

RESILIO

Country Report

Czech Republic



Vít Dostál

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Author: Vít Dostál

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1. Introduction

Despite the populists holding power in the Czech Republic in the past years – President Miloš Zeman from 2013 to 2023 and, more importantly, Prime Minister Andrej Babiš from 2017 to 2021 – the quality of democracy and the rule of law remains quite solid. The post-1989 democratic development marked by the accessions to NATO (1999) and the EU (2004) has never been dramatically reversed. Changes in the executive power have been regular, the party system is semi-stable, the constitution has not been changed significantly since its introduction in 1993, the judiciary enjoys broad independence, civil society is strong, and there is media plurality.

Of course, Czechia presents only a partially rosy picture, and problems with institutional, economic, and social resilience can be identified. Yet compared to the democratic backslidings and attacks on the principles of the rule of law in other Central and Eastern European countries, Czechia represents an example of a successful political transformation and a standard EU member state.

Various international indexes and reports also confirm this. The Variety of Democracies Institute has characterised the Czech Republic as a liberal democracy since 1990, with only two years of exception (2020 and 2021) when it was considered an electoral democracy. In 2022, the Czech Republic has returned to the family of liberal democracies, and has also been showcased among the top democratizing countries in the past three years.¹

The Freedom House Nations in Transit gives the Czech Republic a democracy score of 5.54 out of 7, above the average and the median in its geographical category of Central and Eastern Europe (average 5.09; median 5.49). Despite some decline in the past ten years, with the highest rate of 5.86 in 2013, Czechia has consistently scored above the average and the median.² The 2023 Freedom in the World index considers the Czech Republic a ‘free’ country with a score of 92 out of 100.³

The Bertelsmann Transformation Index considers the Czech Republic a democracy in consolidation with a highly advanced transformation and economy, excellent governance performance, and a good governance index.⁴ On the one hand, international comparisons show that the Czech Republic maintains excellent results compared to countries on a similar starting line in 1989. Only some of the Baltic States and possibly Slovenia are better. As mentioned before, even the rule of Andrej Babiš and Miloš Zeman, coupled with the COVID-19 pandemic, which made it possible to use extraordinary measures to consolidate power, did not threaten democracy and the rule of law. This paper will explore this state of affairs through critical systematic, subsidiary, and contextual factors.

However, the question also arises of why the current governing coalition that emerged from the 2021 elections did not bring about further significant improvements to the system when it had campaigned under the slogan of symbolically 'heading west.' The main reason is Russia's aggression against Ukraine, which has brought further eco-

economic problems and made the post-COVID economic recovery more difficult, contributing to the frustration of a part of society. Thus, this study will note the economic difficulties arising from Russia's aggression against Ukraine as a crisis that has affected democratic resilience. It has not brought about an immediate deterioration in the rule of law. But it has failed to consolidate the quality of prominent institutions and, above all, has complicated the contextual dimension of the country's resilience of the rule of law.

2. Analysis of the country case along the RESILIO model

2.1. Most important systemic factor: constitutional resilience

The stability of Czech democracy owes much of its strong condition to a well-written constitution. The Constitution provides sufficient protection against destabilising attempts. It is fundamentally strong, protects human rights, and is resilient to the changing political environment. It also creates an environment in which the executive, legislature, and judiciary are complementary and separate.

Certain aspects of the Czech constitutional system have proved to be very beneficial. The most important one is the existence of the upper house of parliament, the Senate. Unlike in many other countries, one-third of the Czech Senate is always elected every two years. Senate elections are not held simultaneously with parliamentary or presidential elections, but are carried out at the same time as local and regional elections. This constellation creates an environment in which the balance of power in the Senate usually differs from that in the Chamber of Deputies.

If the Senate rejects a bill, the Chamber can override it by an absolute majority. However, the Senate's consent is necessary for constitutional laws or international treaties. This makes the Senate the guarantee of the democratic direction of the state in case one (anti-democratic) force dominates the Chamber and thus the government. However, the Senate cannot prevent a Chamber majority from governing if it has a majority for its policies in the Lower House.

As in the legislative sphere, certain powers are shared between the President and the Government in the executive sphere.

Since 2013, the President of the Czech Republic has been

directly elected by the citizens. Previously, he was selected by the parliament in a joint session of the Chamber of Deputies and the Senate. The direct election gave the president a symbolically stronger mandate, and the first directly elected president - Miloš Zeman - tested the limits of the Constitution in both his periods in office. In particular, Zeman interpreted the constitutional provision that the president appoints ministers to mean that the president 'may' appoint ministers. He refused to nominate some nominees. But these were always political disputes which the government resolved politically, and were never subject to review by the Constitutional Court. Therefore, it is unclear what the legal interpretation of this clause of the Constitution would be, and there remains some ambiguity about this power.

Another shared area is foreign policy. While the government sets foreign policy, the President represents the country externally under the Constitution. At the same time, the President appoints ambassadors and thus influences foreign policy personnel. Agreement between the government and the president is essential if the filling of ambassadorial posts is not to be blocked. Of course, the need for interplay in foreign policy poses substantial challenges, and the relationship between the government and the president has not always been smooth. But it does provide some balance if the government or president decides to pursue a foreign policy contrary to the country's democratic direction.

Last, the president and the government are complementary in designing economic policy. The government has, of course, a fundamental competence in this area. However, the President independently appoints the board members of the Czech National Bank, whose profile can thus influence the nature of monetary policy.

The constitutional order also strengthens the independence of the judiciary, and thus its resilience. Judges are nominated by the Minister of Justice and appointed by the President. The nature of the selection of constitutional judges is unique: they are appointed by the President with the consent of the Senate. Therefore, the Chamber of Deputies and the government do not influence the appointment of representatives in the institution that protects constitutionalism.

Last but not least, the Senate is involved in selecting the Ombudsman, proposing two candidates to the Chamber of Deputies, from which the lower house chooses one.

This also ensures that there is a sharing of competencies, whereby the executive branch is not being involved in the selection process, and neither chamber of Parliament makes independent decisions.

The above-mentioned checks and balances bring stability to the rule of law and secure prominent institutions against systemic erosion. It is doubtful that a single political force would gain a (constitutional) majority in the Chamber of Deputies and the Senate and have a popularly elected president from among its ranks. A fundamental erosion of the rule of law on a systemic level is thus difficult to imagine.

However, the weakest point in the Czech Republic's systemic factors is the state of institutional resilience. There have also been improvements in several indicators in recent years. A law on the civil service was adopted, which separated political and civil servant positions in ministries and clarified the career order of civil servants. Anti-corruption legislation has been tightened again, thanks to the transposition of the European Directive on the protection of whistle-blowers. Major corruption cases occur at the local level, but not at the government level.

The main challenge is the prestige of the civil service and the reward opportunities it can offer, especially for highly qualified positions. Due to high inflation, civil servants' salaries are not rising in real terms. Maintaining a well-functioning public administration will thus be a challenge in the future.⁵ Here, the Czech Republic cannot rely solely on a well-configured system, since appropriate investment in human resources is necessary.

2.2. Most important subsidiary factor: media resilience

Media pluralism is the essential subsidiary factor that enables the perception and implementation of the rule of law in Czech society. This section focuses on public media which, thanks to their tradition, resistance to external influences, and quality, are an essential guarantee of impartial information in the Czech Republic. Moreover, the systemic steps taken in recent years will strengthen the protection of public service media against disruptive actions. Last, this paper addresses media ownership, in which the lack of transparency or concentration in the hands of leading economic players does not constitute an ideal situation. Yet, the media landscape remains relatively open and pluralistic.

The public media in the Czech Republic are Czech Television, Czech Radio, and the Czech Press Agency. All these institutions are established by law and are governed by a code. For example, the Code of Czech Television clearly states that: 'Czech Television contributes to creating a space of freedom of speech, thought, and creation in which democracy can grow. It informs, provides critical reflection on events, educates and entertains in an atmosphere of respect for man, his work and all forms of existence.'⁶ Public news institutions are thus tasked with contributing directly to democratic resilience.

Their ability to resist external political pressures is crucial in this regard. The Czech Republic has experienced the attempted politicisation of Czech Television between 2000 and 2001, when the then Council of Czech Television installed management associated with the Civic Democratic Party (ODS). Vehement opposition from television staff and the public eventually led to the revocation of this move. The Law on Czech Television was amended, which led to a strengthening of its independence. Above all, politicians have since then not allowed themselves to interfere more visibly in its operation.

The Czech Television Council remains the critical body for overseeing the functioning of the television, including the possibility of appointing or dismissing its director. Its members are selected by the Chamber of Deputies. Although Council members are supposed to be competent to hold this position without party affiliation, it is clear that political parties have sought to select nominees for the Council whom they trusted and who could implement their agenda.

While this system currently remains in place, there has been a change whereby the Senate will select part of the public media councils of the Czech Television and the Czech Radio. Everything will, therefore, no longer be in the hands of the Chamber of Deputies. The results of one election will not be able to determine the composition of the Council, although the Chamber of Deputies still selects two-thirds of its composition.

A serious problem that the government is now addressing is the underfunding of public media. While the Czech Press Agency finances itself through its activities, radio and television are funded by advertising and licence fees, paid by every holder of a television or radio. However, their amount set by law has not changed since the mid-2000s. Therefore, the current fees are not in line with infla-

tion: in real terms, public service media have less and less money. A new law that should expand the possibilities of collecting and increasing the fee is being discussed for early 2024. Although some anti-corruption organizations⁷ have criticized it for its lack of a long-term funding model, it is an important step that may help public service television to function better, at least in part. The current government coalition has included this pledge in its platform.

The map of private media in the Czech Republic shows that outlets are not concentrated in one group of owners with specific political profiles. However, the most extensive media houses are controlled by big business players.⁸ Until recently, they included the former prime minister and now opposition leader, Andrej Babiš. He owned the MAFRA publishing house through his trust fund, but sold his stake after adopting the conflict of interest law amendment that made this model legally questionable.

Still, other media outlets remain in the hands of other moguls. However, no flagrant interference in the political environment can be observed. Given many media outlets' low profitability or loss-making nature, it is difficult to conclude that they were purely motivated by business interests.

Regarding civic resilience, Czechs do not trust political parties and movements very much. On the contrary, they trust the police, the army, banks, and the courts.⁹ Voter turnout is highest for the Chamber of Deputies and presidential elections. On the other hand, turnout is low for the second round of Senate elections or by-elections. The Czech Republic has a well-organized civil society which, although criticized by many politicians for its alleged political agenda, does not face any immediate systemic threat.

Elections in the Czech Republic are of a very high quality. Electoral competition is fair and processes are transparent. However, it is not straightforward for Czech citizens to vote from abroad, which the current government seeks to simplify by amending the law. The party system is semi-stable. Rather than a right-left or liberal-conservative polarisation, there is substantial polarisation between populist and non-populist political entities.

2.3. Most important contextual factor: resilience of public discourse

Although polarisation in political debate was exacerbated

by the COVID-19, security, and economic crises spilling over into broader society, it cannot be said that civility has completely disappeared from public debate. Political discussions are conducted without personal insults and threats, although they are sometimes very impulsive. Political competition takes place within a stable framework.

Mainstream politicians accept defeat in elections without releasing conspiracy narratives into society. The political environment is competitive, and there are no attempts to erase certain currents of opinion.

In particular, there is a sharpening of protest movements that mobilized at the same time as the COVID-19 pandemic and which often started profiling themselves in an anti-Ukrainian way since February 2022. While their support is not high, they do provide a backdrop for conspiracy theories.

In addition to the impact of inflation, high energy prices, and the Czech Republic's weak economic recovery, there is an intense fear of the future in some parts of society. To a large extent, this state of affairs is blamed on the current government, which has the lowest confidence of any government since the Czech Republic was founded in 1993. According to dissatisfied citizens, the government is mainly to blame, not the democratic system.

Actors who would like to dismantle the current democratic system and the rule of law exist in the Czech Republic. The current economic and security instability is playing into their hands, creating fears of the future among many Czech citizens. However, for now, these actors are salvos, do not have sufficient political support, and cannot unite and represent the fringes of the political spectrum.

The established opposition populist parties see them as their competition and do not want to ally with them. In this respect, it can be said that much of the criticism of the current government is absorbed into support for the parliamentary systemic (but populist) opposition. Radical ideologies and dangerous communication practices are being relegated from the mainstream to the margins of public debate. However, it is precisely the increasing economic inequalities to which the government has failed to respond that increase the risk of normalizing these currents.

3. Impact of crises on the rule of law: COVID-19, Russian war, and the economic troubles

During the COVID-19 pandemic, there was no disruption of the rule of law in the Czech Republic. Systemic factors remained consistent, and supportive factors helped to overcome the crisis. Lockdowns, of course, hurt economic and social resilience. Economic prosperity was dampened, societal inequalities deepened, and society became polarised on a new issue that had not existed until then: attitudes towards the pandemic and measures to counter its spread.

The COVID-19 pandemic was immediately followed by the Russian full-scale invasion of Ukraine which, in addition to security concerns, also brought additional economic anxieties. High inflation rates have continued, which particularly affect the most vulnerable and poorest in society. Energy prices have become a significant problem for some households. Although Czech society as a whole is in favour of helping Ukraine, and in particular war refugees (of whom the Czech Republic has taken in the most per capita in the EU), anti-Ukrainian sentiment has also emerged.

When it took office in 2021, the current government set out to implement economic reforms, primarily to improve public finances. Therefore, its main aim was not to reduce inequalities or try to achieve greater inclusion in society but to balance the state accounts. As a result, the effect on reducing inequalities will not be significant, according to some economists and sociologists.¹⁰

The above-mentioned crises have not posed a danger to systemic or subsidiary factors, which remained more or less unaffected. However, these crises have had a substantial impact on the contextual dimension, which may become key in the event of a populist return to power. It is unclear whether a government formed by the populist Action of Dissatisfied Citizens (ANO) and right-wing Freedom and Direct Democracy (SPD) would attempt to undermine further elements of the subsidiary dimension of the rule of law, since the contextual dimension has been so strongly eroded due to the crises.

4. Conclusion

The Czech Republic is an example of a consolidated democracy with a relatively good rule of law. In comparison with its neighbours in Central and Eastern Europe, Czechia shows a stable and developing situation without significant

fluctuations. It is, therefore, appropriate to ask what factors have contributed to this. This case study has attempted to identify them. In the case of systemic resilience, it was the constitutional setting. The existence of a well-designed second chamber of parliament that has specific powers over certain institutions necessary to protect the rule of law can be singled out as a prominent factor.

A vital subsidiary factor is media resilience, in which public media plays a key role. The current ruling coalition's efforts to strengthen their independence are evident. Private media are also well diversified, but their ownership structure is not ideal, when the most considerable influence on the Czech media market is exerted by large economic players whose profits derive from other, often state-dependent sectors such as energy.

In some areas, the Czech Republic is underperforming. The functioning of the public administration is somewhat hindered by the lower salary conditions for employees. The Czech Republic has not been able to return to the economic performance of pre-Covid years. Economic inequality and a sense of abandonment by the establishment drive certain parts of society into isolation and radicalization.

Contextual factors are thus the main challenge for the Czech Republic; systemic factors are relatively secure and therefore difficult to disrupt. Subsidiary factors are in a similar position, while the resilience of the public media, for example, is being further strengthened. However, worrying economic developments that pave the way for populist electoral victories may contain the seeds of future rule of law problems.

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About the author

Vít Dostál is the Executive Director of the Association for International Affairs (AMO). He focuses on Czech foreign and European policy, Central European cooperation, and Polish foreign and domestic policy.

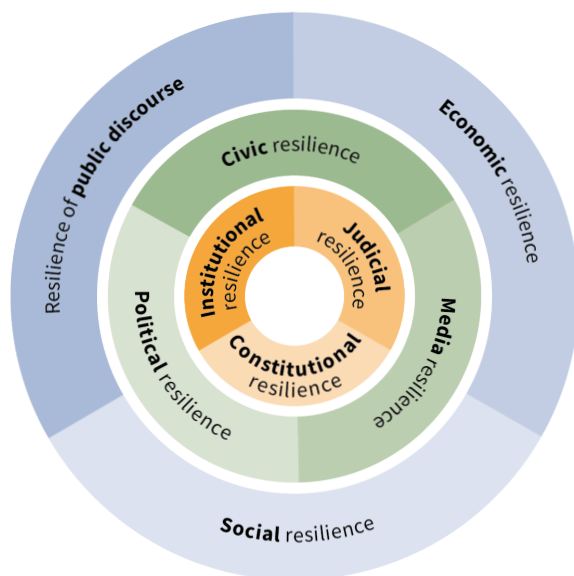
About the project

RESILIO aims to identify institutional and societal factors that make the rule of law more resilient, thus adding a constructive contribution to academic and policy debates. It draws on a “thick” definition of the rule of law, understood as closely connected to democracy and fundamental rights. The resilience of the rule of law means that the rule of law can experience hazardous events or incremental threats without losing its core function, structure and purpose.

About the paper

This paper is part of the **RESILIO Country Report series**. It is a collection of compact analyses that assess the source of rule of law resilience in each EU member state by examining the most prominent resilience factors, using the analytical framework of the RESILIO model.

RESILIENCE FACTORS



RESILIO offers a multi-layered model of the rule of law resilience. Systemic dimension (orange) reflects upon the resilience of the legal setup; subsidiary dimension (green) looks at the phenomena and tendencies present in societies as possible facilitators; and contextual dimension (blue) analyses the broader habitat, determined by structural and systemic variables like economic growth, social cohesion, and general political climate. RESILIO also takes into account the horizontal effects of unpredicted and unprecedented crises that can affect all dimensions of rule of law resilience with different intensity.

While each factor is necessary for a resilient rule of law, they are only sufficient in combination.

The considerations in this paper are compatible with the developed conceptual model of the resilience of the rule of law. They focus on **social resilience** as a contextual factor strengthening the rule of law.

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For more information, visit the project website: www.iep-berlin.de/en/projects/future-of-european-integration/resilio/

