



CZECH REPUBLIC

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Country Summary

The Covid-19 pandemic and the war in Ukraine ushered in a legislative movement on hate speech and misinformation. Three restrictive laws were introduced: two amending the Criminal Code, the first introduced the offense of publicly approving of a terrorist offense or publicly praising its perpetrators for it, doing so through the press, film, radio, television, publicly accessible computer network, and the second, issued during the pandemic, criminalized the distribution of materials promoting movements aimed at the suppression of human rights and freedoms, without the need to prove the intention to promote such movements. A third law, also issued during Covid, allows the police to order the removal of terrorist content or to prevent access to it. In non-legislative developments, the government's Analysis of the Czech Republic's Preparedness to Counter a Serious Wave of Disinformation concluded that the personal as well as the organizational and technical capacities of the Czech Republic to face a serious disinformation wave are insufficient. Both during the Covid pandemic and the war in Ukraine, online material has been blocked for containing unverified information about alternative treatments for Covid-19 infection, disinformation and spreading propaganda of the Russian Federation justifying aggression against Ukraine. With the lack of legal basis to block websites containing disinformation, a draft bill on restricting the dissemination of content that threatens national security online has been under discussion since 2022.

Introduction

According to Justitia's Free Speech Index,¹⁶² the Czech Republic belongs to the group of countries with medium public support for free speech (12th out of the 33 countries ranked).¹⁶³ It falls into the "free" category with a 92/100 rating by Freedom House in 2022 (32nd out of 195 countries); ranked 20th out of 180 countries in the 2022 World Press Freedom Index by Reporters Without Borders¹⁶⁴ and 31st out of 179 countries in the Liberal Democracy Index according to V-Dem Democracy Report 2022.¹⁶⁵

The first half of the time period from 2015 to 2022 in the Czech Republic was characterized by few restrictions on hate speech and disinformation; instead the fight against hate speech and the spread of disinformation was discussed more on a social rather than a political level, without the state considering it necessary to adopt new legislation. However, this has changed in light of two major crises in recent years: the Covid-19 pandemic and then the aggression of the Russian Federation against Ukraine, a topic that, due to Russia's considerable geographical proximity and direct impact on the domestic economy, resonates strongly in Czech society, across its ideological and political spectrum.

However, even before these major crises of our time, various non-legislative documents and legislative amendments were put in place, which had speech restrictive consequences. They have had a significant impact on the lives of affected individuals (such as the crime of condoning terrorist attacks in internet discussions), as described below. The following sections describe new legislation, non-legislative developments, and the most significant cases of their enforcement and state interventions in general. The laws, non-legislative documents, and individual cases are listed chronologically, from 2015 to 2022.

I. Legislation

In criminal law practice, the provision¹⁶⁶ of Section 312e paragraph 1, 4 letter a) of Act No. 40/2009 Coll., the Criminal Code (hereinafter Criminal Code), appears to be the most problematic. This provision is, among other things, applied to cases in which the perpetrator publicly approves of a terrorist offense committed or publicly praises its perpetrators for it, doing so through the press, film, radio, television, publicly accessible computer network (i.e., on the Internet in discussions under articles, blogs, social networks, etc.) or other similarly effective means, for which the offender is liable to imprisonment of 5 to 15 years. This provision is then applied in practice, among other things, to the approval of terrorist attacks in internet discussions, where this provision falls very heavily on the authors of such posts. This provision

¹⁶² <https://justitia-int.org/report-who-cares-about-free-speech-findings-from-a-global-survey-of-free-speech/>

¹⁶³ <https://freedomhouse.org/explore-the-map?type=fiw&year=2023&country=CZE>

¹⁶⁴ <https://rsf.org/en/index?year=2022>

¹⁶⁵ https://v-dem.net/media/publications/dr_2022.pdf

¹⁶⁶ <https://www.zakonyprolidi.cz/cs/2009-40>

was introduced into the Criminal Code by Amendment No. 455/2016 Coll.,¹⁶⁷ effective as of 1 February 2017, as part of a broader anti-terrorism amendment that also introduced crimes such as the financing of terrorism, participation in terrorist groups, and also criminalized recruitment activities. This amendment was introduced in response to the dramatic rise of the so-called Islamic State (ISIS), whose activities, particularly in the years 2014-2019, resulted in a large number of deaths, the devastation of a large territory, and abuse of thousands of women and children. The adoption of the amendment was intended to enable more effective punishment of activities related to and supporting terrorism.

However, in practice, there have already been cases in which the authors of posts online who, for example, have been prosecuted under this provision and faced a possibility of imprisonment for between 5 and 15 years purely for their expression. Fortunately, the Czech courts imposed suspended sentences (i.e., without incarceration, "only" with the imposition of several years of probation). However, this does not change the fact that the threat of such a severe sentence for mere Internet postings (regardless of their improper, hateful, or despicable nature) is grossly disproportionate. Ironically, this provision of the Criminal Code was intended to prevent the dissemination of material such as terrorist propaganda and terrorist recruitment videos but, in practice, may impact those participating in Internet discussions who had no previous criminal record. We can only hope that this provision will soon be amended so that it actually serves its intended purpose and does not cause more (presumably originally unintended) harm in the future.

In 2022, a new criminal offense was inserted into the Criminal Code: section 403a Dissemination of works promoting movements aimed at suppressing human rights and freedoms,¹⁶⁸ based on Amendment No. 220/2021 Coll.,¹⁶⁹ effective from 1 January 2022. This new offense represents an enhancement of the fight against extremism, as until now only the active promotion of movements aimed at the suppression of human rights and freedoms was punishable, but now the mere distribution of such materials (including, for example, uniforms, badges, depictions of representatives of such movements) is also punishable, without the need to prove the existence of an intention to promote such movements. However, it should be noted that under section 403b of the Criminal Code,¹⁷⁰ such conduct is not punishable if the items are disseminated for education, research, art, reporting on current or historical events, or similar purposes.

Considerable attention has been drawn to the recent draft of the Law on Restricting the Dissemination of Content that Threatens National Security Online¹⁷¹ from 27 September 2022. This bill would allow the Ministry of the Interior to disable access to content posted online if

¹⁶⁷ <https://www.zakonyprolidi.cz/cs/2016-455>

¹⁶⁸ <https://www.zakonyprolidi.cz/cs/2009-40>

¹⁶⁹ <https://www.zakonyprolidi.cz/cs/2021-220>

¹⁷⁰ <https://www.zakonyprolidi.cz/cs/2009-40>

¹⁷¹ <https://www.mvcr.cz/clanek/poskytnuti-informace-zakon-dezinformace.aspx>

the information "would be able to threaten the sovereignty, territorial integrity, or democratic foundations of the Czech Republic or to significantly endanger the internal order and security of the Czech Republic, especially if it is created or disseminated by a person or state to which international sanctions apply under a special legal regulation, or by an entity under the control of such a person or state, or if it substantially corresponds with such content." The possibility of blocking a website also applies to cases where the website in question contains content defined as prohibited by the Criminal Code. However, it is currently only a draft of a law that has not been voted on in Parliament and it is not certain whether it will be ever voted on or what its final wording will be.

Last but not least, there is a Czech implementation of Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021, on addressing the dissemination of terrorist content online.¹⁷² This is Law No. 67/2023 Coll., on Certain Measures against the Dissemination of Terrorist Content Online,¹⁷³ which allows the police to order the removal of terrorist content or to prevent access to it. Although this law might seem to be politically neutral and aiming to reach a legitimate target (i.e., to prevent dissemination of terrorist propaganda and prevent radicalization of individuals), it cannot be entirely ruled out that it may potentially be misused in the future.

II. Non-Legislative Developments

The issue of hate speech on the internet was addressed in 2018 by the former Ombudsperson Šabatová, in a press release dated 3rd April 2018.¹⁷⁴ In this press release, she stated, among other things, that she "finds it alarming that the number of hate speeches on the internet by "ordinary" citizens who are not in any way associated with extremist groups is increasing", adding that she would appreciate "if the State made it clear in the future that hate speech of the most serious nature on the internet is illegal and that the State authorities have the tools to punish it within a reasonable time and within the limits set by law."

This press release was followed up two years later with the Ombudsperson's Recommendation on hate speech on the Internet of January 27th 2020,¹⁷⁵ in which the following is recommended to state authorities: unify crime databases and conduct analyses of related case law, ensure the same level of protection of vulnerable groups from hate crimes under the Criminal Code, organize a national campaign on online hate speech with a target group of primary and secondary school students, strengthen the education of law enforcement authorities on hate crime issues, support the development of an automatized tool for detecting hateful comments

¹⁷² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32021R0784>

¹⁷³ <https://www.zakonyprolidi.cz/cs/2023-67>. Although this law was not adopted until 2023, it is based on an earlier EU regulation and was already in the preparation stage in 2022 and therefore falls within the 2015-2022 timeframe.

¹⁷⁴ <https://www.ochrance.cz/aktualne/jak-branit-sireni-nenavisti-na-internetu/>

¹⁷⁵ <https://www.ochrance.cz/uploads-import/ESO/67-2018-DIS-JV-doporuceni.pdf>

on the networks, promote the use of the online form for filing criminal complaints, and modify the Ministry of the Interior's website in its sections related to extremism and prejudicial hatred so that it is more broadly focused on the issue of prejudicial hatred.

The Action Plan to Counter Disinformation of 15 November 2022,¹⁷⁶ prepared by the Government Commissioner for Media and Disinformation, contains, amongst others, the following recommendations: to establish specialized positions focused on countering disinformation in the Government Office, strengthen capacities for monitoring disinformation, strengthen strategic communication aimed at reducing the impact of disinformation on society, organize exercises aimed at defending against a coordinated disinformation wave, and increase funding for NGOs focused on countering disinformation and for independent media, prepare a methodology for the demonetization of disinformation websites, submit a law proposal to allow blocking of disinformation websites, and define a new criminal offense punishing the deliberate dissemination of disinformation aimed at undermining the democratic character of the state or the security interests of the state.

As can be concluded from the enumeration above, the Action Plan recommends the adoption of several new measures, including the possible criminalization of the dissemination of certain types of disinformation and the introduction of legislation to enable the blocking of websites - and such a bill already exists, as mentioned above.

On February 15th 2023, the Czech Government approved the Analysis of the Czech Republic's Preparedness to Counter a Serious Wave of Disinformation.¹⁷⁷ This analysis was prepared in response to the crises of the previous years, and according to its conclusions, the organizational, personnel, and technical capacities of the Czech Republic to face a serious disinformation wave are insufficient, and in the future, the Analysis recommends measures in the field of prevention and defense. Prevention should be about strengthening the natural defense mechanisms of society through the rigorous protection of fundamental rights and freedoms and transparency of democratic processes, promoting media literacy in the population, involvement of civil society in political processes, etc. In the area of defense, the analysis recommends, in general terms, strengthening organizational, personnel, procedural, legal, and other instruments and capacities that would be effective in responding to an attack against the Czech Republic led by a serious wave of disinformation.

III. Enforcement

¹⁷⁶https://uploads-ssl.webflow.com/62a501ab7c276f020734e677/64c8f2e65093ceb4f791af74_akcni_plan_dezinfo.pdf

¹⁷⁷<https://www.mvcr.cz/chh/clanek/analyza-pripravenosti-ceske-republiky-celit-zavazne-dezinformacni-vlne.aspx>. Considering the fact that work commenced as early as 2022 we consider this document to fall within the 2015-2022 timeframe.

In March 2020, the Centre against Terrorism and Hybrid Threats (subordinate to the Ministry of the Interior) alerted several websites to a recording of a program¹⁷⁸ featuring the well-known Czech actor and promoter of alternative medicine Jaroslav Dušek. The reason for this was that the performance "Malá vizita" ("Morning Rounds") contained unverified information about alternative treatments for Covid-19. From a formal point of view, this was not an order or an administrative decision, however, YouTube promptly complied with this request, as did the Czech servers Uložto.cz and Seznam.cz, where the video was also available.

This situation was repeated on a larger scale after the Russian invasion of Ukraine at the end of February 2022, when several websites were suddenly blocked. On February 25th 2022, the National Cyber-Force Center National Cyber Measures Centre sent a letter to CZ.NIC,¹⁷⁹ the administrator of the national supreme domain for the Czech Republic and operator of the domain name registry. This letter included a request to block several websites that were identified as disinformation and spreading propaganda of the Russian Federation justifying aggression against Ukraine. These sites were subsequently blocked, and in response, two NGOs, Institute H21¹⁸⁰ and Open Society,¹⁸¹ went to court to have the blocking of the websites declared illegal, as no existing law allows the state to block websites. However, the Municipal Court in Prague did not uphold their claim on basically formal grounds - in the court's opinion, the letter containing the request could not be considered an (illegal) action of the state authority, since the letter was formulated only as a request and its addressees were not forced to do anything, and the letter itself did not contain any binding order. Not satisfied with this judgment, the plaintiffs appealed to the Supreme Administrative Court, which has not yet ruled on the case.

Conclusion

As can be seen from the examples above, the topic of hate speech and disinformation, in particular, has received increased attention in the Czech Republic in recent years, which has so far been manifested especially in non-legislative documents and policy papers, however, the adoption of a law allowing the blocking of "disinformation websites" is under discussion, while at the same time the blocking of certain websites has already occurred, although, from a formal point of view presented by the Municipal Court in Prague, it is not an action of state power. In addition, legislation has also been passed within the years 2015-2022 which, while not necessarily intended to restrict freedom of expression, might have the potential to do so.

¹⁷⁸ https://www.irozhlas.cz/zpravy-domov/dusek-video-cthh-koronavirus-sarlatanstvi_2005300604_cib

¹⁷⁹ https://www.irozhlas.cz/zpravy-domov/dezinformace-weby-blokace-zaloba-neuspech_2301231500_pik

¹⁸⁰ <https://www.ih21.org/en/home>

¹⁸¹ <https://www.otevrenaspolecnost.cz/en>