

## I. Justice System

### A. Independence

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

##### a) Judges

Amendment of the Act on Courts and Judges adopted in 2021 (No. 218/2021 Coll.), which came into force on 1 January 2022, established the new system of selection of judges and presidents of district, regional and high courts.

The selection system of new judges consists of 5 phases: 1. practice as an assistant of a judge, 2. judicial exam, 3. selection procedure of a judicial candidate, 4. practice of a judicial candidate and 5. open competition for the position of a judge. Selection committees in phases 3. and 5. shall consist of judges and judicial experts while judges will have majority. Applicants from other legal professions (such as lawyers, notaries, bailiffs or public prosecutors) are also allowed to apply for the position of a judicial candidate and/or judge.

Court presidents shall be selected in open competitions before selection committees in which judges will have majority. Applicants are required to be judges that have at least 5 years of practice as a judge. The proposal prohibits the possibility to repeat the mandate of a court president at the same court. Presidents of high and regional courts may repeat their mandate at a different court of the same level after 5 years from the end of the first mandate. Court presidents are required to fulfil a management education course (organized by the Judicial Academy).

##### b) Prosecutors

The legislative process of the draft reform of the Public Prosecutor's Office Act presented by the Ministry of Justice in June 2019 was not completed. The new Government established in December 2021 stated in its Policy statement, which was adopted on 6 of January 2022, that by the end of 2022 the draft amendment of the Public Prosecutor's Office Act will be prepared. The Act shall bring changes to the positions of chief public prosecutors such as term of office, transparent selections, conditions for dismissal, including the specification of the conditions for the dismissal of the Prosecutor General.

#### **2. 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)**

There were no legislative changes. For more information regarding the draft reform of the Public Prosecutor's Office Act, please, see answer to the Q1.

### **3. Promotion of judges and prosecutors (incl. judicial review)**

There were no legislative changes with regard to promotion of judges and prosecutors (incl. judicial review).

### **4. Allocation of cases in courts**

There were no legislative changes concerning the allocation of cases in courts.

### **5. 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)**

There were no changes with regard to independence and powers of the body tasked with safeguarding the independence of the judiciary.

### **6. 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)**

There were no legislative changes in the accountability of judges and public prosecutors. As for proposal which shall introduce a new system of appeal and allow the possibility to challenge decisions of the disciplinary court (chamber) before a second instance (which was mentioned in the 2020 Rule of Law Report – Country Chapter Czechia), the legislative process was not completed due to elections of the new Chamber of Deputies of the Parliament of the Czech Republic. In case of resubmission of the proposal, the legislative process has to start from the beginning.

### **7. Remuneration/bonuses/rewards for judges and prosecutors, including transparency on the system and access to the information**

On 1 January 2021, Act No. 587/2020 Coll. entered into force, which newly determined the method of calculating the salary base for determining the salary of judges (from which the salary for prosecutors is determined) and other public representatives so that significant for the calculation is an average gross monthly wages per recalculated number of employees in the national economy (and not only in the non-business sphere as it was until the end of 2020). Due to COVID-19 pandemic and its economic consequences salaries of public representatives (including salaries of judges and prosecutors) were frozen on 2020 level.

Due to COVID-19 pandemic and its economic consequences on 5 January 2022 the newly appointed Government submitted a proposal to the Czech Parliament to freeze the salaries under the Salary Act (including judges and prosecutors) on 2020 level from February to December 2022 (technically it would be a decrease in salary as in January 2022 the general rule for calculating the salary base applied). The proposal was approved by the Chamber of Deputies on 11th January 2022, the Senate decided not to deal with the matter, currently the proposal is submitted to the President of the Republic.

### **8. Independence/autonomy of the prosecution service**

There were no legislative changes regarding the independence and autonomy of the prosecution service.

### **9. Independence of the Bar (chamber/association of lawyers) and of lawyers**

There were no legislative changes with regard to the independence of the Bar. The new Government established in December 2021 stated in its Policy statement, which was adopted on 6 of January 2022,

that it will protect basic attributes of the right to fair trial, including the protection of the exercise of activities of bar associations from the unlawful interference of the State, including the guarantee of the legal right of secrecy.

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

See answer to Q1. The mentioned amendment promoting transparency has a potential to ultimately affect the perception of general public towards judiciary and its independence.

**B. Quality of justice**

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

The Regulation No. 177/1996 Coll., the Lawyer Tariff – on 1 January 2022 an amendment to the Lawyer Tariff cancelling a 20% reduction in lawyers fees and a maximum fee limit of CZK 5,000 per one act in case legal services were provided by a lawyer appointed by court (paid by the State) came into force. This limitation was introduced in 1997 as a reaction to massive economic damage caused by floods and was no longer economically relevant.

The Act on Service of Documents - during the year 2021, the working group that has been set to draft the Act on Service of Documents finished the expert theses for this Act. The white paper for the Act and the Act itself is supposed to be based upon these expert theses.

Legal aid, court fees – there were no legislative changes. Proposal for comprehensive amendment of court fees mentioned in the 2021 Report was not approved by the Parliament.

**12. Resources of the judiciary (human/financial/material)**

No significant changes from information provided in 2021 Report. Updated information is available in EU Justice Scoreboard 2021.

**13. Training of justice professionals (including judges, prosecutors, lawyers, court staff)**

There are no significant changes in training of judges, public prosecutors and judicial personnel from the information provided in 2021 Report.

**14. 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 COVID-19 pandemic)**

Information in 2021 Report is up-to-date.

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

There are no significant changes, implementation of projects reported in 2021 continued.

**C. Efficiency of the justice system**

**16. 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.**

In the Czech Republic, there is 99 courts in total. Geographically they are divided into district courts and regional courts. To complete Czech four-level judicial hierarchy, there are also high courts and supreme courts.

At the base of the Czech judicial system, there is 86 district courts – 75 courts in districts, 10 courts in different city parts of capital (Prague), plus a Municipal Court in the second largest city – Brno. A step higher in the Czech judicial system, there are regional courts – 8 in total. Another step higher in the judicial hierarchy, there are 2 high courts – in Prague and in Olomouc. District courts act as courts of first instance and appeals against their decisions are decided by regional courts, in some cases (the most serious crimes, insolvency proceedings, disputes in matters of business corporations, competition, intellectual property, etc.) the first instance is regional court, and the court of appeal is then high court. Regional courts also rule as administrative courts. Top of the hierarchy belongs to the Supreme Court of the Czech Republic which unifies jurisprudence in civil and criminal justice, especially through decisions on appeals, and the Supreme Administrative Court of the Czech Republic which decides on cassation complaints in the administrative judiciary.

In terms of personnel, there is quite a wide range of sizes of courts. There are small courts, p. e. District Court in Český Krumlov containing of only 10 judges, and then there are large courts, p. e. Municipal Court in Brno with its 73 judges, which shows the division is rather unbalanced. Therefore, a reform in this direction and a possible abolition of the four-level judicial system is still in the stage of mere discussions of the professionals.

There are no specialized courts; however, there are three different jurisdictions. Courts of general jurisdiction, administrative courts and the Constitutional Court of the Czech Republic which is outside this system of general courts as a special constitutional body of the judicial type but if it decides on constitutional complaints, it may annul any court decision.

#### *Specialisation*

In criminal section of a court, president of the court ensures specialization in the work schedule in matters:

- a) corruption of officials,
- b) corruption in public procurement,
- c) corruption in public tenders,
- d) corruption in public auctions.

When dividing cases between individual judicial departments in the work schedule, the specialization of judicial departments shall be ensured to the extent that the court has jurisdiction at a given level in these matters by law while also considering the court's staff capacity.

(a) in criminal law department mainly in these proceedings:

- 1. juveniles,
- 2. foreigners,
- 3. traffic crime,
- 4. financial and banking crime,
- 5. military crimes,
- 6. serious organized crime (in particular participation in an organized criminal group and criminal offenses committed by an organized group);

b) in civil law department mainly proceedings:

1. court care for minors,
2. inheritance,
3. intellectual property,
4. unfair competition and unlawful restrictions of competition,
5. public registers of legal and natural persons,
6. insolvency,
7. bill of exchange and check,
8. labour law,
9. enforcement of decisions and executions,
10. with a foreign element;

c) in the field of administrative justice.

In between the 2003 and 2013 Czech Supreme Administrative Court used to be divided into specialized chambers - financial administrative chamber and social administrative chamber. However specialised chambers remain cancelled since the 1st of January 2014.

There are no specific courts or chambers within courts to deal with fraud and corruption cases. Criminal matters such as corruption of public officials, corruption in public procurement, corruption in public tenders and scheming in public procurement auction, are assigned evenly to selected criminal chambers of judges within a court.

### ***17. Length of proceedings***

In general, the judicial system in the Czech Republic is efficient as is proved by the comparative CEPEJ reports and EU Justice Scoreboard. The length of judicial proceedings gets shorter. According to the EU Justice Scoreboard, the Czech Republic is no. 7 out of 28 Member States with regard to civil and commercial proceedings. The length of proceedings is less than 200 days, which is one of the best results in the EU.

Czech courts are doing well in terms of the length of proceedings especially in civil and criminal proceedings. In administrative proceedings on the other hand, there is still room for improvement, therefore, the appointment and strengthening of the staffing situation in administrative departments of courts are still ongoing in order to reduce the length of the proceedings.

Comparison of EU countries by length of proceedings in civil and commercial disputes is available online: <https://justice.cz/web/msp/statisticke-udaje-z-oblasti-justice>.

***Other – please specify***

## II. Anti-corruption framework

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

**18. 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).**

Since the last Rule of Law report, there have been no major institutional changes within the institutional framework capacity to fight against corruption. There were no changes in the jurisdiction and authority of the Czech Police either.

#### **Public Prosecution**

As for financial resources, the Prosecution Service does not have an individual budget chapter but is part of the budget of the Ministry of Justice. The Ministry breaks down the budget of Supreme Public Prosecutor's Office, High Public Prosecutor's Offices and all regional Public Prosecutor's Offices. District offices are not budget independent and they fall under regional offices. Information on the management and final accounts of the Ministry of Justice from recent years are available here. The information includes financial and budgetary information on the Ministry of Justice and all managed organizations and services – courts, public prosecution, Prison Service, Probation and Mediation Service etc.

As for cooperation with EPPO – the Czech Republic participates in the enhanced cooperation of European Public Prosecutors Office and has up to date appointed 8 out of 10 European Delegated Prosecutors. There were several cases delegated to EPPO on behalf of the Czech Republic since the beginning of its operation.

#### **Ministry of Justice of the Czech Republic and its Conflict of Interests and Anti-Corruption Department**

In 2021, the allocated legal resources remained unchanged. Also practical resources remained unchanged as the previously mentioned Anti-Corruption Action Plan for 2021 and 2022 was implemented. In 2021, the human resources were supplemented as 1 civil servant was for a fixed period hired with regards to the implementation of “the Project to Strengthen the Fight against Corruption” within the “Good Governance” programme financed by EEA Funds 2014-2021. In 2021, the afore mentioned department belonged to the Anti-Corruption Coordination Section within the Ministry of Justice. Since 1 January 2022 the department belongs to the newly created Legislation Coordination and Corruption Prevention Section.

#### **Anti-Corruption Council of the Government**

In 2021, the legal and practical resources remained unchanged. At the end of 2021, the Anti-Corruption Council comprised of 19 members (see [https://korupce.cz/wp-content/uploads/2021/12/Seznam-clenu-Rady-vlady-pro-koordinaci-boje-s-korupci\\_prosinec\\_2021.pdf](https://korupce.cz/wp-content/uploads/2021/12/Seznam-clenu-Rady-vlady-pro-koordinaci-boje-s-korupci_prosinec_2021.pdf)). The financial costs for ensuring the operation of Anti-Corruption Council can be considered as negligible as their major part consists of personal costs that are already included in the allocated resources of its secretariat: Anti-Corruption Unit (as a part of the Conflict of Interests and Anti-Corruption Department)

## **The cooperation of the Czech Police with OLAF and EPPO**

In the matter of cooperation with OLAF, there has been a change at national level, **reflecting the enhanced cooperation between EPPO and public prosecutors**. To make **non-judicial** cooperation with OLAF more effective, an inter-ministerial agreement between the Ministry of Finance of the Czech Republic and the Czech Republic Police was concluded on 26 November 2021. This agreement regards the exchange of information and mutual cooperation in the field of protection of the financial interests of the EU and the Czech Republic. Under this agreement, the NCOZ SKPV (National Headquarters Against Organized Crime of the CPIS) takes over the role of the AFCOS contact point from the Supreme Public Prosecutor's Office for the cooperation with OLAF in the field of criminal proceedings. **This change was made with the agreement of the Supreme Public Prosecutor's Office** and the Director of OLAF and the relevant OLAF staff have been informed of it.

With regard to the commencement of the EPPO activity on June 1, 2021, NCOZ SKPV organized several trainings for representatives of all organizational units of the Czech Police in setting up appropriate cooperation with the EPPO. Both the European Prosecutor of the EPPO for the Czech Republic and the delegated European Prosecutor also took part in those trainings. Currently, the NCOZ SKPV is organizing additional training for police officers. The training will again take place with the participation of the European Prosecutor at EPPO.

The Ministry of Finance is in charge of cooperation with the OLAF in the administrative area. The amended OLAF regulation<sup>1</sup>, which entered into force on 17 January 2021, introduced among others a new task for member states, namely to provide OLAF when needed for the purpose of its investigation with information on bank accounts and transactions (Article 7(3a)). In order to be able to fulfil this task, the Czech legal framework has to be adapted. Hence, the Ministry of Finance as the Czech AFCOS prepared a proposal of an act "on cooperation of the Anti-fraud Coordination Service with the European Anti-fraud Office" together with a proposal of an act amending other relevant acts. The objective of the proposal is to authorise AFCOS to obtain such sensitive information and provide it to OLAF and in general to streamline the cooperation with OLAF in the frame of protection of the financial interests of the European Union. The legislative process will continue in 2022.

### ***19. Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption.***

For civil servants in general as well as in the Ministry of Justice, the safeguards are given by the Act No. 234/2014 Coll. on Civil Service and relevant by-laws. For public prosecution the safeguards are given by the Act No. 283/1993 Coll. on Public Prosecution and relevant by-laws and by the Act No. 7/2002 Coll. on Proceedings in the Matters of Judges, Public Prosecutors and Bailiffs.

When investigating criminal offences, including corruption and harm to financial interests of the EU, the Police investigators are always under supervision, control and instruction of a relevant public prosecutor, thus ensuring their independence of undue outside influence.

In order to protect the financial interests of the European Union in the Czech Republic a network of authorities/bodies coordinated by AFCOS was set up. AFCOS in the Ministry of Finance is responsible for the cooperation with OLAF in the administrative area. For the cooperation with OLAF in the area of criminal law, the Supreme Prosecutor's Office had been responsible until EPPO started its operation in June 2021. It was then decided that in the new anti-fraud environment set-up, the Czech Police

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<sup>1</sup> Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations.

(namely the National Headquarters against Organised Crime) would be a more appropriate partner for OLAF in the area of criminal law. With the aim to cover all aspects of cooperation, an Agreement between the Ministry of Finance and the Czech Police about exchange of information and cooperation in the AFCOS network was signed in November 2021.

***20. Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators.***

The implementation of measures foreseen in the Government anti-corruption action plans is evaluated ex-post on the annual basis, where the evaluation reports are discussed by the Government and published by the end of March of the following year. Thus, the latest comprehensive evaluation available is for the year 2020 when 63 % of the foreseen anti-corruption measures were completed 32 % were partially-completed and only 5 % of measures were not completed (see <https://korupce.cz/wp-content/uploads/2021/05/Zhodnoceni-plneni-opatreni-uvadenych-v-Akcnim-planu-boje-s-korupci-na-rok-2020.pdf>). The evaluation of foreseen anti-corruption measures for 2021 is not available by the time of creation of this Rule of Law Report.

Additionally, as the election period of the previous Chamber of Deputies of the Parliament of the Czech Republic ended on 21 October 2021, the legislative process for all legislative proposals that were discussed but not approved by the Chamber of Deputies and the proposals would have to be submitted anew. These proposals included for example draft act on whistleblowing, on lobbying (in more detail below).

**Lobbying**

The Bill on Lobbying was submitted to the Government in the summer of 2019 and approved by the Government on July 30, 2019. Consequently, it has been submitted to the Parliament (Chamber of Deputies) where the first reading took place in December 2020 and the Constitutional Law Committee hearing was held in February and May 2021. The second reading of the Bill took place in July of 2021. The third reading started in July 2021 as well but with the end of the term of the Chamber of Deputies the process of adoption of the Bill was ended and must start again from the beginning. After the newly elected Chamber of Deputies was set up, the Bill on Lobbying and the Bill that changes some other legislation in relation to the adoption of Act on Lobbying were both again submitted to the Chamber of Deputies for deliberation by a group of deputies.

**Whistleblowing**

Unfortunately, the Bill on Protection of Whistleblowers mentioned in the previous report was not adopted before the end of the Chamber of Deputies' mandate and before the end of the transposition period of the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. Thus, the legislation process must start again from the beginning.

To ensure the implementation of the aforementioned Directive at least to some extent the Ministry of Justice is, based on the direct vertical effect, playing the role of the external reporting channel and it is also providing consistent methodological support and guidance. The ministry is also striving to secure operation of the internal reporting channels of entities in public sector in accordance with the Directive. In this regard it issued a Methodology for those entities that have some obligations based on the direct vertical effect of the Directive and it is also organizing trainings and Q&A sessions. The ministry also launched a website (<https://oznamovatel.justice.cz/>) containing all the important

information regarding the Directive to both – whistleblowers and the abovementioned entities. At the website, there is also a secured form that allows the whistleblowers to submit their report.

## **B. Prevention**

### ***21. Measures to enhance integrity in the public sector and their application (including as regards incompatibility rules, revolving doors, codes of conduct, ethics training). Please provide figures on their application.***

#### **Government Anti-Corruption Strategic Documents**

In 2021, the Anti-Corruption Action Plan for 2021 and 2022 as mentioned in previous report, was implemented. This action plan is also going to be implemented in 2022.

#### **Internal Anti-Corruption Programme Framework**

In 2021 an update of Framework Ministerial Internal Anti-Corruption Programme was prepared by the Ministry of Justice and discussed at the working level with ministries and other central authorities present in Interdepartmental Coordination Working Group. The update is going to be submitted for the official comments of ministries and other central authorities and subsequent approval of Government in the beginning of 2022. Anti-corruption trainings (codes of conduct, ethics) that were scheduled for 2021 had to be cancelled or postponed due to restrictions with regards to Covid-19.

#### **Revolving doors**

There are no changes in comparison to the last year. With regards to rule on “revolving doors”, that prohibits certain civil servants for a period of up to one year from working in the field, in which they previously worked as civil servants that is stipulated in Civil Service Act, the number of such restricted civil servant posts is at present 44. The Government approved it in its latest resolution on the changes in civil service systemisation from 22 December 2021 effective since 1 January 2022 (the systemisation includes count nature and distribution of civil servant posts + amount of finance on their salaries).

#### **Similarly, the Section 6 of the Act on Conflict of Interests states:**

*(1) For one year following the end of his/her term in office, no public official defined in Section 2, paragraph 1, letters c) to p) and paragraph 2 letters b) to g), may become a partner or accept any position in any body of any corporate entity or become employed by any business subject, if within the last three years preceding the end of his/her term of office such a corporate entity or business subject concluded an agreement with the state or any territorial self-governing unit, legal entity established under law or founded or established by the state or territorial self-governing unit, concerning a public tender whose limits had been exceeded and, at the same time, the conclusion of such an agreement fell within his/her competence or within the competence of any authority on behalf of which he/she was acting.*

*(2) Restrictions stated in paragraph 1 applies similarly to legal entities, which are business companies or which are established or controlled by employer mentioned in paragraph 1.*

#### **Codes of conduct and ethics training in civil service**

One of the central tools supporting integrity of civil servants is the Service Regulation of Director-General for the Civil Service no 13/2015, which lays down ethical rules for civil servants. Apart from rules relating to desirable behaviour of civil servants, this service regulation also contains rules for receiving gifts or attending a meeting with possible elements of lobbying. A monitoring scheme, which

requires civil servants to make a report if these cases occur, has been included as well. In years 2018-2021 the service regulation no 13/2015 has been a subject of critical analysis by the group of experts composed of civil servants and scholars. The expert group came to a conclusion that the service regulation is not appropriate in terms of aspirational understanding of the professional ethics and a new service regulation, more suited to the standards of modern civil service, will be proposed.

In order to develop ethical culture in state administration, a project carried out by the Czech Academy of Sciences in cooperation with the Ministry of Transport was concluded in 2021. The resulting recommendations propose tools and measures to implement and develop effectively the ethical culture in service authorities.

In terms of ethics training, there is currently no centrally organised training programme for state administration. It is up to respective service authorities to organize such training for their civil servants. However, another project carried out by universities and the Czech Academy of Sciences, which was also concluded in 2021, resulted in creation of a brochure on professional ethics intended for public administration employees.

***22. General transparency of public decision-making (e.g. public access to information, including possible obstacles related to the classification of information, transparency authorities where they exist, and framework rules on lobbying including the transparency of lobbying, asset disclosure rules, gifts and transparency of political party financing).***

**Access to Information**

In 2021, the legislative framework for access to information was supplemented by Act No. 36/2021 Coll. (see <https://www.zakonyprolidi.cz/cs/2021-36#cast4>) and by Act No. 261/2021 Coll. (see <https://www.zakonyprolidi.cz/cs/2021-261#cast48>).

**Lobbying**

The Bill on Lobbying mentioned above and also in the previous reports will probably be submitted to the Government and subsequently to the Parliament once again. However, the new Government did not yet make the official decision on this matter.

**Asset disclosure rules**

As to the access to the Central Register of Notifications, following the judgment of the Constitutional Court of 20 February 2020 (Pl. ÚS 38/17; see [https://www.usoud.cz/fileadmin/user\\_upload/ustavni\\_soud/www/Decisions/pdf/Pl-38-17\\_1\\_-\\_EN.pdf](https://www.usoud.cz/fileadmin/user_upload/ustavni_soud/www/Decisions/pdf/Pl-38-17_1_-_EN.pdf)), the information contained therein is no longer accessible to the public in relation to public officials under section 2 par. 1 of the Act on Conflict of Interest. However, the judgment did not change the public officials' obligation to submit notifications to the Central Register of Notifications. A draft law to amend the Act on Conflict of Interests to reflect the above-mentioned judgment of the Constitutional Court was submitted to the new Chamber of Deputies under no. 110 (see <https://www.psp.cz/sqw/historie.sqw?o=9&T=110>). The notifications of the public officials under section 2 par. 1 of the Act on Conflict of Interest were previously immediately accessible to the public and as a result of the judgment of the Constitutional Court have been currently made unavailable to the public. The amendment aims to make the notifications available to public upon request.

**Transparency and corruption risks in political party financing**

In 2021, there were no significant changes in the rules on transparency of political party financing

*Rules:* There is a threshold for donations to political parties and movements (3,000,000 CZK - 120,000 EUR) per one donor (including all legal persons that this donor control or is controlled by). All donations above 1,000 CZK must be documented by a written contract. No donations from foreign persons or public bodies are allowed. All donations used in the elections must be published online (incl. sum and name, date of birth and place of residence of the donor) 3 days before the elections at the latest. All donations must be listed in the Report on the funding of the electoral campaign, which is published by every candidate 90 days after the elections at the latest. All donations need to be also listed in the Annual financial report, submitted to the Office and published. There is a spending limit that differs in various types of elections. All electoral spending should be made from online transparent bank accounts. Third parties may participate in the electoral campaign, with lower spending limits and similar obligations regarding the publication of electoral spending.

*Sanctions:* Min./max. fine 100,000 – 2,000,000 CZK (4,000-80,000 EUR), returning the inappropriate donation to donor

*Risks:* In some types of elections, candidates are not just political parties and movements (e.g. presidential elections), so donation limits do not apply, or foreign donations are allowed. Also, it is possible to accept donations from donors (e.g. non-profits), which does not have to disclose their electoral spending and income via a Report on the funding of the electoral campaign.

It is challenging to monitor multiple donations from individuals – these may act as distributors of financial donations from someone else in order to bypass the limit per single donor. However, this might be the case of only larger parties (several dozens).

It is difficult to monitor the limit for financial donations if there is a business/corporate network with many legal entities providing donations. So far, regular donation monitoring has revealed relatively minor problems regarding the accumulation of donations. However, a more detailed analysis of identified problems will still take place.

Some types of political advertising are hard to trace and evaluate its financial volume and origins (typically social media). Third parties may also consciously engage in the electoral campaign to help a particular candidate and thus increase his spending limit.

## **Healthcare**

Health care benefit package in the Czech Republic is determined by law. The law, however, presumes several areas in which the benefit package is subject to prior authorization or consent of the patients' statutory health insurance fund (SHIF). Until recently patients' requests were evaluated by a medical doctor employed by the SHIFs. In case of patient's disagreement with the doctor's ruling, the patient's appeal was again re-evaluated by the SHIF, usually by the doctor's superior. In order to ensure transparency in decision making and also consistency across the whole SHIF, an institute of "revision commission" was established by law and came into force on 1st January 2022. The revision commission, although appointed by the SHIF, will consist, in its majority, of independent professionals who will objectively review each case. This is ensured by the fact that the majority of the respective commission's members must be professionals who are not employed by the particular SHIF, and therefore their independence is granted.

### ***23. 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, etc.)***

Conflict of interests is primarily governed by the Act on Conflict of Interest. More on the Act and other legislature regulating conflict of interest was reported in the previous reports.

Categories of public officials concerned are set out in section 2 of the Act on Conflict of Interest:

**§ 2 (1) of the Act on Conflict of Interests**

- a) member of the Chamber of Deputies of the Parliament of the Czech Republic (hereinafter only the “Deputy”),*
- b) member of the Senate of the Parliament of the Czech Republic (hereinafter only the “Senator”),*
- c) cabinet member or any director of a central public administration office not headed by a cabinet member,*
- d) deputy of cabinet member or deputy of Minister of Interior for Civil Service*
- e) head of the Chamber of Deputies Office, head of the Senate Office or head of the President of the Republic Office*
- f) inspector of the Office for Personal Data Protection,*
- g) the president of the Czech Office for Standards, Metrology and Testing,*
- h) member of the Council of the Czech Telecommunication Office,*
- i) member of the Council of the Energy Regulatory Office,*
- j) member of the Bank Board of the Czech National Bank,*
- k) the president and vice-president and any member of the Supreme Audit Office,*
- l) the president or member of the Office for Surveillance on Financing of Political Parties and Political Movement*
- m) the ombudsman and his deputy,*
- n) member of the Council for Radio and TV Broadcasting,*
- o) any member of a Regional Council or any member of the Metropolitan Authority of the Capital City of Prague, who has been released for the performance of office for long-term or who has not been employed before being elected a member of a Regional Council, but performs function to the same extent as a member released,*
- p) member of a municipal council, town district council or local district council of a territorially subdivided chartered town or local district council of the Capital City of Prague, who has been released for a full-time performance of office or who has not been employed before being elected as a member of a local council, but performs function to the same extent as a member released,*
- q) mayor of municipality, town district or local district of a territorially subdivided chartered town or of local district of the capital City of Prague, vice-mayor of municipality, town district or local district of a territorially subdivided chartered town, deputy of mayor of local district of the Capital City of Prague or members of municipal council, council of town district or of local district of territorially subdivided chartered town, of local district of the Capital City of Prague, regional councillors or councillors of Capital City of Prague, who were not released for a full-time performance of office.*

**§ 2 (2) of the Act on Conflict of Interests**

- a) director of the security forces and leading member of the security force on 1st and 2nd management levels under a special law on security corps, with the exception of members of the intelligence services,*
- b) member of a statutory body, managing body, supervisory or controlling body of any corporation established by law, state contributory organization, contributory organization of a territorial self-governing body, with the exception of members of the boards of public universities and the statutory body or members of the statutory body, members of the management, supervisory or control body of self-governing professional organizations established by law,*

- c) senior employee of 2nd to 4th management level under special law of a legal entity established by law, state contributory organization, contributory organization of a territorial self-governing body, with the exception of legal entities performing activities of a school or school facility,*
- d) head of state organizational units, which is an administrative office and 2nd to 4th management level under special law of state organization unit with exception of the intelligence services, or head of the unit according to an Act on Civil Service, if he/she is not a head of department or member of intelligence services,*
- e) head official of territorial self-governing body participation in the execution of administrative activities assigned in the municipal office, town authority, local authority of a territorially subdivided chartered town, to regional authority, Municipality of Capital City of Prague or office of a local district of Capital City of Prague,*
- f) judge,*
- g) public prosecutor,*
- h) military soldier of a military rank lieutenant and a higher military rank, except for members of intelligence services, or*
- i) director of public research institution according to the Act on Public Research Institutions.*

**§ 2 (3) of the Act on Conflict of Interests**

*The obligations specified in this act of law shall apply to the personnel indicated in paragraph 2, which submits declarations under Sections 9 to 11 and Section 12 (4) to registration authority, only if such personnel as a part of their official duties*

- a) handle financial means of public administration authorities as transaction principals within the meaning of the Act on Financial Control, if the value of the financial transaction surpasses 250.000 CZK,*
- b) participate directly in the preparation of public tenders, or realisation in the exercise of the rights and obligations of contracting authorities in implementing awarded public contract,*
- c) decide in administration proceedings, with exception of infractions proceedings,*
- d) participates in criminal prosecution.*

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

The situation remains the same as described in the previous reports as the Bill on Protection of Whistleblowers still remains to be adopted (see above).

Civil service has adopted a regulation on whistleblowing already in 2015 by government regulation no 145/2015, on measures relating to reporting a suspicion of breaches of law in a service authority. The regulation introduces a position of special investigator in each service authority, who investigates reports on a suspicion of breaches of law made by civil servants and ensures protection of such civil servant against retaliation, especially by not disclosing their identity.

Civil Service Section of the Ministry of the Interior provides methodological guidance to service authorities and other support, e.g. organizing training. In 2021 a training for investigators of service authorities focusing on prevention of sexual harassment in civil service was carried out. The training was organized by the Office of the Ombudsman with assistance of the Civil Service Section of the Ministry of the Interior.

Current system of reporting breaches of law and protection of a reporting civil servant in service authorities, as stipulated by the above mentioned government regulation no 145/2015, will be considered as an internal reporting channel according to the EU Directive 2019/1937 on the protection

of persons who report breaches of Union law. However, in order to be fully compliant with the Directive, few changes will have to be made to the government regulation no 145/2015.

***25. List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for monitoring and preventing corruption and conflict of interest in these sectors. (e.g. public procurement, healthcare, citizen investor schemes, risk or cases of corruption linked to the disbursement of EU funds, other).***

#### **Collection of data on Corruption in Various Sector in the Czech Republic**

In 2021, a research project began that is being implemented by the Institute of Sociology of the Czech Academy of Sciences in partnership with Ministry of Justice of the Czech Republic that shall identify the extent and forms of corruption in selected sectors in the Czech Republic. The project shall result in recommendations of measures to reduce corruption in the selected sectors and is expected to feed into the future anti-corruption strategies of the Government. The final research report shall propose a methodology for the measurement of direct and indirect experience of corruption. The project is scheduled to be finished by the end of the year 2023 at the latest. In its pilot run the survey used to test and develop the methodology is going to focus on following 6 sectors: Healthcare, Education, Public Procurement, Construction and Land Development Procedure (permits etc.), Executions of debts and Sports.

#### **Conflict of Interests**

Section 4b of the Act on Conflict of Interests contains a restriction to participate on public tender proceedings for such business companies, in which a public official mentioned in Section 2 (1) (c) of the Act on Conflict of Interests (i.e. cabinet member or the head of a central public administration office) or an entity controlled by them owns interest of at least 25 %. The contracting authority is obliged to exclude such business company from such public tender.

Section 4c of the Act on Conflict of Interests contains restriction to provide a subsidy or an investment incentive to a business company, in which the public official mentioned in Section 2 (1) (c) of the Act on Conflict of Interests (i.e. cabinet member or director of a central public administration office) or entity controlled by him/her owns an interest of at least 25%.

#### **Health care**

The Ministry of Health of the Czech Republic follows the current Internal Anticorruption Framework Programme containing duties and procedures. Moreover, Combating Corruption Action Plan was adopted which is in accordance with tasks set by the Czech Government. The Action Plan is evaluated, and the results submitted to the Ministry of Justice of the Czech Republic regularly by the end of January.

The Sectoral Analysis of corruption in the health-care sector which was adopted by the Government Council for Coordination of Fight against Corruption in 2020, is an important part of the Action Plan. Based on this document, particular tasks were identified. Implementing status of the Sectoral Analysis is regularly evaluated.

An internal auditing carried out in the course of the current pandemic COVID-19 pinpointed new objectives regarding extraordinary and protective measures.

***26. Measures taken to assess and address corruption risks in the context of the COVID-19 pandemic.***

As mentioned in previous report, in 2020 the tasks on development of specific methodology and on tagging of pandemic-related public contracts were included in the Anti-Corruption Action Plan for 2021-2022 after an analysis of relevant recommendations of GRECO, OECD, Open Government Partnership that were stressing that one of the important pillars of fight against COVID-related corruption risks is built on transparency alongside with establishment of clear crisis-related processes. These measures were implemented during 2021. Evaluation of implementation of these measures is still pending, as mentioned above.

### ***27. Any other relevant measures to prevent corruption in public and private sector***

According to Section 8 of the Act on Conflict of Interests in the course of consideration of any constitutional body, another state body or any body of a territorial self-governing unit or legal entity established by law, in which he/she makes an address, presents a petition or is entitled to vote, each public official shall announce his/her relation to the considered issue, point out any personal benefit or injury that he/she might obtain or suffer as a result and state whether he/she has any personal interest in the considered issue; this provision does not apply to generally obvious benefits or interests in relation to an unlimited number of addressees.

### ***C. Repressive measures***

#### ***28. Criminalisation, including the level of applicable sanctions, of corruption and related offences including foreign bribery.***

The Act No. 333/2020 Coll. brought significant changes to criminal punishments. The law emphasizes that in case a committed criminal offense sought profit the court should primarily think about imposing a punishment related to property, mainly a pecuniary penalty instead of imposing sentence of punishment. After a year of being in effect it is possible to state that the aim has been achieved.

Under criminal sanctions related to property the Czech Criminal Code understands not only pecuniary penalty (section 67), but also confiscation of assets (Section 66), confiscation of an item (Section 70). Moreover, in case of fulfilling other conditions, it is possible to impose individually or in parallel to a punishment also various protective measures – forfeiture of an item (section 101), forfeiture of a portion of assets (§102a).

In case of corruption related criminal offences the punishment confiscation of assets can be imposed for the most aggravated offence of active and passive bribery. This punishment affects the whole property of an offender or a portion thereof designated by the court (it does not apply to means and items necessary for satisfaction of necessities of life of the convict and persons, whose support or upbringing is the convict obliged to provide according to the law). Confiscated property will devolve to the State.

Pecuniary penalty as a punishment can be imposed on all corruption related criminal offences.

Confiscation of an item is imposed by the court in case the item belongs to the offender and is direct proceeds from criminal activity. It might be imposed also in case it is instrumentalities of criminal activity, or indirect proceeds. If such item was for example destroyed and, therefore, could not be confiscated it is possible to confiscate equivalent value.

Forfeiture of an item may be imposed on the offender in case a sentence of confiscation of an item was not and such item belongs to an offender who cannot be prosecuted or sentenced, or whose punishment has been waived by the court or if it endangers safety of persons or society or property of if there is a threat that it will be used to commit a crime. This protective measure may be imposed also in case the item is direct (in some cases also indirect) proceeds from criminal activity and such item belongs to the offender who was convicted for a criminal offense, from which the item originated, or who cannot be prosecuted or convicted or whose punishment was waived by court, or to a deranged person, who committed an act otherwise criminal, or third person to which the offender transferred the item or who acquired the item in another way or if the item is a part of assets in a trust fund or similar institution. If such item was for example destroyed and, therefore, could not be forfeited it is possible to forfeit equivalent value.

Forfeiture of a portion of assets represents the institution of extended confiscations. This protective measure can be imposed for active and passive bribery and for trading in influence. It is applicable to all crimes where the Criminal Code stipulates a sentence of imprisonment with the upper limit of at least four years or to a specifically mentioned crimes. It can be imposed on the offender or in relation to an item after fulfilling other conditions to a third person, legal entity, trust fund, or which was acquired to community property.

***29. Data on investigation and application of sanctions for corruption offences<sup>9</sup>, including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds.***

Will be added in due time.

***30. Potential obstacles to investigation and prosecution as well as to the effectiveness of sanctions of high-level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, pardoning, etc.)***

There were no legislative changes in investigation, prosecution and sanctions in complex corruption cases in the Czech Republic. As for investigation of high-level and complex corruption cases, we do not see any obstacles, the answer remains as in 2021 report.

**Sanctions issued according to the Act on Conflict of Interests**

Breaches of the Act on Conflict of Interests constitute administrative offences. The most common breach of the Act on Conflict of Interests is a failure to submit one of the Notifications, which is committed by a public official or a former public official. Such offence can be sanctioned with a fine of up to CZK 50 000. However, in most cases much lower fines are imposed (usually CZK 1 000 – 2000). The Ministry of Justice has repeatedly stressed the importance of effective and proportionate sanctions in communication with the relevant authorities (most recently during a series of webinars in December 2021). Another issue is caused by limited human resources of the Ministry of Justice, which is demonstrated in the relatively low number of inspections conducted.

***31. Information on effectiveness of administrative measures, in particular recovery measures and administrative sanctions on both public and private offenders.***

**Disciplinary measures in civil service**

*Please note, that the following information applies only to civil servants.*

All civil servants are legally bound to obey service discipline, i.e. dutifully perform their duties arising from legislation, which pertains to the service in the given field of service, service regulation or service orders. Such dutiful performance of civil service includes obligation not to accept any gifts or benefits the value of which exceeds 300 CZK (approx. 12 EUR) in connection with performance of civil service (with the exception of gifts or benefits provided by the appointing authority). A disciplinary proceeding according to the Civil Service Act, which is carried out in case of breach of service discipline, therefore also covers acts with signs of corruption, if such cases do not bear signs of criminal offence, in which case criminal proceedings take place.

All civil servants are disciplinary liable, with exception of the Director-General for the Civil Service and Secretaries-General (they can, however, be removed from their position if they gravely breach the service discipline or if their conduct compromise dignity of their post or cast doubt on their professional, and just performance and decision making). The disciplinary proceedings are carried out by an independent disciplinary committee composed of three members.

Based on gravity of breach of service discipline, disciplinary measure can take form of: 1) a written reprimand, 2) deduction of 15% of the pay for up to 3 calendar months, 3) removal from the service post of a senior civil servants, or 4) dismissal from the civil service.

***Other – please specify***

### III. Media pluralism

#### A. Media authorities and bodies

##### **32. Measures taken to ensure the independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies**

No substantial change since the last report. The draft law transposing directive 1808/2018/EU has been resubmitted to the Parliament due the fact there had been General election and the new Chamber of Deputies has been set up. Basically identical proposal of law transposing the directive was approved by the Government on 25th October 2021 and sent to the Parliament for further deliberations. First reading is envisaged in January.

##### **33. Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies**

No substantial change since the last report.

##### **34. Existence and functions of media councils or other self-regulatory bodies**

No substantial change since the last report.

#### B. Transparency of media ownership and and safeguards against government or political interference

##### **35. Measures taken to ensure the fair and transparent allocation of state advertising (including any rules regulating the matter)**

No substantial change since the last report.

##### **36. Safeguards against state / political interference, in particular:**

###### **- safeguards to ensure editorial independence of media (private and public)**

The Law on radio and television broadcasting (231/2001) states explicitly in section 31: "A broadcaster and rebroadcaster shall be entitled to broadcast programmes in a free and independent manner. Any intervention in the contents of the programmes is only admissible on the basis of law and within the limits thereof."

###### **- specific safeguards for the independence of governing bodies of public service media governance (e.g. related to appointment, dismissal) and safeguards for their operational independence (e.g. related to reporting obligations),**

The councils governing public service media are defined by the specific laws concerning each public service media (Czech television Act, Czech radio Act). Members are elected by the Chamber of Deputies of the Parliament based on the nominations proposed by the civil society organisations. The Chamber of Deputies of the Parliament can recall individual members on the conditions prescribed by law or dismiss the body as a whole. The new Government formed on 17<sup>th</sup> December 2021 has proclaimed its will to strengthen the independence of public service media. Its intention is to include the other Chamber of the Parliament – the Senate into the election process and in addition to it to precise conditions of the civil society organisations who can submit nominations for the members of the councils.

###### **- procedures for the concession/renewal/termination of operating licenses**

The Law on radio and television broadcasting (231/2001) provides for specific procedures to grant/extend/withdraw the licence for broadcasting. The general principles of administrative law apply as well. The process of granting a licence is simplified for digital broadcasting, basically the regulatory body limit its role to verifying data submitted by the applicant. Whereas the licencing

procedure for analogue broadcasting (radio FM licences) is a public tender. Termination of licences is divided into several categories, time lapse, own requests, dissolution of a legal entity, withdrawal of the licence by the Council based on severe breaches of law and other prescribed conditions by the law (eg. no operation in practice, conflict of interests).

***- information on specific legal provisions for companies in the media sector (other than licensing), including as regards company operation, capital entry requirements and corporate governance***

Foreign Investment Verification Act 34/2021 states the process of obligatory consultation with the Ministry of industry and trade in case of foreign investors who intend to enter the legal person who is holding broadcasting licence or is a publisher of periodicals over 100 000 prints daily in the calendar year. Ministry of industry and trade shall evaluate the public security interest of such intended contract.

***37. Transparency of media ownership and public availability of media ownership information, including on media concentration (including any rules regulating the matter)***

No substantial change since the last report. Ministry of Culture has requested the Council of radio and television broadcasting for its opinion on the matter. In its reply the Council has expressed its opinion it is necessary to give explicit competence by law for the Council to gain full access to the registry of beneficial owners since the general competence to use the part of the registry open for public use as provided by the current law is not sufficient.

**C. Framework for journalists' protection**

***38. Rules and practices guaranteeing journalist's independence and safety***

No substantial change since the last report.

***39. Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists***

No substantial change since the last report.

***40. Access to information and public documents (incl. procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities)***

Journalist have the same rights to access to the information as the rest of the population. In addition to informal procedures, journalists like the rest of the population of the Czech Republic can act upon the Act on Free Access to Information to obtain information. In general, they must submit a request that is normally dealt within 15 days. In case of withholding information, they may defend themselves by appeals or, where appropriate, by an action in administrative courts. The appeal body or administrative court may order to provide information and such order is enforceable. Obligated entities may request the necessary costs associated with processing of providing information. Journalists are not excluded from the obligation to pay the costs.

Due to the lack of time before the elections to the Chamber of the Deputies in 2021, negotiations of two drafts amending the Act on Free Access to Information were postponed. These were the Transposition amendment intended to transpose the EU Directive on open data and the re-use of public sector information (<https://www.psp.cz/sqw/historie.sqw?o=8&T=1194>), and an amendment addressing some application problems (<https://www.psp.cz/sqw/historie.sqw?o=8&T=633>). The

transposition amendment will be re-submitted this year and the commitment to the EU to transpose the above-mentioned Directive will be fulfilled.

Currently, the introduction of an advance payment of costs is no longer considered. In response to the Commission's concerns expressed in the 2020 Report (page 12), any protection against the abuse of the right to information will be limited only to very obvious cases. Entitled access to public registers in the form of mandatory publication as open data has already been introduced into the Act on Free Access to Information by amending Act No 261/2021 Coll.

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

The Ministry of Justice of the Czech Republic prepared a contribution to the public consultation organised by the European Commission for the initiative aiming to protect journalists and human rights defenders in strategic lawsuits against public participation (SLAPP). Further work will depend on whether or not a legislative proposal at EU level is submitted.

***Other – please specify***

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

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

#### **42. Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process**

New legislative proposals are prepared in close cooperation with experts from practice (judges, prosecutors, lawyers and other judicial professions, representatives from the universities, etc.). E.g. in connection with the preparation of the amendment to the Act on Courts and Judges, round tables were organized by the Ministry of Justice, during which the individual topics of this amendment were discussed. These meetings were attended by representatives of regional, high and supreme courts, as well as by representatives of the Judicial Union and others. After that the standard legislative process with standard inter-ministerial comment procedure, in which relevant bodies, courts and other institutions had the opportunity to share their comments, took place. Working groups are established for the preparation of the new criminal and civil procedure codes, new act on preventive restructuralization, etc. Outcomes of the work during the preparation process are usually published on the website of the Ministry of Justice.

#### **Framework, policy and use of impact assessments**

The legislative process and practice do not count with an engagement of the Parliament of the Czech Republic into the creation of frameworks, policies planning and impact assessments. These activities should be done before (ex-ante evaluation) the bill is submitted to the Parliament or after legislation is promulgated and start to be effective (ex-post evaluation). The rules concerning frameworks, policy analysis, planning and impact assessments are summarised mostly on the governmental level in [Rules of Procedure of the Government](#).

The minimal level of ex-ante assessment on the parliamentary level is ensured by sec. 86 (3) of [Act No. 90/1995 Coll., on the Rules of Procedure of the Chamber of Deputies](#) which states that *“The draft law includes an explanatory report justifying the principles of the new legislation. It should analyse the current legal situation and explain the necessity of the new legislation as a whole (general part) as well as in terms of its individual provisions (special part). Each explanatory report must also feature all anticipated economic and financial impact of the new legislation, especially on the state budget and regional and municipal budgets, and an assessment of its compliance with international treaties under Article 10 of the Constitution and with the constitutional order of the Czech Republic.”*

A framework, policy planning and impact assessment works should be undertaken by sponsors who present bills (sponsor of a bill may be any deputy, a group of deputies, the Senate, the government or the Assemblies of higher self-governing units). In cases of bills sponsored by the government, such work is done mostly by the government or ministries, etc. In cases of bills sponsored by deputies or senators, framework, policy and impact assessment issues should be covered by concerned deputies or senators, their assistants, external experts or their political parties which may help them with preparation. Political parties or movements are entitled to state contribution for their operation and contribution supporting an operation of political institutes (think-tank) of political parties which may help in such analytical works (see sec. 20 et seq. of Act No. 424/1991 Coll., on association in political parties and political movements). Every member of the Parliament may be provided with a certain budget with a threshold to pay for his/her assistants. Moreover, members of parliament may submit their expenses for expert and administrative works for reimbursement (this budget has as well its

threshold, see sec. 5 (1) j) of Act No. 236/1995 Coll.). Concerning questions on facts, foreign law or EU issues, the members of Parliament may forward their questions to the Parliamentary Institute which for Parliament resolves the tasks of scientific, informative and educational nature.

### **Stakeholders'/public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms)**

Concerning bills submitted by the Government, there have not been any changes in the comment procedure (consultation procedure) as [Government's Legislative Rules](#) have not been changed or updated since the last year. The same might be said about non-government bills (presented by any Deputy, a group of Deputies, the Senate or the Assemblies of higher self-governing units), as there have not been any changes relevant for the topic of consultations in Act No. 90/1995 Coll., on the Rules of Procedure of the Chamber of Deputies during the year 2021.

Facing the spread of COVID-19 the government and ministries established several additional Advisory and Working Bodies that represented experts, stakeholders or concerned groups.

### **Transparency of the legislative process**

#### The Regime in the Chamber of Deputies and the Senate

During the normal situation, plenary and committee meetings of both chambers of the Parliament are open to the public unless specified otherwise. Only the deliberations of subcommittees of the Chamber of Deputies are generally not accessible to the public if the subcommittee does not decide otherwise. Nevertheless, during the majority of the year 2021, there have been introduced several restrictive measures or prohibitions in physical accessibility of the public to Chamber's and Senate's body meetings due to the protection of members of Parliament against COVID-19 disease. The regime of accessibility of the public has changed several times during the year 2021 reacting to changing measures of the government or the Ministry of Health and epidemical situation.<sup>2</sup> Generally, more restrictive measures were imposed during the second and third wave (autumn 2020, winter and beginning of spring 2021) and fourth wave (since the end of October 2021 until now) of the spread of COVID-19 disease.

Measures included prohibition or limitation of access of the general public to the premises of both chambers (for instance through limitation only to invited persons, limitation of the capacity of rooms or duty to keep distance between persons). The general public without invitation/authorisation was not allowed to enter both chambers from autumn 2020 until late spring 2021.

Since spring 2021, persons entering the premises of the Chamber of Deputies or the Senate had a duty to submit on request confirmation of a) passing the test regarding COVID-19 with a negative result not older than stipulated, b) certificate proving that person undergone COVID-19 in the last 180 days or c) the certificate on vaccination against COVID-19.<sup>3</sup> Both in the Chamber of Deputies and in the Senate was during the end of November/December permitted access only to persons capable to prove they undergone COVID-19 in the last 180 days or have been vaccinated (the Senate allowed to prove

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<sup>2</sup> To find out more information about rules applied in the Chamber of Deputies, see an archive of the different time versions of the website: <https://www.psp.cz/sqw/cms.sqw?z=13799> during the year 2021 using Archive of the Internet on: <https://web.archive.org/>. More information is accessible on the website "News of the Chamber of Deputies" on: <https://www.psp.cz/sqw/cms.sqw>. To find out more information about rules applied in the Senate, visit the website "News on COVID-19" on: <https://www.senat.cz/informace/covid/>.

<sup>3</sup> Protiepidemická opatření v budovách PS. *Internet archive* [online]. 9 May 2021 [cit. 2022-01-11]. Accessible on: <https://web.archive.org/web/20210509021241/https://www.psp.cz/sqw/cms.sqw?z=13799>

infection-free status by test only to those who could prove they cannot undergo vaccination due to health reasons).<sup>4</sup>

It was compulsory to wear a face mask or any type of covering of the mouth and nose at the premises of both chambers of Parliament during all the year 2021. Since 25 February, the duty was limited only to wearing respirators of class FFP2/KN 95 (or respectively medical face mask in the Chamber of Deputies). The gallery for the public in the main meeting room of both chambers remained closed from autumn 2020 until late spring when it was opened for a limited capacity of persons.

The restrictions concerning access to both chambers of the Parliament premises did not apply only to the general public but as well to journalists.<sup>5</sup> Until 25 May 2021, only journalists with permanent accreditation and the necessary technical staff following them were allowed to enter buildings of the Chamber of Deputies. Later, access was allowed as well to journalists without permanent accreditation upon one-time accreditation for the relevant day. The Office of the Chamber of Deputies had the right to limit the number of present persons in the premises devoted to journalists so that the numbers comply with currently applicable measures of the government or the Ministry of Health. At the end of the year, a stricter restriction was reintroduced again. The access of media to the premises of the Senate was allowed during winter, spring and autumn only in a limited number of persons as a journalist were required to submit valid accreditation (number of accreditations was limited). Duty to wear a face mask or to submit confirmation on vaccination, testing or undergoing illness of COVID-19 applied to a journalist the same as to the general public.

Generally, on websites of both chambers are placed stenographic records from Chamber's and Senate's plenary meetings. Meetings of both chambers are broadcast online in real-time and it is possible to find voice or video records from past meetings as well. Moreover, the number of stream channels of the Chamber of Deputies for online broadcasting increased from 3 to the current 5 during the year 2021.<sup>6</sup>

Committees and commissions of the Chamber of Deputies and the Senate usually publish on their official websites invitations to their meetings, brief written minutes of the meeting<sup>7</sup> and resolutions adopted during the meeting. The practice to publish on websites of committees' audio recordings (in mp3 format), presentations or relevant documents after every meeting is currently followed by more than half of the committees of the Chamber of Deputies. Audio recordings of meetings of commissions or committees may be as well available on demand. Commissions of the Chamber of Deputies tend to publish invitations, minutes of the meeting and resolutions adopted but no audio recordings. Audio recordings of committee's and commission's meetings in the Senate are available on demand.

### **Initiatives that may enhance the transparency of the legislative process in future**

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<sup>4</sup> Aktuální pravidla pro vstup do Senátu (22.11.2021) *Senát*. [online]. [cit. 2022-01-11]. Accessible on: <https://www.senat.cz/zpravodajstvi/zprava.php?id=3294>

<sup>5</sup> See websites with a specification of requirements applicable for journalists in the premises of the Chamber of Deputies since 15 March 2021 (<https://www.psp.cz/sqw/cms.sqw?z=14601>), 25 May (<https://www.psp.cz/sqw/cms.sqw?z=14861>) and 22 November 2021 (<https://www.psp.cz/sqw/cms.sqw?z=15201>)

<sup>6</sup> See a comparison of time version of the website of the Chamber of Deputies from 3<sup>rd</sup> March 2021 (<https://web.archive.org/web/20210303061922/https://www.psp.cz/sqw/hp.sqw?k=328>) with its version from 16<sup>th</sup> December 2021 (<https://web.archive.org/web/20211216080743/https://www.psp.cz/sqw/hp.sqw?k=328>).

<sup>7</sup> Sections 43 and 47 of the Rules of Procedure of the Chamber of Deputies stipulate that all committees and commissions of the Chamber of Deputies produce brief written minutes regarding every committee meeting. If the committee or commission meeting was held in public, the minutes shall be made public in a manner allowing remote access. The Rules of Procedure of the Senate in its section 95 and 97 states as a rule that minutes shall be taken of meetings of committee or commissions respectively. Rules of Procedure of the Senate lacks regulation concerning the publishing of the minutes, however, the Senate committees and commissions generally publish online minutes recorded on meetings.

The strengthening transparency of the legislative process is a process, which is still ongoing. Governmental [bill on lobbying](#) and [bill which follows it](#) (Chamber of Deputies documents no. 565 and 566), have not been approved until the end of the 8<sup>th</sup> period of the Chamber of Deputies.<sup>8</sup> Therefore, with the end of the period of functioning of the former Chamber of Deputies, deliberation of both bills was terminated. After election to the Chamber of Deputies which took place on 8<sup>th</sup> – 9<sup>th</sup> October 2021 and setting up the new Chamber of Deputies, the group of deputies proposed similar proposals of bills regulating the issue of lobbying (see the bill on lobbying and the bill which follows it, Chamber of Deputies documents no. 1 and 2).<sup>9</sup> Until now (mid of January 2022), the deliberation regarding these bills have not been initiated.

The transparency of the legislative process should be significantly strengthened thanks to the use of the system [eLegislativa](#) in future. This planned electronic system for the creation of legislation should facilitate the handling and processing of prepared legislation and provide the public with a more user-friendly system, which would enable easier control and participation in the legislative process. According to the last information, the commissioning of the system was postponed due to a delay on the side of the supplier.<sup>10</sup> The beginning of commissioning is linked to the entry into effect of Act No. 222/2016 Coll. on the Collection of Laws and International Treaties, which was postponed to 1<sup>st</sup> January 2023.<sup>11</sup> The last information provided to the Chamber of Deputies contained estimation of the term of overall commissioning of the system eLegislativa in June 2022.<sup>12</sup>

In relation to the entry into force of a new Act on Collection of Laws and International Treaties, the general public will enjoy greater clarity concerning legal order and their obligations as the explanatory reports of newly adopted laws will have to contain a list of public law obligations arising from them.<sup>13</sup> Moreover, the new Act on Collection of Laws and International Treaties states that newly adopted laws will enter into effect only on 1 January or 1 July, if not stipulated otherwise.<sup>14</sup> This rule shall simplify the situation for addressees of legislation as a high number of laws would enter into effect only two times a year.

### ***43. 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 need for quick consideration of a number of bills that were aimed at combatting against COVID-19 negative impacts on population influenced the legislative process that accelerated due to the more

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<sup>8</sup> Sněmovní tisk 565.VI.n.z.o lobbování. *Poslanecká sněmovna Parlamentu České republiky* [online]. [cit. 2022-01-11]. Accessible on: <https://www.psp.cz/sqw/historie.sqw?o=8&T=565>; Sněmovní tisk 566. VI.n.z., kt. se mění někt. z.v souv. s přijetím z. o lobbování. *Poslanecká sněmovna Parlamentu České republiky* [online]. [cit. 2022-01-11]. Accessible on: <https://www.psp.cz/sqw/historie.sqw?o=8&T=566>

<sup>9</sup> Sněmovní tisk 1. N. z. o lobbování. *Poslanecká sněmovna Parlamentu České republiky* [online]. [cit. 2022-01-11]. Accessible on: <https://www.psp.cz/sqw/historie.sqw?o=9&T=1>; Sněmovní tisk 2. N. z. - v souvislosti s přijetím zákona o lobbování. *Poslanecká sněmovna Parlamentu České republiky* [online]. [cit. 2022-01-11]. Accessible on: <https://www.psp.cz/sqw/historie.sqw?o=9&T=2>

<sup>10</sup> Minutes from meeting of the Subcommittee on Digitization of Justice and e-Collection from 7 September 2021; Zpráva o realizaci projektu e-Sbírka a e-Legislativa podaná na jednání Podvýboru pro digitalizaci justice a pro e-Sbírku ústavně právního výboru Poslanecké sněmovny, *Ministerstvo vnitra*, 10. září 2021.

<sup>11</sup> The entry into effect of Act No. 222/2016 Coll. on Collection of Laws and International Treaties was postponed from 2020 to 2022 by an amendment Act No. 277/2019 Coll., promulgated on 6 November 2019. This amendment was amended by Act No. 261/2021 Coll. which postponed the effect of Act No. 222/2016 Coll. to the year 2023.

<sup>12</sup> Zpráva o realizaci projektu e-Sbírka a e-Legislativa podaná na jednání Podvýboru pro digitalizaci justice a pro e-Sbírku ústavně právního výboru Poslanecké sněmovny. *Ministerstvo vnitra*. 10. září 2021.

<sup>13</sup> See section 19 of Act No. 222/2016 Coll. on Collection of Laws and International Treaties.

<sup>14</sup> See section 9 of Act No. 222/2016 Coll. on Collection of Laws and International Treaties.

common use of accelerated procedures – which are procedure of adopting acts in a [state of legislative emergency](#)<sup>15</sup> (in Czech *stav legislativní nouze*) and a [procedure of adopting act in the first reading](#) (fast track procedure).<sup>16</sup> However, as show tables below, contrary to the year 2020 when the legislative emergency regime was used almost in half of the cases of promulgated acts, the majority of acts approved in 2021 were approved in the regular regime. In spite of a visible return to the regular regime, still, the number of acts approved using accelerated procedures regimes was above average, proving that the pandemic situation continues.

Moreover, the year 2021 was not influenced only by the pandemic of COVID-19, but as well as by the holding of elections to the Chamber of Deputies which took place on 8<sup>th</sup> and 9<sup>th</sup> October. As consequence, it was approved fewer bills during the year 2021 than in the previous year.

Below there is provided a table containing statistic data concerning the percentage of acts adopted and promulgated in the Collection of Laws using accelerated procedures compared to the total number of adopted acts in each electoral period since 1998 until now:<sup>17</sup>

	III. (1998- 2002)	IV. (2002- 2006)	V. (2006- 2010)	VI. (2010- 2013)	VII. (2013- 2017)	VIII. (2017- 2021)	IX. (since 2021)
All bills passed	441	494	348	338	357	332	3
Fast track procedure (procedure of adopting acts in the first reading)	31	34	63	28	31	40	0
Bill passed in a state of legislative emergency	7	16	4	6	0	71	3

As have shown table above, since the elections in October 2021, some sessions of the Chamber of Deputies have already taken place which gave an opportunity to the newly settled Chamber of Deputies to approve 3 bills in the legislative emergency regime. All approved acts were related to the COVID-19 pandemic, they tackled issues of labour law and social security. As the regular regime of approval of acts lasts on average 5 months in the Chamber of Deputies and 7 months as the whole process, during the IX. the electoral period could not have been yet approved laws in regular regime due to lack of time. The Chamber of Deputies expressed its confidence in the new government on 13 January 2022.

<sup>15</sup> For more information, see sec. 99 of [Rules of Procedure of the Chamber of Deputies](#), sec. 118 of Act No. 107/1999 Coll. on [Rules of Procedure of Senate](#) and sec. 17 of [Government's Legislative Rules](#).

<sup>16</sup> See sec. 90 (2 – 7) of Act No. 90/1995 Coll. on the [Rules of Procedure of the Chamber of Deputies](#).

<sup>17</sup> See Database of Chamber of Deputies documents, focused on bills on the website: <https://www.psp.cz/sqw/sntisk.sqw?o=8&F=N>. There is possible to select only those bills that were promulgated in the Collection of Laws, those deliberated using legislative state of emergency (*Projednávání v LN*) or fast track procedure (*Projednávání v RJ – přijato již v 1. čtení*).

The crisis related to the spread of COVID-19 among the population started in the mid of March 2020. All bills, that were approved in the legislative emergency regime during VIII. electoral period, were approved in that critical period since March 2020 and the vast majority of bills had a close relationship with the fight against the spread of disease. On the other hand, as the previous table has shown, the procedure of adopting acts in the first reading (fast track regime) was used even during times when there was no emergency need. The procedure of adopting acts in the first reading is used even in cases of non-controversial bills, where there is wide support for the bill across the political parties.

The later table shows differences in numbers in promulgated acts approved in different legislative regimes as counted for the purposes of Rule of Law Report 2021 and 2022. The numbers are influenced by the fact that collections of data took place after the end of every monitored year and requested data in reports should have encompassed even data from the beginning of the later year. The collection of data requested was related to different time periods. On the other hand, in the case of the Czech Republic, in the coming months of the beginning of the year 2022, the number of promulgated laws won't probably rise significantly anyway.

VIII. electoral period of the Chamber of Deputies (2017- until 21 <sup>st</sup> October 2021)		IX. electoral period of the Chamber of Deputies (since 22 <sup>nd</sup> October 2021)	
	Acts promulgated in the Collection of Laws since January 2020 - until 12 February 2021 (13,5 months)	Acts promulgated in the Collection of Laws since 13 February 2021 - until the end of November 2021 (9,5 months)	Laws approved by the new Chamber of Deputies and later promulgated in the Collection of Laws
All bills passed	128	74	3
Fast track bills (procedure of adopting acts in the first reading)	12	10	0
Bill passed in a state of legislative emergency	60	11	3

The following table shows differences in numbers in promulgated acts approved in different legislative regimes as counted according to the calendar year in which they were promulgated in the Collection of Laws.

Promulgated in the Collection of Laws		
	Calendar year 2020	Calendar year 2021
All bills passed	128	89
Fast track bills (procedure of adopting acts in the first reading)	11	11
Bill passed in a state of legislative emergency	59	15

The legislative state of emergency was repeatedly installed during the year 2021. The state of legislative emergency may be declared at the government's request by the Chairperson of the Chamber of Deputies under exceptional circumstances and for a limited period of time when principal human rights and liberties or the state's security are in jeopardy or the state may suffer considerable economic losses. The Chamber of Deputies may cancel the state of legislative emergency or reduce its duration. The legitimacy of the use of legislative emergency may be subjected to a review of the Constitutional Court that has the power to cancel approved act due to misuse of a legislative emergency regime.<sup>18</sup>

The state of legislative emergency allows more flexible and swift decision-making. In summary, the first reading does not take place and committees have strict time limits for consideration of bills. During the second reading the limited speaking time may be imposed, the general debate may be avoided and the third reading commences immediately after the end of the second reading. This procedure does not apply to all bills during the state of legislative emergency but applies only to governmental bills in cases when a government asks for use of this process and the Chairperson of the Chamber of Deputies agrees to it. The Chamber of Deputies shall review whether the circumstances on which the state of legislative emergency is based persist before discussing the programme of its meeting. If concludes that the conditions have already passed, it shall cancel the state of legislative emergency. Moreover, before consideration of every governmental bill, the Chamber of Deputies reviews whether the conditions for the legislative emergency procedure in this case persist.

As have shown tables above, in the year 2021 in the state of legislative emergency were approved 15 bills. Furthermore, in one case the state of legislative emergency was declared at the government's request by the Chairperson of the Chamber of Deputies, however, the resolution concerning the duration of the state of legislative emergency was not approved by the Chamber of Deputies.<sup>19</sup>

Both in the years 2020 and 2021 eleven bills were approved using the procedure of adopting acts in the first reading. Three times during the year 2021 the proponent of the bill proposed to deliberate the bill in the procedure of adopting act in the first reading (fast track regime), however, the Chamber

<sup>18</sup> See for instance judgement of the Constitutional Court case number Pl. ÚS 55/10 from 1 March 2011. Accessible on: <https://www.usoud.cz/en/decisions/2011-03-01-pl-us-55-10-state-of-legislative-emergency>

<sup>19</sup> Act No. 248/2021 Coll. Sněmovní tisk 1025. Novela z. o zaměstnanosti. *Poslanecká sněmovna Parlamentu České republiky* [online]. [cit. 2022-01-11]. Accessible on: <https://www.psp.cz/sqw/historie.sqw?o=8&T=1025>

of Deputies two times did not give its assent to deliberate those bills in the procedure of adopting acts in the first reading<sup>20</sup> and once the proponent withdrew his request concerning the procedure of deliberation.<sup>21</sup>

#### **44. Regime for constitutional review of laws**

There has been no amendments or reforms during the last year which would influence the constitutional review of laws. There have been adopted two amendments of Act No. 182/1993 Coll. on Constitutional Court during the year 2021. Both amendments, Act No. 261/2021 Coll. and Act No. 270/2021 Coll. broadened access of the Constitutional court to personal data from public registers.

#### **45. COVID-19: provide update on significant developments with regard to emergency regimes 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**

##### **Administrative courts review**

Since the Pandemic Act entered into effect, the measures issued according to the Pandemic Act or Act on the protection of public health issued during the state of pandemic alert by ministries (most often by the Ministry of Health) applicable to all the country are subjected to review by Supreme Administrative Court. Other measures, for instance, issued by Regional Hygiene Station are subjected to review by the regional administrative courts.<sup>22</sup> The Supreme Administrative Court decides in a single-stage procedure, which significantly shortens the review of measures. Before entering into effect of the Pandemic Act, measures issued based on the legal basis of the Act on the protection of public health were subjected to review by administrative courts (predominantly by the Municipal Court of Prague which reviews measures issued by all ministries as ministries seat in Prague). Petitioners had a possibility to file cassation actions against judgements of regional administrative courts which were then reviewed by the Supreme Administrative Court. The number of measures<sup>23</sup> that were annulled or declared unlawful<sup>24</sup> by administrative courts or the Supreme Administrative Court during the year 2021 attracted the attention of media<sup>25</sup> and of the Parliament<sup>26</sup> which led the Minister of Health to decision to order an internal audit to investigate the manner of preparation of emergency measures.

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<sup>20</sup> Act No. 285/202 Coll. Sněmovní tisk 1116/0. Novela z. o státní sociální podpoře – RJ. *Poslanecká sněmovna Parlamentu České republiky* [online]. [cit. 2022-01-11]. Accessible on: <https://www.psp.cz/sqw/historie.sqw?o=8&T=1116>; Act No. 323/2021 Coll. Sněmovní tisk 1230. Novela z. o důchodovém pojištění. *Poslanecká sněmovna Parlamentu České republiky* [online]. [cit. 2022-01-11]. Accessible on: <https://www.psp.cz/sqw/historie.sqw?o=8&t=1230>

<sup>21</sup> Act No. 249/2021 Coll. Sněmovní tisk 1126. Novela z. o realitním zprostředkování. *Poslanecká sněmovna Parlamentu České republiky* [online]. [cit. 2022-01-11]. Accessible on: <https://www.psp.cz/sqw/historie.sqw?o=8&t=1126>

<sup>22</sup> See in detail section 13 of the Pandemic Act.

<sup>23</sup> The analysis and table of court decisions on measures during a pandemic since the beginning of the pandemic until the end of the year 2021 is accessible in the study: SYLLOVÁ, Jindřiška. Rozhodnutí soudů o opatřeních během pandemie: Analýza a tabulka soudních rozhodnutí. *Parlamentní institut*. [online]. leden 2022 [cit. 2022-01-11]. Accessible on: <https://www.psp.cz/sqw/text/orig2.sqw?idd=202888>

<sup>24</sup> Although during the course of the proceedings before the Supreme Administrative Court some of the measures have already been annulled by the Ministry of Health, under the Pandemic Act the proceedings reviewing the annulled measure can continue. Although the Supreme Administrative Court can no longer annul the measure, it is at least entitled to declare it unlawful. See section 13 (4) of the Pandemic Act.

<sup>25</sup> ZRŮST, Tomáš. PŘEHLEDNĚ: 13 verdiktů proti opatřením. Nejčastěji soudy ruší omezení služeb, uspěly i stížnosti na testy. *iROZHLAS* [online]. 20. června 2021 [cit. 2022-01-11]. Accessible on: [https://www.irozhlas.cz/zpravy-domov/prehledne-soud-opatreni-verdikt-zruseni-ministerstvo-zdravotnictvi-covid\\_2106200600\\_tzr](https://www.irozhlas.cz/zpravy-domov/prehledne-soud-opatreni-verdikt-zruseni-ministerstvo-zdravotnictvi-covid_2106200600_tzr)

<sup>26</sup> The issue of was subject of interpellations of Minister of Health on several occasions. See websites with stenoprotocols recording the debate: <https://www.psp.cz/eknih/2017ps/stenprot/104schuz/s104314.htm>, <https://www.psp.cz/eknih/2017ps/stenprot/118schuz/s118117.htm>, <https://www.psp.cz/eknih/2017ps/stenprot/118schuz/s118120.htm>

The Supreme Administrative Court or administrative courts mostly found the reason for cancellation due to impossibility to review the measure in deficiencies in justification of adopted measures (such in an evaluation of the necessity of a specific measure, assessment of risk, review of the proportionality of interference into human rights, etc.).<sup>27</sup> Several judgements criticised that identical or similar measures were reinstalled by the Ministry of Health immediately after an annulment or founding unlawful of prior measures without removal of errors identified in the prior court's decisions.<sup>28</sup> The administrative courts and Supreme Administrative Court tended to annul legally effective measures with postponed applicability of decision so that ministries had time to adopt new measure regulating the issue.

Furthermore, other reason for the repeated cancellation of measures rested in the fact that the measures interfered in areas which the Pandemic Act did not allow to regulate, therefore the Ministry exceed its powers.<sup>29</sup> For instance, the Pandemic Act does not provide the possibility to limit freedom of assembly by limiting the maximum number of persons attending an outdoor assembly, such limitation can be allowed only during the state of emergency.<sup>30</sup>

The Supreme Administrative Court noted that it was overwhelmed by caseload related to the review of measures aiming to limit the spread of COVID-19 that resulted in prolonged duration of regular cassation proceeding as the measures have to be reviewed with time priority.<sup>31</sup>

### Constitutional Court review

The task of the judicial review of measures adopted in the context of COVID-19 pandemic is predominantly entrusted to administrative courts and the Supreme Administrative Court, not to the Constitutional Court

However, the same as in the year 2020, members of the Senate exercised during the year 2021 their right to submit a proposal for annulment of legislation or enactment related to the COVID-19 disease before the Constitutional Court. There was not submitted any petition for annulment regarding COVID-19 measures from deputies (members of the Chamber of Deputy). Senators exercised their right in the following cases:

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<sup>27</sup> BOKOVÁ, Terezie. Jarní pandemická sezóna: pokus o shrnutí jarní judikatury NSS k přezkumu mimořádných opatření v režimu pandemického zákona. *Soudní rozhledy*. 2021 (7-8).

<sup>28</sup> See, for instance, *NSS DNEŠNÍM ROZSUDKEM ZRUŠIL S ODLOŽENOU ÚČINNOSTÍ O 3 DNY MIMOŘÁDNÉ OPATŘENÍ MINISTERSTVA ZDRAVOTNICTVÍ REGULUJÍCÍ NOŠENÍ OCHRANNÝCH PROSTŘEDKŮ DÝCHACÍCH CEST*. *Nejvyšší správní soud* [online]. [cit. 2022-01-11]. Accessible on: <http://www.nssoud.cz/NSS-dnesnim-rozsudkem-zrusil-s-odlozenou-ucinnosti-o-3-dny-mimoradne-opatreni-Ministerstva-zdravotnictvi-regulujici-noseni-ochrannych-prostredku-dychacich-cest/art/32905>;  
*NSS ZAMÍTL NÁVRH NA ZRUŠENÍ MIMOŘÁDNÉHO OPATŘENÍ MINISTERSTVA ZDRAVOTNICTVÍ ZAKAZUJÍCÍ POHYB A POBYT BEZ OCHRANNÝCH PROSTŘEDKŮ DÝCHACÍCH CEST NA VYMEZENÝCH MÍSTECH*. *Nejvyšší správní soud* [online]. [cit. 2022-01-11]. Accessible on: [http://www.nssoud.cz/NSS-zamitl-navrh-na-zruseni-mimoradneho-opatreni-Ministerstva-zdravotnictvi-zakazujici-pohyb-a-pobyt-bez-ochrannych-prostredku-dychacich-cest-na-vymezenyh-mistech/art/32920?tre\\_id=205](http://www.nssoud.cz/NSS-zamitl-navrh-na-zruseni-mimoradneho-opatreni-Ministerstva-zdravotnictvi-zakazujici-pohyb-a-pobyt-bez-ochrannych-prostredku-dychacich-cest-na-vymezenyh-mistech/art/32920?tre_id=205)

<sup>29</sup> KUKLOVÁ, Tereza. Jaké jsou podle Nejvyššího správního soudu nedostatky protipandemických opatření? *Bulletin Centra pro lidská práva a demokracii* [online]. Centrum pro lidská práva a demokratizaci, červenec – srpen 2021, XIII.(6) [cit. 2022-01-11]. ISSN 1804-2392. Accessible on:

<https://www.centrumlidskaprava.cz/sites/default/files/attachement/bulletin/Bulletin%20Letn%C3%AD%202021.pdf>;

BOKOVÁ, Terezie. Jarní pandemická sezóna: pokus o shrnutí jarní judikatury NSS k přezkumu mimořádných opatření v režimu pandemického zákona. *Soudní rozhledy*. 2021 (7-8).

<sup>30</sup> *NSS ZRUŠIL MIMOŘÁDNÉ OPATŘENÍ MINISTERSTVA ZDRAVOTNICTVÍ O OMEZENÍ OBCHODU A SLUŽEB*. *Nejvyšší správní soud*. [online]. [cit. 2022-01-11]. Accessible on: <http://www.nssoud.cz/NSS-zrusil-mimoradne-opatreni-Ministerstva-zdravotnictvi-o-omezeni-obchodu-a-sluzeb/art/32870>

<sup>31</sup> *SOUDCI NEJVYŠŠÍHO SPRÁVNÍHO SOUDU SEZNÁMILI POSLANCE ÚSTAVNĚ PRÁVNÍHO VÝBORU POSLANECKÉ SNĚMOVNY PČR SE ZATÍŽENÍM SOUDU*. *Nejvyšší správní soud*. [online]. [cit. 2022-01-11]. Accessible on: [http://www.nssoud.cz/Soudci-Nejvyssiho-spravniho-soudu-seznamili-poslance-Ustavne-pravniho-vyboru-Poslanecke-snemovny-PCR-se-zatizenim-soudu/art/32911?tre\\_id=205](http://www.nssoud.cz/Soudci-Nejvyssiho-spravniho-soudu-seznamili-poslance-Ustavne-pravniho-vyboru-Poslanecke-snemovny-PCR-se-zatizenim-soudu/art/32911?tre_id=205)

Case number	Brief description of the petition content and decision of the Constitutional Court	Day of submission and final decision
Pl. ÚS 8/21 #2 <sup>32</sup>	<p>The petition for annulment of part of the governmental resolutions that prohibited operation of ski lifts and cableways for the public in connection with the use of ski runs by the public</p> <p>The governmental resolutions during the course of the court proceeding lost their effectivity or were cancelled by the Chamber of Deputies. The Constitutional Court, therefore, discontinued the proceeding concerning governmental resolutions.</p> <p>The petition further included the proposal for the annulment of the declaration of the state of emergency after 14<sup>th</sup> February 2021. The Constitutional Court rejected the submission for the lack of its jurisdiction to decide the case (see also the decision Pl. ÚS 12/21 #1).</p>	<p>Submitted on 28<sup>th</sup> January 2021 by a group of senators</p> <p>Decided on 18<sup>th</sup> May 2021</p>
Pl. ÚS 12/21 #1 <sup>33</sup>	<p>The petition for annulment of the declaration of the state of emergency after 14 February 2021 declared by the government on the request of region governors after the rejection of prolongation of the state of emergency by the Chamber of Deputies</p> <p>The Constitutional Court rejected the submission for the lack of its jurisdiction to decide the case. The court stated that if the declaration of the state of emergency does not encompass a specific measure, its isolated review is excluded as it should be considered as an act of governance which shall be reviewed only by the Chamber of Deputies.</p> <p>The Constitutional Court further discontinued the proceedings as to the submission to annul subsequent emergency measures as those had ceased to have effect in the course of the proceedings before the Constitutional Court.</p>	<p>Submitted on 19<sup>th</sup> February 2021 by a group of senators</p> <p>Decided on 16<sup>th</sup> March 2021</p>

<sup>32</sup> Pl. ÚS 8/21 ze dne 18. 5. 2021. *NALUS - databáze rozhodnutí Ústavního soudu* [online]. [cit. 2022-01-11]. Accessible on: [https://nalus.usoud.cz/Search/GetText.aspx?sz=PI-8-21\\_2](https://nalus.usoud.cz/Search/GetText.aspx?sz=PI-8-21_2)

<sup>33</sup> Decision Pl. ÚS 12/21 of 16 March 2021 - Petition of Senators to annul the Government's declaration of the state of emergency ruled inadmissible. *Ústavní soud České republiky* [online]. 6 April 2021 [cit. 2022-01-11]. Accessible on: <https://www.usoud.cz/en/current-affairs/decision-pl-us-12-21-of-16-march-2021-petition-of-senators-to-annul-the-governments-declaration-of-the-state-of-emergency-ruled-inadmissible>; Pl. ÚS 12/21 ze dne 16. 3. 2021: K návrhu skupiny senátorů na zrušení usnesení vlády o vyhlášení nouzového stavu ze dne 14. 2. 2021. *NALUS - databáze rozhodnutí Ústavního soudu* [online]. [cit. 2022-01-11]. Accessible on: [https://nalus.usoud.cz/Search/GetText.aspx?sz=PI-12-21\\_1](https://nalus.usoud.cz/Search/GetText.aspx?sz=PI-12-21_1)

Pl. ÚS 13/21 <sup>34</sup>	<p>The petition for annulment of protective measure which disabled return of the Czech citizens with a positive test on COVID-19 or without a negative result of COVID-19 test</p> <p>The Constitutional Court dismissed the petition on the ground that such type of measures (which is not legislation or enactment) are primarily subjected to control of administrative courts, not the Constitutional Court.</p>	<p>Submitted on 25<sup>th</sup> February 2021 by a group of senators</p> <p>Decided on 16<sup>th</sup> March 2021</p>
Pl. ÚS 20/21 <sup>35</sup>	<p>The petition for annulment of the newly enacted Pandemic Act due to allegedly defective procedure of enacting the act, respectively as a second variant the petition contained a submission for annulment of particular clauses of the act</p> <p>The Constitutional Court found the legislative procedure of enacting the Pandemic Act in conformity with the constitutional law. Concerning the contested provisions, the Constitutional Court repealed part of the Pandemic Act which regulated the right for damages. Specifically, the court cancelled the provision reducing an amount of compensation of damages by offsetting repayable financial assistance which the state already provided to the harmed person.</p>	<p>Submitted on 24<sup>th</sup> March 2021 by a group of senators</p> <p>Decided on 7<sup>th</sup> December 2021</p>
Pl. ÚS 22/21 #1 <sup>36</sup>	<p>The petition for annulment of the measure which prohibited certain retail trade and provision of services</p> <p>The Constitutional Court discontinued the proceeding as the measures ceased to be effective during the course of proceeding before the court. According to the petitioner, the measure was from the material point of view continuation of measures annulled by the Constitutional Court by its judgement Pl. ÚS 106/20.</p>	<p>Submitted on 2<sup>nd</sup> April 2021 by a group of senators</p> <p>Decided on 29<sup>th</sup> June 2021</p>

Additionally, both administrative courts and the Constitutional Court repeatedly faced the problem that even in cases handled in the regime of the preferential court hearing, they often did not manage to review measures before they have lost their effect or validity. The longevity of measures tended to be very short as the situation changed rapidly. The procedural rules of the Constitutional and

<sup>34</sup> Pl. ÚS 13/21 ze dne 16. 3. 2021. *NALUS - databáze rozhodnutí Ústavního soudu* [online]. [cit. 2022-01-11]. Accessible on: [https://nalus.usoud.cz/Search/GetText.aspx?sz=PI-13-21\\_1](https://nalus.usoud.cz/Search/GetText.aspx?sz=PI-13-21_1)

<sup>35</sup> Pl. ÚS 20/21 ze dne 7. 12. 2021: Ústavnost pandemického zákona. *NALUS - databáze rozhodnutí Ústavního soudu* [online]. [cit. 2022-01-11]. Accessible on: [https://nalus.usoud.cz/Search/GetText.aspx?sz=PI-20-21\\_1](https://nalus.usoud.cz/Search/GetText.aspx?sz=PI-20-21_1); Ústavní soud zrušil jediné ustanovení pandemického zákona, zbytek obstal. *Ústavní soud České republiky* [online]. 15. prosince 2021 [cit. 2022-01-11]. Accessible on: <https://www.usoud.cz/aktualne/ustavni-soud-zrusil-jedine-ustanoveni-pandemickeho-zakona-zbytek-obstal>

<sup>36</sup> Pl. ÚS 22/21 ze dne 29. 6. 2021. Nouzový stav v době pandemie koronaviru (omezení maloobchodu a služeb II). *NALUS - databáze rozhodnutí Ústavního soudu* [online]. [cit. 2022-01-11]. Accessible on: [https://nalus.usoud.cz/Search/GetText.aspx?sz=PI-22-21\\_1](https://nalus.usoud.cz/Search/GetText.aspx?sz=PI-22-21_1)

administrative courts in both cases order to dismiss the case.<sup>37</sup> The approach of dismissing invalid or ineffective measures in combination with rapidly changing measures would, however, significantly eliminate effectivity of judicial review which would lead to denial of justice for petitioners.<sup>38</sup> Therefore, the case law of both the Constitutional Court and administrative courts enabled different approaches than a dismissal of a case.

The Supreme Administrative Court stated that in the event when measures are replaced by identical ones in rapid succession, the court must allow the amendment or extension of the petition to challenge the additional measure.<sup>39</sup> The Supreme Administrative Court noted that the rejection of the application is appropriate only if the measure of general application has been repealed (its validity ceased). However, the mere cessation of effectiveness does not make judicial review impossible.<sup>40</sup> The Pandemic Act tackled the issue by a specific provision allowing to continue the proceedings reviewing the annulled measures. Although the Supreme Administrative Court can no longer annul the measure, it is at least entitled to declare it unlawful. The Constitutional Court stressed that “cancelled government crisis measures do not become immune from constitutional review, nor do individual interventions in fundamental rights made on their basis”. “If norm identical or similar in content is incorporated into the new crisis measure, in principle there is nothing to prevent the petitioner, to supplement its proposal accordingly, thus enabling the Constitutional Court within the same proceedings review this (new) measure”.<sup>41</sup>

**- oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic**

**State of the emergency regime during the year 2021 and its oversight by the Chamber of Deputies**

First of all, please note that the state of emergency and state of legislative emergency are different procedures. The state of legislative emergency is related to the possibility of accelerated procedure of decision-making of the Chamber of Deputies (see above). The state of emergency is an emergency regime. The state of legislative emergency may be declared even without the existence of a state of emergency and conversely.

Concerning the emergency regime (*nouzový stav*), the Chamber of Deputies has oversight competence. The second chamber of the Parliament, the Senate has no special oversight competence over the emergency regime. The state of emergency as such is regulated by sec. 5 - 6 of the constitutional Act No. 110/1998 Coll. on the Security of the Czech Republic (Act on the Security) in connection with Act No. 240/2000 Coll. on Crisis Management.<sup>42</sup> According to the Act on the Security:

*(4) The government shall inform the Chamber of Deputies without unnecessary delay that it has declared a state of emergency, which the Chamber of Deputies may annul.*

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<sup>37</sup> See section 46 (1) letter a) of Act No. 150/2020 Coll. Administrative Court Procedure. Section 67 (1) Act No. 182/1993 Coll. on the Constitutional Court.

<sup>38</sup> See, for instance, the Supreme Administrative Court judgement issued on 4 June 2020 no. 6 As 88/2020 – 44.

<sup>39</sup> BOKOVÁ, Terezie. Jarní pandemická sezóna: pokus o shrnutí jarní judikatury NSS k přezkumu mimořádných opatření v režimu pandemického zákona. *Soudní rozhledy*. 2021 (7-8).

<sup>40</sup> Rozsudek NSS ze dne 26.02.2021 6 As 114/2020 – 63. *Zákony pro lidi*. [online]. [cit. 2022-01-11]. Accessible on: <https://www.zakonyprolidi.cz/judikat/nsscr/6-as-114-2020-63>

<sup>41</sup> Point 14 and 15 of the judgement Pl. ÚS 102/20. Accessible on: [https://www.usoud.cz/fileadmin/user\\_upload/Tiskova\\_mluvci/Publikovana\\_usneseni/Pl\\_US\\_102\\_20\\_vcetne\\_disentu.pdf](https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovana_usneseni/Pl_US_102_20_vcetne_disentu.pdf)

<sup>42</sup> Act No. 110/1998 Coll. on the Security of the Czech Republic (unofficial translation). *Ústavní soud České republiky*: [online]. [cit. 2022-01-12]. Accessible on: [https://www.usoud.cz/fileadmin/user\\_upload/ustavni\\_soud\\_www/Pravni\\_uprava/AJ/Zakon\\_o\\_bezpecnosti\\_English\\_version\\_110\\_1998.pdf](https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/AJ/Zakon_o_bezpecnosti_English_version_110_1998.pdf). Please note that translation of Chamber of Deputies and Assembly of Deputies have equivalent meaning.

*(1) A state of emergency may be declared only for the stated reasons, for a fixed period, and in relation to a designated territorial area. Concurrently with its declaration of the state of emergency, the government must specify which rights prescribed in individual statutes shall, in conformity with the Charter of Fundamental Rights and Basic Freedoms, be restricted, and to what extent, and which duties shall be imposed, and to what extent. Detailed provisions shall be laid down by statute.*

*(2) A state of emergency may be declared for a period of no more than 30 days. The stated period may be extended only with the prior consent of the Chamber of Deputies.*

*(3) A state of emergency ends upon the expiry of the period for which it was declared, unless the government or the Chamber of Deputies decides to annul it prior to the expiry of that period.*

The Chamber of Deputies, therefore, has its role in the process of declaration and continuation of the state of emergency.<sup>43</sup> During the second and third wave of the spread of COVID-19 disease in the Czech Republic, the state of emergency was declared since 5 October 2020 and lasted until 14 February 2021. The Chamber of Deputies approved the prolongation of the state of emergency five times<sup>44</sup>, often after long discussions when initial governmental proposals did not succeed and the Chamber of Deputies approved shorter continuations of the state of emergency.<sup>45</sup> On 11 February 2021, the Chamber of Deputies decided not to prolong the state of emergency after 14 February 2021.<sup>46</sup>

The government declared the state of emergency again for the period after 14 February 2021 until 28 February 2021<sup>47</sup> at the request of governors of regions although the Chamber of Deputies declined prolongation of the state of emergency after 14 February 2021. The Chamber of Deputies however did not annul the state of emergency declared again by the government. The procedure used by the government declaring a new state of emergency just after the Chamber of Deputies rejected the prolongation of the former one, rose questions regarding the constitutionality of the step.<sup>48</sup> As a reaction, the group of senators submitted a petition for annulment of the declaration of emergency after 14 February 2021 before Constitutional Court. The Constitutional Court following its previous case-law rejected the submission for review for the lack of its jurisdiction to decide the case since such a resolution on the declaration of the state of emergency represents an act of governance of a political nature and thus belongs to the framework of a political review by the Chamber of Deputies.<sup>49</sup>

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<sup>43</sup> The procedure of voting on terminating a state of emergency before the lapse of the time for which it was declared or voting on expressing consent with the prolongation of a state of emergency is regulated by sec. 109m of Rules of Procedure of the Chamber of Deputies.

<sup>44</sup> See resolutions of the Chamber of Deputies no. 1326 from 30 October 2020, no. 1353 from 19 November 2020, no. 1408 from 9 December 2020, no. 1443 from 22 December 2020, no. 1459 from 21 January 2021. All resolutions of the Chamber of Deputies from the VIII. electoral period are accessible on: <https://www.psp.cz/sqw/hp.sqw?k=99&ido=172&o=8&td=8&n=1>

<sup>45</sup> See debates and voting for instance during sessions no. 70, 76, 80 or 94 of the Chamber of Deputies when deputies approved shorter prolongation of the state of emergency than initially proposed by the government. See stenographic records from the enumerated sessions on: <https://www.psp.cz/eknih/2017ps/stenprot/index.htm>

<sup>46</sup> Sněmovna nesouhlasí s prodloužením nouzového stavu. *Poslanecká sněmovna Parlamentu České republiky* [online]. 11. 2. 2021 [cit. 2021-01-11]. Accessible on: <https://www.psp.cz/sqw/cms.sqw?z=14536>

<sup>47</sup> See resolution of the Government no. 125 from 14 February 2021 promulgated in the Collection of Law under no. 59/2021. *Vláda na žádost hejtmanů vyhlásila nouzový stav na 14 dnů. Vláda ČR* [online]. 14. 2. 2021 [cit. 2022-01-12]. Accessible on: <https://www.vlada.cz/cz/media-centrum/aktualne/vlada-na-zadost-hejtmanu-vyhlasila-nouzovy-stav-na-14-dnu-186652/>

<sup>48</sup> See, for instance, Open letter from the Chairman of the Senate M. Vystrčil regarding re-declaration of a state of emergency. *Otevřený dopis předsedy Senátu M. Vystrčila: Opětovné vyhlášení nouzového stavu by nyní bylo protiústavní (14.02.2021)* [online]. [cit. 2021-02-16]. Accessible on: [https://senat.cz/zpravodajstvi/zprava.php?ke\\_dni=14.2.2021&O=13&id=3116&from=M](https://senat.cz/zpravodajstvi/zprava.php?ke_dni=14.2.2021&O=13&id=3116&from=M)

<sup>49</sup> Decision Pl. ÚS 12/21 of 16 March 2021 - Petition of Senators to annul the Government's declaration of the state of emergency ruled inadmissible. *Ústavní soud České republiky* [online]. 06. April 2021 [cit. 2022-01-11]. Accessible on: <https://www.usoud.cz/en/current-affairs/decision-pl-us-12-21-of-16-march-2021-petition-of-senators-to-annul-the-governments-declaration-of-the-state-of-emergency-ruled-inadmissible>

Nevertheless, the Constitutional Court stated as *orbiter dictum* (non-binding opinion) that “if the circumstances that led to the declaration of the state of emergency do not substantially change, a new state of emergency may not be declared right after the previous state of emergency ended because the Chamber of Deputies did not give consent to its prolongation.”

As a result of the pressure of governors of regions and opposition<sup>50</sup>, the government accepted political compromise in form of enacting Act No. 94/2021 Coll. on extraordinary measures during the times of epidemic of COVID-19 disease (hereinafter referred to as “**Pandemic Act**”) which created a new legal basis for adopting measures which are enumerated in the act even without a declaration of a state of emergency. The Chamber of Deputies decided on 18<sup>th</sup> February that the state of emergency shall be annulled after the Pandemic Act came into effect on 27<sup>th</sup> February 2021.<sup>51</sup> However, the Chamber of Deputies on 26<sup>th</sup> February approved the resolution stating that due to the spread of new mutations of COVID-19 and decreasing capacity of the health care system, it is the competence of the government to newly declare a state of emergency immediately after the end of the current one.<sup>52</sup> Therefore, the government declared a new state of emergency since 27<sup>th</sup> February.<sup>53</sup> Following the consent of Chamber of Deputies with the prolongation of the state of emergency given on 26<sup>th</sup> March<sup>54</sup>, the state of emergency lasted until 11<sup>th</sup> April 2021.

Due to the rapid increase of COVID-19 cases in autumn, the government in resignation declared a state of emergency since 26<sup>th</sup> November 2021<sup>55</sup> which lasted until 25<sup>th</sup> December 2021.<sup>56</sup>

### **Legal basis of measures adopted in the context of COVID-19 pandemic and role of Parliament in oversight of adopted measures**

Concerning oversight of the Parliament over measures in the context of the COVID-19 pandemic, these measures are in majority of cases approved by the government or ministries. The Parliament is neither consulted, nor crisis measures are submitted for consideration to the Parliament.<sup>57</sup> Regarding oversight of Parliament over measures in the context of the COVID-19 pandemic, there is the parliamentary question right of members of the Chamber of Deputies against members of the government (so-called interpellations). Moreover, both groups of deputies or senators are entitled to submit a petition for annulment of legislation or other enactments to the Constitutional Court.

The government and ministries enacted crisis measures based on the following acts as a legal basis for their empowerment:

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<sup>50</sup> STAŇKOVÁ, Kateřina. LUCÁK, Josef. Normativní opatření v pandemické době optikou justice. *Právní rádce* (21)6; Vláda schválila pozměněný návrh pandemického zákona. Nyní míří do sněmovny. *IROZHLAS*. [online]. 15. února 2021 [cit. 2022-01-11]. Accessible on: [https://www.irozhlas.cz/zpravy-domov/nouzovy-stav-nebezpeci-vlada-hamacek-koronavirus-v-cesku-aktualne\\_2102151706\\_oro](https://www.irozhlas.cz/zpravy-domov/nouzovy-stav-nebezpeci-vlada-hamacek-koronavirus-v-cesku-aktualne_2102151706_oro)

<sup>51</sup> See the resolution of the Chamber of Deputies no. 1530 from 18 February 2021 on cancellation of the state of emergency published in Collection of Laws under no. 84/2021.

<sup>52</sup> See the resolution of the Chamber of Deputies no. 1539 from 26 February 2021 to inform the government about the pandemic situation and further action. Accessible on: <https://www.psp.cz/sqw/text/orig2.sqw?idd=185928&pdf=1>

<sup>53</sup> See the resolution of the government no. 196 from 26 February 2021 promulgated in the Collection of Laws under no. 96/2021.

<sup>54</sup> See the resolution of the government no. 314 from 26 March 2021, promulgated in the Collection of Laws under no. 146/2021.

<sup>55</sup> Vláda rozhodla o vyhlášení nouzového stavu na 30 dnů, omezí hromadné akce, provoz restaurací či konzumaci alkoholu na veřejnosti. Vláda. [online]. [cit. 2021-01-11]. Accessible on: <https://www.vlada.cz/cz/media-centrum/aktualne/vlada-rozhodla-o-vyhlaseni-nouzoveho-stavu-na-30-dnu--omezi-hromadne-akce--provoz-restauraci-ci-konzumaci-alkoholu-192558/>

<sup>56</sup> Protiepidemická opatření – co aktuálně platí. *Poslanecká sněmovna Parlamentu České republiky* [online]. [cit. 2021-01-11]. Accessible on: <https://www.vlada.cz/cz/epidemie-koronaviru/dulezite-informace/mimoradna-a-ochranna-opatreni--co-aktualne-plati-180234/>

<sup>57</sup> KŘEPELKA, Filip. Právo pandemie covidu-19: náčrt celkového obrazu. *Časopis zdravotnického práva a bioetiky*. 2020 (2)

- Act No. 110/1998 Coll. on the Security in relation with Act No. 240/2000 Coll. on Crisis Management
- Act No. 258/2000 Coll. on the protection of public health and
- Act No. 94/2021 Coll. on extraordinary measures during the times of epidemic of COVID-19 disease (Pandemic Act).

The last mentioned legal basis, the Pandemic Act<sup>58</sup> is effective since 27<sup>th</sup> February 2021. Pandemic Act is focused only on dealing with the pandemic of COVID-19 and the majority of provisions shall cease to be valid after a year of the effectiveness of the Pandemic Act (28<sup>th</sup> February 2022), if it won't be prolonged.

The Pandemic Act allows declaration of so-called state of pandemic alert due to the spread of COVID-19 which could be cancelled or again activated by the resolution of the Chamber of Deputies adopted on the proposal of the government or one-fifth of all deputies. The Pandemic Act serves as the new legal basis for adopting measures that are enumerated in the act even without the need to declare a state of emergency. In contrast, before enacting the Pandemic Act a continuation of a state of emergency was necessary for the validity of certain types of crisis measures. The measures based on the Pandemic Act issued by the Ministry of Health or regional hygienic station after prior consent of the government shall order only measures in the necessary extent and time frame. All measures shall contain justification which shall take into account the current analysis of the epidemiological situation and the specific level of risk associated with defined activities, areas or other characteristics and the adequacy of interference with the rights and legitimate interests of legal and natural persons.<sup>59</sup>

### **Lex Covid Justice I**

During the first phase of the COVID-19 pandemic in 2020, the Ministry of Justice drafted the Act No. 191/2020 Coll. („Lex Covid Justice I“) which aimed to mitigate the effects of the COVID-19 epidemic on litigants, crime victims, legal persons and other subjects in the area of justice.

Some measures determined by the Lex Covid Justice I were further prolonged in 2021, for example the prohibition of the enforcement of the Court's decision by the sale of movables as well as immovable property in which the debtor has a place of permanent residence or the non-application of the obligation of a debtor (either legal entity or a natural person - an entrepreneur) to file an insolvency petition without undue delay after learning of his bankruptcy. Also, some decision-making mechanisms for legal entities were temporarily made more flexible, as the deciding may be conducted in writing or by technical means, even if the instrument of incorporation does not allow it.

### **B. Independent authorities**

#### ***46. 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***

Abovementioned aspects have not undergone any significant progress since the last report. For more details, please address the ombudsman institution itself or its webpage.

#### ***47. Statistics/reports concerning the follow-up of recommendations in the past two years.***

<sup>58</sup> Zákon č. 94/2021 Sb., o mimořádných opatřeních při epidemii onemocnění COVID-19 a o změně některých souvisejících zákonů. *Zákony pro lidi*. [online]. [cit. 2022-01-11]. Accessible on: <https://www.zakonyprolidi.cz/cs/2021-94>

<sup>59</sup> See section 3 (1), (2), (3) of the Pandemic Act.

We are not aware of any reports or follow-up of recommendations. For more details, please address the ombudsman institution itself or its webpage.

**C. Accessibility and judicial review of administrative decisions**

***48. Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)***

The transparency of administrative decisions is reflected primarily in the Code of Administrative Procedure (Act No. 500/2004 Coll.), which is a general procedural regulation governing the procedure of administrative authorities exercising competence in the field of public administration [Article 1(1)]. Given the general nature of the Administrative Procedure Code, there is a number of specific procedural derogations in special laws which regulate a particular area of public administration and are under the jurisdiction of various ministries or other central administrative authorities.

The Code of Administrative Procedure determinates transparency directly or indirectly in following provisions:

Section 2 – principle of legality

Section 4 - principle of public administration as a public service

Section 7 - principle of equality

Section 14 - exclusion from considering and deciding cases

Section 15 - conduct of procedure

Section 16 - language of the procedure: communication within the procedure shall be carried out and documents executed in the Czech language.

Section 27 - parties to procedure

Section 38 - viewing of a dossier

Section 42 - An administrative authority shall be obliged to receive suggestions to commence an ex officio procedure.

Section 49 - An administrative authority shall order an oral hearing in cases set forth by law, and, furthermore, if it is necessary for the achievement of the purpose of the procedure and application of rights of the parties.

Section 67 - decision

Section 68 - particulars of the decision

Section 71 - time limits of the issuance of a decision

Section 72 - A decision shall be notified to the parties by means of a delivery of a counterpart thereof executed in writing to their own hands or by means of an oral announcement.

Section 80 - Should an administrative authority fail to issue a decision on a case within the statutory timeline, the superior administrative authority shall take an ex officio action against inactivity upon learning thereof.

Sections 81 to 83 - appeal

Sections 89 and 90 - procedure of the appellate authority

Sections 94 to 97 - review procedure and decisions in review procedures

Section 100 - resumed procedure

Section 117 - Objections against resolutions or other acts of the administrative authority in charge of execution

Section 150 - order

Section 152 - remonstrance

The transparency of administrative decisions is also reflected in the Act On Liability for Offenses and Procedure on Offenses, which regulates in particular the conditions of liability for offenses, types of administrative punishments and protective measures and the conditions for their imposition. It also regulates certain special rules for the procedure of administrative authorities in proceedings concerning an offence, which is otherwise governed by the Code of Administrative Procedure as a general procedural regulation. The legal characteristics of the various offences decided by the administrative authorities are then contained in special laws which regulate a specific area of public administration and are under the jurisdiction of different ministries or other central administrative authorities.

Transparency is expressed directly or indirectly in the following provisions of the Act On Liability for Offenses and Procedure on Offenses (Act No. 250/2016 Coll.):

Section 50 - administrative punishment of publication of the decision on the offence - see below

Section 60 - subject-matter jurisdiction

Section 63 - exclusion from considering and deciding cases

Section 68 - parties to procedure

Section 69 - accused, presumption of innocence

Section 70 - injured party

Section 72a - special provisions on viewing of a dossier, protection of privacy and security of persons in procedure on offenses

Section 80 - oral hearings

Section 82 - provision of evidence - interrogation of the accused

Section 87 - settlement: Accused may conclude a settlement agreement with the injured party

Section 89 - proceedings for compensation for damages

Section 90 - The order may impose an administrative punishment of a warning, fine, prohibition of activity, or forfeiture of property or substitute value

Section 91 - on-the-spot order - imposition of a fine

Section 93 - special features of the decision on an offence

Section 94 - time limit for issuing an offence decision

Sections 96-98 - appeal and procedure of the appellate authority

Sections 99 - new decision

Sections 100 - special provisions on review procedure

Sections 101 - review procedure for an on-the-spot order

Sections 106 - records of offences

Sections 108 - objection procedure

Sections 111 and 112(9) - requirements for the authorised official

With regard to the obligation to publish administrative decisions, a distinction must be made as to whether the administrative punishment imposed on the offender for the offence is the administrative punishment of "publication of the decision on the offence", the general regulation of which is

contained in section 50 of the Act on Liability for Offences and Proceedings in respect of Offences - see above, or whether it is not. In both cases, however, it is not a general institute and is therefore contained in certain specific laws which are under the jurisdiction of different ministries or other central administrative bodies (for example, Act No. 121/2000 Coll., the Copyright Act, or Act No. 15/1998 Coll., on supervision in the capital market area, in which the publication of the decision is not regulated as an administrative punishment, and Act No. 111/1994 Coll., on road transport, or Act No. 246/1992 Coll., on the protection of animals against cruelty, in which it is an administrative punishment). The administrative punishment of publication of the decision on the offence may be imposed only on legal entities and business natural persons and consists in publishing the operative part of the decision on the official board of the administrative authority and, at the expense of the offender, in a media determined by the administrative authority.

The Czech legal system does not provide for a central system for the entire public administration that would collect data about administrative decisions (it is also necessary to take into account the need to ensure the protection of personal data of the persons involved - the parties to procedure or the protection of classified information). However, there are certain partial registers of administrative decisions, for example, the register of offences kept by the Criminal Register (under the jurisdiction of the Ministry of Justice), which records certain offences provided for by law - see above - such as offences against public order or property. It is also possible to include the central register of drivers managed by the Ministry of Transport, the partial register of applicants is kept by the Ministry of the Environment under Act No. 100/2004 Coll, on trade in endangered species, certain data on offences are kept by the Police of the Czech Republic in the database of the Criminal Procedure Register. A number of administrative authorities have internal databases of decisions which they use for their own purposes.

**49. Judicial review of administrative decisions:**

**- short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review).**

There are no changes to the information provided in 2021 Report.

**50. Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation**

There are no changes to the information provided in 2021 Report.

**D. The enabling framework for civil society**

**51. Measures regarding the framework for civil society organisations (e.g. access to funding, legal framework incl. registration rules, measures related to dialogue between authorities and civil society, participation of civil society in policy development, measures capable of affecting the public perception of civil society organisations, etc.)**

**Legal framework including registration rules**

Legislation in the Czech Republic does not directly regulate the functioning of NGOs. NGOs based on the narrower definition of the Government Council of NGOs have following legal forms: associations,

subsidiary associations, institutes, foundations, endowment funds, public benefit organisations, registered church legal entities and educational legal entities.

In order to acquire legal personality, the obligation to register applies, the requirements for individual legal entities are clearly set out. **The process of registration is relatively simple and affordable, NGOs are exempt from most fees, registration is done by the courts, the deadlines are reasonable.**

In the Czech Republic, the rights and duties of NGOs in terms of their establishment, registration, membership, organizational structure, financial management, management of the organization and its termination are regulated by the following legal regulations:

- Act No 89/2012 Coll., Civil Code, as amended,
- Act No 3/2002 Coll., on freedom of religion and the position of churches and religious societies and amending certain acts (Act on churches and religious societies), as amended,
- Act No 304/2013 Coll., on public registers of legal and natural persons and on records of trust funds, as amended,
- Act No 563/1991 Coll., on accounting, as amended,
- Act No 586/1992 Coll., on income tax, as amended,
- Act No 235/2004 Coll., on value added tax.

Act No. 304/2013 Coll., on public registers of legal and natural persons and on records of trust funds, amended the duties of individual NGOs in terms of their registration and records. Since 1 January 2014, all NGOs have been registered in public registers maintained by courts of registration. NGOs are required to enter in the register mainly data on their name, registered office, purpose and members of their bodies, and also have a statutory obligation to deposit certain important documents in the collection of documents, such as statutes, minutes of meetings etc. **In terms of the accessibility of information on NGOs, the public register has become a basic instrument for increasing their transparency (mainly of associations).**

### **Access to funding**

In 2021 ministries in the course of drafting the document **Main Areas of the State Subsidy Policy towards NGOs for the Support of Public Benefit Activities in 2022** informally reported that allocation for the NGO projects available through state subsidy programs for 2022 will not be lowered. Nevertheless, NGOs are highly concerned that **the preparation of the state budget might lead to budget cuts in subsidies programs that are particularly intended for the NGOs activities.** Several ministries have already suspended the evaluation procedure till the state budget approval.

State subsidies are provided for the implementation of public benefit projects or activities that contribute to the fulfilment of state policy objectives in individual areas of its operation and can be effectively implemented, for example, through the active involvement of NGOs. The focus of subsidy programs, including the amount of allocation, is in the competence of individual ministries / subsidies providers.

In terms of the volume of subsidies provided, the largest provider of subsidies from the state budget to support public benefit activities is currently the National Sports Agency, followed by the Ministry of Labor and Social Affairs and the Ministry of Culture. In terms of the distribution of funds between the individual areas, physical education and sports (approximately 50 %), social services and social activities (approximately 15 %), and culture (approximately 12 %) have the most significant share.

In 2021 the campaign "**30 percent for donors**" took place to boost the corporate giving. According to the Income Tax Act the companies are able to reduce their tax base to the amount of donations corresponding to a maximum of 15 percent of the tax base, but in 2021 based on the Income Tax Act amendment that was initiated by the Association of Public Benefit Organizations it was increased up to 30 percent for funding donated in years 2020 and 2021.

The events of 2021 such as a global pandemic and tornado in South Moravia emphasized the importance and the role of **volunteering in civil society**. On the other hand, the volunteer centers and NGOs recruiting and coordinating the work of volunteers pointed out the lack of state funding in this area and legislative obstacles preventing the use of volunteers for example in the health services. According to the Volunteering Service Act, the volunteers can be used only for non-professional activities provided those in need and the health services require expert skills for example for assistance with feeding the patients.

### **Participation of civil society in policy development**

In July 2021 the Czech Government approved the national strategic document titled **the Strategy for Cooperation Between Public Administration and NGOs 2021-2030**. The Strategy formulates objectives of cooperation between public administration and NGOs and defines strategic direction regarding civil sector up to 2030. One of three objectives is **to support effective partnership and cooperation between public administration and non-profit sector**. The total of nine specific measures shall contribute to achieving this objective. One of the key measures is to develop **the Methodology of participation of NGOs in advisory and working bodies and in the development of state administration documents**. The main goal of the developed methodology is to contribute to the effective use of participatory processes within creating and operating of advisory and working bodies of ministries and other central administrative authorities and in the development of public policies, strategic materials, legislative and other non-legislative materials by individual ministries and other central administrative authorities. On Jan 10, 2022 **an open public consultation** was launched, the final version of document will be submitted for the Government Council of NGOs approval in March 2022. **Validation of the methodology** is another specific measure and should take place from March to the end of 2022 at three ministries.

In 2021, the Czech Republic continued with the implementation of the "[Action Plan of the Czech Republic Open Government Partnership for 2020 to 2022](#)" that was mentioned in previous report. One of the commitments of the afore-mentioned action plan, that is being implemented focuses on the development of methodology for the participation of civil society representatives, namely of NGOs and their umbrella organisations and networks, in participatory processes ran primarily at the level of ministries and other central administrative bodies. In 2021 a working draft of the methodology was co-created in the dedicated working group built on participative principles. The draft was initially discussed at the Government Council for NGOs and was published for the public consultation in January 2022. Later in 2020 the methodology shall be adopted by the Government Council for NGOs and piloted at selected ministries (or other central administrative authorities).

### ***52. Rules and practices guaranteeing the effective operation of civil society organisations and rights defenders***

As there is no specific status or frame for rights defenders, we would like to refer to practices and guarantees described in question 51.

#### **E. Initiatives to foster a rule of law culture**

### **53. Measures to foster a rule of law culture (e.g., debates in national parliaments on the rule of law, public information campaigns on rule of law issues, etc.)**

During the year 2021, the number of seminars, debates or similar types of sessions was low due to the unfavourable epidemic situation and the fact that the parliamentary election took place. There was not hold debate regarding the issue of rule of law as such. However, the Chamber of Deputies voting committee organised a debate of its members with non-governmental organisations (Association for media and democracy and the Reconstruction of state) on possible improvements regarding the process of selection of candidates to the Media Council of the Czech Television in order to support a choice of candidates with sought qualities and to make the process more transparent.<sup>60</sup>

Another expert seminar with non-governmental organisations was organised on the issue of reform of Office for the Protection of Competition.<sup>61</sup> The seminar was organized under the auspices of the Speaker of the Chamber of Deputies. The seminar attended speaker of the Chamber of Deputies, chairman of the Office for the Protection of Competition, his Slovakian counterpart, one deputy from political party Pirates and representatives of non-governmental organisations Transparency International, Oživení and attorney office Frank Bold.<sup>62</sup>

In the Senate, the chairman of the constitutional law committee organized working a meeting on the issue of amendment of Act on judges.<sup>63</sup>

**Other – please specify**

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<sup>60</sup> Setkání se zástupci Sdružení pro média a demokracii, zs a Rekonstrukcí státu s vedením volebního výboru.: Videoarchiv. *Poslanecká sněmovna Parlamentu České republiky* [online]. 17.2.2021 [cit. 2022-01-11]. Accessible on: <https://videoarchiv.psp.cz/playa.php?cast=192>

<sup>61</sup> Odborný seminář k reformě ÚOHS. *Poslanecká sněmovna Parlamentu České republiky* [online]. 3.2.2021 [cit. 2022-01-11]. Accessible on: <https://www.psp.cz/sqw/cms.sqw?z=14515>

<sup>62</sup> Otevřený lobbistický diář. *Transparency International* [online]. 3.2.2021 [cit. 2022-01-11]. Accessible on: <https://www.transparency.cz/otevreny-lobbisticky-diar/>

<sup>63</sup> Akce v 8. týdnu roku 2021: Pracovní jednání předsedy ÚPV k novele zákona o soudcích. *Senát*. [online]. [cit. 2022-01-11]. Accessible on: [https://www.senat.cz/zpravodajstvi/akce.php?cinnost=rtyden&cislo\\_tydne=08&rok=2021&lng=cz](https://www.senat.cz/zpravodajstvi/akce.php?cinnost=rtyden&cislo_tydne=08&rok=2021&lng=cz)