Historical background to challenges to the rule of law in the Czech Republic

In order to understand the foundations of the current challenges of Czech democracy, including the rule of law, it is necessary to go back to the crucial historical points of the modern Czech democratic system and their subsequent events. Such an analysis of the post-communist development in the Czech Republic will provide readers with a better perspective on new democracy in the making and its various pitfalls.

- **The events occurring from 17 November to 29 December 1989, which later became known as the Velvet Revolution, represented the non-violent transition from a Communist dictatorship to a democratic system with guarantees of rule of law and protection of human rights. The Velvet Revolution marked a decisive break with the former oppressive regime.**
- **Although the path from a purely centrally-planned economy to market oriented one was inevitable, there were, and still are disputes over the overall approach to, and process of privatisation. Critics often claim that the privatisation of enormous state-owned enterprises took place quicker than the new legal system was able to cope with. Buyers did not have to prove the origins of their assets; many used legal loopholes and the lack of regulations to massively and rapidly enrich themselves to the detriment of Czech state and ordinary citizens.**
- **Many of today's issues have their roots in both the recent and not so recent past and it is clear that the Czech Republic has experienced privatisation crimes, various kinds of clientelism, gross abuses of power, and corruption scandals. Despite the institutional checks and balances (especially by the Senate and judicial review, including the Constitutional Court), more transparency in politics and a strong civil society, there are still measures that need to be taken to better prevent politicians' conflicts of interest, strengthen the control of distribution of public funds, establish the institutional independence of the Prosecutor General and to better ensure the independence of public service media.**

Democratisation of Czech lands

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The legitimacy of the authority of the state and its government was drawn again from the will of people as a sovereign entity. Early on, the Constitution of the Czechoslovak Socialist Republic from 1960 and the Constitutional Act on the Czechoslovak Federation from 1968 underwent major changes: most notably, the leading role of the KSČ (Czech abbreviation of the Communist Party of Czechoslovakia) was abolished and the Human Rights Charter was incorporated into the Constitution. Several important laws on political and citizen freedoms were passed, e.g. Law on Association in Political Parties, Law on Freedom of Association, Law on Elections. The Parliament also passed laws which were aimed at rectifying the wrongs and injustices committed by the communist regime (Law on Judicial Rehabilitation, Law on Property of Churches, and Law on Restitution).

HISTORICAL BACKGROUND TO CHALLENGES TO THE RULE OF LAW IN THE CZECH REPUBLIC

FAILED TRANSFORMATION in the early 1990s. The transition from a centrally planned economy to a market economy took place rapidly, in a radical manner. The privatization of state-owned enterprises was too fast, chaotic and incorrect. The new merchants were diverting wealth from enterprises, getting richer to the detriment of the state.

After the unsuccessful transformation, economic stagnation ensued. Courts and the prosecutor's office **DID NOT RESOLVE** corruption scandals. Social discontent grew.

Politicians **ABUSE** their rights, cause political and corruption scandals. Populists come to power.

Source: Kultura Liberalna October 2021 www.letlawrule.com

Regime change also uncovered certain differences between both states within the Czechoslovak federation. The fate of the federation was sealed at the 1992 general elections, after the Civic Democratic Party (ODS) led by Václav Klaus won in Czechia and the Movement for Democratic Slovakia (HZDS) of Vladimír Mečiar prevailed in Slovakia. The differences between both leaders with regard to the governing of Czechoslovakia concluded in a political agreement on the dissolution of the federation. Therefore, despite the absence of referendum and the fact that the majority of Czechoslovakian population was not in favour of breaking up, on January 1, 1993, Czech and Slovak nations "peacefully divorced" and started a new history of their respective countries.

Fundamentals of the constitutional system of the Czech Republic

On 1 January 1993, the Constitution of the Czech Republic, the supreme law of the country, entered into force, covering the fundamental principles – the principle of popular sovereignty and the principle of separation of powers into the legislative, executive and judicial branches of government. Czechia can be characterised as a unitary parliamentary democratic republic, where the President is the head of state and the Prime Minister is the head of government. Although the President (until 1 October 2012 elected by the Parliament – Václav Havel, Václav Klaus; since then by popular vote – Miloš Zeman) has some important powers (appointment of the Prime Minister and Government and the possibility to veto a bill), real executive power is exercised by the Government of the Czech Republic, which reports to the Chamber of Deputies, where it naturally seeks a majority to be able to pass legislation.

The Chamber of Deputies, the lower house, and the Senate, the upper house, form Parliament, the main legislative body. The Chamber of Deputies consists of 200 Deputies elected on party tickets by secret ballot based on proportional representation for four-year terms. The Senate is made up of 81 senators elected in individual electoral districts for six-year terms using a first-past-the-post system. Although the Senate veto on bills passed by the Chamber of Deputies can be overridden by an absolute majority of the Chamber during a repeated vote, there are certain types of bills that cannot be passed without the approval of the upper house, such as election laws and constitutional acts. In order to change supreme law, it is necessary to gain at least three fifths of all Deputies and at least three fifths ofsitting senators. Therefore, the Senate, which sometimes has a different political leaning from the lower house, can be an important constitutional check on efforts to fundamentally revise the constitution.

The Czech judicial system recognises four categories of courts (District Courts, Regional Courts, High Courts, Supreme Courts – the Supreme Administrative Court and the Supreme

Court) and one special entity, the Constitutional Court. The constitutional judiciary has had a long tradition in Czech lands going back to the 1920s and has a crucial place in Czech democratic system. The Constitutional Court, composed of 15 justices who are named for a renewable period of 10 years by the President, subject to the Senate's approval, represents a robust protection against possible violations of the Constitution by either the legislature, government or by any other subject that violates people's constitutional rights and freedoms. The key competences of the Constitutional Court include: jurisdiction to annul statutes or individual provisions thereof if they are in conflict with the constitutional order; to annul other legal enactments or individual provisions thereof if they are in conflict with the constitutional order or a statute; and to decide on constitutional complaints of natural or legal persons against final decisions or other encroachments by public authorities infringing constitutionally guaranteed fundamental rights and basic freedoms.

Downside of economic transformation

Most of the 1990s was politically dominated by the governments led by liberal-conservative ODS and its leader Václav Klaus, who became Prime Minister of the Czech Republic (from 1993 to 1997 – with smaller coalition parties: conservative – liberal ODA – Civic Democratic Alliance and KDU-ČSL – Christian and Democratic Union – Czechoslovak People's Party). Klaus, self-proclaimed admirer of Margaret Thatcher, was a proponent of a quick transformation of the economy. Radical liberalisation of the economy, privatisation and strong pro-market driven approach prevailed over more a gradual advance which would maintain state intervention.

Although the path from a purely centrally-planned economy to market oriented one was inevitable, there were, and still are disputes over the overall approach to, and process of privatisation. Critics often mention that privatisation of enormous state-owned enterprises took place quicker than the new legal system was able to cope with. Buyers did not have to prove the origins of their assets. Many used legal loopholes and non-existing regulations to massively and rapidly enrich themselves to the detriment of Czech state and ordinary citizens. Some unusual means of gaining capital were tolerated. The word "tunnelling" (the situation when privatised banks and factories went bankrupt after the managers of these entities had deliberately transfered company property into their own private businesses), which represents Czech contribution to the world of financial frauds, comes from this era.

Whilst the economy showed stagnation in 1997 and Klaus pushed for austerity packages, the popularity of the government decreased. Many citizens sobered up from the dream that democratisation would provide benefits to the majority of them. At the end of 1997 Klaus was forced to step down as the head of the government by his opponents in ODS in

connection with accusations of funding irregularities in the party. In December of that year, president Havel, a political opponent of Klaus, summarised the feeling of that time in his well-known “bad mood” speech, made in front of lawmakers, in which he mentioned that macroeconomic and technocratic approach to the world won over important prerequisites for reasonable economic development – rules of play, rule of law, or moral code.

The Opposition Agreement era

After a short-term caretaker government, the parliamentary elections in 1998 brought unprecedented power structure to modern Czech politics. Miloš Zeman, the leader of Czech Social Democratic Party (ČSSD), was the most vocal opponent of Klaus. He introduced a harsh vocabulary into political discourse, which painted a horrific vision of Czech lands suffering from economic reforms. Zeman’s rhetoric, full of quips and witticisms, described the post-Klaus Czech Republic as a “burnt country” that required “Operation Clean Hands” to target economic criminality and political corruption.

ČSSD won the elections, but did not form any coalition with smaller political parties (Christian Democrats = KDU-ČSL or Freedom Union = US – anti-Klaus section of ODS, which formed its own party). Instead, Zeman made a political agreement with Klaus on the distribution of power. Although the document from 8 July 1998 was officially called “Treaty on creating a stable political environment in Czech Republic”, it has since become known as the so-called “the Opposition Agreement”. It was agreed that the ČSSD could govern alone, while ODS received a number of parliamentary posts. Both parties also agreed to adopt several constitutional amendments.

Although the Opposition Agreement provided an environment for a stable ČSSD government, the respective period (1998-2002) is considered particularly controversial by many. The fact that the biggest political parties – one left-wing, one right-wing – agreed on the Treaty diminished the traditional political dynamics of a ruling coalition and an opposition party. ODS essentially gave up its opposition party duties (it could not pursue a vote of no-confidence to the government) and thus guaranteed power to the ruling party, which, in turn, was not driven to attack its erstwhile opponent. The difference between governing entity and opposition, between the left and the right became blurred.

The disillusionment with politics intensified during the 10th anniversary of the Velvet Revolution, when there were calls from parts of civil society for Zeman and Klaus to leave the political world. That did not materialise. Instead, Zeman and Klaus continued their efforts to strengthen power of their respective parties and in 2000 they pushed an amendment to the Election Law through Parliament, which made constituencies smaller and

changed the allocation formula – this would give ČSSD and ODS most of the seats in the Chamber of Deputies and would decimate the smaller opposition parties. President Havel and the opposition parties were strongly against this proposed electoral system reform, and turned to the Constitutional Court. The Court struck most of the Amendment down, arguing that Article 18 of the Czech Constitution explicitly states that elections to the Chamber of Deputies must be held "according to the principle of proportional representation".

Zeman's anti-corruption "Clean Hands" operation did not bring many results. Indeed, his government had its own share of scandals. For example, his minister of finances had to resign due to acriminal investigation (in 2005 he was sentenced to jail time for tunnelling a baby carriage company), Zeman's advisor prepared discrediting material on his political opponent within ČSSD, and there are still on-going debates and legal proceedings regarding the controversial privatisation of the major coal-mining company MUS.

Public service media crisis

During the period of the Opposition Agreement there was also one major conflict on the future of public service media. The Czech Television Council is a body through which the public exercises its right to control the activities of Czech Television and one of its major powers is to dismiss and appoint the Director General of Czech Television. Political parties from the Chamber of Deputies nominated their candidates to the Council and the Chamber elected those with the most votes. In 2000, the Council had members who reflected the parliamentary majority of two big parties. After the Council dismissed the Director General and appointed a new one, Czech TV reporters and various citizen associations were in an uproar fearing the newly appointed leadership was too connected with the major political parties and would compromise the independence of reporting. Events between the end of 2000 and February 2001 included large-scale civil society protests, political controversies and a battle for control of the airwaves, which included jamming and accusations of censorship.

At the end of the so-called Czech TV crisis, the Chamber of Deputies supported the position of the protestors, dismissing the Council and appointing a provisional Director General. The Chamber also passed an amendment to the Act on Czech Television, which aimed at lessening politicisation of media councils. The candidates for the position of a media council member are no longer nominated by political parties, but by organisations and associations representing cultural, regional, social, labour, employment, religious, educational, scientific, ecological and national interests. Nevertheless, the issue of political influence on public service media persists to the present due to the fact that the council members are still voted by the Chamber of Deputies and certain candidates have political connections, even though

they are formally nominated by non-political organisations.

With regard to the Czech media environment, it should be noted that since 1994, the first privately held nationwide Czech TV station, TV Nova quickly gained the largest market share. Mass-oriented programming offered new types of shows, including sensationalist journalism. TV Nova became the favoured space for politicians to appear and it was sometimes actively involved in politics itself. Its first CEO (1994-2003), and later a politician, Vladimír Železný, was notorious for his regular Sunday noon show called "Call the CEO", where he not only answered questions from viewers but also used this platform to present his political views, often in line with the Eurosceptic vision of Václav Klaus. During Czech TV crisis, Železný also spoke against the protests and supported Czech TV's new contested leadership (after the crisis, some of them later found work at TV Nova).

One Government, three Prime Ministers

Before the 2002 parliamentary elections, Zeman announced that he would retire and Vladimír Špidla became his successor as head of ČSSD. Both ČSSD and ODS suffered losses in the elections, but ČSSD was still able to form a coalition government with KDU-ČSL and US, with a slim majority in the Chamber of Deputies. Indirect presidential elections in January and February 2003 offered an opportunity to Zeman to make a comeback, however, different opinions within ČSSD on whether to support him or not led to his defeat. Eventually, Václav Klaus was elected by the Parliament (and repeated his win in 2008).

Špidla's government brought the Czech Republic into the European Union (1 May 2004) although Špidla himself did not politically survive the first European Parliamentary elections contested in the Czech Republic nor the low public approval of ČSSD and was succeeded by a former Minister of the Interior, Stanislav Gross. Gross was a relatively popular, young politician, despite being criticised for installing his allies in top positions in state-owned enterprises and for use of the secret services for political goals. However, he spent very little time in office. In early 2005, a scandal broke which eventually led to his resignation; Gross was unable to convincingly explain the origins of the loan to buy his flat. He was replaced by Jiří Paroubek, who led the country until the parliamentary elections of June 2006.

Paroubek was heavily criticised for his rhetoric regarding the harsh police action against a free rave on 30 July 2005. The police operation left around 80 people and several police officers injured, leading to public protests. Paroubek supported the action beforehand and later defended it. His insensitive attitude was compared unfavourably to that of the communist era leaders. The Paroubek government also controversially dismissed the

Prosecutor General, Marie Benešová, based on a proposal by the Minister of Justice Pavel Němec. Benešová was strongly against the Minister's handling of the case of a Qatari prince who had been sentenced to 30 months in prison for paying for sex with 16 Czech minors. However after Němec's intervention, the Qatari prince had been released and repatriated. This case showed a weakness in the Act on Prosecutors is at does not guarantee the sufficient institutional independence of the Prosecutor General, given that the top prosecutor can be dismissed by the government anytime without any reason.

Rise and fall of the centre-right governments

The campaign before the parliamentary elections in June 2006 was particularly polarising, a fact that was reflected in the subsequent election results, with both the centre-right block (ODS, KDU-ČSL, the Green Party) and left-wing block (ČSSD, KSČM = the Communist party) each winning 100 seats in the Chamber of Deputies. The first ODS government led by Mirek Topolánek did not last long and quickly lost a vote of confidence. However, a second attempt, after ODS formed a coalition with KDU-ČSL and the Greens, was successful, narrowly passing a confidence vote on 19 January 2007, when two Social Democrats abstained.

One of the main topics of the Topolánek government was reform of the public finances. However, there have been several controversies related to his era in charge. His colleague from ODS, and Minister of Transportation, was suspected of enriching himself during his time in office when his ministry provided a public procurement contract to the company he still allegedly owned. Topolánek's close aide Marek Dalík was also involved in several notable cases – the most serious one being an attempt to fraudulently ask for a bribe to ensure the government would buy Pandur armoured vehicles from an arms dealer, which later cost Dalík five years in jail.

During the Czech Presidency of the Council of the European Union, on 24 March 2009, ČSSD and the Communist party eventually succeeded in pushing through a no-confidence vote on Topolánek's government. The subsequent interim government, based on an agreement by ODS and ČSSD and led by Jan Fischer was only supposed be in power until the scheduled October elections. However, the Constitutional Court abolished this one-time only Constitutional Act for unconstitutionality – the act had a purpose of shortening the mandate of the Chamber of Deputies and bringing forward elections. As a result, Fischer's interim government actually stayed in power until July 2010.

The big parties, ČSSD and ODS lost seats in the 2010 elections. Paroubek's ČSSD was the eventual winner, but was unable to form a government and ODS, led by Petr Nečas, formed

a centre-right coalition with two new right-wing parties, TOP 09 and VV (Věci Veřejné = Public Affairs). The coalition proclaimed itself as a “coalition of fiscal responsibility, rule of law and fight against corruption”.

One of the most important positive changes regarding the rule of law during the Nečas government came in the form of personnel changes in top prosecutorial positions. The credibility of public prosecutor’s offices suffered several blows over the years for allegations of abuses of power, and mishandling or not properly investigating politically sensitive cases, including certain cases of economic criminality where business interests overlapped with political ones. The controversial Prosecutor General R. Vesecká (2005–2010), who was even accused by her predecessor Benešová of membership of a “judiciary mafia”, was dismissed and replaced by Pavel Zeman (2011-2021). Soon after his appointment, Zeman proposed the removal of another controversial figure, V. Rampula, from the office of High Prosecutor in Prague, who had the infamous nickname the “sweeper of cases”. The Minister of Justice Jiří Pospíšil complied with the proposal and the position of High Prosecutor in Prague was given to the respected Lenka Bradáčová. These changes proved to be helpful to the justice system and its credibility.

This era is notable for the arrest of a well-known Social Democratic politician, the Governor of the Central Bohemian Region, deputy, and former Minister of Health, David Rath, who was later sentenced to seven years in prison for accepting bribes, becoming the most prominent political figure sentenced to prison time for corruption.

However, Nečas’ government had its own share of problems. Vít Bárta, one of the leaders of the coalition member, VV, which ran on an anti-corruption platform, was accused of bribery by his party colleagues and had to resign from his ministerial post. However, the decisive blow to the government came on 13 June 2013, when the Police Unit for Combating Organized Crime raided the Office of the Government and arrested some of Nečas’ closest advisors and collaborators, including Jana Nagyová (now Nečasová), Director of the Section of the Prime Minister, and also the Prime Minister’s mistress, and Ondřej Páleník, former head of the Military Intelligence Service. They were accused of abuse of power and corruption, including Nagyová alleged misuse of the Intelligence Service to monitor Nečas’ wife. Nečas resigned on 17 June 2013.

A directly elected president and his loose interpretation of the constitution

In 2012, Parliament passed a constitutional amendment which introduced direct presidential elections. The change of the election system gave a chance to Miloš Zeman to

make a political comeback. His populist rhetoric, appealing to the lowest common denominator, and willingness to smear his opponent based on unfounded information proved to be effective. Zeman received five hundred thousand more votes in the second round than the rival candidate Karel Schwarzenberg and in March 2013 he became the first directly elected president of the Czech Republic (Zeman was also subsequently re-elected in 2018).

As mentioned above, the Czech Republic is a parliamentary democracy in which the president has a largely ceremonial role. However, the direct vote have gave Zeman a reason to believe that his legitimacy, and thus his powers, were in fact greater than the Czech constitutionalists ever envisioned. Soon it became clear that his interpretation of the constitution, and its principles and customs is differs vastly from his predecessors and from the majority of Czech jurists. Circumventing the constitution or statutes in order to achieve his political goals (e.g. refusal to dismiss or appoint a minister, despite it being proposed by the Prime Minister; letting a government without confidence in power; refusal to appoint professors or a General of the Secret Intelligence Service), along with his attacks on the media (including Czech TV), his affinity to the authoritarian governments of Russia (his long-time advisor Martin Nejedlý was a representative of Lukoil) and China, and his advisors' alleged attempts to influence the decision-making of courts, have all become a clear and present challenge for the rule of law and a real test for Czech institutions and their representatives.

After the end of Nečas, Zeman showed his first disrespect to parliamentary democracy when he ignored the political majority in the Chamber of Deputies and appointed a government of his allies, led by his friend and long-term colleague Jiří Rusnok. Despite a no-confidence vote (7 August 2013), Zeman let this caretaker government rule for an unusually long period of time, essential until January 2014, after the new government had been formed based on the results of the October 2013 elections.

Challenging the traditional political party system

The exhaustion with traditional politics was palpable in 2013. After so many political scandals and disappointments of the previous governments, the problem of corruption became the most salient topic in public polling. Traditional political parties had to face new populist movements, which were challenging the system. The most successful was led by Andrej Babiš, CEO and owner of the Agrofert Group (a conglomerate holding company, which operates agriculture, food, chemical, construction, logistics, forestry, energy and mass media industries – including the popular daily newspaper, like MF DNES, Lidové Noviny and radio station – the Impuls). His populist political movement ANO 2011 ran an

effective campaign, based on an anti-corruption platform promising a political and managerial approach to government.

In the elections, ANO 2011 ended up narrowly second behind ČSSD, proving to be enormously popular among voters. They became part of the coalition government led by Bohuslav Sobotka (leader of Social Democrats, who was regularly undermined by president Zeman) along with ČSSD and KDU-ČSL. Babiš became the Minister of Finance. From 2013 to 2017, the parliament passed several important anti-corruption bills – the Register of Contracts Act, the Reform of Political Finances and Political Campaigns, greater transparency of Rules of Procedure of the Chamber of Deputies and the Amendment of the Conflict of Interests Act, which included provisions that made it illegal for a company owned by a Czech minister to receive subsidies, state investment incentives, public contracts, or to operate television and radio broadcasting and publish periodicals. The last measure passed despite the lack of support by ANO, because it was aimed at tackling Babiš considerable conflict of interest on the matter.

Babiš later became the subject of a criminal investigation regarding the financing of Stork's Nest, a resort in Central Bohemia for which Babiš is alleged to have illegally acquired EUR 2 million of EU subsidies meant for small companies. ANO still won the 2017 elections and Babiš became Prime Minister, having the support of President Zeman. However, another serious blow to the credibility of Babiš as an anti-corruption fighter came with a European Commission audit, which concluded that the Prime Minister still had a conflict of interest. These investigations raised new challenges to the state of the rule of law in the Czech Republic, including concerns about preserving an independent judiciary and the impartiality of state institutions which decide on distribution of public funds.

Conclusion

This analysis is not an exhaustive historical account of the rule of law challenges in the Czech Republic. However, its ambition has been to provide a concise overview of the notable events in modern Czech political history that are relevant for an assessment of the contemporary state of the Czech rule of law. Many of today's issues have their roots in both the recent and not so recent past and is clear that the Czech Republic has experienced privatisation crimes, various kinds of clientelism, gross abuses of power, and corruption scandals. Despite the institutional checks and balances (especially by the Senate and judicial review, including the Constitutional Court), more transparency in politics and a strong civil society, there are still measures that need to be taken to better prevent politicians' conflicts of interest, strengthen the control of distribution of public funds, establish the institutional independence of the Prosecutor General and to better ensure the

independence of public service media.

Lukáš Kraus

* *Photo: Velvet Revolution Monument, Chech Republic, author: Mrs Brown. Source: Pixabay.*