

Research project EUPRETRIALRIGHTS

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

EMPIRICAL STUDY

**The actors of legal protection,
their professional practices
and the use of law in detention.**

Report on the CZECH REPUBLIC

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1 NATIONAL CONTEXT

1.1 Spaces of pre-trial detention

In the Czech Republic, the following premises hold spaces of detention:

1. **Police stations:** As reminded by the Czech Ombudsperson (*Veřejný ochránce práv*, literally Public Defender of Rights) “The scope of persons who can be detained in a police cell by police officers is fairly large. These persons may include: persons detained, held, arrested, being transferred to serve imprisonment or transferred to security detention, protective treatment or protective education, persons taken over by a police officer from remand for procedural reasons, persons serving imprisonment, persons placed in security detention, protective treatment or protective education, or persons being brought before an authority where their resistance prevents successful completion of the relevant official act”² Hence, it is no surprise that, given the variety of purposes behind police detention, the spaces of police detention may vary in accordance.

Pursuant to §9 of Binding Instruction No. 159/2009 from the Chief of Police,³ there are three types of police cells:

- a) the so-called “multi-hour cells” (“*vícehodinová cely*”), i.e. cells intended for the placement of persons detained for longer than 6 hours but not for longer than the maximum time period stipulated by the law (which is 72 hours).
- (b) police cells intended for the short-term placement of a person, and for no more than a total of 6 hours, unless it is not possible or expedient to place the person in a multi-hour cell.
- (c) mobile police cells intended for the short-term placement of a person, for no more than a total of 6 hours, unless it is not possible or expedient to place the person in a multi-hour cell

The most common spaces of police detention are the so-called multi-hour cells, i.e. cells for the placement of persons detained for longer than 6 hours. Detained persons in these multi-hour police cells are separated by sex. Depending on the police station, these detention cells may hold one or several detainees.⁴ The cell’s equipment is rather austere and usually include wooden boards, for which mattresses and blankets are provided at nights, as well as toilets and sinks. The CPT, in its latest available report regarded the material conditions of police cells “on the whole satisfactory”⁵ Doors tend to have bars or, already in the recently renewed facilities, blind doors with a wide-angle peep-window. Whatever option, The person’s right to privacy is restricted as the cell – with the exception of the toilet – is under CCTV surveillance.

Prior to being placed in a cell, the person must undergo a body search and the legal texts (§29 of the Law on the Police) allows for the removal by police officers of items potentially posing a threat to life or health as well as for direct physical contact with or observation of the person’s naked body, if necessary. As noted by the CPT, police tend to overuse such possibility and persons

2 Report on systematic visits carried out by the Public Defender of Rights in 2017, p. 9

3 The basic regulation of the equipment and technical infrastructure of police cells (as well as of the rights and obligations of persons thereby placed) is contained in the Law on the Police of the Czech Republic (*Zákon o Policii Republiky*, Law No. 273/2008 Coll., as amended) and, on the level of secondary legislation, in the Binding Instruction from the Chief of Police on Escorts, Surveillance of Persons and in 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), as well as in other binding Instructions of the Chief of Police and Regulations of the Ministry of the Interior.

4 See table in p. 10 of the Report on systematic visits carried out by the Public Defender of Rights in 2017. https://www.ochrance.cz/fileadmin/user_upload/ESO/22-2017-NZ_Souhrnna_zprava_Policejni_cely_2017_EN.pdf

5 “The cells were sufficient in size, in a good state of repair and clean, had acceptable artificial lighting and ventilation and were adequately equipped (with beds/plinths, mattresses, blankets, tables and chairs, toilets and sinks, as well as call bells). Detained persons staying overnight were, as a rule, provided with clean bedding and personal hygiene items”. Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 10 April 2014. CPT/Inf (2015) 18, p. 19

detained by the police are routinely subjected to a strip-search and sometimes even asked to squat.⁶ The CPT also noted with concern the practice of handcuffing detained persons to wall fixtures or like objects in police establishments⁷

The detained person must comply with other regime-related measures regarding e.g. personal hygiene, meals or lights being turned on all night

2. Remand prisons and certain prisons for convicted: 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)⁸ 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.⁹ Pursuant to §2 of an Order of the General Director of the Prison Service of the Czech Republic,¹⁰ 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 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.¹¹

The basic equipment of a cell for every pre-trial detainee includes 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 (§9 of the Law on the Execution of Pre-trial Detention and §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).¹²

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

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

8 "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

9 <https://www.vscr.cz/organizacni-jednotky/>

10 Order 12/2010 on the identification of remand prisons and prisons run by the Prison Service of the Czech Republic

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

12 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

3. Psychiatric establishments: persons may be deprived of their liberty when being involuntarily placed in a psychiatric establishment. Involuntary placement may be of a civil nature (regulated by the Civil Code, Law No. 372/2011 on Medical Services and Law No. 292/2013 on Specific Court Proceedings) or due to the imposition of a protective treatment measure adopted in the course of a criminal procedure (§99 et s.s. of the Criminal Code).¹³

Psychiatric establishments vary in type and size, yet they tend to be buildings which date back to 1800 and have a capacity for more than 500 patients, some even accommodate up to 1000 patients.¹⁴ Material conditions are generally rated as satisfactory by the CPT in its reports, which notes that premises are generally speaking in a good state of repair and hygiene. Patients are normally accommodated in large-capacity dormitories (e.g. with seven or eight beds) and those subject to a penal measure of protective treatment are grouped together, in specific pavilions or dormitories.

We do not intend to dwell upon this modality of deprivation of liberty, since it lays outside the scope of our topic, which are pre-trial detainees. We will only briefly comment on the access to free legal aid for legal representation, which is mandatory in proceedings in which protective treatment is being imposed, as well as in proceedings on extension and/or termination of the measure if the person is legally incapacitated or his/her legal capacity is limited or if the court has doubts about the person's capability to adequately defend him/herself.¹⁵ The CPT noted in its report of 2015 that it remains somewhat unclear to what extent free legal aid is available within proceedings in which the need for continued protective treatment is being reviewed. On this point, the Government's response limited to assuring that "free legal aid is also available to patients within proceedings in which the need for continued protective treatment is being reviewed because such proceedings involve the extension and/or termination of this measure".¹⁶ We share the concerns raised by the CPT: Indeed, within this type of proceedings, free legal aid is formally available, as pointed out by the Czech Government. The law foresees that 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) of the Criminal Procedure Code (or in case of proceedings on a complaint against the breach of law according to §266 of the Criminal Procedure Code). The problem here, is that §33.2 of the Criminal Procedure Code, nor any other piece of legislation, specify the standards of "insufficient financial means" and courts enjoy much power of discretion when it comes to decide whether a person qualifies as recipient of free defence or defence for a reduced fee.

4. Security detention facilities: Lastly we would like to mention "security detention" ("*zabezpečovací detence*") which was introduced in the Czech Republic in January 2009, for the

detainees. Article 88(4) refers to criminal offences such as murder, manslaughter, torture, unauthorised extraction of organs, abduction, sexual abuse, treason, terrorism, etc

13 "The penal measure of protective treatment may be imposed by a criminal court upon a person who has committed an act which would otherwise be regarded as a criminal offence for which he/she is not criminally liable due to insanity or who has committed a criminal offence in a state of diminished sanity or in a state caused by a mental disorder and his/her remaining at liberty is dangerous, or upon a person who abuses an addictive substance and has committed a criminal offence under its influence or in connection with the abuse. The court may impose "protective treatment" for a maximum period of two years. If the measure has not been terminated before the expiration of that period, the measure may be prolonged by periods lasting a maximum of two years each, in theory indefinitely...A patient may be discharged from protective treatment only on the basis of a court decision, taken upon a motion lodged by the patient, a prosecutor or the psychiatric facility." CPT/Inf (2015) 18, p. 72-73

14 Public Defender of Rights, Report from visits to psychiatric institutions, See table in p. 65 https://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/2008/Mental_Homes_2008.pdf

15 See §36(4)(b) and 36a (1)(a) and (c) of the Code of Criminal Procedure and CPT/Inf (2015) 18, p. 73

16 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 1 to 10 April 2014. CPT/Inf (2015) 29, p. 27

purpose of detaining in special facilities persons who, due to the nature and seriousness of their mental disorder ("*duševní porucha*"), represent a particularly serious threat to society.¹⁷

Security detention is served in special facilities under the authority of the Czech prison service, currently, there are two facilities: in Brno "*ústav pro výkon zabezpečovací detence Brno*" and in Opava "*ústav pro výkon zabezpečovací detence Opava*".¹⁸ The Brno facility is intended to serve as a point of entry into the security detention system; all inmates upon whom security detention is imposed are first placed in Brno Security Detention Facility and may later be transferred to Opava, depending on their diagnosis and therapeutic progress.¹⁹

The basic legal framework for security detention is laid down in §100 of the Criminal Code and the Law on the Execution of Security Detention (*Zákon č. 129/2008 o výkonu zabezpečovací detence*). Thereby, the imposition of security detention is on persons who have committed certain serious criminal offences (or an act which would otherwise be regarded as a serious criminal offence) in a mental state which excludes their criminal liability or diminishes it and who are considered to represent a danger to society, if it cannot be expected that a court-ordered measure of protective treatment (i.e. involuntary placement of patients in psychiatric establishments) will achieve its goal. Security detention is thus designed as a subsidiary measure, the primary aim of which is the protection of society and the therapeutic and educational fostering of inmates.²⁰ In this sense, "the Czech model of security detention can be classified as a "*Clinical Model*", because, besides the protection of the community, it also emphasises the therapeutic, rehabilitative and other effects on detained persons."²¹

Security detention is imposed by a court at the time of sentencing (i.e. during the criminal proceedings) and, depending on the circumstances of the case, either as a separate measure or together with a penalty. In the case that security detention is imposed together with a prison sentence, it is executed after the prison sentence has been served. In addition, at a later stage, a court-ordered measure of in-patient protective treatment in a psychiatric facility may be converted into security detention if conditions for imposing security detention are met or if the protective treatment is not achieving its goal or does not ensure sufficient protection of society, in particular if the patient has escaped from a psychiatric facility, used violence against staff or other patients, repeatedly refused to undergo examinations or treatment, or has in another manner expressed a negative attitude towards the protective treatment.²²

Czech security detention resembles in many ways the German preventive detention ("*Sicherungsverwahrung*"). In fact, it is not unreasonable to conclude that the Czech legislation on security detention mirrored the German legislation and the dialogue maintained between the European Court of Human Rights after its decision on *M. v. Germany* of 17 December 2009 and the German Federal Court with the decision that followed on 4 May 2011. In this sense, "the Czech legislation on security detention fulfils the minimum requirements defined in the decision of the German Federal Court on 4 May 2011, namely that security detention must be only imposed as *ultima ratio* in relation to other protective measures; the detention must take place away from custodial sentences in special buildings that are suitable in terms of the purpose of the execution of such a protective measure; the detained persons must be provided with treatment programmes that are aimed at reducing the level of the danger they represent for the community; and finally, in accordance with the principle of proportionality, there must be a review of the reasons for the further continuation of the security detention at least once every 12 months."²³ Yet, in contrast with

17 CPT/Inf (2015) 18, p. 50

18 <https://www.vscr.cz/organizacni-jednotky/>

19 CPT/Inf (2015) 18, p. 51

20 CPT/Inf (2015) 18, p. 50

21 Petr Zeman (ed.), *Research on Crime and Criminal Justice in the Czech Republic (selected results of research activities of IKSP in the years 2012–2015)*, p. 48

22 CPT/Inf (2015) 18, p. 50

23 Petr Zeman (ed.), *Research on Crime and Criminal Justice in the Czech Republic (selected results of research activities of IKSP in the years 2012–2015)*, p. 48

the German legislation, it is also possible in the Czech Republic to impose security detention on an insane person.²⁴

1.2 Main social characteristics of the general detained population in the Czech Republic

The main official available statistics regarding prison population in the Czech Republic are published by the Czech Prison Administration (*Vězeňská služba České republiky*), which annually publishes a very detailed “Statistical Yearbook”.²⁵ Besides the Yearbook, the Prison Administration also offers general data on a weekly and monthly basis.²⁶

Regrettably, there are no publicly available statistics regarding **class, minorities, mentally ill or disabled persons**.

The latest available data is from 14th January 2019²⁷ and offers the total amount of imprisoned persons in the Czech Republic: 21, 603, from which 1,807 are in pre-trial detention.

Table 1 General statistics of pre-trial detention and convicted prisoners (in stocks, for the last year available)

Situation on 14. 1. 2019	Men	Women	Juveniles	Foreigners	Total
Number of imprisoned persons	19662	1605	73	1784	21603
Number of accused (“obviněný” i.e. pre-trial detainees)	1694	113	18	542	1807
Number of convicts ²⁸	17891	1484	55	1205	19375
minimum security	831	191		56	1022
medium security	5044	623		254	5667
close security	10943	634		769	11588
In high security prisons	1015	31		122	1043
Number of life-sentenced convicts	45	3			48

The above figures must be compared with the available data regarding the capacity of individual prison facilities (the available statistics on this point are from 11.1.2019)

24 Petr Zeman (ed.), Research on Crime and Criminal Justice in the Czech Republic (selected results of research activities of IKSP in the years 2012–2015), p. 48

25 <https://www.vscr.cz/informacni-servis/statistiky/statisticke-rocenky-vezenske-sluzby/>

26 <https://www.vscr.cz/informacni-servis/statistiky/>

27 <https://www.vscr.cz/informacni-servis/rychla-fakta/>

28 Law No. 169/1999 Coll., on the execution of the sentence of imprisonment, was amended in order to change the inmate custody levels and prison security levels. The new classification of prison security levels after the said draft amendment reduced the former four prison types to two: minimum security prisons and high security prisons. Minimum security prisons were further divided into three classification levels: minimum, medium, and close security.

Table 2 The state of accomodation capacities in remand prisons, prisons for convicted and detention centers of the Prison Service of the Czech Republic on 11.1.2019

nr	Prison facilities	ACCOMODATION CAPACITY (4 m²/person)				SITUATION				USE in %			
		Remand prisons	Prison for Convicts	Security Detention Centers	TOTAL	Remanded	Convicted	Security Detention	TOTAL	Reman prisons	Prisons for Convicted	Security Detention	TOTAL
01	Bělušice	0	578		578	0	690		690	-	119.38%	-	119.38%
02	Brno	252	391	45	688	179	301	38	518	71.03%	76.98%	84.44%	75.29%
03	Břeclav	27	326		353	16	398		414	59.26%	122.09%	-	117.28%
04	České Budějovice	105	160		265	75	167		242	71.43%	104.38%	-	91.32%
05	Heřmanice	0	682		682	0	864		864	-	126.69%	-	126.69%
06	Horní Slavkov	0	710		710	0	740		740	-	104.23%	-	104.23%
07	Hradec Králové	158	253		411	124	259		383	78.48%	102.37%	-	93.19%
08	Jiřice	0	771		771	0	881		881	-	114.27%	-	114.27%
09	Karviná	0	206		206	0	184		184	-	89.32%	-	89.32%
10	Kuřim	0	506		506	0	621		621	-	122.73%	-	122.73%
11	Kynšperk nad Ohří	0	829		829	0	735		735	-	88.66%	-	88.66%
12	Liberec	101	259		360	92	245		337	91.09%	94.59%	-	93.61%
13	Litoměřice	201	162		363	134	173		307	66.67%	106.79%	-	84.57%
14	Mírov	0	385		385	0	388		388	-	100.78%	-	100.78%
15	Nové Sedlo	0	584		584	0	477		477	-	81.68%	-	81.68%
16	Odolov	0	298		298	0	293		293	-	98.32%	-	98.32%
17	Olomouc	124	152		276	103	126		229	83.06%	82.89%	-	82.97%
18	Opava	0	288	50	338	0	291	46	337	-	101.04%	92.00%	99.70%
19	Oráčov	0	476		476	0	617		617	-	129.62%	-	129.62%
20	Ostrava	297	226		523	272	218		490	91.58%	96.46%	-	93.69%
21	Ostrov	83	857		940	68	827		895	81.93%	96.50%	-	95.21%
22	Pardubice	0	647		647	0	766		766	-	118.39%	-	118.39%
23	Plzeň	143	1 061		1 204	133	1 285		1 418	93.01%	121.11%	-	117.77%
24	Praha Pankrác	376	860		1 236	305	773	0	1 078	81.12%	89.88%	-	87.22%
25	Praha Ruzyně	270	601		871	220	518		738	81.48%	86.19%	-	84.73%
26	Příbram	0	868		868	0	954		954	-	109.91%	-	109.91%
27	Rapotice	0	759		759	0	824		824	-	108.56%	-	108.56%
28	Rýnovice	0	499		499	0	524		524	-	105.01%	-	105.01%
29	Stráž pod Ralskem	0	728		728	0	818		818	-	112.36%	-	112.36%
30	Světlá nad Sázavou	2	754		756	0	790		790	0.00%	104.77%	-	104.50%
31	Teplice	80	81		161	64	100		164	80.00%	123.46%	-	101.86%
32	Valdice	0	1 100		1 100	0	1 028		1 028	-	93.45%	-	93.45%
33	Vinařice	0	890		890	0	1 072		1 072	-	120.45%	-	120.45%
34	Všehrady	0	589		589	0	583		583	-	98.98%	-	98.98%
35	Znojmo	20	207		227	14	208		222	70.00%	100.48%	-	97.80%
	TOTAL	2 239	18 743	95	21 077	1 799	19 738	84	21 621	80.35%	105.31%	88.42%	102.58%

Foreigners account for about 6% of convicted persons serving a term of imprisonment in Czech prisons. About 28% of accused persons held in custody are foreigners (as of December 31, 2016). The largest numbers of foreigners serving a prison sentence are from Slovakia, Ukraine and Vietnam

Table 3 Nationality of pre-trial detainees, the latest available data is from 31.12.2018²⁹

Country			Remanded			Convicted			Expulsion	Security	Total
			men	wom.	Total	men	wom.	Total		detention	
Belgium	EU	Sch.	0	0	0	0	0	0	0	0	0
Bulgaria	EU		16	3	19	28	0	28	19	0	47
Denmark	EU	Sch.	0	0	0	0	0	0	0	0	0
Estonia	EU	Sch.	0	0	0	0	0	0	0	0	0
Finland	EU	Sch.	0	0	0	0	0	0	0	0	0
France	EU	Sch.	0	0	0	0	0	0	0	0	0
Croatia	EU		2	0	2	4	1	5	2	0	7
Ireland	EU		0	0	0	1	0	1	1	0	1
Italy	EU	Sch.	0	0	0	2	0	2	1	0	2
Iceland		Sch.	0	0	0	0	0	0	0	0	0
Cyprus	EU		0	0	0	1	0	1	1	0	1
Lithuania	EU	Sch.	12	0	12	7	0	7	7	0	19
Latvia	EU	Sch.	8	2	10	6	2	8	8	0	18
Luxemburg	EU	Sch.	0	0	0	0	0	0	0	0	0
Hungary	EU	Sch.	2	0	2	7	0	7	3	0	9
Malta	EU	Sch.	0	0	0	0	0	0	0	0	0
Netherlands	EU	Sch.	3	0	3	1	0	1	0	0	4
Norway		Sch.	0	0	0	0	0	0	0	0	0
Poland	EU	Sch.	50	1	51	50	1	51	22	0	102
Portugal	EU	Sch.	0	0	0	0	0	0	0	0	0
Austria	EU	Sch.	3	0	3	4	0	4	1	0	7
Rumania	EU		36	2	38	39	0	39	33	0	77
Greece	EU	Sch.	0	0	0	3	0	3	0	0	3
Slovak Rep.	EU	Sch.	58	5	63	385	34	419	84	3	485
Slovenia	EU	Sch.	0	0	0	1	0	1	0	0	1
Germany	EU		8	1	9	12	0	12	7	0	21
Spain	EU	Sch.	0	0	0	1	0	1	0	0	1
Sweden	EU	Sch.	2	0	2	1	0	1	0	0	3
Switzerland		Sch.	1	0	1	1	0	1	0	0	2
Great Britain	EU		0	0	0	1	0	1	0	0	1
Russia			14	3	17	25	1	26	15	0	43
Ukraine			63	1	64	120	6	126	77	0	190
Vietnam			95	5	100	280	23	303	150	0	403
Other			144	2	146	178	0	178	48		324
Total			517	25	542	1158	68	1226	479	3	1771

29 <https://www.vscr.cz/wp-content/uploads/2019/01/MSH12-2018.pdf>, p. 11 -12

Table 4 Situation of foreign nationals on 31.12.2018²⁸

Prison facilities	PRE - TRIAL DETAINEES							CONVICTED / Level of security														SECURITY			
	Adults		Juveniles		Total			Minimum		Medium		Closed		not specif.		High		Juveniles		Total			DETENTION		Total
	M	F		F	M	F		M	F	M	F	M	F	M	F	M	F	M	F	M	F		M	F	
Bělušice					0	0	0			3		84								87	0	87			87
Brno	39	1			39	1	40			2		4		5		1				12	0	12	2		54
Břeclav	3				3	0	3	12		9		5								26	0	26			29
České Budějovice	14	1			14	1	15			1		1		2						4	0	4			19
Heřmanice					0	0	0			11		24						2		37	0	37			37
Horní Slavkov					0	0	0			1		106								107	0	107			107
Hradec Králové	24				24	0	24	4		1		1								6	0	6			30
Jiřice					0	0	0	1		13		21								35	0	35			35
Kuřim/Karviná					0	0	0			8		35				1				44	0	44			44
Kynšperk nad Ohří					0	0	0			21		57								78	0	78			78
Liberec	34	2			34	2	36			3		3								6	0	6			42
Litoměřice	19	2			19	2	21			2										2	0	2			23
Mírov					0	0	0					3				22				25	0	25			25
Nové Sedlo					0	0	0	1		6		4	1							11	1	12			12
Odolov					0	0	0	21		7										28	0	28			28
Olomouc	11				11	0	11			1										1	0	1			12
Opava/Oráčov					0	0	0		2	2	6	23	3			4				25	15	40	1	0	41
Ostrava	43	2			43	2	45			1		2		1						4	0	4			49
Ostrov nad Ohří	16	1			16	1	17			37		28		1						66	0	66			83
Pardubice					0	0	0			13		20						1		34	0	34			34
Plzeň	40	3			40	3	43	1		11		55		1		2				70	0	70			113
PrahaPankrác	156	4	1		157	4	161		1	14		43		4						61	1	62			223
PrahaRuzyně	104	9			104	9	113	1	1	4	4	7	1	2						14	6	20			133
Příbram					0	0	0	1		3		38								42	0	42			42
Rapotice					0	0	0	4		22		16								42	0	42			42
Rýnovice					0	0	0					19								19	0	19			19
Stráž pod Ralskem					0	0	0			13		16								29	0	29			29
Světlá nad Sázavou					0	0	0		5		15		25							0	45	45			45
Teplice	10				10	0	10					1		1						2	0	2			12
Valdice					0	0	0					38				93				131	0	131			131
Vinařice					0	0	0			3		76								79	0	79			79
Všehrady/Znojmo	3				3	0	3	2		17		11						1		31	0	31			34
Total	516	25	1	0	517	25	542	48	9	229	25	741	30	17	0	119	4	4	0	1158	68	1226	3	0	1771

Table 5 Ratios of nationals/foreigners pre-trial detainees compared, yet the the latest available statistics date back to 31.12.2017³⁰

	Pre-trial detention			Convicted		
	men	women	Total	men	women	total
Czech Republic	1 179	108	1 287	17 539	1 443	18 982
Foreign nationality	502	20	522	1 222	67	1 289
TOTAL	1 681	128	1 809	18 761	1 510	20 271

Table 6 Age of pre-trial detainees, the latest available statistics date back to 31.12.2017³¹

Age range	Men	Women	Total
16 - under 17 years	3		3
17 - under 18 years	5		5
18 - under 19 years	11	1	12
19 – under 20 years	18	2	20
20 - under 21 years	28	1	29
21 - under 22 years	29	1	30
22 - under 25 years	112	9	121
25 - under 30 years	246	26	272
30 - under 35 years	296	16	312
35 - under 40 years	291	20	311
40 - under 45 years	255	23	278
45 - under 50 years	166	11	177
50 - under 55 years	93	8	101
55 - under 60 years	75	4	79
60 - under 65 years	32	5	37
65 - under 70 years	16	1	17
70 - under 75 years	5		5
Total	1 681	128	1 809

30 <https://www.vscr.cz/wp-content/uploads/2018/10/Statistick%C3%A1-ro%C4%8Denka-2017.pdf>, p. 115

31 <https://www.vscr.cz/wp-content/uploads/2018/10/Statistick%C3%A1-ro%C4%8Denka-2017.pdf>, p. 87

Table 7 General level of education of pre-trial detainees, the latest available statistics date back to 31.12.2017 and only as regards convicted inmates (not pre-trial detainees)³²

Education level	Men	Women	Total sum	Total in %
Not identified (foreigners), not mentioned	180	7	187	0,92%
Special schools	486	46	532	2,62%
Without basic education	33	8	41	0,20%
Unfinished basic education	348	33	381	1,88%
Basic education	8 012	787	8 799	43,41%
Secondary education non-University oriented without school-leaving examination	7 356	340	7 696	37,97%
Secondary education non-University oriented with school-leaving examination	433	23	456	2,25%
Secondary education University-oriented without school-leaving examination	134	19	153	0,75%
Secondary education University-oriented with school-leaving examination	293	50	343	1,69%
Secondary vocational education with school-leaving examination	1 195	165	1 360	6,71%
High vocational training	19	3	22	0,11%
University education- Bachelor	58	5	63	0,31%
University education- Master	55	6	61	0,30%
University education- Engineer	131	11	142	0,70%
University education - PhD	28	7	35	0,17%
Total	18 761	1 510	20 271	100,00%

Table 8 Motives for pre-trial detention, the latest available data is of 31.12.2018³³

Type of pre-trial detention	Czech nationals			Foreigners			Total
	Men	Wom.	Total	Men	Wom.	Total	
Preliminary custody	2	4	6	28	2	30	36
Custody for extradition procedures	0	0	0	3	0	3	3
Custody for transfer procedures	1	0	1	2	0	2	3
Expulsion / Deportation custody	0	0	0	15	0	15	15
Detention following a European Detention Order	0	0	0	0	0	0	0
Pre-trial custody	1 182	85	1 267	469	23	492	1759
Total remanded	1 185	89	1 274	517	25	542	1816

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32 <https://www.vscr.cz/wp-content/uploads/2018/10/Statistic%C3%A1-ro%C4%8Denka-2017.pdf>, p. 93

33 <https://www.vscr.cz/wp-content/uploads/2019/01/MSH12-2018.pdf>, p. 4

Table 9 Length of pre-trial detention the latest available data is of 31.12.2018³⁴

Type of pre-trial detention	Length of pre-trial detention						Over	Total
	2 mon.	4 mon.	6 mon.	9 mon.	1 yr.	2 yrs.	2 yrs.	
Preliminary custody	19	2	2	1	10	0	2	36
Custody for extradition procedures	2	0	1	0	0	0	0	3
Custody for transfer procedures	2	0	0	0	0	1	0	3
Expulsion / Deportation custody	6	3	2	4	0	0	0	15
Detention following a European Detention Order	0	0	0	0	0	0	0	0
Pre-trial custody	550	427	238	223	122	180	19	1759
Total remanded	579	432	243	228	132	181	21	1816
	31.88%	23.79%	13.38%	12.56%	7.27%	9.97%	1.16%	100%

Table 10 Major trends during the past 10 years³⁵

Year	Adults			Juveniles			Total
	men	wom.	Total	men	wom.	Total	
2007	2 110	144	2 254	33	1	34	2 288
2008	2 214	188	2 402	58	3	61	2 463
2009	2 209	151	2 360	44	1	45	2 405
2010	2 279	164	2 443	47	2	49	2 492
2011	2 428	185	2 613	43	3	46	2 659
2012	2 028	155	2 183	29	3	32	2 215
2013	2 161	147	2 308	31	1	32	2 340
2014	2 040	145	2 185	24	1	25	2 210
2015	1 814	146	1 960	5	1	6	1 966
2016	1 752	155	1 907	10	2	12	1 919
2017	1 681	128	1 809	8	0	8	1 817

34 <https://www.vscr.cz/wp-content/uploads/2019/01/MSH12-2018.pdf>, p.4

35 <https://www.vscr.cz/wp-content/uploads/2018/10/Statistick%C3%A1-ro%C4%8Denka-2017.pdf>, p. 119

Table 11 Types of conviction, the latest available data is of 31.12.2018³⁶

Conviction	Law No. 140/1961				Law No. 40/2009				Total		Total
		men	wom	total		men	wom	total	men	wom	
Manslaughter	-	0	0	0	§ 141	8	1	9	8	1	9
Defaulted tax, fines	§ 148	29	1	30	§ 240	193	13	206	222	14	236
Violence against a Public Admin. officer	§ 155	15	1	16	§ 325	226	6	232	241	7	248
Misuse of official authority	§ 158	5	0	5	§ 329	17	0	17	22	0	22
Bribery	§ 161	1	0	1	§ 332	16	1	17	17	1	18
Public safety threat	§ 179	8	0	8	§ 272	51	3	54	59	3	62
Illicit arm possession	§ 185	100	0	100	§ 279	200	1	201	300	1	301
Defamation of a nation, race, ethnica or other group of people	§ 198	3	1	4	§ 355	5	0	5	8	1	9
disorderly conduct	§ 202	77	2	79	§ 358	1503	37	1540	1580	39	1619
Animal abuse	§ 203	0	0	0	§ 302	10	0	10	10	0	10
Spread of pornography	§ 205	74	7	81	§ 191	12	0	12	86	7	93
Neglect of alimony	§ 213	37	1	38	§ 196	1476	112	1588	1513	113	1626
Abuse from a trusted person	§ 215	19	2	21	§ 198	55	19	74	74	21	95
Murder	§ 219	448	24	472	§ 140	573	89	662	1021	113	1134
Injuries	§ 221	42	2	44	§ 146	775	15	790	817	17	834
Serious harm to health	§ 222	63	1	64	§ 145	704	33	737	767	34	801
Negligent harm	§ 223	4	0	4	§ 148	28	1	29	32	1	33
Severe bodily harm / death due to negligence	§ 224	17	0	17	§ 143 § 147	150	7	157	167	7	174
Restrictions to personal freedom	§ 231	7	0	7	§ 171	80	2	82	87	2	89
Robbery	§ 234	358	15	373	§ 173	2172	83	2255	2530	98	2628
Extortion	§ 235	113	3	116	§ 175	778	22	800	891	25	916
Unrespect of inviolability of domicile	§ 238	194	5	199	§ 178	2658	97	2755	2852	102	2954
Rape	§ 241	96	1	97	§ 185	444	2	446	540	3	543
Sexual coercion	-	0	0	0	§ 186	20	0	20	20	0	20
Sexual abuse	§ 242	46	1	47	§ 187	129	3	132	175	4	179
Theft	§ 247	399	22	421	§ 205	7498	629	8127	7897	651	8548
Unauthor. possession of credit card	§ 249b	110	10	120	§ 234	1626	176	1802	1736	186	1922
Fraud	§ 250	308	32	340	§ 209	1251	178	1429	1559	210	1769
Credit fraud	§ 250b	95	10	105	§ 211	363	47	410	458	57	515
Acceptance of bribery	§ 160	3	0	3	§ 331	8	0	8	11	0	11
Waiver of official responsibility	§ 171	109	4	113	§ 337	2692	137	2829	2801	141	2942
Violence against a group of people	§ 196	53	2	55	§ 352	13	0	13	66	2	68
Embezzlement	§ 248	76	6	82	§ 206	375	48	423	451	54	505
Total		2909	153	3062		26109	1762	27871	29018	1915	30933

36 <https://www.vscr.cz/wp-content/uploads/2018/10/Statistick%C3%A1-ro%C4%8Denka-2017.pdf>, p. 98

1.3. Recent evolutions of initiatives to compensate juridical inequalities among detainees/prisoners

We have not managed to find information concerning initiatives put in place/removed to compensate **juridical inequalities** among detainees and interviewees did not mention any.

However, we can refer to austerity measures that have been implemented in the last years to save costs. For example, the Guideline of the Director General of the Prison Service of the Czech Republic No.8/2010, on measures to minimise the costs of energy consumed during the exercise of the rights of prisoners, which came into effect on 6 September 2010. Pursuant to this Guideline, a series of measures to save on hot water and electricity in prisons were adopted: for example, the access to showers of non-working prisoners was reduced from one shower per day to one shower per week and the power from electrical sockets was only available for about one hour in the morning and one to two hours in the evening. Such measures were taken as a result of the cuts in the budget of the Prison Service of the Czech Republic.³⁷

On the other hand, measures have also been adopted to increase the number of prison staff. For example, Government Resolution No.421 of 8 June 2011 was adopted to increase the number of service member positions in the Prison Service of the Czech Republic by 345 positions from 1 July 2011, and to increase the number of civilian employee positions in the Prison Service of the Czech Republic by 196 positions as of 1 July 2011.³⁸ However, and notwithstanding these measures, the truth is that the staffing levels are still inadequate in proportion to the work tasks and the numbers of convicts.³⁹

Practical means of litigation

Recourse to lawyers

We could not find statistics backing up the following statement but R1, R2, R3, R5 and R8 agreed that when it comes to in court litigation people resort to lawyers the most, particularly within the criminal domain, where pursuant to §35(1) of the Criminal Procedure Code, legal representation can only be assumed by a lawyer. In civil and administrative proceedings, however, any natural person, which the applicant chooses, may act in favour of the applicant before the courts.⁴⁰

R1, R5 also noted differences between convicts and pre-trial detainees as regards the recourse to lawyers. They referred that convicts take to courts issues related to their penitentiary situation, particularly, denials by the Prison Administration of access to an early release measure. Yet, prison conditions and even the imposition of certain disciplinary sanctions still are not common complaints before the courts. Convicts resort to lawyers for litigating release-related measures, since they consider these are issues worth fighting for. Indeed, according to R5 and R6, convicts believe it is more likely to have a favourable outcome if they are represented by a lawyer (it must be noted that representation by a lawyer is not compulsory in administrative proceedings). From the point of view of R1, generally convicts request the court to appoint them an ex-officio lawyer, since most of the times they only know the criminal lawyer that represented them in their criminal cause and their

37 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. 24

38 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.25

39 Report on Systematic Visits carried out by the Public Defender of Rights 2016, p. 13

40 The person chosen must be fully capable to legal acts and is not allowed to act before the courts repeatedly. See §24(1), §25 and §27 of the Civil Procedure Code and §35(2) and (7) of the Law on the Procedure before the Administrative Courts. Nevertheless, in proceedings before the Supreme Court, the Supreme Administrative Court and the Constitutional Court, participants must be represented always by a lawyer

situation behind bars makes it very difficult for them to search and contact other lawyers. However, R5 referred that sometimes prisoners' relatives (particularly girlfriends and wives) also look for and contact lawyers on behalf of the inmate. According to R1 and R3, convicts, given their previous contact with the justice system, are already aware of the possibility of requesting free legal aid (in the modality of free defence or defence for a reduced fee) but they are also aware of the system failures, particularly of the difficulty of being granted the modality of complete free defence. Precisely, R5 and R6 suggested that this was probably the reason why convicts did not recourse to lawyers for litigating other aspects of their life in prison (other than access to early release), like for example, their conditions of detention or even the imposition of sanctions. R5 and R6 referred that the large majority of convicts already feel overburdened by the costs generated by their criminal prosecution⁴¹ and fear incurring further costs.

As regards pre-trial detainees, R5, R4 and R1 were of the opinion that they tend to complain even less than convicts. Interviewees did not come up with a definitive reason for this, some thought it was because they hoped their stay in prison will be short and, thus, better go unnoticed (R4 and R5); others (R1) because they prefer to focus on their defence in the criminal procedure, rather than initiating other proceedings in other battlegrounds. R1 noted that if pre-trial detainees get to complain they do so before the judicial authority that ordered their remand in prison and through the same lawyer representing them in that criminal case. This interviewee referred to it as a "litigating strategy": for example, poor conditions of detention can be used as an argument for requesting the imposition of less burdensome precautionary measures other than remand prison.

In conclusion: even if the reasons are not clear, R1, R3, R5, R6 and R8 agreed that few complaints filed by pre-trial detainees or convicts reach the courts. Those which do, mostly refer to denials of access to release measures. Recourse to lawyers in these cases is seen as advantageous and, thus, inmates resort to them. In the case of convicts, these lawyers tend to be ex-officio court-appointed lawyers, whereas in the case of pre-trial detainees it is the same criminal lawyer representing them.

Legal help from (privately/state financed) NGO representatives

R1, R2 and R3 referred that, to their best of their knowledge, most NGOs working on the field of penitentiary law do not litigate before the courts.

This was later corroborated by R5 and R6. R5 said they assisted inmates mainly on issues such as family visits and job opportunities, mediating between prisoners and the Prison Administration but do not represent them in court. R6 said they offered basic legal counselling and even contact of lawyers active in litigation, but they did not take upon litigation themselves.

It is important to note that in the Czech Republic, people who hold a degree in law ("*právník*") need to qualify for in-court litigation. Indeed, only an "*advokát*" can plea and/or defend a case in court.⁴² R5 and R6 had "*právník*" among their staff, but no "*advokát*".

University legal clinics

There are a few university legal clinics in the Czech Republic, in fact, the Faculties of Law of the most important Universities in the country have at least one legal clinic.

The existing legal clinics vary in scope: some offer free legal counselling on general issues and have a structured, officialised functioning. For example, the legal clinic of the Faculty of Law of Charles University collaborates with the Prague Town Hall in the provision of legal advice

41 It is worth noting that 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 the costs of pre-trial detention, if it were the case, of the expenses incurred by the defence lawyer, in cases where the defendant was not granted free defence or defence for a reduced fee, as well as the cost of imprisonment and court fees.

42 Každý právní není advokát, Ceska Advokatni Komora, <https://www.cak.cz/scripts/detail.php?id=8101>

concerning small legal issues in general (such as how to deal with neighbourly issues, lease contracts, etc.) and the provision of such counselling takes place at one of the Town Hall buildings.⁴³ Other legal clinics offer legal counselling on specific areas or topics of law, for example the anti-discrimination law clinic of the Law Faculty of Charles University, or the law clinic on Environmental law of the Faculty of Law of the Palacký University in Olomouc⁴⁴ or the Law clinic on refugee law of the Masaryk University in Brno⁴⁵

The legal services provided by these legal clinics consists mostly on legal counselling provided free of charge by students under the supervision of professors or experienced lawyers. Legal counselling is provided during personal interviews, which usually last for just a maximum of 20 minutes and are intended for the provision of basic legal information enabling the person to navigate the system and, eventually if necessary, to seek professional legal assistance. The Czech Bar Association has always opposed to the provision of legal services by anyone who is not a lawyer, yet in the case of legal clinics, the Bar is of a different opinion and does not oppose them since it is understood that student's free legal counselling does not replace the professional services of a lawyer or notary, but only complements them.

So far we have referred to legal clinics in general; however, when it comes to prisoners, it is important to note that there are no specific legal clinics.⁴⁶ This, coupled with the fact that most legal clinics do not provide legal advice through written means (such as post),⁴⁷ but exclusively through a personal visit which takes place at a legal counselling centre (mainly, within University facilities) means that, in practice, prisoners cannot make use of them. Therefore, it can be concluded that prisoners do not recourse to university legal clinics as a practical means of litigation. R1, R2, R3, R4, R5, R8 agreed on this point. In fact, they were surprised by the sole mention of a legal clinic as a possibility of resorting to.

2 LEGAL PRACTITIONERS – LAWYERS

2.1 Lawyers and litigation work

General policy of the Bar on legal counsel for prisoners

Does the Bar organize dedicated networks or education on penitentiary law? Precise frequency, size or audience.

R1, R2, R3, R5 declared that, to their best of their knowledge, the Bar does not organize dedicated workshops or education on penitentiary law. We then surfed the Bar's Web site (<https://www.cak.cz>) and could not find any kind of training on penitentiary law, nor within the section devoted to current seminars and education (<https://www.cak.cz/scripts/detail.php?pgid=67>), nor within the archive (Bulletin Advokacie, section: Lectures and seminars for lawyers and junior lawyers in education and training centers of the Bar "*Přednášky a semináře pro advokáty a advokátní koncipienty ve vzdělávacích a školicích střediscích ČAK*").

43 http://www.praha.eu/jnp/cz/potrebuji_resit/elektronicke_sluzby/studentska_pravni_poradna/index.html

44 <https://www.pf.upol.cz/katedry-a-centra/centra/centrum-pro-klinicke-pravni-vzdelavani/>

45 <https://is.muni.cz/predmet/law/MV728K?lang=cs;obdobi=7063>

46 The University of Olomouc has a legal clinic on the Praxis of the Ombudsman (*Právní klinika ombudsmanské praxe*), yet the description of the legal clinic does not mention penitentiary law and/or legal counselling to persons deprived of their liberty. See <https://www.pf.upol.cz/katedry-a-centra/centra/centrum-pro-klinicke-pravni-vzdelavani/>

47 The following legal clinic: "*Právnícký akademický spolek Juristi*" offers legal counselling on general issues of law by answering questions submitted to them by e-mail, yet unfortunately, access to the Internet in general is not allowed within prisons. <http://www.juristi.cz/ppp/>. For more details on access to the Internet see the last section of this report.

Are there dedicated networks of lawyers? Are they generalists or dedicated to specific categories of detainees/prisoners or for specific legal fields? (for incarcerated foreigners, for prisoners with certain types of conviction...)

There are dedicated networks of lawyers, but regarding a specific category of detained persons: migrants and asylum seekers. The network is, however, informal, in the sense that lawyers know each other since they are not that many and they mostly work in / for NGOs⁴⁸ (we will further elaborate on NGOs in fore coming sections). Therefore, it is not a formal, structured network with statutes of association, etc. Lawyers have managed to specialise in this topic since legal services provided to migrants and asylum seekers is state-funded in a clear and structured manner and they have the support of the NGOs they work for.

There is also a dedicated network of lawyers regarding the promotion and enhancement of free legal aid, which is called “Pro bono Aliance” (<http://www.probonoaliance.cz>). It is an association of lawyers and other professionals working in the field of law, which aims at promoting better access to legal aid and socially responsible lawyering. To achieve its goals, Pro Bono Aliance organizes educational events, supports exchange of experience and facilitates cooperation between lawyers from NGOs and other legal professions, participates in legislative change, supports pro bono activities of lawyers and spreads information about the protection of human rights. In particular, and regarding our topic, we would like to highlight the following activities carried out by this organization: that of “lobbying” at the legislative level (to support improvements of the state-funded legal aid system) and that of providing citizens with basic advice on where and how to get free legal aid. This service offered to citizens implies that the association knows lawyers who are willing and able to offer their services free of charge; i.e. they have in place a network of lawyers.

Nevertheless, it is important to note that this association does not specifically target prisoners and the particularities of their situation. That is, they promote free legal aid in general, and do not address the difficulties that incarceration entails, like for example, accessing on-line information and meeting lawyers outside prison facilities. In addition, since 2015 their activity seems to have slowed down. Their highest peak of activity was during 2008-2009.

A recently created (in 2017) organisation called Obase.cz (<http://obase.cz/>), which specifically targets convicted prisoners and prisons for convicted seems to be slowly building up a network of lawyers. In their Web site they offer the possibility of providing, upon request, the contact details of lawyers who have experience litigating prison related issues. However, it is mainly issues related to convicts. We requested the contact details of any of those lawyers for an interview, but we got no answer.

Does the Bar edit information booklets/digital tools on penitentiary law, access to legal counsel, practical problems faced by lawyers providing legal aid in police custody and prison? Who designs and promotes such tools? To what extent are they relevant with regard to major prison litigation issues? To what extents are they used by practitioners

The Bar edits a monthly newsletter (“*Bulletin Advokacie*” <http://www.bulletin-advokacie.cz/>), which informs of relevant judgments and court decisions, news updates and seminars and workshops; it also includes specialised articles, legal analyses and reviews on major legal publications. R1, R2 and R3 referred to it as a useful tool which keeps lawyers updated on amendments and current issues. R1, R2 and R3, however, referred that the newsletter rarely mentions prison law or news related to prison. We crosschecked this statement by searching in the archives (<http://www.bulletin-advokacie.cz/archiv-cisel/>) and we can confirm that prison related news or articles hardly appear; not even, for example, in the issues released during 2013 after the presidential amnesty.

48 See for example, <https://www.migrace.com/en/mission/assistance/pravni-poradenstvi> or <http://www.inbaze.cz/asistencni-a-poradenske-sluzby-pro-migranty/>

Relations between the Bar and the national penitentiary administration (at different hierarchical levels). Tensions, cooperation?

R1, R2 and R3 referred that, to the best of their knowledge, the upper echelons of the Bar Association and of the national penitentiary administration ("*Generální ředitelství vězeňské služby*") maintain no particular official relationship (neither of tension nor of cooperation). The public-known relationship is with the Ministry of Justice (which is responsible for the Prison Service) and, in this case, it is of cooperation.

As regards the relationships between practicing lawyers and the directors of individual prison facilities, R1, R3 and R6 referred that it depends on each director: some make things easier for lawyers than others; although on a general basis there are aspects, like access to prisoner files, which are never simple and straightforward independent of the prison director.

Finally, as regards the relationship between lawyers and prison officers, R1, R2 and R3 related that travelling to prisons for convicted is always an inconvenience since they tend to be far away and the security measures are strict (security arch, etc.). However, they also related that, on a general basis, interviews between lawyers and prisoners are very much respected. This is also the case during interviews with pre-trial detainees.

General profile of lawyers active on litigation

Level of legal education, average age, power position within the Bar and capacity to bring problems to the Bar encountered during legal practice in prison

The lawyers we interviewed (both "právník" and advokát", R1, R2, R3, R5, R6) can serve as an example: their range of age was between 27 to 52, both men and women were represented. The level of education varied from those who had just a Degree in Law to those who had qualified as "advokát" (i.e. who had qualified for in-court legal representation) and also hold a PhD in Law. None of the interviewees hold power positions within the Bar and have no particular capacity to bring before the Bar problems encountered in the field of prison litigation. We would, however, like to comment that we also tried to interview a lawyer who had pleaded a leading prison-related case before the Supreme Administrative Court but he refused to be interviewed, arguing that he was very busy. We, nevertheless, googled him and noticed that he does have a power position within the Bar, he is over 50 years old and holds a PhD in Law and besides his work as a lawyer, also teaches Administrative Law at University.

Professional profile of lawyers acting in the field of prison litigation (larger firms, smaller offices, members of NGOs or professional interest organisations)

The lawyers we interviewed (R1, R2, R3, R5, R6) can also serve as an example. Their professional profile varied: some worked in medium-size offices and other were members of NGOs. The most interesting thing from our point of view is that none of them considered themselves as experts in prison law, not even those working for dedicated NGOs. In fact, in the search engine of the Czech Bar Association (where you can look for lawyers using parameters such as the languages they speak and their areas of specialisations) there is no category for "prison law", out of 86 different categories! (which correspond to areas of specialisation in law).

Which proportion of prison litigation case work within their everyday practise?

Lawyers working in NGOs, as already said in a previous section, do not litigate (they are mostly "právník" and not "advokát"); yet their mediation services and counselling to prisoners is a very important proportion of their everyday practise. In fact, for R5 it is its main activity. R7 does have other activities not related to prisoners.

As regards the lawyers ("advokát", R1, R3) interviewed who work in medium-size offices, prison litigation is a very small proportion of their everyday practise. Prison related issues, mainly those

related to pre-trial detainees, reach them because they are included in the lists of lawyers who agree to be appointed ex-officio managed by the courts. The case of one of the lawyers interviewed (R1) can serve as an example of what a small proportion of their everyday practice prison litigation amounts to. He has his own medium-size office, together with four other partners, and they mainly work on pharmaceutical law, commercial and civil law. Areas of law out of which they make a good living. He is included in the list of ex-officio lawyers because he has graduated students working as trainees, who must undertake the exam to become “advokát” (R2). Trainees must examine of all the main areas of law, including criminal and administrative law. Hence, this lawyer, when appointed ex-officio in a criminal case, assigns those cases to the trainees and supervises them, except when it comes to in-court litigation, which can only be done by lawyers and not trainees. He admitted that visits to prison were mostly done by trainees. However, he said that ex-officio cases amount to one to two cases a year in his office.

Connections between lawyers and NGOs / Human Rights organisations / Legal clinics / Universities...

- Are most dedicated lawyers either members of or close to such organisations?

Dedicated lawyers (“právník” R5, R6, R7) tend to be either members of or close to NGOs. However, those lawyers “advokát” (R1, R2, R3) who do in-court litigation are not necessarily part of dedicated NGOs.

- Are there situations of competition/tensions between the two?

No, there are no situations of competition/tensions between the two. In fact, R6 offers the possibility of providing, upon request, the contact details of lawyers who have experience litigating prison related issues.

- Relationships with the judiciary

Since lawyers “právník” who work in NGOs do not litigate before courts, there is no relationship with the judiciary. As regards, “advokát” (lawyers who do in-court litigation), those interviewed (R1, R3) referred that prison related issues do not differ to other issues as regards the relationships with the judiciary.

Legal relief specialization

Selection of cases according to legal or social/political criteria?

R1, R3 referred that, when it is a case where they have been appointed ex-officio, they normally take it on, if no reasons for rejecting it concur. Otherwise, the lawyers who normally work in other areas of law and make a good living out of it (R1) referred that they take on cases of persons deprived of their liberty if that person is already a client and they request their services as a (paid) favour.

Is there a dedication to specific populations of detainees or specific issues?

Yes, as already mentioned, there are lawyers dedicated to detained migrants and asylum seekers.

2.2 How is litigation case work financed?

- What is understood by “pro-bono” in the country?

In Czech legal terminology, “pro-bono” is the provision of legal services free of charge, i.e. without any remuneration in return or for a symbolic compensation, and is mainly understood to be intended for those who cannot afford to pay for those legal services. Sometimes, lawyers agree to waive their fees until courts adopt a decision on the costs of the proceedings, and this is can also be understood as “pro-bono”.⁴⁹

Pr-bono is not common in the everyday legal practice in the Czech Republic but it is not as rare as in other countries. In fact, since 2008 there exists an association of lawyers and other professionals working in the field of law known as “Pro Bono Aliance” (www.probonoaliance.cz),

49 Czech Bar Association short note on pro-bono: “Co je PRO BONO? Právní služby zdarma”, available at: <https://www.cak.cz/scripts/detail.php?id=3248>

which aims at promoting better access to legal aid and socially responsible lawyering. To achieve its goals, Pro Bono Aliance organizes educational events, supports exchange of experience and facilitates cooperation between lawyers from NGOs and other legal professions, participates in legislative change, supports pro bono activities of lawyers and spreads information about the protection of human rights. In particular,

These include, for example, legal work for victims of domestic violence, protection of patients' rights, consumer protection, children's rights, assistance to refugees, counselling for victims of discrimination, labour disputes, environmental protection, etc. In the framework of pro bono lawyers also help non-profit organizations associations, charitable societies, churches, foundations) to address their organizational, labour law, tax or other legal problems.

Nevertheless, it is important to note that this association does not specifically target prisoners and the particularities of their situation. That is, they promote free legal aid in general, and do not address the difficulties that incarceration entails, like for example, accessing on-line information and meeting lawyers outside prison facilities. In addition, since 2015 their activity seems to have slowed down. Their highest peak of activity was during 2008-2009.

N.B.: The term "ex-offo" is also used in Czech legal terminology, and has a different meaning to "pro-bono". "Ex-offo" lawyers are those who provide legal services after having been appointed by the court, or subsidiarily by the Czech Bar Association, for in court representation in cases where legal representation is mandatory or has been deemed necessary by the court and the person in question did not manage to procure a lawyer by his own account.⁵⁰ If the person to whom a lawyer has been appointed "ex-offo" is granted free legal aid, the fees of the "ex-offo" lawyer will be paid by the State in full or in part; otherwise, it is the client the one who has to remunerate the lawyer appointed "ex-offo" for his/her legal services. We thought important to clarify what is understood by "ex-offo" in the Czech Republic since, under the Criminal Procedure Code, pre-trial detainees are one of the categories of persons who must have a so-called "compulsory defence" and, given the fact that their incarceration makes it difficult for them to contact lawyers, most of the time they end up being represented by a lawyer appointed ex-offo.

- Is there state-funded pre-trial aid?

Yes, the free-legal aid state-funded scheme covers also legal advice in the pre-trial stages. From the moment the person is formally declared "accused" (*"obviněný"*), he/she can request free legal aid.

- If yes, it is sufficient to cover expenses?

According to R1 and R3 it is "sufficient to cover expenses" but only because the remuneration levels of lawyers providing legal services under the free legal aid scheme are much lower if compared to those which are usually applicable. The Lawyer's Tariff Regulation establishes that, in these cases, the amount of the lawyer's fee shall be set in compliance with the general provisions for non-contractual fees, yet decreased by 20% and with a maximum limit rate of 5,000 CZK

- If not, what are the consequences?

R3 noted that legal insurance is a reality in Czech Republic. But he said it is mainly for persons in the business world, so that in case of insolvency they can afford to pay the services of lawyers. Standard citizens do not take out insurances with this kind of clauses.

- Legal Aid:

- Amount of aid?

R1, R2 and R3 referred that there is no pre-established fix amount of legal aid, since it depends whether the applicant applies for one of the two modalities of free legal aid: free defence or defence for a reduced fee, whether he/she also applies for the exemption of court fees and on the legal acts performed by the lawyer when providing legal services (indeed, lawyers under the free

50 Czech Bar Association short note on ex-off lawyers, available at:
<https://www.cak.cz/scripts/detail.php?id=16081>

legal aid scheme do not get paid for the overall management of the case, but for the different acts performed, just as any other lawyer). In addition, the amount of aid, depends also on the applicable "Tariff value", which varies depending whether it is an administrative or a criminal proceeding, a closed trial, the term of imprisonment, etc. As already stated, the non-contractual fees, when it comes to free legal aid, are decreased by 20% and have a maximum limit rate of 5,000 CZK. Besides all these variables, interviewees also noted that lawyers must file a petition before the court, specifying all the legal acts performed and the cash expenses he/she has incurred, and it is the court who decides the amount of remuneration and reimbursement of cash expenses.

- What type of costs may it cover, which costs does it rule out?

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.). However, the reimbursement of travel expenses is for the lawyer only in justified cases and they are not entitled to compensation for loss of time. 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). The exemption from expert fees is not automatic, but must be requested before the courts.

- Forms of payment?

Directly to the lawyer through a bank transfer (R1 and R3)

- How is the aid provided? Directly to the lawyer or to the applicant? Can the aid be directed to the applicant's family? No, the aid cannot be directed to the applicant or his/her family

- Are there any delays for reimbursement?

R1 and R3 referred that there used to be delays for reimbursement, but that lately things have improved (N.B. there was an amendment to the Criminal Procedure Code establishing time limits for the payment of lawyers' remuneration)

What are the known consequences of the origin of funds (e.g. state-funded lawyer vs. paid lawyer) in terms of quality of service?

It is a widespread opinion among the public in general that paid lawyers always engage much more than lawyers paid by the State under the free legal aid scheme, given that it is badly paid.

R1 and R3 did agree that being paid by the State under the free legal aid scheme, is indeed badly paid and there are so many variables that a lawyer does not really know how much will he/she be reimbursed, particularly because most of the times courts grant free legal aid in the modality "defence for a reduced fee", meaning that the State pays part of the lawyer's remuneration, but the client must assume the remaining. R1 and R3 referred to this as the worst possible scenario because in most cases the client really cannot afford to pay.

Be that as it may, R1 and R3, did not agree with the general opinion that the quality of their service is worse when they get paid under the free legal aid scheme. All of them said they, as professionals, always try their best, irrespective of how much they will get paid.

2.3 Access of lawyers to their clients

- How does a lawyer access a potential client, that is, make his or her existence known to a prisoner?

R1, R3 referred that it is clients who contact them, they do not advertise themselves among prisoners. Most of the prison related cases they had litigated were because they were appointed as ex-officio lawyers. As regards lawyers working for NGOs (which do not do in court litigation, i.e. R5) they visit prisons (they carry out projects in several prisons) and thus, prisoners learn about their existence.

We would like to mention here R6 which offers, upon request, the contact details of lawyers with experience in prison litigation.

- How is a lawyer attendance organized within detention facilities?

In remand prisons, defence lawyers are admitted at any time, even outside the standard visiting times. Pre-trial detainees must provide the name of the lawyer for the security guards to cross check the lawyers' identity who must also show the power of attorney.

§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-trial 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 (R1, R3).

- Material problems related to access (e.g. remote prisons, costs of transportation)

Yes, R1, R2, R3 referred that this was an important drawback for them. They are very busy people and prisons tend to be far away. In addition, under the free legal aid scheme loss of time is reimbursed only in exceptional cases, so most of the times their travel expenses to prisons are not reimbursed. Remand prisons are better located, within the city, and it is much easier to reach them.

- Administrative problems related to access (e.g. security measures, searches)

Yes, there are security measures and searches, but R1, R2, R3 did not refer to it as an important obstacle

- problems within detention facilities (eg mobility between wards, waiting times, existence of a dedicated space to meet detainees? Issues of confidentiality? Relations with staff: with officers, medical staff, social workers, etc. on legal issues connected with their specific fields)

R1, R3, viewed waiting times as a problem, particularly as regards remand prisoners who can be visited outside visiting hours and unannounced and this means that prison guards have to go and look for the detainee.

- Access to detainees and prisoners' files?

R1, R3 referred that access to prison files is hardly ever granted by the prison facility itself. Normally the lawyer has to convince the judicial authority of the need for it, and upon judicial request, the prison administration does hand it in.

3. LEGAL PRACTITIONERS – NGOs

3.1 Description of dedicated networks (NGOs / Human Rights organisations / Legal Clinics / Universities / monitoring bodies (that provide legal advice and/or may start litigation)

We contacted three organisations which in one way or another work in the field of prisons. The first of these organisations will be referred to as R5. It was the most willing one to talk about their activities and one of their members agreed to be personally interviewed. The second organisation will be referred to as R6. They answered some of the questions we asked via e-mail but did not agree to be personally interviewed. The third organisation will be referred to as R7. It is the largest of the three organisations we contacted and very well known in Czech Republic. Unfortunately, and surprisingly, they did not agree to be interviewed nor did they answer our questions via e-mail. We have, however, included some information regarding their activities, which is available in their Website, since it is one of the most important NGOs involved in the protection and promotion of

human rights in the Czech Republic. We thought that by including it, the picture of the organisations working somehow in the area of prisons will be more complete.

Brief history

Since 2010, the civic association R5 offers mainly social, psychological and legal assistance to inmates and their family members. They mainly work with convicts and not pre-trial detainees, but exceptionally they have helped too pre-trial inmates. Their main mission is to reduce the risk of possible recidivism and places special emphasis on maintaining or restoring functional relationships in the family of convicts. As regards the legal assistance offered by the organisation, it is mainly assistance to convicts in the exercise of their rights and legitimate interests both within prison and in the outside world, in different areas: for example, in the field of parental rights it helps inmates in complex negotiations between courts and children's foster homes; it also offers legal support for the provision and maintenance of housing, as well as assistance with orientation in social benefits or labour law issues. Besides, it mediates between the prison administration and convicts as regards their visit regime and offers material support for communication and meeting of convicts with their families (e.g. reimbursement of travel costs to prisons, buying of stamps, etc.). R5 operates directly in prisons (especially in Prague, the Central Bohemian Region, the Ústí nad Labem Region and the Pilsen Region) and can be contacted by phone, in writing, by e-mail or personally by the convict and/or his/her family.

The organisation R6 is far more opaque as regards its history and who manages it. When we contacted them and asked them, we received no answer on these issues. In addition, nowhere within its Website is there information on these two points. As regards its main goal, it is to offer reliable information for convicts-to-be, relatives and friends of convicts and for the public in general on the reality of the Czech prison system and of individual prison facilities. Its main strength is that anyone can write a query on the Website, which allows for a lot of interaction, and the organisation always answers. They have a lawyer (one not qualified for in court litigation) for answering the questions with a legal basis. Questions tend to be on issues of the interest of convicts and their relatives, like information on communications with the outside world, early release conditions, etc. Another of the services offered by the organisation which is very useful are the complaint forms which are available on their Website with examples on how to fill them in. Relatives take good note of the examples thereby available and later forward the information to inmates.

Finally, R7 is an NGO which, besides many issues related to human rights, also works on prison related issues, albeit incidentally as it is part of one of the topics they work in: "Judiciary and police". The origins of this NGO go back to 2002 when it was officially established and began to develop a wide range of activities related to compliance with human rights. It focused on the members of the police forces, protecting the rights of children and victims of domestic violence. Two years later, the activities of this NGO were better defined: the more consistent enforcement of human rights in the practice of the state authorities (at large, and not just the police), as well as the awareness of the Czech society, became new objectives of the organization. At a later stage, the rights of patients and mentally disabled people, as well as equal access to education also became part of the NGOs activities. However, in 2006 domestic violence was excluded from the activities of R7 since a separate organization for this particular topic was created.

Staff (number, permanent or temporary staff, professional experience)

R5 has 5 permanent staff members: a psychologist, a sociologist, a lawyer ("právník", who cannot do in court litigation), a project manager and an accountant.

We do not know how many staff members does R6 has. However, we do know that they have a lawyer ("právník", who cannot do in court litigation) as a contributor. She is a well-known lawyer in the world of activism, who also collaborates with other NGOs.

R7 is the largest organisation of the three and has 17 persons working, either as collaborators or as directly hired workers by the NGO. However, out of these 17 employees, there are only two persons directly involved in the area of “judiciary and police”, within which the activities related to deprivation of liberty are included. One of them is the same lawyer who also collaborates with R6 and the other is an assistant.

Internal relations between departments and notably with the policy department: e.g. modes of cooperation, cases of conflict, strains and hierarchy

The interviewed member of R5 did not refer cases of conflict between the 5 members/departments. She said they operate according to the needs identified in a particular moment.

Unfortunately, as already mentioned, we did not manage to interview any member of the other two organisations and we only have the information available on their Web sites. There is nothing therein as regards the internal relations between the different departments.

Legal relief policy: selection of cases – according to which legal or social/political criteria (is there a dedication to specific populations of prisoners?)

As regards R5, they give preference to those cases where family ties are involved: on the one hand is a guarantee that prisoners will try their best, it is the strongest bond with the outside world they still maintain, and on the other, it is one of the areas where you can raise a lot of funding.

3.2 How is litigation case work financed?

- Sources of funding

R5 combines public funds and funds stemming from private foundations. On the one hand, it is financed by the Ministry of Justice, the Ministry of work and social affairs, and the Prague Municipality; on the other hand, it is funded by private foundations focused on child care, like for example, the Tereza Maxová foundation (a foundation owned by a very well known fashion model, which focuses on children). It also receives funds from small, anonymous, private donors. A curious fact is that when we asked the interviewee about funds, her answer was that she will not comment funding and the information here provided has come from the organisation’s Website.

The Website of R6 does not offer information on how it is funded and they did not answer the questions related to funding when contacted via e-mail.

R7 combines too funding stemming from public funds, like the European Social Fund for example, with private funds, like the Fond Otakara Motejla

- assessments of possible impacts of funding notably on the selection of cases and their publicity

Unfortunately with the little information provided as regards funding we are not in a position to assess the possible impacts of funding

3.3 Within detention facilities

- Where are these actors located? Possibility to use a permanent office/desk?

R5 works within certain prisons (in Prague, the Central Bohemian Region, the Ústí nad Labem Region and the Pilsen Region). However, they cannot use a permanent office/desk in all of these prison facilities. In those prisons where overcrowding is a pressing problem, when a convict wishes to be assisted by the organisation, they arrange a meeting which takes place in the area designated for meetings between convicts and relatives. In prisons with less pressure in terms of

space, R5 is allowed to make use of a multipurpose room where special, educational and therapeutic activities take place.

The other two organisations, R6 and R7 do not access prisons directly as organisations. R6 referred that some of the persons that work in/collaborate with the organisation, access prisons individually for various reasons and that is why they need to preserve their anonymous nature.

- How do they access a potential client?

R5 referred that the most useful channel for accessing prisoners is the “word of mouth”, that is, prisoners inform other prisoners. They also referred that their Website is very helpful as regards relatives, who also inform prisoners of the existence of the organisation and push them to contact R5.

R6 said that their Website is the best way of reaching prisoners’ relatives and the public in general, which are their target clients, since they do not work directly with prisoners.

- Modes of organisation of attendance in prison facilities

When a prisoner wishes to contact R5 they usually write them or ask a relative to contact the organisation (or a relative contacts it “*motu proprio*”) and they fix a meeting day. The prison staff of the facilities where R5 usually works, already know the members of the organisation and the fact that they belong to an NGO and do not impede access.

- Material problems related to access (e.g. remote prisons, costs of transportation)

As regards this point, R5 said it was one of the biggest obstacles for having a wider reach. The organisation has its seat in the outskirts of Prague and their employees cannot physically operate in the prisons which are far away, as they cannot go to the most remote prisons and come back within a working day. They said it was a very regrettable situation.

- Legal problems related to access (e.g. security measures, searches)

R5 said they have to go through the security measures, but that since they already assume this fact and is not a problem. Most of the security staff already know them and the searches are not extremely thorough.

- Problems within custody (mobility between wards, waiting times, existence of a dedicated space to meet prisoners? Issues of confidentiality? Relations with prison staff)

R5 said that, given that the meeting day is already pre-arranged, there are no extraordinary waiting times. They referred as far more problematic the lack of dedicated spaces to meet prisoners in certain prison facilities. In some prisons, problems of lack of space is a serious issue and R5 meets prisoners in the same areas used for standard visits. Some days the place can get to be very busy.

- Access to case files?

R5 referred that access to case files is not a possibility. Prisoners have to request it themselves through official channels and, not even then, it is guaranteed that they will be given access.

4. PRISONERS AS LITIGANTS

4.1. Assessment of shortage of juridical and economical capital of remand prisoners

- Impact of recent austerity measures/budget cuts on access to legal information?

It is not a recent austerity measure, but it has already been in practice for a while, and we also referred to it in the WP2 report.

Upon admission to prison, pre-trial detainees 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. 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). During our interview with an officer of the prison administration, we were handed this form in Spanish. We can confirm that it is an easily accessible form for members of the prison administration, who have it saved in internal files within their computers, ready to be printed out with just one click. Therefore, when pre-trial detainees who do not speak Czech arrive, they are handed these forms easily and rapidly. Nevertheless, even if pre-trial detainees 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.⁵¹ 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 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 center 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.”⁵²

- Obstacles or facilitations of remedies within facilities through other actors than lawyers, and formal legal practitioners

There are NGOs actually working as mediators, like R5 which was one of the organisations we interviewed and which mediates between inmates and the prison administration on issues such as visits and contacts with the outside world. If a visit is denied, for example, they try to mediate and make the prison administration change its position, particularly if there are children involved. In this sense, it can be said that this organisation is a facilitator of remedies. Regrettably, it is not present in all Czech prisons and it is a small organization with limited capacity. They referred that it is in their interest to maintain good relations with the prison administration to be able to better mediate, so if internal mediation does not work, they do not further complain before external bodies, like for example, courts.

4.2. Access to legal information

- What is the quality/relevance/accessibility of written/oral legal information on rights and duties in police custody/prison?

51 Public Defender of Rights, Report on Visits to Remand Prisons, April 2010, p. 21

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

R1, R2 and R3 agreed that even if inmates were provided with a written form informing them of their rights and obligations, still it was not very clear for them how to implement some of those rights and obligations from the very outset, that is, from the first days in detention. The situation is very confusing the first days and it takes them a while until they situate themselves and orientate themselves through the system. R1 believed that inmates become better aware of how to implement those rights and obligations once they move from the “welcome wardens” to the wardens where they are in contact with other inmates, to whom they can ask. However, R1 also said that other inmates are not always well informed and there is a risk of “passing confusion along”. R1 and R2 were of the opinion that inmates do not ask prison staff on how to implement rights and obligations; whereas, R3 believed that inmates do ask individual members of the prison staff on how to implement rights if they have the opportunity of meeting them without the presence of other inmates. For example, inmates ask social workers on rights and obligations during individual meetings, and some also ask prison priests during mass. However, R3 said that sometimes these actors are not always well informed of how to implement certain rights.

- Where through which members of staff is information made available?

Either wardens or the social workers during the first meeting with the detainee inform him/her of their rights and obligations. R4 referred that Regulations foresee the submission of a specific form (known as “*Poučení pro vazbu*”) and pre-trial detainees must attest with their signature to have received such document.

As referred by R3, prisoners sometimes also ask other actors (like prison priests) at later stages.

- Is its availability mentioned to prisoners during intake?

Yes, Regulations foresee the submission during intake of a specific form informing pre-trial detainees of their rights and obligations (known as “*Poučení pro vazbu*”) and pre-trial detainees must attest with their signature to have received such document. R4 referred that this provision is complied with in practice and that pre-trial detainees are also orally inform of some of the rights and obligations contained in the specific form, particularly of those rights and obligations which are already embedded in the daily routine of pre-trial detainees.

- Is this legal information provided and circulated by incoming lawyers, NGOs, or by other outsiders?

R3 said to be aware that prisons priests, if directly asked by inmates, also inform them of how to implement their rights and obligations. Yet, there is a risk of prison priests not being well informed on how to actually implement them.

NGOs also provide legal information, in fact that is what R5 does: help inmates implement some of their rights, particularly those related with visits and communication with the outside world.

Lawyers do not usually advice/represent inmates on the implementation of their rights within prison. They may bring some issues to the attention of courts if they deem it worth for the issue that is being litigated: for example, if the conditions of detention are not good, or the detention itself poses a risk to the inmate’s health, the lawyer may use it as an argument for requesting the imposition of an alternative measure other than deprivation of liberty. But, as referred by R1 and R3, lawyers when appointed ex-officio tend not to help inmates with the implementation of their rights and obligations within prison; they even tend not to be aware of how the implementation mechanisms/channels work.

- Are there issues related to written and language proficiency: possible access to public writers/interpreters when conversing with lawyers or others, access to translated documents on legal information. Who are the public interpreters, how reliable are they? Official interpreters, members of prison staff, other prisoners? Any related privacy issues?

Yes, there are issues related to language proficiency. R4 referred that the specific form which is handed over to pre-trial detainees informing them of their rights and obligations is available in

several languages. However, as already mentioned elsewhere, the internal rules (which are much more detailed) are available only in Czech. Thus, non-nationals learn about the exact content of the internal rules of the prison facility where they are remanded if other inmates translate them orally.

R1, R2 and R3 referred that with non-nationals they communicate in English; though they have made use of this foreign language in very few occasions. They said that it was difficult given the technicalities of the legal language.

Within court proceedings, translation and interpretation is well established in practice and in law. There are public interpreters, official and reliable (the Ministry of Justice keeps a list of registered in court interpreters and translators). However, within prison there is no such thing as public interpreters and inmates who are non-nationals have problems understanding official communications stemming from the Prison Administration and filling in official forms. R4 said that if prisoners would request the services of a translator/interpreter they would have to assume the costs. It is not a common practice. Rather, prisoners tend to rely on other inmates who help them with translations. He referred privacy issues, yet more problematic in his opinion is the accuracy of the translation.

- Is access to printed forms and other material enabling prisoners to file a motion on their own required by law/effectively provided?

R4 said that printed forms enabling prisoners to file a motion on their own are available in dedicated spaces within corridors. Other interviewees referred not to be aware of whether printed forms were or were not available.

4.3 Organisational and practical issues related to legal aid

Formalities for filing a claim for legal aid

- Are pre-printed forms available in prisons and where? Are they provided to incoming lawyers, are they provided and circulated through NGO/human rights organisations/universities/legal clinics, are they provided through other outsiders (prison priests/imams, volunteers from cultural organisations or educational support groups, etc, other?)

As already mentioned above, R4 said that printed forms enabling prisoners to file a motion on their own are available in dedicated spaces within corridors. R6 referred via e-mail that relatives hand in to inmates the forms available in their Website with examples of how to fill them in. None of the lawyers interviewed mentioned that they circulated pre-printed forms. In fact, R1 and R3 noted that lawyers when appointed ex-officio tend not to help inmates with the implementation of their rights and obligations within prison; they even tend not to be aware of how the implementation mechanisms/channels work. Prisons priests do not circulate pre-printed forms either, R13 and R14 did not mention anything on these lines.

- What is the quality/relevance/complexity of these forms? Is the information to be provided easily available to prisoners? What are the concrete consequences of missing information? How long does it usually take to fill in the form?

According to R4 forms are multi-purpose and have, thus, blank spaces to be filled in. There are separated forms for complaints and requests, which differ in terms of headings, but otherwise they are similar in that all of them have blank spaces. Therefore, the complexity depends on what the inmate wishes to request or complain against. The forms, given that they are multi-purpose, do not include instructions on how to fill them in or what information should not be missed. R5 referred that prisoners find it difficult to fill in forms, regardless of what they request / complain. R4 said that the consequences of missing information depends on what is it that inmates request / complain. R5 believed that it usually takes them a few days to fill in the form, particularly as regards complaints, where inmates balance the pros and cons before filing them

What is the complexity of the appeal proceedings on refusals? Does it require a legal practitioner?

Here we would like to note that not all refusals may be appealed before the courts. Hence, an appeal proceeding can also be filed before the General Directorate of the Prison Administration, depending on the issue. A legal practitioner is only required if the appeal proceedings takes place before the courts, and not always will it be mandatory: depending on the jurisdictional order and on whether the court decides that it is necessary to assure equality of arms.

R1, R3, R5 and R6 considered that appeals are always complex. R1 and R3 agreed that complexity lies in accessing evidence if the appeal is filed before the courts.

Organisation of financial aid for litigation and its concrete implementation

- Existence of dedicated staff/department to centralize and transmit claims for financial aid?

R4 said that no such department/staff exists within the Prison Administration.

- When provision of legal aid is not automatic, is there a policy towards claims made by prisoners? What is the composition of the body which makes the decision and to what extent it is aware of prison issues/situation?

R8 referred that there is no particular policy towards claims made by prisoners.

The decision on free legal aid is adopted by 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. Subsidiarily, the Czech Bar Association, more precisely the Brno branch, may also decide on the granting of free legal aid: the applicant must prove to be a person not fulfilling the requirements to have a lawyer appointed by the court under special legislation 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

- What is the length of the processing time to get a decision on the granting of legal aid?

Three months according to R8, eight months according to R3

- In countries where the law provides that the money flows to the applicant, are there practical aspects for prisoners whose access to banking services are limited?

In Czech Republic the money does not flow directly to the applicant

- Are detainees expected to reimburse legal fees through their salary? Is their family expected to contribute? As a consequence, are there differences between the financial situation of prisoners before their incarceration and after their release?

Yes, in certain cases, detainees are expected to reimburse legal fees through their salary, even if these legal fees were initially paid by the State. 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 (it is important to note that persons remanded in custody fall under this modality of legal defence). 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). As regulated in

§155(1) of the Criminal Procedure Code: “The obligation of the convicted 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 judgment...A complaint is admissible against the decision..., which has a dilatory effect.”

In other words, persons remanded in custody are assigned a “compulsory defence counsel”, meaning that even if they do not want to be represented by a lawyer, they are forced to. This does not mean that they cannot choose their lawyer; but that they are given a time limit for choosing a lawyer and if, within that time limit, they have not chosen one or have not been able to find one, the court will assign them one from the list of lawyers managed by the courts (so-called ex-offo lawyer). The lawyers’ fees of this “compulsory defence” are initially paid by the State. However, if the defendant is finally convicted, the court imposes a duty on the person to pay the defence costs to the State. Only, if the person requested to be granted free legal aid and the court decided that he/she qualified for it, will the convict be exempted from reimbursing to the State the costs of defence (at this point, it is to be noted that the criteria for free legal aid are not well established and defined, rather courts enjoy a wide margin of appreciation regarding the threshold of insufficient financial means). Therefore, as noted by R5, R8 and R12 it is quite common for convicts to have to pay the costs of their compulsory defence, because even in cases where they are granted free legal aid, they can be granted the modality of “reduced fee”, meaning that they do not have to pay the whole sum to which legal fees amount, but a reduced amount decided by the court.

Convicted are not just expected to pay the fees of the “compulsory defence”, but also to reimburse the State the costs of their remand custody and the lump sum of other costs borne by the State (like, for example, the costs of the proceedings, which are not calculated according to the actual expenditure of a particular procedure but are fixed in a flat-rate manner) (See §151(1) of the Criminal Procedure Code). Besides the costs of the remand custody and the costs of the proceedings, convicted must also pay the costs of their incarceration (the prison term to which they have been convicted).

Against this background, no wonder the amount that convicts must reimburse can sometimes get to be quite large, particularly since the wages of convicts are very low. Thus, the answer to the last question is yes, there are differences between the financial situation of prisoners before their incarceration and after their release. In 2018, Law N° 182/2006 Coll. on insolvency was amended and under certain conditions convicts can now make use of the option thereby foreseen for lessening the amount of debt: they must have at least two debtors, debts must not be due to business, they must work or have another source of income (like for example retirement pension), they must file before the courts an application for debt relief and the court must be convinced of their honest intent and of the responsible approach to fulfil their obligations and they must pay in 60 instalments at least 30% of the debt.⁵³ R6 strongly advises to be assisted by a lawyer specialist on insolvency issues, because if the application for debt relief is not filed properly and in a timely manner, the court will reject the proposal (i.e. will not examine in substance whether the conditions for authorization of debt relief are met).

Their family is not expected to contribute, but in practice the reality is that in many cases they do contribute according to R5 (voluntarily)

4.4. Prisoners belonging to various minorities, under-represented or isolated groups within prisons (e.g. LGTB, foreign nationals, women, minors, disabled, persons suffering from chronic diseases, mental illness, etc.) or prisoners facing special security measures, particular disciplinary sanctions, restrictions or isolation (e.g. individuals detained/convicted for terrorism, sexual assault, aggravated murder, gang-related violence, financial crimes, corruption, white-collar criminals, former law enforcement agents, etc.)

- Status inside the facility/prison: access to social relief, financial aid

⁵³ There are other general conditions and exceptions. <https://insolvency.justice.cz/jak-ven-z-dluhove-pasti/oddluzeni/>

R5 referred that they do not have better access to social or financial aid just for their status inside the prison facility. They have better chances of getting social or financial aid if they belong to one of the target groups for increased financial attention, like for example long-term unemployed women over 40 years of age or disabled persons. Persons belonging to these groups, incarcerated or not have a series of social or financial benefits, like for example, the State assuming their social security costs once their unemployment benefit expires, or access to specific pensions, etc. R5 referred that in the case of disabled persons, they tend to be aware of the available benefits before entering prison and most of them already perceive such benefits.

- Limited attention from prison staff or heightened attention to them (e.g. prisoners deemed particularly dangerous or to be protected against other prisoners)

R5 referred that the situation changes from prison to prison. In the last 5 years, prisoners with mental illness are getting heightened attention from prison staff since the moment they enter into the prison system, when they are identified and tried to be accommodated in specific wardens/prisons in order to reduce the risk of abuse by other inmates. As regards prisoners deemed particularly dangerous, the situation is ambiguous according to R5: they too get heightened attention in the sense of more searches, more cell supervision, etc., yet at the same time this heightened attention is not combined with an increased participation in educational, social or rehabilitation programmes. R5 considered that these type of prisoners would require specific programmes and it is not always possible because of budget strain.

- Are there concentrations of specific categories of prisoners in designated wards/or on the opposite a dispersion policy

Yes, there are concentration of specific categories of prisoners in designated wards; there are even concentration of specific categories of prisoners in designated prisons, see for example, the case of persons convicted to "security detention" ("*zabezpečovací detence*", i.e. persons who, due to the nature and seriousness of their mental disorder "*duševní porucha*", represent a particularly serious threat to society). These persons are accommodated in special facilities. Currently, there are two facilities: in Brno "*ústav pro výkon zabezpečovací detence Brno*" and in Opava "*ústav pro výkon zabezpečovací detence Opava*". The Brno facility is intended to serve as a point of entry into the security detention system; all inmates upon whom security detention is imposed are first placed in Brno Security Detention Facility and may later be transferred to Opava, depending on their diagnosis and therapeutic progress

and related obstacles (or facilitations) to the activation of certain types of legal relief, due to:

- Mobility within the facility / the penitentiary system

There are obstacles to the activation of legal relief, yet R5 termed it differently. She said it was not a question of "activation", but of "smooth implementation" of relief in general, not just legal. She said they were a good example of it: if the prisoner is transferred to a prison facility where R5 does not operate, the relief the organisation provides to that prisoners is disrupted. They may still communicate by letter, but this type of communication does not guarantee a "smooth implementation" of the relief provided by the organisation, which sometimes consists on mediation services between the prisoner and the prison administration.

As regards applications for free legal aid strictly speaking, their activation will continue, since the legal proceedings for which free legal aid has been requested will continue before the same judicial authority (also in charge of deciding on the granting or denials of free legal aid). However, for the lawyer it can be more complicated to meet his/her client to prepare the case if he/she now has to travel to a far away prison. Particularly if the lawyers' fees are assumed by the State under the free legal aid scheme, since travel expenses and loss of time are not automatically reimbursed. They are paid on a case-by-case basis and it is the court who decides their reimbursement. This means that, in practice, as R1 and R3 referred, lawyers tend to concentrate or even reduce their visits to incarcerated clients who have been transferred to prisons located further away.

No interviewee referred that mobility within the facility was a particular problem.

- The impossibility for lawyers, NGOs or other key actors to access disciplinary wards (e.g. terrorist wings)

Lawyers and NGOs do not access wards in general (understood as the places where cells are), and not just the disciplinary wards or wards for prisoners under a high security regime. They always meet with their clients in specific rooms for interviews between lawyers and prisoners, who are always escorted to these rooms by a member of the prison staff, who visually control the meeting.

A particularity regarding pre-trial detainees who are remanded in prison because of the fear of influencing witnesses or otherwise frustrating the investigations, must be mentioned at this point: The interviews of this kind of pre-trial detainees with their lawyers is subject to the provisions of § 16.2 of the Ministry of Justice Decree on the Execution of Pre-trial detention. Thereby it is specified that the criminal investigation authorities must not oppose to such meetings; hence, this implies that the criminal investigation authorities must be informed of when do the meetings take place, which contrasts with what is the general rule as regards meetings between lawyers and pre-trial detainees remanded in prison for other reasons. Normally, pre-trial detainees and lawyers can meet whenever the latter requests so, including at times outside working hours and on weekends, without previous notice. R1, R2 and R3 did not comment on this point, it is something we have come across during the analysis of the legislation in place.

- Intimidation/restrictions by wardens, social workers, other

No interviewee referred intimidation/restrictions by wardens or other members of prison staff as regards prisoners belonging to particular categories and their access to legal relief. R1 even recounted how once he had been appointed as the ex-officio lawyer of a known serial killer who was serving life sentence in a high security prison far away from Prague and who wanted to sue the State (the social security) for problems with his retirement pension. Wardens were not impeding access, security controls were not a problem, yet the location of the prison facility was and, before his client passed away due to his old age, they actually met only once and contact was mainly through postal mail. He also mentioned that gathering evidence (requesting labour contracts, for example, or medical certifications) from the prison administration was also a problem.

- Psychological effects of disciplinary measures and confinement (e.g. mental health issues/depression)

- Other

R5 only mentioned that, yes, there are psychological effects related to incarceration in general and to heightened security measures, in particular. But she did not fully grasped the exact point of the question.

Organisation of remedies inside prison facilities among prisoners

- Are there detainee committees? Are they self-organized or organized by the prison administration? Are they allowed to provide legal advice to other prisoners or not?

R5 and R4 said they were not ware of the existence of detainee committees specifically focused on legal relief or on advising other detainees. R13 and R14 did not fully grasped what the term committee meant, they said that prisoners attending religious services tend to help each other, though informally without officially being termed a “committee”. R12, however, said that there is a lot of mistrust between prisoners and that bonds are not easily made. R4 said that among pre-trial detainees committees are rare, even as regards sport or leisure, areas where you can find “committees” among convicted prisoners, given their temporary or provisional character. There was no clear answer regarding this point

- Are there “jail-house lawyers” who help other prisoners (with practical information/translation education/help in writing documents or making contacts

R4 said that you can get to find this type of prisoners sometimes, but that he would not say it is a widespread phenomenon. After all, a prisoner who could act as a “jail-house lawyer” would have to have higher education and that is not very common. White-collar criminals who could, for example, act as “jail-house lawyers” want to go unnoticed to avoid economic extortion by other inmates. In conclusion, prisoners acting as “jail-house lawyers” can be found, but it is rare. However, practical information is commonly shared between prisoners.

- Centralization (e.g. one or several prisoners are the key litigants and centralize complaints, serving as go-betweeners for prisoners, barristers and NGOs) or

R5, R4 and R1 said there are no prisoners serving as go-betweeners between lawyers and NGOs. Prisoners meet individually with their lawyers (there is also the possibility of appointing the same lawyer for more than one defendant but for collective crimes and if there are no conflicts of interest) and also with NGOs who offer advice and assessment. NGOs which offer group activities, like educational programmes, for example, do meet collectively.

- Dispatching? (individualism and absence of organisation)

R5, R4 and R1 said that prisoners do help each other, but not in the sense of one acting as go-betterer or “jail-house lawyer”. The help is more on the lines of sharing practical information and their personal experience with complaints/requests. So, they agreed in the absence of formal organisation, but said that “individualism” was not the word either. There is solidarity among prisoners (and also many cases of abuse too). R4 said that the sharing of practical information has its risks too, since sometimes the information is not accurate or a bad personal experience can hold back other inmates from requesting/complaining when it is legitimate.

5. ACCESS TO THE INTERNET/DIGITAL TOOLS FOR PRISONERS

- Experimentation with or implementation of digital legal tools for prisoners and for defenders

R4 and R5 referred that there are pilot projects as regards prisoner’s (convicted not on remand) access to the Internet (they believed that only to certain Websites). But they were not aware of the details of the project, like who had designated such tools and to what extent were they relevant to prison litigation.

The latest available report from the CPT on the Czech Republic also mentions the possibility of inmates at the Valdice Prison who attended educational or vocational training courses of accessing computers connected to the Internet.⁵⁴ But again no more details are thereby provided.

- Are digital tools for communication between courts and applicants (in the framework of proceedings) available in prison? Under which conditions? To what extent is the confidentiality respected when using the computer equipment provided? In case IT tools are deployed at a large scale within the judicial system, how do courts deal with non digital applications? Is there a difference of treatment between the two kinds of applications (in terms of quality of the examination on the merits)?

R1 and R3 said that digital tools for communication between courts and applicants in the framework of proceedings are not widespread in general within the Czech judicial system. They are not common either within prisons.

⁵⁴ Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 10 April 2014. CPT/Inf (2015) 18, p. 33

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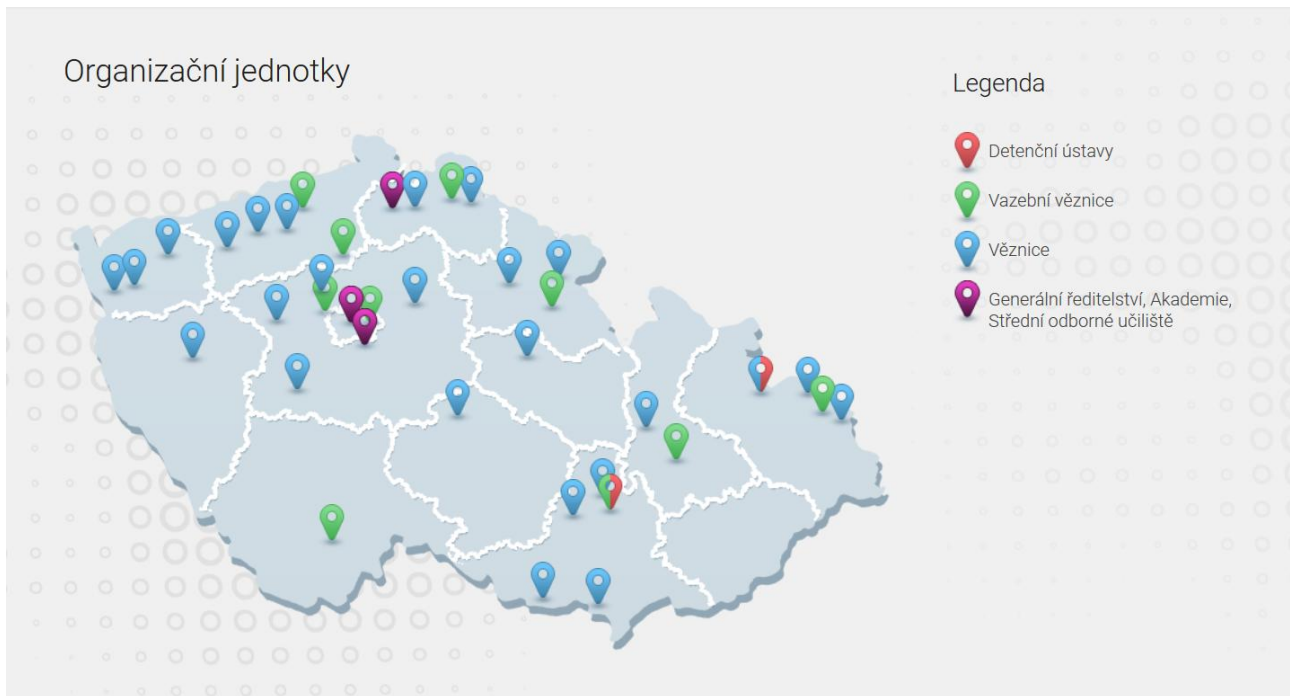
2. Supreme Administrative Court of the Czech Republic Decision No. 2805/2013 Coll.

ANNEXES





Code	M/F	Specialisation/function
R1	M	Lawyer qualified for in court litigation “advokát” (> 20 years)
R2	M	Lawyer still not qualified for in court litigation, yet preparing himself for the qualification exam “Koncipient” (> 3 years)
R3	M	lawyer qualified for in court litigation “advokát” (>10 years)
R4	M	Employee of the Prison administration (> 20 years)
R5	F	Lawyer not qualified for in court litigation (“právník”) working for and NGO (> 20 years)
R6	F	Lawyer not qualified for in court litigation („právník“) working for an NGO (>10 years)
R7	¿?	NGO which we contacted but did not answer
R8	M	Judge in criminal jurisdiction (>5 years)
R9	F	Police officer (> 20 years)
R10	M	Academia. Senior researcher on the area of criminal justice system (>15 years)
R11	M	Academia. Senior researcher on the area of criminal justice system (>20 years)
R12	M	Former prisoner (> 5 years of prison term)
R13	M	Prison priest (> 20 years)
R14	M	Prison priest (> 20 years)

*** We also contacted the Czech Bar Association using the contact provided by the Delegation in Brussels of the Czech Bar Association. We contacted the Brno branch, which is in charge of free legal aid since July 2018; but unfortunately they replied that they were too busy for an interview since they were implementing the free legal aid system after the recent legislative amendments.

Map featuring the location of the main places of detention⁵⁵



Legenda

-  Security detention facilities
-  Remand prison
-  Prison for convicted
-  General Directorate of the Czech Prison Service, Academia and Secondary vocational school for the Prison Administration employees