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# DEVELOPMENTS IN SOCIAL LEGISLATION AND POLICY

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## LIST OF ABBREVIATIONS

ČSSD	Czech Social Democratic Party
CSU	Czech Statistical Unit
CZK	Czech Koruna
ECJ	European Court of Justice
GDP	Gross Domestic Product
OECD	Organisation for Economic Co-operation and Development
Pp	percentage points
ZTP	Severe Health Disability
ZTP/P	Person with especially heavy disability of functions

## ACKNOWLEDGMENT

The aim of this report is to describe and analyse how the Czech welfare state has stood against two giant marauders, such as the chaotic social policy during the aftermath of the Lower House of Parliament's elections in 2017 and the aging society. The report 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 (4.2% of GDP in the first quarter of 2018),<sup>1</sup> boosted by household consumption, low unemployment, rising wages, a thriving manufacturing sector, strong consumer confidence, and an expansionary fiscal policy.<sup>2</sup> There are, however, elements that are likely to slow the economy, such as a decrease in demand for EU products, potential U.S. tariffs on German vehicles (i.e., some parts of them are produced in Czech facilities), or the inability of the government to waive the strict barriers regarding access to the Czech labour market.

The general government deficit has improved significantly since 2009, and the Czech public finances do not appear to face sustainability risks in next years. The Czech Republic recorded a second-best government budget surplus of CZK 80.6 billion. The surplus corresponds to 1.59% of GDP, expressed as a percentage of GDP.<sup>3</sup> Although the government gross debt dropped annually by 2.17 percentage points (pp) to 34.60% of GDP, an ageing society and the current election climate mean that the government decided to improve social benefits, public sector wages and healthcare outcomes.

The political situation in the Czech Republic is extraordinary. Andrej Babiš, a business mogul, former Minister of Finance and a suspect accused of fraud, won the elections to the Lower Chamber of the Czech Parliament in October 2017. Despite allegations against him, Babiš was able to summon support from the left and from the right for different reasons. Most visible was his promise to run the State like a company – efficiently, pragmatically and in a profit-oriented manner. Although his ANO movement was the elections' clear winner, the first minority government led by Babiš, who was appointed Prime Minister as per 6 December 2017, did not survive the confidence vote. After resignation he immediately got a new mandate to form a government on 24 January 2018. Mr. Babiš's movement has only 78

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<sup>1</sup> Cf. official statistical data available at: [https://www.czso.cz/csu/czso/gdp\\_national\\_accounts\\_ekon](https://www.czso.cz/csu/czso/gdp_national_accounts_ekon) (accessed 10 July 2018).

<sup>2</sup> Cf. OECD Economic Forecast Summary of May 2018; <http://www.oecd.org/eco/outlook/czech-republic-economic-forecast-summary.htm> (accessed 10 July 2018).

<sup>3</sup> Cf. Notification of government deficit and debt – 2017, available at: <https://www.czso.cz/csu/czso/ari/notification-of-government-deficit-and-debt-2017> (accessed 10 July 2018).

seats in the Parliament's 200-member Lower House. It took Babiš almost nine months to find a coalition partner – communists and social democrats. Mr. Babiš was re-appointed Prime Minister of the Czech Republic on 6 June 2018. After the Czech Social Democratic Party (ČSSD) agreed to join the minority government of Andrej Babiš with potential confidence and support from the Communist Party, it seems almost sure that the Babiš's government will gain the confidence vote.

**Income inequality** and **relative poverty** continue to be low in comparison to other Western European countries. One of the key findings of a new report published by the International Monetary Fund (IMF) entitled "Inequality and Poverty Across Generations in the European Union" is that the Czech Republic has one of the lowest inequality and at-risk-of-poverty rates in the EU and OECD.<sup>4</sup>

Recent statistics on households' monetary poverty and income inequalities in the Czech Republic published by the Czech Statistical Unit shows that 9.1 % of the population are endangered by poverty. Compared to 2016, figures went down from 9.7 %.<sup>5</sup> The most frequently used threshold is defined as 60 per cent of the median equalised income. This, for example, is a monthly income of CZK 16,792 for two adults.

## 2. SOCIAL REFORMS OF THE MAIN BRANCHES

### 2.1. Old-Age Pensions

Although the Czech Republic still faces the challenge of an ageing society, significant improvements regarding short-term sustainability of the pension system took place in 2017 and are anticipated in 2018.<sup>6</sup> The surplus over spending on pensions should reach almost CZK 10 billion; revenues of equal dimensions have not been collected in the last 22 years. Higher contribution revenues are driven by rapid wage rises and the apparent economic boom. Despite the current positive developments in favour of contribution revenues, the negative trend in Czech pension income could not be overturned. According to the current governmental projections, the demographic ageing of the Czech population in particular, along with the factoring of the current dynamic growth in wages and prices into the

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<sup>4</sup> Cf. report, page 22. The report is available at: <https://www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2018/01/23/Inequality-and-Poverty-across-Generations-in-the-European-Union-45137> (accessed 10 July 2018).

<sup>5</sup> See CSU Household Income and Living Conditions – 2017. The publication contains tables for households (Tab. 1 to 15), for persons aged 16+ (Tab. 16 to 18) and tables of poverty, material deprivation and low work intensity measures (Tab. 19 to 21). Documents available at: <https://www.czso.cz/csu/czso/prijmy-a-zivotni-podminky-domacnosti-rn2to6gtkz> (accessed 10 July 2018).

<sup>6</sup> Cf. <https://ct24.ceskatelevize.cz/ekonomika/2259478-duchodovy-ucet-bude-po-deseti-letech-v-plusu-stat-vybere-o-devet-miliard-vice> (accessed 29 June 2018).

indexation mechanism for pensions in payment, could gradually push up spending on pensions from approximately 8% of GDP today to 11.6% of GDP by 2060.<sup>7</sup>

Even so, the government has prioritised improvements in the social situation of the retirees over the long-term sustainability of the pension system. The new, more favourable indexation scheme of pensions was enacted in 2017 to offset the erosive effects of inflation on fixed incomes. Pensions have been increased on average by about CZK 475 per month (about EUR 18) in 1 January 2018. As of 1 January 2018, the percentage amount calculated from the personal assessment base for all types of pensions (i.e. old-age pensions, including early retirement, disability pensions, widows, widowers and orphan's pensions) has been increased by 3.5%. The basic flat-rate amount of the personal assessment base has been increased by CZK 150 to CZK 2,700. The adjustment applies as well to the so-called partial pensions granted under the EU coordination regulations and under international social security agreements. The basic assessment of partial pensions is increased proportionately to the ratio of the Czech insurance period in the total insurance period.

As of 1 January 2018, the retirement age has changed again. In accordance with Section 32 III of the Pension Insurance Act (Act No. 155/1995, as amended), the retirement age of persons born in 1971 and later has been set to 65. The retirement age is the same for men and women. For people born before 1971, the retirement age still varies depending on the year of birth, and the number of children raised is also taken into account for women. Adjustments to the retirement age beyond the age of 65 have been left to the process of regular reviews that should happen every five years.

The newly appointed Minister for Labour and Social Affairs announced that she will continue the current pro-spending policy. One of the most recent proposals made has been an extra CZK 1,000 per month for pensioners aged 85 and over.

Stricter conditions within the realm of public pension insurance were enacted only for the case of voluntary pension insurance. A new requirement was added to the so-called "pension insurance on the basis of unspecified grounds". From 1 February 2018, insurees must have been insured for at least one year before they apply for pensions, and during this time they must have paid contributions to public pension insurance or been gainfully employed. Collection of substitute insurance periods does not make insurees eligible to this scheme.

## **2.2. Supplementary Retirement Insurance Systems**

The government under Sobotka abolished the second pillar statutory funded pension scheme based on individual savings at the end of 2015, three years after its creation. The

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<sup>7</sup> Government of the Czech Republic: National Reform Programme of the Czech Republic 2018, p. 9. Report available at: <https://www.vlada.cz/assets/evropske-zalezitosti/aktualne/NPR-2018---EN.pdf>, (accessed 11 July 2018).

respective Act No. 376/2015 Coll. was approved in October 2015 and the law entered into force on 1 January 2016.<sup>8</sup> The contributions were returned to the participants by the end of 2016. Sobotka and his government are gone, and the people's trust in public saving schemes has been shattered. Although private pension saving is a vital element in ensuring that retirement incomes are adequate and that State pension provision remains sustainable into the future, and even though the current scheme is far from ideal, fundamental changes will have to wait. It will take years to gain the confidence of the insurees again.

One of the small changes effective in 2017 is that the law has doubled the amount for reducing the income tax base to a total of CZK 24,000 a year.

### 2.3. Invalidation and Survivors

Apart from the increased percentage part of the assessment base, there have been no changes concerning invalidity pensions under Act 155/1995 Coll. as amended. From 1 February 2018, the entitlement criteria for an orphan's pension have been alleviated as well. Contrary to previous regulations, entitlement to the orphan's pension will exist in cases where the deceased parent had at least one year of gainful employment covered by social insurance (at least two years for persons over 38 years of age).

### 2.4. Health Care

The first Babiš government (the second government has the same Minister of Health) declared: "We need clear rules on the financing of the health sector and the development of its capacities – we are weighing up the possibility of merging State-controlled health insurance companies into a single entity."<sup>9</sup> The mentioned merging of State-controlled health care companies is not a new thought. The most recent attempt was made in 2012 when the State envisioned merging three health care companies (i.e., the Military Health Care Insurance Company – in Czech *Vojenská zdravotní pojišťovna ČR*; the Health Care Insurance Company of the Ministry of the Interior – in Czech *Zdravotní pojišťovny ministerstva vnitra ČR*; and the General Health Care Insurance Company – in Czech *Všeobecná zdravotní pojišťovna ČR*). The main motivation for the merger is not only the reduction of the administration but also a financial re-balancing of the General Health Care Insurance Company, which is always in the red (owing to the mandatory status of insurees assigned to pensioners and children) contrary to the two other insurance companies.

In 2012, the government awaited to be saving some CZK 120 billion thanks to the merge. The government estimated around CZK 500 million to be direct costs and CZK 80 million as

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<sup>8</sup> In Czech zákon č. 376/2015 Sb. o ukončení důchodového spoření.

<sup>9</sup> Policy Statement of the Government of the Czech Republic published on 8.1.2018, available at <https://www.vlada.cz/en/jednani-vlady/policy-statement-of-the-government-of-the-czech-republic-163299/> (accessed 9 July 2018).



indirect costs.<sup>10</sup> The Military Health Care Insurance Company opposed, by way of its own assessment memo, that the merge could save CZK 20 million, but that the unification of formal and informal structures among health care insurance companies would cost the same or, more likely, a higher amount. All merge proposals have always been rejected by boards of directors or supervisory boards, or the respective two smaller health care companies in question. Among other reasons, it must be pointed out that the relevant regulations are cursory and only cover a potential merge of the Military Health Care Insurance Company with another health care company.<sup>11</sup>

In order to stabilise the situation in health care, the State must improve health care professionals' wages. The Ministry of Health, in cooperation with the Ministry of Labour and Social Affairs, identified a significant wage gap between public-sector wages (i.e., wages fully covered by the public budgets) and private-sector wages for health care professionals, mainly nurses. Whereas public-sector wages are increased on a regular basis, private-sector wages are not. Both ministries may be willing to support claims on equal wage represented by the health care trade unions, but it is hard to prescribe real private-sector wage adjustments, unless the government does so under the pretext of mandatory benefits for health hazards as set forth in the Labour Code.

The government is preparing a new concept to be applied to the Reimbursement Decrees which set most prices and volume limitations of activities of the health care providers. The new conciliation procedure for reimbursements in 2019 should enhance the negotiation of agreements between care providers and health insurance companies. However, experts do not anticipate any overnight success.

The Anti-Smoking Bill (Act No. 65/2017 Coll.), which came into force on World No Tobacco Day, i.e. 31 May 2017, was scrutinised in April 2018 by the Constitutional Court of the Czech Republic (judgment file No. Pl.ÚS 7/17). Challengers had to overcome an overwhelming presumption in favour of the validity of public health laws. The Court looked at the individual and governmental interests at stake to determine whether the Anti-Smoking Bill had adequate justification that represented a valid use of the State's policy power. In the end, the Constitutional Court upheld the effort to promote laws on tobacco-free areas because the State's primary duty was to improve environmental and living conditions by protecting against the health hazards of tobacco smoke. It has also delivered proof that it is very difficult for anyone to argue that an economic regulation passed to protect public health targets could infringe on a fundamental right (for more on this issue, see Section 5 of this report).

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<sup>10</sup> The government's resolution of 16 May 2012, No. 360.

<sup>11</sup> Cf. Section 11 and 27 of Act 48/1997 Coll. on the Public Health Care Insurance Scheme, as amended (the Public Health Insurance Act) and Section 25 of Act No. 280/1992 Coll. on Sector, Branch, Enterprise and Other Health Insurance Companies, as amended.

## 2.5. Maternity Benefit and Leave Provisions

No changes have been effected to the requirements for obtaining maternity benefits or to the amount thereof, regulated in Act No. 187/2006 on Sickness Insurance.

As per 1 February 2018, Act No. 148/2017 Coll. amended the Sickness Insurance Act to provide for paid paternity leave, which is termed "Fathers' Post-Natal Care". The new provisions comprise a leave of seven days for the birth or adoption of a child (under the age of seven) to be taken within six weeks of birth or date of placement (Sections 38a – 38d of the said act), as well as a new salary replacement benefit, abbreviated as "Father's Benefit" (in Czech *otcovská*). The goal of the benefit is to enhance family cohesion as fathers can, in this way, spend more time with their children and help their partners shortly after childbirth or the adoption. The new paternity leave benefits are provided by social security on the same calculation base as maternity leave, i.e. up to 70% of average daily covered earnings of the previous 12 months. Daily covered earnings are defined as follows: 100% of daily salary up to CZK 942; 60% of daily salary between CZK 942 and CZK 1,412, and 30% of daily salary between CZK 1,412 and CZK 2,824.<sup>12</sup> The social security scheme will cover a **maximum of CZK 8.575**.

Tax and social security insurance are not deducted. The benefit 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 Coll. amended also Section 191 II of the Labour Code. The employer is to grant days off if claimed by the employee. Although there is no statutory requirement for the employee to give to his employer any prior notification, it is highly recommendable. Freelancers are eligible to parents pay if they have collected an insurance period of at least three months before the date they claim paternity pay. The same three-month period is applied to foreign employees if they decide to be insured under Czech regulations (which is optional).

## 2.6. Accidents at Work and Occupational Diseases

In 2014, the Act on Occupational Accident Insurance of 2006 was abolished. The Czech legislature prefers to solve issues regarding occupational injuries within the realm of labour law. The current scheme is neither the German approach with self-governed insurance associations funded by employers' contributions, nor the second State-administered scheme where the system for compensating occupational injuries and disease as part of its wider provision for social security levies contributions from employers to finance it. It is a mix of public insurance operated by only two domestic insurance companies and the civil tort liability of an insuree's employer.

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<sup>12</sup> 70 percent of monthly wages up to 28,000 CZK, 60 percent of wages between 28,000 to 42,000 CZK, and 30 percent of wages from 42,000 to 85,000 CZK.

The government prepared a set of ideas for the new law at the beginning of 2017 (for internal purposes) and opened it to the public in May and June 2017.<sup>13</sup> The new law shall not come in effect until 2020 and, in addition, it should preserve the current old labour law model. Mainly due to the fear of EU competition law, the "new" scheme is to be operated by the Czech Social Security Agency.

As per 1 January 2018, long-term workers' compensations for harm suffered through occupational accidents or diseases are increased by 3.5%, compared to an increase of only 2.2% in 2017. The figures are the same as in public pension insurance and the goal is similar: to offset the erosive effects of inflation on fixed incomes. The respective governmental regulations are published under Section 271u Paragraph I of the Labour Code.

The legislator has prepared an amendment to the Compensation for a Loss of Earnings after the Termination of Incapacity for Work regulated in Section 271b of the Labour Code. The proposal, approved by the House of Deputies of the Parliament is debated in the Senate (the Upper Chamber of the Parliament of the Czech Republic).<sup>14</sup> The bill proposal is going to change current Section 271b III of the Labour Code that regulates jobseekers' compensation amounts. Under both current law and the passed bill proposal, earnings after having suffered an industrial injury or after the ascertainment of an occupational disease shall mean earnings in the amount of the minimum wage (i.e., the lowest monthly rate of the minimum wage as set forth in Section 111 of the Labour Code).

The proposed bill clarifies that any employee who is entered into the registry of jobseekers shall also be entitled to compensation for a loss of earnings with effect from the very first day that the ex-employee was enrolled.

It is characteristic for current Czech politics that the same amendment proposed by the opposition (i.e., file docket No. 22)<sup>15</sup> was refused by the government and stopped until the governmental proposal passed the House of Deputies' voting. The proposal of the opposition was revoked on 22 June 2018.

## **2.7. Unemployment and Promotion of Employment**

Although the Czech public employment policy is rather modest, Czech unemployment is now the lowest in the EU (some experts see a parallel to the Czech immigration policy that pushes migrants to be active and take their destiny into their own hands). The situation on the labour market has been influenced primarily by the growing German economy and

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<sup>13</sup> 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).

<sup>14</sup> File docket No. 91 House of Deputies of the Parliament is available at <http://www.psp.cz/sqw/text/tiskt.sqw?o=8&ct=91&ct1=0&v=PZ&pn=2&pt=1> (accessed 10 July 2018).

<sup>15</sup> File available at <http://www.psp.cz/sqw/text/tiskt.sqw?O=8&CT=22&CT1=0> (accessed 10 July 2018).

availability of seasonal work in construction, agriculture, services, tourism and several other sectors.

In addition, rising labour market shortages are now constraining economic growth, and we can clearly see even worse outcomes in the near future. In Prague and other cities and industrial regions, all bigger employers are confronted with a real lack of available workforce, and this is creating incentives for wage increases and attracting illegal workers mainly from Eastern Europe.

The number of persons in temporary, casual or "self-employed" work has risen in the past 13 years. The government has started to take stern measures in enforcing obedience to labour laws and regulations, such as passing Act No. 206/2017 Coll., which took effect on 29 July 2017 (changes were elaborated on in the previous report).

Act No. 327/2017 Coll.<sup>16</sup> amended the Public Employment Act (No. 435/2004 Coll. as amended) and brought about a number of changes regarding the employment of persons with disabilities (their high unemployment rate has been a serious problem for the last two decades). Its main purpose is to create a sheltered labour market for the disabled in order to enhance their employment.<sup>17</sup> The previous regulations required a high administration profile, because each sheltered job had to be established on an individual basis.<sup>18</sup>

Those employers who will be certified for sheltered labour market purposes can conclude a special agreement with the Labour Office and claim the Grant to Support the Employment of Persons with Disabilities in the Sheltered Labour Market (in Czech *Příspěvek na podporu zaměstnávání osob se zdravotním postižením na chráněném trhu práce*) under Section 78a of the Public Employment Act. This grant has replaced grants paid under Section 78 of the Public Employment Act until 31 December 2017. Regulating the Grant to Support the Employment of Persons with Disabilities in the Sheltered Labour Market, Act No. 327/2017 Coll. realised some minor changes (e.g., annual duty to notify employers' activities), save the notion of "sheltered labour market".

Act No. 327/2017 Coll. set forth other grants, such as the Grant for the Creation of Jobs for Disabled Persons (in Czech *Příspěvek na zřízení pracovního místa pro osobu se zdravotním postižením*) and the Grant to Finance the Maintenance of Employment for Persons with Disabilities (in Czech *Příspěvek na úhradu provozních nákladů vynaložených v souvislosti se zaměstnáváním osoby se zdravotním postižením*). Both grants had been regulated in the same sections (i.e., Section 75 and Section 76 of the Public Employment Act) until 31 December 2017. Act No. 327/2017 Coll. reshaped both grants owing to the fact that there is

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<sup>16</sup> Act No. 327/2017 Coll., which amends Act No. 435/2004 Sb. Coll. on employment, as amended, and Act No. 251/2005 Coll., on labour inspection as amended by Act No. 93/2017 Coll.

<sup>17</sup> See Section 78 of the Public Employment Act, as amended.

<sup>18</sup> Cf. Explanatory report docket file No. 1072 Deputy House of the Parliament of the Czech Republic 2017, general part B.

the notion of "sheltered labour market". The Grant for the Creation of Jobs for Persons with Disabilities can be applied for but not enforced; decisions in this regard are up to the Labour Office's discretion. Unlike its predecessor, the Grant to Finance the Maintenance of Employment for Persons with Disabilities is not bound by any type of prior agreement on the creation of sheltered jobs with the Labour Office. The requirement to conclude an agreement on the grant itself remains.

Regarding other minor changes, Act No. 327/2017 Coll. regulates the duties on the part of jobseekers to enable the State to perform surveillance procedures as set forth for employees or civil servants who are temporarily incapable for work. Said law brought along some minor changes regarding the requalification of workers as governed by the Public Employment Act.

## 2.8. Family Benefits

Act No. 200/2017 Coll. amended the legislation on two main family benefits: Parental Grant (or Parental Allowance according to the terminology used by the Ministry of Labour and Social Affairs), and Child Benefit (or Child Allowance in the terminology of the Ministry).

As to the benefit called Parental Grant (in Czech *rodičovský příspěvek*), the amended Act No. 117/1995 Coll., on state social support, seeks to introduce more flexibility for parents, mainly to speed up their return to work. Parents can now choose to draw a higher monthly benefit but for a shorter period, provided that one of the parents is covered by sickness insurance. The amount of the benefit can be changed every three months. Only parents are qualified to this kind of benefit. The maximum amount of the Parental Grant remains at CZK 220,000 (€8,461) and is payable up to the fourth birthday of the child. The reform addresses mainly high-income earners who are covered by sickness insurance (and thus entitled to maternity/paternity benefits personally or indirectly through their partner) so that they can draw the maximum amount within a shorter period. The increased statutory monthly rate of the Parental Grant that an eligible parent can choose is up to CZK of 32,640 (€1,255), compared to a former CZK 11,500 (€437).

If none of the parents is covered by sickness insurance (and not eligible to maternity/paternity benefit, i.e., students, free lancers or job-seekers), they can claim a Parental Grant of up to CZK 7,600 (€292) per month and shorten the whole period until the child is three years old (compared to the previously non-flexible limit of four years).

According to Section 30 of Act 200/2017 Coll., in the case of twins or a multiple birth, the total amount of the Parental Grant is increased to CZK 330,000 (€12,692). The new law applies to parents of children born before 1 January 2018.

Act 200/2017 Coll. increased both the scope and the total amount of Child Benefit that most people aged up to 26 (provided they are full-time higher education students or fulfil other legal requirements) are entitled to. Child Benefit is a means-tested (i.e. it is based on

financial need) flat-rate benefit depending on the age of the children. Families are eligible if their income equals or is less than 2.7 times the family's living minimum. Act 200/2017 Coll. increased the factor of 2.4 times formerly applicable to keep pace with inflation.

There are three Child Benefit rates: CZK 800 (€31) for children under six, 910 (€35) for children aged 6 to under 15; and 1000 (€38) for children 15-26; reform legislation has increased the monthly benefits by CZK 300 for each rate.

Both Child Grant and Child Benefit are paid by the Labour Office of the Czech Republic.

## **2.9. Social Assistance (Minimum Income Support)**

The government has increased the minimum wage five times in the last five years. Measured by the monthly rate, it has been increased from CZK 8,500 to CZK 12,200. The new minimum wage and average wage levels have changed the mandatory amount of social security contributions and health insurance of employees, employers, and freelancers as well.

The government enacted several cost-of-living adjustments for social inclusion benefits. The scheme is governed by Act No 329/2011 Coll. on Providing Benefits for People with Disabilities and Amendments of Related Acts, as amended, which regulates two cash benefits: Mobility Aids Grant (in Czech *příspěvek na mobilitu*, translated by the Ministry of Labour and Social Affairs into *Allowance for Mobility*), and Special Aid Grant, a benefit for those with severe physical, visual or hearing disabilities to pay for aids that help in self-reliance, working activities, education, social contacts.

The Mobility Aids Grant was increased from CZK 400 to 550 per month. Said benefit covers persons with disability who were certified to belong to the two severest levels of disability (in the Czech *ZTP* or *ZTP/P*). Act No. 301/2017 Coll. specified the minimum amount of the Special Aid Grant (it is CZK 100,000) and simplified the assessment process. The Labour Office of the Czech Republic shall run a means test and consider the income situation of the beneficiary and his/her family. Said law excluded the following circumstances to be taken into account: reasons and frequency for transport requirements, social environment, and property situation.

## **2.10. Cash Benefits under the Sickness Leave Insurance**

There is a separate insurance scheme for paid benefits in the event of a lack of income – i.e. sick leave insurance in the Czech Republic, regulated by Act No. 187/2006 on sickness insurance, as amended. The most important reform under this insurance has been the introduction of a new long-term attendance allowance.

The legislator has increased sick leave benefits for those who will require more than 30 or, respectively, 60 calendar days for sick leave. From the 31st day of sick leave, the sickness benefit rate is increased from 60% to 66%, and from the 61st day it is increased to 72% of

the reduced daily assessment base. The daily basis of assessment is reduced as follows: 90% up to the amount of the first reduction level; 60% from the amount above the first reduction level up to the second reduction level; 30% from the amount above the second reduction level up to the third reduction level; and the amount above the third reduction level is disregarded. The reduction level amounts valid from 1 January of the calendar year are announced as a notification by the Ministry of Labour and Social Affairs in the Collection of Laws. The reduction levels from January 2019 are as follows:

- 1st reduction level - CZK 1,090
- 2nd reduction level - CZK 1,635
- 3rd reduction level - CZK 3,270.

Since 1 June 2018, a new benefit has been effective for insured persons, both employees and self-employed persons who pay their sickness insurance on a voluntary basis, to support them while they look after a sick member of their household or a relative. It is named Long-Term Attendance Benefit.<sup>19</sup>

Employees can apply for the long-term attendance benefit through their employers provided the person in need of care has been hospitalised for at least 7 calendar days and the attending physician has confirmed that the person's health after discharge from hospital requires all-day care for at least 30 calendar days. Self-employed persons can file their applications directly with the District Social Security Administration (DSSA) where they are registered.

The benefit is paid for a maximum of 90 calendar days from the date of discharge from the hospital and amounts to 60% of the average daily covered earnings over the previous year ("reduced daily assessment base"). The daily basis of assessment determined in this way is subject to a reduction, which is made for long-term attendance allowance as follows: the amount up to the first reduction limit is 90%, 60% is calculated from the amount above the first reduction limit up to the second reduction limit, 30% is calculated from the amount above the second reduction limit up to the third reduction limit, and the amount above the third reduction limit is disregarded. Reduction limits effective from 1 January of the calendar year are declared by means of a notice in the Collection of Laws by the Ministry of Labour and Social Affairs.

The reduction limits as from 01 January 2019 are the same as for sickness leave benefits (see above).

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<sup>19</sup> For comprehensive information and clarification in the Czech language go to <http://www.cssz.cz/cz/nemocenske-pojisteni/davky/dlouhodobe-osetrovne.htm>.

### 3. OCCUPATIONAL BENEFITS

Not applicable due to different Czech legal traditions. Because of the suppressed role of trade unions, the poor level of social dialogue and a number of statutory regulations, collective agreements only play a secondary role, and the lack of sufficient informal infrastructure is to blame for this.

Czech law recognises two kinds of collective agreements: plant collective agreements and higher-level collective agreements. Both of them are considered to be sources of law. None of the published higher-level collective agreements contain any regulation on occupational benefits. Higher-level collective agreements are registered at the Collection of Laws of the Czech Republic; they are published by the Ministry on its websites.<sup>20</sup>

### 4. JUDICIAL PROTECTION OF SOCIAL RIGHTS

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

The abbreviations used can be explained as follows:

- "Pl. ÚS" is 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" recognises 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 is the year when a claim was lodged before the Court.

Constitutional Court decisions concerning social security: I.ÚS 2637/17 (a subjective public right of persons with disability to obtain social assistance), III.ÚS 2332/16 (right to being provided at least one free drug in each class), and III.ÚS 4160/16 (Court's duty to order an expert opinion).

Supreme Court decisions: 28 Cdo 2448/2017 (Civil and not Administrative Court's jurisdiction to entertain a claim on unjust enrichment coming from public pension insurance).

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<sup>20</sup> Cf. <https://www.mpsv.cz/cs/3619> (accessed 10 July 2018).



Supreme Administrative Court decisions: 1 Ads 419/2017 – 28 (duty to pay contributions to social insurance), 10 Ads 386/2017-46 (abuse of the State Social Assistance scheme by a help provided by family members).

The following two important decisions issued by the Constitutional Court in the area of health care guaranteed by the Constitution should be highlighted:

The Constitutional Court of the Czech Republic confirmed that physicians and other healthcare professionals must respect the principle of freedom and autonomy of the will. An adult patient can refuse care even though it may be deemed crucial for preserving his/her life. If healthcare professionals act in accordance with the decision of adult patients and do not provide the necessary care, they cannot commit a criminal offence in terms of failure to provide assistance. Decision file No. I. ÚS 2078/16 is available at [https://www.usoud.cz/fileadmin/user\\_upload/ustavni\\_soud\\_www/Decisions/pdf/1-2078-16\\_\\_2\\_.pdf](https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Decisions/pdf/1-2078-16__2_.pdf)

The second decision is connected with a clash between tobacco control and human rights. The Anti-Smoking Bill as an effort to promote tobacco control has immediately created a fresh and significant opposing minority of smokers that challenged the Bill. After passing the Anti-Smoking Bill, 20 senators brought a claim before the Constitutional Court of the Czech Republic and demanded protection against alleged illegal encroachments on the lives of individuals and their liberty protected by both the Constitution and the Charter of Fundamental Rights and Freedoms.

Senators invoked the constitutional protections against a totalitarian State that guarantee that the government shall not deprive individuals of life, liberty, or property without due process of the law. They contended for the personal choice to smoke being under the constitutional right to liberty or privacy. According to their argumentation, by discriminating against smokers, the legislator had not fully respected their autonomy and personal style of life. Another argument was that the Anti-Smoking Bill had interfered with the freedom of doing business. Article 26 I states: "Everybody has the right to the free choice of her profession and the training for that profession, as well as the right to engage in enterprise and pursue other economic activity."

The Anti-Smoking Bill allegedly discriminates against business owners, such as proprietors of bars and restaurants, by allowing smoking in certain establishments and not others. Said law creates an undue economic burden or gives privileges to some businesses but not to non-exempted businesses or groups. A more abstract claim can be made based on the allegations of individual senators: all persons shall receive equal protection under the law, smoker and non-smokers. Hence, the legislator shall be forbidden to subordinate smokers to non-smokers.

Having scrutinised the Anti-Smoking Bill, the Court applied the proportionality test and concluded that it was constitutional with a few exceptions (judgment of 27 March 2018 published under No. 81/2018 Coll.). The essence of the Court's decision was: the comprehensive ban on smoking in indoor areas of restaurants, theatres, cafés, and cinemas throughout the Czech Republic established e-cigarettes and hookahs as legitimate and appropriate because it was the fundamental task of the State to improve people's lives (i.e., protect them against the negative effects of passive smoking). The Court gave more weight to the collectivist notion that it was morally appropriate for the State to protect the non-smoking majority by minimising the dangers of tobacco smoke. The legislator had to act against smokers' individual decisions and preferences, as non-smokers could not protect themselves effectively.<sup>21</sup> The government could treat one group of people differently from another group owing to a good reason – the betterment of public health – and it enjoyed more room for discretion in terms of a common will (unless tobacco control regulations were irrational or arbitrary).

Nevertheless, the Court also identified an individualistic threshold for activist smoke-and-alcohol-free legislation, in that the legislator shall not forbid the usage of alcohol or the abuse of drugs under circumstances where users or abusers threatened only their own, and nobody else's, health and life. Hence, the Court confirmed most of the tobacco control regulations and abolished only minor parts of the Anti-Smoking Bill that had contravened equal protection claims, because said provisions had not been enacted to further the governmental goal of protecting public or common health.

## 5. INTERNATIONAL AGREEMENTS IN SOCIAL SECURITY

The international bilateral agreement on welfare security signed between Tunisia and the Czech Republic on 20 November 2015 came into force on 1 December 2017. The agreement was published in the Collection of International Agreements under No. 9/2018 Coll. and it is the very first international agreement on social security between the two countries.<sup>22</sup> The implementation agreement that shall facilitate the application of the bilateral welfare security agreement was published under subsequent No. 10/2018 Coll.

The bilateral welfare security agreement applies when double super coverage occurs – that is, when an employee working in the same job in both countries would otherwise have to pay separate (or equivalent) contributions in each country. It applies to Tunisian and Czech social security laws. Employees and freelancers are covered by the same principles as known in the EU Regulations on Social Security Coordination.

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<sup>21</sup> Judgment docket file No. Pl.ÚS 7/17.

<sup>22</sup> Both countries were close to agreeing on an international agreement on social security in the 1960s, but political hostilities caused a lack of consensus in the end.

## 6. LIST OF IMPORTANT ACTS

Acts are quoted under their initial number and year of issue in the Collection of Laws as it is common by Czech legal standards.

Bilateral international agreement on social security concluded between Tunisia and the Czech Republic published under No. 9/2018 Coll.

Public Employment Policy

Act No. 327/2017 Coll., which amends Act No. 435/2004 Sb. Coll. on employment, as amended, and Act No. 251/2005 Coll., on labour inspection as amended by Act No. 93/2017 Coll.

Pension Insurance, Health Insurance

Act No. 203/2017 Coll., amending Act No. 155/1995 Coll., on Pension Insurance, as amended

Sick Leave Insurance

Act No. 148/2017 Coll. (Paternity Pay) which amends Act No. 187/2006 Coll., on sick leave insurance and related laws

State Social Support

Act No. 200/2017 Coll. which amends Act No. 117/1995 Coll., on State social support and related laws

## 7. SELECTION OF IMPORTANT PUBLICATIONS

### 7.1. Books

GREGOROVÁ, Zdeňka, Milan GALVAS, Jana KOMENDOVÁ, Jaroslav STRÁNSKÝ a Jitka ČERNÁ. Social Security Law of the Czech Republic and the European Union (in Czech *Právo sociálního zabezpečení České republiky a Evropské unie*). 1<sup>st</sup> edition. Brno: Masarykova univerzita, 2018. Edice Učebnice Právnické fakulty MU, volume No. 538. ISBN 978-80-210-8842-9

HORECKÝ, Jan. Social Protection of Employees in Europe (in Czech *Sociální ochrana zaměstnanců v Evropě*). Prague: Českomoravská konfederace odborových svazů, 2017. P. 31. ISBN 978-80-86809-22-9.

KOLDINSKÁ, Kristina, LANG, Roman. IEL Social Security Law #109 – Czech Republic, Kluwer International 2018, In International Encyclopaedia of Laws: Social Security Law, edited by Willy van Eeckhoutte. Alphen aan den Rijn

KOLDINSKÁ, Kristina, ŠTEFKO, Martin. The Czech Republic: No Promised Land for Carers and Persons Dependent on Long-Term Care, in: Becker, Ulrich/Reinhard, Hans-Joachim (eds). Long-Term Care in Europe. A Juridical Approach, Springer Publishing, Cham 2018

KOLDINSKÁ, Kristina, TRÖSTER, Petr. Social Security Law (in Czech *Právo sociálního zabezpečení*), C.H. Beck, Prague 2018

SELUCKÁ, Markéta, Martina GROCHOVÁ and Jana KOMENDOVÁ, Czech Republic. In Marie Mercat-Bruns, David B. Oppenheimer, Cady Sartorius. Comparative Perspectives on the Enforcement and Effectiveness of Anti-Discrimination Law. Challenges and Innovative Tools. Switzerland: Springer International Publishing AG, 2018. pp. 155-176, 22 s. *Ius Comparatum – Global Studies in Comparative Law*. ISBN 978-3-319-90067-4.

## 7.2. Articles

KOLDINSKÁ, Kristina. Social Law – Public Law in a European Context? *The Lawyer Quarterly – International Journal for Legal Research* (in print)

ŠTANGOVÁ, Věra. The Relationship between Social Security Law and Labour Law. *The Lawyer Quarterly* 2017, No. 4, pp. 255-268

## 7.3. Other Sources

Government of the Czech Republic: National Reform Programme of the Czech Republic 2018, available in English at <https://www.vlada.cz/assets/evropske-zalezitosti/aktualne/NPR-2018--EN.pdf>

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