



**International Covenant on
Civil and Political Rights**

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**Consideration of reports submitted by States
parties under article 40 of the Covenant**

Third periodic reports of States parties

Czech Republic*, **

[17 October 2011]

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** Annexes can be consulted in the files of the Secretariat.

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I. Introduction

1. The Czech Republic presents the third periodic report in accordance with article 40, paragraph 1 (b), of the International Covenant on Civil and Political Rights (hereinafter referred to as the “Covenant”) and in accordance with the concluding observations of the Human Rights Committee as the Covenant’s monitoring body (hereinafter referred to as the “Committee”). The recommendations arose from the Committee’s consideration of the Czech Republic’s second periodic report on the observance of commitments arising from the Covenant¹ at its 2,464th and 2,465th meetings on 16 and 17 July 2007² and from the Committee’s concluding observations, adopted at its 2,478th meeting on 25 July 2007.³

2. The third periodic report is prepared in accordance with the Committee’s reporting guidelines⁴ and covers the period from 1 January 2005 to 31 December 2010. The report therefore focuses on changes relating to the protection of rights guaranteed by the Covenant and on the Committee’s concluding observations for improving the standard of observing those rights protected by the Covenant.

3. Given the period covered by the report and the broad range of rights protected by the Covenant, the report in some places contains only basic updated information on specific issues and refers to other reports that the Czech Republic submits to other United Nations Committees as control bodies for other international treaties on human rights in the United Nations treaty collection.⁵

Developments in the international commitments of the Czech Republic regarding the protection of human rights

4. Between 2005 and 2010, the Czech Republic ratified or signed the following international treaties relating to human rights. In accordance with Article 10 of the Constitution, all these treaties form part of the Czech legal order and are superior to laws, as is clear from previous reports:⁶

(a) Ratified:

(i) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (no. 78/2006 Coll. Int. Tr.);

¹ CCPR/C/CZE/2.

² CCPR/C/SR.2464, CCPR/C/SR.2465, and CCPR/CO/72/CZE.

³ CCPR/C/CZE/CO/2.

⁴ CCPR/C/66/GUI/Rev.2, HRI/GEN/2/Rev.6 and CCPR/C/2009/1.

⁵ Core document forming part of the reports of States parties (2010, HRI/CORE/CZE/2010), National Report of the Czech Republic to the universal periodic review (2008, A/HRC/WG.6/1/CZE/1, A/HRC/WG.6/1/CZE/2, A/HRC/WG.6/1/CZE/3), Combined fourth and fifth periodic report of States parties on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (2009, CEDAW/C/CZE/5), The eighth and ninth periodic report on the implementation of commitments under the Convention on the Elimination of All Forms of Racial Discrimination (2010, CERD/C/CZE/8-9), The fourth and fifth periodic report on the implementation of commitments under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2010, CAT/C/CZE/4-5), The third and fourth periodic report on the implementation of commitments under the Convention on the Rights of the Child and information from the Czech Republic on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2010, CRC/C/CZE/3-4).

⁶ CCPR/C/CZE/2.

- (ii) The European Charter for Regional or Minority Languages (no. 15/2007 Coll. Int. Tr.);
- (iii) The Rome Statute of the International Criminal Court (no. 84/2009 Coll. Int. Tr.);
- (iv) Convention on the Rights of Persons with Disabilities (no. 10/2010 Coll. Int. Tr.);
- (v) Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention (no. 48/2010 Coll. Int. Tr.);
- (b) Signed, but not yet ratified:
 - (i) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, signed on 26 January 2005. The protocol has not yet been ratified because the Czech legislation does not adequately regulate the liability of legal entities and the Czech Republic cannot therefore comply with the requirements of the Protocol. A Government bill on the criminal liability of legal entities is currently being debated in Parliament. Its adoption would remove the obstacle referred to above;⁷
 - (ii) The Optional Protocol to the Convention on the Rights of Persons with Disabilities, signed on 30 March 2007. The ratification for this Optional Protocol is underway.

II. Information with regard to the implementation of specific provisions of the Covenant

Article 1

Right to self-determination (par. 1)

5. According to its Constitution, the Czech Republic is a sovereign, unified, and democratic state, respecting the rule of law and the rights and freedoms of man and citizen,⁸ where all public authority derives from the people, who exercise his power via the bodies of the legislature, executive and judiciary.⁹ As part of the constitutional order of the Czech Republic, the Charter of Fundamental Rights and Freedoms is derived from the right of the Czech and Slovak nations to self-determination and recognises that all people are free and equal in their dignity and in their rights.¹⁰ Everybody has the right to a free choice of his or her nationality,¹¹ while this choice shall not be used to his or her detriment.¹² During the period under review, no changes were made to these rights, information relating to the status of national minorities in the Czech Republic is provided in the commentary to article 27.

⁷ Parliamentary Press no. 285.

⁸ Art. 1 of the Constitution.

⁹ Art. 2 par. 1 of the Constitution.

¹⁰ Art. 1 of the Charter of Fundamental Rights and Freedoms.

¹¹ Art. 3 par. 2 of the Charter of Fundamental Rights and Freedoms.

¹² Art. 24 of the Charter of Fundamental Rights and Freedoms.

Right to dispose of natural wealth and resources (par. 2)

6. The Czech Republic as a state shall use natural resources economically and protect natural wealth.¹³ No changes were made to the related legislation during the period under review.

Territorial guarantee of rights (par. 3)

7. The territory of the Czech Republic encompasses an indivisible integer whose state border may be altered exclusively by constitutional laws.¹⁴ During the period under review, only minimal adjustments were made to the state border between the Czech Republic and Germany.¹⁵

Article 2**The State's territorial jurisdiction in guaranteeing the rights protected by the Covenant (par. 1)**

8. The rights and freedoms protected by the Covenant belong to all individuals in the Czech Republic. All people are equal in their dignity and rights and any discrimination on the basis of gender, race, colour, language, faith and religion, political or other conviction, ethnic or social origin, membership in a national or ethnic minority, property, birth, or other status is prohibited.¹⁶

9. In general it applies that foreign nationals shall enjoy in the Czech Republic all human rights and fundamental freedoms, provided such rights are not expressly reserved only for Czech citizens.¹⁷ This includes for example the possibility of restricting ownership of certain assets,¹⁸ the right to enter the territory of the State and the right to reside therein,¹⁹ the right to form political parties and movements,²⁰ active and passive voting rights (with the exceptions set out in the comment to Article 25)²¹ and certain social rights.

Application and effective protection of rights guaranteed by the Covenant (par. 2 and 3), and the recommendations in the previous concluding observations relating to the implementation of the Committee's opinions on the issue of restitution,²² and relating to human rights education²³

10. Protection of fundamental rights and freedoms guaranteed under the Covenant is provided in the Czech Republic by independent courts.²⁴ The judicial system consists of common courts²⁵ divided into civil, criminal and administrative, and the Constitutional

¹³ Art. 7 of the Constitution.

¹⁴ Art. 11 of the Constitution.

¹⁵ Agreement between the Czech Republic and the Federal Republic of Germany on changing the common state border in the area of the motorway bridge at the Rozvadov–Waidhaus border crossing, published under no. 75/2005 Coll. Int.Tr.

¹⁶ Art. 3 par. 1 of the Charter of Fundamental Rights and Freedoms.

¹⁷ Art. 42 par. 2 of the Charter of Fundamental Rights and Freedoms.

¹⁸ Art. 11 par. 2 of the Charter of Fundamental Rights and Freedoms.

¹⁹ Art. 14 par. 4 of the Charter of Fundamental Rights and Freedoms.

²⁰ Art. 20 par. 2 of the Charter of Fundamental Rights and Freedoms.

²¹ Art. 21 of the Charter of Fundamental Rights and Freedoms.

²² CCPR/C/CZE/CO/2, para. 7.

²³ CCPR/C/CZE/CO/2, para. 19.

²⁴ Arts. 4 and 81 of the Constitution.

²⁵ Art. 90 et seq. of the Constitution.

Court, which is the judicial body for the protection of the constitutional order.²⁶ It performs this task by monitoring compliance of laws, other legal regulations and yet non-ratified international treaties with constitutional laws and decides on complaints by individuals against decisions or other interventions by public authorities encroaching on the constitutionally guaranteed fundamental rights and freedoms protected also under the Covenant. Besides the courts, protection of subjective public rights arising from the law is provided by relevant administrative bodies, which are also required to respect fundamental rights and freedoms.²⁷ These rights are also protected at the horizontal level in civil law relations through the courts and administrative bodies, because the exercise of rights and obligations in breach of the law does not enjoy legal protection.²⁸ Any conflicts between individual fundamental rights and freedoms are resolved according to the principle of proportionality.²⁹

11. During the period under review, no institution that would systematically address human rights issues in accordance with the “Paris principles”³⁰ was established in the Czech Republic. The only such institution in the Czech Republic remains the Public Defender of Rights (the Ombudsman),³¹ who acts as an informal control body for public administration. His main task is to ensure that the public administration operates in accordance with the principles of good governance. It also monitors areas where people are restricted in their personal liberty³² and act as an equality-body in accordance with EU directives. The issue of human rights is also addressed by the advisory and working bodies of the Czech Government,³³ which coordinate the activities of the public administration and non-governmental organisations in this area. All these institutions have their own statutes and rules of procedure, some also have their own committees and working groups to specialise in specific human rights issues and cooperation with the state authorities and general public.

12. As follows from the last report, the Covenant is, like any other international treaty, part of the legal order, while also taking precedence over legislative acts.³⁴ In decision-making, judges are bound both by the legislative acts and by international treaties.³⁵ If a court arrives at the conclusion that an act which is to be applied in its decision-making may be in contradiction with a constitutional act, and it should therefore not be used, it shall suspend the proceedings and pass the matter to the Constitutional Court with a request for a review of the act’s compliance with the constitutional order. As follows from the case law of the Constitutional Court, this procedure also applies in the case of a possible inconsistency with the promulgated and ratified international conventions on human rights

²⁶ Art. 83 et seq. of the Constitution.

²⁷ Section 2 par. 1, of Act No. 500/2004 Coll., the Code of Administrative Practice, as amended (hereinafter referred to as the “Administrative Code”).

²⁸ Section 3 par. 1, of Act no. 40/1964 Coll., the Civil Code, as amended (hereinafter referred to as the “Civil Code”).

²⁹ Art. 4 par. 4 of the Charter of Fundamental Rights and Freedoms.

³⁰ General Assembly resolution No. 48/134 of 20 December 1993 on national institutions for the promotion and protection of human rights.

³¹ Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.

³² See the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (published under no. 78/2006 Coll. Int.Tr.).

³³ These include, for example, the Government Council for Human Rights, the Government Council for National Minorities, the Government Council for Roma minority affairs, the Government Council for Equal Opportunities for Women and Men and the Government Committee for People with Disabilities.

³⁴ Art. 10 of the Constitution.

³⁵ Art. 95 par. 1 of the Constitution.

and fundamental freedoms.³⁶ In addition to legislative acts and international treaties, other administrative bodies are also bound by subordinate legislation and are not authorised to address the Constitutional Court directly.³⁷ Their decisions that would conflict with a legislative act or international treaty may be appealed against to a court in the administrative justice, which can then refer them to the Constitutional Court. People who appeal to the Constitutional Court with a complaint against a decision or other intervention by public authorities into constitutionally guaranteed fundamental rights and freedoms, may also file a petition to annul legislation, the application of which gave rise to the constitutional complaint, and which, because of this, may conflict with the constitutional order. Monitoring compliance with the Covenant is therefore ensured by the methods set out here above.

Implementation of the Committee's opinions on the issue of restitution

13. On the issue of the implementation of the Committee's opinions, the position of the Czech Republic continues to be that set out in its previous comments on this issue, such as those expressed during the consideration of its second periodic report.³⁸ The Czech Republic does not share the legal opinion of the Committee regarding the discriminatory nature of the restitution condition of citizenship. In this it relies on the case law of the Constitutional Court, in which the Court has also referred to the relevant provisions of the Covenant. The opinions of the Committee have been, and will continue to be, implemented through hearings of individual cases by the courts as bodies empowered to protect human rights and fundamental freedoms, and the Constitutional Court as a body established to protect constitutionality. On 7 September 2010, in its resolution no. Pl. ÚS 30/10, the Constitutional Court rejected a proposal to repeal the application of deadlines for restitution claims in the relevant laws.³⁹ The re-opening of restitution proceedings would also be contrary to the principle of legal certainty and the stability of proprietary rights. However, it should be noted that, in certain cases, the Committee's opinions were implemented by other means, such as court hearings based on different grounds.

Human rights training for government officials

14. Since, under constitutional law, the Covenant is a direct part of the Czech legal order, it forms part of legal education at a general level at law faculties, as well as at the level of specialised training for judges, public prosecutors and other civil servants. The rights guaranteed by the Covenant are taught along with the rights guaranteed by the Charter of Fundamental Rights and Freedoms as part of the constitutional law and public international law courses at all law faculties in the Czech Republic. This topic is also addressed in specialised introductory initial training courses provided for civil servants, which are compulsory for all state administration employees.⁴⁰ Additional information on this topic is also provided in the Czech Judicial Academy's training programme for judicial trainees awaiting appointment as judges, as well as for public prosecutors. All civil servants are required to abide by the constitutional order, which includes the Charter of Fundamental Rights and Freedoms, which guarantees most of the rights recognised under the Covenant,

³⁶ Findings of the Constitutional Court, ref. no. Pl. ÚS 36/01, published under no. 403/2002 Coll.

³⁷ Section 2 par. 1 of the Administrative Code.

³⁸ CCPR/C/SR.2464, CCPR/C/SR.2465, and CCPR/CO/72/CZE.

³⁹ The petitioners maintain that, in the event these deadlines are repealed, people who did not comply with the original condition of citizenship by the original deadline could re-enter their restitution claims.

⁴⁰ The introductory initial training plan was approved by Czech Government Resolution No. 1542 on 30 November 2005.

as well as legislative acts and international treaties that form part of the legislation including the Covenant. The information received from the Czech Republic on the implementation of the concluding observations in 2010 contains a detailed discussion of specialised training provided for the security forces.⁴¹

Protection of rights guaranteed under the Covenant in the decisions of other international supervisory bodies

15. During the period under review, the European Court of Human Rights handed down a total of 127 judgements against the Czech Republic for breach of certain of the rights conferred by the Convention for the Protection of Human Rights and Freedoms.⁴² A more detailed overview is given in the table in annex No. 1. Individual measures will be referred to in detail in the individual articles of the Covenant that relate to them.

16. In order to ensure effective remedies in cases where the length of proceedings has been excessive, a new amendment was made to the Code of Civil Procedure.⁴³ For example, the option of holding a so-called “preparatory hearing” prior to court proceedings was incorporated into the Code of Civil Procedure, to enable the court to decide in the merit in the first hearing.⁴⁴ During the preparatory hearing, the judge examines procedural matters, invites the participants to complete their statements, to put forward any evidence and to carry out their other obligations. The court also tries to resolve the case through reconciliation. The participants may only fulfil their obligations and submit evidence until the end of the preparatory hearing, or within 30 days of the hearing if the court so permits. If any of the participants fails to attend a preparatory hearing of which they have been properly notified without excuse, the court may either suspend the proceedings, or issue a judgement of recognition. An amendment was also made to the proposition to set deadlines for procedural acts.⁴⁵ This proposition may now be submitted alongside complaints against proceeding delays.⁴⁶ Moreover, the court may apply reconsideration and itself carry out all the acts required by the complainant within 30 days of receipt of the proposal. This means the matter does not have to be dealt with by a superior court.

17. Account of delays in judicial proceedings is also taken in cases where compensation is provided for damage caused by the exercise of public authority.⁴⁷ The law directly states that a breach of the obligation to act or issue a decision within the statutory period or within a reasonable time is a case of maladministration.⁴⁸ Should this occur, the person affected is entitled to damages and compensation for non-material detriment caused by the delay,

⁴¹ CCPR/C/CZE/CO/2/Add.2.

⁴² Published under no. 209/1992 Coll.

⁴³ Act No. 7/2009 Coll., amending Act No. 99/1963 Coll., the Civil Procedure Act, as amended, and other related Acts.

⁴⁴ Section 114c of Act No. 99/1963 Coll., the Civil Procedure Act, as amended (hereinafter referred to as the “Code of Civil Procedure”).

⁴⁵ Section 174a of Act No. 6/2002 Coll., on Courts and Judges, as amended (hereinafter referred to as the “Act on Courts and Judges”).

⁴⁶ Section 164 et seq. of the Act on Courts and Judges.

⁴⁷ Act No. 160/2006 Coll., amending Act No. 82/1998 Coll., on liability for damage caused in the execution of public authority by decision or incorrect official procedure and on amendments to Czech National Council Act No. 358/1992 Coll., on notaries and their activities (the Code of Notarial Practice), as amended, Act No. 201/2002 Coll., on the Office for Government representation in property affairs, as amended, and Act No. 40/1964 Coll., the Civil Code, as amended.

⁴⁸ Section 13 par. 1 of Act No. 82/1998 Coll., on liability for damage caused in the execution of public authority by decision or incorrect official procedure, as amended.

within the meaning of Articles 5 and 6 of the Convention for the Protection of Human Rights and Freedoms and the case law of the European Court of Human Rights.⁴⁹

18. The protection of rights conferred by the Covenant is, just as in the case of all human rights and fundamental freedoms, guaranteed to all regardless of their gender, race, colour, language, faith and religion, political or other opinion, national or social origin, membership of a national or ethnic minority, property, birth or other status.⁵⁰ More detailed aspects of equal treatment will be discussed in the text to Articles 3 and 26.

Article 3

Equality of women and men in the enjoyment of rights guaranteed under the Covenant and the recommendation of the previous concluding observations⁵¹ relating to the participation of women in public life

19. As follows from the above, fundamental rights and freedoms are accorded by law to men and women with no distinction between the sexes. At the same time, other rights are guaranteed on an equal basis. The Labour Code guarantees women equal pay for equal work or work of equal value.⁵² More detailed information on equality between men and women can be found in the fourth and fifth periodic report on the performance of the Convention on the Elimination of All Forms of Discrimination against Women.⁵³

20. Criminal law protection is guaranteed for the criminal offence of abuse of persons occupying a common dwelling.⁵⁴ A person harassing or threatening someone she lives with can be expelled from the common dwelling by the Police for a maximum of 10 days.⁵⁵ The victim may subsequently submit an application for an interim restraining order, forcing the aggressor to leave the common dwelling, preventing his presence in the surrounding area and ensuring that he refrains from any contact with the victim.⁵⁶ This measure has effect for one month and if proceedings are subsequently started (e.g. divorce proceedings), it may be extended for up to a year. Breach of expulsion rules may be subject to fines⁵⁷ and criminal sanctions.⁵⁸ The new Criminal Code has also introduced the crime of stalking.⁵⁹ In matters of rape, the law continues to apply the principle that the injured party must give their consent to the criminal prosecution of a perpetrator for the rape of his husband or wife.⁶⁰

21. During the period under review, no amendments were made to the status of men and women in family matters in the field of family law.

⁴⁹ Section 31a of Act No. 82/1998 Coll., on liability for damage caused in the execution of public authority by decision or incorrect official procedure, as amended.

⁵⁰ Article 3 par. 1 of the Charter of Fundamental Rights and Freedoms.

⁵¹ CCPR/C/CZE/CO/2, para. 11.

⁵² Section 110 par. 1 of the Labour Code.

⁵³ CEDAW/C/CZE/5.

⁵⁴ Section 215a of the Criminal Code (Act No. 140/1961 Coll.), from 1 January 2010 Section 199 of the Criminal Code (Act No. 40/2009 Coll.).

⁵⁵ Sections 44–47 of Act No. 273/2008 Coll., on the Police of the CR, as amended.

⁵⁶ Section 76b of Act No. 99/1963 Coll., the Civil Procedure Act, as amended (hereinafter referred to as the “Code of Civil Procedure”).

⁵⁷ Section 273b and Section 351 Code of Civil Procedure.

⁵⁸ Section 171 par. 1 (e) of the Criminal Code, from 1 January 2010 Section 337 paras. 1 and 2 of the Criminal Code.

⁵⁹ Section 354 of the Criminal Code.

⁶⁰ Section 163 of the Criminal Code.

22. The representation of women in political functions is relatively low across the political spectrum. It is still true that women do not achieve key positions in the party hierarchy and therefore few of them are selected to be candidates. Nonetheless, the number of women elected to all political offices is gradually increasing. After the elections held on 28 and 29 May 2010, the proportion of women in the Chamber of Deputies of the Parliament of the Czech Republic rose and is currently 22.5% (45 female MPs) which makes this the historically highest proportion of women in this chamber of the Czech Parliament. In the Senate of the Parliament of the Czech Republic, the number of female senators after the 2010 elections rose to 18.5% (14 female senators). Over the long term, the highest proportion of women involved in politics in the Czech Republic is to be found at the municipal level, where the municipal elections held on 15 and 16 October 2010 gave women a total of 26% of seats in town and municipal councils. In the regional councils, 17.6% of the council members are women. After the 2009 elections, 18% of Czech deputies in the European Parliament are women (4 deputies). More detailed information is provided in the tables in annex no. 2.⁶¹ During the period under review, the proportion of women in the government has ranged from 16.8% to 25% of ministers, where the maximum number was 4 female ministers in Jan Fischer's 16-member government. There is currently 1 woman in the present 16-member government. At the deputy minister level, at present, out of a total of 67 deputy ministers, 6 are women (9%). A woman has also been newly appointed as Government Commissioner for Human Rights.

23. To reinforce the theme of equal representation of women and men in politics, a Committee for equal representation of women and men in politics has been established as a working body of the Government Council for Equal Opportunities for Women and Men. Apart from representatives from the public administration and civil society, political parties are also represented in this Committee, by two members of different sexes. The Committee deals with institutional, political and social opportunities for promoting equal representation of women and men in politics. The Committee is currently dealing with the issue of legal regulation of the lists of electoral candidates.

Article 4

Principle of the limitation of rights

24. The possibility of limiting certain human rights in situations of general danger is two-fold – in crisis military situations and in crisis civil situations. During the period under review, no changes were made to the possibility of limiting certain human rights in these situations.⁶²

Article 5

The principle of preserving the achieved standard of rights, the principle of a minimum standard of rights protected by the Covenant, the prohibition of the abuse of rights protected by the Covenant

25. There were no changes in this area in the monitored period. As follows from the above, the Czech Republic is a state respecting the rule of law and the rights and freedoms of man and citizen. The public authority serves all citizens and can be exercised only in cases and within the scope stipulated by law, by means specified by law and for legitimate

⁶¹ Data from the Czech Statistical Office www.volby.cz.

⁶² See the text of the initial report to Article 4, points 107 to 110.

goals determined by law.⁶³ On the other hand, private individuals have the freedom to do whatever is not prohibited by law and duties may only be imposed on them by the law if these are to achieve set legitimate goals.⁶⁴ The principle of prohibiting abuse of statutory restrictions on human rights and fundamental freedoms and respecting their substance and meaning is one of the fundamental principles of the Czech law.⁶⁵

26. The Constitutional Court remains of the view that no change of constitutional order can reduce the level of protection of human rights and fundamental freedoms already achieved, because ensuring the protection of fundamental rights and freedoms is part of the immutable fundamental attributes of a democratic state respecting the rule of law.⁶⁶ In the case of a conflict between an international treaty and the constitution order, for example on the issue of the possibility of restricting certain fundamental rights or freedoms, the Constitutional Court would choose a constitutional-conform interpretation that would place a lesser restriction on the right in question. The aim of any system for the protection of human rights is always to provide the most effective protection for the individual.⁶⁷

Article 6

The right to life (par. 1)

27. Protection of the right to life and the prohibition of arbitrary killing, unless this involves conduct that does not constitute a criminal offence, is a basic principle in the Czech Republic.⁶⁸ Penal legislation distinguishes between such crimes against life and health as murder, being the intentional killing of another with a scale of up to the exceptional sentence,⁶⁹ and the newly introduced intentional killing of another when strongly influenced by fear, dismay, confusion or other excusable emotional upheaval, or as the result of previous reprobate behaviour by the victim with more moderate sentences.⁷⁰ One specific crime is the murder of a newborn baby by its mother who is in emotional state caused by childbirth, where the mother is punishable by a maximum of eight years imprisonment.⁷¹ Death by negligence is also a criminal offence⁷² as is the aiding and abetting of another to suicide.⁷³ Causing death by bodily injury is another specific criminal act.⁷⁴ The killing of people is regarded as an aggravating circumstance in a number of other crimes.⁷⁵ Killing in self-defence or in emergency, maintaining the condition of the necessity

⁶³ Art. 2 par. 2 of the Constitution, Art. 2 par. 3 of the Charter of Fundamental Rights and Freedoms.

⁶⁴ Art. 2 par. 3 of the Constitution, Art. 2 par. 3 of the Charter of Fundamental Rights and Freedoms.

⁶⁵ Art. 4 par. 4 of the Charter of Fundamental Rights and Freedoms.

⁶⁶ Art. 9 par. 2 of the Constitution.

⁶⁷ This view was confirmed by the Constitutional Court in its findings, ref. no. Pl. ÚS 19/08 (446/2008 Coll.) and Pl. ÚS 29/09 (387/2009 Coll.) relating to the compliance of the Lisbon Treaty and the EU Charter of Fundamental Rights with the constitutional order.

⁶⁸ Art. 6 paras. 1, 2 and 4 of the Charter of Fundamental Rights and Freedoms.

⁶⁹ Section 219 of the Criminal Act and Section 140 of the Criminal Code, which replaces the Criminal Act from 1 January 2010. According to Section 54 of the Criminal Code, an exceptional sentence may mean up to life imprisonment.

⁷⁰ Section 141 of the Criminal Code.

⁷¹ Section 220 of the Criminal Act and Section 142 of the Criminal Code.

⁷² Section 143 of the Criminal Code.

⁷³ Section 144 of the Criminal Code.

⁷⁴ Section 145 par. 3, 146 par. 4 and 146a par. 5. of the Criminal Code.

⁷⁵ E.g. crimes of torture and other inhuman and cruel treatment, trafficking with human beings, robbery, extortion, hostage taking, rape, abuse of a person in one's care, and others.

of this act to avert imminent danger or an impending or continuing attack on interests protected by penal law are not considered to be a criminal offence.⁷⁶

28. Members of the Police of the CR, the municipal police force, the Prison Service and the Customs Administration must comply with strict legally defined rules regulating the use of service weapons. Members of the Police of the CR may only use their weapons in the event of an extreme emergency or to defend themselves, to prevent a violent attack or to overcome resistance, against dangerous offenders who refuse to surrender, are escaping or fail to obey an order or represent a danger to themselves or others and only if they are otherwise unable to perform their duties. Police officers should give prior warning to offenders before using their weapons, unless there is no time available or it is an emergency situation. The actual use of a weapon must be cautious and may not harm or threaten the person against whom it is aimed, or any other person more than absolutely necessary.⁷⁷ After using a weapon, police officers are obliged to offer immediate medical assistance and to report the incident to their superior officer and the Public Prosecutor's Office.⁷⁸ Constables of the municipal police may also use their service weapons to defend themselves or in emergency situations or to arrest an offender.⁷⁹ Members of the Prison Service may also use weapons for their defence or in emergency situations, to overcome resistance in situations where their lives or health are at risk, to prevent an attack or to prevent the escape of prisoners.⁸⁰ Members of the Customs Administration may use weapons in similar situations as Czech police officers.⁸¹ All members of these forces and services must also comply with the general conditions governing the use of weapons and their subsequent actions.⁸² Any breach of these will render the officer liable for disciplinary sanctions and subsequent prosecution.

29. There were no changes in the Czech Republic during the period under review as regards the protection of human life before birth. According to constitutional law, human life deserves protection already before birth.⁸³ However, this protection must be consistent with the mother's right to protection of her private life. A pregnant woman may request the artificial termination of a pregnancy up to the twelfth week, without giving a reason.⁸⁴ The only reason to refuse the artificial termination of a pregnancy is where it poses a threat to the woman's life. Artificial termination of a pregnancy for health reasons is possible up to the end of the twenty-fourth week of pregnancy.⁸⁵ The major increase in the application of contraceptive methods since the beginning of the 1990s has led to a fall in the number of abortions, both for health and other reasons. The number of abortions during the period is shown in the table in annex no. 3.

30. Abortion performed in contravention of the law on abortion or without the consent of the pregnant woman is a criminal offence.⁸⁶ It is also a criminal offence to assist a

⁷⁶ Sections 13 and 14 of the Criminal Act and Sections 28 and 29 of the Criminal Code.

⁷⁷ Section 56 of Act No. 273/2008 Coll., on the Police of the CR, as amended.

⁷⁸ Section 57 of the same Act.

⁷⁹ Section 20 of Act No. 553/1991 Coll., on the municipal police, as amended.

⁸⁰ Section 18 of Act No. 555/1992 Coll. on the Prison Service and the Judicial Guard of the Czech Republic, as amended.

⁸¹ Section 40 of Act No. 13/1993 Coll., as amended.

⁸² Section 21 of Act No. 553/1991, Sections 19 and 20 of Act No. 555/1992 Coll., Sections 41 and 42 of Act No. 13/1993 Coll.

⁸³ Art. 6 par. 1 of the Charter of Fundamental Rights and Freedoms.

⁸⁴ See Act no. 66/1986 Coll., on abortion, as amended and the implementing Decree of the Ministry of Health No. 75/1986 Coll.

⁸⁵ E.g. posing a danger to the life or health of the woman, or to the healthy development of the foetus or due to its genetically defective development.

⁸⁶ Sections 227 and 228 of the Criminal Act and Sections 159 and 160 of the Criminal Code.

pregnant woman to abort in contravention of the law and to incite her to take this step.⁸⁷ However, the pregnant woman herself never incurs criminal responsibility for these acts and cannot therefore be punished for terminating the pregnancy in contravention of the law, or for allowing another or requesting another to terminate the pregnancy.⁸⁸

Prohibition of the death penalty (par. 2)

31. There were no changes in the Czech Republic during the period under review. Capital punishment continues to be prohibited under constitutional law and international treaties.⁸⁹

Article 7

Protection against torture and cruel, inhuman or degrading treatment or punishment and the recommendations of the previous concluding observations regarding handing people over for torture or ill-treatment,⁹⁰ relating to the establishment of an independent supervisory authority to monitor unlawful behaviour by public authorities,⁹¹ and concerning the unlawful sterilisation of Roma women⁹²

32. The constitutional order of the Czech Republic still prohibits torture and cruel, inhuman or degrading treatment.⁹³ More detailed information relating to this article can be found in the fourth and fifth periodic reports on the performance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁹⁴

Criminal law protection against torture and cruel, inhuman or degrading treatment

33. Criminal law protection against torture and cruel, inhuman or degrading treatment by public authorities was also incorporated into the new Criminal Code.⁹⁵ Torture is still defined as inflicting physical or mental suffering to another by torture or other inhuman and cruel treatment. The penalty is imprisonment for a period from 6 months to 18 years, depending on the seriousness of the charges and the resulting consequences. There was no change in the legislation regulating the obligations of police officers in their dealings with other individuals relating to protection against torture. Likewise, there was no change in the concept of protection against torture and cruel, inhuman or degrading treatment on the part of private subjects, in the form of the criminal offence of abuse of a person in one's care⁹⁶ and abuse against a person residing in a common dwelling.⁹⁷ Abuse is punishable by a prison term lasting from 6 month to 12 years. An overview of criminal prosecutions for the crimes referred to above is provided in annex no. 4.

⁸⁷ Sections 161 and 162 of the Criminal Code.

⁸⁸ Section 229 of the Criminal Act and Section 163 of the Criminal Code.

⁸⁹ Art. 6 par. 3 of the Charter of Fundamental Rights and Freedoms and Art. 1 of Protocol No. 6 to the Convention on the Protection of Human Rights and Fundamental Freedoms (209/1992 Coll.).

⁹⁰ CCPR/C/CZE/CO/2, para. 8.

⁹¹ Ibid., para. 9.

⁹² Ibid., para. 10.

⁹³ Art. 7 par. 2 of the Charter of Fundamental Rights and Freedoms.

⁹⁴ CAT/C/CZE/4-5.

⁹⁵ The wording of Section 259a of the Criminal Act was incorporated into Section 149 of the Criminal Code.

⁹⁶ The wording of Section 215 of the Criminal Act was incorporated into Section 198 of the Criminal Code.

⁹⁷ The wording of Section 215a of the Criminal Act was incorporated into Section 199 of the Criminal Code.

34. It still applies that in criminal proceedings evidence can only be obtained in a manner that is consistent with the law.⁹⁸ If, therefore, torture and cruel, inhuman or degrading treatment by public authorities is a criminal offence, evidence obtained using these methods is evidence obtained using criminal acts, and therefore in breach of the law. Such evidence can therefore not be used in criminal proceedings against a person who was a victim of this kind of treatment. Likewise, it cannot be used in cases where the witnesses or other persons involved in criminal proceedings were treated in this way. On the other hand, evidence of torture may be used in proceedings against a person who is accused of it as a means of proving his/her guilt.

Monitoring and complaints systems

35. Steps taken by the Czech Republic towards the establishment of an independent supervisory authority to monitor illegal behaviour by public authorities and the operation of the existing system and training for security officers are described in detail in the Czech Republic's information given in 2008⁹⁹ and 2010.¹⁰⁰ The current government is continuing to prepare the Act on the General Inspection of Security Forces, which will be directly subordinate to the government and which will undertake investigations into criminal acts and other unlawful conduct by Czech police officers, the Prison Service and the Customs Administration, and which is due to come into force in the middle of 2012. Information on compensation for maladministration by police officers is provided in annex no. 5.¹⁰¹

36. The situation regarding constables of the municipal police remains the same. Constables are employees of the municipality, not of the state. They have the same status in criminal proceedings as ordinary persons. Their breaches of legal regulations are then dealt with directly by the mayor of the municipality or a member of the council, entrusted by that council to manage the municipal police force, and treated as a labour law misdemeanour, where each municipality established its own procedures. As an employer, the municipality is also liable for damage caused by the misconduct of its constables.

37. Members of the Prison Service providing security for prisons, remand prisons and detention facilities and responsible for compliance with the statutory conditions of remand, imprisonment and detention, are currently under the authority of the Ministry of Justice.¹⁰² Criminal prosecutions of members of the Service are handled by bodies delegated by the Ministry.¹⁰³ Under a new draft Act, members of the Prison Service will also be subject to the General Inspection of Security Forces.

38. Members of the Customs Administration are currently under the supervision of the Ministry of Finance.¹⁰⁴ Their criminal prosecution is handled by the same bodies as the prosecution of other people. A recent development is that the staff of the Customs Administration will also come under the authority of the General Inspection of Security Forces.

⁹⁸ Section 89 par. 3 of the Criminal Act.

⁹⁹ CCPR/C/CZE/CO/2/Add.1.

¹⁰⁰ CCPR/C/CZE/CO/2/Add.2.

¹⁰¹ The Ministry of Interior, as the body providing compensation for maladministration by members of the Police of the CR, does not keep statistics on individual cases. These statistics will be processed and submitted to the Committee as soon as possible.

¹⁰² Section 4b of Act No. 555/1992 Coll., on the Prison Service and Judicial Guard of the Czech Republic, as amended.

¹⁰³ Section 12 par. 2 of the Criminal Code. This is the Prevention Section, Department of Control of the General Directorate of the Prison Service.

¹⁰⁴ Section 1 of Act No. 185/2004 Coll., on the Customs Administration of the Czech Republic, as amended.

39. A national preventive mechanism adopted by the Czech Republic in accordance with Articles 17 to 23 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁰⁵ is the Ombudsman,¹⁰⁶ whose task is to conduct systematic visits of all the places where people are restricted in their freedom, regardless of whether this is the result of a decision or order from a public authority or a consequence of the actual situation of these people. The Ombudsman may visit facilities operated by both the state and private entities. During these visits, the Ombudsman verifies how the residents are treated, attempts to ensure respect for their rights and to reinforce their protection against abuse.

Dignified treatment of people resident in social care institutions and health institutions

40. The new Act on Social Services¹⁰⁷ obliges institutions providing these services to create such conditions in their provision that enable the people who receive these services to enjoy their human and civil rights.¹⁰⁸ Fulfilment of this condition is then monitored by the Regional Authority Inspectorate or the Ministry of Labour and Social Affairs. If this condition is not met, the registration of the service provider may be revoked. Under the proposed law on health services, the patient has the right to respect, to be treated with dignity, to courtesy and respect for privacy during the provision of health services.

Ensuring the safety of foreign nationals deported from the Czech Republic

41. The Act on the residence of aliens does not allow the expulsion of foreign nationals who are at real risk of serious harm in the state to which they would be expelled.¹⁰⁹ Serious harm means the imposition or execution of the death penalty, torture or inhuman or degrading treatment or punishment, or a serious threat to life or human dignity by reason of indiscriminate violence in situations of armed conflict.¹¹⁰ The only exception is if the foreigner has committed a crime against peace, a war crime or a crime against humanity as defined in the relevant international documents, a particularly serious crime, acts that are contrary to the principles and objectives of the United Nations, or constitutes a danger to national security. Even in such cases however, a foreigner will not immediately be extradited to a state where he/she is at risk of serious harm, but will be allowed a maximum of 60 days to be admitted to another state. If the foreigner demonstrates that he/she has not been granted admission to another state, the police will allow him/her to submit an application for a visa.

42. In response to the recommendation in paragraph 8 of the previous concluding observations, regarding the possible extradition of people to countries where they risk torture or other inhuman and cruel treatment, the Czech Republic states that, as a party to the Convention on International Civil Aviation¹¹¹ and a member of the International Civil Aviation Organization (ICAO), it cannot control and restrict landings and flyovers of civil aircraft of other contracting parties, in accordance with article 5 of the Convention. The government is empowered to decide on flyovers and landings of military aircraft, provided

¹⁰⁵ Promulgated under No. 78/2006 Coll.

¹⁰⁶ Section 1 paras. 3 and 4 of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended by Act No. 381/2005 Coll. with effect from 1 January 2006.

¹⁰⁷ Act No. 108/2006 Coll., as amended.

¹⁰⁸ Section 88 (c) of the Act.

¹⁰⁹ Section 179 par. 1 of Act No. 326/1999 Coll., on the Residence of Aliens, as amended.

¹¹⁰ Section 179 par. 2 of the same Act.

¹¹¹ Published under no. 147/1947 Coll.

it promptly notifies both chambers of Parliament, which can revoke its decision.¹¹² Parliament is also informed by the government each year of flyovers and passages of armed forces from foreign countries through the territory of the Czech Republic. On the basis of this information, the Czech Republic has not found that any person has been transported across or extradited from its territory for torture or other cruel and inhuman treatment.

The involvement of individuals in medical and scientific research

43. A person may participate in research and testing of new findings using methods not yet in clinical practice only with his/her written consent and also with the written consent of the Ministry of Health. Candidates must be informed of the nature, method of application, duration and purpose of these untried methods, as well as any dangers associated with them. Findings may not be tested on people on remand, in detention or in prison.¹¹³ The Czech Republic also complies with the Convention on Human Rights and Biomedicine, which forms part of its legal system.¹¹⁴

44. The actual selection of subjects is carried out by individual specialised research institutes, mainly from among their own patients, and these also ensure compliance with the conditions of informed consent. When allocating grant funding to support the research project, the Ministry of Health checks whether the applicant has informed the patients of the nature of the research, including a description of the tasks to be performed.

Sterilisation of Roma women and corrective action taken

45. In 2009, the government of the Czech Republic expressed its regret at the individual errors identified concerning sterilisations carried out in contravention of the applicable regulations. It also undertook to take preventive measures to avoid any recurrence of these errors.¹¹⁵ The Czech Republic provided information on these measures in 2010.¹¹⁶

46. The legislation covering sterilisation, based on the Directive from the Ministry of Health, cannot currently be revised, because this form of legal regulation no longer exists. A comprehensive treatment of the rules relating to sterilisation will be included in the new law on specific health services. In October 2007, healthcare facilities were informed in writing of the need to respect the applicable legislation. This only allows medical interventions to be carried out with the informed consent of the patient, who has been explained the nature of the intervention and its consequences and possible risks. Exceptions may be only in life-threatening or similar situations. The patient is therefore always free to decide whether or not to undergo the given operation. Her written consent is a mandatory part of the medical records.¹¹⁷ The law also establishes the minimum content of the consent form – information regarding the purpose, nature, expected benefits, consequences and possible risks of the medical intervention, guidance on alternative treatments, that the patient can choose, information on possible future limitations and information on treatment regimes and appropriate preventive measures. A template for an informed consent form for

¹¹² Article 43, paragraph 5 of the Constitution

¹¹³ Section 27b of Act No. 20/1966 Coll., on human healthcare, as amended.

¹¹⁴ Promulgated under no. 96/2001 Coll. Int. Tr. Chapter V. “Scientific research” is dedicated to the protection of people involved in scientific research, the protection of people unable to give their consent to the research and the protection of in vitro embryos.

¹¹⁵ Resolution of the Government of the Czech Republic No. 1424 of 23 November 2009.

¹¹⁶ CCPR/C/CZE/CO/2/Add.3.

¹¹⁷ Section 1 par. 2 (h) of Ministry of Health Decree No. 385/2006 Coll., on medical documentation, as amended.

sterilisations has been issued in the Bulletin of the Ministry of Health of the CR.¹¹⁸ The form also contains information concerning the intervention and its consequences, brief information about the anatomy of the internal genital organs and the expected strain on the organism posed by the intervention. The informed consent form also contains a statement by the doctor that the patient has received information regarding the intervention, as well as a declaration by the patient that she has been acquainted with the intervention and any possible complications. The informed consent form is signed by the doctor, the patient and, possibly, a witness. The form is currently translated into Romani.

47. A portal on quality and safety is available to the public on the Ministry of Health website, containing information about patients' rights, including the right to information on interventions and their risks and consequences and the possibilities of refusing to undergo an intervention.¹¹⁹ In April 2010, the Ministry also published and distributed a brochure entitled Patient's Guide, which provides information for patients on their rights, including the right to information on interventions and their risks and consequences, on the possibility of refusing to undergo an intervention and an overview of the legislation relating to healthcare.¹²⁰

48. The Masters and Bachelors degree courses at medical faculties are currently including 17 hours of ethics studies and 15 hours of healthcare law in relation to human rights. The Postgraduate course offers 16 hours of medical ethics and law. These study programmes also require knowledge of the basic legal regulations relating to the medical profession, professional ethics covering contacts between the doctor and the patient, and practical skills in patient communications, with an emphasis on patients' rights and their application. In 2009, the Ministry of Health also instructed that the issue of sterilisation be incorporated in the programme of the Forum of Experts for the creation of standards of care and the concentration of selected highly specialised forms of care.

49. Criminal prosecution of doctors who had performed sterilisations was initiated in a number of cases, but was subsequently suspended or terminated in accordance with the Code of Criminal Procedure. Women who were sterilised in breach of the legislation can legally claim compensation for damages and non-material harm to personal rights. This claim is then assessed according to standard legal provisions, including any statutory limitation period, which in the case of injury to health amounts to 2 years from the time when the victim learned of the damage and the perpetrator, and in the case of compensation for non-material harm 3 years, or a maximum of 10 years after sustaining the injury.¹²¹ In certain cases, however, the Constitutional Court has previously found that the application of the statutory limitation period is inconsistent with good morals. This mainly concerned cases where the participant was not responsible for the limitation of their rights and where any limitation of their claim would represent too harsh a punishment, given the circumstances of their case.¹²²

¹¹⁸ <http://www.mzcr.cz/Legislativa/Soubor.ashx?souborID=9278&typ=application/pdf&nazev=Věstník 8-2007.pdf>.

¹¹⁹ <http://www.mzcr.cz/kvalita/>.

¹²⁰ <http://www.mzcr.cz/Soubor.ashx?souborID=8936&typ=application/pdf&nazev=radce-pacienta.pdf>.

¹²¹ See the Judgement of the Supreme Court ref. no. 31Cdo 3161/2008.

¹²² See the findings of the Constitutional Court ref. nos. II. ÚS 3168/09 and II. ÚS 635/09.

Article 8

Protection against servitude and slavery (par. 1 and 2)

50. The general eligibility of all to rights,¹²³ guarantees the inviolability of person and of privacy, which may be limited only in cases specified by law¹²⁴ and a prohibition on forced labour or service¹²⁵ are enshrined in the constitutional order of the Czech Republic. In general, therefore, slavery and servitude are prohibited under the Czech legislation.

Prohibition of forced labour (par. 3)

51. The constitutional order allows the following exceptions to the prohibition of forced labour.

Compulsory work in crisis situations

52. When a state of emergency is declared, an obligation can be imposed on all individuals to perform specific work for the period of time required (work requirement) or to perform individual and exceptional tasks (work assistance) needed to resolve the crisis situation.¹²⁶ A state of emergency is a situation brought about by natural disasters, environmental or industrial crisis, accident or other hazard, which poses a serious risk to lives, health or property values, or to domestic order and security.¹²⁷ Under these conditions, a state of emergency is declared at a regional level.¹²⁸ Individuals may refuse to carry out the work requirement or provide the work assistance if their performance would endanger their own life or health or that of others, or if these obligations are imposed on them in breach of the law.¹²⁹ Persons under the age of 18 years and over the age of 62, the disabled and those unfit to perform the type of work required, women and single men caring for a child under the age of 15, pregnant women and women within three months of giving birth are exempt from performing work requirements or work assistance. In serious cases, other persons may be exempted from these obligations.¹³⁰ In addition, the worker is due financial compensation for the work requirement or work assistance performed.

Work performed by prisoners while on remand or serving prison sentences

53. Work performed by prisoners continues to be voluntary, and prisoners cannot be forced to work as part of their sentence, i.e. without the right to remuneration for their work, or required to work as an obligation, i.e. even with remuneration. However, if a prisoner is assigned work with his/her consent, he/she must perform this work, provided he/she is medically fit for it.¹³¹ Work is provided for prisoners by the individual prisons as part of their operations, or their own manufacturing or business activities. Other public or private entities may provide prisoners with work on the basis of a contract with the prison. In the case of a private entity, the prior written consent of the prisoner is required before the work can be performed, and this can be withdrawn at any time. This does not apply in the

¹²³ Art. 5 of the Charter of Fundamental Rights and Freedoms.

¹²⁴ Art. 7 par. 1 of the Charter of Fundamental Rights and Freedoms.

¹²⁵ Art. 9 par. 1 of the Charter of Fundamental Rights and Freedoms.

¹²⁶ Section 31 par. 3 (d) of Act No. 240/2000 Coll., on crisis procedures, as amended.

¹²⁷ Art. 5 of Constitutional Act No. 110/1998 Coll., on the security of the Czech Republic, as amended.

¹²⁸ Section 3 of Act No. 240/2000 Coll., on crisis procedures, as amended.

¹²⁹ Section 31 par. 4 of the same Act.

¹³⁰ Section 32 par. 2 of the same Act.

¹³¹ Section 29 par. of Act No. 169/1999 Coll., on imprisonment, as amended.

case of a public or publicly owned entity.¹³² Working conditions for prisoners are the same as for other employees. They are also paid for the work performed. Prisoners use their salaries to pay for damages resulting from their criminal activities, the cost of the stay in prison and their other commitments, and they are also guaranteed a certain amount to cover their own needs.¹³³ During the period under review, there was still insufficient work for those prisoners who are able and willing to work.

54. Work therapy is also deemed to constitute the performance of work, provided it forms part of the treatment programmes, education in the form of full-time study programmes and work that is commonly performed for prisons (e.g. daily cleaning, odd jobs in the kitchen, etc.). The prisoners are obliged to perform this type of work without compensation, but they may not be directed to do so during their rest periods.

55. Details on this topic can also be found in the fourth and fifth periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹³⁴

Carrying out the sentence of community service

56. The sentence of community service is imposed as an alternative punishment to imprisonment and consists of carrying out work for charitable purposes for a municipality or a state or other not-profit institution.¹³⁵ The work must not serve commercial purposes. The time period allocated for the work may vary between 50 and 300 hours, depending on the nature of the criminal offence and the state of health of the perpetrator. Before imposing sentence, the court will request the opinion of the Probation and Mediation Service regarding the possibility of carrying out the sentence and the medical fitness of the accused, as well as the accused's own opinion on the imposition of this type of punishment.¹³⁶ The offender is required to perform the community service within one year of the sentence being imposed. Should he/she fail to meet this obligation for no justifiable reason, the court is entitled to convert the remainder of the sentence that has not been performed into a term of imprisonment, where each remaining hour of community service is counted as one day of imprisonment.

Trafficking in human beings and the recommendation of the previous concluding observations¹³⁷ concerning the fight against human trafficking and commercial sexual exploitation

57. The criminal offence of human trafficking consists of the use of force, threat of force, deception, fraud, abuse of power or of a position of vulnerability to lure, induce or

¹³² This distinction is in conformity with Art. 2 par. 2 (c) of International Labour Organisation Convention No. 29 on Forced or Compulsory Labour of 28 June 1930 (promulgated under no. 506/1990 Coll.), which states: "the term forced or compulsory labour shall not include ... any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations."

¹³³ Government Regulation No. 365/1999 Coll., on the amount and conditions of remuneration for sentenced prisoners in active employment during the performance of their prison sentence and Ministry of Justice Decree No. 10/2000 Coll., on deductions from prisoners' pay.

¹³⁴ CAT/C/CZE/4-5.

¹³⁵ Sections 62–65 of the Criminal Code.

¹³⁶ This new legislation follows, inter alia, the objectives of Council of European Recommendation No. R (92) 16 of the Committee of Ministers to Member States on the European Rules on Community Sanctions and Measures.

¹³⁷ CCPR/C/CZE/CO/2, para. 12.

deliver another to be used for sexual intercourse or other forms of molestation, for the production of pornography, for the removal of tissue, cells or organs from their body, to serve in armed forces, for slavery or servitude or for forced labour or other forms of exploitation.¹³⁸ There have been cases where, under the pretext of an offer of well-paid work, people from countries in Eastern and South-eastern Europe, Russia and Central and Eastern Asia have been recruited to work in the Czech Republic through organised groups, which arranged for their legal entry to the territory of the Czech Republic. According to the relevant state authorities, their passports were taken from them on their arrival in the Czech Republic and they were forced to work for little or no pay, while they were prevented from leaving through indebtedness and the threat of physical violence against themselves or their families in their countries of origin. Girls and women were placed in erotic businesses, where they were forced into prostitution. Information has been discovered regarding links between criminal groups and the state authorities concerning the legalisation of the residence of these foreign nationals in the territory of the Czech Republic. An important factor behind the emergence of this situation was the poor economic situation in the countries of origin of migrant workers. Problems with migrants worsened during the economic crisis, when Czech companies terminated agreements with temporary employment agencies, which assigned their foreign workers to these agencies, companies did not extend temporary work contracts and employment bureaus refused to extend their work permits after their expiry date. The Ministry of Interior has prepared a package of measures to address the situation of redundant workers on the territory of the Czech Republic.¹³⁹ Labour Inspectorates, in cooperation with the customs authorities and employment bureaus, play an important role in identifying the victims of human trafficking and in preventing the exploitation of migrant workers. Specific statistics relating to the crime of human trafficking are provided in annex no. 6.

58. An extremely problematic area involves human trafficking crimes committed against minors, particularly the commercial sexual exploitation of children. The victims are mostly children aged between 15–18 years (and exceptionally even younger), who enter into prostitution voluntarily as a solution to their difficult economic and social situation. Far fewer are the cases of children who are forced into prostitution by another person – this is often a person close to them or a direct relative. These children become a source of regular income for people profiting from prostitution. In order to protect them, the Czech Republic has approved a National Action Plan for the implementation of the National Strategy to Prevent Violence against Children in the Czech Republic for the period from 2009–2010,¹⁴⁰ which sets out specific objectives to accomplish the tasks contained in that strategy. Another problem is the diffusion of child pornography on the Internet. Criminal sanctions for possession of child pornography¹⁴¹ and the abuse of children to produce pornography¹⁴² are important in this context. In 2008, the Czech Republic drafted a National Strategy to Combat Trafficking in Human Beings for the period from 2008–2011, which provides a comprehensive description of the situation in the fight against human trafficking in the Czech Republic, and defines the areas where attention should be focused. These include,

¹³⁸ Section 232a of the Criminal Act and Section 168 of the Criminal Code.

¹³⁹ Government Resolution No. 171 of 9 February 2009.

¹⁴⁰ http://www.vlada.cz/assets/ppov/rlp/dokumenty/strategie-prevence-nasili-na-detech/Narodni-akcni-plan-realizace-Strategie-prevence-nasili-na-detech-2009-2010_1.pdf.

¹⁴¹ Section 205a of the Criminal Act and Section 192 of the Criminal Code.

¹⁴² Section 205b of the Criminal Act and Section 193 of the Criminal Code.

for example, the interpretation and application of penal legislation and the coordination of activities involving prevention, research and the protection of victims.¹⁴³

59. Training for police officers continues to focus on improving their ability to identify victims of human trafficking and to offer them assistance, with the option of following up with the criminal prosecution of the perpetrators. Public prosecutors, judges, doctors, employment bureau staff, representatives from Czech embassies abroad and social departments of local government offices are also involved in the training programmes. Topics relating to the issue of human trafficking are included in the basic training curricula for Czech police officers in the Ministry of Interior secondary police school. The aim of this training is to provide novice police officers with basic information on the problem of human trafficking and to teach them to recognise victims of human trafficking and sexual abuse. The issue of human trafficking is currently also included in the relevant specialised and innovative courses that are run in police academies. The Police Academy of the CR also runs special seminars for the relevant police departments. Constables of the municipal police may also encounter victims of human trafficking. Since April 2007 the set of test questions intended to verify the professional qualifications of constables of the municipal police has been expanded to include questions relating to prostitution and human trafficking and constables of the municipal police are acquainted with the materials and experience of the Czech police officers. A system to train public prosecutors and judges in the area of human trafficking has been introduced, emphasising the need to impose adequate sanctions and for cooperation with non-governmental organisations. An educational project aimed at training local government social department staff was organised in cooperation with the Ministry of Labour and Social Affairs.

60. In 2007 a campaign was launched against human trafficking. The campaign focused on a target group of customers of prostitutes and, indirectly, on the victims of human trafficking for sexual exploitation. It also offered a secure and anonymous method for people to report their suspicions and to learn more about the phenomenon of human trafficking through newly established websites, telephone lines and information materials. For the purposes of the campaign, partner organisations created a platform called “*Together against human trafficking*”. The campaign slogan was: “*Don’t be afraid to say it for her!*” Czech, English and German websites were used during the campaign.¹⁴⁴ The campaign was extended through 2008. Within the context of the prevention of human trafficking, the International Organisation for Migration (IOM) Prague also implemented a short-term pilot project entitled “*Prevention of human trafficking: lectures in secondary schools*” during the spring of 2007. The project, which involved 6 selected secondary schools, showed a level of ignorance, but also the interest of secondary school pupils in the problem of human trafficking and the need to address this target group in a more systematic manner. In 2009, the Ministry of Interior distributed a bilingual brochure intended for both the professional and the general public, as well as potential victims of human trafficking. The Ministry of Interior website was also updated with information relating to the issue of trafficking with human beings.¹⁴⁵ Documents and current contacts for the non-profit and intergovernmental sector were also published.

61. Preventive activities are being organised in the Czech Republic and in the countries of origin of people who become victims of human trafficking. In the Czech Republic, these preventive activities are focused towards vulnerable groups: women travelling abroad for work, residents of economically weaker regions or members of socially marginalised

¹⁴³ <http://www.mvcr.cz/mvcren/file/national-strategy-to-combat-trafficking-in-human-beings-2008-2011-pdf.aspx>.

¹⁴⁴ www.rekni-to.cz; www.sage-es.cz; www.say-it.cz.

¹⁴⁵ <http://www.mvcr.cz/clanek/kriminalita-146433.aspx?q=Y2hudW09NA%3d%3d>.

communities. Non-governmental organisations are responsible for primary prevention in schools and operate an information telephone line. In the countries of origin of victims of human trafficking, information is disseminated on the possibilities of legal (working) migration and on the risks of illegal migration.¹⁴⁶ During the autumn of 2007, employees of the Refugee Facilities Administration underwent training in the methods of identifying real and potential victims of human trafficking, ensuring initial crisis intervention in facilities and the programme options. The training programme received funding from the Ministry of Interior and was carried out by the Arcidiecézní charita Praha, La Strada Česká republika, o.p.s. and IOM Praha. Employees of the non-governmental organisation, La Strada Česká republika, o.p.s. and IOM Praha also carried out training in the identification of victims of human trafficking for the staff of the Foreigners and Border Police forces at international airports. The training took place within the context of the Czech Republic's accession to the Schengen area and emphasised the identification of minors unaccompanied by a legal guardian. Two round tables were also held on the subject of human trafficking in Olomouc and Ústí nad Labem, whose aim was to inform representatives of local and regional bodies of the forms of human trafficking prevention and the programme options, and to initiate regional cooperation on this issue.

62. The Ministry of Interior is responsible for the international project entitled "Transnational referral mechanism for victims of human trafficking in countries of origin and destination", which is coordinated by the International Centre for Migration Policy Development (ICMPD). The aim of the project is to link the existing national coordination mechanisms to protect and assist victims of human trafficking, to unify the standards of services provided to victims and, most importantly, to reinforce international and bilateral cooperation in the area of repatriation and reintegration of victims. The main output of this project will be the establishment of principles of care for victims of human trafficking and their repatriation to their country of origin. The project guarantor is Italy and, apart from the Czech Republic, Portugal, Bulgaria, Romania, Albania, Hungary and the former Yugoslav Republic of Macedonia are also involved, along with a number of non-profit organisations. The ICMPD is responsible for implementing standards and for carrying out activities within the framework of this international project. As part of the activities of the CZ PRES, the Czech Republic promoted the adoption of the Council's conclusions regarding the creation of an informal network of national rapporteurs and equivalent mechanisms.¹⁴⁷ A specialised website was subsequently established, containing information concerning the operations of national rapporteurs in each individual country, their contact details and relevant national materials, such as reports, research, analyses, etc.¹⁴⁸ It was agreed with the Commission that the contents of the website would be copied and incorporated in a special portal dedicated to human trafficking.

Programmes and other measures to assist victims of human trafficking

63. During the period under review, the Programme for the Support and Protection of Victims of Human Trafficking, which currently involves two non-governmental organisations (La Strada ČR, o.p.s., and Arcidiecézní charita Praha) as well as the IOM Praha, continued to operate successfully and to make progress. From 2005 to 2010 a total of 93 victims were included in the Programme. The Programme offers assistance to victims of human trafficking and encourages them to cooperate with law enforcement authorities in criminal proceedings and to help punish the perpetrators of these particularly serious

¹⁴⁶ This mainly relates to countries of the former USSR – Ukraine, Moldavia, Georgia, Belarus.

¹⁴⁷ http://ec.europa.eu/anti-trafficking/download.action?nodeId=0760ad46-7b1f-41da-94ce-b51de3c6c599&fileName=Council+Conclusions+on+National+Rapporteur+Network+2009_en.pdf.

¹⁴⁸ The website address is www.national-rapporteurs.eu.

crimes. Victims of trafficking are offered crisis psycho-social or medical care, accommodation, support during their integration into normal life and, in the case of foreign nationals, a change in their residence status, if required. The Czech Republic coordinates and pays for the voluntary, free and safe return of victims of human trafficking to their countries of origin. To 31 December 2008, 10 repatriations were organised (3 to Brazil, 1 to Ukraine, 1 to Slovakia, 4 to Romania and 1 from Denmark to the Czech Republic). Since 2003 a total of 41 voluntary repatriations have been arranged, of which 10 were from other countries to the Czech Republic. It appears that Czech citizens continue to be victims of human trafficking and because of this, preventive and educational activities must also be developed in the Czech Republic. Various social services were provided to other victims of exploitation. The Programme is funded in the form of a grant for non-governmental organisations financed by the Ministry of Labour and Social Affairs and the European Social Fund. During this period, funding under the grant programme was provided to the non-governmental organisations La Strada ČR, the Arcidiecézní charita Praha, Organizace pro pomoc uprchlíkům, o.s. and Rozkoš bez rizika, o.s. More detailed information on the Programme is provided in annex no. 7.

Article 9

The right to personal liberty and security (par. 1) and the recommendations of the previous concluding observations relating to the detention of people in psychiatric facilities¹⁴⁹ and to periods of detention of minor foreign nationals¹⁵⁰

64. The constitutional order guarantees personal liberty and ensures that it can only be limited by law, which determines the reasons, duration and manner of such limits.¹⁵¹ The constitutional order also establishes the basic boundaries within which liberty may be restricted in criminal proceedings. Any person detained shall be informed without delay of the reasons for the detention, questioned, and not later than within forty-eight hours released or turned over to a court. Within twenty-four hours of having taken over the detained person, a judge shall question such person and decide whether to place in custody or to release the person.¹⁵² If there are grounds to detain a person, the judge shall issue the appropriate warrant, the arrested person shall be turned over to him within twenty-four hours, questioned and within another twenty-four hours must be either placed in custody or released.¹⁵³ The total period of detention may therefore amount to either 72 or 48 hours. Restriction of liberty for health reasons in medical institutions is also under judicial control, because the court must be informed within 24 hours, and will then decide on such placement within 7 days.¹⁵⁴

65. More detailed information on this article, including statistical data, can be found in the fourth and fifth periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁵⁵

¹⁴⁹ CCPR/C/CZE/CO/2, para. 14.

¹⁵⁰ Ibid., para. 15.

¹⁵¹ Art. 8 paras. 1 and 2 of the Charter of Fundamental Rights and Freedoms.

¹⁵² Art. 8 par. 3 of the Charter of Fundamental Rights and Freedoms.

¹⁵³ Art. 8 par. 4 of the Charter of Fundamental Rights and Freedoms.

¹⁵⁴ Art. 8 par. 6 of the Charter of Fundamental Rights and Freedoms.

¹⁵⁵ CAT/C/CZE/4-5.

Deprivation or restriction of personal liberty in criminal proceedings

66. A police authority may detain someone during criminal proceedings on the basis of a decision for detention by the public prosecutor, in urgent cases without this decision, or before the beginning of criminal proceedings. Another private individual may also detain someone in exceptional cases, provided the person detained has been caught committing a criminal act, or immediately thereafter, and this is necessary in order to determine his/her identity, to prevent escape or to provide evidence. The detained person must be immediately handed over to the police. The police authority will question the detained person and draw up a record of this interrogation, in which it will note the place, time and specific circumstances of the detention and justify the detention. The interrogation report and other materials are handed over to the public prosecutor, who may then submit an application for detention, on the basis of which the court will either issue a custody order or release the detainee. If, on the basis of the interrogation or other findings, the reasons for the detention are deemed invalid, the person must be released immediately. In all cases, the time limits mentioned above for the handover and the court's decision must be observed, otherwise the detainee must be immediately released.¹⁵⁶

67. An arrest and committal to custody are on the basis of a court order against a person against whom a criminal prosecution has been launched and where there are reasons for detention.¹⁵⁷ The police authority which carried out the arrest is not authorised to perform any other tasks with the detainee, but only immediately to ensure his/her delivery to the court, which will decide on custody within the time allowed for this decision. The accused has the same right to a lawyer when under arrest as when in detention.

68. Detention may always only last for the period of time necessary.¹⁵⁸ The Code of Criminal Procedure also provides for a total period of detention, which may not be exceeded. Depending on the seriousness of the crime, this can last from one to four years,¹⁵⁹ where one-third of this period can be pre-trial and two-thirds during court proceedings. After the expiry of this period, or its part relating to a particular stage of the criminal proceedings, the accused must immediately be released, regardless of whether the reasons for the custody order still exist.¹⁶⁰ All bodies involved in criminal proceedings are obliged ex officio to examine continuously whether the grounds for detention still exist, at intervals of at least three months.¹⁶¹ The accused also has the right at any time to ask to be released and the court must promptly decide on his/her application within a maximum of five working days.¹⁶² If the grounds for detention no longer exist, the accused must be released immediately.¹⁶³ The public prosecutor is also authorised to order the release of the accused.

¹⁵⁶ Section 75–77 of the Code of Criminal Procedure.

¹⁵⁷ Section 69 of the Code of Criminal Procedure. According to Section 67 of the Code of Criminal Procedure, grounds for detention include efforts in justified cases to prevent the accused from frustrating or hampering the collection and presentation of evidence, from avoiding criminal proceedings or punishment, or to prevent him/her from completing a crime or from committing a new crime. Detention is always an extreme and exceptional measure on the part of the authorities involved in criminal proceedings, must be proportionate to the gravity of the offence being prosecuted, and may only be used if the purpose of the detention cannot be achieved by other means.

¹⁵⁸ Section 71 par. 2 of the Criminal Code.

¹⁵⁹ Section 71 par. 8 of the Criminal Code.

¹⁶⁰ Section 71 par. 9 of the Criminal Code.

¹⁶¹ Section 71 par. 4 of the Criminal Code.

¹⁶² Section 72 par. 3 of the Criminal Code.

¹⁶³ Section 72 par. 2 (a) of the Criminal Code.

The law requires all law enforcement authorities in criminal proceedings to deal with custody matters as a priority and as speedily as possible.¹⁶⁴

69. Detention may be replaced by other measures, unless the detention has been ordered to prevent the perpetrator obstructing the investigation. Detention may be replaced by a warranty covering the future conduct of the accused from a group of citizens or by a trustworthy person, by a written promise of the accused that he/she will lead an orderly life and refrain from committing any further crimes, will cooperate with the law enforcement authorities involved in the criminal proceedings and fulfil his/her obligations and comply with the restrictions that have been imposed on him/her, by supervision by a probation officer or by the payment of bail on the part of the accused or another person,¹⁶⁵ whose amount shall be determined by the court. Should the accused breach his duties, the bail will be forfeit to the state. Bail stands until the accused is finally acquitted or convicted and does perform the punishment imposed. The bail can also be used to cover the costs of the criminal proceedings, if the accused is liable for their payment.

70. Besides the forms of detention referred to above, there are also special types of custody in criminal extradition proceedings within the framework of international criminal law cooperation. On the one hand there is provisional custody, available in cases where there is a risk the person to be extradited will escape. This form of custody may be of a maximum duration of forty days and, if no extradition request has been delivered by that date, the person must be released from custody. Otherwise all the same rules apply to provisional as to normal custody.¹⁶⁶ After the issue of an extradition permit, the person is then taken into extradition custody. Unlike other types of detention, this form of custody is compulsory, i.e. it applies to all extradition cases. This custody may take up to a maximum of six months. Here the person held remains in possession of all means of protecting their rights.¹⁶⁷

71. Criminal sanctions are imprisonment and house arrest. According to the new Criminal Code, the punishment of imprisonment may be imposed for a maximum of 20 years,¹⁶⁸ while in serious cases of recidivism, this may be raised to 30 years.¹⁶⁹ A sentence of 20–30 years or life imprisonment is an exceptional sentence, which may only be imposed for extremely serious crimes or on offenders whose reform is particularly difficult.¹⁷⁰ Life sentences may only be imposed for the most serious crimes provided for.¹⁷¹ The sanction of imprisonment is served in different types of prison, with oversight, with control, with security monitoring or with heightened security monitoring, and the prisoner is placed according to the offence committed.¹⁷²

72. The punishment of house arrest involves the obligation of the prisoner to remain in a given dwelling place for the entire day during weekends and between 8 p.m. and 5 a.m. on working days, unless prevented from doing so by justifiable reasons, in particular to carry out work or occupation obligations or for healthcare in a medical facility. If the prisoner

¹⁶⁴ Section 71 par. 1 of the Criminal Code.

¹⁶⁵ Bail may not be granted for serious crimes if there is a risk of the accused repeating or completing them.

¹⁶⁶ Section 396 of the Criminal Code.

¹⁶⁷ Section 400b of the Criminal Code.

¹⁶⁸ Section 55 of the Criminal Code.

¹⁶⁹ Section 59 of the Criminal Code.

¹⁷⁰ Section 54 of the Criminal Code.

¹⁷¹ These are serious forms of murder, endangering the society, treason, terrorist attack, attacks against humanity, war atrocities, etc, provided these acts result in the death of a human being.

¹⁷² Section 56 of the Criminal Code.

fails to comply with the conditions of the punishment, the punishment may be commuted to a term of imprisonment.¹⁷³

73. In addition to punishments, the court may impose protective measures on the offender, including protective therapy or protective detention. Protective therapy is imposed on unsound offenders or those suffering from mental illness and who would be dangerous if they remain at liberty. The maximum period of protective therapy is two years, although this may be extended for another two years.¹⁷⁴ Protective detention¹⁷⁵ is intended for offenders who are insane and who create a risk if left at liberty and whose condition would not be improved by protective therapy.¹⁷⁶ Protective detention may be imposed on offenders who are dependent on addictive substances and who repeatedly commit extremely serious crimes under their influence, but whose condition cannot be treated by protective therapy. Its duration is not limited, but at least once every twelve months (for juveniles once every six months) the court must investigate whether the reasons for its further continuation still exist.

74. Special arrangements continue to apply to juvenile defendants between the ages of 15 and 18 years.¹⁷⁷ Juveniles must always be held separately from adults.¹⁷⁸ They may only be taken into custody when necessary and for a maximum of four months, in serious cases for one year.¹⁷⁹ Law enforcement authorities involved in criminal prosecution must always investigate, *ex officio*, whether custody cannot be substituted by some other means. Apart from the options outlined above, instead of being placed in custody, the juvenile may, with his/her consent, be assigned to the care of a trustworthy person who agrees to supervise the implementation of measures imposed and to ensure the juvenile leads an orderly life.¹⁸⁰ The punishment of imprisonment for juveniles is always imposed for half the normal period, to a maximum of five years, or ten years in the case of the most serious crimes. However, this punishment may only be imposed in the event that other alternatives have not led to the offender's reform nor to achieving the purposes of the criminal proceedings.¹⁸¹

Restriction of personal liberty by a police officer according to the Act on the Police of the CR

75. If the Police of the CR are not active as a body involved in criminal proceedings, a police officer may restrict an individual's personal liberty by attaching, securing or placing them in a police cell. Attachment involves the restriction of free movement by attaching a person who physically attacks a police officer or another person, who places his/her own life in danger, who damages property or attempts to escape by attaching them to a suitable object with handcuffs. Attachment must be terminated as soon as the reasons for it no longer apply, and at the latest within two hours.¹⁸²

¹⁷³ Section 60–61 of the Criminal Code.

¹⁷⁴ Section 99 of the Criminal Code.

¹⁷⁵ Act No. 129/2008 Coll., on Protective Detention, as amended.

¹⁷⁶ These are people most often classified as highly dangerous aggressors and sexual deviants, for whom, based on an expert examination of their mental state, it is reasonable to assume that they will again commit serious crimes.

¹⁷⁷ Act No. 218/2003 Coll., on the liability of juveniles for illegal acts and on juvenile justice and on amendments to certain Acts, as amended.

¹⁷⁸ Section 51 of the Act.

¹⁷⁹ Section 47 of the Act.

¹⁸⁰ Section 50 of the Act.

¹⁸¹ Section 31 of the Act.

¹⁸² Section 25 of Act No. 273/2008 Coll., on the Police of the Czech Republic, as amended.

76. In many situations, people are restrained during criminal proceedings. Apart from the purposes of the criminal proceedings, a police officer may restrain a person whose behaviour is directly endangering his/her life, the life or health of another or is damaging property, has to be presented for the purposes of judicial or administrative proceedings, has fled from the place where he/she was lawfully detained, or is a minor and has to be returned to the care of his/her legal guardian. A person who was apprehended when committing a criminal offence may provide reason for restraint, if such a person continued such behaviour or hampered its investigation.¹⁸³ Under certain circumstances, a constable of the municipal police may also deliver a person, if such a person refuses to give their identity, if the person is wanted for committing a crime or is missing, he/she disrupts the public order or threatens his/her own life or that of another despite being challenged, or for the purposes of judicial or administrative proceedings. A person may be restrained for a maximum of 24 hours.¹⁸⁴

77. A foreign national may also be restrained, if he/she commits acts that justify their expulsion, or whose expulsion has already been decided or where there is reason to believe that the foreign national is illegally resident in the Czech Republic. The police officer will subsequently inform the Ministry of Interior, which will decide whether to terminate their residence in the Czech Republic, to ensure that the foreigner receives the decision to initiate expulsion proceedings or on expulsion. The total period of detention may not be longer than 48 hours from the time of restriction of personal liberty.¹⁸⁵

78. A person, who has been restrained, arrested or detained, and a person, whose personal liberty has already been restricted due to having been taken into custody, imprisonment, protective therapy or protective detention may be placed in a police cell. People who frustrate the efforts of the Police of the CR to prove their identity or to acquire personal data for the purposes of future identification may also be placed in police cells.¹⁸⁶ Prior to placing a person in a cell, the police may carry out a search of the person and remove any weapons or dangerous items. People are placed in separate cells according to their sex, age (juveniles and adults) and aggressive individuals are kept separately.¹⁸⁷ On request or as required, the police officer will arrange for first aid or medical treatment to be provided and will request a doctor's opinion on the individual's state of health. If, in the opinion of the doctor, the individual's medical condition is such as to prevent him/her continuing to stay in the cell, the police officer will immediately release the person from the cell and, if required, will arrange his/her transfer to a healthcare facility.¹⁸⁸ The superior police authority and public prosecutor's office must immediately be informed of any such event. People may be kept in police cells for as long as their personal liberty may be restricted.

79. The law stipulates that police cells must be hygienic and be adapted to their purpose. They must not contain items that might present a danger to the life or health of the prisoner. Anyone detained in a police cell has the right to adequate clothing, to adequate rest, including sleep, to the provision of any medicines and medical products required, adequate access to water and toilet facilities, that are also sufficient to satisfy his/her basic hygiene requirements, and to the provision of food three times a day at appropriate intervals.

80. A person whose personal liberty has been restricted by a police officer may not be subjected to torture or cruel, inhuman or degrading treatment, neither should they be treated

¹⁸³ Section 26 of Act No. 273/2008 Coll., on the Police of the Czech Republic, as amended.

¹⁸⁴ Section 26 par. 3 of Act No. 273/2008 Coll., on the Police of the CR, as amended.

¹⁸⁵ Section 26 of Act No. 273/2008 Coll., on the Police of the CR, as amended.

¹⁸⁶ Section 28 of Act No. 273/2008 Coll., on the Police of the CR, as amended.

¹⁸⁷ Section 30 of Act No. 273/2008 Coll., on the Police of the CR, as amended.

¹⁸⁸ Section 31 par. 2 and Section 32 of Act No. 273/2008 Coll., on the Police of the CR, as amended.

in a manner that does not respect their human dignity. Each police officer has a duty to take measures to prevent such treatment and immediately to report it to his/her superior. An individual has the right to demand that a kin, or another person be informed immediately of his/her confinement. If the person is a minor, a person deprived of legal capacity or a person whose legal capacity has been restricted, his legal representative is informed. In the case of persons under the age of fifteen, this also means the socio-legal child protection authorities. A person whose personal liberty has been restricted has the right to secure legal assistance and to speak with legal counsel without the presence of a third person and to be examined or treated by the doctor of their choice, provided the conclusions of the examination will not affect the duration of their detention.¹⁸⁹

Placement in detention facilities for foreigners for the purpose of their deportation

81. In accordance with the Act on the Residence of Aliens¹⁹⁰ on the territory of the Czech Republic, foreign nationals over the age of 15 years may be placed in a secure detention facility for foreigners for the purpose of their administrative expulsion, their departure or transfer according to international treaties, or for the purpose of transit. The basis for detention must be a final administrative or judicial decision. The condition for detention is the existence of a risk that the alien might endanger national security, seriously disturb public order or obstruct or hinder the execution of a decision on administrative expulsion, or is recorded in a national or international register of undesirable persons. If, in exceptional circumstances, an unaccompanied minor alien is detained, a trustee is appointed for him/her during the period of detention. Minors are usually placed in special educational facilities, which are specialised and adapted to their needs. The police are obliged to confirm the continuing existence of the reasons for detention throughout the whole period that the alien is detained. The detention must be terminated without undue delay after the reasons for its imposition have ceased to exist, or on the basis of a court decision to cancel the decision on detention or a decision to release the foreign national if he/she is granted asylum or subsidiary protection, or if the alien is granted a long-term residence permit for the purpose of receiving protection in the Czech Republic.¹⁹¹

82. The detention period cannot exceed 180 days, and in the case of a minor alien or families with minor children it cannot exceed 90 days.¹⁹² This period is considered reasonable and also meets the requirements of EU law.¹⁹³ An unaccompanied minor alien may only be detained if there are reasons to suspect that he/she might endanger national security or seriously disturb public order. He/she may also be detained over the short-term for identification purposes. Detention is therefore to be conceived as the last resort for solving the problem. Expulsion may only occur after the state, to which the unaccompanied minor alien is to be deported, arranges for his/her proper reception.¹⁹⁴ The situation of a minor-alien cannot be fully comparable with the situation of other children, because these are foreign nationals and their differential treatment is based on a specific regimen that applies to all foreign nationals as such. Just as an adult citizen of the Czech Republic may not have his/her personal liberty restricted in proceedings under the Aliens Act or the Asylum Act, neither can a minor citizen of the Czech Republic have his/her personal liberty

¹⁸⁹ Section 24 of Act No. 273/2008 Coll., on the Police of the CR, as amended.

¹⁹⁰ Act No. 326/1999 Coll., on the Residence of Aliens, as amended.

¹⁹¹ Section 123b–129 of Act No. 326/1999 Coll., on the Residence of Aliens, as amended.

¹⁹² Section 125 of the same Act.

¹⁹³ Article 15 par. 5 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals enables a period of detention of up to six months to be set.

¹⁹⁴ Section 124 of Act No. 326/1999 Coll., on the Residence of Aliens, as amended by Act No. 427/2010.

restricted under these proceedings. Since this is a different situation, the Czech Republic does not see that the legislation is in breach of its obligations arising from the Covenant.

83. The 2010 amendment to the Act on the Residence of Aliens introduces a whole range of measures that substantially strengthen the guarantees and status of foreign nationals. Recourse will only be made to detention for foreigners if it is not possible to effectively apply less coercive measures, such as reporting obligations for the foreign national to the police or the payment of a financial guarantee. Detention proceedings will be conducted according to the Code of Administrative Judicial Procedure. A decision on detention will be issued for a fixed period and this can be progressively extended as needed, while an application for a judicial review may be submitted against each decision to extend the detention period and the court shall decide on the matter within 7 working days. The amendment enables an exceptional extension of up to 18 months (545) days to be applied, under clearly specified conditions, in the case of adult aliens who are purposefully blocking attempts by the police to expel them, again with the possibility of judicial review.¹⁹⁵

Placing people in asylum facilities

84. Asylum seekers are required to stay in a reception centre during the period required for identification purposes and medical checks.¹⁹⁶ The period of their stay generally does not exceed a few days, unless it is a case of quarantine, for example.¹⁹⁷ In addition to the period referred to above, people who have not been reliably identified or where there is reason to believe that the applicant might represent a danger to state security, are obliged to remain in the reception centre. An administrative body will decide on this obligation and an appeal may be brought against the decision to the appropriate court, and it can also be subject to review by the administrative body. The maximum period asylum seekers may be kept in the reception centre is 120 days.¹⁹⁸

85. Proceedings are conducted in a similar manner in the reception centre of international airports. The alien may request international protection and the Ministry of Interior will decide whether to allow him to enter the Czech Republic within 5 days. If permission is not granted, because of the impossibility of providing identity or for reasons of a threat against state security, public health or public order, the applicant may appeal to the administrative judiciary within 7 days, and this will be prioritised for a decision within a further 7 days. At the same time, the Ministry of Interior will decide on the application within 4 weeks and, if asylum is granted, the alien may request admission to the Czech territory within one month, unless this has already been granted. If the alien is not granted asylum, he/she must leave the country within the same period. The total period of stay in the centre may not exceed 120 days, even if no final decision has been made on the application. The alien shall always be informed of his/her rights in a language he is able to understand.¹⁹⁹

86. The so-called “Dublin cases”, i.e. asylum seekers whose applications are judged by another responsible EU Member State,²⁰⁰ have the same rights as other asylum seekers

¹⁹⁵ This time period is allowed by the Directive in Art.15 paras. 5 and 6.

¹⁹⁶ Section 79 et seq. of Act No. 325/1999 Coll., on Asylum, as amended.

¹⁹⁷ E.g. under Section 57 of the Act on Asylum, certificates for asylum applicants are issued within a period of 3 days of their arrival at the facility.

¹⁹⁸ Section 46a of Act No. 325/1999 Coll., on Asylum, as amended.

¹⁹⁹ Section 73 of Act No. 325/1999 Coll., on Asylum, as amended.

²⁰⁰ See Council Regulation (EC) No. 343/2003 of 18 February 2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national in certain of the Member States, referred to as Dublin II.

during the period of the asylum proceedings. Only after their proceedings in the Czech Republic have been concluded by a decision that another Member State is responsible for assessing their application,²⁰¹ will these aliens be obliged to stay in a reception or accommodation centre until such time as they are transferred to this Member State. These cases involve minimum restrictions on personal liberty, because transfers to the responsible Member States are generally carried out immediately and directly from the reception centre.²⁰²

Accepting and detaining individuals in healthcare facilities against their will

87. Healthcare facilities may accept sick people for institutional care in cases where the individual is suffering from diseases for which compulsory treatment is applicable, where the individual exhibits signs of mental illness or intoxication and presents a danger to him/herself or to others and in urgent cases, when an intervention must be performed to save an individual's life or health and where it is not possible to obtain the patient's consent in view of his/her state of health.²⁰³ The healthcare facility is obliged to report within 24 hours to the court under whose jurisdiction it lies that it has admitted a patient to institutional care without his/her consent, unless the patient has subsequently consented to the institutional care.²⁰⁴ The court then decides whether the patient may be accepted into the care of the healthcare facility without his/her consent for other legal reasons. The person admitted is entitled to be represented in these proceedings by a selected counsel. Should he/she fail to do so, the court will appoint him/her a lawyer as trustee. During the proceedings, the court hears the person admitted and the attending doctor and other necessary evidence and, within seven days of the admission decides whether this was done for legal reasons. The decision is delivered to the admitted patient, unless, according to the attending doctor, he/she is incapable of understanding the content of such a decision, as well as his/her representative or trustee and the institution.²⁰⁵

88. If the admission was in line with the law and the admitted patient continues to be restricted in his/her contact with the outside world, the court will then decide on the admissibility of his/her further detention in the facility. For this purpose it appoints an expert, who cannot be a doctor from the facility in which the patient is being held. The expert is questioned by the court and, depending on the circumstances, it may also hear the attending doctor, the patient and refer to other appropriate evidence as needed. Within 3 months, the court must decide whether further detention is to be permitted, and for how long. The maximum period is 1 year. If the patient is to be held for a longer period in the institution, the court must initiate a new trial and decide again. The patient, his/her representative, trustee and kin may request a new examination and a decision on discharge at any time. However if the court repeatedly rejects a motion for discharge and if no improvement to the patient's condition can be expected, it may decide that no further examinations will be performed before the expiry of the period for which the detention in the institution was authorised.²⁰⁶

89. The Czech Republic has already included in its statement in 2008²⁰⁷ and the subsequent supplementary statement in 2010²⁰⁸ comments on the recommendation in

²⁰¹ Section 25 (i) of Act No. 325/1999 Coll., on Asylum, as amended.

²⁰² In 2010 a total of 21 people over the age of 16 were transferred from asylum facilities to the responsible Member State.

²⁰³ Section 23 par. 4 of Act No. 20/1966 Coll., on Public Healthcare, as amended.

²⁰⁴ Section 24 of Act No. 20/1966 Coll., on Public Healthcare, as amended.

²⁰⁵ Section 191a–191c of the Civil Procedure Code.

²⁰⁶ Section 191d–191g of the Civil Procedure Code.

²⁰⁷ CCPR/C/CZE/CO/2/Add.1.

paragraph 14 of the previous concluding observations and the legislation regulating admission and detention. It also states that in 2009 the Supreme Court adopted a consolidated opinion for ordinary courts in civil proceedings concerning matters of procedure on the admissibility of admissions and detentions in healthcare institutions.²⁰⁹ It states that the institute has an obligation to deliver to the court a report on the admission within 24 hours. The courts must comply with deadlines for decisions on the admissibility of holding patients in facilities, unless there is a risk that they might not be able to ascertain the facts within the time allowed. Immediately after the decision on the admissibility of admission, it must initiate proceedings on the admissibility of extending the detention and restrictions of personal liberty. If the reasons for which the proceedings were commenced cease to exist, they must be cancelled.²¹⁰ This will happen, for example, if the admitted patient provides subsequent written consent to his/her placement in the institution or if he/she is discharged from the institution. If a decision on the admissibility of the admission has already been issued by the court, the court will cancel it.

90. It still applies that the admitted patient may, at any time, lodge a request for a new examination of his/her medical condition and, on the basis of this, for a discharge from the healthcare facility, even in a case where he/she has been deprived of legal capacity. This request may also be made by his/her representative, trustee or kin. The admitted patient again has the right to legal representation, is heard and an independent expert report is made on his/her medical condition. Other people may also be heard during the proceedings, such as family members. In addition, the judicial sentence does not restrict nor imply a medical assessment of the condition of the admitted patient, in other words he/she is always discharged if he/she can no longer be held on medical grounds. The court decision only serves to support the medical assessment. The new draft Act on health services also introduces the option of complaints for poor medical care. Complaints may be lodged with care providers, administrative bodies, health insurance companies or professional associations. Apart from the patient, complaints may also be filed by his/her legal representative, trustee or kin. If necessary, the complaint may also be assessed by an independent expert or expert committee, both from a medical and from a legal perspective. The Committee will discuss the complaint before taking a decision thereon and may recommend any further action or submit a request to those controlling authorities. The complainant has the right to attend committee meetings and to present the crucial facts.

Placing a child in protective or institutional care

91. A child may only be placed in a school facility on the basis of a court decision. The court will either order institutional care in cases where this is in the best interest of the child, generally in cases where the family environment is inappropriate,²¹¹ or it will order protective care as a protective measure in the context of criminal proceedings²¹² in cases where the imposition of institutional care will not suffice. The court may also decide to order protective care in civil court proceedings for children under the age of 15 years, who have committed acts that would otherwise be criminal.²¹³ At the request of the legal

²⁰⁸ CCPR/C/CZE/CO/2/Add.2.

²⁰⁹ Opinion of the civil and commercial advisory board of the Supreme Court of the Czech Republic of 14 January 2009, ref. no. Cpjn 29/2006 in matters of procedure on the admissibility of accepting or holding a person in a healthcare institution.

²¹⁰ Section 104 par. 1 of the Code of Civil Procedure.

²¹¹ Section 46 et seq. of the Family Act.

²¹² Section 22 of Act No. 218/2003 Coll., on the Liability of Juveniles for Illegal Acts and on Juvenile Justice, as amended.

²¹³ Section 93 of Act No. 218/2003 Coll., on Juvenile Justice.

representative, the children may be placed in a school facility for a temporary diagnostic stay, lasting no more than 8 weeks, in order to resolve problems with the child's behaviour.

Criminal law protection of personal liberty

92. Personal liberty also enjoys criminal law protection. Restriction of personal liberty consisting of the unauthorised prevention of the exercise of personal liberty is a crime²¹⁴ as is deprivation of personal liberty consisting of unlawful imprisonment or other types of deprivation of personal liberty.²¹⁵ Restriction of personal liberty may be punished by up to 10 years of imprisonment, deprivation by up to 16 years.

Informing persons deprived of or restricted in their personal liberty (par. 2)

93. Under the Code of Criminal Procedure, a person detained in criminal proceedings must be informed of the reasons for their detention and of their rights, have the right to choose counsel, to speak with him/her in private, to consult him/her and to be questioned in his/her presence, unless the counsel cannot be contacted.²¹⁶ This also applies to any subsequent hearings in court. A person held in custody by the Police outside criminal proceedings also enjoys the same rights.²¹⁷ The police ensure that information has been provided through a written form, signed by the person who has received the information. The form is available in the main world languages and if the person held does not speak any of these languages, he/she has the right to the assistance of an interpreter.²¹⁸

94. A foreign national held in a facility is informed of the reasons for his/her detention through notice of beginning of deportation proceedings or a reasoned decision on expulsion. The police inform him/her of their rights, particularly the right to judicial protection in a language he/she understands. Information is again provided using standard forms in Czech, English, French, German, Chinese, Russian, Arabic, Hindu and Spanish. During these proceedings they have the right to the assistance of an interpreter.²¹⁹

95. A foreign national taken into care in a healthcare facility has the right, just as another other patient, to information on his/her medical condition and on the treatment provided and its possibilities.²²⁰ The court will subsequently inform the person held of their procedural rights and obligations, unless prevented from this by reason of his/her state of health.²²¹

96. A family member of the accused, as well as his/her employer, provided an adult accused agrees, is promptly informed of his/her detention in criminal proceedings. In the case of foreign nationals, the appropriate embassy is also advised.²²² Kin or members of his/her household are also informed of the medical condition and treatment of patients in healthcare facilities, if the circumstances so require and provided the patient has not expressly disagreed with this.²²³

²¹⁴ Section 231 of the Criminal Act and Section 171 of the Criminal Code.

²¹⁵ Section 232 of the Criminal Act and Section 170 of the Criminal Code.

²¹⁶ Section 2 par. 13, Section 33 and Section 76 par. 6 of the Criminal Code.

²¹⁷ Section 13 of Act No. 273/2008 Coll., on the Police of the CR, as amended.

²¹⁸ Section 2 par. 14 and Section 28 of the Criminal Code, Section 24 par. 4 of the Act on the Police of the CR.

²¹⁹ Section 126 (b) of Act No. 326/1999 Coll., on the Residence of Aliens, as amended.

²²⁰ Section 23 par. 1 of Act No. 20/1966 Coll., on Public Health Care, as amended.

²²¹ Section 191b par. 2 of the Code of Civil Procedure.

²²² Section 70 of the Criminal Code.

²²³ Section 23 par. 1 of Act No. 20/1966 Coll., on Public Health Care, as amended.

Duration of limitation of personal liberty (par. 3)

97. The duration of different types of limitation of personal liberty are given in the text to par. 1. The duration of any limitation of personal liberty in criminal proceedings without a court decision are based on the constitutional order and may not exceed 72 hours. The length of detention in criminal proceedings may not exceed 4 years for the most serious crimes, for juveniles the maximum is one year. The length for which some may be held in a police cell is a maximum of 24 hours. The length of time a person may be held in a detention facility for foreign nationals may amount to a maximum of 18 months, or 545 days, in the case of juveniles this is 90 days. The length of time limitation of personal liberty is authorised in a healthcare facility without a court decision is a maximum of 7 days, and based on a court decision, a maximum of one year.

Judicial control of deprivation or limitation of personal liberty (par. 4)

98. All of the above mentioned limitations of personal liberty are under the control of judicial authority and may not be extended above the initial limits without a court decision, which is usually an integral part of the proceedings. In criminal proceedings and in case of detention in a healthcare institution, the court is even required *ex officio* to monitor the existence of conditions for the limitation at regular intervals (max. 1 year). Although judicial review is not part of the proceedings to detain foreign nationals, the foreigner has the right at all times to apply to the court with an appeal against the detention order and with a proposal for release from detention.²²⁴ Should a situation occur where there was illegal limitation of personal liberty and the judicial authorities did not carry out their control function, an application may be filed to terminate the restrictions and also to seek protection against unlawful interference by the public authorities in the administrative courts.²²⁵

99. The Constitutional Court has addressed the issue of excluding people participating in proceedings from closed court sessions, which are only attended by judges and lay judges as members of the Senate. The extension of terms of custody and other limitations of the personal liberty of perpetrators may also be decided during closed sessions. However, the jurisprudence of the European Court of Human Rights deems it essential that the same conditions apply to any proceedings relating to restrictions of personal liberty (and not only a to meritorious proceedings). Therefore, if the accused may comment on the initial limitations of personal liberty in custodial proceedings and is heard in these proceedings, he/she must also have this option in any subsequent proceedings relating to his/her personal liberty, which also applies in a case where the decision is taken in a closed session. Because of this, the Constitutional Court annulled the relevant provision.²²⁶ In proceedings on placement and detention in healthcare facilities under the Code of Civil Administration and in immigration matters under the Administrative Procedure Code, the given person is heard as a participant in the proceedings and can fully express their view of the matter.

100. The Constitutional Court also rules on the influence of the suspensory effect of appeals by the public prosecutor against an exculpatory judgement to the release the accused from custody. According to it, custody is a significant interference of the rights and freedoms of individuals and because of this may only be levied when absolutely necessary and for the amount of time absolutely necessary, provided it is in the public interest that the freedom of a given person be limited. This public interest, however, fades over time and,

²²⁴ Petition against the decision on detention is heard in administrative court proceedings, proposal for discharge from detention is heard in civil court proceedings.

²²⁵ Section 82 et seq. of the Code of Administrative Procedure.

²²⁶ Constitutional Court finding ref. no. Pl. ÚS 45/04 promulgated under no. 239/2005 Coll.

according to the European Court of Human Rights, ends at the time the judgement is announced. In addition, if this verdict is exculpatory no public interest exists any more for the further detention of the person, who, on the basis of the verdict is not guilty and there are therefore no grounds for detention. This person must immediately be released, although it is possible to return the acquittal on appeal. Until this happens however, the accused is deemed to be innocent and cannot continue to be held in custody “for safety’s sake”. The Constitutional Court therefore annulled this clause.²²⁷

101. The newly prepared amendment to the Criminal Code also reacts to the case law of the Constitutional Court in matters of detention. It introduces a new form of custodial sitting, during which the accused will be allowed to comment in person on the further continuation of his/her detention, not only on the basis of his/her application, but also when deciding *ex officio*. The purpose of the custodial sitting is to hear the accused, to hear the arguments of the defence and to make the necessary investigations and even examine the evidence. All decisions on custody that result in the accused being taken into custody are only taken by the court. Failure to comply with the deadlines set to review the justification for maintaining the detention means the accused must immediately be released from custody. If the court issued a verdict of not guilty and also decided to release the accused from custody, the accused must immediately be released.²²⁸

The right to compensation for unlawful detention or other limitations on personal liberty in criminal proceedings (par. 5)

102. According to the constitutional order²²⁹ and international treaties,²³⁰ unlawful restriction of personal liberty entitles the victim to compensation for damage caused. Unlawful restriction of personal liberty is deemed to be not only a restriction based on an unlawful decision or wrong official procedure, but also a justified restriction for which it is subsequently shown that there was no lawful reason. An example is the detention of a person, which had been legally justified, but where the prosecution against such person has been suspended, the person was acquitted, or the case was transferred to another body and it therefore no longer concerns a criminal act.²³¹ A similar arrangement applies even in cases where the person was already imprisoned, provided the accused was acquitted of the charge or if the criminal charges against him/her were dropped for the same reasons²³² and in cases where protective measures were taken, consisting of the restriction of personal liberty,²³³ although the relevant decision had to be cancelled as unlawful. All these cases are based on the fact that personal freedom is an asset that is so important that any restriction of it, although it might be in accordance with the law, but which is shown to be unfounded and therefore unreasonable, is a harm on the rights of the restrained person, which must be compensated. Compensation is not due only in cases which were not proved to be unjustified like in cases where people were themselves responsible for the restriction of their freedom and where they have been acquitted or the criminal charges against them

²²⁷ Constitutional Court findings ref. no. Pl. ÚS 6/10 promulgated under no. 163/2010 Coll.

²²⁸ The proposal is currently being debated by the Chamber of Deputies (Lower House Document no. 335).

²²⁹ Art. 5 par. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

²³⁰ Art. 36 par. 3 of the Charter of Fundamental Rights and Freedoms.

²³¹ Section 9 par. 1 of Act No. 82/1998, on liability for damage caused in the exercise of public authority decision or maladministration, as amended.

²³² Section 10 par. 1 of Act No. 82/1998, on liability for damage caused in the exercise of public authority decision or maladministration, as amended.

²³³ Section 11 of Act No. 82/1998, on liability for damage caused in the exercise of public authority decision or maladministration, as amended. This concerns compulsory treatment and protective detention.

have been dropped only because they are not criminally liable, or they were granted pardon or amnesty, the victim did not approve the prosecution, there was a conditional suspension of the criminal prosecution or settlement was reached, or where the prosecution was stopped for inexpediency.²³⁴ In all these cases the prosecution and sentencing of the individual was justified, but for certain reasons the prosecution was lifted or the punishment was not completed.

103. According to the law, for restriction of personal liberty damages and lost profits are compensated according to general civil law principles. If compensation for loss of profits cannot be determined, it is set at 170 CZK for each day of restriction of personal liberty.²³⁵ Compensation may also cover the costs of the proceedings that were incurred by the victim in remedying the situation, including the costs of representation. The victim may also now claim adequate monetary compensation for caused non-material damage, if the non-material damage could not be covered otherwise and an admission of a breach of rights would not in itself be considered sufficient.²³⁶ The claim must first be brought against the appropriate government authority, responsible for the body which carried out the restriction. If this authority fails to satisfy the complainant's demands within 6 months, he/she may apply to the court.²³⁷ Information on the amounts of compensation paid by the Ministry of Justice for unjustified restriction of personal liberty in criminal proceedings are provided in annex no. 8.

Article 10

Rights of persons deprived of or restricted in their personal liberty (par. 1), and the recommendation of the previous concluding observations concerning the use of restraints²³⁸

104. Treatment of persons restricted in their personal liberty is regulated by laws relating to the individual regimes referred to in the text to Article 9. More detailed information on this article, including statistical data, can be found in the fourth and fifth periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment²³⁹ and also in the third and fourth periodic reports on fulfilment of the obligations arising from the Convention on the Rights of the Child and the information of the Czech Republic on fulfilment of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.²⁴⁰ In accordance with articles 17 to 23 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,²⁴¹ independent oversight of places and facilities where people are restricted in their freedom is carried out

²³⁴ Section 12 of Act No. 82/1998, on liability for damage caused in the exercise of public authority decision or maladministration, as amended.

²³⁵ Section 30 of Act No. 82/1998, on liability for damage caused in the exercise of public authority decision or maladministration, as amended.

²³⁶ Section 31a of Act No. 82/1998, on liability for damage caused in the exercise of public authority decision or maladministration, as amended by Act No. 160/2006 Coll.

²³⁷ Sections 14 and 15 of Act No. 82/1998, on liability for damage caused in the exercise of public authority decision or maladministration, as amended.

²³⁸ CCPR/C/CZE/CO/2, para. 13.

²³⁹ CAT/C/CZE/4-5.

²⁴⁰ CRC/C/CZE/3-4.

²⁴¹ Promulgated under No. 78/2006 Coll.

by the Ombudsman²⁴² who monitors how these people are treated, whether compliance is maintained with the applicable regulations and whether their fundamental rights are respected.

105. Conditions for persons in custody, imprisonment, undergoing compulsory treatment and protective detention are described below. Specific statistical data are provided in annex no. 9.

Conditions for persons placed in detention facilities for foreign nationals for the purpose of their administrative expulsion

106. Detention centres for foreign nationals are divided into high- and low-security sections. The differences between the individual parts lie in their layout and the equipment in the rooms.²⁴³ The high-security sections are used to house aggressive detainees or those who violate the laws or internal regulations. The duration of their stay is set at a maximum of 60 days.²⁴⁴ On arrival, foreign nationals are informed of their rights and obligations and the internal rules of the facility in a language they understand.²⁴⁵ They have the right to a properly furnished room, to food three times a day (minor children five times a day) and basic hygiene products, to medical care, to receive mail (one package a week) and one visit a week, to access to books, newspapers and magazines, to quiet during the night time, to freedom to walk in accordance with the rules of the facility and to communication with the authorities concerning their case.²⁴⁶ On the other hand, they are obliged to abide by the internal rules of the facility, and to undergo personal and medical checks on their arrival at the centre or during their stay there. They may not leave the facility or bring in alcohol or other dangerous items.²⁴⁷ The foreign national may be joined in the facility by a person who is dependent on him/her (children, spouse, etc.). When placing foreign nationals in these facilities, men must be kept separate from women and children under the age of 15 from older people, and religious, cultural and ethnic differences between the foreign nationals are also taken into account. The police will not separate people who are close to each other. Children attend compulsory schooling, even outside the facility.

Conditions for persons placed in asylum facilities

107. In asylum facilities (reception centres, accommodation centres and integration asylum centres) the accommodation procedures are regulated by statute.²⁴⁸ Asylum seekers may leave the accommodation centre for a maximum of 10 days each month, any longer absences must be approved by the Ministry of Interior. The asylum seeker must inform the Ministry of Interior of any absences lasting more than 24 hours, and state the length of the absence and the address he/she will be staying at.²⁴⁹

²⁴² Section 1 paras. 3 and 4 of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended by Act No. 381/2005 Coll. with effect from 1 January 2006.

²⁴³ The high-security section consists of a living room and area for walks, to which the foreign national has access for at least one hour a day. In the accommodation part, each foreign national has the right to a bed and a chair, the table is shared and there is a common bathroom separated by an opaque screen. The low-security section contains common social areas and these rooms also contain lockers to store personal belongings.

²⁴⁴ Section 135 of Act No. 326/1999 Coll., on the Residence of Aliens, as amended.

²⁴⁵ Section 131 of the same Act.

²⁴⁶ Section 134 of the same Act.

²⁴⁷ Section 134 et seq. of the same Act.

²⁴⁸ Title XI of Act No. 325/1999 Coll., on Asylum, as amended.

²⁴⁹ Section 82 of Act No. 325/1999 Coll., on Asylum, as amended.

Conditions for children placed in protective and institutional care

108. Children who have been placed in institutional and protective care have the right to develop their physical, mental and emotional abilities and their social skills, to respect for human dignity, to be housed together with their siblings, to conditions to support their education and to prepare them for a vocation in accordance with their abilities, talents and needs, and to freedom of conscience and religion. They must be informed of their rights and obligations and must have the opportunity of consulting with their counsel or guardian without the presence of third parties. The confidentiality of their correspondence must be respected. They have the right to regular visits and to contact with their family and other close persons. They have the right to submit requests to the facility's director and staff, just as institutions for the socio-legal protection of children and other government authorities and have the right to speak directly with an entrusted employee of the socio-legal child protection authorities and the Czech School Inspectorate without the presence of third parties. They may comment on the educational measures that affect them. They also have the right to take trips away from the facility and may also be granted permission for short stays outside the institution, with their parents or other persons. Children who have been placed in institutional care are obliged to abide by the facility's internal rules. If they break these, stays outside or visits, apart from to family members, may be restricted for up to 30 days, as may their participation in various events. On the other hand, the children may be rewarded for good behaviour or restrictive measures can be lifted.

109. Children over the age of 12 years, in order to control their aggressiveness and to stabilise their psychological state and to protect health and safety, may be placed in a separate room for a maximum period of 12 hours and a maximum of four times a month. The separate room must have an area of at least 6 m² and a height of at least 2.5 m, natural and artificial lighting, natural ventilation and heating. It must be equipped with essential furniture and bedding and have separate sanitary facilities.²⁵⁰ When placed in this room, the child will remain under medical and psychological supervision and is provided with appropriate care.

Conditions for people placed in healthcare and residential facilities

110. The Ministry of Health has prepared new methodological guidelines for the use of restraints in healthcare facilities, which reflect the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe (CPT) and the Czech Government Council for Human Rights.²⁵¹ According to it, cage beds are not an acceptable means of restraint. Healthcare facilities are also obliged to record the use of restraints on patients in the medical records and to notify the court of this fact.²⁵² The issue of restraints used in healthcare facilities, including control mechanisms, will be the subject of legislation in the new Act on Health Services.

111. Cage beds may not be used in residential facilities providing social services. The only devices that may be used to restrict people's movements are physical grips, a room furnished to allow people to stay in it safely and medication given on the basis of a doctor's prescription and in his/her presence.²⁵³ These steps may only be taken in situations where there is a direct threat to the health and life of the patient or other people, unless the

²⁵⁰ Section 22 par.5 of Act No. 109/2002 Coll., on the provision of institutional care and protective custody, as amended.

²⁵¹ The instruction was published in the Bulletin of the Ministry of Health of the CR no. 7/2009.

²⁵² Section 1 par. 2 (j) of Decree No. 385/2006 Coll., on Medical Documentation, as amended.

²⁵³ Section 89 par. 3 of Act No. 108/2006 Coll., on Social Services, as amended.

situation cannot be resolved using other measures (verbal calming, distracting attention, diversion, active listening) and only for the time needed to eliminate a direct threat. The individual must be warned that restraining measures will be used.²⁵⁴ The social services provider is required to record any use of measures that restrict people's freedom in the records and to inform the legal representative or another person responsible for the patient without undue delay.²⁵⁵

Treatment of individuals in custody and in prison (par. 2 and 3)

112. Legislation regulating custody procedures have not changed over the period under review. Prison Service staff are required to ensure that the rights of the accused in custody are respected. The accused are still entitled to a regular diet, appropriate for their state of health and religious beliefs, to clothing of their own choice or provided by the prison, to monitoring of mail (however correspondence between the accused's defence counsel or with government or international bodies may not be controlled). Complaints made by the accused to the director of the prison or other government body must be passed on without delay. The accused may use the telephone to communicate with counsel and kin, provided there is no risk of hindering the investigation, and in serious cases also with other persons. Apart from telephone calls to counsel, these conversations may be monitored. The accused may receive visits from a maximum of four people once every two weeks for a period of ninety minutes, although the prison director may grant an exception. In the case of high-risk prisoners, the judge or public prosecutor will set visiting rules. The accused may receive an unlimited number of visits from his/her counsel. The accused also has the right to exercise religious freedom, to spiritual contact with registered churches and to participate in their religious ceremonies. The accused also has the right to purchase food and personal items at least once a week and may receive a package containing food and personal items weighing up to 5 kg, which will be inspected, once every three months. In addition to this, clothing, books, daily newspapers and magazines and toiletries may be accepted at any time. Prisoners also have access to books, newspapers and magazines in the prison. The accused has the right to eight hours of sleep a day, to at least one hour of exercise and medical care, and is obliged to undergo preventive entry, periodic and exit medical examinations.²⁵⁶

113. The procedures regulating imprisonment have not seen any significant changes during the period under review. The system in many ways resembles the custody system.²⁵⁷ Visiting hours are a maximum of three hours a month and the prisoner may, with the authorisation of the prison director, leave the prison. A treatment programme is devised for each prisoner with the goal of reintegrating him/her into society through discipline, work, educational and other activities. At least three months before release, the convict is also prepared for an independent life.²⁵⁸ Provided the prisoner does not breach the obligations required by law, he/she is entitled to make use of opportunities that will increase his/her personal enjoyment. For this purpose the Act lists a range of rewards, such as the extension of personal leave for sporting, cultural or other recreational activities, permission to leave the prison for up to 24 hours for the purpose of visits or a treatment programme, etc.²⁵⁹

114. Preventive detention takes place in a special institute for preventive detention with special security and medical, psychological, educational, pedagogical and rehabilitation programmes. Participation in these programmes is mandatory for all individuals placed in

²⁵⁴ Section 89 paras. 1 and 2 of Act No. 108/2006 Coll., on Social Services, as amended.

²⁵⁵ Section 89 paras. 4 and 5 of Act No. 108/2006 Coll., on Social Services, as amended.

²⁵⁶ Sections 11–21 of Act No. 293/1993 Coll., on Custody, as amended.

²⁵⁷ Sections 15–27 of Act No. 169/1999 Coll., on Imprisonment, as amended.

²⁵⁸ Section 41 of the same Act.

²⁵⁹ Section 45 of the same Act.

such an institute. The aim of the detention is to reach the state where the detainee understands his/her condition and the danger he/she poses to society and learns to live with this and to cooperate with treatment in a normal psychiatric hospital. In other respects the programme is very similar to that of a prison.

115. When placing the accused in detention cells, care is taken to comply with the purpose of the detention and to avoid moral or other threats to the accused. Providing the conditions of the prison allow it, the accused may be placed in separate cells (including cells for smokers and non-smokers). The accused are separated by gender, age and the severity of the offence for which they have been prosecuted. Accused are always kept separate from convicted prisoners and from other accused with suspected mental illnesses.²⁶⁰ The capacity of low-security prisons is gradually being increased.²⁶¹ Here the accused are not locked in their cells and can spend more time in groups of other accused prisoners and pursue suitable activities. This method of treatment reflects the fact that no decision has yet been made regarding their guilt. Around 30% of accused prisoners now enjoy this low-security remand system.

116. Special attention is paid to accused juveniles. Juveniles are placed in cells separately from other prisoners. Juveniles may receive visitors once a week and more frequent deliveries of packages containing personal items. Lesser disciplinary sanctions are imposed on them and they receive fewer restrictions. During their period in custody, juveniles complete their basic education, unless they have already graduated, or secondary vocational training. In addition, they participate in professional-led preventive educational activities.²⁶²

117. In prison similar rules apply. Juveniles and adults are always kept separately, as are recidivists from other prisoners, those convicted of intentional and negligent crimes, convicts with mental disorders and behavioural disorders.²⁶³ Convicted juveniles are placed in special prisons for juveniles. They also have similar advantages as in custody, a generally less severe regime and the right to rewards for good behaviour. During their stay, the prison primarily focuses on their education and preparing the young prisoners for a future career and independent life, including compulsory school attendance. The legal representative of a juvenile and the socio-legal child protection body may comment on the education provided for the juvenile. Participation in the established education and other activities in the treatment programme are mandatory for juveniles.²⁶⁴

118. During 2005, on the initiative of the Probation and Mediation Service of the Czech Republic, the first “youth teams” were created in certain selected judicial districts, following the model of the British Youth Offender Teams. These are working teams, comprising representatives of the police force, the public prosecutor, the courts, the Probation and Mediation Service, socio-legal child protection bodies and other contributing institutions involved in working with young delinquents. Their task is to analyse juvenile delinquency in a given district, to monitor the current situation and to discuss possible strategies for their solution. The teams also carry out joint analyses of certain cases.

119. During the period under review, the Constitutional Court commented on the review of decisions on disciplinary sanctions made during imprisonment.²⁶⁵ If disciplinary sanctions involve the restriction of fundamental rights and freedoms that are under the protection of the judicial power, their imposition must be subject to judicial review,

²⁶⁰ Sections 6 and 7 of Act No. 293/1993 Coll., on Custody, as amended.

²⁶¹ Section 8 of Act No. 293/1993 Coll., on Custody, as amended.

²⁶² Sections 25–26a of Act No. 293/1993 Coll., on Custody, as amended.

²⁶³ Section 7 of Act No. 169/1999 Coll., on Imprisonment, as amended.

²⁶⁴ Sections 60–65 of Act No. 169/1999 Coll., on Imprisonment, as amended.

²⁶⁵ Constitutional Court findings ref. no. Pl. ÚS 32/08 published under no. 341/2010 Coll.

although the prison system does in itself automatically involve certain restrictions on fundamental rights and freedoms.²⁶⁶ Imprisonment in the form of disciplinary punishments (e.g. placement in solitary confinement) entails an even greater attack on fundamental rights and freedoms, that do not automatically arise from the law, and which must therefore be subject to judicial review, to verify that their imposition is legitimate and reasonable.

Article 11

Deprivation or limitation of personal liberty for not meeting contractual obligations

120. During the period under review, there were no changes in the Czech Republic concerning this issue. Constitutional law only allows for limits on personal liberty in a manner specified by law and continues specifically to prohibit any restriction of freedom merely because of a person's inability to meet a contractual obligation.²⁶⁷

Article 12

Freedom of residence and movement (para. 1)

121. The constitutional order guarantees freedom of movement and residence.²⁶⁸ Freedom of movement and residence may be limited by law if it is essential for the security of the State, for maintenance of public order, for protection of health or for protection of the rights and freedoms of others, and in some areas also for the purpose of nature protection.²⁶⁹ Every Czech citizen has the right to reside in the territory of the State by virtue of his or her citizenship, has the right freely to enter the territory of the State and may leave it at any time, but may not be forced to leave it.²⁷⁰ Foreign citizens do not automatically have the right to enter the territory of the State and may also be expelled in cases specified by law.²⁷¹ In the case of foreign citizens, a distinction is always made for those who are citizens of other EU Member States. Asylum seekers are entitled to reside in the Czech Republic by virtue of an application for international protection until a final decision has been made.

122. A citizen of the Czech Republic may live anywhere on its territory. Every citizen has the address of his/her permanent residence entered in the register of citizens.²⁷² No citizen is obliged to live in his/her place of permanent residence, but it is assumed, for certain acts of public authority or the exercise of certain rights, that he/she does reside in the place of permanent residence, unless a different address is given. These include an address where courts and other government bodies have jurisdiction, an address for delivery of decisions from these bodies, processing documents or the exercise of voting rights. In most cases of course the citizen may, at his/her request, exercise these rights in an other place or may have documents delivered to another address, process and take delivery of documents elsewhere or vote in a different location with a voter card.

123. A citizen of an EU Member State may have temporary or permanent residence on the territory. Temporary residence is not time limited and does not require any special residence permit. Within 30 days of entry in the territory of the Czech Republic, a citizen of

²⁶⁶ Section 27 of Act No. 169/1999 Coll., as amended.

²⁶⁷ Art. 8 par. 2 of the Charter of Fundamental Rights and Freedoms.

²⁶⁸ Art. 14 para. 1 of the Charter of Fundamental Rights and Freedoms.

²⁶⁹ Art. 14 para. 3 of the Charter of Fundamental Rights and Freedoms.

²⁷⁰ Art. 14 paras. 2 and 4 of the Charter of Fundamental Rights and Freedoms.

²⁷¹ Art. 14 para. 5 of the Charter of Fundamental Rights and Freedoms.

²⁷² Section 10 et seq. of Act No. 133/2000 Coll., on the Register of Citizens, as amended.

an EU Member State is obliged to notify the police his/her place of residence on the territory, if he/she intends to stay here longer and has not already registered at his/her place of accommodation (i.e. at a hotel, for example).²⁷³ If he/she intends to stay for a period longer than 3 months, he/she may then apply to the police to issue a certificate of temporary residence. His/her family members must apply for this certificate if they are not citizens of an EU Member State. After 5 years of residence on the territory, a citizen of an EU Member State may apply for permanent residence. A family member who is not a citizen of an EU Member State is required to have at least 2 years of temporary residence and to have had a relationship for at least one year with a citizen of an EU Member State. This is to protect against cases of arranged marriages or arranged paternity.

124. Other foreign nationals are subject to the normal procedures applying to aliens. Citizens of certain states may only enter and reside on the territory of the EU with a valid visa or a valid residence permit.²⁷⁴ If foreign nationals fail to meet these conditions, they are not allowed to enter the territory. They may subsequently reside on the territory either temporarily or permanently, on the basis of a visa or the appropriate residence permit. A foreign national must always report his place of residence and prove his residency status with the relevant permit. Failure to meet the conditions for residence on the territory of the state, as well as many other violations of the Act on the Residence of Aliens, is punishable by administrative expulsion.

125. The residence status of foreign nationals, i.e. the type of residence, affects the rights conferred on them by Czech law. For example, foreign nationals who have been granted permanent residence may work without authorisation from the public authorities and are automatically included in the public health insurance system, which pays for medical care. Their position is thus virtually identical to that of Czech citizens, with the exception of certain political rights that are only granted to citizens of the Czech Republic.

Right to leave the Czech Republic (para. 2)

126. A valid travel document is required for citizens of the Czech Republic to leave the territory of the state, consisting of a passport, or an identity card for travel within the EU. Travel documents are issued to citizens in administrative proceedings upon request. Since 1 September 2006, citizens have been issued passports with machine readable data and with a chip containing biometric data.²⁷⁵ One problem was the identification of children entered in their parents' passports. Children up to the age of 10 years can currently be entered in passports. However, this option will end on 1 July 2011.²⁷⁶ After this all children will have to have their own passport with a photograph, which will make them fully identifiable.

127. Based on the case law of the Constitutional Court²⁷⁷ the legislation regulating the removal of travel documents was changed. The original legislation imposed the task of

²⁷³ Section 93 para. 2 of Act No. 326/1999 Coll., on the Residence of Aliens, as amended.

²⁷⁴ Short-term stays are regulated by Council Regulation (EC) No. 539/2001, listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. For long-term stays, each Member State lays down their own conditions of entry, although over recent years there has been a consolidation of entry conditions for certain categories of people (e.g. academics, professionals, students).

²⁷⁵ Council Regulation (EC) No. 2252/2004, on standards for security features and biometrics in passports and travel documents issued by Member States.

²⁷⁶ See Regulation of the European Parliament and of the Council No. 444/2009, amending Council Regulation (EC) No. 2252/2004, on standards for security features and biometrics in passports and travel documents issued by Member States.

²⁷⁷ Constitutional Court findings file. no. Pl. ÚS 12/07 promulgated under no. 355/2008 Coll. and Pl. ÚS 18/07 promulgated under no. 384/2009 Coll.

removing travel documents or denying their issue to a citizen who had been prosecuted for committing an intentional crime on the competent administrative body, at the request of the law enforcement body involved in the criminal proceedings. The Constitutional Court found the legislation to be unconstitutional for two reasons. The Act on Travel Documents did not allow the competent administrative body to consider whether or not to issue or remove the document and there was no real opportunity to judicial review of the decision of the administrative body. This therefore meant that citizens were deprived of constitutional protection of their procedural rights, because they could not turn to any body for a review of whether the removal or refusal to issue a travel document was reasonable and appropriate from a constitutional perspective. The new legislation introduces a new procedure in the Criminal Code where the removal of travel documents is an alternative means of substitution for custody. The court will now decide on the removal of documents, as it does on imposing custody. The accused may request that this measure be revoked at any time. The court will also always revoke this measure when it is no longer necessary. The legitimacy and justification of this interference with the freedom of movement are thereby fully resolved by judicial means during the criminal proceedings themselves and the protection of substantive and procedural rights is thereby guaranteed.

128. The police can prevent a foreign national from departing in the event that such foreign national leaves a child under the age of 15 years in the Czech Republic, who does not have his/her own travel document and who is not in the care of an adult, or has not been entrusted into institutional care or been hospitalised. In the last case, the police will take into account instances where it is not possible to force a foreign national to stay in the Czech Republic and where it is clear that the child will leave once discharged from hospital. The police resolve these cases through an affidavit stating that the departure of the parents is not contrary to the interests of the hospitalised child.

129. Since joining the Schengen area on 21 December 2007, the Czech Republic no longer protects its land borders.²⁷⁸ Border checks are now only carried out at international airports. Citizens of the Czech Republic and other EU Member States and their family members enjoy the right of free movement and when crossing the external borders are only subject to so-called “minimum” border controls. These consist of checking travel documents and may also include screening through the relevant police databases. Third-country nationals undergo a thorough inspection, which includes a check of their travel documents, a verification that the person has a visa or residence permit, a verification of the intended purpose of their stay, a check that the third-country national has sufficient funds for his/her stay and return and a screening through the Schengen information system and national databases.

Limitation of freedom of residence and movement (par. 3 and 4)

130. There are three model cases of restrictions on freedom of residence and movement in the Czech Republic. The first of these is the limitation of such rights as a result of the declaration of an emergency, which consists of a wide-scale limitation of certain human rights and freedoms, the second is the limitation of freedom of residence and movement as a result of the deprivation or restriction of personal liberty, and the third is the limitation of freedom of residence and movement in specific places, not tied to a specific individual. This concerns, for example, cases of nature conservation,²⁷⁹ cases of health protection

²⁷⁸ Regulation (E) No. 562/2006 of the European Parliament and of the Council of 15 March 2006, establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

²⁷⁹ Act No. 114/1992 Coll., on Protection of Nature and the Landscape, as amended.

against the spread of infectious diseases²⁸⁰ or establishing traffic regulations to maintain public order.²⁸¹ These restrictions are minimal in terms of both space and time given that they are intended to protect the public interests referred to above. More detailed information is contained in the text to Article 4, Article 9, Article 1 and Article 10.

131. A court may impose a punishment banning residence on both foreign nationals and Czech citizens through criminal proceedings, if it is necessary to prevent the perpetrator from staying at the scene of the crime in order to protect human life and health and public order, property or morality. The punishment consists of a ban on staying in a certain district, which must not however be the perpetrator's place of permanent residence. If the convicted person has some business in this place, he/she must apply to the police for permission. The period residence may be denied may range from 1 to 10 years.²⁸²

Article 13

The deportation of foreigners living lawfully in the Czech Republic

132. Foreign nationals, who reside legally on the territory of the Czech Republic, may find their existing permission to stay revoked if they can endanger national security or seriously disrupt public order or public health.²⁸³ In such cases the foreign national may be deported from the territory. Administrative expulsion involves setting a date for his/her departure and the period after which the foreign national will no longer be allowed to re-enter the territory. Depending on the seriousness of the situation, this period may extend from 3 to 10 years. In the case of a citizen of an EU Member State or his/her family members, stricter deportation conditions apply, relating to ensuring freedom of movement and residence.²⁸⁴ The impact of the decision to expel the foreign national on his private or family life is always taken into consideration. During the deportation proceedings, account is also taken of the state of origin of the foreign national and whether, in his/her own opinion and the binding opinion of the Ministry of Interior, he/she runs the risk of persecution or other serious harm there. The law also allows for mitigation of the harshness of administrative expulsion. The foreign national may appeal against the deportation order. The Constitutional Court has repealed the provision excluding a judicial review of a decision on administrative expulsion if the foreign national, prior to the beginning of the deportation proceedings, resides on the territory of the Czech Republic without due authorisation, because the constitutional order always accords to foreign nationals the right to receive legal protection.²⁸⁵ Even in these cases, a foreign national is now entitled to bring an action in court against a decision on expulsion. Foreign nationals have the right to legal representation at administrative and judicial proceedings.

133. In addition to administrative expulsion, courts may also impose a sentence of expulsion on a foreign national in criminal proceedings for a period of between 1 and 10 years, or for an indefinite period, if the safety of people or property or other public interest so requires. Asylum-seekers, people with permanent residence in the Czech Republic, who have families and are socially integrated, and people who would be at risk of persecution, torture or other inhuman treatment in their countries of origin may not be expelled. In the

²⁸⁰ Act No. 258/2000 Coll., on the Protection of Public Health, as amended.

²⁸¹ Act No. 361/2000 Coll., on Road Traffic, as amended.

²⁸² Section 75 of the Criminal Code.

²⁸³ Section 118 et seq. of Act No. 326/1999 Coll., on the Residence of Aliens, as amended.

²⁸⁴ E.g. a minor citizen of an EU Member State may only be deported for threatening the state and in accordance with the Convention on the Rights of the Child.

²⁸⁵ Constitutional Court findings file. no. Pl. ÚS 26/07 promulgated under no. 47/2009 Coll.

case of citizens of EU Member States, deportation can only be ordered in serious cases involving threats to national security or public order.²⁸⁶ Prior to expulsion, the convicted offender may be placed in deportation custody for the time required to produce travel documents.²⁸⁷

Article 14

The right to judicial protection (par. 1)

The principle of equality of parties in civil procedure

134. The equality of the parties in legal proceedings is one of the fundamental principles of the Czech legal order.²⁸⁸ In civil and administrative proceedings, the parties have equal status and the court is obliged to provide them with the same opportunities to exercise their rights and with essential advice on their procedural rights and obligations. In criminal proceedings, the parties have equal status and opportunities to use procedural means to enforce their rights.²⁸⁹ In court, each party may speak in their native language. For people who do not speak Czech, which is the official language, and deaf and blind-deaf people, the court will appoint an interpreter at government expense.²⁹⁰ Access to justice is also guaranteed regardless of the social situation of the participant. A participant who shows that he/she does not have sufficient funds to cover the costs of the legal proceedings may be fully, or at least partially, exempt from court fees and other costs by the court, provided his/her proposal is not an arbitrary or obviously futile petition or interference with the exercise of rights.²⁹¹ If it is necessary to protect the party's interest, the court may appoint a lawyer to be his/her representative at the state's expense.²⁹² However, during the proceedings, the court will monitor whether the conditions justifying the exemption still apply and may possibly withdraw it and, if the exemption was not justified, may even request that the costs be paid retroactively.

The presence of the party in court proceedings

135. The party has the right to participate in court proceedings, to which he/she must be duly summoned and the summons must be served.²⁹³ If he/she still fails to attend, a default judgement may be passed against him/her in civil court proceedings.²⁹⁴ In criminal proceedings, hearings may only take place in the absence of the accused if the court considers that it can reliably decide on the case and achieve the purpose of the criminal proceedings even without the his/her presence, and that he/she was duly summoned and had previously been questioned and could use all his/her procedural rights during the pre-trial hearings. If the accused is in custody or at threat of a prison sentence of over five years, he/she must always be present at the trial. However, he/she may request that the trial be

²⁸⁶ Section 80 of the Criminal Code.

²⁸⁷ Section 350c of the Code of Criminal Procedure.

²⁸⁸ Art. 96 para. 1 of the Constitution and Art. 37 para. 3 of the Charter of Fundamental Rights and Freedoms.

²⁸⁹ Section 2 para. 5 of the Code of Criminal Procedure.

²⁹⁰ Section 18 of the Code of Civil Procedure and Section 36 of the Code of Administrative Procedure.

²⁹¹ Section 138 of the Code of Civil Procedure.

²⁹² Section 30 of the Code of Civil Procedure. For administrative proceedings, the Code of Civil Procedure is used as a subsidiary source in these cases.

²⁹³ Section 115 of the Code of Civil Procedure.

²⁹⁴ Section 153b of the Code of Civil Procedure.

held in his/her absence.²⁹⁵ Other persons participating in the proceedings (e.g. the victim) must also be properly summoned, but the hearings may take place in their absence.

Public access to court proceedings and public disclosure of court decisions

136. A fundamental rule is that court proceedings are open to the public and that the verdict of the court is always publicly pronounced.²⁹⁶ The verdict shall always be publicly pronounced, while legal exceptions may exist limiting public access to court proceedings. In civil proceedings the court may bar the public for reasons of protecting classified information, commercial secret, important interests of the parties or morality. Even under these conditions, it is still possible to allow the presence of certain individuals, provided they are sworn to secrecy about the findings. On the other hand, people who risk disturbing the proceedings may be excluded at any time.²⁹⁷ Anyone disturbing the proceedings may be ejected and a disciplinary fine may be imposed.²⁹⁸ Similar arrangements apply in administrative court proceedings.²⁹⁹ In criminal proceedings, the public may also be barred from the trial for reasons of protecting classified information, morality, or to prevent the proceedings being disrupted, or the safety and other important interest of the witnesses (e.g. to protect their identity). The conditions of individual exclusion and admission shall apply *mutatis mutandis*. The accused has the right to select two confidantes who will always attend the hearings.³⁰⁰

137. Specific rules apply in criminal proceedings involving children and juveniles. Only the defendant juvenile, his/her two confidantes, the defence counsel, legal representatives and immediate family, the injured party and his/her representative, witnesses, expert witnesses, interpreters, the relevant socio-legal child protection body, officers of the Probation and Mediation service and representatives from the school or educational facility may attend these court proceedings. This means the general public is excluded from the proceedings. The reason is to protect the privacy of juveniles as particularly vulnerable people. The judgement however is publicly announced.³⁰¹ In addition, the publication of information on criminal proceedings involving juveniles is restricted to prevent his/her identity being revealed directly. Exceptions do apply, for example when a search is underway for a juvenile, or any other acts needed for the criminal proceedings. Depending on the circumstances, the court may decide to impose other limitations on the disclosure of personal information contained in the verdict or, on the other hand, to publish the final conviction with all the information in the case of a particularly serious crime, when such disclosure is required for the protection of society. The Constitutional Court has also issued an opinion confirming the validity of these limitations.³⁰² It found that they complied with the constitutional order because they meet the legitimate objectives of protecting the interests of the juvenile in view of his/her age and intellectual maturity and with regard to his/her future life, which should not be affected by the publicity and stigmatism associated with criminal proceedings. The juvenile him/herself may decide whether the trial should be open to the public or not. Whether a trial is public does not only depend on the interest of

²⁹⁵ Section 202 Code of Criminal Procedure.

²⁹⁶ Art. 96 para. 2 of the Constitution and Art. 38 para. 2 of the Charter of Fundamental Rights and Freedoms.

²⁹⁷ Section 116 of the Code of Civil Procedure.

²⁹⁸ Sections 53 and 54 of the Code of Civil Procedure.

²⁹⁹ Sections 44 and 49 of Act No. 150/2002 Coll., Code of Administrative Procedure, as amended.

³⁰⁰ 199–201 of the Code of Criminal Procedure.

³⁰¹ Section 54 of Act No. 218/2003 Coll., on the liability of juveniles for illegal acts and on juvenile justice and on amendments to certain Acts, as amended by later Acts, as amended by Act No.253/2006 Coll.

³⁰² Constitutional Court findings file. no. Pl. ÚS 28/04 promulgated under no. 20/2006 Coll.

the court or the interest of the public, but primarily on the interest of the party involved and for that reason it is fair if he/she can influence this public, if it is in his/her legitimate interest. The educational impact of a trial and the decision-making process, in the same way as public scrutiny, may be just as effective regardless of the identity of a specific person. The limitations are therefore adequate for their purpose.

138. General arrangements regulating the disclosure of information on criminal proceedings and the publication of sentences were altered by an amendment to the Code of Criminal Procedure in 2009.³⁰³ Judgements, rulings and other decisions of the Supreme Court, the Supreme Administrative Court and the Constitutional Court are published in electronic version on their websites and issued in printed collections.³⁰⁴ Certain decisions of lower administrative courts are also published on the Supreme Administrative Court website. Since 2007, the Ministry of Justice has been introducing the “eJustice” website³⁰⁵ which enables electronic access to information from the judicial system. Information on court hearings, on continuing litigation can be retrieved through remote access, as can information from the commercial and insolvency registers or the criminal records. Applications to the court can also be filed via internet as actions or requests for payment orders using the same process.³⁰⁶ The website is currently beginning to publish case law from the lower municipal courts. All published court decisions are anonymous. Court judgements can also be accessed through the principle of free access to information, because the courts are legally bound persons under the law and their decision-making activity relates to their competencies.³⁰⁷ An exemption is extended to information concerning on-going criminal proceedings and court decisions that are not final judgements.

139. The Constitutional Court also addressed the issue of access to pending court decisions, where it repealed the statutory limitations and imposed on courts the obligation also to provide information on pending judgements.³⁰⁸ The Constitutional Court concluded that the blanket ban on providing information on these decisions represents unreasonable interference in the right to free access to information, because it does not enable the grounds for the ban to be scrutinised in specific cases.³⁰⁹ The ban is also in conflict with mandatory public pronouncement of judgments, because if the information has already been publicly announced, there is no sense in concealing it. Disclosure of information on pending decisions would not undermine the independence and authority of the judiciary. Judges must guarantee the independence and impartiality of their decisions in the face of public debate and must always be able to defend their decisions both factually and professionally. The power of the judiciary, like other state power, is derived from the people and must therefore also be subjected to public scrutiny.

³⁰³ For more see text to Art. 19.

³⁰⁴ http://www.nsoud.cz/JudikaturaNS_new/ns_web.nsf/,
<http://www.nssoud.cz/main2Col.aspx?cls=AnonymizovaneZneniList&menu=188>,
<http://nalus.usoud.cz/Search/Search.aspx>.

³⁰⁵ <http://obcanskyzakonik.justice.cz/ejustice/>.

³⁰⁶ Of course in this case this is conditional on the possibility of signing these with a secure electronic signature.

³⁰⁷ Section 2 of Act No. 106/1999 Coll., on Free Access to Information, as amended.

³⁰⁸ Findings file. no. Pl. ÚS 2/10 of 30 March 2010, promulgated under no. 123/2010 Coll.

³⁰⁹ See Art. 17 para. 4 of the Charter of Fundamental Rights and Freedoms.

The independence and impartiality of judicial decisions

140. The independence and impartiality of the courts and judges still remains one of the foundations for the functioning of the judiciary.³¹⁰ In decision-making judges are only bound by the law and international treaties³¹¹ and they must interpret them according to their best knowledge and conscience and decide within a reasonable time without delay, impartially and fairly and based on facts established in accordance with the law.³¹² In order to protect the independence of courts and judges, it has been made a crime to interfere with the independence of a judge,³¹³ to commit violence against the court as a public authority or against a judge as a public official,³¹⁴ to threaten a public authority or a public official,³¹⁵ as well as, for example, to misuse and obstruct the powers of a public official³¹⁶ and, finally, to accept bribes and hush money.³¹⁷ These crimes are used to prosecute other people, as well as the judges themselves, who might threaten their own independence and impartiality. In practice, judicial independence is ensured by appointing judges for an unlimited term,³¹⁸ the possibility of removing a judge from his/her function only by decision of a disciplinary court and its termination only for legal reasons,³¹⁹ the transfer of a judge only with his/her approval or at his/her request³²⁰ or the incompatibility of the judicial function with certain other functions and with the performance of a gainful occupation.³²¹ These guarantees are met on the other hand by the obligation of the judge to maintain the dignity and good name of his office and the judiciary in order to maintain confidence in the judiciary and the courts and in fair, impartial and independent judicial decisions.³²² The independence of judges vis-à-vis the parties to the case is ensured by the institute of the legal judge, i.e. by assigning individual cases to judges on the basis of a clear and objective work schedule.³²³ If a party has reason to believe that the judge is not acting impartially towards them, they may lodge an objection of bias and the judge will be excluded from the decision-making process.³²⁴ Decisions issued by a biased judge may be challenged and repealed on this basis.

141. The case law of the Constitutional Court also addresses the issue of the independence of judges. The Constitutional Court has annulled certain provisions of the Act on Courts and Judges because they violate judicial independence.³²⁵ The issue was the possibility of assigning judges to the Ministry of Justice, which was contrary to the

³¹⁰ Arts. 81 and 82 of the Constitution, art. 36 para. 1 of the Charter of Fundamental Rights and Freedoms and Section 1 of Act No. 6/2002 Coll., on Courts and Judges, as amended.

³¹¹ Art. 95 of the Constitution. Judges may judge the congruency of another legal regulation with the legislation or an international treaty and, in the event of a conflict, may decide in favour of the legislation or the treaty. If a court arrives at the conclusion that a law which is to be applied in decision-making is in contradiction with a constitutional act, it has the right to pass the matter to the Constitutional Court.

³¹² Section 79 of Act No. 6/2002 Coll., on Courts and Judges, as amended.

³¹³ Section 335 of the Criminal Code.

³¹⁴ Sections 323 and 325 of the Criminal Code.

³¹⁵ Sections 324 and 326 of the Criminal Code.

³¹⁶ Sections 329 and 330 of the Criminal Code.

³¹⁷ Sections 331–334 of the Criminal Code.

³¹⁸ Section 61 of the Act on Courts and Judges.

³¹⁹ Sections 94 and 95 of the Act on Courts and Judges.

³²⁰ Section 67 et seq. of the Act on Courts and Judges.

³²¹ Sections 74 and 85 of the Act on Courts and Judges.

³²² Section 79 of the Act on Courts and Judges.

³²³ Art. 38 para. 1 of the Charter and Section 41 et seq. of Act No. 6/2002 Coll., on Courts and Judges, as amended.

³²⁴ Sections 14 to 17a of the Code of Civil Procedure, Sections 8 and 9 of the Code of Administrative Procedure, Sections 30 to 31a of the Code of Criminal Procedure.

³²⁵ Constitutional Court findings file. no. Pl. ÚS 39/08 promulgated under no. 294/2010 Coll.

separation of powers and enabled the creation of personal ties between judges and executive officials, as well as the possibility of the temporary removal from their functions of the president or vice-president of court by the Minister of Justice in disciplinary proceedings, because there was no option to defend against this intervention and the possibility of reappointing the president and vice-president of court, because this would pose the risk of endangering the independence of decision-making in order to make a positive contribution to their re-appointment. Moreover, the Constitutional Court had already previously annulled the possibility of removing the president and vice-president of court from their functions for deficiencies in the performance of their duties by the people who appoint them, because there is no distinction between the removal from office of judicial officers and the removal of normal judges. These steps may only be taken by the courts in disciplinary proceedings for established violations of the law.³²⁶

Presumption of innocence (par. 2)

142. No significant changes have occurred in recent years regarding the presumption of innocence. It remains one of the fundamental constitutional principles³²⁷ and is reflected as a fundamental principle in the penal procedure as a whole.³²⁸ All courts and authorities involved in criminal proceedings are required to respect this principle and its breach renders any decisions and other procedural steps taken invalid.

Minimum standards of criminal procedure (par. 3)

The right of the accused to be informed promptly of the causes of the charge against him (sub-paragraph a)

143. It still applies that the accused must be informed in writing of the alleged grounds for indictment in the decision to start a criminal prosecution, which contains a description of the conduct that is considered a criminal offence, and its legal classification. An indictment against the accused may only be brought against this conduct. In the event that the charges are extended, or the legal classification of the conduct is changed, the accused and his/her legal representative must be advised of the same, to allow them the possibility of proposing an additional investigation.³²⁹

The right to choose counsel and to prepare his defence (sub-paragraph b)

144. The right to defence is another key element of penal proceedings. The accused has the right to choose a counsel and, in certain more serious cases or other high-risk situations, a counsel shall be appointed for him or her directly.³³⁰ Only a solicitor may act as defence counsel in criminal proceedings, which ensures the quality of the defence.³³¹ The defence counsel is obliged to provide the accused with legal assistance and to defend his/her interests, in particular to clarify the facts that are favourable to him/her, may be present during his/her interrogation, may perform procedural tasks in his/her name and with his/her approval and participate in their performance and request information about the criminal proceedings.³³² At the end of the investigation, he/she may study the file with the accused

³²⁶ Constitutional Court findings file. no. Pl. ÚS 18/06 promulgated under no. 397/2006 Coll.

³²⁷ Art. 40 para. 2 of the Charter of Fundamental Rights and Freedoms.

³²⁸ Section 2 para. 2 of the Code of Criminal Procedure.

³²⁹ Section 160 of the Code of Criminal Procedure.

³³⁰ Art. 40 para. 3 of the Charter of Fundamental Rights and Freedoms and Section 2 para. 13 of the Criminal Code.

³³¹ Section 35 para. 1 of the Code of Criminal Procedure.

³³² Section 41 of the Code of Criminal Procedure.

and make suggestions for its completion.³³³ The defence counsel has a period of at least 5 working days to prepare a defence prior to the trial.³³⁴

The right to be tried without undue delay (sub-paragraph c)

145. The right to have one's case considered without unnecessary delay is also one of the fundamental rights guaranteed by constitutional laws and international treaties.³³⁵ The Code of Criminal Procedure, in the fundamental principles underlying criminal proceedings, requires the law enforcement authorities to hear criminal cases as quickly as possible and with full regard for fundamental rights and freedoms.³³⁶ In criminal proceedings police authorities have a set deadline from 2 to 6 months to complete their investigation and submit the case to the court.³³⁷ The court itself has no set deadline for its verdict, because it is impossible to predict how much time will be needed for the proper clarification of all the facts. It is only to start the court proceedings that there is a time limit from 3 weeks to 3 months after indictment. An exception, for example, is the issue of a custody order which must be a priority and as speedy as possible.³³⁸ If the duration of the court proceedings is excessively long, the injured party may file a complaint to court, seek the imposition of a deadline for the trial and then seek compensation for damages and non-material damages caused by the delays.³³⁹ The average length of proceedings in civil and criminal cases is given in annex no. 10.

The right to legal assistance and the right to be tried in his presence (sub-paragraph d)

146. The right to a fair hearing in itself includes the right to choose defence counsel, who must be a solicitor. If the accused does not do this, in certain cases a lawyer is appointed by the court. These are cases where the accused cannot effectively and efficiently defend him/herself (e.g. is in custody, imprisoned or otherwise restricted in his/her personal liberty, is on the run or has no legal capacity) or the proceedings are complicated (international cooperation) or a prison sentence of more than five years is at stake. A situation where the accused had no defence counsel, when he/she should have had, is grounds for returning the case to pre-trial proceedings. A defence counsel who is appointed is obliged to accept. The appointed defence counsel obviously does not restrict the accused's choice, but is present in case the accused fails to use this choice and his/her rights will have to be protected.³⁴⁰ The costs of an appointed defence counsel are covered by the state. At the same time, in cases where the accused does not require a defence counsel, and has no funds to pay one, he/she may request that one be appointed at the expense of the state, provided this is necessary to protect his/her interests.³⁴¹

147. The issue of the participation of the accused as a party to the proceedings was discussed above.

³³³ Section 166 of the Code of Criminal Procedure.

³³⁴ Section 198 para. 1 of the Code of Criminal Procedure.

³³⁵ Art. 38 para. 2 of the Charter of Fundamental Rights and Freedoms and Art. 6 para. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

³³⁶ Section 2 para. 4 of the Code of Criminal Procedure.

³³⁷ Sections 167 and 170 of the Code of Criminal Procedure.

³³⁸ Section 71 of the Code of Criminal Procedure.

³³⁹ See text to Art. 2.

³⁴⁰ Sections 36 and 36a of the Code of Criminal Procedure.

³⁴¹ Section 33 of the Code of Criminal Procedure.

The right to present evidence and actively to participate in the examination of witnesses (sub-paragraph e)

148. During the investigation, the police may admit the accused to participate in the investigative actions and allow him/her to question the witnesses under interrogation, especially in cases where the accused has no legal counsel. Even if the police authority will not allow the participation of the accused in the actions, they must notify him/her of them. From the commencement of the criminal proceedings, the defence counsel is entitled to be present when investigative actions are taking place whose results can be used as evidence in court proceedings, unless these are urgent tasks. The defence counsel may ask the witness questions when the police interrogation is complete, and raise objections against the manner of conducting the investigation at any time during its course.³⁴² The accused always has the right to be present when the case is at trial. In general, the accused and his/her defence counsel are entitled to participate in all acts of probation in the trial and, with the court's consent, to perform probation in favour of the defence.³⁴³ After every piece of evidence is presented, the accused must be asked whether he/she wishes to comment, and his/her comments are recorded in the minutes.³⁴⁴

The right to the assistance of an interpreter (sub-paragraph f)

149. The accused has the right to express themselves in court in their own language, or in some other manner of which they are capable.³⁴⁵ All the main documents for the proceedings, such as the resolution to order the commencement of criminal proceedings, resolution of custody, the indictment or the verdict, must be translated for the accused. The consequences of the delivery of this document take effect after its translation, which the accused may understand.³⁴⁶

The right not to be compelled to testify against himself (sub-paragraph g)

150. The accused has the right to refuse making a statement and he or she may not be forced to make a statement or an admission.³⁴⁷ After being indicted, the accused is subsequently interrogated during court proceedings, but even here the right to refuse to respond and the prohibition on self-incrimination apply.³⁴⁸

Criminal proceedings against children and juveniles (par. 4)

151. Criminal proceedings against children and juveniles continue to take place under a special Act on Juvenile Justice, which stipulates that criminal proceedings are held for juvenile offenders of criminal offences between the ages of 15 to 18 years, whereas proceedings for children under the age of 15, who are not criminally liable, will be handled

³⁴² Section 165 of the Code of Criminal Procedure.

³⁴³ Section 215 of the Code of Criminal Procedure.

³⁴⁴ Section 214 of the Code of Criminal Procedure.

³⁴⁵ Section 2 para. 14 of the Code of Criminal Procedure. Reference is made, for example to sign language or other means of communicating with deaf and deafblind people.

³⁴⁶ Section 28 of the Code of Criminal Procedure.

³⁴⁷ Art. 40 para. 4 of the Charter of Fundamental Rights and Freedoms and Section 92 para. 1 of the Criminal Code.

³⁴⁸ In its opinion file. no. Pl. ÚS st-30/10 (promulgated under no. 439/2010 Coll.) the Constitutional Court concluded that body searches, removing traces of odour, removing samples of hair and buccal swabs do not mean that the accused or suspect is being forced to incriminate him/herself because these are not invasive interventions and their aim is objectively to determine existing facts independent of the will of the given individual. This means that adequate means may be used to overcome any resistance and to ensure cooperation in the performance of these interventions.

by a Youth Court in civil proceedings.³⁴⁹ Certain aspects of the Act on Juvenile Justice have already been mentioned above in descriptions of restrictions on personal liberty or public access to court proceedings. Other aspects of the Act were described in the previous report³⁵⁰ and are also discussed in the third and fourth periodic report on the implementation of commitments arising from the Convention on the Rights of the Child and the Czech Republic information on the fulfilment of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.³⁵¹ During the period under review there were no significant changes in the legislation. Even after the approval and entry into force of the new Criminal Code³⁵² the age threshold for criminal responsibility was maintained at 15 years. One new element is that juveniles may also be sentenced to institutional care under the Family Act and can also be sentenced to deportation, although the court will take into account the best interests of the juvenile, especially in respect of his/her family and personal circumstances, and ensures that the imposition of this punitive measure will not cause the juvenile to run wild.³⁵³ Another new sanction is the punishment of house arrest and the punishment of a ban on attending sports, cultural and other social activities for a maximum of 5 years, combined with appropriate educational measures.³⁵⁴ In the case of children under 15 years of age, who do not have criminal responsibility, the range of measures that can be applied in civil law proceedings has been extended. In addition to protective care, and educational programme in the educational care programme and supervision by a probation officer, the sanctions of education obligations, education restrictions and reprehension with warning can also be imposed.³⁵⁵

The right to judicial review in criminal proceedings (par. 5)

152. According to the Code of Criminal Procedure, the ordinary remedy is an appeal against a decision of a court of the first instance, which has a suspending effect.³⁵⁶ The appeal may be lodged by the accused or by his/her kin on his/her behalf and also by the public prosecutor. The deadline for filing an appeal is 8 days from receipt of the judgement. An appeal may be filed for any reason and it is possible to introduce new facts and evidence.

153. An extraordinary remedy is the possibility of appellate review to the Supreme Court against a decision of a court of the second instance.³⁵⁷ The appellate review can only be lodged against a decision on the merits of the case (primarily a conviction and acquittal, but also a rejection of appeal). The appeal may only be lodged by the accused or the public prosecutor, for reasons of law, mainly relating to defective proceedings, to erroneous legal assessment of the case and to compliance with criminal legislation when imposing sanctions. The deadline for filing an appellate review is 2 months. This remedy was described in the previous report.³⁵⁸

³⁴⁹ Act No. 218/2003 Coll., on the liability of juveniles for illegal acts and on juvenile justice and on amendments to certain Acts, as amended.

³⁵⁰ CCPR/C/CZE/2.

³⁵¹ CRC/C/CZE/3-4.

³⁵² Act No. 40/2009 Coll., with effect from 1 January 2010.

³⁵³ Section 26 para. 4 Act No. 218/2003 Coll., on the liability of juveniles for illegal acts and on juvenile justice and on amendments to certain Acts, as amended.

³⁵⁴ Section 26 para. 3 of the same Act.

³⁵⁵ Section 93 para. 1 of Act No. 218/2003 Coll., on Juvenile Justice.

³⁵⁶ Title Sixteen of the Code of Criminal Procedure (Section 245 et seq.).

³⁵⁷ Title Seventeen of the Code of Criminal Procedure (Section 265a et seq.).

³⁵⁸ CCPR/C/CZE/2.

154. A complaint for violation of the law and a retrial are other extraordinary remedies. A complaint for violation of the law may be filed by the Minister of Justice to the Supreme Court against a final decision by a court or the public prosecutor that violated the law, or that was made on the basis of an incorrect judicial procedure.³⁵⁹ There is no legal obligation to file this appeal and it is entirely within the power of the Minister of Justice. A retrial is another extraordinary remedy for cases where facts or evidence come to light that were previously unknown to the court and could justify a different decision on guilt or sanctions or other conclusion to the criminal proceedings.³⁶⁰ The proposal may be submitted by the accused or the public prosecutor and persons who may lodge an appeal in favour of the accused. The court then decides whether to allow the retrial and will possibly subsequently return a new verdict on the case.

155. If the decision made in criminal proceedings conflicts with constitutionally guaranteed fundamental rights and freedoms, and after exhausting other means of protection, a complaint may be filed with the Constitutional Court.³⁶¹

The right to compensation of damage suffered by unlawful verdict (para. 6)

156. Compensation for unlawful conviction is a type of compensation for unlawful decision of the court as a public authority.³⁶² The system is described in the text to Art. 2 (delays in court proceedings) and Art. 9 par. 5 (unlawful limitations of personal liberty). In the case of judicial decisions it applies that, if it was cancelled or changed for illegality on the basis of ordinary or extraordinary remedies or constitutional complaint, the person who suffered damage as a result of this decision may seek compensation.³⁶³ Compensation may also be claimed for immaterial harm.³⁶⁴ The person affected shall submit a request to the Ministry of Justice as the state body holding authority over the court and, unless he/she receives satisfaction within 6 months, he/she may turn to the court.³⁶⁵ The culpability of the accused is not considered.

The principle of *ne bis in idem* (para. 7)

157. The principle of *ne bis in idem*, i.e. the exclusion of any re-opening of a penal law case after a final verdict, is also one of the fundamental principles of criminal proceedings, based on both the constitutional order and the Criminal Code.³⁶⁶ This does not preclude the justified application of the remedial measures referred to above.

³⁵⁹ Title Eighteen of the Code of Criminal Procedure (Section 266 et seq.).

³⁶⁰ Title Nineteen of the Code of Criminal Procedure (Section 277 et seq.).

³⁶¹ Art. 87 para. 1 (d) of the Constitution and Section 72 et seq. of Act No. 182/1993 Coll., on the Constitutional Court, as amended.

³⁶² Act No. 82/1998 Coll., on liability for damage caused in the execution of public authority by decision or incorrect official procedure, as amended.

³⁶³ Sections 7 and 8 of the Act.

³⁶⁴ Section 31a of the Act.

³⁶⁵ Sections 14 and 15 of the Act.

³⁶⁶ Art. 40 para. 5 of the Charter of Fundamental Rights and Freedoms and Section 11 para. 1 (f), (g) and (h) of the Criminal Code.

Article 15

Principle of the ban on retroaction (para. 1)

158. The ban on retroactivity in criminal proceedings continues to be regulated by constitutional law.³⁶⁷ The criminality of an act is assessed and the punishment shall be imposed by the law in effect at the time the act was committed. A subsequent law will be used if it is more favourable to the offender. The new Criminal Code also follows this principle.³⁶⁸ If the law changes during the time a crime is committed, the law in effect on termination of the conduct by which the crime was committed is applied. If later amendments are made to this Act, the least severe Act is applied. The act is committed at the time when the perpetrator or participant executed it, or in the case of an omission, was forced to commit it. It makes no difference when the consequence occurred or when it should have occurred.³⁶⁹ The perpetrator can only receive the type of punishment that is allowed by the law in effect at the time when a decision is made on the criminal act.³⁷⁰ According to the transitional provisions, a sentence imposed before the date the Code comes into effect for an act that is not a criminal act anymore, or the part of it that has not been performed, will not be executed.³⁷¹

Punishment for crimes under general principles of law recognised by the international community (para. 2)

159. The punishability of crimes against humanity and other crimes under international law in the narrower sense, i.e. genocide and war crimes, is also provided for in the new Criminal Code.³⁷² Cooperation with international criminal courts and tribunals is still regulated to ensure that provisions of international judicial cooperation in criminal cases with foreign states are used appropriately, provided these courts were established by international treaty to which the Czech Republic is a signatory, or were established by a resolution by the United Nations Security Council or under the Charter of the United Nations.³⁷³

Article 16

Legal personality of an individual

160. The Czech Republic continues to recognise that every natural person situated in its territory has the capacity to possess rights.³⁷⁴ Legal personality as a capacity for rights and obligations arises at birth and terminates with the death of the natural person or with the declaration of his/her death. Capacity to acquire rights and obligations through one's own legal acts and the responsibility related thereto is incurred at the full age of majority, i.e. on

³⁶⁷ Art. 40 para. 6 of the Charter of Fundamental Rights and Freedoms.

³⁶⁸ Act No. 40/2009 Coll., as amended.

³⁶⁹ Section 2 of the Criminal Code.

³⁷⁰ Section 3 para. 1 of the Criminal Code.

³⁷¹ Section 419 of the Criminal Code.

³⁷² Title XIII (Section 400, Section 401 and Section 411 to Section 418).

³⁷³ Section 375 paras. 2 to 5 of the Code of Criminal Procedure. As was mentioned at the beginning of the report, the Czech Republic ratified the Rome Statute of the International Criminal Court on 21 July 2009 and this entered into force on 1 October 2009. Apart from the International Criminal Court, this currently only applies to the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and also, since 1 July 2012, or 1 July 2013, the International Residual Mechanism for Criminal Tribunals.

³⁷⁴ Art. 5 of the Charter of Fundamental Rights and Freedoms.

attaining the age of 18, or by entering into matrimony from 16 years of age. Minors only have the capacity for legal acts that are by their nature suitable for the intellect and will appropriate to their age.³⁷⁵ Procedural capacity is regulated in the same way, where the capacity to be a party to proceedings is dependent on legal personality and the capacity to act independently in a court or other authority is subject to legal capacity.³⁷⁶

161. According to the constitutional order, legal personality may not be restricted. On the other hand, legal capacity can be fully or partially restricted due to permanent mental disorder or addiction to alcohol or drugs. The restriction must only apply to private rights (e.g. property management) and not to public rights (e.g. the right to go to court). In its decision, the court must also determine correctly the rights in which the person is restricted, while also respecting the human personality and dignity, of which legal capacity is a part, as carefully as possible, and only restrict them in order to protect the person or society, and to the minimum extent necessary. It must then appoint a kin or other suitable person or a municipality as guardian to support the restricted person, through whom the person will exercise the rights that they cannot perform alone.³⁷⁷ At the same time, this guardian is obliged to effectively defend the rights and interests of the represented person. Should he/she fail to do so, the court is obliged to remove them.³⁷⁸

162. The court decides on the restriction, deprivation and restoration of legal capacity in civil proceedings on the basis of an investigation and assessments of the medical condition of the person and an interview with them, provided this is possible in view of their state of health. A person restricted in their legal capacity may however always ask for an interview. At the same time they may also be represented and, if they fail to secure this, a guardian is appointed for them (kin or a lawyer). During the proceedings the court then decides whether and to what extent the legal capacity of the person will be restricted and what tasks the given person cannot perform alone. The court can also decide to waive the receipt of the decision if the expert opinion concludes that the person is unable to understand the meaning of the decision. If there is a change in their medical condition, the court will decide, on a proposal by the restricted person or other persons or even ex officio whether the restriction or deprivation of legal capacity is still justified and if not will change or cancel it.³⁷⁹ The number of people deprived of or restricted in their legal capacity is provided in annex no. 11.

Article 17

The right to privacy (par. 1)

163. Right to privacy³⁸⁰ and its protection is also constitutionally guaranteed. This also covers protection of personal and family life and the protection of personal data.³⁸¹ Constitutional guarantees also apply to the sanctity of the home³⁸² and secrecy of documents.³⁸³ The right to privacy and protection of personality is elaborated in the Civil

³⁷⁵ Sections 7–9 of the Civil Code.

³⁷⁶ Sections 19 and 20 of the Code of Civil Procedure.

³⁷⁷ Section 27 of the Civil Code.

³⁷⁸ See Constitutional Court findings file. no. IV. ÚS 412/04, II. ÚS 303/05 and I. ÚS 557/09.

³⁷⁹ Sections 186–191 of the Code of Civil Procedure.

³⁸⁰ Art. 7 para. 1 of the Charter of Fundamental Rights and Freedoms. According to the Civil Code, the concept of privacy is part of the protection of personhood, which also covers, for example, protection of life and health civic honour and human dignity and expressions of a personal nature.

³⁸¹ Art. 10 of the Charter of Fundamental Rights and Freedoms.

³⁸² Art. 12 of the Charter of Fundamental Rights and Freedoms.

³⁸³ Art. 13 of the Charter of Fundamental Rights and Freedoms.

Code. This provides that there should be no interference in personal rights without the consent of the person involved. The only exceptions are interference by public authorities, which are in accordance with the law, and the use of some personal property, such as portraits, pictures and video or audio recordings for journalistic, scientific or artistic purposes. However, this type of use may not be in conflict with the person's legitimate interests.³⁸⁴ Specific regulations concerning the protection of personal data as information on private persons are contained in the Act on Personal Data Protection, which sets rules for the collection and processing of personal data, legal titles for the work, the obligations of the processors and the rights of the subjects of the data, in line with EU law and international treaties.³⁸⁵

164. The manifestation of the official licence is the various authorisations entitling public authorities to collect and to process personal data and otherwise interfere with personal privacy. The most intensive interventions with the strongest constraints are set in the context of the criminal procedure, the activities of the Police of the CR and other security forces and intelligence services.

165. The Police of the CR, as a body involved in criminal proceedings, may, with permission from the judge, carry out house searches or searches of other private spaces and areas on the basis of a reasonable suspicion that an item or person important for the criminal proceedings is located there. In serious cases, where there is a need to protect life or health or to avert a serious threat, they may enter these places without prior authorisation. The police must question the owner or user of the place beforehand and allow him/her to be present during the inspection, along with another disinterested person. Body searches may only be performed with the permission of a court or public prosecutor in pre-trial proceedings, otherwise only in urgent cases, or on people caught in the act, detained, arrested or placed in custody in order to ascertain whether they are carrying a weapon or other dangerous item. The person is also questioned before the body search. A search is always carried out by a person of the same sex.³⁸⁶

166. During criminal proceedings, the police may also carry out a personal inspection in order to discover whether the body bears any traces or effects of the criminal acts. The inspection may be performed by a doctor or a person of the same sex. A doctor or specialised healthcare worker may also take blood or perform any other necessary medical intervention that does not pose a danger to the suspect's health, including taking samples of biological material, provided this does not entail any interference with the integrity of the body. In the case of an accused or suspected person, this intervention may be performed even without his/her consent and, with the approval of the public prosecutor, reasonable measures may be taken to overcome any resistance. In the case of collecting blood samples or interference with the integrity of the body, resistance may not be overcome.³⁸⁷

167. In criminal proceedings, the police authority may also open and replace mail if it needs to ascertain their contents in order to clarify facts important to the criminal

³⁸⁴ Section 12 of the Civil Code.

³⁸⁵ Act No. 101/2000 Coll., as amended, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data and the Convention for the protection of individuals with regard to automatic processing of personal data, promulgated under no. 115/2001 Coll. Int.Tr.

³⁸⁶ Sections 82–85c of the Code of Criminal Procedure. Originally the public prosecutor could authorise inspections of other areas, but the Constitutional Court annulled this power because, according to the case law of the European Court of Human Rights, an individual's private life may also take place in these areas and they should therefore enjoy the same protection. See the Constitutional Court findings file. no. Pl. ÚS 3/09 promulgated under no. 219/2010 Coll.

³⁸⁷ Section 114 of the Code of Criminal Procedure.

proceedings. Again, a permit is issued by the judge or public prosecutor during the pre-trial proceedings. Without such permit, the police may only hold mail for a maximum of 3 days and, if they fail to obtain a permit by this date, they must release the consignment. Any consignment surrendered may only be opened by the judge or, with his/her permission, by the public prosecutor or the police authority. After obtaining the desired information, the consignment is handed to the addressee, unless this might threaten the criminal prosecution. In this case, the consignment is placed in the file and the addressee is, wherever possible, informed of its contents. Packages containing weapons, drugs, counterfeit money or other dangerous goods, items intended for use in a criminal act, or items produced from a criminal act may be exchanged for another by the court, or with its permission by the public prosecutor.³⁸⁸

168. The interception and recording of telecommunications constitutes a serious invasion of privacy. The court may allow direct interception of telecommunications in criminal proceedings for a particularly serious crime or for an intentional criminal act whose prosecution is binding on a promulgated international treaty, if it is reasonable to assume that important facts will thereby be acquired for the criminal proceedings and that the objective pursued cannot otherwise be achieved, or only with considerable difficulty. Communications between the accused and the defence counsel may not be intercepted and recorded under any circumstances.³⁸⁹ The maximum duration of a court order is 4 months, and this period may be extended in justified cases for an additional 4 months. The police are required continually to evaluate the necessity and justification for phone tapping and, should these reasons disappear, it must immediately be terminated. In exceptional cases the police may intercept telephone calls even without the permission of the court with the approval of the user of the intercepted telephone.³⁹⁰ Recordings of communications must always be protected against unauthorised misuse. The maximum period for which recordings may be stored is 3 years from the final conclusion of the criminal proceedings.³⁹¹ Similar arrangements apply in the case of data on telecommunications traffic, if these data are required to clarify facts that are important for the criminal proceedings.³⁹²

169. In criminal proceedings, the police may also conduct secret surveillance activities related to recording the movements and behaviour of a person. This surveillance must be authorised by the public prosecutor and, in cases entailing interference with the privacy, by the court. Surveillance is authorised for a maximum of 6 months, with the option of extending this for another 6 months. Records that do not contain facts important for the criminal proceedings must be immediately destroyed.

170. In cases that do not involve criminal proceedings, but are urgent, the Police of the CR or the municipal police may enter a dwelling-place, other area or land without the consent of the user in situations where this is necessary to protect life or health or to avert a serious threat to property, public order and safety.³⁹³

³⁸⁸ Sections 86–87c of the Code of Criminal Procedure.

³⁸⁹ Any records made of these communications must be destroyed and any facts discovered there from may not be used in criminal proceedings.

³⁹⁰ These are proceedings on the crimes of human trafficking, entrusting children to the power of another, restricting personal liberty, extortion, abduction of a child and a person suffering from mental disorders, violence against a group of residence and against an individual and dangerous threats.

³⁹¹ Section 88 of the Code of Criminal Procedure.

³⁹² Section 88a of the Code of Criminal Procedure.

³⁹³ Section 40 of Act No. 273/2008 Coll., on the Police of the CR, as amended, and Section 16 of Act No. 553/1991 Coll., on the Municipal Police, as amended.

171. In order to determine a person's identity, the police may obtain the necessary information by scanning fingerprints, identifying physical characteristics, body measurements, taking video, audio and other recordings and the removal of biological samples to obtain genetic information, if the person's identity cannot otherwise be established. In this they are entitled to overcome any resistance, but may not intervene in the integrity of the person's body. Any samples obtained that contain personal information must be destroyed immediately once the person has been identified.³⁹⁴ The police may also scan fingerprints, identify physical characteristics, take body measurements, make video, audio and similar recordings and collect biological samples to obtain genetic information for the purposes of future identification in the case of persons accused of committing an intentional crime, persons serving custodial sentences for committing an intentional crime, persons undergoing compulsory treatment or in protective detention, or persons without full legal capacity who have been found after a search has been launched. Any resistance on the part of these people may also be overcome.³⁹⁵ The police will destroy any data obtained as soon as they are no longer needed for the purposes of prevention, the search or detection of criminal activities or the prosecution of criminal offences or to ensure the security of the Czech Republic, public order or internal security.³⁹⁶

172. Outside criminal proceedings the police cannot carry out phone tapping, but may obtain any traffic and location data they require relating to electronic communications in cases of searches for wanted or missing persons or in order to prevent and uncover specific terrorist threats.³⁹⁷ Where necessary, the Police of the CR and the municipal police may make audio, video or other recordings of persons and things located in public places and may also set up permanent automatic technical systems for this purpose, whose existence, however, they are obliged to make public. They may also make recordings of police interventions.³⁹⁸

173. The intelligence services (Security Intelligence Service and Military Intelligence) may, with the authorisation of the court, carry out phone taps and make video and audio or other recordings of the movements and behaviour of people, provided the detection and documentation of the person under surveillance cannot be achieved by other means. At the same time, they may not interfere with the rights and freedoms of citizens more than is absolutely necessary. Permits are issued for a maximum period of 3 months and phone tapping and recording is under judicial control.³⁹⁹

³⁹⁴ Section 63 of the Act on the Police of the CR.

³⁹⁵ According to the opinion of the Plenary of the Constitutional Court file. no. Pl. ÚS st-30/10 promulgated under no. 439/2010 Coll., these actions do not constitute a significant intervention into physical integrity and therefore are not inadmissible interference in the personal rights of individuals.

³⁹⁶ Section 65 of the Act on the Police of the CR.

³⁹⁷ Section 66 para. 3, Section 68 para. 2 and Section 71 (a) of the Act on the Police of the CR. See also Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC.

³⁹⁸ Section 62 of the Act on the Police of the CR and Section 24b of the Act on the Municipal Police.

³⁹⁹ Section 8 et seq. of Act No. 154/1994 Coll., on Military Intelligence, as amended, and Section 8 et seq. of Act No. 289/2005 Coll., on Military Intelligence, as amended.

Protection of privacy (par. 2)

Judicial protection

174. The basic means of judicial protection continues to be a civil court action for protection of personal rights. By this the injured party may demand that any unauthorised interventions into their rights be abandoned, that any consequences therefrom be removed and that adequate compensation be provided, including financial compensation for any immaterial harm. After the death of the injured party, this right may also be claimed by their spouse or partner⁴⁰⁰ and children, and if there are none, their parents.⁴⁰¹ During the period under review, the Constitutional Court has also considered the issue of compensation for immaterial harm caused to survivors from the death of a kin.⁴⁰² Death can bring suffering to survivors in the form of material damage (funeral costs, the loss of a breadwinner, etc.) and immaterial harm. This is because the definition of damages in the Civil Code does not include immaterial harm, but only actual material damage and lost profit.⁴⁰³ Because of this, compensation for this injury cannot be claimed in proceedings for damages, but in proceedings for protection of personal rights, because causing the death of a person is an infringement of the personal rights of the survivors and of their private and family life.

175. A significant change was made in 2008 to the legislation regulating phone tapping in criminal proceedings.⁴⁰⁴ Now a person who has been the subject of phone tapping must be informed subsequently of the monitoring and its duration. At the same time he/she is informed of the right to submit within 6 months a proposal to the Supreme Court to investigate the grounds for permitting the phone tapping. If the court holds that the law was breached, such a person may seek financial compensation for any immaterial harm that has occurred. Information may only be withheld if this is in the interest of public security, crime prevention, health protection or the protection of the rights and freedoms of others.

176. In a case of continuous or repeated interference by a public authority, recourse may also be made to an action in administrative court proceedings, which may demand termination of the intervention and restoration to the original condition.⁴⁰⁵ If no specific remedial measures exist against interference by a public authority, it is possible to file a constitutional complaint against the interference by a public authority in the constitutionally guaranteed fundamental rights and freedoms.⁴⁰⁶ Compensation can subsequently be sought from the state for an unlawful decision or maladministration.

Administrative protection

177. The independent administrative authority for protection of privacy is the Office for Personal Data Protection who oversees compliance with obligations during the processing of personal data, receives suggestions and complaints relating to violations of these obligations, discusses misdemeanours and other administrative offences and imposes fines

⁴⁰⁰ A partner means a registered partner in a same-sex partnership.

⁴⁰¹ Sections 13 and 15 of the Civil Code.

⁴⁰² Constitutional Court findings file. no. Pl. ÚS 16/04 promulgated under no. 265/2005 Coll.

⁴⁰³ Section 442 para. 1 of the Civil Code. In Section 444 para. 3 the Civil Code also provides for a fixed lump sum for survivors. If these amounts are insufficient, it is possible to demand higher compensation by bringing an action for protection of person rights on the basis of interference in private and family life.

⁴⁰⁴ Act No. 177/2008 Coll., with effect from 1 July 2008.

⁴⁰⁵ Section 82 et seq. of the Administrative Procedure Code.

⁴⁰⁶ Art. 87 para. 1 (d) of the Constitution and Section 72 et seq. of Act No. 182/1993 Coll., on the Constitutional Court, as amended.

and provides advice on the protection of personal data.⁴⁰⁷ The Office's inspectors carry out controls and may use these as a basis for imposing measures to remedy deficiencies.⁴⁰⁸ Each year the Office publishes an annual report on its website⁴⁰⁹ along with its opinions on issues relating to the processing of personal data and observations on practical problems.⁴¹⁰ The Office only imposes public law sanctions and remedial measures. Private law sanctions in the form of a ban on the continuing infringement of personal rights, restoration to original conditions or an order to pay compensation for immaterial harm can only be imposed by a court.

178. During the period under review, the Office dealt with the serious issue of camera systems processing personal data, because these systems are becoming ever more accessible and widespread in our society. It issued a number of statements on this issue, where it pointed out that the operation of a camera system with recording equipment constitutes the processing of personal data and that the operator is therefore fully subject to the obligations of a controller under the terms of the Act on the Protection of Personal Data. The controller must therefore specify the intended purpose of the data processing in accordance with the act and operate in such a way as to meet and not to exceed this purpose, to ensure that personal data are not collected outside this purpose and are not retained for longer than is necessary to achieve the given purpose. The operation of the system (number of cameras, their operation in time and space, etc.) must not interfere with the data subjects more than is absolutely necessary to achieve its legitimate purpose. The controller must also inform the people being monitored of the system's operations and guarantee their right to access the data, to information on the manner of its processing, on any modification, blocking or deletion and must also ensure that the processed data are properly secured.⁴¹¹ In its opinions, the Office also attempted to establish rules for the operation of camera systems in certain specific situations such as apartment buildings,⁴¹² schools,⁴¹³ workplaces,⁴¹⁴ public areas in municipalities⁴¹⁵ etc. It also issued statements on the use of other types of modern technology, such as smart cards, biometric identification, monitoring the use of internet communications, the publication of photographs, video and audio recordings of personal data on the internet, etc.⁴¹⁶

⁴⁰⁷ Section 29 para. 1 of Act No. 101/2000 Coll., on the Protection of Personal Data, as amended.

⁴⁰⁸ Section 40 para. 1 of Act No. 101/2000 Coll., on the Protection of Personal Data, as amended.

⁴⁰⁹ <http://uouu.cz/uouu.aspx?menu=159&lang=en>.

⁴¹⁰ <http://uouu.cz/uouu.aspx?menu=22&lang=en>.

⁴¹¹ See opinion no. 1/2006 Operating video recording systems in the light of data protection law <http://uouu.cz/uouu.aspx?menu=22&loc=570&lang=en> and opinion no. 6/2009 Protection of privacy in processing personal data <http://uouu.cz/uouu.aspx?menu=22&loc=748&lang=en>.

⁴¹² Opinion no. 1/2008. The installation of camera systems in apartment buildings <http://uouu.cz/uouu.aspx?menu=22&loc=575&lang=en>.

⁴¹³ Opinion and recommendations of the OPDP on the possibility of installing a camera system on school premises http://uouu.cz/files/vyjadreni_a_doporuceni_uouu.pdf.

⁴¹⁴ Opinion no. 2/2009 Protection of employee privacy with special attention to workplace monitoring http://uouu.cz/files/stanovisko_2009_2.pdf.

⁴¹⁵ Opinion of the Office on the possibilities for municipalities to operate a camera system with recording equipment in public places <http://uouu.cz/uouu.aspx?menu=14&loc=341> and on the problems of operating web cameras transmitting images to publicly accessible websites in the light of the Act on the Protection of Personal Data <http://uouu.cz/uouu.aspx?menu=14&loc=510>.

⁴¹⁶ Opinion no. 8/2006 on the use of electronic cards <http://uouu.cz/uouu.aspx?menu=22&loc=573&lang=en>, opinion no. 3/2009 Biometric identification or authentication of employees http://uouu.cz/files/stanovisko_2009_3.pdf.

Criminal law protection

179. The crime of unauthorised use of personal data⁴¹⁷ is newly formulated in the Criminal Code to enable the text to cover all personal data collected, not only in connection with the performance of public administration, but by the public sector as a whole (e.g. the judiciary, etc.). The Criminal Code also protects personal information that the perpetrator received in connection with the performance of their profession, occupation or function before their unauthorised publication, communication or disclosure to third parties. Associated with the development of computer networks, breach of the confidentiality of transmitted messages no longer applies only to postal communications and electronic messages, but also to violation of confidentiality of non-public transmission of computer data.⁴¹⁸ The Criminal Code establishes a new crime of violation of confidentiality of papers and other documents held in private, which affects an offender who unlawfully breaches the confidentiality of papers or other written matter, photographs, films or other recordings, computer data or any other documentation held in privacy by another by publishing them or disclosing them to third parties or using them in some other way.⁴¹⁹ Protection of private documents, which is constitutionally guaranteed, also extends to a violation of the secrecy of letters and other papers and records.⁴²⁰ This provision applies to written matter that is both personal and professional in nature, which is in line with the case law of the European Court of Human Rights. The crime of violation of domestic liberty⁴²¹ was adopted with only minor changes in wording. A new criminal offence is stalking, which is also directed against interference in personal privacy.⁴²²

Protection under media laws

180. Laws regulating the activities of the printed media, radio and television, enable a person who was the subject of allegations affecting his/her name, honour, dignity, reputation or privacy that were made public in the media, to demand that the publisher or broadcaster concerned publish an adequate response rectifying the assertion or complementing it or precisising it.⁴²³ Also, if information was published in the media concerning criminal proceedings or proceedings concerning misdemeanours or administrative offences brought against a person who can be identified on the basis of this information, this person has the right to demand that the publisher or broadcaster make public information concerning the conclusion of these proceedings as an additional announcement.⁴²⁴ The application must be delivered to the publisher or broadcaster within 30 days of the date on which the challenged announcement was made public or of the effective date of the decision by which the proceedings were effectively terminated. The broadcaster or publisher must then publish this information within 8 days or within the shortest possible time. If they fail so to do, the authorised person may demand publication through the courts within 15 days of expiry of the period required for publication. After the death of the authorised person, this right passes to his/her spouse and children and if there

⁴¹⁷ Section 178 of the Criminal Act and Section 180 of the new Criminal Code.

⁴¹⁸ Sections 239 and 240 of the Criminal Act and Section 182 of the Criminal Code.

⁴¹⁹ Section 183 of the Criminal Code.

⁴²⁰ Art. 13 of the Charter of Fundamental Rights and Freedoms.

⁴²¹ Section 238 of the Criminal Act and Section 178 of the new Criminal Code.

⁴²² Section 354 of the Criminal Code.

⁴²³ Section 10 of Act No. 46/2000 Coll., the Press Act, as amended and Section 35 of Act No. 231/2001 Coll., on Radio and Television Broadcasting, as amended.

⁴²⁴ Section 11 of Act No. 46/2000 Coll., the Press Act, as amended and Section 36 of Act No. 231/2001 Coll., on Radio and Television Broadcasting, as amended.

are none, to his/her parents. The publication must not be contrary to the law or to morality and must obviously not interfere with the rights of another person.⁴²⁵

Article 18

Religious freedom (par. 1, 2 and 3)

181. There has been no significant change in the situation regarding religious freedom in the Czech Republic. The constitutional order guarantees freedom of conscience, religion and belief and the autonomy of churches and religious societies. Freedom of religion in itself implies the prohibition of the imposition of religion and religious beliefs.⁴²⁶ Since 2006, the amendment to the Act on Churches and Religious Societies⁴²⁷ has modified the registering of ecclesiastical legal entities, which registered churches and religious societies establish as part of their structure (these typically consist of parishes, religious orders, charities, etc.).⁴²⁸ From the very beginning this amendment was criticised by the churches and certain parts of the political spectrum and a group of senators filed a petition to the Constitutional Court for its repeal. The petitioners expressed their suspicion that the adoption of the contested amendment restricted religious freedom through its unconstitutional restrictive interpretation. However, the Constitutional Court dismissed the petition.⁴²⁹ The amendments made to the Act were in accordance with the constitutional guarantees of autonomy of churches and religious societies. Respect for the principle of autonomy of churches and religious societies in the establishment of legal entities can mainly be seen in the principle that a record will always be made if the body registered by the church or religious society meets the legal conditions, which the Constitutional Court considers to be objective and reasonable. Certain restrictions on the autonomy of churches and religious societies are balanced by another constitutionally relevant interest, which is to protect the rights of third parties, or the principle of legal certainty. The newly registered churches and religious societies are listed in annex no. 12.

Criminal law protection

182. As regards the case of the crime of restricting freedom of belief,⁴³⁰ the new Criminal Code states that behaviour that is only threatening with other than serious injury is also criminal, because restrictions on freedom of belief can in practice also be accomplished by “more subtle” methods than physical violence or its threat. Various forms of psychological pressure are typical of the activities of pathological sects, for example. It can also be imagined that this form of pressure to restrict the right of belief is also to be found in facilities where personal liberty is restricted (prisons, diagnostic institutions and institutes for preventive detention, etc.).

183. With the abolition of compulsory military service and the introduction of professional army, the guaranteed right to refuse military service has ceased to be used.

⁴²⁵ Section 12–15 of Act No. 46/2000 Coll., the Press Act, as amended and Sections 37–40 of Act No. 231/2001 Coll., on Radio and Television Broadcasting, as amended.

⁴²⁶ Art. 16 of the Charter of Fundamental Rights and Freedoms.

⁴²⁷ Act No. 3/2002 Coll., on Churches and Religious Societies.

⁴²⁸ Act No. 495/2005 Coll., with effect from 23.12.2005.

⁴²⁹ Constitutional Court findings, file no. Pl. ÚS 2/06 promulgated under no. 10/2008 Coll.

⁴³⁰ Section 176 of the Criminal Code.

Freedom as regards the religious education of children (par. 4)

184. The situation regarding the legal conditions for religious education in public schools has not changed during the period under review. Freedom of belief obviously also applies to the raising of children by their parents.

Article 19**Freedom of expression and the possibility of restrictions therein**

185. Freedom of speech is one of the constitutionally guaranteed rights,⁴³¹ which often conflicts with other fundamental rights and freedoms and public interests, which may limit this particular right, primarily the right to privacy⁴³² and with the public interest in prohibiting the propagation of racial, religious or other hatred and intolerance.⁴³³ For this reason, the next part of the report focuses primarily on freedom of speech and its justifiable restrictions.

Legal regulation of the media

186. During the period under review, digital broadcasting was gradually introduced in the Czech Republic.⁴³⁴ In addition to technical benefits, this technological advance also brings an expansion in the choice of content and in access to information. In May 2010 a new Act on Audiovisual Media Services on Demand was adopted, mainly relating to media services on the internet.⁴³⁵ The service provider is obliged to ensure that its services do not incite hatred on grounds of sex, race, colour, language, national or social origin, national or ethnic minority, property, birth or other status.⁴³⁶ The provider is also required to ensure that minors will not normally see or hear the content of services that might seriously impair their physical, mental or moral development.⁴³⁷ The supervisory body for audiovisual media services is the Council for Radio and Television Broadcasting.

187. Protection of the source and content of information still remains part of media laws.⁴³⁸ The Constitutional Court addressed this issue in the sense that if a journalist provides law enforcement bodies involved in criminal proceedings with specific information on a crime, which will make it possible to initiate criminal proceedings, while protecting his/her sources by refusing to divulge their identities, this should not be considered to be a refusal to provide an explanation and subject to a disciplinary fine.⁴³⁹

Restrictions on freedom of speech

188. Despite some doubts, the crime of slander⁴⁴⁰ was adopted into the new Criminal Code. The substance of this offence is to protect the prestige and honour of individuals

⁴³¹ Art. 17 of the Charter of Fundamental Rights and Freedoms.

⁴³² Art. 10 of the Charter of Fundamental Rights and Freedoms.

⁴³³ Art. 17 para. 4 of the Charter of Fundamental Rights and Freedoms.

⁴³⁴ Act No. 304/2007 Coll., amending certain Acts in connection with the transition to digital broadcasting.

⁴³⁵ Act No. 132/2010 Coll.

⁴³⁶ Section 6 para. 2 of the Act. Similar restrictions are also contained in Section 32 para. 1 (c) and (h) of Act No. 231/2001, on Radio and Television Broadcasting, as amended.

⁴³⁷ Section 6 para. 3 of the Act.

⁴³⁸ Section 16 of Act No. 46/2000 Coll., the Press Act, as amended and Section 41 of Act No. 231/2001, on Radio and Television Broadcasting, as amended.

⁴³⁹ Constitutional Court findings file. no. I. ÚS 394/04.

⁴⁴⁰ Section 206 of the Criminal Act and Section 184 of the Criminal Code.

against the intentional communication of false facts, which are able to significantly undermine their esteem in the eyes of their compatriots, in particular to harm their reputation at work, to disrupt their family relationships or to cause them other types of serious harm. As the Supreme Court concluded in its case law, the falsity of the information must be fully demonstrated during the proceedings by the authorities involved in criminal proceedings. On the other hand, the accused may not be forced to prove the veracity of their claims or even condemned for allegations that are only unsupported or unproven.⁴⁴¹ The number of criminal proceedings in respect of this crime is shown in annex no. 13.

189. In 2009 the legislation regulating access to information on criminal proceedings was amended.⁴⁴² The primary objective of the government's amendment was to provide greater protection for the personality and privacy of victims of criminal acts in view of their age or the nature of the crime committed. Because of this the amendment limited the range of information that could be provided to the public concerning crime victims and prohibited disclosure of their personal data, photographs or video recordings. The circle of victims enjoying this heightened protection was limited to minors and victims of crimes infringing on their personal integrity or their personal rights.⁴⁴³ A fine of up to CZK 1 million may be imposed for a violation of the ban on publishing information on the victim of a crime. The aim of the amendment was not media persecution, but to ensure the protection of vulnerable victims.

190. The amendment was revised in various ways in the Chamber of Deputies. It embodied criminal prosecution of unauthorised publication of information on crime victims in the event that such publication caused serious harm to their rights or legitimate interests. The range of information that could not be disclosed was also expanded. During the pre-trial proceedings, authorities involved in criminal proceedings were prohibited from disclosing information from the criminal proceedings that would enable the identification of not only the victim of the criminal act, but also the suspect and accused, accomplices and witnesses. A general ban was also imposed on disclosure of information obtained from phone tapping recordings where these were not used as evidence in the court proceedings. Any violation of this ban could entail a fine of up to CZK 5 million, and if the disclosure causes serious harm to the rights of a given person, criminal penalties may also be considered.

191. The law however did not take account of the actual overall situation. In certain cases it may well be in the public interest that information will be published (e.g. when a public person is suspected of having committed a crime). In this case two constitutionally protected rights have to be measured against each other – the right to information and the right to protection of privacy. In the event that disclosure is in the public interest and the right to information outweighs privacy rights, any illegality of disclosure would be absent and the person who discloses the information should not be prosecuted.⁴⁴⁴ The problem is that the law itself does not give the court the option to consider a specific case in terms of the public interest, thereby comparing the relevance of the individual rights. For this reason, the Code of Criminal Procedure was amended to refine and revise the provisions

⁴⁴¹ See for example the Supreme Court resolution no. 7 Tdo 608/2008.

⁴⁴² Act No. 52/2009 Coll.

⁴⁴³ This concerned the crimes of procuring, disseminating pornography, criminal acts against family and youth, criminal acts against life and health and criminal acts against freedom and human dignity.

⁴⁴⁴ The case law of the Constitutional Court, in accordance with the case law of the European Court of Human Rights, grants wider rights to publicly active people regarding information on their public life and behaviour and the assessment and criticism of such behaviour. See findings, file. no. I. ÚS 367/03, I. ÚS 453/03 či. IV. ÚS 23/05.

concerning disclosure of information on criminal proceedings.⁴⁴⁵ The Act should explicitly allow the disclosure of information from criminal proceedings when this is in the public interest, which outweighs the privacy interests of the injured party. The question of whether the public interest outweighs the right to privacy will have to be examined in each particular case by an independent and impartial court.⁴⁴⁶ Increased protection from secondary victimisation will only be limited to those cases where it is really reasonable to avoid excessive interference in the constitutionally guaranteed right of the public to information. Increased protection for all victims below the age of 18 will be maintained because of their particular vulnerability. Adult victims will be granted increased protection if the nature of the crime so demands⁴⁴⁷ or if the victims are especially vulnerable⁴⁴⁸ and protection is also granted to survivors of the victims of criminal acts, who might otherwise become extremely traumatised.⁴⁴⁹

192. The Constitutional Court has repeatedly ruled on complaints by broadcasters against decisions of the Council for Radio and Television Broadcasting, which imposed fines on these broadcasters for airing programmes that threaten the moral development of children and juveniles, and against the subsequent judicial decisions that confirmed these fines.⁴⁵⁰ The Constitutional Court dismissed these complaints, holding that these decisions did not result in an obstruction of freedom of expression or in censorship, which is prohibited under constitutional law, because the restrictions referred to pursue the legitimate objective of protecting the morals of young people and were proportionate.

The right to information (para. 2)

193. The Act on Free Access to Information was extensively revised in 2006.⁴⁵¹ The terms and procedures were refined. Besides an appeal against a decision to disclose information, the applicant may also submit a complaint concerning the procedure used to handle the application. Obligated entities have to make certain information available in advance on the internet.⁴⁵² They also have to publish the information that has already been provided on the internet, which may be to their advantage, because they will not have to reply to the same questions. The information may also be made available on the Public Administration Portal, where it is possible to find information from most obliged entities in one place.⁴⁵³ Provisions on the protection of personal data when making information available are refined. On the other hand, information on the beneficiaries of public funding (e.g. recipients of grants and subsidies) is now also included in the required information. The Supreme Administrative Court has included among these cases the remission of tax arrears by tax offices.⁴⁵⁴ Tax income forms part of the public finances and tax due and accessions are undoubtedly part of the state's rights in property, i.e. public finances. The

⁴⁴⁵ Act No 207/2011 Coll., amending the Code of Criminal Procedure, with the effect from August 2011.

⁴⁴⁶ In particular, the purpose of the publication, the manner of publication as well as the achieved or expected effect of the publication must be considered.

⁴⁴⁷ In particular criminal sexual acts that are of a defamatory nature, or criminal acts where serious injury is caused to the victim.

⁴⁴⁸ In particular, crimes against a pregnant women or a person entrusted to care or otherwise helpless.

⁴⁴⁹ E.g. the crimes of murder or manslaughter.

⁴⁵⁰ See Constitutional Court finding, file no. I. ÚS 1110/09, I.ÚS 1171/09, I. ÚS 1408/09 or I.ÚS 1928/09.

⁴⁵¹ Act No. 61/2006 Coll.

⁴⁵² An example is special legal regulations issued within their jurisdiction or lists of the main documents of a conceptual, strategic and programming nature.

⁴⁵³ The website can be accessed on http://portal.gov.cz/wps/portal/_s.155/6966/place.

⁴⁵⁴ Judgement of 1. 6. 2010, no. 5 As 64/2008-155, promulgated under no. 2109/2010 Coll. NSS.

remission of paid or due taxes and accessions therefore has to be considered as provision of public funds under the discretionary powers of the administrative authority.

194. The Supreme Administrative Court also concluded that legal entities controlled or established by the state are under obligation to provide information on their finances, because they are public institutions managing public assets.⁴⁵⁵ This also applies to entities established and controlled by local governments.⁴⁵⁶ It also concluded that the internal rules of an obliged entity should be judged by their content and not by their name or type.⁴⁵⁷ It also commented on the proceedings of local governments. Information on these meetings must be, after excluding any confidential information, published, despite their private nature and any internal documentation must be accessible for viewing and taking extracts.⁴⁵⁸ It then commented on access to contracts concluded by obliged entities and concluded that provided the contract did not contain any trade secrets, the actual text of the contract should be disclosed and not a selective interpretation of its contents.⁴⁵⁹

Article 20

Prohibition of war propaganda (par. 1)

195. The explicit prohibition of war propaganda continues to apply in accordance with international treaties that form part of the Czech legal order. The new Criminal Code regulates the crimes of preparation of an offensive war⁴⁶⁰ and instigation of an offensive war.⁴⁶¹ These crimes do not apply in the event a state of war is declared because of the threat of an attack on the Czech Republic or in fulfilment of its international obligations, the participation of the Czech Republic in actions led by international organisations of which it is a member, or deployment of the armed forces of the Czech Republic abroad, of the presence of foreign armed forces on the territory of the state with the consent of the government or the Parliament.⁴⁶²

Prohibition of the instigation of racial, national and religious intolerance (par. 2)

196. New facts have been incorporated in the new Criminal Code, which make more stringent the punishments for crimes committed by reason of the true or assumed race of the victim, membership of an ethnic group, nationality, political conviction, religion or because they are actually or allegedly non-believers.⁴⁶³ In practice, attacks are motivated by racial,

⁴⁵⁵ See, for instance the Supreme Administrative Court judgement file no. 2 Ans 4/2009-93 relating to the energy company ČEZ, a.s., because this is a public institution established by the state and managing public funds, where the establishment of its bodies is under the dominant influence of the state and where the scope of its activities involve the strategic, security and existential interests of the state. For similar see the findings of the Constitutional Court file. no. I. ÚS 260/06 relating to the state company Letiště Praha (Prague Airport).

⁴⁵⁶ Judgement of the Supreme Administrative Court no. 8 As 57/2006 – 67.

⁴⁵⁷ Resolution of the Supreme Administrative Court no. 5 As 28/2007 – 89.

⁴⁵⁸ Judgement of the Supreme Administrative Court no. 6 As 40/2004 – 62 or Judgement of the Supreme Administrative Court no. 6 As 79/2006 – 58.

⁴⁵⁹ Judgement of the Supreme Administrative Court no. 1 As 17/2008 – 67.

⁴⁶⁰ Section 406 of the Criminal Code.

⁴⁶¹ Section 407 of the Criminal Code.

⁴⁶² Section 408 of the Criminal Code.

⁴⁶³ These are the crimes of murder, causing bodily harm, torture and other inhuman and cruel treatment, deprivation and restriction of personal freedom, abduction, extortion, criminal damage, abuse of official authority, violence against a group of people or an individual, defamation of a nation, race, and ethnic or other group.

ethnic, national or other similar pertinences of the victim, where the perpetrators often draw these conclusions on the basis of the colour of their skin or other visual characteristics of the victim, without knowing the true racial, ethnic, national group to which the victim belongs. Because of this it is important to punish attacks motivated by the unverified, subjective presumptions of the perpetrator. Crimes also include defamation of a nation, race, an ethnic or other group⁴⁶⁴ and inciting hatred against a certain group of people or encouraging the restriction of their rights and freedoms.⁴⁶⁵ The number of criminal proceedings for these crimes is shown in annex no. 14. Special crimes also include genocide, attacks against humanity, apartheid and discrimination against a group of people, the establishment, promotion and propagation of movements aimed at suppressing human rights and freedoms, including active participation in these movements and the denial, questioning, approval and justification of genocide.⁴⁶⁶

197. The criminal division of the Supreme Court also issued an opinion on the expression “movement aimed at suppressing human rights and freedoms”.⁴⁶⁷ Such a movement is considered to be a group of people, at least partially organised, and focusing on suppressing human rights and freedoms, or declaring national, racial, religious or class hatred, or hatred towards another group of people. The movement also has to exist at the time the offender promoted and propagated it. If the movement did not exist at the time the offence was committed and the perpetrator intended by his/her behaviour to initiate the establishment or renewal of such a movement, the offence may consist of an attempt at the offences listed above, or the promotion and propagation of this type of movement, or defamation of a nation, ethnic group or race and encouraging and inciting hatred against a group of people or encouraging the restriction of their rights and freedoms, because these crimes are not dependent on the existence of the relevant movement.

Article 21

The right of assembly

198. The right of peaceful assembly⁴⁶⁸ is regulated by the Act on the Right of Assembly.⁴⁶⁹ During the period under review, two major amendments to this Act were adopted. The first amendment⁴⁷⁰ refined the conditions for police interventions during meetings, particularly for interventions aimed at dissolving the meetings, and also established an obligation for participants not to cover their faces in a manner that makes identification difficult or impossible.⁴⁷¹ Violation of this requirement is punishable as a misdemeanour⁴⁷² and may, in extreme cases, result in the dissolution of the assembly, unless a remedy can be negotiated through a crackdown against individual participants or in some other way.⁴⁷³ The amendment was aimed against those involved in a meeting who obscured their faces in order to commit criminal acts and to breach the law without the possibility of being effectively prosecuted for these acts as they could not be identified. The

⁴⁶⁴ Section 198 of the Criminal Act and Section 355 of the Criminal Code.

⁴⁶⁵ Section 198a of the Criminal Act and Section 356 of the Criminal Code.

⁴⁶⁶ Section 400–405 of the Criminal Code.

⁴⁶⁷ Opinion of the criminal division of the Supreme Court of the Czech Republic of 13.12.2006, file. no. Tpjn 302/2005.

⁴⁶⁸ Art. 19 of the Charter of Fundamental Rights and Freedoms.

⁴⁶⁹ Act No. 84/1990 Coll., on the Right of Assembly, as amended.

⁴⁷⁰ Act No. 274/2008 Coll., with effect from 1.1.2009.

⁴⁷¹ Section 7 para. 4 of the Assembly Act.

⁴⁷² Section 14 para. 2 (d) of the Assembly Act.

⁴⁷³ Section 12 paras. 5 and 6 of the Assembly Act.

adoption of the amendment raised concerns among the public that the law would also prohibit peaceful assembly protected by the constitutional order if the participants had their faces covered, even though they posed no threat to any public interest and that even this kind of meeting could be dissolved and its participants fined. The Ministry of Interior issues an opinion on this issue, which explained the relevant provisions.⁴⁷⁴ The statutory provisions must be interpreted and applied within the context of the legal system as a whole with regard to constitutional principles. When applying provisions on the limits of fundamental rights and freedoms, their nature and meaning shall be respected and such limits may not be misused for other purposes than those for which they were instituted.⁴⁷⁵ Each case will therefore be assessed on the spot and in the context of the given situation. It is therefore necessary, at each meeting where people have obscured their faces, to investigate not only whether the statutory provisions have been met, but whether it actually violates or threatens the protected interests of society such as public safety, protection of human life and health, protection of property, etc. If the assembly of hooded people is calm and does not disturb the protected social interests, its participants have committed no misdemeanour and there is no reason to intervene. The Act itself forces the competent authorities to consider whether or not to dissolve the meeting, where this step is always the last resort after taking action against individual participants in the meeting.⁴⁷⁶ The second amendment⁴⁷⁷ extended the period for evaluating notice of the meeting from three days to three working days.⁴⁷⁸ Municipal authorities thereby gained more time to review the announced assemblies in terms of a possible conflict with public interests or the rights of others.⁴⁷⁹ The right to hold unannounced spontaneous gatherings has been retained.⁴⁸⁰ The Ministry of Interior has also issued a manual for municipalities on how to exercise the right of assembly.⁴⁸¹

199. During the period under review, the Supreme Administrative Court devoted its attention to the issue of the right of assembly, primarily in terms of the possibility of banning an announced gathering. In its ruling, it commented on the issue of the purpose of the assembly.⁴⁸² This is because some assemblies are announced using a false purpose, where the true purpose would be in breach of the Assembly Law and with the constitutional order. This concerns, for example, assemblies of movements inciting hatred and intolerance and promoting the denial or restriction of the rights of citizen by reason of their nationality, sex, race, etc. The Act on Freedom of Assembly obviously only allows the authorities to assess the announced purpose of the assembly.⁴⁸³ The Supreme Administrative Court concluded that in this case there is a gap in the law, which may be filled by interpretation and practical application. The municipal authority can therefore judge the purpose that it believes is the true purpose of the assembly, although in this case it is obliged to prove that the announced purpose is fictitious and the true purpose meets the conditions for the prohibition of assembly, because it leads to violation of rights protected by the law and the constitutional order. In case of doubt, it must allow the announced assembly to take place, and then dissolve it if it deviates from the announced purpose and begins to violate the

⁴⁷⁴ The opinion is available on <http://www.mvcr.cz/clanek/stanovisko-ministerstva-vnitra-k-problematice-maskovani-behem-shromazdeni.aspx>.

⁴⁷⁵ Art. 4 para. 4 of the Charter.

⁴⁷⁶ Section 12 para. 5 of the Act.

⁴⁷⁷ Act No. 294/2009 Coll., with effect from 19.9.2009.

⁴⁷⁸ Section 11 para. 1 of the Assembly Act.

⁴⁷⁹ Section 10 of the Assembly Act.

⁴⁸⁰ Section 12 para. 3 of the Assembly Act.

⁴⁸¹ <http://www.mvcr.cz/soubor/manual-pro-obce-k-zakonu-o-pravu-shromazdovacim-273915.aspx>.

⁴⁸² Judgement of the Supreme Administrative Court no. 8 As 7/2008-116.

⁴⁸³ Section 10 para. 1 of the Assembly Act.

law.⁴⁸⁴ Similarly, traffic restrictions would have to be extremely intense, at important junctions, for a very long time and to a major extent and be in breach of the interests of the population to justify a ban on assembly.⁴⁸⁵ Nor can it proceed to compare the number of participants in the assembly and the number of residents affected, because there will always be more of the latter.⁴⁸⁶ Finally, in the event several assemblies are taking place at the same location and at the same time, the municipal authority must try to reach agreement between the convenors to change the time and place of their events.⁴⁸⁷ Only if it is unable to conclude such an agreement may the authority proceed with the ban on the assembly that had been announced later.⁴⁸⁸

Article 22

The freedom of association (par. 1)

Civic associations

200. Freedom of association is guaranteed by the Act on Civic Associations.⁴⁸⁹ Amendments to the Act during the period under review had no significant impact on the exercise of this right. During the period under review, 21,969 new civic associations were registered and to the date above the Ministry of Interior had recorded a total of 82,197 civic associations.

Political parties and movements

201. The exercise of the right to associate in political parties and movements is guaranteed under the Constitution, which regards the free competition of political parties as the basis of the political system of the Czech Republic,⁴⁹⁰ and is regulated by the Act on Association in Political Parties and Political Movements.⁴⁹¹ Amendments to the Act during the period under review had no significant impact on the exercise of this right. During the period under review, a total of 86 new political subjects were registered, of which 45 are parties and 41 movements.

Restrictions on freedom of association (par. 2 and 3)

202. The legislation regulating the dissolution of civic associations and political parties and movements remained unchanged during the period under review and continues to monitor the protection of public order and the rights and freedoms of the individual in a democratic society and control over the financing of political parties. The Supreme Administrative Court suspended the activities of a total of 22 parties and movements and 14 parties and movements were dissolved.⁴⁹²

⁴⁸⁴ To ban an assembly it is not enough to show, for example, that the convenor is a member of an extremist movement or the fact that he/she had previously held an unlawful assembly.

⁴⁸⁵ Judgement of the Supreme Administrative Court no. 1 As 30/2009-70.

⁴⁸⁶ Judgement of the Supreme Administrative Court no. 5 As 26/2007-86.

⁴⁸⁷ Section 10 para. 2 (b) of the Assembly Act.

⁴⁸⁸ Judgement of the Regional Court in Brno ref. no. 29 Ca 120/2006-10.

⁴⁸⁹ Act No. 83/1990 Coll., on the Association of Citizens, as amended.

⁴⁹⁰ Art. 5 of the Constitution.

⁴⁹¹ Act no. 424/1991 Coll., on Association in Political Parties and Political Movements, as amended.

⁴⁹² The activities of all these parties and movements was suspended or they were dissolved on grounds of violation of Section 18 para. 1 of Act No. 424/1991 Coll., when the parties and movements repeatedly failed to submit information on their annual financial reports to Parliament.

203. One important case was the procedure for the dissolution of the extremist right-wing Workers' Party (Dělnická strana). The first proposal by the government was dismissed by the Supreme Administrative Court, because the government failed to demonstrate that the Workers' Party had broken the law or was a threat to basic democratic principles.⁴⁹³ In that decision it defined the conditions for the exercise of the right of association. Political parties must meet two basic requirements: respect for fundamental democratic principles and the rejection of violence to promote their interests. A democratic legal state has the right and duty to defend its democratic system against parties who fail to obey the rules. According to the Supreme Administrative Court, a political party can only be dissolved if it fulfils all four conditions below:

- (1) The observed behaviour of the political party is illegal;⁴⁹⁴
- (2) The observed behaviour is attributable to the political party in question and not just the excesses of some of its supporters or members;
- (3) Its activities present a sufficiently imminent future threat for a democratic legal state;
- (4) The intended action is proportionate to the objective pursued, i.e. it does not undermine the principle of proportionality between restricting the right of association and the society's interest in protecting other values.⁴⁹⁵

204. By contrast, the new proposal was upheld by the Supreme Court, because it contained evidence of unlawful behaviour by the Workers' Party.⁴⁹⁶ Their true programme, the speeches of its leaders and members and speeches that were given room at the meetings and in the party press, aimed at inciting national, racial, ethnic and social intolerance and restricting the rights and freedoms of certain groups residing in the Czech Republic and presented a threat to the democratic foundations of the rule of law. The Workers' Party had not renounced violence, which placed it in conflict with a political system based on free competition between political parties that respected the basic democratic principles and rejecting violence as a means of asserting their interests. The behaviour of the leaders of the Workers' Party was also attributable to the party, because during monitored events they always appeared in the name of this political party in the position of its official representatives. The Workers' Party presented an imminent risk as a base for other movements that were dangerous for democracy. Given its unchanging programme and the behaviour of the party leadership and its members, it could reasonably be expected that the party would seek to implement their ideas and ultimately disrupt the democratic system. No more moderate means were available to protect society,⁴⁹⁷ because, during official Workers' Party events a whole range of criminal acts were committed, for which the party provided the necessary organisational base and political legitimacy. The Workers' Party therefore had to assume responsibility for the crimes that were committed under its patronage. The Supreme Administrative Court concluded that the programme and activities of the Workers' Party followed all the established rules, the accumulation of which was

⁴⁹³ Judgement of the Supreme Administrative Court no. Pst 1 /2008-66.

⁴⁹⁴ Where the party violates the Constitution and laws or its goal is to eliminate the democratic foundations of the state, where it aims to grasp and to hold power by restricting other parties and movements ability to use constitutional means to compete for power or where it aims to suppress the equality of citizens or their programme or activities threaten morality, public order or the rights and freedoms of citizens.

⁴⁹⁵ These values are primarily interest in state security, public safety and public order, the prevention of crime or the protection of the rights and freedoms of others.

⁴⁹⁶ Judgement of the Supreme Administrative Court no. Pst 1/2009-348.

⁴⁹⁷ E.g. criminal law prosecution of their individual members or suspending the activities of the party.

reason to dissolve a political party. This decision was also confirmed by the Constitutional Court.⁴⁹⁸

205. Similar boundaries for the possible dissolution of civic associations for their views were set by the Supreme Administrative Court in the case of the Communist Youth League.⁴⁹⁹ The League was dissolved by the Ministry of Interior as a movement whose aim was to disobey the Constitution and the law, because its proclaimed goal was the elimination of private ownership of the capital goods. The Supreme Administrative Court pointed out that even the League enjoys the constitutional protection of freedom of expression and that interference with this freedom, in the same way as with the freedom of association, must be rigorously evaluated in terms of its necessity and proportionality. The simple proclamation of certain, even not fully acceptable ideas, without subsequent steps towards their implementation would only justify the dissolution of the group declaring them in truly extreme cases of threat to a democratic state or to the rights and freedoms of its citizens. As this was not proven in this case, the Supreme Administrative Court annulled the dissolution of the movement.

Article 23

Family protection (par. 1)

206. According to the constitutional order, the family enjoys the protection of the state.⁵⁰⁰ Czech law does not precisely define the family and only lays down the scope of the legal relationships between spouses, between parents and children and between any other relatives based on substitute family care or maintenance relationships.⁵⁰¹

207. In 2006 the Czech Republic adopted the Act on Registered Partnership of persons of the same sex.⁵⁰² Partnership is declared to be a permanent relationship of two people of the same sex originating in a manner prescribed by law. Partners have the mutual status of kin, can represent each other in common affairs and receive regular benefits on behalf of the other partner. Both partners decide together on substantive issues and in the event of disagreement the court will decide. The Act provides for a maintenance obligation between the partners, including adequate financial support after the annulment of the partnership. Together with spouses and children, partners are in the first group in the legal inheritance succession. In criminal proceedings the partner has the right to refuse to testify against a partner or to select defence counsel for a partner and to submit an appeal or an application for a retrial on his/her behalf. Unlike matrimony, the law does not allow for the creation of estate by entirety, the use of a common surname or the automatic creation of a joint tenancy on the conclusion of a lease agreement by one of the partners and the transfer of the lease in the event of death to the surviving partner. Neither does it allow for the adoption of children by either both the registered partners or any one of them. However, if one of the partners is the parent of a child, the partnership does not in any way prevent them from exercising their parental rights and parental responsibility and the other partner may be involved in bringing up the child.

⁴⁹⁸ Resolution of the Constitutional Court file. no. Pl. ÚS 13/10 of 27.5.2010.

⁴⁹⁹ Judgement of the Supreme Administrative Court no. 7 As 29/2008-104.

⁵⁰⁰ Art. 32 of the Charter of Fundamental Rights and Freedoms.

⁵⁰¹ Act no. 94/1963 Coll., on the Family, as amended.

⁵⁰² Act no. 115/2006 Coll., on Registered Partnership and on amendments to certain related Acts, as amended.

The right to freedom of marriage and starting a family at a reasonable age (par. 2 and 3)

208. During the period under review there were no changes regarding the age and freedom of will to enter into matrimony. Marriage is still concluded by a voluntary affirmative declaration by a man and a woman,⁵⁰³ both of whom have reached adulthood. The court may allow a marriage to be concluded by minors who have reached the age of 16, provided this is consistent with the purpose of marriage. Through their marriage minors subsequently become fully qualified to perform legal acts.⁵⁰⁴ Without permission, this marriage is invalid, but becomes valid after the coming of age of a minor spouse or when the wife becomes pregnant, because then its invalidity is no longer in the interest of society.⁵⁰⁵ The possibility of concluding a civil⁵⁰⁶ or church marriage⁵⁰⁷ still exists.

Equal rights and responsibilities as to marriage, during marriage and at its dissolution (par. 4)

209. The rights and responsibilities of women and men in terms of the equality of their status as to marriage, during marriage and at its dissolution remained unchanged during the period under review. Both spouses continue to enjoy equal rights and responsibilities.

Caring for children after dissolution of the marriage (par. 4)

210. The legislation regulating care for children after their parents' divorce has not changed. Data on child custody after divorce is provided in annex no. 15. More detailed information is contained in the third and fourth periodic reports on fulfilment of the obligations arising from the Convention on the Rights of the Child and the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.⁵⁰⁸

Article 24

Legal status of children in the family and society (par. 1)

211. The protection of children is monitored under the Constitution.⁵⁰⁹ During the period under review there were no changes in the legislation regulating the status and behaviour of children in legal relations, the legal guardian of a minor child and other issues relating to the status of children in civil relationships. New arrangements were made for specialised foster care for a temporary period where the court may entrust a child on the advice of the socio-legal child protection authority for a period when the parents are temporarily unable to care for him/her, or for a period until the legal requirements are met for the adoption of a child whose parents are uninterested or wish to consent to the adoption.⁵¹⁰ Institutional care must be reviewed by the court after six months to see whether there are still reasons for its imposition and this must also take account of the feelings of the child, his/her parents and the opinion of the socio-legal child protection authority.⁵¹¹ Special limitation arrangements

⁵⁰³ Section 3 para. 1 of the Act on the Family.

⁵⁰⁴ Section 13 para. 1 of the Act on the Family and Section 8 para. 2 of the Civil Code.

⁵⁰⁵ Section 13 para. 2 of the Act on the Family.

⁵⁰⁶ Section 4 of the Act on the Family.

⁵⁰⁷ Section 4a–4c of the Act on the Family.

⁵⁰⁸ CRC/C/CZE/3-4.

⁵⁰⁹ Art. 32 Charter of Fundamental Rights and Freedoms.

⁵¹⁰ Section 45a of the Act on the Family.

⁵¹¹ Section 46 para. 3 of the Act on the Family.

apply to court granted maintenance for minor children, where the statutory limitation period is 10 years for each instalment after its maturity. The procedural status of the child in civil proceedings has also improved because more account is taken of his/her opinion on matters that affect him/her. The court is essentially required to determine the child's opinion through questioning him/her in person, and only rarely through the socio-legal child protection authority or a legal expert.⁵¹²

212. During the period under review, the socio-legal protection of children⁵¹³ focused on reinforcing alternative forms of care for children that are as similar as possible to the family environment, on the protection of children in crisis situations, on arranging adoptions and foster care, on monitoring the development of children living in foster care or in institutional facilities, on protecting children from violence, abuse and socio-pathological behaviour and the conditions under which non-governmental organisations can work in the socio-legal protection of children. Primary emphasis is placed on working with the biological family and maintaining a family environment. If the positive development of the child is disturbed to such a point that it will have to be placed outside the family, the appropriate authorities will be able to use temporary foster care support options to allow the parents to gain time to try and resolve their problems, because it is in the primary interest of the child that it lives with its own parents, or a kin. This fact is also emphasised during the preparation and training of future foster parents.

213. In 2007 new common Instruction for the Ministry of Justice, the Ministry of Interior, the Ministry of Health, the Ministry of Education, Youth and Sports and the Ministry of Labour and Social Affairs, which regulate the procedure for the enforcement of court decisions relating to the custody of minor children were drafted and approved.⁵¹⁴ In the new instruction, the mutual interaction of courts and socio-legal child protection authorities relating to the enforcement of court decisions of the custody of children was revised in detail and it was explicitly laid down that even during the implementation of the decision, the rights and interests of the child must be consistently protected. An obligation was imposed on the socio-legal child protection authorities to provide or arrange for professional assistance for the child, the parents or other persons responsible for the child's upbringing if required. It was also stipulated that, prior to the actual execution of the decision, the court is obliged to discuss the procedure with the competent socio-legal child protection authority. Staff of the socio-legal child protection authority present during the execution of the decision were authorised to propose postponing the enforcement in justified cases, in particular when its immediate execution could cause the child serious injury or otherwise endanger their positive development. Legal changes were also adopted that obliged socio-legal child protection authorities to put pressure on the obligor, encouraging him/her to submit to the court decision on the child's custody or the change in relationship with the child voluntarily, to provide the child with a suitable explanation of the situation and also to provide or arrange professional help for the child and its parents if required. The Ministry of Labour and Social Affairs issued an information leaflet on solutions to post-divorce conflicts. The leaflet contains practical information about the options for arranging child custody during the period after the divorce, including joint and alternating custody, on the procedure for the court proceedings on the settlement of relations with the child, on the rules governing the execution of court decisions, on the possibilities of using the advisory and mediation services and also of the role of the socio-

⁵¹² Section 100 para. 4 of Act No. 99/1963 Coll., the Civil Code, as amended by Act No. 295/2008 Coll. with effect from 1. 10. 2008.

⁵¹³ Act no. 359/1999 Coll., on the Socio-legal Protection of Children, as amended.

⁵¹⁴ http://www.mpsv.cz/files/clanky/7286/Instrukce_142_2007.pdf.

legal child protection authorities in protecting the interests of the child and providing assistance to the parents.⁵¹⁵

214. In 2009 the government approved the National Action Plan to transform and unify the system of care for children at risk for the period 2009–2010. The plan should steer towards a clear preference for childcare in a family environment over institutional care and towards reducing the number of children in institutions, towards intensifying preventive care with vulnerable families and towards reducing the number of children removed from parental care, to improving the individual and multidisciplinary approach in field work, to a more active involvement of children and their families in resolving their own situation and increasing the staff numbers and strengthening the finances of socio-legal child protection authorities.

215. The new Criminal Code raises the standard of criminal law protection for children against abuse, exploitation and neglect. A new crime of endangering a child's education has been formulated,⁵¹⁶ consisting of endangering the "intellectual, emotional or moral development of the child" in accordance with the terminology of the Convention on the Rights of the Child and the Family Act. A new crime relating to child protection is prostitution endangering the moral development of children committed by anyone who operates or organises prostitution in the vicinity of a school, educational or similar facility or place that is reserved for children to visit or to stay.⁵¹⁷

216. During the period under review, two cases brought against the Czech Republic before the European Court of Human Rights,⁵¹⁸ where an infringement of the rights of the complainants to protection of their private and family life was found on the part of the state authorities of the Czech Republic, because a court ordered that children be placed in institutional care because of the family's poor housing conditions. Following on from these judgements, the Czech government approved the General Measures for the Execution of ECHR Judgements – prevention of the removal of children from parental care for socio-economic reasons⁵¹⁹ containing a set of legislative and non-legislative measures within the competence of the ministries involved, which react to the judgements referred to above and should contribute to ensuring that in future there will be no undue interference in the rights of children to be brought up by their parents on the part of the Czech Republic and to protecting family and private life. These measures should be implemented by 2012. The basic principle is the inadmissibility of removing children from family care solely for reasons of inadequate housing and other social and economic reasons, unless their life and health or favourable development are seriously endangered and, at the same time, it is not possible to ensure their protection otherwise. The state has an obligation to provide parents capable of bringing up their children with assistance in their upbringing, including assistance in overcoming poor housing and material conditions, to enable children to remain in their family environment. The parents or other persons authorised to participate in childcare shall also be actively involved in this assistance.

217. Problem situations must be resolved in cooperation between state bodies such as courts and socio-legal child protection authorities, municipal and regional bodies and organisations, NGOs and the parents themselves. In each case an individual plan of social

⁵¹⁵ http://www.mpsv.cz/files/clanky/7288/Porozvodove_konflikty.pdf.

⁵¹⁶ Section 201 of the Criminal Code.

⁵¹⁷ Section 190 of the Criminal Code.

⁵¹⁸ Rulings in the case of *Wallová and Walla v. the Czech Republic* of 26 October 2006, application no. 23848/04 and in the case of *Havelka and Others v. the Czech Republic* of 21 July 2007, application no. 23499/06.

⁵¹⁹ Czech Government Resolution no. 882 of 7 December 2010.

work should be devised focusing on caring for the child in a natural family environment or on his/her rapid return to that environment. Within this framework, parents can be required to use the assistance needed to overcome their problems and to avert the threat of placement in alternative care. The competent authorities should communicate intensively with each other on problem cases. The conditions of stay for children in facilities providing immediate assistance will also be clarified, including the cooperation between the facility and the child's family. Conditions governing the removal of children from their families will be revised, with emphasis placed on preventing removal only for reasons of the material poverty of the family. Training programmes for staff working in the area of care for vulnerable children and families will also be revised and they will be trained in the basic principles and procedures for preventive work with families in difficult socio-economic circumstances or in need of housing. An optimal number of cases per social worker will be established in socio-legal child protection authorities and subsidies for their operation will be allocated more effectively and work standards will also be introduced and controlled. Cooperation with social services providers will also be increased, especially social and activation services for families with children, emergency assistance and sheltered housing.

218. In court proceedings and during court hearings, more emphasis should be placed on the opinions of the child itself. Judges and court officials will be trained in basic principles of case law relating to the removal of children from parental care and informed of the possibilities of cooperation with other subjects in acquiring information concerning family relations and methods of financial, social and psychological help for the family. The Czech Republic will keep the Committee of Ministers of the Council of Europe informed of further progress in meeting the individual measures.⁵²⁰ The Supreme Court issued a consolidated opinion, in which it stated that the material conditions of families, especially their housing conditions, cannot be the only reason for ordering institutional care.⁵²¹ Besides the consolidated opinion of the Supreme Court, the case law of the Constitutional Court, which annulled the decisions of lower courts to intervene in the right of parents to care for their children precisely for reason of the family's sub-standard social and housing conditions, also influences the decisions of ordinary courts.⁵²² More detailed information is also contained in the third and fourth periodic report on the implementation of commitments under the Convention on the Rights of the Child and the Czech Republic information on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.⁵²³

Registration of the birth of a child (par. 2)

219. All children born on the territory of the state are entered in the birth register at the place of his/her birth.⁵²⁴ Births must be notified to the registry office by the medical facility where the birth took place, or by the doctor who was the first to provide medical care either during or after the birth. In other cases, a parent or another person who knew about it will report the birth. The name and surname of the child is entered in the register, along with the

⁵²⁰ The first information for the Czech Republic from the Committee of Ministers of the Council of Ministers is available on [http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Info_cases/RepTcheque/DD\(2011\)126.pdf](http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Info_cases/RepTcheque/DD(2011)126.pdf).

⁵²¹ Opinion of the civil and commercial division of the Supreme Court of the Czech Republic of 8.12.2010, file. no. Cpjn 202/2010 on decision making of courts in cases concerning imposition of institutional care due to economic problems of the family, especially their poor housing conditions.

⁵²² In particular, Constitutional Court findings, file no. II. ÚS 485/10.

⁵²³ CRC/C/CZE/3-4.

⁵²⁴ Section 1 para. 2, Section 10 para. 1 and Section 14 para. 1 of Act No. 301/2000 Coll. on Registers, Names and Surnames, as amended.

date of birth. At the same time the child receives a birth number.⁵²⁵ Information on the child's parents is also recorded. If a citizen of the Czech Republic is born abroad, the birth is recorded in a special register on the basis of the birth certificate from the country of birth, or another public document, and proof of Czech citizenship.⁵²⁶

220. The name, or names, of the child is entered in the register on a statement of consent by the parents or by court decision if the parents fail to agree on a name, or choose a name that cannot be written in the register.⁵²⁷ The person is obliged to use the registered name in official communications. The surname is entered as the parents' common surname or on the basis of an agreement between the parents, or again by court decision.

The right of a child to citizenship (par. 3)

221. The terms of the acquisition of citizenship have remained unchanged in the period under review.⁵²⁸ Minors may acquire citizenship of the Czech Republic by birth, adoption, determination of paternity, being found on the territory of the Czech Republic or by naturalisation.⁵²⁹

Article 25

The right to participate in the administration of public affairs directly or through elected representatives (sub-paragraph a)

222. The Czech Republic is a democratic state with separation of powers, which is derived from the people who exercise this power by means of their legislative, executive, and judicial bodies.⁵³⁰ The dominant form of the exercise of state authority continues to be a representative democracy, involving the management of public affairs through representatives elected on the basis of universal, equal and direct voting rights at a national level and at the level of the municipalities and regions as local governments. With the exception of elections to the Senate (the upper house of Parliament), where the electoral system is by majority, at all other levels, the voting system is proportional. According to the Constitution, a constitutional law may stipulate the cases when the people exercise state power directly.⁵³¹ During the period under review, no legislation was adopted in the Czech Republic on referenda as a direct participation of individuals in the administration of public affairs.⁵³² At a local level, referenda may still be organised in municipalities and, since recently, also in the regions.

⁵²⁵ Section 13 et seq. of Act no. 133/2000 Coll., on the Population Register, as amended.

⁵²⁶ Section 42 et seq. of Act no. 301/2000 Coll. on Registers, Names and Surnames, as amended.

Citizenship can be proven, for example, by a confirmation of Czech citizenship by at least one of the parents, because a child automatically becomes a Czech citizen if at least one of their parents is a Czech citizen. See Section 3 para. 1 of Act no. 40/1993 Coll., on the acquisition and loss of citizenship of the Czech Republic.

⁵²⁷ According to Section 62 of the Act on Registers, names may not be written in garbled, diminutive or pet forms. Men may not receive a female name and vice versa. The same name may not be entered as the name of a living sibling born to the same parents, to avoid errors in the family.

⁵²⁸ Act no. 40/1993 Coll., on the acquisition and loss of citizenship of the Czech Republic, as amended.

⁵²⁹ In 2008 Czech citizenship was granted to 5 homeless children and in 2009 to 2 homeless children.

⁵³⁰ Art. 2 para. 2 of the Constitution.

⁵³¹ Art. 2 para. 2 of the Constitution.

⁵³² During the period from 2005–2010 a total of 4 draft constitutional laws on a national referendum were presented. In addition, 4 draft constitutional laws on referenda on specific issues such as the Treaty establishing a Constitution for Europe and the Lisbon Treaty were presented. Not one of these

223. Referenda at a local⁵³³ and regional⁵³⁴ level provide for the direct participation of residents of municipalities and regions in the administration of matters concerning local governments. A referendum may only be held on matters that fall within the jurisdiction of a given local government. It may not be held on its budget, on the establishment or abolition of its bodies, on the legislation as a whole, on matters under administrative proceedings or if a question was posed or the decision sought that would be in breach of law. Everyone who has the right to vote in municipal or regional elections, i.e. everyone with permanent residency on the territory of the municipality or region, has the right to vote in a referendum. During the period under review, the limit needed to reach a valid decision at a local referendum was reduced from half of the people entitled to vote to 35%, to ensure that a decision that came out of the referendum is valid, despite lower voter participation. The decision is now binding if over half the majority of voters and at least 25% of all those entitled to vote in a local referendum vote.⁵³⁵ The same provisions apply to regional referenda.

The right to elect and be elected (sub-paragraph b)

224. The Constitution defines the basic rules of elections to the chambers of the Parliament of the Czech Republic, with details provided by law.⁵³⁶ Parliamentary elections take place according to the principles of the proportional electoral system at intervals of 4 years. The territory of the Czech Republic is divided into 14 electoral districts defined identically with the territory of the regions. Lists of candidates for elections to the Chamber of Deputies may be submitted by registered political parties and movements whose activities have not been suspended, and their coalitions. The seats are distributed to parties that exceeded 5% of the total number of valid votes cast at a national level, and in the case of coalitions, 5% is added for each party. Seats are divided in the constituencies between the parties and coalitions according to the d'Hondt method. Candidates from individual political parties, political movements and coalitions are allocated seats according to their order on the ballot. Voters may also cast preferential votes and if any of the candidates receives a number of preferential votes that amounts to at least 5% of the total number of valid votes cast for the candidates in the electoral region, the mandate goes to him/her. Voters may currently allocate up to 4 votes.

225. Elections to the Senate are conducted on the basis of a two-round majority voting system in 81 constituencies, with one senator elected in each. The term of office of senators is 6 years, but elections are held every 2 years, always in 1/3 of the constituencies. In the first round, the candidate is elected senator if he/she won more than 50% of the total valid votes cast in a the constituency. Otherwise a second round of elections is held, in which only the two most successful candidates run in each constituency and the one who wins the most votes is elected.

226. Only citizens of the Czech Republic who have reached the age of 18 have the right to vote in elections to both Chambers of Parliament.⁵³⁷ Any citizen who has reached the age of 21 may be elected to the Chamber of Deputies⁵³⁸ and any citizen who has reached the

proposals was adopted. The Constitution for Europe was never debated by the Czech Parliament and the Lisbon Treaty was debated in Parliament in accordance with Art. 10a of the Constitution.

⁵³³ Act No. 22/2004 Coll., on local referendum, as amended.

⁵³⁴ Act No. 118/2010 Coll., on regional referendum and on amendments to certain Acts.

⁵³⁵ Act No. 169/2008 Coll.

⁵³⁶ Act No. 247/1995 Coll., on Elections to the Parliament of the Czech Republic and on amendments and additions to certain other Acts, as amended.

⁵³⁷ Art. 18 para. 3 of the Constitution.

⁵³⁸ Art. 19 para. 1 of the Constitution.

age of 40 may be elected to the Senate.⁵³⁹ A barrier to the exercise of voting rights is legal restrictions on personal liberty in order to protect public health and the deprivation of legal capacity.⁵⁴⁰ The Constitutional Court has commented on the issue of voting rights of people with restricted legal capacity.⁵⁴¹ In its findings it imposed on municipal courts the obligation always to investigate during proceedings on capacity whether the person is capable of understanding the meaning, purpose and results of the elections, and is therefore able properly to exercise their voting right, and always to justify any restrictions, just as when other rights are being exercised.

227. The regularity of elections to the Chamber of Deputies was disrupted in 2009, when, after the fall of the government and even before there had been further two attempts to establish another one, a special constitutional law was adopted to reduce the fifth term of the Chamber of Deputies to elect a new Chamber.⁵⁴² The Constitutional Court repealed this constitutional law as unconstitutional.⁵⁴³ The Constitutional Court rebuked the lack of generality of the law, which was thereby in breach of the separation of powers, because it is the role of the legislature to issue legislation of general application, and also the arbitrary interference with the substance of a democratic state by limiting the term of a democratically elected Chamber, and, finally, the unacceptable retroactive interference in the electoral term of the Chamber, which it had itself adopted and which the voters had created under other conditions. This meant that early elections were cancelled and the Chamber of Deputies completed its term at the proper time, in June 2010. At the same time an amendment to the Constitution was adopted, allowing the president to dissolve the Chamber of Deputies with the approval of three-fifths of all deputies.⁵⁴⁴

228. Local government is exercised in municipalities and regions.⁵⁴⁵ Municipalities and regions are separately administered by councils elected for four-year terms. Elections to municipal⁵⁴⁶ and regional⁵⁴⁷ councils are held under a proportional electoral system. For the elections political parties and political movements whose activities have not been suspended and coalitions of the same may be registered, as well as independent candidates and independent candidate associations, which can associate with political parties and movements. In elections to municipal authorities, voters can give as many votes on all the ballots as there are members of the municipal council, and may allocate votes to political parties and individual candidates in them. In the elections to regional council, the voters have one list of candidates, to which they can allocate up to 4 preferential votes. To obtain a mandate the candidate must obtain 5% of the total number of valid votes. The d'Hondt method is used to distribute the seats to the individual lists of candidates. Elections to the Capital City of Prague council, which has the status of a municipality and a region at once, are regulated by the rules for the elections to municipal councils.⁵⁴⁸

229. Persons over the age of 18, who have permanent residence in the territory of the local government, have the right to vote and to be elected to local government authorities. In the case of municipalities, they may be citizens of the Czech Republic and of other

⁵³⁹ Art. 19 para. 2 of the Constitution.

⁵⁴⁰ Section 2 of Act No. 247/1995 Coll., on Elections to the Parliament of the Czech Republic and on amendments and additions to certain other Acts, as amended.

⁵⁴¹ Constitutional Court findings file. no. IV. ÚS 3102/08.

⁵⁴² Act no. 195/2009 Coll., on shortening the fifth term of the Chamber of Deputies.

⁵⁴³ Constitutional Court findings file. no. Pl. ÚS 27/09 promulgated under no. 318/2009 Coll.

⁵⁴⁴ Constitutional Act no. 319/2009 Coll., amending the Constitution of the Czech Republic.

⁵⁴⁵ Art. 99 of the Constitution.

⁵⁴⁶ Act no. 491/2001 Coll., on Elections to Municipal Councils and amending certain Acts, as amended.

⁵⁴⁷ Act no. 130/2000 Coll., on Elections to Regional Councils and amending certain Acts, as amended.

⁵⁴⁸ Section 123 of Act No. 131/2000 Coll., on the Capital City of Prague, as amended.

states, provided they are entitled to vote under an international treaty by which the Czech Republic is bound,⁵⁴⁹ and in the case of the regions, they must be a citizen of the Czech Republic. Barriers to performance are the same as for elections to Parliament, another barrier, for reasons of the space limitations in the constituency, is also a prison sentence.

230. Special arrangements apply to elections to the European Parliament. They also take place under the system of proportional representation every 5 years. For the purposes of elections to the European Parliament, the Czech Republic is a single constituency. Candidate lists may be submitted by registered political parties and political movements whose activities have not been suspended, and coalitions of the same. Seats are distributed to parties that exceeded the limit of 5% of the total number of valid votes cast. The d'Hondt method is used to distribute the seats. Within the framework of individual political parties, political movements and coalitions, candidates obtain seats according to their position on the ballot, and voters can assign up to two preferential votes and the limit for obtaining a mandate is 5%.

Entry into public office (sub-paragraph c)

231. The work of officials and public servants continues to be regulated by the Public Service Act and, as a subsidiary, the Labour Code. This also prohibits any form of discrimination.⁵⁵⁰ A condition for office is citizenship of the Czech Republic and, in the case of officials of the self-governing units, permanent residence in the territory of the Czech Republic.

Article 26

A ban on discrimination, and the recommendations from the previous concluding observations relating to the fight against discrimination,⁵⁵¹ to the education of Roma⁵⁵² and to the rights of foreign nationals⁵⁵³

232. The constitutional order continues to be based on the equality of people in their dignity and in their rights⁵⁵⁴ and on the prohibition of discrimination in matters of fundamental rights and freedoms on grounds of gender, race, colour, language, faith and religion, political or other conviction, ethnic or social origin, membership in a national or ethnic minority, property, birth, or other status.⁵⁵⁵ According to the case law of the Constitutional Court, it follows from these provisions that the constitutional order and international law do not require absolute equality of all subjects in their rights and obligations, but only the removal of unjustified differences. Legal discrimination in access to certain rights may not be a manifestation of arbitrariness. It is possible to admit rights to a certain group, while denying them to others. A different approach must be based on objective and reasonable criteria and there must be proportionality between the objectives pursued and the means to achieve them. Fundamental rights and freedoms must be guaranteed for all, regardless of the criteria set out above.⁵⁵⁶

⁵⁴⁹ This includes the citizens of all the EU Member States.

⁵⁵⁰ Section 16 of the Labour Code.

⁵⁵¹ CCPR/C/CZE/CO/2, para. 16.

⁵⁵² *Ibid.*, para. 17.

⁵⁵³ *Ibid.*, para. 18.

⁵⁵⁴ Art. 1 of the Charter of Fundamental Rights and Freedoms.

⁵⁵⁵ Art. 3 para. 1 of the Charter of Fundamental Rights and Freedoms.

⁵⁵⁶ See the rich case law of the Constitutional Court, starting from the findings of the Constitutional Court of the CSFR file no. Pl. ÚS 22/92 promulgated under no. 96/1992 Coll. and also, in particular,

233. The Czech Republic has already provided information on the implementation of recommendation no. 16 in its previous observations on the final recommendations for the period from 2008–10.⁵⁵⁷ Following on from the above, we add that the practical application of the Anti-Discrimination Act is ensured by the courts and the competent state inspection authorities (Labour inspectorates, the Czech School Inspectorate, the Czech Trade Inspection, the Ministry of Health and the Ministry for Labour and Social Affairs). These bodies may prosecute violations of the principle of equal treatment of people in labour relations,⁵⁵⁸ in education,⁵⁵⁹ the provision of goods and services,⁵⁶⁰ healthcare⁵⁶¹ and social benefits.⁵⁶² Their investigation may be initiated ex officio or in response to a personal impulse and they may impose fines, but not award compensation to private individuals for injury. This can only be done by courts in civil proceedings. Compensation may be sought both in proceedings for the protection of personality in accordance with the Civil Code and in special proceedings in accordance with the Anti-discrimination Act. In both of these the victim of discrimination may seek termination of the discriminatory conduct, atonement of the consequences caused and adequate compensation, including monetary compensation.⁵⁶³ Discriminatory attitudes causing damage to individual rights need not be targeted at a specific person, but also at a group of which this person is a member⁵⁶⁴ and it does not even have to be motivated by direct discriminatory intent of the discriminating individual. Just as in the case of other interventions into individual rights, the condition is not the intent, but the result caused. The deciding factor is not even the objective perception of discriminatory behaviour, but primarily the subjective perception of the person discriminated against.⁵⁶⁵

234. In anti-discrimination litigation the shared burden of proof is applied. After laying out the facts indicating discrimination against the victim, it is up to the defendant to prove that his/her conduct was not discriminatory.⁵⁶⁶ According to the Constitutional Court, when investigating the circumstances that indicate discrimination, the situation must be comprehensively and thoroughly examined and comparable facts evaluated, to enable the final assessment to determine whether discrimination has occurred or not.⁵⁶⁷ Access to court for low income people, in addition to the general institutes⁵⁶⁸ has been facilitated by the possibility of being represented by NGOs that have been established to protect victims of

finding file no. Pl. ÚS 16/93 promulgated under no. 131/1994 Coll., Pl. ÚS 36/93 promulgated under no. 132/1994 Coll., Pl. ÚS 4/95 promulgated under no. 168/1995 Coll., Pl. ÚS 5/95 promulgated under no. 6/1996 Coll., Pl. ÚS 9/95 promulgated under no. 107/1996 Coll., Pl. ÚS 33/96 promulgated under no. 185/1997 Coll., Pl. ÚS 15/02 promulgated under no. 40/2003 Coll., Pl. ÚS 33/03 promulgated under no. 584/2004 Coll., Pl. ÚS 47/04 promulgated under no. 181/2005 Coll., Pl. ÚS 6/05 promulgated under no. 531/2005 Coll. or Pl. ÚS 8/07 promulgated under no. 132/2010 Coll.

⁵⁵⁷ CCPR/C/CZE/CO/2/Add.1, CCPR/C/CZE/CO/2/Add.2, CCPR/C/CZE/CO/2/Add.3.

⁵⁵⁸ Act No. 251/2005 Coll., on Labour Inspection, as amended.

⁵⁵⁹ Act No. 561/2004 Coll., the Education Act, as amended.

⁵⁶⁰ Act No. 634/1992 Coll., on Consumer Protection, as amended and Act No. 64/1986 Coll., on the Czech Trade Inspectorate, as amended.

⁵⁶¹ Act No. 20/1966 Coll., on Public Healthcare, as amended.

⁵⁶² E.g. Act No. 108/2006 Coll., on Social Services, as amended.

⁵⁶³ Section 13 of the Civil Code, Section 10 of the Anti-discrimination Act.

⁵⁶⁴ See the judgement of the Supreme Court ref. no. 30 Cdo 1630/2004.

⁵⁶⁵ See the findings of the Constitutional Court file no. II. ÚS 1174/09.

⁵⁶⁶ Section 133a of the Code of the Civil Procedure. See also the findings of the Constitutional Court file no. Pl. ÚS 37/04 (promulgated under no. 419/2006 Coll.).

⁵⁶⁷ See the findings of the Constitutional Court file no. II. ÚS 1609/08.

⁵⁶⁸ Exemption from court fees and other costs under Section 138 of the Code of the Civil Procedure and the granting of a representative to protect their interests or professional legal assistance without needing to cover the costs thereof in accordance with Section 30 of the Code of the Civil Procedure.

discrimination.⁵⁶⁹ In addition to these non-profit organisations, general legal assistance is provided by the Czech Bar Association (Česká advokátní komora).⁵⁷⁰ Nonetheless, the Czech Republic does recognise a certain deficit in the general provision of legal assistance, primarily to low income groups of the population, and is therefore preparing a new Act on legal assistance, which anticipates financial and organisational support for general access to basic legal advice free of charge or for a minimal fee. The system should become operational in 2013.

235. According to EU regulations,⁵⁷¹ the role of the equality body taken by the Ombudsman. His task is to contribute to promoting the right to equal treatment, to provide methodological assistance to victims of discrimination in the protection of their rights, to carry out research and to issue reports and recommendations on issues relating to discrimination.⁵⁷² The main activity of the Public Defender of Rights is primarily advice and the dissemination of information. On his web pages, the Ombudsman provides basic information on the problem of discrimination,⁵⁷³ provides instructions on how to protect against discrimination,⁵⁷⁴ and publishes recommendations and legal opinions, using specific examples to show what can be considered to be discriminatory and what not. These non-binding legal opinions can contribute to raising the awareness of public authorities, local governments and private individuals.⁵⁷⁵ Recommendations by the Ombudsman have concerned issues such as renting public housing, access of guide dogs and assistant dogs to public areas or access to pre-school education. The Ombudsman has, for example, produced legal opinions on raising salaries in companies, discounts on public transport fares, the conditions for access to social services or eligibility for early retirement.

236. On the issue of the fight against racism and extremism, in 2009 the government approved a Strategy to combat extremism and subsequently the Police of the CR approved its own Concept for combating extremism, containing solutions in the areas of organisational arrangements, technical equipment, methodologies and analyses, the organisation of criminal proceedings and training. Based on these tasks, significant advances were made in methods of preventing the infiltration of extremists into the security forces, the elimination of concerts and demonstrations by right-wing extremists on the territory of the CR in 2010 and the unlawful behaviour that had accompanied these events in previous years. Extremist views distributed over the internet remain a problem, as does the conspiratorial activities of the extremist groups themselves on the territory of the CR. The number of crimes and individuals prosecuted are shown in annex no. 14.

237. The Czech Republic described the legal arrangements regulating lease relations in its statement in 2010.⁵⁷⁶ It stressed that the legislation covering lease relations is based on protection of tenants as the weaker party. A lease of a flat can only be terminated for reasons set out in the legislation either with the consent of the court, or without its consent,

⁵⁶⁹ Section 26 para. 3 of the Civil Procedure Code and Section 11 of the Anti-discrimination Act.

⁵⁷⁰ <http://www.cak.cz/scripts/detail.php?id=2617>.

⁵⁷¹ Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation and Council Directive 2004/113/EC of 13 December 2004, implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

⁵⁷² Section 21b of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.

⁵⁷³ <http://www.ochrance.cz/en/discrimination/>.

⁵⁷⁴ <http://www.ochrance.cz/en/discrimination/how-to-prevent/>.

⁵⁷⁵ <http://www.ochrance.cz/diskriminace/doporuceni-ochrance/>,
<http://www.ochrance.cz/diskriminace/diskriminace-pravni-stanoviska/>.

⁵⁷⁶ CCPR/C/CZE/CO/2/Add.2.

but in this case the tenant has the option of applying to the court within 60 days with a request for invalidity of the termination, a recourse that must be set out in writing in the termination notice. The period of notice must be at least 3 months and does not run during court proceedings on the validity of the termination. In many cases, mainly when the termination is in the interest of the landlord and the tenant has given no cause for it, the tenant has the right to substitute housing in the form of another flat, longing or at least a shelter. This does not apply in the case of a fixed-term lease, which expires at the end of the period for which it was contracted. Here it is assumed that the tenant knows in advance that the lease is terminated and that he/she will have time to find alternative accommodation.

238. The Civil Code treats all tenants equally. The court may, in determining the validity of the termination, take account of the situation of the tenant (e.g. a family with minor children) and give some the right to better substitute housing than is set out in the law. At the same time it may decide on the invalidity of the termination, which, although complying with legal requirements, is in breach of good morals in its social consequences. These means are used to protect socially disadvantaged and vulnerable groups. Any notice and eviction served in violation of the law are of course invalid and can be successfully defended in court. No landlord can evict a tenant in contravention of the law.

239. Aside from protecting the rights of tenants, the Czech Republic is trying to provide protection for the socially weak and vulnerable using various practical tools. These mainly involve various programmes to promote social integration and field social work with clients at risk of social exclusion. Under the Operational Programme Human Resources and Employment, the Ministry of Labour and Social Affairs has announced support for grant projects and regional individual projects. The government also supports field work projects and community outreach work to prevent social marginalisation. More detailed information is provided in annex no. 16.

240. The role of the municipalities is crucial in this respect. Municipalities are legally obliged, having respect to local possibilities, to create conditions for meeting the needs of its residents, including the need for housing.⁵⁷⁷ In 2009, the government approved the Strategy for Roma Integration for the period 2010–2013,⁵⁷⁸ where it also recommends that municipalities “continuously monitor the access of low-income Roma households to housing and ensure the availability of social forms of housing for these households, creating a non-discriminatory, transparent and equitable allocation of public housing and continuously and timely prevent the loss of housing by Roma tenants as a result of arrears in rent for municipal flats and use legal means⁵⁷⁹ and other preventive tools in collaboration with other stakeholders in the housing sector.” The Ombudsman issued a recommendation

⁵⁷⁷ Section 35 para. 2 of the municipal constitution.

⁵⁷⁸ Government Resolution no. 1572 of 21.12.2009.

⁵⁷⁹ This includes, for example, the institute of the special beneficiary in accordance with Section 59 of Act No. 117/1995 Coll., on State Social Support, as amended, and Section 40 of Act No. 110/2008 Coll., on assistance in material distress, as amended. A special beneficiary is a person who may receive a benefit in the place of the normal beneficiary in order to fulfil the purpose of the benefit and to protect the rights of the beneficiary fee when a misuse of housing benefits to pay the rent threatens termination of the lease, the landlord may be paid the benefit directly instead of the tenant to cover the claim for rent.

on this issue⁵⁸⁰ and, in cooperation with the Ministry of Interior, also issued a manual for municipalities on the topic of preventing social exclusion.⁵⁸¹

241. The Agency for Social Inclusion, which has been working by the Office of the Government since 2008, has also provided methodological support to municipalities in the fight against social exclusion. Municipalities may use the Agency's services for its own community planning and for meeting the needs of its residents. The Agency provides professional consultation and advice to municipalities in the areas of social welfare, employment, health, education, security, etc. Municipalities may collaborate with the Agency in local partnerships on projects for municipal development and the integration of the population and, with its help, apply for grants for these projects. The Agency is currently working with a total of 33 municipalities.

242. In order to meet their obligations to provide housing, municipalities may also use titles to housing subsidies provided by the Ministry for Regional Development. These titles enable the municipality to obtain subsidies for the construction of apartment houses for people in adverse social situations who do not have access to housing. Since 2009 persons other than municipalities have been entitled to apply for a subsidy to build social housing, with the proviso that the subsidy is for rental flats for defined categories of low income people at a fixed rent. Between 2003 and 2010 a total of almost 14,000 subsidised flats have been built. More detailed information is provided in annex no. 16.

Education of Roma children

243. In 2007 the Grand Chamber of the European Court of Human Rights found that the Czech Republic was in breach of Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms prohibiting discrimination in the rights conferred by the Convention and Article 2 of Protocol no. 1 to the Convention guaranteeing the right to education.⁵⁸² Since that time, the Czech Republic is obliged to submit information to the Committee of Ministers concerning the implementation of this judgment.⁵⁸³ On the basis of the judgement, during the period from 2008 to 2009, the Czech government launched a number of research studies aimed at mapping the situation in the education of Roma pupils from disadvantaged backgrounds, focusing on the causes and forms of segregation in education, the use of diagnostic tools for identifying pupils' learning needs, the approach taken by educators, psychologists and other professionals to children from this environment in education and identifying other problems that these children face during their education.⁵⁸⁴

⁵⁸⁰ Recommendation from the Ombudsman to implement the right to equal treatment for applicants for the lease of a municipal flat http://www.ochrance.cz/fileadmin/user_upload/diskriminace/Obecni_byty.pdf.

⁵⁸¹ Recommendations for municipalities and towns to prevent the creation and expansion of socially marginalised areas, with emphasis on providing for housing needs http://www.ochrance.cz/fileadmin/user_upload/Publikace/Doporuceni_socialni_vyloucení.pdf.

⁵⁸² Judgement of the Grand Chamber of the European Court of Human Rights in the case of *D.H. v. The Czech Republic* of 13.11.2007, Application no. 57325/00.

⁵⁸³ Art. 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms (no. 209/1992 Coll.).

⁵⁸⁴ The most important research studies included "Analysis of the individual approach of pedagogues to teaching pupils with special education needs" (author Člověk v tísni, o.p.s.); "Educational tracks and educational chances of Romany pupils in primary schools in the area of socially excluded Roma localities" (author GAC, s.r.o); Analysis of the diagnostic tools used on pupils from socio-culturally disadvantaged environments with regard to Roma children, pupils and students (author Výzkumné

244. The results of the analyses outlined above show that Roma children have truly unequal educational opportunities compared with other pupils.⁵⁸⁵ It is far more likely that Roma children will be educated using a programme designed for children with mild mental disabilities than other children. The survey also shows a strong likelihood that if a student completed primary education structured according to the Framework Educational Programme Primary Education for pupils with mild mental disabilities, they will reach lower educational levels, which reduces their chances of obtaining good quality and well-paid jobs as adults and increases the likelihood that they will face future unemployment and the resulting poverty and social exclusion.⁵⁸⁶

245. An analysis of the diagnostic tools showed that the diagnostic tools are not themselves discriminatory and are able to find relevant results, but their use is problematic in practice. A fundamental prerequisite for their proper application is maintaining the principle of *lege artis* by the counsellors. The use of diagnostic tools assumes a level of qualification, professionalism and experience in the researcher, the dynamism of his/her procedures, the complexity of the examination and a sensitivity to factors causing socio-cultural disadvantages. The results of the survey of diagnostic tools should serve to produce the relevant recommendations and methodologies for employees of school counselling offices.

246. Another problem, which was revealed through the surveys, was the heterogeneity in the approach and the lack of preparedness of schools to teach children with special educational needs. The reason is the different levels of both equipment and staffing of schools and school counselling facilities. Pedagogical staff lacks a broader and more systematic methodological support, misses the professional training required to teach pupils with special educational needs and there is reserve in the system for their further education. In relation to socially disadvantaged children, there is also a need to link educational and social interventions and to provide a continuity between activities of schools and the socio-legal child protection authorities and providers of social services that will result in the overall stabilisation of the life situation of these socially excluded families and to strengthen their efforts to address their situation.

247. In 2010 the Czech School Inspectorate issued a thematic report of inspection activities in the former special schools.⁵⁸⁷ During the inspection staff monitored how the legislative changes had been implemented in practice in the former special schools, the current educational offer of these schools and their estimates of the staffing needs to implement the new school educational programmes. The results of the survey showed that in the 171 basic schools monitored, 35% of Roma pupils were following the school

centrum integrace zdravotně postižených) and Monitoring Framework Educational Programmes (author Institute for Information in Education (Ústav pro informace ve vzdělávání)).

⁵⁸⁵ Results of the Monitoring of Framework Educational Programmes have shown that of the total number of Roma primary school pupils, almost 30% of these (exactly 26.7%) attend schools that teach using educational programmes for pupils with mild mental disabilities, whereas they are only 2.17% of the total number of other pupils from the majority population attended these schools.

⁵⁸⁶ Over 95% of pupils who completed primary education following the programme for pupils with mild mental disabilities, subsequently attended secondary school providing education without a graduation certificate. In the case of Roma pupils, most of those graduating from these primary schools (65%) transferred to secondary schools that only provided a vocational certificate at the end of the programme, only 0.93% of them went on to secondary schools that offered a graduation certificate. In the case of Roma pupils leaving primary schools that followed the standard curriculum, over 30% enrolled in secondary studies with a graduation certificate.

⁵⁸⁷ Until 2005, when there was a change to the Education Act and special schools were abolished, there were 398 special schools in the CR. 171 of these schools (i.e. 43% of former special schools) participated in a survey by the Czech School Inspectorate, attended by a total of 15,894 pupils.

curriculum for pupils with mild mental disabilities. Among the major shortcomings that were uncovered during the inspection was the insufficient identification and registration of socially disadvantaged pupils as required by the Education Act, when mild mental disabilities were deemed to be the cause of the lack of success of these pupils in mainstream education. There was an inability to distinguish between the needs and special conditions of support needed for socially disadvantaged pupils and the pupils with mild mental disabilities, which had a significant impact on the ability of disadvantaged Roma pupils to integrate into mainstream education. It was discovered that 22 preparatory classes had been set up in the framework of the primary schools monitored for socially disadvantaged pupils, which improved their preparedness for learning in mainstream education, but the number of these classes in the schools monitored was found to be very low.⁵⁸⁸ Apart from this the schools also use the development programme issued by the Ministry of Education, Youth and Sports to support the addition of a teaching assistant for socially disadvantaged pupils. Another fundamental problem was the method of inclusion of socially disadvantaged pupils in the educational programme designed for pupils with disabilities. The schools had a problem proving that the legal guardians had been informed and given their consent to their child's education.⁵⁸⁹

248. The results of the analyses described above were used in the development of the National Action Plan for Inclusive Education, whose task is to specify the individual measures and to rethink the manner of their implementation in practice.⁵⁹⁰ The development of the plan and its practical implementation is the task of the Ministry of Education, Youth and Sports. The National Action Plan for Inclusive Education defines the scope of the activities to be carried out in order to ensure equal access and equal opportunities for all in education. It also covers the introduction of measures needed to end the persistent practice of segregation in Czech schools and, at the same time, to prevent any discriminatory effects. The basic plan is to increase the level of an inclusive concept of education in the Czech educational system and the ultimate goal is to act preventively against the social exclusion of individuals and social groups. The plan also includes measures to change the system of pedagogical-psychological counselling with emphasis on the socio-culturally sensitive diagnostic needs of children with special educational needs in conjunction with social counselling and a system of checks and reviews of the diagnoses made. It also deals with the issue of informed consent from the children's legal guardians. Attention is also paid to career guidance and motivating pupils towards further and lifelong education in order to improve their employment opportunities and to reduce their dependence on social networks.

249. For the purpose of fulfilling the plan, amendments have been prepared to the Education Act and its implementing decrees on pedagogic-psychological counselling and on the education of children with special educational needs. The first Decree⁵⁹¹ sets out the rules for the provision of advisory services. It also introduces a written confirmation, which will be signed by the pupil's parent, that the recommendation containing proposed changes to the pupil's school curriculum has been discussed with him/her and that he/she has understood its nature and content and can comment on it if required. Recommendations for the inclusion of pupils in schools or educational programmes for pupils with disabilities

⁵⁸⁸ The number of preparatory classes is however increasing, in 2010 there were 199 of them, with a total of over 2,400 pupils.

⁵⁸⁹ Clear parental consent to teaching their children according to a modified curriculum could not be obtained for 1.08% of pupils in the primary schools inspected.

⁵⁹⁰ Government Resolution No. 206 of 15.3.2010.

⁵⁹¹ Decree No. 72/2005 Coll., on the provision of consulting services in schools and school guidance facilities, as amended by Decree No. 116/2011 Coll., with effect from 1.9.2011.

should be issued for a maximum period of one year.⁵⁹² Pupils and their parents must be informed of their right to request at any time additional advisory services. The Decree on the education of children with special educational needs⁵⁹³ also mentions compensatory measures for pupils with special educational needs, which should serve to compensate for disadvantaged pupils, enabling them to be taught in schools and in classes that are not only intended for pupils with disabilities.⁵⁹⁴ Support measures for pupils with disabilities are also defined here.⁵⁹⁵

250. For the purposes of using compensatory measures, a socially disadvantaged pupil is, in particular, a pupil from an environment where he/she lacks any support for the normal process of education, including cooperation between his/her legal guardians and the school, and a pupil disadvantaged by insufficient knowledge of the teaching language. It has been expressly stated in the legislation that a pupil who is not disabled will not be taught by an educational programme that has been adapted to the needs of pupils with disabilities, but nonetheless, it will be allowed for a class established for pupils with disabilities to educate a pupil without a disability, who is physically or socially disadvantaged and who has been failing over the long term and in a number of areas in mainstream education, even after the application of all the previous compensatory measures. This pupil will be taught by the standard curriculum used in normal primary schools and his/her placement in the class for pupils with disabilities is limited to a period of 5 months, during which time he/she will remain a pupil at his/her original school. A condition for the inclusion of pupils in special education is always a recommendation from the school counselling facility, along with proposals for specific support measures, a discussion of the application with the pupil and his/her family, including the provision of comprehensible information and the informed consent of the parents. During this time the pupil will remain under the supervision of the pedagogical-psychological counsellor, which will recommend further developments in his/her education and will monitor whether grounds still remain for the pupil to stay in special education. The current legislation sets out clear conditions that do not allow pupils without disabilities to attend a class established for pupils with disabilities solely on the request of the parents. The new legislation is intended to support the inclusive education of pupils with special educational needs, contains measures that are specifically aimed at socially disadvantaged pupils, including Roma pupils, and responds to the decision of the European Court of Human Rights.

251. Early pre-school care focuses on promoting the successful management of school education, using “preparatory” classes for socially disadvantaged children. Emphasis is on the educational programme introduced in kindergartens to support the development of communication skills and to prevent reading difficulties in children of pre-school age.

⁵⁹² With the amended Decree, the focus of advisory services has shifted from reporting, within the meaning of diagnostic activities, to recommendations, within the meaning of advisory activities, which are intended to take account of pupils’ special educational needs.

⁵⁹³ Decree no. 73/2005 Coll., on the education of children, pupils and students with special educational needs and specially gifted children, pupils and students, as amended by Decree No. 147/2011 Coll., with effect from 1.9.2011.

⁵⁹⁴ In particular the use of teaching and special teaching methods and procedures, the provision of individual support in teaching and preparation for teaching, the use of advisory services provided by schools and school guidance facilities, individual educational plans or the services of a teaching assistant.

⁵⁹⁵ The use of special methods, procedures, forms and educational aids, compensation, rehabilitation and teaching aids, special textbooks and teaching materials, the inclusion of subjects involving special teaching care, the provision of pedagogical-psychological services, acquiring the services of teaching assistants, reducing the number of pupils in the class or study group or otherwise modifying the organisation of education to take account of pupils’ special educational needs.

Support is directed towards developing the professional skills of the teaching staff, enabling them to work with pupils with various educational needs, to access for socially disadvantaged children to pre-school education, to expanding opportunities for the establishment of “corporate kindergartens”, and to increasing the capacity of kindergartens to promote the systematic development of the skills needed for children to succeed in formal education. The Ministry of Education, Youth and Sports therefore also supports alternative forms of pre-school pedagogical intervention, e.g. low-threshold facilities and family centres and supports the activities of teaching assistants for socially disadvantaged pupils.⁵⁹⁶ Methodological support and assistance is provided from the ministry and its subsidiary professional institutions.⁵⁹⁷ Specific information is also provided in the Statement issued by the Czech Republic in 2010⁵⁹⁸ and in the statements submitted to the Committee of Ministers of the Council of Europe.⁵⁹⁹ Certain statistical data on Roma education and support for inclusive education are provided in annex no. 17.⁶⁰⁰

Ensuring the rights of foreigners

252. The rights of foreign nationals and other persons who do not speak Czech in judicial and other proceedings are described in detail in the text to Article 9 par. 2 as regards restrictions on personal liberty, Article 14 par. 1 in respect of judicial proceedings in civil, criminal and administrative matters and Article 27 regarding administrative proceedings. In all these proceedings a person who does not speak Czech has the right to the assistance of an interpreter at government expense, to enable him/her to defend his/her rights despite the language barrier. Independently of this, he/she also has the right to be exempted from court costs and for free legal assistance, as stated in the text to Article 14 par. 1 and in this Article.

253. Each year the state releases funds to promote the integration of foreign nationals, including the co-financing of projects selected under the grant proceedings announced by the Ministry of Labour and Social Affairs and the Ministry of Education, Youth and Sports. These projects are most often implemented with NGOs and schools. They include, for example, Czech language courses, employment advice and socio-cultural courses to help foreign nationals familiarise themselves with the living conditions in the Czech Republic in a language they can understand or through an interpreter. Support is also granted for field work with foreign nationals and related advice and assistance. The Ministry of Interior, as coordinator of the integration programme for foreign nationals, also implements its own projects. Recently, regional centres to promote the integration of foreigners have been set up in areas where there are larger concentrations of foreign nationals, providing information, advisory services, courses, seminars, etc. specialising in their specific region. Information for foreign nationals is published on the Ministry of Interior website.⁶⁰¹ Information materials for foreign nationals regarding residence, employment and other issues is also accessible from the website maintained and regularly updated by the Ministry

⁵⁹⁶ Most aid comes from the “Support for education in minority languages and multicultural education” and the Ministry of Education, Youth and Sports Programme to promote the integration of the Roma community grant programmes, funded from the state budget and from the European Social Fund.

⁵⁹⁷ http://www.msmt.cz/file/1549_1_1/ , http://www.vuppraha.cz/wp-content/uploads/2009/12/pripravna_trida.pdf , www.inkluzivniskola.cz.

⁵⁹⁸ CCPR/C/CZE/CO/2/Add.2 and CCPR/C/CZE/CO/2/Add.3.

⁵⁹⁹ http://www.coe.int/t/dghl/monitoring/execution/Themes/Add_info/CZE-ai_en.asp.

⁶⁰⁰ Additional information is also contained in the eighth and ninth periodic report on the implementation of the Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/CZE/8-9).

⁶⁰¹ <http://www.mvcr.cz/mvcren/web-useful-information.aspx>.

of Labour and Social Affairs in collaboration with the Ministry of Interior.⁶⁰² Publications are distributed to foreigners in the Czech Republic and through embassies and consulates abroad. Individual ministries issue information leaflets on specific issues affecting the lives of foreigners, always in languages that can be understood by foreigners.

Article 27

Rights of national minorities

Act on the rights of members of national minorities

254. Constitutional protection of minority rights remains unchanged. Members of national minorities still have the right to participate actively in the cultural, social and economic life and in public affairs,⁶⁰³ the right to use the language of national minorities (including education in these languages and the establishment of schools), the right to develop their own culture and traditions and the right to associate in national associations and political parties. Detailed arrangements for these rights are set out in the relevant legislation.⁶⁰⁴ Membership of a national minority shall not be used to the detriment of anyone; such treatment would amount to discrimination.⁶⁰⁵

255. In 2006 the Czech Republic ratified the European Charter for Regional or Minority Languages.⁶⁰⁶ During the ratification a statement was made, by which the Czech Republic undertook to provide special protection for Slovak, Polish, German and Romani, providing support for the Slovak language nationwide and for Polish in the Moravian-Silesian region in the districts of Frýdek-Místek and Karviná, where there is a large Polish minority.⁶⁰⁷ Other minority languages in the Czech Republic are protected under Part II of the Charter and under the Framework Convention for the Protection of National Minorities.⁶⁰⁸

256. The right to participate in addressing issues relating to national minorities is implemented at a national level by the Council for National Minorities, an advisory body to the Czech government for problems affecting national minorities. Council members are representatives of national minorities and representatives of public authorities, where at least half of the members of the Council are representatives of national minorities. Within the framework of its competence, the Council monitors domestic implementation of the Czech Republic's international obligations in terms of the rights of members of national minorities, ensures the preparation of governmental measures concerning the rights of national minorities in the Czech Republic, expresses its opinion on draft laws, government regulations and measures concerning the rights of national minorities before their submission to the government and prepares recommendations to meet the needs of members of national minorities for the government or for the ministries or other

⁶⁰² www.cizinci.cz Information here is available in English, Russian, Ukrainian, Vietnamese, Mongolian and Moldavian. Foreigners can find additional information on the Public Administration Portal http://portal.gov.cz/wps/portal/_s.155/19005 or, for example, on http://portal.mpsv.cz/sz/zahr_zam/prociz.

⁶⁰³ See Section 6 para. 1 of Act No. 273/2001 Coll., on the rights of members of national minorities and on amendments to certain Acts (hereinafter referred to as the "Act on the rights of national minorities").

⁶⁰⁴ E.g. the Act on the rights of national minorities and the relevant provisions of other Acts.

⁶⁰⁵ Art. 25 of the Charter of Fundamental Rights and Freedoms.

⁶⁰⁶ Promulgated under no. 15/2007 Coll. Int.tr.

⁶⁰⁷ There are 31 municipalities where they make up over ten percent of the population.

⁶⁰⁸ Promulgated under no. 96/1998 Coll.

administrative authorities.⁶⁰⁹ The Council prepares for the government a summary report on the situation of national minorities on the territory of the Czech Republic, cooperates with local governments in the practical aspects of the state's national minority policy and contributes to the distribution of state funds to support the activities of members of national minorities.⁶¹⁰

257. At a local level, in a municipality on whose territory at least 10% of the inhabitants claim a nationality other than Czech, according to the census, a Committee for National Minorities will be established. Similarly, in a region, on whose territory at least 5% of the inhabitants claim a nationality other than Czech, according to the census, a Committee for National Minorities will be established. At least one half of the Committee members must be members of the relevant minority. In municipalities where at least 10% of the population are members of a minority, these people may request, through the Committee, that the name of the village, its different parts, streets and other public spaces, the designation of buildings of state authorities and local governments be also presented in the language of their national minority.⁶¹¹

258. A member of a national minority has the right to request that his/her name and surname be entered in the registry document in the language of the national minority and that his/her name be included in that form in his/her personal documents.⁶¹² He/she also has the right to use his/her native language in proceedings before the courts and other administrative bodies, where he/she will be provided with an interpreter.⁶¹³ A member of a national minority has the right to be educated in his/her native language in a municipality in which a Committee for National Minorities has been established, assuming that there is sufficient interest on the part of members of the national minority for this education. If the required number of pupils is not met, certain subjects may be taught in two languages, with the consent of the school founder.⁶¹⁴

259. More detailed information on the exercise of the rights of members of national minorities and their situation is provided in the third periodic report on the implementation of the principles laid down by the Framework Convention for the Protection of National Minorities⁶¹⁵ and the second periodic report on compliance with obligations under the European Charter for Regional or Minority Languages in the Czech Republic.⁶¹⁶

⁶⁰⁹ These particularly concern the area of education, culture and the media, the use of native languages or social and cultural life.

⁶¹⁰ For more detailed information on the Council see <http://www.vlada.cz/en/pracovni-a-poradni-organy-vlady/rnm/historie-a-soucasnost-rady-en-16666/>.

⁶¹¹ Section 29 para. 2 of the Act on Municipalities.

⁶¹² Section 26 para. 2 of Act No. 301/2000 Coll., on Registries, names and surnames, as amended.

⁶¹³ See text to Art. 14.

⁶¹⁴ Section 14 of Act No. 561/2004 Coll., the Education Act, as amended.

⁶¹⁵ http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_CzechRepublic_en.pdf.

⁶¹⁶ Submitted in 2011 to the Secretary General of the Council of Europe; currently awaiting Government approval.