



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

**Consideration of reports submitted by States  
parties under article 19 of the Convention  
pursuant to the optional reporting procedure**

**Sixth periodic reports of States parties due in 2016**

**Czechia\*<sup>,</sup> \*\***

[Date received: 26 October 2016]

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\* The combined fourth and fifth periodic reports of the State party are contained in document CAT/C/CZE/4-5, which was considered by the Committee at its 1068th and 1071st meetings, held on 14 and 15 May 2012 (CAT/C/SR.1068 and 1071). For its consideration, see the Committee's concluding observations (CAT/C/CZE/CO/4-5).

\*\* The present document is being issued without formal editing.

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## **Information on new measures and new developments in the implementation of the Convention**

### **General information**

1. The sixth periodic report of the Czech Republic, submitted in accordance with Article 19 paragraph 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the “Convention”), builds on the initial (CAT/C/21/Add.2), the second (CAT/C/38/Add.1), the third (CAT/C/60/Add.1) and the combined fourth and fifth (CAT/C/CZE/4-5) periodic reports of the Czech Republic. When drawing up the report, the following aspects were taken into account:

(a) General Guidelines on the form and content of reports on the fulfilment of the obligations arising from the Convention submitted by the parties (CAT/C/14);

(b) Conclusions and recommendations of the Committee on the fourth and fifth periodic reports of the Czech Republic (CAT/C/CZE/CO/4-5);

(c) Relevant facts and new measures adopted by the Czech Republic to fulfil the obligations arising from the Convention in the period under review.

2. The sixth periodic report of the Czech Republic covers the period from 1 August 2009 to 31 December 2015 (hereinafter the “Period under Review”). In this period the Czech Republic adopted, especially at the national level, new measures aimed at eliminating some of the still persisting shortcomings in the fulfilment of international legal obligations and national standards, thus contributing to further improvement of the situation in this area.

### **Information relating to individual articles of the Convention**

## **Article 1**

### **Definition of torture**

3. Act No. 40/2009 Coll., the Criminal Code, as amended (hereinafter the “Criminal Code”)<sup>1</sup> sanctions torture and other inhuman and cruel treatment as a criminal offence defined in Section 149 as follows: “Those who by torture or other inhuman and cruel treatment in connection with the exercise of the powers of the state administration authority, local self-government, court or other public authority cause physical or mental suffering to another, shall be punished by imprisonment of six months to five years.”

4. Intentional fault is necessary for the criminal liability for this offence.<sup>2</sup> The Criminal Code also defines qualified merits of the case, in which the fault of negligence is sufficient, while the penalty is further increased. For example a two-year to eight-year prison sentence will be imposed if the offender commit this act as a person in authority; on a witness, to another for their actual or supposed race, ethnicity, nationality, political beliefs or religion; if the offender commits such an offence with at least two persons, or repeatedly. The offender will be punished by imprisonment of five to twelve years for example if they commit the act on a pregnant woman; on a child under the age of fifteen years; in a particularly brutal or harrowing manner. The offender will be punished by imprisonment of eight to eighteen years, if they cause death by such an offence. According to the Criminal Code, even the preparation for this offence is punishable.

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<sup>1</sup> Act No. 40/2009 Coll., the Criminal Code, as amended, is effective from 1 January 2009.

<sup>2</sup> Section 13(2) of the Criminal Code.

5. An analysis which deals with the practical aspects of punishability of all forms of ill-treatment under the Convention and Article 3 of the European Convention on Human Rights is currently being prepared.

## Article 2

### Inclusive education

6. First, it is necessary to reiterate the opinion of the Czech Republic, expressed in its follow-up reply (paragraph 13) from 2013 that the issues of equal access to education for Roma or other children in the Czech Republic do not fall within the scope of the Convention. This opinion is based on the decision of the European Court of Human Rights (hereinafter the “ECtHR”) in the case of D. H. and others versus the Czech Republic. The Court concluded that the excessive representation of Roma children in schools for children with mild mental disabilities constituted violation of the prohibition of discrimination in the right to access to education, but was not a violation of the prohibition of torture and inhuman, cruel or degrading treatment. Similarly, the UN treaty bodies that monitor the implementation of the instruments containing a wide catalogue of human rights and freedoms, including the prohibition of torture and ill-treatment (e.g. ICCPR and CRC), are dealing with the question exclusively as the exercise of the right to education or the right not to be discriminated against. The Czech Republic wishes to emphasise, as it did in its follow-up reply, that the submission of the information provided below should not be interpreted as a change in its position on this matter.

7. On 1 September 2014, the amendment to the Decree of the Ministry of Education, Youth and Sports came into effect, according to which the socially disadvantaged pupils must not be educated in the class or group for students with disabilities. This rule was taken over to the implementing decree to the amended Education Act.

8. The amendment to the Education Act, which strengthens inclusive education, becomes effective on 1 September 2016. The main changes include the following:

- it abandons the categorisation of disadvantaged groups of pupils;
- instead, it defines a “pupil with special educational needs”, who needs supporting measures for the fulfilment of their educational opportunities and for the implementation of the right to education on an equal basis with others;
- it lays down the integration in the mainstream education as the rule of preferential education of the pupil with special educational needs;
- it introduces the concept of the supporting measures necessary for ensuring the maximum achievable full-fledged mainstream education for all pupils free of charge. The supporting measures are divided into degrees according to their organisational and financial demands.

9. In 2015, the government approved the Action Plan for Inclusive Education, which includes measures to promote equal opportunities and equitable access to quality education, including the prevention and remedy of early leaving of drop-outs. For the years 2016 to 2018, it also includes introduction of the aforementioned supporting measures for children, pupils and students with special educational needs, the introduction of accurate registration and statistics of pupils educated in the inclusive environment, more accurate specification and unification of diagnostics so that pupils with any handicap or disability are offered

adequate support within the education system, and also the introduction of a new revision system within the diagnostics of counselling facilities.<sup>3</sup>

#### **Safeguards in case of limitation of personal liberty in the police cell**

10. The basic legal safeguards for the treatment of persons deprived of personal liberty by the police are generally defined in Section 24 of Act No. 273/2008 Coll., on the Police of the Czech Republic (hereinafter the “Police Act”). The Act expressly provides that a person restricted in personal liberty by a police officer may not be subjected to torture or to cruel, inhuman or degrading treatment and may not be treated in a manner not respecting human dignity. The police officer witnessing such treatment is obliged to take action to prevent such treatment and report it immediately to their superior.

11. The informing of close persons about the restriction of a person’s liberty is regulated by the Police Act. The police at the request of the person restricted in personal liberty shall notify it to a close person or another person that the person restricted in personal liberty indicates. The notification shall not be carried out only if it would endanger the fulfilment of the purpose of a serious act or if such notification cause excessive difficulties. The police officer shall inform about the non-notification the locally competent public prosecutor in writing without undue delay. Afterwards, the police officer shall make the notification as soon as the obstacle has passed.

12. The right of access to a lawyer is regulated in Section 24(4) of the Police Act. The person restricted in personal liberty has the right to ensure at their own expense legal assistance and speak with a lawyer without the presence of a third person. For this purpose, the police officer shall immediately provide the necessary assistance, if so requested by the person.

13. Act No. 141/1961 Coll., on criminal court proceedings, as amended, (hereinafter the “Criminal Procedure Code”) stipulates in Section 76(6) that a suspect or an accused has the right to choose a defence lawyer and consult with them without the presence of a third person already during the detention, even though the criminal prosecution has not yet been initiated against them. Pursuant to Section 158(5), the person has the right to the legal assistance of a lawyer also already in the phase prior to detention when submitting an explanation.

14. As regards the issue of medical examinations and the presence of a police officer, there will be continued efforts to ensure the greatest possible confidentiality of the medical examination of the persons detained in the police cell. However, it is necessary to take into account the complexity of the situation when it is necessary to maintain patient confidentiality and also the obligation of police officers to protect the life and health of the person restricted in personal liberty as well as of the present doctor and medical staff. The government will therefore seek an appropriate solution.

15. The access to ex officio lawyer is not limited to just certain types of offences. The seriousness of the offence given by the possibility of imposing a penalty of imprisonment with a maximum of more than 5 years is one of the reasons for appointing an ex officio defence lawyer for a person in pre-trial proceedings, i.e. even a person who is detained in a police cell. However, also an accused, who is restricted in legal capacity or a minor accused is always entitled to an ex officio defence lawyer in the pre-trial proceedings while in police

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<sup>3</sup> More detailed information on any adopted measures enhancing equal access to education is available in the Revised Action Plan for the enforcement of the judgment in the case of D. H. and others versus the Czech Republic “Equal Opportunities” of February 2016, <https://rm.coe.int/CoERMPublicCommonSearchServices/sso/SSODisplayDCTMContent?documentId=09000016805ad0ba>.

custody regardless of the length of impending punishment. The defence lawyer must always be assigned in the pre-trial proceedings to the accused, who is deprived of liberty. The law does not link the access to the defence lawyer to the amount of the possible financial penalty that could be imposed. In a situation where the accused does not have a defence lawyer when they have to have one, a time limit will be determined pursuant to Section 38 of the Criminal Procedure Code for the selection of the defence lawyer and if not selected, the defence lawyer will be appointed.

### **Examination of complaints about ill-treatment**

16. Before providing specific statistics, the government would like to inform about the processes of submitting and examining a complaint about a member of the Police of the Czech Republic (hereinafter the "Police"). The author of the complaint describes all the circumstances of the misconduct of a police officer. However, it needs not always to be a conduct reaching the intensity of ill-treatment within the meaning of the Convention. Such a complaint shall always be assessed not by the title, but by its content.

17. If the complaint contains facts that suggest that a criminal offence was committed by a police officer, only the General Inspection of Security Forces (hereinafter the "GISF") shall be competent to handle the complaint. The complaint in this case is officially called a criminal complaint. The GISF then launches examination and ascertains whether the described conduct actually occurred. Then it accuses the police officer and the phase of investigation of the police officer begins.

18. Not every submission, however, contains facts suggesting criminal conduct. For example, using the first name or familiar form of address with a person restricted in personal liberty can be considered as ill-treatment, specifically degrading treatment, but it does not reach such severity that the submission would be investigated by the GISF and the offender brought to court. In these cases where the facts only indicate conduct that may be a misdemeanour, the authority competent for handling the complaint is the Inspection Department of the Police of the Czech Republic. The procedure for handling such submissions is set out in Section 175 of Act No. 500/2004 Coll., the Code of Administrative Procedure. The examination is concluded by the statement whether the complaint was justified, unjustified or partially justified. If the complaint is found to be justified or partially justified, the administrative authority is obliged to immediately take the necessary corrective measures.

19. The specific corrective measures are taken by the service official depending on the seriousness of the findings. In the case of less serious findings, the matter is discussed, for example, at a meeting of the department which is notified of the wrong procedure. In the case of more serious findings, the matter is dealt with by disciplinary punishment in disciplinary proceedings. The punishment can be a written reprimand, reduction in salary of up to 25% for a period of not more than 3 months, or deprivation of service rank. The deprivation of service rank is always associated with the release of the police officer from service.

20. The service official can also handle the complaint by immediate commencement of disciplinary proceedings without the preceding process. The procedure is regulated by Act No. 361/2003 Coll., on the service of members of security forces. Records of these cases are not included in the table below, since they are not monitored (there is no system with these criteria, which would allow this), their number is estimated to just a few.

21. All submissions are investigated by the competent authorities and the fact that they are not dealt with directly by the GISF does not diminish the objectivity of the examination conclusions and the effectiveness of the investigation. The requirement of the Convention to prosecute all identified ill-treatment is fulfilled, only the method of examination of the

submission and the type of the imposed punishment are different. In cases where it is not clear whether there is a suspicion of a criminal offense or misdemeanour, the submission is consulted with either the GISF or the public prosecutor. If there is a dispute between the notifier and the state authority whether the submission is assessed correctly the matter shall be decided by the public prosecutor.

22. The numbers of complaints in the tables in Annex 1 are complaints handled by the control departments of the Police in accordance with the Code of Administrative Procedure. These are therefore submissions not revealing that an offence might have been committed and the competence of the GISF was not established. The tables show the numbers of complaints which were assessed as justified and partially justified. However, the gender, age, ethnic or other affiliation of the persons, who made the submissions, are not monitored. There is no systematic monitoring either of the data on the measures taken in the case that a complaint was recognised as justified or partially justified.

23. The tables in Annex 2 contain information about criminal prosecution of the members of security forces from 2012 to the present. In 2012, the GISF was established.

### **Domestic and sexual violence**

24. The protection from domestic violence is generally implemented at two levels — the level of civil law and the level of criminal law. The Czech Criminal Code effective from 1 January 2010 defines the offence of cruelty to a person in care (Section 198) and the offence of cruelty to a person living in a common dwelling (Section 199). The Criminal Code, however, does not only punish the conduct defined in the above merits, it also protects the victim and their personal sphere against conduct which could subsequently result in violence, e.g. being stalked by the perpetrator by the offence of stalking (Section 354). This offense applies to a person who is chasing after another in the long term and this conduct is capable of raising justified fear for the life or health of the stalked person or persons close to them. The protection of criminal law is therefore primarily implemented through these provisions of substantive law.

25. The Criminal Code defines a wide range of facts of crime to enable effective sanctioning of offences against human dignity in the sexual area. It defines the criminal offences of rape (Section 185), sexual coercion (Section 186), sexual abuse (Section 187), distribution of pornography (Section 191), production and other handling of child pornography (Section 192), abuse of a child to produce pornography (Section 193), and establishing illegal contacts with a child (Section 193b). The legislation in this area is fully compatible with international conventions, such as the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, whose ratification process is currently in progress, and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, whose ratification is being prepared. The sanctioning of violence is dealt with through the criminal offences against life and health. These offenses include, e.g., the crime of murder (Section 140), bodily harm (Section 146), grievous bodily harm (Section 147).

26. The rights of victims of criminal offences and their status are further regulated by Act No. 45/2013 Coll., on victims of crime and amendment to certain laws (the Crime Victims Act). This Act mainly defines the rights of the victim as a subject of special attention from the state and regulates financial assistance to the victims from the state. It also defines the so-called particularly vulnerable victim, whose rights are further strengthened and which according to this law include among others a child, a victim of sexual violence or human trafficking. The legal rights of the crime victims include, e.g., the right to the provision of professional psychological, legal and other assistance, the right to access information relating to the case in which they have become victims of a crime, the right to police protection, the right to privacy, the right to protection from secondary harm,

and the right to financial assistance. Particularly vulnerable victims are entitled to free assistance and victims of sexual violence are entitled to reimbursement of the costs associated with the provision of professional psychotherapy and physiotherapy or other professional services focused on the remedy of the non-pecuniary harm. For more information about the possibilities of compensation for victims of sexual violence, see paragraph 157 et seq. below.

27. To ensure the protection of the rights of individuals such as witnesses and victims, in particular with regard to their age or health condition, or if required by security or other serious reasons, it is newly possible from 2012 to use technical devices for video and audio transmission — videoconferencing equipment. In relation to the Crime Victims Act, the Criminal Procedure Code emphasised the need for protecting the personality of the witnesses, in particular as regards their personal information and intimate area, and conduct the interrogation so that it would not be necessary to repeat it. It was also established that a witness who is endangered due to the accused or convicted person's being at large, has the right to information concerning the accused (convicted) person, e.g. on their release or escape.

28. Czech legislation also allows preventing of contact of the violent offender with the victim, even without the already ongoing criminal prosecution of the violent offender. According to the Police Act, it is possible to expel a person from a flat or house inhabited together with a person endangered by attack, if it can be reasonably assumed based on the established facts that the person would commit a dangerous attack against life, health or personal liberty or a particularly serious attack against human dignity. The expulsion lasts for 10 days. This regulation is connected to the protection provided by the civil law provisions. Upon the filing of a proposal for preliminary injunction under the Act No. 292/2013 Coll., on special judicial proceedings, during the expulsion its term shall be extended until the coming into force of the court's decision on this proposal. The Court shall decide on this preliminary injunction in the proceedings regarding the protection against domestic violence within 48 hours. If the court approves the proposal, it shall order the defendant, in particular, to leave the common dwelling and not enter into it and its immediate surroundings, refrain from meeting with the petitioner or from unwanted following and harassing of the petitioner in any manner.

29. The related civil law regulation is contained in Section 751 et seq. of Act No. 89/2012 Coll., the Civil Code, effective from 1 January 2014. This provision allows the court at the request of one of the spouses to limit or even exclude for a specified time the other spouse's right to live in the house or flat in which there is the family household of the spouses, if the further cohabitation of the spouses becomes for the petitioner unbearable because of physical or mental violence against the petitioner or another person who lives in the family household of the spouses.

30. Furthermore, in the course of the criminal proceedings, the accused can be prohibited from contacting certain persons, staying in a particular specified place or from entering into a dwelling by the imposition of a preliminary injunction issued in accordance with Section 88b et seq. of the Criminal Procedure Code. In this way it is possible to effectively protect the victim from stalking or domestic violence.

31. In accordance with Act No. 108/2006 Coll., on social services (hereinafter the "Social Services Act"), the victims of sexual and domestic violence have at their disposal a variety of social services, which they may use in their difficult living situations. These include intervention centres, asylum houses and professional social counselling. Through the intervention centre, the person endangered by the violent conduct of another person is offered assistance free of charge. The assistance is available quickly after the expulsion of the violent offender from the common dwelling. Social services in the intervention centre are provided as ambulatory, field or residential services. Asylum houses provide residential

services for a transitional period for people in difficult social situations associated with the loss of housing. Asylum houses may specialise in a target group of people endangered by domestic violence and may have a secret address. Professional social counselling can be provided in counselling centres for the victims of crime and domestic violence.

32. The table in Annex 3 shows the individual types of social services, along with the number of persons in the respective target groups that made use of these services.

33. The assistance to victims of domestic violence should be supported by the law on social housing, which should be submitted in 2016. The law should determine the legal framework for the system of social housing, whose principle is to ensure access to long-term, standard-quality, and spatially non-segregated rental housing and its maintenance. The design of this law envisages the inclusion of the victims of domestic violence among the particularly vulnerable target groups of this law.

34. The Police has placed long-term emphasis on the issue of domestic and sexual violence and organises a series of training sessions conducted by both the police officers — trainers and senior officials, and specialised courses are further organised on the issue at police schools. The Ministry of the Interior also organises regular seminars on this issue, and announces grants for organisations dealing with the prevention of domestic and sexual violence.

35. There are also projects aimed at the support to crime victims, especially the particularly vulnerable victims, as defined in the Crime Victims Act, with a focus on child victims of sexual abuse and victims of domestic violence including child victims and elderly victims. One of the main projects in this area is the building of special interrogation rooms. These rooms were built to prevent the secondary victimisation. The conduction of questioning in an agreeable environment of the room allows the specially trained police officers to establish better contact with the victim. During the questioning of child victims, a psychologist is present throughout the course of the questioning, which is recorded and monitored by the public prosecutor and the judge so that there is no need for repeating the questioning in the court proceedings.

36. The implementation of the National Action Plan for the Prevention of Domestic Violence for the Years 2011-2014 continued in the period under review. It is followed up by the Action Plan for the Prevention of Domestic and Gender-based Violence for 2015-2018. The Action Plan contains measures divided into seven strategic areas (support for persons endangered by domestic and gender-based violence, children endangered by domestic and gender-based violence, work with violent persons, education and interdisciplinary cooperation, society and domestic and gender-based violence, analyses and data collection, legislation). The Action Plan applies to domestic violence and to other forms of gender-based violence in accordance with the definition of the Istanbul Convention, especially rape, sexual harassment or stalking.

#### **The mandate of the Ombudsperson**

37. The Public Defender of Rights already works as an independent institution for the protection and promotion of human rights, which in many ways fulfils the requirements of the Paris Principles. The scope of operation and the powers of the Ombudsperson are regulated by a special law on the Ombudsperson. The Ombudsperson's task is to observe the performance of the state administration in accordance with the law and with the principles of good governance, whereby contributing to the protection of fundamental rights and freedoms. The Ombudsperson conducts independent investigations, makes recommendations to remedy deficiencies and requires the authorities to fulfil them. The Ombudsperson can recommend the complainants steps to protect their rights. The authorities are obliged to cooperate with the Ombudsperson and take corrective measures.



Otherwise, the Ombudsperson shall inform the superior authorities, the government or the public. The Ombudsperson also deals with the supervision of the places where persons are restricted in personal liberty pursuant to the Optional Protocol to the Convention (the National Preventive Mechanism). As a body to combat discrimination, the Ombudsperson also provides assistance to victims of discrimination in the protection of their rights. The Ombudsperson also monitors of the protection of the rights of foreigners and the treatment of them during expulsion.

38. The Ombudsperson is elected for a period of 6 years by the Chamber of Deputies of the Parliament to which they are responsible for the performance of the function. The Ombudsperson is independent of any other authority and has their own office, which is financially independent, working permanently and fulfils their tasks. They inform the Chamber of Deputies through regular reports which are published. Based on their activities, the Ombudsperson recommends changes to legislation, government policies and administrative procedures. The Ombudsperson often makes comments on the proposals of government policies and legislative measures in terms of the protection of human rights.

39. The amendment to the Act on the Public Defender of Rights of 2015, which is currently in the legislative process, proposes further strengthening of the Ombudsperson's competence in the area of human rights. The amendment should simplify and streamline the activities of the Ombudsperson to become more accessible to the complainants. The obligation to cooperate with the Ombudsperson should also apply to private entities. The competences of the Ombudsperson to protect human rights should be extended by the authority to propose to the Constitutional Court the repeal of laws and to bring actions in the public interest in matters of discrimination. The Ombudsperson should also monitor the fulfilment of the Convention on the Rights of Persons with Disabilities. However, even under the current legal status, the Ombudsperson has already been fulfilling the role of the authority for the protection and promotion of human rights in accordance with the Paris Principles. If the amendment is approved, then after its coming into force, the Ombudsperson's accreditation with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights will be considered.

### **Article 3**

#### **Extradition, expulsion and diplomatic assurances**

40. In the period from 1 January 2011 to 31 December 2015, there were a total of 33 cases of extradition from the Czech Republic to a foreign country and 44 cases of extradition from a foreign country to the Czech Republic. The Ministry of Justice does not have the statistics of the cases of extradition for the previous period.

41. The content and character of the received and provided diplomatic assurances depend on the nature of each individual case.

#### **Received assurances**

42. When evaluating the effectiveness of the assurances provided by the foreign state, it is primarily assessed whether the general human rights situation in the receiving state does not absolutely preclude the receiving of any assurances. When assessing the quality of the provided assurances and whether they could be relied on with regard to the practice in the receiving state, the following factors, inter alia, are taken into account in the light of the practice of the ECtHR:

- whether the assurances are specific, or general and vague;

- by whom the assurances were provided and whether this person can oblige the receiving state;
  - whether the assurances are related to treatment that is in accordance with the law, or illegal in the receiving state;
  - whether they were provided by a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms;
  - the length and strength of bilateral relations between the returning and the receiving states, including information on the compliance with similar assurances by the receiving state;
  - whether the compliance with the assurances can be objectively verified by a diplomatic or other monitoring mechanism, including allowing free access to the complainant's lawyers;
  - whether there is an effective system of protection against ill-treatment in the receiving state, including whether it is willing to cooperate with international monitoring mechanisms and whether it is willing to investigate allegations of torture and punish those who are responsible for it;
  - whether the person had already been ill-treated previously in the receiving state;
  - whether the reliability of the assurances was reviewed by the national courts of the returning state.
43. The minimum standard diplomatic assurances, which are required from a foreign state, are as follows:
- the requested person shall not be tortured or subjected to inhuman or degrading treatment;
  - the right to fair proceedings shall be guaranteed to the requested person;
  - no criminal prosecution shall be conducted against the requested person, they shall not be sentenced or deprived of liberty due to enforcement of a sentence or preventive measure for any other offence committed prior to their extradition than the one for which they were extradited by the Czech Republic, and their personal liberty shall not be limited for any other reason;
  - the requested person shall not be extradited to a third state;
  - for the offence for which extradition is sought, it is not possible to impose and execute the death penalty;
  - the requested person will not be subjected in the requesting state to persecution by reason of their origin, race, religion, gender, membership of a particular ethnic or other group, nationality or their political views or other similar reasons, and their position in criminal proceedings shall not deteriorate during a custodial sentence of imprisonment or protective measure involving deprivation of liberty;
  - in the case of extradition, the competent authorities of the requesting state shall without delay inform the Ministry of Justice about any complaint filed by or on behalf of the requested person regarding ill-treatment or physical violence by police officers or members of the prison service, as well as about the way in which such a complaint was handled;
  - the consular staff of the Embassy of the Czech Republic or any other diplomatic mission in the relevant country shall be allowed to visit the requested person in prison and talk to them without the presence of third parties and shall be guaranteed

the right to information regarding the status of the criminal proceedings or the enforcement of punishment imposed on the requested person, including the provision of a copy of the final judgment of conviction.

44. The subsequent process of monitoring the compliance with the provided assurances is then set in the framework of the relevant diplomatic mission in the requesting state. In addition, after the extradition, the Ministry of Justice turns in regular intervals to the requesting state with requests for information regarding compliance with the provided diplomatic assurances, based on which it then assesses further action.

#### **Provided assurances**

45. The minimum standard diplomatic assurances, which are provided to a foreign state, are essentially similar to the contents of the assurances which are required from the foreign country in the case of extradition from the Czech Republic. In this context, however, it should be noted that pursuant to Section 82 of Act No. 104/2013 Coll., on international judicial cooperation in criminal matters, where a foreign state makes extradition conditional on the providing of assurance regarding criminal proceedings, the Ministry of Justice can only provide such an assurance with the prior approval of the court. The specific content of the diplomatic assurances depends on the nature of each individual case.

#### **Asylum seekers and foreigners in detention centres for foreigners**

46. The regulation of detention of asylum seekers or, as applicable, applicants for international protection has undergone a change especially with regard to the obligation to transpose the provisions of EU law into national law. At the EU level, the new reception directive was approved in 2013, which regulates the detention of applicants for international protection. The provision set out by the reception directive was transposed into national law by Act No. 314/2015 Coll., effective from 18 December 2015. This Act also introduced alternatives to detention, the so-called special measures.

47. Asylum seekers can be imposed two special measures, either the obligation to be accommodated in the residential centre of the Ministry of the Interior or the obligation to report to the Ministry in person at the time specified by the Ministry. Subject to the fulfilment of other legal conditions, special measures can be imposed on vulnerable groups except for unaccompanied minors. The Asylum Act excludes detention of vulnerable groups of asylum seekers, which are, in particular, an unaccompanied minor, a parent or a family with a minor child, a parent or a family with an adult child with disabilities, a person over 65 years old, a person with disabilities or a serious illness, a pregnant woman, a victim of human trafficking or a person who was tortured, raped or subjected to other serious forms of violence.

48. The reception centres for asylum seekers are used in particular to carry out the initial acts related to the proceedings for granting international protection. Section 46 of the Asylum Act stipulates that the asylum seeker may not leave the centre until the execution of statutory acts (identification, medical examination, issuance of a certificate of the applicant for international protection, etc.). The Ministry is obliged to perform these tasks without undue delay and the applicant for international protection spends in the reception centre usually only few days. During this time, the asylum seeker may move freely inside the entire area of the reception centre, but is not allowed to leave the reception centre except for administrative or judicial procedures or medical treatment outside the reception centre.

49. According to Section 46a of the Asylum Act, it is possible to detain the applicant for international protection either in the reception centre or in the detention facility for foreigners in order to determine or verify the identity of the applicant or to prevent any threat to national security or public order. In this case, the applicant is detained in the

facility for a period determined gradually by the decision of the Ministry of the Interior, which may not exceed 120 days. Even in the case of detention, the asylum seeker can move freely throughout the entire area of the centre. If an applicant for international protection is detained in the detention facility for foreigners, the maximum period of detention is 120 days; however, they are deprived of personal liberty, cannot move within the premises of the detention facility and are treated as foreigners awaiting expulsion.

50. A specific category are foreigners who are detained in the Czech Republic for the purpose of transfer to another member state of the European Union, which is responsible for handling their application for asylum. These foreigners are not regarded under the national law as applicants for international protection and are deprived of personal liberty under the same conditions of regime as foreigners awaiting expulsion.

51. Act No. 326/1999 Coll., on the residence of foreign nationals in the Czech Republic, as amended, (hereinafter the “Aliens Act”) stipulates that a person may be detained subject to other statutory conditions only if they are older than 15 years. Unaccompanied minors can only be detained if there is a reasonable risk to the security of the state or a risk of serious infringement of public interest and only if it is in the interest of the unaccompanied minor in accordance with the Convention on the Rights of the Child. As regards the detention of families with minor children, these children are accommodated in detention facilities for foreigners together with their parents. In their case, the government believes that it is in their best interest not to be separated from their legal representatives even at the price that they will be accommodated in the detention facility for foreigners and will be subject to special conditions described below. From the above it can be concluded that the detention of children is used only as a measure of last resort.

52. The legal regulation regarding the detention facilities for foreigners is contained in Chapter XII of the Aliens Act. It regulates rights and obligations of the detainees as well as of the facility operator, i.e. the Administration of Refugee Facilities of the Ministry of the Interior. The provision of Section 134 lays down the basic conditions of detention, such as the right of the detainee to a bed, food and basic toiletries. It also establishes the right to receive and send written communication, to receive visits in the facility, and subject to availability, have access to printed media and books.

53. Specific conditions are regulated by the internal rules of the facility, which stipulate, inter alia, the rules for the provision of medical services and the provided psychological and social care, the time schedule of the provided food, with maximum consideration of the requirements of cultural and religious traditions of the detained foreigner. The internal rules also set out the rules and offer of cultural and sports activities. The facility operator is obliged to allow the minors who are subject to compulsory education to accomplish this activity. Internal rules further set out the system of visits, the time schedule to manage purchases for the detained foreigners and other technical matters.

54. The facility, which is designed for families with children, contains a children’s centre whose furnishings and equipment correspond to a kindergarten with the permanent presence of a nurse. There are also playground, gym and indoor playrooms available. Finally, there is an outdoor artificial playground and a gym for older children and adults.

55. Health care in the facilities is provided 24 hours a day by paramedical staff (nurses). A general practitioner for adults has surgery hours during the normal working time. If specialised medical care is needed, it is provided by external medical facilities on a contractual basis.

56. The rooms of the foreigners are equipped with beds, a table, cabinets to store personal items and chairs. Playrooms for children and background facilities in the form of a common room for parents and a kitchenette are available in each of the accommodation buildings. Foreigners are regularly provided with toiletries, such as diapers, children’s

drugstore goods, toothbrushes or washing powder, the scope of which is determined with regard to gender and age.

57. The Government is aware that with the large increase in the number of foreigners detained in the second half of 2015, the conditions in detention facilities for foreigners showed shortcomings for a certain period of time. The material, organisational and staffing provision of the facilities was not wholly satisfactory for several weeks in the autumn of 2015. In response to this increase, however, the number of staff was considerably strengthened, the facility in Bělá — Jezová was adapted to the specific needs of families with children, for which it is now earmarked, and two new detention facilities for foreigners were opened in Drahonice and Vyšní Lhoty. Currently, the staff of the facilities, which was recruited in connection with the increased influx of foreigners to the Czech Republic, is deployed according to the needs of the individual facilities and in case of a new larger increase in people, it is ready to work in any location as needed.

58. Statistical data are presented in Annexes 10-17 to this report. The relevant data show that in the period under review, the request for international protection in the Czech Republic was filed by a total of 4,643 persons. In the period under review, asylum was granted to a total of 605 persons and additional protection to a total of 1,491 persons. The reasons for granting asylum or additional protection are not recorded and thus the cases of torture or risk of torture in this connection are not known.

59. The law regulates the legal remedies both in the case of the procedure for granting international protection and in the case of decisions on administrative expulsion. The administrative procedure for granting international protection is conducted in the first instance by the Ministry of the Interior in a specific administrative procedure. Action may be brought against these decisions before the regional court, which may have a statutory suspensory effect according to the type of the contested decision. In the case that the action does not have statutory suspensory effect, it is possible to request it together with the action.

60. The proceedings and decisions on administrative expulsion are subject to the Aliens Act, as well as the Code of Administrative Procedure. The appeal is decided by a superior authority (in cases of decisions of the Immigration Police Division it is the Directorate of the Immigration Police Service and in cases of decisions of the Directorate of the Immigration Police Service it is the Ministry of the Interior). The decision of the superior administrative authority can be challenged by a court action, which has a statutory suspensory effect on the enforceability of the decision on administrative expulsion, except where there is a threat to the security of the state.

### **Stateless persons**

61. The law of the Czech Republic does not contain a definition of statelessness. However neither Act No. 325/1999 Coll., on asylum (hereinafter the “Asylum Act”) nor the Aliens Act do omit stateless persons from their scope. In other words, all the institutes of the above-mentioned legislation can be applied to a stateless person. In addition, the amendment to Asylum Act No. 314/2015 Coll., explicitly lays down the powers of the Ministry of the Interior when deciding on applications submitted under the Convention relating to the Status of Stateless Persons.

62. No special database of stateless persons in the territory of the Czech Republic has been established, but stateless persons are included in the immigration databases operated both under the Asylum Act and under the Aliens Act.

63. On 1 January 2014, Act No. 186/2013 Coll., on the citizenship of the Czech Republic, came into effect. As regards addressing the issue of statelessness, it is based on the principles laid down by the Convention on the Reduction of Statelessness, which was joined by the Czech Republic in 2001. The law stipulates that the citizenship of the Czech

Republic shall also be acquired by birth by a child that is born on the territory of the Czech Republic and who would otherwise become a stateless person, if both parents of the child are stateless and on the date of birth of the child at least one of them has a residence permit in the territory of the Czech Republic for longer than 90 days.

## **Articles 5 and 7**

### **Requests for extradition**

64. The government does not register any request of another state for the extradition of any person suspected of having committed the crime of torture.

## **Article 10**

### **Training aimed at detecting signs of ill-treatment**

65. For the purposes of assessment of torture and other inhuman and cruel treatment, the Police cooperates with police psychologists, with non-governmental and non-profit organisations, such as the White Circle of Safety, which provides the Police with training in the use of a special SARA DN (Spousal Assault Risk Assessment — Domestic Violence) questionnaire, which is intended in particular for victims of domestic violence, but can be used partially for the evaluation of cruel treatment in case of psychological injury.

66. The Ministry of Labour and Social Affairs (hereinafter the “MLSA”) also grants accreditation of educational programmes for the training of professional workers of social services targeted to cruel, inhuman or degrading treatment or punishment of persons. These are educational programmes aimed at target groups of users of social services, which are the elderly, children, women and the mentally and physically disadvantaged. For the area of further education of social services workers, social workers, social services managers and individuals, who provide assistance to the beneficiaries of care allowance, the MLSA accredited educational programmes in the period 2007-2016 with this specific content. These include, for example, 103 courses focused on the issue of the prevention of violence (domestic violence and crisis intervention), 38 educational programmes focused on assistance to victims of violent crimes, 46 programmes focused on the prevention of torture and abuse of persons, 39 programmes focused on the issue of the CAN syndrome (Child Abuse and Neglect), 9 educational programmes focused on age-related discrimination and ageism and 124 programmes aimed at coping with aggression and other problem behaviour of the clients.

67. The Ministry of Justice implements through the Judicial Academy a wide range of training courses designed for participants among judges, prosecutors and workers of the Prison Service of the Czech Republic. Recently, seminars were held, inter alia, on the following subjects: the rights of victims, domestic violence and the rights of victims in criminal proceedings, criminal activity in prisons, interrogation, the specifics of imprisonment. All the mentioned training courses were devoted in part to the issue of ill-treatment and the specific needs of the injured and victims.

68. The Ministry of Health is aware that doctors investigating persons restricted in personal liberty can significantly contribute to the prevention of ill-treatment and its possible detection. Therefore, a legislative change will be made this year, through which it will be laid down in Act No. 372/2011 Coll., on health care services and the conditions of their provision (hereinafter the “Health Care Services Act”), that the physician is obliged to report suspected ill-treatment to the responsible supervising authorities. Under the existing legislation, the physician is prevented from the notification by the obligation to maintain

confidentiality under Section 52 of the Health Care Services Act. Along with this amendment, a methodology will be issued relating to the detection, recording and reporting of ill-treatment.

### **Crimes of racial hatred and measures against discrimination of minorities**

69. Seminars are implemented in the context of the Campaign against Discrimination and Hate Violence focusing on the prevention of racist attacks and the detection of crimes motivated by racial hatred for the members of the Police. The seminars are carried out in regions where there is a greater risk of racist attacks. There is also an instructional movie intended for the Police dealing with two specific cases of violence of hatred.

70. The Ministry of Justice organises training courses on the issue of hate crime for the representatives from the judiciary. In the period under review, seminars were organised with the following topics: Extremism — racially motivated; Extremism in the European context, Racial and right-wing extremism, Extremism with focus on religious extremism, Hate crimes. The first of these seminars was organised in cooperation with the Agency for Social Inclusion, which implements the Campaign against Discrimination and Hate Violence.

71. Every citizen of the Czech Republic, who expresses interest and meets the conditions set out by Act No. 361/2003 Coll., on the service of members of security forces, can become a member of the Police. The Czech Republic does not keep records of members of ethnic or national minorities and therefore cannot state that a member of a specific minority is a member of the corps of the Police. Keeping such records is not permitted by law. Generally, if a member of any minority, not only the Roma, meets all legal requirements, there is no obstacle for which they could not pursue the police profession.

72. The involvement of members of the Roma communities in the work of the Police is carried out primarily through the implementation of the “Programme of Prevention of Criminality and Extremism — Dawn” by creating and subsidising the position of assistant for crime prevention within the municipal police and the position of liaison officers for minorities within the Police, which were established in 2005. In 2015, there were 175 assistants for crime prevention in 58 cities throughout the Czech Republic. The assistants are chosen from among the population of socially excluded localities (often the representatives of the Roma community) and after training, they take part in increasing the standard of safety and the maintenance of public order. The Police also placed 40 police officers specialising in work with minorities in the four pilot regions.

73. Translation of the Anti-discrimination Act into the Roma language is being prepared.

## **Article 11**

### **The prison system**

74. The development of alternative sentences is presented in the table in Annex 4. The survey shows a visible shift away from imposing custodial sentences in the years 2013 and 2014.

75. In recent years, significant steps were taken in the penal policy based on the principle that imprisonment must be understood as the penalty system’s ultima ratio. The Criminal Code effective from 2010 continued to reduce the space for imposing unsuspended imprisonment and expanded the options for the use of alternative sentencing and substantive alternatives to punishment that can be applied to less serious offences, i.e. misdemeanours. For this reason, two new alternative punishments were laid down, namely

the sentence of house arrest and the sentence of ban on attending sports, cultural and other social events. Unfortunately, more frequent use of alternative sentencing in practice was still not fully achieved due to the fact that the provision of electronic control of house arrest has thus far failed, and that the community service penalty may not be imposed if it has not proven well with the offender in the recent past. The penal policy in the Czech Republic therefore clearly aims at ensuring greater use of alternative sentences and thanks to the planned introduction of electronic control of the house arrest sentence this will be successfully managed in the future.

76. The use of pepper gas by the prison service members will be revised by 31 December 2016 and legislative changes and system regulatory measures will be proposed in this context.

77. Studies investigating the causes of suicides during imprisonment<sup>4</sup> and custody are processed on a regular basis. The Analysis of Suicidal Behaviour for the year 2015 monitored, in addition to the basic statistics, also all relevant personality and situational factors that could act as interacting variables in the suicidal behaviour. In order to reduce the risk of suicide and inter-prisoner violence, measures were implemented toward more efficient use of the existing resources such as the method of predicting the persons at risk of suicidal or violent behaviour, the period of increased checks or improvement of the control mechanisms as such. In January 2016, the government approved the Concept of the Prison System until 2025. This Concept envisages measures leading to the restructuring of the personnel or to the necessary increase in the number of employees and members of the prison service, who work directly with the prisoners. Cells under camera surveillance are gradually introduced in prisons, in particular in the detention ones; however, this is not a blanket measure.

78. The provision of medical care of the imprisoned persons usually occurs without the presence of a member of the Prison Service of the Czech Republic. Supervision is provided by a camera system, which is in almost all prisons. The camera system is without audio recording and the officer monitors the situation in the consulting room through the video, which they are watching from another room. Where there is not yet a camera system, the entrance doors of the consulting rooms of the medical departments are equipped with an inspection hole. Only the medical staff is present in the consultancy room and an officer is only present in cases of imminent danger and at the request of a physician. These measures allow the escorting officer of the same sex in the hallway or in the relevant room to visually control the behaviour of the prisoner during their stay in the consultancy room without the possibility of listening to the conversation between the prisoner and the attending medical personnel. This provides adequate discretion and maintenance of patient confidentiality; on the other hand, it allows the escorting officer to intervene in a timely manner in the case of violation of order and security.

79. A mobile transparent barrier in the form of a retractable grate is used only if there is a security risk and if so decided by the physician. For preventative safety reasons, the examination is carried out in this way after the assessment of risks of psychiatric patients and persons placed in security detention. In some cases, the patient is examined in the presence of a member of the prison service. Whereas it is necessary during the psychiatric examination to establish close contact with the patient, it is appropriate to eliminate to the maximum extent the presence of other persons, including the officer, who is within earshot. This can be done with the help of a mobile transparent barrier. Other psychiatric examinations are conducted in the classic ambulatory manner in consulting rooms.

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<sup>4</sup> The accused constitute up to half of the suicides in the prison population.



80. The provision of health services to prisoners is still under the competence of the Prison Service of the Czech Republic. According to the approved Concept of the Prison System until 2025, an analysis of the possible variants, their advantages and disadvantages, the anticipated costs and benefits is envisaged. The analysis will focus on the following variants — the possibility of maintaining the current system (with partial modifications in areas where most crucial problems are seen, such as staffing, instrumentation and technical equipment, etc.), creation of a medical service as a separate organisational unit, creation of a state-funded organisation, the possibility of establishing civilian medical offices on a contractual basis or a general shift of the health agenda under the responsibility of the Ministry of Health.

### **Incommunicado detention**

81. Incommunicado detention is unknown to the Czech legal order. The Charter of Fundamental Rights and Freedoms in Article 8 stipulates that an accused or a suspect in a crime may only be detained in cases and under the conditions laid down by law.

82. The Czech legal order distinguishes detention under the Police Act and detention under the Criminal Procedure Code. In both cases there is a restriction of personal liberty. The reasons for detention are enumerated in Section 26 (1) and Section 27 (1) of the Police Act. For example, according to Section 26 (1) these are situations where a person by their conduct immediately endangers their life, the life or health of other persons or property, should be brought, e.g., to the police station, escaped from imprisonment, from protective treatment, institutional care, preliminary injunction or protective care or from security detention, or was caught in an apparent administrative offense, or if there is reasonable concern that they will continue the unlawful conduct or obstruct the proper clarification of the matter. An alien can according to Section 27 (1) additionally be detained if they committed acts for which their stay in the territory of the Czech Republic can be terminated or the proceedings on administrative expulsion can be initiated, if they should be deported or there is reason to believe that they illegally entered the territory of the Czech Republic or are staying here illegally. Pursuant to Section 26 (2) of the same Act, the police officer shall release the person without delay after the reason for the detention lapses. Detention under Section 26 (1) and 27 (1) may last a maximum of 24 hours, under Section 27 (2) a maximum of 48 hours from the moment of restriction of personal liberty when during additional 24 hours the decision on termination of stay or administrative expulsion may be served to the alien. The police officer shall produce an official record of the detention.

83. As mentioned above in paragraph 11, the Police is obliged immediately after the commencement of the detention to notify the person at the option of the detainee and the other persons referred to in the Act.

84. Pursuant to Section 76 (1) of the Criminal Procedure Code, a police authority can detain a person suspected of committing a crime who has not yet been charged, if there are any reasons for custody and the conditions laid down by law are observed. Pursuant to Section 76 (2) of the Criminal Procedure Code, anyone can detain a person who was caught committing a crime or immediately thereafter, if it is necessary to establish their identity, to prevent escape or to secure evidence. The detained person must be immediately informed of the reasons for the detention, questioned and within 48 hours either released or brought before a court. The judge must question the detainee within 24 hours from the committal and decide on custody or release.

85. The right of the detainee to choose a defence lawyer, to talk with them without the presence of a third party and consult with them already during the detention is guaranteed in Section 76 (6) of the Criminal Procedure Code.

### **Disciplinary punishments during detention and imprisonment**

86. The proceedings relating to disciplinary offenses during custody are regulated by Section 23 of Act No. 293/1993 Coll., on execution of custody (hereinafter the “Custody Act”). The decision on disciplinary punishment must be notified to the accused. The accused may lodge a complaint against such a decision within three days from its notification or its delivery. The complaint is decided on by the prison director, while a complaint against the decision of the prison director is decided on by the Director General of the Prison Service of the Czech Republic. The decisions on forfeiture and on placement in solitary confinement are subject to review by the court.

87. The provision of Section 52 of Act No. 169/1999 Coll., on the execution of the sentence of imprisonment and amendments to certain related laws (hereinafter the “Imprisonment Act”) lays down the right of the convicted person to file a complaint against the decision on imposing a disciplinary punishment. It also establishes the right of the convicted person to seek judicial review of the decision issued in the proceedings to impose specified disciplinary punishments. The possibility of judicial review is limited to the decision on the imposition of disciplinary punishments of forfeiture, placement in a closed department for up to 28 days (with the exception of the period of the treatment programme), all-day placement in a closed department for up to 20 days and placement in solitary confinement for up to 20 days, and the decision on confiscation. In other cases, the convicted persons serving their term of imprisonment may defend themselves against disciplinary sanctions by complaints. The decision-making on the complaint is regulated in the same way as in the case of the accused in custody.

88. Pursuant to Section 22 (7) of the Custody Act, during the placement in solitary confinement, the accused person may not receive visitors except the defence lawyer and the attorney representing the accused person in another case. However, the placement in solitary confinement may be no longer than 10 days.

89. During the exercise of the disciplinary punishment of all-day placement in a closed department within imprisonment, prisoners are allowed to receive visits, and during the exercise of the disciplinary punishment of solitary confinement within custody, they are allowed to receive and send correspondence.

### **Conditions in prisons**

90. In the period of the last three years, the conditions in custody have been systematically improved. Within the prison service, new furniture is manufactured for the accused — beds, cabinets to store personal items, chairs, tables. All the existing furniture will be gradually restored within the whole accommodation capacity of custody. At the same time, the custody departments are being reconstructed (repair of energy distribution, painting, etc.).

91. The conditions for imprisonment are improved in the context of planned or emergency repairs. Currently, the construction of at least two new quarters is being prepared that will meet the latest requirements of the prison system. The approved Concept of the Prison System until 2025 envisages fundamental changes in the Czech prison system consisting in the implementation of measures aimed at reducing recidivism of criminal behaviour and effective reintegration of released prisoners into society. The concept also aims to allow the accommodation of the convicted persons in smaller cells and dormitories intended for less people, which, however, will meet international standards.

92. All the legislative standards concerning the hygienic conditions of imprisonment are complied with in prisons. The necessary medical and psychiatric care is ensured by doctors who are employees of the Prison Service of the Czech Republic or external specialists. If

necessary, the prisoners can also use civilian medical facilities outside the prisons for specialised examinations.

93. The amendment to Decree No. 345/1999 Coll., on the execution of the sentence of imprisonment, in force since 22 January 2015, allowed convicted persons to take a bath at least twice a week.

94. The convicted persons are provided with regular meals under the conditions and in values that meet the requirement of health. The health condition, age and difficulty of the work performed by prisoners are taken into account. The requirements of cultural and religious traditions of the convicted persons are taken into account to the extent allowed by the operation of the prison. The activity of a prison chaplain is currently ensured in all prisons.

95. The conditional release of persons serving their term of imprisonment is actively used. This is evidenced by the fact that in the years 2009 to 2014, a total of 22,289 convicted persons were conditionally released. The conditional release of imprisoned persons is decided by the courts on the proposal of the prison director, the public prosecutor or at the request of the convict, or possibly even without such a proposal.

96. The obligation of the convicted to pay a fee for their incarceration still exists, but it must be emphasised that the maximum fee is CZK 1,500 per month, which is a fraction of the actual cost. However, there are exceptions to this obligation. Pursuant to Section 35 (2) of the Imprisonment Act, the convict is exempt from the fee for a period for which they were not assigned to work without their own fault, if they were not beneficiaries of a pension or a retirement contribution or have not received money to the escrow account in the calendar month. The prisoner is also exempted from the fee if under the age of eighteen or if they were provided inpatient medical care. The fee for imprisonment is not paid by a convict who was included in the intensive educational or therapeutic programme. By this adjustment of the system, the prison service seeks to motivate the convicted to improve their qualifications. Based on a written application of the convict, the prison director may waive wholly or partly the obligation to pay the costs of imprisonment, if this is justified by the difficult social conditions of the convict.

97. The Prison Service takes prevention measures in the area of inter-prisoner violence. Prisons are reviewed as to whether they meet the regulation of the Director General on prevention, averting and early detection of violence among the accused, the convicted and the inmates. The said regulation imposes a number of tasks on the prisons which should not only reveal violence but also prevent it. The issue is regularly evaluated and adequate measures are also taken in relation to specific prisons. All the submitted findings are objectively investigated and assessed by the designated authorities of the prison service. In the case of detection of violation of the provisions of the Criminal Code, action is taken in accordance with the Criminal Procedure Code and the Act on victims of crime.

98. In Pardubice Prison, several members of professional staff — tutors are present even after 7 p.m., namely until 8:15 p.m. Members of the prison guard service are present 24 hours a day.

99. In a situation where a foreigner who does not speak Czech is to be examined by a physician, an interpreter is ensured with regard to the language barrier, today preferably from among the convicted, to which the patient must always give their consent. If the patient does not agree with this procedure or if no convict who could assist with interpretation is available, a professional interpreter is contacted. All prisons have an agreement for this purpose with the interpreting service. By the end of 2016, it will be ensured in the interest of protection of sensitive patient data and avoidance of the risks of misdiagnosis that exclusively professional interpreters will be used for interpreting. Interpreters from among the convicted will only be used in urgent cases where the service

of a professional interpreter cannot be provided quickly enough. An internal regulation will also lay down the obligation of the attending physician to record in the patient's medical documentation that during the provision of the health services the communication between the physician and the patient was facilitated by the interpreter.

100. The Prison Service perceives the issue of prevention of ill-treatment as very important. The situation in prisons is reviewed by the internal control mechanisms, national control mechanisms, which are under the supervision of the Public Prosecutor's Office and the Ministry of Justice, and by the international control mechanisms, such as the CPT. Prisons are also visited by the Ombudsperson within their competence to carry out systematic visits. After visiting the facility, the Ombudsperson prepares a report on their findings, which may include recommendations or proposals for remedial measures. In general, the control mechanisms deal with the implementation of the rights and obligations of prisoners, the conditions of accommodation and general treatment. The detected shortcomings are immediately addressed. For example, in 2015, the prosecutors performed 272 inspections, the Prison Service itself carried out 195 inspections and, moreover, there were 32 inspections made by the Ministry of Justice and 4 visits by the Ombudsperson. The most common findings related to the length of the accommodation of the prisoners in the entry department, exceeding the accommodation capacity, separation of sanitary facilities from the rest of the cell, wrong procedures during body search, failure to provide lockers, insufficient cell equipment, shortcomings in assigning to passable groups of internal differentiation, ability of prisoners to dispose of their own financial resources and exceeding the number of inmates assigned to one tutor.

#### **Conditions in police cells**

101. The improvement of the conditions in police cells is carried out on an ongoing basis depending on the financial capacities of police. The improvement of conditions is also included in the principles for the construction of cells, which form an Annex to the binding guideline of 2 December 2009 on escorts, guarding of persons and on police cells. Relevant authorities conduct inspection of the state of police cells, assess the obtained findings and notify of the identified deficiencies. In the case of so-called long-term cells, all the expert recommendations are being taken into account and endeavours are undertaken to create conditions offering the detainees the option to stay outdoors, where it is technically possible.

102. Pursuant to the provision of Section 25 of the Police Act, the officer is entitled to restrict the free movement of a person who physically attacks a police officer or another person, endangers their own lives, damages property or attempts to escape, usually by tying them to a suitable object, especially with handcuffs. In accordance with previous recommendations of the European Committee for the Prevention of Torture and Other Inhuman and Degrading Treatment or Punishment (hereinafter "the CPT"), wall fixtures in police cells were removed. Grips were mounted as part of the frame of the bench in the cell that allow the shackling of persons in natural and comfortable positions which are not detrimental to their health and allow the shackled person to sit comfortably. Similarly, outside of the cell these grips will be installed only in the service premises of the police departments, where there is no regular public access.

103. In January 2014, the rule of exceptionality of the use of handcuffs as restraints in a safe environment, arising from the judgment of the ECtHR *Kummer versus the Czech Republic*, was enshrined in the binding guideline of the Police President of 2 December 2009 on escorts, guarding of persons and on police cells and in the annexes attached thereto. The restriction of a person in the police cell in their free movement by handcuffing is reported by the officers in the documents related to the stay of detained persons in a police cell.

104. The use of a tear-inducing means by the Police in a closed room is not excluded by the Czech legislation. However, general conditions for the use of coercive means must be fulfilled in accordance with the Police Act. The police officer is entitled to use this coercive means to protect the security of their own person, another person or property, or to protect public order. Before the use, the police officer is obliged to ask the person, against whom they intervene, to refrain from unlawful conduct, warning that enforcement means will be used. The warning may be waived if there is danger to life or health of a person and the action allows for no delay. The Ministry of the Interior issued a binding opinion in 2010, which defines the conditions under which tear-inducing means can be used against persons who put up passive resistance. Police officers are trained within basic training for the situations where it is necessary to use coercive means. Police officers can always only use the coercive means for which they were properly trained.

105. The officers of the Internal Control Division of the Police Presidium organise in cooperation with the staff of the Office of the Ombudsperson training courses in the individual regional police directorates, in which the police officers are made familiar with general information concerning ill-treatment as well as with specific procedures and recommendations. This information is passed by the participants of the training on their subordinates.

106. Camera systems, including audio recordings are being gradually installed in the police cells. The recordings are stored for a maximum of 30 days in a repository with limited access to prevent their intentional deletion, and are then automatically overwritten. If necessary, for example, when handling complaints, the recordings are archived and enclosed with the files as evidence. The inspection departments of the Police are targeting part of their activities directly at the verification of the correctness of the treatment of people limited in personal liberty.

#### **Conditions in facilities for the detention of foreigners**

107. In the facilities for detention of foreigners, the Ministry of the Interior has supervisory powers pursuant to Section 148 (1) of the Aliens Act. Like prisons and police cells, the facilities are also visited by the Ombudsperson. As an additional measure, which should contribute to the prevention of ill-treatment, amendment No. 314/2015 Coll., brought into the Aliens Act the authorisation of international or non-governmental organisations involved in the protection of the rights of persons restricted in personal liberty to monitor whether the facilities for detention of foreigners are used in accordance with the Aliens Act. The operator is entitled not to allow the organisation of this monitoring due to endangering the proper operation and safety of the facility.

108. The complaint relating to the conditions of the detention may be submitted by the foreigner to the Ministry of the Interior. The Act also allows submitting a proposal to review the handling of the complaint to the Minister of the Interior. Currently there are discussions underway about introducing independent supervision of the compliance with the legislation in the detention facilities for foreigners by the competent public prosecutor's office.

#### **Psychiatric care**

109. The use of cage beds as a means of restraint is not permitted by law in the Czech Republic. The use of net beds in the Czech Republic is generally being abandoned, but there are still patient conditions where the use of this restraint is deemed necessary. Patients are placed in net beds only for the necessary period of time according to the current state of health. In the future, however, ways and procedures will be sought on how to replace the net beds completely with other means.

110. In July 2015, the Ministry of Health launched the preparation of a new methodological guideline on the use of restraints in medical facilities in the Czech Republic. For this purpose, the directors of psychiatric hospitals were contacted with a request for sending the internal regulation governing the use of restraints in their medical facility. Based on the received documents, the Ministry of Health prepared a draft of methodological guideline, which was further consulted with medical professionals. The comments from the medical professionals and the Ombudsperson will be incorporated in the final version of the methodological guideline and it will be prepared after the approval of the amendment to the Health Care Services Act.

111. The strict and uniform regulation of the use of restraints is ensured by the Health Care Services Act, whose amendment with respect to the use of restraints is currently being discussed in the Chamber of Deputies of the Czech Parliament. It is newly laid down that restraints can be used after a milder procedure has failed, except in cases where the use of a milder procedure would clearly fail to avert immediate danger to life, health or safety of the patient or other persons, while the least restraining means corresponding to the purpose of its use must be selected.

112. Besides the existing obligation of the provider of health services to record each use of a restraint in the patient's medical documentation, there will be a newly stipulated obligation to record the reason for using this constraint. The provider will also be newly obliged to keep a central register of the use of restraints, which will include summary information about the number of cases of the use of restraints in the calendar year for each restraint separately. The identification data of patients for whom restraints were used will not be indicated in the central register. The method of checking the use of restraints will be further specified in the methodical guideline currently being prepared.

113. The lodging of complaints against the provision of health services or against the activities related to health services is regulated by the Health Care Services Act. The complaint is filed with the provider against which it is directed. The filing of the complaint may not be to the detriment of the person who filed it or the patient to whom the complaint relates. If the person who filed a complaint with the provider does not agree with its handling, they may file a complaint with the competent administrative authority. In the case of ethical misconduct, it is also possible to contact the Czech Medical Chamber. Another option is to file a complaint with the health insurance company. All these bodies are independent of the provider of health services.

114. The Ombudsperson may be contacted with a complaint by a patient in protective treatment ordered by the court. The Ombudsperson then examines the conditions of protective treatment. In the case of other patients in psychiatric hospitals, the law only allows the Ombudsperson to examine whether and how the regional office handled the complaint about the provision of health services. The conditions in psychiatric hospitals and other medical facilities, where persons restricted in personal liberty by public authorities or as a result of dependence on the provided care are or may be located, are also dealt with by the Ombudsperson within the scope of systematic visits as a National Preventive Mechanism according to the Optional Protocol to the Convention.

115. The control of the providers of health services in connection with the provision of health services is performed by the control authorities stipulated by the Health Care Services Act. In recent years the Ministry of Health carried out several controls in psychiatric institutions focused particularly on the use of restraints. Similar checks are also carried out by the regional offices. With regard to the fact that the control of the use of restraints is currently not clearly regulated, the Ministry of Health plans to specify its form in the planned methodological guideline mentioned in paragraph 111. The control of the providers of health services in connection with hygiene and the protection of public health is conducted by the public health authorities.

116. In the period under review, the Ombudsperson made systematic visits in seven psychiatric hospitals. In one of these hospitals — Psychiatric Hospital in Dobřany, the visit was made in response to the death of a patient in a net bed and was focused on the use of restraints. Since the response of the facility and the Ministry of Health to the report on the visit to the Psychiatric Hospital in Dobřany was not satisfactory, the Ombudsperson conducted a follow-up visit to the establishment and demanded remedy of the identified deficiencies.

117. The Ombudsperson performed a series of systematic visits to children's psychiatric hospitals in the period under review. In response to these visits, the Ombudsperson formulated several recommendations to the Ministry of Health, which were aimed, for example, at the adoption of measures to increase the number of child psychiatrists or the transformation of institutional care to inpatient and outpatient care, which will be equally available throughout the Czech Republic. The Ombudsperson also recommended laying down in a law the rule of subsidiarity on the use of restraints. The last mentioned recommendation has already been fulfilled, while some other recommendations should be carried out in the coming years through the implementation of the reform of psychiatric care.

118. The Ombudsperson also examined the complaints by individuals on the conditions of protective treatment in the Psychiatric Hospital in Dobřany and the Psychiatric Hospital in Bohnice and demanded remedy of the identified deficiencies. The Ombudsperson here dealt with the impossibility for some patients of accessing outdoor areas, the dignity of the conditions of stay and the right to privacy.

119. Twice in the period under review, the Ombudsperson commented on the bill on health services. The Ombudsperson significantly influenced the requirements of the law on the quality of consent of individuals to the provision of health services so that the consent would be free and informed, unless the law provides otherwise. In 2015, by means of comments on the amendment to the Health Care Services Act, the Ombudsperson strived for the introduction of a central register of the use of restraints for individual providers of health services. These comments, however, were not accepted in the relevant points in the amendment procedure. The amendment of the Act does not introduce an obligation to document the reason why a milder procedure was not sufficient for calming the patient. The register is to be introduced into the Act only as the obligation to maintain a list of the numbers (statistics), rather than a list of cases (identification data of patients are not indicated). The Ombudsperson's proposal to enshrine the obligation to evaluate the cases and take measures to reduce the need to use restrictions was not accepted either.

120. The court proceedings in the case of the death of Mrs Věra Musilová have thus far not been finally closed. By its judgment of 14 May 2013, the Supreme Court annulled the decision of the court of first instance and the court of appeal and referred the case back to the court of first instance for further proceedings. In its decision the Supreme Court stated that the courts did not comprehensively assess all the relevant circumstances for the granting of moral satisfaction. The court further stated the following: It is not possible that human dignity of a handicapped individual would be at a different level than in healthy humans. Respect for human dignity is essential for the overall development of a physical person, for the quality of their life and full use of their personality rights, and it is therefore necessary to avoid interference in this personality sphere. Therefore, the scope of human dignity cannot be reduced even by type of disease, particularly in relation to a mentally disabled person, who is unable to effectively resist these attacks by themselves. Based on this judgment, the judicial proceedings in the case continue.

121. The reform of psychiatric care is in the implementation phase. The approval of the technical standards of psychiatric care in the area of ambulatory care, inpatient care and care provided to patients in their own environment, the so-called Mental Health Centres is

in the phase of finalisation. The first pilot Mental Health Centres should be established in 2016. Further development of the network of these facilities in the Czech Republic is planned in the following years.

122. Sustainable financing of the implementation of the health care part of the strategy for the reform of psychiatric care will be solved by taking into consideration the reform in the payment from public health insurance. The transformation costs should be covered through the European Structural and Investment Funds.

## Articles 12 and 13

### Reception of complaints

123. The complainants have a variety of options for filing a complaint. They are informed about these options and make full use of them. Prisoners can turn with complaints to any employee of the prison service, and may request an interview with the prison director. If they do not trust the director, they may turn to the supervising prosecutor, the GISF, the Ombudsperson and last but not least also to international organisations. The complaints of prisoners are always handled properly, within the prescribed time limit and in all points of submission. No measures are taken against the prisoners in connection with the filing of the complaints. In the framework of the internal control activities, the Prison Service of the Czech Republic examines all verifiable, i.e. specific claims, including information arising from anonymous submissions.

124. The process of complaint handling complies consistently with the applicable legislation — Section 175 of the Administrative Code. This area of activity is further elaborated in the Regulation of the Director General of the Prison Service of the Czech Republic No. 55/2014, on the handling of complaints and notifications. As described in paragraph 17 in relation to the members of the Police, if there is a suspicion that a member of the Prison Service committed a crime, the only competent authority to handle this complaint is also the GISF.

125. The table in Annex 5 shows a summary of the complaints of prisoners handled by the designated authorities of the prison service in the period from 1 August 2009 to 31 December 2015. The factual aspects of “physical violence of officers” and “inappropriate and offensive statements of officers” cover the monitored area of misconduct, including possible physical harm to prisoners by the prison staff. The presented summary of complaints indicates that in the period under review, no complaint about the factual aspect of “physical violence of officers” was assessed as justified. As regards the factual aspect of “inappropriate and offensive statements by officers”, the complaints were only found justified in two cases over the period under review. Specifically, these were violations of the principles of decent conduct and rules of politeness, e.g. using the first name or familiar form of addressing the imprisoned person, inappropriate remarks or comments. These were individual failures of specific individuals. The officers who committed these acts were disciplined pursuant to Act No. 361/2003 Coll., on the service of members of security forces.

126. As regards the situation ascertained in 2014 in the prison in Všechny, the matter was dealt with by the public prosecutor’s office and the GISF, and a court action was filed in particular cases. Two members of the prison service were prosecuted for the offence of abuse of power of a person in authority pursuant to Section 329 (1) (a) of the Criminal Code, personnel consequences were implemented at the highest positions of the prison management. The staff of the prison service was duly informed as well.

127. No changes were made as regards the Police. This issue is discussed in paragraph 16 et seq.



128. As regards the receipt of complaints against the procedure of the provider in the provision of health services or against the activities related to health services and the system of their evaluation, there were no changes from the entry into force of the Health Care Services Act on 1 April 2012. The complainant may file a complaint with the competent regional office, the Czech Medical Chamber and the health insurance company.

129. Members of the GISF pay special attention to the cases of suspected torture and ill-treatment by the police and the prison staff. In some cases, there was criminal prosecution of the members of the police and the prison service. The members of the inspection provide the victims with all the information on how they should proceed as victims of crime, where they can turn with the requirements for possible compensation. The inspection does not provide compensation to the victims of crime. Pursuant to the Act on crime victims, the compensation to the victims of crimes is provided by the Ministry of Justice. The victim may obtain compensation even within the criminal proceedings.

130. Nobody was charged with the crime of torture and other inhuman and cruel treatment in the years 2010-2013, three police officers were charged in 2014, in concurrence with abuse of power of a person in authority ) and two policemen were charged in 2015.

131. In its statistics of victims, the Ministry of Justice monitors in its statistics on victims whether the victim is a child, a man, a woman or a senior citizen and whether there is a family relationship. Nationality, compensation, rehabilitation or age of the victim are not being monitored. The Ministry of Justice recorded one victim (male) of crime of torture and other inhuman and cruel treatment in the year 2015.

132. The MLSA registered a total of 50 complaints related to the care in social services in 2015, which could be described as complaints about ill-treatment. The records, however, do not include the reason for the filing of the complaint or information about the persons to whom the complaints relate. In addition, complaints may be filed even anonymously. According to the nature of the complaint, the individual submissions were forwarded as incentives to carry out inspections by the department of social services inspection of the MLSA or as incentives to check the registration conditions by the registering authority of the locally competent regional office. In some cases, the complaint is also sent to the founders of the organisations providing the service. Of the 50 above-mentioned complaints filed in 2015, the regional office was approached in 18 cases. The rest of the complaints was forwarded to the department of social services inspection. These authorities will assess the incentive and use its statutory powers for further procedure.

133. The allocation of competencies in the area of control of social services is laid down by the Social Services Act. The regional office as a registering authority checks the registration conditions, which is, for example, the professional competence of all persons who will directly render social services, the provision of hygienic conditions and the material and technical conditions. The regional office is further approached in the case of the provision of services without registration. The inspection of the provision of social services checks the fulfilment of the obligations of the providers of social services stipulated in Sections 88 and 89 of the Social Services Act and the quality of social services. In 2015, violation of measures restricting the movement of persons was found in five social service facilities and in 2014, this issue was identified in eight facilities.

134. The Ministry of Health does not keep a central register of lawsuits, complaints and criminal proceedings relating to the issues provided for by the Convention. The providers of health services and even the organisation directly managed by the Ministry of Health act in the above proceedings completely independently without the obligation to notify the Ministry of Health of the initiation and progress of these proceedings. The regional office as the administrative authority competent to handle complaints against the conduct of the

provider in the provision of health services or against activities related to health services is obliged to keep records of the filing of complaints and the manner of their handling. A central register of complaints is also kept in the framework of the Ministry of Health, which includes a wide range of complaints lodged in connection with the health care sector and the complaints about violations of the Convention are not kept separately.

135. The Ministry of Education, Youth and Sports recorded five complaints of ill-treatment of children in school facilities for institutional or protective education in the years 2012-2015. Of these, three identical complaints of the same complainant about ill-treatment of children and physical torture of clients in children's home were evaluated as unjustified after the investigation by the regional office and the Czech School Inspectorate. In one case, the complainant was referred with their complaint to another institution and one case of complaint about the authority for social and legal protection of children is still handled by the regional office.

### **Involuntary sterilisation**

136. Women who became victims of illegal sterilisation could judicially claim compensation for the caused damage and the non-pecuniary harm to personality rights. This claim is assessed pursuant to the ordinary legal provisions of civil law. Compensation for non-pecuniary harm may take a non-financial (e.g. an apology) or a financial form. While the right to an apology does not fall under limitation and can be enforced at any time, the financial compensation as a property claim is subject to a limitation period, as is common in civil law.

137. Pursuant to the then applicable Civil Code, the limitation period was three years from the occurrence of the harm. It is true that this rule could in some cases lead to excessive hardness. Taking into account the objection of statutory limitation, the court must consider whether its application is in accordance with good morals and whether, conversely, its application would not be too hard to the person who did not cause the lapse of the limitation period. If that were the case, the court should not accept the objection of limitation, which also happened in two cases examined by the Supreme Court. On the basis of one of them, the victim was awarded compensation; the second case is still being examined by the courts.

138. Act No. 373/2011 Coll., on specific health care services (Law on Specific Health Care Services), does not provide for any compensation mechanism. In 2015, the government was considering the adoption of a special law that would allow extrajudicial compensation of unlawfully sterilised persons. This system, however, was always perceived by the government as a step *ex gratia*, i.e. not as compliance with international human rights obligations of the state, but as an accommodating step towards the persons who were illegally sterilised in the past and for various reasons failed to attain compensation in court. However, after careful consideration, the government did not eventually accept the compensation for victims of past practice when it had thoroughly evaluated all the relevant circumstances, including the recommendations of international authorities. The government based its deliberations on the fact that the illegally sterilised persons had effective remedies at their disposal and that it was their responsibility, whether they use these remedies properly and in a timely manner. The government also took into consideration the fact that the assessment of individual cases, often from the distant past, would be difficult and problematic because the medical records or other documents may possibly be no longer in existence.

139. The retention period of medical records is governed by the applicable legislation, particularly Decree No. 98/2012 Coll., on medical documentation, which in the case of inpatient care determines the retention period of medical documentation of 40 years from the last hospitalisation or 10 years from the death of the patient. The retention period of

medical documentation recording sterilisation is the same as in the case of other medical documentation.

140. Informed consent to sterilisation, which describes the course of the surgery and its consequences, is available in the Roma language. Pursuant to the Health Care Services Act, during the provision of health services, the patient has the right to communicate in a manner understandable to them and by means of communication of their own choice, including methods based on interpreting by another person, even if it is interpretation from a foreign language.

141. During the year 2005, the Ombudsperson referred a total of 60 cases to the Supreme Public Prosecutor's Office to investigate the circumstances of the cases. The Supreme Public Prosecutor's Office evaluated the submissions as criminal complaints against unknown perpetrators and referred these cases to the locally and factually competent public prosecutor's offices. The progress of the conduction of the investigations was regularly monitored by the Supreme Public Prosecutor's Office. In all reported cases, the competent police authorities initiated acts of criminal proceedings pursuant to Section 158 (3) of the Criminal Procedure Code and carried out examination.

142. The examination was finally closed in all 60 reported cases. In most cases, the case was suspended because the prosecution authorities concluded that there was no suspicion of a criminal offence and there was no need to settle the matter otherwise. In four cases, the case was suspended because of the limitation period. The Attorney General ordered the performance of inspection in six of the finally closed cases pursuant to Section 12 (3) of Act No. 283/1993 Coll., on public prosecution, and ordered the adoption of measures to remedy the identified misconduct. After additional presentation of evidence, however, the matter was once again suspended in all these cases. In this context it is also appropriate to highlight the statement of the Ombudsperson expressed in their final statement: "It should first be noted that it is not possible, as quite often happens in the considerations of a wider public, to draw a straight line from the failure to comply with the conditions of a free, serious and error-free expression of will — the consent to sterilisation, to criminal liability and imply that the doctors perhaps might have committed a crime in any case. Conversely, it is equally true that if the authorities active in criminal proceedings state that no crime occurred, this by far does not mean that these are cases in which no mistake occurred and which happened by right". The criminal law assessment simply does not change anything in the fact that the way the sterilisations were performed in the cases that correspond to the previous description, were carried out in violation of the law.<sup>5</sup>

143. The ECtHR thoroughly commented on the issue of unlawful sterilisations in the case *V. C. versus Slovakia*. In its judgment it concluded that in the contested case, there was no obligation of the state to conduct criminal investigation on its own initiative when it learned about the matter. The court found it sufficient that the complainant had a civil action at her disposal.<sup>6</sup>

144. The way in which the information about the nature of sterilisation, its permanent consequences, and potential risks is given is regulated by the Law on Specific Health Care Services and in the specimen informed consent, which was published in the Journal of the Ministry of Health 8/2007; it is detailed and sufficient for the medical personnel's understanding.

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<sup>5</sup> The final opinion on sterilisations carried out in violation of the law and proposals for corrective measures, p. 23, <http://www.ochrance.cz/stiznosti-na-urady/pripady-a-stanoviska-ochrance/stanoviska-2005-2007/stanovisko-ve-veci-provadeni-sterilizaci-23122005/>.

<sup>6</sup> *V.C. versus Slovakia*, No. 18968/07, decision of 8 November 2011, Sections 126-128.

**Trafficking in human beings**

145. In the period under review, the Czech Republic was training personnel who may come into contact with victims of human trafficking. For example, training of labour inspectors was conducted in the years 2013-2015. These training courses were also attended by specialists on the issue of human trafficking from the respective regional directorates and branches of the Unit for Combating Organised Crime of the Police of the Czech Republic. There is continuous educational training underway of the individual units of the Police, the consular officials travelling to Czech representative offices abroad, non-profit non-governmental organisations, etc. Beyond this framework, there is a training course in progress from 2014 for the Immigration Police Service, which focuses on the legal aspects of human trafficking, assistance to victims of human trafficking and also the methods of interrogation of victims and indicators for identifying cases of human trafficking.

146. The Czech Republic continuously responds to current trends, building on cooperation with the major countries of origin and countries of destination for the trafficking victims. An example of good practice is the project Innovations to Prevent Labour Exploitation of EU Citizens.

147. Training of judges and prosecutors generally takes place in the framework of the Judicial Academy, where courses are regularly offered on the subject of human trafficking and related topics. The National Strategy for Combating Trafficking in Human Beings was also focused on educational activities in relation to judicial probationers. In recent years, seminars were organised, for example, on the topics of Human Trafficking for the Purpose of Sexual Exploitation, Trafficking in Human Beings with a Focus on Migration to Germany, Asylum Procedures.

148. The Czech Republic made two amendments of the Criminal Code with impact on sanctioning human trafficking. Firstly, a change was made to the existing crime of human trafficking regulated by Section 168 of the Criminal Code. This step enabled the possible sanctioning of offenders, who receive the victim of human trafficking into their disposition. Secondly, there was a reformulation of the offence of unauthorised employment of foreigners. The amended merits now extend even to situations where the offender unlawfully employs or mediates employment of a foreigner staying illegally in the territory of the Czech Republic or does not have a valid work permit, by doing it not only to a greater extent, but also consistently, repeatedly or under particularly exploitative working conditions. The protection of children was strengthened so that it applies to the employment or mediation of employment of a foreign child staying illegally in the territory of the Czech Republic or without a valid work permit.

149. On 1 January 2012, the new Act No. 418/2011 Coll., on criminal liability of legal persons and proceedings against them, came into effect. This law amended the conditions of criminal liability of legal persons, the penalties and protective measures that can be imposed on legal persons for committing the specified offences and the procedure in proceedings against legal persons. A legal person can be prosecuted under this law for a number of criminal offences specified in the Criminal Code, including, for example, the crime of human trafficking (Section 168), entrusting custody of a child to another (Section 169), extortion (Section 175), rape (Section 185), sexual coercion (Section 186), sexual abuse (Section 187), pimping (Section 189), production and other handling of child pornography (Section 192), abuse of a child to produce pornography (Section 193), participation in pornographic performance (Section 193a), making illegal contact with a child (Section 193b), endangering the child's education (Section 201), seductions to sexual intercourse (Section), or unauthorised employment of foreigners (Section 342).

150. For the strengthening of the status of victims of crime through new legislation, see the comments in paragraph 26 and 157 et seq.

151. In the area of strengthening the competencies in identifying victims, the Czech Republic organises training for the Immigration Police Service, the workers of the Ministry of Foreign Affairs, the non-profit sector and others. The Czech Republic has been a long-term supporter of the preventive activities of non-profit organisations, which primarily include fieldwork, preventive materials and campaigns that are targeted on specific segments of society potentially endangered by human trafficking, as well as on society as a whole.

152. The workers of the Ministry of the Interior and the senior personnel of the Department of Human Trafficking and Illegal Migration of the Unit for Combating Organised Crime participate as lecturers of educational programmes, training and activities at the *Mitteuropäische Polizeiakademie* (Middle-European Police Academy) or the Judicial Academy in workshops focused on trafficking in human beings. The aim is to increase the professional education and professional competence of the involved entities to improve the identification of the victims of trafficking, gather information about this crime and improve the criminal proceedings. There are also specialized training courses for police officers and officers of the Immigration Police Service on the fight against human trafficking.

153. The Ministry of the Interior is the coordinator of the Programme of Support and Protection of Victims of Human Trafficking, which is the basis of the national reference mechanism. It was created with a view to coordinate the activities of the state and non-state entities in the promotion and protection of such persons. The Programme guarantees suitable and adequate housing, health care, legal assistance, legal services, psychosocial services and retraining to victims of human trafficking. Part of the Programme is the offer of safe and free voluntary repatriation of the victims.

154. The aim of the programme is therefore to provide the victims of trafficking with support and to ensure protection of their human rights and dignity and also to motivate the victims to provide testimony, and thus assist the authorities active in criminal proceedings in the detection, prosecution, conviction and punishment of the offenders. However, the assistance and support shall be provided to the victim regardless of whether they are willing to act as a witness. The programme provides assistance to all the probable victims of trafficking in human beings regardless of sex, nationality or forms of exploitation. The victims included in the Programme are identified by the Police or a non-governmental non-profit organisation.

155. The victims of human trafficking are given access to legal counselling and also to legal representation *inter alia* for the purpose of claiming compensation. They are also provided protection from secondary victimisation and further trauma during the criminal proceedings based on individual assessment of the needs and circumstances, such as age, pregnancy, health condition or disability, as well as the physical and psychological consequences of the crime. The victims are given clear and detailed information on the first assistance services, on other related rights and obligations and the potential consequences if there is a violation of the rules or agreements. The victims are thus informed about the important aspects of these measures and the measures are not forced upon them.

156. In terms of gender, there was a predominance of males in the age category of 24-40 years. Most of them came to the Czech Republic for seasonal work in agriculture. The available data show that there were recorded forms of human trafficking for the purpose of sexual exploitation and trafficking for the purpose of labour exploitation. In the Programme, the victims of trafficking for the purpose of labour exploitation predominated in the long-term over sexual exploitation. The table in Annex 6 shows a summary of the number of victims included in the Programme in the years 2003-2015.

157. In addition to this tool, every victim of human trafficking can use the services of non-governmental non-profit organisations pursuant to the Social Services Act and the Crime Victims Act as a particularly vulnerable victim, the status of which is assigned to them by this legislation. They can also use the assistance of cooperating entities and the possible financial assistance from the state. Every victim of human trafficking can also turn for help to the International Organisation for Migration, which ensures their return to the country of origin.

## **Article 14**

### **Redress and compensation measures**

158. Every victim of ill-treatment primarily has the right to compensation for damage caused by the crime from the offender; for this purpose, they can use either the accession proceedings (accession with a claim for damages to the criminal proceedings) or the regular civil proceedings, if the ill-treatment does not reach the seriousness of a crime. The financial assistance granted by the state pursuant to the Crime Victims Act is an allowance used to remove some of the social consequences of victimisation.

159. The right to ask for financial assistance under the Crime Victims Act pertains to the victim who was caused injury to health as a result of a crime; a victim who was caused grievous bodily injury as a result of a crime; a person surviving a victim killed as a result of a crime (if a parent, spouse, registered partner, child or sibling of the deceased and at the time of their death, shared a household with them), or a person to whom the deceased provided or was obliged to provide sustenance; and a victim of a crime against human dignity in the sexual area and a child who is a victim of the crime of cruelty to a person in care.

160. Victims can get assistance in connection with lost earnings or with expenses incurred by them in connection with treatment, and the survivors of victims may receive lump sum assistance. Financial assistance for bodily injury may be either a lump sum of CZK 10,000 (CZK 50,000 for grievous bodily injury), or in the amount corresponding to the actual claim of the victim, up to a maximum of CZK 200,000. The actual claim must be proved, specifically by e.g. all confirmations of the loss of earnings, proof of expenses and costs related to the treatment. At the same time, the amounts obtained by the victim by another way of compensation shall be deducted. In the case of a lethal offense the lump sum is CZK 200,000 (in the case of siblings, the lump sum amounts to CZK 175,000). If there are more survivors, the financial assistance granted to all of them will be to a maximum of CZK 600,000. In the case of offenses against human dignity in the sexual area and the offence of cruelty to a person under guardianship, the expenses of psychotherapy and physiotherapy or other professional assistance are covered up to max. CZK 50,000. An overview of administering the financial assistance to victims of crimes is listed in the table in Annex 7.

161. Financial assistance is only granted if the non-pecuniary harm, bodily injury or damage resulting from death caused by a crime has not been fully compensated (e.g. by the offender, insurance company, etc.). Further conditions for granting financial assistance are as follows:

- to report the offence immediately to the Police;
- to give consent to criminal prosecution of the perpetrator in the case where this consent is a prerequisite for the initiation of criminal prosecution;
- to cooperate with the authorities active in criminal proceedings;
- not to be a co-defendant;

- to file a request in writing and within the prescribed time limit of 2 or 5 years with the Ministry of Justice.

162. As regards violence committed by a member of the security forces, the entitlement to compensation would fall under the regime of Act No. 82/1998 Coll., on liability for damage caused in the exercise of public authority by decision or maladministration. The statistics do not distinguish the individual cases of maladministration, and the given category is statistically monitored only as a whole and it is therefore not possible to determine in how many cases the reason for compensation was violence committed by a member of the security forces.

163. It is not statistically monitored in the Czech Republic by what criminal offence the applicant should have been damaged or their ethnicity, gender or age.

164. Financial assistance can be granted to the victims of criminal offences of human trafficking when the general statutory prerequisites are met (see above paragraph 160 et seq). According to a qualified estimate, no claim for financial assistance in relation to the offense of human trafficking has thus far been applied with the Ministry of Justice.

165. In relation to ill-treatment in health care, no central register of disputes, criminal proceedings or complaints held in connection with the issues covered by the Convention is being kept.

## Article 16

### Surgical castration

166. The treatment of paraphilic disorders<sup>7</sup> in the Czech Republic is conducted comprehensively and has various forms depending on the type and intensity of the disorder. Treatment primarily involves psychotherapy, sociotherapy and the use of psychotropic drugs. However, it is generally accepted that these forms of treatment may not be effective by themselves, particularly in patients suffering from severe paraphilic disorders. In such cases, the only remaining option to provide relief to the patient from their difficulties is antiandrogen therapy aimed at reducing the level of testosterone by either hormonal treatment or, where such treatment is ineffective or contraindicated for health reasons, surgical castration. In accordance with the “Recommended Practices in Therapy of Paraphilic Sex Offenders” developed by the Sexological Society of the Czech Medical Association, castration is thus considered to be a method of last resort.

167. New detailed regulation of surgical castration is contained in the Law on Specific Health Care Services (effective from 1 April 2012), which contains procedural safeguards protecting the rights of paraphilic sex offenders. The patient may only undergo castration based on their request, after the fulfilment of the conditions laid down by law and the positive opinion of the expert commission. This is a procedure that the patient undergoes voluntarily, on the basis of their own free decision. The law completely excludes the implementation of castration of paraphilic sex offenders who are in a prison or in custody. Castration also cannot be conducted on a patient with limited legal capacity. Patients in protective treatment or in security detention may only undergo castration in particularly justified cases provided that the court gives its consent to the procedure. A patient who is in protective treatment or security detention is advised by the professional commission that castration does not constitute a right to their release. From 1 April 2012, when the new

<sup>7</sup> I.e. mental disorders listed in the classification manual of the World Health Organization “International Classification of Mental Diseases (ICD-10th)”.

legislation took effect, the central expert commission discussed two applications, of which one was approved and one rejected.

168. In professional literature, many authors agree that surgical castration may in some cases strengthen the autonomy of the patient suffering from paraphilic disorder by allowing them to return to a normal life, and are of the opinion that the patient's consent to this procedure cannot be considered involuntary. It is therefore erroneous to consider the offering of this therapy to a patient as an alternative to staying in an institution as degrading treatment. On the contrary, the offer of such an option is morally and medically ethical.<sup>8</sup>

169. In the judgment *Dvořáček versus the Czech Republic*, the ECtHR acknowledged that the complainant, who was under sexological protective treatment, faced a difficult choice between the use of antiandrogen drugs with the prospect of earlier release from the hospital and undergoing psychotherapy and sociotherapy with the prospect of a longer stay in the treatment. However, it came to the conclusion that when the antiandrogen treatment was necessary from a medical point of view and the complainant was not compelled to it, it could not be considered that the complainant had been subjected to forced treatment. The court therefore found that there was no violation of Article 3 of the European Convention on Human Rights (prohibition of torture and inhuman or degrading treatment or punishment). Moreover, the court noted that as regards surgical castrations, they were in the Czech Republic at the given time strictly regulated by law and subject to the free and informed consent of the patient. It is clear from the judgment that when the conditions laid down by law are complied with, especially if the treatment is necessary from a medical point of view and is offered to the patient rather than forced upon them, the consent of the patient in protective treatment with such a therapy is voluntary and undergoing it cannot be regarded as degrading treatment.

170. As regards the possibility of detention of persons under the Act on Security Detention for an indefinite period, it is necessary to keep in mind the purpose of this measure, which is to protect society from dangerous activities endangering the health and lives of other people. Security detention is imposed by the court on the offender of a crime or of an act otherwise prosecutable under the conditions provided by law, if the offender free stay is dangerous and it cannot be expected that the imposed protective treatment would lead to sufficient protection of society. Security detention will last until it is required for the protection of society. The court decides on the further continuation of preventive detention for a particular inmate at least once every twelve months and at least once every six months in the case of a juvenile.

### **Prohibition of corporal punishment**

171. The legislation ensuring the elimination of corporal punishment of children is the Civil Code. Although it does not contain an explicit prohibition of all corporal punishment of children, the Czech Republic does not consider corporal punishment of children as an adequate educational means within the family or outside of it. In the Civil Code it is stipulated that until the child becomes fully legally competent, the parents have the right to regulate them by educational measures corresponding to their evolving capabilities, including restrictions aimed at the protection of morals, health and rights of the child, as well as the protection of the rights of others and public order. However, the educational means can only be used in the form and to the extent that is adequate to the circumstances, does not endanger the child's health or development and does not affect the human dignity

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<sup>8</sup> See, e.g., R. B. Krueger, M. H. Wechsler, M. S. Kaplan, *Orchiectomy in Sex Offenders: Identification, Risk Assessment, Treatment and Legal Issues*, New York, Oxford University Press, 2009, and J. McMillan, *The kindest cut? Surgical castration, sex offenders and coercive offers*, *Journal of Medical Ethics*, 2013.



of the child. Thus, although the Civil Code does not explicitly prohibit corporal punishment, the parents must respect the dignity and physical immunity of the child in their upbringing. In an effort to generally cover all the inadequate means of education in the legal regulation, the protection of children is formulated by this broader definition.

172. In all public facilities such as schools or institutional care facilities for children, the children have the right to treatment that respects their rights and human dignity. Legislation must be respected by the school rules and other documents governing the functioning of educational establishments. Corporal punishment is not listed among the permitted educational measures and therefore may not be used. In this respect, the compliance with legislation is controlled by the Czech School Inspectorate, the Ministry of Education, Youth and Sports, the authorities of the social and legal protection of children or the Ombudsperson.

173. The current Czech legislation provides a sufficiently broad scope for effective protection of children and juveniles by stipulating just such educational practices that do not allow even a threat to the dignity of the child or their health (physical), mental or emotional development and are appropriate to the situation.

174. Protection and education on the subject of children's rights also takes place in the form of government campaigns. In the years 2009-2010, the Government Commissioner for Human Rights implemented a campaign against violence against children. The aim of the campaign was to raise public awareness of the existence and forms of violence against children. The campaign was promoted through the [www.stopnasilinadetch.cz](http://www.stopnasilinadetch.cz) website. The main campaign material was a cartoon primer on violence against children, which dealt with the most serious forms of this phenomenon. A calendar of violence against children was also created and distributed to schools and pedagogical and psychological counselling centres and used in campaign seminars. A brochure on Interpersonal Violence against Children was distributed to primary school teachers. Other publicly distributed brochures addressed topics such as positive parenting or safe activities of children on the internet. Twelve seminars for professional public, state administration authorities and non-governmental organisations were organised on the issues of forms of violence against children, the possibilities of assistance victims, forms of prevention and alternative methods of positive parenting. The campaign also took place in television and radio. In 2011, the Government Commissioner for Human Rights organised in cooperation with the Council of Europe the campaign "Stop Sexual Violence against Children". The aim of the campaign was to draw attention to the problem of sexual violence against children and present the materials of the Council of Europe directed toward understanding the problem and its prevention to the public. The main instrument of the campaign was the child-accessible KIKO AND HAND booklet, along with guidelines for its use by adults working with children. All the materials were distributed to entities working with vulnerable children and also to the general public through libraries and are available on the [www.tadysenedotykej.org](http://www.tadysenedotykej.org) website. There were also an expert seminar and a national conference organised on the topic of sexual violence against children.

#### **Data collection**

175. The above mentioned statistical data disaggregated by gender, age, ethnicity and origin of the victims are not monitored. It is possible to use the data on criminal offences committed for racial, ethnic and other hatred motives in the years 2009-2014 contained in the table in Annex 8 as an indicative basis.

176. Statistical data relating to human trafficking are included in Annex 9.

**Other issues**

177. On 1 January 2014, Act No. 104/2013 Coll., on international judicial cooperation in criminal matters, came into effect, which replaced the existing provisions of the Criminal Procedure Code. The obligations under the Convention are reflected primarily in Section 91 (1), which stipulates that extradition of a person to a foreign state is inadmissible if it would be contrary to the obligations arising for the Czech Republic from international treaties on human rights and fundamental freedoms.

178. In the area of asylum policy, the extensive amendment to the Asylum Act, the Aliens Act and other related laws No. 314/2015 Coll., introduced in addition to the changes described above also other measures that relate to the scope of authority of the Committee. In particular, these include clarification of the definition of vulnerable groups of asylum seekers and the obligation to assess whether a specific person needs special support in connection with the asylum procedure and with their staying in the territory during the administrative proceedings on asylum. The effort to minimise the duration of detention led to the introduction of time limits for courts dealing with the decision of the Ministry of the Interior in the case of international protection. This legislation also confirmed the existing practice to first assess the possibility of ordering alternatives to detention and only subsequently to impose detention. This measure is valid for both asylum seekers and illegally staying foreigners.

179. Currently there is a legislative process underway dealing with the amendment to Act No. 108/2006 Coll., on social services (hereinafter the “Social Services Act”), providing for the stay in social services without consent. The aim of this amendment is to create substantive legal conditions and to introduce rules and limits for the provision of residential social services without the consent of the client. The existing provisions of the Act No. 292/2013 Coll., on special judicial proceedings are subsequently further specified and govern the procedure for declaring the inadmissibility of holding a person in a social services establishment.

180. The proposal for the amendment to the Social Services Act newly establishes the obligation of the social service provider to notify within 24 hours the court of the fact that a person, who is unable to terminate the contract for the provision of residential social service because the contract was concluded on the person’s behalf by a guardian or by the municipal office, has expressed seriously meant disagreement with the provision of the residential social service. The proposal also imposes on the social services provider additional record keeping and other obligations relating to persons who are not able to terminate the contract on the provision of service.

181. The proposal for the amendment to the Act on special legal proceedings specifies a time limit for the court decision on the inadmissibility of holding a person in social services (45 days from the date of initiation of the proceedings). It is further added that if the court decides on the inadmissibility of holding a person in social services, it is obliged to examine within 3 months whether the guardian has taken steps to remedy, even repeatedly if no remedy has been made.

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