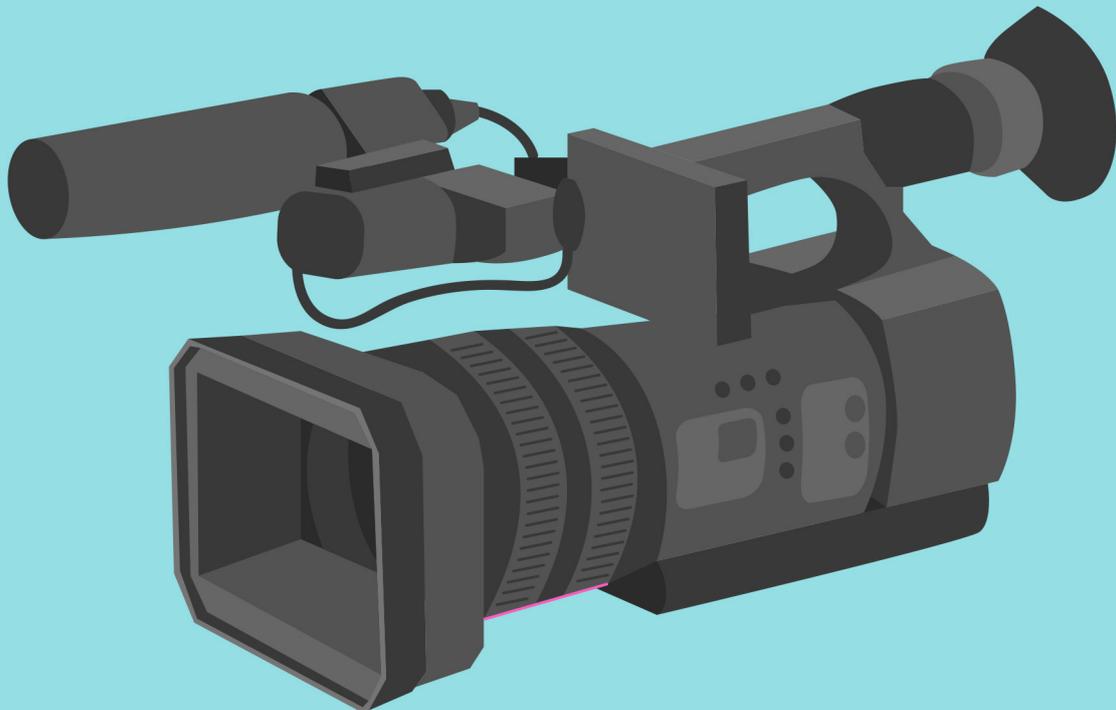


PROCEDURAL RIGHTS OBSERVED BY THE CAMERA – AUDIOVISUAL RECORDING OF INTERROGATIONS IN THE EU

(PROCAM)

COUNTRY REPORT - CZECH REPUBLIC



PROCEDURAL RIGHTS OBSERVED BY THE CAMERA

Audiovisual recording of interrogations in the EU

Country report

Czech Republic

2019 / Liga lidských práv



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1. INTRODUCTION

1.1. About the project; aim and methodology of the research

This country report is based on a research carried out in the Czech Republic in the framework of an empirical research project conducted in five European Union (EU) countries. The project “Procedural Rights Observed by the Camera – Audiovisual Recording of Interrogations in the EU (ProCam)”, supported by the European Commission, is aimed at mapping whether the practice of the audiovisual recording of interrogations in the Member States complies with the requirements set out in Directive 2013/48/EU on access to a lawyer (hereinafter Access to a Lawyer Directive), and at examining how the legal framework and the practice of audiovisual recordings ensures or restricts the procedural rights of defendants in the investigative phase of the procedure.

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The research in the respective countries was conducted by local project partners, with the coordination of the Hungarian Helsinki Committee. The project partners are the following:

- Hungarian Helsinki Committee (Hungary),
- Associazione Antigone (Italy),
- Fair Trials (France),
- Human Rights House Zagreb (Croatia),
- Liga lidských práv (Czech Republic).

The project included an analysis of the legal framework and the statistical data, and an empirical research. Results are summarized in the present country report.

Analysis of the legal framework and the available statistical data

As a first step, researchers analysed the applicable national legal rules with respect to the audiovisual recording of interrogations and of testimonies given at court hearings, along with the available statistical data pertaining to the practice of audiovisual recording. Results were summarized in desk reviews, with the overall purpose to provide, on the basis of the informa-

tion available, a critical account of the criminal procedure with respect to the focus of the research, and to provide a contextual framework for interpreting the data gathered through the empirical research.

Empirical research

As Member States, we wished to assess compliance with the respective EU Directive on the basis of strong empirical evidence. As part of the empirical research, we conducted semi-structured interviews with the participants of the criminal procedure: with representatives of the investigation authorities, with prosecutors, judges, defence counsels and defendants. The willingness of authorities and other stakeholders to cooperate with the researchers varied country by country, similarly to the availability of statistics. Some national research teams faced lack of cooperation at a political and administrative (that is, on a governmental / ministerial) level, and on behalf of the police. In the Czech Republic, official statistical information was not available. In the Czech Republic, interviews were conducted with the following criminal justice stakeholders: 3 police officers, 1 prosecutor, as well as 2 defence counsels, 1 NGO representative and 3 defendants. Further information about the research conducted in the participating countries is provided in the individual country reports.

Liga lidských práv conducted a research in Czech Republic in the context of a multijurisdictional project on audiovisual recording of police interrogations of suspects, including minors and vulnerable persons, funded by the European Commission's Justice Programme (the "ProCam" project). The ProCam project is led by the Hungarian Helsinki Committee and covers Croatia, Czech Republic, France, Hungary and Italy. The overall objective of this multi-jurisdictional research is to assess whether audiovisual recording can help create more transparency and accountability in pre-trial proceedings, thereby contributing to reinforcing the procedural rights of suspects and accused persons.

The methodology of the research consisted of a desk research on legislation, jurisprudence and official pieces of information, followed by submitting Freedom of Information requests to relevant state institutions (the Police as well as the Ministry of Justice) to obtain statistical information as well as official statements to the internal rules and practise, as well as interviewing 10 stakeholders and persons with experience of an interrogation as a means of verifying the actual practice of conducting and recording the interrogations.

1.2. Brief description of the national criminal justice system and criminal procedure

Criminal courts

The system of criminal courts constitutes of District courts, Regional courts, two High courts and the Supreme Court. The Constitutional Court has a special position, meaning that it does not constitute a part of the system of criminal courts; it is however possible to file a constitutional complaint under circumstances explained further in the introduction.

The decisions are made either by a single judge or in a senate consisting of three judges. Which court is competent depends on the sanction set for the crime in prosecution.

Initiation of criminal proceedings

Proceedings before the court are possible only after the submission of an indictment by Public Prosecutor. No private indictment exists in the Czech criminal law. Instead, the main part of preliminary proceedings lies in the investigation carried out by the police.

Stages of criminal proceeding:

Preliminary proceedings

Preliminary proceedings serve for verification of facts, investigation, and also shortened preliminary procedure. Investigation is led by the service of criminal police. Criminal prosecution of the accused starts by the written charge. The written charge has to be delivered to the accused in person. It contains the description of the criminal act, legal qualification and instruction on remedy. The public prosecutor supervises the proceedings. The public prosecutor is entitled to transfer the case, discontinue or stop prosecution or approve settlement. The shortened preliminary procedure concerns lesser serious offences with simplified evidence procedure.

Proceedings before the Court

The proceedings start with the presentation of the indictment and followed by the examination of an accused and the witnesses. The proceedings end with the closing statements.

The criminal proceedings under Czech law are governed by an **adversarial system**, meaning that the role of the court is primarily that of an impartial referee between the prosecution and the defense. The court is therefore not actively involved in investigation of the facts in the case, making the proceedings less prone to bias of the court.

Appeal proceedings

The defendants, their representatives, the public prosecutor or the injured party have the right to appeal within 8 days to a court of a higher instance. If an appeal is filed, the court of appeal reviews the decision of the court of first instance.¹

¹ Summary of the criminal proceedings can also be found on the European Justice portal, see: https://e-justice.europa.eu/content_rights_of_defendants_in_criminal_proceedings_-169-CZ-maximizeMS-en.do?clangcs

Constitutional complaint

Constitutional complaint can be filed after all possible legal remedies have proven ineffective in cases where constitutional rights of the complaining party have been compromised. The Constitutional Court does not gain the power to change the previous verdicts, however, it can annul them in order for them to be reviewed by the original court in the light of reasoning of the Constitutional Court.

2. LEGAL FRAMEWORK

2.1. Legal provisions concerning recording of interrogations

The legal system of Czech Republic does not require the audiovisual recording of interrogations, which remains **optional**². Not all police stations are equipped with the necessary technology.

With the help of both FOI requests and interviews with policemen, we were able to confirm that the police has until very recently had no internal rules concerning the production of audio/audiovisual recording of interrogations. An internal document specifying some details of audiovisual recording is said to have been issued by the Ministry of Interior recently, however, it was not made available to us during the research. The recording of interrogation remains under assessment of each policeman individually. General rules are established by the CPC, as follows:

Special Means of Making Minutes³

- (1) To capture the course of an action a stenography record may be made, which is then along with a transcript of the ordinary writing attached to the protocol, **or an audio or video record or other suitable means**. In case that a video-conference device is used, the audio and video record is always made.
- (2) If an audio or video record was made alongside the protocol, it shall be noted in the protocol made about an action, in which shall be indicated, in addition to the time, place and manner of its execution, also information about the used device. The technical recording medium shall be attached to the file, or there shall be indicated where the medium is stored.

The law states that if such a recording is made, it shall be noted in the protocol and the recording itself shall be attached to the case file. It shall therefore become available to the persons with authorisation to inspect the file itself: the accused person, aggrieved person and the party concerned, as well as their defence counsels. They also have the right to make notes and copies at their own expense. This provision, however, tackles the file as a whole and does not specifically mention the audio or audiovisual recording, meaning that the reality of accessibility of the recording could prove more complicated. In theory, however, it shall be accessible in the same manner as the rest of the file.

² Zákon č. 141/1961 Sb., o trestním řízení soudním (trestní řád), [Czech Republic, Criminal Procedure Code Act]. 1. January 1962. Hereafter: CPC. Available in English at: <https://www.legislationline.org/documents/id/20036>

³ CPC. Article 55a.

Inspection of Documents⁴

(1) The accused person, aggrieved person and party concerned, their defence counsels and agents have the right to inspect files, with the exception of the voting protocol and the personal data of witnesses in accordance with Article 55 (2), to make extracts and notes from them, and make copies of files and their parts at own expense. The same right applies to statutory representatives of the accused person, aggrieved person or party concerned if they are legally incapacitated or if their legal capacity is restricted. Other persons may do so with the consent of the presiding judge and in pre-trial proceedings with the consent of the public prosecutor or the Police authority, and only if it is necessary to exercise their rights.

Apart from producing audio or audiovisual recording as a means of recording the interrogation, the laws also permit for a „video-conference device“ to be used as a means of communicating with the interrogated person; this would usually cover cases such as domestic/sexual violence cases to prevent the interrogated witness or victim from meeting the accused person, or situations in which the interrogated person is physically incapable of transferring to the interrogation room (typically at the police station).

Use of video-conference device⁵

If it is necessary for the protection of rights of persons, especially with regard to their age or health condition, or if it is required by security or other serious reasons, technical devices for transferring picture and sound (hereinafter referred to as “**video-conference device**”) may be used in the course of performing acts in criminal proceedings, if the nature of these acts allow it and if it is technically possible.

As stated in the article 55a, in these cases the audiovisual recording shall be always made.

The CPC also mentions the possibility of audio recordings in the case of court hearings as an equivalent of written record of actions of authorities; however, as stated above, the court itself is not an investigative party.

⁴ CPC. Article 65. Zákon č. 141/1961 Sb., o trestním řízení soudním (trestní řád), Czech Republic, Criminal Procedure Code Act.01.01.1962. Available in English at: <https://www.legislationline.org/documents/id/20036>

⁵ CPC. Article 52a.

Court Reporter⁶

The official record of the actions of authorities involved in criminal proceedings is usually drawn up by a sworn court reporter. If a court reporter is not co-opted, the record shall be made by the person performing the action. **Where an audio record is made in trial proceedings and therefore the presiding judge does not dictate the record,** the court reporter shall be, if necessary, a magistrate or a record officer of the court.

As for the course of the trial proceedings themselves, the production of an audiorecord is given as a rule where possible. The Criminal Proceedings Code explicitly specifies the storage of such audio record: the place of its storage needs to be noted in the minutes and may not be deleted prior to shredding of the file.

Certain Special Features of Protocol in Proceedings before Court⁷

(1) During the course of the trial shall be made a sound record, unless the presiding judge decides otherwise for important reasons; Article 55a (1) shall not be affected thereby.

(2) If a magistrate or a protocol officer is participating as the court reporter, the protocol is not dictated, but is prepared according to the audio record by the magistrate or the protocol officer

(...)

(7) Audio recordings are stored on a data carrier along with the file, and if its attachment to the file is not possible, the place of its storage shall be noted in the protocol or in a brief record. The audio recording may not be deleted prior to shredding of the file.

(8) If the action is conducted outside the court building and the audio recording can not be made, a court reporter is appointed and the presiding judge dictates the protocol.

⁶ CPC. Article 27.

⁷ Article 55b.

2.1.1. The decision of making a recording

The legal provisions do not determine responsibility for a decision of making a recording, leaving a margin of appreciation to each individual interrogator. As the jurisprudence⁸ showed, however, production of the recording of interrogation by the interrogated party should be possible, as there is no law prohibiting such recording.

Although it could be found useful in similar situations, there is no precedence that the recording would be used in case of a dispute over the transcript; neither the law nor the jurisprudence covers the reasoning for making such a recording.

2.1.2. Availability of the recording

Neither the interrogated persons, nor their counsels receive the recording automatically. The legislation doesn't require that the recording be made available in a timely fashion either.

As a matter of fact, there has been a dispute recently as to whether the interrogated person can be given the copy of recording at all. Said dispute arose between the Supreme Public Prosecutor's Office and the Union of Attorneys, dealing with the possibility of releasing the copy of a recording of a testimony. The Supreme Public Prosecutor's Office⁹ argued that as the Police is not obliged to release such recording by the law, there is no reason to do so; on the contrary, the release could lead to obstruction of the investigation. The Union of Attorneys¹⁰, however, stated that since the law does not prohibit the witness from recording their own testimony, it should be possible to obtain the copy of police recording as well.

2.1.3. Recording by other means

While the audio/audiovisual recordings are hardly ever used in the Czech Republic, **written minutes** of the interrogations need to be produced in the form of a **transcript**.

According to the CPC, minutes of every action during the course of criminal proceedings, including interrogation, must be produced. The law presumes assistance of a designated person who keeps the minutes; however, if that person is not available, the obligation lies on the interrogator themselves, which is currently the prevalent practice.

⁸ Resolution of the Constitutional Court (nr III.ÚS 1031/17, issued 24. 10. 2017), available at: <http://nalus.usoud.cz/Search/GetText.aspx?sz=3-1031-17>, see part 2.3. of the country report.

⁹ Supreme Public Prosecutor's Office (2018), letter to the Union of Attorneys, available at: <http://www.uocr.cz/wp-content/uploads/2018/04/Stanovisko-Nejvy%C5%A1%C5%A1%C3%AD-st%C3%A1tn%C3%AD-zas-tupitelstv%C3%AD-1.pdf> (accessed 20.02.2019).

¹⁰ The Union of Attorneys (2018), Analysis on the right to request copy of official record, available at: <http://www.uocr.cz/wp-content/uploads/2018/04/Anal%C3%BDza-mo%C5%BEnosti-po%C5%BEado-vat-kopii-z%C3%A1znamu.pdf> (accessed 20.02.2019).

Taking Minutes¹¹

- (1) The statement of the accused person is usually **recorded in the protocol (minutes) according to the dictation of the interrogator**, in direct speech and, if possible, literally.
- (2) Unless a protocol of the trial or public session is concerned, the protocol must be presented to the accused person to read after the hearing, or if requested, to be read to him. The accused person has the right to request that the transcript is supplemented or that any errors are corrected in accordance with his statements. The accused person must be instructed about this right.
- (3) The transcript of the questioning, which was carried out without a reporter, shall be read to or submitted for reading to the questioned person in the presence of an impartial person before signing. If the questioned person has any objections against the contents of the transcript, they must be discussed in the presence of an impartial person and the outcome of the discussion must be reflected in the transcript.

In practice, the police officer interrogating would very often be writing the transcript themselves. This, of course, bears a number of disadvantages for an obvious reason: it is challenging for the officer to write the transcript and interview the specific person at the very same time. Each part of the interrogation needs to be put on paper subsequently, therefore disrupting the interview by parts; resulting in something less than a perfect live transcript of the interrogation. The outcome would therefore be something between a summary note and a live transcript; an imperfect transcript is produced that is provided for the interrogated person for approval after the interrogation is finished. Signature of the interrogated person confirming the correctness of the transcript is demanded.

The law also does not specify **the location** of the interrogation in case it is recorded; practice showed that although it would in most cases take place at the police station, the officers can execute the interrogation at any place they find convenient.

2.2. Situation of different groups of interrogated persons

To set the background of the research, the categories of interrogated persons we were interested in were as follows: suspects, accused persons, witnesses and victims, in particular vulnerable persons and minors. However, those categories have proven to be of no difference in the legislative framework. Distinction could nevertheless be found in the practice, which will be covered under chapter 4. of the report.

¹¹ CPC. Article 95.

2.2.1. The situation of vulnerable persons

Under the Czech law, vulnerable persons receive no special rights or treatments, with the sole exception of vulnerable victims. The Czech legal system does not recognize the term of a “vulnerable offender” or a “vulnerable suspect”. The term “vulnerability” only concerns “vulnerable victims”.

According to the law on victims of crimes¹², a vulnerable victim could be:

- a) a child
- b) a person of age or a person with a mental disorder or a physical disability, if that circumstance could limit their full application in society in comparison with its other members
- c) a victim of human trafficking or a victim of a terrorist attack
- d) a victim of a criminal offense against dignity of sexual manner, a victim of a criminal offense involving violence or a victim of a hate crime in the case of a risk of a secondary harm

In case of any uncertainty, the police shall approach the victim in the same manner as if they were vulnerable. If a witness to a crime could be endangered – “vulnerable” – by a possibility of danger from the offender, the police shall provide such witness with protection.¹³ Although, specific regulations relating to audiovisual recording have not been implemented.

The CPC does, however, set a rule that persons under 18 years old should be interrogated in a manner that it would not be necessary to repeat the questioning, especially in cases where the questioning could affect their intellectual and moral development. Although audiovisual recordings are not mentioned as a means to ensure that, the practice showed that it is often the case.

Interrogation of minors¹⁴

- (1) If a person under 15 years old is questioned as a witness about circumstances, reviving of which in memory could, in respect of his age, adversely affect his intellectual and moral development, the questioning shall be conducted with especial care and concerning its contents in such a way that it generally should not be necessary to repeat the questioning in further proceedings; a pedagogue or another person having experience with education of juveniles, that would contribute to correct conduct

¹² Zákon č. 45/2013 Sb., o obětech trestných činů. (Act on Victims of Crimes). Article 2, 01.08.2013

¹³ As stated in the Freedom of Information request to the Police Presidium, see annexes to the Report

¹⁴ CPC. Article 102.

of the questioning with regard to the subject of the questioning and to the degree of intellectual and moral development of the questioned person, shall be included to the questioning.

2.2.2. Implementation of the Commission Recommendation on procedural safe guards for vulnerable persons suspected or accused in criminal proceedings

Liga lidských práv has previously conducted a study on safeguards for vulnerable persons in criminal proceedings under the Commission Recommendation 2013/C 378/02¹⁵ with regard to persons with mental disorders (IMPAIR).¹⁶ Unfortunately, the outcome showed that the Czech Republic has not taken any specific measures for the implementation of the Recommendation. Thereby the national legislation does not contain measures that would ensure safeguards for vulnerable persons.

2.3. Decisions of national courts in Czech jurisdiction

There have been at least two instances of constitutional complaints involving the topic of audio recording in previous years. Unfortunately, both of them were rejected by the Constitutional Court as the violations under scrutiny did not reach the level of breach of the Constitution.

In a resolution of the Constitutional Court¹⁷ from October 2017, the complainant argued among others that an audio recording of custody hearing has not been produced despite an explicit demand from the defence. The Constitutional Court argued that neither party was disadvantaged by that fact as either of them could have made the record of the custody hearing on their own behalf.

An further resolution of the Constitutional Court¹⁸ from May 2017 dealt with an audio recording carried out by a policeman using a personal recording device. The complainant argued

¹⁵ Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, available at: https://eur-lex.europa.eu/legal-content/EN/TX/?uri=uriserv:OJ.C_.2013.378.01.0008.01.ENG

¹⁶ Liga lidských práv: Enhancing Procedural Rights of Persons with Intellectual and/or Psychiatric Impairments in Criminal Proceedings: Exploring the Need for Action (the IMPAIR project), information available at: <http://llp.cz/o-nas/nase-projekty/impair/>

¹⁷ Resolution of the Constitutional Court (nr III.ÚS 1031/17, issued 24. 10. 2017), available at: <http://nalus.usoud.cz/Search/GetText.aspx?sz=3-1031-17>

¹⁸ Resolution of the Constitutional Court (nr III. ÚŠ 1122/17, issued 30.05. 2017), available at: <https://iudictum.cz/251931/iii-us-1122-17>

that the recording should therefore be inadmissible. However, the Constitutional Court ruled that the lack of certification of the device should not play a role in the admissibility of the recording.

In the verdict of the Supreme Administrative Court¹⁹, the Court dealt with a case of a possible disproportionate intervention of the Police involving physical injuries to the complaining party. Although a camera man was present at the scene of the intervention, significant parts of the police intervention have not been recorded. The Court stated that such an audiovisual recording of the intervention as a whole could have served as an effective means of evidence and that it was the duty of the Police to produce such recording to the most complete extent.

2.4. Statements by domestic authorities

In recent years, there has been a dispute between the Supreme Public Prosecutor's Office and the Union of Attorneys concerning the possibility of releasing the copy of a recording of a testimony. The Supreme Public Prosecutor's Office argues that as the Police is not obliged to release such recording by the law, there is no reason to do so; on the contrary, the release could lead to obstruction of the investigation.²⁰ The Union of Attorneys, however, states that since the law does not prohibit the witness from recording their own testimony, it should be possible to obtain the copy of police recording as well.

¹⁹ Verdict of the Supreme Administrative Court (nr 6 As 255/2014, issued 01.03.2017), available at: http://www.nssoud.cz/files/SOUDNI_VYKON/2016/0256_6As__1600079_20170301142614_prevedeno.pdf

²⁰ Supreme Public Prosecutor's Office (2018), letter to the Union of Attorneys, available at: <http://www.uocr.cz/wp-content/uploads/2018/04/Stanovisko-Nejvy%C5%A1%C5%A1%C3%AD-st%C3%A1tn%C3%AD-zas-tupitelstv%C3%AD-1.pdf> (accessed 20.02.2019).

3. STATISTICAL INFORMATION

3.1. Difficulties in delivering statistical information

As part of the research, getting statistical information proved extremely complicated. None of the information needed could be found in open sources. After submitting several Freedom of Information requests, we found out that the police gathers a very limited range of statistical data, thereby most of the information we have requested was practically non-existent.

3.2. Special interrogation rooms

While requesting information from the authorities, most of the information we have received referred to special interrogation rooms, each of them being fully equipped for audiovisual recordings. The first one was built in 2006 and by the end of 2017, 66 rooms were established in the Czech Republic. Neither the law nor internal rules of the Police specify for which scope of crimes or which specific group of victims, witnesses or suspects the special interrogation rooms are used. As a practice, they would be used mostly in cases of interrogation of children, interrogations of victims of sexual crimes, as well as any other instances in which the individual police officers would consider appropriate.

3.2.1. Cost of recordings

The police does not keep statistics on costs of individual recordings. The only figure we were able to reach was the cost of equipping a single special interrogation room, which is estimated at approximately EUR 9,700 (CZK 250,000).

3.2.2. Operations carried out in the special interrogation rooms

The police made available a single statistic to our research, which was the number of individual interrogations in the special interrogation rooms. According to official information, each of these operations has been recorded. There are no statistics available of the interrogations, unless they are executed in these rooms.

| year | interrogations of children/minors | | | adults | | other groups | | other interrogations |
|------|-----------------------------------|-----------|-----------|-------------------|------|--------------|-------------|----------------------|
| | victims | witnesses | offenders | domestic violence | rape | seniors | handicapped | |
| 2015 | 729 | 375 | 73 | 57 | 29 | 22 | 15 | 537 |
| 2016 | 779 | 402 | 67 | 60 | 34 | 23 | 24 | 550 |
| 2017 | 858 | 551 | 89 | 104 | 38 | 31 | 10 | 240 |

The quality of the statistical information can, however be questioned. During our research as part of the IMPAIR project²¹, we were able to acquire statistics for 2015 divided into respective police districts. The information that the police provided in 2015 shows a total number of 2,293 operations, while the statistics provided by the police as part of the ProCam project show a total number of 1,837.

²¹ Liga lidských práv: Enhancing Procedural Rights of Persons with Intellectual and/or Psychiatric Impairments in Criminal Proceedings: Exploring the Need for Action (the IMPAIR project), information available at: <http://llp.cz/o-nas/nase-projekty/impair/>

4. THE PRACTICE

4.1. Methodology of the research

Our sources of information were gathering official information both from the Police presidium and the Ministry of Interior (supervising the armed forces including the police) in the form of answers to our Freedom of Information requests and conducting interviews with practitioners taking part in the interrogation to obtain a multiple-sided view on the practice.

Concerning the legal positions, we managed to interview **two attorneys** of different backgrounds, both of them being quite open to share their views publicly. From the position of interrogators themselves, we spoke to **three** different **police officers** of different police departments as well as rankings; a mid-ranking criminalist with wide experience with interrogating adult persons, a high-ranking officer with similar scope of interest but also higher authority and expertise, and a policewoman specializing in the interrogations of children and minors. From another point of view, an interview with **a prosecutor supervising interrogations of children** and minors has been conducted.

To gain a more-sided view on the situation of audiovisual recordings in the Czech Republic, we reached out to three persons with a recent experience of interrogation from different positions: **two witnesses**, one of them having also filed a criminal complaint in the past, and **a suspect to a crime**. Unfortunately, given the practice in our country, we were unable to reach a person whose interrogation would be recorded. We were also able to gather feedback on why the particular persons would value the production of audiovisual recording. Last but not least, we obtained a statement from **a legal professional at an NGO** providing service to victims of hate crimes.

4.2 The way of recording interrogations

As a result of a very limited legal framework and statistical information on the topic, most information relevant to our research came from the interviews we conducted as well as from information disclosed by authorities on the basis of Freedom of Information Requests. According to the information we gained the prevailing practice of recording interrogations remains to produce a written transcript of the interrogation. As a matter of fact, the topic of recordings is very much absent from legal and societal discourse in the country.

According to the police presidium, audiovisual recording is being conducted in the special interrogation rooms, which are being gradually set up across the country. In 2016 the police launched a project aiming at covering main police departments with audiovisual equipment suitable for videoconference transmissions, mainly concerning interrogations of witnesses and victims. The project is being co-financed by the EU with the costs being estimated at approximately EUR 1.1 million (CZK 28 million) and should result in 19 stationary and 21 mobile sets of equipment established by the end of 2018.

4.3. The possibility of audiovisual recording

During the course of our research, we were able to confirm that the police do not have internal rules concerning the production of audio/audiovisual recording of interrogations. Only general rules are established by the CPC (see under chapter 2.), leaving room for a wide margin of appreciation for individual police practices.

4.4. The decision of making a recording

The practice, as all of our interviewees agreed, is that the use of recording falls under the full discretion of each person conducting the interrogation. In result, the practice would differ not only by each police department, but even by each interrogator. According to the statement of one of the interviewees, a high-ranking police officer, even the supervisors would usually leave the decision to each individual person according to the particular situation.

4.5. Situation of different groups of interrogated persons

Although the legislator does not distinguish between different types of interrogated persons when it comes to audio/audiovisual recordings (suspects, accused persons, witnesses, vulnerable persons, minors, victims), the practice showed certain differentiation between different categories of interrogated persons. However, in case of defendants the category of offence seems to play a more significant role in the decision than the category of person interrogated would. As a rule, interrogations of victims and witnesses are more likely to be recorded than accused persons.

4.5.1 The situation of vulnerable persons

As far as the audiovisual recording of interrogations seemed unregulated, there were two different categories of interrogated persons where audiovisual recording of interrogations seemed to consider the standards set out in the Access to a Lawyer Directive: victims or witnesses of sexual or domestic violence and victims under 18 years old. In the course of our research, we were able to interview a policewoman conducting interviews of children and persons under 18 years old and a prosecutor having specializing in the very same group until recently. In practice, it turned out that the children and minors were the only vulnerable group approached coherently. As a rule, these interrogations would take place in special interrogation rooms set up with toys and one sided mirror glass. As stated in the previous part of the report, these interrogations would therefore be often recorded, even though the law does not prescribe such obligation.

Good practice: recording of interrogations of children/minors

Although the production of the audio or audiovisual recordings remains under discretion of each individual interviewer, it seems to become a common practice to record interrogations of children and persons under 18 years old.

5. ATTITUDES OF RELEVANT STAKEHOLDERS

5.1. Means of recording interrogations

Based on the experience of the interviewees, instead of audio / audiovisual recording, the police would produce a written minutes of the interrogation. Even though the ideal case would be a literal transcript of what was being said, as one of the attorneys pointed out, practically the police officer only captures the most important points of the interrogation in their own words, often resulting in a loose interpretation of the interview that would draw near the actual sense of what was being said instead of an actual transcript. The practice described above was confirmed by all of our interviewees including the police officers. The attorneys expressed their worries that this practice very easily results in inaccuracies when interpreting the answers, often even unintentionally. One of the attorneys claimed that this practice allows wrongly asked, guided questions and a great deal of inaccuracies in the protocol. If a recording was made, not only the inaccuracies were captured, the judge would also be able to evaluate the professional quality of the interrogation later in the course of criminal proceedings.

This was confirmed by a policeman depicting their usual interrogations as beginning with a spontaneous testimony of the person interrogated. This would be followed by questions by the interrogator. Instead of a live transcript, they would usually write down only what they would find relevant to the case, stating that the persons interrogated are often prone to extensive storytelling in which the point would be lost. After typing the minutes into the computer, it would be printed and signed by the interrogated person.

5.2. Possibilities and practical issues with recording interrogations

As our main focus, we aimed at finding out what the actual situation of audiovisual recording in the Czech Republic really is. As the law enables police officers to produce such recordings and the information of authorities provided to us via Freedom of Information request showed a positive trend in providing police with the equipment needed, we expected to verify the use of audiovisual recordings with the practitioners themselves. The answers to the very basic question for our research, however, varied significantly.

A high ranking police officer we interviewed disclosed that the decision of production the audio / audiovisual recording was, indeed, under the discretion of individual policemen. Another officer described instances from their practice where recordings were being used as mostly the case of serious crimes for the purposes of proper identification of the suspect as well as nonverbal analysis and a proof for further proceedings.

However, the attorneys, the NGO representative and all of the interrogated persons agreed that none of them has witnessed an interrogation to be recorded throughout their whole practice: with two sole exceptions, one of the situations concerning organized crime (the recording was supposed to be made solely because of the complicity of the case, so that the police would be able to review the interrogation later in the investigation) and a single case of interrogation

of a victim to violence. The lack of recording of the interrogation, however could result in the lack of documenting possible mistakes of the procedure that would later be missing from the written transcript.. One of the interrogated persons we interviewed reported about a case, which illustrates that:

Case study: witness interrogation with a questionable objective

The person who was interrogated by the police was a witness to a crime. While staying in a community center maintained by left-wing activists, a group of neo-nazis attacked the center with flame retardant bottles. While still in shock, the interviewee disclosed their personal information to the police at the scene, only to be summoned as a witness later in the place of their residence.

The interviewee remembered the interrogating policeman produced a protocol during the interrogation by typing on the computer while simultaneously asking questions. Afterwards, he would read the transcript for approval and signature, which turned out to be a loose interpretation of the interview that would draw near the actual sense of what was being said instead of an actual transcript.

The interviewee could neither remember clearly whether they received the instruction on their legal rights; if so, it would only be in oral form. The policemen would mention the possibility of remaining silent but presumed the interviewees wouldn't take advantage of said right.

On the topic of recording the interrogation, **the interviewee disclosed they would appreciate if the recording was produced. They felt that the interrogation had been conducted in a strange, unprofessional manner and served a different purpose:** the officer would admit there was little unknown about the attack itself and continued by asking names of other left-wing activists involved in the community center in a hope that the witness would reveal their identities, leaving the feeling that the purpose of obtaining their names would have little in common with the case they were summoned as a witness to and that the police was, in fact, miscarried the situation. The police officer then tried to behave in a friendly manner and asked the interviewee whether they could contact them if they need help in the future. The interviewee felt that if a recording was produced, this type of behaviour would prove unacceptable, alternatively that they would at least have a proof of the unprofessional conduct of the police officer.

On the topic of **availability of the equipment** needed, one of the police officers ensured us the equipment was available at request and it suited the needs of their department just fine – despite having access to one special interrogation room with audiovisual recording technique for approximately 100 police investigators working at the department. A different po-

liceman, however, said the technique was hardly available, and the interrogation room in their department has been used as a regular office of one of their colleagues.

The attorneys didn't feel the police were sufficiently equipped but believed the willingness of police officers constituted even more of a barrier. If the recordings were obligatory, the pressure on the interrogators regarding the professional standards would rise significantly. At the same time, they believe that the recordings would serve the protection of both the authorities and of the interrogated persons, every mistake becoming clearly visible and scrutinized. That would apply not only to the authorities but the legal representation as well. As for the availability of recording to all the parties of the criminal proceedings, however, one of the attorneys expressed the fear of misuse from some of the parties concerned.

As for the barriers to the introduction of audiovisual recording of interrogations in Czech jurisdiction, most of the stakeholders felt that such a requirement would imply a great deal of administrative duties. They also felt that the camera, if visible or known about, would stress both the interviewer and the interviewee; however they believed it was something the officers could get used to.

5.3. Specific situation of vulnerable persons, especially children

Interviewing a policewoman and a prosecutor with a broad experience in interviewing minors, we were able to understand the specific situation better. The interviews reinforced that as a common practice, **children are often being recorded during interrogations**, often in the special interrogation rooms customized for the needs and comfort of children. The officer described they would try to record the interrogation each time they would find it beneficial either for the case or the parties involved.

They disclosed different reasons behind the practice of recording: firstly, their experience showed that the interrogated minors would tend to share most information the very first time they would talk to the officials; in the later interviews, they would often forget to repeat substantial details, meaning the importance of recording the first encounter would grow significantly. Secondly, given the age and mental development of each minor, it would be often inappropriate to repeat the interrogations of such persons without justification, potentially causing trauma.

As for the availability of the equipment needed to record interrogations, the stakeholders interrogating minors found it to be available with no difficulties other than demanding a considerable number of staff. They also disclosed a new information that was not clarified by other sources: they had the possibility to request recording outside of the police station; it would however require assistance of several staff members.

5.4. Audiovisual recordings as a means of protection interrogated person's rights

The topic of audiovisual recording as a means of protection interrogated person's rights became, surprisingly, the most polarised topic between different groups of interviewees. In general, the stakeholders among legal professionals believed it could easily serve as a proof of the interrogated persons decisions, such as requesting legal advice or communication with the family members, but was not necessary for ensuring the proper instruction of rights, feeling that it was the attorney's task to make sure the interrogated person was handled properly. However, the experience of persons interrogated in the past showed this was very problematic in cases where an attorney has not been summoned, often in the very first stages of criminal proceedings, as the following example showed:

Case study: interrogation of two suspects at the same time and a missing instruction of the interviewee's rights

Person 2 has been interrogated from the position of a suspect; they would be detained at the place of the offence by force and transported to a near police department.

Although there were police cameras present during the course of detention and transport, it is not surprising that this interrogation was not audio/audiovisually recorded either. Nevertheless, the interviewee believed this interrogation involved direct violation of the interrogated person's rights.

The interrogation was conducted by a single policeman. It was, however, conducted with two suspects at the same time. The interviewee remembers clearly they were not given any instruction of their rights in writing or in oral form. The officer would merely say he didn't presume they would talk, which was confirmed by the suspects. The policeman would produce minutes on the computer; the interviewee had not seen or signed any confirmation of the minutes. They received any other information on the advance of the process only in a form of a letter.

The interviewee felt that if the recording of the interrogation itself was produced, the police would need to honour their rights, which they felt were undoubtedly violated.

On the topic of instruction of interrogated persons rights, the attorneys similarly felt the recording was not the most efficient solution; instead of recording, they would rather advocate for the instruction to be abbreviated as there has been so many additions to it in recent years that the instruction became too long and complex to an extent that it often becomes incomprehensible for the interviewees; it has been mentioned by a policeman we interviewed that it takes around 8 minutes to read aloud. Usually, the attorneys would explain the rights to

the interrogated person themselves, thus showing that the violation of interrogated persons rights is very likely when an attorney is not present..

A specific situation of foreigners in need of interpretation was brought up by one of the stakeholders, stating that without a recording, the interpretation would prove unverifiable and sometimes prone to miscarriage not necessarily from the side of the police, as the following example shows:

Case study: unverifiable interpretation

An attorney we interviewed recalled a case with a Vietnamese suspect in need of an interpreter for the sake of interrogation. The interpreter contracted by the police translated the interrogation with no visible obstacles.

Later, the police discovered that the interpreter had been, in fact, threatening the interrogated person during the interrogation itself using Vietnamese language. As no recording had been made, there was no possibility to check what was actually being said in the interrogation room.

As one of the interviewed policemen confirmed, this particular situation has not been uncommon within the practice. With the possibility of checking the recording by an independent person, these situations could have been prevented or at least easily distinguished.

6. POSSIBILITIES OF INTRODUCING INCREASED AUDIOVISUAL RECORDING OF INTERROGATIONS AND THE ANALYSIS OF FACTORS FACILITATING AND HINDERING IT

6.1. Facilitating factors

Although the possibilities of introducing increased audiovisual recording of interrogations seem, as for now, quite limited, there is a positive trend: the special interrogation rooms are being spread through the whole state. We have also encountered positive attitude from several of our stakeholders including the authorities as for the practicality of producing such recordings during the latter stages of criminal proceedings.

6.2 Hindering factors

While being asked on the possible obstacles of the introduction of increased audiovisual recording of interrogations, every stakeholder listed financial reasons as the first and main reason they wouldn't think it was possible. The individual problems seemed to be:

6.2.1 Lack of interrogation rooms

Currently, there is around 66 special interrogation rooms in the Czech Republic, while others are being built. While that sounds like a progress and a good way to go, we were told that in the police department on regional level that we were able to visit, around 100 policemen who could be, in theory, conducting interrogations in the same day, shared one special interrogation room. While the stakeholder we spoke to didn't seem to view that as a burning problem, this would most definitely become a problem if the number of interrogations recorded were to surge.

6.2.2. Lack of personnel

During our research, each of the persons interviewed confirmed that the most common way of recording the interrogation was a live minutes of the interrogation. What seemed to be even more problematic, however, was the fact that the minutes are being produced by the interrogators themselves. The reason was simple: a separate position of a writer became uncommon in the police force. A medium-ranking policeman we interviewed disclosed that this was not the case earlier in his career, unfortunately, the positions were abolished years ago due to financial reasons. Without the writer, they pointed out, the interrogations became difficult as they are: writing the minutes distributes attention, making reacting properly and effectively uneasy and reducing the quality of the very interrogation. As a result, it needs to be the policemen themselves who produce a transcript of the interrogation. Because of that, the simplest and least time consuming methods are being used. If the policeman was to record every single interrogation, they would also need to take the time to process them and make a transcript, which would take an enormous amount of their time. This was a common issue mentioned by the stakeholders:

A stakeholder shared an example of a case where a relatively short interrogation took 2,5 hours, resulting in 60 pages of minutes. Compliant with the rest of the information we gained, this transcript needed to be produced by the officer themselves.

Another kind of personal that would be needed was technicians: another of the interrogators told us that there is usually up to three different people present with the recording devices, overlooking the technical aspect of the recording.

6.2.3 Lack of equipment

Lastly, the equipment itself would need to be purchased: although there were no problems identified regarding the visual part of the recordings, due to the wrong quality of the audio recorders, they often impose difficulties to the authorities. Many times the recordings are inaudible, which undermine the usability of the recordings later in the course of the criminal proceedings.

6.2.4. Willingness of the policemen

While all of the previous points are merely a matter of finances, another topic came up in majority of cases: the willingness of the policemen to record their interrogations, for several reasons. Mainly, the interviewees agreed that a camera present in the room would make every party to the interrogation nervous: from the point of nervousness of the policemen that could be a common problem (but also easily trained), to a concern that they would need to be much more careful with their choice of words as they could be put to scrutiny very easily, even if they conducted the interrogation to the best of their efforts. If the camera was visible, one of the stakeholders pointed out, the nervousness would affect not only the interrogator but also the person interrogated, which could diminish the trustiness and the value of the whole testimony as they would watch their verbal and nonverbal reactions much more closely.

7. RECOMMENDATIONS

In the course of the research as well as interviews with stakeholders, we were able to reach several problematic points but also positive approaches and valuable feedback. The recommendations would be as follows:

7.1. Continuation of introduction of special interrogation rooms

A positive trend could be seen both from the interviews with stakeholders and official information conveyed by the authorities: the special interrogation rooms are becoming more available to the policemen who would decide to record their interrogations. We believe that the availability of the equipment is the essential premise of moving towards good practice and create a base for the legislative framework.

7.2. Motivation of officers

Until there is no binding legislation, the recording remains an individual decision of each officer, thereby motivating the members of police forces to use the recording seems crucial. High ranking police officers could take a lead in promoting this practice among their colleagues.

7.3. Education of officers

We also believe the motivation could come from outside the police forces in the form of educating the officers, promoting the benefits of such practice not only to the interrogated persons but also regarding its advantages to their own work. We believe that non-profit as well as government organizations should promote the good practice and helpfulness of the recordings of interrogations to both parties concerned.

7.4. Reintroducing the positions of assisting staff

While the vision of increasing the number of interrogations recorded would be desirable, we would also point out that a complex solution of the problem must be sought. Without assisting staff such as technicians and writers taking part in the recordings and interrogations themselves, we believe the obligation to produce a recording of each interrogation would be met with understandable reluctance. We would strongly argue that a complex and inevitably financially demanding solution must be sought in order to establish an example of good practice rather than a non-functional system that would look good on paper but would prove unrealizable and possibly counterproductive in practice.

7.5. Introducing legislation on vulnerable persons

During the course of our research, we found that little legislation concerning vulnerable persons had been implemented in the Czech Republic. Neither the practice nor the law recognizes the concept of a vulnerable person accused. Introducing these concepts would be

crucial to ensure the rightful handling of such persons in the criminal procedure, and could be possibly helpful in establishing broader legislation on audiovisual recording of interrogations.

7.6. Specification of rules for recording of interrogations

Despite audiovisual interrogations being possible and sometimes in use, we found there is no internal rules as to the situation in which the recordings would be recommended. Legislative specification of groups covered in terms of age range, vulnerability, and types of offences would prove helpful in establishing good practice throughout the Czech Republic.

