



FUNDAMENTAL RIGHTS AND THE RULE OF LAW

Czech Republic- Country visit report

30 September - 1 October 2021



European Economic
and Social Committee



Fundamental Rights and the Rule of Law

Report on the visit to the Czech Republic 30 September-1 October 2021

Five members took part in the country visit to the Czech Republic. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), social partners, the media and the legal profession, as well as the Czech authorities. The aim of this report is to faithfully reflect and reproduce the views of civil society.

1. Fundamental rights related to social partners

Social partners assessed positively social dialogue in the Czech Republic. They considered that exchanges between employers and trade unions worked well, as did the **tripartite social dialogue with the government**, which spanned from Minister level to a variety of working groups. They explained that CSOs were not directly represented in these tripartite dialogues but that the key concerns they defended, for example the inclusion of persons with disabilities at work, was taken up by social partners themselves.

Social partners considered that the existence of a strong social dialogue had been **very important in tackling COVID-19 related difficulties** around a number of legal uncertainties calling for clarification, for example in relation to home working. They offered illustrations of such legal uncertainties that complicated the lives of employers and workers during the crisis. For example, the absence of legal provisions on short-time work proved to be a challenge during the economic lockdown. A lack of clarity around the rules surrounding the crossing of borders and freedom of movement of goods and labour was also cumbersome for economic life. The question of whether employers had to prevent entry to the workplace for non-vaccinated workers was also a source of confusion.

The main difficulties identified by the social partners concerned **some legal aspects of the Labour Code**. Notably, trade union representatives regretted that Section 24 of the Labour Code imposed the existence of mutual consent amongst all trade unions in a company as a precondition for the conclusion of a collective agreement with the employer, which de facto made them very difficult to attain. It was explained that the number of collective agreements had been declining in recent years. An employers' representative also considered that the Labour Code was unclear on whether or not employers had the obligation to negotiate collective conventions.

2. Freedom of association and assembly

Civil society representatives agreed that **freedom of assembly** was well protected in Czech law. One representative referred to the "Million Moments for Democracy" movement which had not been hindered by the authorities since its creation in 2018. A few cases of excessive use of power by the

police had been brought to Court in the past few years and proceedings were ongoing. During the peak of the COVID-19 pandemic, mass gatherings were restricted but the threshold of the number of demonstrators allowed was adapted to the evolution of the situation.

Participants indicated that there was **no legal restriction to freedom of association**, but that concrete obstacles had increased in recent years. There was a trend towards more distrust of CSOs amongst the general public and a risk of polarisation of Czech society on this topic. Some politicians indeed adopted a confrontational attitude, claiming to be the only legitimate voices of society and denying the role of CSOs. They labelled CSOs active beyond the sphere of social services or sport as "political CSOs" and claimed that they lacked transparency. On this point, the Czech authorities noted that the positions of individual politicians were not those of the government, and the official work of the authorities aimed to support an enabling environment for all CSOs.

In such a context, **access to funding** had become increasingly challenging for CSOs. Participants explained that the majority of the budget allocated to civil society activities went to sport, at the expense of other topics, especially those related to non-discrimination, human rights, and advocacy. They felt that areas like the environment or the fight against corruption were underfunded and that it was particularly difficult to obtain funding for "hot" topics like gender equality or Roma integration. Participants pointed to the 2020 gap between the two EU Multiannual Financial Frameworks, which disrupted the work of CSOs and created an additional burden for them to find co-financing. A participant also pointed to important administrative and bureaucratic barriers in the registration process of CSOs. Reference was also made to studies showing that most CSOs considered that their activities had been seriously impacted by the COVID-19 crisis. The Czech authorities mentioned that funding was available for CSOs to lead anti-corruption awareness campaigns and that the Government Anti-Corruption Council was also open to CSOs.

Participants felt that **access to decision making** needed to be improved. They considered that the government's strategy on cooperation with civil society was good but that it needed to be better implemented. CSOs were formally part of advisory committees but the nomination procedures differed amongst administrations in charge. CSOs considered that there was a lack of representativeness of their sector and regretted that authorities could freely decide to consider or discard CSO contributions without proper feedback. Over the last few years, some CSO representatives had resigned from the advisory body composed of CSOs and government officials. The Office of the Public Defender of Rights as an institution offered very good cooperation with CSOs. However, CSOs criticised the controversial public positions taken by the mandate holder. They considered that the Public Rights Defender's refusal to deal with some issues like minorities, and in particular Roma people, hindered the overall trust in the institution and its authority. On a more operational level, CSOs in the environment field faced restrictions in accessing land planning or related decision-making processes.

Participants also considered that the **COVID-19 crisis** further affected the effectiveness of CSO consultation procedures. CSOs considered that they were not properly involved in the preparation of the Czech National Recovery and Resilience Plan (NRRP) and that they had to turn directly to Brussels to obtain information.

3. Freedom of expression and freedom of the media

Media representatives agreed that journalists benefitted from **a secure environment** in the Czech Republic and that overall the situation was better than in some neighbouring countries. Freedom of expression and media freedom were solidly protected in the Czech Charter of fundamental rights and freedoms.

However, participants also assessed that the **general trend was going in the wrong direction**. Journalists in the Czech Republic did not normally risk their lives as in some other countries and some attempts to put pressure on some journalists had failed. For example, a "muzzle" bill had been proposed a few years ago which could have restricted the work of journalists, but it was never passed. In the area of libel, the Constitutional Court also ruled that public figures could not claim the same level of protection against defamation as private persons, thus reducing the risks of abusive lawsuits against journalists on such basis.

However, the **influence of politicians** (including from the highest level) on media was considered particularly problematic. The few main media owners of the country were depicted as combining business profit with political influence – including through the propagation of fake news. Participants shared their concerns with regards to the recent barring of representatives of international media from a press conference of the Prime Minister with his Hungarian counterpart, which was unprecedented. Questioned by the EESC delegation about the motivation for such exclusion and its possible link to ongoing legal proceedings concerning the Prime Minister, the representatives of the authorities did not express their views. Participants saw local media as particularly at risk of being influenced by local politicians. There was however also a public demand for quality and independent information, which explained the success of some media projects in that area. The Czech authorities explained that the legislation on conflicts of interest prevented public officials from directly carrying out TV, radio or magazine broadcasting, but that this did not prevent holding shares in the media market.

Participants felt that the **increasing economic fragility** of the media sector made media outlets more prone to influence. Social media platforms absorbed the vast majority of advertising revenue, leaving only a slight share to classical media producing content. This trend had accelerated with the COVID-19 crisis, as its impact on the economy dried up sources of advertising. As a result, some of the smallest and weakest media outlets had to close down or undertake restructuration, and the precarious conditions of journalists increased. Many journalists have been working under precarious work contracts or as freelancers, while membership of journalist trade unions has decreased, following a similar trend in other European countries.

Although media representatives considered that there was no topic that could not be covered by journalists in the country, they also considered that the **risk of self-censorship** was on the rise. The number of investigative journalists able to sustain lengthy investigations was considered very low, and there were not many vocations for such career amongst the youth. Participants considered it essential to obtain better support for quality journalism, including through training on how to treat and analyse information.

Participants also felt that the **independence of public media** was in danger. Until recently, there had not been real attempts of political interference in content by members of media supervisory bodies elected by the parliament. However, a trend had emerged in that direction, in particular in relation to the public broadcaster Czech Television.

4. The right to non-discrimination

Participants in that session considered that diversity was not yet conceived as a positive value in Czech society. In that context, they felt that official data on discrimination was lacking and that **effective protection against discrimination** remained a challenge. Access to justice for victims of discrimination and vulnerable groups was problematic. It was felt that police lacked sufficient training in this area and that investigations by the general inspection of police forces did not lead to a truly visible outcome. Legal assistance was very formal, for example migrants would need to turn to private lawyers in the absence of sufficient funding for CSOs offering similar aid free of charge. The Czech authorities mentioned that data on hate crime were actually collected, although they did not cover all

grounds for discrimination. They gave information on training programmes to better identify and protect victims.

Participants explained that several **institutions** were in place to deal with discrimination issues, but that their modality of work needed to be improved. The Government Council for Human Rights had not met regularly in the last few years and some participants felt that the Government Council for Gender Equality did not have enough influence. It was noted that the position of Minister for Human Rights and Equal Opportunities disappeared a few years ago, and that the Public Defender of Rights was not keen on working on issues concerning minorities, migrants and gender equality. Funding for CSOs dealing with discrimination, for example in migration and gender areas, mostly came from the EU rather than State level. The Czech authorities acknowledged that there had been a pause in the meetings of the Government Council for Human Rights, but that these had since resumed, including virtually during COVID times. An extension of the mandate of the Public Defender of Rights was under consideration.

CSO representatives explained that the Czech Diversity Charter was adopted by some big companies like multinationals, but they felt that employers in smaller companies approached **migrants** more as an opportunity for cheap labour rather than through the positive angle of diversity. A participant also considered that trade unions did not integrate enough migrants amongst their ranks, too often associating them with social dumping. Similarly, local municipalities in industrial areas did not know how to deal with the integration of migrant workers. Participants also explained that third country nationals did not have full access to health care – they could not benefit from public insurance and had to contract private ones, offering less protection and reimbursement.

Participants shared their feeling that there was little general awareness and very little political support for **gender equality**. The position of women in the political world was insufficient beyond a few exceptions at top level. There was a positive but slow trend towards more female candidates in the general election. Generally speaking, women benefited from a good level of education but this did not translate into more representation in top positions of public companies. Women could benefit from long maternity leave, which was positive but also challenging to regain access to the job market, especially in the absence of adapted part-time jobs.

It was explained that **gender violence** had increased during the COVID-19 crisis. Despite this worrying development, the State budget available for CSOs working on gender equality and gender violence was considered very low. Participants explained how some politicians led a disinformation campaign associating any activity in that area with a so-called "gender ideology" under foreign influence, and how they used this as an argument to limit financial and political support. Participants expressed their hope that the Istanbul Convention on violence against women and domestic violence would be on the parliament's agenda in the coming months. The Czech authorities called for a distinction between the issue of the ratification of the Istanbul Convention and actual concrete actions led by the government, and they considered that the Government Council for Gender Equality worked well.

CSO representatives explained that a registered partnership existed for gay and lesbians since 2006, but that since then no legislation was passed to protect the rights of **LGBTIQ persons**. They appreciated that a comfortable majority of the Czech population was in favour of equal marriage for all, but regretted that politicians were not more daring, having let a bill stall in Parliament since 2018. A bill on child foster care for unmarried couples was similarly blocked in the initial parliamentary stage. They also regretted that the strategy prepared by the committee on sexual minorities of the Government Council for Human Rights had not been transmitted to the government. Participants also mentioned that LGBTIQ persons did not report the majority of hate speech and hate crime to the police. They also pointed out that the country still had to adapt its legislation to implement a decision by the European Committee of Social Rights concerning transgender people. The decision stated that the Czech law violated the right to health of transgender people by imposing sterilisation before they changed identity

on their personal documents. The Czech authorities said that a bill had been prepared to adapt the law and that it was ready for consideration by the next government.

CSO representatives explained that the situation of **Roma people** was generally approached by authorities as a social issue rather than an issue of discrimination. Roma people faced discrimination in access to housing, health, education and employment, despite the existence of programmes for inclusion through work. They considered that special schools for Roma children were actually segregated schools. A law was recently passed to compensate Roma women who were victims of forced sterilisation, but adequate implementation was uncertain due to the difficulty in presenting evidence to the compensation committee or in seeking legal remedy without an effective system of legal aid.

5. The rule of law

Legal practitioners assessed the overall situation of the rule of law in the Czech Republic as good but fragile. They felt that the **independence of the judiciary** was guaranteed and that the general situation with regards to justice was better than in some neighbouring countries.

However they considered that a key point for concern was the pressure imposed by the executive power on the **chief prosecutor**, as it had the power to dismiss the mandate holder at any time. This situation was particularly problematic in the context of investigations of conflicts of interest at the top of the State. The previous chief prosecutor resigned because of such pressure and the Czech authorities had not yet amended the law to ensure full independence of the position of chief prosecutor, as recommended notably by the Council of Europe Group of States against Corruption (GRECO). While they did not consider that the situation could be generalised, participants felt that judges in the highest Courts were more prone to pressure by politicians than normal ranking judges.

Participants pointed to a danger of state capture if **high level cases of conflict of interests** were not properly tackled. Such cases, combined with politicians' influence on the media and pressure on the highest level of the judicial system could also fuel a long term trend of erosion of public trust in the institutions. Law practitioners felt that, as in other countries, awareness on the rule of law and key principles like separation of powers amongst the general public was too low and would deserve more support. In their view, however, the "Million Moments for Democracy" movement showed a real sense of justice and a call for a fair and transparent political system in the population.

A positive illustration of the importance of an independent judiciary was offered in the context of the **COVID-19 crisis**. Some citizens sued the State for disproportionate, unclear or unjustified legal decisions, which led the Supreme Court to cancel some decisions on this basis. Participants felt that there had not been enough general debate on decision-making in response to the crisis, nor consideration for some legitimate criticisms stemming from civil society. This, combined with the cancellation of some authorities' decisions by the judiciary as previously mentioned, contributed to a loss of confidence by the population in the authorities' capacity to offer the appropriate responses to the crisis.

Another challenge raised by participants was **law enforcement**. One participant pointed to a lack of a unified case law system in the country and to a problematic inconsistency in the severity of decisions made by Courts depending on the geographical locations of the cases or the area of law. Within the field of construction law, many illegal acts were never prosecuted, whereas within the area of debt and foreclosure law, the law had been applied very stringently, which has particularly affected the low income population. This had led many people to fall into debt traps for not having been able to pay fines or debts and the subsequent accumulating interest, leading to the seizure of their properties.

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