

Helping Czech civil servants claim decent pay and working conditions with an effective machinery for social dialogue

by Anna Ridka

LLM Capstone Thesis
SUPERVISOR: Prof. Csilla Kollonay Lehoczky
Central European University Private University
Quellenstrasse 51-55, 1100 Vienna
Austria

TABLE OF CONTENTS

ABSTRACT.....	2
Introduction.....	3
Chapter 1	7
1.1 Zooming in: Civil servants in the Czech Republic	7
1.2 The Czech labour movement and its civil servants	10
Chapter 2.....	15
Section 2:1 Codifying the right to bargain collectively in Czech law	15
2.2 The status of civil service trade unions and collective bargaining in the Civil Service Act.....	18
2.3 Overview of legislative deficiencies and reactions of the interviewee.....	21
2.4 Concluding thoughts	22
Chapter 3	23
3.1 Solutions to the problem and means of challenge	23
3.1.1 Proposals for policy solutions.....	23
3.1.2. Challenging the government via strategic litigation	24
Conclusion	26
Bibliography	27
APPENDIX 1.....	30

ABSTRACT

This Capstone Thesis offers a socio-legal inquiry into the viability of Czech civil servants' opportunities for active participation in the available national machinery for social dialogue in the light of a recent government pay freeze. It is complemented by possible policy proposals to help civil service trade unions claim full collective bargaining rights and improve the quality of the social dialogue they entertain with the government. Lastly, it sketches out the contours of possible litigation strategies to challenge government measures which diminish civil servants' labour human rights.

INTRODUCTION

In December 2021, the newly instated centre-right coalition government in the Czech Republic took the decision¹ to cancel a scheduled pay rate increase for all its salaried civil servants for the second year in a row. This had effectively reversed the Czech Government's initial commitment to raise pay tariffs across the whole of the Czech public service sector as stipulated in its Executive Order No. 420/2021 Coll.² whose coming into force had followed the successful conclusion on 4 October 2021 of a higher-level collective bargaining agreement (*higher-level CBA* from hereon), between the then-Prime Minister Andrej Babiš acting on government's behalf, and the representative trade unions, namely the Trade Union of State Bodies and Institutions (*OSSOO* from hereon), the Czech-Moravian Trade Union of Civilian Employees of the Army, the Trade Union of the Health Service and Social Care of the Czech Republic, the Czech and Moravian Trade Union of Workers in Education and finally, the Association of Independent Trade Unions of the Czech Republic. Representatives of organised Czech civil servants have found the government's unilateral withdrawal of the scheduled wage-increase manifestly unlawful on at least two counts: first, as having violated the terms of the legally-binding October 2021 CBA and its provisions on trade unions' rights of consultation as regards pay development, and second, the government is said to have acted foul of the applicable provisions of the Czech Labour Code No. 262/2006 Coll. (*the Labour Code* from hereon) and the Civil Service Act No. 234/2014 Coll. (*the Civil Service Act* from hereon)³.

The scheduled rise in pay for all public sector employees which Government Decree No. 420/2021 anticipated prior to it having been overruled by the new liberal government was the outcome of the long and at times difficult negotiations taking place between the above-mentioned unions and the government in the months leading up to the finalization of the state budget for the following year 2022 on 29 September 2021. The unionists intended the pay increase to be a measure to counter the rising rate of inflation in the country, arguing also in

¹ Government Decree No. 531/2021 '531/2021 Sb.' <<https://www.psp.cz/en/sqw/sbirka.sqw?cz=531&r=2021>> accessed 20 June 2022.

² Government Decree No. 420/2021 AION CS- info@aion.cz, '420/2021 Sb. Nařízení vlády, kterým se mění nařízení vlády č. 341/2017 Sb., o platových poměrech zaměstnanců ve v...' (*Zákony pro lidi*) <<https://www.zakonyprolidi.cz/cs/2021-420>> accessed 20 June 2022.

³OSSOO, 'Předseda Vlády - Dopis OS RoPo Ke Zmrazení Platů.Pdf' [Prime Minister - RoPo Trade Unions' Letter Regarding Pay Freeze] <<https://statorg.cmkos.cz/dokumenty/P%C5%99edseda%20vl%C3%A1dy%20-%20dopis%20OS%20RoPo%20ke%20zmrazen%C3%AD%20plat%C5%AF.pdf>> accessed 20 June 2022.

terms of a ‘more than well-deserved’⁴ reward for all those state employees who had kept the country running since the start of the Covid-19 pandemic. And even though unions faced some resistance on their proposal of a three thousand Czech Crowns increase of public sector pay tariffs by the ruling ANO party, unions came out victorious in the end as the government had finally conceded to the pressure they had mounted, with the then-Minister of Social Affairs Jana Maláčová coming out on 17 June 2021 to proclaim that ordering a pay rise in all sectors of economic activity, including in the public sector, indeed presented an opportunity to help reignite the Czech economy following the Covid-19 slump⁵. It therefore came as a particularly rude awakening to all Czech public sector unionists when on the 29th December, MP Peter Fiala's newly elected liberal government which at that point had only been in office for 15 days, single-handedly reversed Czech civil servants' fortune by enacting Government Decree No. 531/2021 scrapping the anticipated pay increase and freezing civil servants' salaries, all without duly notifying the unions beforehand. The head of the Czech-Moravian Trade Union of Civilian Employees of the Army summarized the shock of the situation succinctly in remarking that 'What we have on our table is Government Decree No. 421 from the 10th of November 2021, duly consulted with the trade unions, and now also Decree No. 531 from the 29th of December 2021 on which the unions were not in any way consulted, and yet this comes into force on the 1st of January 2022 already’⁶.

Response from the affected Czech trade unions representing their constituent base of civil servants came immediately. Although one might here expect protests, strikes or even the launch of a constitutional challenge in courts⁷, the Czech response, however, was more measured. Now publicly available open letters in which organizers decried the government decision's deleterious effects were sent out to all respective ministries in whose agencies the

⁴ OSSOO, ‘Odborový svaz státních orgánů a organizací: Jsme zklamáni postojem hnutí ANO k platům ve veřejném sektoru – Tripartita’ [The Trade Union of State Bodies and Organisations: We are disappointed with the position of the ANO part regarding pay in the public sector] <<https://www.tripartita.cz/odborovy-svaz-statnich-organu-a-organizaci-jsme-zklamani-postojem-hnuti-ano-k-platum-ve-verejnem-sektoru/>> accessed 20 June 2022.

⁵ Ministry of Labour and Social Affairs, ‘Tisková zpráva - S odbory panuje shoda: Minimální mzda 18 tisíc korun je cestou, jak nastartovat obnovu ekonomiky’ [Press release - There is a consensus with the unions: The minimum wage of 18,000 crowns is a way to start economic recovery] <https://www.mpsv.cz/documents/20142/2061970/17_06_2021_TZ_TK_minim%C3%A1ln%C3%AD+mzda_W+%281%29.pdf/e2fb58c5-9c35-ec1a-ad65-46f925bbe2b8> accessed 20 June 2022.

⁶ KOV PČR OSSOO, ‘Ministr vnitra - Otevřený dopis odborů Policie ČR’ [An open letter to the Minister of Interior from the Czech Police trade unions] <<https://statorg.cmkos.cz/dokumenty/KV%20P%C4%8CR%20-%20otev%C5%99en%C3%BD%20dopis%20ministru%20vnitra.pdf>> accessed 20 June 2022.

⁷ See Eric Tucker, ‘The Constitutional Right to Bargain Collectively: The Ironies of Labour History in the Supreme Court of Canada’ (2008) 61 Labour / Le Travail 151, p. 154.

affected civil servants are employed⁸. This effort then culminated in an exchange of correspondence between Jan Willem Goudriaan, General Secretary of the European Public Service Union (EPSU) and Petr Fiala as the Prime Minister. Today, the animosity between the government and the public service unions that had resulted from the passing of the Government Decree No. 531/2021 continues to fester while the government continues to show its unwillingness to engage in any good faith negotiations with its public service unions in the way EPSU had urged it to do.

Sadly, this incident presents but one example of the deficiency of the overarching institutional framework for social dialogue in the Czech civil service that consequently allows for these kinds of assaults on civil servants' core human labour rights to go unchallenged, since as much as it is a regrettable policy choice for the government to pursue its cost-saving agenda even at the price of denying the entitlement to fair pay of those who make state bureaucracy operation and effective, I argue that it is altogether unacceptable that civil servants be denied the right of pursuing their important workplace interests with the use of collective bargaining to the extent to which this is available to civil servants' counterparts employed in the private sector. I submit that it is high time now to start questioning the current Czech *modus operandi* for managing industrial relations in the civil service or state administration sector.

My capstone project first aims to inquire into the justificatory discourses marshalled to legitimate the unequal access to the rights to participate in social dialogue and to bargain collectively currently facing Czech civil servants, the provisions and the statutory language of the national framework for civil service collective bargaining, participatory and joint decision-making rights which work to sustain this state of affairs, as well as any possibilities for redress via means of policy and litigation.

In Section 1.1 I will first sketch out the different categories of public sector workers in the Czech Republic and specifically the place of civil servants among them. Beyond this, I will also provide some of the latest statistical data as to the actual number of civil servants working in the Czech Republic, as well as their pay and work conditions.

⁸See for ex. OO ÚP OSSOO, 'Otevřený Dopis PV Odborů p. Ministru Jurečkovi.Pdf' [Open Letter of Labour Office Trade Union Organizations to Minister Jurečka] <<https://statorg.cmkos.cz/dokumenty/Otev%C5%99en%C3%BD%20dopis%20PV%20odbor%C5%AF%20p.%20ministru%20Jure%C4%8Dkovi.pdf>> accessed 20 June 2022.

Closing the first section, Section 1.2 will be devoted to providing more historical and sociopolitical context on the particular position of civil servants within collective bargaining structures globally and in the Czech Republic. More context will be provided as to their legal status.

Chapter 2 will be the most extensive chapter in its scope. First, it will enumerate gaps and traps in the relevant domestic legal framework. Secondly, assumptions based on the content of the governing law as to the gaps in the framework made in Section 2.1 and 2.2 will then be confronted with critical insights from union personnel in Section 2.3. Section 2.4 presents concluding thoughts. Consequently, Chapter 2 forms the heart of my capstone thesis.

Section 1 of Chapter 3 will then propose possible policy solutions designed to close the gaps in the domestic legal coverage to ultimately improve civil servants' opportunities for meaningful social dialogue. Finally, it will discuss potential means of challenging the government pushback on raising salary.

CHAPTER 1

1.1 Zooming in: Civil servants in the Czech Republic

As I've made clear in my introduction, civil servants represent the main subjects of my study. Civil servants may be categorized as forming one of a number of subgroups of public service workers employed in the Czech public sector. Whilst they are paid out of the state budget along with for ex. teachers and health service workers employed in publicly-funded institutions, in contrast to these groups they are considered to be directly engaged in the administration of the State. Working as civil servants in the Czech civil service, theirs is not a standard private labour relationship, but a service relationship which the Supreme Administrative Court of the Czech Republic defines as a distinct 'veřejnoprávní poměr státně zaměstnanencký' [*public employment relationship*]⁹. Studies define them as employees in public administration who are said to perform an important function in the realization of state policies and in ensuring the smooth functioning of the state apparatus more broadly¹⁰.

As for their prevalence on the Czech labour market, in 2020 there were only 78 180 civil servants employed¹¹. This number represents a total of 8 per cent of all public sector workers, and 16,9 per cent of all state employees¹². When confronted with these numbers and the relatively marginal position civil servants occupy in the labour market, we may conclude that the attention afforded to the excessive number of civil servants, and therefore also the alleged costliness of state administration in the public discourse is indeed disproportionate¹³. According to the latest available statistical data, civil servants' monthly earnings from 2020 average around mere 1.536 EUR¹⁴ for employees of local state administrative bodies in comparison with the average gross monthly wage of Czech private sector employees in Prague which reached 1.961 EUR during the first quarter of 2022¹⁵. Civil servants on the pay

⁹ EPRAVO.CZ, 'Služební poměr policisty' [Public employment relationship of a policeman] <<https://www.epravo.cz/top/soudni-rozhodnuti/sluzebni-pomer-policisty-26644.html?mail>> accessed 20 June 2022.

¹⁰ 'IDEA Studie 2 2022 Statni Zaměstnanci a Uředníci' <https://idea.cerge-ei.cz/files/IDEA_Studie_2_2022_Statni_zamestnanci_a_urednici/IDEA_Studie_2_2022_Statni_zamestnanci_a_urednici.html> accessed 20 June 2022, p. 3.

¹¹ *ibid.*, p. 6.

¹² *ibid.*, p. 7.

¹³ *ibid.*, p. 2.

¹⁴ *ibid.*, p. 9.

¹⁵ Kurzy.cz, 'Průměrná hrubá měsíční mzda zaměstnanců v Praze dosáhla v 1. čtvrtletí roku 2022 hodnoty 48 498 Kč a byla tak opět nejvyšší mezi kraji. | Kurzy.cz' [The average gross monthly wage of employees in

grade for local administrative bodies employees also make up the vast majority of Czech civil servants¹⁶. Adding insult to injury, the earning gap between the private and public sector in the Czech Republic has been widening since 2018, and consequently, in 2020, the rate of increase of civil servants' average pay has been reported to lag behind the wage increase in the economy as a whole by 3 to 6 percentage points¹⁷.

I had already gestured towards the fact that Czech civil servants are presently facing a difficult situation in terms of their individual economic standing, as well as their collective position vis-à-vis their social partners (i.e. the Czech government) in the preceding paragraphs. I would now like to illustrate this point by considering the profile of what we might consider the average Czech civil servant working at a local branch of a state service agency.

Suppose that in her position as a consultant in the specialized area of benefits of assistance in material need (that is, position with a minimal Award of Maturitní Zkouška secondary education requirement) employed at one of the local or regional branches of the Labour Office of the Czech Republic, the employee earns a gross monthly income of 1.200 EUR¹⁸. Yet, over the past two years you have seen your workload rise exponentially as a result of having to process benefit applications in the fall out of both the Covid-19 crisis and the Russian occupation of Ukraine and the influx of Ukrainian refugees this has brought into the country¹⁹. The Ministry of Labour and Social Affairs as the ministerial department responsible for the operations of the Labour Office, has failed to advocate for you to receive

Prague reached CZK 48,498 in the first quarter of 2022 and was thus again the highest among the regions.] <<https://www.kurzy.cz/zpravy/655485-prumerna-hruba-mesicni-mzda-zamestnancu-v-praze-dosahla-v-1-ctvrtletu-roku-2022-hodnoty-48-498-kc/>> accessed 20 June 2022.

¹⁶ 'IDEA Studie 2 2022 Statni Zamestnanci a Urednici' (n 10), p. 7.

¹⁷ *ibid.*, p. 2.

¹⁸ E15.c, 'Úředníci hrozí stávkou, chtějí více peněz. Vláda valorizaci odmítá' [Officials threaten to go on strike, they want higher pay. The budget is limited, counters Jurečka] <<https://www.e15.cz/domaci/urednici-hrozi-stavkou-chteji-vice-penez-rozpocet-je-omezeny-oponuje-jurecka-1389561>> accessed 20 June 2022.

¹⁹ See OSSOO President's statement regarding the work overload in the Labour Office of the Czech Republic addressed to the Czech Prime Minister via letter from 31 March 2022. Available in Czech <<https://statorg.cmkos.cz/dokumenty/%C3%9AP%20%C4%8CR%20-%20dopis%20premi%C3%A9rovi%20a%20ministrovi%20pr%C3%A1ce.pdf>> accessed 20 June 2022.

an adequate pay rise, however. Instead, the government-ordered pay freeze that came into force on the 1st of January 2022 has set the purchasing power of your salary back by 16 per cent in light of the current surge in inflation²⁰. In such a situation you may be said to have been deprived of your right to fair remuneration for the work performed.

And so faced with mounting stress, as well as with what effectively amounts to a pay cut which will make it even harder to cover rising energy prices²¹, you slowly slip into in-work poverty.

To make matter worse, the restricted scope of bargaining rights provided for in the Civil Service Act makes it so that your union cannot bargain on questions related to your pay. Further still, the government would appear to act in contempt of your union representation as they have also failed to honour your union's legislatively guaranteed consultation rights²². Under such circumstances, your right to freedom of association and its essential²³ component of the right to bargain collectively has also been breached.

As we adopt a holistic view of the issue of Czech civil servants' unequal participation in the national machinery for active social dialogue and as we extrapolate the concrete effects of how the applicable legal framework is currently being deployed by the government, we are able to recognize and identify the labour human rights²⁴ violations that are being suffered by organized civil servants in the Czech Republic. On applying a human rights-regarding optic

²⁰ 'Inflation, Consumer Prices' (*Inflation, Consumer Prices*) <https://www.czso.cz/csu/czso/inflation_consumer_prices_ekon> accessed 20 June 2022.

²¹ 'What Is Driving the Record-High Growth in Gas and Electricity Prices in Europe? - Czech National Bank' <<https://www.cnb.cz/en/monetary-policy/monetary-policy-reports/boxes-and-articles/What-is-driving-the-record-high-growth-in-gas-and-electricity-prices-in-Europe/>> accessed 20 June 2022.

²² Section 132 of the Civil Service Act.

²³ 'ECHR Upholds Right to Collective Bargaining and to Strike' (*Eurofound*) <<https://www.eurofound.europa.eu/publications/article/2010/echr-upholds-right-to-collective-bargaining-and-to-strike>> accessed 20 June 2022.

²⁴ For the purposes of this Capstone Thesis, by *labour human rights* I take to be rights that human beings have in their capacity as workers and among which is included the right to form and join unions and the right to collective bargaining. See Pablo Gilabert, 'Labor Human Rights and Human Dignity' (2016) 42 *Philosophy & Social Criticism* 171, p. 172.

to this issue, we ought to also be reminded of the standardly held view of human rights scholars which posits that flagrant and long-standing violations of human rights are ‘grave faults extremely hard to justify by appeal to other norms or considerations²⁵’. By this metric, can we definitively say that there are exigent reasons present which would justify the denial of equal recognition to civil servants when it comes to the right to bargain collectively on workplace issues and the right to engage in good faith consultation with management? In the following sections I will attempt to argue to the contrary, namely that the above-describe violations of core labour human rights can scarcely be justified by reference to the justifications that have thusly been advanced by scholarly literature or by governments themselves, ranging from ideological constructs concerning state sovereignty²⁶, to institutional commitments to the de-politicisation of public administration²⁷, to competing policy objectives to do with the stabilisation and professionalization of the civil service²⁸.

1.2 The Czech labour movement and its civil servants

Besides lobbying for more opportune legislation, and possibly raising claims as to their individual rights-entitlements, civil servants are to protect their economic interests and redress their structural power imbalance vis-à-vis the government primarily by means of engaging in social dialogue, and especially through collective bargaining. Indeed, relevant studies²⁹ show that successfully negotiated collective agreements contribute to reduced working time and rising wages. In the context of the Czech Republic, *OSSOO* has shown that

²⁵Pablo Gilabert, ‘Labor Human Rights and Human Dignity’ (2016) 42 *Philosophy & Social Criticism* 171, p. 177.

²⁶ Explored in Section 1.2.

²⁷ Michal Plaček and František Ochraňa, ‘A Comparison of Selected Characteristics of the Senior Civil Service of the Czech Republic and the United Kingdom: A Lesson for Effective Management of Bureaucracy’ (2018) 31 *Economic Research-Ekonomska Istraživanja* 880, p. 894.

²⁸ *ibid.*, p. 881.

²⁹ TREXIMA, ‘Jaký má vliv kolektivní vyjednávání na postavení zaměstnanců na českém trhu práce? | TREXIMA’ [The impact of collective bargaining on employees' on the labor market in the Czech Republic] (29 March 2022) <<https://www.trexima.cz/jaky-ma-vliv-kolektivni-vyjednani-na-postaveni-zamestnancu-na-ceskem-trhu-prace/>> accessed 20 June 2022.

it is able secure better working conditions for its constituent base of 19,822 members³⁰. An example of their track-record is present in the fact of them having successfully negotiated benefits ranging from paid sick leave (so-called ‘sick days’)³¹ and meal allowance³², to work and life anniversary premiums³³ already in the higher-level CBA from 2015 under the heading of *Social conditions of state employees*. As the higher-level CBA also enjoys the status of an industry level agreement, the minimal protection and benefits it offered were extended to all ‘government employees in a service relation exercising state administration in state agencies³⁴’. These benefits continue to be enjoyed by Czech civil servants today³⁵. However, it is on the high-priority³⁶ question of salary rates where the civil service trade unions have thus far been unable to make any advances³⁷. The practical reasoning for this is twofold - first, basic pay is set unilaterally by order of the government - an act of state authority on which trade unions shall only be *informed*³⁸. Second, as we will see in Section 2.1, provisions of the Civil Service Act explicitly prohibit collective bargaining on civil servants' direct entitlements arising under the terms of the service employment relation, including individual pay entitlements. Therefore, while the Czech Republic has brought into its constitutional order³⁹ the right of trade unions to ‘defend the rights and interests of their members irrespective of their legal status⁴⁰’ under Art. 22 of the ICCPR, when it comes to collective bargaining, the Czech Republic nevertheless takes advantage of ‘a certain freedom

³⁰ ‘Living and Working in Czechia’ (*Eurofound*) <<https://www.eurofound.europa.eu/country/czechia>> accessed 20 June 2022.

³¹ Art. 10.2 in Higher-level Collective Bargaining Agreement between civil service unions and Mgr. Bohuslav Sobotka, PM from 22 December 2015. ‘Kolektivní dohoda vyššího stupně - Státní služba’ [Higher-level Collective Bargaining Agreement - State administration] < <https://www.mvcr.cz/sluzba/clanek/kolektivni-dohoda-vyssiho-stupne.aspx> > accessed 20 June 2022.

³² *ibid.*, Art. 13.2.

³³ *ibid.*, Art. 11.

³⁴ Section 143 para. 3 (b) of the Civil Service Act.

³⁵ For benefits as included in the current higher-level CBA, same articles still apply. ‘Zneni-Kolektivni-Dohody.Pdf’ [Higher-level Collective Bargaining Agreement - State Administration 4 October 2021] <<https://www.vlada.cz/assets/media-centrum/aktualne/zneni-kolektivni-dohody.pdf>> accessed 20 June 2022.

³⁶ Between 2014 and 2015 Eurofound noted a significant increase in the prevalence of remuneration commitments across the private, as well as the public service and administration sector. See ‘Czech Republic: Survey Points to Rise in Collective Agreements On’ (*Eurofound*) <<https://www.eurofound.europa.eu/publications/article/2016/czech-republic-survey-points-to-rise-in-collective-agreements-on-commitment-to-raise-wages>> accessed 20 June 2022.

³⁷ “The unions originally demanded the inclusion of an increase in pay scales in the civil service of 25%; however, this proposal was withdrawn.” See in ‘Czech Republic: First higher-level collective agreement in public’ (*Eurofound*) <<https://www.eurofound.europa.eu/ga/publications/article/2016/czech-republic-first-higher-level-collective-agreement-in-public-sector-signed>> accessed 20 June 2022.

³⁸ Art. 3.2 of the Higher-level CBA 2021.

³⁹ Art. 1 para. 2 in connection with Art. 10 of the Constitution of the Czech Republic.

⁴⁰ German Trade Union Confederation (DGB), ‘Submission to the CCPR des Deutschen Gewerkschaftsbundes’ <https://tbinetnet.ohchr.org/Treaties/CCPR/Shared%20Documents/DEU/INT_CCPR_CSS_DEU_43260_E.pdf>, para. 5.

of choice⁴¹, which is afforded to states in devising their systems of labour relations management in the public service. On the basis of this freedom, the Czech Republic has adopted a position-based career system⁴² of public administration. The political exigencies⁴³ of classical career-based civil service require it to create a dual system of employment relations that differentiates between private law employees and employees with ‘traditional, special public law employment status⁴⁴’ to the effect of excluding the latter from the process of collective bargaining⁴⁵. The ideological roots for the essential distinction it makes between these two classes of employees, and consequently between two differing levels of the collective right protection which it grants to employees is the assumption that ‘employees and employers in the civil service are bound together by such interests and qualifications which transcend the employment relationship⁴⁶’.

In the context of the Czech Republic, the careers system has its roots in the model of the Austro-Hungarian state service legally distinguished between service employees and private employees⁴⁷, and which was later transposed to the Czechoslovak civil service of the 1. Republic. Globally, the implications of the career system principle of ‘service obedience⁴⁸’ of servants vis-à-vis state authorities for collective bargaining in the civil service were further elaborated by Franklin D. Roosevelt. Although the former US President is remembered as a

⁴¹ Para. 9 of the Concurring Opinion of Judge Spielmann, Judges Bratza, Casadevall and Villiger in *Demir and Baykara v Turkey* [2008] ECtHR [GC] 34503/97. However, it should be noted that the freedom of states to preclude civil servants from participating in collective bargaining as such must be "offset" by arranging for public service unions ample opportunities for social dialogue and for their participation in drafting relevant employment regulations as per para. 149 of the judgment. In sum, according to the ECtHR a state may not place such obstacles in the way of social dialogue as to render civil servants' participation in negotiating their terms and conditions of employment totally meaningless. The nature of the obstacles presented by the provisions of the applicable national legislation and by the acts of the Czech government will be scrutinized in the following sections.

⁴² Úřad vlády ČR, ‘Analýza možnosti jediné komplexní úpravy právního postavení zaměstnanců ve veřejné správě’ [Analysis of the possibility of a single complex adjustment the legal status of employees in public administration] <https://www.vlada.cz/assets/urad-vlady/statni-sluzba/aktualni-informace/anal_za.pdf> accessed 20 June 2022, p. 5.

⁴³ Ensuring stability of civil service, highly experienced civil servants, as well as loyalty and service of civil servants to the public authorities see Koen Nomden, David Farnham and Marie-Laure Onnee-Abbruciati, ‘Collective Bargaining in Public Services: Some European Comparisons’ (2003) 16 *International Journal of Public Sector Management* 412.

⁴⁴ Eurofound (2011) ‘Representativeness of the European social partner organisations: Public administration’ <https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1109en.pdf> accessed 20 June 2022, p. 6,

⁴⁵ Nomden, Farnham and Onnee-Abbruciati (n 43), p. 420.

⁴⁶ HW Arthurs, ‘Collective Bargaining in the Public Service of Canada: Bold Experiment or Act of Folly?’ (1969) 67 *Michigan Law Review* 971, p. 980.

⁴⁷ Mahulena Vodárková ‘Úprava státní služby 1918–1938’ Univerzita Karlova Právnická fakulta (Prague 26 November 2021) <<https://dspace.cuni.cz/bitstream/handle/20.500.11956/170944/120407597.pdf?sequence=1>> accessed 20 June 2022, p. 19.

⁴⁸ *ibid.*

champion of collective bargaining in the private sphere, he refused to concede that especially on matters of pay determination, federal employees should be represented by their unions. He is said to have stated that ‘The pay is fixed by Congress and the workmen are represented by the members of Congress in the fixing of Government pay⁴⁹’. Granting bargaining rights to federal employees would, pace Roosevelt, hold the democratically-elected executive beholdent to the demands of just one interest group - that of trade unions - with the effect of limiting state sovereignty⁵⁰. Since then, these considerations have come to represent a kind of labour law doxa, and unsurprisingly, a similar line of argumentation for discriminating between workers and government workers is still paraded today⁵¹, even while it may be said to have since been challenged through subsequent law-making practice⁵², by later labour scholarship and in academic observations⁵³.

In providing a historical narrative of the paradigm shift⁵⁴ which allowed for extending collective bargaining rights to federal government employees in passing the original Canadian Public Service Staff Relations Act of 1967, Harry W. Arthurs notes that ‘*years of practical experience with labor relations on the private sector model in governmental and quasigovernmental employment*’ had subverted ‘*The traditional belief--or myth--that collective bargaining is somehow intrinsically incompatible with the dignity and functions of a sovereign state*⁵⁵’. The Canadian experience has shown that extending collective bargaining rights to civil servants does not automatically interfere with the government’s control over the public purse⁵⁶.

While Arthur's assessment above could not aptly describe the state of public administration at the time at which his article was published, it nevertheless does apply to the civil service as it has developed in the Czech Republic since the 1990s - in an era in which the economic

⁴⁹ POLITIFACT, District of Columbia 1800 I Street NW Washington and Dc 20006, ‘PolitiFact - Did FDR Oppose Collective Bargaining for Government Workers?’ (@politifact) <<https://www.politifact.com/factchecks/2013/aug/14/scott-walker/Did-FDR-oppose-collective-bargaining-for-government/>> accessed 20 June 2022.

⁵⁰ Jacob Finkelman, ‘Report on Employer-Employee Relations in the Public Service of Canada’ (1974) 29 *Relations Industrielles / Industrial Relations* 786, p. 787.

⁵¹ Washington and Dc 20006 (n 49).

⁵² Here recall Executive Order 10988 of 1962 in the US, the Canadian 1967 the Public Service Staff Relations Act, or the Spanish Civil Service Statute of 1998.

⁵³ Nomden, Farnham and Onnee-Abbruciati (n 43), p. 421.

⁵⁴ For the development in Canada that lead to the recognition of civil servants' bargaining rights see ‘Civilization.ca - Canadian Labour History, 1850-1999 - Unionization of the Public Service’ <<https://www.historymuseum.ca/cmc/exhibitions/hist/labour/lab37e.html>> accessed 20 June 2022.

⁵⁵ Arthurs (n 46), 974.

⁵⁶ Arthurs (n 46), 996.

imperative of productive efficiency of public administration came to dominate theories of state administration- and when the post-Communist project of depoliticizing, decentralising and de-bureaucratizing the civil service was meant to be achieved through ‘economization’⁵⁷ and ‘managerial governance’⁵⁸ of the state apparatus and its workforce. Indeed available sources corroborate that during at least the past twenty years, the experience of not only the Czech Republic but also of other European public administrations has been one where faced with ‘increasingly differentiated and sophisticated demands’⁵⁹ of citizens on public administration services, governments have responded with integrating private sector models of governance into the public sector, ‘often accompanied by outsourcing processes and a reform of labour relations’⁶⁰. As such, under conditions where the public and the private are merging together, it becomes increasingly more difficult to continue to deprive civil servants of full-fledged collective bargaining rights.

In the following sections, I will argue that this is especially the case where there are available measures which on the one hand preserve and further civil servants’ human labour rights, whilst on the other hand, ensuring the transparency and efficacy of the civil service, and where the implementation of these measures by the State doesn’t come at an unreasonable cost⁶¹.

⁵⁷ JUDr. Jiří Grospič, CSc., ‘Principy dobré správy - K principům dobré správy a jejich koncepci | CODEXIS®’ [Principles of good governance - On the principles of good governance and their conceptualization] (Veřejný ochránce práv, 22 March 2006)<<https://next.codexis.cz/literatura/LT8958?dokumentVyzraz=mana%C5%BEerizace>> accessed 20 June 2022.

⁵⁸ *ibid.*

⁵⁹ Eurofound (n 44), p. 6

⁶⁰ *ibid.*

⁶¹ Gilabert (n 24), p. 180.

CHAPTER 2

Section 2:1 Codifying the right to bargain collectively in Czech law

Social dialogue is understood as ‘all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy⁶²’. Social dialogue may be led at both sectoral⁶³ and ‘supra-sectoral⁶⁴’ level and can take place on the national, as well as on the international stage. While social dialogue may take place between a triad of social partners⁶⁵, social dialogue narrowly construed as participation in the mechanism for collective bargaining is essentially bipartite - taking place strictly between two subjects who are identical with the parties to the collective agreement⁶⁶. Due to its scope as well as its potential for furthering larger social political projects⁶⁷, social dialogue is considered to help enhance the living standard of Czech workers, contribute to a better fulfilment of their needs, prevent social exclusion⁶⁸ and preserve social peace⁶⁹.

⁶² ILO, ‘Social Dialogue (GOVERNANCE)’ <<https://www.ilo.org/ifpdial/areas-of-work/social-dialogue/lang-en/index.htm>> accessed 20 June 2022.

⁶³ Consider sectoral-wide higher-level CBAs for the setting of minimum shared standards at the national level. At the EU level, consider inter-professional social dialogue in the form of agreements (e. g. 1998 agreements on the organisation of working time for seafarers) and sectoral agreements implemented by means of Council directives, see Section B of ‘Social Dialogue | Fact Sheets on the European Union | European Parliament’ <<https://www.europarl.europa.eu/factsheets/en/sheet/58/social-dialogue>> accessed 20 June 2022.

⁶⁴ At national level, the meeting of the Council of Economic and Social Agreement of the Czech Republic (RHSD) will produce (non-binding) resolutions and conclusions on, for example, national minimum wage rates see Mgr. Jan Horecký, Ph.D. JUDr. Vít Samek, ČMKOS, ‘Odborna-Studie-Odborova-Prava-Ochrana-Zamestnancu.Pdf’ [Trade union rights - employees' protection] (Prague 2015, ČMKOS) <<https://ipodpora.odborny.info/soubory/dms/ukony/14750/6/odborna-studie-odborova-prava-ochrana-zamestnancu.pdf>> accessed 20 June 2022, p. 14. At EU level, consider multi-sector agreements of which the 2006 Agreement on Workers' Health Protection through the Good Handling and Use of Crystalline Silica and Products containing it was the first one.

⁶⁵ As is the case with the tripartite Council of Economic and Social Agreement (RHSD) where the Government is joined by Českomoravskákonfederaceodborovýchsvazů a Asociacesamostatnýchchodborů on the side of labour and by Svazprůmyslu a dopravyČeskérepubliky a Konfederacezaměstnavatelských a podnikatelskýchsvazůČeskérepubliky on the employer side.

⁶⁶ Federální shromáždění ČSFR ‘FS ČSFR 1990-1992, Tisk 260, Část č. 1, Důvodová zpráva’ [Government proposal for the Law on Collective Bargaining, preliminary report] <https://www.psp.cz/eknih/1990fs/tisky/t0260_01.htm> accessed 20 June 2022.

⁶⁷ ‘President von Der Leyen at EESC Plenary Session’ <https://ec.europa.eu/commission/presscorner/detail/en/AC_21_6841> accessed 20 June 2022.

⁶⁸ Mgr. Jan Horecký, Ph.D. JUDr. Vít Samek (n 63), p. 6.

⁶⁹ ILO (n 61).

Social dialogue principally involves two mutually-reinforcing components – the first component involves instituting a system for the exercise of trade unions’ right to information, right to consultation, right to co-decision and co-determination, and to control of the working conditions guaranteed by the employer⁷⁰. The unions’ right to participation in the determination of terms and conditions of employment may otherwise also be exercised⁷¹ via direct participation of unions in the consultative committees on labour matters or by other methods where a common agreement⁷² may be reached. The second, and most powerful form of dialogue is the institution of collective bargaining. Importantly, only trade unions⁷³ are legally entitled to bargain collectively and negotiate collective bargaining agreements.

Collective bargaining is a method of group dealing under which the employees are organized in trade unions, and where conditions of work are fixed jointly between the employer and the trade union delegates⁷⁴. The process of collective bargaining on bargainable issues⁷⁵ foresees the conclusion of a collective bargaining agreement representing a binding workplace norm that labour and management representatives were able to come to an agreement on in their negotiations. Importantly, the normative substance of an agreement which confers rights and duties onto not otherwise specified groups of addressees (employees and the employer) has the status a legal norm⁷⁶. Consequently, the beneficiaries of collective bargaining agreements – both individual employees and trade unions – may rely on CBA provisions of the above-described character in the same way they would rely on any other contract, labour code provision, or any other act of law⁷⁷.

Collective bargaining agreements, which are concluded both in the private sector as well as in the civil service, can either be signed at company, or at industry/sector level⁷⁸. A company

⁷⁰Mgr. Jan Horecký, Ph.D. JUDr. Vít Samek (n 63), p. 15.

⁷¹ In line with the provisio given in Art. 7 of ILO Convention No. 151 which reads: *other methods as will allow representatives of public employees to participate in the determination of these matters.*

⁷² Here not to be understood as a collective bargaining agreement. See para. 9 of Concurring Opinion in *Demir and Baykara v. Turkey* (n 41).

⁷³ As opposed to other types of employee associative groups like a works council or the representative for safety and health at work. See Section 143 para. 2 of the Civil Service Act.

⁷⁴ Magnus W Alexander, ‘Collective Bargaining-Some Fundamental Considerations’ (1920) 90 The Annals of the American Academy of Political and Social Science 61, p.61.

⁷⁵ Permissible bargainable issues include pay, work organisation, health and safety, work-life balance and employers’ contributions to pensions. See WORKER PARTICIPATION.EU ‘Collective Bargaining / Czech Republic / Countries / National Industrial Relations / Home - WORKER PARTICIPATION.Eu’ <<https://www.worker-participation.eu/National-Industrial-Relations/Countries/Czech-Republic/Collective-Bargaining>> accessed 20 June 2022.

⁷⁶Mgr. Jan Horecký, Ph.D. JUDr. Vít Samek (n 63), p. 37

⁷⁷ *ibid.*

⁷⁸WORKER PARTICIPATION.EU (n 74).

level agreement is binding upon company management and, by virtue of the principle of representation⁷⁹, on all of the company's employees⁸⁰, their trade union membership notwithstanding. Industry level agreements - known as 'higher-level collective agreements' - are normally⁸¹ binding on employers who are members of the employers' association that have signed a given agreement. In the case of the civil service, the Czech government as represented by a 'high-grade ministerial official'⁸² in the course of negotiations, would stand in for the private sector employers' association that is to be bound by the resulting agreement. On the labour side, a higher-level CBA applies to all employees in a given sector of economic activity. In the context of the public service and administration sector, the higher-level CBA applies to all employees covered by the Civil Service Act⁸³.

One issue presented by the governing national legislation on collective bargaining which appears problematic for both private sector as well as civil service unions looms large over the unanimity requirement to petition an arbiter to enforce a CBA and materializes itself in the reality of multi-union bargaining. This issue, referred to in Czech scholarly literature at the plurality of unions problem⁸⁴, is said to have a potentially paralyzing effect on collective bargaining⁸⁵. Indeed, when we consider that as the currently applicable national legal framework does not offer clear guidance on solving a potential impasse where a representative union's right to have their collective rights enforced in arbitration (or their *ultima ratio* right to take collective action) is being obstructed by the fact of inimical yellow unions' presence in their workplace, we realize the negative consequences of such a legislative gap which puts into question the very quality of trade unions' right to effect changes to their working conditions with the use of the collective bargaining machinery. Faced with this problem, the Czech-Moravian Confederation of Trade Unions continues to

⁷⁹“Odborová organizace zastupuje všechny zaměstnance zaměstnavatele, u kterého působí, bez ohledu na to, jsou-li zaměstnanci jejími členy, nebo ne. Odborová organizace tedy jedná za zaměstnance, kteří nejsou odborově organizováni.” [The trade union represents all employees of the employer, regardless of whether the employees are members or not. Thus, a trade union acts also on behalf of employees who are not unionized] in Mgr. Jan Horecký, Ph.D. JUDr. Vít Samek (n 63), p. 33

⁸⁰ Provided that there is only one trade union active in one place of employment.

⁸¹ Unless their reach is extended to also cover employers not represented in the association but who operate in the same industry provided certain conditions are fulfilled pursuant to the rules of the Collective Bargaining Act. See WORKER PARTICIPATION.EU (n 74).

⁸² ‘Czech Republic: First higher-level collective agreement in public’ (n 37).

⁸³ *ibid.*

⁸⁴ Mgr. Jan Horecký, Ph.D. JUDr. Vít Samek (n 63), p. 33.

⁸⁵ *ibid.*, p. 3.

lobby for solution by way of, what has shown to be a controversial⁸⁶, legislative guarantee of affording preferential treatment to the majoritarian trade union organisation where division inhibits collective bargaining⁸⁷.

2.2 The status of civil service trade unions and collective bargaining in the Civil Service Act

The Civil Service Act (hereon ‘the Act’) sets up a unified system of public administration including provisions on civil servants’ rights to collective bargaining, as well as their participation rights. The Act whose passing was kept on hold in the Czech legislature for almost 20 years⁸⁸ was finally introduced in 2014 after it had transpired that the European Commission made its enactment a prerequisite to the Czech Republic’s full access to the European Structural and Investment Funds⁸⁹. The Act was intended to deliver on instituting ‘an independent, professional, stable and accountable public administration⁹⁰’, bringing also legal certainty to civil servants who, up until that point, had been covered by the general labour law framework in matters of their employment⁹¹. Before the Act came into force, no authority on the side of the employer had the competence⁹². The historically first Czech higher-level CBA in the civil service governing the period between 2016 and 2018 was as such negotiated on the employer side by a *high-grade official* - the Deputy Minister of the Interior for Civil Service, to be finally signed by the then-Prime Minister Bohuslav Sobotka. For the current higher-level CBA, the negotiating team on the employer side represented by the Deputy Minister of the Interior for Civil Service was also joined by 1st Deputy Prime

⁸⁶ Decision of the Constitutional Court of the Czech Republic No. 116/2008 Coll para. 301 where the principle of representativeness was deemed a “narušení principu rovnosti” [*contravention of the principle of equal treatment and equal standing of unions*] <<https://www.zakonyprolidi.cz/cs/2008-116>> accessed 20 June 2022

⁸⁷Mgr. Jan Horecký, Ph.D. JUDr. Vít Samek (n 63), p. 34.

⁸⁸ Consider that Art. 79 of the Constitution of the Czech Republic from 1992 already states that *The legal status of government employees in ministries and other administrative agencies shall be defined by law*.

⁸⁹ Jakub Strnad ‘Status státního úředníka v režimu zákona o státní službě’ [Civil servant status under the Civil Service Act] Právnická fakulta Masarykovy univerzity (Brno 2014/2015) <https://is.muni.cz/th/eu26u/Diplomova_Prace.pdf> accessed 20 June 2022, p. 29.

⁹⁰ Commission of the European Communities, ‘2001 REGULAR REPORT ON THE CZECH REPUBLIC’S PROGRESS TOWARDS ACCESSION’ (Brussels, 13 November 2001) <http://aei.pitt.edu/44559/1/czech_2001.pdf> p. 17.

⁹¹Jakub Strnad (n 88), p. 28.

⁹² Such competence of the Government to conclude higher-level CBAs with the civil service trade unions is now found in Section 143 (3b).

Minister and Minister of the Interior, as well as by the Minister of Finance and the Minister of Labour and Social Affairs⁹³.

The formal process of collective bargaining for civil servants is outlined in para. 143 (3) of the Act which in turn refers to para. 8 of the Collective Bargaining Act. Para. 8 of the latter provides for rules to be followed in the process of concluding a CBA. However, no definitive statement on the precise moment or act by which a collective bargaining agreement is considered to have been concluded is provided. This then leaves room for the application of the Government's Legislative Rules to fill in those gaps. Subjecting an already negotiated CBA to an inter-ministerial comment procedure before finally receiving assent from the PM, however risks that the already agreed union concessions and gains will be sabotaged. Not to mention that the additional requirement of the comment procedure distorts the essentially bipartisan nature of collective bargaining.

As for the substantive content of civil servants' collective bargaining rights, section 143 para. 1 of the Act stipulates that civil servants' rights to improve their conditions of service, in particular medical, social, or cultural terms of their service relationship may be negotiated in a collective bargaining agreement. Notice that questions of employee pay are not included. The prominent Czech labour law scholar Prof Bořivoj Šubrt in fact holds that *'...ustanovení § 143 odst. 1 zákona o státní službě umožňuje zakládat hromadná práva zaměstnanců, například v úpravě pracovního prostředí a bezpečnosti a ochraně zdraví zaměstnanců ve službě (což se týká i bezpečnostních sborů), nikoliv individuální nároky. Kolektivní dohoda může jen upravovat bližší podmínky, za nichž jsou individuální práva, založená právním předpisem, uspokojována'*⁹⁴ (...section 143 (1) of the Civil Service Act allows for the establishment of collective rights of employees [through collective bargaining], for example in the regulation of the working environment and the safety and health protection of employees in the service (which also applies to security forces), **not individual claims**. A collective agreement can only regulate the detailed conditions under which individual rights established by law are satisfied). If we are to accept such an interpretation, we would not be

⁹³ 'Premiér Babiš Podepsal s Odbory Novou Kolektivní Dohodu Vyššího Stupně pro Státní Zaměstnance | Vláda ČR' <<https://www.vlada.cz/cz/media-centrum/aktualne/premier-babis-podepsal-s-odbory-novou-kolektivni-dohodu-vyssiho-stupne-191025/>> accessed 20 June 2022.

⁹⁴ 'Práce a Mzda JUDr. Bořivoj Šubrt, 'Kolektivní Dohoda Vyššího Stupně | Práce a Mzda' [Higher-level Collective Bargaining Agreement] <<https://www.praceamzda.cz/clanky/kolektivni-dohoda-vyssiho-stupne>> accessed 20 June 2022.

surprised to find also that Prof Šubrt considers those benefits⁹⁵ that may be individually claimed by each and every civil servant whose service employment relationship is governed by the Act, which civil service trade unions have successfully managed to “smuggle into” the provisions of the concluded higher-level CBAs through their reliance on section 143 para. 3 (d)⁹⁶ to be unlawful aberrations⁹⁷. Therefore, as long as the provisions of the Act in their current form continue to apply to them, civil servants will remain excluded from wage bargaining.

The civil servant specific system of wage-determination is helpfully elaborated on by the Czech public-interest law organization Frank Bold, which seems to view it in strictly positive terms: "The regular pay has been determined by the governmental decree no. 304/2014 Coll. According to this decree, every civil servant has been assigned a particular tariff intended for a particular pay class determined by a position in civil service, and for a particular pay grade in which the state employee is subsumed. Because the tariffs, pay classes and pay grades are determined by law, there is no room for the superiors' arbitrariness and the remuneration is transparent⁹⁸". What this description leaves out, however, is that just as there is no room for the arbitrary decision-making of the civil servant's direct superior – an unarguably positive aspect of the career system's stress on professionalization and independence – there is equally no scope for social dialogue or negotiation to take place on the key question of remuneration.

Beyond the right to bargain collectively which Czech civil servants enjoy, albeit in a severely restricted capacity, the Act also enshrines civil servants' participation rights. Participation varies by degree of employee input on given matters and includes the rights to information, consultation, discussion, codetermination, etc.. Distinctly different from collective bargaining which involves concrete contract negotiations and successive rule-administration, the more

⁹⁵ He especially takes issue with the provision of the so-called *sick days* and life and work anniversary premiums see.

⁹⁶ section 143 para. 3 (d) reads: employment claims are considered to be claims from the service employment relationship. Here, Prof Šubrt seems to suggest that civil service trade unions in their attempts to provide individual right-entitlements to their members, have relied precisely on this provision to insert private labour law employee claims into the public law regime of the Civil Service Act.

⁹⁷JUDr. Bořivoj Šubrt, ‘Kolektivní vyjednávání’ [*Collective bargaining*] [2018] Praktická personalistika č. 9-10/2018.

⁹⁸Frank Bold ‘Briefing on Implementation of Civil Service Act, Czech Republic’ (Frank Bold, 1 October 2015) <https://en.frankbold.org/sites/default/files/tema/briefing-civil_service_act-2015-10-09_0.pdf> accessed 20 June 2022, p. 6.

consensual and mutualistic participation rights⁹⁹ have in some corners¹⁰⁰ been received with mistrust as mechanisms of union cooptation which ultimately serve to retain management control over key prerogatives¹⁰¹. Yet while distinguishing between bargaining and participation is necessary, the two remain inextricable parts of social dialogue. So instead of rejecting participation in the civil service altogether, I argue that in a distributive bargaining setting¹⁰² where hostility is high, strengthening participation rights should be viewed as a way to improve union-management relations¹⁰³ on which unions may then build during collective bargaining. In this way, effective exercise of unions' participation rights may work to build its leverage.

The Act provides for a duty on the management of civil service agencies to inform unions of changes to basic working conditions concerns¹⁰⁴. According to section 131, consultations shall take place on issues of occupational health and safety. Fleshing out the former is Art. 3.2 of the current higher-level CBA stating that ‘both service agencies and trade unions shall *inform* each other of developments in the conditions of the service relationship, *especially with regards to pay*.’ However, the functional effectiveness of such participation rights is decreased considering that a violation of the duty to consult trade unions will not cause the invalidity of a government decision¹⁰⁵.

2.3 Overview of legislative deficiencies and reactions of the interviewee

So far in my review of the applicable legislative acts, I have pointed to the following areas of concern:

1. civil servants' severely restricted subject-matter bargaining mandate

⁹⁹ As opposed to adversary see Milton Derber, ‘Collective Bargaining, Mutuality, and Workers Participation in Management: An International Analysis’ (1980) 35 *Relations industrielles / Industrial Relations* 187., p. 196.

¹⁰⁰ William Moore and Robert C Miljus, ‘Integration of Collective Bargaining and Formal Worker Participation Processes: Boon or Barrier to Worker Rights?’ (1989) 2 *Employee Responsibilities and Rights Journal* 217, p. 220.

¹⁰¹ D.F. Smith, ‘A critique of worker participation in New Zealand’ [1978] *New Zealand Journal of Industrial Relations*, Vol. 3, pp. 71–79, p. 79.

¹⁰² Derber (n 98), p. 192.

¹⁰³ William Moore and Robert C Miljus (n 99), p. 221.

¹⁰⁴ Section 130.

¹⁰⁵ Note that this is different from the union’s right to cooperation and co-determination whose breach by the government would result in a given act being declared null and void, that is it would be of no legal force. The Labour Code, however, only grants unions this right with regards to a closed list of issues that is very narrow in its scope (e.g. dismissal of a trade union functionary, the introduction of a partial unemployment system etc.). See Mgr. Jan Horecký, Ph.D. JUDr. Vít Samek (n 63), p. 20.

2. unaccountable Government's Legislative Rules used during inter-ministerial comment procedure and deployed to sabotage union gains
3. participation rights without sanctions for non-compliance
4. missing legislative guidance on union representativeness in multi-union bargaining and enforcement

When conducting my interview with Ms. Homfray, Legal Advisor at the Trade Union of State Bodies and Institutions in the Czech Republic on March 31 2022 I have found that she was able to corroborate three of the four above-mentioned points. I first asked her to identify what she thought were some of the barriers to the full enjoyment of genuine collective bargaining rights by civil servants stemming from the current statutory setup. With regards to point 4, she did not at all consider the problem of plurality of unions and the inhibiting effect of yellow unions on unanimous trade union decision-making. She did¹⁰⁶, however, decry the seemingly “toothless” consultation rights afforded to civil servants engaged in social dialogue, likening the lack of input unions are able to give with regard to pay increases to the inability of the government to receive their views about proposed restructuring in the system of civil service organisation¹⁰⁷.

Secondly, Homfray highlighted the issue of some unauthorised ministers pushing for substantive last-minute changes to the already negotiated normative content of a higher-level CBA during the inter-ministerial comment procedure, outside the purview of the unions¹⁰⁸.

Lastly, Homfray voiced her frustration with the inexplicably narrow scope of bargainable issues which a CBA under the Civil Service Act may lawfully cover¹⁰⁹.

2.4 Concluding thoughts

Indeed, when one considers the confluence of elements which are all at play here - the restricted scope of bargaining premised on outlived sovereignty arguments, the deference to government rules to govern bargaining processes and the ‘toothlessness’ of overlapping participation rights - what emerges is a worrying picture of a civil service whose members' core labour human right to advocate on behalf of and participate in the establishment of

¹⁰⁶ Appendix 1, para. 11.

¹⁰⁷For this process, she uses the word systemization

¹⁰⁸ Appendix 1, para. 12.

¹⁰⁹ *ibid.*, para. 13.

important workplace rules has been effectively made meaningless through the constitution of the currently applicable national legal framework, and the way in which this framework has been deployed by the government against its own civil servants.

In the following chapter, I offer possible means of redress to tackle the gaps and traps in the legal framework which I have been able to identify and which Ms Homfray has corroborated with her practical experience.

CHAPTER 3

3.1 Solutions to the problem and means of challenge

In order to normalise labour relations in the Czech civil service for the benefit of civil servants' labour human rights, both more and less radical reformist legislative and policy measures may be considered.

3.1.1 Proposals for policy solutions

I would first like to submit a general suggestion for unions to lobby for a more profound systemic transformation to move beyond sovereignty-centred ideological commitments that inform the Czech career-model of the civil service as it currently stands. This would involve abandoning the artificial distinction between private and civil sector workers in order to give full recognition of civil servants' collective bargaining rights and subject wage-fixing to a process of democratic co-decision. While this would require considerable courage on the part of both the legislature and the government, as the latter may be reluctant to give up the

advantages it enjoys under the current legislative framework¹¹⁰, experience has shown that successfully implementing a reform of this magnitude is not impossible¹¹¹.

Second, in order to improve the position of Czech civil servants, the Civil Service Act should be amended to contain an inflation clause so that servants' pay tariffs are adjusted for inflation automatically. The implementation of such a policy in the civil service already finds support across numerous European jurisdictions¹¹². Beyond this, some support for this policy may arguably be already found in the wording of Art. 9 of the current higher-level CBA which reflects a point of agreement between the social partners to the effect that civil servants' salaries should not lag behind inflation¹¹³.

Third, in our interview, Homfray also suggested codifying a closed list of purely formal aspects of a higher-level CBA which may be subject to amendments during the inter-ministerial comment procedure prior to the agreement receiving the PM's assent. This would add a layer of legislative oversight to the application of Rules and prevent further distortion of the bipartite character of collective bargaining taking place between civil service unions and the 'high-grade ministerial official' on the management side¹¹⁴.

3.1.2. Challenging the government via strategic litigation

As I've already noted in the Introduction, the government's systematic denial of service unions' collective rights following the wage-increase cancellation incident has not yet come under judicial scrutiny. As such, I've discussed possible means of judicial challenge with Homfray. She outlined two potential courses of action¹¹⁵. First, she raised the possibility of a strategic judicial review action lodged before the administrative courts which would challenge the practice of government's unilateral wage-setting by arguing a breach of a given civil servant's right to freely associate without discrimination¹¹⁶ to protect his or her economic interests (including their ability to influence the amount payable to them on their

¹¹⁰ Finkelman (n 50), p. 788.

¹¹¹ *ibid.*

¹¹² E.g. Sweden and Belgium see Nomden, Farnham and Onnee-Abbruciati (n 43).

¹¹³ "The parties agree that no later than the end of the first calendar quarter will start negotiations on the valorisation of civil servants' salaries for the following calendar year." (own translation) available through <<https://www.vlada.cz/assets/media-centrum/aktualne/zneni-kolektivni-dohody.pdf>> accessed 20 June 2022.

¹¹⁴ Appendix 1, paras 15 - 16.

¹¹⁵ *ibid.*, para. 18.

¹¹⁶ Section 140 para. 2 of the Civil Service Act.

salary statement). The argument would hold that the compounded effect of several factors (denial of full collective bargaining rights combined with weak participation rights that fail to incentivize government compliance) has rendered the right devoid of substance in practice.

Second, Homfray also mentioned the possibility of a constitutional challenge. Carefully considering her comments on this point, I hold that it is within the best interests of Czech civil service unions to formulate a constitutional challenge to bring the provisions of the applicable national law into conformity with the Czech Republic's international obligations under the ILO Convention No. 154 - a duly ratified¹¹⁷ treaty document which is to be granted priority of application over ordinary legislative acts such as the Civil Service Act¹¹⁸. Arguing on the basis of Convention No. 154 is significant since while Convention No. 151 on labour relations in the public service admits that "traditional forms of collective bargaining are not the only way by which a state can meet its obligations to the workers covered¹¹⁹", Convention No. 154 specifically extends collective bargaining of equal scope to all sectors of economic activity. Further to that point, as Canessa-Montejo notes 'A member State that has ratified Convention No. 154 recognizes collective bargaining as the only procedure to establish working conditions and terms of employment between public authorities and public employees' organizations¹²⁰'

¹¹⁷ Czechia ratified on 6 December 2017.

¹¹⁸ Art. 1 para. 2 in connection with Art. 10 of the Constitution.

¹¹⁹ H Collins, KD Ewing and A McColgan, *Labour Law* (Cambridge University Press 2012) <https://books.google.at/books?id=hJBQekoDn_IC>, p. 541.

¹²⁰ Miguel F Canessa Montejo, 'The Scope of Collective Bargaining in Public Administration', p. 18.

CONCLUSION

It is hoped that my Capstone Thesis has shown that what stands in the way of Czech civil servants' ability to collectively advocate for their right to decent pay and working conditions isn't merely one government's hostility to labour and the reductions such a government makes to its public sector wage bill spending budget. In fact, I hope to have presented compelling evidence demonstrating that for 'cost-saving measures' of the type the Czech government has implemented on the backs of its civil servants, a 'fertile ground' in the form of an enabling legislative framework must have been laid first.

Today, the hurdles that Czech civil servants and their representative trade unions are facing in efforts to vindicate their labour human rights are primarily of a systemic nature. As such, if civil service unions wish to challenge the government's iron grip on civil service bargaining and enhance the quality of social dialogue they entertain with the government, unions should be keenly aware of the limitations of the national legal framework which they will inevitably have to navigate. My Capstone Thesis, along with the article written for *Sondy Revue* has hopefully contributed to this emerging awareness by outlining three areas of concern with regards to the extant legal framework for leading social dialogue in the civil service: 1) civil servants' severely restricted subject-matter bargaining mandate, 2) unaccountable government legislative rules deployed to sabotage union gains, 3) weak participation rights without adequate incentives for compliance. To situate these issues within broader theoretical labour law debates, I have attempted to grapple with the longstanding sovereignty argument for denying civil servants recognition of full collective bargaining rights. Under present conditions in the Czech state administration, it is my view that the argument is more a political myth functioning to preserve the existing social conditions¹²¹. My argument has been that expanding civil servants' access to social dialogue does not ultimately interfere with the government's control over the public purse, and further that adjusting civil servants' pay tariffs to inflation and additionally allowing for their mutual determination by both government and civil servants may actually further the goals of promoting a more transparent, stable¹²² and motivated civil service.

¹²¹ Here I am paraphrasing Jacob Finkelstein in Arthurs (n 46), p. 974.

¹²² In terms of creating conditions for recruitment and retention of highly-qualified staff.

BIBLIOGRAPHY

Alexander MW, 'Collective Bargaining-Some Fundamental Considerations' (1920) 90 The Annals of the American Academy of Political and Social Science 61

Arthurs HW, 'Collective Bargaining in the Public Service of Canada: Bold Experiment or Act of Folly?' (1969) 67 Michigan Law Review 971

Canessa Montejo MF, 'The Scope of Collective Bargaining in Public Administration'

'Civilization.ca - Canadian Labour History, 1850-1999 - Unionization of the Public Service' <<https://www.historymuseum.ca/cmc/exhibitions/hist/labour/labh37e.html>> accessed 20 June 2022

'Collective Bargaining / Czech Republic / Countries / National Industrial Relations / Home - WORKER PARTICIPATION.Eu' <<https://www.worker-participation.eu/National-Industrial-Relations/Countries/Czech-Republic/Collective-Bargaining>> accessed 20 June 2022

Collins H, Ewing KD and McColgan A, *Labour Law* (Cambridge University Press 2012) <https://books.google.at/books?id=hJBQekoDn_IC>

'Czech Republic: First higher-level collective agreement in public' (*Eurofound*) <<https://www.eurofound.europa.eu/ga/publications/article/2016/czech-republic-first-higher-level-collective-agreement-in-public-sector-signed>> accessed 20 June 2022

'Czech Republic: Survey Points to Rise in Collective Agreements On' (*Eurofound*) <<https://www.eurofound.europa.eu/publications/article/2016/czech-republic-survey-points-to-rise-in-collective-agreements-on-commitment-to-raise-wages>> accessed 20 June 2022

Derber M, 'Collective Bargaining, Mutuality, and Workers Participation in Management: An International Analysis' (1980) 35 Relations industrielles / Industrial Relations 187

'ECHR Upholds Right to Collective Bargaining and to Strike' (*Eurofound*) <<https://www.eurofound.europa.eu/publications/article/2010/echr-upholds-right-to-collective-bargaining-and-to-strike>> accessed 20 June 2022

Finkelman J, 'Report on Employer-Employee Relations in the Public Service of Canada' (1974) 29 Relations Industrielles / Industrial Relations 786

'FS ČSFR 1990-1992, Tisk 260, Část č. 1' <https://www.psp.cz/eknih/1990fs/tisky/t0260_01.htm> accessed 20 June 2022

Gilbert P, 'Labor Human Rights and Human Dignity' (2016) 42 Philosophy & Social Criticism 171

'IDEA Studie 2 2022 Statní Zamestnanci a Uředníci' <https://idea.cerge-ei.cz/files/IDEA_Studie_2_2022_Statni_zamestnanci_a_urednici/IDEA_Studie_2_2022_Statni_zamestnanci_a_urednici.html> accessed 20 June 2022

‘Inflation, Consumer Prices’ (*Inflation, Consumer Prices*)
<https://www.czso.cz/csu/czso/inflation_consumer_prices_ekon> accessed 20 June 2022

info@aion.cz AC-, ‘420/2021 Sb. Nařízení vlády, kterým se mění nařízení vlády č. 341/2017 Sb., o platových poměrech zaměstnanců ve v...’ (*Zákony pro lidi*)
<<https://www.zakonyprolidi.cz/cs/2021-420>> accessed 20 June 2022

‘Jaký má vliv kolektivní vyjednávání na postavení zaměstnanců na českém trhu práce? | TREXIMA’ (29 March 2022) <<https://www.trexima.cz/jaky-ma-vliv-kolektivni-vyjednani-na-postaveni-zamestnancu-na-ceskem-trhu-prace/>> accessed 20 June 2022

‘Kolektivní Dohoda Vyššího Stupně | Práce a Mzda’
<<https://www.praceamzda.cz/clanky/kolektivni-dohoda-vyssiho-stupne>> accessed 20 June 2022

‘Kolektivní dohoda vyššího stupně - Státní služba’
<<https://www.mvcr.cz/sluzba/clanek/kolektivni-dohoda-vyssiho-stupne.aspx>> accessed 20 June 2022

Kurzy.cz, ‘Průměrná hrubá měsíční mzda zaměstnanců v Praze dosáhla v 1. čtvrtletí roku 2022 hodnoty 48 498 Kč a byla tak opět nejvyšší mezi kraji. | Kurzy.cz’
<<https://www.kurzy.cz/zpravy/655485-prumerna-hruba-mesicni-mzda-zamestnancu-v-praze-dosahla-v-1-ctvrtleti-roku-2022-hodnoty-48-498-kc/>> accessed 20 June 2022

‘Living and Working in Czechia’ (*Eurofound*)
<<https://www.eurofound.europa.eu/country/czechia>> accessed 20 June 2022

Moore W and Miljus RC, ‘Integration of Collective Bargaining and Formal Worker Participation Processes: Boon or Barrier to Worker Rights?’ (1989) 2 Employee Responsibilities and Rights Journal 217

Nomden K, Farnham D and Onnee-Abbruciati M, ‘Collective Bargaining in Public Services: Some European Comparisons’ (2003) 16 International Journal of Public Sector Management 412

‘Odborna-Studie-Odborova-Prava-Ochrana-Zamestnancu.Pdf’
<<https://ipodpora.odborny.info/soubory/dms/ukony/14750/6/odborna-studie-odborova-prava-ochrana-zamestnancu.pdf>> accessed 20 June 2022

‘Odborový svaz státních orgánů a organizací: Jsme zklamáni postojem hnutí ANO k platům ve veřejném sektoru – Tripartita’ <<https://www.tripartita.cz/odborovy-svaz-statnich-organu-a-organizaci-jsme-zklamani-postojem-hnuti-ano-k-platum-ve-verejnem-sektoru/>> accessed 20 June 2022

‘Otevřený Dopis PV Odborů p. Ministru Jurečkovi.Pdf’
<<https://statorg.cmkos.cz/dokumenty/Otev%C5%99en%C3%BD%20dopis%20PV%20odbor%C5%AF%20p.%20ministru%20Jure%C4%8Dkovi.pdf>> accessed 20 June 2022

Plaček M and Ochrana F, ‘A Comparison of Selected Characteristics of the Senior Civil Service of the Czech Republic and the United Kingdom: A Lesson for Effective Management of Bureaucracy’ (2018) 31 Economic Research-Ekonomika Istraživanja 880

‘Předseda Vlády - Dopis OS RoPo Ke Zmrazení Platů.Pdf’
<<https://statorg.cmkos.cz/dokumenty/P%C5%99edseda%20v%C3%A1dy%20-%20dopis%20OS%20RoPo%20ke%20zmrazen%C3%AD%20plat%C5%AF.pdf>> accessed 20 June 2022

‘Premiér Babiš Podepsal s Odbory Novou Kolektivní Dohodu Vyššího Stupně pro Státní Zaměstnance | Vláda ČR’ <<https://www.vlada.cz/cz/media-centrum/aktualne/premier-babis-podepsal-s-odbory-novou-kolektivni-dohodu-vyssiho-stupne-191025/>> accessed 20 June 2022

‘President von Der Leyen at EESC Plenary Session’
<https://ec.europa.eu/commission/presscorner/detail/en/AC_21_6841> accessed 20 June 2022

‘Principy dobré správy - K principům dobré správy a jejich koncepci | CODEXIS®’
<<https://next.codexis.cz/literatura/LT8958?dokumentVyzraz=mana%C5%BEerizace>>
accessed 20 June 2022

‘Služební poměr policisty’ (EPRAVO.CZ) <<https://www.epravo.cz/top/soudni-rozhodnuti/sluzebni-pomer-policisty-26644.html?mail>> accessed 20 June 2022

‘Social Dialogue | Fact Sheets on the European Union | European Parliament’
<<https://www.europarl.europa.eu/factsheets/en/sheet/58/social-dialogue>> accessed 20 June 2022

‘Social Dialogue (GOVERNANCE)’ <<https://www.ilo.org/ifpdial/areas-of-work/social-dialogue/lang--en/index.htm>>%20%20a> accessed 20 June 2022

Tucker E, ‘The Constitutional Right to Bargain Collectively: The Ironies of Labour History in the Supreme Court of Canada’ (2008) 61 Labour / Le Travail 151

‘Úředníci hrozí stávkou, chtějí více peněz. Vláda valorizaci odmítá’ (E15.cz)
<<https://www.e15.cz/domaci/urednici-hrozi-stavkou-chteji-vice-penez-rozpocet-je-omezeny-oponuje-jurecka-1389561>> accessed 20 June 2022

Washington D of C 1800 ISN and Dc 20006, ‘PolitiFact - Did FDR Oppose Collective Bargaining for Government Workers?’ (@politifact)
<<https://www.politifact.com/factchecks/2013/aug/14/scott-walker/Did-FDR-oppose-collective-bargaining-for-governmen/>> accessed 20 June 2022

‘What Is Driving the Record-High Growth in Gas and Electricity Prices in Europe? - Czech National Bank’ <<https://www.cnb.cz/en/monetary-policy/monetary-policy-reports/boxes-and-articles/What-is-driving-the-record-high-growth-in-gas-and-electricity-prices-in-Europe/>>
accessed 20 June 2022

‘Zneni-Kolektivni-Dohody.Pdf’ <<https://www.vlada.cz/assets/media-centrum/aktualne/zneni-kolektivni-dohody.pdf>> accessed 20 June 2022

‘531/2021 Sb.’ <<https://www.psp.cz/en/sqw/sbirka.sqw?cz=531&r=2021>> accessed 20 June 2022

Demir and Baykara v Turkey [2008] ECtHR [GC] 34503/97

APPENDIX 1

Interview with Mgr. Šárka Homfray, Legal Advisor at the Trade Union of State Bodies and Institutions in the Czech Republic, 31 March 2022, TRANSCRIPT

1. A.R: The Civil Service Act which is applicable to Czech civil servants sets up a career system of civil service (or rather a mixed system with largely career aspects). This is in contradistinction to a purely "contractual" or "job" system. Could you tell us a bit more about the system and maybe how is this distinctive position of Czech civil servants in a service relationship being justified - if it is perhaps been justified with reference to the goal of civil service stabilisation, or some other reason?

2. HOMFRAY: One of the reasons for the passing of the Civil Service Act and its guiding principle is the professionalization and stabilisation of state administration. The rationale behind it considers that the specific service employment relationship makes great demands of civil servants as to their expertise, their experiences, their high qualification and their commitment to further their education. At the same time, the work here is highly specific, especially in higher posts at central government institutions (ministries and agencies), and so this clearly requires some kind of training. The starting point was to support both sides of the relationship by ensuring that the individual civil servant, once he/she has been appointed, remains in the system for as long as possible. For this reason the law constructs a legal nexus between the civil servants and the Czech Republic, as opposed to an individual government agency as "employer". Before this, you would have a standard employer meaning you would have in each government agency managing personnel with whom you would enter into a classic employment contract upon becoming an employee there. When you then used to change to go some place else, or you terminated the service

appointment, this would end in the termination of your employment relationship, as the Labour Code understands it, and you would eventually enter into another private employment relationship some place else. In the state administration right now, this is not the case - you enter a relationship with the Czech Republic and although your place of work may change over the course of your career, the relationship is still a single ongoing one, and the competences gained therein are expected to be fully transferable. The fact that even when, for example due to systemization, your position at a given state agency is terminated and you are consequently laid off by the agency's management, the nature of the service relationship you have once entered means that you will not be completely left to your own devices and will be transferred to a different position with you retaining your service relationship status even then is reflective of the fact that both parties have invested something substantial into it. This maybe is what defines the career system.

3. However, from our point of view, there are too few career elements in the current system. Basically the only one being automatic pay increase given by the system of pay levels contained in pay charts. These give you a guarantee that after several years of you increasing your practical experience, this will be rewarded by an increase in pay. However, this is a relatively small guarantee. More aspects of the career system were included in the original wording of the Act with regard to the selection process, especially for the positions of a 'high-grade ministerial official', with a strong preference for selecting candidates already in a civil service relationship. This had been weakened by the 2017/2018 novelization of the Act. With this what has happened is the weakening of the career system in the country.

4. However, what ran counter to this tendency was the limited options for internal dismissal. When somebody wanted a different position, as a principle the agency would have to call a new selection process... This is something which we perceive to be a barrier to career development - you may have the service relationship construed as tied to the whole state administration and to the Czech Republic, but in reality, in practice, the service relationship unfolds in the first place you enter and when you are supposed to transfer from the position you have first been appointed to, this comes with an onerous procedure.

5. A.R.: Would you say that as regards the position of civil servants, public law interests are given a priority over the interest of labour under private law?

6. HOMFRAY: I am not really able to say whose interests does it serve. Because for example this system of internal rigidity inside agencies is criticized not only by us - the unions- but also by the agencies themselves. For them it is also difficult...But, as I said, what

the institution of the career system took as its goal was professionalization - so that only the most experienced and well educated enter into the civil service.

7. A.R.: As my second question, could you give me some examples of the barriers civil servants here face as regards their enjoyment of genuine collective bargaining rights. Are there issues stemming from the current legislative setup? If so, which do you consider those to be?

8. HOMFRAY: When the Civil Service Act was being drafted, not all provisions related to trade unions were lifted from the Labour Code. Some of this may have its reason in the different legal character of these Acts, to give an example - when in an employment relationship you want to dismiss a trade union functionary, the [trade union] organisation must agree with this and if it disagrees, then you as an employer cannot dismiss the employee, or only under very narrow conditions.

9. The Civil service act does not allow for this to happen as for when a certain situation arises that is foreseen by the law, the civil service relationship must come to an end and you as the agency cannot influence this. To give a different example, there might also be a broader competence that trade union organizations in state administration are given to communicate their views on a broad range of decisions related to the termination of service relationships, but this not often used in its fullest extent.

10. What we could, we at least transposed into the text of the higher-level CBA, for example, with regards to workload and work intensity. The Labour Code states that unions also have a say in matters of workload and work intensity, but this is not explicit in the Civil service act, hence why we went ahead and incorporated it into the higher-level CBA.This competence is a big practical issue for a lot of civil service agencies employing civil servants - we're talking understaffing and unpaid overtime that are not being logged and monitored properly etc. So this is something that is an important competence for our trade union organizations.

11. Then you have a distinct lack of clarity on the issue of how questions such as systemization are to be consulted with the unions when these government decisions are being tabled. There, interpretative practice has allowed for trade unions not to stay completely in the dark about what is being prepared, so they are being consulted, but even still, they cannot effectively communicate their views and challenge systemization as this policy derives from government issued budgetary indicators which are basically binding on the employing agencies.

12. At the highest, level the Trade Union of State Bodies and Organisations in the Czech Republic has mandate to conclude higher-level CBAs, however, the problem is on the government side where there is often a lack of any such authorisation . On the government side, we see that lawfully elected negotiators are negotiating, however, the content of the agreement that is being negotiated then gets revised several times over before the government finally gives its stamp of approval. The result of this is that the CBA that's being negotiated cannot be too ambitious as because it has to pass by a diverse group of actors.

13. Thirdly, there is the question of pay bargaining where pay is set by a government decree, and this is not only the case for the civil service but also for all other types of employers who remunerate their staff with pay. And since there is this level of centralization, I don't see why pay also could not be centrally negotiated at the same level as the higher-level CBA but the law simply is not set up that way. The law merely says that pay will be set out by government decree, which, by the fact of its being legislative material, we as a union have some general consultative authorisation in relation to it and then a place in the inter-ministerial comment procedure. This, however, does not guarantee us a given outcome simply for the reason that the government can overrule us.

14. A.R.: Could you give us an idea of any potential means of redressing the imbalance of the extent and quality of the right to collective bargaining as it is accorded to civil servants in comparison with private law employees employed on the basis of a standard employment contract?

15. HOMFRAY: The very bare minimum of what could be done without resorting to a full-blown legislative reform would be to agree some basic procedural rules on the conclusion of a higher-level CBA which would be binding upon the government. In this way, a negotiating team could be set up which would be expected to reach an agreement and get to a tangible result within a set time limit. And once the negotiating team agreed on the substance of their agreement, it would thereon be fully respected. That would be the foundational basis.

16. If a mutual agreement could not be reached on this, we would have to resort to legislative changes because so long as the rates of public administration salary tariffs are handed down unilaterally in a government decree according to the government's own rules of procedure, there should be a kind of veto right of trade unions provided in the Government's Legislative Rules. This would then typically only be guaranteed until the rules change again.

But in any case this would still be a legislative change taken within the bounds of the current system of civil service.

17. A.R.: Could you potentially envisage some way of challenging the current situation with the government-ordered pay freeze by way of arguing it to be in breach of the ILO Convention No. 154 (ratified by the Czech Republic in 2017) which states that the right to collective bargaining guaranteed in the convention is to be accorded in degree equally to civil servants as it is to employees in other sectors of economic activity?

18. HOMFRAY: I am not familiar with the exact wording of the Convention but supposing that if we give it adequate interpretation, we [the union] should be entitled to bargain collectively on payment terms for civil servants and reach a common conclusion, a consensus, on this matter in an agreement that would be binding for the government. If the convention interpretation would indeed really allow for this, the government could be confronted with this argument either by political means - by way of for ex. issuing an appeal to the Government to come into compliance with the Convention and take such measures as appropriate for reaching this end - legislating for "genuine" and full collective bargaining rights for civil servants or respecting terms negotiated with unions as having a binding effect on them. Another way of confronting the government with their duty under the Convention would be by way of litigation - perhaps the easiest route there would be to raise this challenge in the course of an individual complaint submitted under administrative law according to the Administrative Procedural Code where there would have to be identified a moment where the decision of the government interferes with the concrete legal entitlements/rights and duties of an individual civil servant by way of, for example, an altered salary statement being issued to him or her on behalf of the government by the employing civil service agency. In taking on this case, we could make an appeal to the administrative courts, or perhaps even to the Supreme Administrative Court of the Czech Republic in order to temper the current legislative setup for collective bargaining in the public administration sector, or the way that it is being actually wielded by the government. Also potentially viable could be a constitutional challenge, namely a challenge for the government to respect the constitutional order of the Czech Republic because when it is an already ratified ILO convention that is at issue, this should take priority over an act of domestic legislation, as according to the Constitution of the Czech Republic. Another question here though would be how we would even get to the Constitutional court in the first place, and while I cannot rule out the possibility of a hearing before the Constitutional court outright, the fact of the matter is that

no one in the Trade Union of State Bodies and Institutions in the Czech Republic has as yet had much experience with it. But of course the possibility is there and unlike with the Supreme Administrative Court of the Czech Republic, who would merely temper the government's use of the current legislative set up, the Constitutional court actually interfere in and force change of the legislative set up.