



MAX PLANCK INSTITUTE
FOR SOCIAL LAW AND SOCIAL POLICY

Social Law Reports

Martin Štefko

Developments in Social Legislation and Policy

Reported Period: 2016

Cite as: Social Law Reports 3/2017

© Max Planck Institute for Social Law and Social Policy, Munich 2017.

Department of Foreign and International Social Law

All rights reserved.

ISSN 2366-7893

Max Planck Institute for Social Law and Social Policy

Amalienstraße 33, D-80799 Munich, Germany

Tel.: +49 (0)89 38602-0 · Fax: +49 (0)89 38602-490

E-mail: info@mpisoc.mpg.de

<http://www.mpisoc.mpg.de>

CONTENT OVERVIEW

INTRODUCTION	1
1. CURRENT ECONOMIC, POLITICAL AND SOCIAL SITUATION	1
2. SOCIAL REFORMS OF THE MAIN BRANCHES	2
2.1. Old Age Pensions at Retirement Age	2
2.2. Supplementary Retirement Insurance Systems	3
2.3. Invalidity and Survivors	4
2.4. Health Care	4
2.5. Maternity Benefit and Leave	4
2.6. Industrial Accidents and Occupational Diseases	5
2.7. Unemployment and Labour Market Participation	6
2.8. Family Benefits	6
2.9. Social Assistance (Minimum Income Support)	7
2.10. Housing and Social Services	7
4. ORGANISATIONAL, ADMINISTRATIVE AND FINANCIAL ISSUES	8
5. JUDICIAL PROTECTION OF SOCIAL RIGHTS	9
5.1. Home Births without Midwives	9
5.2. The Doctrine of Determination	11
6. INTERNATIONAL AGREEMENTS ON SOCIAL SECURITY	11
7. LIST OF IMPORTANT ACTS	12
8. SELECTION OF IMPORTANT MONOGRAPHS	12
8.1. Books	12
8.2. Articles	12

INTRODUCTION

The aim of this report is to describe and analyse how the Czech welfare state has stood against two giant marauders, such as the imminent elections of the lower house of Parliament (interconnected with the decreasing support of the government by the population, in 2016 and during 2017) and the country's aging society. It is based on research conducted by Martin Štefko under the auspices of the Max Planck Institute for Social Law and Social Policy.

1. CURRENT ECONOMIC, POLITICAL AND SOCIAL SITUATION

The economy of the Czech Republic continues to grow at a steady pace (GDP growth was 2.9% in the first quarter of 2017), while inflation has returned to target after three subdued years (the inflation rate was 1.5% in May 2017). The country exhibits a flourishing labour market, rising wages, a boosting manufacturing sector and strong consumer confidence.

The general government deficit has improved significantly since 2009, and Czech public finances do not appear to face sustainability risks in next years. 2016 ended with a record budget surplus of US\$ 2.4 billion. The debt-to-GDP ratio was 37.20% of the country's gross domestic product in 2016.

The political situation in the Czech Republic is crushing. The once stable government vanished and the leading governmental political party is losing support among its voters. Shilly-shally Prime Minister Sobotka of the social democrats attempted to dismiss Andrej Babis, the Finance Minister and leader of the centrist and second largest political party "ANO". Sobotka committed political suicide on TV screens when he declared to resign and, afterwards, revoked his resignation. Finally, Babis had to leave the government.¹

Income inequality and relative poverty continue to be low in comparison with other Western European countries. Eurostat reports that the total percentage of the population at a risk of poverty or social exclusion in the Czech Republic is 14% compared to the EU average of 23.7%.²

Recent statistics on monetary poverty and income inequalities in the Czech Republic prove that the income quintile share ratio (also called the S80/S20 ratio)³ has not changed significantly in the last 10 years. It is between 3.4 and 3.6. For example, 20% of the population with the highest income received 3.5 times higher an income than the 20% of the population with the lowest income.⁴ Czech experts find the Hoover index (the Robin Hood index) more appropriate. In 2015, it equalled 17.4%, i.e. almost one fifth of the total community income would have had to be taken from the richer half of the Czech population and be given to the poorer half for there to be income uniformity.

¹ Cf. <http://www.reuters.com/article/us-czech-government-babis-idUSKBN1800ZH> (accessed 26 June 2017).

² Cf. [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:At-risk-of_poverty_or_social_exclusion_rate,_2014_and_2015\(%25\).png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:At-risk-of_poverty_or_social_exclusion_rate,_2014_and_2015(%25).png) (accessed 27 June 2017).

³ It is a measure of the inequality of income distribution. It is calculated as the ratio of total income received by the 20% of the population with the highest income (the top quintile) to that received by the 20% of the population with the lowest income (the bottom quintile)

⁴ Cf. <http://www.statistikaamy.cz/2016/08/prijmova-nerovnost-v-ceske-republice/> (accessed 12 July 2017).

2. SOCIAL REFORMS OF THE MAIN BRANCHES

2.1. Old Age Pensions at Retirement Age

The Czech Republic still faces the challenge of an ageing society. The state must therefore take action to ensure that the pension system remains on an adequate and sustainable footing. Despite a huge deficit in the pension insurance, the government has prioritised improvements in the social situation of the population over the long-term sustainability of the pension system at the very moment of the imminent elections for the new Parliament. Contrary to the proposal of the Expert Committee on Pension Reform, the government has rejected any form of a regular mechanism or process to review the pace of increasing the statutory retirement age. The government proposed and the Parliament approved a cap of the retirement age. In accordance with Section 32 III of the Pension Insurance Act, the retirement age of those who born in 1971 and after has been fixed at 65 years.⁵ This reform reversed earlier reform decisions taken in 2015. The retirement age has been equalized for both men and women.

There have been no other substantial legislative changes with respect to the limitation or expansion of early or deferred retirement, insurance periods, or pension calculation formulas except for the miners' special regulations: Act No. 213/2016 Collection set forth the reduction of the retirement age to seven years (and for some even ten years) less than the general retirement age. Another major advantage of miners in the Czech pension system as compared to other insured persons is a special method in their favour of increasing the percentage amount of the old-age pension, which can be described as a "retroactive adjustment." Any percentage amount of the old-age pension granted to miners after 31 December 1995 is adjusted according to the adjustment regulations which came into force as per 1 January 1996, with effect up to the day preceding the date of the old-age pension being awarded. Due to this fact, the state miners' old-age pensions are higher than average old-age pensions in the Czech Republic. Both exceptions together mean that miners remain the only professionals that managed to hold privileges from the previous communist era. Although miners had always enjoyed an exceptional position in pension insurance schemes due to their historical relevance and the political situation, the communist regime emphasized the social merits of their occupation beyond everything the Czechs had known from history.

According to the legislation in force before 1 January 1993 (the communist regulations), the occupations were divided into three occupational categories based on the Soviet model. The first occupational category included the riskiest and most demanding professions in underground mines which were, from the perspective of society, also the most valuable.⁶ Consequently, the type of category influenced both the retirement age and the final amount of the pension.⁷ Since 1 January

⁵ Proposal No. 912 Parliament of the Czech Republic accessible on <http://www.psp.cz/sqw/text/tiskt.sqw?o=7&ct=912&ct1=0&v=PZ&pn=2&pt=1> (accessed 26 June 2017).

⁶ As for current claims to a special (lowered) retirement age, of greatest significance is the inclusion in the so-called I. AA occupational category, i.e. employment with a permanent workplace in the underground mines. Claims to a special (lowered) retirement age have been maintained also by miners, whose professions were included in the so-called I. A and I. B occupational category.

⁷ For example, pursuant to Section 22 Paragraph 1 of the Social Security Act of 1988, the amount of old-age pension is comprised of 60% of an individual's average monthly earnings if he or she has worked for 20 years in the first employment category, 55% of an individual's average monthly earnings if he or she reached 20 years in

1996, the miners have enjoyed their continued right to a lower retirement age of between 50 to 59 years of age. Exceptions continued to be regulated first through unpublished official methodical interpretations, and later through secondary regulations, such as Decree-Law No. 363/2009 Collection and Decree-Law No. 69/2015 Collection.

The government is clearly in favour of preserving the miners' privileges, even though the legislation that allows for early retirement contains, inter alia, the condition that an employment relationship must have existed before 1 October 2016. Higher pensions of a group of employees of the private mining companies were guaranteed without any additional revenue for the pension insurance scheme.

Attempts to improve adequacy of benefits have been made with regard to pension indexation rules. In February 2016 the government approved an amendment to the Act on Pension Insurance. Its objective is to enable the government, in the event of very low nominal statutory indexation in future years, to consider arbitrary increase within given limits. The amendment to the Act will allow the government to increase pensions by up to 2.7% in case that the statutory minimum increase is lower.⁸

2.2. Supplementary Retirement Insurance Systems

Private pension saving is a vital element in ensuring that retirement incomes are adequate and that state pension provision remains sustainable into the future. Even so, the government has abolished the system of pension savings (the so-called "2nd pillar"). The respective Act 376/2015 Collection was approved in October 2015 and the law came into force on 1 January 2016.⁹ The insurance rates came back to the state of affairs applicable before the introduction of the second pillar, i.e., the pension insurance rate of all employees has again turned to 6.5% of the assessment base (the employers' rate for the pension insurance of 21.5% remaining unchanged). An employee contributes a total of 11% of his gross income (4.5% health care insurance, 6.5% old-age pension insurance), whereas the employer continues to pay a total rate of 34%. A self-employed individual is subject to a mandatory contribution of 42.7% (13.5% health care insurance, 28% old-age pension insurance, 1.2% unemployment contribution) on the assessment base (determined as 50% of the income tax base; i.e. the valid insurance rate is 29.2% from the assessment base). There is no maximum assessment base for health insurance contributions. The maximum assessment base (annual cap, in Czech "maximální vyměřovací základ") for social security purposes (old-age pension contributions and unemployment insurance) is 48 times the monthly average wage, which corresponds to CZK 1,355,136 for 2017. The rate for employers has remained unchanged.

the second employment category, or 50% of an individual's average monthly earnings in other cases. In accordance with Section 22 Paragraph 2 of the Social Security Act of 1988, the basic amount of old-age pension was increased by exactly 2% of an individual's average monthly earnings for each year of employment if he or she continued to work beyond the 26th year of employment (if an individual worked 20 years in the first or second employment category then the limit was decreased from the 21st year onwards) and was employed in the first employment category; the basic amount was increased by about 1.5% if it was the second employment category and by 1% in all other cases.

⁸ See National Reform Programme of the Czech Republic 2016, p.8, available at

https://ec.europa.eu/info/sites/info/files/european-semester-national-plan_czech_2016_en.pdf. The

amendment was passed on 15 June 2016 and proclaimed as Act No. 212/2016 Coll. See Article I of said Act.

⁹ In Czech zákon č. 376/2015 Sb. o ukončení důchodového spoření.

2.3. Invalidity and Survivors

There have been no changes concerning invalidity or survivors' pensions.

2.4. Health Care

In 2017, there were only limited changes to the scheme, which were intended to rebalance the whole sector of the economy. The Ministry of Health managed to obtain more revenue and spent it on the 10% increase of doctors' and nurses' wages, the relocation of investments into hospitals and the increase of payments by the state to health care insurance companies. The Ministry of Health prepared a new training programme for nurses to help fill the gap created by the record number of nurses leaving the health service. In order to tackle the nurse drain (the departure of nurses from the Czech Republic), the government decided – oddly enough – to downgrade the nursing education standards. The current standards are stipulated by law in the Czech Republic (Act No. 96/2004 Collection as amended). Instead of college education, nurses and other personnel are now to receive their education at higher vocational schools, according to a new bill on training primary health care professionals.¹⁰ The bill also overrides the nurses' continuing education over the life-cycle (life-long learning). The opposition claims that the government failed to understand that the true reasons for nurse drain lay elsewhere.

The Anti-Smoking Bill, which was approved by both houses of Parliament in January 2017, came into force on World No Tobacco Day, i.e. 31 May 2017. It stipulated the complete ban on smoking in indoor areas of restaurants, theatres, cafes, and cinemas throughout the Czech Republic; this does not apply to e-cigarettes and hookahs. The new bill replaced Act No. 379/2005 Collection that had left ample scope to restaurant owners to decide whether to allow smoking in their establishments, provided they maintained separate smoking areas in restaurants at set times. As a result of the Anti-Smoking Bill, movie theatres, concert venues, exhibition halls, and indoor sports settings are banned from having separate rooms for smokers. Envisaged sanctions include harsher penalties for the sale of tobacco and alcohol to minors; the bill even enhanced the competence to licence withdrawal in case of severe infringements of the sale of alcohol and cigarettes.

2.5. Maternity Benefit and Leave

No changes have been made to the requirements or the amount of maternity benefits. The same is true for the conditions and length of maternity leaves save for changes made via Act No. 148/2017 Collection that set the terms for paternity pay (in Czech "otcovská"; literally translated, the title of the benefit is: fathers' benefits). The law has been effective since 1 February 2018.

According to Sections 38a-38d of this act, fathers, adoptive fathers and foster fathers who take time off due to their partner having a baby or adopting a child are eligible for one week (i.e. seven days) paid paternity leave if the baby is born alive at any point during the pregnancy.

¹⁰ Cf. https://www.mzcr.cz/dokumenty/senatori-poslali-novelu-zakona-o-vzdelavani-sester-k%C2%A0podpisu-prezidentovi-republ_13881_114_1.html (accessed 13 July 2017). The law was published as Act No. 201/2017 Coll.

The statutory daily rate of paternity pay is 90% of the involved person's average daily earnings. Tax and social security insurance are not deducted. The money is paid while an employee is on leave. His employer must confirm the start and end dates for the paternity pay. Act No. 148/2017 Collection also amended Section 191 II of the Czech Labour Code. The employer is to give days off if claimed by the employee. Although there is no statutory requirement for the employee to give his employer any pre-notice it is highly recommendable. Freelancers are eligible to parental allowance if they have fulfilled an insurance period of at least three months before the day paternity pay is claimed. The same three month period is applied to foreign employees if they decide to be insured under Czech regulations (this is optional).

2.6. Industrial Accidents and Occupational Diseases

In 2014, the government abolished Act No. 255/2006 on occupational accident insurance that had never come into force with all its provisions. The Czech legislature preferred to find remedies to occupational injuries within the realm of labour law. It has to be pointed out that the Czech Republic, in doing so, has refused the western type of occupational injury insurance scheme and returned to the solution developed in the 1950s of the previous century, when Czechoslovakia was a communist totalitarian state.

The current scheme is neither the German approach with self-governed insurance associations funded by employers' contributions, nor a state-administered scheme which compensates occupational injuries and disease as part of its wider provision for social security and levies contributions from employers to finance it. It is a mix of public insurance operated by only two domestic insurance companies and civil tort liability of employers. The old communist model was enhanced at the beginning of the 1990s of the previous century by means of mandatory public insurance operated by two state-chosen private insurance companies as a temporary measure for one year. Maybe because the specific insurance scheme for compensating occupational injuries and diseases is funded from employers' contributions collected by those two private insurance carriers, the Czech Republic has never been able to free itself from this distinctly mixed legacy.

The current scheme also has a huge advantage for beneficiaries. Unlike elsewhere in Western Europe except Luxembourg, full compensation of lost earnings is granted to injured employees in cases where the payment of benefits is required on a permanent basis. In cases of inability to work following an occupational injury, the employer is required by law to continue to pay the victim's salary up to his/her retirement age. There is no welfare scheme that would step in and take over the duty to pay permanent benefits from the occupational injury and disease insurance system. Monthly benefits are calculated as 100% of the victim's maximum earnings reference value.

Czech legislative practice is to hold consultations with all stakeholders over a specific period during the development of policy proposals, so that they have sufficient input at the substantive policy development stage. Consultations are conducted in line with the Government Legislative Code of Practice on Consultation (in Czech "Legislativní pravidla vlády"). The government prepared a set of ideas for the new law at the beginning of 2017 (for internal purpose) and disclosed it to the public in

May and June 2017.¹¹ The new law shall not come into effect until 2020 and, in addition, it is intended to preserve the old but currently valid labour-law model. Mainly due to the fear of EU competition law, the "new" scheme should be operated by the Czech Social Security Agency. For most new regulatory proposals, the Czech government also requires government departments to prepare an impact assessment to be published alongside the consultation. Impact assessments force government departments to think through the consequences of all actions, but in this case we can doubt the given numbers and enumerated legal risks.

2.7. Unemployment and Labour Market Participation

Although the Czech public employment policy is rather modest, the (general) unemployment rate¹² has dropped to 3.4%, which is the lowest level since 1993. The situation on the labour market has been primarily influenced by the growing German economy and availability of seasonal work in construction, agriculture, services, tourism and several other sectors. In Prague and other cities and industrial regions, employers are facing a real lack of available workforce, which has prompted them to increase wages and illegally employ workers, mainly from Eastern Europe.

The number of temporary, casual or "self-employed" workers has risen in the past 13 years. The government has introduced stern measures in enforcing compliance with labour law laws and regulations, such as with Act No. 206/2017 Collection that took effect on 29 July 2017. New measures should reverse the trend of temporary work and casual contracts to increase both the social protection of the workers in question and the revenue of the state (i.e. employees' incomes are taxed more because employees cannot make tax deductions; there are even double taxes in some cases). Among many, the most important changes are: a bail of CZK 500,000 (payment made to the Labour Office of the Czech Republic as a guarantee that temporary agencies will obey their duties), increased duties of responsible representatives with a view to temporary employment, and the ban on the re-hiring of own employees through temporary agencies and the practice of successive contracts on fixed-term work by temporary agencies.

2.8. Family Benefits

The Senate (the upper house of Parliament) approved an amendment to Act No. 117/1995 Coll. on state social support, which facilitated faster claims to a monthly childcare allowance. The total amount of this benefit (CZK 220,000) has been not increased, the legislator only authorised the beneficiaries to claim this benefit over a shorter period of time to speed up the beneficiaries' return to work. The statutory monthly rate of the childcare allowance is determined by the beneficiary and can be up to CKZ 32,000 (compared to formerly CZK 11,500).

Said law increased the total amount of benefit that most people up to age 26 (provided they are full-time higher education students or fulfil any other law requirements) can receive. People aged 15 to 26 are eligible to CZK 1000 in terms of a monthly child benefit.

¹¹ Cf. <http://www.komora.cz/pro-podnikani/legislativa-a-normy/pripominkovani-legislativy/nove-materialy-k-pripominkam/115-16-navrh-vecneho-zameru-zakona-o-pojisteni-odpovednosti-zamestnavatele-za-skodu-pri-pracovnim-urazu-t-7-6-2016.aspx> (accessed 26 June 2017).

¹² Official data available at https://www.czso.cz/csu/czso/employment_unemployment_ekon (accessed 12 June 2017).

This amendment was approved by Parliament in June 2017 and came into effect on 1 January 2018 as Act No. 200/2017 Collection.

2.9. Social Assistance (Minimum Income Support)

The government repeated several times that although it intended to increase the minimum wage, it did not want to raise the minimum income support; this is because it desires quite the opposite. The government seeks to widen the gap between those working on a minimum wage and people on minimum income support. The minimum wage has been increased three times over a short period from CZK 9,900 to CZK 11,000. The minimum wage is supposed to amount to 40% of the average wage, which has been fixed at CZK 28,232 for 2017. The minimum wage and average wage levels have an influence on the mandatory amount of social security and health insurance contributions of employees, employers, and freelancers, too.

Act No. 367/2011 Collection developed the already existing scheme of voluntary unpaid work (in Czech "veřejná služba"). Said bill is the first substantial change after the Constitutional Court's decision¹³ that overruled regulations requiring jobseekers to do voluntary (in this connection rather compulsory) unpaid work for up to 20 hours a week in 2012. The essence of the Court's decision was that the legislator breached both the right to just wages and the ban on forced labour; both rules are protected by the Charter of Fundamental Rights and Freedoms. Having scrutinised the duty for jobseekers, the court upheld the respective regulations on voluntary unpaid work for those on income support. The scheme of voluntary unpaid work, thus, remained to be regulated for people on income support in Act No. 111/2006 Coll. on Help in Material Need, as amended.

Act No 367/2011 Coll. has to be understood as the Senate's attempt (the ruling social democrats were against the proposal but they were overruled by other political parties) to encourage people on income support to seek a better life through their own efforts. The bill came into force on 1 February 2017 with the intention of activating beneficiaries of income support. The bill cuts income support to CZK 2,000 per month to all beneficiaries who have received income benefits for longer than 6 months, unless they take part in re-qualification courses operated by the Labour Office of the Czech Republic or perform unpaid voluntary work for 20 hours per month. Refusal to carry out this type of unpaid work leads to the described cut of the benefit.¹⁴

2.10. Housing and Social Services

The Ministry of Labour and Social Affairs had prepared a new Act on social housing (in Czech "zákon o sociálním bydlení a o příspěvku na bydlení") that came into force on 1 January 2017.¹⁵ The bill should combat homelessness and housing exclusion more efficiently, i.e., it clearly lays down the rights and duties of the government, municipalities and other stakeholders.

¹³ File No. Pl. ÚS 1/12.

¹⁴ Social democrat's veto to said bill is available at <http://www.parlamentnilisty.cz/politika/politici-volicum/Ministryne-Marksova-Verejna-sluzba-ma-lidem-pomahat-ne-je-trestat-474054> and <https://www.novinky.cz/domaci/417964-verejna-sluzba-se-ma-zvyhodnit-navrh-ale-pripomina-drabkuv-paskvil.html> (accessed 12 July 2017).

¹⁵ The proposal is available at <http://www.psp.cz/sqw/historie.sqw?o=7&t=1065> (accessed 26 June 2017).

The recent governmental crisis ended up in a stalemate situation: The lower house of Parliament is more interested in playing politics than solving problems. The bill on social housing has been successfully obstructed by the opposition in the lower chamber of Parliament. The right-wing opposition objects to the rising costs of the whole scheme, pointing to the danger of creating ghetto-like effects and of hampering the motivation of beneficiaries to improve their status. The session on said law has been adjourned, as we now know, indefinitely because even discussions about governmental gridlock have come to resemble the gridlock itself, as being static and tiresome. The Act on Social Housing is one example of collateral damage, another victim of the governmental crisis and the pre-election quarrels. Language, like politics, has reached an impasse.

The promised bill on social services is suffering the same fate. It has not even managed to be passed by the lower house of Parliament.¹⁶ The promised new Act on Social Workers has not even been introduced to the lower house of Parliament. As experts have disclosed, the main reason was a lack of consensus and the inability to find a constructive solution. The law should regulate the terms and conditions of social work for all social workers, include opportunities for professional promotion, secure professional positions and protect professional status.¹⁷

3. OCCUPATIONAL BENEFITS

Czech legal traditions do not accommodate the issue of occupational benefits. Because of the suppressed role of the trade unions, the poor level of social dialogue and a number of statutory regulations, collective agreements only play a secondary role, and this is due to a lack of sufficient informal exchange between different levels of infrastructure. Scholars, judges and legal practitioners were educated in different legal cultures and it hampers their legal thinking even today. The social partners only have a limited role in the setting up of additional pension insurance schemes or other social security schemes. The situation has not changed in the last 28 years after the fall of communism and this will not change in the near future.

4. ORGANISATIONAL, ADMINISTRATIVE AND FINANCIAL ISSUES

The government agreed to carry out a new inspection of existing health insurance carriers (in Czech: Úřad pro dohled nad zdravotními pojišťovny) in accordance with its coalition agreement of 2013. Although some proposals had been prepared, politics did not reach a consensus.

The Czech Republic recorded a government budget surplus equal to 0.60% of the country's gross domestic product in 2016 (i.e., CZK of 61.8 billions), which is the best result since 1993.¹⁸ Although the government has committed itself to diminishing state debt, the country's ageing society and the

¹⁶ Cf. material No. 1081, which is available at <http://www.psp.cz/sqw/historie.sqw?o=7&T=1081>.

¹⁷ Cf.: Musil, L.; Bareš, P.; Havlíková, J. (Eds.): Výkon profese sociální práce v systémech sociální ochrany ČR (Social Workers in the Czech Republic, Ministry of Labour and Social Affairs, VUBP, Prague 2017, available at http://praha.vupsv.cz/Fulltext/vz_421.pdf (accessed 20.6.2017).

¹⁸ Cf. <http://www.mfcr.cz/cs/aktualne/tiskove-zpravy/2017/stat-v-roce-2016-hospodaril-s-rekordnim-27109> (accessed 12 July 2017).

current election climate have induced the government to improve social benefits, public sector wages and healthcare spending.

5. JUDICIAL PROTECTION OF SOCIAL RIGHTS

Court decisions are cited in accordance with Czech standards. Decisions are identified by file number under which they can be found in free public databases, such as <http://www.usoud.cz/> (for decisions of the Constitutional Court), <http://www.nsoud.cz/> (for decisions of the Supreme Court) or <http://www.nssoud.cz/Uvod/art/1> (for decisions of the Supreme Administrative Court).

Used abbreviations can be explained as follows:

- "Pl. ÚS" a plenum or general assembly of the Constitutional Court;
- "I. ÚS" identifies a senate of the Constitutional Court;
- "Cdo" means file lodged before the Supreme Court;
- "A" or "Ad" means the Administrative Court, the letter "s" following the abbreviation "Ad" recognizes a case connected with social security, and the letter "f" a case connected with taxes;
- A number before a slash means a file number, and a number after the slash denotes the year in which a claim was lodged before the court.
- Constitutional Court decisions concerning social security: Pl.ÚS 3/15, Pl.ÚS 2/15.
- Supreme Court decisions: 25 Cdo 3423/2015
- Supreme Administrative Court decisions: 3 Ads 49/2016 – 39, 6 Ads 260/2016 – 44, 2 Ads 17/2017 – 15, 6 Ads 21/2017 – 23, 6 Ads 285/2016 - 38.
- The following two important decisions issued by the Constitutional Court in January 2015 in the areas of health care and the right to education guaranteed by the Constitution should be highlighted: Pl. ÚS 16/14 and Pl. ÚS 19/14.

5.1. Home Births without Midwives

The author of this report does not wish to either promote or condemn planned unassisted birth. The aim of this section is simply to inform about Czech regulations, practice and test cases.

Given the evidence that home birth is both safe for normal births, and cheaper than hospital birth, it should be hard for a Czech health authority to argue that providing a home birth service is not in the woman's best interests, or that it would not be an effective use of resources. Yet, nothing is further from reality. The state policy is geared against home birth. The Czech legislator set forth requirements for home birth so onerous as to effectively negate the possibility of giving birth at home. Although there are no laws forcing a woman to go to hospital to give birth – which means that every woman de facto has the right to insist on staying at home to have her baby – she will, as a result of said state policy, not be able to be assisted by any home birth service.

This serious reduction in the rights of users of health care was apparently effected without much debate and with little comment from the government. It was speculated that, if this change in the law took place without sufficient debate, it would soon be the subject of a judicial review – which is what happened on both national and international level, as we will see.

The Supreme Court of the Czech Republic upheld in its judgement (dated 15 June 2016, file number 30 Cdo 3598/2014) that the described state policy was lawful. The plaintiff brought a maladministration claim against the state as it had not ensured care provision for home births, and as it had not enacted the necessary legislation. As a result, the plaintiff had had to give birth at home without any qualified care assistance. The courts of the first and second instance dismissed the claim.

The plaintiff objected to the decisions of both instances stating that the courts had omitted to consider Art. 8 of the European Convention on Human Rights, and Art. 10 Para. 2 of the Charter of Fundamental Rights and Freedoms of the Czech Republic which provide for the protection of private and family life and of human dignity. She also contended that the Czech Republic had paid lip service to the Parliament and Council Directive No. 2005/36/EC and to Council Directive No. 80/155/EEC, which deals with the activities of midwives at home births. She further contended that the Czech Republic acted in breach of its obligations under EU law and that this constituted maladministration.

The Supreme Court continued the settled practice and stated that as a matter of principle, legislative activity must not be considered as maladministration, which also applied to the government's statutes. The Supreme Court held that there was no rule in the Czech legislation that would have obliged the health authorities to provide a home birth service, and that such an obligation could not be deduced from Art. 8 of the Convention either. The Court further came to the conclusion that no article of Council Directive No. 80/155/EEC imposed a duty to ensure medical care for pregnant women during home births through midwives, and the Czech legal regulation enabling midwives to help women during physiological births in health care institutions did not contradict said directive. EU law had been adopted to eliminate discrimination on the basis of nationality of midwives coming from individual member states of the European Union, and to ensure their free movement and freedom of settlement, rather than to determine the conditions for providing medical services.

Thus, this case must be considered as a matter of fact, namely that if a woman seeks to enforce a judicial review of a health authority's refusal to provide a home birth service, she might be not in a good position because there is no legal right for the woman to insist on assisted childbirth in her home. The Czech legislator assumes that a hospital birth is always better even if the woman can show that this is not in her best interests and that the financial consequences have to be borne by the national health care insurance scheme.

The European Court of Human Rights upheld in *Dubská and Krejzová v. the Czech Republic* the Czech regulations in question (Applications Nos. 28859/11 and 28473/12). The Court examined three main factors in order to evaluate the measures adopted by the national authorities to deal with those risks: whether they gave due weight to the competing interests and whether they carefully considered the possible alternatives and assessed the proportionality of their policy in respect of home births. It was the legislative and administrative framework what was in fact appraised in this case.

5.2. The Doctrine of Determination

The Constitutional Court overruled Section 15 of the Pension Insurance Act in its decision of 23 March 2010, file number Pl. ÚS 8/07 due to a lack of proportionality.¹⁹ Having scrutinised Section 15, the Court concluded that it was unconstitutional. In essence, the judges found: the more an insured person earns, the more he or she has to contribute; but the more the insured person pays into the scheme, the less he or she will receive in terms of beneficial value. Despite the decision of the Court, the legislator has declined to fully and adequately amend Section 15 of the Pension Insurance Act so as to give effect to the Court's judgment. Subsequently, pensioners brought new claims to administrative courts contending that the legislator had not fully implemented the ruling of the Constitutional Court as mentioned above.

The Supreme Administrative Court applied the so-called doctrine of determination (name given by the author, not used in the relevant literature so far). The Court gave more weight to the collectivist notion that it was morally appropriate for those with higher earnings to pay proportionately more, namely in cases of 8 June 2011 docket file number 3 Ads 75/2011 – 47, of 23 October 2013, docket file No. 3 Ads 156/2011 – 127, and of 29 August 2013, docket file No. 4 Ads 31/2013 – 18. The pensioners tried to challenge the case law of the Supreme Administrative Court, but the Constitutional Court (composed of newly appointed judges) upheld it, too. Given that 98% of the pensioners have to rely on the state pension as only source of income, and given that those pensions are more or less of the same amount, the Constitutional Court decided to reject the more liberal approach adopted previously for new contributors, based on inevitable economic reasons. At any rate, the sudden departure from previous case law (judgment file No. Pl. ÚS 8/07) and the adoption of a judicial self-restraint position by the Constitutional Court raises the question of impartiality of the recently appointed judges who are influenced by political affiliation and aspirations.

6. INTERNATIONAL AGREEMENTS ON SOCIAL SECURITY

The international bilateral agreement on welfare security signed by and between Albania and the Czech Republic on 13 June 2015 came into force on 1 February 2017. The agreement was published in the Collection of International Agreements as No. 2/2017 Collection and it is the very first international agreement on social security between both countries.²⁰ The implementation agreement that shall facilitate the application of the bilateral welfare security agreement was published as subsequent No. 3/2017 Collection.

The bilateral welfare security agreement applies when double super coverage occurs – that is, when an employee would otherwise have to pay contributions (or equivalent) in both countries simultaneously for the same work. The agreement applies to Albanian and Czech welfare security laws. Employees and freelancers are covered on the basis of the same principles as known under the Regulation 833/2004/EC on the coordination of social security systems.

¹⁹ The decision is available at <http://www.usoud.cz/en/decisions/20100323-pl-us-807-right-to-adequate-material-security-1/> (accessed 26 June 2017).

²⁰ Both countries were close to agreeing on an international agreement on social security in the 60s of the previous century, but political hostilities caused a lack of consensus in the end.

7. LIST OF IMPORTANT ACTS

Acts are quoted under their initial number and year of issue in the Collection of Laws according to Czech citation standards:

Pension Insurance, Health Insurance:

- Act No. 150/2017 Coll. on Diplomatic Service amending Acts on Health Care and Pension Insurance
- Act No. 65/2017 Coll. The Anti-Smoking Bill

Sick Leave Insurance:

- Act No. 148/2017 Collection (Paternity Pay)

8. SELECTION OF IMPORTANT MONOGRAPHS

8.1. Books

Boučková, Havelková, Koldinská, Kühn, Kühnová, Whelanová: Antidiscrimination Commentary [in Czech: "Antidiskriminační komentář"], Prague, C.H.Beck 2016, ISBN 978-80-7400-618-0

Holečková, R.: Pension Insurance of Miners [in Czech: "Důchodové pojištění horníků"], dissertation thesis, Charles University, Faculty of Law, Prague 2016

Koldinská, K.: Financial Support of Caregiving Persons – Proposals for Improvement of the System of Benefits, Examples of Good Practices Abroad [in Czech: "Finanční podpora pečujících a návrhy na zlepšení systému dávek - příklady dobré praxe ze zahraničí"], Prague 2016, Diakonie, ISBN 978-80-87953-27-3

Koldinská, K.: European Equality Law Review: European Network of Legal Experts in Gender Equality and Non-Discrimination, 2016, 2nd Edition, pp. 89-90

Komendová, J.: EU Labour Law [in Czech: "Základy pracovního práva EU"]. 1st Edition, Prague, Wolters Kluwer, 2016. 252 pp., ISBN 978-80-7552-286-3

8.2. Articles

Brázdilová, P.: Income Inequalities [in Czech: "Příjmová nerovnost v České republice"], Statistics and We 2016 (transl.), Nos. 7-8, in Czech, available at <http://www.statistikaamy.cz/2016/08/prijmova-nerovnost-v-ceske-republice/> (accessed 12 July 2017)

Pichrt, Koldinská: The Right to Social Security in the Constitution of the Czech Republic, pp. 31-45, in: Jegorov, A.; Wujczyk, M.: The Right to Social Security in the Constitutions of the World: Broadening the Moral and Legal Space for Social Justice, 1st Edition, Geneva 2016, ILO, ISBN 978-92-2-130400-5

Štangová, V.: Development Trends in Pension Reform in the Czech Republic [in Czech "Vývojové tendence důchodové reformy v ČR"], pp. 407-415, in Pocta prof. JUDr. Květoslavu Růžičkovi, CSc. k 70. narozeninám, Prague 2016, Wolters Kluwer, ISBN 978-80-7478-976-2

Martin Štefko
Charles University
Faculty of Law
Prague, Czech Republic
Email: STEFKOM@prf.cuni.cz
