

14/02/2022

RAP/RCha/CZE/19(2022)

EUROPEAN SOCIAL CHARTER

19th National Report on the implementation of the European
Social Charter

submitted by

THE GOVERNMENT OF CZECH REPUBLIC

Follow-up to Collective Complaints

Report registered by the Secretariat on
21 December 2021

CYCLE 2022

MINISTRY OF JUSTICE

Office of the Agent of the Czech Government
before the European Court of Human Rights

Follow-up to the decision of the European Committee of Social Rights in case no. 96/2013 – *Approach v. the Czech Republic*

Report submitted by the Government of the Czech Republic
on 21 December 2021

I. INTRODUCTION

On 20 January 2015, the European Committee of Social Rights (“ECSR”) adopted a decision on the merits of collective complaint no. 96/2013 – *Approach v. the Czech Republic*. In the decision, the ECSR found that the provisions of Czech law do not expressly or through clear and precise case law set out an overall prohibition of all forms of corporal punishment of children that is likely to affect their physical integrity, dignity, development or psychological well-being. The legislation permits corporal punishment for educational reasons and only sanctions punishment reaching a specific threshold of gravity, whereby the Czech Republic violates Article 17 of the European Social Charter (“Charter”).

On 31 January 2020, the ECSR assessed the follow-up made to the above decision by the Czech Republic. In its findings (CCASST/096/2013/EN), it noted that the situation has not been brought into conformity with Article 17 of the Charter as domestic legislation allows corporal punishment for educational purposes and is not interpreted as totally prohibiting all forms of corporal punishment.

Further to the above decision and findings of the ECSR, the Government are hereby submitting this report on the implementation of the decision. The report covers the examination of the decision at domestic level and the measures that have already been adopted as well as those that are planned.

II. EXAMINATION OF THE DECISION AT DOMESTIC LEVEL AND FOLLOW-UP MEASURES

2.1 POLICY DOCUMENTS

2.1.1 NATIONAL STRATEGY TO PROTECT CHILDREN’S RIGHTS FOR 2021–2029

The Government report the ECSR that the decision in *Approach v. the Czech Republic* was examined and duly taken into account during the preparation of the *National Strategy to Protect Children’s Rights for 2021–2029* (the “Strategy”), which is available [here](#). The Government approved the Strategy by resolution no. 1323 on 14 December 2020.

2.1.1.1 Objectives and contents of the Strategy

The Strategy is an important document through which the state strives to consistently protect all the rights of every child and to meet their needs in compliance with the Convention on the Rights of the Child. The state makes every effort to perfect the system so that it promotes the quality of life of children and families, and eliminates discrimination and the unequal approach to children. Another objective is to foster the overall development of the child in the natural family environment or in an alternative family setting. All of that [is] taking place with the child’s participation in the decision-making processes with a direct impact on the child.

The objective of the Strategy is to implement a system of cooperation that ensures the protection of children and improve the life of all children and families, and primarily of children in difficult life circumstances. The Strategy defines six sub-objectives, one of them focusing on the safe care of children in the family environment.

2.1.1.2 Measures taken to implement the decision

The Strategy regards the issue of violence against children in all forms, including domestic violence, to be a key aspect of the safe care of children. In this respect, it refers to the definition of violence under Article 19 of the Convention on the Rights of the Child.

One of the measures to be adopted in order to achieve this goal is to raise awareness about positive parenting and reduce the social tolerance of abuse and neglect of children, including the inadmissibility of corporal punishment of children.

The *First Action Plan* to implement the Strategy sets tasks for the first implementation period of the Strategy (2021 to 2024). The action plan expects the above awareness raising campaign on positive parenting and reducing the social tolerance of abuse and neglect of children, including the inadmissibility of corporal punishment of children, to be carried out by the end of 2024. The *First Action Plan* is available [here](#).

2.1.2 ACTION PLAN FOR THE PREVENTION OF DOMESTIC AND GENDER-BASED VIOLENCE FOR 2019–2022

The office also informs the ECSR that a section of the *Action Plan for the Prevention of Domestic and Gender-Based Violence for 2019–2022* addresses violence against children or more specifically corporal punishment; the plan is available [here](#). The principal priorities of the action plan include ensuring specialised services are accessible to persons threatened by domestic and gender-based violence and their children. For a description of the activities of the working group created under the action plan, see below.

2.2 EXAMINATION BY EXPERT AND ADVISORY BODIES

2.2.1 EXPERT PANEL ON THE EXECUTION OF THE JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

2.2.1.1 Composition and mission of the Panel

The Panel is the advisory body to the Czech Government Agent before the European Court of Human Rights. The Panel is comprised of representatives of all ministries, both chambers of the Parliament of the Czech Republic, higher courts, the Public Prosecutor's Office, the Office of the Public Defender of Rights, academia and civil society. In spite of its name, the missions of the Panel are broader: it is also tasked with analysing decisions of the ECSR issued in proceedings against the Czech Republic and formulating recommendations to the competent bodies for the adoption of general measures for the implementation of such decisions. More generally, the Panel's role is to contribute to the use of the Charter and the ECSR's decision-making in the day-to-day practice of the domestic authorities and ultimately ensuring the full exercise of the economic, social and cultural rights enshrined in the Charter and the additional protocols thereto. The Panel's website is available [here](#).

2.1.2.2 Examination of the decision in *Approach v. the Czech Republic*

The Panel examined the decision in *Approach v. the Czech Republic* in its meeting of 14 January 2020. The Panel obtained information about the decision several times in its meetings (the Panel received a first summary report on the decision in its meeting of 22 November 2018), as well as about the associated international obligations, including the clear case law of the European Court of Human Rights (e.g. *Tlapak v. Germany*, nos. 11308/16 and 11344/16, judgment of 22 March 2018, §§ 90–91, and *O. C. I. v. Romania*, no. 49450/17, judgment of 21 May 2019, §§ 42–43).

The Panel took note of the developments in the matter and agreed to convene a meeting of experts in order to define steps and activities to be undertaken for the implementation of the decision. The minutes of the meeting are available [here](#).

2.1.2.3 Meeting of experts on corporal punishment of children

Further to the conclusions of the Panel’s discussions on 14 January 2020, a meeting of experts on corporal punishment of children was held on 9 November 2021. Representatives of the Ministry of Justice, the Ministry of Labour and Social Affairs, the Ministry of Health, the Ministry of Education, Youth and Sports, the Supreme Public Prosecutor’s Office, the Office for the International Legal Protection of Children, the Office of the Public Defender of Rights, the Committee on the Rights of the Child, the Czech Paediatrics Society as well as a judge, a lawyer, a child psychologist, a social worker and representatives of several non-governmental organisations focusing on violence in family settings attended the meeting.

The expert group firstly discussed the options for amending the Civil Code, which regulates the matter. The expert group considers that such an amendment needs to be accompanied by other supporting measures including a massive campaign on positive parenting. The experts also talked about ways of getting the amendment through in Parliament. Another topic was the coordination of the efforts of medical doctors/paediatricians, teaching staff, employees of social and legal protection of children services, the police, lawyers, judges, public prosecutors and other entities whenever it is found that a child is being punished corporally. The debate also tackled work with the family and approaches to the child and the parents. Another point on the agenda covered the experience of workers of non-governmental organisations, including the identification of lacunas in the existing system and adequate help for victims of corporal punishment and their parents. The experts also discussed the possible formats of the educational and awareness raising activities on positive parenting and on reducing the social tolerance of abuse and neglect of children, including the inadmissibility of corporal punishment enshrined in the Strategy and the *First Action Plan* to implement the Strategy. Finally, other indispensable steps that need to be taken in order to change the current situation were discussed.

The opinion that it is necessary to amend the Civil Code so that it expressly prohibits corporal punishment of children and to adopt other measures concurrently, in particular awareness raising campaigns on positive parenting, prevailed at the meeting. The meeting of experts will probably reconvene in approximately six months in order to assess the subsequent discussions on the possible amendment to the Civil Code and to evaluate the preparation work for carrying out the positive parenting awareness campaign.

2.2.2 COMMITTEE ON THE RIGHTS OF THE CHILD

The Committee on the Rights of the Child is a permanent body of the Government Council for Human Rights (the “Council”). The Council’s website is available [here](#). The Committee makes suggestions to the Council with a view to improving the situation and the respect of human rights in the Czech Republic, takes part in the drawing up of the Czech Republic Human Rights Report and of

reports under the control mechanisms of international treaties, prepares draft sub-measures and systemic measures for the Council aimed at improving the human rights situation and carries out other tasks assigned by the Council. The Committee's website is available [here](#).

In its [Concluding observations on the combined fifth and sixth periodic reports of Czechia of 22 October 2021](#), the UN Committee on the Rights of the Child reiterated the need to explicitly prohibit corporal punishment in law, in all forms and settings, and to promote positive, non-violent and participatory forms of child-rearing and discipline. As required by the UN Committee on the Rights of the Child, the Concluding observations were translated into Czech; the translation is available [here](#). The Concluding observations, including the explicit prohibition of corporal punishment in law, were considered by the Committee on the Rights of the Child on 21 October 2021. The minutes of the meeting of the Committee on the Rights of the Child are available [here](#). One of the upcoming meetings of the Committee on the Rights of the Child will be dedicated to the issue of corporal punishment of children.

2.2.3 WORKING GROUP FOR WORK WITH CHILDREN AFFECTED BY VIOLENCE IN THE FAMILY

The Working Group for Work with Children Affected by Violence in the Family was formed under measure no. 10 of the *Action Plan for the Prevention of Domestic and Gender-Based Violence for 2019–2022* (see above) with a view, *inter alia*, to formulating standards for work with children affected by violence in the family. The decision to form the Working Group was adopted by the Committee for the Prevention of Domestic Violence and Violence against Women in its meeting of 6 December 2018. The Committee's website is available [here](#). The minutes of the meeting of the Committee are available [here](#). Some of the outputs of the Working Group's efforts to-date are the *Common minimum multi-sectoral standards for work with child victims of violence in the family* and the *Minimum Standards of Zero-violence centres*, which are currently undergoing an external consultation procedure.

The Working Group meets three to four times a year. The first meeting was held on 7 February 2019. The ECSR's decision was extensively presented in the meeting of 2 December 2020. The working group agreed that the ban on corporal punishment is important and expressed its support for its adoption. The meeting also led to a debate on the possible forms of the campaign for promoting the prohibition of corporal punishment of children. The members agreed that it is vital for the success of the campaign to tackle it in a positive manner and that communication experts should also be approached. The campaign should also offer solutions for addressing the situation of parents. They also proposed that the issue of corporal punishment of children should also be considered by the Committee for the Prevention of Domestic Violence and Violence against Women. In its meeting of 14 October 2021, the Working Group also discussed the topics of its activities in 2022, including, *inter alia*, corporal punishments of children and the awareness campaign on violence against children as well as programmes for children who experienced violence in the family.

2.3 FURTHER ACTIVITIES

The LOCIKA Centre, the leading non-governmental organisation helping children experiencing violence in the family as direct victims or witnesses (the website of the organisation is available [here](#)), held an online conference on 25 November 2021 called *Empathic Upbringing or Spare the Rod*. The interdisciplinary conference made an in-depth analysis of child rearing without physical punishment. It also dealt with the consequences of physical punishment in child rearing from the children's and the parents' perspective. Experts in psychology, neuroscience, and on early trauma and positive parenting explored the issue of physical punishment and introduced alternatives to ineffective parental discipline patterns. Information about the conference is available [here](#).

III. CONCLUSION

The Czech Republic has taken the conclusions of the ECSR's decision and its findings into account and has given them close consideration. It has long been paying attention to the realisation of the right of children to be brought up without corporal punishment. Nevertheless, it is aware that the decision of the ECSR has not been fully implemented yet as the prohibition of corporal punishment of children has not been enacted into law. Although experts have been warning about the consequences of corporal punishment for a long time, the conviction that it is a necessary educational means is deeply rooted in Czech society and there is a relatively strong opposition to changing this approach. For some parents, punishment is a means of achieving obedience. Many parents believe that punishment is the best educational means in particular because it was a part of their own upbringing. To some extent, this could result from a lack of information about other forms of parenting and from concerns about the criminalisation of parenting methods involving corporal punishment of children.

The Government are aware that the legislative ban alone will not solve the situation and that it must be underpinned by the adoption of other measures, which it has been striving to achieve in the long run. The necessity to change society's attitude to corporal punishment has been repeatedly reflected in the strategic documents, most recently in the current National Strategy and in the *Action Plan for the Prevention of Domestic and Gender-Based Violence*. A working group has been set up to provide a framework for discussions about the necessary changes and how to instil awareness that any violence in the family, including corporal punishment, must be prevented. The topic was also discussed in various expert forums. An awareness campaign on positive parenting is under preparation, aimed at influencing social perception of the harmfulness of corporal punishment. It seems necessary to make parents aware of alternate forms of child-rearing. Paediatricians, teaching staff and other experts who are confronted with corporal punishment of children also need to know how to treat such children and the parents.

In parallel with the efforts to enact the prohibition of corporal punishment of children into law, additional steps will be taken in order to change the perception of physical punishment so that it is seen as being completely unwarranted. It will not be easy to achieve a total legislative ban on physical punishment and the law will not be amended immediately. However, the above accompanying measures susceptible to contribute to the approval of the legislative ban by the political representatives will be implemented prior to reaching the ultimate goal.

MINISTRY OF JUSTICE

Office of the Agent of the Czech Government
before the European Court of Human Rights

Follow-up to the decision of the European Committee of Social Rights in case no. 104/2014

– *European Roma and Travellers Forum v. the Czech Republic*

Report submitted by the Government of the Czech Republic
on 21 December 2021

INTRODUCTION

On 17 May 2016, the European Committee of Social Rights (“ECSR”) adopted a decision on the merits of collective complaint no. 104/2014 – *European Roma and Travellers Forum (ERTF) v. the Czech Republic*. In the decision, the ECSR found

- a violation of Article 16 of the Charter on the grounds of insufficient access to housing, poor housing conditions and territorial segregation;
- a violation of Article 16 of the Charter on the grounds of forced evictions; and
- a violation of Article 11 of the Charter on the grounds of exclusion in the field of health and inadequate access to health care services.

The ECSR found no violation of Article 11 of the Charter on the grounds of segregation of Roma children.

On 31 January 2020, the ECSR assessed the Czech Republic’s follow-up given to the above decision. In its findings (CCASST/104/2014/EN), it found that the Czech Republic had not brought the situation into conformity with Articles 16 and 11 of the Charter (§§ 62 and 67 of the findings).

As to Article 16 of the Charter, the ECSR considered that there is still insufficient access to housing of Roma, who also face poor housing conditions, territorial segregation and forced evictions (§ 61 of the findings).

As to Article 11, the ECSR found that more needs to be done by the Czech Republic to ensure that Roma families are not harmed by their environment and enjoy adequate access to health care.

Further to the above decisions and findings of the ECSR, the Government are submitting this report on the implementation of the decision. The structure of the report follows that of the articles of the Charter that the ECSR found to have been violated. These parts are then subdivided to correspond with the areas in which the ECSR concluded – in its findings – that the respective rights remain insufficiently safeguarded. Each chapter also indicates the measures both taken and planned.

I. EXAMINATION OF THE DECISION AT DOMESTIC LEVEL

1.1 POLICY DOCUMENTS

The Government inform the ECSR that they are taking account of the decision in *ERTF v. the Czech Republic* in drawing up strategic documents both on housing and on health. In 2020, the Government completed and adopted several key documents in which the conclusions of the above decision are reflected. The Government provide below an overview of these documents. However, these are not

all the policy and strategic documents that define the contents and objectives of the policies in the respective areas. A comprehensive overview of the documents is provided in the chapters relating to the individual articles that the ECSR found to have been violated in its decision. They are mentioned in the text of this report either directly or by reference to the observations submitted in the case of the collective complaint in *FEANTSA v. the Czech Republic*.

1.1.1 STRATEGY FOR ROMA EQUALITY, INCLUSION AND PARTICIPATION

The decision in *ERTF v. the Czech Republic* has been examined and duly taken into account in drawing up the *Strategy for Roma Equality, Inclusion and Participation for 2021–2030*. The Strategy is divided into six sections, one of which focuses on housing and another one on health. More detailed information is provided or referred to below in connection with the collective complaint in *FEANTSA v. the Czech Republic*.

The Government approved the Strategy on 13 May 2021. It is available [here](#). Its Task Section is available [here](#).

1.1.2 HOUSING POLICY CONCEPT OF THE CZECH REPUBLIC 2021+

The decision in *ERTF v. the Czech Republic* has also been examined and taken into account in drawing up the *Housing Policy Concept of the Czech Republic 2021+*. More detailed information is provided or referred to below in connection with the collective complaint in *FEANTSA v. the Czech Republic*.

The Government approved the Policy Concept on 12 April 2021. It is available [here](#).

1.1.3 SOCIAL INCLUSION STRATEGY 2021–2030

The Ministry of Labour and Social Affairs (“MLSA”) also took the decision into account in drawing up the *Social Inclusion Strategy 2021–2030*. More detailed information is provided in the respective chapters below or referred to in the section on access to housing in connection with the collective complaint in *FEANTSA v. the Czech Republic*.

The Government approved the Strategy on 20 January 2020. It is available [here](#).

1.1.4 STRATEGIC FRAMEWORK FOR HEALTH CARE DEVELOPMENT IN THE CZECH REPUBLIC BY 2030

Last but not least, the Czech Republic focused on the aspects that the ECSR found to be contrary to the right to health in drawing up the *Strategic Framework for Health Care Development in the Czech Republic by 2030*. It includes an *Implementation Plan for the Strategic Framework for Health Care Development in the Czech Republic by 2030*, which is discussed in the section on the violation of Article 11 of the Charter below.

The Government approved the Plan on 11 January 2021. It is available [here](#).

1.2 EXAMINATION BY EXPERT AND ADVISORY BODIES

The decision in *ERTF v. the Czech Republic* was also examined by expert and advisory bodies to the Government.

1.2.1 COMMITTEE OF EXPERTS ON THE EXECUTION OF THE JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

The Committee is the advisory body to the Czech Agent before the European Court of Human Rights. It is comprised of representatives of all ministries, both chambers of the Parliament of the Czech Republic, higher courts, the Public Prosecutor's Office, the Office of the Public Defender of Rights, academia and civil society. In spite of its name, the missions of the Committee are wider; it is also tasked with analysing decisions of the ECSR issued in proceedings against the Czech Republic and formulating recommendations to the competent bodies for the adoption of general measures for the implementation of such decisions. More generally, the Committee's role is to contribute to the use of the Charter and the ECSR's case law in the day-to-day practice of the domestic authorities and, ultimately, ensuring the full enjoyment of the economic, social and cultural rights enshrined in the Charter and the additional protocols thereto. The Committee's website is available [here](#).

The Committee considered the decision in *ERTF v. the Czech Republic* in its meetings of 14 January 2020 and 13 May 2021. During those meetings, the Committee focused on the violation of Article 16 of the Charter on the grounds of insufficient safeguards in the event of eviction. Details are provided in the relevant part of the report below. The minutes of the first meeting are available [here](#) and those of the second meeting are available [here](#).

1.2.2 GOVERNMENT COUNCIL FOR ROMA MINORITY AFFAIRS

The Council is the permanent advisory and initiative body of the Government for Roma integration affairs. Its mission is to help improve the position of Roma in all areas of life, remove unjustified differences between the position of Roma and the majority, and achieve a conflict-free and mutually enriching coexistence of Roma and the majority. The Council approves, *inter alia*, the measures and proposals for Roma integration. It is chaired by the competent member of the government who, at this point, is the prime minister. Other ministers and deputy ministers, representatives of other public authorities, the Government Commissioner for Human Rights and representatives of civil society are also members of the Council. The website of the Council is available [here](#).

The Council considered the decision in *ERTF v. the Czech Republic* in its meeting of 22 November 2021. It took note of the conclusions stated in the decision and was informed of the steps to be taken for its implementation. The Council, and in particular its Health and Social Committee, will be consulted about the future individual steps.

II. ON THE VIOLATION OF ARTICLE 16 OF THE CHARTER

2.1 ACCESS TO HOUSING FOR ROMA, TERRITORIAL SEGREGATION AND POOR HOUSING CONDITIONS

The Government note that the above-mentioned issues are the subject matter of collective complaint no. 191/2020 *European Federation of National Organisations Working with the Homeless (FEANTSA) v. the Czech Republic*. The Government presented their detailed observations on the fulfilment of these aspects of Article 16 of the Charter in its observations on the merits of this collective complaint of 28 March and 3 September 2021. Both documents are available in English [here](#) and [here](#).

The Government hereby fully refer to their contents.

In the observations of 28 March 2021, they refer primarily to §§ 178–219, which relate specifically to the right to housing of Roma. They also refer to §§ 5–11, 21–93, 108–112 and 134–158, which

discuss the broader context of the right to housing that, nevertheless, also has a direct impact on that particular right of Roma.

Similarly, from among the observations of 3 September 2021 the Government refer primarily to §§ 44–58, which pertain specifically to the rights of Roma, but also to §§ 4–35, which discuss the wider relevant context.

In addition to other information, those sections of the observations also include details about the above-mentioned *Roma Integration Strategy until 2030* and the *Housing Policy Concept 2021+*.

2.2 SAFEGUARDS AGAINST FORCED EVICTION

The Committee of Experts analysed thoroughly and in context the violation of Article 16 of the Charter on the grounds of insufficient safeguards against forced eviction (for the Committee see above; for the analysis, see [here](#), pp. 12–37). It identified several elements whose improvement in practice could make the safeguards against eviction stronger and more efficient. The Government will discuss them in the following sections.

In addition to the range of information contained herein, the Government also refer to the above-mentioned observations on the merits of the collective complaint in *FEANTSA v. the Czech Republic*. Both sets of observations also present relevant information on the matter of forced evictions. Specifically, please see §§ 117–122, 136–138, 140–157 and 178–187 of the observations of 28 March 2021 and §§ 59–65 of the observations of 3 September 2021.

2.2.1 CONSULTATION WITH PERSONS BEING EVICTED

2.2.1.1 Eviction under civil law

The Government recall that for the termination of a lease the Civil Code lays down a three-month notice period. The person affected is therefore advised in advance that the legal basis for using the property is coming to an end. In addition, a forced eviction may only take place after a court issued an order to vacate the property that the former tenant failed to comply with, leading the court to subsequently order the enforcement of the decision. The court notifies the eviction to the liable party at least 15 days in advance. Thus, two court decisions are normally necessary for a forced eviction. The affected person is a party to both proceedings.

Therefore, in the Government's opinion, a sufficient degree of information and involvement of the persons affected by the eviction is ensured. In the course of the analysis by the Committee, however, the question arose whether these safeguards could be strengthened by ensuring that the municipality is advised in due time of the impending eviction of a particular person on its territory. The Committee also considered the question whether the possibility of concluding an unlimited succession of fixed-term leases for very short periods and notarial clauses on direct enforceability do not weaken the safeguards against evictions. The Government will discuss these aspects, which given their nature are more related to the prevention of evictions, in chapters 2.2.3.1 and 2.2.3.2.

2.2.1.2 Eviction from a property under the building legislation

In its decision in *ERTF v. the Czech Republic*, the ECSR based its conclusions as to insufficient consultation with those being evicted on events where properties were vacated under building legislation. These are situations requiring immediate action due to the poor structural and technical condition of the building in order to protect the life and health of the residents of the building. In reality, these situations occur very rarely. There were 20 cases in 2018 and 18 in 2019.

In this respect, the Government note that a new Building Act was adopted on 1 July 2021 (no. 283/2021). In its section 295, the new law brought a more detailed definition of the persons to whom the Building Office must address the decision to vacate a property. These include not only the owner but also all the persons using the building or staying in it. The new Building Act also provides a more thorough definition of the category of persons to whom the order must be notified. These are the evicted person, the property owner, the person carrying out the eviction and the municipality. It also sets out in more detail the manner in which the decision must be notified. The listed persons must be notified without undue delay. Moreover, if persons unknown to the Building Office are staying at the place in question, the eviction notice must also be displayed at the location of the property. It also follows more clearly from the new Building Act that tenants of apartments and non-residential premises are parties to the eviction proceedings. This strengthened the involvement of the affected persons in the eviction process. The new Building Act will come into force on 1 July 2023.

The Government observe that in view of the nature of the situations in which evictions are ordered under the Building Act, i.e. when life or health are under imminent threat, increasing the involvement of the affected persons described above appears to be sufficient. Nevertheless, in addition to the above, the Committee together with the Ministry for Regional Development (“MfRD”) also considered avenues for a better prevention of situations where a building is reduced to such a poor technical and structural condition that eviction has to be ordered. On that topic, see chapter 2.2.3.3 below.

2.2.2 TIMING OF THE ACTUAL EVICTION

The Government inform the ECSR that on 9 June 2021 decree no. 222/2021, amending decree no. 37/1992 on rules of procedure for district and regional courts, was published in the Journal of Laws (*Sbírka zákonů*). It contains, *inter alia*, a new section 64, which reads as follows: “*When setting the date and time of the enforcement of a decision by eviction, the court shall take into account the suitability of the time of the day on which the eviction is to be carried out and of the weather conditions that can be expected on the day of eviction so that the eviction does not put at risk the life or health of the persons being evicted.*” The decree will come into effect on 1 January 2022. Thus, the guarantees against evictions occurring at night or under bad weather conditions, i.e. in periods when temperatures drop very low, have been reinforced.

2.2.3 PREVENTING EVICTIONS

2.2.3.1 Ensuring that the municipality is informed in due time of an action for eviction

How to ensure that the municipality in whose territory an eviction is about to take place is informed in due time was discussed by the Committee and in several meetings between the Ministry of Justice, the MLSA and MfRD. The point is for the municipality to be able to offer social services in a timely fashion to the affected person in order to completely avoid eviction, or to help them deal with the circumstances after they have been evicted.

Several options were considered. Currently, during discussions the solution proposed as the most suitable is to enact the obligation for the courts to advise the defendant at the time the very first act is performed in eviction proceedings that they have the possibility to contact the municipality and seek social assistance. The possibility of enacting the obligation for the courts to inform the municipality that an eviction has been ordered as soon as the decision becomes final is also being considered. Discussions about the best solution will continue. The matter is also being addressed by the MfRD as part of the analysis of tenancy that is currently under way. The MfRD should complete the analysis in

the first half of 2022. The questions will also be reviewed by the Civil Law Panel of the Institute of State and Law of the Czech Academy of Sciences.

The Government will inform the ECSR of the outcome of the discussions and the measures taken in the next report on the implementation of the decision.

2.2.3.2 Successive short-term leases and use of notarial direct enforceability clauses

Safeguards against eviction in the form of a notice period and court decisions on the eviction from a property can be impaired in cases where rather than concluding a lease for an indefinite term a succession of fixed-term leases for short periods of time are concluded instead. A notarial clause on direct enforceability can also worsen housing precarity. In cases where a tenant does not vacate the premises voluntarily at the end of tenancy, such a clause allows the landlord to apply for the enforcement of the notarial clause without the need for court proceedings for eviction. A tenant can thus be evicted very soon after the end of the lease.

As such, both concepts – the lease for a definite term and the direct enforceability clause – are necessary and suitable in many practical situations. However, in practice they can also be used in a manner that undermines the stability of housing and weakens the safeguards against eviction to an excessive degree. The Committee therefore asked the MfRD to address this situation in cooperation with the Ministry of Justice as part of the analysis of tenancy currently underway. The objective is to strike a balance between the rights of landlords, the rights of tenants and the public interest in ensuring affordable and stable tenancy housing. For this purpose, the option of enacting provisions similar to those applicable to employment contracts under labour law will also be considered. This would mean setting a maximum number of successive fixed-term leases after which a lease for an indefinite term would have to be concluded. If adopted, such provisions would also be accompanied by amendments to the current list of [statutory] grounds for tenancy termination applicable to leases with an indefinite term.

The use of successive fixed-term leases was discussed by the Civil Law Panel of the Institute of State and Law of the Czech Academy of Sciences in November 2021. Most members noted that provisions on flat tenancy for a fixed term are present in the legislation of most European countries, although some legal orders regulate them in some way. Provisions similar to those existing for employment contracts are not used in these legal orders. It is, however, necessary to further examine what problems are encountered when concluding fixed-term leases that do not contain an extension or renewal obligation. This can result in rent increases that are not subject to the restrictions set out in section 2249 of the Civil Code when a succession of repeated leases are made. There are also the issues of contractual penalties and security deposit to be tackled in this respect, and finally there is a need to address the use of notarial clauses. Resolving related issues could provide tenants with adequate protection.

As to the notarial clauses, there is a consensus among the ministries concerned that in the future the landlord should bear the financial burden. To date, they are usually borne by future tenants. The Civil Law Panel of the Institute of State and Law of the Czech Academy of Sciences will also discuss these topics in one of its upcoming meetings. It will also analyse whether section 2251(2) of the Civil Code, designed to protect tenants against unjustified payment demands from landlords, also applies to parties interested in entering into a lease agreement, and whether it prevents landlords from demanding that future tenants pay for the notarial clause.

The Government will inform the ECSR of the outcomes of these discussions and of the adopted measures in the next report on the implementation of the decision.

2.2.3.3 *Use of preventative measures by Building Offices vis-à-vis owners of properties that have long been in disrepair*

If a Building Office finds that a building presents defects that the owner failed to repair, the Building Office can order remedial measures to be taken. Depending on the type of defect, in particular in cases where the property maintenance is inadequate, it can order maintenance work or, if the lives or health of persons or animals are at risk, that the owner secure the property as necessary.

The new Building Act significantly increased the practical efficiency of these remedial measures. Indeed, if the owner of a building or plot of land fails to comply with such an order issued by the Building Office and there is danger in delay, the Building Office will have them carried out by a third party. The property owner is obligated to pay the costs and, failing that, the Building Office will pay them from the state budget and order the owner to reimburse them to the Building Office.

Previously, when a property owner refused to pay such costs, the municipality entrusted with the activities of the Building Office within delegated powers had to pay them from the municipal budget. The municipality then had to recover the costs from the property owner, a very lengthy and administratively complex process with an uncertain outcome. Therefore, municipalities were rarely able and willing to advance the funds from their own budget to pay for the repair of private property. The amended legislation will solve this problem.

A new Specialised and Appellate Building Office will supervise the exercise of Building Offices' powers in matters falling under the Building Code, including building inspections. A unified structure of the state building administration will also allow for unified and systematic inspections, a comprehensive analysis of the results of inspections and the use thereof for harmonising the procedure followed by Building Offices, and for their unified and effective management.

2.2.4 *COURSE OF ACTION DURING EVICTIONS*

Just as importantly, the Committee of Experts examined the question of providing shelter to persons forced to leave the property where they had been living on the basis of an eviction order. This issue too will be included in the above analysis of tenancy relationships that the MfRD is carrying out. The questions of shelter or other alternative solutions will also be discussed in one of the upcoming meetings of the Civil Law Panel of the Academy of Sciences.

The Government will inform the ECSR of the results of the analysis and of the discussions and of the adopted measures in the next report on the implementation of the decision.

III. ON THE VIOLATION OF ARTICLE 11 OF THE CHARTER

To start with, the Government note that both aspects of the right to health that the ECSR found to be problematic in its decision and later in its findings during the first assessment of the implementation of the decision, i.e. inadequate access to health care services for Roma and the unhealthy living conditions in which many members of the Roma community live, are addressed in the *Strategy for Roma Equality, Inclusion and Participation*, the *Roma Integration Strategy 2021–2030* and the *Social Inclusion Strategy 2021–2030* (for details, see below).

3.1 SUFFICIENT ACCESS TO HEALTH CARE

3.1.1 MEASURES TAKEN

The Government recall that under Act No. 372/2011 on medical services, every person has the right to contact the provider of health care (medical) services where they are registered when they seek medical assistance or to obtain information on prevention and options to maintain their health.

Since 2018, the Ministry of Health (“MoH”) has implemented multiple projects aimed at raising awareness among the communities living in these socially excluded localities in order to improve access to health care services in these localities.

Firstly, since 2019, it has been carrying out the project called *Ensuring access to health care for homeless people and people at risk of homelessness* (more information available [here](#)). The project has been running in four regional capitals selected on the basis of an analysis of needs. The main objective of the project is to improve access to health care services and health care in localities at risk of homelessness for homeless persons and persons at risk of homelessness. The secondary objective of the project is to bolster primary prevention among these populations. The second call under the project was issued in 2020.

The project carried out by the National Institute of Public Health with the support of the MoH since 2018 called *Effective Health Promotion for Persons at Risk of Poverty and Social Exclusion* (more information available [here](#)) is also an answer to the need to improve health literacy. It is a five-year project financed by the European Social Fund and the state budget. As part of the project, Regional Health Promotion Centres with 14 implementation teams active in all regions of the Czech Republic were created. The expert team of the National Institute of Public Health drew up field work methodology guidance for the regional implementation teams, which they have gradually put into practice in their field work.

Each team is led by a regional coordinator working with field workers, called health promotion mediators (or assistants), who focus on individual interventions. At the end of 2020, there were 14 coordinators and 56 mediators. The mediators attended an intensive health promotion mediation course. Most of them are Roma familiar with socially excluded localities. They provide comprehensive health promotion services to persons at risk of poverty, including Roma. At community level, they integrate socially disadvantaged Roma by helping them register with primary care practitioners, helping them find specialists and developing the health literacy competencies of people.

Finally, in 2020, the project *Applied Research for Innovating Policies Concerning Health Care Accessibility for Roma People Living in Social Exclusion* was carried out by the Social Health Institute, Palacký University Olomouc (more information, including a summary research report, is available [here](#)). The project’s authors focused on the social determinants of the health of Roma living in social exclusion and, on the basis of their findings, proposed innovations to existing methodologies and procedures. The project studied social determinants of health and structural, financial, cognitive and psychological barriers to accessing health care services. In the final report of the project, the authors proposed solutions to improve the accessibility of health care for Roma living in social exclusion, such as awareness raising among the target group, better local and financial accessibility of health care, education of helping professions and the role of health promotion services and accessibility of health care. After evaluating their urgency and practicability, they identified 20 priority proposals. These proposals were sent to the key actors for their implementation.

3.1.2 MEASURES PLANNED

3.1.2.1 Roma Integration Strategy

Chapter 9 of the Strategy addresses health. Its task part enunciates an array of actions to improve access to health care for Roma. The following, in particular, are worth mentioning:

- Objective F.2: Improving access to health care and participation in caring for health among Roma;
 - measure:
 - description: the MoH will ensure that by the end of 2024 master's degree in general medicine and dental medicine include mandatory courses on intercultural and intersocial communication and culturally sensitive approaches to health care (the curriculum of the courses will be prepared by a work group composed of medical doctors, medical anthropologists, Romani studies experts, sociologists and other experts specialising in intersocial communication. Inspiration will be drawn from the comprehensive study conducted by the Department (Agency) for Social Inclusion covering best practices in courses existing in this area in neighbouring countries);
 - institution responsible: MoH, Ministry of Education, Youth and Sports;
- Objective F.3: Gathering representative quantifiable data on health and caring for health among Roma in all regions;
 - measure: carrying out representative quantitative research focusing on the health and caring for health among Roma in the Czech Republic;
 - description: carrying out at least six quantitative research studies, representative of socially excluded Roma, focusing, *inter alia*, on: a) knowledge of key topics of health literacy of Roma; b) metrics of actual participation of Roma in preventative exams and screening programmes; c) actual accessibility of primary medical care for socially excluded Roma; d) prevalence of infectious and selected non-infectious diseases (with particular emphasis on diseases that available individual research indicate as contributing the most to health inequality affecting Roma);
 - institution responsible: MoH, Institute of Health Information and Statistics, MLSA;
- Objective F.4: Ensuring accessibility of medical services in terms of time, location, capacity and cost, specifically for socially excluded populations, including Roma;
 - measure: implementing and monitoring systematically accessibility of health care in terms of travel time and local availability pursuant to government decree no. 307/2012 on travel time and local availability of health care services and pursuant to section 11 of Act No. 48/1997 on public health insurance;
 - description: monitoring of compliance with the above regulations and their consistent practical implementation by 2025, specifically by means of a) monitoring of travel time and local availability of health care services, especially in socially excluded localities and in places with a larger Roma population; and b) formulating measures aimed at achieving the accessibility

- of health care services declared by the government, in particular in socially excluded localities and in places with a larger Roma population;
- institution responsible: National Institute of Public Health, regions, health insurance companies;
- measure: creating the conditions for the detection and sanctioning of discrimination on grounds of nationality, ethnicity, social status, place of residence, age, etc. in access to health care;
 - description: by 2025 implementing models of cooperation between health insurance companies and practitioners and health care institutions that efficiently detect and sanction discrimination on the grounds of ethnicity in choosing a practitioner and deciding on care;
 - institution responsible: MoH, health insurance companies.

3.1.2.2 Social Inclusion Strategy 2021–2030

Chapter 4.7 of the Strategy covers access to health care. It expressly mentions inequalities in health among groups at risk, which include, among others, Roma and the homeless. Specific objectives include, e.g. to *systematically address the de facto unavailability of health services for socially excluded persons, persons at risk of social exclusion and otherwise disadvantaged persons*, and to *increase health literacy in the area of rights and obligations applied in access to primary health care for socially excluded persons, persons at risk of social exclusion and otherwise disadvantaged persons*.

These objectives should be fulfilled in particular through the adoption of the following measures:

- levelling the availability of health services for the target group in a given area (municipality, district, region) regardless of its financial and socio-economic conditions. The application of the measures will lead to a reduction in inequalities between socially excluded and disadvantaged people and the majority population;
- cooperation between social services, health services and scientific institutions will be improved;
- improving awareness about and orientation in the field of rights and obligations of the insured and the patient applied in access to primary health care, including prevention;
- effective acquisition of knowledge about the rights and obligations of the insured and the patient aims to strengthen competencies in registration with primary care physicians and effective defence in the event of discrimination in the provision of health services.

3.1.2.3 Implementation Plan for the Strategic Framework for Health Care Development in the Czech Republic by 2030

In the Implementation Plan, the Czech Republic strives to guarantee that all citizens suffering from poor health in the long term enjoy an equal opportunity to avail themselves of health care and social services in all necessary forms (in outpatient settings, in the field, provided in the client's own social environment, and hospital/residential, suited to tackle temporary or permanent life situations). The relevant specific objectives are:

- Implementing region-specific models of integrated care;
 - planned outcome: by 2025, a functional joint model for integrated health care and social care reflecting region-specific possibilities and requirements of regions in terms of interconnecting health care and social services;

- institution responsible: MoH;
- increasing accessibility of integrated health care and social services and integration of health, work and social rehabilitation;
 - planned outcome: ensuring accessibility of integrated care providers corresponding to the needs of patients with chronic conditions requiring health care and social care;
 - institution responsible: MoH.

3.2 INADEQUATE LIVING CONDITIONS

3.2.1 MEASURES TAKEN

The Government note that the above expert team from the National Institute of Public Health designed 68 preventative interactive programmes aimed at reducing lifestyle risk factors. 40 of these programmes, including implementing methodology, were carried out already. Between 2018–2020, almost 4,000 group interventions and several tens of individual interventions took place in all regions of the Czech Republic.

The work of the Regional Health Promotion Centres has been affected by the COVID-19 pandemic since 2020. Some planned group activities were therefore replaced with current topics related to the prevention of the spread of COVID-19, for example by raising awareness about disinfection, hand hygiene, respiratory hygiene, handling of face masks and respirators, and about governmental measures.

3.2.2 MEASURES PLANNED

3.2.2.1 Roma Integration Strategy

The task part of the strategy also contains many measures to improve the living conditions and lifestyle of Roma. The following in particular are worth mentioning:

- Objective F.2: Improving access to health care and participation in caring for health among Roma;
 - measure: increase full-time equivalent of health promotion mediators;
 - description: ensuring further development, personnel stabilisation and systemic funding of Regional Health Promotion Centres and of the activity of health promotion mediators. In regions with the lowest social exclusion burden (Pardubický, Zlínský, Vysočina), an increase to four full-time contracts and in regions with the greatest social exclusion burden (Ústecký, Moravskoslezský regions) an increase to 22 and 16 full-time contracts respectively by 2025;
 - institution responsible: MoH, health insurance companies, regions, MLSA;
 - measure: creating a multi-disciplinary team in each region to address health problems and other associated issues of socially excluded persons in a comprehensive manner;
 - description: the measure combines social and health care within one multi-disciplinary team whose work focuses on accompanying the individual on their path to preventing disease and to leading a productive life, which in turn

increases efficiency in addressing serious health problems and other associated issues. The objective of the measures is to create a multidisciplinary team that spends at least half of the time in the natural environment of the persons from the target group;

- institution responsible: MoH, MLSA.

3.2.2.2 Health Programme financed by EEA grants

In 2020, the Ministry of Health launched the call *Preventing Communicable and Noncommunicable Diseases in Socially Excluded Localities with a Focus on the Roma Population* under the Health Programme co-financed by EEA grants in 2014–2021. Two successful projects will be implemented in various locations over the upcoming years. More information is available [here](#).

CONCLUSION

The Czech Republic has taken note of the conclusions of the decision and of the findings of the ECSR and is addressing them thoroughly. The Government have long been paying attention to the fulfilment of the right to housing and health for Roma. It has taken numerous measures accordingly and included many others to be carried out in the years to come in the *Roma Integration Strategy until 2030*, the *Social Inclusion Strategy 2021–2030* and other policy and strategic documents.

Progress has been made since the last ECSR's assessment of the follow-up given to the *ERTF v. the Czech Republic* decision. In particular, in terms of the safeguards against eviction the Czech Republic strengthened the affected person's involvement in the eviction process, strengthened safeguards against evictions carried out at an unsuitable time of the day or in bad weather conditions and improved the system for implementing measures to remedy the poor condition of buildings ordered by Building Offices. It has implemented the *Housing First* project in relation to access to housing for Roma in more than 20 towns and villages. As to access to health care services for Roma, the creation of Regional Centres for Health Support in all regions and the activity of health mediators can be highlighted in particular. For the exhaustiveness, the Government add that between January 2019 and August 2021 the Ministry of Health did not register any complaints of insufficient access to health care for Roma or of discrimination by health care personnel.

That said, the Czech Republic is aware that the decision of the ECSR has not been fully implemented yet. Nevertheless, it is convinced that the adoption of the above measures will result in the fulfilment of the rights that the ECSR found to have been violated in the *ERTF v. the Czech Republic* decision.

MINISTRY OF JUSTICE

Office of the Agent of the Czech Government
before the European Court of Human Rights

**Follow-up to the decision of the European Committee of Social Rights
in case no. 117/2015
Transgender Europe and ILGA-Europe v. the Czech Republic
Report submitted by the Government of the Czech Republic
on 21 December 2021**

INTRODUCTION

On 15 May 2018, the European Committee of Social Rights (“ECSR”) adopted a decision on the merits of collective complaint no. 117/2015 – *Transgender Europe and ILGA-Europe v. the Czech Republic*. In its decision, the ECSR found a violation of Article 11 § 1 of the European Social Charter (the “Charter”) on the grounds that Czech legislation requires surgery involving sterilisation as a condition for gender change recognition. As to the remainder of the complaint of the complainant organisations, concerning the non-discrimination clause of the Preamble to the 1961 Charter, the ECSR found no violation.

On 24 October 2018, the Committee of Ministers of the Council of Europe adopted resolution no. CM/ResChS(2018)9, having regard to the statement of the Government submitted on 10 September 2018 [DD(2018)861], and observed that it:

- takes note of the intention of the Czech authorities to bring the situation into conformity with the Charter;
- welcomes the measures taken to amend the relevant legislative acts relating to the recognition of the gender identity of a transgender person in compliance with the Charter, as well as other measures adopted to ensure the translation and publication of the decision of the ECSR;
- looks forward to the Czech Republic reporting on any new developments regarding the implementation of the decision on the collective complaint.

Further to the decision of the ECSR and to the resolution of the Committee of Ministers, the Government are submitting this report on the implementation of the decision. The report first presents information on a planned amendment to the legislation, then describes the relevant decision-making practice of domestic superior courts, and finally provides information on the contemplated strategic framework for ensuring the enjoyment of LGBT+ rights.

I. LEGISLATIVE PROCESS

Already before the delivery of the ECSR’s decision, the Expert Panel on the Execution of the Judgments of the European Court of Human Rights, the advisory body to the Czech Government Agent before the European Court of Human Rights (“ECHR”), had started examining the matter. The Panel is comprised of representatives of all ministries, both chambers of the Parliament of the Czech Republic, higher courts, the Public Prosecutor’s Office, the Office of the Public Defender of Rights, academia and civil society. In spite of its name, the missions of the Panel are broader: it is also tasked with analysing decisions of the ECSR issued in proceedings against the Czech Republic and formulating recommendations to the competent bodies for the adoption of general measures for the

implementation of these decisions. More generally, the Panel's role is to contribute to the use of the Charter and the ECSR's decision-making in the day-to-day practice of domestic authorities and ultimately ensuring the full exercise of the economic, social and cultural rights enshrined in the Charter and the additional protocols thereto. The Panel's website is available [here](#).

The Panel has examined the matter of gender reassignment legislation in detail and repeatedly at its meetings since 2015, further to the ECHR judgments in *Y. Y. v. Turkey* (no. 14793/08, judgment of 10 March 2015) and later also in *A. P., Garçon and Nicot v. France* (nos. 79885/12, 52471/13 and 52596/13, judgment of 6 April 2017). The minutes of the Panel's meeting of 10 November 2015 are available [here](#), those of the meeting of 14 December 2016 [here](#), those of the meeting of 12 June 2017 [here](#), and those of the meeting of 28 February 2018 [here](#). The Public Defender of Rights as well as the Committee for Sexual Minorities of the Council of the Government for Human Rights have also drawn attention to the issue. As a result of all the discussions, the parties involved concluded that the relevant laws needed to be amended so as to bring Czech legislation on gender reassignment in conformity with international law. As early as the beginning of the year 2018, the Ministry of Justice commenced legislative work in cooperation with the Ministry of Health and in consultation with representatives of non-governmental organisations defending the rights of LGBT+ persons.

In June 2018, the Ministry of Justice submitted a draft amendment to the Civil Code, the Act on Specific Medical Services and the Act on Civil Registry, Name and Surname for an inter-ministerial comment procedure. Under the draft amendment, legal gender reassignment would be available to persons over 15 years of age in whom a sexologist confirmed a gender identity disorder and who made a statement before the Civil Registrar. On that basis, the Civil Registrar would record the gender reassignment in the Registry of Births. 'Surgical gender reassignment' pursuant to the Act on Medical Services would be maintained but on a voluntary basis, not as a mandatory requirement for legal gender reassignment.

In November 2018, the comments were presented. The Ministry of the Interior had submitted fundamental comments on the bill. The representatives of this institution argued that the bill would result in many practical problems, e.g. it would allow a person who is legally male to actually give birth to a child or it would allow repeated gender reassignments. The Ministry of the Interior was also of the opinion that it should be within the competence of the courts, not civil registrars, to adopt decisions on gender reassignment. The debate on these questions took place both between the ministries and in further meetings of the Panel (specifically in the meeting of 22 November 2018, the minutes of which are available [here](#), and in the meeting of 14 January 2020, the minutes of which are available [here](#)). Nevertheless, the fundamental comments of the Ministry of the Interior could not be resolved even at the level of deputy ministers or ministers.

In October 2021, elections to the Chamber of Deputies of the Czech Republic were held. The new government, formed in December 2021, will return to the legislative bill.

II. DECISION-MAKING PRACTICE OF DOMESTIC COURTS

Domestic courts have also considered the compatibility of Czech gender reassignment legislation with international law. Proceedings in this matter were commenced by a person who was assigned male gender at birth, as well as a personal identification number (*rodné číslo*) in the format used for males. However, this person has not self-identified with the male gender ever since they were a child; they consider themselves to be genderless and, where unavoidable, prefer to be referred to as female. The Ministry of the Interior rejected their application for a change in their personal identification number to the female format until they can provide a medical report on completing gender reassignment, including the surgical operation. The person challenged the course of action followed

by the Ministry of the Interior by bringing an administrative action against an unlawful interference. They claimed that the condition of undergoing a surgical operation including sterilisation is incompatible with their constitutional rights and the Czech Republic's international obligations.

The Municipal Court rejected the action in 2018 with the reasoning that the legislation in question is not incompatible with the constitutional order of the Czech Republic nor with the case law of the ECHR. The claimant filed a cassation appeal against the judgment. On 30 May 2019, the Supreme Administrative Court rejected the cassation appeal in judgment no. 2 As 199/2018. It held in particular that today's Czech society still insists on the binarity of legal gender and on strict rules for gender reassignment. In the Supreme Administrative Court's view, the choice that an individual who feels a discrepancy between their legal gender and their subjective gender identity is compelled to make under the Czech legislation currently in force is reasonable and remains within the boundaries of what can be fairly required from such a person in the current situation in Czech society. The judgment is available [here](#).

The claimant then lodged a constitutional appeal arguing that their fundamental rights were violated in consequence of the application of existing law, namely the relevant provisions of the Civil Code, the Act on Specific Medical Services and the Act on Civil Records, which they deem to be unconstitutional. The appellant therefore moved for the repeal of the impugned provisions in their constitutional appeal.

On 11 February 2020, the chamber to which the case had been assigned decided to stay the proceedings on the constitutional appeal and to refer the appellant's motion to repeal the relevant provisions to the Plenum of the Constitutional Court. It held that it follows from the impugned court decisions that the Supreme Administrative Court and the Municipal Court both decided to depart from the judgment of the ECHR in *A. P., Garçon and Nicot v. France*. It is therefore necessary for the Constitutional Court to consider on the merits whether such a course of action was constitutionally compliant, including with respect to the duty of the Czech Republic to conform to its international obligations. The decision is available [here](#).

The case is pending before the Plenum under no. Pl. ÚS 2/20. The Constitutional Court has not ruled yet.

III. DRAFT GOVERNMENT STRATEGY FOR EQUALITY AND REMOVING BARRIERS TO A LIFE IN DIGNITY FOR LGBTI+ PEOPLE IN THE CZECH REPUBLIC FOR 2021–2026

In April 2021, the Government Commissioner for Human Rights in cooperation with the Committee for Sexual Minorities of the Government Council for Human Rights submitted a draft *Government Strategy for equality and removing barriers to a life in dignity for LGBTI+ people in the Czech Republic for 2021–2026* for an inter-ministerial comment procedure. The Strategy should be the first Government document addressing the rights, lives and problems of LGBTI+ people in a comprehensive manner. It follows on the past activities of the Governments of the Czech Republic and covers all the main topics related to LGBTI+ rights. The Strategy focuses on strengthening the protection of rights, removing barriers and ensuring equality in all six strategic areas addressed. These are the protection of human dignity and the right to self-determination, family relationships, employment and work life, social and health areas, and education and institutional protection of LGBTI+ rights. In these areas, the Strategy proposes measures aimed at improving the protection of rights, removing barriers and achieving equality of LGBTI+ people in the Czech Republic.

If approved, the Strategy will be, first of all, a strategic document in which the Czech Government set the course and the boundaries of their activities related to LGBTI+ rights and to the approach of the authorities to LGBTI+ people. It follows from the above that the Strategy will be mainly used by the

relevant central administration bodies. The strategy will assign tasks (measures) to them for the 2021–2026 period, through which the objectives set are to be achieved. Their fulfilment will improve the status of LGBTI+ people, both generally and in various groups in a particular life situation and with specific needs. The secondary category of users will include other public institutions, including self-government bodies.

An administrator (usually a ministry) responsible for each measure will guarantee their implementation by sub-delegating responsibilities within its structure. A time limit and an indicator by which fulfilment is to be measured will be set for each measure.

The draft Strategy includes Measure 1.3.1 called *Abolishing the requirement of medical operations and sterilisation for legal gender reassignment*. The administrators of this measure will be the Ministry of Justice, the Ministry of the Interior and the Ministry of Health. The proposed time limit for completing the implementation of this measure is December 2022. The description of the measure states: *“International standards of human rights protection consider mandatory surgical intervention as a condition for legal gender reassignment to be incompatible with the protection of human rights. Surgical intervention should therefore only be undergone if there is a medical indication and with the person’s free and informed consent as with any other treatment. They should also continue to be covered by public health insurance like any other form of necessary care.”* The indicator for this measure is defined as follows: *“Submitting the relevant amendment to the Civil Code, the Act on Civil Records, the Name and Surname, and the Act on Specific Medical Services.”*

The comment procedure for this draft strategy was completed and its final wording has been drawn up. It will be for the new government appointed following the elections to the Parliament to consider the draft Strategy.

CONCLUSION

The Czech Republic is aware that the decision in *Transgender Europe and ILGA-Europe v. the Czech Republic* has not yet been implemented. However, both the executive power and the judiciary have been dealing with this issue. The Plenum of the Constitutional Court will decide whether to repeal the provisions of the laws that require medical treatments including sterilisation as a condition for legal gender reassignment for being unconstitutional. The Ministry of Justice together with the Ministry of Health prepared a draft amendment to the relevant laws, which should repeal this condition for recognising gender reassignment. It will be for the new government to consider the bill as well as the draft strategy for the full enjoyment of LGBT+ rights. The Government will report to the ECSR on further developments and the measures taken in its next report on the implementation of the decision.

MINISTRY OF JUSTICE

Office of the Agent of the Czech Government
before the European Court of Human Rights

Follow-up to the decision of the European Committee of Social Rights in case no. 128/2016 – *University Women of Europe v. the Czech Republic*

**Report submitted by the Government of the Czech Republic
on 21 December 2021**

INTRODUCTION

On 5 December 2019, the European Committee of Social Rights (“ECSR”) adopted a decision on the merits of collective complaint no. 128/2016 – *University Women of Europe (UWE) v. the Czech Republic*. In the decision, the ECSR found

- a violation of Article 4 § 3 of the European Social Charter (the “Charter”) and Article 1.c of the 1988 Additional Protocol on the ground that pay transparency is not ensured and job comparisons are not enabled in practice;
- a violation of Article 1.c of the 1988 Additional Protocol on the ground that there has been insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay; and
- a violation of Article 1.d of the 1988 Additional Protocol on the ground that there has been insufficient progress in ensuring a balanced representation of women in decision-making bodies within private companies.

As to the remaining complaints of the complainant organisation the ECSR found no violations of the 1988 Additional Protocol.

On 17 March 2021, the Committee of Ministers of the Council of Europe adopted Recommendation CM/RecChS(2021)5. With regard to the response provided by the Government on 2 July 2020 [DD(2020)279], it recommended that the Czech Republic:

- pursue and finalise the adoption of measures to improve pay transparency by means of entitling workers to request and obtain, in the context of judicial proceedings, information on the pay of a fellow worker while duly respecting applicable rules on personal data protection and commercial and industrial secrecy;
- expand the scope of pay comparisons in the private sector beyond the same enterprise;
- review and reinforce existing measures aimed at reducing and eliminating the gender pay gap and consider adopting any new measures that may bring about measurable progress within reasonable time in this respect;
- promote an effective parity in the representation of women and men in decision-making positions of the largest publicly listed private companies;
- indicate the decisions and actions taken to comply with this recommendation in the next report on follow-up to decisions in collective complaints.

Following the ECSR decision and the recommendation of the Committee of Ministers, the Government are submitting this report on the implementation of the decision. The report is divided into the four areas on which, according to the Recommendation, the Committee of Ministers wished

to receive more detailed information. The individual chapters (II to V) set out the measures already adopted and those that are planned.

I. EXAMINATION OF THE DECISION AT NATIONAL LEVEL

1.1 GENDER EQUALITY STRATEGY FOR 2021–2030

On 8 March 2021, the Government adopted the new Gender Equality Strategy for 2021–2030 (“Strategy”). During the drafting of the Strategy, discussions were also held on the ECSR’s decision in *University Women of Europe v. the Czech Republic*. The conclusions of the decision have been incorporated into the Strategy.

The Strategy is the Government’s framework document for the implementation of gender equality policy in the Czech Republic. The aim of the Strategy is to formulate a framework for state administration measures that will contribute to achieving gender equality in the Czech Republic. The purpose of these measures is to develop the positive changes that have been achieved in some areas of gender equality and to counter negative trends that have persisted or are growing in this area. The Strategy follows the Government Strategy for Gender Equality in the Czech Republic for 2014–2020. An integral part of the Strategy is its connection to policies implemented or coordinated at EU level. The Strategy is also closely linked to human rights obligations arising from international treaties and the respective monitoring bodies, including the Charter and the ECSR. Furthermore, the Strategy follows up on some recommendations of international organisations. The Strategy contains eight thematic chapters (Work and care, Decision-making, Safety, Health, Knowledge, Society, External relations and Institutions) and 26 strategic objectives.

The Strategy is primarily intended for the relevant central government bodies. It imposes individual tasks (or measures) in the 2021–2030 time frame, through which the defined specific objectives are to be achieved. The secondary area of the Strategy includes the Ombudsman Offices and other public institutions (including local governments). This area also includes non-governmental organisations, academia and the general public, as it provides them with information on the framework for adoption of gender equality measures at government level. Given the wide range of users, once the Strategy has been approved, communication tools will be developed to bring it closer to specific target groups, in particular the media, non-profit organisations and the general public.

The sponsor (*gestor*) and central coordinator for fulfilling the Strategy is the Office of the Government of the Czech Republic. Tasks aimed at fulfilling the Strategy will be imposed on the sponsors of the individual measures by a government resolution, and will thus be binding for the ministries and the organisations under their control, the Czech Statistical Office and any other central government authorities. Similar to the previous Government Strategy for 2014–2020 an emphasis will be placed on the cooperation and sharing of information between the state administration, local governments, social partners and academic workplaces and non-governmental organisations. For the purpose of reflecting current changes in society and in legislation and also in connection with the evaluation of the Strategy, two reviews will take place during the course of the validity of the Strategy.

The bodies responsible (sponsors), cooperating entities and duration of the implemented measures are always given for the individual measures of the Strategy. The timetable has these key milestones:

- 2021–2030 implementation of the Strategy’s measures and annual evaluation in relation to the government,
- 1 January–31 December 2023 first review of the Strategy, including the tasks,

- 2024–2025 external evaluation of the fulfilment of the Strategy,
- 1 January–31 December 2026 second review of the Strategy, including the tasks,
- by 31 December 2031 overall evaluation of the fulfilment of the Strategy.

More detailed information on the individual measures is set out in the chapters devoted to the individual violations found by the ECSR.

The Strategy is available in English [here](#).

1.2. COMMITTEE OF EXPERTS ON THE EXECUTION OF THE JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

The Committee of Experts is the advisory body to the Agent of the Czech Government before the European Court of Human Rights. It is comprised of representatives of all ministries, both chambers of the Parliament of the Czech Republic, higher courts, the Public Prosecutor’s Office, the Office of the Public Defender of Rights, academia and civil society. In spite of its name, the Committee has a broader mission; it is also tasked with analysing decisions of the ECSR issued in proceedings against the Czech Republic and formulating recommendations for the competent bodies to adopt general measures for implementing such decisions. More generally, the Committee aims at contributing to the application of the Charter and the ECSR’s decision-making in the day-to-day practice of the national authorities and ultimately ensuring the full exercise of the economic, social and cultural rights enshrined in the Charter and additional protocols thereto. The Committee’s website is available [here](#).

The Committee also discussed the implementation of the decision in *UWE v. Czech Republic* in its meeting held on 13 May 2021. It expressed support for the Strategy, the Action Plan on Equal Pay and the Pay Transparency Directive. More detailed information on the relevant parts of these documents is set out in the chapters devoted to the individual breaches found by the ECSR. The minutes from the Committee’s last meeting are available [here](#).

II. ON THE VIOLATION OF ARTICLE 4 § 3 AND ARTICLE 1.C OF THE 1988 ADDITIONAL PROTOCOL DUE TO A LACK OF PAY TRANSPARENCY

2.1 GENDER EQUALITY STRATEGY FOR 2021–2030

The Strategy addresses pay transparency in chapter 1 “*Work and care*”. Specific objective 3.7 *Raising the level of wage and pay transparency* has the aim of reducing the gender pay gap from 15.70% to 10% by adopting these measures:

- 3.7.1 Adopting at least one of the four key measures listed in the Commission recommendation on strengthening the principle of equal pay between men and women through transparency (2014/124/EU), by 31 December 2022; the body responsible is the Ministry of Labour and Social Affairs (“the MLSA”);
- 3.7.2 Introducing an obligation to list the base amount of the wage/pay in advertisements for available jobs. The measure will be implemented by tabling an amendment to the relevant legislation by 31 December 2023, the responsible authority is the MLSA;
- 3.7.3 Declaring null and void any legal act consisting of negotiating a non-disclosure clause in which employees commit to confidentiality regarding their wage/pay. The measure will be implemented by submitting an amendment to the Labour Code by 31 December 2022

expressly prohibiting the negotiation of confidentiality clauses; the body responsible is the MLSA;

- 3.7.4 Publishing information on the gender pay gap as a percentage in the bodies of corporations with any state ownership in the period from 31 December 2022 to 31 December 2030; the bodies responsible are all the ministries and the cooperating entity is the Office of the Government;
- 3.7.5 Continuing to monitor and keep anonymous statistics on the average pay of (state) employees in individual pay grades by gender in the period from 31 December 2021 to 31 December 2030; the bodies responsible are all the ministries and the cooperating entity is the Office of the Government.

Another relevant measure is measure 2.8.2 *Ensuring that trade unions are informed about the evolution of salaries or wages broken down by gender* which has the aim of amending the Labour Code so that employers are obligated to inform trade unions about the evolution of average wage or salary and the individual components thereof, also broken down by gender. The Labour Code amendment is due to be submitted by 31 December 2023 and the body responsible is the MoLSA.

2.2 PROPOSAL FOR A DIRECTIVE ON PAY TRANSPARENCY

The Czech Republic is actively participating in negotiations over the Pay Transparency Directive (the full title is Directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms), which the European Commission submitted in March 2021. In the draft directive, the whole of Chapter II “*Pay transparency*” is devoted to the issue of pay transparency. The most relevant provisions in terms of implementing the ECSR decision are Article 7 (*Right to information*) and Article 8 (*Reporting on pay gap between female and male workers*).

The Czech Republic supports the draft directive. It is seeking, however, to keep the administrative burden on employers within reasonable limits. The draft directive has also been discussed in the Czech Parliament, specifically in the European Affairs Committee of the Chamber of Deputies and the Social Policy Committee of the Senate. The Office of the Government is planning to organise an international conference in January 2022 focusing on the draft directive and more broadly also on support for pay transparency in general.

2.3 ACTION PLAN FOR EQUAL PAY

The MLSA is currently finalising the Action Plan for Equal Pay. After it has been discussed within the MLSA and in an inter-ministerial comment procedure, it should be due to be submitted for government approval by the end of 2021. The Action Plan is made up of six parts, and one part is devoted to the issue of pay system transparency. The working version of the Action Plan includes the following objectives and measures:

- objective: informing trade unions about pay rates for women and men
 - measure: to extend the Labour Code to include an obligation on employers to inform trade unions about average pay, including the elements thereof, broken down by gender,
 - criteria and time limit for implementation: the measure will be submitted as an amendment to section 287(1)(a) of the Labour Code by the end of 2026,
 - body responsible: the MLSA;

- objective: raise awareness among male and female employees
 - measure: to extend the Labour Code to include the right of male and female employees to be told the average pay rates, broken down by gender, for men and women performing equal work or work of equal value. To extend the Labour Code to include an obligation on employers to inform male and female employees every year about this right,
 - description of the measure: employees must have the right to obtain this information via their representatives or via the body for equal treatment (the Ombudsman) or a monitoring body, alternatively employers may provide information every year on average pay rates broken down by gender in the individual categories (equal work and work of the equal value) to all employees. Employers may require employees not to use this information for purposes other than promoting the principle of equal pay for equal work or work of equal value and not to disseminate the information further. The measure is based on Articles 7 and 26 of the draft Pay Transparency Directive,
 - criteria and time limit for implementation: the measure will be implemented through the submission of an amendment to the Labour Code by the end of 2026,
 - body responsible: the MLSA;
 - measure: extending employers' obligation to inform male and female job applicants about the agreed basic salary/pay and the agreed remuneration and about the range of the remuneration on offer,
 - measure description: employers must set out in their advertisements the basic salary/pay or agreed remuneration or the range from the minimum to the maximum level. The lowest and highest amounts stated shall be defined as +/- 10% of the median pay level. The measure is based on Article 5 of the Draft Pay Transparency Directive,
 - criteria and time limit for implementation: the measure will be implemented through the submission of an amendment to the Labour Code or amendments to other relevant legislation by the end of 2026,
 - body responsible: the MLSA;
- objective: involve representatives of employer organisations and trade unions in the process to reduce the gender pay gap (“GPG”)
 - measure: bring the relevant actors together and launch a social dialogue with the aim of reaching an agreement and developing an active approach to solving the issue. Hold regular discussions at the Council of the Economic and Social Agreement of the Czech Republic (“CESA”) on methods for addressing the large GPG (focusing on the unexplained part of the GPG, the size of which reflects the inequalities caused by the setup of pay systems and lack of transparency);
 - measure description: discuss the Pay Transparency Directive at CESA meetings, discuss progress in transposing the Directive, the individual steps and the timetable. Seek a consensus between the social partners and actively involve them in the creation of policies supporting equal pay.

Focus on the adjusted GPG and its elimination. The measure is based on Article 11 (social dialogue) of the Draft Pay Transparency Directive,

- criteria and time limit for implementation: adoption of a government resolution that the CESA must, at every meeting, discuss the issue of unequal pay in connection with the Draft Pay Transparency Directive until the Directive has been successfully transposed, or in the period from 2021 to 2026,
 - body responsible: the MLSA,
 - cooperating entity: CESA;
- objective: reduce the pay gap in companies competing in public tenders
- measure: to take appropriate measures to ensure that, in the performance of public contracts or concessions, economic operators comply with the obligations relating to equal pay for equal work or work of equal value;
 - measure description: to take appropriate measures so that firms participating in tendering procedures for public contracts awarded by government bodies or institutions declare their respect for equal pay. Determine the size of their GPG by analysis using the Logib tool or another suitable analytical tool designed specifically for identifying equal pay for the equal work or work of equal value. The measure is based on Article 21 of the Draft Pay Transparency Directive,
 - criteria and time limit for implementation: submission of an amendment to Act No. 134/2016 on public procurement, by the end of 2026,
 - body responsible: the MLSA,
 - cooperating entities: all ministries;
- objective: sharing the burden of proof
- measure: to consider, in connection with disputes over unequal pay for men and women, amending the Code of Civil Procedure so as to share or shift the burden of proof,
 - measure description: lighten the evidentiary requirements placed on workers who feel they have been wronged through non-compliance with the principle of equal pay pursuant to Article 16 of the Draft Pay Transparency Directive,
 - criteria and time limit for implementation: submission of an amendment to the Code of Civil Procedure, by the end of 2026,
 - body responsible: the MLSA.

2.4 PAY CALCULATOR

A salary and wage (pay) calculator was produced by the MLSA as part of the 22% TO EQUALITY project. The calculator methodology was developed and verified on data from 2016. The data is updated every year and the calculator works with data from the previous full year. Its aim is to calculate an individual's average income based on the specific data that is entered and also to calculate the gender pay gap as a percentage based on this data.

The calculations are set up only for workers who are in an employment relationship. Thanks to the high-quality and highly detailed database used by the calculator, the calculations can be set up specifically for the different spheres of economic activity (i.e. the public and private sectors) and at the same time for each major group and sub-major group of occupations (under the CZ-ISCO classification of occupations).

The pay calculator is available [here](#).

The methodology used by the calculator is available [here](#).

2.5. THE “22% TO EQUALITY” PROJECT

The 22% TO EQUALITY project is a systemic MLSA project aimed at addressing the gender pay gap problem in the Czech Republic. It provides a platform dedicated to tackling the gender pay gap issue in a comprehensive manner (from identifying the causes of the problem to solving it in practice) and bringing together the interests, requirements and practical experience of all parties (other ministries, other government bodies, non-governmental organisations, the academic community and other stakeholders and individuals).

The objectives of the project are to:

- support the gender pay gap reduction process in the Czech Republic;
- increase public awareness of the problem;
- link up and mobilise everyone affected by the issue, i.e. employees, employers, the relevant bodies in the state administration, social partners and the general public;
- propose (and carefully verify in practice) new and effective approaches that will help solve the problem, and
- contribute towards greater pay transparency on the Czech labour market.

The project has been extended to 2022 with the aim of making all the tools and methods so far created available to labour offices and the State Labour Inspection Office and also to disseminate and provide them to employers and other groups of stakeholders for consultation. In the extension period the project team will also provide expert support to selected units of the MLSA in creating and implementing policies and measures in the area of equal pay at national and international levels (the European Commission directive, the Action Plan and the Strategy).

The project’s website is available in Czech [here](#) and in an abbreviated version in [English](#). Similarly, a list of project activities is available in Czech [here](#) and an abbreviated version in [English](#).

2.6 LOGIB

Logib is a self-testing tool (software) for conducting equal pay analysis and it is intended for employers in the private and public sectors. Logib works with data from the organisation’s salary or wage (pay) system and is reliable for workforces of over 50 employees. Using Logib, employers can check for themselves how pay has been set up in their organisation without having to share sensitive data with anyone.

The MLSA acquired the tool in 2016 from Switzerland, where it was already in use. It was translated as part of the 22% TO EQUALITY project and the categories were amended in line with Czech employment law. Pilot testing then began and it is still continuing. Also as part of the 22% TO EQUALITY project an advisory package has been offered to employers (available [here](#)) who wish to join the pilot testing. A number of employers are currently involved in the testing and 15 of them have completed

the full analysis and obtained a certificate (the latest report on the test results is available [here](#)). The aim of the project is to test Logib at 30 employers. Employers can also provide the resulting data to the MLSA, which will evaluate it with the help of a GPG expert or analyst, who will then draw up a final report and, based on the specific findings of the study, plan the next steps towards reducing the GPG. As the existing Logib is intended for employers with more than 50 employees, a “slim” version of Logib for employers with up to 50 employees will be created and localised in Czech by 2022 as part of the aforementioned project.

Inspections by the labour inspectorates on equal pay are restrained by a number of limiting factors, such as identifying work of equal value, assessing the value of work and so on. Tests have therefore started using the Logib tool in inspections focussing on equal pay. The deployment of Logib should help to eliminate the barriers. A unique similarity score module has also been created for the tool, allowing comparisons to be made between people performing equal work and work of equal value. During the 22% TO EQUALITY project extension period, pilot testing will take place of the Logib tool and the similarity score module in equal pay inspections conducted by the State Labour Inspection Office and regional labour inspectorates at various firms.

2.7 GRANT PROGRAMMES

The MLSA is currently drawing up a system of support grants under the Employment Plus Operational Programme. The system is based on the Strategy and it takes account of data on equal opportunities in the private sector in the Czech Republic and across the entire region of central and eastern Europe. In the long term, it is seeking to reduce the gender pay gap on the Czech labour market.

The grants will also go towards encouraging pay transparency in medium-sized and large firms. In this area support will go to:

- pay audits using the Logib tool at employers with more than 50 employees, and mainly at employers with more than 250 employees following transposition of the relevant directive into Czech law,
- studies of HR processes particularly in the area of recruitment, remuneration, evaluation and flexibility in the work environment with the aim of finding the causes of the gender pay gap and proposing strategic plans for its elimination,
- implementing selected follow-up measures based on the strategic plans.

The projects will undergo unified evaluation of initial, interim and final states. It will thus be possible to determine whether any shift has taken place in the areas addressed during project implementation. The evaluation will place particular emphasis on “awareness of the issue” at specific organisations and acceptance of the proposed solutions by both employees and management. The output of the unified evaluation will be anonymised data which, whilst meeting the specific criteria (quality, quantity, comparability, reliability), can also serve for benchmarking employers not involved in the Employment Plus Operational Programme.

The Employment Plus Operational Programme will also fund educational and awareness raising projects focusing on the private sector and aimed at collecting anonymised data on the gender-based problems addressed and actively involve businesses in supporting pay transparency and flexibility in the work environment, including gender diversity and inclusion.

III. ON THE VIOLATION OF ARTICLE 4 § 3 OF THE CHARTER AND ARTICLE 1.C OF THE 1988 ADDITIONAL PROTOCOL ON THE GROUND THAT JOB COMPARISONS ARE NOT ENABLED IN PRACTICE

3.1 PROPOSAL FOR A DIRECTIVE ON PAY TRANSPARENCY

The proposal for a Directive on Pay Transparency includes Article 16a dealing with the procedure for comparing the nature and value of work. Since this provision was added to the draft later, the relevant ministries and the Confederation of Industry are currently discussing the position of the Czech Republic. The Office of the Government is urging that the Czech Republic support the provisions in the draft directive.

3.2 ACTION PLAN FOR EQUAL PAY

As part of the inter-ministerial consultation over the Action Plan, discussions will take place on the inclusion and form of measures extending the possibility to compare jobs in more than one company.

3.3 DOMESTIC COURT DECISIONS IN A CASE INVOLVING REGIONAL PAY DIFFERENCES

The domestic courts have recently considered a case concerning pay discrimination against employees based on their place of work. It involved a situation where drivers of the *Česká pošta* postal service in Prague were better paid than drivers elsewhere. The case did not involve gender-based discrimination, but it is an important piece of domestic case law in the area of broadening the comparison of jobs for the purposes of considering pay discrimination across regional branches of one and the same company.

On 20 July 2020 the Supreme Court decided (no. 21 Cdo 3955/2018-228) in favour of an employee who claimed that he had been discriminated against. The Supreme Court acknowledged in the reasoning of the judgment that the socio-economic situation in the region logically influence the labour market both on the supply side and the demand side. In places where supply is greater on the labour market, employers offer better employment conditions, including better pay. According to the Supreme Court, however, this does not justify the conclusion that the principle of equal treatment is upheld in relation to the pay of employees working for one and the same employer where they are performing comparable work in different regions of the Czech Republic, even in cases where these employees are paid different remuneration to take account of the socio-economic situation in the region in which they are working. Section 104 of the Labour Code provides an exhaustive list of criteria for determining the difficulty of working conditions and links these exclusively to the internal conditions in which the work is performed. It stipulates that work conditions shall be assessed according to the work regimes resulting from the distribution of working time, for example, into shifts, days off, night work or overtime, according to harmfulness or the difficulties associated with the negative effects of the working environment and according to the levels of risk in the working environment. In the opinion of the Supreme Court, therefore, with regard to the principle of equal pay, the socio-economic conditions and the corresponding cost of living in the place where employees are performing their work are not material for assessing whether a specific case involves equal work or work of equal value.

The findings of the Supreme Court were upheld by the Constitutional Court (decision of 31 August 2021, no. I.ÚS 2820/20), which rejected *Česká pošta's* constitutional appeal.

IV. ON THE VIOLATION OF ARTICLE 1.C OF THE 1988 ADDITIONAL PROTOCOL ON THE GROUND THAT THERE HAS BEEN INSUFFICIENT MEASURABLE PROGRESS IN PROMOTING EQUAL OPPORTUNITIES BETWEEN WOMEN AND MEN IN RESPECT OF EQUAL PAY

4.1 CURRENT DEVELOPMENTS IN THE GENDER PAY GAP

According to the data from the Czech Statistical Office (“CZSO”) the gap between the average hourly pay of men and women (working full-time without leave) in 2020 fell year-on-year from 18.0% to 15.9%. According to the CZSO, the GPG shrank mainly due to pay increases in feminised sectors such as health, social services and education.

4.2 GENDER EQUALITY STRATEGY FOR 2021–2030

Chapter 1 of the Strategy is devoted to work and care. This part includes a separate strategic objective no. 3, entitled “*Reducing the gender pay gap*”. It is made up of seven specific objectives containing 18 measures (we list the most important of these in the following):

- Objective 3.1: reducing the level of gender segregation within fields of study,
 - indicator no. 1: the proportion of women in STEM fields at university increases from 16.9% to 25%,
 - indicator no. 2: the proportion of women IT fields and digital agenda rises from 11.3% to 17.5%,
 - indicator no. 3: the proportion of men in medical, teaching and social fields at university increases from 23.7% to 27.5%;
- Objective 3.2: ensuring a systematic, comprehensive and long-term solution to the issue of the gender pay gap,
 - measure 3.2.1: adopting an action plan to address the gender pay gap
 - measure description: approving an Equal Pay Action Plan, following up on, developing and expanding the activities of the 22% TO EQUALITY project,
 - criteria and time limit for implementation: action plan to be submitted by 31 December 2021,
 - body responsible: the MLSA,
 - cooperating entity: Office of the Government;
- Objective 3.3: reducing the occurrence of direct gender-based wage/pay discrimination,
 - indicator no. 1: the gap in the average pay of women and men performing work of equal value for the same employer falls from 11% to 6%,
 - measure 3.3.1: motivating employers to adopt comprehensive measures to eliminate direct pay discrimination and supporting pay transparency, e.g. by using the Czech version of the Logib tool,
 - criteria and time limit for implementation: calls issued in the period from 31 December 2021 to 31 December 2030,
 - body responsible: the MLSA;
 - indicator no. 2: assessment of the chance of victim discrimination to assert their rights (“easy”) increases from 15% to 25%,

- measure 3.3.2: supporting awareness activities in order to increase public awareness of the legal means of protection against pay discrimination,
 - criteria and time limit for implementation: calls issued in the period from 31 December 2021 to 31 December 2030,
 - body responsible: the MLSA;
- measure 3.3.3: expanding the offer of education on gender-based wage/pay discrimination at the Judicial Academy
 - criteria and time limit for implementation: inclusion of training activities in the period from 31 December 2022 do 31 December 2030,
 - body responsible: Ministry of Justice;
- Objective 3.4: ensuring continual rising of wages and salaries in feminised professions,
 - measure 3.4.1: adopting a concept by the end of 2022 for increasing wages/salaries in feminised sectors (education, health, social services etc.),
 - bodies responsible: the MLSA, Ministry of Health and Ministry of Education, Youth and Sports;
- Objective 3.5: increasing the capacity of the State Labour Inspection Office to monitor compliance with the prohibition of gender-based wage/pay discrimination,
 - measure 3.5.1: including inspections focused on equal pay (and non-disclosure clauses) in annual inspection plans and providing methodological support to the State Labour Inspection Office and support for using Logib during inspections,
 - measure description: The State Labour Inspection Office conducts at least 50 inspections a year on equal pay,
 - criteria and time limit for implementation: inspections performed in the period from 31 December 2022 to 31 December 2030,
 - body responsible: the MLSA;
 - measure 3.5.2: setting up an expert group on equal pay at the State Labour Inspection Office,
- Objective 3.6: reducing the gender pay gap in the public sector,
 - indicator: difference in median pay gap between women and men in the public sector shrinks from 16% to 10%,
 - measure 3.6.1: thoroughly analysing the potential impact in relation to pay inequality when adjusting salaries in the public sector,
 - criteria and time limit for implementation: evaluation performed in the period from 31 December 2021 to 31 December 2030,
 - body responsible: Ministry of Finance,
 - cooperating entities: all Ministries;
 - measure 3.6.2: adopting targeted measures to reduce the gender pay gap and supporting pay transparency, e.g. by using the Czech version of Logib,
 - measure description: adopting pay equality action plans. Supporting, under the Employment Plus Operational Programme, projects

- measure description: the annual reports will contain large amounts of detailed information, e.g. the grounds for selecting firms to check on, more detailed information on their characteristics, information on alleged discrimination-related grounds, the fines imposed in individual cases, information on non-disclosure clauses,
 - time limit for implementation: 2023,
 - body responsible: the MLSA and State Labour Inspection Office,
 - specific objective 2.3: reducing the number of employees who have a non-disclosure clause in respect of pay,
 - measure 2.3.1: checking for the presence of and analysing any non-disclosure clauses in the contracts and clauses of entities being inspected,
 - measure description: focussing all equal pay inspections on the existence of non-disclosure clauses. Introducing a method guideline that will establish a procedure for labour inspections where there are non-disclosure clauses, before amending the Labour Code,
 - time limit for implementation: 2023,
 - body responsible: State Labour Inspection Office;
 - specific objective 2.4: understanding and identifying equal work and work of equal value,
 - measure 2.4.1: creating methodologies for assessing and comparing the value of work, equal work and work of equal value in accordance with the Labour Code, stating specific examples, criteria and procedures in the area of equal pay,
 - measure description: developing and making widely available methodologies for assessing and comparing the value of work based on specific and objective criteria that are neutral in terms of gender and in three variants: 1. for the labour inspectorates, 2. for employers, 3. for employees and trade unions. Measure based on Article 4 of the draft Pay Transparency Directive,
 - time limit: 2023,
 - body responsible: the MLSA;
 - specific objective 2.5. strengthening the sanction mechanisms,
 - measure 2.5.1: revising the sanction mechanisms to be applied for violations of rights and obligations related to paying women and men the same for work of equal value. The aim of the sanction mechanisms will be to support the deterrent effect for employers who act unlawfully and to motivate them to comply with their obligations proactively;
 - time limit for implementation: 2026,
 - body responsible: the MLSA and State Labour Inspection Office;
- Strategic objective 3: remuneration in the public sector and institutional securing of equal pay,

- specific objective 3.2: reducing the pay gap in the public sector,
 - measure description: The working group for the Action Plan, in cooperation with relevant unions/departments of the MLSA: 1) will prepare a methodology for acknowledgement of relevant practical experience, 2) create a methodology for remuneration in the public administration, 3) propose a detailed model of an internal/service regulation for the 'non-tariff' elements of pay, which will be distributed to the relevant institutions, and especially those where service evaluations are not carried out; 4) the Ministry of Finance will reassess the volume of resources received for pay at individual institutions and organisations in relation to the number of employees in the public administration with a view to reducing differences between similar institutions and organisations, and this will subsequently be incorporated into the state budget,
 - time limit: 2022 to 2026,
 - bodies responsible: the MLSA and Ministry of Finance;
- specific objective 3.4: strengthening the role of the equality body in relation to the gender pay gap,
 - criteria and time limit for implementation: from 2026, the Office of the Public Defender of Rights will play the role following from Article 25 (Equality bodies) of the draft Pay Transparency Directive,
 - body responsible: Office of the Government;
- specific objective 3.5: greater specialisation of courts,
 - criteria and time limit for implementation: creating specialised benches at regional courts, by 2026,
 - body responsible: Ministry of Justice;
- Strategic objective 4: culture and education,
 - specific objective 4.2: raising awareness among primary school pupils of the issues of gender inequality and discrimination and segregation on the labour market,
 - specific objective 4.3: eliminating gender inequality in selection procedures at secondary schools and universities,
- Strategic objective 5: work-life balance,
 - specific objective 5.2: eliminating legal obstacles to a faster return to the labour market by parents (especially mothers) of young children,
 - measure 5.2.2: extending the employers' obligation to keep the original job and workplace for a parent on parental leave until the child reaches two years of age,
 - measure description: amending section 47 of the Labour Code so that employers must reinstate (male and female) employees to their original jobs and workplaces not only on return from maternity leave but also on return from parental leave until the child reaches two years of age,
 - time limit: 2026,

- body responsible: the MLSA;
 - specific objective 5.5: indexation of pay on return from maternity or parental leave,
 - measure 5.5.1: encouraging, through awareness raising and inspections, a more consistent application of the principle of equal pay for equal work or work of equal value, especially through employers comparing the pay of (male and female) employees on return from maternity or parental leave (pay indexation) with the pay of other employees,
 - time limit: 2026,
 - body responsible: the MLSA;
 - specific objective 5.6: removing barriers to flexible working conditions for all, especially parents and carers,
 - measure 5.6.1: introducing an obligation to document in writing requests for flexible forms of work and to deliver written decisions on agreeing/rejection, including proper argumentation,
 - measure description: amending the Labour Code so that it: 1) lays an obligation on employees to formulate written requests for the adjustment of working hours or a change of workplace (work from home), 2) lays an obligation on employers to formulate written decisions on the approval/rejection of requests for a change to the hours or place of work, 3) clearly sets out the particulars of the requests and the decisions, including the time limits within which employers must respond,
 - time limit: 2026,
 - body responsible: the MLSA and State Labour Inspection Office;
- Strategic objective 6: making data available,
 - specific objective 6.1: institutionalising and centralising the administration of data in order to increase the availability of high-quality data for analyses of the GPG and the factors influencing it,
 - specific objective 6.2: increase government inspections of the collection and use of data and improving data availability,

4.4 PROPOSAL FOR A DIRECTIVE ON PAY TRANSPARENCY

The Czech Republic actively and constructively contributes to the negotiation of the directive on pay transparency. The directive is intended to help EU Member States to adopt appropriate measures aimed at reducing the GPG.

4.5 THE “22% TO EQUALITY” PROJECT

4.5.1 RESEARCH AND ANALYSIS

As part of the aforementioned *22% TO EQUALITY* project, research and analyses have been carried out bringing new input on the causes of unequal pay. This has formed the basis, among other things, of measures aimed at reducing the gender pay gap. It has included in particular *What to do about the GPG from a macroeconomic perspective [Jak na GPG z pohledu makroekonomie]* (2021), a

macroeconomic analysis carried out by Deloitte Advisory; *What we know about the gender pay gap [Co víme o rozdílech ve výdělcích žen a mužů]* (2020), a round-up of published studies; *Legislative options for equal pay [Legislativní možnosti rovného odměňování žen a mužů]* (2020), a comprehensive analysis in cooperation with Deloitte Advisory; *Tracing the causes of unequal pay [Po stopách nerovné odměny]* (2020), a qualitative study in cooperation with Deloitte Advisory; *Promoting equal opportunities on the labour market within the work of the Labour Office [Podpora rovných příležitostí žen a mužů na trhu práce v rámci činnosti Úřadu práce]* (2021), a methodological guide; and *Instructions for working with the symmetrised CZ-ISCO catalogue [Návod k práci se symmetrizovaným katalogem CZ-ISCO]* (2021).

A further two economic studies will be published by the end of 2021: F. Pertold, M. Šoltés: *Analysis of the impact of parenthood on the taxation of work using the TAXBEN model [Analýza dopadu rodičovství na danění práce pomocí TAXBEN modelu]*; and K. Kalíšková, D. München: *Analysis of the impacts of the (un)availability of kindergarten places on women's participation in the labour market [Analýza dopadů (ne)dostupnosti míst v mateřských školách na participaci žen na trhu práce]*.

4.5.2 EDUCATION AND AWARENESS CAMPAIGN

The objective of the awareness raising campaign is to influence a broad range of target groups and draw attention to the complexity of the gender pay gap issue. The campaign also seeks to raise awareness of this phenomenon and to make it more visible in society. Last but not least, it aims to mobilise the target groups in order to reduce the gender pay gap and increase pay transparency. In the campaigns implemented to date helped to establish very constructive cooperation with various actors and to positively influence public opinion.

4.6 GRANT PROGRAMMES

The grants to promote equal opportunities also include support for diversity, flexibility and inclusion on the labour market. In this area, support will go to:

- piloting and evaluating measures to reduce gender segregation in fields of study, the broadening out of which will in the long term lead to less horizontal segregation of the labour market;
- introducing flexibility and the management of maternity and parental leave into corporate processes and corporate culture with the aim of enabling, at a company level, a work-life balance for all employees and also, through changes in corporate culture, allowing men to play a greater role in caregiving. The measures were introduced in response to a sharp drop in employment and an associated drop in income particularly for women caring for young children. The aim of the measure is to set up mutually beneficial cooperation between employers and parents who are on maternity or parental leave and to enable parents to return to work quickly and without any problems;
- changes to corporate culture and processes with a view to increasing gender diversity and work team inclusivity. Employers will create the conditions for increasing the number of women in their company's management by analysing the initial situation in the company, adapting their processes – especially in the field of recruitment, appraisal and career development – and emphasising an inclusive work environment, thereby eroding vertical segregation at the company over the long term and, ultimately, on the labour market.

V. ON THE VIOLATION OF ARTICLE 1.D OF THE 1988 ADDITIONAL PROTOCOL BECAUSE THERE HAS BEEN INSUFFICIENT PROGRESS IN ENSURING A BALANCED REPRESENTATION OF WOMEN IN DECISION-MAKING BODIES WITHIN PRIVATE COMPANIES

5.1 GENDER QUALITY STRATEGY FOR 2021-2030

The Strategy includes, in Chapter 2 “*Decision-making*”, strategic objective no. 1 on increasing the representation of women in decision-making positions. One important specific objective is specific objective no. 1.5 *Increasing the representation of women in statutory bodies and upper management of corporations*, which includes the following five measures:

- 1.5.1 ensuring through methodological support and updating of the relevant manual that companies inform on implementation of their diversity policy in line with Act No 256/2004, on capital market undertakings, including identifying good practice;
- 1.5.2 submitting to the government, by the end of 2023, amendments to the Nomination Act and the Business Corporations Act which introduce a provision to promote the equal representation of women and men in the management and supervisory bodies of business corporations;
- 1.5.3 organising workshops for the Nominating Committee and nominating ministries on the issue of equal representation of women and men in decision-making positions representing the state on the supervisory boards of corporations with a state ownership interest;
- 1.5.4 carrying out awareness-raising activities attended by business corporations with a state ownership interest and private companies in order to share good practice and promote cooperation; and
- 1.5.5 issuing specific calls under the specific objective of Operational Programme Employment+ for the application of diversity in the workplace and support for the balanced representation of women and men in corporations. The calls will serve as one of the tools for combating discrimination and vertical and horizontal segregation on the labour market, and for promoting a better work-life balance, including sufficient capacity of available childcare services.

Another important specific objective is specific objective no. 1.6 *Increasing awareness of persons in current decision-making positions in the field of business*, which includes the following two measures:

- 1.6.1 supporting awareness-raising activities focused on corporate management; a
- 1.6.2 taking part in private-sector initiatives to promote diversity.

In June 2021, at a meeting of the Committee for balanced representation of women and men of the Government Council for Gender Equality, a discussion was initiated with the Ministry of Justice to adopt legislative changes to promote the balanced representation of women and men in governing (statutory) bodies and senior management of commercial companies. It was agreed that support for the gender balance among management and supervisory bodies under the Business Corporations Act would be a part of a broader legislative amendment also addressing other measures set out in the Strategy. It is due to be drawn up in 2022. A working group comprised of representatives of the Committee, the Office of the Government and the Ministry of Justice is currently being formed in order to prepare the legislative work. The first meeting of the working group will take place in January 2022.

5.2. PROPOSAL OF A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON IMPROVING THE GENDER BALANCE AMONG NON-EXECUTIVE DIRECTORS OF COMPANIES LISTED ON STOCK EXCHANGES AND RELATED MEASURES

The Czech Republic supports the proposal of a directive on the gender balance. The proposal is also expected to be discussed in the first half of 2022.

CONCLUSION

The Czech Republic has taken account of the conclusions of the ECSR decision and the recommendations of the Council of Ministers and is addressing them in detail. It sees the gender pay gap, including the lack of pay transparency and the unequal representation of women and men as company managers as a serious and complex problem, and has long been committed to solving it.

In the period since the adoption of the decision in *UWE v. the Czech Republic* there has already been some limited progress, mainly in reducing the GPG and adopting the Strategy, a comprehensive strategic document containing a range of ambitious measures.

The Czech Republic is nonetheless aware that it is not enough just to adopt policies, and that implementation is key. It will therefore intensively work towards the adoption and implementation of the Action Plan and implementation of the Strategy in the near future. At the European level, it will promote a constructive approach to the negotiation of the Pay Transparency Directive proposal and it will continue to support its adoption.

In conclusion, it can be stated that the Czech Republic is aware that the ECSR's decision has not yet been fully implemented. However, it is convinced that the adoption of the abovementioned measures will lead to the fulfilment of the rights that the ECSR found to have been violated in *UWE v. Czech Republic*.