

## Evolution of the Rule of Law in the Czech Republic in 2021-2023

Although the rule of law is deteriorating in most countries around the world, the Czech Republic showed an improvement in [the World Justice Project's 2022 assessment](#) compared to the previous year. So-called democratic candidates won the elections and legislation was strengthened in a number of key areas. Nevertheless, some events in 2021-2023 raised doubts about the state of the rule of law in the Czech Republic. According to the European Commission's assessment of [the Rule of Law Report 2022](#), the Czech Republic introduced some beneficial reforms in the judiciary over the past year, but continues to have shortcomings in corruption investigations, particularly in high-profile cases.

- Two key elections took place in the Czech Republic – a parliamentary and a presidential election. In the 2021 elections to the Chamber of Deputies, the Czech Parliament, a coalition of three parties managed to form a government with the largest number of votes, and formed a government together with another coalition of two parties. Former Prime Minister Andrej Babiš, who has been criticized for conflicts of interest, moved back to the opposition after four years in government. In the presidential elections, the pro-Western candidate Petr Pavel was elected, beating Andrej Babiš.
- The Russian invasion of Ukraine has raised concerns about the security of the region. In addition to the refugee crisis, the government had to deal with the energy crisis. The Czech Republic also saw a series of anti-government demonstrations. An attempt by the opposition to dismiss the government on the grounds of insufficient efforts to resolve the energy crisis was unsuccessful. Even so, the challenges of previous years have taken their toll on Czech society and trust in state institutions is currently at its lowest level since the Czech Republic became an independent state. The worsening financial situation of the majority of its citizens is also affecting the perception of democracy.
- In the second half of 2022 the Czech Republic held the Presidency of the Council of the European Union. Although the Czech presidency was considered a success with regards to the rule of law, parts of the government could have shown more decisive action and efforts to prevent its decline in some of the EU's member states.
- The end of Miloš Zeman's presidential mandate saw several attempts to increase presidential powers. A series of controversial pardons was followed by an attempt to appoint a new president of the Constitutional Court when the acting president still had

more than six months left of his term.

- The current government has not escaped scandals and accusations of conflicts of interest. The current Justice Minister Pavel Blažek caused controversy by demanding information from the prosecutor's office in a corruption case against his fellow party members.
- In 2023 the media laws were amended to strengthen the independence of the public service media. There are, however, a number of necessary reforms that have not moved forward at all or only very slowly – for example the reform of psychiatric care, or the reform of the Office for the Protection of Competition. Some anti-corruption laws are being worked on, but their drafts are often weak (e.g. the Whistleblower Protection Act has been adopted, but only to a minimal extent, providing only basic protection, with no protection for anonymous reports). Nonetheless the tightening of the law on conflicts of interest and the strengthening of the right to information are welcome.

## **Change of government after the 2021 general election**

The main political event of 2021 was undoubtedly the elections to the Chamber of Deputies, which fundamentally changed the power dynamics of the Czech political scene. Three political parties (the liberal-conservative right-wing parties Civic Democratic Party (ODS) and TOP 09, and the Christian Democratic Party KDU-ČSL) formed a coalition that, after a close contest, received more votes than the ANO party led by former Prime Minister Andrej Babiš. The coalition eventually managed to form a government with two other democratic parties (a coalition composed of the Pirates and STAN).

However, the new elections did not bring much change in terms of equal representation. In the Chamber of Deputies, as in other political institutions, the representation of women and ethnic and national minorities has remained very low. In the 2021 elections, the percentage of women MPs rose by just two per cent and is now still only 25 per cent. As in the previous period, the Roma minority is not represented at all.

## **Reverberations of the coronavirus pandemic and the Russian invasion of Ukraine**

The end of 2021 and much of 2022 were still largely influenced by the COVID-19 pandemic. Even in the second year of the pandemic, the country's strategic communication did not improve much and the Czech Republic, like other European countries, faced a flood of disinformation, which was amplified by Russian propaganda related to the emerging war in

Ukraine.

A considerable number of pandemic measures implemented by the Ministry of Health and other authorities have been declared illegal by the courts, with among them even some very basic measures, such as the obligation to wear protective face masks in public. The reasons for these decisions were mostly a lack of justification or disproportionate interference with citizens' freedoms. In this particular case, the Ministry of Health did not sufficiently comment on the potential health risks associated with a prolonged covering of the respiratory tract.

The ability to seek legal protection has evolved considerably during the pandemic. The first motions to overturn pandemic measures were not successful in the courts and were usually rejected. The reality was that the measures were constantly repealed and replaced by new ones. Under procedural rules the courts cannot annul a measure that no longer exists. The annulment of illegal measures led to some very bizarre situations on the part of the state authorities, when, for example, the courts annulled a Ministry of Health measure and the ministry implemented a new measure with the same content on the same day.

Eventually, a solution was found: In a lawsuit against the illegal intervention, the courts would declare the measure illegal, despite it already having been canceled, thus opening up the possibility for the plaintiffs to claim compensation from the state for any damages caused.

The evolution of the rule of law in the Czech Republic (as in other European countries) was strongly affected by the Russian invasion of Ukraine and the related energy and financial crisis. The reaction of the Czech government was swift, immediately condemning the invasion and pushing for tougher international sanctions. The actions of the Russian Federation were also criticized by then President Miloš Zeman, who had for a long time advocated a pro-Russian policy. Prime Minister Petr Fiala publicly supported Ukraine's accelerated accession to the European Union and was one of the first politicians to travel to Ukraine after the February aggression.

The energy crisis, high inflation, and other problems associated with the crisis led to a series of anti-government demonstrations and an unsuccessful attempt by opposition movements to pass a vote of no confidence in the government.

Shortly after the beginning of the Russian invasion in February 2022, mobile operators and the national domain administrator blocked access to some pro-Russian websites which spread disinformation. The move was first presented as a private initiative. However, it was

later revealed that the shutdown was requested by the National Cyber Operations Centre (NCKO), a body under the control of the Ministry of Defence. By shutting down certain websites spreading disinformation, the Centre wanted to prevent the dissemination of false and misleading information that could serve to manipulate the population towards justifying and endorsing the Russian military aggression.

The ministry subsequently faced several lawsuits for violating freedom of expression and the rule of law. The court did not uphold these claims, justifying its decision on the grounds that there was no right to have access to information from a particular website and that the government's recommendation to shut down certain websites could not be seen as an interference by public authorities.

These events have resulted in even more attention being given to the forthcoming draft legislation on disinformation and on restricting the online dissemination of content threatening national security. However, the drafting of this legislation was later suspended, and the Czech Republic is at present still waiting for regulations to be passed on one of the biggest threats to democracy.

## **Mandatory publication of judgments - the way to greater transparency of justice?**

The mandatory publication of court decisions in the Czech Republic has so far applied only to the three highest courts - the Supreme Court, the Supreme Administrative Court, and the Constitutional Court. Although a public database of judgments administered by the Ministry of Justice has been in operation for ten years, the publication of judgments has so far been voluntary and most courts have not sent their decisions to be included in this database. This undermines the legitimate expectations of litigants, as district courts in particular often decide similar cases in different ways, and a standardization of case law only occurs in proceedings before the Supreme Court.

This should change with the 2021 amendment to the law, which makes the publication of the judgments of all courts mandatory. However, according to a decree of the Ministry of Justice specifying the different categories of judgments to which the obligation applies, among criminal cases, only judgments relating to bribery offenses will have to be published. The publication of case law relating to bribery is one of the recommendations made by the OECD to the Czech Republic as part of its assessment of the Czech Republic's compliance with the requirements of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The ministry has refrained from making mandatory the publishing of other decisions in criminal proceedings due to financial pressure. Thus, there

will be greater transparency of the judiciary in only one of its branches, and the ministry will have to build up funds for further reform.

## **The Czech Republic's position on problems with the rule of law in neighboring countries**

Although one of the priorities of the Czech Presidency of the Council of the European Union in the second half of 2022 was the resilience of democratic institutions, the Czech Republic has continued to bury its head in the sand in the face of violations of the rule of law in countries such as Poland, Hungary, and Romania. Prime Minister Petr Fiala, on a visit to Poland in April 2022, said that other issues were more pressing at a time of war in Ukraine, and that it was therefore not the right time to address the deficiencies of the rule of law that represent a threat to democracy in Poland and Hungary.

Fiala's statement illustrates the Czech Republic's long-standing lenient approach to violations of the rule of law in some European countries. Turning a blind eye to the situation in Poland in particular can be attributed to the closeness of the strongest Czech ruling party, the ODS, to the representatives of the Polish Law and Justice Party (PiS). The alliance of the four countries of the Visegrad Group has been reinforced, among other things, by a common skepticism towards strengthening the powers of the European Union.

Similarly, in the case of Hungary, the Czech Republic has often hesitated to take more decisive steps. Despite calls from Czech EU Commissioner Věra Jourová, there has been no major reaction from the Czech Presidency to [the racist speech made by Hungarian Prime Minister Orbán](#) during his visit to Romania. When voting on the resolution on violations of the rule of law and fundamental rights in Hungary and the freezing of EU funds in June 2023, not a single MEP from the ODS voted in favor of adopting the resolution. However, what should be noted is the use, during the Czech Presidency, of the instrument for the protection of the budget and the rule of law, which the European Commission launched against Hungary last year and which makes the use of money from the European budget conditional on Hungary's compliance with the principles of the rule of law. In December 2022 part of the European money was frozen and Hungary lost some cohesion policy subsidies that it was supposed to receive under the current 2021-2027 EU budget.

However, the Czech government's attitude seems to have changed somewhat in recent months. Czech Foreign Minister Jan Lipavský (Pirates) has [strongly objected to Orbán's comparison of European integration to Hitler's plans](#). For the first time, Prime Minister Petr Fiala [openly criticized Poland and Hungary for blocking the migration agreement](#) and commented that international cooperation with these countries was not always easy.

## **President Zeman continues to bend the Constitution**

The end of President Zeman's term in office was not without a number of scandals and attempts to strengthen his presidential role. There was, for example, some controversy surrounding the granting of pardons. Prior to his election, Zeman had declared that he would only consider granting pardons to terminally ill convicts, but he repeatedly broke his promise. One of the most recent cases was the granting of a pardon to Miloš Balák, the head of the Lány Forestry Administration (an organization of the office of the president of the republic), who was convicted of interfering in a public contract. The pardon was granted to Balák just two days after he had finally been convicted, and no reasons were given for the decision.

Although the former president was criticized by politicians and the public for abusing his powers, he did it again in January 2023. This time he pardoned Jana Nečasová, who was behind one of the Czech Republic's biggest political scandals. When she was director of the Czech prime minister's cabinet office, Jana Nečasová (formerly Nagyová) misused military intelligence to spy on the now former wife of Prime Minister Nečas. The scandal eventually led to the fall of the Nečas government, and political analysts agree that this scandal and the subsequent decline of the Czech population's trust in 'traditional political parties' contributed to the rise in popularity of the ANO movement led by Andrej Babiš.

Granting pardons is not the only example of Miloš Zeman violating the rule of law. Just before the end of his second presidential term in early March 2023, he publicly stated that he was considering appointing a new president of the Constitutional Court, even though the mandate of the current one was only due to expire in August. Although the constitution does not explicitly state when the president of the Czech Republic should appoint a new president of the Constitutional Court, it is clear that doing so six months in advance is not in line with the constitution. In the end, the appointment did not go through, but Zeman pointed out that he remained convinced of his right to appoint a new president. In the last days of his presidency, Miloš Zeman even [openly admitted that he had tried to move the Czech Republic closer to a presidential system during his rule](#).

## **Presidential elections in 2023**

After the ten-year rule of President Miloš Zeman, the Czech Republic elected a new head of state in January 2023. One of the presidential candidates was former Prime Minister Andrej Babiš, who, after being defeated in the 2021 elections, moved to the opposition in the Chamber of Deputies. According to some, the motivation for his candidacy was the ongoing criminal prosecution for subsidy fraud, which he would have avoided while being president

thanks to his immunity (and theoretically he could have also stopped the criminal prosecutions). As expected, he reached the second round of the election, but was then defeated by Petr Pavel, a retired army general and former chairman of the NATO military committee.

This was only the third presidential election in the Czech Republic since the introduction of direct presidential elections in 2013, and it was characterized by a particularly acrimonious political campaign led by Babiš. According to the experts, his campaign violated the ethical principles of communication, given that it exploited the fear of war and spread alarmist messages. Babiš's main message was that he would not drag the Czech Republic into war, whereas the former soldier Petr Pavel was threatening to do so.

For the Czech Republic, the election of Pavel represents not only a return to a head of state supporting pro-Western policies, but also a more restrained style of governing without interfering with the constitutional order and without trying to impose an illegitimate (semi)presidential system. In his first months of governance, public trust in the president as a political institution increased rapidly. While in the last year of Miloš Zeman's government the president was one of the least trusted institutions (37 per cent), trust in the newly elected president increased to 60 per cent and Petr Pavel has also become the most trusted politician in the country.

## **New composition of the Constitutional Court**

One of the first tasks of the new president was to appoint new judges to the Constitutional Court. Most ten-year terms of the Constitutional Court judges expire in the same year, which is problematic for two reasons: It makes it difficult for the institution to preserve continuity, and it allows the president to appoint almost all the judges of the Constitutional Court in one go.

The judges of the Constitutional Court of the Czech Republic are appointed by the president with the approval of the Senate. However, the constitution does not specify in detail how the president should select his nominees. The first Czech president, Václav Havel, created an advisory council tasked with nominating the judges. The nominations carried out by Presidents Václav Klaus and Miloš Zeman were already rather haphazard and, from the public's point of view, it was not clear what had been the criteria for selecting the candidates. Petr Pavel has returned to a more transparent procedure and asked selected legal institutions such as the courts, professional chambers, and members of the legal profession to propose their candidates. These will then be assessed by the president's consultative panel, which is again composed of representatives of the legal profession.



Although the new procedure is clearly an improvement compared with the previous one, this method of appointing judges is not without its flaws, as it results in the legal establishment proposing candidates from within their institutions, typically from their own senior management. This means that a number of excellent lawyers from, for example, the nonprofit sector will not be considered.

It is also worth noting that the composition of the Constitutional Court in the Czech Republic is not very gender-balanced. Until recently, the Constitutional Court had only one female judge. Petr Pavel promised that he would take gender considerations into account when selecting candidates, and judging by his first nominations, it looks like he will keep his promise (he nominated two more female candidates in addition to the female constitutional judge he had already nominated and eventually appointed).

## **Conflicts of interest and concerns about the justice minister influencing criminal proceedings**

Concerns about violations of the rule of law have been raised by some recent actions by Czech Justice Minister Pavel Blažek from the ODS. One of the latest and most controversial cases was the Minister's submission of several requests for information to the prosecutor's office and his statements on these matters. The minister requested information on a case dealing with irregularities in the allocation of city flats, in which some ODS members were allegedly involved. The minister was said to have close relations with some of them.

Blažek denied any connection with the case, as well as the unusual nature of his actions. Regarding the requests for information, he pointed out that it was the MPs who had requested the information in question. It could be argued that the very fact that he was investigated by the special police forces from the National Centre against Organized Crime does already constitute a conflict of interest. In the Czech Republic, the public prosecutor's office is subordinate to the government and the Ministry of Justice in organizational matters, although neither the government nor the minister is authorized to interfere in its activities.

In his requests for information, the attorney general said the minister should have asked, among other things, about the personal circumstances of the prosecutor who is overseeing the case and the investigation of the minister himself. The minister also asked for the names of the judges who had ordered the detentions and searches in the case, which, according to the deputy president of the court, was extremely unusual.

The Czech branch of Transparency International and other representatives of civil society



have also called for Blažek's dismissal. However, Prime Minister Fiala has not yet agreed to the dismissal and has commented that he could find nothing wrong with the minister's action.

Other cases involving the minister include the refusal to appoint the deputy president of the regional court in Brno because of disagreeing with his decisions or the filing of a disciplinary action against a judge who complied with an information request and published search warrants in the aforementioned case of the city apartments.

Although the motivation behind Minister Blažek's individual actions is unknown, and they are not necessarily proof of his malicious intent, the minister's actions put dangerous pressure on law enforcement authorities and left open the possibility that his assessment had influenced the officials' actions. Pavel Blažek is not the first justice minister to commit such acts, raising the question of whether the Czech Republic is sufficiently prepared for a system in which the judiciary is run by the Ministry of Justice. In the long term, such a model might only be sustainable in countries with a strong political culture.

## **Participation of an ultra-conservative group in the government**

Criticism of the current government is not only directed at the actions of Minister Blažek. There has been a wave of dissent after it was revealed that representatives of the ultra-conservative group Alliance for the Family were acting as advisors to the Ministry of Labor and Social Affairs and the Ministry of Justice. The Alliance has become known for its anti-abortion views and its strong opposition to same-sex marriage.

Repeated calls by some organizations to end this cooperation have seen some reaction. The most recent initiative was an open letter from members of some churches who believe that the Alliance's goals go against the values of religion and the democratic state. In the letter, they particularly objected to homosexuality being labeled a disease and the associated threat to the health and psychological development of children.

## **The first (non)success of climate litigation**

In June 2022 the first ever judgment in a climate lawsuit against the Czech Republic was delivered. While climate litigation is already a common method of the fight against climate change in other countries, the Czech Republic had to wait a little longer for its first case. The public was therefore all the more surprised when the court at first instance partially upheld the charges.

The action was directed against the government as a whole and against some individual ministries, namely the Ministry of the Environment, the Ministry of Industry and Trade, the Ministry of Agriculture and the Ministry of Transport. The group of claimants, which included not only farmers and foresters but also a municipality and a man suffering from environmental anxiety, argued that the Czech Republic was not active enough in combating the effects of climate change.

The court found a violation of the right to the environment in that the Czech Republic had failed to set out any specific mitigation measures that would lead to a reduction in greenhouse gas emissions. The relevant ministries were obliged to adopt a sufficiently specific plan for reducing emissions to meet the European Union's objectives under the Paris Agreement.

The judgment was eventually overturned in proceedings before the Supreme Administrative Court, which ruled that the Czech Republic's obligation to reduce emissions cannot be inferred in a situation in which the Czech Republic has not adopted any binding targets in its own climate laws. A new trial before the first instance court is currently underway, so it remains to be seen whether the first Czech climate action will be successful.

## **Greater independence for public service media and stricter rules on conflicts of interest**

In June 2023, after a long legislative process, which the opposition attempted to disrupt several times, Parliament succeeded in passing the so-called small amendment to the media laws. From now on, both chambers of the Czech Parliament will participate in the election of the members of the media councils of Czech Television and Czech Radio (whereas previously, it was only the lower house which elected all members). The board of a given media outlet can also no longer be dismissed as a whole if the Chamber of Deputies fails to approve its annual report twice in a row. The criteria for organizations to nominate a candidate to the media council have also been tightened. The amendment to the law can be seen as a positive step towards making public service media more resilient against political pressures.

However, the Czech media scene suffers from a number of other problems. One of the most acute is the lack of funding for public service media. Although license fees have remained high in the last 15 years, their real value has fallen by about half. Budget cuts have ultimately led to staff redundancies and the closure of some channels. Media funding should be the subject of a forthcoming further amendment to the media laws.

Media independence in the Czech Republic is also threatened by politicians and other public officials owning media outlets, and their resulting influence on media content. This was already addressed in the 2017 amendment to the Conflict of Interest Act (dubbed *lex Babiš* after the then finance minister and subsequent prime minister), which undisguisedly sought to restrict Andrej Babiš' ownership of several media houses.

Babiš eventually resolved his conflict of interest by transferring the media he owned to trust funds. However, this did not completely remove the threat of undue influence. The Chamber of Deputies therefore tightened the ban, and in June 2023 adopted another amendment that banned this practice (as well as the transfer of ownership to a close person). The law will now also apply to the president of the republic, who had been exempted until now.

Although the current government is committed to promoting the independent functioning of the media and has adopted the above-mentioned legislation, some of its actions are moving in the opposite direction. The government first appointed a media and disinformation commissioner, but removed him in early 2023, and abolished the post itself. This interrupted, among other things, efforts to create the aforementioned anti-disinformation law or the state's strategic communication plan.

## **Other anti-corruption legislation**

Apart from the above-mentioned measures, the government's commitment to anti-corruption legislation has so far been disappointing. Although a draft law on whistleblower protection was prepared in the previous period, the new government delayed the adoption of the law for a long time and finally approved a weak draft, which only formally fulfilled the requirements of the European Directive. It did not include protection for the authors of anonymous notifications, nor did it include protection for all offenses. The weakened version of the law was supported by conservatives from the ruling parties ODS and KDU-ČSL, and Babiš's ANO. The Czech Republic will also be fined for the first time ever for delaying the implementation of the directive.

Another of the government's objectives was to strengthen the independence of prosecutors from the government. The Ministry of Justice did put forward a highly problematic proposal, and the first draft even contradicted the government's own manifesto, as it left in place the long-criticized possibility for the government to dismiss the chief prosecutor at any time without giving reasons. However, the amendment was improved after criticism from anti-corruption organizations and some government parties. In the end, the cabinet approved a relatively good amendment that contained better safeguards against interference by politicians.

Following the European Commission's criticisms of poor transposition of EU legislation, the government also had to quickly draw up and approve an amendment to the law on the registration of beneficial owners. In another positive development, the amendment to the Information Act now requires state-owned companies, including CEZ (the largest utility and biggest public company in Central and Eastern Europe with the Czech government being its majority shareholder), to provide more information. At the same time, it makes it easier for entities to process requests, if they are obliged to do so, and includes protection against abuse of the law. Other useful measures include changes to the functioning of the Office for Supervision of the Management of Political Parties and Movements, whose competences have been clarified, and the swift approval of the Czech Magnitsky Act in response to the need to effectively sanction entities responsible for the aggression in Ukraine.

The government has also started to work on the long-delayed law on lobbying. However, the Ministry of Justice put forward a proposal containing so many exceptions that it would not be effective. Its definition of lobbyists does not include key players, such as professional bodies, associations, and churches; and the definition of those on the receiving end of lobbying does not include the president and the officials in close contact with politicians, such as assistants, deputies and senators. It remains to be seen what form the bill will take at the end of the legislative process.

According to the government's manifesto, the key measure in the area of public procurement was to be the reform of the Office for the Protection of Competition. However, the relevant ministry has not yet submitted any proposal. The government has also committed to modernising the state administration and improving its efficiency. This is a very ambitious and comprehensive goal and so far, only a small reform of the Civil Service Law has been accomplished. However, work is underway on a 'major' amendment to the Civil Service Law. It should also be mentioned in this context that the government has established the Digital and Information Agency in order to launch digital transformation.

The Council of Europe's Group of States against Corruption (GRECO) recently rated the Czech attempts to fight corruption as '[disappointing](#)'. Overall, the Czech Republic has managed to adopt only three out of the fourteen recommendations on how to prevent corruption among legislators, judges, and prosecutors.

In June 2022, after more than two years of investigation, the police conducted a mass raid at the Prague City Hall, the headquarters of the Prague City Transport Company, and a number of other locations. Among the eleven accused was the then deputy mayor of Prague, Petr Hlubuček (from the political party STAN). The group was accused, among other things, of interference in public procurement, bribery and theft of the institutions' assets. Shortly

after his arrest, Petr Hlubuček was stripped of all his posts, followed by other changes in the leadership team of the STAN, one of the ruling political parties. This case shows that high-level political corruption has not disappeared from public life.

## **Conclusion**

Although the last parliamentary and presidential elections turned out to be a success for the traditional political forces, the need to cope with several more or less expected crises brought new problems. As the [experts of the Network for the Protection of Democracy stated in their summary report for the second half of 2022](#), the Czech democracy has withstood many challenges, including the consequences of the ongoing war in Ukraine and the energy crisis. However, according to the experts, we are witnessing the harsh social impacts of inflation and energy poverty, the mobilization of anti-systemic forces, unprecedented discontent with democracy and an alarming rise of distrust in society. Pro-democracy political representatives must clearly address these challenges and limit the risk that extreme populists opposing the system will win the next parliamentary elections. As shown in other countries in Central Europe, a complete loss of confidence in the political entities that promised change can lead to the return of the worst of the political forces.