

The Czech Republic: National Report on the Protection of Fundamental Human Rights in Criminal Proces

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1. INTRODUCTION

The Czech Republic is a country which traditionally belongs to the continental legal system of criminal law and criminal procedure. Both the Austro-Hungarian Criminal Code and Code of Criminal Procedure were in force in Czechoslovakia until 1950. In the 1950s and the early 1960s, a new Criminal Code and a new Code of Criminal Procedure were introduced according to the Soviet model. After 1989, these codes were amended on several occasions in order to introduce democratic principles of criminal law and criminal procedure.

2. APPLICABLE INTERNATIONAL LAW

The Czech Republic was born as a State on 1 January 1993, the date of dissolution of the former Czech and Slovak Federal Republic (Czechoslovakia). In a letter dated 16 February 1993, received by the Secretary-General on 22 February 1993 and accompanied by a list of multilateral treaties deposited with the Secretary-General, the Government of the Czech Republic notified that:

“In conformity with the valid principles of international law and to the extent defined by it, the Czech Republic, as a successor State to the Czech and Slovak Federal Republic, considers itself bound, as of 1 January 1993, i.e., the date of the dissolution of the Czech and Slovak Federal Republic, by multilateral international treaties to which the Czech and Slovak Federal Republic was a party on that date, including reservations and declarations to their provisions made earlier by the Czech and Slovak Federal Republic. The Government of the Czech Republic have examined multilateral treaties, the list of which is attached to this letter. The Government of the Czech Republic considers to be bound by these treaties as well as by all reservations and declarations to them by virtue of succession as of 1 January 1993. The Czech Republic, in accordance with the well established principles of

international law, recognizes signatures made by the Czech and Slovak Federal Republic in respect of all signed treaties as if they were made by itself".¹

As of 1 June 2002, the date it entered into force, the constitutional law no. 395/2001 Coll., amending Article 10 of the Constitution of the Czech Republic,² promulgated international treaties to the ratification of which Parliament has given its consent and by which the Czech Republic is bound, form a part of the legal order. If an international treaty provides something other than the law, the international treaty shall apply.³ Thus, it is the monistic concept that applies and all international treaties meeting aforementioned conditions form an integral part of the Czech domestic legal order. Their legal value is superior to ordinary laws and inferior to constitutional laws. However, it follows from Article 10 of the Constitution that the superiority of international treaties to ordinary laws is in the nature of application, not of derogation. In other words, an international treaty (falling under the scope of the Article 10 of the Constitution) does not derogate a law that is contradictory to this treaty, but this law may not be applied within the scope of the treaty, which enjoys priority in application. It should be added that all international treaties on human rights fall under the scope of Article 10 of the Constitution.⁴

A. Relationship to Domestic Criminal Process

According to Article 95 of the Constitution, in making his decision, a judge is bound by laws (including constitutional laws) and international treaties forming a part of the legal order. He is authorized to consider the conformity of another enactment with the law or with such an international treaty. Should a court come to a conclusion that the law that should be applied in the resolution of a matter is in conflict with the constitutional order, it shall submit the matter to the Constitutional court. It follows that if a court comes to the conclusion that the law is in conflict with an international treaty, the latter should be applied. Constitutional order consists of the Constitution, the Charter of Fundamental Rights and Basic Freedoms, constitutional acts adopted pursuant to the Constitution, and those constitutional acts of the National Assembly of the Czechoslovak Republic, the Federal Assembly of the Czechoslovak Socialist Republic, and the Czech National Council

¹ See <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/historicalinfo.asp>.

² The Constitution of the Czech Republic was adopted on 16 December 1992, in force from 1 January 1993.

³ See Article 10 of the Constitution.

⁴ See Article 49 (a) of the Constitution.

defining the state borders of the Czech Republic, as well as constitutional acts of the Czech National Council adopted after June 6 1992.⁵

Consequently, Czech courts are bound to apply human rights *ex officio*, as these rights form an inherent part of Czech legal order, their legal value being either constitutional (if contained in the Charter of Fundamental Rights and Basic Freedoms) or supra-legal (if contained in an international treaty). Citizens are not obliged to invoke human rights in order to make them apply. In theory, a basic principle that the court knows the law (*iura novit curia*) applies. However, in practice and mainly due to the case-load at the Czech courts, it is the role of parties to a court procedure (and essentially of defence attorneys) to invoke human rights, to claim that they were violated in the matter or that they would be violated by a certain decision of the court. It is their role to invoke the case-law of Czech higher courts, including the Constitutional court, and of international bodies, such as for example European Court of Human Rights.

The basic document protecting rights and freedoms of people and citizens of Czech Republic is the Charter of Fundamental Rights and Freedoms, which was adopted by The Federal Assembly of Czech and Slovak Federative Republic in 1991 and then promulgated again by the Presidium of the Czech National Council as a part of the constitutional order in the 1992.⁶ The Charter provides the protection of fair trial and criminal process in a special Chapter 5: The Right to Judicial and Other Legal Protection. Based on this chapter, the following rights are guaranteed in Czech Republic:

a. Fair trial (Art. 36-38)

Everyone may assert his rights before an independent and impartial court.

A person who claims that his rights were curtailed by a decision of a public administrative authority may turn to a court for review of the legality of that decision.

Everyone is entitled to compensation for damage caused him by an unlawful decision of a court, other state bodies, or public administrative authorities, or as the result of an incorrect official procedure.

Right to refuse to give testimony.

⁵ See Article 112 (1) of the Constitution.

⁶ No. 2/1993 Coll. of Laws of Czech Republic

The right to assistance of counsel from the very beginning of proceedings before courts, other state bodies or public administrative

All parties to such proceedings are equal.

Anyone who declares that he does not speak the language in which a proceeding is being conducted has the right to the services of an interpreter.

No one may be removed from the jurisdiction of his lawful judge. The jurisdiction of courts and the competence of judges shall be provided for by law.

Everyone has the right to have his case considered in public, without undue delay, and in his presence, as well as to express his views on all of the admitted evidence. The public may be excluded only in cases specified by law.

b. Rights in criminal process (Art. 39-40)

Only a law may designate the acts which constitute a crime and the penalties or other detriments to rights or property that may be imposed for committing them.

Only a court may determine a person's guilt and designate the punishment for criminal acts.

The presumption of innocence in a criminal proceeding.

An accused has the right to be given the time and opportunity to prepare a defence and to be able to defend himself pro se or with the assistance of counsel.

An accused has the right to refuse to give testimony; he may not be deprived of this right in any manner whatsoever.

No one may be criminally prosecuted for an act for which he has already been finally convicted or acquitted of the charges. This rule shall not preclude the application, in conformity with law, of extraordinary procedures for legal redress.

B. Right of Complaint to an International Judicial Body – Exhaustion of Domestic Remedies

Generally, two ways of protecting human rights by an individual complaint to an international judicial body are open to Czech citizens. The first is a complaint lodged with the European Court of Human Rights (ECtHR) in Strasbourg pursuant to Articles 34, 35 of the European Convention on Human Rights and Fundamental Freedoms (ECHR). Another possibility is a complaint filed with the Human Rights Committee according to the Article

2 of the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). One of the conditions that has to be met in both cases is the preliminary exhaustion of Czech domestic remedies. These remedies include ordinary remedies, extraordinary remedies and a constitutional complaint.

It should be noted that the Constitutional Court is competent to decide on a constitutional complaint against a final decision or another encroachment by public authorities into constitutionally guaranteed fundamental rights and basic freedoms⁷ and thus offers a supreme domestic protection of fundamental human rights and freedoms. In its case-law it often refers to the case-law of the European Court of Human Rights and, more recently, also to that of the Court of Justice of European Communities.

3. ACTORS IN CRIMINAL PROCESS

The powers of the criminal justice authorities are activated at the very beginning of criminal process. A criminal investigation (meaning to institute prosecution) may be instigated if there is a reasonable suspicion that an offence has been committed. Pro-active investigation is possible and requires a reasonable suspicion that an offence is being planned or is about to be committed. During the investigation, the investigator proceeds on his own initiative in order to clarify all facts significant to the case, such as the offender and the consequences of the crime. Before this starting point criminal justice authorities have to prevent crime (for example as seen in places where crime has increased). They must observe the law, especially human rights. The police may only act if expressly permitted to do so by law.

A. Judiciary

Professional judges must be Law School graduates, and must have passed the special judicial examination. During the three-year probation period, probationers prepare the judge's profession. The Minister of Justice can include time spent in another profession as part of the probation period, on the condition that previous work included experience necessary to work as a judge. Reduction of the probation period cannot exceed 2 years. After the probation period is over, probationers must pass the special judicial examination,

⁷ See Article 87(1)(d) of the Constitution.

the aim of which is to find out whether they have the necessary knowledge and are adequately prepared to discharge the duties of judges. Candidates must have the experience and moral qualities that guarantee the duties of the judge will be properly discharged, they must be at least 30 years old on the day of appointment, and must agree to be appointed as judges and to serve with the courts to which they are directed. The Czech Republic has a judiciary career system ; this system has, however, been recently modified with the requirement of an age of at least 30 years for new judges.

Trials are conducted according to principles of law, the professional judge and in some cases, also by lay judges. A single judge conducts the trial in cases where the law prescribes a penalty of no longer than five years in prison. The law stipulates that cases must be heard by panels of judges for serious offences. These panels are comprised of professional judges or of a professional judge sitting with lay judges. One of them is called the presiding judge. All the judges in a panel of judges have equal votes, professionals and lay judges alike. Laic participation in the administration of justice is organised in the form of laypersons sitting as judges and hearing cases at first instance. Appellate and Supreme Court cases are heard by professional judges only.⁸ The professional judge is a guardian of due procedure and also plays a truth-finding role.

The position of investigating judge who investigates the facts himself does not exist. But in cases that requires the consent of a judge under the Code of Criminal Procedure, the judge grants leave to prosecute and grants permissions for the use of invasive investigative methods.

B. Prosecution

The Public Prosecutor's Office is formally independent of the executive except with regard to administrative matters. It is a hierarchical organization comprised of the Supreme Prosecution Service, the High Prosecution Service, the Regional Prosecution Service and the District (Local) Prosecution Service. The Supreme Prosecutor is superior to High Prosecutors, the High Prosecutors are superior to Regional Prosecutors and the Regional Prosecutors are superior to District Prosecutors. Each of them is superior to the prosecutors, who act for their Prosecutor's Office.

⁸ Z. Fišer, Judges Facing the Challenges of European Criminal Law, in: M. Tomášek, (ed.), *European Law and National Criminal Legislation*, Ljubljana/Prague, 2007.

Prosecutors must be Law School graduates, and must have passed the special examination after completing three years in practice. Only the public prosecutor (in CR called state attorney) is authorized to submit the case to the court. The public prosecutor cannot be forced to bring a prosecution. If the results of investigation or detection justify bringing the accused before the court, the prosecutor submits the case to the penal court. The prosecutor cannot begin proceedings in cases where the prosecution is dependent on the consent of the injured party and such consent has not been given or has been withdrawn. The prosecutor may prosecute if there is enough evidence and reasons of public interest so dictate. He may also decide to stop the prosecution if the prescribed punishment is insignificant in comparison with the punishment already inflicted upon the defendant or which is expected to be inflicted for another act, or if it is discovered that the purpose of criminal proceedings has been met.

Prosecutors can settle cases out of court. In proceedings concerning a criminal act for which the law imposes a sentence of imprisonment not exceeding 5 years, the court, and in preliminary proceedings the prosecutor, may with the consent of the defendant, suspend the prosecution conditionally. If the defendant pleaded guilty, the court and the prosecutor may require compensation for the loss caused by the act, or arrange an agreement with the injured party that the defendant pay such compensation. The decision to conditionally suspend prosecution shall stipulate a probationary period from 6 months up to 2 years. A defendant who concluded an agreement to pay damages to the injured party must pay damages during the probationary period. The legal system does not recognize the figure of "plea-bargaining". However, it is foreseen in the proposed new Code of Criminal Procedure.

There is no Code of Conduct for Prosecutors, but they must act in accordance with the Law.⁹ The prosecutor's most important role in criminal process is the following: the prosecutor supervises the preliminary proceedings (he is dominus litis), during which time he is entitled to give binding instructions for the investigation of crimes. In court he represents the state and public interest and has a position as party to the case.

Prosecutorial decisions are monitored by superior prosecutors and by the courts. Mainly, they inspect whether the prosecutor's decision is in accordance with the law. It is possible

⁹ Law of Public Prosecutor's Service Code, Law No. 283/1993 and other binding regulations (e.g. the Code of Criminal Procedure, the Criminal Code, the Constitution).

to say that the police are totally under the authority of the prosecution service in criminal cases. The prosecutor may also take part in performing the acts of the investigator or police body, personally perform an individual act or conduct the whole investigation. Finally, the prosecutor can issue a decision concerning any case matter, refer the matter with his instructions back to the investigator, and cancel illegal or unfounded decisions and measures taken by the investigator or police and substitute his own for them. There are no other investigative agencies with investigative powers prior to trial. Crimes are investigated only by police investigators.

C. Defence

Defence lawyers must be advocates. An advocate must have a Law Degree and have completed 3 years in practice. After this, they must have passed a special examination (judiciary or legal or notary). They are trained by an older advocate called “a tutor” for whom they work. They then must attend obligatory courses held by the Czech Bar Association. Not all lawyers, therefore, have rights of audience in the courts – only advocates have these rights. The Czech Republic has a Bar Association with a criminal law division. Membership is mandatory if a lawyer wants to be an advocate.

There is no Public Defender’s Office and no Code of Conduct for defence lawyers, but there is the Ethics Code of the Czech Bar Association, which is binding on all advocates. Moreover, the Board of Directors Decree regulates the action of advocates while proceeding in criminal cases. Sanctions against misconduct are: expulsion from the Czech Bar Association, suspension of advocate’s activities (6 months to 3 years), financial fine, public admonition and warning.

The client is dominus litis in the relationship lawyer – client. The defence lawyer is regarded as the inseparable and partisan representative of the client, from whom an advocate must obtain a brief. Defence lawyers do not have a duty to actively gather and introduce evidence to support their client’s case, but they can do so. Counsel shall give the accused appropriate legal assistance, effectively apply lawful means and ways of defence for protecting the latter’s interests, mainly with the aim of proper and timely clarification of facts proving the innocence of the accused or alleviating his guilt, and thereby contribute to a proper clarification and decision of the case. All bodies in charge of criminal proceedings

(i.e. court, prosecutor, investigator and police), have a duty to actively gather and introduce evidence.

D. Court Procedure

a. Investigation of the facts/truth-finding/evidence

In criminal process, the emphasis lies on court procedure with regard to establishing the facts of a criminal case. The prosecution has the main responsibility for gathering evidence. The bodies in charge of criminal proceedings must evaluate the evidence based upon careful consideration of all circumstances of the case, both individually and as a whole. Examination of the evidence is based on a dossier compiled by the prosecution. The defendant cannot be forced to give evidence or plead guilty. The defence of the defendant and the evidence presented by him is carefully examined, provided it is not completely irrelevant.

Initially, the court shall evaluate whether an indictment constitutes a reliable basis for further proceedings. The court shall especially consider whether preliminary proceedings before the indictment were conducted in a manner consistent with the Code of Criminal Procedure and whether the results sufficiently justify bringing the accused before the court.

To that effect, the evaluation serves as a preliminary hearing, within which the court may refer the matter back to the prosecutor for further investigation and, if necessary, for the rectification of deficiencies of preliminary proceedings or for proper clarification of the matter.

Anything to help clarify the case can be accepted as evidence, especially defendant and witness testimony, expert opinions, objects and documents significant for criminal proceedings and inspection. All evidence must be obtained according to principles of law. In adopting a decision, the court shall only take into account the facts which have been discussed in a trial and evidence established in the trial. The court has an active truth-finding role. The essential nature of criminal procedure in our country is accusatorial with adversarial attributes.

b. Appeal

The legal remedy against the verdict of the inferior court (court of first instance) is an appeal. Our legal system always allows an appeal against any Article. Only the prosecutor may challenge the verdict in the defendant's disfavour. If obligations to pay damages are involved, the injured party that claimed compensation shall also enjoy the same right to appeal. The verdict also can be challenged in the defendant's favour by direct relatives, brothers or sisters, adoptive parents, adoptive children, spouse and common law spouse. In a case of miscarriage of justice there is the possibility of revision. It is possible to interpose an extraordinary appeal, a motion for a new trial and a complaint of breach of the law against the final Articles.

The Czech legal system allows for appeal to a higher court on points of law. The decision by the higher court cannot have adverse effects for a defendant who has been acquitted by a lower court. The principle called "prohibition of *reformatio in peius*" applies. The term basically means that a person should not be placed in a worse position as the result of filing an appeal. A final appeal (called a constitutional complaint) can be lodged with a Constitutional Court on the grounds that rights safeguarded by the Constitution of the Czech Republic have been violated.

4. Human Rights in Domestic Criminal Process

A. The Right to Life

The amendment of the Criminal Code of 1990 abolished the death penalty, substituting life imprisonment. Life imprisonment is imposed for the most serious criminal offences, the majority of which involve homicide. Nowadays the moves to reintroduce the death penalty are sporadic in the Czech Republic. If reliable information points to a life threatening situation, the right to life imposes positive obligations on the state to instigate criminal investigations. The police can apply some special rules (e.g. rules of detention, rules of custodial measures or rules of custody)¹⁰.

B. The Right to Be Protected against Cruel and Humiliating Treatment

¹⁰ M. Tomášek, *Menschenrechte im europäischen Strafrecht*, Würzburg 2006

The Czech Constitution provides that no person may be tortured or subject to cruel, inhumane or humiliating treatment or punishment. This right is regarded as an absolute right. If reliable information points to a situation in which an individual may be subject to such treatment, the right to be protected against cruel and humiliating treatment imposes positive obligations on the state to instigate a criminal investigation. The police can apply some special rules (e.g. rules of detention, rules of custodial measures or rules of custody).

The interrogation of suspects by the police is mainly governed by the Code of Criminal Procedure and The Constitution (these stipulate for example that the suspects may ask to be examined in the presence of the advocate). The suspects have a right to an interpreter and translation of some important documents (e.g. indictment, provision of law, criminal injunction). A right to counsel becomes effective at the very beginning of criminal proceedings, i.e. in preliminary proceedings. The accused must have an advocate when, for example, there are doubts about the capability of the accused to defend himself because of his physical and mental condition, or when he is in custody, in prison or under assessment in a medical institution.

Counsel may be present during police interrogation of the defendant (or suspect) but during his examination he may not consult his advocate to find out how to answer a question. The Code of Criminal Procedure does not impose an obligation on the bodies in charge of criminal proceedings to record the audio or video tapes of interrogations.

Custody is a procedural act which ensures the detention of the accused for the purposes of criminal proceedings and the execution of punishment. Its purpose is also to prevent the accused from impeding or frustrating the gathering of evidence, and to prevent the completion of a criminal offence or the commission of a new criminal offence. The Code of Criminal Procedure does not allow for mandatory custody. Only a person who is charged can be remanded into custody. In court proceedings, custody is decided by a single judge who decides criminal matters of guilt and punishment within his jurisdiction. A judge decides on matters of custody in preliminary proceedings, at the instigation of the prosecutor. Custody may only last for the period which is absolutely necessary. The time served in custody and the period by which it was extended cannot exceed 3 years, or 4 years in the case of particularly grave criminal offences. All bodies in charge of criminal proceedings are obliged to examine whether the reasons for custody still exist in each stage

of the prosecution. The judge shall do so in preliminary proceedings when deciding, at the instigation of the prosecutor, to extend custody and when deciding on the request of the accused to be discharged from custody. If the defendant is in custody, it is compulsory for him to have an advocate. The advocate can visit him at all times. In custody the defendant may consult the advocate without the presence of a third party.

A complaint against a decision of custody is admissible as a regular legal remedy. A tribunal of a superior court decides on any complaint against the decision of the lower court. If criminal proceedings are conducted against the accused serving a sentence of imprisonment and if a statutory reason for custody is given, the court, or the judge at the instigation of the prosecutor in preliminary proceedings, decides on the reasons, specifications, and duration of restriction. The breaches of pre-trial detention rights can be raised during trial. There are no special groups that are subject to special conditions.¹¹

C. Habeas Corpus

All authorities in charge of criminal proceedings are bound to always inform the accused of his rights and provide him with a possibility to enforce those rights. The police are authorized to bring into custody persons caught committing a crime, and to hold suspects long enough to carry out necessary operations. Suspects cannot be held for longer than 24 hours. A policeman is authorized to put in custody a person who endangers the property, life, or health of other persons, a person who attempts to escape custody, a person who damages police property, a person caught committing an offence, a person who is suspected of preparing for, attempting, or committing an offence. The maximum time that a person can be remanded in custody before being brought before an independent judicial body is 48 hours.

Only the person who is charged can be remanded in custody. Pre-trial incarceration can be imposed in cases meeting one or more of the following conditions: a) the accused is likely to escape or avoid trial, particularly if his or her identity is not known or he or she has no domicile; b) the accused might influence the witnesses or other defendants or hinder the fact-finding process; c) the accused may continue or begin committing crimes or threatens to do so.

¹¹ F. Ciopec, Procedural Guarantees in EU Law, in: M. Tomášek (ed.), *European Law and National Criminal Legislation*, Ljubljana /Prague, 2007.

A financial surety (bail) is a measure that can be substituted for custody. However, if the accused is prosecuted for certain offences (e.g. terrorism, exposure of the public to danger under Section 2, 3, murder, rape under the Criminal Code), bail may not be accepted. When the accused might influence the witnesses or other defendants or hinder the fact-finding process, bail may not be accepted either. With consent of the accused, bail may be furnished by another person. Prior to the acceptance of the bail, such person must be informed of the basis of the accusation and the reasons for custody. The amount and manner of bail deposition is decided by the court, and in the case of preliminary proceedings, by the judge. The bail must have a minimum value of 10,000 Czech crowns, with an undetermined upper limit. In determining the specific amount of the bail, the character and financial resources of the accused or the person who stands bail for the accused is taken into consideration. A complaint can be brought against a bail decision. Initially, the court or judge must decide whether they accept the bail. Following their decision, they decide whether to discharge the accused or keep them in custody.

Custody is subject to regular monitoring by the prosecutor in whose area custody is served. The accused shall have the right to apply for release at any time. If a prosecutor in pre-trial proceedings denies such an application, he shall immediately submit it to the court. The court shall rule on the application without delay. If the application is denied, the accused may not submit it again, unless he states other grounds, any less than fourteen days after the decision became final.

D. Fair Trial

a. The right to know the charges

If there are reasonable grounds to believe that a criminal offence has been committed by a specific person, the investigator or the police shall immediately make a decision that this person will be prosecuted as a person charged with a criminal offence. The defendant shall be notified of the decision without undue delay, however not later than at the beginning of their first interrogation. The defendant shall have the right to request reasonable postponement of the first interrogation to prepare his defence; he must be instructed about this right. The investigator or the police authority shall decide on the duration of the postponement. The investigator or the police authority shall send the copy of the decision

raising the charge to the prosecutor within 48 hours. The suspect shall be informed of the substance of the charge against him and advised of his rights.¹²

If investigation findings are sufficiently strong to justify the accused's being brought before a court, the prosecutor shall file an indictment and attach files and their annexes to it. They shall notify the accused and the defence counsel of filing the indictment. The indictment shall be filed only for the act against which the charges were laid. If the prosecutor wants to view this act as a criminal offence other than the opinion of the investigator, they shall notify the accused and their defence counsel prior to filing indictment and they shall also find out whether they file a motion to extend the investigation with respect to the intended change. The charge cannot be amended during trial.

b. The right to bring one's case before an independent and impartial tribunal within a reasonable time

Settlement out of court

The Czech legal system provides incentives that encourage defendants to settle out of court through pleading guilty and if the defendant; has paid the compensation for damages caused by the criminal offence, has taken other steps to compensate the damage, or otherwise eliminated harm caused by the offence. These figures have been called conciliation and conditional stay of criminal prosecution. Defendants are entitled to legal aid if they settle out of court, because they have the right to elect and consult counsel in the course of procedures carried out by the bodies active in criminal proceedings.

A defendant can insist on appearing before an independent and impartial tribunal, but only the prosecutor can initiate prosecution. Prior to deciding on approving the conciliation, the court – or the prosecutor during formal investigation – shall hear the defendant to make sure that the defendant understands the content of the indictment and is aware of the consequences of the approval of the conciliation. The court or the prosecutor shall then hear the defendant and the aggrieved, in particular with a view to ascertaining the manner and circumstances of the conciliation, whether the conciliation has been made voluntarily, and whether they agree with approval of the conciliation. Examination of the defendant must comprise the defendant's declaration that he has committed the offence which gave rise to

¹² M. Tomášek, Europäischer Katalog der Menschenrechte für Strafverfahren, In: Tomášek, M. (ed.), Menschenrechte im Europäischen Strafrecht, Prag-Würzburg 2006

the prosecution against him. Prior to interrogating the defendant and the aggrieved, they must be advised of their rights and of the essence of the legal institution of conciliation. Concerning the conditional stay of criminal prosecution, the guarantees are analogous. The accused may file a complaint against the decision on conditional stay of criminal prosecution or the decision on approving the conciliation and it shall have a suspending effect. If a court decides on a conditional stay of criminal prosecution or on approving the conciliation then the prosecutor shall also have such a right. If it is a prosecutor's decision (in pre-trial), the complaint is settled by a superior prosecutor.

Independent and impartial tribunal

Judges are appointed by the President of the Czech Republic upon nominations submitted by the Minister of Justice for an unlimited time period. They must agree to be appointed as judges and to serve in the courts to which they are directed. The judges shall be independent in the performance of their office. Nobody may jeopardize their impartiality. A judge may not be recalled or transferred to another court against his will, any exceptions, ensuing in particular from disciplinary liability, shall be specified by law. The office of judge shall be incompatible with the office of President of the Republic, Member of Parliament, or any office in public administration; the law shall specify which other activities are incompatible with the performance of judicial office.

Judges are reasonably paid, are appointed for life and can only be removed following disciplinary proceedings conducted by a special judicial ethics panel, composed of senior judges. According to the Act on Courts and Judges, the judicial function ends at the end of the calendar year in which a judge reaches 70 years old. Judges may be sanctioned for infringement of duties, which the Act on Courts and Judges imposes on judges. The sanctions to which they may be subjected are: a reprimand, cut in salary to 25 % for 6 months at the most, suspension from the office of presiding judge and suspension from the office of judge. Laypersons are elected by local councils. The candidates for the lay judges are nominated by members of local councils. A reasonable time is the time span required for doing something or performing some activities or completing some assignment etcetera under similar circumstances and conditions.

Judges or lay judges shall be disqualified from a criminal case whenever there are reasonable grounds to question their impartiality with respect to the case under consideration or to persons directly involved in the proceedings, their defence counsel, legal representatives and proxies, or another body involved in the same proceedings. A judge or lay assessor shall also be disqualified from criminal proceedings if he has served as a prosecutor, an investigator, a member of the police force, a representative of a civil association, defence counsel or proxy of a participating person or the injured in the same matter. After the indictment has been filed, the judge who – in pre-trial proceedings – issued a search warrant, an arrest warrant or custody ruling in respect of the person against whom an indictment was subsequently filed shall also be disqualified. Moreover, a judge or assessor who took part in the decision of a lower-instance court shall be disqualified from deciding at a higher-instance court and vice-versa.

c. The right to a public hearing and pronouncement of sentence

The court shall hold, as a rule, a public main hearing. Everyone has the right to have their case considered in public, without unnecessary delay, and in their presence, as well as to express their views on all of the admitted evidence. The public may be excluded from the main hearing only if the public hearing were to jeopardize a secret protected by a special act, the undisturbed course of the proceedings or morals or security or any other important interest of witnesses. The public may also be excluded for a part of the main hearing. The court shall rule about excluding the public in a ruling which shall be publicly pronounced after hearing the parties. The defendant, prosecution and the third party too may request that a trial takes place behind closed doors.

d. Presumption of innocence

The accused shall have the right to give his opinion on any allegation of his guilt and the supporting evidence without, however, having the obligation to testify. The accused shall not be coerced in any way to make a statement or confession and his human integrity shall be respected during interrogation. He is not cautioned that he does not need to say anything by which he may incriminate himself, but he is cautioned that he has no obligation to testify. All the authorities active in criminal proceedings shall at any moment advise the

accused of his rights and give him a possibility to fully exercise his rights. If that caution is not given, evidence so obtained is excluded. If a suspect chooses to remain silent, no adverse inferences about his guilt may be drawn.

The burden of proof does not rest with the prosecution, because the burden of proof rests with the court. There is no special sanction against third parties (especially politicians or public officials) for making public statements about a person's guilt before the verdict has been reached by the court. Such matters may be resolved within protection of personality in civil litigation or may be a trespass against civil coexistence.

e. The right to counsel and legal aid

The party against whom proceedings have been instituted shall be advised of his right to defence and his right to choose counsel at any stage in the proceedings; all authorities active in criminal proceedings shall make it possible for this party to exercise his rights. There are no exceptions to the right to counsel, because everyone shall have the right to assistance of counsel in proceedings before courts, other state bodies, or public administrative authorities from the very beginning of such proceedings. The right to counsel implies a right to an adequate defence.

Counsel shall be mandatory if the court or a prosecutor in pre-trial proceedings deems it necessary because they are in doubt whether the accused is capable of proper defence, in view of his physical or mental handicap. An accused has the right to be given the time and opportunity to prepare a defence and to be able to defend himself either pro se or with the assistance of counsel. If he fails to choose counsel even though the law requires him to have one, he shall have counsel appointed by the court. The law shall set down the cases in which an accused is entitled to counsel free of charge.

A suspect/defendant has the right to oppose the actions of defence counsel, because he is dominus litis in the relationship lawyer – client. Counsel may be recalled or relieved of this duty at his own application or on application of the accused, and replaced by a substitute. This decision shall be made by the presiding judge of a panel in judicial proceedings or by a judge in pre-trial proceedings.

Already at the stage of pre-trial proceedings, counsel shall have the right to file motions and petitions and to apply for legal remedies on behalf of the accused, to have access to the files

and to participate in the investigation. Counsel shall have the right to speak with the accused remanded in custody. In the course of judicial proceedings, counsel shall have the right to participate in all of the procedures open to the participation of the accused. At any stage of criminal proceedings, counsel shall have the right to request an advance copy or transcript of the minutes on each procedure of criminal proceedings. The authorities acting in criminal proceedings shall have to grant such request, which may only be refused on technical grounds.

Client-counsel confidentiality cannot be authoritatively overridden. However, the client can relieve the counsel of secrecy. Czech procedure stipulates unrestricted access between counsel and client in principle. There is only one restriction: the accused shall not have the right to consult his counsel about his answers to questions asked during the interrogation.

The Code of Criminal Procedure stipulates that an accused who cannot afford to pay the defence costs shall have the right to a free counsel or to the defence for a reduced legal fee. He must prove that he does not have enough finances to meet the costs. The Bar Association has registered about 10 000 active members in 2007. However, three quarters of them refuse to represent pro bono. Only 28 % of the Czech attorneys at law agree to represent poor and disadvantaged clients pro bono. The reason is that legal aid is not regulated by a comprehensive act. The lawyers state that they are not paid sufficiently in pro bono cases.

f. The right to have adequate time for the preparation of one 's defence

The police may have admitted an implication of a defendant in investigative operations and permit him ask the witnesses questions. Defence counsel shall have the right to be present in all steps in criminal procedure; upon filing the indictment, during summary investigation, counsel has the right to be present at all investigative steps that are open to participation of the defendant. Counsel may have the right to pose questions to the accused and to other interrogated persons, but only after the authority concerned has completed the interrogation and handed him the floor. If the defence counsel informs an investigator of its intention to take part in an investigation procedure, the investigator shall have the obligation to give advance notice of the time and place of the procedure, except when such notice cannot be ensured and the procedure cannot be postponed.

If an investigator or the police authority deems the investigation completed and its results sufficient to file an indictment, he shall make it possible for the accused and his counsel, within a reasonable time, to access the dossier and to submit motions for additional investigation. He shall advise the accused and his counsel of such a possibility at least three days in advance. If the accused and counsel agree, the above time limit may be reduced. If the investigator or the police authority does not consider the proposed additional investigation necessary, he shall reject the motion.

The presiding judge shall order the day of the main hearing in such a way that the defendant shall have, from the day of summons delivery, and the prosecutor and defence counsel from the day of notice, at least a five working day term for preparation. This term may be shortened only with their consent and with regard to the defendant only when they shall appear at the main hearing and explicitly require its execution.

g. The right to know and challenge the evidence

The defence has a right to disclosure of the prosecution case pre-trial (see above). If the accused or his counsel does not take advantage of the possibility to examine the dossier even though they have been duly advised of it, the investigator or the police authority shall note this fact down in the dossier and continue in the proceedings as if such procedure had been performed.

If they have serious reasons, a prosecutor, an investigator or the police shall have the right to deny access to the dossier in the course of pre-trial proceedings. On application by the person denied such access, the prosecutor shall have the duty to expeditiously review the seriousness of reasons given by the investigator or police for such a denial. These rights shall not be denied to the accused and his counsel once these persons have been notified of the possibility to look into the dossier. In granting access to the dossier, secret information can be protected in accordance with the Law of Secret Information Security.

The defendant may state the circumstances and give evidence for his defence, file motions and petitions and apply for legal remedies. The defence has a right to call experts on behalf of the defendant. It is not necessary to have expert evidence re-examined by another expert, if it contains a clause in which the expert states that he is familiar with consequences of knowingly giving untrue expert evidence. The defence has a right to propose the calling of

witnesses on behalf of the defendant. At trial the prosecutor, defendant and defence counsel may request to be allowed to examine the witness. The presiding judge shall satisfy their request, especially if the witness was summoned upon their motion. The defendant and their defence counsel may ask the examined persons questions, usually after the presiding judge has completed his examination and when the members of the panel have no other questions.

The Czech system also allows for hearsay testimony and anonymous testimony. If there is a justified fear that disclosing the identity or the domicile and/or the whereabouts of a witness could put his life, health, or physical integrity in danger, or if such a danger exists for a person close to him, the witness may be allowed to withhold his personal data. At the main hearing, however, he shall make a statement as to how he gained knowledge of the facts he reports. Material that makes it possible to establish the identity of such a witness shall be deposited at the prosecutors' office and, in judicial proceedings, with the presiding judge of a senate. It shall be included in the dossier only after the danger no longer exists. If necessary, such witnesses may also be asked questions concerning the facts relating to their credibility, in particular questions about their relation to the accused or to the injured. Before examining a witness whose identity is not to be disclosed, the court shall exclude the public from the hearing or take other measures to provide for the witness's safety.

h. The right to an interpreter and translation of documents

Everybody shall have the right to use his mother language when dealing with the authorities in criminal proceedings. If there is a need to translate the content of a statement or a written document, or if the accused declares that he does not speak the language of the proceedings, he shall be assigned an interpreter. Should the defendant choose a language for which there is no interpreter on the list of registered interpreters, or if the matter bears no delay and registered interpreters cannot be reached, the criminal justice authority shall assign an interpreter for the official language of the country of the defendant's citizenship or, in the case of stateless persons, of the country of the defendant's residence.

The interpreters must be registered experts and interpreters. They must be the citizens of Czech Republic, have appropriate knowledge of language for which they are appointed and appropriate personal qualities, and they must agree with their appointment as interpreters.

i. The right to privacy

The Czech legal system allows for pro-active, invasive methods that could infringe a person's right to privacy. These methods may be used only if criminal proceedings are instituted. Whoever is in the possession of any object relevant for criminal proceedings shall have the duty to hand it over, when requested, to the court, prosecutor, investigator or police; if the purpose of criminal proceedings requires it, he shall have the duty to surrender, when requested, such an object to these authorities. The authority to request that an object be surrendered shall be vested with the presiding judge of a panel or, in pre-trial proceedings, a prosecutor, an investigator or police.

If an object relevant for criminal proceedings is not surrendered upon request by the person who has it in his possession, it may be seized upon an order issued by the presiding judge of a panel or, in pre-trial proceedings, by a prosecutor, investigator or police authority. An investigator or a police body shall issue such order only upon a prior authorization by a prosecutor.

Where money held in a bank account or in a subsidiary of a foreign bank is materially relevant for criminal proceedings, the presiding judge of a panel or the prosecutor during formal investigation may issue an order to freeze the account.

House searches may be conducted if there are reasonable grounds to believe that an object relevant for criminal proceedings may be found, or a person suspected of a crime is hiding in that house or other places used for residential purposes or premises attached to them (dwellings). A search of a person may be conducted if there are reasonable grounds to believe that the person concerned has on him an object relevant for criminal proceedings. A house search warrant shall be issued by the presiding judge of a panel or, in pre-trial proceedings, by a judge on application by a prosecutor. In cases of emergency, such a warrant may be issued by the presiding judge of a panel or a judge of the court in whose district the search is to be conducted rather than the competent presiding judge of a panel or a judge. A warrant for searching other premises or property shall be issued by a judge or the presiding judge of a panel or, in pre-trial proceedings, by a prosecutor, investigator or a police body. An investigator or a police body shall need a prior authorization by a prosecutor. The warrant shall be issued in writing and shall contain the justification. The

warrant to conduct the search of a person shall be issued by a judge or the presiding judge of a panel or, in pre-trial proceedings, by a prosecutor; upon an authorization by the latter, it may be issued by an investigator or a police body.

An investigator or a police body may enter a dwelling, other premises or property only in cases of emergency when entry is necessary to protect the life or health of persons or to safeguard other rights and freedoms, or to avert a serious threat to public safety and, in particular, if the dwelling, other premises or property belong to a person caught committing a crime.

If the clarification of facts relevant for criminal proceedings makes it necessary to ascertain the content of undelivered telegrams, letters or other private communications dispatched by or addressed to the accused, the presiding judge of a panel or, in pre-trial proceedings, a prosecutor or an investigator shall issue an order to the post office or the mail delivery organization to surrender such private communications; the investigator may do so upon prior authorization by a prosecutor. Surrendered mail consignments may be opened only by the presiding judge of a panel or, in pre-trial proceedings, by a prosecutor, an investigator or the police; the investigator or the police must obtain prior authorization by a prosecutor.

Where criminal proceedings are conducted in respect of a particularly serious criminal offence under the Criminal Code, or in respect of a wilful criminal offence, where so provided by a promulgated international treaty, it shall be possible to issue an order to intercept and record telecommunications activities if there are reasonable grounds to believe that this will reveal facts that are materially relevant for criminal proceedings. Where, in the course of intercepting and recording telecommunications activities, the defendant is found to be in communication with his counsel, no information thus obtained may be used for the purposes of criminal proceedings, and any such information must be forthwith destroyed in a prescribed manner; this shall not apply to information relating to a case in which counsel does not represent the defendant. The order to intercept and record telecommunications activities shall be issued in writing prior to the commencement of prosecution or during formal investigation by a judge acting on a proposal from a prosecutor or, in the proceedings before the court, by a judge or the presiding judge of a panel even in the absence of such a proposal.

j. The right to freedom of expression; the role of the media in criminal process

A lawyer cannot be prosecuted for what he has said in court in defence of his client. Authorities active in criminal proceedings shall inform the public of their activities through the mass media. They shall take care not to endanger the clarification of facts relevant for adjudicating the case, not to report data about the parties to criminal proceedings that are not directly connected with the criminal act, and not to violate the principle of considering the person against whom the criminal proceedings has been instituted innocent until proven guilty by a final sentencing judgment. The prosecutors and the judges are allowed to talk to the media about ongoing cases, but they cannot speak about future decisions. The media can report freely on ongoing cases at both the investigative and trial stage, with the exception of juvenile cases. They do not have the right to name juveniles and must show respect for victims.¹³ If journalists fail to comply with restrictions, they could answer to a charge of trespass.

The public, including the press, may be excluded from the main hearing only if the public hearing were to jeopardize a secret protected by a special act, the undisturbed course of the proceedings or morals or security or any other important interest of witnesses. The television can be present in the courtroom only if the judge allows it. The criminal justice authorities do not provide special facilities for the media.

k. Protection against discrimination

The guarantees of a fair trial and other fundamental rights relevant to criminal process are applied indiscriminately to all persons.

l. Protection against double jeopardy

If a decision has been reached in the final instance by a domestic court, another prosecution cannot be brought against the same defendant for the same offence. If the decision was given by a foreign court, it must be recognised by a Czech court. The motion for recognition of a foreign decision shall be submitted on the basis of a request by a foreign authority, by the Ministry of Justice to the Regional Court in whose district the sentenced

¹³ See D. Císařová & J. Hořák, Der Geschädigte und die Europäisierung des Strafverfahrens in: M. Tomášek, (ed.), *Menschenrechte im europäischen Strafrecht*, Prag/Würzburg 2006; or D. Císařová, Die Reform des Strafverfahrens in der Tschechischen Republik, in: A. Esser, J. Arnold & J. Trappe, (Hrsg.), *Strafrechtsentwicklung in Osteuropa : zwischen Bewältigung und neuen Herausforderungen*, Berlin, Duncker & Hublot, 2005, pp. 128 ff.

person has his residence, and which shall have jurisdiction to proceed. If the sentenced person is not resident in the Czech Republic, the Regional Court in Prague shall have jurisdiction. The recognised foreign decision shall have the same legal effects as a decision by a Czech court.¹⁴

E. Consequences of Misuse or Abuse of power and/or Infringement of Fundamental Rights

Evidence obtained by means of unlawful duress or threat of duress cannot be used in the proceedings, except if it is to be used as evidence against a person who has used duress or threat of duress. This rule is applied to all violations of fundamental rights.

The sanctions in different instances of misuse or abuse of power and/or an infringement of fundamental rights are:

Misuse of invasive methods of surveillance by investigative authorities: exclusion of unduly obtained evidence, disciplinary punishment (depending on the circumstances of the case)

Breaches of pre-trial detention rights: disciplinary punishment (depending on the circumstances of the case), compensation of damages caused by incorrect official resolution
Undue delay in bringing the case: claim on an appropriate compensation from state, disciplinary punishment (depending on the circumstances of the case)

Undue infringement of privacy and/or presumption of innocence through statements made to the media by figures of public authority: disciplinary punishment

Prosecutorial misconduct/abuse of process or infringement of other fair trial rights: exclusion of unduly obtained evidence, disciplinary punishment, punishment for criminal offence (for offence abuse of power by a public official), compensation of damages caused by incorrect official resolution or official procedure (depending on the circumstances of the case)

F. State of Emergency and Derogation from Obligations under Human Rights Treaties

The Czech legal system allows for the suspension of human rights (including those of fair trial) in emergency situations. The power to make this decision rests with the Parliament or the Government of the Czech Republic (depending on the situation). Decisions on the

¹⁴ T. Gřivna, The principle ne bis in idem in the European Law, in: M. Tomášek (ed.), *Menschenrechte im Europäischen Strafrecht*, Prag/Würzburg 2006.

declaration of war, approval of a dispatch of Czech military forces outside the territory of the Czech Republic, or of the presence of foreign military forces on the territory of the Czech Republic, as well as a decision on the participation of the Czech Republic in defence systems of international organizations of which the Czech Republic is a member, shall require the consent of absolute majority of all Deputies and absolute majority of all Senators. The control mechanism, which will be applied, is ex post control. Our legal system distinguishes between derogable and non-derogable human rights.

5. RECENT LEGAL CHANGES IN CZECH CRIMINAL PROCEDURE AFFECTING HUMAN RIGHTS

There have been reforms of the Criminal Code in connection with organised crimes and terrorism. A new offence called “the terrorist attack” has been formulated and criminal sanctions for offences committed as organised crimes have been toughened up. The reforms amended the existing common legal framework of criminal law enforcement.

A. Pre-trial setting

In the Czech Republic, coercive measures have not been introduced in such way that they could definitely preclude fair trial norms, although special measures for the protection of the identity of witnesses, victims, judges etcetera have been introduced, as have specific production orders for stored information at the disposal of service providers especially internet providers, credit card companies or cell phone operators. The legal system has not experienced an increase of investigative powers and coercive powers of the investigation authorities or cooperation duties of investigated persons. Neither has a shift of powers occurred from the judiciary to the executive dealing with investigation, from public prosecutors to the police (rather the opposite). Pre-trial evidence is subjected to judicial control. In the field of serious offences the judicial control is inferior.

Requests for legal assistance emanating from the Czech pre-trial authorities shall be transmitted abroad through the General Prosecutor’s Office. Requests for legal assistance emanating from the Czech courts shall be transmitted abroad through the Ministry of Justice. Diplomatic channels shall not be excluded. Service effected by a foreign authority upon a request by the Czech authority, as well as evidence taken by such authorities, shall

be valid if they were carried out in accordance with the law of the requested State or if they comply with the law of the Czech Republic.

B. Trial and post-trial setting

A regional court shall act as a first-instance court in respect of criminal offences punishable by a minimum sentence of eight years imprisonment or by exceptional punishment. A regional court shall also act as a first-instance court in respect of criminal offences of high treason, subversion of the republic, terrorism, diversionist activities, sabotage, espionage, genocide, endangering an official secret under the Criminal Code. When dealing with serious offences such as terrorism and organised crime, there have been no changes to the rights to fair trial of the suspect/accused/detained person. Nor have there been any changes post-trial.

ANNEX I

List of selected UN multilateral international human rights treaties ratified by the Czech Republic (as to January 24, 2008)

Treaty	Signature	Ratification	Reservations
International Covenant on Civil and Political Rights	7.10.1968 (Czechoslovakia)	23.12. 1975 (Czechoslovakia)	No (see note I/1)
Optional Protocol to the International Covenant on Civil and Political Rights	12.3.1991 - (Czechoslovakia)	(accession)	No
<u>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</u>	8.9.1986 (Czechoslovakia)	7.7.1988 (Czechoslovakia)	No (see note I/2)
Optional Protocol to the Convention against	13.9.2004	10.7.2006	No

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment			
Convention on the Rights of the Child	30.9.1990 (Czechoslovakia)	7.1.1991 (Czechoslovakia)	Noi (see note I/3)

Note I/1

Czechoslovakia had signed and ratified the Convention on 7 October 1968 and 23 December 1975, respectively, with reservations and declarations. For the texts of the reservations and declarations made upon signature and ratification, see United Nations, Treaty Series, vol. 999, pp. 283 and 289.

Subsequently, on 12 March 1991, the Government of Czechoslovakia had declared the following:

[The Czech and Slovak Federal Republic] recognizes the competence of the Human Rights Committee established on the basis of Article 28 of the Covenant to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant.

Further, on 7 June 1991, the Government of Czechoslovakia had made the following objection:

"The Government of the Czech and Slovak Federal Republic considers the reservations entered by the Government of the Republic of Korea to the provisions of paragraphs 5 and 7 of Article 14 and Article 22 of the International Covenant on Civil and Political Rights as incompatible with the object and purpose of the Covenant. In the opinion of the Czechoslovak Government, these reservations are in contradiction to the generally recognized principle of international law according to which a state cannot invoke the provisions of its own internal law as justification for its failure to perform a treaty.

"Therefore, the Czech and Slovak Federal Republic does not recognize these reservations as valid. Nevertheless the present declaration will not be deemed to be an obstacle to the entry into force of the Covenant between the Czech and Slovak Federal Republic and the Republic of Korea."

Objection of the Czech Republic: 12 September 2007

With regard to the reservation made by Maldives upon accession:

"The Government of the Czech Republic has carefully examined the contents of the reservation made by the Republic of Maldives upon accession to the International Covenant on Civil and Political Rights, adopted on 16 December 1966, in respect of Article 18 thereof.

The Government of the Czech Republic is of the opinion that the aforementioned reservation is in contradiction with the general principle of treaty interpretation according to which a State party to a treaty may not invoke the provisions of its internal law as justification for failure to perform according to the obligations set out by the treaty. Furthermore, the reservation consists of a general reference to the Constitution without specifying its content and as such does not clearly define to other Parties to the Covenant the extent to which the reserving State commits itself to the Covenant.

The Government of the Czech Republic recalls that it is in the common interest of States that treaties to which they have chosen to become party are respected as to their object and purpose by all parties, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties. According to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation that is incompatible with the object and purpose of a treaty shall not be permitted.

The Government of the Czech Republic therefore objects to the aforesaid reservation made by the Republic of Maldives to the Covenant. This objection shall not preclude the entry into force of the Covenant between the Czech Republic and the Republic of Maldives, without the Republic of Maldives benefiting from its reservation."

Note I/2

Czechoslovakia had signed and ratified the Convention on 8 September 1986 and 7 July 1988, respectively, with the following reservations:

"The Czechoslovak Socialist Republic does not consider itself bound, in accordance with Article 30, paragraph 2, by the provisions of Article 30, paragraph 1, of the Convention."

"The Czechoslovak Socialist Republic does not recognize the competence of the Committee against Torture as defined by Article 20 of the Convention."

Subsequently, on 26 April 1991, the Government of Czechoslovakia notified the Secretary-General of its decision to withdraw the reservation with respect to Article 30 (1).

On 17 March 1995 and 3 September 1996, respectively, the Governments of Slovakia and the Czech Republic notified the Secretary-General that they had decided to withdraw the reservation with respect to Article 20 made by Czechoslovakia upon signature, and confirmed upon ratification.

Note I/3

Czechoslovakia had signed and ratified the Convention on 30 September 1990 and 7 January 1991, respectively, with the following declaration in respect of Article 7 (1):

"In cases of irrevocable adoptions, which are based on the principle of anonymity of such adoptions, and of artificial fertilization, where the physician charged with the operation is required to ensure that the husband and wife on one hand and the donor on the other hand remain unknown to each other, the non-communication of a natural parent's name or natural parents' names to the child is not in contradiction with this provision."

By a communication received on 7 June 1991, the Government of Czechoslovakia had made the following objections with regard to the reservation made by Kuwait upon signature:

"These reservations are incompatible with the object and purpose of the Convention. In the opinion of the Czechoslovak Government, the said reservations are in contradiction to the generally recognized principle of international law according to which, a state cannot invoke the provisions of its own internal law as justification for its failure to perform a treaty. Therefore the Czech and Slovak Federal Republic does not recognize these reservations as valid."

1 During the ceremony of accession to the Council of Europe, the Minister of Foreign Affairs of the Czech Republic declared that the reservation made by the Czech and Slovak Federal Republic to Articles 5 and 6 of the Convention will remain applicable. The reservation reads as follows:

"The Czech and Slovak Federal Republic in accordance with Article 64 of the Convention for the Protection of Human Rights and Fundamental Freedoms [Article 57 since the entry into force of the Protocol No 11] makes a reservation in respect of Articles 5 and 6 to the

effect that those Articles shall not hinder the imposition of disciplinary penitentiary measures in accordance with Article 17 of the Act No. 76/1959 of Collection of Laws, on Certain Service Conditions of Soldiers."

The terms of section 17 of the Law on certain conditions of service of members of the armed forces, No. 76/1959 in the Compendium of Legislation, are as follows:

Section 17

Text transmitted by Note Verbale from the Permanent Representation, dated 8 April 1992, registered at the Secretariat General on the same day - Or. Fr.

Disciplinary Sanctions

1. Disciplinary sanctions shall comprise: a reprimand, penalties for petty offences, custodial penalties, demotion by one rank, and in the case of non-commissioned officers, reduction to the ranks.
2. Disciplinary custodial penalties shall comprise: confinement after duty, light imprisonment and house arrest.
3. The maximum duration of a disciplinary custodial penalty shall be 21 days.

ANNEX II

List of selected Council of Europe multilateral international human rights treaties ratified by the Czech Republic (as to January 24, 2008)

Treaty	Signature	Ratification	Reservations
European convention on Human Rights and Fundamental Freedoms	21.2.1991 (Czechoslovakia)	18.3.1992 (Czechoslovakia)	Yes (see note II/1)
Protocol to the Convention for the Protection of Human	21.2.1991 (Czechoslovakia)	18.3.1992 (Czechoslovakia)	No

Rights and Fundamental Freedoms			
Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinions	21.2.1991 (Czechoslovakia)	18.3.1992 (Czechoslovakia)	No
Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention	21.2.1991 (Czechoslovakia)	18.3.1992 (Czechoslovakia)	No
Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto	21.2.1991 (Czechoslovakia)	18.3.1992 (Czechoslovakia)	No
Protocol No. 5 to the Convention for the Protection of Human	21.2.1991 (Czechoslovakia)	18.3.1992 (Czechoslovakia)	No

Rights and Fundamental Freedoms, amending Articles 22 and 40 of the Convention			
Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty	21.2.1991 (Czechoslovakia)	18.3.1992 (Czechoslovakia)	No
Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms	21.2.1991 (Czechoslovakia)	18.3.1992 (Czechoslovakia)	No
Protocol No. 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms	21.2.1991 (Czechoslovakia)	18.3.1992 (Czechoslovakia)	No
Protocol No. 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms	5.2.1992 (Czechoslovakia)	7.5.1992 (Czechoslovakia)	No
Protocol No. 10 to the Convention for the Protection of Human Rights and Fundamental Freedoms	7.5.1992 (Czechoslovakia)	26.6.1992 (Czechoslovakia)	No

Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby	11.5.2004	28.4.1995	No
Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms	4.11.2000	No	No
Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances	3.5.2002	2.7.2004	No
Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention	29.6.2005	19.5.2006	No
<u>European convention for the prevention of torture and inhuman or degrading treatment or punishment</u>	23.12.1992 (Czechoslovakia)	7.9.1995	No

Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	28.4.1995	7.9.1995	No
Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	28.4.1995	7.9.1995	No

Note II/1

Czechoslovakia had signed and ratified the Convention on 30 September 1990 and 7 January 1991, respectively, with the following declaration in respect of Article 7 (1):

"In cases of irrevocable adoptions, which are based on the principle of anonymity of such adoptions, and of artificial fertilization, where the physician charged with the operation is required to ensure that the husband and wife on one hand and the donor on the other hand remain unknown to each other, the non-communication of a natural parent's name or natural parents' names to the child is not in contradiction with this provision."

By a communication received on 7 June 1991, the Government of Czechoslovakia had made the following objections with regard to the reservation made by Kuwait upon signature:

"These reservations are incompatible with the object and purpose of the Convention. In the opinion of the Czechoslovak Government the said reservations are in contradiction to the generally recognized principle of international law according to which a state cannot invoke the provisions of its own internal law as justification for its failure to perform a treaty. Therefore the Czech and Slovak Federal Republic does not recognize these reservations as valid."