

Czech Republic: Social Law One Step Forward Two Steps Back¹

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ABSTRACT

This article analyses Czech Social Security law from the perspective of sustainability. The first part describes what is it, its position in the Czech legal order, and the level of protection given to welfare rights in the formal constitution. A social security system that is overly costly is not sustainable in the long term (the principle of financial sustainability). There are no real welfare rights in the constitution; they are rather constitutional ideas for legislature that must consider the health of the Czech economy.

KEYWORDS

social security law, social benefits, occupational injuries

1. Dogmatic part

Czech Social Security law is built as a comprehensive system of social protection that protects the population from the negative consequences of social events from birth to death. Social security law comprises insurance and provision subsystems. Insurance comprises pension, sickness, and health insurance. The unemployed are covered by the state employment policy, though it is not an insurance system. Support for families with dependent children is provided through state-funded state social assistance. The last part of social security law is social assistance, comprising material need assistance, social services, and benefits for persons with disabilities. Relatively recently, the regulation of substitute maintenance has come into force, where the State takes over the payment of part of the alimonies owed by the child's parent.²

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2 Act No. 588/2020 Coll., on Substitute Maintenance for a Dependent Child and on Amendments to Certain Related Acts (the Substitute Maintenance Act).

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This system includes protection against all risks, as calculated in international conventions binding the Czech Republic.³ It has ratified the European Social Charter⁴ and the European Code of Social Security,⁵ and those in connection with ILO Convention No. 102 create a basic framework of Czech Social Security law. Czech Social Security law is considered public law in Czech theory. As in other systems of continental written law, it primarily comprises laws. Collective agreements play only a limited role and if any social security relevant stipulations are included, they are agreed upon almost exclusively on the plant level.

Although social benefits under Czech regulations usually are based on statutes, there have been exceptions; benefits based on court decisions (i.e. allowances to Czech citizens who were adjudicated lower Slovak pensions) or governmental decrees without any statutory bases (benefits for emigrants invited by the government to the Czech Republic from certain parts of the former Soviet Union).

1.1. Evolution of Czech Social Security law

The origins of modern systems of social security in the Czech Republic stem from the Austrian Empire and the Soviet Union. On the former, the Czech social assistance system was established in the 1850s, and, at the end of the century, social insurance was introduced through the so-called Taaffe's reform, which was strongly inspired by Bismarkian social reforms in Germany. On the latter, the system inherited from Austrians and developed during the First Czechoslovak Republic (in 1918–1938) was subsequently centralised and followed the Soviet model of social security. During the 1950s and 1960s, all private areas of social security, including the system of social assistance, were abolished; social security as such was run by the state and its institutions (including social services); and citizens were only socially secured by the state, regardless of their contribution to social welfare. The name of social security law (in Czech právo sociálního zabezpečení)⁶ after the Soviet Union and, more so, the approach to individual security in case of social events originated from this period. Citizens still rely heavily on the state to provide for them in the event of old age or illness.⁷

Shortly after political changes in November 1989 (still, in former Czechoslovakia), economic reform was commenced, accompanied by an extensive and fundamental reform of the legal system. Surprisingly, academics could persuade respective

3 The Czech Republic fulfils its international obligations under Article 1(2) of the Constitution.

4 The European Social Charter was published under No. 14/2000 Collection of international agreements. Speaking about the subject of this chapter, the Czech Republic is bound by Article 11 (1, 2, 3), Article 12 (1, 2, 3, 4), Article 13 (1, 2, 3, 4), Article 14 (1 and 2), Article 15 (2), Article 16, and Article 17.

5 The Czech Republic ratified the European Code of Social Security on 8 September 2000 and has accepted Parts II–V and VII–X.

6 Social security is a term that stems from Russian. The term security (obespechenie) was first encountered in Europe in the programme of the All-Union Communist Party (Bolsheviks) (1919) to denote an all-encompassing system of social benefits for all workers, paid for from state resources, but not implemented given the lack of funds during the Civil War (1919–1923). The first attempt was made for miners 10 years later.

7 Koldinská, 2020, p. 12.

authorities to prepare a programme of social reform. In fact, on the same day the so-called scenario of economic reform was presented, the ‘scenario of social reform’ was also proposed. In the Czech version of the reform scenario, economic reform could not be performed successfully without social reform.

The new concept of social security (introduced gradually after 1989) represents a transition from state paternalism to the participation and responsibility of citizens and social groups for their social situation and future. It is based on the principle that citizens and families must ensure the widest possible scope of their needs on a socially acceptable level through their efforts. The state should interfere only when citizens or families cannot manage their affairs, for subjective or objective reasons. The state, however, must guarantee citizens’ security on a dignified level, as many sources of international and EU law on fundamental social rights provide. In connection with the European Social Charter, the Czech Republic has already been forced to adapt its national law, especially in connection with ILO Convention No. 102 and, subsequently, the European Social Security Code.

1.2. Level of protection in the Constitution

The constitutional frame of the State’s duties to protect its citizens and other natural persons against social risks, such as unemployment, lack of healthcare, disability to work, ageing, and, poverty, is not laid down in Act No. 1/1993 Collection (hereinafter ‘the Constitution’). Rather, it is outlined in Articles 26, 30, 31, and 32 of the Charter of Fundamental Rights and Freedoms (hereinafter ‘Charter’), declared as an appendix of the statute No. 23/1991 Collection.

Under the aforementioned Article 26, the State grants appropriate protection to an unemployed Czech citizen who cannot find work, unless this citizen is disabled by personal acts. The Employment Act denotes this right as the right to work.⁸ Article 30 of the Charter lays down the base for obligatory Czech pension insurance and welfare assistance. The former must be developed and somewhat cover the needs of people endangered by age, disability to work, and death of ‘breadwinner’. The latter represents the last safety net intended for people with insufficient income.⁹ Jurisprudence refers to Article 30 as the regulation of rights to social security. Additionally, the ground for the right to free healthcare is incorporated into Article 31 of the Charter. By this Article, everyone has the right to the protection of their health, whereas only citizens may claim free healthcare. Article 32 particularly focuses on protecting pregnant women and minors. The State cares for them through either

8 However, the right to work, outlined in Section 26 of the Charter, is not designed to be a subjective right of an individual. See Pavlicek, 2002, p. 229. For further details of the right to work as a social right, see Constitutional Court Decision on 19th January 1994, file number Pl. ÚS 15/93, published in Sb.n.u.US. volume 1, Decision No. 3, p. 23.

9 Within the system of social support, the State introduced measures (‘social services’) in 2006 dealing with the problem of providing sufficient support for elderly persons and persons living entirely alone. These provisions are contained in the Social Service Act (No. 108/2006 Collection).

statutory sick leave insurance¹⁰ or a special system designated for low-income families with children.¹¹

According to Articles 3 and 112 of the Constitution, the provisions of the Charter maintain a unique position within the Czech legal order. The Charter has the same legal effect as the Constitution. Consequently, Czech statutes, secondary legislation, and international treaties must abide by the Charter, and it can be amended only by the same approval procedure as that of the Constitution. The amendments must be agreed by three-fifths of all members of the lower house of the Parliament and three-fifths of the majority of the senators present at the time of voting.¹²

Although the protection against social risks is outlined in the Charter, it does not enjoy the absolute highest effect of laws within the Constitution. In particular, Article 9 of the Constitution establishes another tier of law, determining a fundamental immutable rule. It prescribes that the ‘fundamental requirements of Czech democratic state bound by law¹³ cannot be changed even through amendments’. ‘Welfare state’ is, however, absent from Article 9.

Further, the Charter’s level of granting constitutional protection to social security is reduced by two elements. First, according to the Charter, every natural person not a citizen of the Czech Republic is entitled to a limited number of rights (e.g. benefits in case of poverty and healthcare to some extent).¹⁴ The second restriction is the possibility of claiming constitutional protection only within the frame of

10 There are particular benefits designed primarily for, or enjoyed by, female beneficiaries (e.g. maternity benefits or financial support for a mother taking care of a child or other family member). A man is entitled to claim paternity benefits only if he lives alone and there is no woman that can care for a child. This regulation is evidently contrary to the principle of equal treatment as set forth in the Charter; however, the effectiveness of the law that shall remedy this discrepancy has been postponed to 1 January 2009.

11 The system was introduced by the Family Policy Act (No. 117/1995 Collection), which came in force in 1995. The law was a part of a second stage of social reform; and its task was to outline a new system of cash benefits that had been either formerly incorporated in the system of sickness ‘security’ (there was no ‘insurance’ principle in social security during the Communist era) or had not existed at all because of education and property policies under Communism (e.g. free education and prescribed rent prices).

12 See Article 39 (4) of the Constitution.

13 The concept of ‘state bound by law’ means the State must act only in accordance with the law. The State may act only when three conditions are fulfilled: the law must be in force, the action must be authorised by the law, and the action must be in accordance with the procedure regulated by law. See Constitutional Court Decision on 25th September 1997, file number III. ÚS 31/97, published in Sb.n.u.US. Volume 8, Decision No. 66, p. 149.

14 Secondary legislation, such as the Pension insurance Act (statute No. 155/1995 Collection), the Sickness Insurance Act (No. 187/2006 Collection), the Health Care Insurance Act (No. 48/1997 Collection), the Family Policy Act (No. 117/1995 Collection), and the Poverty Assistance Act (No. 111/2006 Collection), does not condition participation in social security on the status of citizenship but on the place of residence. Therefore, the regulation incorporated into these social laws is more favourable than the regulation contained in the Charter.

secondary Czech legislation.¹⁵ The Constitutional Court justified this latter restriction because of the character of social rights. The Court reasoned that the State's obligations given social rights are expensive because they, in principle, demand long-term financial support from the State (*status positivus*). As the economy is naturally unstable, and the State's revenue from taxes and other payments is unpredictable, the range of social protection is better regulated through secondary legislation.¹⁶

Hence, there is thus far neither a guarantee contained in the Charter nor another constitutional law nor an obstacle derived or developed by the Constitutional Court to change current social security. Nevertheless, the provisions contained in the Charter are not completely without legal impact. Actually, they form constitutional ideas on the Czech legal system; the State and its administrative agencies and courts are bound to follow and implement these ideas in their actions and decisions. Article 13 (2) of the European Social Charter certifies that no one can be alienated from their political rights only because they are beneficiaries of a certain welfare benefit.

1.3. Are there any gaps in the implementation?

On the subject of this chapter, the Czech Republic is bound by Articles 11 (1, 2, 3), 12 (1, 2, 3, 4), 13 (1, 2, 3, 4), 14 (1 and 2), 15 (2), 16, and 17 of the European Social Charter. The Czech Republic publishes reports on its policies, in which it is stated that the Czech Republic fulfils all its obligations.¹⁷ Such a statement can be found in those reports regularly from 2000 onwards. Granted, those statements are somewhat misleading. In its recent conclusions, the European Committee of Social Rights found that the Czech Republic is in non-conformity with Articles 11 (1, 2, 3), 12 (1), 13 (1), and 14 (1).¹⁸ Regarding the other six situations related to, among others, Articles 12 (4) and 13 (1), the Committee mentioned that it needs further information to examine the situation. The Czech Republic has been subject to several complaints.¹⁹

15 See Article 41 (I) of the Charter. See Constitutional Court Decision on 29 June 2005, file number III. ÚS 118/2005; or Decision on 23 November 2004, file number II. ÚS 599/02, published in Sb.n.u.US. volume 35, Decision No. 175, p. 343.

16 See Constitutional Court Decision 10 July 1996, file number Pl.ÚS 35/95, published in Sb.n.u.US. volume 5, Decision No. 64, p. 487. The Constitutional court continued specifically as follows: the possibility to provide free healthcare is dependent on the total premiums paid back by insured persons to insurance carriers. See Constitutional Court Decision on 25 December 2003, file number I. ÚS 504/03, published in Sb.n.u.US. volume 31, Decision No. 138, p. 227.

17 Reports can be found in Czech language at: www.mpsv.cz. Reports lodged to the Council of Europe can be found in English [Online]. Available at: <https://www.coe.int/en/web/european-social-charter/czech-republic> (Accessed: 13 July 2023).

18 European Committee of Social Rights, 2021, p. 2.

19 For example, *Transgender Europe and ILGA-Europe v. the Czech Republic*, Complaint No. 117/2015. Resolution CM/ResChS(2018)9, *Transgender Europe and ILGA-Europe v. the Czech Republic*, Complaint No. 117/2015, adopted by the Committee of Ministers on 24 October 2018 at the 1328th meeting of the Ministers' Deputies and its Appendix; Decision on the merits of 18 May 2018. Koldinská, 2021, p. 5.

In its previous conclusion, the Committee considered that the situation in the Czech Republic was not in conformity with the European Social Charter, as the minimum level of old age benefit fell below 40% of the Eurostat median equivalised income. The same opinion was mentioned in the last conclusion. We can only agree with the Committee, as it states that ‘the minimum amount of pension is manifestly inadequate’. In its previous conclusion, the Committee considered that the minimum level of unemployment insurance benefit was manifestly inadequate, as it fell below 40% of the median equivalised income. The Committee considered that the situation where the Czech support required material need and social assistance was not in conformity with Article 13 (1) of the European Social Charter.

A long-standing problem is the obligation of foreigners to take out commercial health insurance, which does not provide the same coverage as public health insurance and is significantly more expensive.²⁰ The situation was only partially rectified in 2021 and only for newborns. They were included in the public health insurance system for two to three months. Members of the Parliament also refused to honour international commitments and include the older children of long-term resident foreigners in the public insurance system. This practice in the Czech Republic has long been criticised by the Public Defender of Rights and European and international organisations.²¹ From the second report, the Czech Republic explained its policy by referring to the fact that, in the case of non-insurance welfare benefits, it has the right to require, as a precondition, a certain period of residence for foreigners, as articulated by Article 12(4) of the European Social Charter with the words, ‘and subject to the conditions laid down in such treaties’. Accordingly, the Committee was further informed that the Czech Republic did not keep records of the number of foreigners who had received medical or social assistance.²² This statement is only half true because the Ministry of the Interior has a register of people who are legally residing in the Czech Republic and have arranged commercial health insurance. Even so, the Committee referred to the conclusions adopted in 2017 under Article 13 (1) (personal scope) of the European Social Charter and reiterated that Article 13 (4) only covers emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory. Another major problem is the virtually non-existent regulation of social housing and the poor state housing policy.

1.4. Place of social law in the national system

Social security is governed by several laws regarding its various areas. The overwhelming majority of these are considered to be public law statutes. According to experts,

20 Children of foreigners working in the Czech Republic and coming from outside the EU must rely on expensive and unreliable commercial insurance. If these children are chronically ill or are born prematurely, commercial insurance companies may exclude them from coverage or cover only a small part of their treatment.

21 For example, by Forum for Human Rights, Validity Foundation and Inclusion Czech Republic. Submitted by the Czech Government on 25 August 2021.

22 Second report to the European Social Charter, pp. 114 and 142.

Czech Social Security law is considered to be a part of public law. Social security law is not codified, part of which is recognized as follows: health insurance; sickness insurance (including maternity insurance); pension insurance; unemployment security (it is not understood to be an insurance scheme); insurance and security for accidents at work and occupational diseases; state social assistance and family assistance; social assistance; and social services. Marital equality within the meaning of Article 16 of the European Social Charter is regulated by Act No. 89/2012 Coll., the Civil Code, as amended. The tax benefit for a raised child is regulated in Act No. 586/1992 Coll. on Income Taxes, as amended.

1.5. Benefits

The Czech pension insurance scheme is based on the following principles: universality (it covers all the economically active population, such as wage earners, groups of people performing work or analogous activities, and the self-employed),²³ unification (one scheme for the whole population), equality (pension amounts are almost the same throughout population), and solidarity (mainly between generations). Under Act No. 155/1995 Coll. on Pension Insurance, the wage earners ('employees' in Czech legislation), like other persons performing work or simile activities, are entitled to old age, invalidity, and widow, widower, and orphan pension. Sick leave insurance is regulated through Act No. 187/2006 Coll. on Sickness Insurance, as amended. This Act represents a comprehensive regulation of sickness insurance and sets forth benefits as follows: sickness benefit, maternity benefit, paternity benefit (fathers post-natal-care benefit), attendance allowance, long-term attendance allowance, and compensatory benefit for pregnancy and maternity.

A specific feature of the Czech Social Security system is the separation of health insurance from sickness (or social) insurance, both regarding its codification, organisation and implementation, and financing and administration. Employees' compensation for injury caused by occupational accidents or occupational diseases remains regulated in the Labour Code (concretely following Sections 365–393 of the Labour Code) and based on the principle of liability of the employer for damage caused by occupational accidents or diseases.²⁴

Legislation on employment, including unemployment benefits, which means legal regulation of relationships originating when the citizen exercises his right to gain the necessities of life by working, is deemed to be part of labour law in the Czech Republic. It is a traditional conception in the Czech Republic, but it cannot be ignored that given its aim (above all in the area of security in case of unemployment), the legislation is closer to social security law and administrative law in light of the method of regulation (this legislation is governed by public-law methods), the subjects whose

23 The range of insured persons (employees) and the conditions of their participation are identical to the rules applied in the field of sickness insurance—the participation in these two systems of insurance is tightly linked.

24 Pichrt and Morávek, 2020, p. 50.

relations are being regulated (because there is a public authority and there are private subjects—a citizen and an employer), and the rules of procedure (e.g. in proceedings related to disqualification from the job seeker register, an administrative procedure applies).²⁵

For Article 16 of the European Social Charter, it is important to note that family grants are regulated in Act No. 117/1995 Coll., on state social support. This system was introduced in 1995, whereas previously family benefits were spread throughout the system of social security. Some allowances for children were included in the system of sickness insurance, while others were subject to the social care system. Conditions and concepts differed significantly from each other, and the whole sample of family benefits was somewhat chaotic and, therefore, legally not transparent. This problem was inherited from communist times and had to be solved by introducing a new and modern system of family benefits. The idea was to centralise the benefits, have them administered by state offices, and more effectively target them through income testing, at least in the case of some benefits.²⁶

Under the state social support, the following benefits are available: child allowance, housing allowance, parental allowance, foster care benefits, birth grants, and funeral grants. The benefits of the state social support system are due to persons with residence in the territory of the Czech Republic. The entitlement conditions do not include nationality; thus, benefits may be granted to aliens with a permanent residence permit. For non-EU foreign nationals, registration as permanent residents in the Czech Republic is considered to be the period following the passage of 365 days from the date on which they registered to stay in the Czech Republic. This does not include any period during which a person is seeking asylum. Some benefits—the so-called means-tested benefits—can be granted only if the total family income does not exceed the statutory limit. This limit is the family subsistence minimum (regulated by Act No. 110/2006 Coll.), multiplied by the relevant coefficient. For people who have taken children into foster care, there are also special benefits legislated in Act No. 359/1999 Coll., on social and legal protection of children. There are four types of foster care benefits, three of which are provided to foster parents.²⁷

Act No. 111/2006 Coll., on assistance in material needs regulates a modern system to assist those with insufficient income; the system motivates them to actively strive to secure the resources they need to meet their living requirements. It is one of the

25 It notes from the report in this regard that the amount of unemployment benefits in the Czech Republic depends on the average monthly net earnings the applicant received in the last job before being included in the register of job seekers. The amount of unemployment benefit is determined by a percentage rate. The percentage of the unemployment benefit is 65% of the average monthly net earnings for the first two months of the support period, 50% of the average monthly net earnings for the next two months of the support period, and 45% of the average monthly net earnings for the remainder of the support period. During the reference period, no legislation was adopted that would change the conditions for determining the amount of unemployment benefits.

26 Komendová, 2021, p. 116.

27 Halířová, 2020, p. 288.

means applied by the Czech Republic to combat social exclusion. The Act is based on the principle that ‘all persons who work must be better off than those who are out of work or who avoid work’. Benefits provided under the system of assistance in material need include Allowance for Living, Supplement for Housing, and Extraordinary Immediate Assistance.

Benefits for handicapped persons were reformed at the end of 2011. Originally, these benefits were regulated by old and non-functioning legislation from communist times. In 2011, the new act on benefits was proposed and adopted.²⁸ In the interest of social integration of handicapped persons, principal attention concentrates on their employment and all measures enhancing such employment, particularly their working rehabilitation. Instruments used in the framework of state employment policy for the promotion of the employment of the handicapped comprise economic incentives or administrative measures. A strong instrument is the possibility for an employer who employs people with disabilities to significantly reduce their income tax base. The tax rate of employers employing more than 50% handicapped from the total number of their employees is, thus, further reduced. Every employer who employs more than 25 employees must employ people with disabilities. The obligatory quota is 4% of handicapped employees of the total number of employees. Beyond employment of handicapped persons, employers may satisfy this obligation by purchasing products or services from special institutions employing more than 50% handicapped by commissioning certain production programmes to relevant organisations or buying products from sheltered workshops operated by citizen cooperatives or owned by the state, a church, or a religious assembly or by placing orders with the subjects or buying products or services from self-employed persons with a physical handicap. Another way to fulfil the obligation of employing handicapped persons is paying 2.5 times the average monthly wage within the national economy to the state budget for each person with a physical handicap who should be employed. The individual variants may be combined. However, should the employer not comply with the imposed obligation through one of these three forms, he would be sanctioned by a fine.

Current trends explicitly prefer that the handicapped should live in a family environment that provides better possibilities for their social integration. Act No. 108/2006 Coll., on social services, regulates social care services provided to people with a certain level of dependency. According to this Act, a person shall be considered dependent on the assistance of another physical person according to four degrees (slight, medium-strong, strong and total dependence) and their health status, as examined by a physician of the district social security administration, which narrowly collaborates

28 The problem however, was that it entered into force not even two months after it was adopted. Thus, many offices lacked adequate time to prepare properly for such a change (including some technical changes; for example, new software to provide the benefits to the clients). From its inception, the act was, thus, strongly criticised. Some organisations representing people with disabilities also complained that some benefits were reduced through the new system, and that, especially, for severely handicapped people who cannot work, it is even more difficult to pay for all the services and special treatment they urgently need. Cf. Lang and Štangová, 2018, p. 23.

with the Labour Office of the Czech Republic and decides on the degree of dependency for the care allowance. Social care services are provided as stay-in, ambulatory, or field services. There are several types of social care services, defined by the Social Services Act. For example, social care services help persons arrange for their physical and mental self-sufficiency to enable them to integrate with the common social life to the maximum possible extent and, when their health condition excludes such a possibility, to arrange for them a dignified environment and treatment.

1.6. Financing

In Czech Social Security law, all basic subsystems of social insurance (i.e. public health, sickness and pension insurance) are financed by PAYGO. A similar approach can also be found in unemployment insurance and statutory insurance of the employee in the case of injury caused to the employee, a work-related accident, or occupational disease. Public health insurance is mainly financed by public health insurance premiums collected by individual health insurance companies. If the collection of premiums is insufficient to cover the costs, the State makes up the revenue of the health insurance companies by contributing from the taxes collected. Sickness and pension insurance and passive employment policy are financed by social security contributions and a contribution to state employment policy or, in the case of pension insurance, by a matching contribution from the state budget from tax revenues. Sickness insurance premiums, pension insurance premiums, and the contribution to state employment policy are collected by the Czech Social Security Administration (Česká správa sociálního zabezpečení) and, under its authority, the district social security administrations (OSSZ) in Prague by the Prague Social Security Administration (PSSZ) and Brno by the Brno Municipal Social Security Administration (MSSZ).

The fund method is the standard for supplementary pension insurance systems (especially Act No. 427/2011 Coll., on supplementary pension saving, as amended, and Act No. 42/1994 Coll., on supplementary pension insurance with a state contribution and amendments to certain acts related to its introduction) and individual (private-law) insurance products.

State social assistance is fully and single-source financed from the state budget (from the budget chapter of the Ministry of Labour and Social Affairs).²⁹ Social assistance in the form of material needs and benefits for persons with disabilities is financed from the State budget. Social services are usually financed in a multi-source way via subsidies from the state or public budget to social service providers, a payment paid by the beneficiary, monetary and non-monetary donations (e.g. altruistic assistance from third parties through volunteer activities), and self-financing by the social service provider. The costs of providing social services are paid by the person in the amount agreed in the contract concluded with the social service provider; for some

29 Section 1(2) of the Act on state social assistance.

social services, the legislation sets a maximum amount of payment to be paid by the person to whom the social service is provided.

Regarding expenditures, Czech Social Security schemes are still modest. Of the 15 European countries for which there are preliminary data for 2019, social expenditure protection as a percentage of GDP was around 18.3%, which is still lower relative to 31% in France, 28.4% in Austria, or 28.9% in Germany. However, Hungary's spending was even lower, at approximately 16.3%.³⁰ In 2020, the Czech government tried to offer social protection to its citizens and preserve the Czech economy during the COVID-19 pandemic. It called in the military, fire fighters, students, and volunteers to keep the healthcare system going and announced a state of emergency (prolonging it by five times). During the first wave, many helped a lot without being asked to do so. An unseen wave of solidarity swept the nation. Moreover, Parliament approved several special laws supporting various branches of the Czech economy. Billions of CZK were spent to maintain social cohesion introducing mandatory vaccinations or scrutinising citizens on their health status.³¹ Ultimately, they argued that the Czech government did not perform as well as other states, such as Germany or Denmark.³²

Although it remains unclear how big a loss in revenues the state suffered in 2021, the Czech government ended the year 2020 with a deficit of CZK 367.4 billion. The deficit threshold had to be increased three times within the same year.³³ The state debt is around 39.1% of GDP,³⁴ and, all circumstances considered, public finances do not seem to be in good shape.³⁵ Even if the new government were to find additional sources of money to fund the ambitious policies launched by the Babiš government, this situation would inevitably yield high inflation rates, poverty, and further stratification of Czech society. As COVID-19 is unlikely to just disappear, the Czech

30 Pištorová, 2021, p. 42.

31 The Czech government tried to safeguard some sort of normality. However, the labour market changed, and the government and individual employers encroached on employees' liberties. Both disregarded the Labour Code and declared home-based office work without any previous agreement with the majority of the workforce. More than 30,000 people have died because of COVID-19, and dozens remain suffering from severe health problems. The number of people with mental problems has increased. An increased demand for psychopharmaceutical drugs can be discerned. During the second, third, and fourth waves of the pandemic, many people lost hope and questioned the authorities. Some scholars note that governments could be assessed and rated in accordance with their ability to manage the state during the pandemic.

32 Cf. Sívák, 2020, p. 9.

33 Cf. Ministerstvo Financí, 2021.

34 Cf. The respective state report at Ministerstvo Financí, 2021.

35 Notably, there was generous help from abroad. For example, the Czech Republic received an advantageous loan from the Development Bank of the Council of Europe, given which it could obtain up to EUR 300 million. This money was used to cover the extra costs in healthcare incurred because of the fight against COVID-19. The government consented to make an agreement on irrevocable and unconditional guarantees payable on demand within the meaning of Article 11 of the Council Regulation on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency following the COVID-19 outbreak. Given this agreement, the Czech Republic could obtain up to EUR 374 million to pay programmes announced by EU Member States to support the employment rate.

government will likely see the efforts of the earlier policies limited if not bashed. Such limits can define or derail the financial sanity of the official policy. The third year of the pandemic seems to have conjured the breakdown of the Czech welfare policy and even society. The legislator has come to realise that measures have been exhausted, nothing more can be done for those who by nature are vulnerable to this horrible virus, and the agency of even a social and democratic state can appear limited when anti-waxers do not trust the government and are not willing to limit themselves and obey state measures for the common cause. In 2021, the Czech Republic spent almost 37% of its state budget on social security and employment. Most of these expenditures are mandated and cannot be expected not to repeat in future years.

1.7. Organisation and administration

Legal regulations codifying the organisation of social security contain no umbrella term that would cover all institutions ensuring the implementation of the rights and obligations from legal relations in the field of social security. The term most frequently used in these regulations is ‘social security bodies’. This term is defined in Section 3 of the Act of the Czech National Council No. 582/1991 Coll., on social security organisation and implementation, as amended. According to its provisions, the number of social security bodies includes ministries and other public institutions, such as the Ministry of Labour and Social Affairs, Czech Social Security Administration, District Social Security Administrations, Ministry of Interior, Ministry of Justice, and Ministry of Defence.

As per the noted Act, we can define the competence of the Ministry of Labour and Social Affairs as follows: management and control of the exercise of state administration in the field of social security, assurance of tasks connected with the further development of social security, assurance of tasks arising from international treaties in the field of social security, management of the Czech Social Security Administration, inspections concerning health conditions and citizens’ working ability for judicial review proceedings in matters of pension insurance, possible establishment and administration of social institutions and institutes providing diagnostic service, and supervision of the provision of social services by organisations and citizens and the imposition of measures to remedy ascertained shortcomings.

A specific position is accorded to the Czech Social Security Administration. This social insurance carrier, with district offices, administers pension insurance and sickness insurance. In the case of a sickness insurance appeal, the Czech Social Security Administration is also an appeal institution. It collects all contributions to the sickness insurance and pension insurance systems. It is methodologically guided by the Ministry of Labour and Social Affairs. Without any doubt, it is the most important social security body in the Czech Republic, as it runs two important and costly systems of social insurance—pensions and sickness insurance.

Statutory public health insurance is implemented by health insurance companies, which are private companies, registered in the commercial register, and must meet several conditions to be established. The only exception is the General Health

Insurance Company of the Czech Republic, established directly by an act (Act of the Czech National Council No. 551/1991 Coll., as amended). Health insurance companies are used to cover the costs of healthcare provided in the territory of the Czech Republic. The companies are also used to refund the amount clients have expended on necessary and urgent treatment, the need for which has arisen during their stay abroad, up to the amount provided for such care in the territory of the Czech Republic. The EU coordination Regulations No. 883/2004 and 987/2009 are applied by the health insurance companies, whereas the Centre of International Reimbursements works as a liaison body for the coordination of sickness benefits provided in kind.

The administration of the system of employment policy as such is ensured by a state institution—the Labour Office of the Czech Republic through its local branches—labour offices. Their competencies are regulated by Act No. 73/2011 Coll., on the Labour Office of the Czech Republic and by Act No. 435/2004 Coll., on employment. State administration of state social support benefits is exercised by the Labour Office of the Czech Republic. The Ministry of Labour and Social Affairs is authorised by law to perform inspections. Social assistance, similarly to state social support, as a system of non-contributory benefits, is administered by the Labour Office of the Czech Republic. All non-contributory benefits were entrusted to the Labour Office of the Czech Republic for efficiency and better control and to combat the misuse of benefits, especially social assistance benefits.

2. Current Issues

2.1. Punishment for communists and fragmentation of old age

On the last day of 2022, Act No. 455/2022 Coll.³⁶ came into force to primarily make a vivid mark, following the Czech communistic past in the previous century. The Act has condemned the communist era of Czechoslovakia and reduced the retirement pensions of communist leaders by CZK 300 for each year in office. Symbolically, Act 455/2022 Coll. was passed by the Parliament in which the Communistic Party has not even one Member. The reduction of the old-age pension hinges on the period spent in high office before November 1989 and will be reflected for the first time in the March 2024 instalment of the old-age pension. If someone becomes entitled to the old-age pension only after that date, the percentage will be calculated first and then an adequate reduction will be made. The reduction will not be made for people currently on disability pensions. The reduction will only be considered when the former official applies for a retirement pension.

36 Full name of said law: zákon č. 455/2022 Sb. ze dne 13. prosince 2022, kterým se mění zákon č. 155/1995 Sb., o důchodovém pojištění, ve znění pozdějších předpisů, a některé další zákony; in English: Act No. 455/2022 Coll. of 13 December 2022 amending Act No. 155/1995 Coll., on pension insurance, as amended, and certain other acts.

The Act reduced the retirement pensions of people included on the list of leaders of the communist regime compiled by the Institute for the Study of Totalitarian Regimes. The specific list will then be drawn up by the Office of the Security Service in cooperation with the Archive of the Security Forces. Those officials served in high political positions or the ranks of the Secret Police, the Police, the Border Guard, or the Main Staff of the People's Militia before 1989. The government assesses that the Act will punish around 3000 pensioners who are still alive. Regarding the reasons noted in minutes of discussions in the Parliament or somewhere else, the Act aims to come to terms with the totalitarian past, as other post-communist countries have done, including Slovakia, Germany, Hungary, Estonia, Latvia, and Poland. Reduction of pensions was chosen because high communist officials had received a retirement pension, which was often above average. Mr. Jurečka, the Minister of social affairs, who proposed the Act in a modified version, which had almost been approved by the prior Parliament, explained the mechanics of the law:

So if today, for example, a former high-ranking Communist Party official receives a pension of CZK 25000 a month and we know that he held a high-ranking party post for 10 years, his pension will be reduced by CZK 3000.³⁷

Honestly, such a measure came a little late to make any difference. Neither will the adjustment bring significant savings to the state budget nor is it an important measure, which could affect the highest representatives of institutions that maintain and deepen the totalitarian regime. The reason is obvious: most prominent figures are dead because it is now more than 30 years after the Velvet Revolution. Moreover, the reduction is capped such that the necessary level of social security in old age is maintained for these people.

The spiciest flavour, however, was added by the ongoing presidential elections of 2023. In January 2023, two candidates made it to the second round of the presidential election in the Czech Republic. The first is a convicted collaborator with the communist secret state security, and the second, as an officer, has completed a prestigious subversive course as part of his training for the communist military counter-intelligence and was thus prepared to serve abroad. As many commentators agreed regarding those two candidates, Czech voters are willing to support them. Nobody else stood the chance.

The same law also induced an adjustment to early retirement for medical doctors, paramedics, and firefighters, breaking the previously uniform retirement age, from which only miners were exempt. The new measure could affect more than 6,000 members of emergency response teams and another three thousand or so members of professional plant fire brigade units. Specifically, it will concern members of emergency response groups and ambulance drivers, operators of the medical operations

37 Citation for the quotation of the Minister is available at: www.mpsv.cz, news published by the Ministry of Labour and Social Affairs (Accessed: 10 June 2023).

centres, and mountain rescuers. They will be joined by members of company fire brigade units. Earlier entitlement to the old-age pension is linked to the increased premiums paid to employers for the time spent on work. Other employees who do not have these benefits will not pay extra for the reduced retirement age of the selected group. The reason for the special arrangement is the demanding nature of the work and the increased requirements for perfect health.

2.2. Sustainability in the valorisation

In March 2023, the president signed the amendment³⁸ that diminished the valorisation of old-age pensions. This piece of legislation was published under No. 71/2003 Coll. and came into force on 20 March 2023. According to the government, the reduction in indexation is necessary to stabilise public finances, and the state will save CZK 19.4 billion this year alone. The opposition, however, talks about impoverishing or robbing pensioners, who will lose an average of CZK 7,000 this year alone. The Czech Republic has acted quite vigorously against further extraordinary valorisation of pension insurance benefits. It did so in a rather controversial manner, using a state of legislative emergency. Further, some experts note that the amendment was delayed because of a clear political calculation not to influence the presidential elections in January 2023.³⁹ Significantly, the opposition and the president have said they intend to challenge the law in the Constitutional Court.⁴⁰

2.3. Demographic challenges

Since the beginning of the 21st century, the population of the Czech Republic has grown every year, the only exception being 2013.⁴¹ In the last 10 years, from the beginning of 2011 to the end of 2020, the Czech population has increased by approximately 2% to almost 11 million in 2020. However, the population growth was solely driven by a positive migration balance, while the natural change had an overall negative balance (i.e. Czechs died out). The situation seems to be similar to that in other Western European states.⁴²

The situation in the Czech Republic can, thus, be described as one in which the population is ageing significantly, impacting the labour market, which suffers from a shortage of skilled and experienced labour. Today, it is already possible to identify some sectors of the economy that cannot do without foreigners. The ageing of the population has a significant negative impact on health insurance and pensions. All published forecasts show that the current demographic situation cannot be called

38 Act amending Act No. 155/1995 Coll., on Pension Insurance, as amended, and certain other acts (in Czech Zákon, kterým se mění zákon č. 155/1995 Sb., o důchodovém pojištění, ve znění pozdějších předpisů, a některé další zákony).

39 The average monthly pension will, thus, increase by CZK 760 from June instead of the expected CZK 1770, as would be the case under the ordinary statutory rules.

40 Cf. Komendová, Smejkal and Horecký, 2021, p. 358.

41 When there was a decline of 3.7 thousand inhabitants.

42 Cf. Data published by the Czech Statistical Unit. Czech Statistical Unit, 2023.

anything other than a crisis and that its satisfactory solution can no longer be found within the power of the Czech population.

3. Closing Remarks

The social situation in the Czech Republic cannot be described as stable. It is changing but not towards equality and social cohesion. The poor and the poorest are struck by high inflation, energy crises, and fear of another war in the neighbourhoods. Political elites seem unable to address the real problems for ordinary people, such as expensive housing, costly food, missing medication supplies, and not helping the educational system. According to official data, 10% of the population is endangered by poverty, and up to 100,000 individuals are homeless. The process of social stratification is continuing. Once almost equal in every aspect of social life, Czech society lags behind Western democracies and still searches for a new balance.

Regarding democracy and political dialogue, we must conclude that the Czech political scene has still not maintained a constructive dialogue no matter what is at stake. Consider two demonstrative examples in connection with a description of the current political fight. The former government, with Necas as Prime Minister, shaped the recent pension reform without a consensus across the parliamentary political parties. Thus, its opposition repeatedly informed the government, pension insurance companies, and the broad public that, after a victory in the parliamentary elections, it intends to abolish the pension savings system. Now, the opposition has become the government and seeks ways to reverse the current supplementary retirement insurance. Regardless of what reform law will be prepared, the public has lost confidence, and it will take years to regain it. The second example regards the pandemic. The main changes in paid leave in response to the COVID-19 containment measures concerned the attendance allowance (in Czech ‘ošetřovné’), a benefit for the care of dependants provided by the Statutory Sick Leave Insurance Act.⁴³ During the pandemic, access conditions and the benefit level were adjusted to support parents, particularly during the extended periods of school closures. The number of cases of long-term attendance benefits has been relatively low since its introduction. However, in 2020, numbers were skyrocketing for obvious reasons, and the whole scheme was pushed in red numbers for the first time in the last 27 years.⁴⁴

Although the pandemic did not end, and the new government faces the war efforts connected with the War in Ukraine, it is not willing to find additional sources of money

43 The benefit aims to support insured workers while they look after a sick member of their household or a relative.

44 Cf. Ministry of Labour and Social Affairs, 2023.

to fund the ambitious populist policies launched by the Babiš government.⁴⁵ Currently, the bold governmental suggestions to increase the retirement age to 65 and other saving proposals were wildly refused by the opposition. Trade unions threatened the government with strikes. The strong refusal by the opposition remains a bad sign that not even the current ruling elites can find a workable compromise on sustainable pension and healthcare insurance for the short- and long-term.

3.1. De lege ferenda and best practice regarding sustainability

For the last 30 years, the legislator proved wisdom by regulating the ideas rather than particular welfare rights in the Charter. A social security system that is too costly is not sustainable in the long term (the principle of financial sustainability). This principle has already been reflected in the construction of social rights in the Charter of Fundamental Rights and Freedoms in the case of social rights and, more generally, in Article 41 of the Charter. The Constitutional Court of the Czech Republic justified the limitation of social rights by implementing laws given the nature of these rights. According to the Court, mandatory requirements arising from the guarantee of social rights are usually of a long-term (permanent) financial support nature, thus requiring certain actions from the state. There is an obligation on the state to act (performance rights in the narrower sense). However, the state's revenues in the form of taxes and insurance premiums are entirely dependent on the performance of the national economy, which is a volatile factor in the long term. Thus, regulation via 'ordinary' laws is preferred for better legislation adaptability to the possibilities of the Czech economy and changing views of society.

On specific questions connected with Czech social security law, the achievements are not great. In the context of the persistent economic problems of the public health insurance system, which are further aggravated by the emerging demographic crisis throughout Europe and in the Czech Republic, in particular, it would be appropriate to look for structural reserves in the area of public health insurance. In the Czech Republic, there is a pluralistic system of health insurance companies, which, however, shows serious distortions given its still relatively short-lived existence. This fact can be traced to the markedly servicing trend in both countries. Indeed, the long-term trend in the public health insurance market is clearly towards merging health insurance companies. However, the question is whether it is appropriate to intervene politically and, if so, to what extent, to hasten the merger of two or more health insurance companies. For greater financial stability of social insurance, it is necessary to consider unifying the collection of public health insurance premiums with social security premiums and contributions to state employment policy. Hence, considerable administrative costs

45 The Ministry of Labour and Social Affairs published a proposal for pension reform in 2021. However, the proposal was criticised for not improving the long-term financial sustainability of the pension system, and its main proponent, the ČSSD (Czech social democratic party), which went into the elections with the slogan of 'Fair Pensions', did not make it to the Chamber of Deputies of Parliament. Thus, no consensus was reached on the pension reform, the reform proposal was rejected in Parliament, and another opportunity to carry out a more fundamental reform of the public pension system was missed.

associated with the operation of these systems can be saved.⁴⁶ However, neither of the administrative boards of the insurance carriers in question found the courage to agree with the merger. Therefore, three insurance companies still somewhat focus on the same insureds, which seems highly uneconomical.

On the procedural aspects, the social security legislation is overly complicated, unclear, and, therefore, difficult to apply. Currently, when a problem arises, a separate solution is adopted, regardless of the existing legislation (e.g. substitute maintenance). The idea that sick, elderly, or immobile beneficiaries can successfully defend their rights on their own is further weakened by the complexity of the legislation. The *de lege ferenda* idea aims to unify administrative decision-making and remedies in all sectors of social insurance and social security by introducing a two-stage administrative procedure and non-independent administrative tribunals as a second administrative instance body deciding on appeals against decisions of the Czech Social Security Administration and the Social Security Administration. Moreover, the courts' competences in administrative proceedings in social insurance matters should be adjusted to focus on legal issues, and the system of bodies assessing health status for social security purposes should be unified. Most of the key institutes of social security proceedings are currently regulated differently from the Social Security Code. Therefore, from a conceptual perspective, it would be possible to combine the solution of the shortcomings of procedural rules and adopt a single homogeneous regulation of the specifics of administrative proceedings in all areas of social security for proceedings in the social insurance, state social support, and social assistance systems. The scope of the future Czech Social Security Code could then be limited to the basic principles of administrative proceedings. From the good administration perspective, it would be advisable to decentralise the organisation of social security and bring it closer to those in need. Overall, citizens' participation in decision-making on social security benefits should be strengthened, not only for insurance benefits.

46 One of the key issues repeatedly raised in the Czech Republic in this context is a change in the structure of the organisation of this insurance. In fact, two options are conceivable. In a Bismarckian system, a single insurance carrier and a plurality of health insurance companies are possible. Each of these options has its advantages. If the plurality model guarantees the possibility of free choice and competition, which should result in an improvement in the quality of services for the insured and the healthcare provider, then, theoretically, significantly lower costs of the system and easier control by the insured and the state speak in favour of the existence of a single carrier.

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