

EU 2020: DEMANDING ON DEMOCRACY

*Country & Trend Reports on Democratic
Records by Civil Liberties Organisations
Across the European Union*

CZECH REPUBLIC



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Czech Republic // League of Human Rights (LIGA)



LIGA LIDSKÝCH PRÁV

Key concerns

- The controversial appointment of a new president of the Supreme Court by the president of the Czech Republic renews concerns on judicial independence.
- A lack of media independence and support for investigative journalism remain important issues.
- Lack of clarity and transparency around new COVID-19 restrictions, some of which are passed without proper justification.

Justice system

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

The Czech Republic's Chamber of Deputies (the lower house) discussed the amendment

to the Act on Courts and Judges, which is now going to the Senate. It aims to improve the transparency process when selecting new judges and court presidents, using objective uniform criteria. Currently the law does not regulate the selection of new judges. From now on there should be five phases, namely (1) the experience of the judge's assistant, (2) a judicial examination, (3) a selection procedure for a judicial candidate, (4) the experience of a judicial candidate (other legal professions may apply as well, e. g. lawyers) and (5) an open audition for a judge. A five-member commission consisting of two members of the executive branch and three members of the judiciary should be established to select the presidents of high, regional and district courts. Specific members of the commission will be appointed depending on the position for which they will select a suitable candidate. The amendment also extends the exclusivity of the judicial office. In addition to the current restrictions, it will now be prohibited to combine the function of a judge with the function of a statutory, managing or controlling body of a legal entity, a trustee, etc. A judge will also not be able to be a member of a political party or movement. This is about strengthening the independence of the judiciary and a clearer separation of powers. The amendment also enshrines the obligation of the judge to notify the president of the court of what other paid activities he/she had in previous year, by 30 June of the following calendar year. This measure will contribute

to greater transparency and independence of the judiciary.

In the spring of 2020, the President of the Czech Republic, Miloš Zeman, appointed a new president of the Supreme Court. He did not follow the recommendation of the Minister of Justice and decided arbitrarily, in a non-transparent manner and without proper justification.

Since 2016, the Council of Europe's Group of States against Corruption (GRECO) has been recommending that the Czech Republic adopt an amendment to the Public Prosecutor's Office Act. However, several parliamentary proposals for this amendment have been in the Chamber of Deputies for a year and a half, and the Minister of Justice has not yet submitted its proposal. Currently, the government can remove the Supreme Public Prosecutor at any time without having to provide a reason. According to the government's draft proposal, the Supreme Public Prosecutors could only be removed by a decision within the disciplinary proceedings, i.e. with proper justification. In the current legislation, there is no fixed term of mandate of the Supreme Public Prosecutor. The term of the office should now be seven years, and the Supreme Public Prosecutor should be elected by a five-member commission composed of members appointed by the Ministry of Justice, the Supreme Public Prosecutor and the Chief Prosecutor.

Accountability of judges

Since the end of 2019, the Chamber of Deputies has had a bill on proceedings in matters of

judges, public prosecutors and bailiffs, within which the disciplinary proceedings of these officials are to be changed. A two-stage system of disciplinary proceedings should be introduced, in which the high courts would be the first instance and it would be possible to appeal to the Supreme Court and the Supreme Administrative Court. In 2020, a significant decision was made by the disciplinary senate of the Supreme Administrative Court concerning judge Alexander Sotolář. In the Opencard case (a chip card required for using the public transport in Prague), the judge manipulated the transcripts of the hearings, as they did not match the sound recordings. Sotolář was found guilty, and the disciplinary senate removed him from the position of Chairman of the Senate of the Municipal Court in Prague. However, he was not removed from the judiciary, so he continues to pursue his work as a judge. This has provoked criticism, for example, from former President of the Supreme Administrative Court Josef Baxa and the Minister of Justice.

Other

On 28 October 2020, the traditional presentation of state decorations by the President of the Czech Republic was to take place. However, due to the COVID-19 pandemic, the Prague Castle only published the names of the awarded personalities on its website, and the medals will not be taken over until autumn 2021. Among the winners is the President of the Constitutional Court, Pavel Rychetský, to whom the President wanted to grant the Order of T. G. Masaryk. However, at the beginning of February 2021, the Constitutional Court issued a ruling repealing

part of the electoral law, according to which elections to the Chamber of Deputies are to take place in autumn 2021. The President considers this decision to be damaging to the Czech Republic, and therefore decided not to award Rychetský the decoration. It is not clear at this time whether the President has already signed the diplomas to award or bestow honours or not. If so, it is not *de jure* about not awarding the award, but about withdrawing it. However, a state decoration can only be lost by the death of the decorated person or by a final conviction in criminal proceedings and the imposition of a penalty of loss of honorary titles and decorations. In this case, the President would act in violation of the law and would *de facto* arbitrarily punish one of the country's top judicial officials. It could thus upset the principle of checks and balances between executive and judicial power, without any support in law.

Quality of justice

Accessibility of courts

In summer 2020 the government submitted a new draft law regarding court fees. The amount of the fee was supposed to increase, since the standard of living has increased in the past 10 years. In consequence, the government wanted to create more pressure for people to use the alternative methods of resolving disputes such as mediation. By increasing court fees, access to justice would get more difficult for people who have lower income and those facing poverty. The draft law was supposed to lower this effect by exempting people with lower incomes

more regularly from court fees. However, it is not certain that courts would become more benevolent. It is also important that they consider equality before the law. The court must be consistent in its ruling and not act discriminatorily. Court fee exemptions would have to reflect those requirements. After the first reading in January of 2021 the new draft law was rejected by Parliament.

In 2020 a new draft amendment of judicial administrative order law was discussed. The amendment was passed at the beginning of 2021 and will come into force in spring 2021. The administrative courts adjudicate proceeding has only one instance, so an ordinary appeal is not possible. One may only file an extraordinary appeal in the form of an appeal in cassation. The Supreme Administrative Court decides this appeal and reviews both substantive and procedural flaws in the proceeding. Until now the court has found appeals in cassation in matters of international protection inadmissible if the affair does not have implications well beyond the personal interests of the applicant. The amendment shall aim at decreasing the high strain the court has had to bear and at fastening the judicial review of the decisions of the regional courts. Now the appeals in cassation in cases where a specialized judge has decided in the first instance and the case does not highly exceed the interests of the applicant will be found inadmissible. That includes simpler cases, such as offences charged with fines of up to 100 000 Czech crowns (approximately 3845 EUR), some foreign matters, permit to stay, etc. Ordinary people will lose the opportunity for their decision to be subjected to further revision. Their

access to justice might become more difficult. People might reach out more frequently to the Constitutional Court (not taking into consideration the admissibility of the constitutional complaint).

Digitalisation of the justice system

In the Czech Republic a program called eGovernment has been operating for several years now. The program serves to administer public matters through various electronic devices. According to the Digital Economy and Society Index (DESI), which monitors the digital competitiveness of EU Member States, the Czech Republic is performing below average in electronic administration matters, even though digitalization is on the government's agenda. Progress has been very slow. At the beginning of 2020 came into effect the Act on the Right to Digital Services, which guarantees, amongst others, the right to the provision of digital services by public authorities. However, in connection with the digitalization of the judiciary system, there is a conflict between theory and reality. For example, to strengthen the right to information and transparency in the functioning of the courts, all decisions of the civil judiciary courts are supposed to be gradually published. Since almost no decisions were published, the Department of Justice issued guidance for the courts to publish at least the "important" decisions. Currently, it is mostly the highest court instances who publish their decisions: the Supreme court, the Supreme Administrative Court and the Constitutional Court. Because the instructions from the Department of Justice were not sufficient to ensure compliance with

the obligation to publish all judicial decisions, the Parliament debated a modification of the law governing the judicial system, which was passed after several amendments in January 2021. The law may strengthen the transparency of the judiciary system and the principle of legal certainty. A decree will determine which decisions must be published. Courts will have the obligation to publish their decisions from the second half of 2022. The draft law will now be deliberated on by the Senate.

Other

According to the annual statistical report prepared by the Department of Justice on the state of the Czech judiciary system during 2019, there is a lack of 453 custodial court judges in full-time employment for 2020. The calculation results from the number of cases which were assigned to the custodial courts in the past 3 years. By 1 January 2020 the number of full-time employments was 367, which means that the need was covered by only 81 %. According to the Department of Justice, 14 national courts (approximately 16 %) reached or exceeded the calculated need and 31 national courts (approximately 36 %) narrowly missed the required level, by approximately one full-time employment. Most of the remaining courts missed the target by 1 to 3 full-time employments. The calculated need for custodial court judges says nothing about the quality and speed of individual judges and their ruling. At the moment the Department of Justice is communicating with each national and regional court and is trying to resolve how to improve the situation of missing custodial judges. They are also working on securing a

more personal and less formal attitude to minors in court proceedings (special interrogation rooms, methods and the attitude of judges).

Fairness and efficiency of the justice system

Length of proceedings

The Department of Justice publishes an annual report on the length of the judicial proceedings. The 2020 report is not completed yet but according to the 2019 annual report there has been a slight improvement in the length of individual court proceedings. For courts of first instance, the Czech Republic features at 7th place compared to other EU Member States regarding the length of the proceedings in civil and business matters. According to the last annual statistical report the average length of civil court proceedings has decreased by 13 days in comparison to 2018. The situation of the busiest courts got better as well, mostly those in North Bohemia and South Moravia. Vice versa, when regional courts decide matters in first instance, the average length of court proceedings has increased from 922 to 1046 days. In the first instance criminal agenda, court proceedings have prolonged from 526 to 571 days. The number of solved cases in administrative judicial proceedings have for the first time surpassed the number of new cases delivered, although the average length of 486 days for administrative proceedings by regional courts remains high. The Department of Justice wants to reflect this situation in the selection procedure of new judges. It also

wants to strengthen the administrative sectors of selected courts.

Execution of judgments

During spring 2020 a new act came into effect regarding measures to contain the spread of COVID-19 (Lex COVID). The measures were passed in fast-track procedures under the state of emergency. The law aimed to improve the situation of people who suffered from the coronavirus. Many people lost their jobs or have lower incomes. The effect of this law on execution of the judicial rulings consists of a possibility of relief from the effects of the expiry of the period in the proceedings of execution of the judicial rulings and executional proceeding. The law also established a protected period from the moment of coming into effect until 30 June 2020. During this time the courts were not executing the judicial rulings or execution by sale of movable and immovable property.

Corruption of the judiciary

The judge of the High Court in Prague, Zdeněk Sovák, is accused of having actively demanded bribes in exchange for a favourable decision of the party that would enrich him. The case is still under investigation.

Corruption

General transparency of public decision-making

The Chamber of Deputies decided to adopt a law on the registration of beneficial owners, thanks to which some companies will no longer be able to hide their unclear ownership structure. The law was approved in early 2021. It defines, inter alia, who is referred to as the “beneficial owner”, namely the person who is the ultimate beneficiary or the person with ultimate influence over the company. The law further defines what information companies are required to disclose. This will help to ensure that anonymous companies do not receive subsidies or public procurement. If companies do not comply with the law and, for example, do not provide accurate data, they will face a fine of up to half a million Czech crowns.

Whistleblower protection

At the instigation of the new EU Whistleblower Protection Directive, the government prepared a draft law on the protection of whistleblowers, which was approved at the beginning of 2021 and submitted to the Chamber of Deputies. The law is drafted in a fundamentally positive direction and has the potential to ensure effective legal protection for both notifiers and people affected by the notification. However, there is no independent authority to which whistleblowers can turn. They will therefore have to contact the Ministry of Justice, which will forward the

notification to other competent authorities (e. g. inspections), which in practice may jeopardize the application of the law. On the positive side, notifications will not be archived in paper form for 10 years but will be archived digitally for 5 years.

Other measures to prevent corruption

At the end of 2020, the government approved an Action Plan to Fight Corruption for 2021 and 2022. The plan contains various measures and divides them into four areas - executive and independent executive, transparency and open access to information, efficient management of state property and civil society development. The plan also stipulates the individual government departments’ responsibilities for fulfilling specific tasks. Among the most important measures was the enforcement of the draft law on the protection of whistleblowers, which has already been adopted (see above) or the draft law on lobbying (which is now in the Chamber of Deputies).

Media environment and freedom of expression and of information

Transparency of media ownership and government interference

A report by the European Federation of Journalists (EFJ) warns about the issue of ownership of private media in the hands of Czech

Prime Minister, Andrej Babiš. In an open letter from 17 November 2020, the president of the EFJ, Mogens Blicher Bjerregård, called for the need to protect democracy with a special focus on freedom, plurality and the independence of media that have been in danger for the past couple of years. According to the president, civil society relies on the freedom of press particularly during the COVID-19 pandemic since the media can be an easy source of new and reliable information. International experts stress the need to pay attention primarily to the funding of the media.

Prime Minister, Babiš owns up to 30% of the private media which has potential for conflict of interest. The media group Mafra is the public's main concern, due to its direct links to Andrej Babiš through his trust funds in the company Agrofert, which owns Mafra. The main media associated with Mafra are big newspapers such as Lidové noviny, Mladá fronta Dnes, news portal [iDNES.cz](https://www.idnes.cz) and [Lidovky.cz](https://www.lidovky.cz), radio stations Impuls and Rockzone and other magazines. The EFJ has highlighted the issue of media portraying Prime Minister Babiš only in a positive light with little critique. Simultaneously, the EFJ with support of the public demand the complete independence and freedom of media.

According to the international organization Reporters Without Borders, the Czech Republic has fallen from 13th to 40th place in the last 5 years (data available for 18/10/2019) when it comes to media independence. The EFJ and other independent international supervisory institutions that have investigated the situation in the Czech Republic have

concluded that the situation is worsening. To improve the situation in the future, there must be an increase of support for investigative journalism.

Other issues related to checks and balances

Independent authorities

At the beginning of 2020, the Chamber of Deputies elected a new Ombudsman, Stanislav Křeček, as former Ombudsman, Anna Šabatová, finished her mandate. However, immediately after his election, he began to express himself very controversially about public affairs, and in some cases, he publicly presented his own views, which were in conflict with the recognized (human) legal doctrine. More than 300 lawyers responded to his statements by signing an open letter, urging the Ombudsman to be aware of his role and responsibilities. The letter reacted, inter alia, to the Ombudsman's statements to ban the presence of fathers at childbirth under the emergency state present at the time (Křeček said it was not a human right, but only a fashion issue and would not address people's complaints). The letter also addressed the Ombudsman's approach to the interpretation and application of human rights. Signatories included influential personalities of the professional legal community, such as former Vice-President of the Constitutional Court Eliška Wagnerová, Senate Vice-President Petr Pithart, Constitutional Lawyer Jan Kysela

and Deans of three law faculties in the Czech Republic - Jan Kuklík, Martin Škop and Václav Stehlík. The Ombudsman responded to the letter on his website stating that he was surprised by the letter, as the attitude of his signatories was based on distorted and untrue messages spread by some media. However, in view of the several interviews given by the Ombudsman including on the points mentioned above, it is clear that his statement was false. Unfortunately, problems with the new ombudsman continue. Given that it is an independent function, it cannot be dismissed unless, for example, it engages in other gainful activities prohibited by the Ombudsman Act.

In 2020, a bill on the children's ombudsman was drafted. It was supposed to be on the agenda of the Chamber of Deputies in autumn, but due to the deteriorating epidemiological situation, its discussion was postponed. In the context of this law, there has been a wide-ranging debate on whether a children's ombudsman should be part of the current ombudsman's mandate, i.e. that his remit should be extended, as the Ombudsman's Office already acts as a supervisory body for the Convention on the Rights of the Child and its employees have the necessary know-how and experience, or whether to create an independent institution. In the end, it was decided that a separate institution should be set up, which would work closely with the current Ombudsman in order to build on existing good practices. Some activities will also be linked, for example, in the area of complaints.

Other systemic issues affecting rule of law and human rights protection

Widespread human rights violations

The Body of Social and Legal Protection of Children (ASLPC) is not acting in accordance with one of its core principles - to act in the best interest of a child according to Article 3 of The Convention on the Rights of the Child. In certain situations, ASLPC examines insufficiently what the best interest of the child is. Consequently, courts are ruling on the basis of ASLPC's statement, rather than considering the child's opinion or an opinion of its lawful supervisor. In these cases, the role of independent and impartial court is not present. This kind of court is often not trying to get to know the complex situation and is not deciding in the best interest of the child. Of course, there are courts and ASLPCs that work well together. However, it is necessary to pay attention to cases where the application of law is not delivered perfectly, especially regarding the cases of state institutions.

In one of the cases that the League of Human Rights (LLP) represented, the mother of a mentally ill daughter wanted a special assistant not only during her daughter's classes but also during her daughter's time in afterschool and on school trips. However, the school was not able to meet these conditions and contacted instead ASLPC. Straight after, ASLPC filed a motion to court to impose proper measures (in reality this means a removal of a child of

one's care) due to bad communication of the mother with the school. ASLPC took the highest possible measure that is available to resolve the situation without consulting it with LLP's client, which is directly against the law. For 2 years, the mother had to go through numerous proceedings and was under constant fear that her child would be taken away from her. The mother had to pay over 35 000 Czech crowns in legal services. In the end, the courts confirmed the ASLPC's mistake but ruled that the mother should get only 20 000 Czech crowns as compensation, much less than her expenses. The mother took the case to the higher courts but neither the Highest Court nor the Constitutional Court have decided in her favour.

In February 2020, the organization European Roma Rights Centre (ERRC) filed a complaint to the European Committee for Social Rights warning about persistent discrimination against Roma citizens. The ERRC stated that the Czech Republic failed to implement effective policies and laws and did not collect data, such as unemployment rates, of the Roma minority. The ERRC also highlighted that there is an excessive amount of Roma children in the state care and that the state did not carry out sufficient preventive measures that would lower the rate.

Currently a novelization of a law considering health institutes is being negotiated - it includes abolishing children's homes for children up to the age of three.

Impact of COVID-19

Emergency regime

The first state of emergency was declared on 12 March 2020 and ended on 17 May 2020. Right at the beginning of the first wave of the pandemic, there was a big problem with the lack of supplies of face-masks and other protective equipment, which the government gradually bought, but not transparently. It continued to do so for a month after the declaration of a state of emergency. Contracts with suppliers were not published in the contract register. The government issued crisis measures in the form of government resolutions on the basis of crisis law. Even before the declaration of the state of emergency, the Ministry of Health began issuing comprehensive anti-epidemiological measures based on the Public Health Protection Act. However, with some measures, the Ministry of Health exceeded its legal competences, which was criticized, for example, by the Municipal Court in Prague. The government stated that it was not liable for any damages beyond the flat-rate compensatory measures it had taken. Although the compensatory measure partially covers the incurred expenses of persons, it is not a complete compensation of damage. In addition, some of the measures taken were illegal. For example, in violation of the Constitution, the government postponed the Senate elections in Teplice, cancelled the meetings of municipal and regional councils and banned citizens from traveling outside the Czech Republic. The government did not properly justify its measures, did not examine whether they were

proportionate, and did not provide the public with appropriate information that would justify its decisions. The explanation was simply that this was a new, sudden and complex situation, which is very serious - but that is just a vague statement that cannot be used for a whole year. Following criticism from the courts and civil society, the government and the Ministry of Health have improved the rationale for individual measures, but still not in sufficient quality. Over the summer, measures to contain the virus became more relaxed. Unfortunately, in September, the number of infected people increased rapidly again, and a new state of emergency was introduced on 5 October. The government extended it several times. It lasted until 14 February 2021. The Chamber of Deputies did not approve its further extension. However, immediately after the government negotiated with the governors of all state regions, who later uniformly declared a new state of emergency, without passing it by the Chamber of Deputies. Thus, as of 15 February 2021, the government imposed a new state of emergency, which some experts, including Senate President Miloš Vystrčil, describe as unconstitutional.

How courts responded to COVID-19 measures

Although the courts are rather critical of individual measures and have annulled some of them for illegality or insufficient reasoning, their decisions are often late due to the dynamic of the situation. Unfortunately, before a court decides that a particular measure is against the law and needs to be revoked,

a new one will come into effect. In one case, the Municipal Court in Prague annulled a measure concerning the obligation to wear face-masks, due to insufficient reasoning, but the decision was not effective until a few days after its announcement. The Court wanted to give the Ministry of Health time to create a better explanation for the measure. In the meantime, the Ministry of Health managed to repeal the measure and adopted a completely new one, which was not covered by the court decision. However, the reasoning remained the same - including a badly copied date from the previous measure.

Measures affecting human rights that are not proportionate or legitimate

A student of the 6th year of elementary school defended himself against the obligation to wear a mask at school at all times. The boy has both medical and mental problems that make it impossible for him to wear a mask. However, the school insisted the boy wear a mask, as ordered by the Ministry of Health. The school threatened the mother with the Authority of child protection. When issuing the measure, the Ministry of Health did not respect earlier court instruction to find a solution for the negative health effects of wearing masks. The measure was (or still is, because even though the Ministry of Health issued a new one, the content is still the same) disproportionate and did not take into account the needs of people who cannot wear masks for various reasons. Also, the Ministry of Health did not deal with the best interests of the child under the

Convention on the Rights of the Child. The court has not yet ruled on the matter.

From 18 March 2020 to 15 April 2020, a measure of the Ministry of Health prohibited visits to medical facilities, including the presence of fathers at childbirth. The measure affected thousands of families who had a child during this period. One lawyer from Prague, in cooperation with the League of Human Rights, filed a motion to repeal this measure as disproportionate and illegal. Unfortunately, the Municipal Court in Prague rejected this proposal because the measure changed in a matter of days and the Ministry of Health was still issuing new ones (although the content was the same). A petition and an open letter to the Minister of Health were issued, but the situation did not change until mid-April. To this day, no court has ruled an interference with the fundamental rights of the families affected by the measure. In the second wave, however, a similar ban was not issued again.

Other

On 22 February 2021, the Constitutional Court issued a ruling (the complaint was submitted by a group of 63 senators), which partly annulled a government resolution on retail sales and the provision of services. Although the finding relates to measures adopted on 28 January 2021, the senators lodged their complaint as early as November 2020. Since then, the individual bans have changed, but the substance of the matter has remained the same. The court accused the government of issuing a blanket ban on retail sales and the provision

of services, but at the same time provided for almost 40 exceptions. Also, the government is not able to properly justify its decisions, to clarify why they are necessary, why there are no milder options and what the meaning of introducing so many exceptions is. The reason why arms, ammunition and flower shops are open, but clothing stores are not, remains unclear.

Government's efforts to counter disinformation

Firstly, the Ministry of Health has started (from the second half of 2020) a clearly structured portal on their official websites as a way of fighting the spread of disinformation. The website offers a verified source with information related to the new restrictions at place as well as information about the epidemiologic development of the pandemic in the country. The Ministry of Foreign Affairs chose a very similar way to inform Czech citizens in case of their departure from and to the Czech Republic, where quarantine measures or required PCR testing may apply.

Secondly, the Centre of Fight against Terrorism and Hybrid Threats (CTHH) conducted an analysis of the ten most common disinformation narratives that appeared between March 2020 and May 2020 on quasi-media websites and social media. The findings have been published on the official websites of the Ministry of Internal Affairs where any citizen can see the disinformation statements and factual explanations backed up by official sources that show why these statements are wrong.

Notwithstanding the good intentions of the project, its real impact on civil society has been minimal. According to MEP Markéta Gregorová, who specializes in disinformation, at least 60 % of Czechs encountered disinformation from which 25% continued to believe the information even after they have been confronted with the truth.

Thirdly, the Ministry of Health launched a campaign (after almost a whole year of the pandemic) that is focused on exposing disinformation, lies, hoaxes and alternative facts regarding the vaccination against COVID-19. One part of the campaign is a video conducted by two social influencers who explain together with main epidemiological experts and doctors, some basic disinformation and how it is false by presenting a true scientifically established claim. A few marketing experts gave opinion on the campaign on the internet portal [Seznam.cz](https://www.seznam.cz) especially due to the odd character of the target group on which the government's campaign focuses when it published the project on the platform TikTok.

Overall, the effort produced by state institutions is very reactive, considering the circumstances of the spread of disinformation. There is an evident lack of preventive measures. This resulted in the mistrust of society towards officials and its institutions. The most alarming fact is that there is an apparent legislative vacuum in disinformation matters which impedes any further progress in fighting the spread of disinformation. It is vital to create a law that would stop disinformation harming society. Non-governmental and volunteering organizations stepped in to debunk COVID-19

myths and present facts in order to educate members of society.