

Young Scholars Session – European Regional Congress

The Czech Republic's Report

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I. Introduction

After the Czech economy showed occasional signs of growth in 2013, analysts expect a more sustained recovery in current year, driven mostly by improved exports. Some predict gross domestic product will grow more than 2 percent in 2014, with the weaker Czech crown helping to increase demand in key export markets, with the automotive industry at the lead. Another factor that could help increase growth is the pledge by the Czech Republic's Prime Minister, Bohuslav Sobotka, that the country will put aside the austerity policies of the former government of Petr Nečas, who left office in July 2013. Sobotka, who heads the Social Democrats (in Czech abbreviated as "ČSSD"), has represented to allow a deficit of up to 3 percent annually, in keeping with EU rules. Cuts in sales' taxes, among other measures, will be introduced to help stimulate spending.

In last Parliament's election, which was held in October 2013, experienced the right (in particular the historically dominant Civic Democrats, in Czech abbreviated as "ODS"), huge defeat, as many of its voters switched to ANO, which purported to be pro-business. The Social Democrats, which had expected a far stronger victory, took only 21% of the vote, followed by ANO with 19% and the Communists with 15%. The right-of-centre TOP 09 and the ODS got 12% and 8% respectively. Usvit (Dawn), a party some term proto-fascist, scored 7%. So did the Christian Democrats. The Social Democrats had hoped to secure at least 70 seats in the 200-seat chamber of deputies, but instead won just 50. After weeks of negotiation, a coalition was forged from Social Democrats, ANO and the Christian Democrats.

As far as democracy and politic dialogue is concerned, we have to conclude that the Czech politic scene is still not able to maintain a constructive dialogue no matter what is at stake. Let us have one example. The former government, lead by Necas as a prime minister, shaped the recent pension reform without a consensus reached across the parliamentary political parties. As a result, its opposition had repeatedly informed the government, pension insurance companies as well as the broad public that, after a victory in the parliamentary elections, it intends to abolish the pension savings system. Now, the opposition became the government and seeks ways how to reverse the current supplementary retirement insurance, much to public's disappointment. Regardless what a reform law will be prepared, public has lost confidence and it will take years to regain it back.

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II. What are the most significant changes that the legal system of your country has undergone since the start of the global economic crisis (2008)

It is difficult to select few important legal changes in Czech labour law from many which happened from 2008 until June 2014. Nevertheless, seeing from labour law perspective, a tendency towards increased flexibility ended with the entrance of the new Czech Civil Code into effect stays at the top of the charts (further analysed as part a) of this report). To the contrary, in collective employment law two legal changes will be described that demonstrate rather restrictive approach towards collective rights (part b) of this report). In social security law, the Czech Republic has attempted to launch austerity programmes in pension insurance law and employment (part c) of this report).

a) Employment Contracts Law

One of the basic principles that the new Labour Code of 2006 should had been founded upon was the principle of freedom of contract. Under this rule both the employer and employee were permitted to define their mutual rights and duties in the employment relationship in accordance with their needs to a much larger extent than before. The principle of 'anything that is not expressly forbidden by the law is permitted' was set forth in the Constitution and in Article 2, paragraphs 2 and 3 of the Charter.² However, the final and approved version of the respective sections of the Labour Code did not satisfy anybody.³ It was too complicated and ambiguous. This was because the legislature tried to guarantee the same level of protection as in the Labour Code of 1965 and, at the same time, it wanted to widen the room to manoeuvre for both parties.

Subsequently, due to a complaint, the principle of the freedom of contract was examined by the Constitutional Court of the Czech Republic. The Constitutional Court profoundly simplified the principle by its intervention in 2008. In reaction on this decision, the legislation has prepared the Act no. 365/2011 Coll. The largest Labour Code amendment that has been adopted since the Code has come into effect. It introduced more than 300 changes. One of them was the fresh approach to the relation between the Czech Civil Law and Labour Law. The last important change occurred on 1 January 2014 when the new Civil Code came into force. The Civil Code brings new ethos of freedom that constitutes a novel experience for Labour Law regulations. Although it has facilitated a larger flexibility of labor law relations, the Labour Code still remains very protective of employees due to rigidity even enhanced by the ancillary act, which was designed to react on the entry into effect of the Civil Code.

2. The Charter of Fundamental Rights and Freedoms was adopted as an appendix of statute no. 23/1991 Coll. After the extraordinary situation of 1992, when the Charter's predecessor was abolished, the Charter was re-established on 16 December 1992 as a component of the Czech constitutional order (Manifestation no. 2/1993 Coll.).

3. The provisions concerning the freedom of contract were set forth in Sections 2 and 363 of the Labour Code of 2006. Parties were not to violate or depart from the Labour Code's regulation when the provisions were declared as overriding (mandatory) rules. The Labour Code of 2006 set forth the following categories of rules as mandatory: provisions enumerated in Section 363, paragraph 2; definitions of parties of labour law relations (e.g. employer, employee or trade unions); provisions referring to the provisions of the Civil Code (the delegation principle); regulations regarding remedies; provisions in which the law is explicitly written; and provisions from which the

We can conclude that the long-term desire to reduce employees' protection just entered a new stage which does not appear to be the last one.

b) Trade Union Law and Collective Bargaining

To start with, Czech collective employment law remains to be pretty far from the Western tradition. There are two main reasons for it. On one hand, thanks to Communistic regime, trade union had lost credit; on the other legal practitioners, educated in different legal culture, slowly regain skills in a creative collective bargaining. Among many changes, especially the preparation of the new Act on Strike in 2012 has to be mentioned. In the Czech Republic, the right to strike is constitutionally protected and according to the current legislation, it applies to virtually all people without any difference and in the same scope (with the exception of judges, attorneys and members of armed forces as well as security corps). The Charter of Fundamental Rights and Freedoms (which basically has the weight of a Constitutional Act) predicts the establishment of a more detailed legal regulation, but such a thing never occurred. A partial regulation which still has hardly ever been used is in the Act on Collective Bargaining (inspired by a rich Dutch tradition) that considers a strike as an ultimate means in a collective agreement dispute. The government decided to change this situation, but it reached its decision only after severe anti-governmental appraisals which enables the opposition to claim that the proposed legislation finally only aims at limiting as far as possible the right to strike for the protection of one's economic and political rights.

Regrettably, the day-to-day application of the new Czech Civil Code has revealed a number of shortcomings practitioners find difficult to face. Most serious obstacles in the Civil Code's bright future in labour law seems to be doubts connected with trade unions legal personality. The Civil Code spells out that a trade union is a society (in Czech "spolek"). But trade unions find it excruciating. The main reason given for their level of contempt for new regulations on societies is a sincere restriction to their room of manoeuvre which they even consider to be violating respective ILO conventions. In fact, the Civil Code and supplementary legislation have brought many duties for societies. But relevant Civil Code's regulations shall apply only if it is appropriate in regard to international obligations of the Czech Republic. Nevertheless, it is true that the clear border line between applicable and non-applicable regulations will be established by case law in next 15 odd years what make not only trade union's legal position in collective bargaining and other negotiations highly uncertain.

c) Social security law (pension systems, protection against unemployment, welfare to work)?

With the increasing unemployment that surpassed the 8 % level in 2013, the fight against unemployment⁴ has become a more and more current topic in last six years. For example, a new appointed Ministry of Labour and Social

⁴ Legislation on employment, including unemployment benefit, which means legal regulation of relationships originating when the citizen exercises his right to gain the necessities of life by performance of work, is deemed to be part of labour law in the Czech Republic. This is a traditional conception in the Czech Republic but it cannot be ignored that in the light of 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 the light of both the

Affairs presented in 2013 a seven issue plan of fight against unemployment, which is supposed to cost a symbolic amount of CZK 7 billion. The support for young people and graduates/school leavers as well as a broader range of work for a limited period of time, retraining schemes, help for municipalities and NGOs, the transgression from dependent work into the entrepreneurial sphere and a simpler reception of European program financial support are meant to play a key role.⁵

Oddly enough, the novel emphasis on introducing pro-active measures has clashed with developments of security provided to job applicants in the field of active and passive employment policy. In the Constitutional Court's case of 27 November 2012, file number Pl. ÚS 1/12 were questioned among other issues two highly important: a new law on public services and a duty of health care providers to apply for a new authorization to be allowed conduct their activity after 2015. The new law on public service extended the scope of public service to persons being listed in the register of job seekers longer than two months. If chosen by a regional branch of the Labour Office, said job-seekers had to perform public service unless there was a serious reason against. Provided selected job-seekers did not comply they were taken off the register for a period of at least six months. The Constitutional Court found such regulations violating the principle of equality (too much wide discretion for the Labour Office in selection from registered job-seekers), the right to fair compensation (the court considers public service performed by chosen job-seekers to be dependent work; job-seekers were no eligible to any sort of compensation for public service done) and the right to appropriate material security during unemployment (no evidence of improved social position due to the performance of public service). Therefore, respective regulations were quashed by the Constitutional Court.

On top of many changes in the Czech pension law, there is a pending reform of supplementary retirement insurance systems. It is the second pension reform phase that began in 2009. In order to finalize the whole process, a third phase were envisaged (the chance for an opt-out of the compulsory system on a larger scale). In contrast to the government's expectations, the public rather has neglected the new pension savings system. According to data from July 2013, only a small percentage decided to participate in the system of additional pension saving program (on 23.7.2013, the overall number was 78.5006). Furthermore, this number which is anyway low, is divided between 10 pension companies, which creates a product that is economically not self-sufficient.⁷ In addition, the number of participants is not expected to rise too rapidly is the absence of a consensus across the parliamentary political parties regarding the specific shape of the pension reform. The second reason for apparent failure of the reform is the mass participation on the supplementary pension insurance scheme that has been partially amended and partially terminated by the reform. In a 10mio inhabitant country, almost fifty percent do participate in this system.⁸

light of rules of procedure (for example in proceedings related to disqualification from the job seeker register an administrative procedure applies).

⁵ For further information, see: <http://www.financninoviny.cz/zpravy/mpsv-chce-snizit-nezamestnanost-predstavilo-sedmibodovy-plan/914150> (cit.: 22.4.2013).

⁶ See: <http://www.finance.cz/zpravy/finance/394624-do-2-pilire-penzijniho-systemu-vstoupilo-za-pul-roku-78-500-lidi/> (Cit.: 14.9.2013).

⁷ The regulation of § 30 of the Pension saving act defines that the number of participants in pension funds operated by the pension companies have to reach at least 50,000 participants within 24 months from the date on which the permission to create a pension fund is granted. You can look up the number of participants at individual pension instance companies on:

Almost the same pattern can be seen in the health care insurance. What previous central and right wing governments enacted and the Constitutional Court abolished only partially (decision on 20 June 2013, file number Pl. ÚS 36/11 quashed regulatory fees for inpatient care, including inpatient therapeutic-rehabilitation spa care, in an inpatient care medical facility of a healthcare provider)⁹ the opposition is about to annul. In accordance with its election promises, regulatory fees (co-payments) paid for visiting a doctor or an emergency room and for a prescription shall be revoked by the end of this year. Nevertheless, there is one difference. The reform of supplementary retirement insurance scheme does not endanger the system of protection against aging as a whole. To the contrary, the annulment of regulatory fees means the closure of another additional source of income for health care providers (almost one year ago, the Constitutional Court quashed payments for health care above standard stating that the funds of public health insurance must fully cover quality, full-value, and effective health care as elementary, standard care.

2) What role has the input from the international and supranational authorities (ILO, IMF, European Union, Council of Europe, Eurasian Customs Union, etc.) played in the elaboration of these reform measures?

International and supranational authorities play extremely important role in the preservation of Czech welfare state. Generally speaking, the Czech Republic respects it's international obligations. ILO's international conventions, other international agreements covenants and EU rules have proven themselves to be very effective obstacle in Czech's desire to lessen solidarity throughout its social security schemes. This effect can be identified in all two above described areas. For one, employment rights guaranteed by European international standards and the extent of harmonisation have saved Czech labour law during the time of civil law recodification. For another thing, although the Czech neoliberalism in collective employment law was stopped by the constitutionally enshrined right to strike it must be pointed out that respective constitutional regulations mirror international standards.

Astonishingly, Czech courts developed another way how to profit from supranational authorities. By its decision of 31 January 2012, file no. Pl. ÚS 5/12 the Constitutional Court ended a long-lasting clash between its case-law and the Supreme Administrative Court's. The issue at stake was about the evaluation of insurance periods completed on Slovak soil during the common Czech and Slovak state (before the end of 1992). Contrary to the Constitutional Court's opinion, the Supreme Administrative Court had ruled that employment periods completed in Slovakia shall not be considered as Czech periods of pension insurance. Surprisingly enough, the dispute was taken to the EU Court of Justice by the Supreme Administrative Court which contested the Constitutional Court's opinion. Against most expectations, the Constitutional Court upheld its case law (expressed for example, in decisions file no. Pl. ÚS 50/04 and Pl. ÚS 19/08). Its argumentation recalled the German Constitutional Court's decision in a case abbreviated as "Solange". The Constitutional Court stated: *"... delegation of the powers of national bodies cannot continue in a case where they exercise them beyond the scope of the powers of the European Union. In these cases, community acts would be inapplicable in the Czech Republic, and*

⁹ The respective decision is also available in English here <http://www.uskrs.cz/rozhodnuti/97-4-2013-22418-11-1-5280-580-20-1-0-18-11044-1476>

the Czech national bodies would again take over the relevant powers.” Therefore, it continues to consider periods of employment collected on Slovak’s soil but during the common Czechoslovak state to be acquired in the home state. The Constitutional Court rejected thoughts expressed in the CJEU’s decision of 22 June 2011, C-399/09, and considered the CJEU’s decision itself as inapplicable.

III. Conclusion

It is a generally acknowledged fact that the European systems of social protection are presently experiencing severe financial problems. Although Europe is not alone in having an ageing population, Europe will be the only continent with a negative population growth rate over the next 50 years and as a result will have the highest median age. This is also true for the Czech Republic, where (despite local variations) both aging of population¹⁰ and shrinking of working-age population¹¹ together with underlying trends of higher life expectancy¹² and low birth rates may easily result in dynamics that weaken social cohesion in the society.¹³

To ensure prosperity and solidarity within Europe and across the society and generations, both Europe and the Czech Republic need in the future higher employment, greater productivity and enhanced social understanding. There are many challenges in achieving that. Ultimately, current social situation in the Czech Republic cannot be described as stable. It is changing, but not towards equality and social cohesion. According to official data, 10 % of population is endangered by poverty; up to 100.000 individuals are homeless. Apparently, the process of social stratification is continuing. Once almost equal in every aspect of social life, Czech society follows western democracies and is still searching for a new balance.

¹⁰ As far as the original Czech inhabitants are concerned, the growth of their number stopped in 1994, and from 1995 it has been dropping and it will also continue in this direction. The number of children born alive has been decreasing since 1948 (22.2) continuously, in 1995 the figure was 9.3, in 2003 it was 9.2, but in 2011 it became 10.2. The low infant mortality as well as the decreasing abortion rate positively influences this number. On the other hand, the death rate shows a much lesser volatility – both in 1948 and in 1995 this index was 11.4, whereas in 2011, it reached 10.2. The value of this index is influenced by the average life expectancy, but also the proportion which the respective age group covers in the critical age spectrum. The mutual comparison of both above-mentioned indices leads to the natural growth or decrease index. In 1948, the natural growth was 10.8 and has been almost regularly decreasing until 1995 when the first decrease occurred “– 2,1”. The decrease stopped in 1996 (-2,2) and since then, the natural growth temporarily grew to “0,2” in 2011. In 2008, the natural growth of the number of citizens rose by 1.8 ths.

¹¹ The age group of 0-14 years is continuously decreasing.

¹² During the period beginning after WW2 and ending in 1989, average life expectancy of Czech men was about 67 years, and the average life expectancy of women about 72 years. During this period, the number of this index was stagnating. Only in the last years of the previous century, a significant growth occurred. In 1994 average life expectancy of men ranged at about 69,5 years and the