

# An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory

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## Table of Contents

<b>1. Civic space developments in 2022</b>	<b>3</b>
<b>1.1. Methodology for the participation of NGOs in the decision-making of the public sector adopted</b> .....	<b>3</b>
<b>1.2. Funding of legal aid for migrants by NGOs not extended in 2022 by the Ministry of Interior</b> .....	<b>4</b>
<b>1.3. Human rights defender protected by Court</b> .....	<b>5</b>
<b>2. Promising practice in 2022</b>	<b>9</b>
<b>2.1. Reform of one-year funding cycles for NGOs</b> .....	<b>9</b>
<b>3. Visa for human rights defenders</b>	<b>10</b>
<b>3.1. Entry and stay for human rights defenders (HRDs) at risk</b> .....	<b>10</b>

# 1. Civic space developments in 2022

## 1.1. Methodology for the participation of NGOs in the decision-making of the public sector adopted

Area	Participation and cooperation with authorities
Topic	Access to consultations / participation in decision-making
Impact	Minor

On 28 June the Government Council for Non-Governmental Non-Profit Organisations<sup>1</sup> adopted the 'Methodology for the Participation of Non-Governmental Non-Profit Organisations in Working and Advisory Bodies and in the Process of Preparation of Administrative Documents'<sup>2</sup> drafted by a Working Group specifically set up to draft its text.

The Methodology contains recommendations aimed at ensuring the appropriate conditions and resources are in place for both the state and NGOs to enable participation to take place in a meaningful way. The Methodology is applicable to the development of public policies, strategic materials, and legislative and other non-legislative materials by ministries and other central administrative authorities. The Methodology will be piloted from January 2023 in at least one Ministry.<sup>3</sup>

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<sup>1</sup> Czech Republic, Government Council for Non-Governmental Non-Profit Organisations (*Rada vlády pro nestátní neziskové organizace*) (2022), [Minutes from the meeting on 28 June 2022](#), p. 5.

<sup>2</sup> Czech Republic, Office of the Government (*Úřad vlády*) (2022), [Methodology for the Participation of Non-Governmental Non-Profit Organisations in Working and Advisory Bodies and in the Process of the Preparation of Administrative Documents](#) (*Metodika participace nestátních neziskových organizací v poradních a pracovních orgánech a při tvorbě dokumentů státní správy*), May 2022.

<sup>3</sup> Czech Republic, Government Council for Non-Governmental Non-Profit Organisations (*Rada vlády pro nestátní neziskové organizace*) (2022), [Minutes from the meeting on 13 October 2022](#) (*Zápis ze zasedání 13. Října 2022*), p. 4.

## 1.2. Funding of legal aid for migrants by NGOs not extended in 2022 by the Ministry of Interior

Area	Financing framework
Topic	Funding landscape
Impact	Major

The Ministry of Interior excluded NGOs from the list of eligible applicants for funding for providers of legal aid for migrants in 2022.<sup>4</sup>

This decision could impact the quality of services provided to migrants. Firstly, the contracted lawyers are not specialised in migration and asylum law,<sup>5</sup> Secondly, the new funding scheme focuses solely on legal aid and not psycho-social aid.<sup>6</sup>

A new funding scheme provided by the Asylum, Migration and Integration Fund, within which NGOs can potentially apply again, will be in place from 2023.<sup>7</sup> However, the change in funding led to the partial dissolution of the legal and social-aid teams that were provided by the biggest provider of services – the Organization for Aid to Refugees (OPU) – in five regions.<sup>8</sup> The gap created by the termination of the original programme in April 2022 will impact the ability of organisations to apply for funding, as former OPU employees no longer work there because of the lack of funding.

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<sup>4</sup> Trojan, F. (2022), 'Už to asi nevyhrajeme. Na Ministerstvu vnitra končí Organizace pro pomoc uprchlíkům' (We probably aren't going to win. The Organisation for Aid to Refugees won't be continuing at the Ministry of the Interior), *Respekt*, 30 March 2022.

<sup>5</sup> For more information, see the firm's website at: <https://www.akvt.cz/>.

<sup>6</sup> Czech Republic, Ministry of Interior (*Ministerstvo vnitra*) (2022), [Home Affairs Funds AMIF and ISF 2014-2020](#) (*Fondy v oblasti vnitřních věcí AMIF a ISF 2014-2020*).

<sup>7</sup> Trojan, F. (2022), 'Už to asi nevyhrajeme. Na Ministerstvu vnitra končí Organizace pro pomoc uprchlíkům' (We probably aren't going to win. The Organisation for Aid to Refugees won't be continuing at the Ministry of the Interior), *Respekt*, 30 March 2022.

<sup>8</sup> Communication with the Organisation for Aid to Refugees (Organizace pro pomoc uprchlíkům) on 28 December 2022.

## 1.3. Human rights defender protected by Court

Deciding body (in original language)	Ústavní soud
Deciding body (in English)	Constitutional Court
Case number (also European Case Law Identifier ECLI, where applicable)	<a href="#">III.ÚS 3006/21</a> , ECLI:CZ:US:2022:3.US.3006.21.1
Parties	The parties to the proceedings are the complainant K. K., the Municipal Court of Prague, and the District Court for Prague 6, and the Municipal State Prosecutor's Office Prague and J.V are interveners.
Decision date	22 March 2022
Web link to the decision (if available)	<a href="https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezky/2022/III._US_3006_21_an.pdf">https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezky/2022/III. US 3006 21 an.pdf</a>
Key facts of the case	The complainant, the director of a non-profit organisation dedicated to the prevention of hate crime, has been repeatedly (intensively since at least 2016) the target of death and rape threats for practising her profession.

<p>also situatin g the fundam ental rights dimensi on (max. 250 words)</p>	<p>The defendant sent a total of 114 e-mail messages of a harassing, pornographic, or threatening nature to the complainant's work e-mail. The defendant's conduct has been the subject of numerous criminal and misdemeanour notices. In all but one case, the public authorities have found that the conduct in question did not constitute an offence. In 2020, the complainant was granted short-term Police protection, and the defendant was prohibited from contacting or seeking out the complainant in any way and criminal proceedings were initiated against the defendant for the offence of violence against a group of citizens and against an individual, and for extortion and the offence of dangerous stalking and harassment. However, the District Court for Prague 6 referred the offence to the Prague 6 Municipal District Office for consideration, as the alleged offence was not a criminal offence and the defendant's act could be assessed by another authority as a misdemeanour. The court justified this decision primarily on the grounds that criminal law should be used only if no other legal remedy is available. Moreover, the applicant is a public figure who must endure a higher degree of criticism, irony, or negative assessment. The Municipal Court in Prague subsequently dismissed the prosecutor's complaint.</p>
<p>The key legal question raised by the Court</p>	<p>The key issue in this case is the concept of the subsidiarity of criminal law, meaning that criminal law should only be used in cases in which no other means are available.</p>
<p>Result of the case in terms of factual outcome, and in terms of assessment of the legal question</p>	<p>The complainant did not seek the annulment of the contested judgment (specifically its guilty verdict), but only a decision that would find that her constitutionally guaranteed rights had been violated, i.e. a declaratory verdict. The complainant's fundamental rights were infringed by the fact that the municipal courts repeatedly denied her, as the victim, the only protection that was apparently effective, which is to say, criminal protection against the same perpetrator. The Constitutional Court upheld the constitutional complaint and found that the orders of the Municipal Court in Prague and the District Court for Prague 6 violated the complainant's right to protection of private and family life under Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the right to protection of human dignity under Article 10 para 1, and the right to protection against unwarranted interference with private and family life under Article 10 para 2 of the Charter of Fundamental Rights and Freedoms.</p>
<p>Give interesting</p>	<p>Para 42: 42. Nelze přijmout ani argument obecných soudů, podle něhož je stěžovatelka jako veřejně činná osoba povinna strpět vyšší míru kritiky. Jakkoliv tento argument v obecné rovině Ústavní soud akceptuje, v posuzované věci je použití tohoto</p>

<p>quotes where the Court deals with civic space</p>	<p>argumentu nepřipadné. Při hodnocení kolize svobody projevu na straně jedné a osobnostních práv na straně druhé ... vskutku potřeba přihlídnout i k postavení „kritizované osoby“ (příčemž veřejně činné osoby jsou obecně povinny strpět vyšší míru kritiky), jedná se však pouze o jedno z kritérií. Na druhé straně by totiž výroky zásadně neměly „vybočit z mezí v demokratické společnosti obecně uznávaných pravidel slušnosti, neboť jinak by ztratila charakter korektního úsudku nebo komentáře a jako taková by se mohla ocitnout mimo meze ústavní ochrany“.<sup>9</sup> Relativní váha jednotlivých kritérií rozhodných pro posuzování kolize obou práv přitom není a priori dána a závisí na kontextu věci. Celá řada (či dokonce většina) e-mailů vedlejšího účastníka přitom byla takové povahy, že zcela zřetelně a bez jakýchkoliv pochyb vybočovala z mezí akceptovatelných v demokratické společnosti a míra jejich ústavní ochrany může být z tohoto důvodu toliko zcela marginální. I kdyby tak stěžovatelku bylo skutečně možno považovat za veřejně činnou osobu, nemá tento argument v kontextu posuzované věci takový význam, aby převážil nad argumentem, podle něhož výroky vedlejšího účastníka s ohledem na jejich obsah a formu požívají pouze mizivé ústavní ochrany.</p>
<p>Give full English translation of these quotes</p>	<p>42. Nor can the argument of the general courts that the complainant, as a public figure, is obliged to tolerate a higher level of criticism be accepted. Although the Constitutional Court accepts this argument in general terms, in the present case the application of this argument is inappropriate. In assessing the conflict between freedom of expression on the one hand and the protection of personal rights on the other ... it is indeed necessary to take into account the position of the 'person criticised' (wherein public figures are generally obliged to tolerate a higher level of criticism), but this is only one criterion. On the other hand, statements should not, as a matter of principle, 'go beyond the limits of the rules of decency generally accepted in a democratic society, since otherwise they would lose the character of a fair judgment or comment and as such might fall outside the bounds of constitutional protection'. The relative weight of the individual criteria relevant to the assessment of the conflict between the two rights is not a priori determined and depends on the context of the case. Many (or even most) of the intervener's e-mails were of such a nature that they clearly and without any doubt went beyond the limits of what is acceptable in a democratic society, and the extent to which they enjoy protection under the constitution may therefore be only marginal. Thus, even if the applicant could indeed be regarded as a public figure, this argument is not of such importance in the context of the present case that it could override the</p>

<sup>9</sup> A note from the authors of this report: The court refers here to the following judgment – Czech Republic, Constitutional Court of the Czech Republic (Ústavní soud České republiky), [III.ÚS 359/96](#), 10 July 1997.

	<p>argument that the intervener's statements, in view of their content and form, enjoy only marginal constitutional protection.</p>
<p>Provide your analysis of the legal and factual relevance of the judgment</p>	<p>The judgement could be considered crucial in relation to the protection of people active in the civic space as human rights defenders. The case is also important as the complainant is a woman and the attacks on her were gender-based. The decision of the Constitutional Court, which emphasises the need to use criminal law for the protection of human rights defenders private life, is a step towards the protection of the civic space in general.</p>



## 2. Promising practice in 2022

### 2.1. Reform of one-year funding cycles for NGOs

The Government Council for Non-State Non-Profit Organisations established an Expert Group (hereafter Group) on systemic change in the financing of publicly beneficial services and activities from the state budget for a two-year period.<sup>10</sup> The Expert Group was created in response to an objective set out in the 'Strategy for Cooperation between Public Administration and Non-governmental Non-profit Organisations 2021-2030',<sup>11</sup> which is to streamline the system of NGO financing from public sources.

The Expert Group will further be divided into thematic working groups for the 13 topics that emerged out of public consultations (the financing of umbrella organisations, the financing of social services, multiannual funding etc.).<sup>12</sup>

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<sup>10</sup> Czech Republic, Government Council for Non-Governmental Non-Profit Organisations (*Rada vlády pro nestátní neziskové organizace*) (2022), [Minutes from the meeting on 28 June 2022](#) (*Zápis ze zasedání 28. Června 2022*), p. 8.

<sup>11</sup> Czech Republic, Office of the Government (*Úřad vlády*) (2022), [Strategy for Cooperation Between Public Administration and NGOs 2021-2030](#) (*Strategie spolupráce veřejné správy s NNO na léta 2021 až 2030 včetně podkladových studií a vypořádání konzultací*), 15 July 2021.

<sup>12</sup> Czech Republic, Office of the Government (*Úřad vlády*) (2022), [Call for NGOs to submit proposals for topics for the Expert Group on Systemic Change in Funding](#) (*Výzva pro nestátní neziskové organizace k zasílání návrhů témat k jednání Expertní skupiny k systémové změně financování*), 23 August 2022.

## 3. Visa for human rights defenders

### 3.1. Entry and stay for human rights defenders (HRDs) at risk

Dedicated visa scheme for HRDs at risk available in your country	No
Other type of visa or alternative legal entitlement or derogation clause applied to HRDs	Yes

In the aftermath of the Russian invasion of Ukraine, the Czech Republic created an ad hoc programme called 'Civil Society',<sup>13</sup> through which citizens of Russia and Belarus who are at risk due to political persecution in their country of origin can apply for a residence permit<sup>14</sup> at the respective consulate.<sup>15</sup> The Russian and Belarusian national may apply for the residence permits envisaged by the Act on the residence of foreigners in the territory of the Czech Republic<sup>16</sup> (employee card,<sup>17</sup> blue card,<sup>18</sup> long-term visa for study or long-term residence permit for study or scientific research, or business or other purposes).

Foreign nationals may be included in the programme if they have a sponsor (a non-governmental organisation, NGO) that can prove they are a human rights defender who is subject to persecution by the state authorities and has to leave their country of origin for security reasons, for the active defence of democratic principles and in particular freedom of expression, for the inability to practise their profession freely and with impunity, or for other reasons of special consideration related to the restriction or threat to their human rights and freedoms.

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<sup>13</sup> Czech Republic, Ministry of Foreign Affairs (*Ministerstvo zahraničních věcí*) (2022), [Civil Society Programme](#) (*Program Občanská Společnost*), 26 September 2022.

<sup>14</sup> The programme specifies the different kinds of permits that are established under [Act No. 326/1999 Coll. on the residence of foreigners in the territory of the Czech Republic](#) (Zákon o pobytu cizinců na území České republiky), 1 January 2000.

<sup>15</sup> The sponsor first informs the Ministry of Foreign Affairs via email about the applicant, then the Ministry informs the respective consulate that an application will be submitted.

<sup>16</sup> The programme specifies the different kinds of permits that are established under [Act No. 326/1999 Coll. on the residence of foreigners in the territory of the Czech Republic](#) (Zákon o pobytu cizinců na území České republiky), 1 January 2000.

<sup>17</sup> Sec. 42g of the [Act No. 326/1999 Coll. on the residence of foreigners in the territory of the Czech Republic](#) (Zákon o pobytu cizinců na území České republiky), 1 January 2000.

<sup>18</sup> Sec. 42i of the [Act No. 326/1999 Coll. on the residence of foreigners in the territory of the Czech Republic](#) (Zákon o pobytu cizinců na území České republiky), 1 January 2000.

The sponsor must provide a specific justification for the inclusion of the foreign national in the programme. The Ministry of Foreign Affairs decides on the foreign national's inclusion in the programme. The Ministry of Interior then decides the case itself within 30 days.

The programme has been implemented to run from 20 May 2022 for a period of one year with the possibility of an extension. The annual quota is 500 applicants and extends also to minors or the dependent adult children of the foreign national or his/her spouse, or partners permanently living in the same household (including partners of LGBT persons).

The Act on Asylum<sup>19</sup> does not contain any specific provisions regulating the rights of human rights defenders (HRDs). The Act envisages two reasons<sup>20</sup> for granting international protection (asylum and subsidiary protection) to which HRDs could apply. First, if someone is persecuted for exercising political rights and freedoms or, second, if someone has a well-founded fear of being persecuted for reasons of race, sex, religion, nationality, membership of a particular social group, or political opinion in their country of origin. Persecution is defined as serious violations of human rights, as well as measures of psychological coercion or other similar acts. Persecution can also be carried out, encouraged, or tolerated through a series of acts, which in combination amount to persecution.<sup>21</sup>

The Ministry of Interior, which administers asylum procedure, is legally obliged to gather all necessary evidence to evaluate applications for international protection.<sup>22</sup> In practice, the Ministry conducts an interview with an applicant and a uniform set of questions is used in each interview.<sup>23</sup> The Ministry does not currently have a methodology that could be used to evaluate whether an HRD falls under either of the two categories provided for in the law. However, a methodology that could harmonise evaluations of the credibility of applications for international protection, including a draft decision, is being prepared by the Office of the Public Defender of Rights as an outcome of previous proceedings, which the Public Defender of Rights initiated in 2018.<sup>24</sup>

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<sup>19</sup> Czech Republic (1999), [Act No. 325/1999 Coll. on Asylum](#) (Zákon č. 325/1999 Sb. O azylu) , 1 January 2000.

<sup>20</sup> Czech Republic (1999), Act No. 325/1999 Coll. on Asylum (Zákon č. 325/1999 Sb. O azylu), Sec. 12, 1 January 2000.

<sup>21</sup> Czech Republic (1999), Act No. 325/1999 Coll. on Asylum (Zákon č. 325/1999 Sb. O azylu) , 1 January 2000, Sec. 2, para 4, 1 January 2000.

<sup>22</sup> Czech Republic (1999), Act No. 325/1999 Coll. on Asylum (Zákon č. 325/1999 Sb. O azylu) , 1 January 2000, Sec. 19, para 1, 1 January 2000.

<sup>23</sup> Information provided by a legal expert on asylum law.

<sup>24</sup> Czech Republic, Public Defender of Rights (*Veřejný ochránce práv*) (2022), Report No. 4861/2018/VOP.