MARTIN ŠKUREK*

The Basic Institutions for the Protection of Human Rights Under the Czech Constitution and the Charter

ABSTRACT: *This part of the paper primarily examines the human rights protection system in the Czech Republic. Given the extensiveness of its legal regulation and the multitude of bodies involved in its implementation, the protection of fundamental rights and freedoms might appear robust and their status unproblematic. In reality, however, the opposite is true. According to the 2023 reports of the European Union Agency for Fundamental Rights, Amnesty International, European Network of National Human Rights Institutions, European Commission, United Nations Human Rights Council, Commissioner for Human Rights of the Council of Europe, and Public Defender of Rights, significant shortcomings persist in the protection of the fundamental rights and freedoms of the Roma, persons with disabilities, and women.*

KEYWORDS: *human rights protection, fundamental rights and freedoms, the Charter, the Constitution, the Anti-Discrimination Act, general courts, administrative courts, the Civil Procedure Code, the Code of Administrative Justice, the Constitutional Court, the Constitutional Court Act, the Defender, the Defender Act, the Council, the Commissioner*

1. The Protection of Fundamental Rights in the Constitution and the Charter

Regarding the sources of human rights protection standards in the Czech Republic, it must first be noted that the Czech Republic, as a Member State of the United Nations (hereinafter "the UN"), the European Union (hereinafter "EU") and the Council of Europe (hereinafter "the COE"), has human rights obligations at the

* Assistant Professor, Department of Administrative and Financial Law, Faculty of Law, Palacky University in Olomouc, the Czech Republic; martin.skurek@upol.cz; ORCID: 0000-0003-2581-7634.

https://doi.org/10.47078/2026.1.397-458

universal, regional and national level.[1] The Czech Republic, as a UN Member State, is subject to the oversight of various UN human rights bodies, including the Human Rights Council and its Universal Periodic Review and thematic special procedures. As a party to specific universal human rights treaties, the Czech Republic's policies and practices are monitored by the UN treaty bodies. It has accepted the complaints procedure of six treaty bodies, and ratified the following UN human rights treaties: International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Protection of All Persons from Enforced Disappearance, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of Persons with Disabilities, Convention on the Rights of the Child, International Convention on the Elimination of All Forms of Racial Discrimination.[2]

As a Member State of the EU,[3] the Czech Republic ratified the Treaty of Lisbon which amended the Maastricht Treaty, and the Treaty of Rome. The Treaty of Lisbon also amends the attached treaty protocols and the Treaty on the European Atomic Energy Community.[4] According to the Treaty on European Union, the EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These interrelated values guide the EU's internal and external action. In the area of human rights, the EU's actions are primarily based on the EU Charter of Fundamental Rights,[5] which establishes principles and rights related to dignity, liberty, equality, solidarity, citizenship and justice for EU citizens and residents with a scope broader than the European Convention on Human Rights. The EU Charter of Fundamental Rights is legally binding, possessing the same legal value as the EU treaties in accordance with the Treaty on European Union. It applies to all the actions of EU institutions and to the EU Member States in their implementation of EU law. However, it does not extend the competences of the EU beyond those already granted in the treaties. Regarding the EU Charter of Fundamental Rights, it is noteworthy that the EU Agency for Fundamental Rights was established to provide EU institutions and Member States assistance and expertise in the field of fundamental rights. In other words, the EU Agency for Fundamental Rights is a body tasked with collecting and analysing data on fundamental rights with reference to, in principle, all rights listed in the

1 See also: Matczak, Bencze and Kühn, 2010, pp. 81–99; Bělohlavek, 2012; Šturma, 2013, pp. 357–370; Zukal, 2021, pp. 334–350; Kosař, Petrov, 2018, pp. 397–425; Šipulova, Janovsky and Smekal, 2018, pp. 181–205.

2 See: International Justice Resource Center, n.d; see also: Schellongova, 2022, pp. 1–13; Heyns, Viljoen and Murray, 2024.

3 See also: Hamuľák, 2020, pp. 108–124; Kříž, Chovančík and Krpec, 2021, pp. 49–72.

4 See also: Zemánek, 2016, pp. 135–157; Němečková, 2009, pp. 239–258.

5 See also: Madej, 2019, pp. 228–247.

EU Charter of Fundamental Rights. However, it is intended to focus particularly on the thematic areas within the scope of EU law.[6]

As a Member State of the COE, the Czech Republic has ratified the European Convention on Human Rights[7] and is subject to the jurisdiction of the European Court of Human Rights. The country has also ratified the European Social Charter and authorised the European Committee of Social Rights to decide collective complaints against it. Its human rights policies and practices are monitored by the COE Commissioner for Human Rights, who identifies gaps in human rights protection, conducts country visits, engages in dialogue with the Member States, and prepares thematic reports and advice. As a State party to the European Social Charter, the Czech Republic must submit regular reports to the European Committee of Social Rights on its implementation of the Charter's provisions. As a Member of the COE, the Czech Republic is also party to the following regional human rights treaties: the COE Convention on Action against Trafficking in Human Beings, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Framework Convention for the Protection of National Minorities.[8]

As for domestic law, human rights are primarily guaranteed by the Constitution and the constitutional Act No. 2/1993 Coll., and the Charter of Fundamental Rights and Freedoms (hereinafter "the Charter"). Under Article 112(1) of the Constitution, the constitutional order of the Czech Republic comprises the Constitution itself, the Charter, constitutional acts adopted under the Constitution and those of the National Assembly of the Czechoslovak Republic, the Federal Assembly of the Czechoslovak Socialist Republic, the Czech National Council defining the state borders of the Czech Republic, and constitutional acts of the Czech National Council adopted after 6 June 1992.[9] Article 3 of the Constitution directly states that the Charter is part of the constitutional order of the Czech Republic . The reason for this state of affairs is that fundamental rights and freedoms are not regulated in the Constitution. Notably, although the Charter regulates fundamental rights and freedoms almost in their entirety, this legal regulation is not absolutely reserved for this purpose. Within the definition of Article 87(1)(d) of the Constitution, fundamental rights and freedoms may also be guaranteed by other constitutional acts. Although the Charter is part of the constitutional order in terms of legal force and formally equivalent to its other parts, it nevertheless stands apart from the other constitutional acts in its significance. Its incorporation into the constitutional order is expressly mentioned in the basic provisions of the Constitution, alongside Article 112(1), and it regulates the rights and freedoms of the human being and the citizen, namely, the fundamental rights

6 For more details see: EUR-Lex.
7 See also: Grünwaldová, 2018, pp. 248–292; Kokeš and Mikuli, 2013, pp. 79–101.
8 See: International Justice Resource Center, n.d.
9 See also: Dani, Goldoni and Menéndez, 2023, pp. 1–331.

and freedoms on which a democratic state based on the rule of law is founded and which are, therefore, protected by the judiciary, particularly by the Constitutional Court. In addition, the Charter sets out the conditions and limits for the exercise of state power typical of a democratic state governed by the rule of law, and the scope of individual freedom within it. Thus, the majority of the Charter regulates the essential elements of a democratic state governed by the rule of law, which the Constitution does not allow to be changed. In material terms, the Charter, together with the Constitution, forms the very core of the constitutional order of the Czech Republic.[10]

Specifically, the Constitution states that the Czech Republic is a sovereign, unitary and democratic, law-abiding state, based on respect for the rights and freedoms of man and citizen, and the fundamental rights and freedoms shall be protected by the judiciary power.[11] The Charter then guarantees human rights to all without distinction of sex, race, colour, language, creed and religion, political or other opinions, national or social origin, membership of a national or ethnic minority, property, birth or other status. Conversely, the Charter guarantees that no one shall be harmed by the exercise of fundamental rights and freedoms.[12] Introductory articles of the Charter are directly followed by Act no. 198/2009 Coll., on Equal Treatment and on the Legal Means of Protection Against Discrimination, which incorporates the relevant anti-discrimination Directives of the European Parliament and the Council.[13]

Regarding the details of the protection of human rights through the Constitution,[14] as mentioned above, the Constitution states in Article 1 that the Czech Republic is a sovereign, unitary and democratic, law-abiding state, based on respect for the rights and freedoms of man and citizen and the fundamental rights. The prioritising of the individual over society, and thus of fundamental rights and freedoms, can be deduced from Article 1 of the Constitution. The modern conceptualisation of democracy is that the rule of the majority is challenged by the unbreachable boundary of the fundamental rights and freedoms of individuals, which enables all people who are subject to the decisions of the majority to live in dignity[15] and enables the minority to realise a fair social order by becoming the majority in free democratic elections. In this sense, the protection of fundamental rights and freedoms undoubtedly constitutes an essential element of a democratic state governed by the rule of law the elimination of which is expressly prohibited. Article 9(2) of the Constitution specifically states that the substantive requisites of

10 For more details see: Sládeček et al., 2016, pp. 1258–1262.
11 See also: de Visser, 2013, pp. 1–484; Blokker, 2013.
12 See also: Kudrna, 2011, pp. 19–28.
13 See: Preuss, 2025.
14 See also: Wiedermann, 2016, pp. 27–60.
15 See also: Benák, Vyhnánek and Zahumenský, 2019, pp. 197–210.

the democratic, law-abiding state may not be amended. In this way, the concept of fundamental rights and freedoms is protected.[16]

Article 1 of the Constitution is the basic interpretative guide for the activities of all state authorities. It applies to legislative, executive and judicial powers. Therefore, in the broadest sense, protection of fundamental rights and freedoms is provided by all bodies of the state, and hence, of public authority. The legislator, by issuing legal regulation that is consistent in content with the constitutional order, and the executive and judiciary, by constitutionally consistent interpretation and application of this legal regulation, or, in specified cases, by removing it from the legal order for contradicting the Constitution.[17]

Fundamental rights and freedoms are principles that are further elaborated in the legal regulations of individual branches of law. For instance, Article 11 of the Charter regulates the basic characteristics of property, which is further specified by the Act No. 89/2012 Coll., namely, the Civil Code. Therefore, simple law completes the form of fundamental rights and freedoms, reinforces the legal certainty that cannot be guaranteed by general principles, and thus serves as their effective, everyday protection in social relations.[18]

For the protection of fundamental rights and freedoms, the introductory part of the Charter, specifically, Articles 1 to 4, is absolutely crucial, as it establishes the principles on which the entire system is built within the Czech legal structure. In general terms, they can be expressed as the principle of equality, freedom and dignity. These introductory articles of the Charter only comprise basic and general provisions. The principles contained in these articles apply to all fundamental rights and freedoms included in the Charter and are the basis for their interpretation. Violations of the aforementioned provisions of the Charter cannot be generally challenged since they are not directly applicable. Therefore, a specific, primarily substantive fundamental right or freedom – and the corresponding provision of the Charter or of an international agreement – that may have been violated must be identified.[19]

Article 1 of the Charter specifically states that all human beings are free and equal in dignity and rights. Freedom is defined in Article 2(3) of the Charter such that everyone may do what is not prohibited by law and no one may be compelled to do what the law does not require. In a democratic state governed by the rule of law, the individual is fundamentally free, and his or her freedom may be restricted only in order to protect the rights and freedoms of others or an important public interest. Under Article 2(2) of the Charter, the state power may interfere with

16 See: Linhart, 2008, p. 36; for more details see: Sládeček et al., 2016, pp. 104–121.
17 See: Linhart, 2008, p. 36; for more details see: Sládeček et al., 2016, pp. 9–24.
18 See: Linhart, 2008, pp. 27–28; for more details see: Husseini et al., 2021, pp. 362–421.
19 See: Linhart, 2008, p. 27; for more details see: Husseini et al., 2021, pp. 73–198.

rights and freedoms of individuals only in these cases, and within the limits and in the manner prescribed by law.[20]

Equality[21] is a relative category requiring the elimination of unjustified differences. Therefore, the principle of equality in rights and freedoms must be understood as non-arbitrary legal distinctions in access to certain rights and freedoms, although it does not imply that everyone must be granted every right or freedom. The Constitutional Court case-law considers equality to be a fundamental human right. Generally, along with a violation of the principle of equality, a violation of another fundamental right or freedom must also be claimed. This is the case with the Charter or the European Convention on Human Rights; the exception is Article 26 of the International Covenant on Civil and Political Rights, which constitutes equality as a separate civil right.[22]

In this vein, the requirement of equality can be understood as a prohibition of discrimination.[23] Article 3 of the Charter states that fundamental rights and freedoms are guaranteed to all without distinction; however, this does not mean that all groups of people must be afforded the same level of legal protection. International human rights treaties and related case-law make a distinction between formal equality (i.e. equal treatment of formally equal subjects in formally equal cases) and substantive equality (i.e. formally unequal treatment of factually unequal subjects in order to compensate for that very factual inequality and thus help to establish substantive equality between them). This is often referred to as positive discrimination. For example, the Charter gives special legal protection to minors, women and persons with disabilities. Thus, the categories of equality and freedom are mutually reinforcing.[24]

Article 4 of the Charter, the final introductory article, states that obligations may be imposed only on the basis and within the limits of the law and only when fundamental rights and freedoms are preserved. These obligations are to be understood as analogous to fundamental human rights and freedoms. They are expressly enshrined obligations towards the state in the form of doing something, refraining from doing something, and so on. This so-called public subjective obligation characterises the relationship between the state under the rule of law and the individual, without which it is impossible to describe the full characteristics of this relationship. Without individuals under the jurisdiction of the state fulfilling these obligations, the state under the rule of law could not exist because its legal order would lose its meaning. This is a prerequisite for the exercise of state power.[25]

20 See: Linhart, 2008, p. 28; for more details see: Husseini et al., 2021, pp. 73–119.
21 See also: Idriz, 2022, pp. 297–323.
22 See: Linhart, 2008, p. 28 and for more details see: Husseini et al., 2021, pp. 73–119.
23 See also: Serghides, 2021, pp. 117–145.
24 See: Linhart, 2008, pp. 28–29; for more details see: Husseini et al., 2021, pp. 141–184.
25 See: Linhart, 2008, p. 29; for more details see: Husseini et al., 2021, pp. 185–198.

The remaining sections of Article 4 of the Charter regulate the restriction of fundamental rights and freedoms.[26] Thus, fundamental rights and freedoms may be restricted by law under the conditions set out in the Charter, as long as this is done on a non-discriminatory basis, and their purpose and essence are preserved. Besides statutory restrictions, for instance, a restriction arising in conflict with another fundamental right, freedom or constitutional value may be considered. The provisions of Article 4 of the Charter can also be applied to these cases.[27]

Article 3 of the Charter is followed by the Act No. 198/2009 Coll., on Equal Treatment and on the Legal Means of Protection Against Discrimination (hereinafter "the Anti-Discrimination Act"), which incorporates the relevant anti-discrimination Directives of the European Parliament and the Council, and directly follows the introductory articles of the Charter. Under its Article 1(1)(a) to (j), the Anti-Discrimination Act transposes the relevant regulations of the European Communities and, in relation to the Charter and the international agreements that are part of the legal order, defines more precisely the right to equal treatment and prohibition of discrimination with respect to: (a) the right to employment and access to employment, (b) access to an occupation, business or other self-employment, (c) employment contract, service and other paid employment, including remuneration, (d) membership of, and involvement in, trade unions, workers' councils or employers' associations, including the benefits such associations provide to their members, (e) membership of, and involvement in, professional associations, including the benefits such legal persons governed by public law provide to their members, (f) social security, (g) the granting and provision of social advantages, (h) access to and provision of healthcare, (i) access to and provision of education, and (j) access to goods and services, including housing, to the extent as they are offered to the public, or in their supply. In legal relationships subject to the Anti-Discrimination Act, a natural person has the right to equal treatment and to non-discrimination. On the other hand, the Anti-Discrimination Act does not apply to legal relationships connected with the stipulation of conditions relating to the entry and residence of third-country nationals or stateless persons in the territory of the Czech Republic.[28]

■ *1.1. The Relationship Between the Constitution and International Law*

Regarding the relationship between the constitution and international law in the Czech Republic, Articles 10, 10a and 10b of the constitutional Act No. 1/1993 Coll., the Constitution of the Czech Republic (hereinafter "the Constitution") are relevant. Specifically, under Article 10 of the Constitution, the ratification of promulgated international treaties for which Parliament has given its consent and by

26 See also: Barroso, 2023, pp. 74–91.
27 See: Linhart, 2008, p. 29; for more details see: Husseini et al., 2021, pp. 185–198.
28 See also: Boučková et al., 2016, pp. 137–169.

which the Czech Republic is bound, form a part of the legal order. The fulfilment of all three conditions expressly stated in the first part of Article 10 of the Constitution is a prerequisite for an international treaty to become ex constitutione (without the need for further expressions of will by the state) "part of the legal order", referring to the legal order of the Czech Republic, namely, the domestic and not the international legal order. The term "legal order" includes all domestic legal regulations and international treaties under Article 10 of the Constitution. No distinction is made between different types of international treaties, such that international treaties under Article 10a(1) of the Constitution, which states that certain powers of the Czech Republic's authorities may be transferred to an international organisation or institution by international treaty, also fall under Article 10. However, internal legal acts of international organisations or institutions to which the Czech Republic has contractually transferred certain powers of its authorities are no longer international treaties.[29,30]

In order for an international treaty to become part of the legal order, the condition that both Chambers of Parliament have given their prior consent to its ratification by the President of the Republic, or that this consent has been given in a referendum, must first be met. Since the Parliament – with its legislative power – decides on the adoption of a draft law, within the meaning of Article 10 of the Constitution, it is impossible for an international treaty that the Parliament has not expressly recognised as eligible for ratification to take precedence over the law. Thus, international treaties concluded by the government or ministries do not become part of the legal order. In case of doubt as to whether an international treaty is in accordance with the constitutional order of the Czech Republic, the Constitution grants the Constitutional Court the power to decide, even before ratification. The second condition necessary for an international treaty to become and remain part of the legal order is that the treaty is internationally binding on the Czech Republic. The starting point for assessing whether a treaty has become or remains binding on the Czech Republic is primarily the Vienna Convention on the Law of Treaties. Although Article 49 of the Constitution states that the consent of both Chambers of Parliament is required for the ratification of international treaties, the Rules of Procedure of both Chambers expressly provide for decisions on consent to withdraw from an international treaty that a Chamber has consented to ratify. The third condition is the promulgation of the international treaty in the manner prescribed by law, under Article 52(2) of the Constitution. If a statute must be promulgated in the manner prescribed by law in order to be valid, it is entirely logical and necessary that in a democratic state governed by the rule of law, an

29 For more details see: Sladeček et al., 2016, pp. 121–130.

30 See also: Hájek, 2023, pp. 1425–1447; Schellongová, 2022, pp. 1–13; Pouperová, Dienstbier and Vícha, 2015, pp. 1331–1344; Šturma, 2013, pp. 357–370; Bělohlávek, 2012.

international treaty forming part of the legal order must also be promulgated in the manner prescribed by law and thus made accessible to the public.[31]

Article 10 of the Constitution prioritises the provisions of an international treaty in the event of a conflict with the content of a law, because such a solution generally leads to the fulfilment of obligations under international law. However, this does not imply that an international treaty, as part of the legal order of the Czech Republic, takes precedence over the law in the sense of a hierarchical structure. An international treaty has application priority; while judges, under Article 95(1) of the Constitution, are bound by both the law and international treaties that are part of the legal order of the Czech Republic, if a conflict arises between their provisions, they are required to proceed under Article 10 of the Constitution. However, application of the precedence principle is only considered if there is a real conflict between specific legal norms; specifically, if situation A is required by law, whereas situation B is required by an international treaty under the same circumstances. However, such a conflict cannot arise if the international treaty does not lay down directly applicable legal rules but merely contains an obligation on the Czech Republic to incorporate certain legal rules into its domestic legal order. Ignoring such an obligation would be a breach of Article 1(2) of the Constitution and could also lead to the Czech Republic being held liable internationally for breach of its obligation to perform a valid treaty in good faith.[32]

■ *1.2. The Responsibility for the Protection of Freedoms and Rights Under the Constitution and the Charter*

In the case of the Czech Republic, it is clear that the Constitution and the Charter are based on both the horizontal and vertical functioning of fundamental human rights and freedoms, as evidenced in particular by their introductory provisions (in particular Article 2 of the Constitution and Articles 2–4 of the Charter). Meanwhile, protection of all human rights is primarily provided by the general courts, namely, district courts, regional courts, and high courts, led by the Supreme Court of the Czech Republic. The administrative judiciary is exercised by special chambers of regional courts, of which the Supreme Administrative Court of the Czech Republic is the highest authority and provides a specialised check on the legality and correctness of decisions of administrative bodies. The Constitutional Court of the Czech Republic is sometimes erroneously referred to as the highest authority to which appeals can be made if other means fail. While exhaustion of other legal remedies is one of the conditions for its jurisdiction to rule, the decision in the proceedings must also have violated a right guaranteed by the constitutional order.[33]

31 For more details see: Sládeček et al., 2016, pp. 121–130.
32 For more details see: Sládeček et al., 2016, pp. 121–171.
33 See: Preuss, 2025; see also: Kratochvíl, 2019, pp. 69–84; Kühn, 2018, pp. 173–186.

Other options in the Czech Republic for the protection of human rights include the activities of the Public Defender of Rights (hereinafter "the Defender") under Act No. 349/1999 Coll., on the Public Defender of Rights. Although the Defender is not an institution focused directly on human rights, it aims to protect people from the actions, or even inactions, of authorities and other institutions that are contrary to the law, or do not comply with the principles of democratic rule of law[34] and good governance.[35] In doing so, it contributes to the protection of fundamental rights and freedoms. However, the Defender cannot directly enforce human rights or make authoritative decisions; he or she has, for instance, the competence to bring an action in the public interest.[36]

For many years, the protection of human rights in the Czech Republic was entrusted to one member of the Government: the Minister for Human Rights. This function ceased to exist in 2017. However, within the Office of the Government of the Czech Republic, there is still the post of Government Commissioner for Human Rights (hereinafter "the Commissioner"), which is usually linked to the chairmanship or vice-chairmanship of the Government Council for Human Rights. The Government Council for Human Rights is an advisory body to the Government of the Czech Republic. It does not deal with individual cases of rights violations, but rather with the concept of the long-term development of human rights protection in the Czech Republic. It prepares proposals and initiatives to improve the human rights situation. Since the system of human rights protection at both regional and European level is identical for all the Central European countries, it is not necessary to deal with it in detail. Therefore, the rest of this paper will focus on the specifics of human rights protection in the Czech Republic.[37]

The first noteworthy issue is the fundamental rights and freedoms protection by the general and administrative courts. Under Article 4 of the Constitution, fundamental rights and freedoms are protected by judicial power. This undoubtedly includes the activities of the Constitutional Court as a body protecting constitutionality, as well as the general courts. Under Article 90 of the Constitution, the courts are primarily called upon to protect fundamental rights and freedoms in the manner prescribed by law. This provision of the Constitution complements Article 36(1) of the Charter and its entire Chapter V, which enshrines the right to a fair trial. Specifically, Article 36(1) of the Charter states that everybody may assert in the set procedure, his or her right in an independent and unbiased cerate of justice and, in specified cases, with another organ.[38]

34 See also: Sládeček, 2019, pp. 82–98.
35 See also: Janderová and Hubálková, 2021, pp. 63–82.
36 See: Preuss, 2025.
37 Ibid.
38 See: Linhart, 2008, p. 37; for more details see: Husseini et al., 2021, pp. 1032–1135; Sládeček et al., pp. 1048–1061.

Article 95 of the Constitution states that a judge, when making a decision, is bound by the law and any international treaty that is part of the legal order. This must, of course, be interpreted extensively, which means that the judge is bound not only by ordinary law but also by constitutional law and other parts of the constitutional order of the Czech Republic. An international treaty is one that is incorporated into the national legal order under Article 10 of the Constitution, with international human rights treaties being crucial in this respect. At the same time, the aforementioned Article 1 – serving as a basic rule of interpretation and application of law in judicial decision-making – and Article 9(3) – prohibiting the interpretation of legal norms that justify their removal or threaten the basis of the democratic state – of the Constitution are applicable here.[39]

Therefore, to conclude that the protection of fundamental rights and freedoms is primarily provided by the Constitutional Court of the Czech Republic and that the general courts are bound by sub-constitutional law is impossible. If it is the constitutional duty of the courts to protect rights arising from the provisions of the ordinary law, all the more so must they protect fundamental rights and freedoms. Article 95 of the Constitution remembers this fact in two ways. First, under Article 95(1), a judge may assess the compatibility of another legal regulation with the law or the international treaty mentioned above. If they are inconsistent, for instance, because they are contrary to fundamental rights or freedoms, then the judge may not apply such a legal regulation. Second, under Article 95(2) of the Constitution, if a judge concludes that the law to be applied in resolving a case is contrary to the constitutional order, he or she shall suspend the proceedings and submit the case to the Constitutional Court. The Constitutional Court will assess the law in question and either annul it or declare its conformity with the constitutional order. The court will then complete the proceedings and make a decision on the matter. International treaties on human rights and fundamental freedoms that have been, as mentioned above, ratified and promulgated are also considered as a part of the legal order.[40]

Article 36(1) of the Charter, and Articles 95(1) and (2) of the Constitution, are followed by Act No. 99/1963 Coll., the Civil Procedure Code (hereinafter "the Civil Procedure Code"), which in its Sections 1 to 6, the so-called basic provisions, defines the nature and purpose of civil proceedings. Specifically, the Civil Procedure Code regulates the procedure of the general courts and the parties in civil proceedings to ensure the fair protection of private rights and legitimate interests of the participants, and the honest performance of duties, and to respect the rights of others. In civil judicial proceedings, courts hear and decide disputes and other legal matters and enforce decisions that were not achieved voluntarily yet ensure that there is no violation of the rights and interests protected by law, and that

39 See: Linhart, 2008, p. 37; for more details see: Sládeček et al., 2016, pp. 1094–1120.
40 Ibid.

rights are not abused. Civil law is a guarantee of fairness and justice, serving the consolidation and development of the principles of private law. Any person may request the court to protect their private rights that have been threatened or violated. The courts provide the participants of their procedural rights and obligations. In the proceedings, the court predictably – and in coordination with the parties – protect rights in a manner that is fast and efficient and ensure that the facts disputed between the parties according to the extent of their participation are reliable. The provisions of this Act are interpreted and applied so as to prevent their abuse.[41]

Very important is also the legal regulation under Article 7(1) to (4) of the Civil Procedure Code, concerning the competence of courts deciding in civil proceedings. Specifically, in civil proceedings, the courts hear and decide disputes and other legal matters arising from the realm of private law that are not dealt with by other organs and make decisions about them. Litigation and other legal matters that are decided by authorities other than courts, are heard in civil proceedings and judged according to the conditions set out in Part V of the Civil Procedure Code. Other matters are discussed and decided by the courts in civil proceedings only if set out by the law. Unless otherwise provided by the law, these disputes are first heard at the district courts. As courts of first instance, the regional courts decide for example, disputes by mutual settlement payment of overpaid dose pension insurance, sickness insurance, state social support and assistance in material need, and disputes of compensation paid as a result of entitlement to sickness insurance. The Supreme Court of the Czech Republic decision as a court of first instance shall be determined by a special regulation.[42]

In addition, the Civil Procedure Code contains Part V called proceedings in matters decided by another body, i.e. Articles 244 to 250l, regulating judicial proceedings concerning matters decided by another authority, which states that if the elected body of the executive authority of the unitary authority, institution or professional self-interest, or arbitration body set up under a special law pursuant to a special act of the litigation or other legal matters arising from relations of private law, and entered into if enforced by the decision of the administrative body, can be consulted in civil proceedings. This condition does not apply (a) if the decision on the dispute comes from other legal matter arbitrators or permanent arbitration courts or arbitration committee of the association; (b) if the decision of the administrative body, as a result of objections or other similar transactions involved in a legal relationship made before the administrative body under a special law, is repealed or becomes ineffective; (c) is referred to under a special

41 For more detail see: Boučková et al., 2016; Svoboda et al., 2021.
42 Svoboda et al., 2021.

law administration affecting participants' legal relationship with their claims to court.[43]

Under Article 36(2) of the Charter, anybody who claims that his or her rights have been violated by a decision of a public administration organ may approach a court for a review of its legality, unless the law provides differently. However, review of decisions affecting the fundamental rights and freedoms listed in the Charter may not be excluded from the jurisdiction of courts. Articles 36(1) and (2) of the Charter and Articles 95(1) and (2) of the Constitution are followed by Act No. 150/2002 Coll., the Code of Administrative Justice (hereinafter "the Code of Administrative Justice"), which in its Articles 1 to 10, the so-called basic provisions, defines the nature and purpose of administrative court proceedings. Specifically, the Code of Administrative Justice provides for (a) jurisdiction and competence of courts acting and making decisions in administrative justice, and some of the issues concerning the organisation of courts and the status of judges; (b) procedure of courts, parties to proceedings (hereinafter "party") and other persons in administrative justice. Courts in administrative justice provide protection to the individual public-law rights of both natural persons and legal entities in a manner specified by the Code of Administrative Justice, under the conditions specified by this Act or by a special law, and make decisions in other matters set out by this Act.[44]

Very important is also the legal regulation under Articles 4(1) and (2) of the Code of Administrative Justice, concerning the competence of courts deciding in administrative court proceedings. Specifically, courts of administrative justice decide on (a) complaints against decisions made in the sphere of public administration by an executive authority, the autonomous unit of a local administrative authority, and by a natural person or legal entity or another authority if entrusted with decision-making about their rights and obligations in the sphere of public administration (hereinafter "administrative authority"); (b) protection against the inaction of an administrative authority[45]; (c) protection against an unlawful interference of an administrative authority; and (d) competence complaints. Furthermore, courts of administrative justice decide on (a) election matters and in the matters of a local referendum; and (b) matters concerning political parties and political movements. Unless otherwise set out by the Code of Administrative Justice or by a special law, the protection of rights that can be claimed in administrative justice provides only on the submission of a complaint and after the exhaustion of all appropriate remedial actions, if admissible under a special law.[46]

It follows from other provisions of the Code of Administrative Justice that the bodies hearing and deciding matters in the judicial review of administrative

43 Ibid.
44 For more details see: Blažek et al., 2016; Husseini et al., 2021, pp. 1032–1135.
45 See also: Skulová et al., 2019, pp. 43–68.
46 For more details see: Blažek et al., 2016.

decisions are regional courts and the Supreme Administrative Court of the Czech Republic. In regional courts, administrative justice is implemented by specialised benches and judges sitting alone. Courts of administrative justice are excluded from deciding on matters as specified by the Code of Administrative Justice or by a special law. Unless otherwise set out by the Code of Administrative Justice or by a special law, a regional court shall have subject-matter competence in proceedings. The Supreme Administrative Court, as the highest judicial authority in matters within the jurisdiction of courts of administrative justice, guarantees unity and legality of decision-making by ruling on cassation complaints in cases prescribed by the Code of Administrative Justice and, furthermore, decides on other cases specified by this Act or a special law. The Supreme Administrative Court follows and assesses the final decisions of the courts of administrative justice and adopts a position on judicial decision-making in matters of specific kinds on the basis of these decisions and in the interest of uniform judicial decision-making. In its decision-making, the Supreme Administrative Court may, in the interest of lawful and uniform decision-making by administrative authorities, make a ruling of an exemplary nature.[47]

Another instrument is the fundamental rights and freedoms protection by the Defender. As mentioned previously, the Defender defends persons against the conduct of authorities and other institutions set forth in the Act No. 349/1999 Coll., on the Public Defender of Rights (hereinafter "the Defender Act"), wherein such conduct is at variance with the law or does not comply with the principles of a democratic State governed by the rule of law and good administration. It also defends against their inaction, thereby contributing to the defence of fundamental rights and freedoms. These competences of the Defender, as defined in the general provisions of the Defender Act, apply to ministries and other administrative authorities[48] having competence over the entire territory of the Czech Republic, the administrative authorities subject to them, the Czech National Bank when acting as an administrative authority, the Council for Radio and Television Broadcasting, bodies of regional and local government in the exercise of State administration and, unless hereafter stipulated otherwise, the Police of the Czech Republic, Army of the Czech Republic, Castle Guard, Prison Service of the Czech Republic, and also to the facilities serving for remand in custody, imprisonment, protective or institutional education, protective treatment, preventive detention, as well as to public health insurance companies (hereinafter "an authority").[49]

Under the Defender Act, the Defender shall systematically visit places where persons restricted in their freedom by public authority or as a result of their dependence on the care provided are or may be confined with the objective

47 Ibid.
48 See also: Skulová, Potěšil and Hejč, 2014, pp. 393–420.
49 For more details see: Chamráthová et al., 2019, pp. 1–30.

of strengthening the protection of these persons against torture; cruel, inhuman and degrading treatment; punishment; and other forms of ill-treatment. These competences of the Defender apply to: a) facilities serving for remand in custody, imprisonment, protective or institutional education, protective treatment or preventive detention; b) other places where persons restricted in their freedom by public authority are or may be confined, especially police cells, facilities for the detention of foreigners and asylum facilities; c) places where persons restricted in their freedom are or may be confined as a result of dependence on the care provided, especially social services facilities and other facilities providing similar care, health-care facilities, and facilities providing social and legal protection for children (hereinafter "a facility").[50]

The Defender must also: (a) act within his or her competence in matters concerning the right to equal treatment and protection against discrimination; (b) monitor the detention of foreign nationals and the enforcement of their administrative expulsion, transfer or transit, and the punishment of expulsion imposed on those placed in expulsion custody or serving prison sentences (hereinafter "expulsion monitoring"); (c) monitor the implementation of the international treaty on the rights of persons with disabilities; and (d) demonstrate competence in matters related to the freedom of movement of citizens of the European Union and the European Economic Area and their family members. Finally, the Defender is authorised to initiate proceedings under the Act No. 7/2002 Coll., on Proceedings in Matters of Judges and Public Prosecutors, and participate in these proceedings but not to interfere with the activities and decisions made by authorities and facilities in any manner other than as stipulated in the Public Defender of Rights Act. On the other hand, the competence of the Defender does not apply to the Parliament, the President of the Republic and the Government, the Supreme Audit Office, the intelligence services of the Czech Republic, prosecuting bodies, public prosecutors and courts, with the exception of the public prosecutor's administrative bodies and the State administration of courts.[51]

It follows from the Defender Act that the Defender initiates the exercise of his powers: (a) on the basis of a complaint lodged by a natural or legal person (hereinafter "a complaint") addressed to him or her; (b) on the basis of a complaint addressed to a member of the Chamber of Deputies or the Senate, who has passed the said complaint on to the Ombudsman; (c) on the basis of a complaint addressed either to the Chamber of Deputies or the Senate, which has been passed to the Ombudsman; or (d) on his or her own initiative. Everyone has the right to address the Defender with a written complaint in matters that fall under the Ombudsman's

50 For more details see: Chamráthová et al., 2019, pp. 1–30.
51 Ibid, pp. 67–83.

competence; such a complaint may also be made orally into a record. A complaint may not be subject to official inspection or a fee.[52]

If the case in question does not fall within his or her competence or does not concern the party lodging the complaint, the Defender sets the complaint aside. The Defender may also set a complaint aside if (a) the requisites mentioned above have not been supplemented within the set deadline; (b) it is manifestly unfounded; (c) on the date of delivery of the complaint, more than one year has elapsed from the legal force of the decision or from the measure or event to which the complaint pertains; (d) the case to which the complaint pertains is subject to pending court proceedings or has already been decided by a court; or (e) if the complaint is filed in a case that has already been inquired into by the Defender and the new complaint does not reveal any new facts. The Defender shall advise the complainant in writing that the complaint has been set aside and state the reasons. If a complaint, in view of its content, represents a remedy under the regulations on proceedings in administrative or judicial matters, a lawsuit or remedy in administrative justice, or a constitutional complaint, the Defender shall inform the complainant accordingly without delay and provide instructions as to the correct procedure.[53]

On the other hand, if the Defender does not set the complaint aside, he shall initiate an inquiry and the complainant shall be informed in writing accordingly. The Defender is authorised, with the heads of the concerned authorities having been notified, to enter all the authorities' premises without prior notice to carry out an inquiry involving: (a) inspection of files; (b) interviewing employees; and (c) interviewing persons placed in the facilities, in the absence of other parties. At the Ombudsman's request and within his set deadline, the authorities shall: (a) provide information and explanations; (b) submit files and other written materials; (c) provide their statement in writing as to the facts of the case and legal issues; (d) take evidence adduced by the Ombudsman; or (e) perform such supervisory actions to which they are authorised by law and which the Defender suggests. The Defender is authorised to be present at oral hearings and during the process of taking of evidence by the authorities, and to question the persons present. For the purposes of inquiry pursuant to the previous paragraphs, a person authorised to this effect pursuant to a special law shall release the individual employees of an authority, at the Ombudsman's request, from their duty to maintain confidentiality that has been imposed on them by this special law. Where no special law identifies the person authorised to release the above from the duty to maintain confidentiality, for the purposes hereof, the head of the relevant authority shall be deemed to be such a person with respect to any employee of that authority; the head of the superior authority, or if there is no such authority, the Prime

52 Ibid.
53 Ibid.

Minister, shall be deemed such with respect to the head of a subordinate authority. For the purposes of an inquiry under this Act, the Defender cannot be required to comply with a confidentiality obligation based on a contract.[54]

Moreover, all governmental bodies and persons exercising public administration are obliged, within the scope of their competence, to provide any assistance requested by the Defender in the performance of the Ombudsman's inquiry. Specifically, for the performance of the Ombudsman's duties, the Ministry of the Interior or the Police of the Czech Republic shall provide the Defender with: (a) reference data from the basic register of inhabitants; (b) data from the agenda information system for the population records; (c) data from the agenda information system for foreign nationals; or (d) data from the register of birth identification numbers of persons who were assigned such a number but do not have a record in any of the information systems listed above.[55]

At the end of the commentary on the Defender, it is necessary to mention that if the Defender does not ascertain any breach of legal regulations or any other maladministration in the course of his or her inquiry, he shall inform the complainant and the authority in writing accordingly. On the other hand, if the Defender ascertains a breach of legal regulations or any other maladministration in the course of inquiry, he shall request the authority to provide a statement on the Ombudsman's findings within 30 days. If the authority then states that it has implemented or is in the process of implementing remedial measures, and the Defender finds these measures to be sufficient, the Defender shall inform the complainant and the authority accordingly. Otherwise, following receipt of the statement or expiry of the deadline to no effect, the Defender shall inform the complainant and the authority in writing of the Ombudsman's final statement; the latter shall include a suggested remedy. Specifically, the Defender may suggest mainly: (a) initiating proceedings on the review of a decision, act or procedure of the authority if it is possible to initiate such proceedings ex officio; (b) performing acts to eliminate inactivity; (c) initiating disciplinary or similar proceedings; (d) initiating prosecution for a criminal offence, infraction or some other administrative offence; or (e) provision of indemnification or filing a claim for indemnification. The authority shall inform the Defender within 30 days of receipt of the final statement of the remedial measures that have been adopted. If the authority fails to comply with this or her duty, or if the remedial measures are insufficient in the Ombudsman's opinion, the Ombudsman: (a) shall inform the superior authority, or if there is no such authority, the Government; (b) may inform the public of his or her findings, including disclosure of the names and surnames of persons authorised to act on behalf of the authority.[56]

54 For more details see: Chamráthová et al., 2019, pp. 83–97.
55 Ibid.
56 For more details see: Chamráthová et al., 2019, pp. 83–97; Chamráthová, 2019, pp. 65–83.

The last instrument discussed is the fundamental rights and freedoms protection by the Council of the Government of the Czech Republic for Human Rights (hereinafter "the Council"). The Council is a permanent advisory body to the Government in the field of protection of human rights and fundamental freedoms in the territory. It was established under Government Resolution no. 809 of 9 December 1998, and monitors compliance with the Constitution, the Charter and other legislation governing the protection of and respect for human rights and fundamental freedoms. The Council further monitors the national implementation of the international commitments of the Czech Republic in this domain. The Council Chairman convenes meetings at least four times a year. Activities of the Council are governed by the Statute and the Rules of Procedure. In addition, its secretariat is a part of the organisational structure of the Office of the Government of the Czech Republic.[57]

The Vice-Chairman of the Government Council for Human Rights is also the Commissioner. The Commissioner: (a) develops concepts for the long-term development of human rights protection; the rights of national minorities, the integration of the Roma minority, gender equality, the status of persons with disabilities and the status of non-governmental non-profit organisations; (b) prepares proposals and initiatives to improve the human rights situation and the position of national minorities; (c) prepares reports on the fulfilment of obligations arising from international human rights treaties that the Czech Republic submits to individual treaty monitoring mechanisms at the level of the UN, the COE and within the EU; and (d) considers materials of a legislative and non-legislative nature relating to the above-mentioned agendas in the inter-ministerial comment procedure; and cooperates with public authorities (state administration and self-government), non-governmental non-profit organisations and experts.[58]

■ *1.3. The Protection by the Constitution and the Charter in Terms of Human Rights*

Article 3(1) of the Charter states that everyone is guaranteed the enjoyment of her fundamental rights and basic freedoms without regard to gender, race, colour of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national or ethnic minority, property, birth, or other status.[59] The guarantee of fundamental human rights to all, regardless of the discriminatory grounds[60] expressly listed in Article 3(1) of the Charter, is one of the manifestations of equality in rights and dignity within the meaning of Article 1(1) of the Charter. The dignity of human beings is certainly a fundamental

57 See: the Government of the Czech Republic, 2008.
58 Ibid.
59 See also: Šturma, 2013, pp. 357–370.
60 See also: Vieten, 2009, pp. 91–114.

pillar of modern constitutionalism in the field of human rights. Human dignity[61] expresses the unique value of each individual human being. Dignity is inherent to human beings by virtue of their being human. It is an ontological category defined by certain inherent dignity. However, the protection of individual dignity is not singled out in the Charter, but mentioned together with the values of freedom and equality.[62] Moreover, it is not in the form of a declaration of the inviolability of human dignity, but of "equality in dignity" (although the preamble to the Constitution mentions "the inviolable values of human dignity and freedom").[63] In terms of consequences, there is no major difference between these formulations, as evidenced by the case law of the Constitutional Court.[64] As regards freedom, Article 1 of the Charter does not enshrine a specific subjective "right to freedom" but a general principle emphasising the primacy of the free individual over the state – the freedom of the individual being the basic state of affairs – that public authority may restrict only in accordance with constitutionally prescribed rules. Freedom is guaranteed to all people, which means that everyone can exercise their freedom only to the extent that it does not infringe on the freedom of others. The freedom of one limits the freedom of others. The mutual harmonisation of the interests of individuals and their possible free self-realisation then logically leads to certain conceptual limits of human freedom[65] if people are to live together in the same human community, for instance, in a state. Equality is one of the most complicated concepts in law, because of its generality, its cross-cutting scope, and the efforts of all social sciences to capture it. However, different conceptual approaches, perspectives, and methods of examination lead to differences in terminology, definitions and classifications, and equality is often discussed using the same term but with slightly different meanings. The idea of natural human rights,[66] on which the Charter is based, stems from the belief that every human being has the same moral value and is worthy of the same respect regardless of a number of a priori givens or personal characteristics such as origin, race, skin colour, religion, property, and gender. In other words, moral equality, equality in dignity, and the recognition of equal value for every individual. If people are worthy of equal respect, they should also be treated equally, both in the creation and application of rules.[67]

Article 3(1) of the Charter aims to prohibit discrimination in the area of guaranteeing fundamental rights and freedoms. The term "fundamental rights and freedoms", within the meaning of Article 3(1) of the Charter, can be understood

61 See also: Benák, Vyhnánek and Zahumenský, 2019, pp. 197–210.
62 For more details see: Husseini et al., 2021, pp. 141–184.
63 See also: Porter, 2020, pp. 301–326.
64 Wagnerová et al., 2012, pp. 55–61.
65 See also: Vandenhole, 2009, pp. 1–20.
66 See also: Massini-Correas, 2022, pp. 71–86.
67 For more details see: Husseini et al., 2021, pp. 73–119.

to mean not only the fundamental human rights and freedoms guaranteed directly by the Charter but also by international treaties.[68] However, these international treaties often have their own anti-discrimination provisions or deal directly with specific types of discrimination. Not every conceivable right is fundamental, which means that the scope of Article 3(1) of the Charter is somewhat narrower than that of Article 1. Given that the right to equal treatment is covered by both articles in a certain symbiosis, this distinction is not significant for practical application or prohibition of discrimination, as cases of discrimination that cannot be subsumed under Article 3(1) of the Charter – whether due to the absence of the fundamental right concerned or the absence of the element of discrimination – fall within the scope of Article 1 of the Charter. Meanwhile, fundamental rights are guaranteed to everyone without further ado. If equality in rights is guaranteed in Article 1 of the Charter, then equality in fundamental rights is also automatically guaranteed, and discriminatory grounds, namely, grounds for exclusion, play no role in this respect. Notably, the significance of Article 3(1) of the Charter does not lie solely in the guarantee of fundamental rights in the above context, but also in the guarantee of equality in their application or restriction.[69]

It follows from the above that the legal regulation under Article 3(1) of the Charter also has a fundamental practical impact. In its case law, the Constitutional Court uses[70] the term "accessory equality"[71] for equality that is linked to another fundamental right. This means that when alleging a violation of Article 3(1) of the Charter before the Constitutional Court, another fundamental right must be identified, the application of which has resulted in the alleged discrimination. If no such right is identified, Article 1 of the Charter must be applied. However, this may not be a common situation, as the Charter covers a wide range of rights. Therefore, unless the scope of rights is interpreted "generously", almost any situation can be subsumed under the "broader framework" of a particular right. The fundamental right in question does not have to be violated; it is sufficient that there has been unjustified unequal treatment in relation to that right. From the perspective of the protection of individual rights, it can be concluded that the issue of the non-existence of the fundamental right in question is not of fundamental importance. It may only be reflected in the operative part or the reasoning of the Constitutional Court's decision in connection with the provision on which the Constitutional Court expressly based its decision.[72]

68 See also: Ramcharan et al., 2023.
69 For more details see: Husseini et al., 2021, pp. 141–184.
70 See: Judgment Case No. Pl. ÚS 15/02 of 21 January 2003.
71 See also: Lépinard and Rubio-Marín, 2018, pp. 339–423 and the dissenting opinion of Judge Boštjan Zupančič, *Burden vs. the United Kingdom*, No. 13378/05 of 29 April 2008, *Reports of Judgments and Decisions of the European Court of Human Rights*, 6/2008, p. 319.
72 For more details see: Husseini et al., 2021, pp. 141–184.

Notably, the anti-discrimination clause in Article 3(1) of the Charter states that people are equal and even the characteristics defined therein cannot change this; in other words, although people are not the same, the differences listed as grounds for discrimination must not be held against them. In the context of protected persons, we also speak of "protected grounds."[73] However, it also follows that a distinction can, in principle, be made using criteria that are linked to the individual but are of the nature of abilities, merits, skills, knowledge, and so on. The protected grounds defined in Article 3(1) of the Charter are perceived as a priori suspect, albeit to varying degrees, which means that they either exclude differential treatment almost always (typically racial, national or ethnic discrimination), or require very strong justification for it. These grounds are based either on a certain a priori condition or characteristic of an individual (e.g., race, ethnic origin, family, gender), strong personal choice (e.g., belief, religion, opinion), vulnerability of minorities that need protection (e.g., persons with disabilities), or a combination of the above reasons. Thus, the Constitutional Court must provide at least the same standard of protection to all complainants.[74]

With regard to the legal regulation under Article 3(1) of the Charter, it is noteworthy that guarantees of equality are also enshrined in the provisions of the Charter regulating equality in the restriction of fundamental rights (Article 4(3)), equality of forms of ownership (Article 11(1)), equality of electoral rights (Article 21(3)), equal access to elected and other public functions (Article 21(4)), equality of children born in and out of marriage (Article 32(3)), and equality of parties to proceedings (Article 37(3)). Article 29 then states that women, adolescents, and persons with health problems have the right to increased protection of their health at work and to special work conditions. Adolescents and persons with health problems have the right to special protection in labour relations and assistance in vocational training. Finally, Article 30 states that citizens have the right to adequate material security in old age, during periods of work incapacity, and in the case of the loss of their provider. Everyone who suffers from material needs has the right to such assistance as is necessary to ensure her a basic living standard.

■ *1.4. The Guiding Principles of the Status of the Individual Under the Constitution and the Charter*

The guiding principles of the status of the individual is undoubtedly the rule of law,[75] whose basic components include the sovereignty of the people, guarantees of

73 See also: Zaccaroni, 2017, pp. 167–195.

74 For more details see: Husseini et al., 2021, pp. 141–184.

75 See also: Fruhstorfer, 2019, pp. 1028–1046; Havlík, Hrubeš and Pecina, 2014, pp. 440–460; Janderová, 2019, pp. 117–139; Janderová, 2024, pp. 55–77; Janderová and Hubálková, 2021, pp. 63–82; Kudrna, 2011, pp. 19–28; Meier, Lorenz and Wendel, 2023; Přibáň and Young, 2019; Sever, Rakar and Kovač, 2014, pp. 249–275.

fundamental human rights and freedoms, the principle of legality, the principle of legal certainty and the principle of prohibition of retroactivity. These components are regulated at the constitutional level, specifically in Articles 1, 36(1) and 40(6) of the Charter and in Articles 1(1), 2(1), 4(1) and (3) and 9(2) of the Constitution.

As for the sovereignty of the people, Article 2(1) of the Constitution provides that the people are the source of all State power. The constitutional rule that 'the people are the source of all State power' is the traditional form of expression of Rousseau's popular sovereignty.[76] However, sovereignty is limited by the natural rights of the people, the preservation and guarantee of which the government or state is relatively spontaneously constituted. In the constitutional order of the Czech Republic, the natural law sources are reflected, in addition to Article 2(1) of the Constitution, in the second sentence of Article 1 of the Charter, which uses typical natural law terms. Natural rights are explicitly mentioned in the constitutional wording of the oath taken by the judges of the Constitutional Court in Article 85(2) of the Constitution. By Article 6 of the Constitution, the most important political decision of the citizens is free elections, on the basis of which a system of institutions is formed, shaping the will of the State. The principle of sovereignty of the people also implies the guarantee of universal equal suffrage for the election of State bodies and free competition of political parties and forces. The concept of the people, within the meaning of Article 2(1) of the Constitution, falls into two basic groups: citizens and inhabitants of the State. The decision-making of State organs through elections is limited to citizens of the State; on the other hand, foreign citizens and stateless people must also be guaranteed those political rights which allow the basic expression of political will. These are regulated by the Charter, specifically Articles 17, 19 and 20, by the legal regulation of freedom of expression, the right of assembly and the right of association. Another aspect of the concept of popular sovereignty is that the people themselves have the right to determine the ways in which State power may be exercised.[77]

The basic forms of the exercise of State power are determined by the democratically adopted Constitution. The sovereignty of the people must be insured by fundamental guarantees, and a form of government guaranteeing its continuance must be adopted. The separation of state powers through a tripartite division into "legislative, executive and judicial organs" is considered a fundamental guarantee of democratic organisation, a safeguard against the concentration of State power and thus against the possibility of undemocratic ways of exercising State power; in other words, a guarantee of the preservation of the people as the *pouvoir constituant*.[78] Another substantive aspect of the principle of popular sovereignty is the thesis that when the sovereignty of the people is significantly undermined,

76 See also: Nikolakakis, 2023, pp. 140–157.
77 For more details see: Sládeček et al., 2016, pp. 24–51.
78 See also: Aroney and Kennedy, 2025.

the people have the right to resist. It follows that the state authorities can only interfere to a limited extent with the expression of the people's will through free and democratic elections.[79] The organisation and regulation of elections must not be overly formalised to allow citizens to express their own will, or to run in elections without bureaucratic obstacles. The activities of state bodies must also not be partisan in the sense that they infringe the possibility of the free establishment of political parties and the equality of opportunity of political parties in elections. Nor may the courts interfere excessively in the establishment of state organs through free and democratic elections, nor in the formation of political parties and associations. All state organs arise from the people and their decisions. It means that all other institutions derived from directly elected State organs, whatever they can be called and whatever powers they may have, are State organs and subject to the relevant rules on accountability.[80]

Furthermore, Article 1 of the Charter provides that fundamental rights and freedoms are inherent, inalienable, non-barred and irrevocable. Thus, it emphasises the inherent and enduring nature of fundamental rights and is linked in value to key international human rights instruments. The impossibility of these rights being revoked or withdrawn from individuals is expressed in the concept of "irrevocability". This characteristic does not mean that the rights in question cannot be limited unless they are absolute rights. Article 1 of the Charter merely prohibits public authorities from abrogating, withdrawing or depriving individuals of those rights that they possess by virtue of being human. The State does not constitute fundamental rights, it merely declares and acknowledges their existence and undertakes to protect them, and thus has no power to abrogate them, since they are beyond its disposal. Nor can these rights be extinguished by the individual's failure to claim, invoke or exercise them. They cannot therefore be extinguished by the passage of time; they are "non-barred". Every individual has the right to life, the right to private and family life, personal liberty, and so on, even if he may never have claimed them in life. The specific nature of fundamental rights is also linked to their "inherence" and "inalienability", namely the impossibility for their holder to alienate, transfer, give away, renounce, or lend these rights to another. The inalienability of rights protects individuals to some extent even against their will. Thus, no one can transfer or waive their fundamental rights to another, even if they want to. In connection with the above, the Constitutional Court stated[81] that the right of access to a court can be waived in a particular and specific case if it is a matter of the free decision of its holder. It is important to emphasise the words "in a specific case"; however, that no one can naturally alienate their human right in general applies to all cases and times; only ad hoc actions, specifically

79 See also: Fiorespino, 2025, pp. 355–380.
80 For more details see: Sládeček et al., 2016, pp. 24–51.
81 See: Judgment Case No. Pl. ÚS 6/02 of 27 November 2022.

limited to specific cases, can be considered valid. In summary, only rights that are fundamental in the substantive sense – fundamental, natural rights – can be associated with their characterisation as inherent, inalienable, non-barred and irrevocable within the meaning of Article 1 of the Charter.[82]

Regarding the separation of powers, Article 2(1) of the Constitution, after the semicolon, provides that the people shall exercise state power through the legislative, executive and judicial organs. Thus, Article 2(1) expresses the separation of powers through Montesquieu's tripartite branches of State power, which is considered to be a fundamental guarantee of a democratic polity, a safeguard against the concentration of State power and thus against the possibility of undemocratic exercising of State power. That the powers are separate, and the way they are separated or combined, is evident from the general arrangement of their relations, which is regulated in other articles of the Constitution. To preserve the separation of powers as an element of the rule of law, it is certainly necessary to uphold the basic principles of separation and independence as derived from the Constitution and constitutional principles. The Constitutional Court of the Czech Republic states[83] that the very foundation of our constitutional system enshrines the principle of the separation of state powers, which has become a guarantee against arbitrariness and abuse and, in essence, a guarantee of freedom and protection of the individual.[84]

With regard to the principle of legality, Article 2(3) of the Constitution provides that State (public) power serves all citizens. The principle of legality, which comprises the exercise of State (public) power only in cases, within the limits and in the manner prescribed by law, means that all organs of the state, namely, legislative, judicial, executive and other state organs, or constitutional officials and official persons who exercise State (public) power in the name of the State on behalf of the competent State authority, must be guided by the law in the exercise of that power. In Article 2(3) of the Constitution, law means not only ordinary law but also constitutional law insofar as it is directly applicable. Therefore, the State authorities, constitutional officials and public officials may act only as the law allows them to do; they must not do anything that the law does not allow them to do. It must be added, however, that Article 2(3) of the Constitution applies only to acts of authority wherein State (public) power is exercised in some form. Notably, the obligation to be bound by the law in the exercise of State (public) power does not apply only to the State authorities but also to other entities, specifically those to which the exercise of State (public) power has been delegated or conferred, or which exercise so-called self-government on the basis of the law. This means in particular territorial public corporations, such as municipalities and regions, and

82 For more details see: Husseini et al., 2021, pp. 73–119; Daly, 2025, pp. 147–154.
83 See: Judgment Case No. Pl. ÚS 7/02 of 16 April 2002.
84 For more details see: Sládeček et al., 2016, pp. 24–51; Young, 2025, pp. 1–31.

professional self-governing public corporations or their bodies, but also private legal and natural persons. The rules on bindings apply to a more limited extent, or only in certain aspects, to other entities that are, by virtue of the law, the bearers of the exercise, to varying degrees, of other public powers or provide a particular public service. These include health insurance companies, Czech Television, Czech Radio, public universities, state funds and public research institutions. In summary, it follows from Article 2(3) of the Constitution that the substantive, jurisdictional and procedural conditions for the exercise of State (public) power can only be regulated by law. This general constitutionally enshrined reservation of the law is followed by the general injunction under Article 4(1) of the Charter that obligations should be imposed only on the basis of the law and within its limits, and only while preserving fundamental rights and freedoms.[85]

The principle of legal certainty stems from Article 4(3) of the Charter, providing that legal restrictions on fundamental rights and freedoms must apply equally to all cases that meet the conditions laid down. Article 4(3) of the Charter thus provides for the prohibition of discrimination in the restriction of fundamental rights and freedoms, which is part of the constitutionally protected principle of equality. The article also contributes to the right to equal treatment arising from Article 1 of the Constitution, according to which the Czech Republic is a sovereign, unitary and democratic state governed by the rule of law based on respect for the rights and freedoms of man and of the citizen, Article 1 of the Charter, according to which people are free and equal in dignity and rights, and Article 3(1) of the Charter that enshrines equality in relation to the guarantees of fundamental rights and freedoms. Equality is to be understood not absolutely, but relatively; the principle of equality in rights represents an idea that legal distinctions between subjects in access to certain rights must not be a manifestation of arbitrariness. The Constitutional Court in its case law upholds[86] both the concept of accessory equality – equality in relation to another fundamental right or freedom – and non-accessory equality – general equality before the law. Thus, in the case of the requirement of equal restriction of fundamental rights and freedoms under Article 4(3) of the Charter, this is always an accessory equality. When restricting fundamental rights and freedoms, in the interest of equality before the law, the specific scope of the fundamental right, which is to be guaranteed to the individual from the perspective of the legislator, must flow from the law and apply equally to all subjects.[87]

The first sentence of Article 40(6) of the Charter provides that the criminality of an act shall be judged and punishment imposed in accordance with the law in force at the time the act was committed. Thus, Article 40(6) lays down special

85 For more details see: Sládeček et al., 2016, pp. 24–51; Sharp and Blahoudková, 2024, pp. 35–48.

86 See: Judgment Case No. Pl. ÚS 24/17 of 11 September 2018.

87 For more details see: Husseini et al., 2021, pp. 185–198; Carlsson, 2025, pp. 302–321.

rules for the application of criminal law in the area of punishment for an offence and the imposition of punishment. As it does not primarily establish a subjective right of a procedural nature, its content is more related to Article 39 of the Charter, while in its first sentence it sets out the principle of *nullum crimen sine lege praevia*. This rule also applies in the area of administrative punishment and is a prohibition that is unbreakable under normal conditions of the rule of law. In the case law of the Constitutional Court,[88] it is regarded as a part of the so-called hard core of human rights and its establishment is one of the essential elements of a democratic state governed by the rule of law within the meaning of Article 9(2) of the Constitution, stating that changes to the essential elements of a democratic state governed by the rule of law are inadmissible. Subjective rights under Article 40(6) of the Charter are held not only by the accused but also suspects or all persons against whom criminal proceedings, obviously contrary to the Charter, would be directed. The addressees of Article 40(6) of the Charter are primarily law enforcement authorities applying the comparable legislation. However, with the exception of the courts, they are fully subject to the will of the legislator. Hence, the court is also its addressee because its task is to maintain criminal law in a consistent state. In summary, Article 40(6) of the Charter establishes a subjective right to set out the prohibition of retroactive application of criminal law. It is a special protection of the principle of legal certainty, according to which everyone must be able to know what conduct is prohibited and under what conditions and how they can be punished for it. Conversely, legislation cannot fulfil its function of regulating individual behaviour if it acts retrospectively.[89]

Examining whether the provisions on human rights and freedoms have equal force or are perhaps ordered hierarchically according to the values they protect, it is clear from the interpretation of the introductory provisions of the Charter, its introductory provisions, and Article 112(1) of the Constitution that no such hierarchy arises explicitly from the constitutional order of the Czech Republic.[90] However, it is necessary to draw attention to Article 9(2) of the Constitution, which states that any changes in the essential requirements for a democratic state governed by the rule of law are impermissible. Article 9(2) is a clause limiting the power of the constitutional legislator to change certain parts of the constitutional order. The clause is, in its concept, wording, and systematic placement, inspired by Article 79(3) of the Basic Law for the Federal Republic of Germany,[91] specifically by the so-called eternity clause (Ewigkeits-garantie),[92] and is a response to the abuse of a formalistic or legalistic approach to law-making. The clause prohibits change in the provisions laying down the essential elements of a democratic

88 See: Judgment Case No. III.ÚS 1698/14 of 10 January 2017.
89 For more details see: Husseini et al., 2021, pp. 1240–1270.
90 See also: Benák, Vyhnánek and Zahumenský, 2019, pp. 197–210.
91 See also: Alvarez, 2019, pp. 285–315.
92 See also: Korioth and Marx, 2021, pp. 145–175.

state governed by the rule of law. Thus, the provision acknowledges the value orientation of the Constitution towards the rule of law, not in the legalistic sense of the term but, according to the Constitutional Court, in a materially rational sense. According to the case law of the Constitutional Court,[93] in the concept of a constitutional state on which the Czech Constitution is based, law and justice are not subject to the free disposal of the legislature and, therefore, not subject to the law, because the legislature is bound by certain fundamental values that the Constitution declares to be inviolable. Unchangeable provisions have a so-called supra-constitutional character, which means that they cannot be changed even by constitutional acts, specifically, by regulations of the highest legal force. In its case law, the Constitutional Court states[94] that the constitutive principles of a democratic society within the framework of this Constitution are placed above the legislative competence and thus ultra vires of Parliament. The constitutional state stands or falls with these principles. The significance of unchangeability lies in the restriction of future legislators by emphasising certain values and principles in the constitutional text to such an extent that they are declared and generally considered to be natural values. Their change would indicate a violation of the fundamental principles of democracy and the rule of law.[95]

Notably, the provisions of the Constitution that may not be changed in terms of the requirements of a democratic legal state[96] are not precisely defined in the Constitution. This suggests that Article 9(2) of the Constitution is not motivated by a desire for textual continuity or identity of the future Constitution but only by the protection of the abovementioned principles. Therefore, Article 9(2) does not mean that the Constitution as a whole cannot be changed. If all the principles pursued by Article 9(2) are preserved in the new Constitution, all constitutional formulations may differ significantly from the current Constitution in terms of text and structure. What cannot be changed, even by indirect amending, are the essential elements of a democratic state governed by the rule of law. Not only the whole but also part of the text of the relevant provision of the Constitution may be amended, on condition that the essential elements of a democratic state in the Constitution are not impaired in the new text. For example, in Article 1 of the Constitution, it would be possible to change the republic to a kingdom, provided that the essential elements of a democratic state governed by the rule of law remain intact.[97]

The unchangeable provisions of the Constitution are partially calculated in the case law of the Constitutional Court, which expressly claims[98] as indisput-

93 See: Judgment Case No. Pl. ÚS 19/93 of 21 December 1993.
94 See: Judgment Case No. Pl. ÚS 21/01 of 12 February 2002.
95 For more details see: Sládeček et al., 2016, pp. 104–121.
96 See also: Kazanchian, 2021, pp. 114–119.
97 See also: Roznai, 2014, pp. 29–57; or more details see: Sládeček et al., 2016, pp. 104–121.
98 See: Judgment Case No. Pl. ÚS 19/93 of 21 December 1993.

able the sovereignty of the people[99] and the principles contained in the following: Article 5 (i.e. that the Czech political system[100] is founded on the free and voluntary formation of and free competition among those political parties which respect the fundamental democratic principles and renounce force as a means of promoting their interests); Article 6 of the Constitution (i.e. in the Czech Republic, political decisions emerge from the will of the majority[101] manifested in free voting and the decision-making of the majority shall take into consideration the interests of minorities); and in Article 23 of the Charter (i.e. in the Czech Republic, citizens have the right to resist anybody who would do away with the democratic order of human rights and fundamental freedoms established by this Charter, if the actions of constitutional bodies or the effective use of legal means have been frustrated), which further refers to several articles of Chapter I of the Constitution and Chapters I and V of the Charter, as well as the principles of electoral law. Thus, it is clear that the unchangeable provisions are not limited to the Constitution but can also be found in the Charter and in other constitutional acts. As for doctrinal opinions on the concerned provisions of the Constitution and the Charter, these differ somewhat. Some theorists consider Articles 1(1), 5 and 6 of the Constitution to be unchangeable, while others add the sovereignty of the people, namely, Articles 2(1) and 23 of the Charter. The selection of Articles 1(1), 5 and 6 can in principle be agreed with, as these are provisions that deal with the essential elements of a democratic state, since they regulate the democratic rule of law and a pluralistic political system. As for Article 2(1) of the Constitution, regarding the sovereignty of the people and the separation of powers, and Article 23 of the Charter, namely, the right to resist, these clearly formulate the basis of the legitimacy of the democratic state and the legal order on which the other articles of the Constitution and the Charter are based, and whose inviolability is also indisputable. Article 4 of the Constitution, which states that fundamental rights and freedoms are protected by the judiciary, and similarly, Article 36(1) to (4) of the Charter, could probably be added. At this point, it is necessary to add that the concept of Article 9(2) of the Constitution is linked to the Constitutional Court's doctrine of the so-called material core of the Constitution. In its case law, the Constitutional Court states[102] that the material core of the Constitution, under Article 9(2), refers to the values for which the prohibition of retroactive effect of legal regulations may be violated.[103]

99 See also: Přibáň, 2019, pp. 13–28.
100 See also: Lorenz and Formánková, 2020.
101 See also: Corneo and Neher, 2015, pp. 96–109.
102 See: Judgment Case No. Pl. ÚS 42/2000 of 24 January 2001.
103 For more details see: Sládeček et al., 2016, pp. 104–121.

■ *1.5. The Organization of Freedoms and Rights in the Constitution and the Charter*

It follows from the above interpretation that fundamental rights in the Czech Republic are not enshrined in the Constitution, but in a separate human rights catalogue, namely, the Charter. The Charter was formally promulgated by Resolution No. 2/1993 Coll. of the Presidium of the Czech National Council as a part of the Czech constitutional order, which was an incorporation of the text of the Federal Czechoslovak Charter approved by the Federal Assembly of the Czech and Slovak Federal Republic, with the introductory constitutional Act No. 23/1991 Coll., of 9 January 1991, with effect and validity from 8 February 1991. After the dissolution of the Czech and Slovak Federal Republic, the Federal Czechoslovak Charter was incorporated into the legal order of the Czech Republic without any terminological changes, which means that federal terminology appears in many places in the Charter, such as references to the territory of the Czech and Slovak Federal Republic, and citizenship of the Czech and Slovak Federal Republic.[104] Therefore, the interpretative rule under Article 1(2) of the Czech National Council's constitutional Act No. 4/1993 Coll. must be applied on Measures connected with the Dissolution of the Czech and Slovak Federal Republic; where individual provisions of the Charter refer to the Czech and Slovak Federal Republic, the relevant provision must be interpreted as referring to the Czech Republic.[105]

In terms of its legal force, the Charter is considered a constitutional act thanks to the explicit reference in Articles 3 and 112 of the Constitution, which declare the Charter to be part of the constitutional order. If the constitutional order comprises a set of constitutional acts and the Charter assigned to them, it can be inferred from the intention of the constitutional legislator that the Charter should be granted the same importance and legal force as other parts of the constitutional order.[106] This interpretation is necessary despite the fact that the Charter was never approved as a constitutional act by the Czech legislative body. Despite the form in which the Charter is enshrined in the legal order of the independent Czech Republic, no other interpretation is possible from a substantive point of view, because the enshrinement of a catalogue of fundamental rights and freedoms should be part of the constitution in a state governed by the rule of law, whether that constitution is mono-legal or semi-legal,[107] as is the case of the Czech Republic.[108]

The Resolution of the Presidium of the Czech National Council has no formal relevance in terms of the legal binding force or effect of the Charter. It is merely a decision to publish the text of the Charter in the Collection of Laws of

104 See also: Kudrna, 2011, pp. 19–28.
105 For more details see: Husseini et al., 2021, pp. 1–53.
106 See also: Grinc, 2019, pp. 16–26.
107 See also: von Gall, 2022.
108 For more details see: Husseini et al., 2021, pp. 1–53.

the independent Czech Republic, symbolically immediately after the Constitution, under No. 2/1993 Coll. The Resolution was adopted on the same day that the Constitution was approved by the Czech National Council, on 16 December 1992. However, the constitutional force of the Charter is fully accepted in legal practice and clearly declared by the Constitutional Court.[109]

The Charter is divided into six Chapters. Chapter I contains general provisions. Chapter II is dedicated to fundamental rights and freedoms, and political rights. Chapter III enshrines rights of national and ethnic minorities. Chapter IV includes economic, social and cultural rights. Chapter V encompasses the right to a fair trial. Chapter VI contains rather unsystematically incoherent provisions as to the right to asylum, and common restrictive clauses on social rights and distinctions regarding which fundamental rights are enjoyed by aliens. The Charter also includes an introductory text of interpretative and technical nature. The Charter is based on the conception of natural law (the state guarantees and enshrines fundamental rights and freedoms but does not create them). When drawing up the Charter, the main sources of inspiration were the international conventions on human rights, particularly the European Convention on Human Rights, also the Universal Declaration of Human Rights and to a lesser extent also the constitutions of other countries and philosophical sources. Notably, the European Convention on Human Rights and the Charter differ in many aspects; the catalogue of rights protected by the Charter is longer (economic, social and cultural rights, right to asylum, rights of national and ethnic minorities), the number of legitimate aims justifying restrictions to political rights is lower, and the number of unqualified rights (without its own restrictive clause) is greater, among several other differences. The absence of a general restrictive clause and the enshrinement of the common restrictive clause of social rights are specific and distinctive traits of the Charter.[110]

■ *1.6. The Important Freedoms and Rights Contained in the Constitution and the Charter*

Given the long-standing and ongoing political debate on the concept, the topic of marriage and family protection is particularly important in the Czech Republic. In the Czech Republic, the institution of marriage[111] is not directly mentioned at the constitutional level. The first sentence of Article 32(1) of the Charter merely states that parenthood and family are protected by law. Article 32 of the Charter is systematically included in Chapter IV, regulating economic, social and cultural rights, and specifies the social aspect of the fundamental right to protection of family life, set out in Article 10(2) of the Charter. It includes the guarantee of several

109 Ibid.

110 See: Masaryk University in Brno – Faculty of Law 2015; for more details see: Husseini et al., 2021, pp. 1–53.

111 See also: Zdechovský and Fialová, 2024, pp. 157–174.

subjective rights and positive obligations on the part of the State, including to protect the family and parenthood. The legal guarantee of family and parenthood protection is one of the social rights listed in Article 41(1) of the Charter, according to which an individual may invoke it only within the limits of the implementing laws. Therefore, the Charter presupposes that the law specifies the content of this constitutionally guaranteed social right. Direct protection under the Charter itself can be invoked only in relation to its essential core. This essence is, as opposed to the negative obligation not to interfere in the private sphere of family life within the meaning of Article 10(2) of the Charter, the positive obligation of the State to provide active support toward parenthood and the family. In connection with the above, the legal norms implementing Article 32 of the Charter are in private law, in particular, the norms in Part Two of Act No. 89/2012 Coll., the Civil Code, and in public law, the norms of social and legal protection of children in Act No. 359/1999 Coll., on the Social and Legal Protection of Children, and in Act No. 109/2002 Coll., on the Provision of Institutional Education or Protective Education, Part Four of Act No. 40/2009 Coll., the Criminal Code regulating offences against the family and children, and the norms in Act No. 218/2003 Coll., the Juvenile Justice Act, regulating child offenders.[112]

Although the protection of family and parenthood is one of the rights fulfilled by the legislator through ordinary laws, Article 32 of the Charter defines the very core of this positive obligation of the State and can serve as an interpretative guide to statutory regulation in any matter, such that the duty to protect the family and parenthood is never violated by the applying authorities. In accordance with this thesis, the Constitutional Court stated[113] that given the entire complex of all rights and obligations between parents and children, the legal reason for parents to inspect the criminal file containing information about the death of their child is instinctively recognisable and presumable. This reason does not only arise from the rights of the child itself, but many of these rights originally belong directly to the parents. The third sentence of Section 65(1) of the Code of Criminal Procedure must also be interpreted in a constitutionally consistent manner in light of the special protection of parenthood within the meaning of Article 32(1) of the Charter. If the parents do not explicitly state in their request for access to the file which specific right they wish to exercise, this does not prevent access to the file. This conclusion does not create any new right and, therefore, does not violate Article 41(1) of the Charter, since it merely sets out the requirements for the interpretation of the third sentence of Article 65(1) of the Code of Criminal Procedure. The constitutionally conforming interpretation is that the right, for the exercise of which the so-called other person requires inspection of the criminal

112 For more details see: Husseini et al., 2021, pp. 892–935.
113 See: Judgment Case No. IV ÚS 3526/16 of 21 March 2017.

file, is certified by the very nature of the special protection of parenthood in the case of minor children.[114]

The concept of family is not legally defined in the Czech legal system. It can thus take many forms depending on the interpreter, the time in which it is defined, and the society and values on which it is based. Traditionally, family was institutionalised in the form of marriage. However, today, the legislator must respond to social developments and reflect the social reality of the increase in cohabitation of unmarried couples. Thus, the current version of the Civil Code in force does not base the concept of family on that of marriage and strictly differentiates these two institutions. Legal regulation under Article 655(1) of the Civil Code provides that marriage is a permanent relationship between a man and a woman, formed in the manner prescribed by law, the main purpose of which is the establishment of a family, the proper upbringing of children and mutual support and assistance. Under Article 687 of the Civil Code, spouses have equal status, are obliged to respect each other, live together, be faithful to each other, respect and support each other and create a healthy family environment for the joint care of children. Marriage may only be contracted by a person who is fully capable of exercising their legal capacity, namely, an adult or one not restricted in their legal capacity. An exception to this rule is made for minors over 16 years of age, if the court grants them permission to marry for important reasons under Article 672 of the Civil Code. In particular, a person who has already entered into an analogous permanent relation in the past, and persons in the direct line of descent, siblings or adoptive parents with adopted children are prohibited from marrying, under threat of criminal sanctions.[115]

Same-sex couples can legalise and institutionalise their relationship only by entering into a registered partnership under Act No. 115/2006 Coll., on Registered Partnerships. With effect from 1 January 2025, Article 655 of the Civil Code was amended by adding a second paragraph stating that a partnership is a permanent relationship of two people of the same sex, which is concluded in the same way as a marriage. Unless otherwise provided by law or other legislation, the provisions on marriage, rights and obligations of spouses, widows and widowers shall apply mutatis mutandis to partnerships and the rights and obligations of partners.[116]

Parenthood is also not legally defined in the Czech Republic. Biological conditionality means that a child has two parents, a father and a mother, and the law tries to reflect this biological reality. However, in the course of a child's life, or even an adult's life, legal parental relationships, unlike those biologically determined, may become complicated by the emergence of various social situations. The legal parenting relationship is established by the birth of a child – most

114 For more details see: Husseini et al., 2021, pp. 892–935; see also: de la Mata Barranco, 2023.
115 For more details see: Husseini et al., 2021, pp. 892–935.
116 Ibid.; see also: Sekerák and Novotný, 2021, pp. 374–399.

often to biological parents – or by adoption. As society, technology and medicine evolve, new challenges arise for legislators. Besides the natural conception of a child, artificial insemination associated with possible donation of genetic material or surrogacy, which is not legally regulated in the Czech Republic, can be considered. Consequently, various legal repercussions can arise. Furthermore, the question arises as to what extent the Charter guarantees an individual, or a couple, the right to parenthood if it is not biologically possible for them. The Constitutional Court commented[117] on the issue of artificial insemination with the sperm of a deceased husband by stating that doubts as to the actual will of the applicant's deceased husband to become a father after his death cannot be excluded. Indeed, the informed consent to the cryopreservation of sperm contained an express provision for the destruction of that biological material in the event of his death. Thus, the cryopreserved sperm of a man cannot be used for conception after death, even if the six-month period after the man's death has not yet expired. The Constitutional Court also expressed[118] its opinion on the issue of recognition of a foreign state's decision on the parentage of two persons of the same sex by stating that it is contrary to the best interests of the child as protected by Article 3(1) of the Convention on the Rights of the Child not to recognise such a foreign decision in a situation where family life has already been factually and legally constituted between them in the form of surrogacy, on the grounds that Czech law does not allow parentage of two persons of the same sex. Where a family life already exists between persons, established on a legal basis, it is the duty of all public authorities to act in such a way such that this relationship can develop, and the legal guarantees that protect the relationship between the child and their parent must be respected.[119]

Notably, Czech legislation still works with the assumption that a child can have only one mother and one father, although in practice this concept is beginning to encounter obstacles. In the case of maternity, disputes do not arise because, under Article 775 of the Civil Code, the mother of a child is, without exception, the woman who gives birth to it. More complex situations arise with the determination of paternity under Article 776 to 793 of the Civil Code. It should be noted that the Czech legislation has evolved in response to the widespread use of DNA testing, yet the three-presumption model for determining paternity is still a well-established one. The first presumption of paternity applies to the mother's husband if the child is born between the time of the marriage and the 300th day after the dissolution of the marriage. The second presumption of paternity comes into play when the first presumption is excluded, for instance, if the child is born to an unmarried woman, or the paternity of the first presumption is finally

117 See: Judgment Case No. I. ÚS 1099/18 of 8 November 2018.
118 See: Judgment Case No. I. ÚS 3226/16 of 29 June 2017.
119 For more details see: Husseini et al., 2021, pp. 892–935; see also: Deech, 2023, pp. 19–34.

denied. The third presumption of paternity then arises if paternity has not been established under the first and second legal presumptions. However, the three-presumption model for determining paternity encounters limits in practice, for example, in the case of artificial insemination ex *mortuo*, where none of the legal presumptions of paternity can be invoked.[120]

This suggests that the requirement of conformity of legal and biological paternity cannot be considered absolute. The legal relationship between father and child is not merely a mechanical reflection of the existence of a biological relationship, but over time, even in the absence of such a relationship, a social and emotional bond can develop between the legal father and the child which, from the perspective of the right to protection of private and family life, also enjoys legal protection. In such a case, the continuation of the legal relationship will depend on several factors, among which the interest of the child plays an important role.[121]

The Constitutional Court addressed[122] the necessity of considering the specific circumstances where the change in the status of legal paternity was not sought by a man, but by an adult child. An adult woman, the complainant before the Constitutional Court, failed in her application for the establishment of paternity due to the obstacle of *res iudicata*, because she unsuccessfully sought the same as a minor in 1963, when DNA testing was unavailable. The Constitutional Court expressly stated[123] that persons seeking to identify their relatives have a protected interest in obtaining information necessary to reveal important aspects of their personal identity. That right is counterbalanced by the general interest in the stability of the legal relationship based on a matter already decided, as well as by the rights of the third parties concerned; however, these must be balanced as precisely as possible with the right cited. While both parties have the right to maintain legal certainty, they also have the right to have their own identity established. The legislation cannot ignore the fact that a significant legal interest in the establishment (or denial) of paternity can sometimes only arise with a considerable time lag after the birth of the child.[124]

The legal regulations under Article 792 and 793 of the Civil Code seem to reflect the above theses sufficiently based on the possibility to waive the time limit for denying paternity – a restrictively applicable exception to the rule. The Constitutional Court specifically stated[125] that the grounds for exceptional waiver of the time limit for denying paternity exist specific cases of fathers of adult children and who are not dependent on either maintenance, the presence of a fatherly figure, or the provision of a stable educational environment during adolescence.

120 For more details see: Husseini et al., 2021, pp. 892–935; see also: Rogers, 2002, pp. 1151–1173.
121 For more details see: Husseini et al., 2021, pp. 892–935.
122 See: Judgment Case No. I. ÚS 2845/17 of 17 January 2019.
123 See: Judgment Case No. I. ÚS 987/07 of 28 February 2008.
124 For more details see: Husseini et al., 2021, pp. 892–935; see also: Esteve, 2021, pp. 133–160.
125 See: Judgment Case No. II ÚS 1741/18 of 21 May 2019.

On the other hand, in the case of minor children, the Constitutional Court has consistently stated that when the biological father is not clearly known, by denying paternity, the child would lose the person who has fulfilled the paternal role so far. This legal presumption corresponds to the existing social reality – the removal of family ties would thus constitute a disproportionate interference with the rights of the child, who would have to deal with the existence of an apparent father and would be detrimental to his proper and moral upbringing.[126]

However, even this does not provide a certain guarantee of reconciliation of biological and legal reality. This state of affairs can be demonstrated by a situation wherein the Constitutional Court dealt[127] with the case of a putative biological father who was not actively legitimated to file an action to deny the paternity of the mother's husband, within the meaning of Article 785(1) and 789 of the Civil Code. Neither the mother nor her husband had any interest in denying legal paternity to the newborn. The Constitutional Court expressly stated that if there is no revision of the circle of persons actively entitled to bring a denial action in the case of establishing paternity under the first presumption, the question of the possibility of contact between the biological father and the child whose paternity he claims, remains essential. As is undoubtedly apparent from the case-law of the European Court of Human Rights, Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms imposes an obligation on Member States to examine whether it is in the best interests of the child to allow their natural father to establish a relationship, for example, by granting them a right of access. The biological father must not be completely excluded from the life of his child unless there are compelling reasons in the best interests of the child.[128]

Given the migration crisis of recent years, the Russian Federation's invasion of Ukraine, and Czech society's deteriorating attitude towards immigrants, another important topic is the protection of ethnic and national minorities' rights in the Czech Republic. In the Czech Republic, the protection[129] of minorities at the constitutional level is regulated by Article 24 and Article 25 of the Charter. The notion of minority can certainly be viewed from various perspectives, such as legislative, cultural or social, but always refers to a group of persons who are distinguished in society by various characteristics such as religion, language, nationality, ethnicity, gender or culture. From the various theoretical definitions, it can be deduced that an ethnic minority is a numerically minority group of people who do not have their own state territory, and their belonging to such a group is not a matter of individual will but an innate characteristic. A national minority is a smaller group of members of a nation that has its own state territory,

126 For more details see: Husseini et al., 2021, pp. 892–935.
127 See: Judgment Case No. II ÚS 3122/16 of 16 May 2017.
128 For more details see: Husseini et al., 2021, pp. 892–935.
129 See also: Baumgart, 2023, pp. 39–127; Jacob-Owens, 2021, pp. 167–197; Klučka, 2018, pp. 17–37; Machalová, 2016, pp. 173–186; Rechel, 2008; Řezníková, 2025, pp. 1315–1330.

but the members of the minority are settled outside its borders. Membership of a national minority is generally a matter of individual will. It is important to add that in the Czech Republic, the distinction between ethnic and national minorities is not legally relevant, since their members are entitled to the same protection, or the same consequences are associated with a violation of the prohibition of discrimination against members of the aforementioned minorities.[130]

Article 24 of the Charter specifically states that membership of any national or ethnic minority shall not be to the detriment of anyone. Article 25 of the Charter enshrines the specific rights of citizens of the Czech Republic belonging to a national or ethnic minority. Article 25(1) of the Charter specifically states that citizens belonging to national or ethnic minorities are guaranteed all-round development, in particular, the right to develop their own culture together with other members of the minority, the right to disseminate and receive information in their mother tongue and to associate in national associations. Article 25(2) of the Charter states that citizens belonging to national and ethnic minorities are also guaranteed, under the conditions laid down by law, (a) the right to education in their language, (b) the right to use their language in official dealings, and (c) the right to participate in matters concerning national and ethnic minorities.[131]

Article 24, together with Article 25, forms the entire Chapter III of the Charter, entitled 'Rights of National and Ethnic Minorities'. This legal regulation is directly related to the issue of non-discrimination and equality in dignity and rights. However, the title of this chapter is misleading, as it is not possible to talk about minorities' rights as such. The concept of fundamental human rights is based on individual rights of specific persons, not collective rights. Therefore, it is more appropriate to speak about individual rights of individual members of national and ethnic minorities. Article 24 of the Charter is linked to the general constitutional context of minority protection, namely Article 6 of the Constitution, setting out the protection of minorities in relation to the democratic rule of the majority and the prohibition of discrimination enshrined in Article 3(1) of the Charter, the so-called anti-discrimination clause, according to which equality in the exercise of fundamental rights is guaranteed to all without distinction as to gender, race, colour of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national or ethnic minority, property, birth, or other status. The related Article 3(2) of the Charter guarantees the right of the individual to freely decide on their nationality, while expressly prohibiting any influence on this free choice or pressure towards de-nationalisation. Thus, Article 24 of the Charter emphasises on the general prohibition of disadvantaging an individual because of their membership of a minority, specifically a national

130 For more details see: Husseini et al., 2021, pp. 728–748.

131 For more details see: Husseini et al., 2021, pp. 728–748; see also: Barczewski and Sykuna, 2024, pp. 257–269.

or ethnic minority. In light of the wording of Article 3(1) and (2) of the Charter, as well as the declaration of equality in dignity and rights under Article 1 of the Charter, Article 24 of the Charter is of no more fundamental significance because membership of any minority, not just a national or ethnic one, must not be to the detriment of anyone.[132]

In the Czech Republic, therefore, the protection of national or ethnic minorities is guaranteed in particular in Chapter III, and Articles 1and 3 of the Charter, and their statutory implementation can be found primarily in the Act no. 273/2001 Coll., on the Rights of Members of National Minorities (hereinafter referred to as the "Minorities Act"). In Section 2(1) of the Minorities Act, a minority is defined as

> 'a community of citizens of the Czech Republic living in the territory of the present-day Czech Republic who, as a rule, differ from other citizens by common ethnic origin, language, culture and traditions, form a numerical minority of the population and at the same time express the will to be considered a national minority for the purpose of joint efforts to preserve and develop their own identity, language and culture and at the same time to express and protect the interests of their community which has historically formed.'

Under Section 2(2) of the Minorities Act, a member of a national minority is 'a citizen of the Czech Republic who claims to be of a nationality other than Czech and expresses a wish to be considered a member of a national minority together with others who claim the same nationality.' At this point, it should be noted that the Minorities Act implements Article 25 of the Charter, not Article 24, which grants rights to members of all national and ethnic minorities without further ado. It follows that its application cannot take into account the narrowed circle of addressees of the above-mentioned norms of the Minorities Act, since Article 24 of the Charter applies to any member of any national and ethnic minority[133] without further consideration, in other words, regardless of the nationality of the minority member or membership of a legally recognised minority. However, it also follows from Article 24 of the Charter that it leaves it to the legislator and public authorities to interpret the term "minority" for their own practice and application. The Czech legislator took advantage of this when defining the term national minority in the Minority Act.[134]

In the context of minorities' protection, it is necessary to mention the annual reports of the Public Defender of Rights, which have shown for many

132 For more details see: Husseini et al., 2021, pp. 728–748; see also: Lakatos, 2019, pp. 502–511.
133 See also: Barczewski and Sykuna, 2024, pp. 257–269.
134 For more details see: Husseini et al., 2021, pp. 728–748.

years that discrimination on the grounds of race or ethnic origin constitutes a significant number of complaints. As regards unequal treatment on grounds of nationality or ethnicity, the Constitution contains in its Preamble a declaration of the Czech citizens' determination, inter alia, to build, protect and develop the Czech Republic, in the spirit of the inviolable values of human dignity and freedom, as a homeland of equal and free citizens. As mentioned above, Article 3(1) of the Charter sets out the so-called anti-discrimination clause, followed by Article 24 regarding the prohibition of harm on the ground of a national or ethnic minority membership. Racial discrimination is considered to be a particularly serious ground for exclusion and very serious reasons must be provided to justify such exclusion. The same is the case for national and ethnic grounds.[135]

Commenting on this issue, the Constitutional Court dealt[136] with a dispute concerning the personality protection of a restaurant guest. In the public area of the restaurant, a statue of a figure holding a baseball bat with the inscription '*To the gypsies...*' was placed. The complainant, of Roma[137] origin, sought an order requiring the restaurant keeper in question to apologise to him and to pay him compensation for non-pecuniary damage in the amount of 300 000 CZK. The Constitutional Court stated that there is nothing to reproach from a constitutional point of view with regard to the legal basis of the reasoning of the general courts that the mere subjective feeling of an individual is not decisive from the perspective of the protection of personality; however, the objective capacity to cause personal injury is crucial. This can already be deduced by the argument of reduction ad absurdum. Otherwise, any negative subjective perception of any situation would have to be regarded as an unjustified interference with personality rights (and any action would thus have to be upheld without further delay), which is indeed not the purpose of the constitutional and specific sub-constitutional regulation. In addition to the subjective aspect, which will always be present in court proceedings (otherwise no action would be brought) and which cannot practically be proved, the objective aspect referred to above must also be fulfilled. The personality of an individual may be objectively affected by the unintended consequences of an act as well as by the intended consequences, and the result is the same. In terms of the possibility of an individual's personality being affected, it is irrelevant whether or not the other party's injurious conduct was intentional. If an individual feels themselves to be related to a particular set of persons or group, they may be objectively affected in their personality even if the formulation is expressed only in relation to a set of persons (i.e. without individualising the persons). If the statement is directed against a set of persons (i.e. defined in general terms), it is, by its very nature, also directed against individuals, since they are its

135 Ibid.
136 See: Judgment Case No. II. ÚS 1174/09 of 13 January 2010.
137 See also: Tomšej, 2025, pp. 118–127.

own content (subsets). The name of such a group is only a means of designating the content that the individuals constitute. Notably the issue of unequal treatment on grounds of nationality or ethnicity is also regulated in Act no. 198/2009 Coll. on Equal Treatment and Legal Means of Protection against Discrimination.[138]

■ *1.7. The Clauses of the Constitution and the Charter Limiting the Exercise of Constitutional Freedoms and Rights*

Regarding whether the Constitution contain clauses limiting the exercise of constitutional freedoms and rights, Article 4(2) of the Charter states that limitations may be placed upon the fundamental rights and freedoms only by law and under the conditions prescribed in the Charter.[139] Article 4(3) of the Charter states that any statutory limitation upon the fundamental rights and freedoms must apply in the same way to all cases that meet the specified conditions. Article 4(4) of the Charter states that when employing the provisions concerning limitations upon the fundamental rights and freedoms, the essence and significance of these rights and freedoms must be preserved. Such limitations shall not be misused for purposes other than those for which they were enacted. With a few exceptions, the fundamental rights and freedoms guaranteed by the Charter are not absolute, which means that they may be restricted by law under the conditions set out in the Charter, while complying with the conditions contained in Article 4(2) to (4). In terms of the conditions set out in the Charter, such a restriction of a fundamental right or freedom: 1. must be provided for in the Charter; 2. must be prescribed by law; 3. must not be discriminatory; and 4. must respect the essence and meaning of the fundamental right being restricted. The last condition also applies in cases where there is a conflict among the fundamental rights and freedoms or between them and the so-called public good.[140]

For a restriction of any of the fundamental rights and freedoms guaranteed by the Charter to be considered at all, it must be provided for by the Charter itself. The prerequisite for the restriction of a fundamental right or freedom can be left unspecified. In a number of cases, the Charter sets out more specific conditions for the restriction of fundamental rights and freedoms. To fulfil the relevant conditions, it is decisive whether the Charter provides for their restriction in one of the above-mentioned manners; in other words, whether there are so-called limitation clauses in the case of particular fundamental rights and freedoms. However, it follows from the case law of the Constitutional Court that even in the case of rights that do not have their own limitation clause, in the case of a conflict, they may be restricted in the interest of another fundamental right or freedom or even in the interest of the public good.[141]

138 For more details see: Husseini et al., 2021, pp. 728–748; see also: Hermida, 2017, pp. 93–113.
139 See also: Valutytė, Jočienė and Ažubalytė, 2021, pp. 1–15.
140 See also: Weber, 2024, pp. 581–604; for more details see: Husseini et al., 2021, pp. 185–198.
141 For more details see: Husseini et al., 2021, pp. 185–198.

The limits of fundamental rights and freedoms may only be regulated by a statute. The purpose of this exclusive power of the legislature, known as the reservation of statutory regulation, is to prevent the executive power from implementing its own ideas on the manner and extent to which fundamental rights and freedoms should be restricted. However, this does not mean that any restriction of fundamental rights and freedoms can only be implemented by statutory law and not by subordinate regulation.[142] There is also the case where the limits of fundamental rights and freedoms are set out in basic features directly by statutory regulation, while subordinate regulation imposes obligations restricting fundamental rights and freedoms on the basis of and within the limits of the statutory regulation. What is meant by these basic features that must be set out by the statutory regulation depends (as does the extent to which such specification is permissible) on the nature of the relevant obligation, or the corresponding right. Thus, the reservation of the statutory regulation does not preclude the statutory limits on fundamental rights and freedoms from being further regulated by subordinate legislation. However, this cannot lead to a narrowing or broadening of the limits set out by the statutory regulation. As for the reservation of the statutory regulation and the limits of delegated rule-making, the executive power cannot be empowered by law to set limits on fundamental rights and freedoms, specifically, to regulate matters reserved for the legislative power by the Constitution.[143]

As for the rule that statutory restrictions on fundamental rights and freedoms must apply equally to all cases that meet the specified conditions, this implies a prohibition of discrimination in this context, which is part of the constitutionally protected principle of equality, or the right to equal treatment arising from Article 1 of the Constitution and Articles 1 and 3(1) of the Charter. At this point, it is important to recall that equality must be understood not in absolute terms but in relative terms.[144] The Constitutional Court upholds the concepts of both accessory and non-accessory equality. The case of a requirement for equal restriction of fundamental rights and freedoms under Article 4(3) of the Charter is always a matter of accessory equality. In the interests of equality before the law in the restriction of fundamental rights and freedoms, the specific scope of a fundamental right must be derived from the law and apply equally to all subjects. This condition is also violated if the law does not guarantee that the limits of a fundamental right or freedom are set out in a similar manner for all cases that are similar in nature.[145]

When applying provisions on the limits of fundamental rights and freedoms, their essence and meaning must be respected. In other words, their essential or

142 See also: Hejč, 2019, pp. 738–752.
143 For more details see: Husseini et al., 2021, pp. 185–198.
144 See also: Erica, 2009, pp. 19–38.
145 For more details see: Husseini et al., 2021, pp. 185–198.

substantive content – the core of fundamental rights[146] – must be considered. Such restrictions must not be abused for purposes other than those for which they were established. The legal regulation under Article 4(4) of the Charter thus concerns the restrictions on fundamental rights and freedoms contained in the so-called limitation clauses to which it refers, and thus follows on from Article 4(2) of the Charter, according to which restrictions must be provided for by the Charter. Article 4(4) of the Charter cannot be regarded in this respect as a general limitation clause for all fundamental rights and freedoms; it instead lays down a general condition, a restriction, for legislators when applying limitation clauses to individual fundamental rights and freedoms. In addition, Article 4(4) of the Charter applies in cases of mutual conflict among fundamental rights and freedoms, and between a fundamental right or freedom and a public good, where a fundamental right or freedom is to be restricted in the interest of another fundamental right, freedom or public good, regardless of whether the restriction is provided for by a limiting clause.[147]

Thus, the limit on the restriction of fundamental rights and freedoms set out in Article 4(4) of the Charter applies not only to the creation of law but also to its application by courts and other public authorities in cases of conflict among fundamental rights, freedoms and the public good. Resolving such conflicts always carries the risk of a disproportionate restriction of one right or freedom in preference of another.[148] It is precisely in connection with such conflicts that the Constitutional Court, in its case law, has derived[149] the requirement to minimise interference with fundamental rights and freedoms (the principle of preserving the maximum content of conflicting fundamental rights) from Article 4(4) of the Charter. In addition, the requirement to preserve the essence and meaning of fundamental rights and freedoms implies that, if there are several interpretations of a public law norm, the one that interferes least with the fundamental right or freedom in question must be chosen; in case of doubt, a more lenient approach must be taken.[150]

The principle of minimising interference is usually seen as part of the proportionality test[151] in the Constitutional Court's decisions, in the form of considering ways to minimise restrictions on one conflicting fundamental right and freedom or public good, although this isn't always the case. Sometimes it is applied alongside (outside) the proportionality test. The requirement to minimise interference is then usually part of the last of the three components of the proportionality test, which is the balancing test that compares the importance of the

146 See also: van Drooghenbroeck and Rizcallah, 2019, pp. 904–923.
147 For more details see: Husseini et al., 2021, pp. 185–198.
148 See also: Bor, Jørgensen and Petersen, 2023, pp. 704–711.
149 See: Judgment Case No. I. ÚS 353/04 of 16 June 2005.
150 For more details see: Husseini et al., 2021, pp. 185–198.
151 See also: Vyhnánek, 2024, pp. 773–790.

two conflicting rights. The balancing test, within the proportionality test, follows the suitability test, according to which the relevant measure must be capable of achieving the intended objective, which is the protection of another fundamental right or public good. The balancing test also follows the necessity test, according to which only the least restrictive of several possible means may be used in relation to the fundamental rights and freedoms concerned.[152]

In its case law, the Constitutional Court uses[153] two types of proportionality tests[154] namely the proportionality test in the form of an optimisation order, which is the postulate of minimising restrictions on fundamental rights and freedoms or the public good, and generally applies in cases of conflicts among them, unless a modified proportionality test is to be applied in accordance with the case law of the Constitutional Court.[155] In the case of a modified proportionality test, the Constitutional Court applies the structure of the principle of proportionality in a narrower sense, namely of excluding extreme disproportionality. In addition, when applying the modified proportionality test, an assessment is also made from the perspective of compliance with measures arising from the constitutional principle of equality, both non-accessory in the sense of Article 1 of the Charter, which arises from the requirement to exclude arbitrariness in distinguishing between subjects and rights, and accessory within the scope defined in Article 3(1) of the Charter. This modified proportionality test is used by the Constitutional Court when reviewing legal provisions on property sanctions for unlawful conduct or in the context of pension insurance for instance. Notably, the requirement to exclude extreme disproportionality in the above-mentioned cases of review involves assessing whether the legal provision has a so-called choking effect. This means that its impact must not be, in its consequences, confiscatory or choking in relation to the property of an individual.[156]

The constitutional possibility of restricting the exercise of freedoms and rights in exceptional circumstances appears in Articles 2, 5, and 6 of constitutional Act No. 110/1998 Coll., on the Security of the Czech Republic.[157] According to this legal regulation, if the Czech Republic's sovereignty, territorial integrity, or democratic foundations are directly threatened; if its internal order and security, lives, health or property are to a significant extent directly threatened; or if such is necessary to meet its international obligations on collective self-defence, the state of emergency, condition of threat to the State, or state of war may – in accordance with the intensity, territorial extent and character of the situation – be declared.[158]

152 For more details see: Husseini et al., 2021, pp. 185–198.
153 See: Judgment Case No. Pl. ÚS 41/02 of 28 January 2004.
154 See also: Vyhnánek, 2024, pp. 773–790.
155 See: Judgment Case No. Pl. ÚS 29/08 of 21 April 2009.
156 For more details see: Husseini et al., 2021, pp. 185–198.
157 See also: Bílková, 2015, pp. 457–482.
158 See also: Horák, Dienstbier and Derka, 2021, pp. 431–450.

The state of emergency or condition of threat to the State is declared either in a restricted area or for the entire territory of the State, whereas a state of war is declared for the entire territory of the State. The government may declare a state of emergency in cases of natural catastrophe, ecological or industrial accident, or other danger which to a significant extent threatens life, health, property, or domestic order and security. A state of emergency may not be declared on grounds of a strike held for the protection of rights or of legitimate economic and social interests. If delay would present a danger, the Prime Minister may declare a state of emergency. Within 24 hours of the announcement thereof, the government must either ratify or annul his decision. The government shall inform the Chamber of Deputies without unnecessary delay that it has declared a state of emergency, which the Chamber of Deputies may annul. A state of emergency may be declared only for the stated reasons, for a fixed period, and in relation to a designated territorial area. Concurrently, with its declaration of the state of emergency, the government must specify which rights prescribed in individual statutes shall be restricted in conformity with the Charter and to what extent, and which duties shall be imposed and to what extent. Detailed provisions shall be laid down by statute. A state of emergency may be declared for a period of no more than 30 days, and the stated period may be extended only with the prior consent of the Chamber of Deputies. A state of emergency ends upon the expiry of the period for which it was declared, unless the government or the Chamber of Deputies decides to annul it earlier.[159]

The legal regulation under Articles 2, 5, and 6 of constitutional Act No. 110/1998 Coll., on the Security of the Czech Republic, is directly followed by Section 5 of the Act No. 240/2000 Coll., on the Crisis Management, according to which during a state of emergency or condition of threat to the State, for the period and to the extent unavoidably required, the following can be limited: (a) the right to inviolability of a person and habitation during evacuation from the place, where their life and health are endangered; (b) the right to property and the enjoyment right of legal and natural entities related to their property in case of forced restriction of their property and enjoyment rights for the reason of protection of life, health, property or environment, endangered by the crisis situation, whereby adequate compensation is provided; (c) freedom of movement and residence within the restricted area endangered or affected by the crisis situation; (d) the right to free assembly within the restricted area endangered or affected by the crisis situation; (e) the right to operate their business that would endanger executed crisis measures or disrupt or preclude their realisation; and (f) the right to strike in case it would lead to disruption or constrain of rescue and disposal operations.[160]

159 The Ministry of the Interior of the Czech Republic 1998.
160 The Ministry of the Interior of the Czech Republic 2000.

■ *1.8. The Current State of the Constitutional Freedoms and Rights Regulation*

Because of the extensiveness of legal regulation and the multitude of bodies involved in its implementation, it would seem that the protection of fundamental rights and freedoms in the Czech Republic is robust and their status unproblematic. Unfortunately, the opposite is true. Regarding the content of the European Union Agency for Fundamental Rights, Amnesty International, European Network of National Human Rights Institutions, European Commission, United Nations Human Rights Council, Commissioner for Human Rights of the Council of Europe and Public Defender of Rights 2023 reports, there are significant shortcomings in the protection of the fundamental rights and freedoms of Roma,[161] persons with disabilities[162] and women.[163]

Specifically, as per these reports, the Roma face discrimination when looking for housing; according to the Defender and NGOs, some healthcare providers allegedly deny Roma access to healthcare; and infringement proceedings concerning the discrimination against Roma children in education are still ongoing.[164] The key findings from the Roma Survey 2021 provide a snapshot of the persisting impact of antigypsyism and the problems many Roma face in enjoying their fundamental rights. Every fourth Roma surveyed felt discriminated against in the previous 12 months in one or more core areas of life. This number remains practically unchanged since 2016, reaching almost 50% of Roma in the Czech Republic. Finally, a large number of Romani pupils continue to be segregated in special programs with lower learning outcomes. On the other hand, the Czech Republic has set up systemic reforms aimed at strengthening their participation and that of pro-Roma civil society in structures of policy making and implementation.

As for the protection of fundamental rights and freedoms of persons with disabilities, in these reports, the continuing investment in the construction and refurbishing of institutions runs counter to the deinstitutionalisation agenda and should be halted. The allocation of financial resources to responsible authorities on a one-year budget cycle inhibits the long-term planning necessary for such transformation processes.[165] Rising costs of services for persons with disabilities risk forcing such persons to seek care in institutions. Regarding involuntary placement in social care and health care institutions as well as involuntary treatment, steps must be taken to ensure effective access to justice to those affected, whilst systemic change towards the provision of health care on the basis of free and informed consent is necessary. Finally, judicial practice often focuses on limiting the legal capacity of persons with disabilities, rather than making use of supported decision making.

161 See also: Albert, 2023, pp. 248–262.
162 See also: van Kessel et al., 2020, p. 105; Sinecká, 2009, pp. 195–203.
163 See also: Šiklová and Hradilková, 2018, pp. 82–86.
164 See also: Cashman, 2017, pp. 595–608; Nyitray, 2016, pp. 230–246.
165 See also: Šiška and Beadle-Brown, 2011, pp. 125–133.

Regarding women, these reports recommend that various measures be taken for victims with specific protection needs, including women. They should be interviewed in premises adapted for that purpose by trained professionals. In addition, the same people should conduct all the interviews. On the other hand, the Czech Republic has adopted amendments to the Act No. 45/2013 Coll., on Victims of Crime, introducing special protection measures to prevent the secondary victimisation of victims of rape and domestic violence. The newly accessible measures include conducting interviews in premises that trained specialists have designed for that purpose and the same interrogator if repeated questioning is necessary. Notably, a law providing financial compensation to women sterilised against their will or without proper consent came into force in 2022. By December 2023, hundreds of applications were rejected or pending. In this context, civil society organisations have criticised Ministry of Health of the Czech Republic for a burdensome application process, leading to significant delays in awarding compensations. Finally, the Committee for Prevention of Domestic Violence and Violence against Women, and the Defender and Members of Parliament, respectively, recommended the adoption of a consent-based definition of sexual violence to the Czech state authorities. Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) then criticised the failure of the Czech Republic to do so.

■ *1.9. The Right of Access to Justice and the Right to an Effective Remedy*

Regarding whether the Constitution provide for a right of access to justice[166] or a right to an effective remedy,[167] Article 4(2) of the Charter states that everyone may assert, through the prescribed procedure, their rights before an independent and impartial court or, in specified cases, before another body. The right to judicial and other legal protection primarily entails the right of access to justice. This is the individual's right to have someone to turn to and to effectively seek protection of their rights. Article 36(1) of the Charter specifically implies a positive obligation on the part of public powers to establish independent and impartial courts – together with other bodies for the protection of rights – to which individuals shall have access if they decide to seek protection of their rights through this channel. These rights of access are a necessary condition for the realisation of the right to a fair trial. Article 36(1) of the Charter establishes the right of access to judicial protection provided by independent and impartial courts and to other legal protection provided by non-judicial bodies of public power established by law.[168]

166 Skládalová, Hrubešová and Svoboda, 2023, pp. 37–58.
167 Sommermann and Weber, 2024, pp. 327–350.
168 For more details see: Husseini et al., 2021, pp. 1032–1135.

It is once again the positive obligation[169] of public power to ensure that everyone can assert their substantive rights[170] through these two channels. However, the criminal, civil, and residual guarantees of the Charter and the Convention must also be applied in these channels. These guarantees define in depth what the procedural path through the two channels should look like. In practice, it is always necessary to examine which procedural guarantees can also be applied in the case of other legal protection provided, in particular, by administrative bodies. Furthermore, it is essential to ask about the standard of their application. Other law enforcement bodies, for example, are not independent and impartial as these characteristics are understood in relation to courts. However, before other law enforcement bodies, it is possible to exercise the right to a proper statement of reasons (see Article 36 of the Charter), the right to comment on all evidence presented (Article 38(2) of the Charter), the equality of participants (Article 37(3) of the Charter) or the right to a reasonable length of proceedings (Article 38(2) of the Charter).[171]

When interpreting Article 36(1) of the Charter, one must consider Article 4 of the Constitution, which stipulates the fundamental rights and freedoms being protected by the judiciary. This negative rule of competence prevents the legislature from adopting legislation that would, in individual cases, deprive the courts of their power to protect fundamental rights and freedoms. In general, the first sentence of Article 36(2) of the Charter guarantees that everyone who claims that their rights have been infringed by an administrative body may apply to the court for a review of the legality of the administrative body's procedure.[172] Article 4 of the Constitution is specified in the second sentence of Article 36(2) of the Charter, which states that the review of decisions concerning fundamental rights and freedoms under the Charter cannot be excluded from the jurisdiction of the courts. This obviously has an impact on the other legal protection. If the protection provided concerns fundamental rights and freedoms under the Charter, then the constitutionally guaranteed protection is duplicated. The final decisions of the so-called other legal protection bodies must still be subject to judicial review.[173] This completes the entire structural system provided for in the Charter regarding the right to judicial and other legal protection.[174]

In its case-law, the Constitutional Court stated that constitutionally guaranteed judicial protection is not the only way by which an individual can obtain protection of their subjective rights. The legal system also regulates various forms of other legal protection, which usually constitute effective and sufficient solutions

169 See also: Barnes, 2022, pp. 369–415.
170 See also: Guild and Lesieur, 1998.
171 For more details see: Husseini et al., 2021, pp. 1032–1135.
172 Batalli and Pepaj, 2022, pp. 85–94.
173 See also: Kosař and Ouředníčková, 2023, pp. 445–472.
174 For more details see: Husseini et al., 2021, pp. 1032–1135.

in practice, although they do not offer the same guarantees of independence and impartiality as the courts. This includes all administrative or other proceedings conducted before a body of public power other than a court. Other legal protection may be provided not only by bodies of public power, but also by authorised natural and legal persons. As long as access to the courts is not ultimately excluded, the legislature has considerable scope to find solutions that enable effective protection of rights to be achieved in the required quality, in real time and without unnecessary costs, taking into account the specific nature of the legal relationship in question. If properly designed, the need to seek judicial protection in such cases should be the exception rather than the rule.[175]

Article 36(1) of the Charter further stipulates that everyone may assert their rights before an independent and impartial court[176] or, in cases provided for by law, on the basis of the prescribed procedure.[177] This part of Article 36(1) of the Charter must be applied in conjunction with Article 36(4), which stipulates that the conditions and details of the rights arising from Article 36 of the Charter are regulated by law. Thus, this provides a constitutional basis for possible restrictions on the right of access to justice. Notably, the rights arising from Article 36 of the Charter are not absolute, including access to justice. However, it is always necessary to examine each specific case for whether restrictions on the right of access to the courts interfere with the very essence of that right. A statutory restriction on the right of access to the courts will only comply with the guarantees of a fair trial if it pursues a legitimate aim and there is a reasonable relationship between the means employed and the aim pursued. Such restrictions typically include imposing fees on certain submissions, requiring mandatory legal representation, defining the conditions for the admissibility of certain submissions, setting time limits for submissions, or determining the subject-matter and territorial jurisdiction of public authorities called upon by law to protect rights in specific cases.[178]

Furthermore, it is necessary to bear in mind that Article 36(1) of the Charter prohibits the denial of justice.[179] This refers to a situation wherein a public authority refuses to deal with the merits of a case, thereby depriving a party of judicial and other legal protection. This most often occurs in situations involving a formalistic assessment of a proposal. However, there may be more sophisticated cases wherein a public authority traps a party in a vicious circle, such that one public authority refers to another procedural instrument or another public authority, although neither of these can provide the individual with the desired protection of their rights. The denial of justice is defined similarly by the case law of the

175 See: Judgement Case No. Pl. ÚS 32/18 of 30 July 2019.
176 See also: Marmor, 2010, pp. 666–674.
177 See also Wawrzyńczak, 2023, pp. 89–116.
178 For more details see: Husseini et al., 2021, pp. 1032–1135.
179 See also: Walde and Sabahi, 2008, pp. 1049–1124.

Constitutional Court, which emphasises[180] that procedural rules of sub-constitutional law imperatively specify the concrete means and procedural institutions by which the right to judicial and other legal protection can be exercised. If an individual complies with the procedure so established, and the court or other law enforcement body still refuses to decide on their right, this amounts to a constitutionally impermissible denial of justice.[181]

The category of denial of justice,[182] albeit at the level of the highest court, also includes situations wherein a civil court of appeal or a regional court acting in administrative proceedings incorrectly inform a party to the proceedings that an appeal or cassation complaint is inadmissible, although an extraordinary remedy is admissible in the case in question. Such a course of action constitutes a violation of that party's right to judicial protection or access to the Supreme Court and the Supreme Administrative Court. The Constitutional Court, to which the parties to the proceedings refer directly in such cases, even without objection, will overturn the decision of the civil court of appeal or regional court acting in administrative proceedings to give them the opportunity to refer the matter to the Supreme Court or the Supreme Administrative Court after receiving the correct instructions. However, the Constitutional Court has consistently ruled that if the case goes beyond the interests of the complainant, who acted in good faith based on the appellate court's instruction that the appeal was inadmissible, then the constitutional complaint may be heard in exceptional cases. Notably, the Supreme Court does not take into account the procedure of the court of first instance that, in its request for the appeal to be supplemented, granted the appellant a longer time limit than that provided for by law. If the Supreme Court fails to take into account the supplement to the appeal filed within this longer time limit and does not examine the merits of the case on the grounds of late filing, it thereby deprives the appellant of his right to judicial protection.[183]

■ *1.10. The Duties of Individuals*

Article 4(1) of the Charter states that duties may be imposed only on the basis, and within the bounds, of law, and only while respecting the fundamental rights and freedoms. The obligations to which Article 4(1) of the Charter applies are, from a general point of view, expressly established obligations of individuals towards the state in the form of doing something, refraining from doing something, and so on. These so-called public subjective obligations characterise the relationship between the legal state and the individual, and without them, it is impossible to provide a complete description of this relationship.[184] Without individuals under

180 See: Judgment Case No. II. ÚS 2398/18 of 14 August 2019.
181 For more details see: Husseini et al., 2021, pp. 1032–1135.
182 See also: Wälde and Sabahi, 2008, pp. 1049–1124.
183 For more details see: Husseini et al., 2021, pp. 1032–1135.
184 See also: Dömők, 2023, pp. 83-95.

the jurisdiction of the state fulfilling their obligations, such a state could not exist because its legal order would lose its meaning. The general conditions for the exercise of state or public power are laid down in Articles 2(2) and (3) of the Charter, which stipulate the requirement of a legal form (reservation of law) for all exercise of public power, both in organisational matters – the very existence of public authorities and the definition of their powers and competences – and in the imposition of obligations on individuals. Article 4(1) of the Charter follows from the principle of the reservation of public power to the law and regulates further limitations on public power in cases where it is to be exercised against individuals and their autonomous sphere, or where fundamental rights and freedoms are to be restricted. The rule contained in Article 4(1) should also be understood as an essential requirement of any democratic state governed by the rule of law, without which there can be no legal state.[185]

The rule that obligations may only be imposed on the basis of and within the limits of the law can also be referred to as the principle of legality.[186] Specifically, under Article 2(3) of the Constitution and Article 2(2) of the Charter, state authority is to serve all citizens and may be asserted only in cases within the bounds of and in the manner provided for by the law. This is a general legal principle linked to the concept of the rule of law, requiring that every public authority, in exercising its powers, act only on the basis of and within the limits of the law, within the scope of its powers and competences as defined by law and in the manner prescribed by law. In this respect, Article 4(1) of the Charter is a complementary provision to Article 2(2), which means that it operates by clarifying the impact of Article 2(2) of the Charter on individuals. The principle of legality constitutes a fundamental limit on public power exercised over individuals. Exceeding these limits, or violating the principle of legality, constitutes a violation of an individual's subjective right to have public authority respect the autonomous expressions of their personality, including expressions of will that are reflected in specific actions, unless such actions are prohibited by law.[187]

The relevant reservation of the law requiring that obligations be imposed on individuals only on the basis of and within the limits of a legal regulation, including a constitutional law and a statutory measure is by its nature a formal condition. In addition, Article 4(1) of the Charter also sets out a substantive requirement that the obligation imposed must not lead to the failure to uphold any of the fundamental rights and freedoms. Meanwhile, conditions may only be imposed on the basis of and within the limits of the law. This means that obligations may not be imposed by subordinate legislation or contained in other legal forms.[188] Therefore, a public authority also violates the above-mentioned reservation of law in its application

185 For more details see: Husseini et al., 2021, pp. 119–141.
186 See also: Sharp and Blahoudková, 2024, pp. 35–48.
187 For more details see: Husseini et al., 2021, pp. 119–141.
188 See also: Kačer, 2021, pp. 1024–1037.

if it imposes an obligation on an individual beyond the scope of the law, whether it is a case of flagrant disregard for a mandatory norm of sub-constitutional law or the application of an extensive interpretation of a legal norm.[189] However, the reservation of law cannot be understood in absolute terms; the law must at least establish the basis of the obligation in question, although it may be specified in another legal form including a subordinate legal regulation. The Constitutional Court stated[190] that not every obligation must be set out directly and exclusively by law, as such a requirement would clearly lead to absurd consequences. This would negate the meaning of sub-statutory rule-making, since a conceptual component of every legal norm is the definition of certain rights and obligations of the norm's addressees. However, a sub-statutory regulation must always remain within the limits of the law, which are either expressly defined or derive from the meaning and purpose of the law. At this point, it is worth noting that formal restrictions on public power when imposing obligations can also be seen as a formal limit on the restriction of a fundamental right, since the reservation of law in question essentially corresponds to the formal requirement set out in Article 4(2) of the Charter, according to which fundamental rights and freedoms may only be restricted by law.[191]

The formal condition for imposing obligations under Article 4(1) of the Charter is accompanied by a condition that is, by its nature, substantive, namely that the obligation imposed must be based on and within the limits of the law and must preserve fundamental rights and freedoms.[192] This substantive condition follows on from Article 4(4) of the Charter, according to which the essence and meaning of fundamental rights and freedoms must be respected when applying provisions limiting them. If Article 4(1) of the Charter is a limit on the restriction of a fundamental right, then Article 4(4) of the Charter provides the same as the above substantive condition.[193]

Article 4(1) of the Charter is directly followed by Article 2(4) of the Constitution, which states that all citizens may do that which is not prohibited by law, and nobody may be compelled to do that which is not imposed upon them by law. Thus, Article 2(4) of the Constitution guarantees the freedom of natural and legal persons to behave or act in legal and other relationships in a manner they deem appropriate, thereby expressing respect for the autonomous sphere of the individual and for the expression of their personality.[194] However, this freedom is limited by prohibitions on certain acts. These may be activities that are inappropriate or harmful for various reasons, primarily to other persons (e.g., insults,

189 See also: Guli and Hoti, 2025, pp. 63–75.
190 See: Judgment Case No. Pl. ÚS 23/02 of 30 June 2004.
191 For more details see: Husseini et al., 2021, pp. 119–141.
192 See also: Skládalová, 2023, pp. 139–150.
193 For more details see: Husseini et al., 2021, pp. 119–141.
194 See also: Blicharz, 2021, pp. 34–46.

discrimination, unfair competition), dangerous behaviour (e.g., criminal offences of general endangerment), or acts preventing the limitation of the freedom of others by the binding establishment of certain rules (e.g., traffic rules). Meanwhile, in connection with Article 2(3) of the Constitution, it is guaranteed that no person shall be compelled by public authority to perform or refrain from performing any act unless such act is imposed by or on the basis of law (e.g., traffic rules, the performance of community service on the basis of a final court judgment, the submission of certain documents, and the fulfilment of maintenance obligations). In both cases, this may be a prohibition or an order imposed by law, as confirmed by Article 4(1) of the Charter.[195]

The case law of the Constitutional Court[196] provides an extensive interpretation, according to which the state guarantees protection against interference by other persons, restricts itself, and only takes action that interferes with the private sphere in cases justified by public interest, by issuing orders or prohibitions.[197] Furthermore, the priority of the citizen over the state is guaranteed, which should not be burdened by excessive formalism. Prohibitions on certain acts are formulated directly at the constitutional level and are contained primarily in the Charter, for instance, in Articles 2(2) and (3), 6(2) and (3), 9(1) and 15(3), as well as in the Constitution, such as in Article 12(2). However, the vast majority of these prohibitions apply to both private natural and legal persons and to state authorities or other entities exercising public power, which means that they have a broader scope in relation to Article 2(4) of the Constitution.[198]

2. Summary

As for a brief summary of this paper, it is necessary to state that in the Czech Republic the freedom of action of a private individual is not absolute and unlimited. Certain activities may be prohibited (e.g. petitions may not interfere with the independence of the courts under Article 18(2) of the Charter), while others may be mandated (e.g. the public duty of school attendance for the period specified by law under Article 33(1) of the Charter). In addition, however, some acts are not expressly prohibited by law, but are subject to some form of notification to a state authority (e.g. the right of assembly), and may require the issuance of a (permit) act by the competent state (administrative) authority prior to the commencement of (qualified) action.[199] For instance, a trade license for business activities under the Act No. 445/1991 Coll., on Trade Licensing, or a permit for special, above-normal,

195 For more details see: Husseini et al., 2021, pp. 119–141.
196 See: Judgment Case No. I. ÚS 331/98 of 12 June 2000.
197 See also: Červínek, 2020, pp. 905–926.
198 For more details see: Husseini et al., 2021, pp. 119–141.
199 See also: Kayange, 2021, pp. 133–148.

use of surface or groundwater under the Act No. 254/2001 Coll., on Water. However, in general, the law does not often contain an explicit prohibition of certain conduct or make it conditional on an act by a state authority. It is sometimes necessary to deduce the prohibition or inadmissibility of specific conduct from the provisions of the law establishing penalties for certain unlawful conduct. Furthermore, although the term "citizen" is used in Article 2(4), the interpretation must take into account the wording of the similar Article 2(3) of the Charter, which uses the term "everyone". Therefore, it can be deduced on the basis of the cited provision that every private natural and legal person has the possibility and freedom to act in a manner not prohibited by law and, simultaneously, may not be compelled to act or to fulfil obligations not imposed by law. A natural person is also understood to mean a citizen of another state or a person without nationality, and it is irrelevant whether they reside in the Czech Republic or abroad.[200]

200 See also: Doubek, 2023, pp. 353–379; for more details see: Husseini et al., 2021, pp. 119–141.

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