Research project EUPRETRIALRIGHTS

Improving the protection of fundamental rights and access to legal aid for remand prisoners in the European Union

ANALYSIS OF NATIONAL LAW

National norms as regard to access of detained persons to the law and to court

Report on CZECH REPUBLIC

Clara Rey Sanchez
Dr. Esther Pascual Rodriguez[1]

Universidad Pontificia de Comillas ICAI-ICADE Madrid

21 November 2018

[1] With the cooperation of *Prof. dr. Pedro Jose Cabrera Cabrera*

This report is part of the research project EUPRETRIALRIGHTS from the consortium of partners :

Centre National de la Recherche Scientifique
Laboratoire SAGE, Université de Strasbourg
CESDIP, Université de Saint Quentin en Yvelines/Ministère de la Justice
European Prison Litigation Network
University of Utrecht, Montaigne Centre for Rule of Law and Administration of Justice
Helsinki Foundation for Human Rights, Poland
Dortmund University of Applied Sciences and Arts
University of Florence, L'Altro diritto - Inter-university Centre
Bulgarian Helsinki Committee
Ghent University, Institute for International Research on Criminal Policy
General Council of Spanish Bars
Pontifical University of Comillas

This project was funded by the European Union's Justice Programme (2014-2020).

INTRODUCTION:

CONTEXTUALIZATION

According to the latest available Council of Europe Annual Penal Statistics (SPACE I Project), the total population of the Czech Republic is 10 553 843 and the total number of inmates on 1st January 2018 (including pre-trial detainees) is 22 159.[2] The latests data available from the SPACE I Project regarding the prison population rate per 100 000 inhabitants in the Czech Republic is from 1st September 2015 and amounted to 197.7, a relatively high number if compared to other countries (for example, Germany, 77.4 or France 98.4) and well above the European median, which stood at 115.7.[3]

As regards the prison density per 100 places, on 1st January 2018, it amounted to 105.5[4] which means that the prison facilities in the Czech Republic are overcrowded.[5] The negative effects of overcrowding are worsened by the fact that prison facilities are built on the principle of shared accommodation; as the Ombudsman noted in its report "even newly built accommodation facilities follow the system of shared accommodation."[6] "The "one cell – one inmate" system cannot be applied as yet in view of the structural design of the premises, because the interior lay-out in most prisons was dimensioned for the traditional placement of inmates in groups…[Nevertheless,]...certain specifics apply to the execution of life imprisonment sentences, where according to the law inmates are generally placed in single cells."[7]

Overcrowding is an issue not only in prisons for convicted but in remand prisons too, since they are never purely custodial. In fact, in many cases, "pre-trial detention is accompanied by far worse conditions than actual imprisonment...[indeed]...custody itself involves a series of problems. In particular, these are unsuitable premises for custody (small cells with poor hygiene conditions) owing to the architectural layout of the buildings, which are old and often do not allow for any activities outside the cells.[8] Areas for inmates to spend time outside are very small, sparse, and not arranged in a natural manner...[and]...the prison service is currently unable to fully implement programmes for treating defendants in accordance with the law".[9]

As regards the regulation of pre-trial detention, Law no. 265/2001 Coll., which came into force on January 1, 2002 presented a significant change and substantially amended and

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2 Council of Europe Annual Penal Statistics SPACE I-Custody, Available at http://wp.unil.ch/space/space-i/prison-stock-on-1st-january/2018-2/

3 Council of Europe Annual Penal Statistics SPACE I-Prison Populations, Survey 2015 (updated 25th April 2017), p. 34 and 47. Available at http://wp.unil.ch/space/files/2017/04/SPACE_I_2015_FinalReport_161215_REV170425.pdf

4 Council of Europe Annual Penal Statistics SPACE I-Custody, Available at http://wp.unil.ch/space/space-i/prison-stock-on-1st-january/2018-2/

5 "Czech prisons have been dealing long-term with the issue of insufficient accommodation capacity, with the exception of the year 2013 and the following year, when the number of inmates fell significantly due to a proclamation of amnesty of the President" Zdeněk Karabec, Jiří Vlach, Jana Hulmáková et al. Criminal Justice System in the Czech Republic 3 rd amended and revised edition, Praha 2017, p. 96

6 Public Defender of Rights, Report on Systematic Visits to Prisons carried out by the Public Defender of Rights, 2016, p. 17

7 Zdeněk Karabec, Jiří Vlach, Jana Hulmáková et al. Criminal Justice System in the Czech Republic 3 rd amended and revised edition, Praha 2017, p. 90

8 "Some prisons housed in historical buildings are today antiquated and in certain other cases the prisons are not fully suitable, since they were created by re-purposing former boarding houses for the workers of various industrial plants or former military buildings etc." Zdeněk Karabec, Jiří Vlach, Jana Hulmáková et al. Criminal Justice System in the Czech Republic 3rd amended and revised edition, Praha 2017, p. 96

9 Public Defender of Rights, Report on Visits to Remand Prisons, April 2010, p. 7-8

supplemented the Criminal Procedure Code.[10] This amendment regulated, among other things, the conditions for being taken into custody (which were made much stricter) and its duration (which was restricted).[11]

Currently, the maximum terms that a person may be remanded in custody according to the Criminal Procedure Code (§72.a), are the following:[12]
- one year in cases of crimes which are dealt with by a single judge,
- two years in cases of crimes which are dealt with by a panel of three judge
- three years in cases of felony crimes (i.e. intentional crimes punishable by a sentence with an upper jail term of at least 10 years)
- four years in cases punishable by an exceptional penalty (i.e. 20 – 30 years or life imprisonment)

One third of the maximum pre-trial detention term may be exhausted in pre-trial proceedings and two thirds may be exhausted during the trial. Reaching the maximum term is always reason for immediate release. An exception to the time limits above arises in cases of pre-trial detention due to concern of interfering with witnesses or similar frustration of proceedings, in which case the maximum pre-trial detention period may be only three months, except where the accused person has already been influencing witnesses or otherwise frustrating the proceedings. The court must review the reasons for pre-trial detention every three months and decide either to continue it, or to release the accused person. Both the prosecutor and the pre-trial detainee may file a complaint against any decision on pre-trial detention, which leads to review by an appellate court. Special rules of remand pertain to persons who are processed for extradition, e.g. illegal foreigners or those detained under the European Arrest Warrant.

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10 Besides the Criminal Procedure Code, other pieces of Czech legislation concerning criminal sanctions policy and penitentiary issues have also been amended in the last two decades. In this sense, a new Criminal Code (Law No. 40/2009 Coll.) was adopted, which came into force on 1st January 2010. Pursuant to the new Criminal Code (and related amendments from 2011 and 2012) two new sentence types: house arrest and prohibition to enter sport, cultural and other social events were introduced. Besides the introduction of the new types of sanctions, the conditions for imposing the already existing types of sentences were significantly modified. These modifications clearly reflect the philosophy of an overall limitation of the space for imposing imprisonment terms, supported by widening the options for applying alternative sentences. On the other hand, the new Criminal Code also made sentences related to crimes of a serious character more severe. Indeed, the new Criminal Code extended the general maximum permitted imprisonment term from 15 to 20 years. The imprisonment term can be extended from 20 to 30 years only for extraordinary imprisonment cases as regards offenders who have committed criminal acts for the benefit of an organized crime group or in the cases of extraordinary sentences. An exceptional sentence of imprisonment may only be imposed for a particularly serious crime for which this punishment is permitted by the Criminal Code or if reforming the offender is particularly difficult. Life imprisonment is foreseen by Czech legislation. Courts may only impose a sentence of life imprisonment on an offender who committed a particularly serious felony of murder (Section 140 (3)), or who intentionally caused the death of another person when committing a particularly serious felony of general danger (Section 272 (3)), treason (Section 309), terrorist attack (Section 311 (2)), terror (Section 312), genocide (Section 400), attack against humanity (Section 401), use of forbidden means and methods of combat (Section 411, (3)), war cruelty (Section 412 (3)), persecution of civilians (Section 413 (3)), or abuse of internationally recognized and national signs and symbols (Art. 415 (3)), under the condition that a) such especially serious crime is extraordinarily serious due to the especially egregious manner of the commission of the act or especially egregious motive, or to the exceptionally severe and difficult to remediate consequences; and b) the imposition of such sentence is required for the effective protection of society or there is no hope that the offender could be reformed by a sentence of imprisonment of twenty to thirty years. Zdeněk Karabec, Jiří Vlach, Jana Hulmáková et al. Criminal Justice System in the Czech Republic 3 rd amended and revised edition, Praha 2017

11Zdeněk Karabec, Jiří Vlach, Jana Hulmáková et al. Criminal Justice System in the Czech Republic 3 rd amended and revised edition, Praha 2017, p. 51

12British Embassy Prague, Information pack for British prisoners in the Czech Republic, 2016, p. 15-16

I. Regime of detention applicable to pre-trial detainees

Pre-trial detention[13] is mainly regulated in the following legal texts:
1. The Criminal Procedure Code (*Zákon o trestním řízení soudním (trestní řád)*, Law No. 141/1961 Coll., as subsequently amended)
2. The Law on the Execution of Pre-trial Detention (*Zákon o výkonu vazby*, Law No. 293/1993 Coll., as subsequently amended)
3. The Ministry of Justice Decree on the Execution of Pre-trial detention (*Vyhláška Ministerstva spravedlnosti, kterou se vydává řád výkonu vazby,* Regulation No. 109/1994 Coll., as subsequently amended)
4. and the internal regulations of the Prison Service of the Czech Republic, the activity of which is governed particularly by Law No. 555/1992 Coll., on the Prison Service and Judicial Guard of the Czech Republic, as subsequently amended (*Zákon České národní rady o Vězeňské a justiční stráži České republiky*)

According to §4 of the Law on the Execution of Pre-trial Detention, pre-trial detention is served in remand prisons (which are never purely custodial)[14] or in special sections of prisons for convicted.

There are in total 37 prison and detention facilities in the Czech Republic, out of which 10 are remand prisons.[15] Pursuant to §2 of an Order of the General Director of the Prison Service of the Czech Republic,[16] the following penitentiary facilities serve as remand prisons:
1. Brno Remand Prison and Preventive Detention Facility
2. České Budějovice Remand Prison
3. Hradec Králové Remand Prison
4. Liberec Remand Prison
5. Litoměřice Remand Prison
6. Olomouc Remand Prison
7. Ostrava Remand Prison
8. Praha-Pankrác Remand Prison
9. Prague-Ruzyně Remand Prison
10. Teplice Remand Prison

Pursuant to the provisions of §3 of the same Order of the General Director of the Prison Service of the Czech Republic, the following prison facilities for convicted also have specific wardens for pre-trial detainees:
1. Břeclav Prison
2. Ostrov Prison
3. Plzeň Prison
4. Světlá nad Sázavou Prison
5. Znojmo Prison.

According to a description of the Czech Ombudsman, generally, “remand prisons tend to be buildings (or complexes of buildings) in the centres of cities which form part of or are adjacent to court buildings. Most of these buildings are approximately...80-100 years

13 Imprisonment of convicted is mainly regulated in the Law on the Execution of Imprisonment (*Zákon o výkonu trestu odnětí svobody*, Law No. 169/1999 Coll.)
14 As noted by the Czech Ombudsman, remand prisons “are never purely custodial; they also contain more or less separate sections, in some cases in outlying buildings, which serve for imprisonment purposes. These, however, are smaller sections which are used especially to house prisoners who work inside the remand prison.” Public Defender of Rights, Report on Visits to Remand Prisons, April 2010, p. 9
15https://www.vscr.cz/organizacni-jednotky/
16 Order 12/2010 on the identification of remand prisons and prisons run by the Prison Service of the Czech Republic

old...The capacity of cells varies from one to eight prisoners; most often cells contain 2-4 beds...Prisons also set up multi-purpose cells, especially as cultural rooms, which are often furnished with nothing more than furniture and equipment for watching television or a DVD...Prisons always contain rooms for inmates to meet with lawyers, visiting rooms, and exercise yards."[17]

The provisions of § 9 of the Law on the Execution of Pre-trial Detention state that the basic equipment of a cell for every defendant must include a bed, a lockable cupboard for storing personal belongings, a small table and chair for each occupant, as well as a toilet separated from the rest of the cell by an opaque screen. Each cell must have electrical lighting and signaling devices. In addition, there has to be a washbasin with running water (§ 14 of the Ministry of Justice Decree on the Execution of pre-trial detention).

As foreseen in §7 of the Law on the Execution of Pre-trial Detention, different groups of inmates are kept separately. Hence, pre-trial detainees are to be remanded separately from convicted, men from women, juveniles from adults, smokers from non-smokers, etc. Further, pre-trial detainees are also to be remanded separately from other pre-trial detainees based on the reasons for their pre-trial detention (§7.2).[18]

§8 of the Law on the Execution of Pre-trial Detention and §13 of the Ministry of Justice Decree on the Execution of pre-trial detention foresee the possibility of applying **pre-trial detention with a moderate regime** (also called open-type pre-trial detention) on those detainees whose behaviour guarantees that their free movement within an allocated section and their contact with other pre-trial detainees will not disturb the purpose of pre-trial detention. As noted by the Czech Ombudsman,[19] moderate pre-trial detention "should not be a special situation, as is currently the case" and in her reports fully recommends the Czech Prison Service to make greater use of this modality of pre-trial detention.

Pre-trial detainees are allowed to receive **visits** in application of § 14 of the Law on the Execution of Imprisonment and § 44 -§ 47 of the Ministry of Justice Decree on the Execution of pre-trial detention. Visits generally take place on working days, in daytime, in a visiting room within the prison. Pre-trial detainees have the right to receive a visit of no more than 4 persons once every 2 weeks for ninety minutes. In justified cases, the prison director may allow the reception of more than two weekly visits, or for longer than ninety minutes. Also in justified cases the prison director may decide that for security reasons the visit must take place in a room where the visitor is separated from the defendant by a partition. Visits generally take place in the presence of the Prison Service staff, yet in justified cases, the prison director may allow a visit without auditory or visual inspection. However, it appears that in practice such visits are never granted[20]

As regards the practical arrangements for visits, pre-trial detainees must fill in an application for a visit approval stating the name and number of visitors and hand this application to the prison service workers in an unsealed envelope. Once the application is approved and the exact date of the visit set, the prison service staff will stamp the envelope, seal it and send it to the address stated on the envelope by the pre-trial detainee. Visitors must identify themselves when they arrive at the prison by showing an identification document containing a photograph (e.g. passport).[21] If the reason behind pre-trial detention is the fear of influencing witnesses or otherwise frustrating the investigation, the application for a visit

17 Public Defender of Rights, Report on Visits to Remand Prisons, April 2010, p. 9

18 For example, according to § 7.2.a) those pre-trial detainees who are prosecuted for one of the offences referred to in Article 88(4) of the Criminal Code are to be kept separately from the rest of pre-trial detainees. Article 88(4) refers to criminal offences such as murder, manslaughter, torture, unauthorised extraction of organs, abduction, sexual abuse, treason, terrorism, etc.

19 Public Defender of Rights, Report on Visits to Remand Prisons, April 2010, p. 12

20 CPT/Inf (2015) 18, p. 30

21 British Embassy Prague, Information pack for British prisoners in the Czech Republic, 2016, p. 7

approval needs to be sent to the investigating bodies (mainly the Public Prosecutor) who will determine the date and terms of the visit (§14.2 of the Law on the Execution of Pre-trial Detention).

Visitors can bring a parcel containing food, books or things for personal use to a maximum of 5kg (§46 of the Ministry of Justice Decree on the Execution of pre-trial detention). Alternatively, the parcel may be sent by post. Pre-trial detainees may receive a parcel once every three months. This limitation does not apply to parcels containing clothes sent as a change for existing clothes,[22] books, and – only when on remand – also to personal hygiene items.[23]

As regards **correspondence**, pre-trial detainees may receive and send at their own expense written communications without limitation (§13 of the Law on the Execution of Pre-trial Detention). Correspondence is subject to control by prison staff, except for the correspondence between detainees and their lawyers, the state authorities of the Czech Republic or diplomatic mission or consular office of a foreign State, or between pre-trial detainees and international organizations, which have jurisdiction over applications concerning human rights under an international agreement binding on the Czech Republic. This correspondence is delivered at the expense of the prison if the pre-trial detainee has no funds (§13.3 of the Law on the Execution of Pre-trial Detention and §41.2 of the Ministry of Justice Decree on the Execution of pre-trial detention)

§13(a.) of the Law on the Execution of Pre-trial Detention states the right of pre-trial detainees, who are not remanded in prison because of the fear of influencing witnesses or otherwise frustrating the investigations, to use the **telephone** to contact a close person. The costs associated with the use of the telephone shall be borne by pre-trial detainees. Only for a grave reason detainees may be allowed to use the telephone to contact someone who is not a close person. Lawyers are classified within this group and §13a.3 foresees that if the detainee has no funds to make the telephone call, the prison administration shall bear the costs of the first contact. The practical arrangements for making a phone call are as follows: detainees must file a request in writing, which is handed to the prison staff who will first check that the person to call is genuinely the person stated in the request.[24] The phone calls may be recorded for security reasons. [25] The Czech Ombudsman in her report notes that "the practice varies from prison to prison and the legitimacy of requests to use the telephone is assessed differently everywhere; sometimes prisons are very restrictive, when they only allow telephone calls for serious family matters, such as illness"[26]

Finally, as regards **work**, §19 of the Law on the Execution of Pre-trial Detention and §58 and 59 of the Ministry of Justice Decree on the Execution of pre-trial detention foresee the possibility of pre-trial detainees being included within the working capacity of the prison at their own request for the duration of their detention. Nevertheless, in practice job offers are limited and usually cover the needs of the prison.[27] Given that remand prisons are never purely custodial, as stated above, in practice the limited job offers are preferably covered by convicted inmates.

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22 During pre-trial detention, inmates are permitted to wear their own clothes, underwear and shoes, provided they meet hygienic and aesthetic safety conditions and that they are able to replace them at their own expense (§12 of the Law on the Execution of Imprisonment). Inmates underwear must be replaced at least once a week, clothes and shoes as required and prison bed linen once every two weeks (§ 29.2 and §30.3 of the Ministry of Justice Decree on the Execution of pre-trial detention). If these conditions are not met, inmates must wear prison clothes, underwear and shoes.

23 British Embassy Prague, Information pack for British prisoners in the Czech Republic, 2016, p. 8

24 British Embassy Prague, Information pack for British prisoners in the Czech Republic, 2016, p. 12

25 CPT/Inf (2015) 18, p. 31

26 Public Defender of Rights, Report on Visits to Remand Prisons, April 2010, p. 12

27 British Embassy Prague, Information pack for British prisoners in the Czech Republic, 2016, p. 11

Restrictive measures that may be decided against an incarcerated pre-trial inmate:

§22(2) of the Law on the Execution of Pre-trial Detention foresees the following disciplinary punishments:[28] a) reprimand, b) fine up to CZK 1000, (c) a ban on the purchase of food and personal belongings (except for hygiene) for up to one month, d) confiscation of a thing, e) placement in solitary confinement for up to 10 days. Yet, during its visit, the CPT noted that the resort to severe disciplinary sanctions, such as solitary confinement, is very rare.[29]

A disciplinary punishment in the form of a fine of up to CZK 1 000 is usually imposed on pre-trial detainees for a significant or repeated violation of his/her prescribed duties. The execution of this disciplinary punishment is effected by transferring the respective amount from the funds that the detainee deposited in the prison. The amount remaining after the transfer of the fine must not be lower than CZK 500. If the person in question does not have sufficient funds, or if the remaining amount would be lower than CZK 500, such disciplinary punishment cannot be imposed (§63.1 of the Ministry of Justice Decree on the Execution of pre-trial detention)

Disciplinary punishment in the form of placement in solitary confinement may be imposed only in the event of very significant wilful violation of prescribed duties, or if the previously imposed disciplinary punishments and other measures had no effect. Following the execution of the disciplinary punishment of solitary confinement, another disciplinary punishment of solitary confinement may only be imposed after: a) five days, if the previous disciplinary punishment of solitary confinement lasted for five days or a period of time shorter than that, b) ten days, if the previous disciplinary punishment of solitary confinement lasted for more than five days (§63.4 of the Ministry of Justice Decree on the Execution of pre-trial detention). Prior to the execution of the disciplinary punishment of solitary confinement, an extraordinary preventive medical check-up must be carried out.[30] During the placement of solitary confinement, pre-trial inmates can not receive visits (except from their lawyers),[31] has no right to accept parcels, purchase food and personal belongings (except hygienic needs), are not allowed to read magazines and books (except for juridical, educational or religious literature), to play social games and to use their own portable radio and television. Pre-trial detainees may, however, receive and send correspondence and are allowed to read the daily press (§22.7 of the Law on the Execution of Pre-trial Detention).

Prior to the imposition of any of these disciplinary punishments, pre-trial detainees are able to express their views, comment on all the facts and evidence used against them and propose further evidence in support of their claims. However, although §65.3 of the Ministry of Justice Decree on the Execution of pre-trial detention states that the decision on the imposition of disciplinary punishment must be issued in writing, must contain instructions concerning remedies in addition to the actual decision and its justification,and the pre-trial

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28 The handling of disciplinary offences is covered by Chapter IV of the Law on the Execution of Imprisonment, Chapter V of the Ministry of Justice Decree on the Execution of pre-trial detention and Section V of the methodical order No. 28/2007 on the principles covering the compilation and issue of prison internal regulations

29 CPT/Inf (2015) 18, p. 28

30 On this regard, The CPT reminded the Czech authorities that “medical practitioners in prisons act as the personal doctors of prisoners, and ensuring that there is a positive doctor-patient relationship between them is a major factor in safeguarding the health and well-being of prisoners. Obliging prison doctors to certify that prisoners are fit to undergo punishment is scarcely likely to promote that relationship. As a matter of principle, the Committee considers that medical personnel should never participate in any part of the decision-making process resulting in any type of solitary confinement in a prison environment (except where the measure is applied for medical reasons)” CPT/Inf (2015) 18, p. 48

31On this point, the CPT recommended the Czech Republic “to take the necessary steps, including at the legislative level, to ensure that disciplinary punishment of prisoners does not involve a total prohibition of family contact and that any restrictions on family contact as a punishment are imposed only when the offence relates to such contact”. CPT/Inf (2015) 18, p. 47

detainee has to confirm the reception of the decision by his/her signature; in practice the CPT noted with concern that prisoners subjected to a disciplinary sanction were usually not provided with a copy of the decision,[32] a necessary step in order to ensure that the right of appeal is fully effective in practice.

In addition to the above mentioned disciplinary punishments, §21b of the Law on the Execution of Pre-trial Detention states that if a pre-trial detainee damages prison property and the amount of such damage does not exceed CZK 10000, the Director of the Prison may impose on the pre-trial detainee an obligation to compensate for such damage. Against the decision of the Director of the Prison, the detainee may file a complaint within 3 days of service, which is decided by the Director General of the Prison Service. The complaint has a suspensive effect.

Finally, one of the concerns noted by the CPT, was the use of service dogs within detention areas of a prison. Regrettably, it appeared to be common practice in several prisons visited that service dogs were present during daily headcounts at weekends, in principle behind metal bars, and also for escorting certain prisoners (i.e. life-senteced prisoners) within the perimeter of a prison.[33]

II. Bodies entitled to receive formal complaints

The right to file a complaint is stated in §20 of the Law on the Execution of Pre-trial Detention and §60 and §62 of the Ministry of Justice Decree on the Execution of pre-trial detention. Thereby it is foreseen that pre-trial detainees "may file complaints, requests and applications to bodies of the State Administration of the Czech Republic, as well as to international organizations which have jurisdiction over applications concerning the protection of human rights, and which are binding on the Czech Republic". In addition, pre-trial detainees "may request an interview with representatives of bodies responsible for the execution of his/her rights and legitimate interests", including "the prison director or his/her representative...If the accused requests an interview with the prison director or his/her deputy, such an interview shall be made possible, usually within a week, in very urgent matters without delay. The urgency of the matter shall be assessed by the prison director or his/her deputy according for the reason for request for interview."

In practice, pre-trial detainees file complaints and requests before the Prevention and Complaints Department present in each individual prison. The different sections or wardens have a complaints box where prisoners can leave their complaint or request. Pre-trial detainees are also able to exercise their right to file complaints and other submissions before staff members; for example, in the majority of facilities pre-trial detainees can also complain to the head supervisor or tutor during the morning inspections.[34] Pre-trial detainees also complain to the General Directorate of the Czech Prison Service[35] and may contact a variety of non-governmental organisations, the Czech Ombudsman and international institutions like the European Court of Human Rights. Finally, and as regards two disciplinary sanctions

32 "As regards disciplinary procedures, the delegation observed that, in the establishments visited, prisoners facing disciplinary charges were usually heard by the person responsible for taking a decision and were informed orally about the possibility to lodge an appeal against the decision to the superior official and subsequently to the court. That said, it is a matter of concern that prisoners subjected to a disciplinary sanction were usually not provided with a copy of the decision. In order to ensure that the right of appeal is fully effective in practice, the CPT recommends that prisoners subjected to a disciplinary sanction always be given a copy of the decision (containing information on the reasons for the decision as well as on the avenues and deadline for lodging an appeal). The prisoners concerned should confirm in writing that they have received a copy of the decision". CPT/Inf (2015) 18, p. 47

33 CPT/Inf (2015) 18, p. 37 and 45

34 Public Defender of Rights, Report on Visits to Remand Prisons, April 2010, p. 22

35General Directorate of the Czech Prison Service, frequently asked questions https://www.vscr.cz/informacni-servis/nejcastejsi-dotazy/stiznosti/

(confiscation of a thing and solitary confinement)[36], pre-trial detainees may contest their imposition before the administrative courts.[37] They can also seize the courts as regards other matters, for example the criminal courts if they fall victims of a crime while in pre-trial detention.

Pursuant to §43(1) of the Ministry of Justice Decree on the Execution of pre-trial detention, an authorized staff member of the Prison Service affixes a presentation seal of the prison and a relevant date on any and all correspondence, in which the accused seeks remedy within the meaning of procedural rules. According to §20.4 of the Law on the Execution of Pre-trial Detention, pre-trial detainees when filing complaints have the right to seek legal assistance from the lawyer representing them in another matter, to keep correspondence with him/her and to speak to him/her without the presence of a third person.

As regards the proper functioning of the complaints procedure in practice, the Czech Ombudsman during its visits to remand prisons, noted that "proper records are kept of complaints, and no specific shortcomings were found on the part of prison employees...According to the [pre-trial detainees] themselves, they have no problems exercising these rights or filing complaints". However, "although in formal and organisational terms the complaint mechanism works, in practice [pre-trial detainees] often said that it was not worth filing a complaint, which corresponds to the frankly negligible percentage of complaints that are dealt with positively (in some cases fewer than 3 % of complaints). Most of the [pre-trial detainees] spoken to were aware that they could request an interview with the prison governor; they said that such interviews did take place, although they claimed that it was generally the first deputy governor that attended... One minor shortcoming was found in that a number of [pre-trial detainees] in more than one of the prisons visited were unaware that complaints are collected from the complaints boxes by staff specially appointed with this task, not by the staff of the section in question, a fact which, if a complaint were directed against the conditions in a particular section, could discourage the inmate from placing the complaint."[38]

Besides the aforementioned bodies and institutions entitled to receive formal complaints, prison facilities (including remand prisons) are subject to inspection. Internal supervision is provided by the Czech Prison Service through the Department of Inspection and Prevention of the General Directorate of the Czech Prison Service and through the Ministry of Justice – Prison Service Section of the Ministerial Department of General Inspection.[39] In addition, pursuant to §71.1 of the Ministry of Justice Decree on the Execution of pre-trial detention, inspections of prisons without the need of special permits may also be conducted by the vice-ministers of justice, the Director General of the Prison Service and his/her deputies. External supervision is carried out by the regional Public Prosecutor's Office of the district where the remand prison is located (§ 29 of the Law on the Execution of Pre-trial Detention) and by the Czech Ombudsman (*Veřejný ochránce práv*, literal translation: Public Defender of Rights) in its capacity as the National Mechanism for the Prevention of Torture.[40]

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36 §23.8 of the Law on the Implementation of pre-trial detention states that "decisions issued in disciplinary proceedings imposing disciplinary sanctions pursuant to §22(2)(a) to (c) shall not be subject to review by the court". This means, *mutatis mutandis*, that disciplinary sanctions consisting of the confiscation of a thing §22(2)(d) and solitary confinement §22(2)(e) may be subject to court review.

37 SVOBODA, Milan. K soudnímu přezkumu rozhodnutí vydaných v kázeňském řízení proti odsouzenému (On Court Review of Decisions Issued in Disciplinary Proceedings Against Convicts). Prague: Právní rozhledy, 13/2011.

38 Public Defender of Rights, Report on Visits to Remand Prisons, April 2010, p. 23

39 Public Defender of Rights, Report on Visits to Remand Prisons, April 2010, p. 2

40 The Czech Republic ratified the Optional Protocol to the United Nations Convention against Torture (OPCAT) in July 2006 and designated the Public Defender of Rights (Ombudsperson) as the National Preventive Mechanism (NPM). The Law on the Ombudsperson (Zákon o Veřejném ochránci práv, Law No. 349/1999, as amended) authorises the Ombudsman to carry out visits to places where persons are or may be deprived of their liberty by a public authority, in particular to prisons, police

Effectiveness of the domestic remedies in the terms of art. 13 ECHR[41]

The Law on the Ombudsman grants this institution the right to file a petition with the Constitutional Court for the abolishment of subordinate legal regulations, the right to become an enjoined party in Constitutional Court proceedings on abolishment of a law, the right to lodge action to protect a general interest or application to initiate disciplinary proceedings with the president or vice-president of a court, and the right to make recommendations to the Government concerning adoption, amendment or repealing of a law.[42] Notwithstanding the broad powers enjoyed by the Ombudsperson, it still cannot be considered an effective remedy under the terms of art. 13 of the ECHR. Indeed, the Ombudsperson cannot directly overrule acts and decisions of the Prison Administration but must resort to the courts or the government. The Ombudsman's activities (mainly periodical reports and recommendations) lack both the binding and compensatory effect required by art. 13 ECHR in order to be considered en effective remedy.

As regards the Public Prosecutor, §29 of the Law on the Execution of Pre-trial Detention states that in the exercise of supervision, the public prosecutor is entitled to:
(a) visit the places where custody is carried out,
(b) inspect the documents held in custody, speak to the accused without the presence of third parties,
c) check whether the orders and decisions of the Prison Service are in compliance with the laws and other legal regulations,
d) request the Prison Service staff to provide the necessary explanations, the submission of files, documents, orders and decisions concerning custody,
e) issue orders to observe the regulations applicable to custody,
(f) order that a person who is in custody in breach of the decision of the law enforcement authority or without such decision is immediately released.

Pursuant to §29.3 of the Law on the Execution of Pre-trial Detention the Prison Service is obliged to execute without delay the orders of the Public Prosecutor according to the preceding paragraph. Hence, the supervisory powers of the Public Prosecutor are binding in the terms of art. 13 ECHR. Nevertheless, it lacks compensatory effect and although prisoners may theoretically address them directly,[43] in practice it appears that they hardly do so since their visits to prisons are not so regular and thorough. As noted by the CPT in its visits "Prosecutors' inspection reports seen by the delegation appeared to be extremely succinct (sometimes containing only one sentence) and contained no information on the action taken, nor any conclusions." The CPT recommended that Prosecutors should be more proactive and take the initiative to visit the establishments' detention areas and to enter into direct contact with inmates, including by interviewing them in private."[44] In the light of the above, the Public Prosecutor cannot be considered an effective remedy under the terms of art. 13 of the ECHR.

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establishments, security detention facilities, detention centres for foreigners as well as to health-care, social welfare or similar establishments. Since 2011 the NPM's mandate also covers the monitoring of deportations of foreign nationals. The NPM may carry out visits at its own initiative, without prior notification, and has the right to interview persons deprived of their liberty in private. A separate department, responsible for the NPM function and employing ten full-time staff, has been established within the Ombudsman's Office and carries out some 30 to 50 visits per year to various places of deprivation of liberty. CPT/Inf (2015) 18, p. 13

41"Guide to good practice in respect of domestic remedies", Council of Europe, 2013. *Available at*: https://www.echr.coe.int/Documents/Pub_coe_domestics_remedies_ENG.pdf

42Public Defender of Rights, Report on Systematic Visits to Prisons carried out by the Public Defender of Rights, 2016, p. 1

43 According to §20.2 of the Law on the Execution of Pre-trial Detention states that "the Prison Service shall, without undue delay, notify the Public Prosecutor, the Judge or the Prison Inspector, of the accused's request for a hearing and, on their instructions, allow such a hearing in Prison".

44CPT/Inf (2015) 18, p. 49

As regards compensatory remedies, the ECtHR briefly and ancillary assessed the available domestic remedies that prisoners could make use of in the case Jirsak v Czech Republic of 5th April 2012 (8968/08), where the European Court was called to decide on the conditions under which the applicant served his detention. The Court concluded that the conditions of detention to which the applicant was subjected "did not attain the minimum level of severity amounting to degrading or inhuman treatment within the meaning of Article 3 of the Convention" (para. 73). Be that as it may, what matters here is the assessment of the compensatory remedies undertaken by the ECtHR.

Before turning to the ECtHR, the applicant instituted civil proceedings against the State before the Jičín District Court claiming compensation for pecuniary damage under Articles 420 et seq. of the Civil Code on account of his injury caused by the inadequate conditions of his detention. The domestic courts rejected his claim based on the lack of any unlawfulness on the part of the Government and the compliance of the conditions of the applicant's detention with domestic law. The ECtHR considered the remedy chosen by the applicant an effective remedy, since "If he had been successful with his claim, he would have been compensated for his injury, which, in his view, was caused by unsatisfactory conditions of detention." (para. 47). The Court further noted that "It might be true, as maintained by the Government, that the applicant could also have lodged an action against the State for protection of personal rights under Articles 13 and 16 of the Civil Code seeking compensation for both pecuniary and non-pecuniary damage...However, given that the remedy pursued by the applicant must be considered an effective remedy for his present complaints before the Court, he cannot be required to have had recourse to another available remedy which, moreover, did not offer a better prospect of success. Here the Court notes that the remedy suggested by the Government requires the claimants to prove the unlawfulness of the defendant's conduct in the same way as the remedy the applicant pursued. In fact, Article 16 of the Civil Code, which regulates claims for compensation for pecuniary damage within the framework of the protection of personal rights, expressly states that such claims are regulated by the general provisions on claims for damages, which are to be found in Articles 420 et seq. of the Civil Code. Consequently, this kind of claim would be governed by the same rules as the claim made by the applicant...The same conclusion is valid in respect of a possible action against the State under the State Liability Act, being just an alternative avenue at that time for claiming compensation in respect of pecuniary damage against the State which would also require a finding of illegality in the conduct of the State in order to be successful." (paras. 48-50)

III. Impact of the ECtHR judgements on the system of legal aid/access to legal information

The Constitutional Court of the Czech Republic, in a decision[45] on the possibility of submitting certain disciplinary punishments imposed by the Prison Administration to external judicial review, expressly referred to the jurisprudence of the ECtHR. In particular, it expressly referred to Engel v Holland and to Campbell and Fell v. United Kingdom. In addition, when partially repealing §76(6) of the Law on the Execution of Imprisonment (the provision which excluded from judicial review the decisions issued by the Prison Administration in disciplinary proceedings) the Constitutional Court concluded that such provision did not "respect the principles on which the ECtHR has based the interpretation and application of Article 6 (1) of the Convention". We deem appropriate to mention here this decision of the Constitutional Court because enabling the judicial review of disciplinary proceedings has had an impact on prisoner's access to free legal aid. Indeed, after such decision, prisoners can contest the imposition of certain disciplinary sanction before the courts and can, thus, request to be represented by a free legal aid lawyer.

45 Decision dated 29 September 2010, sp. stmp Pl. ÚS 32/08, No. 341/2010 Coll. Available at: http://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-32-08_3

Otherwise, the Czech system of free legal aid has been much more deeply shaped by EU Directives on that specific issue than by the jurisprudence of the ECtHR.

1. LEGAL SUPPORT

1.1 Obligations as regards to legal support

Contextualization:

The police can detain someone on suspicion of having committed a criminal offence and must take them before a court within 48 hours. The judge has an additional 24 hours to decide whether to release or remand the person in custody, in which case he/she must be transferred to a remand prison. In total, the person concerned may be held for up to 72 hours in police detention facilities.

Persons may also be arrested by the police under an arrest warrant issued by a judicial authority (§69.4 of the Criminal Procedure Code). Persons who are arrested under an arrest warrant must be brought before a court within 24 hours, and the judge must take a decision on release or remand detention within 24 hours. The maximum period of police custody in this case is thus 48 hours.[46]

Persons may also be deprived of their liberty by the police for other reasons. For example, summoned to present themselves at a police station in order to provide an "explanation" (§158 of the Criminal Procedure Code); or to prove their identity, for the commission of an administrative offence, for posing a threat to one's life or the life or health of others or to property; unaccompanied minors, etc. (see for example, §26-28, §65.3 of the Law on the Police of the Czech Republic). In all of these cases, the period of police custody shall not last for more than 24 hours.

The legal texts which define an **obligation to provide legal information** in police custody/penitentiary facilities are the following:

1. The Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*, Law No. 2/1993), which forms part of the Constitution (*Ústava České Republiky, L*aw No. 1/1993 Coll.)

Thereby, in §8.3, it is stated that "any person accused or suspected of having committed a criminal offence may be detained only in cases specified by law. Such detained person 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." §8.4 state that "a person accused of a criminal act may be arrested only on the basis of a written warrant issued by a judge, which includes the grounds for its issue. The arrested person shall be turned over to a court within twenty-four hours. A judge shall question the arrested person within twenty-four hours and decide whether to place in custody or to release the person."

2. The Criminal Procedure Code (*Zákon o trestním řízení soudním (trestní řád)*, Law No.141/1961 Coll., as amended)

§2.13 declares that "the person against whom criminal proceedings are conducted must be informed in every stage of the proceedings in an appropriate and comprehensible manner about his/her rights enabling him/her to fully exercise his/her defence, and about the possibility of choosing a defence counsel; all authorities involved in criminal proceedings are obliged to enable full exercise of his/her rights".

§33.5 states that "all law enforcement authorities are obliged to always inform the

46 CPT/Inf (2015) 18, p. 14

accused person (*Obviněný*[47]) of his/her rights and provide him/her the full possibility to exercise these rights. The accused who has been detained or arrested must also be informed of the right to urgent medical assistance, of the maximum period for which he/she may be deprived of liberty before being handed over to the court and of the right to notify the consular post and a family member or any other natural person of the required information if he/she is taken into custody."

§33.6 "the law enforcement authority which has carried out the arrest or detention shall hand over to the accused without undue delay a written instruction about his/her rights; the accused must be able to read this letter of rights; the accused has the right to keep this letter of rights with him/her for the entire period of his/her deprivation of liberty. "

§33.1[48] and §33.2[49] list further rights of the accused person. These include the right not to testify, the right to comment on all facts that are used against him/her, the right to submit proposals, applications and remedies, the right to be appointed legal counsel and to consult legal counsel during the process of the criminal investigation, the right to be questioned in the presence of legal counsel, the right to consult the counsel without the presence of a third party if he/she is in custody/prison, and the right to legal counsel free of charge or for a reduced fee if the conditions set forth by the law are met.

A person who is not in the position of the "accused" can also be deprived of his/her liberty by the police for several reasons: for example, when called to "provide explanation" according to §158 of the Criminal Procedure Code. In these cases, the police is obliged to provide information on the following: on the consequences of failing to appear when summoned (§158.7) and on the right to refuse to provide an explanation (a person is entitled to refuse to provide an explanation in case it would entail the initiation of criminal prosecution against the person himself/herself or to a next of kin, §158.8)

In addition, a person can also be deprived of his/her liberty by the police pursuant to an arrest warrant issued by a judicial authority. In these cases, the Criminal Procedure Code foresees the following (§69.4): "The arrested person *(Zatčená osoba)* has the right to choose a lawyer, to speak with him/her without the presence of a third person and to consult with him/her during the arrest. The arrested person shall also have the right to communicate at his/her own expense through written communications or telephone with a person of his/her own choice, if this is technically possible and if circumstances allow, in particular if the purpose of the criminal proceedings is not compromised or if the protection of victims is not at risk; this communication is subject to control. The arrested alien has the right to inform about his/her arrest to the consular office of the state of which he/she is a citizen and the

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47 §32 of the Criminal Procedure Code states that "The person suspected of having committed a criminal offence may be considered as the accused, and the means specified by this Code may be used against him, once a criminal prosecution is initiated against him"

48 §33.1 of the Criminal Procedure Code reads as follows: "The accused person has the right to comment on all matters of facts he is being charged with and to all evidence thereof, however he is not obliged to testify. He may state circumstances and evidence for his defence, make proposals, and submit petitions and appeals. He has the right to choose a defence counsel and to consult him even during acts performed by authorities involved in criminal proceedings. However, he may not consult the defence counsel on how to respond to a question that has already been asked. He may request to be questioned in the presence of his defence counsel, and that the defence counsel attended other acts of the pre-trial proceedings. If he is in custody or serving a sentence of imprisonment, he may consult the defence counsel without the presence of a third party. The accused person has these rights even if he is legally incapacitated or if his legal capacity is restricted."

49 §33.2 of the Criminal Procedure Code reads as follows: "If the accused person proves that he does not have enough funds to pay the costs of the defence, the presiding judge or a judge during pre-trial proceeding shall decide that he is entitled to the defence counsel free of charge or at a reduced fee. If the evidence gathered imply that the accused person lacks sufficient funds to pay the costs of the defence, the presiding judge and during pre-trial proceedings the judge upon a motion of the public prosecutor may decide that the accused person is entitled to the defence free of charge or at a reduced fee even without a petition of the accused person, if it is necessary to protect his rights. In cases referred to in the first and second sentence, the whole or partial costs of the defence are covered by the state.

right to communicate with that consular office. If the detained foreigner does not have sufficient financial means, communication with the consular office shall be free of charge. **The arrested person shall be informed of these rights and given the full possibility of making use of them**."

Finally, §76b of the Criminal Procedure Code regulates the right of apprehended persons *(zadržené osoby)* in exactly the same terms as §69.4 regarding arrested persons: The apprehended person has the right to choose a lawyer, to speak with him/her without the presence of a third person and to consult with him/her during the arrest. The apprehended person shall also have the right to communicate at his/her own expense through written communications or telephone with a person of his/her own choice, if this is technically possible and if circumstances allow, in particular if the purpose of the criminal proceedings is not compromised or if the protection of victims is not at risk; this communication is subject to control. The apprehended alien has the right to inform about his/her arrest to the consular office of the state of which he/she is a citizen and the right to communicate with that consular office. If the apprehended foreigner does not have sufficient financial means, communication with the consular office shall be free of charge. **The apprehended person shall be informed of these rights and given the full possibility of making use of them**."

3. The Law on the Police of the Czech Republic (*Zákon o Policii Republiky*, Law No. 273/2008 Coll., as amended)

§13 "The policeman is obliged to inform the person affected by the act of the legal reasons for the execution of such act before carrying it out and, in the case of an act interfering with the rights or freedoms of a person, also about his/her rights and obligations. If this information obligation prevents the nature and execution of the act, the policeman will inform or provide this information as soon as the circumstances allow."

§33.5 "a person placed in a cell shall be demonstrably informed about the rights and obligations of persons placed in a cell."

§24 "(2) At the request of a person whose liberty has been restricted, the Police shall inform a close person or another person designated by the detainee...(3) The notification provided for in paragraph 2 shall not be carried out by the police if this would jeopardize the fulfilment of the purpose of the investigations or if such notification would involve disproportionate difficulties. The police shall inform the local Prosecutor in writing without undue delay of this fact...(4) A person whose liberty has been restricted shall have the right to obtain legal assistance at his/her own expense and to speak with a lawyer without the presence of a third party. For this purpose, the police officer shall immediately provide the necessary assistance if requested by the person concerned...(5) A person whose liberty has been restricted has the right to be examined or treated by a doctor of his/her choice; this does not apply to a doctor's examination to determine whether it can be placed in or removed from the police cell. For the purpose of treatment or examination, the police will allow a physician access to that person."

4. The Binding Instruction from the Chief of Police on Escorts, Surveillance of Persons and on Police Cells (*Závazný pokyn policejního prezidenta č. 159/2009, o eskortách, střežení osob a o policejních celách,* Instruction No. 159/2009 issued on 2 December 2009), which supplements the Law on the Police of the Czech Republic and sets out detailed requirements regarding the conditions under which persons shall be held in police holding or custody cells

§13.5) states that "when taking a person into a cell, the supervisor or other appointed police officer shall inform the person whose freedom has been limited on the legal grounds for the execution of the act and about his/her rights and obligations"

§15 establishes the regime of persons placed in a police cell and foresees the following:

§15.1 "a person placed in a cell shall be informed of the cell regime by the police; The information sheet [i.e. letter of rights] signed by the person placed in the cell is kept in the records of the police station where the cell is located, and a copy is issued to the person

concerned. If the person kept in the cell refuses to sign the information sheet, this must be adequately noticed in the police records"...§15.4 "A person placed in a cell has the right to make suggestions, instigations and complaints, which the police officer shall immediately transmit to his/her superior for further action. Copies of written and written transcription of oral suggestions, instigations and complaints shall be kept in the records of the relevant department or organizational unit of the police. The person placed in a cell shall be allowed, upon request, to write a communication to be sent at his/her expense to State Authorities of the Czech Republic or to an international organization competent for the hearing of human rights initiatives according to international conventions to which the Czech Republic is bound. If a person has a legal representative, he/she may exercise his/her right to submit suggestions, instigations and complaints through him/her. If the person placed in a cell does not have a lawyer, he/she writes the suggestions, instigations and complaints on his/her own - for security reasons under the supervision of a police officer in the room for interrogation or other police premises. If based on objective reasons it appears that the communication can not be written by a person placed in a cell, the police officer in charge of his/her supervision shall immediately inform the relevant internal control unit of the police; an employee of that workplace, will write the suggestion, instigation or complaint and a person placed in the cell will sign it". §15.5 "A person placed in a cell shall be provided with adequate rest, as a rule at night between 22.00 and 06.00 hours... In addition, a person placed in a cell must have access to drinking water, toilets and to the possibility of basic hygiene".

§12, §17 and §19 regulate in detail the provision of medical assistance, the access to a police cell of persons other than the detainee (for example, a lawyer or and inspection officer) and the provision of meals.

5. The Binding Instruction from the Chief of Police on the performance of tasks of the police authorities in criminal proceedings, as amended (*Závazný pokyn č. 30/2009 policejního prezidenta o plnění úkolů v trestním řízení*, issued on 21 April 2009)

§38 states that "Prior to any questioning or other procedural act involving his participation, the accused must be advised, without limitation, of his right: to choose his legal counsel or to request that legal counsel be appointed, and to confer with him during the tasks carried out by the police authority; to request the presence of his legal counsel during questioning or other acts, and, if the accused is in remand or is serving a term of lawful imprisonment, also of his right to speak with his legal counsel without the presence of third parties. The reading of these rights to the accused is to be recorded verbatim in the record of the given act prior to which the accused was advised of them. A suspect that has been detained must similarly be informed of his right to choose legal counsel and to confer with him"

§47(2) sets out the rights of a suspected detained person (*Zadržený podezřelý*): "The police authority shall inform a detained suspect of the objective elements of the crime of which he is suspected and of the reasons for his detention, and shall also advise him of his right to choose legal counsel, to confer with him during his detention, and to request that his legal counsel be present during his questioning. The police authority shall set a reasonable time limit, of at most a number of hours, for the detainee to choose legal counsel, and shall provide him with assistance to allow him to contact legal counsel by telephone, or, as the case may be, to choose legal counsel using the telephone directory or the list of lawyers maintained by the court. The police authority shall question a detainee without the presence of legal counsel if the detainee has refused to choose a legal counsel, or if the period for the choice of legal counsel has expired, or if legal counsel has failed to appear at the detainee's questioning within a reasonable period of time or is unreachable."

Legal information in penitentiary facilities:

The obligation to provide legal information upon admission into pre-trial detention is foreseen in §5.2 of the Law on the Execution of Pre-trial Detention. Thereby it is stated that pre-trial detainees when taken into custody "must be demonstrable informed of their rights and obligations under this law, the order of pre-trial detention and the internal rules of the prison

facility. A written copy of the acquaintance with their rights and obligations in the language of the State of which they are a citizen or in a language he/she understand shall be handed over to the [pre-trial detainee] without delay".

In addition, §8 of the Ministry of Justice Decree on the Execution of pre-trial detention also foresees this legal information obligation and states the following: "Upon admission to remand prison [pre-trial detainees] must be informed of all the rights and obligations that affect them while in custody. A record of this process is made, which the [pre-trial detainee] signs."

Finally, §3 of the Ministry of Justice Decree on the Execution of pre-trial detention foresees that: "The manner in which rights and duties are to be exercised in individual remand prisons or in special departments in prisons...shall be determined by the prison governor in the internal code of the prison in question, which governs the operation of the prison and activities of the accused in accordance with the law and this by-law. (2) The internal code shall address in detail the rights and duties of the accused, daily order in the prison, particularly the schedule detailing walks, bathing, shopping, lending of books and games, provision of diagnostic and therapeutic care, and satisfaction of further requirements of the accused, so as to provide to the accused a comprehensive overview of information on the manner of exercise of their rights, and on their duties. The internal code shall also provide for different execution of pre-trial detention with respect to special groups of the accused in accordance with the law and this by-law. (3) The internal code shall hang in individual cells or other areas commonly accessible to the accused."

In the light of the above, it can be concluded that the obligation to provide legal information during **police detention** is a matter of general law (Constitution, Criminal Procedure Code) and specific law (Law on the Police of the Czech Republic and Binding Instructions from the Chief of Police). The obligation to provide legal information during **pre-trial detention** is a matter of specific prison law (Law on the Execution of Pre-trial Detention and the Ministry of Justice Decree on the Execution of pre-trial detention).

The legal information obligation as regards both, detainees in police custody and pre-trial detainees in remand custody, makes reference to aspects of everyday life in detention. Particularly at the level of secondary legislation it is foreseen that persons deprived of their liberty must be informed of their rights and obligations, but also of the daily regime that is followed in the police stations or remand prisons.

As regards the conditions under which the obligation to provide legal information has emerged and been legally enshrined, it must be noticed that recently the basic legal framework governing detainees' right to legal information has undergone important changes by virtue of Law No. 141/2014, Coll. amending certain provisions of the Criminal Procedural Code, the Criminal Code and the Law on Criminal Liability of Legal Entities and Proceedings against them. Such amendments entered into force on 1 August 2014 with the aim, among others, of transposing several EU directives[50] into Czech legislation and to strengthen some of the procedural safeguards offered to persons subject to criminal proceedings: for example, now the obligation to inform a person against whom criminal proceedings are being conducted of his/her rights (enshrined in §2.13 of the Criminal Procedure Code) expressly stipulates that such information should be provided in **"an appropriate and comprehensible manner**". In addition, paragraph 6 was added to §28 of the Criminal Procedure Code regarding translation, and now it is expressly foreseen that a detained and arrested person shall also "**without undue delay, receive a written translation of his/her**

50 Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, Directive 2012/13/EU on the right to information in criminal proceedings and Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

rights." Moreover, following the 2014 amendments, now it is expressly foreseen that the law enforcement authorities inform the accused person who has been detained or arrested "of the **right to urgent medical assistance**, of the **maximum period for which he/she may be deprived of liberty** before being handed over to the court and of the **right to notify the consular post and a family member or any other natural person** of required information if he/she is taken into custody." (§33.5 of the Criminal Procedure Code). Finally, a new paragraph (para. 6) was added to §33 of the Criminal Procedure Code expressly stating that "the law enforcement authority which has carried out the arrest or detention shall hand over to the accused without undue delay a written instruction about his/her rights; the accused must be able to read this **letter of rights**; the accused has the right to keep this letter of rights with him/her for the entire period of his/her deprivation of liberty. **"**

1.2 Legal support to non-native speakers

The law provides the following in terms of legal support to non-native speakers:

Art. 37.4) of the Charter of Fundamental Rights and Freedoms foresees that "whoever sates that he or she does not speak the language in which the proceedings are conducted is entitled to the services of an interpreter".

§2.14 of the Criminal Procedure Code "Criminal law enforcement authorities conduct proceedings and make their decisions in Czech. Anyone who declares that he/she does not speak Czech is entitled to use his or her mother tongue or the language he or she is in command of before the criminal law enforcement authorities."

§28 Criminal Procedure Code: (1) "If the content of a document, notice or other procedural act is to be translated, or if the accused exercises the right referred to in §2.14, an interpreter shall be provided; ... If the accused masters a language which is not recognised or a language or dialect which is not the language of his/her nationality or the official language of the State of which he/she is a citizen and no person is entered in the list of interpreters for such language or dialects, he/she will be provided with an interpreter for the language of his/her nationality or the official language of the State of which he/she is a citizen. In the case of a stateless person, the state of residence or the country of origin is understood to be his/her state. If the accused exercises the right referred to in Article 2 (14), the interpreter shall, at his/her request, also interpret his/her defence with the defence counsel during the proceedings. (5) The rights referred to in paragraphs 1 and 4 shall also apply to the suspect. (6) **Subject to the conditions mentioned in paragraph 1, the person who is detained or arrested shall also, without undue delay, receive a written translation of his/her letter of rights**.

Further, §13(4) of the Binding Instruction from the Chief of Police on Escorts, Surveillance of Persons and on Police Cells states that "When a foreigner is placed in a cell, [the police in charge] shall immediately notify it to the Operational Centre of the Alien Police Service..." Moreover, §15.2 foresees that "**The information for foreigners placed in a cell are identical in content to those of a citizen of the Czech Republic. Information can be provided by using a translation of the instructions in printed form, or through an interpreter in a foreign language that the person understands**."

As regards pre-trial detainees, specifically §28 of The Law on the Execution of Pre-trial Detention states that "(1) A foreigner shall be immediately informed of his/her right to contact the diplomatic mission and consular post of the State of which he/she is a national. Refugees and homeless people learn about the right to turn to the diplomatic mission of the state in charge of protecting their interests, or to international bodies whose mission is to protect these interests. This is without prejudice to the obligation of the law enforcement authority to notify, in accordance with the relevant international treaty, to the embassy of the State of which the accused is a citizen of his/her detention. (2) **A foreigner shall be informed of the**

right to receive a consular visit by the representatives of the authorities referred to in paragraph 1. The restrictions referred to in Article 14 (1), (2) and (3) shall not apply to this visit. (3) **A foreigner's information of his/her rights shall be made in his/her mother tongue or in a language he/she understands**..."

Finally, §80 of the Ministry of Justice Decree on the Execution of pre-trial detention states that (1) A foreigner shall be **informed** within the meaning of § 5, paragraph 2, § 28, and § 8, paragraph 1 of the Act **in a language he/she understands**. (2) When placing foreigners into cells, special care shall be taken to place them in such a way that foreigners who speak the same language or who know the same language are able to communicate. (3) The prison administration shall inform the consulate of the relevant state whose citizen the foreigner is of any transfer thereof. (4) When satisfying the material and cultural needs of foreigners, the prison shall take cultural and religious traditions and customs into consideration where possible, and make books in a language they speak or understand available thereto."

As can be seen from the above provisions, several legislative texts provide that foreigners shall be informed of their rights and obligations, including their right to legal advice, in a language that they speak or understand. In practice, this is usually done, both in remand prisons and police facilities, through printed forms which include a translation in several languages of the relevant rights and obligations. For example, the letter of rights that is provided to detainees at police stations is available in 13 foreign languages (Annex 3 of the Binding Instruction from the Chief of Police on Escorts, Surveillance of Persons and on Police Cells).

However, it is nowhere foreseen in the legal texts specific support to non-native speakers for applying for legal aid. In practice, and as regards detention in police facilities, if detainees express their desire to contact a lawyer, police officers turn to the police Intranet and print out the list of attorneys available in the Intranet. They provide the detainee the part of the list containing the locally available lawyers for him or her to choose a lawyer. Besides the contact details, the list indicates the languages spoken by the lawyers thereby listed, which helps non-native speakers find a lawyer who speaks a language they understand. The police subsequently contact the selected lawyer.[51]

As regards the support for applying for legal aid provided in remand prisons to pre-trial detainees who are not native speakers, it must be noted that upon their admission to prison, foreign pre-trial detainees are provided with a written form informing them of their rights and obligations (known as "*Poučení pro vazbu*") in a language they understand. This form is available in a wide range of languages (e.g. English, Bulgarian, French, Croatian, Mongolian, Macedonian, German, Polish, Romanian, Russian, Serbian, Spanish, Ukrainian and Vietnamese).[52] Nevertheless, even if they are provided with a letter of rights and obligations in a language they understand, the truth is that the internal rules of each remand prison are written only in Czech. These internal rules actually provide more detailed information about life in pre-trial detention at a particular prison than the written form informing inmates of their rights and duties in general and which is handed to inmates upon arrival. Important daily aspects (such as daily rotas, minimal range of goods available in the canteen, foods that are classed as an epidemiological risk, instructions for sending packages, conditions covering the use of radio receivers, television receivers and other such items, surgery hours of the general practitioner and specialist, the preventive educational, interest and sports programmes available, bathing schedule, etc.) are regulated by these internal rules which are not translated and usually hang on the walls of prison corridors and other communal areas.[53] Coming back to the topic of legal aid, it must be noted that these internal rules usually explain the practicalities for requesting an interview with a lawyer (for

51 Public Defender of Rights, Report on systematic visits carried out by the Public Defender of Rights to Police cells", 2017, p. 16
52 Public Defender of Rights, Report on Visits to Remand Prisons, April 2010, p. 21
53 Public Defender of Rights, Report on Visits to Remand Prisons, April 2010, p. 21

example, whom to address the request form, where the interview will take place, etc.), but regrettably this information is available only in Czech, which leaves non-native speakers in clear disadvantage. The written form handed to pre-trial detainees upon arrival to the remand centre and which is available in several languages only informs inmates of their right to meet their lawyer in private, but does not actually explain how to implement this right. As noted by the Czech Ombudsman, "it is evidently a very costly matter to have these internal regulations translated into several foreign languages, yet it is essential to provide foreign defendants with basic information about their rights and obligations...this information must be provided in a form that defendants can understand (either in translation or, for example, in the form of pictograms)...The Defender would consider it good practice if this information were provided to foreigners in one of the ways described above, in at least several different language versions."[54]

1.3 Actors providing legal information

Police officers are the ones in charge of informing detainees in police facilities of their rights, including their right to contact a lawyer at his/her own expense and to meet with the lawyer in private. If the detainee wishes to exercise such right and does not know any particular lawyer beforehand, the police hands him/her a list of the locally available lawyers for him/her to choose one (the police officer downloads such list from the police Intranet). The police subsequently contact the selected lawyer. That is, the police simply informs the detainee of the existence of their rights, but the person who will actually provide the legal information as such is the lawyer who turns up at the police detention facility; the lawyer will also inform the detainee about the possibility of being granted free legal aid at a later stage, how to request it, before whom and when. This is the standard way of proceeding, however, the Czech Ombudsman in her visits to police facilities noticed that "in many [police] departments, if the detainee asks the police for assistance in arranging legal advice, police officers often use Internet search engines to find suitable lawyers and their contact details. This can lead to undesirable delays. Police Intranet should be used to comply with the detainee's request without delay..."[55] In addition, the Czech Ombudsman, also noted that "in rare cases, the police selected a specific attorney for the detainees"; an improper procedure which she considers "infringes on the right of the detained persons to choose their attorneys."[56]

As regards the actors providing legal information in pre-trial detention, it is usually the wardens or the social workers who orally inform pre-trial detainees of their rights and duties and hand them, upon their arrival to prison, a printed form with their rights and obligations (known as "*Poučení pro vazbu*"). Pre-trial detainees must sign a declaration confirming that they have received this printed form. Nevertheless, once again, wardens and social workers simply inform pre-trial detainees of the existence of their rights, but the person who will actually provide the legal information as such is the lawyer who defends the inmate in the main criminal case or any other lawyer who the inmate contacts to pursue legal action outside the criminal domain.

As regards the status of lawyers: the conditions under which legal services are provided is mainly regulated by Law No. 85/1996 Coll. of 13 th March 1996 on the Legal Profession, as amended. Thereby it is established that only lawyers who have been admitted to the Czech Bar Association having their name recorded in the Register of Lawyers maintained by the Bar can practice the legal profession.[57] Thereby, it is also established that "a lawyer shall proceed

54 Public Defender of Rights, Report on Visits to Remand Prisons, April 2010, p. 22
55 Public Defender of Rights, Report on systematic visits carried out by the Public Defender of Rights to Police cells, 2017, p. 16
56 Ibid, p. 16
57 §2.1.b) of the Law on the legal profession also allows to practice law "natural persons who are citizens of a EU Member State, Contracting State to the European Economic Area Agreement or the Swiss Confederation (hereinafter referred to as "home country"), or citizens of other state permanently established in a home country, and have obtained in their home country entitlement to provide legal

in his legal practice in such a manner that the dignity of the legal profession may not be degraded; for this purpose he shall be obliged to observe the rules of professional ethics and competition." (§17). Further, it is established that: "a lawyer shall be obliged to preserve professional secrecy regarding any facts known to him in connection with his provision of legal services" (§21.1). As for the budget they are dependent on, §22 foresees that "law shall be practised regularly for a fee; [and] the client may be requested to pay a reasonable fee in advance" and in those cases where the lawyer has been appointed by court [for example, in cases of free legal aid] the State shall cover his fee" (§23)

1.4 Practical arrangements

The practical arrangements for providing legal information to detainees in police facilities are as follows: the police officer who detains or apprehends a person, usually orally informs him/her of his/her rights at the moment of detention/apprehension. Later, upon arrival at the police station, the duty officers or other police officers responsible for guarding police cells provide the detainee with a printed form containing the rights and obligations of persons placed in a cell (form No. 216 in the police information system)[58] and the detainee must attest to this fact by signature. This printed form is available in 13 different languages. Yet, in the day to day practice, the CPT and the Czech Ombudsman have detected flaws, for example, in some police facilities, the Ombudsman noted that "police officers do not issue the...form [informing the detainee of his/her rights] or do not let the detainees keep it. The stated reason is that the paper is an item that can potentially pose a danger to life or health. Alternately, they claim that the detainees were acquainted with their rights prior to their placement in the cell, therefore they "must know" their rights and obligations. In some police departments, police officers only issue the advice form on express request of the detainee."[59]

This is as far as the legal obligation to inform detainees of their rights refers, as for the exercise of some of those rights, particularly of the right to obtain legal assistance, during police detention, the following must be noted: a person deprived of his/her liberty by the police has the right to obtain, at his/her own cost, legal assistance and to talk to a lawyer in private (§24.2 of the Law on the Police). In practice, the person deprived of his/her liberty expresses his/her desire to be assisted by a lawyer. If he/she already knows a particular lawyer, he/she can ask the police to contact him/her; otherwise, the police assists the detainee in arranging legal advice by printing a list of available lawyers from the Intranet and giving it to the detainee for him/her to choose one from the list and by later contacting the chosen lawyer. Once the lawyer arrives at the police station, he/she can meet in private with the detainee at a special room designated for such purposes. The lawyer may also be present during the police questioning although he/she cannot advice the detainee how to answer the questions asked by the police (§33.1 of the Criminal Procedure Code). That said, the CPT noted in its last report that "some detained persons claimed that they had been questioned by police officers without the presence of a lawyer and that their request to consult a lawyer had only been granted after the first questioning"[60]

As regards the practical arrangements for providing legal information to pre-trial detainees in prison facilities it usually goes as follows: Upon admission to prison, pre-trial detainees are subjected to a thorough personal search (for injuries, forbidden objects, weapons etc.). Each person admitted to prison is given bedding sheets (blanket, sheet, bed clothes, and towel), basic hygienic items (soap, toilet paper, tooth paste and toothbrush, disposable razor), and prisoner clothes if newcomers cannot provide themselves with clean clothes on a regular

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services under the home-country professional title notified in the Communication of the Ministry of Justice, published in the Collection of Laws (hereinafter referred to as the "European lawyer").

58 Public Defender of Rights, Report on systematic visits carried out by the Public Defender of Rights to Police cells", 2017, p. 12

59 Public Defender of Rights, Report on systematic visits carried out by the Public Defender of Rights to Police cells", 2017, p. 12

60 CPT/Inf (2015) 18, p. 18

basis from family/friends. Each new pre-trial detainee will also receive a written form informing them of their rights and obligations (known as "*Poučení pro vazbu*") in a language they understand. Pre-trial detainees must attest with their signature to have received such document. Subsequently, a bed is provided in a cell for newcomers. 24 hours from being taken into custody, pre-trial detainees are taken for an interview with the psychologist or other specialist. Next working day the prisoner will undergo a medical examination and have their photograph taken.[61] As regards the exercise of their right to contact a lawyer: §47 of the Ministry of Justice Decree on the Execution of Pre-trial detention specifies that "(1) There shall be special rooms in the prison facility, designated to the contact between the...[pre-trial detainee]...and his/her defence attorney. The...[pre-trial detainee]...shall be brought before his/her defence attorney whenever the defence attorney request so, including at times outside working hours and on weekends. (2) The...[pre-trial detainee]...may also meet in the prison with a lawyer representing him/her in other matters. In the cases of visits by a defence attorney of an accused placed in pre-trial detention for fear that he/she might frustrate the investigation of facts relevant for criminal proceedings, provisions of § 16, paragraph 2 shall be applied as appropriate [i.e. the criminal investigation authorities must not oppose to such meetings]. (3) A parcel...may be handed over during a visit...[to pre-trail detainees]...by his/her defence attorney or lawyer". In practice, upon their arrival to prison, pre-trial detainees must communicate to the prison officers the name and contact details of the lawyer representing him/her in the main criminal case. In order to access prison and meet with this/her client, the said lawyer just needs to show his/her lawyer's licence (similar to an ID card issued by the Czech Bar Association) and the power of attorney.

1.5 Legal information tools

During police detention, detainees are provided with a written form informing them of their rights and obligations and with a list of the locally available lawyers for them to choose one. This list is available in the police Intranet and it is the police officer who prints it if the detainee expresses the desire to make use of his/her right to be assisted by a lawyer. Otherwise, detainees are not allowed to access the internet and their earphones are removed before being placed in a cell.

During pre-trial detention, pre-trial detainees are handed a written form informing them of their rights and obligations while in custody (known as "*Poučení pro vazbu*"). The English version of the laws and regulations governing custody and imprisonment are available upon request from prison authorities.[62] Just as detainees in police detention, pre-trial detainees are not allowed to access the internet and their smart-phones are removed before being placed in a cell. There are some pilot projects regarding access to internet for convicted inmates for educational reasons, but no more information, other than its existence, is available.

1.6 Reporting on legal information

"The exercise of the rights of detainees is subject to internal control mechanisms of the Police of the Czech Republic. On January 2011, the Deputy Police President for External Service assigned to the Directorate of the Public Order Police Service of the Police Presidium of the Czech Republic to carry out methodological activities aimed at: verifying the correctness of the set rules for restricting the liberty of persons and for holding them in cells, with an emphasis on the advising of persons of their rights; verifying whether any violations are occurring of the personal rights of persons whose liberty has been restricted; and at checking compliance with the lawful periods applying to the holding of persons in police cells".[63] Currently, it is the Internal Control Department of the Police Presidium of the Czech

61 British Embassy Prague, Information pack for British prisoners in the Czech Republic, 2016, p. 9
62 British Embassy Prague, Information pack for British prisoners in the Czech Republic, 2016, p. 16
63Response of the Czech Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the Czech Republic from 1 to 10 April 2014, CPT/Inf (2015) 29, p. 3

Republic and control departments of regional police directorates the bodies in charge of inspecting conditions in police cells, asses the findings and point out any shortcomings.[64] To this end, the police is obliged to keep custody records containing, among other things, information on the date and time of the detention, time of arrival at the police station and date and hour of release. The police also keep individual files of detained persons containing the original copy of the written form informing detainees of their rights while in detention signed by the detained person.

2. LEGAL AID

2.1 Fees and mandatory (or not) character of legal representation

The Czech legal order allows any natural person, which the applicant chooses, to act in favour of the applicant before civil courts. The person chosen must be capable in acts of law, competent to proper behaviour and is not allowed to act before the courts repeatedly.[65] Indeed, §24(1) and §25 and §27 of the Civil Procedure Code establish that "The participant may chose a representative to represent him in the proceedings...A lawyer may always be chosen as a representative...The participant may be represented also by any individual being fully capable to legal acts. This representative may act only in person."

The same applies as regards administrative courts. In application of §35(2) and (7) of the Law on the Procedure before the Administrative Courts "a participant may be represented by a lawyer or by another person who performs specialized legal advice according to special laws, if it concerns the design of a branch of activity mentioned therein...The participant may also be represented by a natural person who has the capacity to perform legal acts in full. The court will not allow such representation by a resolution unless such person is clearly capable of being represented properly or represented in different cases again."

Nevertheless, in proceedings before the Supreme Court, the Supreme Administrative Court and the Constitutional Court participants must be represented always by a lawyer.[66]

In addition, and pursuant to §35(1) of the Criminal Procedure Code "the defence counsel in criminal proceedings can only be a lawyer. The defence counsel may allow his/her trainee to represent him/her for the purpose of individual acts of criminal proceedings, except for proceedings before the Regional Court as the court of the first instance, the Appeals Court, and the Supreme Court."

The Czech legal order has a particularity worth mentioning here as it affects the subject matter of our report, i.e. pre-trial detainees. Pursuant to §36 and 36a of the Criminal Procedure Code, representation by a lawyer is mandatory in criminal proceedings for persons who are remanded in pre-trial detention. These two legal provisions provide for what is known as "compulsory defence" (*nutná obhajoba*), according to which the accused must have legal counsel even if he expressly refused legal representation or did not intend to choose any legal counsel."[67]

It must be pointed out that pre-trial detention is not the only situation where the so-called "compulsory defence" is foreseen. Besides pre-trial detainees, §36 and 36a also provide for

64 Response of the Czech Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the Czech Republic from 7 to 16 September 2010, CPT/Inf (2014) 4, p. 13

65 ŠTURMA, Pavel "Report on the situation of Fundamental Rights in the Czech Republic", 3 January 2005 (CFR-CDF/repCZ/2004), p. 89

66 ŠTURMA, Pavel "Report on the situation of Fundamental Rights in the Czech Republic", 3 January 2005 (CFR-CDF/repCZ/2004), p. 89

67 Zdeněk Karabec, Jiří Vlach, Jana Hulmáková et al. Criminal Justice System in the Czech Republic, 3 rd amended and revised edition, Praha 2017

“compulsory defence” in cases where:
1. the nature of the proceedings so requires: i.e. the proceedings relate to a crime for which the law imposes a penalty of imprisonment for a term with the upper limit exceeding five years
2. or, regardless of what penalty the accused faces, he/she cannot duly arrange his/her own defence: for example, because he/she is serving a term of lawful imprisonment or is under observation at a medical institution, has been deprived of legal capacity or has limited legal capacity or is a juvenile, or in the case of proceedings against a fugitive. The accused must also have legal counsel, if deemed necessary by the court (or during pre-trial proceedings by the state prosecutor), particularly in cases where these have doubts about the accused's capacity to present an adequate defence due to his physical or mental deficiencies. The accused must also have legal counsel during the hearing in simplified proceedings against a detainee during which a decision is made on ordering or amending "security detention" (i.e. detention for compulsory treatment in a secure institution) or on ordering or amending compulsory treatment, with the exception of treatment for alcoholism.[68]

This is as far as criminal litigation is concerned, where in application of §36 and 36a of the Criminal Procedure Code, representation by a lawyer is mandatory for pre-trial detainees.

As regards prison litigation concerning:
1. access to an early release measure for medical reasons: it must be noted that pursuant to §73b(2) of the Criminal Procedure Code any request of the accused person for release from custody are decided by the court and in pre-trial proceedings by the public prosecutor. That is, pre-trial detainees request their release before the same criminal court which ordered their pre-trial detention (or in pre-trial proceedings before the Public Prosecutor) and such request is pleaded by the same lawyer representing the accused in the main criminal case. As already stated above, this lawyer is mandatory for persons remanded in custody.
2. the conditions of detention: complaints regarding this issue are filed by pre-trial detainees within prison, before the Prison Director first and then before the General Directorate of the Czech Prison Service. Legal representation by a lawyer is not mandatory in this “internal proceeding”. It must also be noted that conditions of detention can also be litigated by the lawyer representing the accused in the main criminal case before the criminal court which ordered their pre-trial detention, if the aim behind such litigation is to request release from pre-trial detention or the imposition of an alternative measure other than remand prison (for example, home arrest or electronic monitoring).
3. exercise of fundamental rights inside prison: complaints regarding this issue are filed by pre-trial detainees within prison, before the Prison Director first and then before the General Directorate of the Czech Prison Service. Legal representation by a lawyer is not mandatory in this “internal proceeding”. Once these remedies have been exhausted, certain aspects like for example the imposition of certain disciplinary sanctions (i.e. confiscation of a thing and solitary confinement), may be pleaded further before the administrative courts.[69] When litigating before the courts, pre-trial detainees may request free legal aid, just as any other citizen, following the procedure detailed in the fore coming sections. Representation by a lawyer will only be mandatory in the criminal domain, in the other jurisdictional orders (administrative and civil) representation by a lawyer is not mandatory. For example, pursuant to §35(2) and (7) of the Law on the Procedure before the Administrative Courts “a participant may be represented by a lawyer or...may also be represented by a natural person who has the capacity to perform legal acts in full.”

As regards court fees:

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68 Public Defender of Rights, Problems and their solutions, Do you need legal help? Available at: https://www.ochrance.cz/en/complaints-about-authorities/do-you-wish-to-complain/problems-and-their-solution/legal-aid/

69 SVOBODA, Milan. K soudnímu přezkumu rozhodnutí vydaných v kázeňském řízení proti odsouzenému (On Court Review of Decisions Issued in Disciplinary Proceedings Against Convicts). Prague: Právní rozhledy, 13/2011.

1. Court fees applicable in criminal cases are regulated in the Criminal Procedure Code (*Zákon o trestním řízení soudním (trestní řád),* Law No. 141/1961). Thereby, in §151(1) it is stated that the costs necessary to conduct criminal proceedings shall be borne by the State. Nevertheless, pursuant to §152(1.e) "If the defendant is finally and effectively found guilty, he is obliged to reimburse the State for:
(a) the costs of the custody,
(b) the remuneration and reimbursement of expenses incurred by a State appointed defense lawyer if he is not entitled to a defense free of charge,
(c) the cost of using the electronic control system for the conditional release from imprisonment and the replacement of custody,
(d) costs of imprisonment and home-imprisonment, and
(e) the lump sum of other costs borne by the State."
The costs of the proceedings are not calculated according to the actual expenditure of a particular procedure but are fixed in a flat-rate manner. Such fixed rate is determined by the Decree of the Ministry of Justice No. 312/1995 Coll. (*Vyhláška 312/1995, kterou se stanoví paušální částka nákladů trestního řízení*), which establishes the lump sum of the costs of criminal proceedings as follows:
- CZK 2,000 in cases where a judicial order has been issued and has become final
- CZK 4,000 in other cases in which proceedings at first instance were brought before the District Court
- CZK 6,000 in cases in which proceedings at first instance were brought before a regional court.

If an expert opinion was drawn up in the proceedings, §3 of the Ministry of Justice Decree raises the flat-rate sum of the criminal proceedings by CZK 7,000, if at least two experts intervened in the expert report or by CZK 3,800, in other cases.

§156 of the Criminal Procedure Code foresees that, in those cases where court fees are not paid by government duty stamps, the presiding judge of the court of the first instance shall decide on the obligation for their reimbursement after the full force and effect of the judgement.

2. Court fees in civil and administrative matters are mainly regulated by the Civil Procedure Code (*Občanský soudní řád,* Law No. 99/1963 Coll.), the Administrative Procedure Code (S*právní řád,* Law No. 500/2004 Coll.) and by Law, Nº 549/1991 Coll., on Court Fees (*Zákon České národní rady o soudních poplatcích*). As foreseen in §5 of the Law on Court fees, these are either a fixed amount or they are calculated as a percentage of a monetary amount (this last option is known as "percentage fee"). Pursuant to §138(1) of the Civil Procedure Code, "upon a petition, the presiding judge may grant a participant a full or partial exemption from judicial fees if it is justified by the participant's condition and unless the matter is an obviously unsuccessful exercise or defence of a right. Unless the chairman of the panel decides otherwise, the exemption shall apply to the entire proceedings and shall have a retroactive validity; however, fees paid before the decision on exemption shall not be returned." Exemption from court fees and free legal aid (understood as the State assuming the costs of legal defence by a lawyer) are intrinsically related and will be explained in the following section.

2.2 Legal aid scheme

The procedure for granting free legal aid has not yet been unified under a comprehensive Legal Aid Law. Legal reform in this area is, however, on the agenda of the Ministry of Justice ever since 2015.[70] As recently as May 2018 a parliamentary proposal aiming at creating one unified legal regime for the provision of legal aid in court proceedings and proceedings

70. Latham and Watkins, Llp. *Pro bono practices and opportunities in the Czech Republic.* Available at https://www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/pro-bono-in-the-czech-republic.pdf

before other public authorities and administrative bodies was discussed by the Government. However, on 18 May 2018 this Draft Law was rejected as the Government felt the drafting was not clear and conflicted with provisions of the existing regime.[71] Given the difficulties of enacting a comprehensive law, the Czech Bar Association successfully lobbied for the enactment of amendments to the Law on the Legal Profession as regards the provision of free legal aid and free legal advice by the Bar. These amendments came into effect on 1 July 2018[72] and will be commented further down. But first, we will clarify the legal aid scheme.

The fact that there is no comprehensive Legal Aid Law, means that there is a variety of legislation governing the provision of and the access to free legal aid. In practice, free legal aid in court proceedings is regulated for each jurisdictional order in different pieces of legislation. Yet before elaborating on each of these laws individually, it must be mentioned that the right to legal aid is guaranteed at the level of the constitutional framework by Articles 37(2)[73] and 40(3)[74] of Law No. 2/1993 on the Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*), which is a separate document from the constitution (*Ústava České Republiky*) but imbued with the same legal standing as the constitution.

The constitutional right to free legal aid has been developed, mainly, by the following laws and regulations:
1. The Criminal Procedure Code (*Zákon o trestním řízení soudním (trestní řád)*, Law No. 141/1961 Coll., as subsequently amended)
2. the Civil Procedure Code (*Občanský soudní řád,* Law No. 99/1963 Coll., as subsequently amended)
3. the Law on the Procedure before the Administrative Courts, (*Zákon soudní řád správní,* Law No. 150/2002 Coll., as subsequently amended)
4. the Law on the Legal Profession, (*Zákon o advokacii,* Law No. 85/1996 Coll., as subsequently amended)
5. The Law on the Police of the Czech Republic (*Zákon o Policii Republiky*, Law No. 273/2008 Coll., as amended)
6. Regulation of the Ministry of Justice No. 177/1996 Coll. of 4th June 1996, on fees and remuneration of lawyers for the provision of legal services (the Lawyer's Tariff Regulation, *Vyhláška Ministerstva spravedlnosti o odměnách advokátů a náhradách advokátů za poskytování právních služeb (advokátní tarif*)
7. Regulation of the Ministry of Justice No. 275/2006 Coll., regulating the method of determining the income and property of the applicant for the appointment of a lawyer by the Czech Bar Association to provide legal services free of charge or at a reduced fee (*Vyhláška kterou se stanoví způsob zjišťování příjmových a majetkových poměrů žadatele o určení advokáta Českou advokátní komorou k poskytnutí právních služeb bezplatně nebo za sníženou odměnu*)

We will start by discussing the free legal aid scheme foreseen within the criminal domain.

Access to free legal aid in criminal proceedings has been developed mainly by § 33(2) and §36 of the Criminal Procedure Code. These two articles envisage different regimes:

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71 https://www.zakonyprolidi.cz/monitor/6224971.html
72 Information available at the Web site of the Czech Bar Association: https://www.cak.cz/scripts/detail.php?id=18434
73 Art. 37 (2) reads as follows: "In proceedings before courts, other State bodies, or public administrative authorities, everyone shall have the right to legal assistance from the very beginning of such proceedings"
74 Art. 40 (3) reads as follows: "The accused has the right to be given the time and opportunity to prepare a defence and to be able to defend herself, either *per se* or with the assistance of counsel. If she fails to choose counsel even though the law requires her to have one, she shall be appointed counsel by the court. The law shall set down the cases in which the accused is entitled to counsel free of charge"

1. According to **§33(2)** the accused may apply to the court for free defence or defence for a reduced fee. The application may be filed by the accused[75] directly before the presiding judge (or in pre-trial proceedings through the public prosecutor). It does not matter at which stage of the proceedings the claim for a free defence or defence at a reduced fee is made, it will still be granted if the court considers that the criteria are met. If the court grants the application, the accused may chose a defence counsel at his/her own discretion. If he/she does not do so, the accused may ask the court to appoint a defence counsel for him/her. Regardless of whether the defence counsel is chosen by the accused or is appointed by the court, the costs are paid by the State, in full or in part – depending on whether the court has decided that the applicant is entitled to free defence or defence for a reduced fee.[76]

For deciding on the granting of partial or full exemption of legal defence, the court needs to be provided, by means of a special form, with details about income and the property and social situation of the applicant. If the court discovers during the proceedings that the situation of the party does not justify the granting of free defence or defence for a reduced fee (i.e. the situation has changed or the party stated incorrect information) it may cancel its decision on the partial or full granting of legal aid, and it may do so retroactively.[77] Nevertheless, the criteria regarding the economic requirements that must be met are not detailed clearly enough, and Courts seem to enjoy much power of discretion for granting or denying free legal aid in full or in part.

According to the second paragraph of §32(2), the court may also decide, without a prior application of the accused, the need to grant him/her free defence or defence for a reduced fee if it is necessary to protect his/her rights. This is done upon a motion of the public prosecutor when the evidence gathered implies that the accused person lacks sufficient funds to pay the costs of the defence.

The Court's decision either granting or denying legal counsel and the partial or total exemption of court fees must be substantiated and it can be appealed.

2. **§36 and §36 (a)** of the Criminal Procedure Code govern **"compulsory defence"**, which needs to be distinguished from the application for a free defence or defence for a reduced fee regulated in §33(2)

§36 specifies the situations where an accused person needs a compulsory defence, whereas §36(a) specifies the situations where a convicted person needs a compulsory defence.

§36 foresees the need for a compulsory defence by the accused where:

1.) the accused cannot duly arrange their own defence because he/she: is in custody in execution of a protective measure associated with incarceration or is on observation in a medical facility; is legally incapacitated or has restricted legal capacity; is a fugitive; or is negotiating an agreement on the guilt and punishment. In these cases, the accused person must have an appointed defence counsel already at the stage of pre-trial proceedings
2.) the court (or the public prosecutor in pre-trial proceedings) deem it necessary to appoint a compulsory defence, especially with regard to any physical or mental defects of the accused

75 In addition to the accused, the following persons are also entitled to submit a petition for a free defence or a defence for a reduced fee: direct relative, sibling, adoptive parent, adoptive child, spouse, partner, or a participating person. If the accused person is legally incapacitated or if his legal capacity is restricted, this can be done even against their will (Article 37 CCP).
76 Public Defender of Rights, Problems and their solutions, Do you need legal help? Available at: https://www.ochrance.cz/en/complaints-about-authorities/do-you-wish-to-complain/problems-and-their-solution/legal-aid/
77 Public Defender of Rights, Problems and their solutions, Do you need legal help? Available at: https://www.ochrance.cz/en/complaints-about-authorities/do-you-wish-to-complain/problems-and-their-solution/legal-aid/

person which give rise to doubts about his capacity to defend himself appropriately
3.) the nature of the proceedings requires a compulsory defence, since the accused is charged with crimes with the upper limit of a sentence exceeding five years
4.) The accused must also have a defence counsel
a) during the main hearing in a simplified proceeding against him/her,
b) during proceedings in which the decision to impose or change security detention or the imposition or alteration of a protective treatment is taken (with the exception of the anti-alcoholic protective treatment)

As for **§36(a)**, it foresees compulsory defence for a convicted person in the following cases:
- In enforcements proceedings of convicted persons, when the convicted person has restricted legal capacity, is already in custody, or if there is any doubt about his/her capacity to properly defend him/herself.
- Convicted persons must also be appointed a defence counsel in proceedings on a complaint for the violation of law, in extraordinary appeal proceedings and in proceedings on the petition for authorization of a new trial, when the convicted person has restricted legal capacity, is already in custody, there is any doubt about his/her capacity to properly defend him/herself, or if it concerns a criminal offence for which the law stipulates a sentence of imprisonment with the upper limit exceeding five years,

In all these cases, if the accused or the convicted do not choose a defence counsel themselves within a period stipulated by the court,[78] a "compulsory defence counsel" will be appointed by a court decision. If there are several accused persons, a common defence counsel shall generally be appointed for all of them if their interests in the criminal proceeding are not in conflict (§38).

The costs of defence by a "compulsory defence counsel" are borne by the State. However, pursuant to §152.1.b of the Criminal Procedure Code, in case of the lack of success in proceedings – conviction, rejection of an appellate review or of a motion for a new trial – the court imposes a duty on the person to pay the defence costs to the State. The court will not impose a duty to pay the costs of a "compulsory defence" only if the person for whom a "compulsory defence" was appointed meets the requirement of insufficient financial means laid down in §33(2) or in case of proceedings on a complaint against the breach of law according to §266 of the Criminal Procedure Code

§39 of the Criminal Procedure Code provides that for the purposes of appointing a defence counsel under the terms of §36 of the Criminal Procedure Code, the courts of the Czech Republic maintain an alphabetically organised list of lawyers who consent to the performance of the defence as appointed defence counsels of the court and have their office established in the district or seat of the court. Lawyers listed on that list shall be appointed as defence counsels for individual accused persons successively, following the alphabetical order of the list. If a lawyer is appointed in this way and there are reasons for his exclusion from the defence, or if the lawyer could not be appointed for other reasons, the next lawyer without such reasons for exclusion shall be appointed.

As regards the free legal aid scheme foreseen within civil proceedings, it is mainly governed by **§30 and §138** of the **Civil Procedure Code**. According to these provisions:

A party who is entitled to be exempted from court fees (§ 138) shall be appointed a legal

78 The time limit for the appointment of a lawyer is not specified in the Criminal Procedure Code. The length of the period shall be determined taking into account the circumstances of the case so as to reconcile the following two purposes: First, to give the accused the real possibility of choosing a lawyer and not to jeopardize the purpose of the compulsory defence; and secondly, to prevent unnecessary delays in criminal proceedings. VANTUCH, Pavel. Obhajoba obviněného. 3 ed., Praha: C.H. Beck, 2010. Beckovy příručky pro právní praxi, p. 85

representative by the presiding judge at his/her request, if this is indispensable for the protection of his/her interests. The presiding judge is obliged to instruct the parties to submit the application. §138 does not set out any condition for the exemption of court fees, but simply states the following: The Court may grant partial exemption (if it is justified by the circumstances of the party and if it does not involve an arbitrary and or apparently unsuccessful exercise or defence of one's right) or full exemption (only in exceptional cases and for extremely serious reasons). According to §138.3 where an exempt party has been appointed a legal representative, the exemption from court fees, insofar as it was granted, also applies to the remuneration for legal representation, which will be borne by the State as well as the cash expenses incurred by the court-appointed legal representative.[79]

For deciding on the granting of partial or full exemption of legal representation fees, insufficiency of funds needs to be plausibly proven by means of a special form which is attached to the application for requesting legal representation. If the court discovers during the proceedings that the situation of the party does not justify the partial or full exemption of legal representation fees (i.e. the situation has changed or the party stated incorrect information in the application) it may cancel its decision on the appointment of a legal representative and on the partial or full exemption of court fees, and it may do so retroactively.[80]

The Court's decision either granting or denying legal counsel and the partial or total exemption of court fees must be substantiated and it can be appealed.

As regards the free legal aid scheme foreseen within proceedings before the **administrative courts**, it is mainly regulated by **§35(9)** of the Law on the Procedure before the Administrative Courts, (*Zákon soudní řád správní,* Law No. 150/2002 Coll., as subsequently amended), according to which:
The claimant, who has the prerequisites to be exempt from court fees and if necessary to protect his rights, may request the presiding judge to appoint him/her a representative, who may also be a lawyer. The representatives' cash expenses and the remuneration for representing the applicant shall be payable in such a case by the State. If the applicant was appointed a representative who is a taxpayer of value added tax (hereinafter "the tax"), the entitlement to reimbursement by the State is increased by the amount corresponding to the tax which that person is required to pay. If the petitioner applies for exemption from court fees or the appointment of a representative, the time limit set for filing an application for the opening of proceedings is not effective as from the date of filing such a request. The representative appointed in the proceedings before the regional court, if he is a lawyer, represents the petitioner also in the proceedings on the cassation complaint.
Therefore, as can be seen from §35(9), when a claimant requests free legal aid, he/she must prove that the appointment of a representative is necessary for the protection of his/her rights and must prove insufficiency of funds. The applicant proves his or her financial situation by means of a form received from the court. The request for free legal aid may be made before a petition to commence proceedings is filed so that the claimant already can prepare his/her claim. If legal representation is granted, fees and cash expenses incurred by the legal representative are borne by the State.[81]

79Public Defender of Rights, Problems and their solutions, Do you need legal help? Available at: https://www.ochrance.cz/en/complaints-about-authorities/do-you-wish-to-complain/problems-and-their-solution/legal-aid/
80 Public Defender of Rights, Problems and their solutions, Do you need legal help? Available at: https://www.ochrance.cz/en/complaints-about-authorities/do-you-wish-to-complain/problems-and-their-solution/legal-aid/
81 Public Defender of Rights, Problems and their solutions, Do you need legal help? Available at: https://www.ochrance.cz/en/complaints-about-authorities/do-you-wish-to-complain/problems-and-their-solution/legal-aid/

Besides the procedural codes aforementioned, access to free legal aid for in-court proceedings is also regulated by **§18(2) and §18c** of Law Nº 85/1996, on the Legal Profession

According to §18(2) and §18c of the Act on Legal Professions, as amended by the recently passed Law Nº 258/2017[82]**,** individuals, whose income and property conditions justify it and who are not represented already by a lawyer, can request the Czech Bar Association (*Česka advokátní komora*, ČAK hereinafter) to appoint a lawyer to provide legal services for in court representation.

The conditions for being appointed a lawyer by ČAK for the provision of a legal service for free or at a reduced fee are the following:
- submission in time of an application using a standard form
- The application form must contain a description of the matter in which the legal service should be provided and a statement by the applicant that he/she is not represented by another lawyer (§18c(2)). In addition, the application must be accompanied by documents stating the amount of the applicant's income and the income of all jointly considered persons living in the common household for the period of 6 calendar months preceding the filing of the application, as well as documents stating his/her assets (§18c(4)). The application form is available online at the ČAK Web Site.[83] As thereby explained, completely free of charge legal service is provided to persons absolutely without property, without regular income or those having income on the level of the minimum subsistence amount. The minimum subsistence amount is determined by the Law on the Minimum Living and Subsistence Amount, No. 110/2006 Coll.[84]
- the applicant must prove to be a person not fulfilling the requirements to have a lawyer appointed by the court under special legislation, and
- the applicant can not manage to arrange for legal services otherwise. §18c(3) foresees a higher standard regarding this last requirement in the case of the provision of legal services by a lawyer appointed by the ČAK, but whose fees will be paid by the State and not the ČAK (i.e. legal representation in proceedings before the public administration and in proceedings before the Constitutional Court). In these cases, the applicant shall be obliged in the application to prove that he has unsuccessfully attempted to provide legal services through at least two attorneys.

As can be seen from the above conditions, such procedure is truly exceptional and is intended for persons who do not meet the conditions for the appointment of a defence counsel by the court, have also been refused by at least a lawyer (or two, in certain cases) contacted directly by the applicant, and their representation in the given matter is absolutely essential.[85]

According to §18c(6), in the decision on the appointment of a lawyer, the ČAK defines the case in which the lawyer is required to provide legal services and the scope of such services. Pursuant to §55.1 of the Law on the Legal Profession, the decision is adopted through an administrative proceeding within 30 days from the reception of the application and no remedial measure before the ČAK is admissible against such decision; though it is possible to file an action before the administrative jurisdiction.[86]

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82 https://www.epravo.cz/_dataPublic/sbirky/2017/sb0090-2017.pdf

83 https://www.cak.cz/scripts/detail.php?id=10342

84 Instructions for appointment of lawyers by the Czech Bar Association, Available at https://www.cak.cz/scripts/detail.php?id=8750

85 Public Defender of Rights, Problems and their solutions, Do you need legal help? Available at: https://www.ochrance.cz/en/complaints-about-authorities/do-you-wish-to-complain/problems-and-their-solution/legal-aid/

86 Instructions for appointment of lawyers by the Czech Bar Association, Available at https://www.cak.cz/scripts/detail.php?id=8750

As foreseen in §18(d)(2), for the purposes of appointing a lawyer, the ČAK keeps a list of lawyers who have expressed their consent to the provision of legal services under §18c; when appointing a lawyer for such legal services, the ČAK ensures that all lawyers thereby listed are objectively and equally appointed at some point, in view of the nature and complexity of the matter in which the legal services are to be provided and of the possible costs that may be incurred by the lawyer for the provision of legal services. If a lawyer can not be identified from this specific list, the ČAK shall appoint one from the general list of lawyers maintained by the ČAK (pursuant to § 4 of the Law on the Legal Profession).That is, the ČAK may also appoint a lawyer who has not explicitly given his/her consent for the provision of free legal representation but who is a registered lawyer. In this case, the main criteria for selecting a lawyer will be the residence of the applicant or the place where the legal service is to be provided (such as the court's seat, the place where the prison is located, etc.)[87]

As regards the financing of the legal services provided by a lawyer appointed by the ČAK pursuant to §18(c), the following scheme is foreseen by §23(3) and by §23(4) and the Resolution of the ČAK Board of Directors No. 3/2018 of the Bulletin, of 10 April 2018, on the Provision of Free Legal Assistance:

- If a lawyer has been designated by the ČAK to provide legal services consisting of representation in proceedings before the public administration and in proceedings before the Constitutional Court, the **State shall pay its remuneration** in accordance with the provisions governing non-contractual remuneration of lawyers enshrined in the Ministry of Justice Regulation No. 177/1996 Coll., of 4th June 1996, on fees and remuneration of lawyers for the provision of legal services. The lawyer must hand in to the ČAK within one month from termination of the provision of legal services: the bill together with a request for reimbursement. The due date shall be determined by the lawyer so that reimbursement does not occur before 60 days have elapsed from the date of receipt of the application for reimbursement by the ČAK. These 60 days term is to allow the ČAK to carry out a one-month audit of the completeness and integrity of the billing statement and, in the event of misstatements, return the bill to the lawyer for correction. The application for reimbursement is then submitted by the ČAK to the Ministry of Justice for reimbursement. If a lawyer, or the company or foreign company where he/she works, is submitted to value added tax, the remuneration and compensation will also cover the amount corresponding to that tax which the lawyer or company is obliged to pay (§23(a))
- In other cases, for example, in proceedings before courts other than the Constitutional Court, a lawyer designated in accordance with §18c is entitled to ask the ČAK for a **contribution to the costs** associated with free provision of legal services using the procedure established in Art.10 of Assembly Resolution No. 5/1999 of the Bulletin, on the Social Fund of the Czech Bar Association.

Given the fact that it is a relatively new possibility, public awareness of the opportunity to apply to the Czech Bar Association for legal representation in court proceedings is still low.

So far we have looked at in-court legal representation. Yet, besides it, the provision of **free legal advice and legal orientation** by lawyers outside proceedings also exists. We deem worth mentioning this possibility in the present report since prisoners could, if steps are given in the right direction, benefit from this possibility. The already mentioned Law Nº 258/2017, amending Law Nº 85/1996 on the the Legal Profession, foresees the possibility of granting free legal advice to persons with insufficient means, and delegates the provision of this kind of legal aid to the ČAK.

The conditions for being appointed a lawyer by the ČAK for the provision of legal advice for

87 http://www.bulletin-advokacie.cz/bezplatna-pravni-pomoc-a-hromadne-zaloby

free are regulated by **§18(2)** and **§18(a)** of the Law on the Legal Profession. According to these provisions:
- the applicant must submit in time an application using a standard form, available online at the ČAK Web Site.[88]
- The application form must contain a statement by the applicant that he/she is not represented by another lawyer (§18(2)). In addition, the application must be accompanied by documents proving that the average monthly income of the applicant (or persons jointly assessed) for the period of 6 calendar months preceding the submission of the application does not exceed three times the subsistence minimum of the individual under the law governing the minimum subsistence amount.[89] Although if there are good reasons for special consideration, the condition of the 6 months-average income may be waived (§18(a)1).
- the applicant must prove to be a person not fulfilling the requirements to have a lawyer appointed by the court under special legislation, and
- the applicant must state that he/she could not manage to arrange for legal services otherwise (§18(a)3)
- the applicant is obliged to pay the ČAK a fee for the processing of an application of CZK 100 and attach a proof of payment to the application (§18(a)5). Such fee can be paid on the following account number: 6724361052/2700 or by postal order (postal order A). Cash payments to the ČAK are not possible.[90] Yet, the following applicants are exempt from the payment of such fee (§18(a)5) :
a) foreigners placed in a facility for detention of foreigners, pursuant to the Law governing the stay of foreigners in the territory of the Czech Republic, or in a receiving centre under the Asylum Law,
b) holders of a severe health disability card (known in Czech as ZTP or ZTP/P (*průkaz těžkého postižení*)),
(c) persons receiving assistance in material need under the Law governing assistance in material need,
(d) persons under the age of 15,
(e) Persons who are eligible for Grade III (Heavily Dependent) and IV (full dependency) care allowance under the Social Services Law, and
(f) persons caring for persons who have been granted a Grade III (heavy dependency) and IV (full dependency) care allowance under the Social Services Law.
In order to be exempt from the payment of the processing fee, the applicant is required to document these facts.

It is to be noted that only basic information is provided in order for applicants to be able to navigate the justice system. Indeed, legal advice is provided for a minimum period of 30 minutes, up to 120 minutes of legal consultation for each calendar year; the total annual time limit is counted as every 30 minutes of legal consultation commenced (§18(a)2)

As foreseen in §18(d)(2), for the purposes of appointing a lawyer, the ČAK keeps a list of lawyers who have expressed their consent to the provision of legal advice under §18a; when appointing a lawyer for such legal consultations, the ČAK ensures that all lawyers thereby listed are objectively and equally appointed at some point, in view of the nature and complexity of the matter in which the legal services are to be provided and of the possible costs that may be incurred by the lawyer for the provision of legal services. If a lawyer can not be identified from this specific list, the ČAK shall appoint one from the general list of lawyers maintained by the ČAK (pursuant to §4 of the Law on the Legal Profession). Thus,

88 https://www.cak.cz/scripts/detail.php?id=10342

89 Determined by the Law on the Minimum Living and Subsistence Amount, No. 110/2006 Coll., , which is annually updated through Decrees. Currently, the minimum subsistence level is CZK 4 310 per month (167 EUR); for 2 adults persons living in the household the minimum subsistence level is CZK 5,480 per month (212 EUR). If the reasons for the special consideration are good, then this condition may be dropped

90 Bezplatná právní pomoc po 1. 7. 2018 Informace pro žadatele
https://www.cak.cz/scripts/detail.php?id=2617

here too the ČAK may also appoint a lawyer who has not explicitly given his/her consent for the provision of free legal advice but who is a registered lawyer. In this case, the main criteria for selecting a lawyer will be the residence of the applicant or the place where the legal service is to be provided (such as the court's seat, the place where the prison is located, etc.). Pursuant to the Resolution of the Board of Directors No. 3/2018 of the Bulletin, of 10 April 2018, on the Provision of Free Legal Assistance, free legal advice under §18(a) cannot be provided by a legal trainee.

In practice, the provision of this kind of free legal advice goes as follows: If the applicant fulfils the conditions set out in §18(a) of the Law on the Legal Profession, the contact details of the designated lawyer are sent to him/her. It is up to the applicant to contact the lawyer and agree on the place and time of the consultation. Likewise, the lawyer will be informed by a letter of the applicant's contact details and information on the maximum length of the legal consultation. There is no administrative decision made in writing; a formal written decision will only occur if the application is rejected.[91] Precisely, given the fact that the applicant and the lawyer agree on the place and time of the consultation is what leaves the door open to prisoners making use of this possibility and benefiting from free legal advice.

As regards the financing scheme, §23(2) of the Law on the Legal Profession states that lawyers appointed by the ČAK for the provision of legal advice are paid by the State, yet compensation for missed time and reimbursement of travel expenses is for the lawyer only in justified cases. The Resolution of the Board of Directors No. 3/2018 of the Bulletin, of 10 April 2018, on the Provision of Free Legal Assistance foresees that: the lawyer is to make a report on the legal consultation according to a standard form and to send a copy of it to the ČAK within one week of the provision of legal advice. In addition, the lawyer is to send the billing of the legal advice provided together with a request for reimbursement within the statutory period of one month from termination of the provision of legal services. The due date shall be determined by the lawyer so that reimbursement does not occur before 60 days have elapsed from the date of receipt of the application for reimbursement by the ČAK. These 60 days term is to allow the ČAK to carry out a one-month audit of the completeness and integrity of the billing statement and, in the event of misstatements, return the bill to the lawyer for correction. The application for reimbursement is then submitted by the ČAK to the Ministry of Justice for reimbursement. If a lawyer, or the company or foreign company where he/she works, is submitted to value added tax, the remuneration and compensation will also cover the amount corresponding to that tax which the lawyer or company is obliged to pay (§23(a))

2.3 Emergence of a right to legal aid in penal facilities

Within prison, pre-trial detainees can file complaints and requests before the Prevention and Complaints Department present in each individual prison, before the Prison Director and before the immediate superior of the staff member against whom their complaint is directed (for example, in the majority of facilities pre-trial detainees have the possibility of orally complaining to the head supervisor or tutor during the morning inspections). However, taking into account that pre-trial detainees bear their costs of their remand in custody, it cannot be said that such “complaint scheme” is defrayed. Indeed, pursuant to §152(1.e) of the Criminal Procedure Code “If the defendant is finally and effectively found guilty, he is obliged to reimburse the State for: (a) the costs of the custody,” among others.

Pre-trial detainees can also file complaints and requests to external bodies and institutions, like the General Directorate of the Prison Service, the Ombudsman, NGOs or the European Court of Human Rights. They file their complaints in writing and according to §13 of the Law on the Execution of Pre-trial Detention, pre-trial detainees can send at their own expense written communications without limitation. Only when pre-trial detainees have no funds, the prison administration bear the costs of delivering this correspondence (§13.3 of the Law on

91https://www.cak.cz/scripts/detail.php?id=2617

the Execution of Pre-trial Detention and §41.2 of the Ministry of Justice Decree on the Execution of pre-trial detention).

As regards litigation before the courts of justice, two relevant milestones benefiting inmates must be mentioned:

1.) In 2010 the Constitutional Court decided that convicted inmates should be allowed to contest the imposition of certain disciplinary sanctions (particularly, confiscation of a thing and solitary confinement) before the courts. The Constitutional Court paved the way to such possibility through its decision dated 29 September 2010 (sp. stmp Pl. ÚS 32/08, No. 341/2010 Coll.,), which partially repealed §76 of the Law on the Execution of Imprisonment excluding from judicial review the decisions issued by the prison administration in disciplinary proceedings. Yet, the Constitutional Court concluded that it was up to the legislator to resolve the question of the practicality and effectiveness of the review of decisions made in disciplinary proceedings: i.e. whether it was a matter entrusted to the general courts in which the criminal proceedings are conducted or to the administrative courts. The solution adopted by the legislator was not clear enough and the Supreme Administrative Court in 2013 had to decide on cassation[92] which court had jurisdiction for deciding on an action against the Prison Service decision to impose disciplinary sanctions. The conclusion reached was that it fell within the administrative judiciary and the competent courts were therefore the regional courts (*Krajský soud*) where the prison is located. This possibility has been extended to pre-trial inmates too.[93] These two judgments were the first of a series of judicial decisions from the Constitutional Court and the Supreme Administrative Court taking a stance on the access to courts of prisoners (for example, on the possibility of choosing the treatment programme or on questions related to probation, etc. However, as they relate more to convicted prisoners we will not further elaborate on them)

The second development has taken place as recently as 1 July 2018, when an amendment to the Law on the Legal Profession (new wording of §18a-18c) has extended free legal aid. Due to this new legislative amendment, free legal aid currently also covers:
1. legal services, in the form of legal consultations, provided before public authorities
2. legal representation in administrative proceedings and
3. legal representation in proceedings before the Constitutional Court.
With this change, the Ministry of Justice complements free legal assistance where it has not been provided at present.[94] We consider this could benefit prisoners in that they could try to apply for free legal advice or free legal representation in the proceedings before the Prison Administration. It is however, a very recent possibility and only time will show whether inmates can really make use of it.

2.4 Perimeter of the legal aid regarding prison litigation

Not every single aspect of life in prison can be litigated before the courts (for example, the imposition of certain disciplinary sanctions, like a reprimand or a fine up to 1000CZK, cannot). Yet, all aspects of prison life that concern fundamental rights should be open to court review, as reminded by both the Constitutional Court[95] and the Supreme Administrative

92Nález Nejvyššího Správního Soudu č. 2805/2013 Sb.m Available at: http://sbirka.nssoud.cz/cz/rizeni-pred-soudem-prezkum-rozhodnuti-vezenske-sluzby.p2924.html

93 §23.8 of the Law on the Implementation of Pre-trial detention was also modified and currently foresees that "decisions issued in disciplinary proceedings imposing disciplinary sanctions pursuant to §22(2)(a) to (c) shall not be subject to review by the court". This means, *mutatis mutandis*, that disciplinary sanctions consisting of the confiscation of a thing §22(2)(d) and solitary confinement §22(2)(e) may be subject to court review.

94 https://www.cak.cz/scripts/detail.php?id=18765

95 In the already mentioned decision dated 29 September 2010 (sp. stmp Pl. ÚS 32/08, No. 341/2010 Coll.,), the Constitutional Court was called on to decide whether the imposition of some disciplinary punishments within prison were "decisions affecting fundamental rights and freedoms under the

Court[96]. Whenever in court litigation takes place, prisoners (just as any other citizen) can request free legal aid. If the court (or, subsidiarily, the Czech Bar Association) considers that they meet the criteria, their litigation will be then covered by free legal aid (in full or in part). Therefore, what we are trying to say is that, the perimeter of legal aid regarding prison litigation depends on what can be litigated before the court.

Does the legal aid granted for a criminal case provide for additional fees if the lawyer handles a proceeding linked to the defendants' rights within the prison?

If the proceeding linked to the defendants' rights within prison is pleaded before the same criminal court which ordered pre-trial detention (for example, if the free legal aid lawyer asked for early release because of medical reasons) then the legal aid granted for that criminal case would provide for additional fees, given that free legal aid differentiates between the various legal acts performed by the lawyer when providing legal services. That is, handling a proceeding (or more precisely, a plea) linked to the defendants' rights within prison besides the main criminal case, will imply more work (more legal acts, like additional meetings with the inmate in prison, writing legal reports, etc.) and the lawyer will get paid for them. Otherwise, if the proceeding linked to the defendants' rights within prison is not litigated within the main criminal case by the same free legal aid lawyer, no additional fees will be provided. Indeed, it can happen that the pre-trial detainee litigates before the courts the imposition of a disciplinary sanction consisting on solitary confinement; in this case his/her complaint would be filed before the administrative courts and he/she when requesting free legal aid will be assigned, if the court considers he/she meets the criteria, a new lawyer (although the pre-trial inmate could also choose as his/her free legal aid lawyer the one in charge of his/her main criminal case, yet here what the lawyer gets paid would not be considered additional fees but actual reimbursement for that new legal service)

2.5 Scope of the compensation

Generally, lawyers' fees for the provision of legal services are regulated by a contract between the lawyer and the client (this fee is known as "contractual fee"). However, when it comes to free legal aid, §1(2) of the Ministry of Justice Regulation No. 177/1996 Coll., of 4th June 1996, on fees and remuneration of lawyers for the provision of legal services (*Vyhláška Ministerstva spravedlnosti o odměnách advokátů a náhradách advokátů za poskytování právních služeb (advokátní tarif*), hereinafter referred to as the Lawyer's Tariff Regulation) establishes that, in these cases, "the amount of the lawyer's fee shall be set in compliance with provisions for non-contractual fees"

The Lawyer's Tariff Regulation does not provide for the overall management of the case, but rather differentiates between the various legal acts performed by the lawyer when providing legal services. In this sense, §11 establishes that "non-contractual fees shall be paid for each of the following legal services:...(b) initial advice to the client including the acceptance and preparation of his representation or defence where the lawyer is appointed by a court, (c) subsequent advice to the client exceeding one hour, (d) a written submission or a proposal in relation to the merits, a call for performance with a basic factual and legal analysis preceding the proposal in relation to the merits, (e) participation in investigative acts during the pre-trial procedure, for every two hours commenced,...(g) participation in acts performed by an administrative or other body, attending trial before a court or another body, for every two hours commenced, (h) writing a legal analysis of the case, (i) negotiating with the adverse party, for every two hours commenced,...(k) an appeal, appeal review, application for a new

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Charter" (para. 26). It concluded that "The impact of some disciplinary punishments is a serious violation of fundamental rights and freedoms...[therefore]...Decisions imposing such disciplinary punishments can not be excluded from review by a court in situations where they concern fundamental rights and freedoms...[since that would be in contradiction with Article 36 (2) of the Charter of Fundamental Rights and Freedoms]..."

96 See for example, nález Nejvyššího Správního Soudu č. 2805/2013 Sb.

trial, action for nullity, or a complaint against a decision on an application for a new trial and commenting statement," etc.

Further, §2(1) of the Lawyer's Tariff Regulation foresees that "In addition to his entitlement to a **lawyer's fee**, a lawyer shall be entitled to have his **cash expenses** remunerated, as well as the **loss of his time** compensated". §13(1) explains, by way of example, what is to be understood by "cash expenses" and refers, in particular, to "court and other fees, travel costs, mail costs, telecommunications, expert reports and other specialists' opinions, translations, true copies and photocopies". It is a non-exhaustive list. §14(1) states that "a lawyer shall be entitled to have the time lost in relation to the provision of legal services compensated: a) when performing acts in a location other than the seat or residence of the lawyer, for the duration of travelling to the location and back; b) for the time lost due to the delayed opening of a trial before a court or any other body if such delay exceeds 30 minutes."

Lawyers appointed as "compulsory defence" pursuant to §36 and §36(a) of the Criminal Procedure Code and lawyers appointed as the defence counsel of an accused person who has been acknowledged the right to a defence counsel free of charge or for a reduced fee (§33(2)) are entitled to "**remuneration** and **cash expenses** from the State" (§151(2) and §151(6)). According to §151(3), (4) and (5), in order to get reimbursed, the appointed lawyer must file a claim within one year from the day he/she learned that the duty to defend ended, otherwise the claim expires; the claim of the defence counsel, if he is a payer of value added tax, shall be increased by the amount equal to this tax that the defence counsel is required to pay. The amount of remuneration and reimbursement of cash expenses shall be decided by the authority involved in criminal proceedings that led the proceedings at the time when the obligation of the defence counsel to defend ended, without undue delay, at the latest within two months from lodging the motion. In trial proceedings, the presiding judge of the court of first instance shall make the decision. Upon a petition of the defence counsel the authority involved in criminal proceedings may take measures to ensure that the defence counsel is given a reasonable advance payment for remuneration and reimbursement of cash expenses before the end of the criminal prosecution, if it is justified by the duration of the criminal prosecution or by other serious reason. The remuneration and reimbursement of the cash expenses must be paid without undue delay after they were granted, at the latest within 30 days.

The same applies to lawyers appointed by courts in civil or administrative proceedings. In this sense, §140(2) of the Civil Procedure Code states that "If the court appointed an attorney of law for a participant, his **cash expenses** and a **remuneration** for representation shall be paid by the state; in justified cases, the state shall provide the attorney of law upon his request with an adequate advance payment."

It is to be noted that court appointed lawyers are not entitled to compensation for loss of time (irrespective of whether they were appointed by criminal, administrative or civil courts)

Worse off are lawyers appointed by the ČAK to provide free legal **advice** under §18(a) of the Law on the Legal Profession. Pursuant to §23(2) of the Law on the Legal Profession, they are entitled to remuneration of their fee by the State (and the State will pay their remuneration in accordance with the law governing non-contractual remuneration), yet compensation for missed time and reimbursement of travel expenses is for the lawyer only in justified cases. In practical terms this could mean that lawyers may not be reimbursed for the travel expenses incurred when meeting inmates in prisons, although it can also happen that travels to prisons will actually be one of those "justified cases" (since this modality of free legal aid was established as recently as July 2018,[97] it is still too early to see what will be the

97 Before the enactment of Law Nº 258/2017 the ČAK was also appointing lawyers for the provision of legal advice but under a different regime: The appointment of lawyers was not centralised by the Brno branch of the ČAK, but actually every regional branch organised the provision of legal advice differently: In some regions, the regional representative of the Czech Bar Association designated a

day-to-day practice)

2.6 Eligibility to legal aid

The different laws regulating free legal aid do not specifically mention legality of residency as a criteria. Hence, theoretically a British tourist who ended up prosecuted and in remand prison during his/her holidays in the Czech Republic could also benefit from free legal aid. However, as regards the criteria of legality of residence, two laws must be mentioned:
1. Law on access to justice in cross-border disputes as a transposition of the Council Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes was adopted (*Zákon č. 629/2004 Sb., o zajištění právní pomoci v přeshraničních sporech v rámci Evropské unie*). It was adopted on 11 November 2004 and it stipulates the right to legal aid for citizens of other EU member states in cross-border disputes before the courts in the Czech Republic, as well as for Czech citizens or persons living on the territory of the Czech Republic before the courts of other EU member States. However,it provides for legal aid only in the limited instance where a citizen of another EU member state participates in a cross-border dispute in front of a Czech court, or where a Czech citizen participates in a procedure in front of a court of another EU member state. To apply for legal aid in cross-border disputes, the same procedure as set out in the preceeding sections applies.

2. The Asylum Law (*Zákon č. 325/1999 Sb. o azylu*) which specifically foresees free legal aid for asylum seekers and undocumented foreigners in the the administrative proceedings (before the Ministry of Interior) concerning their applications for asylum and administrative expulsion proceedings. §21 stipulates that "(1) A party to a proceeding has the right to seek assistance from a legal or natural person engaged in providing legal aid to refugees; the Ministry will contribute to the payment of expenses incurred by the legal or natural person during the provision of free legal aid on the basis of a contract concluded in writing" who has entered into a written legal aid agreement with the Ministry to cover the costs of providing free legal aid. (2) The provisions of paragraph 1 are without prejudice to the right of a party to legal aid granted under another legislation; reimbursement of the costs associated with the provision of such legal assistance shall be borne by the party concerned. (3) The party to the proceedings has the right to contact the legal or natural person providing legal assistance. In the asylum facility, legal aid may be provided only on premises designated for that purpose by the designated operator of the asylum facility." This provision has enabled a plethora of NGOs working on the field of migration, undocumented foreigners and asylum to provide free legal aid.

The economic and property situation of the person applying for free legal aid is, as already mentioned in previous paragraphs, the main criteria for being granted free legal aid. However, and although being the main criteria, no exact threshold is foreseen within the different laws regulating free legal aid, except as regards the application for free legal advice and orientation provided by lawyers appointed by the ČAK pursuant to §18(a) of the Law on the Legal Profession; thereby the following economic threshold is established: "the average monthly income of the applicant (or persons jointly assessed) for the period of 6 calendar months preceding the submission of the application must not exceed three times the subsistence minimum of the individual under the law governing the minimum subsistence amount."[98] Still, however, if there are good reasons for special consideration, the condition of

specific legal counsel to provide minor legal aid; in other regions, however, a permanent official post had been established and legal counsels took turn in providing minor legal advice according to a pre-set order. This meant that lawyers provided free legal advice in a specific building furnished by the regional branch of the ČAK, but did not go to prison. With the current system, however, maybe the lawyer upon agreement with the applicant for free legal advice, agrees to go to prison. Time will tell.

98 Determined by the Law on the Minimum Living and Subsistence Amount, No. 110/2006 Coll., , which is annually updated through Decrees. Currently, the minimum subsistence level is CZK 4 310 per month (167 EUR); for 2 adults persons living in the household the minimum subsistence level is

the 6 months-average monthly income may be waived (§18(a)1)).

The fact that there is no fixed and clear criteria as regards the economic situation of the applicants means that in practice courts and the ČAK enjoy a wide margin of appreciation and there is room for disparity (i.e. it could happen that even if two applicants have the same economic situation, one would be granted free legal aid, whereas the other would not). On the other hand, it also leaves room for flexibility, particularly since the economic situation of the applicant (although being the main criteria) is not considered on its own. Indeed, consideration is also given to the social situation of the applicant, his/her health condition, as well as the amount of the court fee, the probable cost of supplying evidence and the nature of the claim filed[99]

As regards the criterion relating to the merits of the applicants' complaint, it must be noted that in administrative and civil proceedings, the courts when deciding on the granting of free legal aid, actually consider whether a legal representative in the form of a lawyer is "necessary for the protection of the applicants' rights". Representation by a lawyer is not mandatory in these jurisdictional orders and the parties to a civil and administrative procedure can also be represented by a natural person who has the capacity to perform legal acts in full (except in proceedings before the Supreme Court, the Supreme Administrative Court and the Constitutional Court, where participants must be represented always by a lawyer). When deciding on the need of a lawyer, the court would normally consider the complexity of the case and the level of understanding of the applicant (social and cultural level, age, etc.). In addition, and as regards civil proceedings, the court also considers whether the claim "does not involve an arbitrary and or apparently unsuccessful exercise or defence of one's right" (§ 138).

Finally, as regards lawyers appointed by the ČAK for the provision of in court legal representation pursuant to §18(c) of the Law on the Legal Profession, it must be noted that the ČAK examines the merits of the applicant's complaint, but not to decide whether free legal aid is granted or not, but to define and delimit the scope of the legal services which the appointed lawyer will provide.

2.7 Choice of the lawyer

Pre-trial inmates can choose their lawyer when granted free legal aid in those cases where the court accepts to grant a defence free of charge or for a reduced fee pursuant to §33(2) of the Criminal Procedure Code. If the accused does not choose a lawyer within the time-limit set by the court, the accused may ask the court to appoint a defence counsel for him/her.

Pre-trial inmates can also choose their lawyer in the case of "compulsory defence" pursuant to §36 of the Criminal Procedure Code, which specifically applies to pre-trial detainees. Again, if the remand prisoner does not choose a defence counsel within a period stipulated by the court, a "compulsory defence counsel" is appointed by a court decision (§38.1 of the Criminal Procedure Code).

Not only within criminal proceedings may pre-trial detainees choose their lawyer when granted free legal aid, also in civil and administrative proceedings.

However, there is no possibility of choosing the lawyer when it is appointed by the ČAK, both pursuant to §18(a) (i.e. for the provision of legal advice) or pursuant to §18(c) for the provision of legal services, mainly in-court representation.

CZK 5,480 per month (212 EUR). If the reasons for the special consideration are good, then this condition may be dropped

99 J. SOBOTA, Náklady trestního řízení a jejich náhrada, Diplomová prace, Právnická fakulta Masarykovy univerzity, 2017, p. 31

2.8 Application for legal aid

No legal text specifies which particular documents should be attached to an application for free legal aid. However, when requesting free legal aid both before the courts and before the ČAK,[100] the applicant must make use of the available pre-printed forms, which specifically ask for certain information. The documents listed below support the information requested in such forms:

- documentation which allows to properly identify the applicant (for example, ID or passport) and his/her personal situation (marital status, city registration, etc.)
- documentation which allows to identify the particulars of the case (for example, if the applicant requests before the ČAK the appointment of a lawyer for the the provision of legal aid in court proceedings, and such proceedings are ongoing, he/she has to provide the court number and its address, the number assigned to the particular proceeding, the type of proceeding, the date of its commencement and the date of the next hearing/court act. If for example, the applicant requests before the ČAK the appointment of a lawyer for the provision of legal advice, he/she has to describe the subject matter for which the advice is sought)
- a statement of the applicant's average monthly income from his/her employment (from his/her employee) or if self-employed, this confirmation may be provided by the tax administration; if unemployed, evidence can be a confirmation from the employment office of his/her registration in the list of job seekers
- a statement of the amount of any secondary income (e.g. capital revenues from securities);
- a statement of pension benefits received by the applicant, and full details thereof; or a certificate from the social affairs office of his/her admission in the list of persons in material need
- full details of personal assets of a higher value (e.g. financial savings, properties not used as primary housing, land owned, etc.); or otherwise confirmation from the local authority of the place of residence that he does not own any property
- full details of essential monthly expenditure: expenditure connected with housing (for example rent bills); subsistence (electricity bills, gas bills, etc.); the cost of commuting to work (for example, transport pass); maintenance for children or a (former) spouse (with full details of the authority and the judgement imposing this obligation on the applicant);
- full details of any debts and creditors, leases and consumer credits (and where appropriate a specification of execution proceedings against the applicant);

In addition to these documentation, the applicant must state in the pre-printed forms the following:

- a solemn declaration from the applicant that he/she has disclosed truthful information in his/her application and has not concealed any facts;
- the date and the applicant's signature.

When the applicant requests free legal advice before the court, he/she must state

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100 The application forms which ought to be submitted before the ČAK have been established by Decree 120/2018 Coll. on the determination of the application forms for the appointment of a lawyer and the form for the provision a one-off legal consultation (*Vyhláška 120/2018 Sb. o stanovení formulářů žádosti o určení advokáta a formuláře podnětu k poskytnutí jednorázové právní porady*) *Available at*: https://www.zakonyprolidi.cz/cs/2018-120/zneni-20180701#p2-1

- whether the applicant is seeking: a) exemption from the obligation to pay a court fee, b) the appointment of a representative, c) the appointment of a lawyer as a representative, having regard to the complexity of the case.

2.9 Evaluation and granting of applications for legal aid

The bodies competent to decide on the granting of free legal aid are the following:

1. The **courts**, more precisely: either the presiding judge of a panel consisting of three judges, once the trial has commenced, or a single judge in pre-trial proceedings. The decision adopts the form of a court order. It is to be noted that an application for free legal aid is submitted before the court hearing the proceedings in respect of which free legal aid is sought; yet the court of first instance decides on applications, even in cases where the application concerns free legal aid for proceedings after the lodging of an appeal.

There are no fixed deliberative rules (neither are there standardised and well established criteria of property and social situation) for the granting of free legal aid. Hence, it is totally at the discretion of the judge. This is obviously a very unsatisfactory situation.

Pursuant to §33.3 of the Criminal Procedure Code, refusals may be appealed and the appeal has a dilatory effect.

2. The **Czech Bar Association** (ČAK), more precisely the ČAK Branch located in Brno. According to §45(2)a) of the Law on the Legal Profession the determination of lawyers for the provision of free legal aid (pursuant to §18a to §18c of that same legal text) is a task entrusted to the Chairman of the ČAK; yet on July 2018, the chairman of the ČAK delegated the exercise of such power on the Brno ČAK Branch. Since it is a very recent delegation, we have not managed to ascertain the precise deliberative rules. Nevertheless, the criteria of property is more precisely defined when requesting free legal aid before the ČAK (than when requesting it before the courts) and, thus, there is less room for disparity (i.e. there is less room for applicants who are in a similar situation being treated differently). However, it is worth reminding that the possibility of requesting the appointment of a free legal aid lawyer for in court representation by the ČAK is subsidiary; that is, the applicant must prove to be a person not fulfilling the requirements to have a lawyer appointed by the court under special legislation (for example, “a compulsory defence counsel”) and prove that he/she did not manage to arrange for legal services otherwise. Only then, would the applicant have the possibility of his/her request being considered by the ČAK Branch located in Brno. This is not the case if the applicant requests free legal advice and orientation (here there is no need to prove the rejection by lawyers contacted in the first place).

Against the decision on the granting or denying of free legal aid, no remedial measure before the ČAK is admissible; though it is possible to file an action before the administrative jurisdiction.

2.10 Remuneration of legal aid lawyers

As already stated, when it comes to free legal aid, §1(2) of the Ministry of Justice Regulation No. 177/1996 Coll., of 4th June 1996, on fees and remuneration of lawyers for the provision of legal services (*Vyhláška Ministerstva spravedlnosti o odměnách advokátů a náhradách advokátů za poskytování právních služeb (advokátní tarif*), hereinafter referred to as the Lawyer’s Tariff Regulation) establishes that, in these cases, “the amount of the lawyer’s fee shall be set in compliance with provisions for non-contractual fees”, irrespective of whether lawyers have been appointed by the courts or by the ČAK.

Generally, the rates for non-contractual fees are established in §7 of the said Lawyer’s Tariff Regulation. According to such provision: “The rate for a non-contractual fee for one act of the legal service is set from the tariff value of
1. up to CZK 500 .....….CZK 300
2. from more than CZK 500 up to CZK 1 000..... ….....CZK 500

3. from more than CZK 1 000 up to CZK 5 000.....……CZK 1 000
4. from more than CZK 5 000 up to CZK 10 000.....……..CZK 1 500
5. from more than CZK 10 000 up to CZK 200 000.....……CZK 1 500 and CZK 40 for every commenced CZK 1 000 exceeding CZK 10 000
6. from more than CZK 200 000 up to CZK 10 000 000.....……CZK 9 100 and CZK 40 for every commenced CZK 10 000 exceeding CZK 200 000
7. more than CZK 10 000 000.....……CZK 48 300 and CZK 40 for every commenced CZK 100 000 exceeding CZK 10 000 000."

It is to be noted that, pursuant to §11, the lawyer's fee is calculated for each act performed during the provision of legal services. That is, the total remuneration that a lawyer will perceive for the provision of a legal service, is the sum of the fees billed for each act performed according to a tariff value.

Further, §10 of the Lawyer's Tariff Regulation establishes what is to be considered the tariff value in the following proceedings:
(1) CZK 500 shall be considered to be the tariff value with respect to representation of a client in administrative proceedings including proceedings for administrative infractions or any other administrative delicts.
(2) CZK 500 shall be the tariff value with respect to defence in criminal cases where the trial court (court of first instance) decides in a closed trial.
(3) Regarding defence in criminal proceedings, other then those under subsection (2), the following tariff values apply:
a) CZK 5,000 in cases of a crime where the maximum statutory term of imprisonment is one year,
b) CZK 10,000 in cases of a crime where the statutory term of imprisonment is more than one and a maximum of five years,
c) CZK 30,000 in cases of a crime where the statutory term of imprisonment is more than five and a maximum of ten years,
d) CZK 50,000 in cases of a crime where the statutory term of imprisonment is more than ten years or where the extraordinary punishment may be imposed.

So far, we have described how are non-contractual fees regulated in general. However, **when it comes to free legal** aid the **rates** differ to those established in §7, in that they are **20% decreased**. As established in §12(a) of the Lawyer's Tariff Regulation:
"(1) The rates of a non-contractual fee under §7 for legal service acts of an appointed representative in civil proceedings, an appointed guardian in civil proceedings, an appointed defence lawyer in criminal proceedings, an appointed authorized representative in criminal proceedings or a child's guardian according to another legal regulation on the judiciary in juvenile cases are reduced by 20%.
In addition, and according to §12(a)2, the "rate of a non-contractual fee per a legal service act of an appointed representative in civil proceedings, or...an appointed defence lawyer in criminal proceedings,...reduced under paragraph 1 **is CZK 5,000 at most**."

This is as regards lawyers appointed by courts or by the ČAK for the provision of free legal aid in court proceedings. Yet, as regards the remuneration of lawyers appointed by the ČAK for the provision of free legal advice, §12(b)1 of the Lawyer's Tariff Regulation foresees that: "The rate of non-contractual remuneration for legal advice provided under §18(a) of the Law on the Legal Profession shall be 150 CZK for each half-hour of legal consultation."

The remuneration amounts described in the previous paragraphs do not include travel or cash expenses. According to §13(3) and (4) of the Lawyer's Tariff Regulation "In the absence of an agreement between a lawyer and his client on a flat fee to cover national mailing costs, local phone calls and transportation fees, the amount shall be CZK 300 for each act performed within the provision of legal services...Unless otherwise agreed with respect to travel costs the amount to cover such costs shall be set in compliance with legislation

governing travel expenditures" (i.e. Law No. 119/1992 Coll. on Travelling Expenses Reimbursement, as subsequently amended).

In conclusion, remuneration of legal aid lawyers is 20% lower and has a maximum limit rate of 5,000 CZK. However, once granted free legal aid, free legal aid lawyers do not get paid differently when litigating prison related issues than when litigating other matters of a criminal or civil nature.

2.11 Support to non-native speakers

During court proceedings, a party who does not speak or understand Czech, is entitled to translation/interpretation.

For example, in criminal proceedings, §2(14) of the Criminal Procedure Code foresees that "The authorities involved in criminal proceedings conduct the proceedings and issue decisions in the Czech language. **Any person who declares that he does not speak Czech is entitled to use their mother tongue or a language he declares he understands before the authorities involved in criminal proceedings**". §28(1) of the Criminal Procedure Code complement the above precept by stating that "**If the need to translate the content of a document, testimony or other procedural act arises, or if the accused exercises the right referred to in Section 2(14), a translator shall be co-opted"**

For the purpose of translation/interpretation of the proceedings, the Minister of Justice keeps a list of registered interpreters/translators. The requirements for being thereby enlisted, as well as the compensation for cash expenses and remuneration for interpreting/translating is regulated by the Law on Experts and Interpreters (*Zákon č. 36/1967 Sb., o znalcích a tlumočnících*) and by the Decree on the Implementation of the Law on Experts and Interpreters (*Vyhláška č. 37/1967 Sb., k provedení zákona o znalcích a tlumočnících*).[101] According to §17(2) of the Law on Experts and Interpreters, where an interpretation/translation is requested by a public authority, the costs are borne by that public authority. This means that in practice, the costs of interpretation are born by the state if the accused chooses to exercise his/her right to use his/her mother language or to use a third language he/she understands and the court appoints an interpreter. Following a decision by the Supreme Court, the State does not request that these costs be paid back by the party to the proceedings who exercised his/her right to use his/her mother tongue if that person is found guilty.[102]

This is as far as translation / interpretation in court proceedings goes. Yet as regard translation / interpretation in administrative proceedings (i.e. proceedings before the Public Administration, like for example, the Prison Administration) the following rules apply:

§16 of the Administrative Procedure Code (Law No. 500/2004) foresee that "Communication within the procedure shall be carried out and documents executed in the Czech language. Parties to the procedure may also communicate and file submissions in the Slovak language. Documents executed in a foreign language shall be submitted by the party to the procedure

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101 §29 of the Criminal Procedure Code also regulates remuneration of interpretation/translation in court proceedings and foresees that:

"(2) The amount of compensation and remuneration of an interpreter shall be determined by the authority that co-opted the interpreter and in trial proceedings, the presiding judge, without an undue delay, at the latest within two months from expensing the compensation and remuneration of an interpreter. If the authority that co-opted the interpreter disagrees with the amount of compensation and remuneration charged for the interpreter, it shall decide by a resolution. A complaint is admissible against this decision, which has a dilatory effect.

(3) Compensation and remuneration of an interpreter is to be paid without undue delay after being awarder, within 30 days at the latest."

102 Nejvyšší soud, case of 18. 6. 2012, No.: 25 Cdo 5282/2007

in the original version and, concurrently, in an officially attested translation to the Czech language, unless the administrative authority informs the party to the procedure that such translation is not required. Every person who declares that he/she does not speak the language of the procedure shall have the right to have an interpreter entered on the list of interpreters; he/she shall use the interpreter´s services at his/her own expense. In procedures regarding an application, the applicant who is not a citizen of the Czech Republic, shall arrange for the services of an interpreter at his/her own expense."

Finally, as regards non-native speakers and communication with their lawyer: It is not regulated by legislation and it is up to them to decide whether they need an interpreter to be able to understand each other. The costs will be borne by the client in these cases.

2.12 Exemption of costs for the legal aid beneficiary

The exemption from expert fees is not automatic, but must be requested before the courts. According to §151a of the Code of Criminal Procedure:
(1) The accused person, who is entitled to a defence counsel free of charge or at a reduced fee...may request that the presiding judge and in pre-trial proceedings the public prosecutor decide that the State shall bear the cost of an expert opinion, which the accused or aggrieved person requested. The request cannot be granted, if such evidence is obviously not necessary to clarify the matter or the same action to establish the same fact has already been requested by an authority involved in criminal proceedings.
(2) A complaint is admissible against the decision according to sub-section (1).

As regards other legal fees: we remind here what has already been stated in other sections: If an applicant is granted free legal aid: not only the costs for legal representation are borne by the State (in full or in part), but also the cash expenses incurred by the legal counsel in connection with the provision of legal service (in particular telephone expenses, postage expenses, etc.). The reimbursement of travel expenses is for the lawyer only in justified cases and they are not entitled to compensation for loss of time (irrespective of whether they were appointed by criminal, administrative or civil courts or by the ČAK).

If an applicant for free legal aid has also been granted exemption from court fees, then the applicant is also exempted from the copy of file (here too the exemption can be in full or in part)

2.13 Financial consequences of the failure of the proceedings for the legal aid beneficiary

Generally, the beneficiary of free legal aid does not have to reimburse the costs incurred by his/her legal representation. There is, however, an exception as regards the modality of "compulsory defence" regulated in §36 and §36 (a) of the Criminal Procedure Code. The costs of defence by a "compulsory defence counsel" are initially borne by the State. However, pursuant to §152.1.b of the Criminal Procedure Code, in case of the lack of success in proceedings – conviction, rejection of an appellate review or of a motion for a new trial – the court imposes a duty on the person to pay the defence costs to the State. The court will not impose a duty to pay the costs of a "compulsory defence" only if the person for whom a "compulsory defence" was appointed meets the requirement of insufficient financial means (as established under the terms of §32 (2) of the Criminal Procedure Code) or in case of proceedings on a complaint against the breach of law (§266 of the Criminal Procedure Code).[103]

As regulated in §155(1) of the Criminal Procedure Code: "The obligation of the convicted

103 Ombudsman of the Czech Republic, Do you need legal help? *Available at:* https://www.ochrance.cz/en/complaints-about-authorities/do-you-wish-to-complain/problems-and-their-solution/legal-aid/

person to reimburse the costs associated with...the remuneration and cash expenses paid by the State to the appointed defence counsel (Section 152 (1) a), b)) shall be decided on by the presiding judge of the senate of the court of the first instance after the full force and effect of the judgement.
(6) A complaint is admissible against the decision…, which has a dilatory effect."

3. ORGANIZATION OF BARS AND LAWYERS' ACTION IN DETENTION

3.1 Regulations of bars' involvement in legal support to detainees

As regards detainees, according to §24 (4) of Law no. 273/2008 on the Police, persons deprived of their liberty by law enforcement agents have the right to obtain, **at their own cost**, legal assistance and to talk to a lawyer in private. Indeed, detained persons can only benefit from free legal aid once they had been formally declared "accused" (*obviněný*). This is a grievance for those who cannot afford a lawyer and, as reminded by the CPT, "the exercise of the right of access to a lawyer can only be considered to be an effective safeguard against ill-treatment if persons in police custody who are not in the position to pay for a lawyer benefit from a fully-fledged system of legal aid. If this is not the case, the right of access to a lawyer will remain, in many cases, purely theoretical".[104]

Given that detainees may access a lawyer at their own cost, the Bar Association is not obliged to organize legal consultation in detention. The ČAK, however, maintains a list of all registered lawyers in the Czech Republic which is publicly available. Thereby, a search engine helps you find a lawyer according to parameters such as the languages spoken by the lawyer, his/her office seat or area of specialization.[105] A similar search engine is available in the Police intra-net to help the police contact a lawyer in case the detainee so requests. This list of lawyers handled by the police is run and updated by the ČAK.

3.2 Lawyers specialized in detention/penitentiary law

To become a lawyer (*advokát*) in the Czech Republic, the following requirements must be met:
• have a university degree in law;
• have full legal capacity;
• have at least three years' prior legal experience as an "articled clerk" (*koncipient advokata*);
• pass a professional examination for lawyers;
• blamelessness (clean criminal record);
• take an oath before the Chairperson of the Czech Bar Association; and
• be registered on the publicly accessible list of lawyers maintained by the Czech Bar Association.

There are no specialized statutory qualifications for lawyers specialized in detention/penitentiary law and there is no mandatory continuous training in prison law for criminal lawyers (or others).

3.3 Practical arrangements for carrying out legal assistance missions

Pursuant to the Law on the Execution of Pre-trial Detention and to the Ministry of Justice Decree on the Execution of pre-trial detention, the practical arrangements for carrying out legal assistance missions in pre-trial detention are as follows:

The inmate has the right to receive visits of his/her defence counsel without limitation. This means that defence lawyers may visit their clients as many times as they deem necessary

104 Report to the Czech Government on the visit to the Czech Republic carried out by the CPT from 1 to 10 April 2014, (CPT/Inf (2015) 18), p. 16
105 http://vyhledavac.cak.cz/

and outside the normal visiting hours. Indeed, the inmate shall be brought before his/her lawyer whenever the lawyer request so, including at times outside working hours and on weekends. Nevertheless, in the cases of visits by a defence attorney of an accused placed in pre-trial detention for fear that he/she might frustrate the investigation of facts relevant for criminal proceedings, the application for a visit approval needs to be sent to the investigating bodies who will determine the date and terms of the visit (§14.2 of the Law on the Execution of Pre-trial Detention). The accused has also the right to receive visits of a lawyer who represents him/her in another matter.

Lawyers must present an authorization for the visit in the form of a power of attorney empowering him/her to represent the inmate in a given matter, or in the form of a written court instrument which assigns the lawyer in question the inmate's defence. In light of the above, summons of the inmate for the purpose of a visit by or an interview with his/her defence attorney cannot be denied by the Prison director. In addition to the presentation of the above mentioned credentials by the lawyers, pre-trial inmates communicate upon their arrival to prison, the name of the lawyer representing them in the main criminal case and the prison staff register such fact.

There are special rooms in the prison facility designated to the contact between the accused and his/her lawyers. After the appropriate security checks, the lawyer is brought to the room designated for those purposes. Lawyers do not have access to inmates' accommodation facilities, not even when litigating their conditions of detention. They can only access the parlours for lawyers. The accused may only bring things directly related to his/her defence or proceedings in other matters. The lawyer cannot bring to the interview his/her smart-phone/laptop. The prison director is obliged to make such arrangements that when the inmate is brought before his/her lawyer, the staff member of the Prison Service in charge can watch, but not hear, the conversation between the accused and the lawyer. A parcel may be handed over during a visit of the accused by his/her lawyer.

As regards correspondence between pre-trial inmates and his/her lawyers (or between inmates and bodies of the State administration of the Czech Republic or an international organization, which has jurisdiction over applications concerning human rights under an international agreement binding on the Czech Republic), it is not subject to control by prison staff. The costs of this correspondence are paid for by the accused from his/her own financial resources, except if the accused has no financial resources of his/her own, in which case it will be delivered at the expense of the prison (§13.3 of the Law on the Execution of Pre-trial Detention and §41.2 of the Ministry of Justice Decree on the Execution of pre-trial detention).

4. ROLE OF NGOs, LEGAL CLINICS AND NATIONAL MONITORING BODIES OF PRISON CONDITIONS

4.1. Ability for these organisations to intervene in prison and to provide legal advice

Prison legislation expressly allows the following bodies to visit prison without any prior authorization of any type:

- Pursuant to §29(2)(a) of the Law on the Execution of Pre-trial Detention, the Public Prosecutor in whose district the custody is performed.

- Pursuant to §29(4) of the Law on the Execution of Pre-trial Detention, the relevant organs of the Prison Service entrusted with control activities

- Pursuant to §29(4) of the Law on the Execution of Pre-trial Detention: bodies or persons authorized by the Minister of Justice or stipulated by a special law:

- This is the case of the Ombudsperson (*Veřejný ochránce práv*, literal translation: Public Defender of Rights). The Czech Republic ratified the Optional Protocol to the United Nations Convention against Torture (OPCAT) in July 2006 and designated the Public Defender of Rights (Ombudsperson) as the National Preventive Mechanism (NPM). The Law

on the Ombudsperson (Zákon o Veřejném ochránci práv, Law No. 349/1999, as amended) authorises the Ombudsman to carry out visits to places where persons are or may be deprived of their liberty by a public authority, in particular to prisons, police establishments, security detention facilities, detention centres for foreigners as well as to health-care, social welfare or similar establishments. Since 2011 the NPM's mandate also covers the monitoring of deportations of foreign nationals. The NPM may carry out visits at its own initiative, without prior notification, and has the right to interview persons deprived of their liberty in private. A separate department, responsible for the NPM function and employing ten full-time staff, has been established within the Ombudsman's Office and carries out some 30 to 50 visits per year to various places of deprivation of liberty[106]

- The Committee for the Prevention of Torture on the basis of the International agreements signed by the Czech Republic.

- Pursuant to §71 of the Ministry of Justice Decree on the Execution of pre-trial detention, for the purposes of carrying out supervision and control of custody, the following bodies (and the persons authorized by them on the basis of a written mandate) can also access prisons without special permission:

a) The Deputy Minister of Justice,

b) the General Director of the Prison Service and his deputy.

Human rights NGOs (irrespective of whether they provide free legal advice or other services) are entitled to visit prisons but they need the prior authorization of the Ministry of Justice, pursuant to §29(4) of the Law on the Execution of Pre-trial Detention. Normally, as regards NGOs which carry out projects in prisons, these authorizations are on a long-term basis, not for just one visit to prison.

§60 of the Ministry of Justice Decree on the Execution of pre-trial detention, as regards the protection of the rights of the accused, foresees that

"(1) Complaints and requests for the exercise of his / her rights and legitimate interests may be addressed by the accused both to state authorities of the Czech Republic and to international bodies and organizations that are considered at the global and European level as part of the process of collecting and investigating information on human rights abuses.

(2) The international bodies and organizations referred to in paragraph 1 are in particular:

(a) the Human Rights Committee, Geneva,

(b) the United Nations Human Rights Commission, Geneva,

c) the Office for Human Rights, Geneva,

d) Committee on the Elimination of Racial Discrimination, Geneva,

e) Anti-Torture Committee, Geneva,

(f) United Nations Commission on the Status of Women, Vienna,

g) Committee on the Rights of the Child, Geneva,

(h) the United Nations High Commissioner for Human Rights, Geneva,

(i) The United Nations High Commissioner for Refugees, Geneva, including the Prague branch,

(j) the European Court of Human Rights, Strasbourg,

k) Committee on the Prevention of Torture, Strasbourg,

(l) The OSCE High Commissioner for National Minorities, The Hague,

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(m) OSCE Office for Democratic Institutions and Human Rights, Warsaw,

n) Amnesty International, London, including a branch in Prague,

o) the International Federation for Human Rights, Paris,

(p) The International Helsinki Federation for Human Rights, including the Prague branch,

r) International Society for Human Rights, Frankfurt,

s) The International Roma Union, Texas,

t) The International Committee of the Red Cross, Geneva, including a branch in Prague."

Nothing within the legislation prevents NGOs from providing free legal advice (but only advice, not in court representation, see the next section for clarification).

NGOs and national monitoring bodies can correspond confidentially with prisoners. However, the right to meet confidentially and without limitation with prisoners is reserved for lawyers who have a power of attorney.

4.2 Dissemination of legal documents

General legislation does not provide on this specific issue. The dissemination of legal documents seems to be a matter decided by each Prison Director in the specific rules governing the daily regime of a particular prison facility.

4.3 Legal action in court

NGOs do not have standing to bring legal action **in court** in order to defend **pre-trial detainees**. The law, however, foresees the following exceptions as regards NGOs (or other legal persons) to bring legal action in court or in administrative proceedings:

- The law allows NGOs (which have the provision of legal aid to refugees or foreigners stated in their statutes as one of their fields of activity) to act before the courts on behalf of foreigners in cases concerning their stay and status in the territory of the Czech Republic. Indeed, pursuant to §35(5) of the Law on the Procedure before the Administrative Courts, (*Zákon soudní řád správní,* Law No. 150/2002 Coll., as subsequently amended): "If a party seeks judicial protection in a case of international protection, a decision on administrative expulsion, a decision to leave the territory, a decision on the retention of a foreigner, a decision to extend the duration of a foreigner's detention, as well as other decisions resulting in personal of the foreigner's freedom, he/she may also be represented by a legal person created by a special law, whose activities, mentioned in the statutes, include the provision of legal aid to refugees or foreigners...". In addition, §21 of the Asylum Law allows NGOs to act on behalf of asylum seekers in administrative proceedings (before the Ministry of the Interior) and specifically provides that such legal service will be free for the beneficiary. Indeed, §21 reads as follows "(1) A party to a proceeding has the right to seek assistance from a legal or natural person engaged in providing legal aid to refugees; the Ministry will contribute to the legal or natural person who has entered into a written legal aid agreement with the Ministry to cover the costs of providing free legal aid….(3) The party to the proceedings has the right to contact the legal or natural person providing legal assistance. In the asylum facility, legal aid may be provided only on premises designated for that purpose by the designated operator of the asylum facility."

- The law also allows NGOs, which have protection against discrimination stated in their statutes as one of their fields of activity, to act before the courts on behalf of the applicant in cases of discrimination. For example, §35(4) of the Law on the Procedure before the Administrative Courts, (*Zákon soudní řád správní,* Law No. 150/2002 Coll., as subsequently amended) foresees that "Where a party who claims to have been discriminated by reason of his or her sex, national, social or racial origin, membership of a national or ethnic minority, skin color, language, religion, political or other beliefs, disability, age, property, gender or

other status, or sexual orientation, may also be represented by a legal person created by a special law, whose activities, mentioned in the statutes, include protection against such discrimination". On the same lines reads §26(3) of the Civil Procedure Code (Zákon č. 99/1963 Sb., Občanský soudní řád): "In the case of protection against discrimination based on sex, racial or ethnic origin, religion, belief, world opinion, disability, age or sexual orientation, the participant may also be represented in the proceedings by a legal entity created by a special legal regulation, whose activities mentioned in the statutes, include protection against such discrimination".

As regards the possibility of challenging general and impersonal norms, as of January 1st, 2012, the Public Defender of Rights may file a lawsuit against the decision of an administrative body, if there is a serious public interest in filing such a lawsuit.[107] Such possibility is expressly established by §66(3) of the Law on the Procedure before the Administrative Courts, (*Zákon soudní řád správní,* Law No. 150/2002 Coll., as subsequently amended).

107 https://www.ochrance.cz/en/complaints-about-authorities/do-you-wish-to-complain/problems-and-their-solution/judicial-protection-against-the-decision-of-administrative-authorities/