

# **Globalex : An Introduction to the Czech Legal System and Legal Resources Online (<http://www.nyulawglobal.org/>)**

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## **1. Introduction**

The Czech Republic is a land-locked country in Central Europe. It is a relatively small country (surface 78 thousand sq km), neighbouring Germany in the West, Poland in the North, Slovakia in the East and Austria in the South.

The Czech Republic is one of the two successor states established in 1993 upon the peaceful and negotiated dissolution of Czechoslovakia (the other successor being the Slovak Republic). The Czechoslovak Republic was in turn created following the break-down of the Austria-Hungary in 1918.

Since 1<sup>st</sup> May 2004, the Czech Republic is a member of the [European Union](#) . From January 2009 until June 2009, the Czech Republic assumed the [Presidency of the European Union](#) . Since 1999, the Czech Republic is a member of [NATO](#) .

The capital of the Czech Republic is Prague (*Praha*) (Art. 13 of the Constitution of the Czech Republic). The legislature, the head of state and most of the executives are located in the capital. Supporting the idea of separation of powers both Supreme courts (the Supreme Court as well as the Supreme Administrative Court) and the Constitutional Court are located in Brno. Brno is also the seat of related offices (e.g. Supreme State Prosecutor's Office) and other institutions (e.g. the Public Defender of Rights - Ombudsperson).

National currency is the Czech Crown (česká koruna). The Czech Republic intends to join the Single European Currency (Euro). No precise date has however been set yet.

The Czech Republic is a unitary state. The only official language is Czech. Czech belongs to the Slavic language family.

The population of the Czech Republic is about 10.4 million people (2011 est.).

## **2. The Czech Political and Legal System in a nutshell**

The Czech legal system is a "continental" legal system, more specifically, due to common historical roots, it can be said it belongs to the "Germanic" legal culture. The characteristics of the legal system are the following ones:

- Principle areas of law and procedure are codified (Civil and Criminal Codes, Codes of Criminal, Civil and Administrative Procedure etc.);
- The system of legal sources is hierarchical, forming a pyramidal structure of legal force within the legal system;
- Only written law (statutes adopted by the Parliament and regulations adopted by the Government and administrative authorities) is recognised as a formal source of law.

The Constitution of the Czech Republic (hereinafter CCR) ( [in English](#) ), adopted by the Czech National Council on 16<sup>th</sup> December 1992 defines the Czech Republic as a sovereign, unitary, and democratic state governed by the rule of law, founded on respect for rights and freedoms of a man and citizen (Art. 1 (1) CCR).

An important part of the Constitution and constitutional order is the Charter of Fundamental Rights and Freedoms (Art. 3 and Art. 112 (1) CCR) ( [in English](#) ). Albeit being in a separate constitutional law, it has the same legal force as the Constitution itself.

The political system is recognised as a parliamentary democracy, although the President of the Republic, who is the head of the state, is directly elected (Art. 54 (2) CCR). The functions of the head of state are mostly representative; the genuine executive power is vested in the government, which is in turn politically responsible to the Parliament (or more precisely to its first chamber, i.e. the Chamber of Deputies).

The state power is divided into the classical three powers, namely:

- Legislature = the Parliament of the Czech Republic, consisting of the first chamber (Chamber of Deputies) and the second chamber (the Senate);
- Executive = the head of state (the president of the Republic) and the government (as the highest body of the executive power);
- Judiciary = the courts of general jurisdiction (civil and criminal), administrative courts and the Constitutional Court.

There are other central bodies, which enjoy high degree of independence and cannot be therefore associated with any of the three classical powers: the Czech National Bank and the Supreme Audit Office.

There are also territorial self-governing units: municipalities and regions.

### **2.1. The Legislative Power**

The legislative power is vested in the Parliament (Art. 15 (1) CCR). The Parliament consists of two chambers: the Chamber of Deputies ( *Poslanecká sněmovna* ) and the Senate ( *Senát* ).

The **Chamber of Deputies** has 200 members who are elected every four years. The renewal of the Chamber is always complete. The Chamber holds standing sessions. It elects its Chairperson and the Vice-chairperson and establishes committees and investigation commissions. The internal functioning of the Chamber is regulated by the Standing Rules of the Chamber of Deputies (law no. 90/1995 Coll., [in English](#) ).

Members of the Chamber of Deputies are elected by secret ballot on the basis of universal, equal and direct right to vote, according to the principle of proportional representation.

The second chamber, the **Senate** is a permanent body. It is composed of 81 senators, who are elected to a six-year term of office. Every second year elections for one third of the senators are held. There is thus partial renewal of the Senate every 2 years.

Senators are also elected by secret ballot on the basis of universal, equal and direct right to vote, however according to the principle of majoritarian electoral system. The election has normally two rounds: in the first round, a person is elected who receives total majority of all votes given (i.e. more than 50% votes). If no one is able to unite the total majority in the first round, a second round with the two candidates who received the most votes is held.

The Senate has a stabilising role in the constitutional system. First, because of its permanent session, if the Chamber of Deputies is dissolved the Senate is empowered to adopt legislative measures on matters which cannot be delayed and would otherwise require enactment of a statute (Art. 33 CCR). Second, because of its continuity, it tends to be a more moderate body than the Chamber of Deputies. The internal functioning of the Senate is regulated by the Standing Rules of the Senate (law no. 107/1999 Coll., [in English](#) ).

### **2.2. The Executive**

The executive power is shared between the President of the Republic and the Government.

#### **2.2.1. The President of the Republic**

The President of the Republic ( *prezident republiky* ) is the head of the state. He/she is elected directly by citizens. The term of office is 5 years, with one re-election possible.

The powers of the president are mostly of representative and ceremonial nature. There are a number of powers the president is entitled to realise acting alone (i.e. without the consent of the prime minister or the responsible minister). These are contained in Art. 62 CCR.

Powers of the President of the Republic that are enumerated in Art. 63 CCR and those established by law do, however, require the countersignature of the Prime Minister or of a member of the government designated by him/her. In the case of the exercise of these powers, which are more numerous than those of the president acting alone, the government is politically responsible for the decisions of the President.

Since 1993 when the former Czechoslovakia split into the Czech Republic and Slovakia, the Czech Republic has had three Presidents. Until the constitutional amendment of 2012 the President had been elected at a joint session of the Chamber of Deputies and the Senate.

The first President of the independent Czech Republic was Václav Havel (1993 – 2003). The second President was Václav Klaus (2003 – 2013). The third President of the Czech Republic (the first one elected directly) is Miloš Zeman.

### **2.2. 2. The Government**

The government ( *vláda* ) is the highest body of executive power. It consists of the Prime Minister, deputy prime ministers and ministers.

The government is politically responsible to the Chamber of Deputies. Following a general election, the President of the Republic designates the Prime Minister. Upon the proposal of the designated Prime Minister, the President of the Republic appoints other members of the government and entrusts them with the management of the respective portfolios. Within 30 days of the appointment, the government as a collegiate body shall go in the Chamber of Deputies and ask it for a vote of confidence (for the detailed procedure and its variations see Art. 68 CCR).

It is a constitutional convention that the Government shall be formed by the party which won the general elections. Alternatively, the chairperson of the second largest party is to be asked to form the Government. The Government is, however, supposed to be composed of politicians who were able to secure support for their Government in the lower chamber of the Parliament.

The internal instability of governmental coalitions over the last 20 years has resulted in a modification of this constitutional rule, which now appears to allow for the possibility of a “civil servants government” or the so-called “upkeeping government” ( *úřednická vláda* ). Such government is not composed of politicians, but of civil servants. It is created after a collapse of the existing government and before new general elections. The first such government was created in 1998 for 6 months and chaired by Josef Tošovský, the then governor of the Czech National Bank. The second civil servants government was formed in April 2009 and was headed by Jan Fisher, the former chairman of the Czech Statistical Bureau. The third second civil servants interim government was created in July 2013 and led by Jiří Rusnok. It is the first Government which lost confidence vote. However, in accordance to the Constitution the Rusnok’s government exercised all governmental functions and powers until creation of a new government following general elections.

The government decides as a collegiate body by an absolute majority of all its members.

Members of the Government are generally at the same time heads of respective ministries. There are not many members of the government without a ministerial responsibility for a certain department (so-called “ *ministr bez portfeje* ”).

### **2.2.3. The Ministries**

The ministers are appointed by the President of the Republic upon the proposal of the Prime Minister. The President of the Republic will also recall a minister if the Prime Minister so proposes.

The number and portfolios of individual ministries are established by a statute (law no. 2/1969 Coll., on the Establishment of Ministries and Other Central Bodies of State Administration, as numerously amended). The current number of ministries is 14. These are:

- **The Ministry of Finance**

- The Ministry of Foreign Affairs
- The Ministry of Education, Youth and Sports
- The Ministry of Culture
- The Ministry of Labour and Social Affairs
- The Ministry of Health
- The Ministry of Justice
- The Ministry of Interior
- The Ministry of Industry and Trade
- The Ministry for Regional Development
- The Ministry of Agriculture
- The Ministry of Defence
- The Ministry of Transport
- The Ministry of Environment

#### **2.2.4. Other central agencies of state administration under governmental control**

There are a considerable number of other central agencies, established by the law no. 2/1969 Coll., that perform vital administrative tasks. These agencies are not managed by a member of the Government and enjoy a certain degree of independence of government. The head of these agencies is, however, appointed by the government with the exception of the head of the Office for Protection of Competition and the head of the Czech Statistical Bureau who are appointed by the President of the Republic upon proposal of the government. These agencies include:

- The Czech Statistical Bureau
- The Czech Survey and Land Registry Office
- The Office for Industrial Property
- The Office for the Protection of Competition
- The National Security Office
- The Czech Telecommunications Office
- The Office of the Government of the Czech Republic
- The Czech Mining Office
- The State Office for Nuclear Safety
- The Energy Regulatory Office
- The Administration of State Material Reserves

#### **2.2.5. Other central agencies of state administration independent of the government**

There are other central agencies, established by a special statute, that are, to a high degree, independent of the government. The bodies are entrusted with realising administrative task sometimes running against the interests of the government of the day. Their independence is guaranteed mainly by a special way of appointing (and recalling) the head of the agency (typically for a fixed period of time) and by a financial independence (they have a separate chapter of the state budget). These agencies include:

- The Council for Radio and Television Broadcasting
- The Office for Personal Data Protection

The Council for Radio and Television Broadcasting is organised as a collegiate body. Its members are appointed by the Prime Minister based on the proposal made by the Chamber of Deputies.

The Head of the Office for Personal Data Protection is appointed by the President of the Republic upon proposal of the Senate.

### **2.3. Self-Government**

There are two types of self-government in the Czech Republic: territorial and professional. In both cases, the legislator has delegated certain powers to independent entities. The Constitution guarantees the territorial self-government (cf. chapter 7 of the CCR), whereas the professional self-government is enacted solely by ordinary statutes. Some authors recognize also a third type of self-government, namely the educational self-government. Similarly to self-governing territorial units and professional chambers, primary and secondary schools and universities are based on something like membership

foundation and enjoy certain degree of self-governance, but unlike territorial units and professional chambers. they are connected to the state administration to a greater extent.

### 2.3.1. Territorial self-government

The state may intervene in the activities of territorial self-governing units only if such intervention is required for protection of law and only in a manner defined by law (Art. 101 (4) CCR).

Territorial self-government ( *územní samospráva* ) is realised on two levels:

- Municipalities ( *obce* ), which are basic territorial self-governing units ( *základní územní samosprávné celky* );
- Regions ( *kraje* ), which are so-called higher territorial self-governing units ( *vyšší územní samosprávné celky* ).

There are 14 regions created by the constitutional law no. 347/1997 Coll., on the Creation of Higher Territorial Self-governing Units. The competence and functioning of the regions are set by law no. 129/2000 Coll., Act on Regions (in English) .

Every municipality is a component of a region. The competence and functioning of municipalities are laid down by law no. 128/2000 Coll., Act on Municipalities (in English) .

Territorial self-governing units enjoy self-governing competence in the fields specified by the above named laws. This competence also includes the power to adopt legislation (generally binding ordinances, *obecně závazné vyhlášky*) in those fields (Art. 104 (3) CCR).

Authorities of municipalities and regions may also be entrusted to exercise state administration when so provided by law (Art. 105 CCR). Then the authorities of self-governing units act as a kind of decentralised bodies of the government and exercise delegated state administration (not self-administration).

### 2.3.2. Professional self-government

Statutory basis for professional self-governance ( *profesní samospráva* ) can be found in a number of statutes setting up professional self-governing entities, e. g.:

- The **Czech Bar Association** , established by law no. 85/1996 Coll., the Legal Profession Act (available in [English](#) );
- The **Chamber of Tax Advisors** , established by law no. 523/1992 Coll., Tax Advising and the Chamber of Tax Advisors Act (available in [English](#) );
- The **Czech Chamber of Surgeons** ;
- The **Czech Dental Chamber** ;
- The **Czech Apothecary Chamber** all three being established by law no. 220/1991 Coll., the Czech Chamber of Surgeons, the Czech Dentists' Chamber and the Czech Apothecary Chamber Act;
- The **Czech Chamber of Veterinary Surgeons** established by law no. 381/1991 Coll., the Chamber of Veterinary Surgeons of the Czech Republic Act.

The chambers typically exercise regulatory and disciplinary powers vis-à-vis its members, with membership being the precondition for the exercise of the respective regulated profession. Most of the decisions of the bodies of those chambers can be reviewed by administrative justice.

## 2.4. The Judiciary

The judiciary in the Czech Republic is defined by the Constitution so that the courts perform their duties as independent authorities (Art. 82 CCR).

The system of ordinary courts is made up of District, Regional, High courts and the Supreme Court (Art. 91 (1) CCR). The system of general (civil and criminal) judiciary is supplemented by administrative and constitutional judiciary.

Specialized administrative chambers have been constituted at regional courts. The chambers perform judiciary in public administrative matters that are frequent and do not require great specialisation. Specialized administrative matters are ruled on by the Supreme Administrative Court. The Constitutional Court has the authority to protect constitutionality (Art. 83 CCR).

The basic regulation of the judicial power in the Czech Republic is provided by law no. 6/2002 Coll., Courts, Judges, Lay-judges and the State Administration of Courts Act (the Judges Act 2002)], available in [Czech](#) .

The judicial system in the Czech Republic is recognised as a professional career judiciary. There is no trial by jury. There is, however, the laic participation in the administration of justice in the form of laypersons sitting as judges in chambers, hearing cases at first instance. Laypersons are elected by municipal assemblies (§ 64 and f. Judges Act 2002). Two lay judges sit with a professional judge, hearing non-specialised cases at first instance. Appellate and Supreme courts' chambers are composed of professional judges only.

The judges are appointed by the President of the Republic. They must be at least 30 years of age at the time of the appointment, must have completed an M.A. in law and a three year period of specialised training within the courts (Art. 60 (1) Judges Act 2002). Judges are appointed for life and can be only removed following disciplinary proceedings conducted by a special judicial ethics panel (cf. law no. 7/2002 Coll., on Disciplinary Proceedings Concerning Judges and Prosecutors).

There is a limited self-administration of the courts, mostly at the supreme level. The state administration of courts has repeatedly been criticised on the international as well as domestic forum (cf. e.g. the decision of the Constitutional Court of 18<sup>th</sup> June 2002, case no. Pl.ÚS 7/02, [English translation](#) ). The state administration of the courts is exercised by the Ministry of Justice and involves such crucial elements as the courts' budgeting or the appointment of presidents and vice-presidents of the courts (cf. part III of the Judges Act 2002).

#### **2.4.1. Courts of General Jurisdiction**

Civil and criminal courts share the same judicial structure. Together, they form the courts of general jurisdiction ( *obecné soudnictví* ). They are competent in all types of disputes with the exception of those expressly reserved for the administrative courts or the Constitutional Court.

The structure, functions and powers of the courts of general jurisdiction are regulated by the Judges Act 2002.

The structure of the ordinary courts is as follows:

- Supreme Court located in Brno;
- 2 High Courts ( one located in Prague with jurisdiction over Bohemia and the other seated in Olomouc with jurisdiction over Moravia ) ;
- 8 Regional courts ( the regional court in the capital is called Metropolitan Court in Prague (Art. 11 Judges Act 2002) ;
- 86 District courts ( the district court in the district Brno is called City Court, Art. 12 Judges Act 2002).

As far as the access to the case-law of the courts of general jurisdiction is concerned, only the decisions of the Supreme Court are published in printed version. There is an official selection of the Court's case-law, published in its Collection of the decisions of the Supreme Court published by [C.H.Beck Publishers](#) . All decisions of the Supreme Court (from 2000 onwards) are also [accessible electronically](#) .

Selected decisions of the High and Regional courts can be searched in an official database (available [here](#) ) and are also published in non-official legal periodicals specialised on case-law.

##### **2.4.1.1. Civil Justice**

Apart from the Judges Act 2002, the most important piece of legal regulation in civil matters is the law no. 99/1963 Coll., the Code of Civil Procedure [CCivP], in [Czech](#) . A great revision of the Code of Civil Procedure entered into force from 1<sup>st</sup> January 2014. The Code of Civil Procedure now comprises solely rules of proceedings in disputes, whereas indisputable proceedings are regulated by a separate law on special judicial proceedings (law no. 292/2013 Coll.)

District courts have subject-matter jurisdiction at first instance unless the law stipulates otherwise (Art. 9 CCivP). In enumerated cases (Art. 9 CCivP) regional courts rather than district courts have the jurisdiction at first instance for reasons relating to greater specialisation and consistent decision making. Regional courts as courts of first instance hear and rule on cases, which are complicated and specialized and/or occur infrequently. The list of cases when regional courts act as courts of first instance is quite long and complex (§ Art. 9 (2) CCivP). It includes e. g.

- disputes concerning foreign states or persons enjoying diplomatic privileges and immunities,
- disputes over protection of rights infringed by unfair competitive behaviour,
- disputes arising from copyright and intellectual property law ,
- disputes arising from transactions on the commodity market,
- disputes concerning financial security, cheques, bills of exchange or investment instruments.

Regional courts decide on appeals ( *odvolání* ) against the decisions of district courts rendered on the first instance. In cases where the court of first instance is the regional court, the appellate court is one of the two High Courts.

The Supreme Court has the jurisdiction to decide on extraordinary appeal ( *dovolání* ) against final decisions of regional or high courts, acting as appellate courts. Unless the law stipulates otherwise, the extraordinary appeal is admissible against every final decision (a judgment or a resolution) of an appellate court if the challenged decision is based on answering an issue of substantive or procedural law which the appellate court has decided differently from the constant case-law of the Supreme Court, which has not been decided by the Supreme Court yet, which has not been answered uniformly by various panels of the Supreme Court, or which is proposed to be answered differently (cf. Art. 237 CCivP).

#### **2.4.1.2. Criminal Justice**

Rules of criminal procedure are contained in the law no. 141/1961 Coll., the Code of Criminal Justice (CCrimP), in [Czech](#) . A special procedural regime has been introduced for criminal liability of persons under 15 years of age (law no. 218/2003 Coll., Juvenile Criminal Justice Act).

The courts of first instance in criminal matters are generally district courts. If, however, the criminal offence is punishable under the Criminal Code (law no. 40/2009 Coll.) by at least 5 years imprisonment, the courts of first instance become the regional courts.

An appeal against the first-instance decision of the district court goes to the regional court. Appeals against decisions rendered on the first instance by regional courts are assessed by a High Court on appeal.

The Supreme Court decides on extraordinary appeals ( *dovolání* ) against final appellate decisions of regional courts and high courts. An extraordinary appeal shall be limited to legal, not factual, reasons set by the Code of Criminal Procedure, and to cases in which the punishment of life imprisonment has been imposed (Art. 265b CCrimP). There is another special remedy in criminal matters before the Supreme Court, the so-called complaint for violation of law ( *stížnost pro porušení zákona* ). Only the Minister of Justice is entitled to file this extraordinary remedy before the Supreme Court; its availability is limited to substantial flaws in the procedure, which may have caused the illegality of a (otherwise final) decision (Art. 266 CCrimP).

#### **2.4.2. Administrative courts**

The organisation of the administrative justice is laid down in the law n. 150/2002 Coll., the Code of Administrative Justice ( [English translation](#) ), [CAJ 2002].

Administrative justice ( *správní soudnictví* ) is a two-layer system. Specialized administrative chambers or specialized single-judges at regional courts hear and rule on cases related to administrative law at first instance. The [Supreme Administrative Court](#) ( *Nejvyšší správní soud* ), which is the highest judicial body specialized exclusively in the field of administrative justice, as a court of second instance decides on cassation complaints (a type of remedy against a decision of a regional court in matters of administrative justice) and as a court of first instance decides on other matters specified by law (Art. 12 (1) CAJ 2002).

The task of the administrative courts is to protect individual rights in the area of public law. Regional courts as administrative courts provide protection against a decision of an administrative authority, protection against inaction by an administrative authority, and protection against unlawful interference by an administrative authority.

The jurisdiction of the Supreme Administrative Court besides ruling on cassation complaints comprises electoral matters (including presidential election), matters of a local and regional referendum and matters of political parties and political movements including their dissolution. It also provides protection against unlawful measure of a general nature, which is a hybrid form between an administrative decision and a regulation. The Supreme Administrative Court is also called to decide some conflicts of competence between administrative authorities (competence conflicts between authorities of state administration on one side and authorities of self-governing units on the other side, conflicts between self-governing units versus each other and conflicts between authorities of central state administration versus each other, cf. Art. 97 (1) CAJ 2002). It is also the disciplinary court in matters of judges, state prosecutors and enforcement agents.

Competence conflicts arising from duality of law (civil law versus public law) between the administrative court and the civil courts and conflicts between courts and administrative agencies (judiciary versus administration) are resolved by a Special Panel (*zvláštní senát*) composed of equal number of justices of the Supreme Court (representing the civil-law standpoint) and the Supreme Administrative Court (representing the public-law standpoint). Further details are set by law no. 131/2002 Coll., on Deciding Certain Conflicts of Competence (in [Czech](#)).

The decisions of the Supreme Administrative Court are published in two ways. Firstly, there is the official Collection of the Decisions of the Supreme Administrative Court (*Sbírka rozhodnutí Nejvyššího správního soudu*), which the Court publishes monthly in a paper edition in cooperation with Wolters Kluwer Czech Republic Publishing. This Collection contains a selection of crucial decisions of the Supreme Administrative Court. Secondly, all Court's decisions are also made publicly available (in Czech only) on the [website of the Court](#).

### **2.4.3. The Constitutional Court**

The constitutional jurisdiction is represented by the specialised Constitutional Court (*Ústavní soud*), seated in Brno. Basic provisions concerning the functioning of the Constitutional Court are contained in Articles 83 – 89 CCR. Detailed provisions are to be found in the law no. 182/1993 Coll. - the Constitutional Court Act ([English translation](#)).

The structure and functions of the Czech Constitutional Court are, similarly to its Austrian and German counterparts, rooted in the Kelsenian conception of constitutional jurisdictions and constitutional review. The then Czechoslovak Constitutional Court, founded already in 1920, was one of the first constitutional courts worldwide.

The contemporary Czech Constitutional Court is the judicial body responsible for the protection of constitutionality (Art. 83 CCR). It is composed of fifteen justices appointed for a period of ten years (re-appointment possible). The justices are appointed by the President of the Republic with the consent of the Senate.

There are various types of procedures before the Constitutional Court (cf. Art. 87 CCR). The most important ones are twofold: the “abstract” and the “concrete” review of constitutionality.

Generally, the Constitutional Court reviews solely the constitutionality of an act. The difference is the type of act subjected to review.

“*Abstract*” review is concerned with statutes which are in conflict with the constitutional order, no application onto an individual case being necessary. The number of potential applicants in this type of review is limited to state authorities: the President of the Republic, a group of deputies or senators or, under special circumstances, the government. The Constitutional Court has also the power to review legal regulations other than statutes (so called secondary legislation). In this case the Constitutional Court considers not only constitutional compatibility, but also statutory compatibility. The number of potential applicants in this type of proceeding is wider and includes the Public Defender of Rights, higher territorial self-governing units et al. The Constitution (Art. 87 (3) CCR) provides for an opportunity to shift this power to the Supreme Administrative Court by a statute, but it has not been



used. Therefore, both statutes adopted by the Parliament and regulations adopted by administrative authorities, may solely be annulled by the Constitutional Court.

The second type of review of constitutionality is the “*concrete*” review . This is realised in the form of decisions over constitutional complaints against final decisions or other encroachments by public authorities infringing constitutionally guaranteed fundamental rights and basic freedoms. In this proceeding, any type of act or omission of a public authority including a judicial decision can be challenged, if the applicant claims that his/her constitutionally guaranteed rights and freedoms have been violated by the preceding act by public authority and after he/she has exhausted all available remedies.

The jurisdiction of the Constitutional Court also comprises ruling on impeachment of the President of the Republic based on charges of the Senate brought with the consent of the Chamber of Deputies. The first charge against the President for high treason in the history of the Czech Republic was brought in March 2013 against the outgoing President Václav Klaus for, inter alia, granting an amnesty. Although granting an amnesty is presidential power ensured by the Constitution, it was criticised, because it ended a number of prosecutions of defendants charged with serious economic crimes.

Decisions of the Constitutional Court are published in the official collection of decisions of the Court ( *Sbírka nálezů a usnesení Ústavního soudu* ), published by the **C.H.Beck Publishers, Prague** . The Court’s jurisprudence is also available for **free online** , in Czech only. There is, however, a **representative selection** of the Court’s judgments translated into English.

## **2.5. Other statewide authorities**

There are some statewide institutions that are more or less independent from bodies of the three branches of state power. Similarly like some other modern constitutions of European countries, the Constitution of the Czech Republic is not based on strict triad of state power. Besides the legislative, executive and judicial power it establishes other specialized authorities – the Supreme Audit Office (Chapter V CCR) and the Czech National Bank (Chapter VI CCR). The Public Defender of Rights (the Ombudsperson), has been established only by an ordinary statute, distinctly from some other European countries.

From the material perspective the three institutions may be recognized as executive or administrative authorities or authorities with executive or administrative functions, but formally they are authorities *sui generis* , excluded from the standard three components of state power.

### **2.5.1. The Supreme Audit Office (*Nejvyšší kontrolní úřad*)**

As mentioned above, The Supreme Audit Office (hereinafter SAO) is established by the Constitution (Art. 97 CCR). More details on the tasks of the office, its organization and functioning are laid down by the law no. 166/1993 Coll., on the Supreme Audit Office (hereinafter SAO Act) ( **in English** ). SAO is an independent state body that audits management of state property and implementation of state budget. The competence of SAO comprises neither auditing of municipal and regional property and finances nor auditing of business corporations owned by the state, municipalities or regions. A constitutional amendment widening the competence in this respect has been discussed in the Parliament, but has not been adopted so far.

The head of the SAO is the President of SAO, whose deputy is the Vice-President of SAO. Both are appointed by the President of the Republic on the nomination of the Chamber of Deputies. Their offices are time-limited (9 years). SAO Act establishes also other bodies of SAO which are collegiate. The President and Vice-President may be also recalled from their office by the President of the Republic on the proposal of the Chamber of Deputies, but only for strictly limited reasons (Art. 10 (9) SAO Act) which is one of the most important guarantees of the independence of SAO.

### **2.5.2. The Czech National Bank (*Česká národní banka*)**

The Czech National Bank is the state central bank, entrusted with maintaining price stability (Art. 98 CCR). Detailed regulation is laid down by law no. 6/1993 Coll., the Czech National Bank Act ( **in English** ).

Its competence comprises issuing of banknotes and coins, setting the monetary policy, managing of the circulation of the Czech currency and the payment system, supervision of the financial market, bank sector and other financial institutions.

Its supreme body is the Bank Board, which consists of the Governor of CNB, two Vice-Governors of CNB and other board members. All members of the Bank Board are appointed by the President of the Republic for a 6 years term.

### **2.5.3. The Public Defender of Rights (*Veřejný ochránce práv*)**

The office of the Public Defender of Rights (the Ombudsperson) has been established by the law no. 349/1999 Coll., the Public Defender of Rights Act (hereinafter PDR Act) [\(in English\)](#). The Czech Public Defender of Rights represents the major model of “parliamentary ombudsperson”. He/she is elected by the Chamber of Deputies for a term of 6 years (one re-election is admissible). Two candidates are nominated by the President of the Republic and two are nominated by the Senate. He/she, among other duties, submits an annual report on his/her activities to the Chamber of Deputies.

His/her task is to defend individuals against such conduct of authorities enumerated in Art. 1 (2) PDR Act that does not comply with principles of a democratic state, rule of law and good administration, as well as against illegal inactivity of those authorities (Art. 1 PDR Act).

In order to protect public interest he/she has the special legitimation to challenge a decision of an administrative authority at an administrative court (Art. 66 (3) CAJ 2002) and to seek abrogation of a law other than a statute at the Constitutional Court (Art. 64 (2) Constitutional Court Act).

## **3. The Legal Order**

The Czech legal system is a civil law system. It can be grouped within the Germanic continental legal culture.

The substantial areas of law are codified. The main codes are:

- The Civil Code – law no. 89/2012 Coll. [CivC] – is the basic code, providing foundations for almost all the area of private law and the legal system generally, containing provisions on legal personality and subjects of legal relations, legal rights and obligations, types of obligations and contracts, unjust enrichment, civil liability and succession. So called “New Civil Code” was adopted after an age-long work on re-codification in 2012. It came into force 1<sup>st</sup> January 2014. In addition to the New Civil Code law no. 90/2012 Coll. on Business Corporations and new law on Private International Law (Law of Conflicts, law no. 91/2012 Coll.) have been adopted and many other laws have been or are being revised to supplement the recodification.
- The previous Civil Code (law no. 40/1964 Coll.) was based on socialistic perspectives of civil law and after the overturn in 1989 must have been amended in order to align it with principles of democratic society, however most of its wording still remained rooted in the circumstances of the socialistic society. The New Civil Code, inspired by civil codes of democratic European countries with civil law tradition and also by the Austrian General Civil Code (*Allgemeines Bürgerliches Gesetzbuch, ABGB*) from 1811, codifies nearly whole civil law area including commercial contracts, family and customer relations, which have been currently dealt by separate laws so far. The New Civil Code is based on civil law standards shared by mature democratic European countries. It specifies or modifies rules in areas which were inadequately regulated by the Civil Code 1964 and emphasizes the autonomous will of individuals, principle of honesty and protection of goodwill and the principle that contracts and promises are binding (“*pacta sunt servanda*”).  
Among others, the Commercial Code (law no. 513/1991 Coll.), which has regulated relationships between undertakings and commercial activity generally, types of commercial contracts and law of companies until December 2013, has been repealed by the New Civil Code. Abrogating the duality of regulation of civil and commercial obligations is one of the most important changes brought by the New Civil Code. It affects not only provisions on individual types of contracts, but also general provisions on obligations (e. g. concerning time bar or liability).
- The Criminal Code – law no. 40/2009 Coll. [CrimC] – defines the types of behaviour constituting a criminal offence, contains enumerative list of criminal offences and types of punishment.

The main procedural codes are:

- The Code of Civil Procedure - law no. 99/1963 Coll.[CCivP] – basic code of judicial procedure containing the rules for the courts of general jurisdiction acting in civil and commercial cases. In 2014, following the recodification of the civil law, a great revision of the Code of the Civil Procedure entered into force. Proceedings in disputes are dealt by the Code of Civil Procedure and rules of indisputable proceedings are comprised in a new law on special judicial proceedings (see above).
- The Code of Criminal Procedure - law no. 141/1961 Coll. [CCrimP] – contains procedural rules for the investigation, prosecution and execution of sanctions in matters falling under the Criminal Code.
- The Code of Administrative Procedure – law no. 500/2004 Coll. [CAP] – lays down substantial principles of practice of public administration and codifies procedural rules for making a decision on rights and duties of individuals, issuing a certificate, making a public administrative contract, adopting a measure of general application and every other activity of an administrative authority while executing public power.
- The Code of Administrative Justice - law no. 150/2002 Coll. [CAJ 2002] – lays down the jurisdiction and competence of administrative courts, some of the issues concerning the organization of courts and the status of judges, procedure of administrative courts and rights and duties of parties to proceedings and other persons in administrative justice. The jurisdiction of administrative justice is laid down so that administrative courts provide protection to the individual public-law rights of both natural persons and legal entities and make decisions in other matters provided by the Code of Administrative Justice..

### **3.1. Sources of law**

Sources of law are nowhere fully or exhaustively listed. The legal order is assorted in a pyramidal-type structure (the Kelsenian pyramid of norms); where the lower levels of the pyramid have to be compatible with the higher ones. The hierarchy of sources of law is based on constitutional and doctrinal principles, sometimes explicitly mentioned in ordinary statutes, explained by the legal doctrine and followed by the practise and case–law.

The structure is as follows:

- Constitution and constitutional laws (including the Charter of Fundamental Rights and Freedoms)
- International treaties approved by the Parliament and ratified by the President of the Republic (Art. 10 CCR)
- Statutes adopted by the Parliament
- Derived legislation (adopted by the government, ministries and other authorities of state administration) and legislative acts of territorial self-governing units

Since the Czech Republic’s accession to the European Union, EU law and its legislative sources (primary law, secondary law – regulations, directives, decisions etc.) also became part of the Czech legal order.

### **3.2. Legislation**

#### **3.2.1. Types of legislation**

The various types of legislation are distinguished by two key elements:

- Who can adopt a legislative act?
  - The Parliament – constitutional laws, ratification of some international treaties, laws;
  - The government, ministries or authorities of state administration – orders and regulations (derived secondary legislation);
  - Self-governing units within the delegated competence (derived secondary legislation);

- Self-governing units within the independent self-governing competence (so called original secondary legislation).
- What majority (or legislative procedure) is required for the adoption of the legislation? This distinction applies mostly to the Parliament, where various legislations may be adopted with different legislative majority being required:
  - Constitutional majority – the concurring will of three-fifths of all the members of the Chamber of Deputies and three-fifths of all members of the Senate present (Art. 39 (4) CRR);
  - Qualified majority in both chambers – the concurrence of an absolute majority of all Deputies and an absolute majority of all Senators (Art. 39 (3) CCR);
  - Consent of both Chambers – only simple majority in both Chambers is necessary, but both have to agree on the bill, i.e. the Chamber of Deputies cannot outvote the Senate (Art. 40 CCR);
  - Simple majority – simple majority of the present and voting members of each chamber is required, one-third of the members of each chamber constituting a quorum (Art. 39 CRR);
  - Simple majority in Senate only (Art. 33 CCR).

Constitutional statutes ( *ústavní zákony* ) are legislative acts of the highest legal force. They are passed by a special majority being necessary in both Chambers of Parliament and with the agreement of both chambers (the concurrence of three-fifths of all Deputies and three fifths of all senators present – Art. 39 (4) CRR).

There is a plurality of constitutional statutes (i.e. not a single constitutional document), all the constitutional statutes form the so-called constitutional order ( *ústavní pořádek* ) of the Czech Republic (Art. 112 CCR).

The most important constitutional laws are:

- [Constitutional law no. 1/1993 Coll., the Constitution of the Czech Republic, in English ;](#)
- [Resolution no. 2/1993 Coll. of the Presidium of the Czech National Council of 16 December 1992 on the declaration of the Charter of Fundamental Rights and Basic Freedoms as a part of the constitutional order of the Czech Republic, in English;](#)
- [Constitutional law no. 110/1998 Sb., on the Security of the Czech Republic, in English;](#)
- [Constitutional law no. 347/1997 Coll., on the Creation of Higher Territorial Self-Governing Units, in English.](#)

International treaties ratified under Art. 10 CCR take precedence over ordinary statutes. This means that in the case of conflict between a provision of a law and a provision of an international treaty adopted under Art. 10 CCR, the latter shall prevail. The most important treaty in this category is the [Convention for the Protection of Human Rights and Fundamental Freedoms](#) drafted by the Council of Europe.

Ordinary statutes ( *zákony* ) are the universal form of legislative decision making adopted by the Parliament. For a statute to be adopted, the simple majority of the present members in the Chamber of Deputies and the simple majority of present senators (i.e. simple majority in both houses) are required (Art. 39 (1) and (2) CCR).

In the legislative process leading to the adoption of an ordinary statute, the political will of the Chamber of Deputies is decisive. If, in the course of this legislative procedure, the Senate rejects a bill, the Chamber of Deputies can uphold the bill and pass it against the will of the Senate by an absolute majority of all Deputies (Art. 47 CCR). The same goes for the veto of the President of the Republic, which can also be overturned and the bill approved by an absolute majority of the all the Deputies (Art. 50 (2) CCR).

Consent laws are special sort of laws, for the adoption of which is basically required the concurrence of the will of both chambers, i.e. the Chamber of Deputies cannot overturn the negative vote in the Senate. These types of laws are provided in Art. 39 (3) CCR and Art. 40 CRR (by absolute majority and

qualified majority respectively) and include issues such as electoral laws, laws concerning the principles of dealings and relations of both chambers, movements of troops or declaration of war.

Senate's legislative measure (*zákonné opatření senátu*) is a special type of legislation with the force of statute (Art. 33 CCR). Its purpose is to keep the legislative power of the Czech Republic operational even when the Chamber of Deputies is dissolved. Should such a situation arise, the Senate is empowered to adopt legislative measures concerning matters which cannot be delayed and which would otherwise require the adoption of a statute. It is meant as an interim and conditional legislative form, as legislative measures of the Senate must be approved by the Chamber of Deputies at its first meeting after the election. Should they not be ratified, they cease to be in force. This special type of legislative act was adopted in 2013 for the first time, as after the Rusnok's government had lost confidence vote, it was the first time when the Chamber of Deputies was dissolved (art. 35 (2) CCR).

Governmental order (*nařízení vlády*) is a form of legislation adopted by the government as a collegiate body. It is recognised as a form of secondary derived legislation. Its legal force is lower than the force of a statute (*secundum et intra legem*, secondary legislation) and its purpose is to implement a statute (derived legislation). Albeit being a form of derived legislation, an express statutory provision authorising the government to adopt a precise order is not necessary; the government is entitled to adopt orders by the Constitution itself. "In order to implement statutes, and while remaining within the bounds thereof, the government is authorized to issue orders" (Art. 78 CCR).

Regulations (*vyhlášky*) are other principal form of secondary derived legislation, adopted by ministries and other administrative agencies (central, regional and local) or bodies of territorial self-governing units. "If they are so empowered by statute, the ministries, other administrative authorities and bodies of territorial self-governing units may issue regulations on the basis of and within the bounds of that statute" (Art. 79 (3) CCR). A regulation alike a governmental order is adopted to implement a statute. Unlike the governmental orders, regulations can be adopted only upon an express empowerment contained in the respective law. Being a secondary legislative act, regulations must of course stay within the bounds of the law (Art. 79 (3) CCR).

Generally binding ordinances (*obecně závazné vyhlášky*) are adopted by representative bodies of territorial self-governing units within their self-governing competence (cf. Art. 104 (3) CCR). Being a form of secondary legislation, they must comply with ordinary and constitutional statutes. However unlike governmental orders and regulations they are not recognised as a form of derived legislation, as they are not adopted to implement a statute, they are described as original legislation. Generally binding ordinances regulate matters falling under the self-governing competence that are not regulated by statutes at all or that are regulated by statutes but with a different purpose of regulation. However, Municipal Law and Regional Law limit the original character of generally binding ordinances when stipulating conditions upon which duties on individuals may be imposed by a generally binding ordinance.

### **3.2.2. Legislative process**

The legislative process varies according to the type of legislation adopted. If concentrating on the legislative process in the Parliament (i.e. adoption of statutes), all the bills (*návrhy zákonů*) are introduced in the Chamber of Deputies. Bills may be introduced by Deputies, groups of Deputies, the Senate, the government, or representative bodies of higher territorial self-governing units (i.e. regions) (Art. 42 CCR). In practice, the great majority of the bills are introduced by the government.

The detailed provisions of the (floor) debate in both chambers of the Parliament are regulated by the Rules of Procedure of both chambers (by law no. 90/1995 Coll., Standing Rules of the Chamber of Deputies Act, in [English](#) , and by law no. 107/1999 Coll., Standing Rules of the Senate Act, in [English](#) , respectively).

### **3.2.3. Promulgation and publication of the legislation**

In order for legislation to be valid, it must be duly promulgated first (Art. 52 CRR). The mode of promulgation of constitutional and ordinary statutes and state-wide regulations by administrative authorities is laid down by the law no. 309/1999 Coll., the Collection of Laws and the Collection of International Treaties Act. All treaties by which the Czech Republic is bound must be published in the Collection of International Treaties, where the authoritative foreign version, as well as the Czech version, is published simultaneously.

If an act is published in the Collection of laws (*Sbírka zákonů* , abbreviated in Czech as “*Sb.*”), the standard form of citation is:

“number of the document”/”year of the publication” Coll.

The number of every document is unique. The document number 1/1993 Coll. thus refers to the first document published in the Collection of laws in the year 1993, which was the Constitution of the Czech Republic. The publication in the Collection of International Treaties (*Sbírka mezinárodních smluv* , abbreviated in Czech as “*Sb.m.s.*”) follows the same numbering principles.

Both Collections are published in a printed version by the Ministry of Interior. They are also fully accessible online in a “PDF” format from 1945 onwards at the [Ministry of Interior web page](#) or on the [Sagit Publishing web site](#) (access free of charge).

The only authentic version of Czech legislation is in the Czech language. There are no systematic official translations of the legislation in force into English; the translations, to which this guide refers, are unofficial translations compiled by various public or private institutions.

### **3.3. Case law**

From the traditional continental dogmatic point of view, case law is not recognised as a formal source of law. In practice, however, the decisions of the courts, especially the decisions of Supreme Courts and the Constitutional Court, considerably shape the legal system and thus progressive legal theorists admit that case law work as a material source of law.

### **3.4. Legal Doctrine**

Neither legal doctrine is a source of law in the Czech legal system, although there is some influence of the legal doctrine on the legal practice, especially on the case-law of higher courts.

## **4. Legal Education and Legal Professions**

### **4.1. Law schools and legal education**

The general legal programme offered by the Czech law public law schools is the 5 year lasting M.A. (*magistr* , abbreviated as *Mgr.* , written before the name). It is the qualifying degree and the minimal requirement for any traditional legal profession (attorney, prosecutor, judge).

Higher degrees are the JUDr. ( *iuris utrisque doctor*, “doctor of both laws”, so-called “small” doctorate in law, written before the name) and the research degree of Ph.D. (“normal” doctorate in law, written after the name). The small doctorate is obtained by submitting a written piece of work anytime after completing the Magister. Its scholar importance is limited, but it serves as a traditional badge recognising the completed education. The normal doctorate is obtained after completing (at least) 3 years of doctoral studies and a research resulting in a dissertation thesis. Other academic titles one may encounter especially with more senior lawyers are the CSc. (Candidate of Science) and DrSc. (Doctor of Science), both written after the name, which are former counterparts of the Ph.D. degree. They are no longer awarded.

There are 4 public law schools that offer full legal education: Prague, Brno, Olomouc and Pilsen. There is no Czech private law school providing full legal education required for traditional legal professions, however there are some private schools which provide education in specialized legal fields.

The [Charles University Law Faculty](#) is the oldest and can be said to be the most respected law school in the Czech Republic. The University was founded in 1348 by the Czech King and Roman Emperor Charles IV and is the oldest university north of the Alps and east of Paris. The law faculty was one of the then 4 faculties of the university, which was German speaking at that time. The current student body of the law faculty numbers about 4,000.

The [Masaryk University Law Faculty](#) was founded in 1919. It is named after the first Czechoslovak president, Tomáš Garrigue Masaryk. The faculty was closed down in 1950 during the Communist regime and re-established in 1969 at the time of the so-called Prague Spring. The faculty has become a reputable school and research institution as well. The faculty comprises about 3, 000 students.

The **Palacky University Law Faculty** was originally founded in 1566, closed however in 1860. The University was re-established in 1947, the Law Faculty after the overturn of the regime only in 1991. The current number of students is about 1300. Being the second youngest Czech law faculty it has become a very dynamic law school with number of research results. It puts emphasise on clinical education.

The **West-Bohemian University Law Faculty** is the youngest law faculty in the Czech Republic. It was founded in 1993.

Apart from the teaching institutions, there is also the **Institute of State and Law** within the Academy of Science of the Czech Republic. The Institute is a research-only institution.

There is a special state institution of the justice sector - **Judicial Academy** (*Justiční akademie*), located in Kroměříž. It was established in 2002 under the Judges Act for the continuing education and training of judges and prosecutors.

## **4.2. The Legal Professions**

### **4.2.1. Attorney (*advokát*)**

Attorneys provide individuals with legal services for remuneration. The provision of legal services means representation before a court of law and other authorities, defence in criminal cases, granting legal advice, drawing up legal papers, processing legal analyses and other forms of legal aid if carried out systematically and for a fee.

An attorney is a person who has completed a master's degree in law followed by 3 years of professional training under a mentorship of a senior attorney and successfully passed the bar exam. The list of attorneys entitled to practice may be viewed [here](#) .

The exercise of the profession is regulated by the law no. 85/1996 Coll., on the Legal Profession ( [in English](#) ).

The professional body of attorneys is the **Czech Bar Association** , which is a professional self-governing entity.

### **4.2.2. Public prosecutor (*státní zástupce*)**

Public prosecutor represents the state (public interest) in criminal proceedings.

Public prosecutors are appointed following Master's studies in law, 3 year period of training and a professional exam.

The functions, organisation and hierarchy of the public prosecution are laid down in law no. 283/1993 Coll., Public Prosecutor's Office Act.

### **4.2.3. Public notary (*notář*)**

Public notary is a private person entrusted with the public office of notary, which entails activities like the drawing of deeds and documents of sale of land, verification and legalisation of documents etc.

The profession is regulated by law no. 358/1992 Coll., Public Notaries and their Functions Act ( [in English](#) ).

Public notary must have completed Master's degree in law, a practical professional training and pass a professional exam. There is only limited number of public notaries in the Czech Republic (*numerus clausus*).

The professional self-regulating body is the **Czech Notary Chamber** .

### **4.2.4. Judge (*soudce*)**

Judges are appointed by the President of the Republic, following Master's degree in law, 3 years of professional training and successful passing of judicial examinations. A judge must be at the time of his/her appointment at least 30 years old. The [list of current judges](#) may be viewed online.

#### 4.2.5. Executor (exekutor)

A new legal profession, created by the law no. 120/2001 Coll., on Judicial Executors and Executions. Executor is a private person entrusted with the enforcement of civil and commercial judicial decisions and awards.

The access to the profession is conditional upon having completed Master's degree in law, 3 years of professional training and successful passing of a professional exam.

There is a professional self-governing chamber – the [Executors' Chamber of the Czech Republic](#) (*Exekutorská komora České republiky*).

#### 4.2.6. Tax Advisor (daňový poradce)

A tax advisor is not *per se* a legal profession; under the law no 523/1992 Coll., on Tax Consultancy and on the Chamber of Tax Advisors of the Czech Republic, which regulates the activity of tax advisors, a law degree is not required for admission as a tax advisor. There are, however, a growing number of tax advisors who are either lawyers by original education or have read economics/accountancy as well as law.

The professional body is the [Chamber of Tax Advisors of the Czech Republic](#) (*Komora daňových poradců*).

### 5. Legal Resources

The most common sites providing update on the newest developments in Czech and European law are:

- [www.epravo.cz](http://www.epravo.cz) ;
- [www.ipravnik.cz](http://www.ipravnik.cz) .

#### 5.1. Legislation online

- [Collection of Laws](#) (Ministry of Interior, free access to nonconsolidated laws);
- [Public-Administration Gate](#) (*Portál veřejné správy*) (by Ministry of Interior, free access to consolidated laws);
- [Beck-online](#) (private collection, paid access);
- [Sagit](#) (private collection, free access to nonconsolidated laws).

#### 5.2. Law Reports and case-law online

- The decisions of the Constitutional Court :
  - Are published in the official (printed) collection of decisions of the Court (*Sbírka nálezů a usnesení Ústavního soudu*).
  - The [Court's jurisprudence](#) is also available for free online (in Czech only). There is also a representative selection of Court's judgments [translated into English](#) .
- The decisions of the Supreme Court :
  - There is the official printed selection of the Court's case-law, published in its Collection of the decisions of the Supreme Court (*Sbírka rozhodnutí Nejvyššího soudu*).
  - All decisions of the Supreme Court (from 2000 onwards) are also [accessible online](#) .
- The decision of the Supreme Administrative Court :
  - Are published in the official printed Collection of the Decisions of the Supreme Administrative court (*Sbírka rozhodnutí Nejvyššího správního soudu*).
  - All Court's decisions are also [accessible online](#) on its website.
- The [Salvia Database](#) is a private collection of some of the case law of the Czech courts.
- Most of the legal databases listed below in point 5.3. also contain a selection of some of the case law.

#### 5.3. Legal databases



The following legal databases are available upon subscription. They contain a compendium of all Czech and European valid law (consolidated versions) and most of the available case law.

- **Lexgalaxy** - the oldest legal database, with multiple research functions.
- **ASPI** – a more “user-friendly” and accessible database, in which the navigation is easier even for a less experienced user.
- **Beck-online** – offers most of the standard functions, integrates substantive amount of doctrinal literature and full-text books and articles.
- **Codexis** – a quite new legal database with some practical functions, which becomes more popular, especially among young lawyers.