COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

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GENERAL OVERVIEW QUESTIONNAIRE

COUNTRY PROFILE QUESTIONAIRE

THE CZECH REPUBLIC

COUNCIL OF EUROPE CONVENTION AGAINST TRAFFICKING IN HUMAN ORGANS

As adopted by the Santiago de Compostela Committee
in Plenary meeting
on 25-26 October 2023

Replies should be addressed to the Committee Secretariat
by **3rd May 2024**
(**organtrafficking@coe.int**)

Document prepared by the Committee of the Parties' Secretariat
Directorate General I – Human Rights and Rule of Law

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I. INTRODUCTION

1. The Council of Europe Convention against Trafficking in Human Organs[1] (hereinafter "the Santiago de Compostela Convention" or "the Convention"), which entered into force in March 2018, requires criminalisation of illicit removal of human organs, the use of illicitly removed organs for purposes of implantation or other purposes than implantation, illicit solicitation, recruitment, offering and requesting of undue advantages and preparation, preservation, storage, transportation, transfer, receipt, import and export of illicitly removed human organs. The Convention provides a framework for national and international co-operation across the different sectors of the public administration, measures for coordination at national level, preventive measures at domestic and international level and protection of victims and witnesses. Furthermore, it foresees the establishment of a monitoring body to oversee the implementation of the Convention by the States Parties.

2. The Committee of the Parties to the Convention (also known as the "Santiago de Compostela Committee" or "the Committee of the Parties), established to monitor whether Parties effectively implement the Convention, decided that:

> *1. Following ratification and within six months from the entry into force of the Santiago de Compostela Convention in respect of the Party concerned, every Party to the Convention shall be required to reply to a questionnaire aimed at providing the Santiago de Compostela Committee with a general overview of the legislation practice, institutional framework and policies for the implementation of the Convention at the national, regional and local levels. Thereafter, the Parties should regularly inform the Santiago de Compostela Committee of any substantial changes to the situation described in their replies to the General Overview Questionnaire.*
>
> *2. States having signed the Convention shall be invited to reply to the questionnaire referred to in paragraph 1 of this rule.*
>
> *3. The secretariat shall compile the replies received and make them public on the Committee's website[2].*

3. In accordance with Rule 27 of the Committee's Rules of Procedure:

> *"(…)*
>
> *2. The secretariat shall address such questionnaires to the Parties through the member in the Santiago de Compostela Committee representing the Party to be monitored and who will act as "contact point".*
>
> *3. Parties shall coordinate with their respective domestic authorities to collect replies, which shall be submitted to the secretariat in one of the official languages of the Council of Europe within the time limit set by the Santiago de Compostela Committee. The replies shall be detailed, as comprehensive as possible, answer all questions and contain all relevant*

[1] *Council of Europe Convention against Trafficking in Human Organs* (CETS No. 216), Santiago de Compostela, 25/03/2015.
[2] Santiago de Compostela Committee's Rules of Procedure, Rule 25.

reference texts. The replies shall be made public, unless a Party makes a reasoned request to the Santiago de Compostela Committee to keep a reply confidential.

4. The Santiago de Compostela Committee may also receive information on the implementation of the Convention from non-governmental organisations and civil society involved in preventing and combating trafficking in human organs, in one of the official languages of the Council of Europe and within the time-limit set by the Santiago de Compostela Committee. The secretariat transmits these comments to the Party(ies) concerned.

5. The secretariat may request additional information if it appears that the replies are not exhaustive or are unclear. Where warranted, with the consent of the Party or Parties concerned and within the limits of budgetary appropriations, the Bureau may decide to mandate an on-site visit in the Party or Parties concerned to clarify the situation. The Bureau shall establish guidance as to the procedure governing the on-site visits pending any official guidelines agreed by the Santiago de Compostela Committee.

4. The purpose of this general questionnaire is to collect information to provide the Committee of the Parties with an overview of the situation, which will constitute the general framework within which it will assess replies by Parties to the thematic questionnaire for the first monitoring round (see Rule 25 of the Committee's Rules of Procedure).

II. PRELIMINARY REMARKS

5. The provisions of the Santiago de Compostela Convention have been grouped under different sections in this questionnaire without necessarily following the structure of the Convention. This methodological choice in no way intends to prioritise the various provisions of the Convention: equal importance is attached to all rights and principles therein.

6. Parties will be invited to update their replies to this Country Profile Questionnaire when they will receive the next thematic monitoring questionnaire. Responses to a thematic questionnaire should therefore be interrelated and combined with the responses provided in the context of this questionnaire.

7. Parties are kindly requested to:

   - answer the questions with regard to central, regional and local levels to the extent possible. Federal states may, in respect of their sovereign entities, answer the questions in a summarised way;

III. GENERAL LEGAL FRAMEWORK AND ALIGNMENT OF THE CONVENTION

Question 1: Non-discrimination

Is discrimination, on grounds such as the ones mentioned in the indicative list in Article 3, prohibited in the implementation of the Convention, in particular in the enjoyment of the rights guaranteed by it? If so, please specify.

The prohibition of discrimination is enshrined in the Czech legal system at the constitutional level in the Charter of Fundamental Rights and Freedoms (resolution No. 2/1993 Coll.).

Article 3 of the Charter stipulates that everyone is guaranteed the enjoyment of their fundamental rights and basic freedoms without regard to sex, race, colour of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national or ethnic minority, property, birth, or other status. Similarly, European Convention on Human Rights and International Covenant on Civil and Political Rights enshrine the prohibition of discrimination.

At the statutory level, the above-mentioned international and constitutional obligations are reflected in particular in the Anti-Discrimination Act (Act No. 198/2009 Coll.). In the area of victims of crime, the prohibition of discrimination is stipulated in Section 3 para. 3 of the Victims of Crime Act (Act No. 45/2013 Coll.).

Article 3 of the Victims of Crime Act says:

(3) The victim is entitled to rights according to this Act regardless of race, ethnic origin, nationality, gender, sexual orientation, age, disability, religious belief, faith or world view. Victims are entitled to rights according to this Act regardless to their national citizenship if this Act does not determine otherwise.

Question 2: Overview of the implementation

Please indicate (without entering into details):

a. **the main legislative or other measures to combat against the trafficking in human organs in accordance with the Convention;**

- Criminal Code (Act. No. 40/2009 Coll.)
- Act on Donation, Collection and Transplantation of Tissues and Organs and Amendments to Certain Acts (Transplantation Act) (Act No. 285/2002 Coll.)
- Criminal Procedure Code (Act No. 141/1961 Coll.)
- Act on Criminal Liability of Legal Entities (Act No. 418/2011 Coll.)
- Victims of Crime Act (Act No. 45/2013 Coll.)
- Act on International Judicial Cooperation in Criminal Matters (Act No. 104/2013 Coll.)

b. whether your country has adopted a national strategy and/or Action Plan to combat against the trafficking in human organs. If so, please specify the main fields of action and the body/bodies responsible for its/their implementation;

NO, the Czech Republic has not yet adopted any national strategy and/or Action Plan to combat the trafficking in human organs.

Since the criminal activity consisting of trafficking in human organs has not, according to the statements of law enforcement authorities as well as other competent entities, occurred in the territory of the Czech Republic for many years, such a specifically focused strategic document is yet to be created.

Nevertheless, it is worth noting that the Government of the Czech Republic continuously approves and evaluates a 4-year long national strategy focused on the fight against human trafficking. The currently still valid National Strategy for Combating Human Trafficking for the period 2020–2023 (its duration is being extended) is available online on the official website of the Ministry of Interior under the following link: https://www.mvcr.cz/soubor/narodni-strategie-boje-proti-obchodovani-s-lidmi-v-cr-na-obdobi-2020-2023-pdf.aspx.

c. If there has not been any adoption of a national strategy and/or Action Plan to combat against the trafficking in human organs, whether there is a strategy and /or Action Plan by a particular Ministry or State Agency that leads on this nationally.

NO, please see the previous answer.

d. Regarding compliance with the content of the Convention, does your country's domestic law comply with the concepts of:

- **"trafficking in human organs" (Article 2)**

YES. Section 2 of the Transplantation Act and Division 5 of Chapter I, Part Two of the Criminal Code stipulate criminal offenses connected to the illicit disposal of human tissues and organs, human embryo and human genome (for more information please see the answer to Q5).

- **"human organ" (Article 2)**

YES. Section 2 of the Transplantation Act.

- **"financial gain or comparable benefit" (Article 4)**

YES. Division 5 of the Criminal Code, which stipulates criminal offenses connected to the illicit disposal of human tissues and organs, human embryo and human genome (for more information please see the answer to Q5).

e. **Does your legal system provide the compensation for an organ donation (Article 4 para. 3)? If so, which concepts are legally included in the term "compensation"?**

YES. Donors of an organ shall receive compensation of effectively and demonstrably expended costs as well as of a remainder between lost income and received compensation of wage, salary or remuneration and received sickness benefits paid from social security arising in relation to the temporary sick leave due to procurement of organ and health services provided.

f. **Does your legal system provide for the possibility that persons without the capacity to decide may donate organs? If so, under what conditions, circumstances and requirements?**

From donors who are minors, persons with limited legal competence or legally fully incompetent persons, or persons who have expressed their consent to the donation but, with regards to their current medical condition, it can be reasonably presumed that despite full advice they did not, or could not, assess all consequences relating to procurement of regenerative tissue for their own health.

If not stipulated otherwise, procurement of regenerative tissue may only be performed, provided if:

a) there is no other suitable donor available, being able to give his/her explicit and concrete consent,
b) the recipient is the donor's sibling,
c) the donation represents a possibility of saving the recipient`s life,
d) a legal representative of the donor who is a minor or a legally incompetent person has given his/her consent to the donation in accordance with Article 7, para. 4 of the Transplantation Act (Act. No 285/2002 Coll.),
e) the Ethical Committee has approved this particular donation in accordance with,
f) the donor has not objected to the donation.

Question 3: National co-operation and information exchange

a. **Please describe how co-operation and exchange of information is ensured between representatives of health authorities, law-enforcement (e.g. police) and other competent authorities in order to prevent and combat effectively the trafficking in human organs (Article 21, para. 1 letter (c));**

Cooperation and exchange of information between representatives of health authorities and law enforcement authorities is ensured during the investigation of specific criminal activity according to Section 8 of the Criminal Procedure Code. Further exchange of information takes place on a general level by sharing statistical outputs, etc.

b. Which legislative or other structured measures have been taken to set up or ensure:

- **the existence of a transparent domestic system for the transplantation of human organs (Article 21 para. 1 letter (a));**
- **equitable access to transplantation services for patients (Article 21 para. 1 Letter (b));**
- **adequate collection, analysis and exchange of information related to the offences covered by the Convention (Article 21 para. 1 letter (c));**

The Transplantation Act (Act. No 285/2002 Coll.).

c. Please indicate the healthcare professionals and relevant officials (including police, legal professionals) as well as civil society in the prevention of and combat against trafficking in human organs. Please indicate how healthcare professionals and relevant officials (including police, legal professionals) are trained for this purpose and how resources are secured for them (Article 21, para. 2);

The new Criminal Code in Section 368 expands the list of crimes that every citizen, including a health professional, is obliged to report without undue delay to the police or the public prosecutor's office if he learns credibly that the crime mentioned in this provision has been committed.

If a health professional has reasonable suspicion that a person is a victim of human trafficking (e.g., injuries, signs of physical or sexual abuse, fear or suspicious behaviour), he should ensure that the person is not exposed to further danger and provide him with immediate medical care and, if necessary, consultation with a psychologist or a sexologist. The health professional should work with social workers or other organizations dealing with victims of human trafficking to provide the necessary help and support. These organizations have expertise and experience in working with victims of human trafficking.

The health professionals must respect the duty of confidentiality and privacy of the victim and act in accordance with the applicable ethical and legal requirements in their area of expertise.

d. Please describe how campaigns about the unlawfulness and dangers of trafficking in human organs are promoted ((Article 21, para. 2 letter (b));

The specific topic of victims of human trafficking is not yet included in the education of healthcare workers, but similar topics such as torture, violence, social and legal protection, etc. are included. We also deal with the issue of violence in the lifelong education of healthcare workers, the current offer of the Institute of Postgraduate Education in Healthcare (IPVZ) is now a Domestic violence, Course - violence, victimization and suicide.

Furthermore, an extraordinary webcast Istanbul Protocol: principles of procedures and activities of health professionals when detecting signs of ill-treatment (violence, abuse, torture) took place.

Given that the criminal activity consisting in trafficking in human organs has not occurred in the territory of the Czech Republic in many years, preventive campaigns or separate educational programs for police officers are yet to be created. As part of the issue of human trafficking, several preventive educational activities are being implemented, including a training system for all police officers involved in this area.

As for campaigns focused on the general public, the Ministry of Interior together with the Police, the non-governmental organization La Strada and other stakeholders prepare many preventative campaigns focused on human trafficking, its dangers, various forms and unlawfulness. And even though, those campaigns are not specifically focused on promoting the dangers and unlawfulness of trafficking in human organs they help to raise the awareness and bring the topic of human trafficking for various purposes to the attention of the general public. Helping the people to understand the potential dangers and giving them an idea of where to go if they are being victimized.

e. Is prohibited any advertisement of the need for, or availability of human organs, with a view to offering or seeking financial gain or comparable advantage? (Article 21, para. 3);

YES, it is prohibited in the Czech Republic.

Question 4: International cooperation

a. Please indicate the national contact point responsible for the exchange of information pertaining to trafficking in human organs (Article 22, letter (b)).

Koordinační středisko transplantací – Coordination Centre for Transplantation
Ruská 85
Prague 10, 100 00
Phone: +420 736 623 603
Email: info@kst.cz

b. Please, indicate the national authorities involved in the fight against organ trafficking and their contact details.

The specialized police unit that deals with the investigation of organized crime, including human trafficking, is the National Organized Crime Agency SKPV (address: PO BOX 41/NCOZ, 15680 Prague 5 – Zbraslav, phone: +420 974 842 683, email: epodatelna.policie@pcr.cz).

IV. PROSECUTION OF PERPETRATORS OF TRAFFICKING IN HUMAN ORGANS

Question 5: Criminal Law offences

a. Please indicate whether the intentional conducts in the box below are considered criminal offences in internal law.

- **Article 4 – sections 164, 165, 166 and 168 Criminal Code**
- **Article 5 – section 164 para. 2 and section 165 para. 2 Criminal Code**
- **Article 7 – section 164 para. 2, section 165 para. 2, section 168 Criminal Code. In conjunction with section 24 Criminal Code, the person of an intermediary who acts as an organizer or instigator will also be criminalized.**
- **Article 7 para.2 and 3 – section 166 Criminal Code**
- **Article 8 – sections 164 and 165 Criminal Code**
- **Article 9 – sections 21, 23, 24 Criminal Code**

Section 164 Criminal Code - Unauthorized Extraction of Tissues and Organs

(1) Whoever performs extraction of tissue, cell or organ from the body of another person contrary to other legal regulations, will be sentenced to imprisonment for two to eight years.
(2) The same sentence will be imposed to a anyone who contrary to other legal regulations for himself or for another obtains, mediates, offers, imports, exports or transits human tissue, cell or organ withdrawn from the body of a living human, or in other ways disposes with such tissue, cell or organ.
(3) An offender will be sentenced to imprisonment for five to twelve years or to confiscation of assets, if he

a) commits the act referred to in sub-section (1) or (2) on a child,
b) commits such an act with the use of violence, threat of violence or threat of another grievous injury,
c) commits such an act while abusing distress or dependency of another person,
d) commits such an act on at least two persons,
e) commits such an act repeatedly,
f) commits such an act as a member of an organized group,
g) causes grievous bodily harm by such an act, or
h) gains substantial profit for himself or for another by such an act.

(4) An offender will be sentenced to imprisonment for eight to sixteen years or to confiscation of assets, if he

a) commits the act referred to in sub-section (1) or (2) on a child under fifteen years or age,
b) commits such an act in connection to an organized group active in several states,
c) causes death by such an act, or
d) gains for himself or for another extensive profit by such an act.

(5) Preparation is criminal.

Section 165 Criminal Code - Illicit Disposal with Human Tissues and Organs

(1) Whoever contrary to another legal regulation extracts tissue, cellule or an organ from the body of a dead person, will be sentenced to imprisonment for up to two years or to prohibition of certain activity.
(2) The same sentence will be imposed to anyone who contrary to another legal regulation disposes with extracted human tissue, cellule or human organ with the intention to obtain profit for himself or for another.
(3) An offender will be sentenced to imprisonment for one year to five years or to confiscation of assets if he
a) commits the act referred to in sub-section (1) or (2) repeatedly,
b) commits such an act as a member of an organized group, or
c) gains for himself or for another substantial profit by such an act.
(4) An offender will be sentenced to imprisonment for two to eight years or to confiscation of assets if he
a) gained for himself or for another extensive profit by the act referred to in sub-section (1) or (2), or
b) commits such act in connection with organized group operating in several states.

Section 166 Criminal Code - Extraction of Tissue, Organ and Performing a Transplant for a Fee

(1) Whoever contrary to another legal regulation offers, promises, or provides a fee to another or for another for performing extraction of tissue or organs from their body, or for performing a transplant, will be sentenced to imprisonment for up to five years.
(2) The same sentence will be imposed to anyone who by himself or through someone else contrary to another legal regulation requests, accepts, or accepts a promise of a fee in connection to extraction of tissue or organs or performance of a transplant for himself or for another.
(3) An offender will be sentenced to imprisonment for three to ten years or to confiscation of assets, if
a) he commits the act referred to in sub-section (1) or (2) as a member of an organized group,
b) grievous bodily harm occurs in connection to such an act, or
c) such an act is committed on a child.

(4) An offender will be sentenced to imprisonment for five to twelve years or to confiscation of assets, if
a) he commits the act referred to in sub-section (1) or (2) as a member of an organized group operating in several states,
b) death occurs in connection with such an act, or
c) c)such an act is committed on a child under fifteen years of age.

Section 168 Criminal Code – Trafficking in Human Beings

(1) Whoever forces, procures, hires, incites, entices, transports, conceals, detains, accepts or hands over a child to be used

a) by another for sexual intercourse or other forms of sexual abuse or harassment, or for production of pornographic works,
b) by another for extraction of tissue, cell, or organs from his body,
c) for service in the armed forces,
d) for slavery or servitude, or
e) for forced labor or other forms of exploitation, or who profits on such a conduct, will be sentenced to imprisonment for two to ten years.

(2) The same sentence will be imposed to anyone who forces, procures, hires, incites, entices, transports, hides, detains, accepts or hands over a person other than referred to in sub-section (1) by using violence, threat of violence or other grievous harm or deceit, or by abusing his error, distress, or dependence in order for the person to be used
a) by another for sexual intercourse or other forms of sexual abuse or harassment, or for the production of pornographic works,
b) by another for extraction of tissue, cell, or organs from their body,
c) for service in the armed forces,
d) for slavery or servitude, or
e) for forced labor or other forms of exploitation, or who profits on such conduct.

(3) An offender will be sentenced to imprisonment for five to twelve years or to confiscation of assets if he
a) commits then act referred to in sub-section (1) or (2) as a member of an organized group,
b) exposes another person to a risk of grievous bodily harm or death by such an act,
c) commits such an act with the intention to gain a substantial profit for himself or for another, or
d) commits such an act with the intention to use another person for prostitution.

(4) An offender will be sentenced to imprisonment for eight to fifteen years or to confiscation of assets if he
a) causes grievous bodily harm by the act referred to in sub-section (1) or (2),
b) commits such an act with the intention to gain extensive profit for himself or for another, or
c) commits such an act in connection to an organized group operating in several states.

(5) An offender will be sentenced to imprisonment for ten to eighteen years or to confiscation of assets, if he causes death by the act referred to in sub-section (1) or (2).

(6) Preparation is criminal.

<u>Section 21 Criminal Code - Attempt</u>

(1) A conduct imminently leading to completion of a criminal offense, which has been undertaken by the offender with the intent to commit such an offense, will be considered as an attempt to commit an offense, unless the offense was completed.

(2) Attempt to commit an offense will be punishable according to the term of sentence for the respective completed criminal offense.

(3) Criminal liability for an attempted criminal offense will expire if an offender voluntarily abandoned further conduct leading to the completion of the criminal offense and
a) removed the threat to an interest protected by the Criminal Code which occurred due to the committed attempt, or

b) reported the attempt to commit an especially serious felony at a time the threat to an interest protected by the Criminal Code which occurred due to the committed attempt could still be removed; the report must be made to a public prosecutor or police authority. A soldier may report it to his superior officer.

(4) If there are several persons involved in an act, expiration criminal liability for the attempt is not precluded in case of an offender who acted in such manner, if the act is completed by the other offenders despite his timely reporting or earlier participation in such an act.

(5) The provisions of sub-section (3) and (4) will have no effect on the criminal liability of an offender for any other completed criminal offense which they have committed by their conduct referred to in sub-section (1).

Section 23 Criminal Code - Accomplice

If a crime is committed by joint intentional conduct of two or more persons, each of them will be criminally liable as if they alone had committed the offense (accomplices).

Section 24 Criminal Code – Participant

(1) A participant in a completed offense, or an attempt to commit an offense, is anyone who intentionally

a) plotted or directed commission of a criminal offense (an organiser);
b) instigated another person to commit the criminal offense in (instigator), or
c) enabled or facilitated commission of a criminal offense by another person, in particular by providing the means, removing of barriers, eliciting the aggrieved person to the crime scene, keeping watch during commission of an act, providing advice, encouraging the resolve or promising to participate in a criminal offense (aidor).

(2) Criminal liability and criminality of an act of a participant will be governed by provisions on criminal liability of an offender and criminality of an act, unless this Code stipulates otherwise.

(3) Criminal liability of the participant will expire, if he voluntarily abandons any further participation in commission of a crime and

a) eliminates the threat to an interest protected by this Code arising from his participation in the offense; or
b) reports his attempt at a time when the threat to an interest protected by this Code arising from his participation in the offense could still be eliminated. The report must be made to a public prosecutor or police authority. A soldier may report it to his superior officer.

(4) If there are several persons involved in an act, expiration criminal liability for the participation is not precluded in case of a participant who acted in such manner, if the act is completed by the other offenders despite his timely reporting or earlier participation in such an act.

(5) The provisions of sub-section (3) and (4) will have no effect on the criminal liability of an offender for any other completed criminal offense which they have committed by their conduct referred to in sub-section (1).

b. Do the offences in your internal laws require intentional conduct? If no, please provide information.

YES, for all criminal offences is required intent.

c. Please highlight whether there are any other offences not included in the box below that involves trafficking in human organs in your country? Please provide their definitions and specify in which act these are included.

NO, there are no other offences not included in the box below that involves trafficking in human organs in the Czech Republic.

d. According to the explanatory report para 29 it is left open for Parties to decide whether to apply Article 4, paragraph 1, Articles 5, 7 and 9 to the donor and/or the recipient. Please specify whether your internal law criminalize donors and/or the recipients for these criminal offences. Please explain the reasoning behind the regulation.

All natural and legal persons might be held liable for these criminal offences if they fulfil the conditions of the respective criminal offence. This means that there are no limitations as to who might be held liable for the specific criminal offences, therefore the provisions apply to both the donor and the recipient.

***Article 4* – Illicit removal of human organs**

1 Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the removal of human organs from living or deceased donors:

a where the removal is performed without the free, informed and specific consent of the living or deceased donor, or, in the case of the deceased donor, without the removal being authorised under its domestic law;

b where, in exchange for the removal of organs, the living donor, or a third party, has been offered or has received a financial gain or comparable advantage;

c where in exchange for the removal of organs from a deceased donor, a third party has been offered or has received a financial gain or comparable advantage.

(…)

Article 5 – Use of illicitly removed organs for purposes of implantation or other purposes than implantation

Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the use of illicitly removed organs, as described in Article 4, paragraph 1, for purposes of implantation or other purposes than implantation.

Article 7 – Illicit solicitation, recruitment, offering and requesting of undue advantages

1. Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the solicitation and recruitment of an organ donor or a recipient, where carried out for financial gain or comparable advantage for the person soliciting or recruiting, or for a third party.

2. Each Party shall take the necessary legislative and other measures to establish as a criminal offence, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to healthcare professionals, its public officials or persons who direct or work for private sector entities, in any capacity, with a view to having a removal or implantation of a human organ performed or facilitated, where such removal or implantation takes place under the circumstances described in Article 4, paragraph 1, or Article 5 and where appropriate Article 4, paragraph 4 or Article 6.

3. Each Party shall take the necessary legislative and other measures to establish as a criminal offence, when committed intentionally, the request or receipt by healthcare professionals, its public officials or persons who direct or work for private sector entities, in any capacity, of any undue advantage with a view to performing or facilitating the performance of a removal or implantation of a human organ, where such removal or implantation takes place under the circumstances described in Article 4, paragraph 1 or Article 5 and where appropriate Article 4, paragraph 4 or Article 6.

Article 8 – Preparation, preservation, storage, transportation, transfer, receipt, import and export of illicitly removed human organs

Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally:

a) the preparation, preservation, and storage of illicitly removed human organs as described in Article 4, paragraph 1, and where appropriate Article 4, paragraph 4;

b) the transportation, transfer, receipt, import and export of illicitly removed human organs as described in Article 4, paragraph 1, and where appropriate Article 4, paragraph 4.

Article 9 – Aiding or abetting and attempt

1. Each Party shall take the necessary legislative and other measures to establish as criminal offences, when committed intentionally, aiding or abetting the commission of any of the criminal offences established in accordance with this Convention.

2. Each Party shall take the necessary legislative and other measures to establish as a criminal offence the intentional attempt to commit any of the criminal offences established in accordance with this Convention.

3. Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply, or to apply only in specific cases or conditions, paragraph 2 to offences established in accordance with Article 7 and Article 8.

Question 6: Jurisdiction

a. **With regard to the offences referred to in question 5, letters a, b and c, please indicate which jurisdiction rules apply. Please specify under which conditions, if required (Article 10, Explanatory Report, paras. 64-75).**

In accordance with the Criminal Code following principles will apply:

- Article 10 para. 1a: principle of territoriality – section 4 Criminal Code (The criminality of an act committed in the territory of the Czech Republic will be assessed pursuant to the law of the Czech Republic.).
- Article 10 para 1b and c: principle of registration - section 5 Criminal Code
- Article 10 para 1d: principle of personality – section 6 Criminal Code
- Article 10 para 1e: reservation made by the Czech Republic

Section 4 Principle of Territoriality

(1) The criminality of an act committed in the territory of the Czech Republic will be assessed pursuant to the law of the Czech Republic.
(2) A criminal offense will be considered as committed in the territory of the Czech Republic
a) if an offender committed the act here, either entirely or in part, even though the violation or endangering of an interest protected by the criminal law occurred or was supposed to occur, either entirely or in part abroad, or
b) if an offender violated or endangered an interest protected by criminal law or if such a consequence was supposed to occur, even partially, within the territory, even though the act was committed abroad.
(3) Participation is committed in the territory of the Czech Republic,
a) the act of the offender has been committed within its territory, which is determined analogically according to sub-section (2), or
b) if the accomplice of the act committed abroad partially acted within its territory.
(4) If the accomplice acted in the territory of the Czech Republic, the law of the Czech Republic will apply to the participation, regardless of whether the act of the offender is criminal abroad.

Section 5 Principle of Registration

The criminality of an act committed outside of the territory of the Czech Republic, aboard a ship or another vessel, aircraft or other means of air transport, which is registered in the Czech Republic, will also be assessed in accordance with the law of the Czech Republic. The place of commission of such an act will be assessed according to Sections 4 (2) and (3).

Section 6 Principle of Personality

The law of the Czech Republic will also apply to the assessment of criminality of an act committed abroad by a citizen of the Czech Republic or a person with no nationality, who has been granted a permanent residence in its territory.

b. **According to your national legislation, is your country competent to investigate and prosecute suspected organ trafficking abroad? If yes, please specify in which cases.**

Except for the rules for establishing jurisdiction mentioned above and with reference to Article 10 para 6 of the Convention, the Criminal Code provides for the provision concerning the subsidiary principle of universality.

Section 8 Subsidiary Principle of Universality

(1) The law of the Czech Republic will also apply to assessment of criminality of an act committed abroad by a foreign national or a person with no nationality, who has not been granted permanent residence in the territory of the Czech Republic, if
a) the act is criminal also under the law effective in the territory of its commission, and
b) the offender was apprehended in the territory of the Czech Republic, the extradition or surrender proceedings took place and the offender was not extradited or surrendered to another state or to another entitled authority for criminal prosecution or execution of a sentence, and
c) the foreign state or another entitled entity that requested the surrender or extradition of the offender for criminal prosecution or execution of a sentence has requested that the criminal prosecution of the offender was conducted in the Czech Republic.
(2) The law of the Czech Republic will apply to assessment of criminality of an act committed abroad by a foreign national or a person without a nationality to who has not been granted permanent residence in the territory of the Czech Republic, also when the act was committed in favour of a legal entity with a registered office or branch in the territory of the Czech Republic.
(3) However, the offender cannot be imposed a more severe sentence than the sentence prescribed by the law of the state, in the territory of which was the criminal offense committed.

Question 7: Corporate liability

Does your system provide that a legal person may be held liable for an offence established in accordance with Article 11? Please specify under which conditions.

In accordance with the Act on Criminal Liability of Legal Entities (Act No. 418/2011 Coll.) legal persons can be held liable for all criminal offences stipulated in the Criminal Code, including the ones that are relevant to the Convention. There are only some exhaustively listed criminal offences that cannot be applied to the legal persons such as manslaughter, brawling, etc.

Moreover, legal persons who are providers of health services and who commit acts specified in this Convention other than under the Criminal Code are punishable under administrative proceedings for violation of the provisions of Transplantation Act and Act on Human Tissues and Cells (Act No. 296/2008 Coll.).

Section 8 of the Act on Criminal Liability of Legal Entities provides for the conditions of the establishment of the criminal liability of a legal entity.

Section 9 of the Act on Criminal Liability of Legal Entities expressly stipulates in para 3 that the criminal liability of legal persons is without prejudice to the criminal liability of natural persons and vice versa.

Section 8

(1) Criminal act committed by a legal entity is an unlawful act committed in its interest or within its activity, if committed by

a) statutory body or member of the statutory body or other person in a leadership position within the legal entity, who is entitled to act on behalf of or for the legal entity,
b) a person in a leadership position within the legal entity, who performs managerial or controlling activities, even if they are not a person as mentioned in paragraph a),
c) a person with a decisive authority on management of this legal entity, if his/her act was at least one of the conditions leading to a consequence establishing criminal liability of a legal entity, or
d) employee or a person with similar status (thereinafter “employee”) while fulfilling his/her duties/tasks, even if they are not a person as mentioned in paragraph a) to c), provided that the act can be attributed to the legal entity in accordance with sub-section (2).

(2) Commission of a criminal act as specified in Section 7 can be attributed to a legal entity, if committed by

a) action of bodies or persons referred to in sub-section (1) a) to c), or
b) an employee referred to in sub-section (1) d) on the grounds of a decision, approval or guidance of bodies of the legal entity or persons referred to in sub-section (1) a) to c), or because the bodies of the legal entity or persons referred to in sub-section (1) a) to c) did not take measures required by other legal regulation or that can be justly required, namely that they did not perform obligatory or necessary control (supervision) over the activities of employees or other persons they are superiors to, or they did not take necessary measures to prevent or avert the consequences of the committed criminal act.

(3) Criminal liability of a legal entity is not precluded by the fact that a specific natural person who has acted in a way specified in sub-section (1) and (2) cannot be identified.

(4) Sub-section (1) and (2) will apply also if

a) the activity specified in sub-sections (1) and (2) took place prior to incorporation of the legal entity,
b) the legal entity has been incorporated, but the court decided on nullity of the legal entity,
c) the legal act establishing authorisation for acting on behalf of the legal entities is invalid or ineffective, or
d) the acting natural person is not criminally liable for such criminal act.

(5) The legal entity will be relieved of criminal liability according to sub-section (1) to (4) if it made every effort which could be reasonably required of it in order to prevent the commission of the unlawful act by the persons referred to in sub-section (1).

Section 9

(1) A perpetrator of a criminal act is a legal entity to which a breach or endangering of an interest protected by the Criminal Code by means specified in this Act can be attributed.

(2) A perpetrator is also a legal entity that used other legal or natural person for the commission of a criminal act.

(3) Criminal liability of legal entity is without prejudice to criminal liability of natural persons specified in Section 8 (1) and criminal liability of these natural persons is without prejudice to criminal liability of the legal entity. If the criminal act has been committed by means of a joint action of more persons, where at least one of them was a legal entity, every each one of these persons is liable as if the person committed the act on their own.

Question 8: Sanctions and measures

a. Please indicate which sanctions internal law provides for the criminal offences established in accordance with the Convention with regard to both natural and legal persons. Please specify whether the sanctions are criminal, civil and/or administrative sanctions (Article 12, Explanatory Report, paras. 83-87);

<u>Natural persons</u>

It is possible to impose a penalty (criminal sanction) in the form of a sentence of imprisonment (deprivation of liberty) for all criminal offences under the Criminal Code that are relevant to the Convention. For the specific penalties see above in Q5 for every criminal offence.

The extradition of a natural person to a foreign state is permissible pursuant to section 90 para. 1 of the Act on International Judicial Cooperation in Criminal Matters (Act No. 104/2013 Coll.), if the act for which extradition is sought is a criminal offence under the Criminal Code and the upper limit of the prison sentence that may be imposed for that offence is at least one year. This rule is met for all the offences mentioned in Article 12 para. 1 Convention.

In general, the court may in accordance with section 52 Criminal Code impose following punishments for committed criminal offences:

a) sentence of imprisonment,
b) house confinement,
c) community service,
d) confiscation of assets,
e) pecuniary penalty,
f) confiscation of an item,
g) prohibition of certain activity,
h) prohibition of possessing and keeping animals,
i) residence ban,
j) ban from sport, cultural and other social events,
k) loss of honorary titles or decorations,
l) demotion of military rank,
m) banishment.

There are, however, specific conditions for the imposing of penalties in regard to specific criminal offences.

Legal persons

The Act on Criminal Liability of Legal Entities (Act No. 418/2011 Coll.) stipulates that for criminal acts committed by a legal entity, the following penalties can be imposed:

a) dissolution of the legal entity,
b) confiscation of property,
c) monetary penalty,
d) confiscation of items,
e) prohibition to perform certain activities,
f) prohibition of possessing and keeping animals,
g) prohibition to perform public contracts or to participate in public tenders,
h) prohibition to receive endowments (grants) and subsidies,
i) publication of a judgement.

Dissolution of a Legal entity - the court may impose this sentence on a legal entity with a registered office in the Czech Republic if its activities consisted entirely or predominantly in committing a criminal act or criminal acts. The sentence of dissolution of a legal entity cannot be imposed if it is excluded by the nature of the legal entity.

A monetary penalty, which is a criminal sanction may be imposed on a legal entity by the court for any criminal offense. The daily rate is no less than 1000 CZK and no more than 2 000 000 CZK. While determining the amount of a daily rate, the court takes into account the property owned by the legal entity.

Prohibition to perform certain activity - the court may impose this sentence to a legal entity for one year to 20 years if the criminal act has been committed in connection to this activity.

b. Which legislative or other measures have been taken to provide for the possibility of taking into account final sentences passed by another Party in relation to the offences established in accordance with the Convention? Please provide details and describe any good practice resulting from the taking of these measures (Article 14, Explanatory Report, paras. 95-100).

In principle, according to Section 11 para. 1 of the Criminal Code, a criminal judgment of a foreign state cannot be executed in the territory of the Czech Republic or have other effects in this territory unless the law or an international treaty stipulates otherwise.

However, Section 11 para. 2 of the Criminal Code stipulates that a final and effective judgment of another member state of the European Union issued in criminal proceedings will be deemed as a judgment of a court of the Czech Republic for the purposes of criminal proceedings, if it was issued for an act that is criminal also under the law of the Czech Republic.

Further, the Act on International Judicial Cooperation in Criminal Matters (Act No. 104/2013 Coll.) provides for procedures and conditions for the recognition and enforcement of foreign decisions, both regarding decisions issued by the competent authorities of another member state of the European Union, and decisions issued by other competent foreign authorities in connection with a criminal offence and/or an otherwise punishable offence.

Section 4 of the Act on the Criminal Register (Act No. 269/1994 Coll.) further provides under what conditions foreign decisions are also recorded in the Criminal Register.

Section 4 para. 5 then states that the decision of a foreign court or an international court is recorded in the Criminal Register according to para. 1 to 3 of that Section shall be regarded as a conviction by a court of the Czech Republic. Such foreign decisions may then be taken into account when assessing the offender's personality.

Finally, Section 4a of the Act on the Criminal Register (Act No. 269/1994 Coll.) regulates registration in the Criminal Register of the convictions of Czech nationals by the courts of another member state of the European Union or of the United Kingdom in criminal proceedings.

Question 9: Aggravating Circumstances

Please indicate which of the circumstances referred to in Article 13, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration in your legal system as aggravating circumstances in the determination of the sanctions in relation to the offences established in accordance with this Convention (Explanatory Report, paras. 88-94).

Criminal Code in its Section 42 stipulates only a **demonstrative list** of aggravating circumstances that are applicable to all criminal offences including the ones which are related to the Convention. However, the court may consider also other circumstances than the ones stipulated in this provision. Moreover, all criminal offences which are related to this Convention contain qualified constituent elements.

In this sense, the Czech Criminal law specifically stipulates the following aggravating circumstances as qualified constituent elements of the relevant criminal offences in addition to which section 42 Criminal Code also applies:

- the offence caused death of, or serious damage to the physical or mental health of the victim (sections 164 para. 3g and 4c, 166 para. 3b and 4b, 168 para. 4a and 5 Criminal Code)
- the offence was committed by a person abusing his or her position (section 164 para. 3c Criminal Code)
- the offence was committed in the framework of a criminal organisation (sections 164 para. 3f and 4b, 165 para. 3b and 4b, 166 para. 3a and 4a, 168 para. 3a and 4c Criminal Code)
- the perpetrator has previously been convicted of offences established in accordance with this Convention (sections 164 para. 3e, 165 para. 3a Criminal Code)
- the offence was committed against a child or any other particularly vulnerable person (sections 164 para. 3a and 4a, 166 para. 3c and 4c Criminal Code).

<u>Section 42 Criminal Code - Aggravating Circumstances</u>

The Court may consider the following circumstances as aggravating, particularly when the offender:

a) committed the criminal offense with premeditation or after previous deliberation,
b) committed the criminal offense out of greed, for revenge, due to hatred relating to nationality, ethnic, racial, religious, class or another similar hatred or out of another particularly condemnable motive,
c) committed the criminal offense in a brutal or agonizing manner, insidiously, with special deceit or in a similar manner,
d) committed the criminal offense by exploiting another person's distress, duress, vulnerability, dependence or subordination,
e) breached a special duty by the criminal offense,
f) abused his occupation, position or function when committing the criminal offense,
g) committed the criminal offense against a person participating in saving life and health or in protection of property,
h) committed the criminal offense against a child, a close person, a pregnant person, an ill person, a disabled person, a person of high age or an impuissant person, and endangering their life or health, causing them damage, bodily harm or other harm or unjustifiably enriching themselves at their expense,
i) led another person, especially a child under the age of fifteen, a juvenile or a person of an age close to the legal age of juveniles, to commit an act otherwise criminal, into misconduct or to commit a criminal offense,
j) committed the criminal offense during an emergency situation, natural disaster or another event seriously threatening life, public order or property, or at the territory where evacuation is in progress or has been carried out,
k) caused higher damage or another larger harmful effect by the criminal offense,
l) acquired higher profit by the criminal offense,

m) committed the criminal offense in a larger extent, on more items or more persons, was committing the criminal offense or continued in its commitment for a longer time,
n) committed more criminal offenses,
o) committed the criminal offense with another person,
p) committed the criminal offense as an organizer, a member of an organized group or a member of a conspiracy, or
q) had already been sentenced for a criminal offense; the court is authorized not to consider such a fact as an aggravating circumstance according to the nature of the previous conviction, particularly in respect of the significance of a protected interest affected by such an act, the manner of commission of such an act and its consequences, the circumstances under which it was committed, the offender's personality, the extent of his culpability, his motives and the period which has passed since his last conviction; concerning an offender of the criminal offense committed in a state induced by a mental disorder, or an offender who indulges in abuse of an addictive substance and has committed the criminal offense under its influence or in connection with its abuse, also when he commenced treatment or took other necessary measures for its commencement.

Question 10: Investigations and criminal measures

a. Which legislative or other measures have been taken to ensure that investigations or prosecutions of offences established in accordance with the Convention shall not be subordinate to a complaint and that the proceedings may continue even if the victim has withdrawn his or her statement? (Article 15, Explanatory Report, para. 101).

In accordance with the principle of legality which is enshrined in the Criminal Procedure Code (Section 2 para. 3) the public prosecutor is obliged to prosecute all criminal offences of which they gain knowledge, unless the law, directly applicable act of the European Union or a promulgated international treaty binding the Czech Republic stipulates otherwise. Also, the authorities involved in criminal proceedings act ex officio, which means they are obliged to act even if no complaint has been submitted (principle of officiality – Section 2 para. 4). There are several criminal offences (Section 163 Criminal Procedure Code), where criminal prosecution may be initiated or continued only with the consent of the victim. However, criminal offences related to offences established in the Convention do not fall under this exhaustive list.

b. Please describe which circumstances or other measures have been taken to ensure effective criminal investigation and prosecution of offences established in accordance with the Convention (e.g. carrying out financial investigations, the use of covert operations, other special investigative techniques (Article 16)).

Every investigation is conducted with the basic intention of being effective. For this, several legal institutes are available during the criminal proceeding, such as wiretapping, monitoring of persons and things, the use of an agent, pretended transfer, exchange and tracking of a shipment, etc.

Financial investigations are carried out in every criminal proceeding where a specific suspect is known. This is regulated by the relevant internal act.

Question 11: Measures of protection for the victim

a. Please describe the measures taken to (Article 18):

- **ensure that victims have access to information relevant to their case and which is necessary for the protection of their health;**

In accordance with the Victims of Crime Act victims are entitled to access various information, which concerns the matter in which a crime was committed on them. A similar right is provided to the close person of the victim. In accordance with Section 8 of this Act when the police come into first contact with the victim, they inform them without request about e.g., to which specific authority can the victim submit notification on facts suggesting that a crime had been committed and provide the victim with contact to this authority, at which specific authority the victim can obtain other information on the matter in which they had become a crime victim, what stages of proceedings follow after the criminal complaint, and what task the victim has in these stages, to which nearest providers of health services they may turn with request for provision of health services. Part of the provided information is also about relevant assistance providers.

If the victim requests it, then in accordance with Section 11 para. 1 of the Act the relevant authority involved in criminal proceedings shall provide the victim with:

a) information that the criminal proceedings have not commenced,
b) information about the status of the criminal proceedings, with the exception of cases when such information could jeopardize attaining the purpose of the criminal proceedings,
c) information about the act of which the accused person is accused, including its legal characterization,
d) information about the time and place of the public hearing of the case in the trial proceedings,
e) final decision in the criminal proceedings.

Section 8 of the Victims of Crime Act - Information provided to the victim by the Police of the Czech Republic, police authority and state prosecutor

(1) Once the Police of the Czech Republic or police authority comes into first contact with the crime victim, it informs him/her without request about:

a) at which specific authority the victim can submit notification on facts suggesting that a crime had been committed, and provides the victim with contact to this authority,
b) to which entities filed in the register of providers of assistance to crime victims the victim can turn with a request for professional assistance and under what conditions he has the right to receive free professional assistance, and provides the victim with contacts to these entities,
c) under what conditions he has the right to accept measures for ensuring safety according to other legislation (Section 14),

d) at which specific authority he can obtain other information on matters, in which he became a crime victim,
e) what stages of proceedings follow after the criminal complaint, and what task the victim has in these stages,
f) at which specific authority and in what manner he can request information according to Section 11(1) and (3), and provides the victim with contact to this authority,
g) under what conditions and in what scope he has the right to monetary assistance, including instruction on the deadline for submitting an application,
h) to which nearest asylum houses, intervention centers or other social service facilities providing residence he or she may turn,
i) to which nearest providers of health services he or she may turn with a request for the provision of health services,
j) at which authority and in what manner he can seek redress, if his rights are violated by a public authority or if he is prevented fully exercising said rights,
k) on what actions for the protection of his interests he can request if the victim has a residence in another European Union Member State,
l) what other rights he has according to this Act.

- **assist victims in their physical, psychological and social recovery;**

According to the Crime Victims Act professional assistance is provided to the victims in the form of psychological counselling, social counselling, legal assistance, providing legal information or restorative programs. This assistance is provided as long as its purpose is required. Entities providing psychological and social counselling must dispose of the authorization according to Act No. 108/2006 Coll., on social services entitling them to provide social counselling and social prevention services and therefore, they are entitled to provide services of psychological and social counselling to victims. Social counselling covers e.g., providing information aiming at solving a social situation and advising on choosing the suitable type of service, providing information on basic rights and obligations information, social therapeutic activities, assistance in the exercise of rights, legitimate interests, and assistance with personal matters.

According to the Act, the Ministry of Justice of the Czech Republic uses tools that can help to bridge the unfavourable situation arising in connection with the crime.

Furthermore, according to the above-mentioned Act the following rights of victims are regulated in particular: the right to receive professional assistance, the right to information, where the emphasis is placed primarily on the clarity of the information provided, the right to protection from imminent danger, the right to protection of privacy, the right to protection from secondary victimisation by the police and law enforcement authorities, the possibility of making a statement to the victim about the impact of the crime on his or her life, the right to financial assistance.

The Act also sets out a range of victims who are identified as particularly vulnerable and higher risk of secondary harm or intimidation by the perpetrator. These victims may also be particularly susceptible to exacerbating the stress and emotional trauma experienced as a result of being involved in the criminal proceedings themselves, e.g. during interrogation. The law therefore provides for special measures to prevent the victim's stress from intensifying and to reduce the risk of secondary harm - victimisation.

According to the Act, the Ministry of Justice of the Czech Republic maintains a register of entities providing social services, accredited entities providing assistance to victims of crime, as well as a register of lawyers and the Probation and Mediation Service : see https://otc.justice.cz/verejne/seznam.jsf .

Moreover, monetary assistance can be provided. However, it is important to note that this kind of an assistance for victims of crime cannot be understood as compensation for the damage caused by the offender, but rather as a special type of social benefit paid by the State under conditions regulated by law. It is to be remembered that the Institute of Monetary Assistance and the Institute of Compensation are not identical. The purpose of the payment is to bridge the period of deterioration in the social situation following the offence. The financial assistance to the victim referred to in Article 24(1)(d) consists of reimbursement of the costs associated with professional psychotherapy and physiotherapy or other professional services aimed at remedying the non-pecuniary damage suffered.

Another instrument is the use of restorative approaches through the activities of the Probation and Mediation Service or the provision of subsidy support to non-governmental non-profit organisations implementing restorative programmes. Restorative programmes and approaches, such as mediation, restorative conferences and circles create a safe space for the victim, the offender and possibly others to come together to talk about the events and their consequences.

The Probation and Mediation Service, in the framework of its activities, cooperates with victims, in particular with a view to involving the victim in a restorative approach consisting in the repair of relationships, in particular by offering mediation, an out-of-court negotiation by the offender with the participation of a mediator, the aim of which is not only material compensation for the harm but also the repair of relationships and the acquisition of moral satisfaction. In the framework of its activities, it also provides compensation for damages and important information. In particular, the Probation and Mediation Service offers victims: a safe space to express their story, expectations, feelings and needs, advice on how to proceed, what the victim is entitled to and where to ask for it, mediation and other professional assistance, and the services of a 'confidant' (e.g. accompanying them to interviews or court hearings). The Probation and Mediation Service also offers assistance in preparing a statement about the impact of the crime on their life or in applying for financial assistance.

- **provide for the right of victims to compensation from the perpetrators.**

Criminal Procedure Code stipulates (Section 43 and further) that if a victim suffered bodily harm, material damage or non-material harm by a criminal offence, or if the offender enriched himself by a criminal offence at the expense of the victim, the victim is entitled to petition the court to impose an obligation on the defendant in the convicting judgment to compensate (in monetary terms) the damage or non-material harm caused to the victim by the commission of the criminal offence, or to surrender any unjust enrichment.

The petition must be filed at the trial before the commencement of evidentiary proceedings at the latest, if an agreement on the guilt and punishment is negotiated, the petition must be made at the first negotiation on such an agreement at the latest.

The petition must clearly show on what grounds and in what amount is the claim for damage or non-material harm being exercised or on what grounds and to what extent is being exercised the claim for the surrender of unjust enrichment. The victim is obliged to prove the grounds and amount of damage, non-material harm or unjust enrichment and they must be advised on these rights and obligations.

If the court sentences the defendant for a criminal offence, by which he caused another person material damage or other non-material harm, or who unjustifiably enriched himself at the expense of the victim, it will impose upon them an obligation in the judgement to compensate in monetary terms the damage or non-material harm to the victim or to surrender any unjust enrichment, provided that the claim was asserted on time. Unless a legal obstacle prevents it, the court will always impose the obligation on the defendant to pay damages or to surrender unjust enrichment, if the amount of the damage caused or the extent of the unjust enrichment forms a part of the description of the act referred to in the verdict of the judgment, by which the defendant was found guilty and provided that the damages in such amount have not yet been paid or the unjust enrichment has not yet been surrendered to this extent.

Section 229 Criminal Procedure Code implies that the criminal court may never reject, even partially, a timely and proper claim for damages filed by the injured party against the perpetrator. If the criminal court does not impose an obligation on the perpetrator to pay compensation to the victim, it must always refer the victim to civil proceedings or to proceedings before another competent authority. This principle applies even if the criminal court acquits the accused. If, there are no grounds for imposing an obligation to pay monetary compensation of damage or non-material harm, or for the surrender of unjust enrichment on the basis of the results of evidentiary procedure, or if further evidence would be necessary for any decision on the obligation to pay monetary compensation of damage or non-material harm, or for the surrender of unjust enrichment, which would significantly delay the criminal proceedings, the court will refer the victim to proceedings in civil matters or to proceedings before another competent authority. The court will also refer the victim to proceedings in civil matters or to proceedings before another competent authority with the rest of their claim if for any reason it grants his claim only in part.

Pursuant to Section 135 of the Civil Procedure Code, in subsequent civil proceedings the court is bound by the decision that a criminal offense was committed and by the decision as to who committed it. On the other hand, the civil court is not bound by a criminal acquittal, i.e., a decision that the crime was not committed, and other findings of the criminal court. These may include, for example, a causal link between the illicit removal of human organs by the perpetrator and the resulting effects on the victim's health, or the number of damages assessed. In this way, the right of victims to compensation is ensured in the Czech legal system.

b. **Please describe the measures taken to inform victims of their rights, the services at their disposal, the follow-up given to their complaint, the charges, the state of the criminal proceedings, and their role as well as the outcome of their cases (Article 19, para. 1, letter (a) and para. 2).**

The measures are based on the Victims of Crime Act specifically on Sections 7 - 14. The Act lists the obligatory and authorised entities, from the Police of the Czech Republic, police authorities and state entities registered in the register of providers of assistance to victims of crime, other public authorities and health care institutions, where for each entity the conditions, characteristics and scope of information provided are listed.
In order to avoid possible discrimination and reduction of the rights of persons who do not speak Czech, the law regulates this in Section 12 on providing information to a victim who does not speak Czech.

c. **Please also indicate which measures have been taken to enable the victim to be heard, to supply evidence and the means of having his/her views, needs and concerns presented, directly or through an intermediary, and considered (Article 19, para. 1, letter (b));**

Criminal Procedure Code stipulates in Section 43 that a person who has suffered bodily harm, material damage or non-material harm by a criminal offence, or those at whose expense has the offender enriched himself by a criminal offence (victim), has the right to make proposals for additional evidence, to inspect files, to attend negotiations of an agreement on the guilt and punishment, to attend the trial and public session held on an appeal or on the approval of an agreement on the guilt and punishment and to comment on the matter before the proceeding is concluded. During the court proceedings with the consent of the presiding judge, the victim and their agents may ask the interviewed person questions.

Victim is also entitled to make a statement on how the committed crime affected their life at any stage of the criminal proceedings. The statement may also be made in writing. Such a written statement will be produced as evidence in proceeding before the court.

Furthermore, measures based on the Victims of Crime Act leading to the protection of the victim from secondary victimization, the purpose of which is to burden the victim as little as possible with the approach of law enforcement authorities and other authorities in the already difficult life situation, are applied. Such measures are, for example :

- Questions directed to the intimate sphere of the victim being questioned, in particular concerning the victim's previous sexual relationships and behaviour, may only be asked if necessary to clarify facts relevant to the criminal proceedings. Such questions must be asked in a particularly gentle and comprehensive manner, so as not to make it necessary to repeat the interrogation; their wording must be adapted to the age, personal experience and psychological state of the victim while maintaining the necessary sensitivity.

- The victim has the right to object to the focus of the question at any time. The objection shall be recorded in the minutes. The reasonableness of the objection shall be decided by the interrogating authority.

- A particularly vulnerable victim must be questioned in criminal proceedings with particular sensitivity and with regard to the specific circumstances that make him/her particularly vulnerable.

- The questioning of a particularly vulnerable victim shall be carried out in such a way that it does not have to be repeated at a later date. In the case of a further interview before the same authority, the interviewer shall normally be the same person, unless important reasons prevent this.

- The possibility of being accompanied by a confidant to criminal proceedings and to give explanations cannot be overlooked. The confidant may be a natural person with legal capacity chosen by the victim. The confidant may also be the victim's attorney.
  The confidant shall provide the victim with the necessary assistance, in particular psychological assistance. The issue of accompaniment by a confidant is regulated in Article 21 of the Act on Victims of Crime.

- A victim in criminal proceedings may be represented by a proxy at all stages of the proceedings. The proxy may be a natural person whose legal capacity is not limited or a legal person. This may be a lawyer, a relative or an acquaintance of the victim. The proxy may also be a person who is a trustee. A person who acts as a witness, interpreter or expert cannot be a proxy in the main trial.

  The victim may choose a proxy when reporting the offence or at any time during the criminal proceedings. The victim usually notifies the police authority or the court in writing that he or she will be represented by an agent; the notification shall include the name of the agent, his or her address, date of birth and any other identifying information; alternatively, he or she shall bring the person directly and make the notification orally.

  The victim's proxy is entitled to be present during the investigation from the start of the prosecution and may make motions, applications and appeals on behalf of the victim. He or she may take part in all acts in which the victim may participate. However, the proxy cannot testify on behalf of the victim.

d. What kind of support services are provided to victims so that their rights and interests are duly presented and taken into account? (Article 19, para. 1, letter (c))

According to the Victims of Crime Act, the victims of crime have the right to professional assistance. Professional assistance is provided by entities registered in the Register of Providers of Assistance to Victims of Crime, which is administered by the Ministry of Justice and is available online 24/7 at the Register of Providers of Assistance to Victims of Crime (justice.cz). This assistance includes psychological services, social counselling, legal assistance, providing legal information and the possibility of participating in so-called restorative programmes to restore relationships and repair the harm suffered.

One can apply for professional assistance at any time before, during and after the criminal proceedings. To get help, one must, however, ask for it. It can also be done verbally.

If a particularly vulnerable victim is involved, they can ask the bodies listed in the register of victim assistance providers to provide assistance free of charge.

Social service providers: counselling, legal and psychological assistance

Accredited bodies: counselling, legal and psychological assistance

Lawyers: providing pro bono legal aid

The Probation and Mediation Service: victims of crime can contact the relevant centres of the Probation and Mediation Service, which operate in all parts of the Czech Republic, on any working day. In total, there are 74 centres and 2 branches. In the contact link one can check the list of all centres, where it is easy to find addresses, email and telephone contacts of the centres' professional staff. The centres of the Probation and Mediation Service are governed by the Victims of Crime Act.

e. Please describe the measures taken to provide the safety of the victims, their families and witnesses from intimidation and retaliation (Article 19, para. 1, letter (d));

Any specific measures are the responsibility of the law enforcement authorities in a cooperation with other authorities and organisations such as the Probation and Mediation Service (replacing detention with supervision) and the non-profit sector providing social and accredited services (asylum accommodation and accommodation with a hidden address).

f. Please specify under which conditions victims of the offences established according to the Convention have access to legal aid provided free of charge (Article 19, para. 3).

The victim of crime and his or her rights are defined by the Victims of Crime Act.

Free legal aid is granted to victims from the circle of particularly vulnerable victims, which includes those victims in whose protection the state has a heightened interest - both because of their age (children, pensioners) and because of the nature of the crime, which may have shaken the victim and caused them serious psychological harm (rape, terrorism, racially motivated attacks, etc.). They are entitled to free legal aid from those lawyers who are voluntarily registered in the register of providers of assistance to victims of crime, the extent of this free legal aid is determined by each lawyer individually.

Furthermore, the provision of legal aid and legal information is regulated in Section 6 of the Victims of Crime Act, as follows:

(1) Legal aid shall be provided free of charge to the victim and to the person concerned upon their request under the conditions and to the extent provided for in other legislation.

(2) Only lawyers may provide legal aid under this Act.

(3) Bodies accredited for the provision of legal information and the Probation and Mediation Service may provide legal information under this Act to the victim, to the person concerned and to a legal person against whom an offence has been committed on the basis of misuse of data enabling the victim to be identified.

It follows that victims of crime may, at any time during working hours, address their requests for legal information to the relevant centres of the Probation and Mediation Service and to entities accredited for providing the legal information, which is also registered in the register of providers of assistance to victims of crime.

g. Which legislative or other measures have been taken to ensure that victims of an offence established in accordance with the Convention in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their state of residence? (Article 19, para. 4, Explanatory Report, para. 120).

The Criminal Code in its Provision 7 para. 2 provides protection to all Czech citizens regardless of the place the criminal offence has taken place. The provision stipulates that the law of the Czech Republic will also apply to the assessment of criminality of an act committed abroad against a Czech national or a person without a nationality, who has been granted permanent residence in the territory of the Czech Republic, if the act is criminal in the place of its commission, or if the place of its commission is not subject to any criminal jurisdiction.

h. Please describe how your internal law allows for groups, foundations, associations or governmental or non-governmental organisations assisting and/or supporting victims to participate in legal proceedings (for example, as third parties) (Article 19, para. 5). Please specify under which conditions, if so required;

The victim has the right to be accompanied by a fiduciary and/or agent during the proceedings. Agent or fiduciary are usually staff members from non-governmental organisations who provide assistance and support to victims.

A fiduciary provides the victim with necessary, mainly psychological help. They can also provide necessary practical and legal information to the victim. The fiduciary can be also the victim’s agent. The agent contrary to fiduciary can interfere in the course of the criminal proceedings. They are entitled to make proposals and submit petitions and appeals on behalf of the victim. They are entitled to participate in all actions in which the victim could participate.

Furthermore, the Ministry of Justice of the Czech Republic supports selected programmes and projects implemented by non-governmental non-profit organisations and other entities in the form of non-reimbursable subsidies. Generally, programmes providing legal information or restorative programmes are being supported.

The Department of National Grants of the Legal Department of the Ministry of Justice of the Czech Republic is responsible for the grant and accreditation procedure.

V. PREVENTION OF AND COMBAT AGAINST TRAFFICKING IN HUMAN ORGANS

Question 12: Ensure quality and safety requirements for the transplantation system

a. Which legislative or other measures have been taken to establish the existence of a transparent domestic system for the transplantation of human organs? (Article 21 para. 1 letter (a), Explanatory Report, para. 125-126)

The Transplantation Act.

b. Which legislative or other measures have been taken to ensure equitable access to transplantation services for patients? (Article 21 para. 1 letter (b))

The Transplantation Act.

c. Which legislative or other measures have been taken to ensure adequate collection, analysis and exchange of information related to the offences covered by the Convention in co-operation between all relevant authorities? (Article 21 para. 1 letter (c))

No legislative measures.

Adequate collection of statistical data is ensured at the level of the Ministry of Justice (statistical yearbooks on crime), as well as at the level of the Police of the Czech Republic and at the level of the Ministry of Health.

d. Which legislative or other measures have been taken to ensure the prohibition of the advertising of the need for, or availability of human organs? (Article 21 para.3)

The Transplantation Act and the Advertising Regulation Act.

e. Which measures have been taken to provide (Article 21 para. 2 letter a, Explanatory Report, para. 127):

- **information for healthcare professionals and relevant officials (including police, legal professionals in the prevention of and combat against trafficking in human organs?**

The specific topic of victims of human trafficking is not included in the education of healthcare workers, but similar topics such as torture, violence, social and legal protection, etc. are included.

- **information for civil society in the prevention of and combat against trafficking in human organs**

As for information provided to the civil society, the Ministry of Interior together with the Police, the non-governmental organization La Strada and other stakeholders continuously prepare preventative campaigns focused on human trafficking, its dangers, various forms, combat against and its unlawfulness. And even though, those campaigns are not specifically focused on prevention of and the combat against trafficking in human organs they help to raise awareness and bring the topic of human trafficking for various purposes to the attention of the civil society. Helping the people to understand the potential dangers and giving them an idea of where to go if they are being victimized.

As explained earlier, the crime of trafficking in human organs is thankfully non-existent in the Czech Republic. This is mainly due to the very straightforward approach to transplantations that are since 2002 governed by the very detailed Transplantation Act.

f. Which policies or strategies have been implemented to promote or conduct awareness-raising campaigns targeted at the general public where the focus is directed especially towards the risks and realities of the unlawfulness and dangers of trafficking in human organs?

- **Please describe the material used for the campaign/programme and its dissemination.**

- **If possible, please provide an assessment of the impact of the campaign/programme. If there are currently plans for launching a (new) campaign or programme, please provide details (Article 21, para. 2 letter b);**

  Given that the criminal activity consisting of trafficking in human organs has not occurred in the territory of the Czech Republic for many years, there are currently no ongoing preventive or awareness-raising campaigns on this specific matter.

VI. INFORMATION

Please specify which state body/agency was responsible for collecting the replies to this questionnaire and which state bodies/agencies (and, at the discretion of the country, where relevant, civil society and external contributors) contributed to responding to this questionnaire.

- **Body/agency responsible for collecting the replies**:

Ministry of Justice of the Czech Republic

- **State bodies/agencies (where relevant, civil society and external contributors) that contributed to responding to this questionnaire:**

Ministry of Justice of the Czech Republic
Ministry of Interior of the Czech Republic
Ministry of Health of the Czech Republic
Police of the Czech Republic
Coordination Centre for Transplantation