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COMMISSION STAFF WORKING DOCUMENT

**2020 Rule of Law Report
Country Chapter on the rule of law situation in Czechia**

Accompanying the document

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**2020 Rule of Law Report
The rule of law situation in the European Union**

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ABSTRACT

A number of important reforms of the Czech justice system are currently ongoing or in preparation, including on the public prosecution, the selection procedure for judges and disciplinary regime for judges and prosecutors. These reforms could contribute to increasing the transparency and limiting the influence of the executive in the appointments, promotion and dismissal of judges and prosecutors. Certain limited aspects of the proposed reforms, in particular as regards high-ranking prosecutors, have given rise to some concerns. As regards the quality of the justice system, the effective introduction of the e-file would contribute to the digitalisation and the accessibility of courts. The proposed increase of court fees has raised questions as regards its impact on access to justice for the most vulnerable.

The legal and institutional framework to fight corruption is broadly in place. There have been a number of initiatives aiming to increase transparency and accountability, in particular the launch of the register of contracts and the new law on nominations to state-owned enterprises. Nevertheless, several important legislative measures are still pending adoption, for example the bills on lobbying and whistle-blower protection as well as the bill extending the mandate of the Supreme Audit Office. There are ongoing investigations and audits at both national and European level into potential conflicts of interest and the use of EU funds. There are concerns that high-level corruption cases are not pursued sufficiently. Some gaps have been identified in the integrity frameworks applicable to Members of Parliament.

The Charter of Fundamental Rights and Basic Freedoms, incorporated into the Czech Constitutional Order, in its Article 17, guarantees freedom of expression and the right to information, and expressly bans censorship. The media sector is still exposed to risks related to the influence of media owners over editorial content and stemming from the lack of specific rules regulating the transparency of media ownership. The Czech Broadcasting Council appears to effectively carry out its tasks, although there appears to have been an increasing polarisation of recent decisions concerning media coverage of certain issues of high political sensitivity.

The system of checks and balances in Czechia is well-established. Conducting impact assessments and consulting stakeholders are established practices for enacting legislation and efforts are ongoing to further increase the transparency of the legislative process. Some civil society organisations have nevertheless called for a more systematic involvement of civil society stakeholders in the legislative process. While there is a vibrant and diverse civil society, the pressure on certain types of NGOs is rising, in particular in the area of migration. There is an Ombudsperson but not yet a National Human Rights Institution. Initiatives are undertaken for organising regular debates on rule of law related topics, in particular by the Senate.

I. JUSTICE SYSTEM

The Czech justice system is composed of eighty-six district courts, eight regional courts, two high courts, the Supreme Court and the Supreme Administrative Court¹. The central body of state responsible for the administration of the courts is the Ministry of Justice. The Ministry of Justice performs state administration of high, regional and district courts to the extent stipulated by law², either directly or through the presidents of these courts. Some acts of the central state administration are performed by the Presidents of the two Supreme Courts. These various authorities take into account the opinions of the relevant judicial councils, which are established at the Supreme Court, the Supreme Administrative Court, high courts, regional courts and larger district courts. Judges are appointed by the President of the Republic, from candidates selected by the presidents of regional courts and presented by the Minister of Justice. The prosecution service is part of the executive branch. Public prosecutors are appointed into their office for an indefinite time by the Minister of Justice on a proposal from the Prosecutor General. The Prosecutor General is appointed and recalled by the Government on a proposal from the Minister of Justice³. The Bar Association is established by law and is independent. It performs public administration in the area of the legal profession and provides self-regulation for the entire profession. The self-governing power of the Bar is limited by the power of the Minister of Justice in the areas listed by law⁴.

Independence

A reform of the selection procedure for judges is being discussed in Parliament. This reform⁵ aims to increase transparency and accountability in the selection of ordinary judges as well as court presidents. The process of selection of candidates for a judicial post is currently not stipulated by law. In practice, the candidates are nominated by presidents of regional courts who forward a list to the Ministry of Justice. After further consideration, the latter presents a final list of candidates to the President of the Republic, who formally appoints the judges. Candidates for presidents of high and regional courts are proposed by the Minister of Justice⁶. If the President of the Republic refuses to appoint a candidate, he or she is required to provide reasons. The decisions of the President on the appointment of a judge are subject to judicial review before the administrative courts⁷. The proposed amendments seek to establish a more transparent and uniform system of recruitment and selection of new judges and court presidents based on precise, objective and uniform criteria⁸. The reform also

¹ In addition, specialised administrative chambers within regional courts act as administrative courts of first instance.

² Act No. 6/2002 Coll., On Courts and Judges.

³ The method of appointment and dismissal of high-ranking prosecutors is part of a reform proposed by the Ministry of Justice in June 2019.

⁴ Input from Czechia for the 2020 Rule of Law Report, p. 6, and contribution from the Czech Bar Association for the 2020 Rule of Law Report, p. 13.

⁵ Amendment to the Act No. 6/2002 Coll., on Courts and Judges. Besides reforming the selection procedure for judges, the proposed amendments also include a more detailed regulation of secondary activity of judges and a changes concerning lay jurors.

⁶ Act No. 6/2002 Coll., on Courts and Judges, and figures 61, 62 and 65, EU Justice Scoreboard 2018.

⁷ The decisions are subject to judicial review with regard to, inter alia, the right to equal conditions of access to elected and other public office, and the right for the case to be heard without undue delay. Decisions of the Supreme Administrative Court of 27 April 2006, no. 4 Aps 4/2005 and of 21 May 2008, no. 4 Ans 9/2007.

⁸ Amendment to the Act No. 6/2002 Coll., on Courts and Judges. The proposed selection system of new judges will, if the amendments are adopted, consist of five phases: 1. a practice as an assistant of judge, 2. judicial exam, 3. selection procedure of a judicial candidate, 4. practice of a judicial candidate and 5. an open competition for the position of a judge. Applicants from other legal professions (such as lawyers, notaries, bailiffs or public prosecutors) may also apply for the position of a judicial candidate and/or judge.

lays down the composition of the selection committees for the position of court presidents at high, regional and district courts. The latter would have five members, of which two representing the executive and three representing the judiciary and the membership of the selection committees in charge of assessing the candidates is furthermore explicitly defined according to the position in question⁹. The intention is that the committees recommending the final list of candidates for appointment would have a substantial part of their members drawn from the judiciary, which is consistent with Council of Europe recommendations¹⁰.

The perception of judicial independence among the general public and companies is average. The independence of the courts is perceived as ‘fairly or very good’ by 56 % among the general public and 44 % among companies. These figures have seen an overall increase in recent years¹¹.

A draft reform of the disciplinary regime for judges, prosecutors and bailiffs is now before Parliament¹². Its stated objective is, on the one hand, to strengthen the guarantees of the legality of proceedings by introducing an appellate system and, on the other hand, to increase the proceedings’ efficiency. Under the current regime, it is not possible to appeal against a decision of the disciplinary court, which is a special senate at the Supreme Administrative Court¹³. The reform would establish a two-tier disciplinary system, with high courts acting as courts of first instance and the Supreme Court and the Supreme Administrative court as appellate courts. Such a reform could contribute to strengthening judicial independence, which is consistent with Council of Europe recommendations¹⁴.

A draft reform of the public prosecution service was proposed by the Minister of Justice. The reform¹⁵, presented in June 2019, will amend the appointment and dismissal regime for the prosecution service. At present, the Prosecutor General is appointed by the

⁹ E.g. for the selection of the president of a high or regional court, the members of the selection committee are proposed to be: the Deputy Minister of Justice, an expert from the Ministry of Justice, the president (or his/her authorised representative vice-president) of the regional or high court in which the office of president is to be occupied, the president (or the deputy president) of the regional or high the court in which the office of president is not to be occupied, and the president of the Supreme Court or his/her designated vice-president.

¹⁰ Para. 47 of Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe. As regards the process of judicial appointment from the perspective of judges’ independence and impartiality, Joined Cases C-585/18, C-624/18 and C-625/18, A.K., paras 124-125 and 133-134; Case C-272/19, Land Hessen, paras 54-60.

¹¹ Figures 44 and 46, 2020 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

¹² Act No. 7/2002 Coll. on Proceedings in Matters of Judges, Prosecutors and Bailiffs.

¹³ It is possible to request reopening of the proceedings if previously unknown information come to light, and it is possible to file a constitutional complaint; these are however not considered as standard review.

¹⁴ CDL-AD(2016)017, Rule of Law Checklist, para 78, CM/Rec(2010)12, para 69 and CDL-AD(2010)004, para 43. According to the case law of the European Court of Justice (C- 216/18 PPU, LM, 25 July 2018, para 67): “the requirement of independence also means that the disciplinary regime governing those who have the task of adjudicating in a dispute must display the necessary guarantees in order to prevent any risk of its being used as a system of political control of the content of judicial decisions. Rules which define, in particular, both conduct amounting to disciplinary offences and the penalties actually applicable, which provide for the involvement of an independent body in accordance with a procedure which fully safeguards the rights enshrined in Articles 47 and 48 of the Charter, in particular the rights of the defence, and which lay down the possibility of bringing legal proceedings challenging the disciplinary bodies’ decisions constitute a set of guarantees that are essential for safeguarding the independence of the judiciary”.

¹⁵ Materials published in the electronic library of the legislative process, <https://apps.odok.cz/veklep-detail?pid=KORNBD9J6ZWU>.

Government, on a proposal of the Minister of Justice and for an indefinite period. At the same time, the law stipulates that the Prosecutor General may be dismissed by the Government on a proposal of the Minister of Justice without stating reasons¹⁶. As to other prosecutors, the law prescribes which authority appoints them, but does not regulate the selection process, nor the requirements that a candidate for the position needs to fulfil. The reform proposed by the Minister of Justice stipulates that high-ranking prosecutors, including the Prosecutor General, may be dismissed only by a decision issued in a disciplinary proceeding. It also prescribes that senior public prosecutors would be appointed for seven years, and lays down the requirements for candidates for prosecutorial offices, and the process of their selection. Candidates should be selected by a committee of five members, three of which should be nominated by the Ministry of Justice (one of them must be a judge), one by the Prosecutor General, and one by a senior public prosecutor, who is responsible for submitting a proposal for appointment of the senior public prosecutors. The amendment also foresees that the term of office of the current Prosecutor General would end in the year 2023, and the term of the two High Prosecutors in 2024. In the consultation process, several stakeholders¹⁷ have expressed concerns that some of the proposed amendments would maintain a high degree of involvement of the executive branch in the selection of the Prosecutor General and other chief prosecutors, in particular via the nomination of the members of the committee in charge of selecting candidates for prosecutorial offices. Moreover, stakeholders have criticised the fact that, while the amendment prescribes a term of seven years for senior prosecutors, the term of the current Prosecutor General and the two High Prosecutors would end already in the years 2023 and 2024 respectively, given that they have been in office for longer than the term envisaged by the reform¹⁸. The draft reform is still awaiting Government approval and the legislative process in Parliament has yet to begin.

Quality

The Government has proposed an amendment to the Court Fee Act, which is now under consideration in Parliament¹⁹. The draft amendments to the Act on Court Fees, presented in February 2020, represent a comprehensive increase in some court fees so as to bring them in line with the increased living standards since the last amendment in 2011²⁰. At the same time, the proposal foresees an increase in the amount of certain court fees, with the aim of encouraging more prudent litigation²¹ and the use of alternative dispute resolution, such as amicable settlements through mediation²². At present, the court fees are comparatively low

¹⁶ Act No. 283/1993 Coll., on the Public Prosecutor's Office.

¹⁷ Including the Prosecutor General, the Union of Public Prosecutors and the Government Council for the Coordination of the Fight against Corruption.

¹⁸ See previous note. In a press release, the Prosecutor General stated that in the light of the stipulated end of term, the true aim of the law is to replace him and the two High Prosecutors.

¹⁹ Bill amending Act No. 549/1991 Coll., On court fees.

²⁰ In particular, for example, fees for a proposal to initiate civil court proceedings on a pecuniary claim up to CZK 20,000 (approx. EUR 750) would double from CZK 1000 (approx. EUR 37) to CZK 2000 (approx. EUR 75), fees for a proposal for the issuance of an electronic payment order, the subject of which is monetary performance up to the amount of CZK 10,000 (approx. EUR 375) would merge with the category up to CZK 20,000 (approx. EUR 750) and the fee would increase from CZK 400 (approx. EUR 15) to CZK 1,500 (approx. EUR 56), and a fee for a proposal to initiate proceedings in matters of administrative justice against the decision of the administrative body would increase from CZK 3,000 (approx. EUR 113) to CZK 6,000 (approx. EUR 225).

²¹ The number of incoming civil and commercial litigious cases has been consistently slightly above the EU average in the period 2012 – 2018. Figure 3, 2020 EU Justice Scoreboard.

²² In such case, the court fees would be returned or reduced.

for civil and consumer cases, but relatively high for commercial cases²³. In the consultation process and public debate, several stakeholders²⁴ have raised concerns as regards the effect of the reform on the access to justice, in particular for the most vulnerable members of the population²⁵. To address these concerns, the bill proposes that an exemption from the court fees will no longer be considered as exceptional. A participant to court proceedings, who will prove that his or her financial situation is difficult, could be exempted from court fees.

A system of broadened legal aid has been implemented by the Bar Association. The Bar has been implementing a system of broadened free legal aid introduced in 2018²⁶, in which legal advice is provided by an attorney for a very low fee or for free²⁷. This scheme is co-financed by the state.

There is room for improvement in the digitalisation of the justice system. While it is possible to submit a claim digitally²⁸, it is not yet possible to access judicial files online and judgments are only partially accessible online²⁹. The Covid-19 pandemic highlighted the need to introduce digital court files. Although the Ministry of Justice has already launched the process of implementing the e-file, the project is still at an early stage³⁰. So far, e-file can only be used in proceedings regarding orders for payment³¹.

A reform of insolvency proceedings was adopted in 2019. The amendment expanded the cases in which a court may declare a debtor debt-free. The amendment was prompted by the high number of people in the so-called “debt trap” and the negative impacts of this situation for both society and individuals³². According to the latest statistics (February 2020), almost 800,000 persons, representing about 8% of the population, are debtors in enforcement proceedings carried out by bailiffs³³, including numerous cases when this has been disproportionate to the original claim. According to information from 2019, 90 % of the debtors were not able to ever repay their debts and are potentially faced with subsistence problems³⁴. Such situations may impact negatively on various fundamental rights³⁵. The

²³ Figures 24 and 25, 2020 EU Justice Scoreboard. Based on a specific consumer case and a specific commercial case scenario, respectively.

²⁴ For example the Supreme Administrative Court, the Government Commissioner for Human Rights, Ministry of Labor and Social Affairs or the Public Defender of Rights.

²⁵ The European Court of Human Rights (ECtHR) found that court fees could, under certain circumstances, hinder access to justice. See ECtHR, *Kreuz v. Poland*, paras 60-67; ECtHR *Podbielski and PPU Polpure v. Poland*, paras 65-66; ECtHR *Weissman and Others v. Romania*, para 42; ECtHR *Georgel and Georgeta Stoicescu v. Romania*, paras 69-70; ECtHR *Stankov v. Bulgaria*, para 59. See also judgment of the European Court of Justice, C-279/09, DEB, para 61, and C-61/14, *Orizzonte Salute*, paras 46-47.

²⁶ As a part of the Act No. 258/2017 Coll., amending the Act on the Legal Profession.

²⁷ The duration of this free legal advice ranges from 30 to a maximum of 120 minutes per year. The fee for processing the application is set at CZK 100 (approx. EUR 4), but there are exceptions where the fee is waived completely.

²⁸ Figure 27, 2020 EU Justice Scoreboard.

²⁹ Figure 28, 2020 EU Justice Scoreboard.

³⁰ An ongoing tender for the developer.

³¹ In addition, since 2019 a project is ongoing to modernise and digitalise the office of the General Prosecutor through the analysis of process workflows of the Public Prosecutor's Office, with a particular focus on the possibilities of digitalisation of processes, supported from the European Commission's Structural Reform Support Programme.

³² Explanatory report to Act No. 31/2019.

³³ Website of the Chamber of Bailiffs of the Czech Republic, Statistical overview <https://statistiky.ekcr.info/statistiky>.

³⁴ Regulatory Impact Assessment report to Act No. 31/2019.

³⁵ Decision of the Czech Constitutional Court No. I. ÚS 3271/13.

reform seeks to give more debtors the opportunity to be declared debt-free through insolvency proceedings. It remains to be seen whether the amendment will fulfil its purpose.

Efficiency

The justice system is not facing any particular efficiency challenges in civil and commercial cases, but proceedings in administrative cases remain lengthy. The estimated length of court proceedings in civil and commercial cases is at average or shorter than average level, and the clearance rate suggests that courts are able to cope with incoming cases³⁶. In administrative cases, Czechia reports average results, with an estimated time for a decision in an administrative case in first instance taking 412 days in 2018³⁷. The rate of resolving cases belongs to the lower ones in the EU context³⁸, which indicates existing challenges in this field. One of the reasons could be relative under-staffing, whereby only about 4 % of all judges deal with administrative cases³⁹. Data published by the Ministry of Justice⁴⁰ suggest that in 2019, there were significant regional differences in efficiency of courts⁴¹. Those differences persist, despite a positive trend of reduction of the gap. The Ministry of Justice started to reflect on a possible amendment of the Code of Administrative Justice, *inter alia* to speed up the procedure before administrative courts and contribute to its efficiency⁴².

II. ANTI-CORRUPTION FRAMEWORK

The legal and institutional framework to fight corruption is largely in place. The competence to fight corruption is shared between several authorities. The Conflict of Interests and Anti-Corruption Department of the Ministry of Justice is in charge of the anti-corruption agenda. An Anti-Corruption Council established in 2014 acts as an advisory body to the Government. The National Organised Crime Agency, in cooperation with the Public Prosecutors' Offices, investigates corruption related crimes. The Financial Analytical Office was established as an independent administrative office in 2017 and acts as a financial intelligence unit. The Supreme Audit Office reviews the state's management of public revenue and expenditure and its findings may contribute to the identification of corruption risks. In recent years, a number of reforms in the area of transparency and accountability were initiated. Several important legislative measures are still to be adopted, notably as regards lobbying and whistleblower protection, as well as a bill extending the mandate of the Supreme Audit Office.

In the latest Transparency International 2019 Corruption Perceptions Index, Czechia scored 56/100 and was ranked 13th in the European Union and 44th globally⁴³. 87% of the respondents to the 2020 Special Eurobarometer survey on corruption think that corruption is widespread in their country (EU average: 71%) and 22% of people feel personally affected by

³⁶ Figures 5-7 and Figures 10 -11, 2020 EU Justice Scoreboard.

³⁷ Figure 8, 2020 EU Justice Scoreboard.

³⁸ 88 % in 2018, Figure 12, 2020 EU Justice Scoreboard.

³⁹ Information received in the context of the country visit and corroborated by data in Czech Justice System in 2019: Annual Statistical Report published by the Ministry of Justice, and CEPEJ (2020), Study on the functioning of the judicial systems in the EU Member States.

⁴⁰ Czech Justice System in 2019: Annual Statistical Report, Ministry of Justice 2020.

⁴¹ For example, the average length of civil proceedings in the slowest courts being almost double of the length in the fastest court. Czech Justice System in 2019: Annual Statistical Report, Ministry of Justice 2020, published on 30 June 2020.

⁴² Information provided by Czech authorities.

⁴³ Transparency International (2020), 2019 Corruption Perceptions Index.

corruption in their daily lives (EU average: 26%)⁴⁴. Furthermore, 76% companies consider corruption to be widespread (EU average 63%) whereas 32% of companies consider corruption to be a problem when doing business in Czechia (EU average: 37%)⁴⁵. 29% of people find that there are enough successful prosecutions to deter people from corrupt practices (EU average: 36%) while 21% of companies consider that people and businesses caught for bribing a senior official are appropriately punished (EU average 31%).

Czechia has a well-established strategic anti-corruption framework. Since 1999, the Government has adopted consecutive anti-corruption strategies. The current strategy covers the period 2018-2022⁴⁶ and envisages the preparation of three one-year action plans, whose implementation is to be monitored by the Government Anti-Corruption Council. The Council is supported by the Conflict of Interests and Anti-Corruption Department of the Ministry of Justice, which drafts anti-corruption strategic documents and is in charge of the anti-corruption agenda. In February 2020, the Government approved the new Action Plan for the fight against corruption⁴⁷. It focuses on four main priority areas: (i) an effective and independent Government; (ii) transparency and open access to information; (iii) efficient management of state property and (iv) development of civil society. In April 2020, the Government concluded that most actions in the 2019 action plan have been completed⁴⁸.

The anti-corruption criminal legal framework is broadly in place although some challenges remain. The Czech Criminal Code criminalises the offences of acceptance of a bribe, bribery, trading in influence and arranging advantage in commission of a public contract, public tender and public auction⁴⁹. The bribery provisions do not cover all categories of employees in the public sector, as they are limited to “persons deciding or co-deciding on the affair in the public interest”⁵⁰. Foreign bribery is not specifically criminalised by the Criminal Code⁵¹. An advisory body to the Government, established in 2014, coordinates and evaluates the activities in the field of anti-corruption.

The number of persons investigated, prosecuted and convicted for corruption offences has been fluctuating over the past three years. In 2017, the Czech law enforcement authorities opened 115 investigations into corruption offences, compared to 319 in 2018 and 152 in 2019. 148 persons were prosecuted for corruption offences or suspected⁵² thereof in 2017, compared to 268 in 2018 and 190 in 2019⁵³. In the past years, Czechia has seen several high-level corruption cases being investigated, with alleged perpetrators being indicted and in some cases, convicted by the court. Nevertheless, 62% of Czech respondents to the 2020 Eurobarometer survey on corruption⁵⁴ are of the opinion that there are not enough successful prosecutions to deter people from corrupt practices (EU average: 34%) and 64% think that high-level corruption cases are not pursued sufficiently (EU average: 66%). Moreover, 54% of businesses responding to the 2019 Eurobarometer survey on Businesses’ attitudes towards

⁴⁴ Special Eurobarometer 502 (2020).

⁴⁵ Special Eurobarometer 482 (2019).

⁴⁶ Government concept of the fight against corruption for the years 2018 to 2022.

⁴⁷ Anti-Corruption Action Plan 2020.

⁴⁸ Evaluation of the implementation of the measures set out in the Anti-Corruption Action Plan 2019.

⁴⁹ Chapter X, Division 3, Special section ‘Corruption’ of Act No. 40/2009 Coll., Criminal Code.

⁵⁰ GRECO Third Evaluation Round - Second Compliance Report on the Czech Republic.

⁵¹ Implementing the OECD anti-bribery convention: The latest Phase 4 follow-up report for the Czech Republic on the implementation of the OECD anti-bribery convention notes that there are several recommendations that have either been partially addressed or not addressed at all.

⁵² Sections 160 and 179b (3) of the Criminal Procedure Code.

⁵³ Information gathered during the country visit to Czechia, 3-5 June 2020.

⁵⁴ Special Eurobarometer 502 (2020), Corruption.

corruption in the EU⁵⁵ think that it is unlikely that corrupt people would be heavily fined or imprisoned by a court (EU average: 39%).

There are ongoing investigations and audits at national and European level into potential conflicts of interest and the use of EU funds. The management of EU funds in Czechia has been raised as a potential concern in recent years⁵⁶. Following an investigation between 2016 and 2017 by the European Anti-Fraud Office (OLAF), which found serious irregularities as regards the use of EU funds, a criminal investigation in a high-profile case is at present ongoing at national level, and further Commission audits have been launched to examine issues of possible conflicts of interest in relation to the use of EU funds.

The Act on conflict of interest contains rules on conflict of interests and disclosure of assets⁵⁷. It applies to cabinet members, members of Parliament, regional governors and deputies, senior public officials, mayors and local council members, as well as members of statutory, management, supervisory or control bodies. The Act establishes a central register of notifications, administered by the Ministry of Justice. Persons covered by the Act have to submit their declarations on personal interests, assets, activities, income, gifts and liabilities. GRECO has highlighted that more effective sanctions could be required as regards the declaration requirements⁵⁸. Equally, it has been highlighted that Czechia should consider widening the scope of declarations to cover information on spouses and dependent family members of Members of Parliament⁵⁹. The law does not regulate the acceptance of gifts and other advantages by parliamentarians⁶⁰. The lack of clear rules for parliamentarians on, for example, the acceptance of gifts and other advantages, on the declaration of activities and incompatibilities and on the interaction with lobbyists has been underlined in the latest European Semester report⁶¹.

Several initiatives aim to strengthen the anti-corruption and integrity rules as regards public administration. An internal anti-corruption programme framework⁶² is in place, which sets out a regular evaluation of corruption risks and internal risk management within ministries, other central authorities and subordinate bodies and agencies. Each authority is obliged to establish a framework that includes a code of ethics, integrity trainings, internal whistleblowing procedures and procedures for cases of suspected corruption. The implementation of the framework is assessed at least every two years. A code of ethics for civil service officials and employees is put in place, which is binding for those working for the central administration. However, 80% of the respondents to a 2020 Eurobarometer survey on corruption⁶³ consider that there is corruption in the local or regional public institutions (EU average: 68%).

There is an ongoing debate as regards a draft bill extending the powers of the Supreme Audit Office. The extension of the mandate of the Supreme Audit Office is listed as one of

⁵⁵ Flash Eurobarometer 482 (2019), Businesses' attitudes towards corruption in the EU.

⁵⁶ In June 2020 the European Parliament adopted a Resolution (2019/2987(RSP)) concerning the situation in the Czech Republic and expressed concerns in relation to the issue of conflicts of interest and the use and distribution of public and EU funds.

⁵⁷ Act no. 159/2006 Col.

⁵⁸ The failure to submit a declaration or to declare all assets may trigger a financial sanction between CZK 1,000 (EUR 40) to CZK 50,000 (EUR 1,850).

⁵⁹ GRECO Fourth Evaluation Round – Interim Compliance Report Czech Republic.

⁶⁰ GRECO Fourth Evaluation Round – Interim Compliance Report Czech Republic.

⁶¹ European Commission, Country report Czechia 2020, SWD(2020) 502 final, p. 43.

⁶² Established by Government resolution from 2 October 2013, No. 752.

⁶³ Special Eurobarometer 502 (2020).

the priorities in the new Government Programme Statement⁶⁴. The draft bill⁶⁵ aims to expand the mandate of the Office to audit the regularity and performance of public spending at local and regional level. The Act would also cover state-owned enterprises and companies with majority ownership of the state and/or municipalities⁶⁶. These measures are expected to have a positive impact when it comes to the accountability and transparency of public spending.

Lobbying regulation has been proposed. The draft bill on lobbying⁶⁷ is pending adoption. It will establish a publicly accessible register of lobbyists and lobbied persons. Lobbyists and public officials will be required to submit quarterly reports with information on their respective contacts with one another. Furthermore, the draft bill also establishes a ‘lobbying footprint’, which will be an obligatory attachment to all bills. It will contain information on lobbyists, lobbied persons and the specific way in which the legislation in question was lobbied. This aims to increase transparency in the legislative process. The draft bill also contains rules on the declaration of gifts.

A number of measures provide for whistleblower protection and encourage the reporting of corruption. Government Regulation No. 145/2015 Coll. lays down a framework for internal reporting for civil servants who are at present the only group of employees protected as whistleblowers. Mechanisms for police officers and civil employees to submit a notice of suspicion of corruption have also been put in place. At present, the Ministry of Justice is drafting a bill on whistleblower protection in order to implement Directive 2019/1937 on the protection of persons who report breaches of Union law⁶⁸. According to survey data, 55% of the Czech respondents to the 2020 Eurobarometer survey on corruption⁶⁹ would not know where to report a case of corruption should they experience or witness it (EU average: 54%).

The register of contracts was launched in July 2016⁷⁰ and publishes contracts above CZK 50,000 (approximately EUR 2,000) online. The register includes contracts having as a party one of the selected entities governed by public law, for example, state, local/regional authorities, state enterprises, state funds, public universities or legal entities, in which the state or a local/regional authority (itself or together with other local/regional authorities) has a majority stake through other legal entity. Certain types of contract are exempted from a compulsory publication in the register⁷¹. The register can be considered as an example of good practice with a positive preventive impact when it comes to corruption.

⁶⁴ Government Programme Statement.

⁶⁵ The draft bill is in the third reading in the Chamber of Deputies and pending adoption of a related Constitutional amendment by the Senate.

⁶⁶ Amendment of the Act on the Supreme Audit Office, (2018).

⁶⁷ The draft bill on lobbying consists of two separate but related drafts: a draft bill on lobbying (Parliamentary print 565) and a draft bill which changes some acts in relation with approval of act on lobbying (Parliamentary print 566).

⁶⁸ 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, OJ L 305, 26.11.2019, p. 17–56.

⁶⁹ Special Eurobarometer 502 (2020).

⁷⁰ A clause stating that a contract is effective only if it was published in the register of contracts entered into force 1 July 2017.

⁷¹ Website of the Ministry of Interior on the register of contracts, <https://www.mvcr.cz/clanek/registr-smluv.aspx?q=Y2hudW09NA%3d%3d>.

The Act on nominations to state-owned companies was adopted by the Parliament in December 2019 and entered into force in January 2020⁷². The Act lays down new rules for the selection of members of statutory and management bodies of state-owned companies, as well as companies with partial state ownership. The Act aims to prevent political nominations and to further increase the transparency of the selection process as candidates will have to pass a selection procedure, run by a Government committee.

In 2019, the Government carried out a corruption risk analysis of the healthcare sector. The analysis identified the sector as one of the high-risk sectors as far as corruption is concerned. It highlighted that corruption risks exist on all sides of the healthcare sector, ranging from corruption generated by patients and healthcare providers to corruption at the central Government level⁷³. Following the analysis, the Ministry of Health aims to introduce specific mitigating measures and is also expected to present a legal proposal to optimise the functioning of public insurance companies.

III. MEDIA PLURALISM

The Charter of Fundamental Rights and Basic Freedoms, incorporated in the Czech Constitutional Order guarantees freedom of expression and the right to information, and expressly bans censorship⁷⁴. The Act on Radio and Television Broadcasting clearly defines the competences of the Czech media regulator⁷⁵ while the Act on Free Access to Information⁷⁶ guarantees access to information held by public authorities.

The Government is considering a reform to further strengthen independence of media regulator. The Act on Radio and Television Broadcasting attributes the role of Czechia's media regulator to the Council for Radio and Television Broadcasting (the Council)⁷⁷, which is authorised to supervise radio and television broadcasting, as well as on-demand audiovisual media services. Other media outlets (print, online) are subject to a general regime stemming from criminal law, advertising rules, the consumer protection framework and self-regulatory initiatives⁷⁸. The Act establishes the Council as an “independent administrative body” consisting of 13 members and lays down the Council's duties and obligations. Furthermore, it sets out the eligibility criteria, exclusionary criteria and appointment procedures for the Council's members and head. The decisions of the Council are subject to judicial review. In case that the Council repeatedly and seriously infringes the obligations laid down in the Act, or if its mandatory annual report repeatedly fails to be approved due to serious faults, the Chamber of Deputies may propose to the Prime Minister to remove the entire Council. The authorities have announced that a proposal has been tabled to limit this power of the Chamber of Deputies, so that only individual members may be removed in such cases. This reform aims to strengthen the independence of the Council as a whole, in line with the objectives of the revised Audiovisual Media Services Directive (AVMSD)⁷⁹.

⁷² Act on the Selection of Persons to the Management and Supervisory Bodies of Legal Entities with State Ownership Participation (Nomination Act).

⁷³ Government Anti-corruption portal, www.korupce.cz.

⁷⁴ Between 2019 and 2020, Czechia's position in the Reporters Without Borders World Press Freedom Index remained stable at 40th place worldwide. Reporters without Borders, Czech Republic.

⁷⁵ Act No. 231/2001 Coll., as amended.

⁷⁶ Act No. 106/1999 Col.

⁷⁷ Act No. 231/2001 Coll., as amended.

⁷⁸ Among them the Czech Advertising Standards Council.

⁷⁹ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or

The competences of the Council are well-defined in law and effectively applied in practice. As noted in the Media Pluralism Monitor 2020⁸⁰ (MPM 2020), the functioning of the media regulator demonstrates low risk overall, although there appears to have been an increasing polarisation of recent decisions concerning media coverage of certain issues of high political sensitivity⁸¹.

Czechia has no specific rules regulating the transparency of media ownership. The above-mentioned Act on Radio and Television Broadcasting also aims to control the mergers between broadcasters and puts into place limits on accumulation of licences or personal links among different broadcasters. The Act on Conflict of Interest⁸² prohibits any public official from being a radio or television broadcaster, or a publisher of printed media or controlling person of such broadcaster or publisher. The act requires certain facts to be introduced in the relevant public registries in line with general rules regulating company registration. However, media companies are not obliged to reveal their ownership structures, changes thereto or any information relating to the ultimate beneficial owner of the company⁸³. It should be noted in this context that the MPM 2020 points to a high risk regarding media ownership transparency, not least given the general high risk levels associated with threats to market plurality more generally in terms of commercial and owner influence over editorial content and news media concentration⁸⁴. In spite of the adoption of amendments to the Conflict of Interest Act in 2017, which explicitly prohibit politicians from owning stakes in media, risks to political independence of the media remain high, considering that political influence might still be exercised through informal networks and power alliances between owners and political actors⁸⁵. Civil society and journalists associations consulted by the Commission for this report have confirmed that these dynamics represent the most significant risk to media pluralism in the country⁸⁶.

Czechia does not possess specific rules regarding allocation of state advertising beyond the general requirements for advertisement set out in the Public Procurement Act⁸⁷, i.e. that any state advertising contract with a value over 50,000 CZK (approximately EUR 2,000) shall be published and made available in the public registry. MPM 2020 also points to some risks stemming from the lack of regulation ensuring transparency of political advertising online⁸⁸.

administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive, AVMSD) in view of changing market realities.

⁸⁰ 2020 Media Pluralism Monitor.

⁸¹ The Czech authorities have prepared a draft law transposing the revised AVMSD, the adoption of which is envisaged at the end of 2020 or beginning of 2021.

⁸² Act No. 159/2006 Coll., as amended.

⁸³ The revised AVMSD encourages Member States to adopt legislative measures providing that media service providers under their jurisdiction make accessible information concerning their ownership structure, including the beneficial owners. Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.

⁸⁴ 2020 Media Pluralism Monitor.

⁸⁵ 2020 Media Pluralism Monitor.

⁸⁶ Information received in the context of the country visit and of the consultation process for the preparation of the report, e.g. contribution from Transparency International Czech Republic for the 2020 Rule of Law Report.

⁸⁷ Act No. 134/2016 Col.

⁸⁸ 2020 Media Pluralism Monitor.

Access to information is guaranteed by the law but obstacles can exist in practice. The Act on Free Access to Information⁸⁹ guarantees access to information held by public authorities. A draft amendment currently in preparation⁹⁰ would introduce a mechanism – in line with Czech case law – to counter “overtly obstructive requests for information”. The amendment would allow the public body to require an advance payment to be made to cover the costs associated with extensive information retrieval. This could be an obstacle for access to detailed information held by public authorities. In addition, concerns have been raised during the country visit about reports of public authorities refusing to provide access to information and challenging the claims in front of the courts⁹¹.

While journalists are considered to be safe from any physical harm, verbal insults and threats against them are not unknown in political discourse. The Council of Europe Platform to promote the protection of journalism and the safety of journalists⁹² registered no alerts in Czechia in 2019 and 2020. MPM 2020 also considers the area of journalistic profession, standards and protection to be at low risk. However, it is noted that “verbal insults, defamation of and threats towards journalists have become a common part of political discourse for both populist and right-wing parties”⁹³ and individual politicians⁹⁴. It should be also noted that imprisonment – up to one year, and as a subsidiary sentence – is among the envisaged sanctions for defamation⁹⁵.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Czechia has a bicameral parliamentary system of government⁹⁶ with a directly elected President. Legislative proposals can be submitted by a member of the Chamber of Deputies, a group of members of the Chamber of Deputies, the Senate, the Government, or representative bodies of higher self-governing regions⁹⁷. The Constitutional Court can carry out ex-post constitutional review. In addition to the justice system, the Ombudsperson’s Office and the civil society play a role in the system of checks and balances.

Conducting impact assessments and consulting stakeholders are established practices for enacting legislation. A legislative proposal can originate from the Chamber of Deputies (a deputy, or a group of deputies), the Senate (only as a whole), the Government and the regional councils. The proposal also includes an explanatory memorandum, which has to assess the current legal situation, explain the need for new regulation, describe the expected economic and financial impacts and clarify the compliance of the proposal with the constitutional order, international treaties and with the obligations arising from membership in the European Union. Impact assessments are required for every legislative proposal

⁸⁹ Act No. 106/1999 Col.

⁹⁰ The amendment is in the Chamber of Deputies of the Parliament of the Czech Republic, Chamber of Deputies, Print No. 633, awaiting discussion at first reading.

⁹¹ Information received in the context of the country visit and pointed out also by the 2020 Media Pluralism Monitor.

⁹² Council of Europe. Platform to promote the protection of journalism and safety of journalists.

⁹³ 2020 Media Pluralism Monitor.

⁹⁴ Including statements by the President of the Republic. In this context, it should be recalled that as indicated by the Council of Europe Recommendation 2016/4, “Member States should put in place a comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear”.

⁹⁵ Centre for Media Pluralism and Media Freedom (2019), Decriminalisation of Defamation.

⁹⁶ Composed of the lower chamber, the Chamber of Deputies (*Poslanecká sněmovna*) and the higher chamber, the Senate (*Senát Parlamentu České republiky*).

⁹⁷ Art. 41 of the Constitution.

prepared by the Government, as well as for any regulation where substantive costs to businesses, administrations and citizens are expected. Legislation proposed by Members of Parliament and local and regional authorities is not subject to regulatory impact assessments. The Government, which prepares the vast majority of primary legislation, established a number of advisory and working bodies that represent experts, stakeholders or other concerned groups⁹⁸. Despite this comprehensive framework, the civil society stakeholders consulted have expressed concern as regards an allegedly missing consulting obligation and the lack of an effective follow-up to the consultations conducted⁹⁹. The Constitutional Court, Supreme Court, Supreme Administrative Court and the Prosecutor General's Office are consulted in cases where a draft proposal is related to their areas of competence.

Efforts to further increase the transparency of the legislative process are ongoing. Access to Government and parliamentary documents is already possible through a range of online tools¹⁰⁰. Furthermore, a project is ongoing to establish an 'eCollection' and 'eLegislation'¹⁰¹ portals, which would enable easier control and participation in the legislative process. The completion date is planned at the end of 2020.

Measures in response to the COVID-19 pandemic have been subject to judicial review. The Government declared a state of emergency on 12 March 2020. The state of emergency lasted until 17 May, after the Chamber of Deputies twice agreed to its extension¹⁰². The government resolution declaring the state of emergency due to the outbreak of Covid-19 and several Government measures and extraordinary measures taken by the Ministry of Health have been subject to judicial review by the Municipal Court in Prague, by the Supreme Administrative Court and by the Constitutional Court¹⁰³. The constitutionality of the government declaration of the state of emergency was upheld as well as, in most cases, the challenged extraordinary measures. The Municipal Court in Prague annulled four measures¹⁰⁴, which triggered subsequent legislative adaptations by the Government.

The Public Defender of Rights (Ombudsperson) defends the rights of individuals vis-à-vis public authorities and promotes good governance standards. Czechia does not have a National Human Rights Institution¹⁰⁵. There is an Ombudsperson which is independent in a formal and material sense and is separate from the three branches of government. The office of the Ombudsperson is set up by law and is not embedded in the Constitution. The main task

⁹⁸ Website of the Government, <https://www.vlada.cz/en/pracovni-a-poradni-organy-vlady/>.

⁹⁹ E.g. contribution from the Czech Helsinki Committee for the 2020 Rule of Law Report.

¹⁰⁰ These tools include ODok, <https://www.odok.cz/>, which enables circulation of documents between central state administration bodies, an electronic library of the legislative process (eKLEP, <https://apps.odok.cz/>), which encompasses all prepared pieces of legislation and even some related documents such as comments and regulatory impact assessment reports, the websites of the Chamber of Deputies and the Senate though which documentation related to all legislative proposals, online broadcasts of the meetings of both chambers as well as stenographic records from Chamber's and Senate's meetings and minutes from meetings of Committees are accessible.

¹⁰¹ More information about the project can be found at <https://www.mvcr.cz/clanek/esbirka-a-elegislativa.aspx>. The project is co-funded by EU funds.

¹⁰² The state of emergency can be declared by the Government for up to 30 days and can be further extended only with the approval of the Chamber of Deputies. Constitutional Act No. 110/1998, Arts. 5 and 6.

¹⁰³ E.g. decisions of the Municipal Court in Prague no. 14 A 41/2020 of 23 April 2020 and no. 10 A 35/2020 – 261 of 7 May 2020, decisions of the Supreme Administrative Court of 4 June 2020, no. 6 As 88/2020 – 44, of 21 May 2020, no. 5 As 138/2020 – 80, 8 May 2020 no. Nao 48/2020 – 149 and decision of the Constitutional Court of 22 April 2020, no. Pl. ÚS 8/20.

¹⁰⁴ Municipal Court in Prague (2020), Judgment No. 14 A 41/2020, 23 April 2020.

¹⁰⁵ Recommendations to establish an NHRI have repeatedly been made to Czechia in the UN Universal Periodic Review (UPR) and are supported by Czechia.

of the Ombudsperson is to assist persons in cases where the conduct of public authorities is either unlawful or goes against the principles of a democratic state and good governance, by conducting inquiries and recommending actions to remedy the situation. The Ombudsperson does not have a decision-making power and the outcomes of their inquiries are not legally binding¹⁰⁶. Additionally, the Ombudsperson has received the mandate of Equality Body, National Monitoring Mechanism under the United Nations Convention on the Rights of Persons with Disabilities, National Preventive Mechanism under the United Nations Committee against Torture and as monitor of forced returns¹⁰⁷.

There is a practice of organising debates on the justice system in the Senate. The Senate organises conferences and debates on topics related to the justice system, which provide an opportunity for senators to debate the issues concerning the justice system and policy solutions. The most recent conference took place in November 2019, when the Constitutional and Legal Committee, in cooperation with the Supreme Court, organised an international conference on the ‘Efficiency and Quality of the Czech Judiciary: Evaluation and Perspectives’.

There is a vibrant and diverse civil society but the pressure on certain types of NGOs is rising. The space for civil society is considered open¹⁰⁸ and civil society participate actively in support of democracy, integrity of public administration and independence of justice and prosecution¹⁰⁹. Nevertheless, civil society organisations, in particular in the area of migration and gender issues, are facing a rising animosity of some segments of society and some political parties¹¹⁰.

¹⁰⁶ Act no. 349/1999 Coll. on the Public Defender of Rights.

¹⁰⁷ State of the Rule of Law in Europe. Reports from National Human Rights Institutions, p. 64.

¹⁰⁸ Rating given by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

¹⁰⁹ CIVICUS, 22 July 2019, Politicians continue to undermine critical media in the Czech Republic. Mass protests persist. CIVICUS, 15 January 2020, Citizens call for PM’s resignation in anti-government protests; press freedom in decline.

¹¹⁰ Input from Czechia for the 2020 Rule of Law Report, p. 33.

Annex I: List of sources in alphabetical order*

* *The list of contributions received in the context of the consultation for the 2020 Rule of Law report can be found at (COM website).*

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Virtual country visit to Czechia in the context of the 2020 Rule of Law Report.

Annex II: Country visit to the Czech Republic

The Commission services held virtual meetings in June 2020 with:

- Anti-Corruption Council of the Government
- Association of Journalists
- Chamber of Bailiffs
- Council for Radio and Television Broadcasting
- Czech Bar Association
- Financial Analytical Office
- Frank Bold – Reconstruction of the State
- International Press Institute Czech Republic
- National Organised Crime Agency of the Czech Police
- Ombudsman
- Prosecutor General’s Office
- Supreme Administrative Court
- Supreme Audit Office
- Supreme Court
- The Endowment for Independent Journalism
- Transparency International Czech Republic
- Union of Judges
- Union of Public Prosecutors

* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Press Institute
- Lifelong learning Platform
- Open Society Justice Initiative/Open Society European Policy Institute
- Reporters without Borders
- Transparency International EU