

## Introduction

Czechoslovakia was formed after World War I as a single state composed of the Czech and Slovak nations. The adoption of the 1920 Czechoslovak Constitution accompanied the nation's formation. After their seizure of power in 1948, the Communists adopted another constitution as a transitional measure.<sup>1</sup> It was eventually replaced by the Czechoslovak Constitution of 1960, which embodied the goals of Communist rule:<sup>2</sup> it declared the Communist Party to be the ruling party, proclaimed state ownership of both the production industries and the national economy, and contained communist slogans on the rights of work, leisure, health care, security in old age, and education. This constitution outlined a nominal government; all power remained with the Communist Party. The eventual creation of a federation in 1968 did nothing to diversify this concentrated power.<sup>3</sup> At that time, the state was reorganized as a federation of the Czech and the Slovak Republics, which together formed the Czechoslovak Republic. The Communist dictatorship, however, continued to retard any genuine constitutional activity.

After the 1989 demise of the hardline Communist regime, the new Czechoslovak government began applying the proper meanings to both the existing communist Constitution of 1960, and the Constitutional Law of the Czechoslovak Federation of 1968. The 1989 political change did not, however, remove Communist Party members from top government positions. They regrouped under the banners of newly formed political parties and continued to govern the country. Many of them, especially in Slovakia, exchanged their communist activism for nationalism. It is this upsurge of Slovak nationalism which caused the break-up of the Czechoslovak federation.

The newly-enacted Czech Constitution is based on the Czechoslovak Constitution of 1920.<sup>4</sup> The draftspeople of the new Czech Constitution considered the constitutions of other countries but, in the end, relied principally on the 1920 Czechoslovak Constitution. This predecessor constitution was modern and democratic. Its preamble was inspired by the preamble of the United States Constitution, and the

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1. Law of May 9, 1948, on the Constitution of the Czechoslovak Republic, No. 150, Collection of Laws.

2. Law of July 11, 1960, on the Constitution of the Czechoslovak Socialist Republic, No. 100, Collection of Laws.

3. Constitutional Law of October 27, 1968, on the Czechoslovak Federation, No. 143, Collection of Laws.

4. Law of February 29, 1920, Introducing the Constitution of the Czechoslovak Republic, No. 121, Collection of Laws.

body of the constitution defined the role of government in six areas: general provisions, the legislative, the executive, and the judicial powers, the rights and duties of citizens, and the protection of national, religious and racial minorities.

## **I. Comments on and Evaluation of the Constitution of the Czech Republic of 1992**

The Constitution of the Czech Republic<sup>5</sup> is a relatively short document. In its 113 articles, the draftspersons managed to embody all that a constitution ought to contain, yet avoided matters which are properly relegated to laws enacted under its authority. This makes it far superior to the lengthy constitutions of other nations.

The constitution follows the arrangement of subjects used in the Czechoslovak Constitution of 1920; namely, there are the general provisions, the legislative power, the executive power, and the judicial power. But while the 1920 Constitution directly addressed the rights and duties of citizens, and the protection of national, religious, and racial minorities, the present Constitution assigns these two topics to the appended Charter of Fundamental Rights and Freedoms, and also adds three new parts addressing the Supreme Control Office, the Czech National Bank, and territorial self-government.

### **A. The Legislative Power**

Although the legislative power provides for a Senate, the Senate has not yet been convened. At first it was assumed that the seats in the Senate could be filled by members of the defunct Chamber of Deputies of the federal parliament. This plan, however, did not materialize. Under the transitional provisions of the Constitution, which govern the matter, the function of the Senate is presently being exercised by the Chamber of Deputies. The lack of a Senate has not presented any problems; on the contrary, the country has not suffered for existing without it. This result strengthens the views of those who originally advocated a unicameral legislature.

Under the Constitution, the Senate does not have any truly independent function; it is merely a subsidiary of the Chamber of Deputies. For instance, the Senate can only delay, not stop, enactment of a measure for 30 days. It is excluded from consideration of the budget

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5. The Constitution is known in Czech as Ústavní zákon, and will be cited hereinafter as ÚST.ZÁK.ČR.

and approval of the government's financial management.<sup>6</sup> The Senate's most important function is to make decree-laws when the Chamber of Deputies is dissolved.<sup>7</sup> Under the prior Constitution,<sup>8</sup> this was done by the presidium of the Federal Assembly. Another function of the Senate is to prosecute the President for treason in the Constitutional Court.<sup>9</sup> The 1960 Constitution immunized the President, and the 1920 Constitution provided for his prosecution for treason in the Senate upon indictment by the Chamber of Deputies.<sup>10</sup> To adopt to unicameral practice, the present Constitution could be amended to provide for a permanent committee endowed with the decree-making power in the case of dissolution of the Chamber of Deputies. The Chamber of Deputies could prosecute the President in the Constitutional Court. There seems to be no fundamental reason for having a Senate except for the above, largely honorary purposes. Eventually, it is likely the Constitution will be amended so as to make the legislative branch unicameral. This amendment would save the state money which it needs for urgent tasks like environmental protection.

The President of the Republic, the Prime Minister, the governing coalition, and most other political parties agree that there is no need for the Senate, and that it should not have been embodied in the Constitution. They differ, however, on what should be done about it. The governing coalition of political parties, including the President and the ministers, feel that to remove it from the Constitution would cause serious problems. They feel the Senate and its functions are so intertwined with the constitution and the constitutional system that to take the Senate out of the system would necessitate a complete reworking of the Constitution.

Such a reworking might reopen the debate on many topics which were settled in the process of drafting the constitution. One rich topic is the electoral system: Should there be proportional representation or a simple majority system? The constitution embodies a compromise in that the House is elected by proportional representation and the Senate by majority.<sup>11</sup> Abolishing the Senate would remove the possibility of such a compromise. Possibly for these reasons, the governing coalition thinks the Senate should be given an opportunity to function despite the sentiment for its removal. But there are other

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6. ÚST.ZÁK.ČR art. 33(1)-(2).

7. *Id.*

8. *See supra* notes 2-3.

9. ÚST.ZÁK.ČR art. 65(2).

10. *See* Law of February 29, 1920, *supra* note 4, art. 67.

11. ÚST.ZÁK.ČR art. 18(1)-(2).

important matters, particularly national defense, which are not mentioned in the Constitution and which could be addressed if the Constitution were redrafted. That, however, would be extremely time-consuming and it is better to give the present Constitution time to prove itself before making any amendments so shortly after its adoption.

## B. The Executive Power

The exercise of the executive power is assigned to the President and the government and is well-balanced between them. The provisions are similar to those of the 1920 Constitution.<sup>12</sup>

A candidate for the office of President must be at least 40 years old, holds office for a term of five years.<sup>13</sup> The 1920 Constitution required the President to be at least 35, and the term was seven years. No one can be elected for more than two consecutive terms.

Article 63(1)(b) of the Constitution authorizes the President to transfer the negotiation of international agreements to the ministries or, with its consent, to its individual members. The President has exercised this authority and transferred the negotiation of those international agreements which do not require the approval of Parliament to the ministries and those which do not exceed the authority of a particular ministry to the appropriate minister.<sup>14</sup> The transfer deals only with agreements of minor importance, however, since all political and economic agreements, those affecting human rights and fundamental freedoms, and those which must be incorporated into the legal system by a statute require the approval of Parliament. In article 80, the Constitution refers to the office of the public prosecutor, the powers of which are determined by law. The government is presently preparing legislation to abolish the system of prosecutors' offices established by the Communists and to revert to the pre-Communist system. Under the Communists, the prosecutor's office was the guardian of so-called "socialist legality," which strengthened the rule of the Communist Party over the nation by empowering prosecutors to supervise all activity of the authorities and individuals. Under the pre-communist system, there was a hierarchy of offices of state representation, which operated as prosecutors in criminal matters, and in civil matters as

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12. See Law of February 29, 1920, *supra*, note 4, art. 55-93.

13. The 1920 Constitution required that any candidate for president be qualified to be elected as a Senator. *Id.* art. 57(1). Article 19(2) required that citizens must be at least 40 years old to be elected to the Senate.

14. Decision of the President of the Republic of April 28, 1993, on the Negotiation of International Agreements, No. 144, Collection of Laws.

government counsel. The new legislation will re-establish the system as it existed under the 1920 Constitution.

### C. The Judicial Power

There was no direct provision for a Constitutional Court in the 1920 Constitution, but it was mentioned in the Law Introductory to the Constitution.<sup>15</sup> It was established by a Special Law,<sup>16</sup> but was not fully operational. Under Communist rule, the Constitutional Law on the Czechoslovak Federation provided for a Constitutional Court,<sup>17</sup> but it remained a dead letter until the downfall of Communist rule; at that time the Court was established by statute.<sup>18</sup> Nevertheless, it did not function due to the dissolution of the federation. The present Constitution has an explicit provision on the Constitutional Court, and a statute was enacted to bring it into existence and regulate its organization and procedures.<sup>19</sup> Only the future will tell whether the Court will be a success. Both the Supreme Court and the Supreme Administrative Court had a tradition of very successful operation under the 1920 Constitution.

The seat of the Constitutional Court is the city of Brno. It has a chief judge, two deputy chief judges, and another twelve judges.<sup>20</sup> The number may seem high, but the Court's workload is expected to keep it reasonably busy. The twelve junior judges form four three-member panels among which most of the work is divided.<sup>21</sup> Decisions are by majority, and if there is none, the matter is submitted to the full Court of 15 judges.<sup>22</sup> In the panels, all three judges must be present.

In the Full Court there is a quorum of 10.<sup>23</sup> Decisions are also made by a majority which may be reached by gradually eliminating less-voted motions until only two are left. In some important matters, nine affirmative votes are needed for a decision. Specifically enumerated matters like the invalidity of laws and requests by the President to set aside declarations of Parliament that he is unable to exercise his

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15. See Law of February 29, 1920, *supra* note 4, art. 2-3.

16. Law of March 9, 1920 on the Constitutional Court, No. 162, Collection of Laws.

17. Constitutional Law of October 27, 1968, *supra* note 3, art. 86-101.

18. Constitutional Law of February 27, 1991 on the Constitutional Court of the Czech and Slovak Federative Republic, No. 91, Collection of Laws; Law of November 7, 1991 on the Organization of the Constitutional Court of the Czech and Slovak Federative Republic, No. 491, Collection of Laws.

19. Law of June 16, 1993 on the Constitutional Court, No. 182, Collection of Laws.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

office, are considered directly by the Full Court. The decisions of the Court are final and unreviewable.

#### **D. Territorial Self-Government**

The question whether lands or regions will be set up as local units of self-government is presently being debated. The traditional organization was based on the land system; the Communists introduced the system of regions, which are much smaller units. Both systems have advantages and disadvantages, and a solution may take some time to be worked out.

##### *1. The Land System and the Regions System*

Prior to Communist rule, there were two lands, the Czech land and the Moravian-Silesian land. Each was divided into districts. The lands and the districts had a dual function. They both were organs of state administration as well as units of territorial self-government. The state administration was headed by the government ministries, to which the land administration was directly subordinated. The land administration was the direct superior of the district offices. The land and district assemblies consisted of elected representatives who governed the offices of local administration in their respective lands and districts.

The districts were directly subordinated to the Ministry of the Interior which coordinated the relations of the districts with other specialized ministries. Each district administration was headed by a director appointed by the ministries after nomination by the Minister of the Interior. The district and the ministries carried out state administration. In addition, there was a district assembly, elected by the citizens which governed the district administration. It supervised the management of the district office, approved the district budget and verified disbursements.

The Communists abolished the land system and set up a system of regions. Eventually, there were seven regions and the capital city of Prague held equivalent status. Seventy-five districts were allotted among the regions. The regions set up by the Communists continue to operate. They are concerned chiefly with the economic and cultural development of their respective areas.

The traditional, pre-Communist system of communities survived under the Communists, but all regions, districts, and communities were actually governed by Communist Party secretariats.

The post-Communist regime enacted new laws on the districts<sup>24</sup> and on communities.<sup>25</sup> Both returned to the pre-Communist way of administration. The communities comprise all cities, including the capital city of Prague, which, however, is governed by a special law.<sup>26</sup>

Communities are self-governing.<sup>27</sup> They have their own property. They are headed by a mayor, a municipal council, and a municipal assembly. All are elected by the citizens. The municipal administration is exercised by the municipal office headed by the mayor and the councilors.

## 2. *The Future of Land Divisions*

Discussions concerning the future arrangement of territorial division and administration of the Czech Republic start with the system presently in place. The original land system seems to have only a few supporters, so the regions system will most likely be kept. The question remains, however, about the number of the individual regions and the powers of those regions. Most politicians, including the governing coalition, envisage about 12 to 13 regions, but others would have a larger number of regions—up to 25. The demands for a large number of regions are generally made by political parties which have a strong base in a particular area; by creating regions, those political parties would be the dominant force there. This fragmentation of territorial administration is, however, opposed by many politicians.

There is a proposal to gradually transfer most of the administrative powers of the districts to the regions and phase out the districts as basic units of state administration. The regions would be retained as agencies of administration and continue as units of territorial self-government. The regions will then have a dual capacity as organs of state administration and as units of territorial self-government.

The future arrangement of the territorial division of the state and of territorial self-government continues to be debated and a statutory decision is not likely to be made for some time. The ministries, however, plan to hold elections to the territorial self-government bodies in the Spring of 1995, so the matter will have to be settled sometime in 1994. On the other hand, the elections could be held together with the

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24. Law of October 9, 1990 on the District Offices, No. 425, Collection of Laws; Consolidated Text of August 14, 1992, No. 403, Collection of Laws.

25. Law of September 4, 1990 on Communities, No. 367, Collection of Laws; Consolidated Text of August 21, 1992, No. 410, Collection of Laws.

26. Law of October 9, 1990 on the Capital City of Prague, No. 418, Collection of Laws; Consolidated Text of March 5, 1993, No. 90, Collection of Laws.

27. *Id.*

general parliamentary elections in 1996, in which case the final decision on the territorial administration might not be made until 1995.

### **E. The Charter of Fundamental Rights and Freedoms**

The Charter of Fundamental Rights and Freedoms seems to list all rights known to the law, and the draftspersons made special efforts not to miss any inadvertently. The Charter considerably enlarges the list of rights and freedoms of the 1920 Constitution.

A problem has arisen regarding article 11 of the Charter, which provides that everyone has the right to own property, that the right of all owners has equal legal effect and enjoys equal protection, and that the right to inherit is guaranteed. A difficult circumstance affects Czech citizens who managed to escape Czechoslovakia after the communists seized power in 1948. Most of the citizens left in 1948 and 1949, before the borders were closed by minefields, or in 1968, when the borders were open for a time after the Soviet invasion. More than 100,000 left and settled abroad where they started new lives and acquired foreign citizenships. All were convicted in absentia and sentenced. Their property was seized by the Communists and was considered lost, with the exception of real property which could be identified and restored to them. The post-Communist regime enacted a statute which declared null and void all such judgments, convictions, and confiscations.<sup>28</sup> Consequently, the rightful owners were considered owners of their properties without interruption, and entitled to restitution. Yet, a more recent law provided that only persons who are citizens of Czechoslovakia and are permanent residents could recover their property.<sup>29</sup>

The net result of these two laws is that, by the first, the exiles were declared entitled to their property while the second withdrew the entitlement, thus reconfiscating it. It is therefore the post-Communist regime which confiscated the property of the Czech exiles. All efforts to persuade the regime to amend the law, including appeals to the President, government, and Parliament have failed. The properties concerned are mainly family homes and apartment houses which are occupied by the Communist and post-Communist elite. Most of the registered owners in the land records died long ago; the claims are made by their heirs. The post-Communist regime thus denies them

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28. Law of April 23, 1990 on Judicial Rehabilitation, No. 119, Collection of Laws.

29. Law of February 21, 1991 on Extrajudicial Rehabilitation, No. 87, Collection of Laws.



their rightful inheritances. This breaches article 11 of the Charter of Fundamental Rights and Freedoms.

The present regime makes the title to land dependent upon citizenship and permanent residency. This has no counterpart in the laws of developed states. It is a principle of both domestic and international law that title to land cannot depend on such criteria. The denial of property rights to rightful owners is also in breach of generally recognized civil rights as evidenced by the Universal Declaration of Human Rights<sup>30</sup> and the Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

## II. Summary of the Constitution of the Czech Republic

### A. The Enactment

After the June, 1992 Czechoslovak elections,<sup>31</sup> both the Czech and the Slovak Republics began working on their respective constitutions. In the Czech Republic, the Parliament set up a commission for the preparation of the constitution in early July, 1992. This commission was composed of representatives of all Czech political parties, proportionally represented, and was presided over by the President of the Parliament. The commission started with a ministry-approved draft constitution; the revisions, additions, and accompanying debates took only six months. The parliament approved the final draft on December 16, 1992.

Approval of the Constitution was overwhelming, and the three-fifths majority vote necessary for approval was well exceeded. One hundred ninety-eight members of the 200-member house were present; 172 voted yes, 16 no, and 10 abstained. The Constitution was enacted as Law No. 1 of 1993, Collection of Laws, and entered into force on January 1, 1993.

### B. The Constitution

The Constitution has a preamble and 113 articles presented in eight parts.<sup>32</sup> The preamble introduces the text of the Constitution and declares that the citizens of the Czech Republic continue to sup-

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30. G.A. RES. 217 A(III) (1948).

31. *Adopted* Mar. 20, 1952.

32. The individual parts of the Constitution are as follows: Fundamental Provisions; The Legislative Power; The Executive Power; The Judicial Power; The Supreme Control Office; The Czech National Bank; Territorial Self-Government; and Transitory and Final Provisions.

port the rule of law. The Czech Charter of Fundamental Rights and Freedoms is appended to the Constitution.<sup>33</sup>

### 1. *Part One: Fundamental Provisions*<sup>34</sup>

The Constitution defines the Czech Republic as a sovereign, unitary, democratic state based on both the law and freedom.<sup>35</sup> All power of the republic emanates from the people who exercise it through their elected representatives.<sup>36</sup> The populace may do whatever is not prohibited by law, and no one may be compelled to do what the law does not command.<sup>37</sup> No one may be deprived of citizenship against their will.

The Charter of Fundamental Rights and Freedoms embodies certain rights which are expressly protected by the judicial power. The Czech political system is founded on the free competition of political parties that adhere to democratic principles;<sup>38</sup> all political decisions are made by majority vote.<sup>39</sup> Local self-government is guaranteed, and the Constitution may be amended only through specific constitutional laws.<sup>40</sup> Furthermore, binding international treaties regarding human rights and fundamental freedoms are directly applicable and paramount to other laws.<sup>41</sup>

### 2. *Part Two: The Legislative Power*<sup>42</sup>

The legislative power is vested in the Parliament.<sup>43</sup> The Parliament is composed of both a 200-member Chamber of Deputies, each member elected for four years, and an 81-member Senate, each elected for six years.<sup>44</sup> To maintain continuity, one third of the senators are elected every two years.<sup>45</sup> These elections are held within 30

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33. This charter is annexed to the Constitutional Law No. 23 of January 9, 1991, Collection of Laws. Decree of the Presidium of the Czech National Council of December 16, 1992, Introducing the Charter of Fundamental Rights and Freedoms, No. 2/1993, Collection of Laws.

34. ÚST.ZAK.ČR art. 1-14.

35. *Id.* art. 1.

36. *Id.* art. 2.

37. *Id.* art. 2(4).

38. *Id.* art. 5.

39. *Id.* art. 6.

40. *Id.* art. 8, 9.

41. *Id.* art. 10.

42. ÚST.ZAK.ČR art. 15-53.

43. *Id.* art. 15(1).

44. *Id.* art. 16(1)-(2). Despite this constitutional provision, the Senate has not as yet been created and the Parliament works as a unicameral body.

45. *Id.* art. 16(2).

days of the expiration of the electoral term.<sup>46</sup> If the Chamber of Deputies is dissolved, elections must be held within 60 days.<sup>47</sup> Election to the Chamber of Deputies is conducted according to proportional representation, and election to the Senate on the majority system.<sup>48</sup> Every citizen eighteen years of age or older has the right to vote,<sup>49</sup> but one may only be elected to the Chamber of Deputies upon reaching the age of 21, or to the Senate upon reaching the age of 40.<sup>50</sup> Members carry out their functions in accordance with their conscience and cannot be bound in any way; they are subject to discipline by their respective chambers but cannot be criminally prosecuted without the chamber's consent.<sup>51</sup> Each chamber elects its president, vice-presidents, committees, and commissions.<sup>52</sup>

If the Chamber of Deputies is dissolved, the Senate can make decree-laws at the government's request.<sup>53</sup> The Chamber, however, must approve them in its first session. Otherwise, the decree-laws are automatically repealed.<sup>54</sup>

While the Parliament as a body is permanently in session, each chamber may adjourn, on its own motion, for not more than 120 days per year.<sup>55</sup> The session of the Chamber of Deputies opens within 30 days of elections and lasts until either its term runs out or until its dissolution.<sup>56</sup> While it may be dissolved by the President of the Republic for specific reasons,<sup>57</sup> it cannot be dissolved in the last three months of its term.<sup>58</sup>

A joint session of both chambers may be called by the President of the Chamber of Deputies.<sup>59</sup> The quorum in each chamber is one-third, and only a simple majority of members present is required for a

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46. *Id.* art. 17(1).

47. *Id.* art. 17(2).

48. *Id.* art. 18(1)-(2).

49. *Id.* art. 18(3).

50. *Id.* art. 19(1)-(2).

51. *Id.* art. 27(1)-(3), (5).

52. *Id.* art. 29.

53. *Id.* art. 33.

54. *Id.*

55. *Id.* art. 34.

56. *Id.*

57. *Id.* art. 35(1). The President may dissolve the Chamber of Deputies if: (1) a vote of confidence in a newly appointed government is refused, (2) the Chamber of Deputies does not dispose within three months a ministerial proposal embodying an issue of confidence, (3) the Chamber of Deputies adjourns for an inadmissibly long period, or (4) the Chamber of Deputies lacks a quorum for more than three months even after repeated calls to session.

58. *Id.* art. 35(2).

59. *Id.* art. 37.

decision.<sup>60</sup> A declaration of war, however, requires a majority of all deputies and all senators.<sup>61</sup> The approval of a constitutional law or an international treaty requires a three-fifths majority of both all deputies present and all senators present.<sup>62</sup>

Bills originate in the Chamber of Deputies and may be presented by any member, any group of members, the Senate, the ministries, or the legislature of any local self-government.<sup>63</sup> The government presents its budget to the Chamber of Deputies, which decides on it without the Senate.<sup>64</sup> Armed forces may be sent out of the country only with the consent of both chambers.<sup>65</sup>

The government has the right to comment on all bills within 30 days. If it fails to do so, approval is presumed.<sup>66</sup>

A bill approved by the Chamber of Deputies is sent to the Senate, which must act on it within 30 days;<sup>67</sup> if it fails to do so, the bill is considered approved.<sup>68</sup> The Chamber of Deputies votes on any bill amended by the Senate, and, if approved as presented by the Senate, the bill becomes law.<sup>69</sup> If the Chamber disapproves the amendments, the Chamber of Deputies must then pass its original version with a majority vote of all its members. The same applies to a bill rejected by the Senate. No further amendments, however, may be made by the Chamber of Deputies.

The Parliament must vote on certain treaties: human rights treaties, treaties on fundamental freedoms, political and commercial treaties, and all those that have to be approved by a statute.<sup>70</sup>

The President of the Republic may within 15 days return a law, except a constitutional law, to the Chamber of Deputies for reconsideration.<sup>71</sup> To pass, the Chamber must again approve the law by a majority of all its members.<sup>72</sup> Laws are signed by the President of the

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60. *Id.* art. 39(1)-(2).

61. *Id.* art. 39(3).

62. *Id.* art. 39(4).

63. *Id.* art. 41(1)-(2).

64. *Id.* art. 42(1)-(2).

65. *Id.* art. 43(2).

66. *Id.* art. 44.

67. *Id.* art. 46(1).

68. *Id.* art. 46(3).

69. *Id.* art. 47.

70. *Id.* art. 49.

71. *Id.* art. 50(1).

72. *Id.* art. 50(2).

Chamber of Deputies, the President of the Republic, and the Prime Minister.<sup>73</sup> They must be published to be valid.<sup>74</sup>

### 3. *Part Three: The Executive Power*<sup>75</sup>

#### a. President of the Republic<sup>76</sup>

The President of the Republic is the head of state.<sup>77</sup> The President is elected for five years by a joint session of the Chamber of Deputies and the Senate either within the last thirty days of the President's term or within thirty days from the time the office becomes vacant.<sup>78</sup> Any person eligible for a Senate seat may be elected President.<sup>79</sup> A president may be re-elected for one subsequent term.<sup>80</sup>

A presidential nomination must be made by at least ten deputies or ten senators.<sup>81</sup> To be elected, the candidate must obtain the vote of a majority of all deputies and all senators.<sup>82</sup> Absent a majority, the election is repeated within fourteen days, between the two candidates who obtained the most votes in the Chamber of Deputies and the Senate, respectively.<sup>83</sup> In case of a tie in one of the chambers, the candidate from among them is the one who obtained the most votes in both chambers.<sup>84</sup> To be elected, the candidate needs the votes of a majority of all deputies and all senators present.<sup>85</sup> If no one is elected, a third electoral ballot is taken within 14 days.<sup>86</sup> If even the third round failed to elect the President, an entirely new election is held.<sup>87</sup>

The President begins his term by taking an oath of office.<sup>88</sup> The President may submit his resignation at any time to the President of the Chamber of Deputies.<sup>89</sup>

The President exercises functions under two articles of the Constitution. Acting alone, the President may exercise article 62 func-

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73. *Id.* art. 51.

74. *Id.* art. 52.

75. ÚST.ZÁK.ČR art. 54-80.

76. *Id.* art. 54-66.

77. *Id.* art. 54(1).

78. *Id.* art. 54(2), 56.

79. *Id.* art. 57(1).

80. *Id.* art. 57(2).

81. *Id.* art. 58(1).

82. *Id.* art. 58(2).

83. *Id.* art. 58(3), (4).

84. *Id.* art. 58(5).

85. *Id.* art. 58(7).

86. *Id.* art. 58(7).

87. *Id.* art. 58(8).

88. *Id.* art. 59.

89. *Id.* art. 61.

tions. The President may exercise article 63 functions with the countersignature of the Prime Minister or other responsible Minister.

The President's article 62 responsibilities include the following:

- a) appointing the Prime Minister and the other ministers, and accepting their resignations;
- b) asking the ministers to stay in office until a new cabinet is formed;
- c) calling the Chamber of Deputies into session and dissolving it;
- d) appointing judges, including both the president and vice-presidents of the Constitutional Court;
- e) from among the judges, appointing the president and vice-presidents of the Supreme Court;
- f) commuting or reducing punishment of criminals or ordering criminal proceedings either not to be initiated or to be discontinued, and pardoning convictions;
- g) returning to Parliament a passed law, other than a constitutional law;
- h) signing laws; and
- i) appointing the president and vice-president of the Supreme Control Office and the members of the banking board for the Czech National Bank.<sup>90</sup>

The President's article 63 powers include the following:

- a) representing the state; negotiating and either ratifying international treaties or delegating their negotiation to the ministries;
- b) acting as the supreme commander of the armed forces;
- c) receiving the heads of diplomatic missions;
- d) appointing and recalling heads of Czech diplomatic missions;
- e) calling elections for the Chamber of Deputies and the Senate;
- f) appointing and promoting generals;
- g) conferring state decorations, appointing judges, and declaring amnesty; and
- h) exercising other functions conferred on him by law.<sup>91</sup>

The President may freely participate in the sessions of either chamber of Parliament, including their committees and commissions.<sup>92</sup> The President may also take part in ministry and cabinet meetings and request information from agencies or their individual members.<sup>93</sup>

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90. *Id.* art. 62.

91. *Id.* art. 63.

92. *Id.* art. 64(1).

93. *Id.* art. 64(2).

The President may not be arrested or prosecuted for acts committed during his term of office.<sup>94</sup> The President may, however, be prosecuted in the Constitutional Court for treason, but only at the request of the Senate.<sup>95</sup> The only available punishment is removal from office and a concomitant disqualification from holding it in the future.<sup>96</sup>

If the President's office is vacant or the President is unable to govern, and if both chambers of Parliament agree, all of the Article 63 functions may be exercised by the Prime Minister, with the exception of calling elections to the Chamber of Deputies and the Senate, appointing and promoting generals, and exercising functions conferred solely on the President by statute.<sup>97</sup> Article 62 functions can also be exercised by the President of the Chamber of Deputies, with the exception of appointing the president and vice-presidents of the Supreme Court and the Supreme Control Office, commuting sentences or pardoning convictions, returning laws to Parliament, and signing laws.<sup>98</sup> If, for whatever reason, the Chamber of Deputies is dissolved, the article 62 functions may then be exercised by the President of the Senate.<sup>99</sup>

b. The Cabinet<sup>100</sup>

The cabinet, as the premier executive body, is composed of the presiding Prime Minister, Deputy Prime Ministers, and other ministers, and it is responsible to the Chamber of Deputies.<sup>101</sup> The President of the Republic appoints the Prime Minister;<sup>102</sup> the President may also appoint the other ministers, but only at the Prime Minister's request.<sup>103</sup> Similarly, the President accepts their resignations. All members of the cabinet are sworn in by the President.<sup>104</sup> Every new cabinet must obtain a vote of confidence by the Chamber of Deputies within 30 days.<sup>105</sup> The cabinet may request a vote of confidence in the Chamber of Deputies or any 50 members of the Chamber may submit

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94. *Id.* art. 65(1).

95. *Id.* art. 65(2).

96. *Id.*

97. *Id.* art. 66.

98. *Id.*

99. *Id.*

100. ÚST.ZÁK.ČR art. 67-80.

101. *Id.* art. 67(2), 68(1).

102. *Id.* art. 68(2).

103. *Id.* art. 68(5).

104. *Id.* art. 69(1).

105. *Id.* art. 71.

a written motion for a vote of no confidence.<sup>106</sup> To pass, a no-confidence vote requires a majority of all members.<sup>107</sup> If it passes, or if the request for a vote of confidence is denied, the cabinet must resign.<sup>108</sup> If a vote of confidence is not obtained, then a different cabinet is appointed; and should this cabinet also fail to obtain a vote of confidence, the President appoints a Prime Minister on the recommendation of the President of the Chamber of Deputies.

The cabinet acts as a single body and needs a majority vote of all members for any decision.<sup>109</sup> It issues regulations regarding the execution of the laws which must be signed by both the Prime Minister and the appropriate minister.<sup>110</sup> Ministries and other administrative organs are created by law, and may issue regulations if so authorized by law.<sup>111</sup>

#### 4. *Part Four: The Judicial Power*<sup>112</sup>

The judicial power is vested in courts staffed by independent judges.<sup>113</sup> A judge may only be removed or transferred to another court without his consent for cause,<sup>114</sup> which is determined in appropriate disciplinary proceedings.<sup>115</sup>

##### a. *The Constitutional Court*<sup>116</sup>

The Constitutional Court protects and interprets the Constitution. It is composed of 15 judges, each of whom is appointed for 10 years by the President with the consent of the Senate.<sup>117</sup> Any lawyer with at least 10 years of legal experience and eligible for election to the Senate may be appointed.<sup>118</sup> A Constitutional Court justice may be criminally prosecuted only with the consent of the Senate.<sup>119</sup> A justice may decline to testify on any matter, the knowledge of which

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106. *Id.* art. 72(2).

107. *Id.*

108. *Id.* art. 73(2).

109. *Id.* art. 76(1)-(2).

110. *Id.* art. 78.

111. *Id.* art. 79(1)-(3).

112. ÚST.ZAK.ČR art. 81-96.

113. *Id.* art. 81.

114. *Id.* art. 82(2).

115. Disciplinary proceedings are regulated by Law of December 21, 1992 on the Disciplinary Responsibility of Judges, No. 22/1993, Collection of Laws, amending Law No. 412/1991, Collection of Laws.

116. ÚST.ZAK.ČR art. 83-89.

117. *Id.* art. 84(1)-(2).

118. *Id.* art. 84(3).

119. *Id.* art. 86(1).



he acquired in his judicial office, even after the expiration of his tenure.<sup>120</sup>

The Constitutional Court rules on the constitutionality of laws, their individual provisions, and other legal measures.<sup>121</sup> The Court declares laws invalid if they conflict with either the Constitution or a binding international treaty on human rights or fundamental freedoms.<sup>122</sup> The Court also rules on constitutional issues of state interference with local governments, and whether administrative decisions interfere with fundamental rights and freedoms.<sup>123</sup> The Court considers issues of parliamentary elections, including members' eligibility for and compatibility with office.<sup>124</sup> The Constitutional Court has sole jurisdiction to prosecute the President of the Republic for treason, and may, at the request of the President, also set aside a Parliamentary declaration that the President is unable to exercise his office.<sup>125</sup> The Court may enforce a decision of a binding international tribunal if the decision would not be otherwise enforceable.<sup>126</sup> The Court may further determine whether a decision to either dissolve a political party or alter its function is in conformity with the law.<sup>127</sup> Finally, the Constitutional Court hears disputes regarding the competence of state agencies and territorial self-governments.<sup>128</sup> Disputes about the constitutionality of legal measures, as well as those concerning the competence of state agencies and territorial self-governments may, however, be transferred to the Supreme Administrative Court by law.<sup>129</sup>

All decisions of the Constitutional Court are executed upon their publication and are binding on all government bodies and persons.<sup>130</sup>

#### b. The Courts

The courts of the Republic are, in hierarchical order, the Supreme Court, the Supreme Administrative Court, and the Superior, Regional, and District Courts. The jurisdiction and organization of

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120. *Id.* art. 86(3).

121. *Id.* art. 87(1).

122. *Id.* art. 87(1)(a)-(b).

123. *Id.* art. 87(1)(c)-(d).

124. *Id.* art. 87(1)(e).

125. *Id.* art. 87(1)(g).

126. *Id.* art. 87(1)(i).

127. *Id.* art. 87(1)(j).

128. *Id.* art. 87(1)(k).

129. *Id.* art. 87(2).

130. *Id.* art. 89.

each is determined by law.<sup>131</sup> The Supreme Court is the highest judicial body, except for matters falling within the jurisdiction of the Constitutional Court or the Supreme Administrative Court.

Judges are appointed to an open-ended tenure by the President of the Republic. Any citizen of good repute with full legal education may be appointed. The applicable rules and procedures are determined by law.<sup>132</sup> Judges sit either individually or in panels, and are bound only by the law. If a judge or panel feels an applicable law is unconstitutional, they may submit the matter to the Constitutional Court.

All participants in judicial proceedings, regardless of their public stature, have the same rights. All judicial proceedings are both oral and public; exceptions do exist, however, and may be determined by law.<sup>133</sup> Judgments are always publicly pronounced.

#### 5. *Part Five: The Supreme Control Office*<sup>134</sup>

The Supreme Control Office is an independent body charged with ensuring compliance with the state budget and overseeing any dealings with state property. Its president and vice-president are appointed by the President of the Republic upon the recommendation of the Chamber of Deputies. The Control Office's function and structure are determined by law.<sup>135</sup>

#### 6. *Part Six: The Czech National Bank*

The Czech National Bank is the central bank of the state. Its main function is to keep the Czech currency stable. Like other governmental entities, its function and structure are determined by law.<sup>136</sup>

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131. See Law of December 21, 1992 on Courts and Judges, No. 17/1993, Collection of Laws, amending Law No. 335/1991, Law No. 264/1992, Law No. 23/1993, and Law No. 29/1993, Collection of Laws.

132. See *Id.*

133. Code of Civil Procedure as amended by Law No. 24/1993, Collection of Laws; Code of Criminal Procedure as amended by Law No. 25/1993, Collection of Laws.

134. ÚST.ZAK.ČR art. 97.

135. Law of January 22, 1992 on the Supreme Control Office of the Czech Republic, No. 61/1993, Collection of Laws.

136. Law of December 17, 1992 on the Czech National Bank, No. 6/1993, Collection of Laws.

### 7. *Part Seven: Territorial Self-Government*<sup>137</sup>

The Czech Republic is composed of numerous communities, each of which is a fundamental unit of territorial self-government.<sup>138</sup> Lands or regions which are the higher units of the territorial self-government may be established or abolished only by constitutional law.<sup>139</sup> All these units are public bodies, and have their own budgets. Their councils are elected for four-year terms, and primarily issue regulations binding on that territory.

### 8. *Part Eight: Transitional and Final Provisions*<sup>140</sup>

Until the establishment of the Senate, its functions are being exercised by the Chamber of Deputies, which, under the circumstances, cannot be dissolved.

## C. **The Charter of Fundamental Rights and Freedoms**

This Charter was enacted by the Parliament of the Czech and Slovak Federative Republic, and wholly adopted by the Czech Republic. In 44 articles, it declares fundamental rights and freedoms, including political rights, rights of national and ethnic minorities, economic, social, and cultural rights, and rights to judicial and other legal protections.

Fundamental rights and freedoms are inalienable, irrevocable, and guaranteed without regard to sex, race, color, language, religion, belief, political opinion, national or social origin, ethnicity, property, descent, or other status.

Fundamental human rights include the rights to life (which effectively bars the death penalty), to inviolability of the person, to personal freedom, to protection of human dignity, to personal honor, to a good reputation, to own and inherit property, to protection of the home, to secrecy of the mails, and to freedom of movement. Also included are the rights of residence, of conscience and religion, of scientific research, and of artistic creation.

The Charter further guarantees political rights, particularly rights to expression and to information, to petition authorities, to assembly and association, and to access to elected and public offices. These

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137. ÚST.ZÁK.ČR art. 99-105.

138. Communities are governed by Law No. 367/1990, Collection of Laws on Communities, as amended, consolidated text No. 410/1992, Collection of Laws.

139. No constitutional law on this subject has yet been passed. The question of the establishment of higher units of territorial self-government is being debated.

140. ÚST.ZÁK.ČR art. 106-113.

rights envisage the free competition of political forces in a democratic society.

Ethnic minority rights include the rights to cultural development, to an education in a native language, to the use of a native language in official communications, and to representation in minority matters.

Economic, social, and cultural rights guarantee free choice of occupation and freedom of economic association, including the freedom to participate in trade unions and other associations aimed at protecting one's economic interests. Furthermore, the special protection of women, juveniles, and the handicapped, and the freedom of parenthood and the family, are also guaranteed.

The rights to judicial and other protection include protection by an independent and impartial judiciary and the right to judicial recourse for administrative decisions. A person may decline to testify on the ground that he may incriminate himself or a close relative. And finally, in criminal proceedings, a person is considered innocent until convicted.

Foreigners equally enjoy all human rights and freedoms guaranteed by the Charter unless the right is explicitly reserved to citizens.<sup>141</sup>

### Conclusion

Taken as a whole, the present Constitution is a worthy successor to the Constitution of the Czechoslovak Republic of 1920. Irrespective of whether an amendment concerning the Senate is made, the Constitution will properly guide the destiny of the Czech Republic for many years to come. It is a solid document which should withstand the adversity of time. The application of the Constitution and its provisions, including the Charter of Fundamental Rights and Freedoms, depends on the current regime's President, government and Parliament. The regime should carefully observe the provisions it has set up. The regime's credibility at home and abroad will depend on how it can govern under the standards announced in the Constitution.

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141. By decision of the Constitutional Court of July 12, 1994, No. 164, Collection of Laws, the condition of permanent residency was determined unconstitutional and was removed from Law No. 87/1991 on extrajudicial rehabilitation. The requirement of citizenship, however, was left intact, so that the decision is of little help to the exiles who lost Czech citizenship. These exiles are mainly those who acquired United States citizenship.