

QUESTIONNAIRE

CZECH REPUBLIC

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1. Introduction

Please read carefully before answering the questionnaire

The RAYUELA project is aimed at protecting children in their online interactions. For this purpose, the project will develop a “game”, which will present the children with realistic scenarios relating to the following cybercrimes/cyber-facilitated crimes:

- **Online grooming** (further: OG) is the crime where the perpetrator (usually an adult) uses electronic communication services, including social media, to contact a minor and build rapport with the aim of eventually meeting in person for the purposes of sexual activity. The perpetrator may employ various strategies (deception, romantic/emotional attachment, promise of material or other benefits, blackmail, coercion, etc.) to lower a child's inhibitions, heighten their curiosity about sexual experiences, or otherwise convince them to meet up.
- **Cyber bullying** (further: CB) is a broad term that includes all types of bullying behaviour online. This includes cyber stalking and cyber harassment, and any other type of behaviour online aimed at hurting the victim. Cyber bullying may also have a sexual component.
- **Misinformation and deception** (further: MD) is a behaviour that may or may not be punishable by law depending on the context. It involves all kinds of information sharing that is fake, or deceptive. For a criminal qualification to apply, typically the behaviour will need to be intentional and there will need to be material consequences to this intention.
- **Human trafficking with a cyber component** (further: HT) is the online facilitation of human trafficking by grooming and attracting potential victims for human trafficking.

The purpose of the game is to teach children how to remain safe online, while the obtained insights will be used to provide policy recommendations and educational tools.

The game does not focus solely on the threats of potentially falling victim to one of these four crimes. It also aims to raise awareness about the general threats of using IT, such as the Internet and connected devices, and minors’ capacity to make responsible choices in this regard.

A particular point of interest is understanding whether minors are aware of when they, or someone else, is crossing the line in becoming offenders themselves, as this is an important aspect of protecting children online. Due to the nature of online communication, inhibitions may be lowered, and certain actions may feel more innocent or less “real” than in real life. In addition, a perception may exist that what happens on the Internet has little or no impact beyond the digital world. This creates situations where minors engage in what they perceive to be relatively innocent behaviour (“everyone does this on the internet”), that may however have serious legal consequences.

One of the goals in RAYUELA is to ensure that minors realize when their behaviour may turn into actions that are punishable by law.

The present study and questionnaire are set up in the context of the RAYUELA project in order to provide an overview of the **legislative framework and relevant policies** in a number of countries, both in the EU and beyond, in relation to:

- How the main crimes of OG, CB, MD and HT are dealt with by the legal system i.e., which behaviours are punishable and under which conditions?
- How cybercrime and cyber-facilitated crime perpetrated by minors is dealt with in the legal system (both in general and specifically in relation to the crimes in focus)?
- What international instruments and cooperation mechanisms are available in dealing with cybercrime perpetrated by minors?

Importantly, we want to know both the legal rules and policies which are implemented in practice, and their effect on the **real enforcement situation**. If you have knowledge about the effects of current policies on crime rates by minors and on the crime rates for OG, CB, MD and HT, this would be of interest.

We are specifically interested in **case law** that illustrates the “why and how” of certain legal rules, principles and policies in practice. Case law will help us illustrate the similarities and differences between jurisdictions and is therefore *essential*. Please ensure to have a good amount of case law processed in your answers.

In addition, we want input on **international legal instruments and international cooperation** relevant for cybercrime, and in particular for cybercrime perpetrated by minors. What happens when cybercrimes is perpetrated in a cross-border context? What are the legal rules in place for cooperation with authorities from other countries, and how does this work out in practice (issues, problems, etc.)?

Lastly, we are interested in some **statistical information on cybercrime** in your country and cybercrime by minors specifically.

The purpose of this questionnaire is to help you provide this information for your jurisdiction.

2. Questions relating to OG, CB, HT and MD with minors as victims

Question 1: Is online grooming punishable by law in your country?

Answer:

Please explain the applicable rules (all applicable legal qualifications/ articles, conditions for application, prescriptive period, and the range and types of punishment that may be imposed and jurisdictional aspects in cross-border cases) and applicable policy.

Please provide case law to illustrate the application of the rules in practice.

Please provide details on known issues of application.

ANSWER LV:

It should be emphasized that the legislation concerning sexual violence and related activities have a different definition in each country, based on the legislation in the specific country, especially if we focus on children and the age limit of adulthood plays a significant role.

There is a special law focused on YOUTH'S RESPONSIBILITY FOR INFRINGEMENTS AND JUDICIARY IN YOUTH MATTERS number Act No. 218/2003.

- Definition of child I a person under the age of fifteen, who at the time of committing the offense did not reach the age of fifteen,
- Definition of juveniles - who at the time of the offense was at the age of 15 and under the age of 18; A juvenile is also considered to be a person who reached the age of 15 at the time of the offense, but for whom it is not possible to determine without reasonable doubt that he or she was over the age of 18 at the time of the offense.

The Criminal Law of the Czech Republic focuses on the issue of online grooming in the section § 193b.

§ 193b, Establishing illegal contacts with the child

Whoever proposes to meet a child under the age of fifteen with the intention of committing an offense under **Section 187 (1), Section 192, 193, Section 202 (3)** of the Czech Criminal Law or another sexually motivated offense shall be punished by imprisonment for up to two years.

Offenses Section 187, 192, 193, 202

Section 187 Sexual Abuse

(1) Whoever performs a sexual intercourse with a child under the age of fifteen, or whoever otherwise sexually abuses a child, shall be sentenced to imprisonment for one to eight years.

(2) An offender shall be sentenced to imprisonment for two to ten years, if he/she commits the act referred to in Sub-section (1) on a child under fifteen years of age entrusted to his/her supervision, while abusing their addiction or the offender's position and, their credibility or influence derived therefrom.

(3) An offender shall be sentenced to imprisonment for five to twelve years, if he/she causes grievous bodily harm by the act referred to in Sub-section (1).

(4) An offender shall be sentenced to imprisonment for ten to eighteen years, if he/she causes death by the act referred to in Sub-section (1).

(5) Preparation is criminal.

Section 188 Intercourse among Relatives

Whoever engages in intercourse with a relative in direct generation line or with a sibling, shall be sentenced to imprisonment for up to three years.

Section 192 Production and other Disposal with Child Pornography

(1) Whoever handles photographic, film, computer, electronic or other pornographic works, displaying or otherwise using a child or a person that appears to be a child, shall be sentenced to imprisonment for up to two years.

(2) Whoever produces, imports, exports, transports, offers, makes publicly available, provides, puts into circulation, sells or otherwise procures photographic, film, computer, electronic or other pornographic works that display or otherwise use a child or a person that appears to be a child, or

whoever exploits such pornographic works,

shall be sentenced to imprisonment for six months to three years, to prohibition of activity or to confiscation of a thing or other asset value.

(3) An offender shall be sentenced to imprisonment for two to six years or to confiscation of property, if he/she commits the act referred to in Sub-section (2)

a) as a member of an organised group,

b) by press, film, radio, television, publicly accessible computer network, or in other similarly effective way, or

c) with the intention to gain substantial profit for him-/herself or for another.

(4) An offender shall be sentenced to imprisonment for three to eight years or to confiscation of property, if he/she commits the act referred to in Sub-section (2)

a) as a member of an organised group operating in more states, or

b) with the intention to gain extensive profit for him-/herself or for another.

Section 193 Abuse of a Child for Production of Pornography

(1) Whoever persuades, arranges, hires, allures, entices, or exploits a child for production of pornographic works and exploits the child's participation in such pornographic works, shall be sentenced to imprisonment for one year to five years.

(2) An offender shall be sentenced to imprisonment for two to six years, if he/she commits the act referred to in Sub-section (1)

a) as a member of an organised group, or

b) with the intention to gain substantial profit for him-/herself or for another.

(3) An offender shall be sentenced to imprisonment for two three to eight years, if he/she commits the act referred to in Sub-section (1)

a) as a member of an organised group operating in several States, or

b) with the intention to gain extensive profit for him-/herself or for another.

Section 202 Seduction to Sexual Intercourse

(1) Whoever offers, promises, or provides monetary reward, benefits or advantages to a child or to another person for sexual intercourse with a child, masturbation of a child, their indecent exposure, or other comparable conduct for the purpose of sexual satisfaction, shall be sentenced to imprisonment for up to two years or to a pecuniary penalty.

(2) An offender shall be sentenced to imprisonment for six months to five years, if he/she

b) commits the act referred to in Sub-section (1) on a child under the age of fifteen years,

c) commits such an act out of a condemnable motive,

d) continues in commission of such an act for a long period of time, or

e) commits such an act repeatedly.

In the Czech Republic, the term “cybergrooming” itself is not known by the Criminal Code. (Criminal Code - Act No. 40/2009 Coll.). Which is a lack of Czech legislation compared to countries such as the USA or the UK. According to Czech criminal law, a criminal offense is a dangerous act for society, the features of which are specified in the Criminal Code.

Children and adolescents live in a world of diverse situations and contacts, which causes the frequency and occurrence of deviation stimuli. The issue of cybergrooming is closely linked to activities which, in fact, comply with the laws set out in the Criminal Code of the Czech Republic. These activities contain both formal and material features of crime.

Cybergrooming is an act that is carried out intentionally, therefore its activities fall under §15 of the Intent (Criminal Code, Title II, Criminal Liability, Part 2). Cybergrooming activities may bear the factual basis of the following sections of the Criminal Code (not including the already mentioned above):

Section 140 Murder - the intentional termination of a child's life is an extreme impact of cybergrooming behavior, unfortunately such acts are already known in foreign countries. If a cybergroomer commits such an offense, he shall be punishable by a term of imprisonment of 15 to 20 years or an exceptional penalty in accordance with paragraph (3) (c).

Section 140 Murder

(1) Whoever intentionally kills another person shall be sentenced to imprisonment for ten to eighteen years.

(2) Whoever intentionally kills another person with premeditation and after prior consideration sentenced to imprisonment for twelve to twenty years.

(3) An offender shall be sentenced to imprisonment for fifteen to twenty years or to an exceptional sentence of imprisonment, if he/she commits the act referred to in Sub-section (1) or (2)

a) on two or more persons,

b) on a pregnant woman,

- c) on a child under fifteen years of age,
- d) on an official person in the service or execution of their competencies,
- e) on a witness, expert or interpreter in connection with the performance of his/her obligations,
- f) on a medical worker during performance of the medical profession or employment aimed at saving life or health, or on a person who fulfilled his/her similar obligation of saving life, health or property arising from his/her employment, profession, position or function, or imposed by law,
- g) on another person for their true or presupposed race, belonging to an ethnical group, nationality, political beliefs, religion or because of his/her true or presupposed lack of religious faith,
- h) repeatedly,
- i) by a particularly cruel or agonising manner, or
- j) with the intention to obtain for him-/herself or for another material profit, or in an attempt to conceal or facilitate another criminal offence, or out of another condemnable motives.

Section 145 severe injury - a number of cybergrooming offenders do not directly kill the child, but they cause him serious injuries during his actions, in which case the offender faces a sentence of imprisonment of 5 to 12 years according to paragraph (2) point c.

Section 145 Grievous Bodily Harm

(1) Whoever intentionally inflicts grievous harm to the health of another person, shall be sentenced to imprisonment for three to ten years.

(2) An offender shall be sentenced to imprisonment for five to twelve years if he/she commits act referred to in Sub-section (1)

- a) on two or more persons,
- b) on a pregnant woman,
- c) on a child under the age of fifteen years,
- d) on a witness, expert or interpreter in connection with the performance of their obligations,
- e) on a medical worker during performance of the medical profession or employment aimed at saving life or health, or on a person who fulfilled his/her similar obligation of saving life, health or property arising from his/her employment, profession, position or function, or imposed by law,
- f)) on another person for their true or presupposed race, belonging to an ethnical group, nationality, political beliefs, religion or because of his/her true or presupposed lack of religious faith,
- g) repeatedly or after having committed another especially serious felony connected to intentional causing of grievous bodily harm or death or attempt thereof, or
- h) out of a condemnable motive.

(3) An offender shall be sentenced to imprisonment for eight to sixteen years, if he/she causes death by the act referred to in Sub-section (1).

(4) Preparation is criminal.

Section 146 Injury to health - in this case, the offender faces the penalty of imprisonment for 6 months to 3 years according to paragraph (2) point b.

Section 146 Bodily Harm

(1) Whoever intentionally harms another person's health shall be sentenced to imprisonment for six months to three years.

(2) An offender shall be sentenced to imprisonment for one year to five years, if he/she commits the act referred to in Sub-section (1)

a) on a pregnant woman,

b) on a child under the age of fifteen years,

c) on a witness, expert or interpreter in connection with the performance of their obligations,

d) on a medical worker during performance of the medical profession or employment aimed at saving life or health, or on a person who fulfilled his/her similar obligation of saving life, health or property arising from his/her employment, profession, position or function, or imposed by law, or

e) on another person for their true or presupposed race, belonging to an ethnical group, nationality, political beliefs, religion or because of his/her true or presupposed lack of religious faith.

(3) An offender shall be sentenced to imprisonment for two to eight years, if he/she causes severe harm to health by the act referred to in Sub-section (1).

(4) An offender shall be sentenced to imprisonment for five to ten years, if he/she causes death by the act referred to in Sub-section (1).

Section 168 Trafficking in human beings - at present, trafficking in human beings, especially children, can be a profitable business for criminal organised groups, which is also well known to the perpetrators of cybergrooming. Today, the Internet also serves as a valuable tool for child trafficking, so that offenders can also earn imprisonment for 2 to 10 years according to paragraph (1).

Section 168 Trafficking in Human Beings

(1) Whoever forces, procures, hires, incites, entices, transports, conceals, detains, or consigns a child to be used by another for

a) sexual intercourse or other forms of sexual abuse or harassment, or for production of pornographic works,

b) extraction of tissue, cell, or organs from his/her body,

c) service in the armed forces,

d) slavery or servitude, or

e) forced labour or other forms of exploitation, or

who profits on such a conduct,

shall be sentenced to imprisonment for two to ten years.

(2) The same sentence shall be imposed to anyone who forces, procures, hires, incites, entices, transports, hides, detains, or consigns a person other than referred to in Sub-section (1) by using violence, threat of violence or other grievous harm or deceit, or by abusing his/her error, distress, or addiction in order to use him/her for

a) sexual intercourse or other forms of sexual abuse or harassment, or for the production of pornographic works,

b) extraction of tissue, cell, or organs from their body,

c) service in the armed forces,

d) slavery or servitude, or

e) forced labour or other forms of exploitation, or

who profits on such conduct.

(3) An offender shall be sentenced to imprisonment for five to twelve years or to confiscation of property if he/she

a) commits then act referred to in Sub-section (1) or (2) as a member of an organised group,

b) exposes another person to a risk of grievous bodily harm or death by such an act,

c) commits such an act with the intention to gain a substantial profit for him-/herself or for another, or

d) commits such an act with the intention to use another person for prostitution.

(4) An offender shall be sentenced to imprisonment for eight to fifteen years or to confiscation of property if he/she

a) causes grievous bodily harm by the act referred to in Sub-section (1) or (2),

b) commits such an act with the intention to gain extensive profit for him-/herself or for another, or

c) commits such an act in connection to an organised group operating in several states.

(5) An offender shall be sentenced to imprisonment for ten to eighteen years or to confiscation of property, if he/she causes death by the act referred to in Sub-section (1) or (2).

(6) Preparation is criminal.

Section 170 Deprivation of personal liberty - in the case of a personal meeting, the child may be deprived of personal liberty. In such a case, the child will be seriously harmed, for which the perpetrator faces imprisonment for 5 to 12 years according to paragraph (2)

Section 170 Illegal Confinement

(1) Whoever without authorisation imprisons or otherwise confines another person, shall be sentenced to imprisonment for two to eight years.

(2) An offender shall be sentenced to imprisonment for five to twelve years, if he/she

a) commits the act referred to in Sub-section (1) as a member of an organised group,

b) commits such an act on another for his/her true or presupposed race, belonging to an ethnical group, nationality, political beliefs, religion or because of his/her true or presupposed lack of religious faith,

c) causes physical or mental suffering by such an act,

d) causes grievous bodily harm by such an act, or

e) commits such an act with the intention to gain substantial profit for him-/herself or for another.

(3) An offender shall be sentenced to imprisonment for eight to sixteen years, if he/she

a) causes death by the act referred to in Sub-section (1) , or

b) commits such an act with the intention to gain extensive profit for him-/herself or for another.

(4) Preparation is criminal.

Section 171 Restriction of personal freedom - when a child encounters a cybergroomer, the child's personal freedom may be restricted for the purpose of committing another criminal offense. In this case, the perpetrator faces imprisonment for 2 to 8 years according to paragraph (3). If the perpetrator causes death by his act, he will be punished for 3 to 10 years according to paragraph (4).

Section 171 Illegal Restraint

(1) Whoever restrains another from enjoying personal freedom, shall be sentenced to imprisonment for up to two years.

(2) An offender shall be sentenced to imprisonment for up to three years, if he/she commits the act referred to in Sub-section (1) with the intent to facilitate another criminal offence.

(3) An offender shall be sentenced to imprisonment for two to eight years, if he/she

a) commits the act referred to in Sub-section (1) as a member of an organised group

b) commits such an act on another for his/her true or presupposed race, belonging to an ethnical group, nationality, political beliefs, religion or because of his/her true or presupposed lack of religious faith,

c) causes physical or mental suffering by such an act,

d) causes grievous bodily harm by such an act, or

e) commits such an act with the intention to gain substantial profit for him-/herself or for another.

(4) An offender shall be sentenced to imprisonment for three to ten years if he/she

a) causes death by the act referred to in Sub-section (1), or

b) commits such an act with the intent to gain extensive profit for him-/herself or for another.

Section 175 Extortion - in the process of cybergrooming, we often encounter extortion, which the perpetrators use to coerce the child. By extortion we mean behavior that "forces another to do, neglect or suffer through violence, threat of violence or threat of other serious harm." The offender may be punished for extortion according to paragraph (1) by imprisonment for 6 months to 4 years.

Section 175 Extortion

(1) Whoever forces another person by violence or by a threat of violence or another serious detriment to act, omit or to suffer something, shall be sentenced to imprisonment for six months to four years, or to a pecuniary penalty.

(2) An offender shall be sentenced to imprisonment for two to eight years, if he/she

a) commits the act referred to in Sub-section (1) as a member of an organised group,

b) commits such an act with at least two persons,

c) commits such an act with a weapon,

d) causes substantial damage by such an act,

e) commits such an act on a witness, expert, or interpreter in connection to performance of their obligations, or

f) commits such an act on another for his/her true or presupposed race, belonging to an ethnical group, nationality, political beliefs, religion or because of his/her true or presupposed lack of religious faith.

(3) An offender shall be sentenced to a sentence of imprisonment for five to twelve years, if he/she

a) causes grievous bodily harm by such an act,

b) commits such an act with the intention to enable or facilitate commission of a criminal offence of Treason (Section 309), Terrorist attack (Section 311) or Terror (Section 312), or

c) causes extensive damage by such an act.

(4) An offender shall be sentenced to imprisonment for eight to sixteen years, if he/she causes death by the act referred to in Sub-section (1).

(5) Preparation is criminal.

Section 185 Rape - the second most extreme impact of cybergrooming can be the rape of a child, who, for example, comes to a contract without the knowledge of his parents, believing that he is going to a friend who is as old as that child. The result is a fatal and often lifelong trauma. An offender who, under the threat of violence or violence, has sexual intercourse with a child under the age of fifteen shall be punished in accordance with paragraph (3) (a) with a sentence of imprisonment of 5 to 12 years. It must be emphasized that preparation for such an act is also a criminal offense under paragraph (5).

Section 185 Rape

(1) Whoever forces another person to have sexual intercourse by violence or by a threat of violence, or a threat of other serious detriment, or

whoever exploits the person's vulnerability for such an act, shall be sentenced to imprisonment for six months to five years.

(2) An offender shall be sentenced to imprisonment for two to ten years, if he/she commits the act referred to in Sub-section (1)

a) by sexual intercourse or other sexual contact performed in a manner comparable with intercourse,

c) on a child, or

d) with a weapon.

(3) An offender shall be sentenced to imprisonment for five to twelve years, if he/she

a) commits the act referred to in Sub-section (1) on a child under the age of fifteen,

b) commits such an act on a person in detention, serving a prison sentence, in protective treatment, in security detention, in protective or institutional therapy or in another place where personal freedom is restricted, or

c) causes grievous bodily harm by such an act.

(4) An offender shall be sentenced to imprisonment for ten to eighteen years, if he/she cause death by the act referred to in Sub-section (1).

(5) Preparation is criminal.

Section 186 Sexual coercion/duress - undoubtedly one of the behaviours that is practiced by cybergroomers on children.

Section 186 Sexual Duress

(1) Whoever forces another person to masturbation, indecent exposure, or other comparable conduct by a threat of violence or a threat of another serious detriment, or whoever exploits the vulnerability of another for such conduct, shall be sentenced to imprisonment for six months to four years or to prohibition of activity.

(2) The same sentence shall be imposed to anyone who makes another person perform sexual intercourse, masturbation, indecent exposure, or other comparable conduct by exploiting his/her addiction or the offender's position and credibility or influence derived therefrom.

(3) An offender shall be sentenced to imprisonment for one year to five years, if he/she commits the act referred to in Sub-section (1) or (2)

a) on a child, or

b) with at least two persons.

(4) An offender shall be sentenced to imprisonment for two to eight years, if he/she

a) commits the act referred to in Sub-section (1) with a weapon,

b) commits the act referred to in Sub-section (1) or (2) on a person in detention, serving a prison sentence, in a protective treatment, security detention, protective or institutional therapy or in another place where personal freedom is restricted, or

c) commits such an act as a member of an organised group.

(5) An offender shall be sentenced to imprisonment for five to twelve years, if he/she

a) commits the act referred to in Sub-section (1) on a child under the age of fifteen, or

b) caused grievous bodily harm by such an act.

(6) An offender shall be sentenced to imprisonment for ten to sixteen years, if he/she causes death by the act referred to in Sub-section (1) or (2) .

(7) Preparation is criminal.

Section 189 Pimping/Solicitation - many of the children may fall victim to cybergroomers, who will try to persuade and entice children to engage in prostitution. Such conduct will bring consequences to the offender in the form of imprisonment under paragraph (1) for 6 months to 4 years.

Section 189 Solicitation

(1) Whoever induces, arranges, hires, allures, or entices another person to practice prostitution, or whoever profits from prostitution practiced by others,

shall be sentenced to imprisonment for six months to four years, prohibition of activity, or confiscation of items or other asset values.

(2) An offender shall be sentenced to imprisonment for two to eight years, if he/she commits the act referred to in Sub-section (1)

a) with the intention to gain substantial profit for him-/herself or for another, or

b) as a member of an organised group.

(3) An offender shall be sentenced to imprisonment for five to twelve years or to confiscation of property, if he/she causes grievous bodily harm by the act referred to in Sub-section (1).

(4) An offender shall be sentenced to imprisonment for eight to fifteen years or confiscation of property, if he/she causes death by the act referred to in Sub-section (1).

Section 191 Distribution of pornography - it must be emphasized that such a perpetrator can be the child himself, who is led by such a cybergroomer to such an act and subsequently, for example, blackmailed.

Section 191 Distribution of Pornography

(1) Whoever produces, imports, exports, transits, offers, makes publicly available, arranges, puts into circulation, sells or otherwise procures photographic, film, computer, electronic or other pornographic works displaying violence or disrespect to human beings or that describes or depicts or otherwise displays sexual intercourse with an animal, shall be sentenced to imprisonment for up to one year, to prohibition of activity or to confiscation of a thing or other asset value.

(2) Whoever

a) offers, makes available, or makes accessible for children, or

b) at a place accessible to children, exhibits, or otherwise makes available written,

shall be sentenced to imprisonment for up to two years, to prohibition of activity or to confiscation of a thing or other asset value.

(3) An offender shall be sentenced to imprisonment for six months to three years, if he/she commits the act referred to in Sub-section (1) or (2)

- a) as a member of an organised group,
- b) by press, film, radio, television, publicly accessible computer network, or in another similarly effective way, or
- c) with the intention to gain substantial profit for him-/herself or for another.

(4) An offender shall be sentenced to imprisonment for one year to five years, if he/she commits the act referred to in Sub-section (1) or (2)

- a) as a member of an organised group operating in more states, or
- b) with the intention to gain extensive profit for him-/herself or for another.

Section 201 Endangering the upbringing of a child - by their actions, cybergroomers can endanger the moral upbringing of young people, because whoever even negligently endangers the mental, emotional or moral development of the child, eg according to paragraph (1) point a (seduction to a lazy or immoral life), he is punished by imprisonment for up to 2 years.

Section 201 Endangering a Child's Care

(1) Whoever, even out of negligence, endangers the intellectual, emotional, or moral development of a child by

- a) enticing them to an indolent or immoral life,
- b) allowing them to lead an indolent or immoral life,
- c) allowing them to obtain means for themselves or for others by a criminal activity or in another condemnable manner, or
- d) seriously breaching his/her obligation to take care of them or another important obligation arising from parental responsibility,

shall be sentenced to imprisonment for up to two years.

(2) Whoever allows, even out of negligence, a child to play on vending machines equipped with a technical device affecting the outcome of the game and which provides the possibility of monetary winnings, shall be sentenced to imprisonment for up to one year, to a pecuniary penalty, or to prohibition of activity.

(3) An offender shall be sentenced to imprisonment for six months to five years, if he/she

- a) commits the act referred to in Sub-section (1) or (2) out of a condemnable motive,
- b) continues in commission of such an act for a long period of time,
- c) commits such an act repeatedly, or
- d) gains substantial profit for him-/herself or for another by such act.

Section 354 Dangerous persecution - cybergroomers persistently persecute their child victims by seeking their personal closeness or they monitor them, persistently contact them through electronic

communications, in writing or otherwise. For such acts, the perpetrators may be punished by imprisonment under paragraph (2) for 6 months to 3 years.

Section 354 Dangerous Pursuing

(1) Whoever pursues another in long term by

- a) threatening with bodily harm or another detriment to him/her or to persons close to him/her ,
- b) seeks his/her personal presence or follows him/her,
- c) persistently contacts him/her by the means of electronic communications, in writing or in another way.
- d) abuses his/her personal data for the purpose of gaining personal or other contact, and this conduct is capable of raising reasonable fear for his/her life or health or lives or health of persons close to him/her, shall be sentenced to imprisonment for up to one year or to prohibition of activity.

(2) An offender shall be sentenced to imprisonment for six months to three years, if he/she commits the act referred to in Sub-section (1)

- a) against a child or a pregnant woman,
- b) with a weapon, or
- c) with at least two persons.

Cybercrime policies/strategies in the Czech Republic – status regarding the Budapest Convention

The Czech Republic has no specific cybercrime strategy adopted, however the National Cyber Security Strategy 2015- 2020 and the related Action Plan for the National Cyber Security Strategy were drafted by the Czech National Security Authority (NSA) and adopted by the Government in 2015. The new National Cybersecurity Strategy is valid in the period 2020 – 2025. This strategy does not address crimes committed against children or crimes committed by young people and juveniles on the Internet.

The cyber security strategy is based on the following principles:

- Protection of fundamental human rights and freedoms and of the democratic rule of law principles.
- Comprehensive approach to cyber security based on principles of subsidiarity and cooperation.
- Trust building and co-operation among public and private sector, and civil society.
- Cyber security capacity building.

Its main goals are:

- Efficiency and enhancement of all relevant structures, processes, and of cooperation in ensuring cyber security.
- Active international cooperation.
- Protection of national CII and IIS.
- Cooperation with private sector.
- Research and development / Consumer trust.
- Education, awareness raising and information society development.
- Support to the Czech Police capabilities for cybercrime investigation and prosecution.

- Cyber security legislation (development of legislative framework). Participation in creation and implementation of European and international regulations.

Cybercrime legislation

State of cybercrime legislation

The cybercrime legislation of the Czech Republic is to be found in two codes, namely the Act No. 40/2009 Coll., the Czech Criminal Code, as amended (Czech Criminal Code) and the Act No. 141/1961 Coll., the Code of Criminal Procedure, as amended (Code of Criminal Procedure). There are also other relevant acts which are listed in the “Related laws and regulations” section below.

The Convention on Cybercrime – Budapest Convention

The Convention was signed on behalf of the Czech Republic in Strasbourg on 9 February 2005.

The Convention was approved by the Parliament of the Czech Republic and ratified by the President of the Czech Republic. The instrument of ratification of the Czech Republic was deposited with the Secretary General of the Council of Europe, the Depositary of the Convention, on 22 August 2013.

Substantive law

Article 2 of the Convention on Cybercrime (hereinafter referred to as “Convention”) is implemented by Section 230 Subsection 1 of the Czech Criminal Code.

Article 3 is embodied in Section 182 Subsection 1 lit. c) of the Czech Criminal Code. (already mentioned above)

Article 4 is implemented in Section 230 Subsection 2 lit. b) and c) of the Czech Criminal Code.

Article 5 is enshrined in Section 230 Subsection 2 lit. b), c), d) in connection with Section 230 Subsection 3 lit. b) of the Czech Criminal Code.

Article 6 is implemented by Section 231 of the Czech Criminal Code.

Actions described in Article 7 are punishable pursuant to Section 230 Subsection 2 lit. c) of the Czech Criminal Code.

Article 8 is implemented by Section 230 Subsection 3 lit. a) of the Czech Criminal Code.

The criminal conduct detailed in Article 9 is criminalized by Section 192 and Section 193a in conjunction with Section 126 of the Czech Criminal Code.

Article 10 is covered by Section 270 of the Czech Criminal Code.

The criminal conduct described in Article 11 is fully implemented by Sections 21, 23 and 24 of the Czech Criminal Code.

The criminal conduct of legal persons detailed in Article 12 is fully implemented by Act No. 418/2011 Coll., on Criminal Liability of Legal Persons and Proceedings against Them as amended (Sections 7 and 8).

In connection with criminal activity committed on children with a cross-border element, the possibility of data preservation is very important for criminal proceedings and investigation, because It is one of the possibilities how to obtain evidence abroad. Data preservation gives the law enforcement enough time to process an European Investigation Order or mutual legal assistance.

Procedural law

The rules on **expedited preservation of stored computer data** (Article 16) are embodied in Section 7b Subsection 1 of the Code of Criminal Procedure. The rules on expedited preservation and partial disclosure of traffic data (Article 17) are enshrined in Section V (data protection, services and electronic communications networks) of the Electronic Communications Act. In accordance with Section 97 Subsection 3 of the Electronic Communications Act, a legal or natural person providing a public communications network or providing a publicly available electronic communications service is obliged to store traffic and location data for a period of 6 months. This legal or natural person, who stores traffic and location data, is obliged to provide it without delay to the law enforcement authorities for the purposes and in compliance with the conditions stipulated by Code of Criminal Procedure. The police is authorised to request traffic data in the criminal proceedings pursuant to Section 88a of the Code of Criminal Procedure, and in the situation of monitoring people and things based on Police Act.

The rules that enable the production of data [Article 18(1)(a)] are provided in Sections 78 and 79 of the Code of Criminal Procedure.

The production of subscriber data by service providers [Article 18(1)(b)] is to be found in Section 66, Act No. 273/2008 Coll., on the Police of the Czech Republic.

Article 19 (search and seizure of stored computer data) is embodied in Sections 82 - 85(b) of the Code of Criminal Procedure.

The rules on interception of data (Article 21) are enshrined in the Code of Criminal Procedure (Sections 88, 88a and 158d), Electronic Communications Act [Section 97 Subsection 1, 2 and 8)], and Act on protection of classified information and security eligibility.

Safeguards

General rules and safeguards apply. Supervision over compliance with the legality in pre-trial proceedings shall be conducted by the public prosecutor [§ 174 Subsection 1 of the Code of Criminal Procedure No. 141/1961 Coll.]. There is also a possibility to request for a review of actions taken by a police authority and public prosecutor according to Section 157a of the Code of Criminal Procedure.

The restrictions and limitations in investigation procedure contained in Article 15 are implemented by international treaties to which the Czech Republic is a party, namely e. g. the European Convention on Human Rights (Art. 8) and the Charter of Fundamental Rights and Freedoms (Art. 13).

Related laws and regulations

Besides the abovementioned codes, there are important acts related to the cybercrime area:

- Act No. 273/2008 Coll., on the Police of the Czech Republic
- Act No. 127/2005 Coll. on Electronic Communications as amended (Electronic Communications Act).
- Act No. 418/2011 Coll., on Criminal Liability of Legal Persons and Proceedings against Them
- Act No. 412/2005 Coll. on Protection of Classified Information and Security Eligibility
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime No. 33/1997 Coll.
- Act. No. 110/2019 Coll. on processing of personal data and the Act No. 111/ 2019 Coll., amending some acts in relation to the adoption of the act on processing of personal data became effective as late as of 24 April 2019 (Source: Information on the recent developments at national level in the data protection field) replacing Act No. 101/2000 Coll., on the Protection of Personal Data.

Specialised institutions

National Cyber and Information Security Agency (NCISA) is the central body of state administration for cyber security, including the protection of classified information in the area of information and communication systems and cryptographic protection.

The National Cyber Security Centre has been established by the National Cyber and Information Security Agency and its main task is to coordinate cooperation on national and international levels in order to prevent cybernetic attacks, to propose and adopt measures for incident solving and against ongoing attacks.

Ministry of the Interior of the Czech Republic

Ministry of Justice

Supreme Public Prosecutor's Office

Police of the Czech Republic, National Organized Crime Agency, Criminal Police and Investigation Service, Cyber Crime Division is designated 24/7 point of contact according to Article 35 (Budapest Convention on Cybercrime).

The Czech Republic has also two cyber incident response teams: 1) a Government Computer Emergency Response Team (GovCERT.CZ) and 2) a national Computer Security Incident Response Team (CSIRT.CZ). (Source: <https://www.cyberwiser.eu/czech-republic-cz>)

International cooperation

Competent authorities and channels

If the mutual legal assistance in criminal matters is concerned, the judicial authorities to execute the request in principle are the courts and the state prosecutor's offices (judicial authorities).

There are two central authorities for the mutual legal assistance in criminal matters.

The Supreme Public Prosecutor's Office of the Czech Republic is the competent central authority in the pre-trial stage of criminal proceedings whereas the Ministry of Justice of the Czech Republic is the competent central authority for the trial stage of criminal proceedings and when extradition and execution of sentences is concerned.

Unless the international treaty provides for a direct contact of judicial authorities, there is a contact via central authorities.

Complying with Article 35 of the Budapest Convention, a contact point was established. It is based at the Cyber Crime Division, National Organized Crime Agency, Criminal Police and Investigation Service (Police of the Czech Republic).

Practical guides, templates and best practices

The Czech Republic signed and ratified almost all of the conventions and treaties on international cooperation in criminal matters within the Council of Europe, the European Union and the United Nations. The Czech Republic is also a Member State of OECD and has almost 40 bilateral Treaties on mutual legal assistance in criminal matters.

Question 2: Is cyberbullying punishable by

law in your country? Please take into account a broad understanding of cyberbullying (cyber/online stalking, harassment, sexual harassment)?

Answer:

According to Czech legislation, cyberbullying is not in itself a crime or an offense, but its manifestations may be factual of certain criminal offenses under Act No. 40/2009 Coll., The Criminal Code of the Czech Republic. A person who has been harmed by a criminal offense has a position in criminal proceedings due to damage to health, property, moral or other damage. The following criminal offenses may be involved (comparable to the answer to question 1):

Section 175 Extortion

(1) Whoever forces another person by violence or by a threat of violence or another serious detriment to act, omit or to suffer something, shall be sentenced to imprisonment for six months to four years, or to a pecuniary penalty.

(2) An offender shall be sentenced to imprisonment for two to eight years, if he/she

a) commits the act referred to in Sub-section (1) as a member of an organised group,

b) commits such an act with at least two persons,

c) commits such an act with a weapon,

d) causes substantial damage by such an act,

e) commits such an act on a witness, expert, or interpreter in connection to performance of their obligations, or

f) commits such an act on another for his/her true or presupposed race, belonging to an ethnical group, nationality, political beliefs, religion or because of his/her true or presupposed lack of religious faith.

(3) An offender shall be sentenced to a sentence of imprisonment for five to twelve years, if he/she

a) causes grievous bodily harm by such an act,

b) commits such an act with the intention to enable or facilitate commission of a criminal offence of Treason (Section 309), Terrorist attack (Section 311) or Terror (Section 312), or

c) causes extensive damage by such an act.

(4) An offender shall be sentenced to imprisonment for eight to sixteen years, if he/she causes death by the act referred to in Sub-section (1).

(5) Preparation is criminal.

Section 181 Infringement of Rights of Another

(1) Whoever causes a serious detriment on rights of another by

a) misleads another person, or

b) uses error of another person,

shall be sentenced to imprisonment for up to two years or to prohibition of activity.

(2) An offender shall be sentenced to imprisonment for up to three years, if he/she

a) causes by the act referred to in Sub-section (1) a substantial detriment on rights of another,

b) gains by such an act a substantial profit for him-/herself or for another,

c) impersonates a public official in such an act.

(3) An offender shall be sentenced to imprisonment for six months to five years, if he/she

a) causes by the act referred to in Sub-section (1) an extensive detriment on rights of another, or

b) gains by such an act an extensive profit for him-/herself or for another.

Section 183 Breach of Confidentiality of Files and other Private Documents

(1) Whoever without an authorisation breaches confidentiality of files or other documents, photographs, film or other recordings, computer data, or other private documents by another person by publishing, making them available to third parties, or otherwise uses them, shall be sentenced to imprisonment for up to one year, by prohibition of activity, or to confiscation of items or other asset values.

(2) An offender shall be sentenced to imprisonment for up to two years, to prohibition of activity, or to confiscation of items or other asset values, if he/she commits the act referred to in Sub-section (1) with the intention to obtain for him-/herself or for another material or other profit, to cause damage or other serious detriment to another, or to threaten his/her social status.

(3) An offender shall be sentenced to imprisonment for six months to five years or to a pecuniary penalty, if he/she

a) commits the act referred to in Sub-section (1) as a member of an organised group,

b) commits such an act against another person for his/her true or presupposed race, belonging to an ethnical group, nationality, belonging to a certain social group, political or religious beliefs or for true or presupposed lack or religious faith,

c) causes substantial damage by committing such an act, or

d) commits such an act with the intention to gain substantial profit for him-/herself or for another.

(4) An offender shall be sentenced to imprisonment for two to eight years, if he/she

a) causes extensive damage by the act referred to in Sub-section (1) , or

b) commits such an act with the intention to gain substantial profit for him-/herself or for another.

Section 184 Defamation

(1) Whoever makes a false statement about another capable of significantly threaten his/her reputation among fellow citizens, especially harm him/her in employment, disrupt his/her family relations or cause another serious detriment, shall be sentenced to imprisonment for up to one year.

(2) An offender shall be sentenced to imprisonment for up to two years or to prohibition of activity, if he/she commits the act referred to in Sub-section (1) by press, film, radio, television, publically accessible computer network or in another similarly effective manner.

Section 353 Dangerous Threatening

(1) Whoever threatens another with death, grievous bodily harm another serious detriment in such a way that it can raise a reasonable fear, shall be sentenced to imprisonment for up to one year or to prohibition of activity.

(2) An offender shall be sentenced to imprisonment for up to three years or to prohibition of activity, if he/she commits the act referred to in Sub-section (1)

a) as a member of an organised group,

b) against a child or a pregnant woman,

c) with a weapon,

d) on a witness, expert or interpreter in connection to performance of their duties, or

e) on a medical worker in performance of medical occupation or a profession aimed at saving lives or protection of health or on another person who was fulfilling his/her similar duty in protection of lives, health or property arising from his/her occupation, profession, position or function or imposed to him/her according to law.

Section 354 Dangerous Pursuing

(1) Whoever pursues another in long term by

a) threatening with bodily harm or another detriment to him/her or to persons close to him/her ,

b) seeks his/her personal presence or follows him/her,

c) persistently contacts him/her by the means of electronic communications, in writing or in another way,

d) abuses his/her personal data for the purpose of gaining personal or other contact,

and this conduct is capable of raising reasonable fear for his/her life or health or lives or health of persons close to him/her, shall be sentenced to imprisonment for up to one year or to prohibition of activity.

(2) An offender shall be sentenced to imprisonment for six months to three years, if he/she commits the act referred to in Sub-section (1)

a) against a child or a pregnant woman,

- b) with a weapon, or
- c) with at least two persons.

There is another possibility where the offender may be punished by a misdemeanor. If it is not a criminal offense, it may be an offense under Act No. 250/2016 Coll., On liability for offenses and proceedings against them (offense against civil cohabitation). Act No. 89/2012 Coll., The new Civil Code protects all personal rights, because according to section 3 para. a) - "Everyone has the right to the protection of his or her life and health, and of freedom, honor, dignity and privacy." According to section 81 (2), this law also protects, inter alia, human dignity, seriousness, honour, privacy and personal manifestations.

The person concerned therefore has the right to demand the waiver of unauthorized intervention so that the bullying person (ie the aggressor/perpetrator) has to leave his actions or the consequences of these actions are removed (eg deleting disgraceful comments, pictures, videos, etc.). Likewise, according to section 84 and section 85 of the Civil Code, it is not possible to capture and expand the image of a person so that it is possible to determine his identity without his (consent) permission. In addition to waiving the actions of the other person and eliminating the consequences, the injured party also has the right to compensation for the damage incurred pursuant to Section 2956.

Question 3: When would misinformation and deception online constitute a criminal offence in your country? In other words, what potential qualifications could apply to wilful misinformation and deception on the internet?

Answer:

The Czech legislation does not know the term "disinformation" or "propaganda", therefore the factual nature of the crime of "disinformation" or "propaganda" is not defined in Czech criminal law either. These acts are criminal only if they occur within the framework of acts that would fulfil, for example:

§ 181 Infringement of Rights of Another

§ 184 Defamation,

§ 345 False accusations

§ 355 Defamation of a nation, race, ethnic or other group of persons

§ 356 Instigation of hatred towards a group of persons or suppression their rights and freedoms

§ 357 Spreading of alarming news

§ 364 Incitement to a criminal offense

§ 365 Approval of a criminal offense

§ 404 Expression of sympathy for a movement aimed at suppressing human rights and freedoms

Section 181 Infringement of Rights of Another

(1) Whoever causes a serious detriment on rights of another by

a) misleads another person, or

b) uses error of another person,

shall be sentenced to imprisonment for up to two years or to prohibition of activity.

(2) An offender shall be sentenced to imprisonment for up to three years, if he/she

a) causes by the act referred to in Sub-section (1) a substantial detriment on rights of another,

b) gains by such an act a substantial profit for him-/herself or for another,

c) impersonates a public official in such an act.

(3) An offender shall be sentenced to imprisonment for six months to five years, if he/she

a) causes by the act referred to in Sub-section (1) an extensive detriment on rights of another, or

b) gains by such an act an extensive profit for him-/herself or for another.

Section 184 Defamation

(1) Whoever makes a false statement about another capable of significantly threaten his/her reputation among fellow citizens, especially harm him/her in employment, disrupt his/her family relations or cause another serious detriment, shall be sentenced to imprisonment for up to one year.

(2) An offender shall be sentenced to imprisonment for up to two years or to prohibition of activity, if he/she commits the act referred to in Sub-section (1) by press, film, radio, television, publically accessible computer network or in another similarly effective manner.

Section 345 False Accusation

(1) Whoever falsely accuses another of a criminal act, shall be sentenced to imprisonment for up to two years.

(2) Whoever falsely accuses another of a criminal act with the intention to cause his/her criminal prosecution, shall be sentenced to imprisonment for up to three years.

(3) An offender shall be sentenced to imprisonment for two to eight years, if he/she

a) causes substantial damage by the act referred to in Sub-section (1) or (2),

b) commits such an act by press, film, radio, television, publically accessible computer network or in another similarly effective way,

c) commits such an act with the intention to seriously harm another in his/her occupation, to disrupt his/her family relations or to cause another serious detriment,

d) commits such an act with the intention to conceal or demean his/her own criminal act, or

e) commits such an act on another who has fulfilled his/her duty to him/her arising from his/her occupation,

Section 355 Defamation of Nation, Race, Ethnic or other Group of People

(1) Whoever publically defames

a) any nation, its language, any race of ethnic group, or

b) a group of people for their true or presupposed race, belonging to an ethnic group, nationality, political or religious beliefs or because they are truly or supposedly without religion,

shall be sentenced to imprisonment for up to two years

(2) An offender shall be sentenced to imprisonment for up to two years, if he/she commits the act referred to in Sub-section (1)

a) with at least two persons, or

b) by press, film, radio, television, publically accessible computer network or in another similarly effective way.

Section 356 Instigation of Hatred towards a Group of People or of Suppression their Rights and Freedoms

(1) Whoever publically instigates hatred towards any nation, race, ethnic group, religion, class or another group of people or instigates suppression of rights and freedoms of their members, shall be sentenced to imprisonment for up to two years.

(2) The same sentence shall be imposed to anyone who conspires or assembles to commit the act referred to in Sub-section (1).

(3) An offender shall be sentenced to imprisonment for six months to three years, if he/she

a) commits the act referred to in Sub-section (1) by press, film, radio, television, publically accessible computer network or in another similarly effective way, or

b) actively participates in activities of a group, organisation or association that promotes discrimination, violence or race, ethnical, class, religious or other hatred by such an act.

Section 357 Spreading of Alarming News

(1) Whoever intentionally causes a threat of serious concernment of at least a portion of population of a certain area by spreading alarming news that is untrue, shall be sentenced to imprisonment for up to two years or to prohibition of activity.

(2) Whoever communicates the news referred to in Sub-section (1) or other untrue news capable of causing precautions leading to a risk of serious concernment of at least a portion of population of a certain place or an unfounded rescue operation of the integrated emergency system to court or to a police authority of the Czech Republic, to a state administration authority, local self-administration authority or another public authority, to a legal person, natural person who is an entrepreneur or a mass communication media, shall be sentenced to imprisonment for six months to three years or to prohibition of activity.

(3) An offender shall be sentenced to imprisonment for one year to five years or to prohibition of activity, if he/she

a) commits the act referred to in Sub-section (1) or (2) repeatedly,

b) commits such an act as a member of an organised group,

c) causes substantial damage by such an act,

d) causes serious disruption in activity of body of state administration, local self-administration, court or another public authority by such an act, or

e) causes serious disruption in activity of a legal person or natural person who is an entrepreneur by such an act.

(4) An offender shall be sentenced to imprisonment for two to eight years, if he/she

a) commits the act referred to in Sub-section (1) or (2) in a state of national peril or state of war, during a natural disaster or another event seriously endangering lives and health of people, public order or property, or

b) causes extensive damage by such an act.

Question 4: What constitutes human trafficking and how is human trafficking facilitated by electronic means punished in your country? Are online grooming activities to find victims (e.g. lover boys) before the actual human trafficking punishable in itself? In addition, are these activities punishable as a separate crime if human trafficking does take place afterward?

In the Czech Republic there is a Nation Strategy of Combating Trafficking in Human Beings for the period 2020 – 2023 (Strategy).

The strategic goal is to combat trafficking in human beings, especially in raising awareness of the issue, improving cooperation between individual entities and prevention.

The Strategy is focused on the following specific goals which is more specified further in the individual tasks:

- combating child trafficking;
- strengthening the identification of victims of trafficking;
- prevention and assistance to victims of trafficking in human beings;
- cooperation in combating trafficking in human beings at national and international level.

1. COMBATING CHILD TRAFFICKING

In the international field, the Czech Republic is called upon to draw up a strategy or action plan that will focus on combating child trafficking. Given that children are exposed to the same forms of trafficking as adults and that the fight against this crime is to be coordinated and comprehensive. In the Czech Republic, some cases are still being investigated in which a person under the age of 18 is identified as the object of the attack. It is, therefore, necessary to continue to educate stakeholders on this issue to ensure the correct and rapid identification of victims, develop a support and protection mechanism and deepen cooperation. Groups of children who are at increased risk of the crime of trafficking in human beings include, in particular, foreign minors, children fleeing facilities for institutional or protective education, children from a socially excluded background.

In the Czech Republic, sexual exploitation most often takes the form of being forced to provide sexual services for remuneration or the production of pornographic materials. As part of the annual reports for the Report on the State of Trafficking in Human Beings in the Czech Republic facilities working with unaccompanied minors also report suspicions of other forms of trafficking in children, especially forced begging or forced criminal activity, especially theft.

In the area of child trafficking, the Czech Republic is bound by several international documents. These are, for example, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the United Nations Convention against Transnational Organized Crime, the Council of Europe Convention on Measures against Trafficking in Human Beings, Council of Europe Convention against Trafficking in Human Organs, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Directive 2011/36/EU on Preventing, Combating and Protecting Victims of Trafficking in Human Beings. All of the above documents were, if needed, implemented into the Czech law.

The Czech Republic has a sufficient legal basis for combating child trafficking and must not relax to eradicate all forms that child trafficking may take.

As regards the agenda of the social and legal protection of children, child victims of trafficking are classified under Section 6 point e of Act No. 359/1999 Coll., on the Social and Legal Protection of Children, as amended (hereinafter referred to as the „Act on Social and Legal Protection of Children“) as children who have been the victims (or are suspected of being the victims) of criminal offences that threaten their lives, health, liberty, human dignity, moral development or property. We classify this group of endangered children in the category of abused, mistreated and neglected children.

Since 2015, when the provisions of Section 9a paragraph 3 of the Act on Social and Legal Protection of Children came into force, the team of the social and legal protection of children unit should include a specialist in the agenda of protection of abused and mistreated children, who purposefully help this category of children. These specialists continue to enhance their professional skills in this area while also providing professional support for other team members in solving cases that overlap in this area.

The system of assistance to a child who has been trafficked works in such a way that the situation is always investigated in cooperation with law enforcement agencies and other experts (the police, public prosecutor's office, medical facilities) and further steps are proposed to resolve the situation. Two tasks were set in the area of combating trafficking in children within the framework of the National Strategy for Combating Trafficking in Human Beings in the Czech Republic for the period 2016 – 2019. Both tasks concerned updating and supplementing of documents dealing with cooperation and procedures of public administration bodies in the area of trafficking in children and repatriation of unaccompanied minors. These two tasks were reached by the publication of a manual of Recommended Practices in Solving Cases of Child Trafficking for State.

According to the 2020 STATUS REPORT ON TRAFFICKING IN HUMAN BEINGS IN THE CZECH REPUBLIC

2.2. Perpetrators in criminal proceedings

It remains true that the number of foreigners committing this crime is lower than the number of perpetrators from the Czech Republic. Of the 20 prosecuted and investigated persons in 2020, 18 were citizens of the Czech Republic, and 2 were foreigners. Of the total number of 20 people, 12 were men, and 8 were women. This number included three repeat offenders. One person was a minor and 3 persons were juveniles.

Was found out that:

The Czech Republic continues to be considered a target and transit country primarily while also remaining a source country.

As regards the forms of trafficking in human beings, the prevalent form of trafficking in human beings in the Czech Republic is trafficking in human beings for prostitution and for forced labour or other forms of exploitation or profiting from such acts (labour exploitation, forced marriages). Despite the fact that these are the most common forms of trafficking in human beings in the Czech Republic, there are also cases of suspected coercion of trafficking in human beings victims into criminal activities and begging.

An alarming trend resulting from court judgments submitted by the Ministry of Justice of the Czech Republic (hereinafter referred to as “MoJ”) since 2017 is the use of children from children's homes and children on the run from child facilities, to engage in prostitution, and the provision of sexual services for remuneration, where part of the money earned is kept by the person who arranges contact, or who transports these children to the required place.

In cases of trafficking in human beings for the purpose of sexual exploitation, a specific feature of almost all cases was that the perpetrators always took advantage of the plight of the victims or a situation where the victim was in need of financial resources (mostly destitute girls who had escaped from child facilities, etc., i.e. without any social background).

INFORMATION ON TRAFFICKING IN PERSONS UNDER THE AGE OF 18

In addition to law enforcement agencies, it is also the ASLPC and its offices that play an essential role in resolving child victims of trafficking in human beings, especially by protecting the rights and defending the interests of endangered children.

The most intensive is the direct work with child victims of trafficking in human beings at the level of ASLPC of the municipal office of the municipality with extended powers, who have the most extensive range of competencies according to the Act on Social and Legal Protection of Children. The agenda of social and legal protection of children (hereinafter referred to as “SLPC“) is provided 24/7 at this level (on-call outside office hours).

MLSA annually monitors important statistical indicators on social and legal protection performance, which are processed in the **Annual Report on the Performance of Social and Legal Protection of Children**, with the Report reflecting the situation for the previous year (available at <https://www.mpsv.cz/statistiky-1>).

From the point of view of trafficking in children, the following areas are monitored in the Report:

- The number of children in whom abuse for the production of child pornography was registered or proven in the reference year;
- The number of children in whom abuse for prostitution was registered or proven in the reference year;
- The number of cases in which ASLPC filed a criminal complaint with the Police of the Czech Republic or the Public Prosecutor’s Office on suspicion of committing a crime against life, health, freedom, human dignity, moral development or property of the child (criminal reports of committing a criminal offence under the Criminal Code, specifically under Section 169 – entrusting a child to another person for adoption or other similar reason, Section 193 – abuse of a child for production of pornography, and Section 193a – participation in pornographic performance).

Other types of commercial abuse of children are not monitored separately within the Annual Report on the performance of social and legal protection.

Only cases that have been reported to and resolved by ASLPC are registered in the Report. The number of registered cases of **abuse of boys and girls for the production of child pornography decreased** in 2020 compared to 2019. In 2020, **21 boys and 56 girls** were abused for the **production of child pornography** (in 2019, 34 boys and 80 girls). As for **child prostitution**, the numbers of registered cases

remain similar. **In 2020**, the ASLPC dealt with a total of **5 cases of child prostitution** (1 boy and 4 girls; in 2019 it was also 1 boy and 7 girls).

This topic needs further attention, including the issue of child safety in cyberspace.

In terms of age, the **most vulnerable group** are children in the age category **from 6 to 15 years**. **Girls have a higher incidence of abuse** in terms of gender.

As far as the Facilities for Children – foreigners is concerned, there was a decrease in the number of unaccompanied minors migrating illegally in the spring months, but a slight increase was again recorded in the period from summer 2020. **A total of 93 unaccompanied minors, 91 boys and 2 girls**, were admitted to the facilities in 2020. Of these, 10 were in the age group under 15 and 83 in the age group over 15. **4 children were asylum seekers**. In terms of ethnicity, boys from Afghanistan are the most prevalent. One of the girls who stayed in the facility in the past was a 15-year-old girl from Bulgaria, who was a suspected victim of **trafficking for labour exploitation**. The girl was repatriated to the Republic of Bulgaria with the cooperation of the Office for International Legal Protection of Children and the Embassy of Bulgaria.

2020 STATUS REPORT ON TRAFFICKING IN HUMAN BEINGS IN THE CZECH REPUBLIC – in the attachment – including case studies.

Questions regarding cybercrime or cyber-facilitated crime committed by minors

Question 5: How is crime committed by minors dealt with in your country, in general? Is there a specific juvenile justice system? If yes, please explain in detail how this works.

Answer: :

The current legislation on juvenile criminal justice:

The current legislation on juvenile criminal justice is contained in Act No. 218/2003 Coll., on Liability of Youth for Unlawful Acts and on Juvenile Justice, which entered into force on 1 January 2004 (hereinafter referred to as the "Juvenile Justice Act" - JJA) in the Czech Republic.

The JJA is a comprehensive regulation of criminal proceedings in youth matters, containing both substantive and procedural norms and is therefore a so-called mixed legislation.

The JJA constitutes a *lex specialis* to the general regulation under the criminal legislation applicable to adult offenders, which are Act No. 40/2009 Coll., the Criminal Code (hereinafter referred to as the "CC") and Act No. 141/1961 Coll., the Criminal Procedure Code. Similarly, it is a special regulation to Act No. 359/1999 Coll., on the Social Legal Protection of Children (hereinafter referred to as "the CPC"), Act No. 99/1963 Coll., the Code of Civil Procedure (hereinafter referred to as "the CCP") and Act No. 89/2012 Coll., the Civil Code (hereinafter referred to as "the CC"), which replaced the Family Act as of 1 January 2014.

Pursuant to Section 1(3) of the JJA, the general criminal and civil law provisions apply only if the JJA does not provide otherwise. The principle of subsidiarity is given between the regulations, which is explicitly stated in the JJA and which must be strictly observed whenever the JJA does not contain its own regulation. This is confirmed by Article 291 of the Code of Criminal Procedure, which provides that "proceedings in juvenile criminal cases shall be governed by a special law. Unless a special law provides otherwise, this Act shall be followed."

The key concept of the JJA is youth. According to Section 2(1)(a) of the JJA, youth consists of children and adolescents. According to the CC, a child means any person under the age of eighteen years. The JJA further specifies this group. Under the JJA, a child means a child under the age of fifteen years, which, under section 2(1)(b) of the JJA, is a person who has not attained the age of fifteen years at the time of the commission of an otherwise criminal act. The attainment of fifteenth year of age, having regard to section 139 CC, means the expiry of midnight of the day on which the person has his fifteenth birthday. The time of commission is then the time of completion of the act which leads to the commission of the otherwise criminal act. If a person had committed an otherwise punishable act on his fifteenth birthday, he would still be considered a child under 15 years of age. A day later, he would already be a juvenile.

As is clear from the above definition, a child under the age of 15 can only commit an otherwise punishable act. While such an act fulfils the elements of the offence as defined by the CC, it is precisely because of the lack of age that it is not a criminal offence. It is therefore relatively unpunishable, although in other circumstances it would be a criminal offence. *If the person is not criminally responsible, he can neither commit a crime nor a misdemeanor.*

A juvenile under section 2(1)(c) of the JJA is a person who at the time of the commission of the offence has attained the age of fifteen years but has not exceeded the age of eighteen years. The same rules apply to the attainment of the age of eighteen as to the attainment of the age of fifteen. A misdemeanour is an offence committed by a juvenile. The different terminology has been chosen within the framework of the regulation, primarily in order to protect the juvenile as much as possible from secondary victimisation.

The above definitions of groups of young persons then imply a limit of criminal liability of fifteen and eighteen years. The lower limit is defined by the provisions of Section 25 CC, which establishes the criminal non-liability of persons under the age of fifteen. The lower limit is also explicitly stated in the JJA, namely in section 89(1) of the JJA. The criminal liability of juveniles is governed exclusively by the JJA. It also provides for the possibility of imposing certain measures on children under the age of fifteen if they commit an otherwise criminal act (more details in the following chapters).

According to the original draft of the JJA, the law should have defined a special category of juveniles, so-called **young adults**. The group of young adults was to include persons who had passed the age of eighteen but had not reached the age of twenty-one. The main reason for the introduction was to remove the harshness of the general penal provisions affecting this specific group, whose social and mental development may not yet be complete. However, this concept has not been implemented. Instead, Act No 140/1961 Coll., the Criminal Code, which was in force and in force at the time, was amended to include the commission of an offence at an age close to that of a minor as a mitigating circumstance, and this mitigating circumstance was incorporated into the current legislation.

Also very important is the criterion of intellectual and moral maturity, which further limits the criminal liability of juveniles. According to Section 5(1) of the JJA, a juvenile "who, at the time of the commission of the offence, has not attained such intellectual and moral maturity as to be able to recognise the unlawfulness of the offence or to control his or her conduct, shall not be criminally liable for that offence." Intellectual and moral maturity is a prerequisite to liability for a juvenile's unlawful conduct. The two components of intellectual and moral maturity form a conceptual and factual whole. The rational component of development is characterized by the development of conceptual thinking. Moral development refers to the process by which a juvenile acquires the norms of behaviour accepted by mainstream society. On the basis of these societal norms, he or she then develops his or her own value system. Intellectual and moral maturity develops over time, depending on individual maturation. The period of adolescence under the JJA is therefore a period of so-called conditional, relative criminal responsibility.

Finally, it is also appropriate to define the concept of a measure, the imposition of which is usually the end of criminal proceedings in juvenile matters. A measure can generally be defined as a consequence of a juvenile's offence. It is therefore the equivalent of a sentence, from which it differs significantly in its purpose. The purpose of the measure is to create conditions for the healthy social and mental development of the juvenile, to protect him from harmful influences and to prevent him from committing further offences.

Special proceedings for children under the age of 15

As already mentioned above, if a child under the age of 15 commits an act which has the characteristics of a criminal offence, it is an act otherwise punishable. Otherwise criminal offences are dealt with in the special proceedings for children under 15, which are governed by Title III of the JJA. However, these are not criminal proceedings but a special type of civil uncontested proceedings. Therefore, Act No. 292/2013 Coll., on Special Judicial Proceedings (SJP), does not apply in the alternative. Furthermore, this type of procedure also applies in the case of the commission of an otherwise criminal act by a minor who is not criminally responsible for his or her act due to a lack of intellectual and moral maturity.

The public prosecutor shall initiate uncontested proceedings immediately after becoming aware of the inadmissibility of the criminal proceedings. In addition, proceedings may be initiated without a motion, in cases where the proceedings are not initiated on the motion of the public prosecutor or where the motion has been filed by an unauthorised person.

However, the fact that proceedings in the case of children under the age of 15 are not a type of criminal proceedings but civil proceedings brings its own problems in practice. While juvenile proceedings are governed by the principle of restorative justice, this principle is considerably suppressed in proceedings involving children under 15. According to the League of Human Rights, the child is treated as an object of care in proceedings rather than as an active subject who could actively seek to remedy the matter and thus take responsibility for his or her own actions. Furthermore, in comparison to proceedings with adult and juvenile offenders, some legal restrictions and rules of procedure and evidence are suppressed in proceedings involving children under the age of fifteen.

Above all, the institution of the necessary defence is completely absent from the proceedings. After the commencement of Title III proceedings, the court must appoint a guardian for the child, who must be a lawyer, but there is no such obligation before the proceedings are commenced. Therefore, children under the age of fifteen are not automatically entitled to legal aid in the preparatory phase of the proceedings. They can only avail themselves of the general right to a lawyer. Although the Children's Social and Legal Protection Unit (OSPOD) must always be present instead of a lawyer, this does not guarantee that sufficient legal aid will be provided. Given the JJA's emphasis on protecting juveniles in proceedings and asserting their rights, the absence of necessary counsel in cases involving children under the age of fifteen is a serious deficiency. This deficiency has been pointed out not only by the Human Rights League, but also by the Council of Europe and the UN Committee on the Rights of the Child, as the lack of a necessary defence is contrary to the UN Convention on the Rights of the Child.

Another problematic aspect is the taking of evidence in court hearings. In contrast to criminal proceedings, the SJM procedure allows for the use of evidence other than that provided for in the Criminal Procedure Code and allows for the use as documentary evidence of documents from the files of the law enforcement authorities that could not be used in criminal proceedings. The only restriction on the use of evidence is its legal seizure. "Evidence that could not be used in criminal proceedings due to a breach of the provisions of the Criminal Procedure Code on the acquisition and execution of evidence cannot be used as evidence even in the civil proceedings in question.

This situation, however, violates the fundamental principle of adversarial proceedings, when, for example, records of explanations of persons who were not present and could not ask additional questions can be used as evidence. In the case of proceedings against a juvenile or adult offender, this procedure

would be inadmissible. Moreover, this procedure has already been described by the European Court of Human Rights as a violation of the right to a fair trial.

De lege ferenda, therefore, we can only recommend the introduction of the institute of the necessary defence also in relation to children under the age of fifteen in order to ensure sufficient legal protection for these children and to comply with the international obligations of the Czech Republic. This would also preserve the principle of adversarial proceedings and eliminate the problem of the use of non-adversarial evidence. It would then be appropriate to establish limits for evidence similar to those contained in the Code of Criminal Procedure.

Furthermore, in view of the subsidiary application of the civil law rules to proceedings concerning children under the age of 15, the principle of *reformatio in peius* does not apply in appeal proceedings. Thus, where the case is on appeal, the Court of Appeal may also decide to impose a more severe measure than that imposed by the court of first instance. This aspect may, however, discourage the child and his/her representative from defending themselves against the decision of the court on appeal.

As mentioned above, all these problematic features have long been subject to criticism by international organisations. For this reason, it would be advisable to proceed with the modification of the special procedure in cases of children under the age of fifteen to be more in line with the rules and correctives of juvenile criminal proceedings.

Sanctioning of youth

In the context of the youth criminal justice system, so-called measures can be imposed on juveniles for their offences. As mentioned above, a measure can be understood as a consequence of the juvenile's unlawful conduct, i.e. a punishment. However, due to its different purpose, this term is not used in juvenile proceedings and has been replaced by the term measure. The difference in terminology is based on the principle of restorative justice and expresses the different meaning of the measure imposed, which is intended to have a positive effect on the juvenile and not merely to punish him. The main purpose is to actively influence the immature adolescent. According to the JJA, the measures are then divided into measures imposed on juveniles and measures imposed on children under the age of fifteen according to Section 2(2)(b) of the JJA.

Measures imposed on juveniles are divided into educational, protective and punitive measures. This systematisation creates an internally interrelated hierarchical system.

Educational measures aim to direct the juvenile's way of life. Educational measures include:

- supervision by a probation officer;
- probation programme;
- Educational obligations;
- educational restrictions;
- and reprimands with warnings.

Protective measures, in contrast, are primarily aimed at protecting society from juveniles committing offenses. Protective measures include:

- Protective treatment;
- protective custody;

- seizure of property or other assets;
- and protective education.

The last type is punitive measures, which are the most severe measures and their use is the ultima ratio option. The condition for their imposition is that they must necessarily be conducive to the creation of suitable conditions for the further development of the juvenile. Punitive measures include:

- community service;
- financial measures;
- suspended pecuniary measures;
- confiscation of property or other assets;
- prohibition of activity;
- expulsion;
- house arrest;
- prohibition of entry to sporting, cultural and other social events;
- imprisonment suspended for a probationary period;
- imprisonment suspended for a probationary period with supervision;
- unconditional imprisonment.

Question 6: Are there specific rules or is there a specific policy that deals with cybercrime by minors as a special topic, acknowledging the special characteristics of crime by minors in the cyber environment, and the fact that minors may not knowingly or intentionally break rules (issues with criminal intent)? Even absent a written policy, are minors prosecuted for cybercrime in practice?

Answer:

There are no special rules for crimes committed by minors in cyberspace.

Question 7: Can minors be punished for online grooming in your country? I.e. the situation of a minor capable of providing sexual consent (e.g. 17 year-old) grooming a minor who has not reached the age of sexual consent (e.g. 13 years old) to meet up with the intent to perform sexual activities? Please focus not only on the specific crime of online grooming (which, if present as a separate crime in your jurisdiction, often requires an adult perpetrator), but also on other crimes that would punish the activities that constitute online grooming (i.e. the use of different strategies to force a meeting with the minor victim with the intent to perform sexual activities). If criminal sanctions could apply, are minors prosecuted in practice?

Answer:

In the Czech Republic, a person is not criminally liable until the day after the age of 15, as explained above. Before the age of 15, the person is not criminally responsible and everything is dealt with the JJA LAW. Parents are also partially responsible for the children, for example, in the event of damage, the parents are obliged to pay for the damage if the court decides.

Question 8: Can minors be punished for purely online behaviour with a sexual intent when other minors are the victim? E.g. the situation where a minor perpetrator obtains sexually explicit material from the minor victim in order to sell this or to force the victim to do something. If criminal sanctions could apply, are minors prosecuted in practice?

Answer:

A minor cannot be punished under the criminal code for purely online behaviour with sexual intent, even if the victims are other minors. In case of violation, the institution of probation and mediation services is usually used because the minor is not criminally liable see JJA Act.

Question 9: Can minors be punished for cyberbullying behaviour, without there being a physical component to the crime? This includes behaviours such as cyberstalking and cyberharassment. If criminal sanctions could apply, are minors prosecuted in practice?

Answer:

Minors cannot be punished for cyberbullying behaviour under the Criminal Code. They can be punished under the JJA by various forms of measures. Already mentioned above.

Question 10: Can minors be punished for wilful misinformation or deception online (sharing false news, false information, pretending to be someone else, pretending to be an expert, etc.)? Which crimes/qualifications could possibly apply? If criminal sanctions could apply, are minors prosecuted in practice?

Answer:

Minors cannot be punished for spreading of misinformation or online deception under the Criminal Code. They can be punished under the JJA by various forms of measures. Already mentioned above.

Question 11: Can minors be punished for online actions facilitating human trafficking? Typically this includes the selection and grooming of victims (e.g. lover boy phenomenon). If criminal sanctions could apply, are minors prosecuted in practice?

Answer:

Minors cannot be punished for online actions facilitating human trafficking under the Criminal Code. They can be punished under the JJA by various forms of measures. Already mentioned above.

Question 12: Can minors be punished for acts of online piracy in your jurisdiction, i.e. the illegal use and/or distribution of content protected by intellectual property rights? Please focus on the elements of criminal nature. If criminal sanctions could apply, are minors prosecuted in practice?

Answer:

ANSWER LV: Minors cannot be punished for online piracy under the Criminal Code. They can be punished under the JJA by various forms of measures. Already mentioned above.

Question 13: Can minors be punished for acts of hacking (i.e., unauthorized access to a computer system)? In particular, would this also apply to various scenarios exploiting vulnerabilities in IoT and connected devices? If criminal sanctions could apply, are minors prosecuted in practice?

Answer:

Minors cannot be punished for online hacking under the Criminal Code. They can be punished under the JJA by various forms of measures. Already mentioned above.

Question 14: Can minors be punished for acts of using Cybercrime as a Service? If yes, under what qualification? In particular, how would this apply to using such services for exploiting vulnerabilities in IoT and connected devices e.g., the device of a friend or acquaintance? Does it matter if the intent is somewhat innocent (i.e., the minor thinks it's a joke or a prank)? If criminal sanctions could apply, are minors prosecuted in practice?

Answer:

Minors cannot be punished for using cybercrime as a service under the Criminal Code. They can be punished under the JJA by various forms of measures. Already mentioned above.

Question 15: How does your country deal with the cross-border nature of many cybercrimes? When is jurisdiction established? Can judgements have extra-territorial effect?

Answer:

International police cooperation in the Czech Republic has a clear objective, which is to obtain and verify the information that the police need to perform their tasks. Without high quality and fast cross-border cooperation, it would be very difficult for the police to ensure the performance of all the tasks they are responsible for in the area of ensuring the internal security and order of the Czech Republic. The timely acquisition of the necessary information is important in preventing, detecting, detecting and documenting crime. Of considerable importance is the subsequent use of the information obtained in court proceedings as evidence, which is a more complex process where international judicial cooperation also plays a role, but it is often operational cooperation at police level that plays an important role at the outset. Police cooperation focuses to a large extent on the tasks of national police forces related to Schengen cooperation, the activities of joint border centres for police and customs cooperation or national units of the European Police Office (Europol) or Interpol.

International police cooperation has a strong rationale in the fight against serious organised crime, such as drug trafficking or terrorism, and the list of crimes that can be prevented by international cooperation would be very long. The building blocks at the beginning were precisely the issues of drugs and terrorism. As part of the fight against terrorism, the National Contact Point for Terrorism (NCPT) was launched in the Czech Republic in 2009, precisely to enable the rapid sharing of essential information to prevent terrorist attacks and to detect risks associated with terrorist activity.

The current development of cybercrime, which places high demands on international police cooperation at the level of the contact points established under Article 35 of the Budapest Convention on Cybercrime, cannot be overlooked. The increase in cybercrime has also been largely influenced by the SARS CoV-2 pandemic, which has further connected a significant part of the global population to computing and

the cyber world. Without good international cooperation, it is impossible to investigate cybercrime, which truly knows no borders, whether in the real or virtual world.

It must also be emphasised that international police cooperation is not only important in the fight against organised serious crime, but also in the protection of public order and ordinary police work. The very notion of police cooperation is found mainly in international treaties, which define precisely the mutual relations between the police authorities of the contracting states, which may subsequently cooperate in:

- the prevention and clarification of criminal offences,
- preventing breaches of public order and security,
- clarifying administrative offences within the competence of police or customs authorities.

In addition, these international treaties may contain other forms of cooperation such as:

- joint border patrols,
- joint control groups,
- joint search parties and cross-border search operations,
- cross-border deterrence of danger,
- coordination of measures taken on both sides of the border,
- provision of equipment and police technical resources,
- creation and exchange of cover assets,
- joint training and transfer of experience, etc.

A major prospect for international police cooperation for all EU Member States may be the intensification of cooperation at the level of the judiciary in the form of the European Public Prosecutor's Office (EPPO). This may be one of the cornerstones for the future creation of a 'European Investigation Office', which will deal with selected international serious crime, for example in the form of the fight against drug crime, terrorism and cybercrime.

Police of the Czech Republic and international police cooperation

International police cooperation is of great importance to the Police of the Czech Republic (hereinafter referred to as the Police), consisting in obtaining and verifying information that the Police needs for the performance of its tasks in the prevention, search, detection and prosecution of criminal activities and the safeguarding of the security of the Czech Republic, public order and the internal security of the state. Police cooperation focuses to a large extent on those tasks of the national police which are closely linked to Schengen cooperation, the activities of joint border centres and Europol national units.

Content and focus

The concept of police cooperation is mainly to be found in international treaties in which the mutual relations between the police authorities of the contracting states are precisely defined. In this way, the Contracting States may cooperate in preventing breaches of public order and security, preventing and clarifying criminal offences or clarifying administrative offences within the competence of police or customs authorities.

International treaties may also address other forms of police cooperation such as:

- joint inspection groups,
- joint border patrols,
- cross-border deterrence of danger,
- joint search parties and cross-border search operations,
- coordination of measures taken on both sides of the border,
- the provision of equipment and police technical resources,
- creation and exchange of cover assets,
- joint training and transfer of experience, etc.

Police authorities for international police cooperation

The central authority for international police cooperation is the Police Presidium of the Czech Republic, which performs tasks in this area on the basis of the provisions of Act No 273/2008 Coll., on the Police of the Czech Republic. This Act enables the police to cooperate with foreign partners and also sets out the conditions under which members of a foreign security force may operate on the territory of the Czech Republic and, conversely, the conditions under which a member of the Police of the Czech Republic may operate abroad. The Act also addresses the issue of the use of operational support and operational search means by the police at the request of a foreign security force. It also regulates the possibility of providing classified information to cooperation entities without the consent of the National Security Office.

Directorate for International Police Cooperation

At the level of the Police Presidium of the Czech Republic, the tasks of international cooperation are performed by the Directorate for International Police Cooperation, which plays the role of the central contact point of the Police of the Czech Republic for international police cooperation and foreign relations. The integration of the Directorate in the structure of the Police Presidium and its direct subordination to the President of the Police ensures an effective possibility of responding to the needs of rapid day-to-day cooperation.

The main task of the Directorate is to mediate the continuous exchange of information with other countries of the world, whether within the network of national headquarters of the International Criminal Police Organisation - Interpol, by using the services of the European Union Agency for Law Enforcement Cooperation - Europol or by using the Schengen Information System.

The Directorate for International Police Cooperation also performs other important tasks, such as:

- facilitating cooperation between police services and foreign security forces,
- representing the Czech Republic in bilateral, regional, European and global platforms in the field of international police cooperation,
- ensuring the agenda of foreign official and diplomatic relations of the Police of the Czech Republic,
- deploying police officers to perform service abroad, whether in the framework of operations of the European Border and Coast Guard Agency - Frontex or by participating in civilian missions of the European Union or the United Nations, or by sending experts abroad,
- methodological guidance of the organisational units of the regional directorates of the Police of the Czech Republic and police units with national competence in the field of international police

cooperation in the prevention, detection and investigation of criminal activities or in the search for persons and things.

Bilateral and other platforms for police cooperation of the Police of the Czech Republic

Bilateral agreements

Currently, the Czech Republic has concluded a number of bilateral agreements on police cooperation both with our neighbouring countries and other European countries (Italy, France, Bulgaria, Hungary, Moldova, Lithuania, Latvia, Romania, Switzerland, Ukraine, Belgium, Serbia, Albania, Slovenia, Croatia, Great Britain, Cyprus, Macedonia, Bosnia and Herzegovina, Montenegro) and with several non-European countries (Israel, Chile, Kazakhstan, Kyrgyzstan, Tunisia, Turkey, Uzbekistan, USA, Russia).

The countries of the Western Balkans region have long been at the forefront of the interest of the Czech Police and the Ministry of the Interior of the Czech Republic. This increased interest is due to the fact that persons originating from the countries of this region are significantly involved in crime, especially organised crime and drug-related crime, on a global scale. The Czech Republic already has police cooperation agreements in force with Croatia and Slovenia, Albania, Macedonia, Serbia, Bosnia and Herzegovina and Montenegro.

The police cooperation treaties must be approved by both houses of parliament and ratified by the President of the Republic. They are published in the Collection of International Treaties and then become part of the Czech legal system. Treaties are usually negotiated for an indefinite period, with the possibility of termination.

Bilateral agreements on police cooperation with neighbouring states

Treaties concluded with states directly neighbouring the Czech Republic, i.e. the Federal Republic of Germany, the Republic of Poland, the Slovak Republic and the Republic of Austria, play a key role in international cooperation in combating crime. The importance of cooperation with these states is obvious with regard to combating cross-border crime between neighbouring states. These treaties are also subject to the approval of both chambers of the Parliament of the Czech Republic and subsequent ratification by the President of the Republic.

After their publication in the Collection of International Treaties, they became part of our legal system and were published under No. 26/2005 Coll. (with Slovakia), No. 65/2006 Coll. (with Austria), No. 20/2016 Coll. (with Austria), No. 62/2007 Coll. (with Poland) and No. 48/2016 Coll. (with Germany). These four treaties have a number of identical features, which together distinguish them from other treaties concluded with non-neighbouring states.

In general, the purpose of these treaties is to intensify cooperation in combating crime and protecting public order. Police cooperation should be distinguished from legal assistance, which is reserved for the judicial authorities.

A fundamental common feature of the treaties concluded with neighbouring States is the regulation of certain specific institutes, such as joint police and customs cooperation centres, cross-border pursuits, joint patrols and others, which are at least unusual in international police cooperation with non-neighbouring States. In the case of more recent treaties, there is a trend towards extending the scope to administrative offences and strengthening the powers of police officers operating in the territory of the other state.

The forms of cooperation consist mainly in the exchange of various information, cooperation in searches and various measures, mutual assistance, intensification of communication, coordination of interventions, lending of resources, education, training, etc. Specific forms of cooperation are also implemented through requests for assistance, such as exchange of various information, search for persons and objects, identification of persons, protection of witnesses, trace work, etc.

The treaties provide for various forms of deployment - in particular joint patrols, participation in raids, cross-border searches, joint control groups or crime prevention programmes. They provide for the possibility of support from the other party's staff or cooperation in rail transport security. They also contain conditions on the possibility of continuing the pursuit of a person beyond the borders of the neighbouring State. The treaties also cover arrangements for the exchange of information, protection of personal data, cooperation in the implementation of various measures and other institutes of police cooperation. The treaties generally cover the entire national territory, but also contain special provisions for border areas.

Schengen cooperation

Schengen cooperation is the name given to cooperation between states within the so-called Schengen area, which is the territory of states whose common borders (so-called internal borders) are not subject to border controls. Schengen cooperation can be defined as a set of measures consisting of:

- creating an area without border controls at internal national borders;
- the development of a common policy on asylum, immigration and external border control;
- measures aimed at ensuring the free movement of persons within the countries of this area which fully apply these measures on their territory.
- The areas of Schengen cooperation include close cooperation in particular in the field of police cooperation, judicial cooperation in criminal matters, protection of personal data, abolition of checks at internal borders, reinforced external border protection and visa policy, access to the common Schengen Information System, which is a database used in particular to search for persons and things within the Schengen area.

Prüm cooperation

Originally a multilateral treaty on strengthening cross-border cooperation, in particular in combating terrorism, cross-border crime and illegal migration, of 27 May 2005, the signatories were Austria, Belgium, Germany, Spain, France, Luxembourg and the Kingdom of the Netherlands. It was signed in Prüm, Germany, and is therefore known as the 'Prüm Convention'. Substantial parts of the Convention were transposed into European law in 2008 after a political consensus was found.

This was done by the adoption of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (the so-called "Prüm Decision") and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (the so-called "Prüm Implementing Decision"). Both Decisions entered into force at the end of August 2008.

The purpose of the Prüm cooperation is to ensure that information is shared as quickly as possible, in particular in the field of fingerprints, DNA profiles and vehicle registration data. In terms of information exchange, the core of the cooperation is the establishment of automated information exchange mechanisms and access to information from Member States' databases.

The Swedish Framework Decision

There is no uniform practice among EU Member States in dealing with requests for information. The availability of certain categories of information varies from one Member State to another, depending on

national legislation. Requests are often processed at length. In an attempt to remove these obstacles to the rapid and efficient exchange of information, a Council of Europe Framework Decision, the so-called Swedish Framework Decision, was adopted in 2006. Its aim is to harmonise the rules for the exchange of information in the prevention of crime or the conduct of operational search activities by approximating the national legislation of EU Member States on the exchange of information on request.

Under the Swedish Framework Decision, it is possible to request any information, except that to be used as evidence in criminal proceedings and exchanged through legal aid, in the context of crime prevention, the investigation of facts suggesting that a crime has been committed or the detection and investigation of criminal offences. Thus, information relating to offences cannot be exchanged on this legal basis, nor, for example, copies of part or all of a criminal file.

Joint Police and Customs Cooperation Centres

Joint Police and Customs Cooperation Centres are a very important element in the implementation of international police cooperation. These are centres set up under international treaties and subsequent implementing arrangements where police and customs officers from neighbouring countries work together. Here they exchange police-relevant information, support each other and participate in the coordination of international police cooperation in border areas.

The Czech Republic has one or two such centres with each neighbouring country. These joint centres are established in agreement with the competent authorities of the neighbouring State on the basis of international bilateral agreements and subsequent implementing arrangements. The specific organisational and technical conditions of mutual cooperation in the joint centres are then regulated in the respective rules of procedure.

Currently, members of the Police of the Czech Republic operate in six joint centres. In general, it can be stated that the joint centres are built primarily as service centres that support other Police of the Czech Republic units in the field of international cooperation, mainly by exchanging information, forwarding, evaluating and processing requests for assistance to avert threats to public order and security, supporting the deployment of cross-border measures and supporting the transfer of persons.

National contact points

One of the first significant projects in the field of international police cooperation was the creation in 2009 of the National Contact Point for Terrorism (NCPT) as a specialised central communication, information and analytical workplace, which is part of the National Organized Crime Agency of the Police of the Czech Republic (NOCA). It is a workplace dealing with the collection and analysis of information identified by the Police of the Czech Republic relevant for the protection of internal security, in relation to the issue of terrorism, extremism, including persons reasonably suspected of having links to terrorist and extremist organisations. The NKBT is linked to all departments of the Police of the Czech Republic and cooperates with other security authorities at home and abroad. For the needs of the professional public, the NKBT develops methodologies for the prevention, detection and investigation of terrorist crime and prepares situational and position documents for the issues entrusted to it.

The second important focal point of the NOCA, in relation to the issue of cybercrime, is the National Cybercrime Focal Point, which was established in 2013 in accordance with the Budapest Convention on Cybercrime ("Budapest Convention") and became part of the NOCA in 2016. Its important tasks include providing methodological guidance - technical advice, providing legal information, dealing with

data retention requests , collecting evidence and ensuring expedited communication between contact points of other Budapest Convention States and ensuring other necessary communication within the framework of international police cooperation. Given the fact that cybercrime is on the rise globally, this point is an important part of internal security and has a role to play in detecting, documenting and investigating cybercrime, with an emphasis on protecting critical information infrastructure and important information systems in the Czech Republic.

Question 16: What international legal instruments (bi-lateral, multi-lateral) apply in your country to the fight against (cross-border) cybercrime and how have they been implemented in national law (if implementation is necessary)?

Answer:

The implementation of Budapest Convention is already explained on page 15.

The National Point of Contact (POC) is situated on the Organize Crime Agency in the Czech Republic. This Agency has a special Cyber Crime Section which also responsible for cybercrime investigation – especially hacking attack on critical information infrastructure.

At this Section you can find the National Cyber Crime Contact Point 24/7 tasks (Budapest Convention on Cybercrime and G7 HTC network, Directive 2013/40/EU on attacks against information systems etc., EU LE Emergency Response Protocol)

This POC is responsible for:

- National Contact Point 24/7 for communication with global ISPs and OSPs (Facebook, Google, Microsoft etc.) in emergency cases
- Serious cyber-dependent crimes and cyber-enabled crimes investigation
- Regional Units coordination
- Digital forensics and cryptocurrency support
- New legislation, strategic documents proposals/coordination
- Internal education and prevention participation/coordination
- Science, research and innovation tasks

About the contact point:

- Established in 2013 – the Budapest Convention on Cybercrime ratification
- New department within the NOCA Cybercrime Division since 2019
- **SPOC for outgoing and incoming data preservation requests**
- **SPOC for emergency requests (Child in Denger)**
- Cooperation with global ISPs and OSPs
- Cooperation with the Prosecutor General’s Office
- Cryptocurrency analysis and support
- OSINT

Emergency Requests

- Special 24/7 channel
- Threats to life, health, property or for example major cross-border cyber attacks
- Direct communication with global online service providers, contact points, Europol or Interpol
- Registered emergency SPOC for Meta (Facebook, Instagram, WhatsApp), Google, Microsoft, Apple, etc.
- Typically, missing children, suicidal or “bomb” threats

Question 17: What forms of international cooperation exist in your country to the fight against cross-border cybercrime? Please describe different routes/options/procedures and the measures that can be requested (e.g., asking for investigative actions, exchange of information/evidence, etc.)?

Answer:

Already answered above: Additional:

According to the Budapest Convention the Section 7b was implemented into the Criminal Procedure Code.

§ 7b

(1) Where it is necessary to prevent the loss, destruction or alteration of data relevant to criminal proceedings which are stored in a computer system or on a medium, the person who holds or has under his control the said data may be ordered to preserve such data in an unaltered form for such period as may be specified in the order and to take such measures as may be necessary to prevent disclosure of the fact that the preservation of the data has been ordered.

(2) Where necessary to prevent the continuation or repetition of criminal activity, a person who holds or has under his control data which is stored in a computer system or on a medium may be ordered to prevent other persons from accessing such data.

(3) An order under subsection (1) or (2) may be made by the President of the Senate and, in pre-trial proceedings, by a public prosecutor or a police authority. The police authority shall need the prior consent of the public prosecutor to issue such an order; without prior consent, an order may be issued by the police authority only if prior consent cannot be obtained and the matter cannot be delayed.

(4) An order under subsection (1) or (2) shall specify the data to which the order relates, the reason for which the data are to be retained or access to them is to be prevented and the period for which the data are to be retained or prevented, which shall not **exceed 90 days**. The order shall include a statement of the consequences of non-compliance.

(5) The authority which has made an order under subsection (1) or (2) shall forthwith serve it on the person against whom it is directed.

An according to the Budapest Convention the Czech Republic implemented the Section 65 into the Act No. 104/2013 on International Judicial Cooperation in Criminal Matters.

Section 65a Retention of data at the request of the Czech Republic

(1) If, for the purposes of criminal proceedings, it is necessary to ensure the expeditious preservation of data stored in a computer system or on an information carrier (system) located on the territory of a foreign state, the Police Department of the Czech Republic, which performs the function of a contact point pursuant to an international treaty, (hereinafter referred to as "Police Department") shall, with the prior consent of the judicial authority, request the foreign authority to preserve such data.

(2) The request for storage of data shall include:

(a) the name of the authority making the request and the date on which the request was made,

(b) a brief description of the act in respect of which the criminal proceedings are being conducted and its legal qualification,

- (c) a precise identification of the data whose preservation is requested and their connection with the offence for which the criminal proceedings are brought,
- (d) the available information necessary to identify the person who holds or has under his or her control the data requested or to identify the location of the computer system or other medium,
- (e) the reason why the data must be retained; and
- (f) information that the judicial authority intends to make a request for legal aid or to issue a European Investigation Order requesting the preservation of the stored data.

(3) The translation of the request referred to in subsection (2) shall be arranged by the Police Service.

Question 18: Do the rules (national, international) and policies mentioned in your answers in this section have any particular effect or impact on cybercrime committed by minors?

Answer:

Yes they do, especially in emergency cases, when a child is in danger and there is an eminent threat of death, suicide, direct sexual abuse etc. ...

Question 19: Do you have any information on the rates/statistics of cybercrime in your country and their recent evolution? Of particular interest would be statistics related specifically to the crimes covered in this questionnaire and statistics on cybercrime by minors (ideally also specifically for the crimes covered above)? If there were any (relatively) recent legislative or policy changes, please try to find statistical information on how this has impacted the incidence of cybercrime in practice, and in particular cybercrime by minors.

Answer:

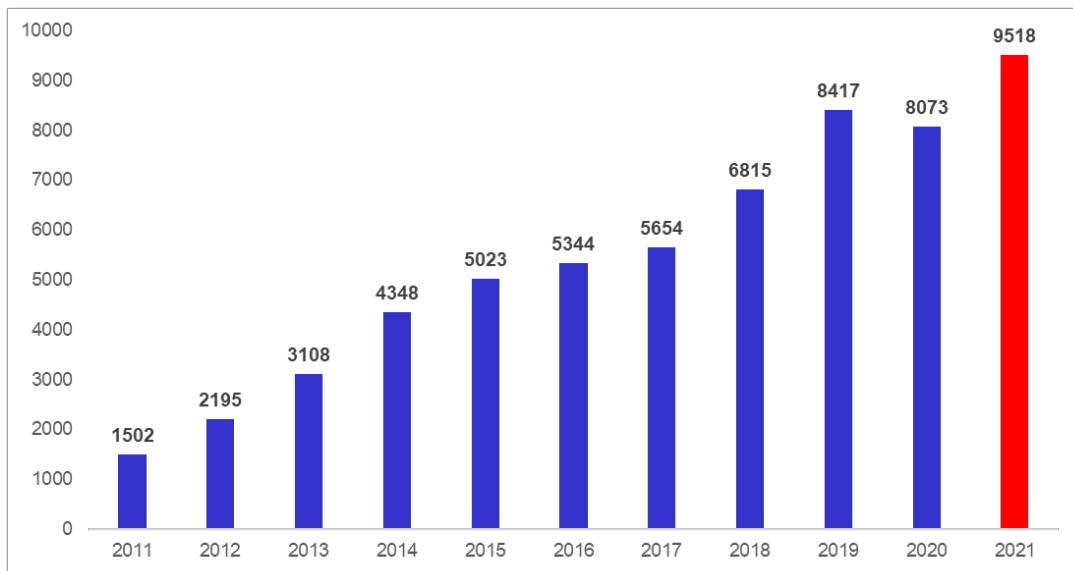
Sending in the attachment.

Question 20: Do you have any other comments to make that may be relevant to your jurisdiction?

Answer:

Statistics:

The Development of Cyber Crime in the Czech Republic 2011 - 2021



Cyber Crime Statistics

