

Czech Republic

1. Introduction

The criminal justice system of the Czech Republic is based on the continental European legal system, which is characterised by the use of written, generally recognised normative acts that have been issued by the legitimate bodies of the legislative or executive power and that are recognised as the source of law.¹

As part of the so-called two-year legal plan (1948-1950), which was based on a government resolution of 14 July 1948, the draft of a new Criminal Code (hereinafter CC) and Criminal Procedure Code (CPC) started. In 1950, these new Codes, Act No. 86/1950 Coll. and Act No. 87/1950 Coll. were adopted. It was in 1961, that the two Codes were replaced by Act No. 140/1961 Coll. and Act No. 141/1961 Coll., respectively. The new CC forms the foundation of current criminal law in the Czech Republic and has been amended numerous times in the last years. During these last years, there was a focus on developing alternative sanctions to prison. This way, the sentence of community service was introduced (No. 152/1995 of Coll.) and also the possibility to apply supervision executed by the probation office for conditional discharge and for a suspended sentence (No. 253/1997 of Coll.). On 27 January 2009 the President signed a new CC which passed by the Czech Parliament. The new CC will enter into force on 1 January 2010 and will completely replace the Code from 1961. This new Code addresses a wide range of legal and social issues, introduces house arrest as a type of alternative punishment and also constitutes a proposal to lower the age of criminal responsibility from 15 to 14 years.²

The main source of the Czech law of criminal procedure is the mentioned CPC. The most relevant amendment to the CPC was made in 2001, with Act No. 265/2001 Coll., which came into effect on 1 January 2002. With this Act, the CPC was substantially amended and supplemented. The changes encompassed, *inter alia*, the function of the probation officer in criminal proceedings, establishing new time limits for completing investigations, adding appellate review to the range of extraordinary appeals and regulating the limitation of the duration of custody. From Sec. 67 on, the CPC deals with the issue of custody, which refers to the period from the time when the person is accused and detained until the final decision of the last instance court. This Code governs the main rulings on custody. Other relevant regulations are, *inter alia*, the Execution of Custody Act³, the Police Act⁴, the Code Governing the Execution of Pre-trial Detention⁵, the Prison Service and Judicial Guard of the Czech Republic Act,⁶ and the Act on Juvenile Liability for Unlawful Acts and on Justice in Juvenile Matters.⁷ The Constitution and the Charter of Fundamental Rights and Freedoms (hereinafter Charter), which form a part of the constitutional order, also contain relevant provisions on criminal procedure and custody in particular, of which the relevant provisions will be dealt with later on.⁸

¹ K. Kangspunta, M. Joutsen, N. Ollus and S. Nevala (eds.), *Profiles of Criminal Justice Systems in Europe and North-America 1990-1994*, Heuni 1999, p. 112.

² Although the new CC lowers the age of criminal liability from 15 to 14 years, the Minister of Justice has promised to prepare an amendment in order to change the age limit, which has been criticized by some politicians and experts. By the time the Code enters into force, it may be amended and the age limit may be set back to 15 years depending on the results of the discussion which will be opened by the submission of the respective amendment.

³ Act No. 293/1993 Coll. (amended by Act No. 539/2004, entered into force on 1 November 2004).

⁴ Act No. 283/1991 Coll. (amended more than 15 times).

⁵ By-law No. 109/1994 of the Ministry of Justice (amended by By-law No. 242/2006, entered into force 1 July 2006).

⁶ Act No. 555/1992 Coll. (amended by Act No. 274/2008, entered into force on 1 January 2009).

⁷ Act No. 218/2003 Coll. (amended by Act No. 129/2008, entered into force on 1 January 2009).

⁸ Constitutional Act No. 1/1993 Coll., Resolution of the Presidium of the Czech National Council No. 2/1993 Coll.

In this report, pre-trial detention will be discussed thoroughly.⁹ The aim is to give an analysis of the minimum standards in pre-trial detention and the grounds for regular review in the Czech Republic. After dealing with some empirical background information in paragraph 2, the legal basis (scope and notion of pre-trial detention) will be discussed in paragraph 3. Paragraphs 4 and 5 concern the grounds for pre-trial detention and the grounds for review of pre-trial detention, respectively. The length of pre-trial detention will be treated in paragraph 6, after which other relevant aspects in relation to pre-trial detention follow (paragraph 7). Paragraph 8 will focus on the system of pre-trial detention regarding special groups.

2. Empirical background information

Various sources deliver statistics on the size of the prison population, pre-trial detention/remand imprisonment etc in the Czech Republic. In this paragraph, attention will be paid, *inter alia*, to national statistics from the Czech Statistical Office and to data from international sources: the Council of Europe's SPACE I, the International Centre for Prison Studies of King's College London and the European Sourcebook of Crime and Criminal Justice. After presenting the data, the statistics will be discussed.

Table 1:

	2000	2003	2004	2005	2006	2007
Prisoners total	21,538	17,277	18,343	18,937	18,578	18,901
Persons in custody	5,967	3,409	3,269	2,860	2,399	2,254
Adults	5,804	3,316	3,190	2,796	2,340	2,200
Males	5,448	3,154	3,011	2,634	2,219	2,077
Females	356	162	179	162	121	143
Juveniles¹⁰	163	93	79	64	59	34
Foreigners¹¹	1,405	790	792	663	532	541

Source: General Directorate of the Prison Service of the Czech Republic, at 31 December 2006.¹²

Data from the Council of Europe Annual Penal Statistics, SPACE I, Survey 2006¹³

Remarks: The numbers relate to 1 September, 2006 (stock); they include the entire prison population and not only those who are held in penal institutions and no measures (legislative or other) directly influencing the trends in the number of prisoners have been taken in the course of the last twelve months.

Table 2: The Czech Republic and its prisoners in general

Population 2006, annual estimates (thousands)	10189.0
Total number of prisoners (including pre-trial detainees)	18,912 ¹⁴
Prison population rate per 100,000 inhabitants	185.6
Total capacity of penal institutions/prisons	18,936
Prison density per 100 places	99.9

⁹ Though the headings of the paragraphs in this report refer to pre-trial detention, in the text 'custody' will be used, as this is the term which is prescribed in Czech law. It refers to the period from the time when the person is accused and detained until the final decision of the last instance court.

¹⁰ Juveniles are persons between the ages of 15 and 18.

¹¹ Until 2005, besides "Foreigners", there was also a category called "Outstanding". This category comprised ex-CSFR citizens of whom it was not clear whether they were Czechs or Slovaks.

¹² <http://www.czso.cz/eng/redakce.nsf/i/home>

¹³ 23 January 2008, PC-CP (2007)9 rev3, by M.F. Aebi, N. Delgrande: University of Lausanne, Switzerland.

¹⁴ This number includes the following categories: Persons held in institutions for juvenile offenders (128), Persons held in institutions for drug-addicted offenders (550), Persons serving their sentence under Electronic Monitoring (1,160).

Table 3: Special groups of prisoners¹⁵

Number of female prisoners (including pre-trial detainees)	868
Percentage of female detainees (including pre-trial detainees)	4.6
Number of foreign prisoners (including pre-trial detainees)	1,378
Percentage of foreign prisoners (including pre-trial detainees)	7.3
Of which: number of foreign pre-trial detainees	510
Percentage of foreign prisoners who are pre-trial detainees	37.0

Table 4: Legal status of prison population I

Untried prisoners (no court decision yet reached)	...
Convicted prisoners, but not yet sentenced	2,398
Sentenced prisoners who have appealed or who are within the statutory time limit for doing so	...
Sentenced prisoners (final sentence)	16,514
Other cases	***
Total	18,912

Table 5: Legal status of prison population II

Percentage of prisoners not serving a final sentence	12.7
Rate of prisoners not serving a final sentence per 100,000 inhabitants	23.5
Percentage of untried prisoners (no court decision yet reached)	12.7
Rate of untried prisoners (no court decision yet reached) per 100,000 inhabitants	23.5

Evolution of prison populations between 2000 and 2006

	Total number of prisoners (including pre-trial detainees) on 1 September of each year	Prison population rate per 100,000 inhabitants on 1 September of each year
2000	22,489	219
2001	21,206	207
2002	16,861	164.2
2003	17,053	167.1
2004
2005	19,052	186.4
2006	18,912	185.6

- The change between 2000-2006 = evolution (in percentage) of prison population rates between 2000 and 2006: -15.2
- The change between 2005-2006 = evolution (in percentage) of prison population rates between 2005 and 2006: -0.4

Prison population data from further in the past show us the following:

¹⁵ SPACE provides no numbers on juveniles.

Prison population (including accused in custody) as of 31 December¹⁶

Year	Number of prisoners	Number of prisoners per 100,000 inhabitants	Males	Females
1994	18,753	181.4	18,133	620
1995	19,508	188.8	18,816	692
1996	20,860	202.2	20,092	768
1997	21,560	209.2	20,760	800
1998	22,067	214.3	21,202	865
1999	23,060	224.3	22,076	984
2000	21,538	209.7	20,570	968
22001	19,320	187.8	18,531	789

Data from the International Centre for Prison Studies, King's College London

Table 6: Prison Brief 2007

Prison population total (including pre-trial detainees/remand prisoners) ¹⁷	18,901 On 31 December 2007 (national prison administration)
Prison population rate (per 100,000 of national population)	182 based on an estimated national population of 10.38 million at the end of 2007 (Eurostat)
Pre-trial detainees/remand prisoners (percentage of prison population)	11.9% (31 December 2007)
Official capacity of prison system	19,250 (31 December 2007)
Occupancy level (based on official capacity)	98.2% (31 December 2007)

Table 7: World Pre-trial/Remand Imprisonment List¹⁸

Total number in pre-trial/remand imprisonment	2,390
Date	11 April 2007
Percentage of total prison population	12.5
Estimated national population (at date shown)	10.30 million
Pre-trial/remand population rate (per 100,000 of national population)	23

¹⁶ Karabec, Dibliková and Zeman, *National Criminal Justice Profiles: Czech Republic*, Heuni 2002, p. 84.

¹⁷ Prison Brief for Czech Republic,

http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=133

¹⁸ Roy Walmsley, January 2008,

<http://www.kcl.ac.uk/depsta/law/research/icps/downloads.php?searchtitle=World%20Pre-trial&search=search&type=0&month=0&year=0&lang=0&author>

The List refers to those persons who, in connection with an alleged offence or offences, are deprived of their liberty following a judicial or other legal process but have not been definitively sentenced by a court for the offence(s).

Table 8: World Female Imprisonment List¹⁹

Female prison population (number of women and girls in penal institutions, including pre-trial detainees/remand prisoners)	913
Date	31 March 2006
Female prisoners as a percentage of the total prison population	4.8

Data from the European Sourcebook of Crime and Criminal Justice 2006**Table 9: Prison population: percentage of pre-trial detainees in the total stock**

2000	28
2001	24
2002	21
2003	20

From the several sources of which the numbers are quite similar to each other, Tables 1 and 6 give us the most recent size (dated 31 December 2007) of the total prison population in the Czech Republic: 18,901. This means that the prison population rate per 100,000 inhabitants is 182, which is higher than the European average. The occupancy level is almost 100%, indicating that the prison system's total capacity of 19,250 is just sufficient to accommodate all prisoners. Nevertheless, one of the observations of the CPT's last visit to the Czech Republic in 2006 was that prisons are confronted with overcrowding. More on this issue will be said in paragraph 7.

As we can see in Table 1, since the beginning of the century, the number of persons in custody has decreased tremendously: from 5,967 in 2000 to 2,254 in 2007. To a large extent, this must be due to the reforms made in the Czech Republic during the last decade, in which different proceedings and alternatives to custody were introduced into the legal system. Changes in the Mediation and Probation Service also play a role: probation officers now have a greater responsibility in securing the presence of the accused pending trial. At the end of 2007, the share of persons in custody was 11.9% of the total prison population – one of the lowest percentages in Europe. With regard to specific groups, the data shows us that 541 foreigners, 143 women and 34 juveniles were being held in custody at the end of 2007. The foreigners were mainly from Slovakia and Ukraine. With 4.8%, the share of women in the total prison population of the Czech Republic almost corresponds to the European average (4.4%). With this, we will conclude this paragraph on empirical background information and continue with the legal basis of pre-trial detention in the Czech Republic. The scope and notion of this concept will be discussed in the following paragraph.

3. Legal basis: scope and notion of pre-trial detention

In relation to the scope and notion of pre-trial detention, several aspects will pass in review in this paragraph, such as the definition of pre-trial detention, the primary objective of pre-trial detention, beginning and end of pre-trial detention according to the law, the competent authorities for arrest/further detention, and the procedural rights of the accused at the time of arrest/during detention.

Regulations regarding the judicial system are to be found in the Judges Act 2002 (No. 6/2002 Coll.). According to section 13 of the CPC, there are four criminal-court levels in the Czech Republic in a three-instance system: District Courts, Regional Courts, High Courts and the Supreme Court. Alongside the ordinary courts, there is the Constitutional Court. The District Courts, as first-instance courts, have jurisdiction over minor crimes and cases. The Regional

¹⁹ Roy Walmsley, August 2006, <http://www.kcl.ac.uk/depsta/law/research/icps/downloads.php?searchtitle=world+female+imprisonment+list&type=0&month=0&year=0&lang=0&author=&search=Search>

Courts, in first instance, have jurisdiction over serious crimes for which a sentence of at least five years imprisonment is prescribed as well as cases expressly stipulated by law (e.g. unfair competition). Besides criminal offences, there are also less dangerous offences, defined as misdemeanours or delicts (Misdemeanours Act No. 200/1990 Coll.). The Czech system does not have an investigating judge. Investigations are conducted by the police, sometimes in cooperation with the public prosecutor. Depending on the circumstances of the case and the gravity of the offence committed, different proceedings are prescribed in the CPC, namely:

- Normal proceedings with an investigation and a decision to prosecute further before a District or a Regional Court. The court terminates the proceedings with a judgment;
- Shortened preliminary proceedings (two weeks) with a hearing before a single judge in a District Court;²⁰
- Proceedings before a single judge that apply to offences for which the law imposes a maximum of five years imprisonment. Without a hearing, the judge may issue a criminal order and impose a limited punishment.

In the Czech Republic, the principle of compulsory prosecution, which also implies that proceedings are held *ex officio*, is in force, and public prosecutors play a fundamental role during the preliminary phase of the criminal process.²¹ In certain matters, as provided by the CC, the competent organ may only institute or continue prosecution already instituted upon the consent of the victim (Sec. 163 CPC). The preliminary proceedings contain two phases: the “procedure before commencement of criminal prosecution” and the “decision on commencement of criminal prosecution and investigation phase”.²²

During the first phase, the purpose is to find out whether a criminal offence was committed and to try to identify the offender. The police play a key role in this phase. In principle, it is not possible to hold someone in detention during this period. Only a court may remand a person into custody provided that a person has been charged with an offence. However, if necessary, the police can take a person who is suspected of a criminal offence, in detention for no more than 48 hours (Sec. 76 CPC).²³

The Czech law permits custody in certain circumstances (which will be discussed in paragraph 4) for the purpose of bringing the accused before the competent legal authorities, preventing collusion and preventing the person to continue his criminal activity. The rules regarding arrest and custody detention of persons are prescribed in the CPC and the Charter. Art. 8 of the Charter states that a person who is accused or suspect of an offence may only be arrested in cases stipulated in the law. The principle of presumption of innocence is prescribed in the CPC, Charter and the Execution of Custody Act, which state that a person cannot be regarded as guilty until he/she is found guilty by a final condemnatory decision. In the Charter (Art. 8) as well as in the CPC (Sec. 69), it is prescribed that a person accused of an offence can only be arrested on the basis of a written justified warrant issued by a judge (except in the case of detention of an accused by the police when it is necessary, as discussed above). The arrested person shall be turned over to a court within 24 hours. A judge shall question the arrested person and decide, within 24 hours, whether the person shall be placed or released. The court (in preliminary proceedings: the judge on the proposal of the public prosecutor) decides whether the accused should be sent home or kept in custody. In preliminary proceedings, the public prosecutor may – even without any proposal – decide on releasing the accused. If the public prosecutor rejects an application for release from custody, he is obliged to submit it to the court for its decision (Sec. 73b CPC).²⁴

²⁰ These proceedings apply to offences for which the law imposes a maximum term of three years of imprisonment if the suspect was caught in the act of committing a felony or immediately afterwards, and given the known circumstances of the case it is likely that the suspect can be brought to the court within two weeks.

²¹ The Public Prosecution Act of 1993 (No. 282/1993 Coll.) governs the duties/obligations of the Public Prosecution Service.

²² T.P. Marguery, *Unity and Diversity of the Public Prosecution Services. A study of the Czech, Dutch, French and Polish systems*, dissertation University of Groningen 2008, p. 274-282.

²³ While Sec. 76 CPC concerns the detention of a *suspect*, Sec. 75 CPC refers to the detention of an *accused*, i.e. a person already charged with a crime, by the police. The distinction between suspect and accused is extremely important, because suspects cannot be taken into custody according to Sec. 67 et seq.

²⁴ The CPC also recognizes special types of custody, such as banishment custody (into which it is possible to take a person who has been sentenced for banishment under conditions stipulated by law) and extradition custody (into

The defendant has a series of rights, which are prescribed in the CPC and the Charter. The most relevant rights are the following:

- the right to be promptly informed on the grounds of detention (Art. 8 of the Charter);
- the right to a defence counsel from the very beginning of the proceedings (thus, during the interrogation and at other operations in preliminary proceedings). The right to a defence also means the right to be given the time and opportunity to prepare a defence and to be able to defend oneself. If a defendant can prove that he/she does not have sufficient means to pay the cost of defence, he/she has the right to free defence or defence with a reduced fee (Sec. 2.13, 33, Chapter Five, 69.5 CPC and 37.2, 40.3 of the Charter). Though the regulations prescribe the right to a defence counsel from the very beginning of the proceedings, the practice is not always this way. During its 2006 visit to the Czech Republic, the CPT found that, at times, the right to an attorney only became effective after a person had been detained. Many of the persons interviewed by the delegation claimed that they had not been permitted to contact a lawyer – or were not even informed of their rights – until being questioned by the criminal police. The delegation found that, in most cases, detained persons were not allowed to contact a lawyer until a protocol specifying the charges against them had been drawn up and presented to them to sign²⁵;
- the right to confront adversarial witnesses, to present witnesses and evidence on his own behalf, and to have access to government held evidence relevant to his case (Chapter Six CPC);
- the right to remain silent with respect to the charges brought against him (Art. 37.1 and 40.4 of the Charter and Sec. 33.1 CPC);
- the right to an interpreter (Art. 37.4 of the Charter);
- the right to complaint against the decision on custody (Sec. 74 CPC and 36.1 of the Charter).

The rights of the defendant prescribed in the Charter and CPC are complemented by international instruments such as the European Convention on Human Rights and the International Covenant on Civil and Political Rights. These international instruments have an eminent position within the Czech legal system, as after their ratification they do not only form part of national law but they also prevail over conflicting provisions of national law pursuant to Art. 10 of the Constitution.

The objective of pre-trial detention and the rules regarding arrest/detention have been discussed above. However, the question remains on which grounds pre-trial detention can be ordered. This question will be dealt with in the following paragraph.

4. Grounds for pre-trial detention

As mentioned earlier, the Charter prescribes that custody can be imposed only on the grounds provided for by law and only on the basis of a judicial decision. Sec. 67 CPC states that only the accused (i.e. the person against whom the criminal charges were brought) may be taken into custody, and only in case his behaviour or other particular circumstances support a reasonable fear that:

- a) he will escape or shelter to avoid criminal prosecution or punishment, especially, if his identity cannot be immediately ascertained, if he has no permanent residence, or if he possibly faces a severe punishment;
- b) he will affect the witnesses or co-defendants who have not been interrogated yet or otherwise frustrate clarification of circumstances significant for the criminal prosecution; or
- c) he will again commit the offence for which he is being prosecuted, complete the attempted offence, or commit a crime which he has planned or threatened to commit.

Furthermore:

which a person may be taken under conditions stipulated by law, when extradition proceedings are under way for extraditing him to a foreign country).

²⁵ CPT/Inf(2007) 32.

- a) the ascertained facts must indicate that the actions for which the criminal prosecution has been initiated did take place and qualify as a criminal offence;
- b) there must be obvious grounds to suspect that the criminal offence was committed by the accused;
- c) the purpose of custody cannot be achieved by any other measure (taking into account the personality of the accused, and the nature and gravity of the criminal offence).²⁶

In addition to the exemptions set out in the law, it is also not possible to take into custody an accused who has been prosecuted for an intentional criminal offence carrying a maximum term of imprisonment of two years or less, or for a negligence criminal offence carrying a maximum term of imprisonment of no more than three years (Sec. 68.2 CPC). These restrictions shall not apply if:

- a) the accused has already escaped or been sheltered;
- b) the accused has repeatedly failed to appear after being summoned;
- c) the identity of the accused is unknown and cannot be established by any available means;
- d) the accused has influenced witnesses or co-defendants, or has otherwise frustrated the clarification of circumstances relevant to the criminal prosecution; or
- e) if the accused has already continued the criminal activity for which he is being prosecuted.²⁷

5. Grounds for review of pre-trial detention

With regard to the issue of legal remedies, the Czech system makes a distinction between regular and extraordinary remedies for the decisions of an authority responsible for criminal proceedings. Regular remedies are: complaint, appeal and protest. Extraordinary remedies include appellate review, complaint for breaching of the law, and reopening of the proceedings.²⁸

The complaint is the ordinary form of review used against resolutions issued in the course of preliminary proceedings. Against a resolution of the police, a complaint can always be brought. Against a resolution of a court or public prosecutor, a complaint can only be brought in cases expressly stipulated by law, and only when the court or public prosecutor decides in the first instance (Sec. 141-150 CPC). The law expressly stipulates that a complaint is available against a custodial decision. This is prescribed in Sec. 74.1 CPC.²⁹ According to Sec. 143 and 146 of the CPC, a complaint must be filed against the same body that issued the resolution within three days following the announcement of the resolution. In criminal proceedings, investigators, prosecutors and judges are obliged to continuously monitor if the grounds for custody still exist and the circumstances haven't changed (Sec. 72.1 CPC). The accused must be released immediately if the grounds for custody no longer exist, or if it is evident that – in view of the accused person's circumstances or the circumstances of the case – prosecution will not result in a sentence of unconditional imprisonment, and the accused person's behaviour does not justify keeping him in custody (Sec. 72.2 CPC). According to Sec. 72.3 CPC, the accused has the right to apply for release at any time. The court must decide about such applications immediately – within five working days at the latest. If the application is rejected, unless he presents new reasons, the accused may only repeat the application fourteen days after the decision has acquired legal force. Against a decision to keep the accused in custody, a complaint is possible, as explained above (Sec. 74 CPC).

As discussed in paragraph 3, the court and, in preliminary proceedings, the prosecutor decides whether the accused should be kept in custody. If, in preliminary proceedings, the duration of custody reaches three months, the public prosecutor is obliged to decide, within five working days after the end of the three-month period, if the accused should stay in custody or be released (Sec. 71.3 CPC). If the public prosecutor decides to continue the custody, within three months following the legal force of this decision, he is obliged once more to decide whether the accused should be

²⁶ The law mentions a number of alternatives to custody; these will be discussed in paragraph 7.

²⁷ Section 68.3 CPC.

²⁸ Karabec, Dibliková and Zeman, *National Criminal Justice Profiles: Czech Republic*, Heuni 2002, p. 33.

²⁹ A complaint has a dilatory effect only if this is expressly stipulated by law. Sec. 74.2 CPC prescribes that only complaints made by the public prosecutor against the decision of releasing an accused person from custody, and complaints made by parties against forfeiture of the financial security to the State shall have a dilatory effect.

kept in custody or be released. The accused may be retained in custody only if the criminal prosecution could not have been terminated within the above-mentioned period because of difficulties in the case or for other significant reasons, and release of the accused could result in frustration or reasonable aggravation of the criminal prosecution process (Sec. 71.4 CPC).³⁰ A complaint lodged against the decision of the public prosecutor who ordered the extension of custody, must be decided on within five days following the expiration of the time limit for lodging a complaint, by the court in whose district the public prosecutor is active (Sec. 146a.1 CPC).

6. Length of pre-trial detention

According to the Charter, a person may be placed in custody only for the period of time laid down in the law. The duration of custody is counted from the date when the accused was arrested or detained, or, if there was no previous arrest or detention, from the date when the personal liberty of the accused was restricted on the basis of the decision on custody. The maximum term of custody is laid down in Sec. 71 CPC.

Sec. 71, subsection b, CPC prescribes that collusion custody which is imposed on the basis of Sec. 67 CPC, subsection b, may last for no more than three months. The total period of custody in the criminal proceedings may last up to four years, depending on the nature of the crime:

- a) one year if the criminal prosecution is conducted for a criminal offence that can be tried by a single judge;
- b) two years if the criminal prosecution is conducted for a criminal offence that must be tried, in first instance, by the Bench of a District or Regional court (unless it is a criminal offence as referred to under c) or d));
- c) three years if the criminal prosecution is conducted for an especially grave, intentional criminal offence (unless it is a criminal offence as referred to under d));
- d) four years if the criminal prosecution is conducted for a criminal offence for which an exceptional punishment may be imposed in accordance with the special part of the CC (Sec. 71.8 CPC).

Section 71.9 CPC states that one third of the period mentioned in subsection 8 can be spent on the preliminary proceedings, and two thirds on the court proceedings. After this period has elapsed, the accused must be released from custody immediately.

According to the statistics of the General Directorate of the Prison Service of the Czech Republic (dated 31 December 2006), the average custody duration in days was as follows:

Year	Average pre-trial duration in days
2000	180
2003	133
2004	154
2005	145
2006	130

Finally, Sec. 157a CPC has to be mentioned. In this section, it is stated that, in the course of pre-trial proceedings, the accused as well as the victim are entitled to ask the public prosecutor to eliminate delays in the procedure or impediments in the course of police authority. There are no time limits for such requests.

The European Court on Human Rights found the length of custody to be excessive in the Barfuss (Barfuss v. Czech Republic, 31 July 2000) and Tariq (Tariq v. Czech Republic, 18 April 2006)

³⁰ A period of thirty days (which can be prolonged), from the date when the charge has been filed, also counts for the court to decide whether the accused should be retained in custody or released (see Sec. 71.5-71.7 CPC).

cases. In both cases, there was found to be a violation of Art. 5.3 of the European Convention on Human Rights, because “special diligence was not displayed in the conduct of the proceedings”.³¹

7. Other relevant aspects

Several elements in relation to pre-trial detention have already been discussed in the previous paragraphs. Some of the remaining questions, such as whether the time spent in pre-trial detention is taken into account, whether there is a mechanism for compensation if the accused is not sentenced, whether there are alternatives to pre-trial detention, and the practice regarding the execution of pre-trial detention, will be treated in this paragraph.

When passing sentence, the court must take into consideration the fact that the accused spent a certain period of time in custody during the criminal proceedings. If criminal proceedings were conducted against the offender while he was in custody and if he is sentenced, the time spent in custody is deducted from the sentence if this is possible in view of the type of punishment imposed. When the time spent in custody cannot be deducted, the court takes this fact into consideration when determining the type of sentence or its duration (Art. 38 CC).³² The question on deduction concerning time spent in foreign custody is dealt with in Art. 22 CC. This article prescribes the following:

1) If an offender has been kept in custody or sentenced by an organ of a foreign country for a particular act (crime), the period which he spends in custody or in prison (or any other penalty which he fulfils) shall be set off against the punishment (sentence) imposed on him by a court of the Czech Republic for the same act (crime), provided that such set-off is possible given the type of punishment (sentence) imposed. A similar procedure shall be applied by a court if it imposes upon an offender an aggregate sentence or a subsequent total sentence.

(2) If the period of custody or fulfilment of a sentence abroad (sub-provision (1)) cannot be set off in the Czech Republic, largely because the offender (convicted person), fully or partly, served or performed abroad a type of punishment which is not recognized by this Code, the (Czech) court shall take this fact into consideration when imposing a sentence on the offender (in relation to both its type and extent).

With respect to the issue of compensation for detained persons who are eventually not sentenced, Art. 36.3 of the Charter prescribes that “everybody is entitled to compensation for damage caused him by an unlawful decision of a court, other state bodies, or public administrative authorities, or as the result of an incorrect official procedure”. The system of compensation is also prescribed in the Act on Liability caused by Public Authority (No. 82/1998 Coll.). According to Art. 9.1 of this Act, a person taken into custody is entitled to compensation of damages caused by the decision to take him into custody if criminal proceedings against him are stopped, if he is cleared of the charge, or if the matter is transferred to a different body. Art. 13.1 of the mentioned Act states that the State is liable for damages caused by incorrect official procedures. Act no. 82/1998 Coll. also regulates the right to compensation of damages, and includes compensation of legal costs which the injured party incurred during proceedings in which a) an unlawful decision was issued; b) a decision on custody, punishment or protective measures was issued; or c) a reversal or not-guilty decision was issued – whereby the criminal proceedings were stopped or the matter was transferred to another body. An injured party who has been taken into custody for more than a month and can prove that, as a result of being taken into custody, he lost profits, is entitled not only to compensation of damages for that detriment, but also to compensation of attorney's fees in the amount of non-contractual fees. However, if the accused, with his actions, provoked the judge to impose a pre-trial detention order, he will not be able to ask for compensation.

A number of alternatives to custody are available. These alternatives are applicable to anti-escape and preventive custody in appropriate cases, provided the conditions set by law are met.³³ As a first alternative, Sec. 73.1 CPC mentions acceptance of a guarantee given by a citizen's

³¹ See also the cases of *Cesky v. Czech Republic* (6 June 2000), *Punzelt v. Czech Republic* (25 April 2000), *Fesar v. Czech Republic* (13 November 2008) and *Smatana v. Czech Republic* (31 March 2008).

³² *Karabec, Diblíková and Zeman, National Criminal Justice Profiles: Czech Republic*, Heuni 2002, p. 33.

³³ There are no alternatives to collusion custody.

interest association or by a trustworthy person concerning the future behaviour of the accused, and the assurance that he will not avoid prosecution. The second alternative is acceptance of a written promise by the accused to lead an orderly life, not avoid prosecution, meet the obligations and observe the restrictions imposed on him. The third alternative is supervision of the accused by a probation officer instead of committal to custody. The Probation and Mediation Service was established by the Law on Probation and Mediation Service, No. 257/2000, which came into effect in January 2001. The role of the Probation and Mediation Service during the pre-trial stage is mainly to provide information about the background of the offence, to help resolve the conflict between the victim and the offender, and to support the use of alternative sanctions.³⁴ If the accused does not meet the obligations imposed in connection with one of the alternatives mentioned in subsection 1, and if the grounds for custody still exist, the relevant authority will decide on taking the accused into custody. The last alternative to pre-trial detention is stated in Sec. 73a CPC: the acceptance of bail, the amount of which is determined by the authority deciding on custody. Several serious criminal offences, such as offences of terror, murder and rape, are excluded from bail. If an accused who has been granted bail avoids prosecution or does not cease committing offences, his bail is forfeited to the State and a new decision on custody will be made.

Other alternatives are attached to the conditional waiver. With the reforms of the 90s aimed at, *inter alia*, reducing pre-trial imprisonment, new procedures for diverting some cases from prosecution were included in the CPC, namely conditional cessation of prosecution (Sec. 307-308 CPC) and approval of out-of-court settlement (Sec. 309-314 CPC). As to the first procedure, in case of an offence punishable by a maximum of five years imprisonment, the judge (in the pre-trial stage: the prosecutor) may conditionally stop the prosecution. He may do so if the offender pleads guilty and agrees to compensate for any damage. A probationary period of six months to two years is set, during which time the compensation must be paid. In the second procedure mentioned, the judge (in the pre-trial stage: the prosecutor) may approve an out-of-court settlement for offences punishable by a maximum sentence of up to five years. The judge takes into account the nature and gravity of the offence, the extent to which the offence affects the public interest, and the offender's character and assets. The offender must admit the offence and compensate the victim's damages or otherwise remedy the harm caused by the offence. The offender must also donate a certain amount of money to charity or a victim's fund. The settlement must be approved by both the offender and the victim. The Probation and Mediation Service plays a supportive role in these procedures.³⁵

With regard to the execution of pre-trial detention in practice, it can be observed that remand prisoners are detained in remand prisons or in special departments of regular prisons.³⁶ The use of single-person cells is not very common; less than 10% of the remand prisoners are held in such cells. Most are held in two- to four-person cells. Remand prisoners are always separated from sentenced prisoners; there is no contact whatsoever between the two groups.³⁷ Following its 2006 visit, the CPT reported that the material conditions in the police establishments visited were on the whole satisfactory for short-term custody and that there was no overcrowding at the time of the visit. Nevertheless, certain police stations required upgrading. With respect to the prison establishments, the Committee was concerned about the problem of overcrowding, especially in prisons located in the centre of urban areas. With the amendments to the Confinement Act and to the Execution of Custody Act in 2004, the minimum norm of 4 m² per prisoner (in multi-occupancy cells) was introduced. However, an exemption to this rule was introduced. In their follow-up response of 14 April 2005 (CPT/Inf (2005) 5), the Czech authorities noted that "based on a minimum accommodation area of 4 m² per person, most prisons are significantly overcrowded".³⁸ In its response to the 2006 visit of the CPT, the government noted that the

³⁴ For more information on the Probation and Mediation Service, see A.M. van Kalmthout, J. Robberts & S. Vinding (eds.), *Probation and Probation Services in the EU accession countries*, Nijmegen: Wolf Legal Publishers, 2003.

³⁵ V. Stern, *Developing Alternatives to Prison in Central and Eastern Europe and Central Asia. A Guidance Handbook*, COLPI Papers 6, 2002, p. 24.

³⁶ Sec. 4, Execution of Custody Act.

³⁷ European Committee on Crime Problems, *Analysis of Responses to Questionnaire 2 on Conditions of Detention on Remand Prisoners in Member States*; Report by Roy Walmsley, PC-DP (2004) 6.

³⁸ CPT/Inf (2007) 32.

standard of the Czech prison system had improved dramatically since the CPT's visit in 2003, that many legislative amendments had been made to laws, and that these changes primarily concerned improved conditions for sentenced and remand prisoners.³⁹

The government has permitted independent monitoring of prison conditions. In April 2006, the Czech Helsinki Commission found that while prisons met domestic regulations, half of the country's prisons were filled beyond capacity, and did not meet international standards with respect to physical condition and activities for prisoners. The Law on the Ombudsman, formally called the Public Defender of Rights, was amended and came into effect in January 2006. Under the new law, the Ombudsman has greatly expanded responsibilities, including performing regular visits to government facilities, examining the treatment of individuals and ensuring respect for their fundamental rights.⁴⁰ While the Ombudsman deals with individual cases, there is also a Government Commissioner for Human Rights who deals with structural issues. This Commissioner is always consulted on new draft legislation or on plans to amend existing legislation, as soon as human rights issues arise.⁴¹

Regarding the treatment of prisoners, the law prohibits torture and other inhuman or degrading treatment or punishment as prescribed in Art. 7.2 of the Charter. The police and security services are subject to a broad variety of restraints, but in practice violations occur.⁴² Following its visit in 2006, the CPT noted that while most persons interviewed during the visits about their experiences in police custody indicated that they had not been mistreated, the delegation received a few allegations of ill-treatment by the police, some of which related to ill-treatment during questioning and, more particularly, during interrogation by officers of the criminal police. The allegations consisted of being punched, kicked and struck with various objects. The report also expressed concern over the use of physical restraints in prisons, and heard reports that police had handcuffed persons to metal rings in uncomfortable positions in certain police stations and that persons in police custody, in the districts of Liberec and Ostrava, were given either no food or meagre amounts of food during detention, particularly during weekend periods. The Czech government stated that they had adopted the majority of the CPT's recommendations as part of new, more rigorous written protections for prisoners.⁴³

To conclude this paragraph, it has to be mentioned that remand prisoners can be visited by family members. The usual frequency of visits to remand prisoners is two or three times a month; visits usually last from thirty minutes to one hour. Remand prisoners spend about one hour per day outside of their cell/room.⁴⁴

8. Special groups

This paragraph will consider the special regulations (if any) with respect to pre-trial detention for vulnerable groups in the Czech Republic. Attention will be paid to juveniles, women, foreigners and alleged terrorists. The particular groups will be dealt with separately.

³⁹ CPT/Inf (2007) 33.

⁴⁰ *Czech Republic*, Country Reports on Human Rights Practices, March 11, 2008, released by the Bureau of Democracy, Human Rights, and Labor of the US Department of State.

⁴¹ *Follow-up report on the Czech Republic (2003-2005)*, Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights of 29 March 2006, CommDH(2006)15.

⁴² Sec. 6.1 of the Police Act prescribes that "when carrying out police actions and police procedures, a police officer must respect the honour, esteem and dignity of persons and his own and make sure that no unreasonable damage is caused to persons in connection with this activity and that a potential interference with their rights and freedoms does not exceed the extent necessary for achieving the purpose of the police action or police procedure".

⁴³ *Czech Republic*, Country Reports on Human Rights Practices, March 11, 2008, released by the Bureau of Democracy, Human Rights, and Labor of the US Department of State.

⁴⁴ European Committee on Crime Problems, *Analysis of Responses to Questionnaire 2 on Conditions of Detention on Remand Prisoners in Member States*; Report by Roy Walmsley, PC-DP (2004) 6.

8.1 Juveniles

According to the Czech CC, a juvenile is a person who, at the moment of committing a criminal offence, has reached the age of 15 years but not the age of 18 years.⁴⁵ As mentioned in the first paragraph, a new Criminal Code has been passed and is waiting for a presidential signature to enter into force in January 2010. One of the changes in the new Code is the lower age of criminal responsibility for juveniles: 14 instead of 15.⁴⁶

The extensive new Law on the Juvenile Liability for Unlawful Acts and on Justice in Juvenile Matters, which was adopted in 2003, contains substantive law and procedural aspects of youth sentencing, a system of specialised juvenile courts etc.⁴⁷ It also sets up, within a specially modified civil process, a way of handling cases, and determines the types of educational measures that can be imposed on children younger than 15 years for committed offences.

The rules regarding custody for juvenile offenders are regulated by Sec. 46 et seq. of this Act. The use of custody in juvenile criminal cases is an absolutely exceptional measure. It is necessary to use alternative securing measures instead of custody. Juvenile detention cannot last more than two months. After the expiration of this period, detention can, under exceptional circumstances, be extended for another two months based on a court's decision. Such an extension can take place only once in the preliminary proceedings and once in the court proceedings. If the juvenile offender is prosecuted for an especially serious offence, pre-trial detention cannot last longer than six months. According to the law, juveniles shall be kept in cells separately from adults. After the juvenile offender has been released from detention, probationary supervision can be ordered, which can last until the end of the criminal proceedings.⁴⁸ In addition to the general alternatives to custody described above, there is a special alternative for juveniles, namely "care of a reliable person". The "reliable person" must agree in writing to take care of the juvenile and pledge that he/she will make sure that the juvenile will appear before the authorities when requested. The juvenile must agree in writing with such care as well as with other conditions prescribed by the authorities. There is no definition for "reliable person" in the Juvenile Liability for Unlawful Acts and on Justice in Juvenile Matters Act.

8.2 Women

According to the law, women have to be accommodated separately from men. The Code Governing the Execution of Pre-trial Detention (1994) contains special provisions on accused women. Following its 2006 visit, with respect to female prisoners, the CPT recommended to the Czech government that "specific sections within both Liberec and Ostrava Prisons be created for women prisoners, which can provide them with appropriate material conditions and enable them to participate in purposeful activities. Further, allocation of women prisoners upon sentence should be carried out efficiently to minimise additional time spent in a prison not specifically dedicated to accommodating women prisoners."

Since mid-2004, in one prison, there is also a special remand unit for mothers of children younger than one year of age.

8.3 Foreigners

Unless a specific regulation stipulates otherwise, pre-trial detention for foreigners is governed by the same Rules of the Execution of Custody that apply to Czech citizens.⁴⁹ Without delay, foreigners shall be instructed of their right to contact a diplomatic mission or a consular institution of their own country and to receive visits by representatives of their authorities. The instructions must be given in the mother tongue of the detainee or in another language he/she understands.⁵⁰

⁴⁵ The category of young adults is not being recognized. Only Art. 33b CC mentions age close to the age of a juvenile as a mitigating circumstance.

⁴⁶ See footnote 2.

⁴⁷ With the adoption of the new law, parts of the CC and CPC concerning juveniles are cancelled or amended.

⁴⁸ H. Valkova, "Restorative Approaches and Alternative Methods: Juvenile Justice Reform in the Czech Republic", in *International Handbook of Juvenile Justice*, J. Junger-Tas and S.H. Decker (eds.), Springer 2006, p.384-388.

⁴⁹ H. Valkova, "Czech Republic", in *Untersuchungshaft und Untersuchungshaftvollzug, Waiting for Trial*, F. Dunkel and J. Vagg (eds.), Max Planck Institut: Freiburg 1994, p. 712.

⁵⁰ Chapter VI of the Execution of Custody Act.

As to irregular migrants who are facing removal, Act No. 326/1999 on the Residence of Foreigners on the Territory of the Czech Republic was amended (entered into force in November 2005) with the aim of improving detention facilities for foreigners. Adults can be detained for a maximum of 180 days and unaccompanied minors between the ages of 15-18 to a maximum of ninety days. Two regimes are applicable to these foreigners: the Low-Security Detention Regime and the High-Security Detention Regime. Detainees held under the low-security regime benefit from accommodation areas, common sanitary facilities as well as cultural facilities.⁵¹

8.4 Alleged terrorists

Following the terrorist attacks of 11 September 2001, the Czech Republic initiated a National Action Plan to Combat Terrorism. Currently, there is no special “anti-terrorism act” in the Czech Republic. The legal basis for anti-terrorist action is generally contained in the CC.⁵² Sec. 73b CPC excludes persons accused of terror offences from bail (as an alternative to custody).

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⁵¹ *Follow-up report on the Czech Republic (2003-2005)*, Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights of 29 March 2006, CommDH(2006)15.

⁵² CODEXTER, Czech Republic June 2006, www.coe.int/gmt

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