressed to the Member State in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter and (2) any other significant developments since January 2022 [2] falling under the 'type of information' outlined in the next section.

The input should be short and concise and summarise information related to one or more of the areas referred to in the template. You are invited to focus on the areas that relate to the scope of work and expertise of your organisation. Existing reports, statements, legislation or other documents may be referenced with a link (no need to provide the full text). Stakeholders are encouraged to make references to any contributions already provided in a different context or to Reports and documents already published.

Contributions should focus on significant developments both as regards the legal framework and its implementation in practice.

**If you wish to submit information concerning several Member States, you will have to fill-in the questionnaire separately for each Member States (due to the size of the questionnaire). There is no limit to the number of contributions submitted by a single participant. In such cases, you are not required to repeat the information in the section "about you" that is non-mandatory nor the information on horizontal developments.**

Please provide your contribution by **20 January 2023**. Should you have any requests for clarifications or encounter difficulties in filling in the questionnaire, you can contact the Commission at the following email address: [rule-of-law-network@ec.europa.eu](mailto:rule-of-law-network@ec.europa.eu).

[1] For the consultation for the 2022 Report, see [https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation\\_en](https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en)

[2] Unless the information was already submitted in the consultation for the previous Rule of Law Reports.

## Type of information

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The topics are structured according to four pillars: I. Justice system; II. Anti-corruption framework; III. Media pluralism; and IV. Other institutional issues related to checks and balances. The replies could include aspects set out below under each pillar. This can include challenges, current work streams, positive developments and best practices:

### Legislative developments

- Newly adopted legislation
- Legislative drafts currently discussed in Parliament
- Legislative plans envisaged by the Government

### Policy developments

- Implementation of legislation
- Evaluations, impact assessment, surveys
- White papers/strategies/actions plans/consultation processes
- Follow-up to reports/recommendations of Council of Europe bodies or other international organisations
- Important administrative measures
- Generalised practices

### Developments related to the judiciary / independent authorities

- Important case law by national courts
- Important decision/opinions from independent bodies/authorities
- State of play on terms, nominations and expired mandates for high-level positions (e.g. Supreme Court, Constitutional Court, Council for the Judiciary, heads of independent authorities included in the scope of the questionnaire[1])

### Any other relevant developments

- Respondents are free to add any further information, which they deem relevant; however, this should be short and to the point.

If there are no changes, it is sufficient to indicate this and the information covered in the contributions for the previous Rule of Law Reports should not be repeated.

[1] Such as: media regulatory authorities and bodies, national human rights institutions, equality bodies, ombudsman institutions, supreme audit institutions and, where they exist, transparency authorities.

## About you

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I am giving my contribution as: **Other**

If "Other", please specify: **Bar Association**

Organisation name: [REDACTED]

Main Areas of Work: **Justice System, Other**

If "Other", please specify: **Self-governing organization performing public administration in the area of the Legal Profession.**

Please insert an URL towards your organisation's main online presence or describe your organisation briefly:

[REDACTED]

Transparency register number: [REDACTED]

Country of origin: **Czechia**

First name: [REDACTED]

Surname: [REDACTED]

Email address of the organisation (this information will not be published) [REDACTED]  
[REDACTED]

Publication of your contribution and privacy settings

Anonymous - Only your type of respondent, country of origin and contribution will be published. Organisation name, URL, transparency register number, first name and surname given above will not be published. **To maintain anonymity, please refrain from mentioning the name of your organisation and any details from which your organisation can be identified in the rest of your contribution.**

✓ I agree with the personal data protection provisions.

[Specific privacy statement targeted stakeholder consultation 2023 rule of law report.pdf](#)

## Questions on horizontal developments

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In this section, you are invited to provide information on general horizontal developments or trends, both positive and negative, covering all or several Member States. In particular, you could mention issues that are common to several Member States, as well as best practices identified in one Member State that could be replicated. Moreover, you could refer to your activities in the area of the four pillars and sub-topics (an overview of all sub-

topics can be found below), and, if you represent a Network of national organisations, to the support you might have provided to one of your national members.

Overview topics for contribution

[list of topics 2023 Report.pdf](#)

Please provide any relevant information on horizontal developments here

**Regarding horizontal developments, we refer to the CCBE Stakeholder contribution, which is being prepared in cooperation with all its EU Members, including the Czech Bar Association.**

**We would only like to point out separately what has been mentioned several times during our meetings with the Commission, Parliament and Council and also publicly during the event organized by the Czech Bar under the auspices of the Czech Presidency in the Council on 8 November 2022 in Brussels, i.e. that we believe that it is crucial to be involved in the legislative process officially before all three institutions and that it should be clarified when to contribute (especially on the level of the Council) and to structure the dialogue with the stakeholders not only during the preparation of the ROL report. There are many proposals debated in different stages/with different outcomes at the same time and some of them could have a potentially very harmful impact on the legal profession and administration of justice (either they don't reflect the specificities of the sector, the main principles of the profession or they try to undermine those principles for the sake of efficiency).**

**During this event which was recorded and is available here: <https://advokatnidenik.cz/2022/11/01/prijedte-diskutovat-do-bruselu-o-zavaznych-advokatickych-tematech-3/> and the conclusions here: <https://advokatnidenik.cz/2022/11/10/bruselsky-kulaty-stul-o-pravnim-statutem-ktery-spolupradala-cak-naplnil-svoji-ideu/>, number of important points concerning both Rule of Law and Protection of Professional Secrecy/Legal Professional Privilege, were raised and we believe that those require further attention.**

## Questions for contribution

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The following four pillars (I.-IV.) are sub-divided into topics (A., B., etc.) and sub-topics (1., 2., 3., etc.). For each of the topics and sub-topics, you are invited to provide (1) information on measures taken to implement the recommendations addressed to the Member States in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter of the 2022 Rule of Law Report and (2) any other significant developments since January 2022<sup>[1]</sup>. Please include a link to and reference relevant legislation/documents (in the national language and/or where available, in English) if relevant. Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices.

If there are developments you consider relevant under each of the four pillars that are not mentioned in the sub-topics, please add them under the section "other - please specify". Only significant developments should be covered.

Information provided in reply to the first question under each pillar, related to the follow-up to the recommendations, does not need to be repeated in subsequent parts of the questionnaire, but can be cross-referenced in the subsequent questions, where relevant. All other questions are not limited to the recommendations, but as in previous years, cover the entire scope of the Report.

<sup>[1]</sup> Unless already covered in the input for the previous Rule of Law Reports.

Member State covered in contribution [only one choice possible]

**If you wish to submit information concerning several Member States, please fill in the questionnaire separately for each Member State. There is no limit to the number of contributions submitted by a single participant.**

Czechia

## I. Justice System

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Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the justice system (if applicable)

- **Draft amendment to the Act on the Prosecution Service has been published in October 2022 and currently the received comments are being debated (some aspects of the draft amendment to the Act are mentioned below).**
- **We described in detail the relevant parts of the functioning of the justice system in the Czech Republic in previous contributions, we refer to those contributions for the context, if necessary.**

## A. Independence

Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)

*(The reference to 'judges' concerns judges at all levels and types of courts as well as judges at constitutional courts)*

**Act No. 6/2002 Coll. on Courts and Judges was substantially amended (as described in our previous contributions) by Act No. 218/2021 which entered into force as of January 2022. So far there is no analysis of the effectiveness of the novelisation. The new legislation is primarily based on the recommendations of the Group of States Against Corruption (GRECO). The aim is to establish a uniform and transparent system for the selection of judges and a more detailed regulation of the secondary activities of judges.**

In the field of selection of judges, the amended legislation unifies the preparation of candidates for judicial office within the institute of a judicial candidate, which follows the successful passing of the professional judicial examination. Persons who have other legal experience with a professional examination will also be able to complete the practice of a judicial candidate under specific conditions. This approach was perceived by the Bar as potentially very beneficial and enriching for the judiciary in the Czech Republic, but the outcomes of the implementation in practice are still to be evaluated.

The provision on ancillary activities for judges was extended to include the obligation to report ancillary activities to the President of the competent court, while at the same time providing for an explicit ban on judges operating in political parties and political movements. The new legislation sets in § 105b – 105e criteria, preconditions and the selection procedure of the judges and the appointment of Presidents and Vice-Presidents of the Courts. The selection procedure will be unified for the District Courts, Regional Courts and High Courts. These amendments could be considered a major development to reduce arbitrariness and increase the transparency of the whole procedure.

The new legislation also sets the conditions for the selection of the judges of the Supreme Court and Supreme Administrative Court in §117a. These rules shall set out the procedure for selecting candidates and how candidates are to be assessed. The rules may be laid down following the conditions for the establishment of a judge, for the application of a selection procedure for the position of judge, for assignment or transfer to the competent court and for carrying out a psychological examination. The new legislation also amended the conditions for Presidents and Vice-Presidents of Courts. Presidents and Vice-Presidents may not be reappointed to the position of President and Vice-President of the same court for two consecutive terms. The position of Vice-President shall also expire 3 months after the date of appointment of the new President of the Court.

A Database of decisions of District, Regional and High Courts was introduced in §118a. Since 2020 the pilot phase of the functioning of the database was launched and contained mainly the decisions of High Courts. Ministry of Justice published on 8 December 2022 an order on the publication of court decisions which entered into force in January 2023 specifying which decisions of the District, Regional and High Courts are to be published, the database, therefore, should be fully functional at the moment and is available here: <https://justice.cz/web/msp/rozhodnuti-soudu-judikatura->

Irremovability of judges, including transfers, (incl. as part of judicial map reform), dismissal and retirement

regime of judges, court presidents and prosecutors (incl. judicial review)  
Promotion of judges and prosecutors (incl. judicial review)

In addition to what is mentioned above, the general rule is that Judges of the General Courts (i.e. Supreme Court, Supreme Administrative Court, High Courts, Regional Courts and District Courts) are appointed for an indefinite period by the President of the Czech Republic and also their irrevocability remains unchanged. Lay-Judges are elected by respective representations of local authorities and regional authorities depending on the type of court to which they are installed into office.

In the amendment to the Act on the Public Prosecutor's Office, which was sent to the inter-ministerial comment procedure on 25 October 2022 the Ministry of Justice proposes a seven-year term of office of the Prosecutor General. However, the proposal does not contain any clarification of the conditions for the removal of the chief prosecutor from office – contrary to the government's policy statement. Minister of Justice said that the coalition did not agree on the issue of appointment and dismissal and that it is expected the proposal to be further debated in the government and Parliament.

The proposal also explicitly provides that only a prosecutor with at least ten years of legal experience as a prosecutor, judge or lawyer "who, by virtue of his professional knowledge, professional experience, experience in the exercise of management functions and moral qualities, guarantees of the proper performance of that office" may be appointed Prosecutor General. The amendment adds that no one can be appointed as the Prosecutor General more than once and that a public prosecutor cannot become the chief prosecutor if a disciplinary measure has been imposed by a final decision – unless it has been erased.

The chief prosecutor's functions on all levels should be limited according to the proposal for a seven-year term of office, during which only decisions of the Disciplinary Chamber could be removed from office. The exception to the rule that chief prosecutors cannot repeat their mandate at the same prosecutor's office twice in a row does not apply to senior district prosecutors. A prerequisite for a high prosecutor to be able to perform a managerial function is 8 years of experience, 6 years of experience for regional prosecutors and 4 years for district prosecutors.

The draft proposal will probably undergo further changes. The current draft proposal is available here: <https://justice.cz/web/msp/pravni-predpisy-v-legislativnim-procesu>

Allocation of cases in courts

Allocation of cases in courts is stated in section 6 Internal organization of courts and work schedule (§40 and following) of the Act No. 6/2002 Coll. on Courts and Judges.

The president of the court may transfer a judge to another agenda even without his/her consent.

On 26 May 2022, the Supreme Administrative Court confirmed the correctness of the conclusions of the judgment of the Regional Court in Prague in the case of a judge who defended herself against being transferred to another section of her court. Supreme Administrative Court confirmed that it was for the administrative courts to check whether the president of the court was impermissibly interfering with the judge's rights and independence. However, the intervention by the administrative courts should be rather exceptional. <https://advokatnidenik.cz/2022/05/30/predseda-soudu-muze-prelozit-soudce-na-jinou-agendu-i-bez-jeho-souhlasu/>

Independence (including composition and nomination and dismissal of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

**We refer to our previous contributions, no development in this regard.**

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review)

**The disciplinary liability of judges and prosecutors is enacted in the Act on Courts and Judges and the Act on Public prosecutor's office which we described in detail in our previous contributions. The draft amendment to the Act on Public Prosecutor's Office mentioned above newly explicitly mentions disciplinary regimes in concrete cases for chief prosecutors at all levels and their deputies and contains sanctions in case of liability. The draft also proposes to prolong the statute of limitations period for a disciplinary offence of a public prosecutor from 2 to 3 years after it was committed.**

Regarding interesting cases, at the beginning of December 2020, detectives from the National Centre against Organized Crime accused ex-judge Zdeněk Sovák of allegedly influencing the verdicts of the High Court in Prague. On 23 November 2022, the Public Prosecutor of the High Public Prosecutor's Office in Prague filed an indictment with the Municipal Court in Prague in a criminal case concerning influencing court decisions at the High Court in Prague against the former judge and four other people. [https://www.irozhlas.cz/zpravy-domov/zdenek-sovak-soud-korupce-korupcni-kauza\\_2211241605\\_sto](https://www.irozhlas.cz/zpravy-domov/zdenek-sovak-soud-korupce-korupcni-kauza_2211241605_sto)

On 30 December 2022, Minister of Justice Pavel Blažek filed a disciplinary action with the Supreme Administrative Court against the judge of the Municipal Court in Brno, Aleš Dufek. The reason is that at the beginning of November, Mr Dufek provided journalists with court orders for searches of the homes of three people involved in the privatization of Brno's municipal apartments. According to judge Dufek, people involved in the case were acquainted with the reasons for the criminal proceedings and there was no risk of jeopardizing the course of the investigation. The judge also justified the provision of information on the grounds of the public interest in its disclosure, as these are public figures to whom the usual principles of privacy protection cannot be applied.

[https://www.idnes.cz/zpravy/domaci/ministr-blazek-zaluje-soudce-dufka-brno-byty-hladik.A221230\\_171843\\_domaci\\_tty](https://www.idnes.cz/zpravy/domaci/ministr-blazek-zaluje-soudce-dufka-brno-byty-hladik.A221230_171843_domaci_tty)

In its judgment of 23 June 2022 in the case of Grosam v. the Czech Republic, the European Court of Human Rights found that the proceedings against the complainant, a bailiff, were not fair, as the special chamber of the Supreme Administrative Court, which decides on disciplinary offences committed by bailiffs, did not meet the requirements of independence and impartiality. In September 2022, the government requested for the case to be referred to the Grand Chamber and the request was accepted. In particular, the government criticised the judgment for the fact that the European Court had failed to respect its role, the scope of its powers and the rules governing its functioning. The applicant did not challenge the composition of the Disciplinary Chamber as such before the national authorities or in his complaint. The Court dealt with this issue on its own initiative. Moreover, it focused on the abstract examination of the rules on disciplinary proceedings, which is not for it to do, and not on the specific circumstances of the case of the complainant Grosam. The objections in the judgment to the legal framework essentially exclude the involvement of lay judges (in this case two bailiffs, a lawyer and one representative of another legal profession) in the decision-making activities of disciplinary bodies, even though the Strasbourg Court has so far taken the opposite approach.

Remuneration/bonuses/rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year), transparency on the system and access to the information

**In December 2022, the Parliament voted in favour of an increase in the remuneration of judges and prosecutors by about 12.7% in 2023.**



**The independence of the Prosecutor General is debated for years and also the mentioned draft amendment to the Act on Public Prosecution's Office does not deal with the issue that the General Prosecutor could be removed from office by the government based on the proposal of the Minister of Justice.**

Independence of the Bar (chamber/association of lawyers) and lawyers

**The Czech Bar Association is the largest self-governing professional legal organisation in the Czech Republic, established based on Section 40 of Act No. 85/1996 Coll., on the legal profession, as amended. The Bar provides both for the public administration of the legal profession and for its self-government. In the latter area, the Bar is not subordinate to the State and is in no way financed by it. The performance of self-governing activities relates to the mandatory membership of all lawyers in the Czech Bar Association, disciplinary liability, supervision over compliance with ethical rules, issuing professional regulations, etc. The Bar's self-governing power is limited by the competence of the Minister of Justice, as defined in Sections 50 to 52c of the Legal Profession Act. According to these provisions, the Minister of Justice appoints members of the examination committee, issues decrees comprising the lawyers' disciplinary rules and lawyers' examination rules and is authorised to bring disciplinary lawsuits. The Minister of Justice also strives to ensure compliance with the professional regulations with the law and issues decrees regulating the lawyers' fees. Individual lawyers are also independent in the provision of their legal services, as laid down by Section 3 of the Legal Profession Act, which further states that in the provision of legal services, a lawyer is bound by the laws and regulations and, within their limits, by the client's instructions. This means independence of the State power, various bodies and anyone who might want to try and specify how the lawyer should provide their services.**

**Lawyers' entry to court buildings**

**On 1 January 2022, an amendment to the Act on Courts and Judges entered into force, regulating, among other things, the issue of lawyers entering court buildings. The previous ongoing controls of lawyers therefore ceased. According to the current legal situation, the president of the court may have a lawyer searched only in individual justified cases. We are now discussing the possibility to apply for this exemption also to trainee lawyers (which is not the case at the moment).**

**Stricter penalties for unlawful provision of legal services by non-lawyers**

**Practical experience has shown certain shortcomings in the existing legislation on offences involving the unlawful provision of legal services by non-lawyers. As a result of these, many cases could not be punished because it was not possible to prove that legal services had been provided without a licence in exchange for payment. An amendment has therefore been passed so that it is now an administrative offence for non-lawyers to even offer legal services.**

**Efforts to enshrine lawyer-client privilege in law**

**In 2022 the Czech Bar Association instigated an amendment to the Act on the Legal Profession aimed at enshrining protection for the lawyer-client privilege (additionally to the confidentiality obligation) in law. The amendment rests on three pillars: that any information exchanged with a lawyer during the provision of legal services is confidential; that only the client may decide if the privilege could be waived; and that no one can be forced to provide confidential information without the client's consent. Discussions regarding the amendment of the Legal Profession Act will continue in 2023.**

**The digitalisation of the Czech Bar Association**

**The COVID-19 pandemic has shown that the personal attendance requirement for convening the General Assembly (the Czech Bar Association's supreme body) can constitute an obstacle that was not foreseen in the law. The CBA has therefore proposed to amend the law and its professional rules so that the Assembly can be held online. By 2025 lawyers should thus be able to attend the Assembly remotely and elect the CBA's bodies via online elections.**

#### **Amendment of the professional rules on the practice of escrow**

The revocation of Sberbank's Czech banking licence as part of the sanctions against Russia in 2022 led to several problems in the use of escrow accounts held with the bank. It became clear that more detailed regulation was required in relation to the practice of escrow by lawyers, to ensure that clients are kept informed to the fullest possible extent and that their rights to payment of escrow funds are adequately protected. The Czech Bar Association, therefore, amended its professional rules governing escrow, and also drew up a proposal for amendment of the Banking Act, which provides for the disbursement of compensation from the Deposit Insurance Fund.

#### **Honorary awards of the Czech Bar Association**

In 2022 the Czech Bar Association adopted new professional rules establishing honorary awards that the CBA will present to lawyers for their services in the advancement of the practice of law. These will be a worthy form of recognition given to lawyers for their contribution to the legal profession, and one which has been lacking until now. Along with the annual social event "Lawyer of the Year", these awards will thus support the cultivation of the legal profession as a self-governing occupation.

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

**Additionally to the cases mentioned above, there are two cases which require attention.**

#### **The situation of the High Public Prosecutor's Office in Olomouc**

Ministry of Justice analyzed 2022 in detail the overall state and activities of the High Public Prosecutor's Office in Olomouc. The result of the analysis is according to Minister unsatisfactory, sometimes even disturbing. The Ministry of Justice points out high damages for unlawful criminal prosecutions in comparison with the High Public Prosecutor's Office in Prague. Secondly, the overly senior management structure – almost a third of prosecutors are in a management position with a management premium remuneration. Thirdly, Ministry found that the Department of Serious Economic and Financial Crime (OZHKF), which consists of 15 public prosecutors, filed 4 indictments against natural persons and 4 against legal persons in 2021. Again, in comparison with VSZ Prague, where 17 public prosecutors work in the same department, 33 indictments were filed against natural persons and 11 against legal persons in 2021.

The Czech Bar Association was active in the case of wiretapping of ten interrogation cells in the Brno-Bohunice detention Prison (where defence lawyers were to hold meetings with their clients) in 2022. The Czech Bar Association asked the Minister of Justice and the Chamber of Deputies' Commission for Wiretapping Control to investigate the wiretapping of interrogation rooms in the Brno-Bohunice detention prison. The Bar Association argued that a conversation between a defence counsel and a client without any presence of a third person is an elementary pillar not only of the defence but of the entire criminal proceedings. If there is no guarantee that the accused can speak to his lawyer without anyone else monitoring the content of their conversation without his/her consent, not only his constitutional right to a defence is violated, but also his constitutional right to a fair trial. In the given case, both the public prosecutor and the judge, knowing how the conversations between defence lawyers and the accused in custody take place, must certainly have been aware that hundreds of conversations between the accused and defence counsel that have nothing to do with the case would be monitored by such monitoring, and yet such a procedure was proposed by the public prosecutor and allowed by the judge. President of the Bar Robert Němec, LL.M., also addressed a letter to Prosecutor General Igor Stříž on 17 February 2022 and asked him to check the media information in the case within his competencies and, if necessary, to take measures within his powers that will be an appropriate remedy for the situation. The Prosecutor General's Office (NSZ) in April published a statement that it reviewed the procedure of the public prosecutor of the High Public Prosecutor's Office in Olomouc, branch in Brno, in a criminal case in which persons and objects in the Brno-Bohunice Prison were monitored. The NSZ concluded that there was no "massive" wiretapping of people present in the prison, as some reports in the media incorrectly suggested. In reality, the wiretapping was very strictly limited, so the technical means of monitoring and recording the interviews were always located exclusively in a single interrogation room, and only if two specific persons were to be present simultaneously in that predetermined interrogation room. In this way, the technical means of monitoring and

recording the interviews were placed in the interview room in question for only 9 days (91 hours in total). In the criminal proceedings, however, there was a procedural error by the police authority GIBS and the public prosecutor of the High Prosecution's Office in Olomouc, branch in Brno. During the monitoring, communication between the lawyer and the client, who had the procedural status of defence counsel and the accused in other criminal proceedings, was recorded. One recording of their mutual communication was destroyed in the proper procedural manner, but the other two audio recordings were not destroyed in the prescribed manner and were mistakenly placed in the file. That error was discovered only after the investigation had been completed, and the public prosecutor decided to rectify this error by obtaining the accused's additional consent to keep the audio recording in the file. However, according to the NSZ's conclusion, this procedure was incorrect and both records should have been destroyed in accordance with the law after the police authority learned that the lawyer's communication with the client had been recorded, regardless of the additional opinion of the accused. As part of the review, the NSZ also found that in one case, "non-evidence" communication was also recorded during surveillance (i.e. communications of persons other than those against whom surveillance was permitted by the court and which did not contain facts relevant to criminal proceedings; in this case, it was not a communication between a lawyer and a client). The record of this communication should have been destroyed in accordance with the law, but this did not happen and this record was mistakenly included in the file. Based on its findings, the NSZ took the necessary remedial measures and imposed specific instructions on the High Public Prosecutor's Office in Olomouc to destroy both records in relation to the responsibility of the public prosecutor. Furthermore, the NSZ instructed the management of the High Public Prosecutor's Office in Olomouc to take the necessary measures to ensure in the future that court-approved surveillance of persons and objects will not cause disproportionate interference with the rights of other persons and that surveillance records will always be handled in accordance with the Code of Criminal Procedure.

## B. Quality of justice

*(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2)*

Accessibility of courts (e.g. court/legal fees, legal aid, language)

Despite the efforts of the previous Minister of Justice Benešová in 2021, the raise of court fees was not approved by the Parliament and remained the same in 2022. The EU Justice Scoreboard evaluated the court fees to be of average high across EU Member States.

We described the legal aid system in our previous contributions. In February 2022, the Czech Bar Association launched an initiative HELP UKRAINE and coordinated pro bono legal services for Ukrainian refugees. The Bar has published the list of lawyers who agreed to provide pro bono legal services (available here <https://www.cak.cz/scripts/detail.php?id=25507>) and also cooperated with NGOs to eliminate the attempts of intermediaries to provide legal advice in asylum matters to Ukrainian refugees for a fee.

In 2022, the representatives of the Bar met several times with the Ministry of Justice regarding the amendment to the lawyer's tariff. CBA representatives emphasized that the lawyer's tariff has not been indexed since 2006. As a result of the accumulated annual inflation over a period of 16 years, the tariff has long failed to reflect economic reality or average wage growth in many respects, not to mention the indexation of salaries in the judiciary. The lawyer's tariff serves mainly as a basis for determining the non-contractual remuneration of a lawyer and at the same time, it is the basis for determining the reimbursement of the costs of legal representation, which is awarded to procedurally successful parties in court and administrative proceedings. The lawyer's tariff also determines the remuneration of defence lawyers appointed in criminal proceedings ex officio. CBA representatives consider the valorization of the lawyer's tariff to be necessary, especially in those cases where the amount of compensation awarded in court proceedings is in fundamental contradiction with the client's actual costs of legal services and also where the remuneration for the provision of legal services is significantly underestimated. If the status quo is maintained for the coming years, there is a risk that access to legal services and access to justice will be severely restricted, especially for citizens, consumers and small and medium-sized enterprises. Representatives of the Ministry of Justice expressed understanding of the need to valorize the lawyer's tariff, but at the same time emphasized that the limiting factor is the existing budgetary

**possibilities of the state or the Ministry of Justice. Both parties agreed that the negotiations will continue with the fact that they will determine priorities in the area of the necessary amendment of the lawyer's tariff as of July 2023.**

Resources of the judiciary (human/financial/material)

**In October, the Supreme Court published a statement of an outcome of the meeting with Presidents of the Courts (all levels) pointing out that as a result of the long-term desperate remuneration of court employees (others than judges), there is an increase in the outflow of experienced and high-quality workers, who cannot be replaced and that under the current conditions, they cannot guarantee the proper functioning of courts. There is a growing shortage of high-quality staff at all levels of the judicial system and the situation continues to deteriorate. According to the Vice-President of the Supreme Court, in the current situation where it is not possible to provide high-quality IT experts, it can hardly be imagined that the judiciary will be digitalized in the foreseeable future.**

Training of justice professionals (including judges, prosecutors, lawyers, and court staff)

**There is no mandatory training for lawyers in the Czech Republic (unlike for trainee lawyers). Nevertheless, the Czech Bar Association has prepared an optional three-year educational programme for lawyers (Continuing lawyers' education), which started in 2019. A lawyer who earns at least 36 credits in the field of law, legal or related fields, lawyering skills or other areas over the course of three years is eligible for a Czech Bar Association certificate of completion of continuing lawyers' education. A lawyer who has completed this programme and has been certified by the Bar has the right to inform the clients and the public of this fact and may use the advantages, discounts and other benefits provided or arranged by the Czech Bar Association in the following three-year cycle of continuing education programme.**

**The Bar newly offers most of the educational activities to trainee lawyers or qualified lawyers both online and offline. The Czech Bar Association has been also continuously involved in EU projects, mainly in cooperation with the CCBE and European Lawyers Foundation.**

**The Bar has also launched a new project in cooperation with the Faculty of Law, Charles University in Prague, called "Legal practice", in 2022. The purpose of this project is to introduce the legal profession to law students, who can spend 80 hours per term of their studies in the Master programme "Law and Jurisprudence" officially (evaluated as a course by the University) in a law firm that signs up to cooperate as an intern.**

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in the COVID-19 pandemic)

**The Ministry of Justice is implementing a total of 5 projects focused on the digitization of justice within the National Recovery Plan. All these projects are included in Pillar 1 – Digital Transformation and are divided between components 1.1. and 1.2., both owned by the Ministry of the Interior. The total cost of these projects is CZK 416.5 million. CZK and these are the following projects:**

**Component 1.1 Digital services for citizens and companies include the following projects:**

- 1) Justice Portal**
  - 2) Courtroom audio recordings and transcription to text**
- and are brought together in Reform No 5 entitled "Digital services in the justice sector"**

**Component 1.2 Digital Public Administration Systems includes the following projects:**

- 1) Strengthening the infrastructure for the digital workplace**
- 2) Digital transformation**
- 3) Videoconferencing**

and are brought together in Reform No 6 entitled "Paving the way for digital justice

Regarding the scope of the National Recovery Plan in the area of digitalisation of justice, the Czech Bar expressed in the letter to the former Minister of Justice that the stated ambition is not adequate. The Covid-19 pandemic showed the need to speed up the process of digitalisation of justice. The Ministry of Justice is currently working on the introduction of court electronic file which, which is the most pressing issue for the legal profession and technical and legislative measures to improve the use of videoconferencing court hearings and audio recordings of the court hearings.

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, and surveys among court users or legal professionals)

Geographical distribution and number of courts/jurisdictions ("judicial map") and their specialization, in particular, specific courts or chambers within courts to deal with fraud and corruption cases

**No specific developments in 2022.**

## C. Efficiency of the justice system

*(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2)*

Length of proceedings

According to the annual report of the Ministry of Justice, the average length of civil proceedings in district courts fell from 281 to 271 days last year. But criminal proceedings took longer – an average of 205 days instead of 201. The courts managed the individual agendas in full despite the continuation of the covid pandemic. However, the ministry mentioned that overloading the Supreme Administrative Court remains a significant problem for the judiciary which should lead to an increase in the number of judges and their assistants. The second positive trend, according to the Ministry, is the development of administrative justice (lower instances). In regional courts, the average length of such proceedings decreased from 525 days to 511 days last year.

## II. Anti-Corruption Framework

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Where previous specific reports, published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD address the issues below, please make a reference to the points you wish to bring to the Commission's attention in these documents, indicating any relevant updates, changes or measures introduced that have occurred since these documents were published.

### A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical resources as relevant), including the cooperation among domestic authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable)

**No specific comments.**

Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption

No specific comments.

## B. Prevention

General transparency of public decision-making, including rules on lobbying and their enforcement, asset disclosure rules and enforcement, gifts policy, transparency of political party financing

**On 30 November 2022, The Ministry of Justice submitted a proposal for lobbying regulation to the inter-ministerial comment procedure. The adoption of lobbying regulation is a condition for the Czech Republic to draw funds from the European Union through the National Recovery Plan. According to Ministry, the aim is to make the legislative process more transparent, to enable the public to have access to information on contacts between politicians and senior officials and lobbyists and to legitimise lobbying as a standard element of the functioning of democracy, provided that it is carried out transparently. The basic parameters of the draft proposal are: the definition of lobbying, lobbyist and list of lobbyists; to establish a register of lobbyists and lobbyists; failure to comply with obligations laid down by law, such as failure to notify a lobbyist's intention to lobby, could be sanctioned; legislators will be required to indicate the lobbying trail of the legislation, i.e. to inform the public about which draft legislation they have successfully lobbied for.**

The Czech Bar is waiting for the publication of the proposal and will analyze it in detail, due to previous failed attempts to regulate lobbying which did not distinguish the lobbyist according to whether they follow private interests or whether it is a public body objectively commenting on the proposals or actions on behalf of the whole profession as it is in the case of the Czech Bar Association.

Rules and measures to prevent conflict of interests in the public sector. Please specify the scope of their application (e.g. categories of officials concerned)

**On 1 July 2022, an amendment to the Act on Conflict of Interest entered into force, which after more than a year and a half again opens up the possibility for the public to view the asset declarations of politicians in the Central Register of Notifications. Notifications shall only be accessible upon prior individual request. Information obtained from the notification may then be used and further processed only to identify a possible breach of the duties of a public official. The amendment also responds to the requirements of municipal practice in particular and exempts selected groups of unreleased elected public officials from the scope of the Act on Conflict of Interest. Deputy mayors of municipalities exercising delegated powers to the basic extent (so-called "number one municipalities") and members of councils of these municipalities and municipalities with an authorized municipal office (so-called "two-way municipalities") are newly excluded from the group of public officials, in both cases if these persons have not been released for the performance of their duties on a long-term basis. This is connected with the obligation of the Ministry of Justice to delete from the Central Register of notifications of public officials within 60 days of the effective date of the amendment the notifications of those persons to whom the Act on Conflict of Interest no longer applies.**

The government has been criticized that problems with provisions of Sections 4a – 4c of the Act on Conflict of Interest remain unsolved. The main shift and solution would be to establish bans on media ownership and assigning of public contracts, subsidies and investment incentives on beneficial ownership data. Until such amendment is adopted, it must be assessed on a case-by-case basis whether a member of the government is the controlling person above the recipient of public resources. This can be a legally challenging issue, which is why the correct application of these rules for the prevention of conflicts of interest has not yet been achieved.

Measures in place to ensure whistleblower protection and encourage reporting of corruption

**On 12 January 2023, the Chamber of Deputies approved in the first reading a draft of a new Act on the protection**

of whistleblowers, which should enable employees to report infringements confidentially and anonymously. According to experts, companies must take measures to ensure that employees trust the system and use it instead of anonymously submitting it to the authorities, the police or the media. Otherwise, this process will not be effective at all, as shown by the experience to date with the use of the notification system by the Czech state administration, for which these obligations have been in force for a year.

Employers with 50 or more employees and other obliged entities will be obliged to introduce an internal notification system under the bill. Entities with 250 or more employees will have to have their internal notification system (maintained internally or by a third party), and smaller employers will be able to share it, for example, in a group. The internal notification system is intended to be a confidential channel enabling whistleblowers to report orally and in writing, including anonymous reports. It will be available not only to employees but also to other persons performing work or other similar activities for the employer. In addition to internal channels, whistleblowers can also use an external channel (established by the Ministry of Justice) or, in some specific cases, switch to the publication of reports. The employer must protect whistleblowers from retaliation. Should retaliation nevertheless be taken and the whistleblower thereby suffered non-pecuniary damage, the proposal establishes the right to adequate satisfaction. The same protection should be provided to persons in a certain relationship with the notifier - e.g. close persons or persons who assisted the notifier in submitting the report. If the obliged entity fails to comply with the obligations under the bill, it commits a transgression for which a fine of up to CZK 1,000,000 or 5% of the last net turnover of the obliged entity could be imposed. Following the text of the Directive, the deadline for assessing the notification and notifying the whistleblower in writing of its results will be 3 months instead of the previous 30 days. In addition, there has been a slight change in the regulation of oral notifications. Those would primarily be recorded, the purpose of which will be to faithfully capture the essence of the oral announcement. According to the text, the previously preferred audio recording of the notification will only be possible with the consent of the whistleblower.

### III. Media Freedom and Pluralism

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#### Framework for journalists' protection, transparency and access to documents

Access to information and public documents (incl. transparency authorities where they exist, procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities, possible obstacles related to the classification of information)

Amendment to the Information Act No. 241/2022 Coll. was approved by the Senate in August 2022 and entered into force on 1 September 2022. The scope of obliged entities has been extended to include public enterprises, which are state- or self-controlled enterprises operating in sectors such as energy or transport. In addition, there is an obligation to publish so-called dynamic data, such as data from traffic or weather sensors, in the form of open data. The Act also contains changes that respond to the most pressing problems of the current application practice. In particular, it concerns greater protection of information relating to critical infrastructure and protection of information of companies with 100% state ownership operating in a competitive environment. The amendment also responds to the fact that some applicants abuse the right to information to unreasonably burden or even bully obliged entities. Protection is introduced in such cases in the form of the possibility to refuse such a request for information. Furthermore, changes caused by application practice, which are essential for obliged entities, were included in the amendment. Most of the changes come into effect from 01.01.2023 and include, for example, the possibility to refuse a request for information on the grounds of abuse of the right to information consisting of the use of an information request as a means of exerting pressure on the natural person to whom the information relates or causing a disproportionate burden on the obliged entity; the possibility of refusing a request because the information requested is not required. It will be possible to refuse the request if the obliged entity does not have the requested information and is not obliged by law to have it; inclusion of the protection of information the disclosure of which could jeopardise the equality of parties to judicial, arbitration or other proceedings (even before the commencement of such proceedings) –

these include, for example, legal analyses, searches, opinions, etc.; explicit provisions for the protection of information the disclosure of which could directly or significantly impair the protection of critical infrastructure; explicit rules on the provision of information on salaries and remuneration paid out of public funds; procedural rules in the area of simplified processing of requests for information; the introduction of the Central Register of Annual Reports, which the Ministry of the Interior will operate from 01.01.2024, with obliged entities being able to voluntarily publish their annual reports.

In 2022, 14 Czech websites were banned under the pretext of the „fight against disinformation“ thus limiting the plurality of media in the Czech Republic. In January 2023, The Supreme Administrative Court (SAC) has rejected a cassation complaint by a man from Prague who unsuccessfully challenged the temporary blocking of some Czech websites after last year's invasion of Ukraine by Russia. The reason for the block, which lasted for three months, was the fear of spreading disinformation. The man filed a lawsuit for protection against unlawful interference against the government, the Ministry of Defense, the Office for Foreign Relations and Information and the Security Information Service. The Municipal Court in Prague rejected the lawsuit last June, but now the decision is final. In its decision, the Municipal Court argued, for example, that the state did not block the disputed websites itself, but only called on Internet service providers and operators to do so, which cannot be considered an illegal intervention by a state authority. However, according to the man's appeal, even an opinion, request or instruction of the Government, as a central public authority, may constitute unlawful interference.

The Supreme Administrative Court found no reason to change the decision. *"Even while respecting the constitutionally guaranteed right to information as a reflection of freedom of expression, it is generally not possible to infer a public, subjective public right of an individual to receive information from a specific website,"* the Court agreed.

On 25 February 2022, the day after the start of the Russian invasion of Ukraine, the government approved a resolution concerning hybrid action against the interests of the Czech Republic. "The Government calls on all relevant entities to take the necessary measures to prevent the spread of false and misleading information in cyberspace, which serves to manipulate the population of the Czech Republic towards justifying and approving the current Russian military aggression against Ukraine," the resolution said.

Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits

The concept of SLAPPs has so far received little attention in the Czech Republic both in – we do not know about cases which could be explicitly called SLAPP and also the expert opinions were so far published as a reaction to the debate on the EU level, rather than that there would an urgent need to regulate this issue on the national level.

## IV. Other institutional issues related to checks and balances

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### A. The process for preparing and enacting laws

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'[1]

/public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process

[1] This includes also the consultation of social partners

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)



The Constitutional Court received in August 2022 a proposal to abolish part of the Act on Juvenile Justice. According to the District Court Prague-East, which filed the petition, the legislation discriminates against children under the age of 15 compared to juveniles or adult offenders in some situations. Children under the age of 15 are not criminally liable in the Czech Republic. However, for acts that would be considered criminal for older offenders, measures ranging from various educational restrictions to warnings and supervision by a probation officer as a protective education or treatment can be imposed on them. Precisely because children are not criminally liable, they are not subject to criminal law. The courts proceed in accordance with the Special Act on Juvenile Justice. Unless something is expressly provided for by law, the rules for civil proceedings, i.e. civil litigation, apply. The procedure is thus different from criminal justice, for example, it does not allow diversions. The judge must order a hearing even in a situation where he or she does not agree with the Public Prosecutor's Office's proposal to impose measures, or if he or she considers that the pre-trial stage of the proceedings has fulfilled its purpose in the given situation and the trial is superfluous. The child thus finds himself before the court with the participation of the public prosecutor's office, the authority for the social and legal protection of children, the guardian and the parents. The whole process may be perceived as a form of sanction.

COVID-19: provide an update on significant developments with regard to emergency regimes/measures in the context of the COVID-19 pandemic

- judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic
- oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic
- processes related to lessons learned/crisis preparedness in terms of the functioning of checks and balances

We refer to our previous contributions which contained detailed descriptions of emergency regimes in the Czech Republic during the pandemic and also numerous activities of the Bar in this regard.

## A. Independent authorities

Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions  
(Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>)

The Governmental working group has announced in November 2022 to prepare a draft legislation on establishing of the institution of a children's ombudsman. The main aspects of the new legislation were agreed by all members, including representatives of the Ministry of Justice, Ministry of Labour and Social Affairs, Deputy Public Defender of Rights, Human Rights Commissioner, deputies and senators across political parties.

In August 2022, the Deputy Ombudsman Šimůnková resigned from the office due to "disagreement with the opinions and professional and human approach of the Ombudsman, Stanislav Křeček."

At its meeting on 23 January 2023, the United Nations Human Rights Council (UNHRC) dealt with the human rights situation in the Czech Republic, in particular the so-called Istanbul Convention against Domestic and Sexual Violence and the situation of the Roma minority. The final report on human rights and recommendations for the Czech Republic will be issued by the member states on 10 February. Most countries, including France,

Liechtenstein and the Maldives, have called on the Czech Republic to broaden the definition of rape and to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence. The Government Commissioner for Human Rights said that the Government will deal with the issue this year. Another major topic at the UNHRC meeting was discrimination against the Roma minority in the Czech Republic, both in schools, in finding housing and through hate speech. On the contrary, many states appreciated the progress made by the Czech Republic by adopting government strategies for the protection of children's rights (Ghana), gender equality (Greece) and Roma integration (Ireland). The representative of Israel appreciated, for example, the reception of Ukrainian refugees in the Czech Republic.





