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Border Defence and Migration in the Czech Republic

- **ABSTRACT:** *The Czech Republic, as a member state of the European Union, applies the so-called “zero” regime of state border protection, which is based on the abolition of internal border protection and border controls when crossing internal borders. However, this does not apply to Third-Country nationals. Although the strong influence of European legislation is also evident in this area, the Czech Republic has legislation regulating the defence of its national borders and protecting against illegal migration. This paper focuses on such legislation. The introduction presents the constitutional regulation of Czech state borders and the concretisation of these constitutional norms at the statutory level through two basic acts: State Borders and Protection of the State Borders. Furthermore, attention has been paid to protecting the Czech Republic against illegal migration, mainly contained in the Act on the Residence of Foreigners and partly in the Asylum Act, where emphasis is on the de facto protection mechanism and administrative expulsion. The second part of the paper presents criminal law regulations for protecting the Czech Republic against illegal migration. The article concludes with a statistical overview of illegal migration for 2022.*

- **KEYWORDS:** Czech Republic, border defence, migration, administrative expulsion, criminal law

1. Introduction

In this paper, I present the border defence of the Czech Republic in connection with the migration of foreigners. This paper provides a comprehensive presentation regarding protecting state borders (in terms of constitutional, administrative,

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and criminal laws). It is based on Czech legislation, leaving aside the European legal norms. In addition, this article presents statistical data on illegal migration in the Czech Republic for the last year (2022).

A few known facts should be kept in mind while reading the paper. The Czech Republic has been a member state of the European Union since 1 May 2004 and,¹ more importantly, from the point of view of the focus of this paper, has been part of the Schengen area² since 21 December 2007.³ Therefore, the protection of state borders has European and national legal frameworks. Given the focus of this paper, attention will be focused exclusively on the national (i.e. Czech) legal framework. However, all the Czech legislation cited here is significantly influenced by European legislation and, to some extent, constitutes secondary legislation, as directly applicable European legal acts already regulate many rules.

2. On the Czech border regulation

■ 2.1. Constitutional level

Before proceeding to analyse the protection of Czech state borders in connection with migration and refugees, it is appropriate to introduce legal regulations for the borders of the Czech Republic itself.

Legal regulations on the borders of the Czech Republic are enshrined at the constitutional level. According to Article 11 of the Constitution of the Czech Republic,⁴ ‘the territory of the Czech Republic constitutes an indivisible whole, the state borders of which may be changed only by constitutional act.’⁵ This provi-

1 Cf. Constitutional Act No. 515/2002 Coll., on the referendum on the accession of the Czech Republic to the European Union. In the vote held on 13–14 June 2003, 77.33 % of the eligible voters approved the Czech Republic’s accession to the European Union. The official results of the referendum are [Online]. Available at: <https://volby.cz/pls/ref2003/re13?xjazyk=CZ> (Accessed: 14 January 2024).

2 On the Schengen area, see [Online]. Available at: <https://www.consilium.europa.eu/en/policies/schengen-area/> (Accessed: 14 January 2024).

3 With regard to the legal basis for the Czech Republic’s accession to the Schengen area, cf. the EU Council Decision on the full application of the provisions of the Schengen acquis in the Czech Republic and several other States, most of which have only recently become EU members (2007/801/ES). This Decision was implemented nationally by Act No. 379/2007 Coll., which amended Act No. 326/1999 Coll., on the Residence of Foreigners on the Territory of the Czech Republic, Act No. 325/1999 Coll., on asylum and (at that time) Act No. 283/1991 Coll., on the Police of the Czech Republic. For more details on this topic, see e.g. Pikna, 2005, or Zoubek, 2008, pp. 349 et seq.

4 Constitutional Act No. 1/1993 Coll., Constitution of the Czech Republic.

5 The second reference to state borders is contained in Art. 112(1) of the Constitution of the Czech Republic, according to which ‘the constitutional order of the Czech Republic consists of this Constitution, the Charter of Fundamental Rights and Freedoms, constitutional laws adopted pursuant to this Constitution and constitutional laws of the National Assembly of the Czechoslovak Republic, the Federal Assembly of the Czechoslovak Socialist Republic and the Czech National Council regulating the state borders of the Czech Republic and

sion, which expresses the principle of indivisibility of the state unit, also makes any change in state borders conditional on adopting a constitutional act.⁶ This provision corresponds to the Czech (Czechoslovak) constitutional tradition as it has been essentially unchanged since the first Czechoslovak constitution.⁷ The constitutional regulation of changes to state borders respects that state borders are one of the basic attributes of statehood and simultaneously express the continuity of Czech statehood. The formulation that the territory of the Czech Republic constitutes an indivisible whole confirms that it is a unitary state, that is, a state which, unlike a federal-type state, has a single and unified system of state bodies (legislative, executive, and judicial powers) and does not divide into territorial units which have the character of a state.^{8,9}

The borders of the modern state (previously called “Czechoslovakia”) were first regulated mainly by the peace treaties of the so-called Versailles system in 1919 and 1920 (Versailles, St. Germain, Trianon, and Sévres) and subsequently by other acts.¹⁰ Traditionally, all legal predecessors of the Czech Republic since the beginning of the modern state on the territory of the Czech lands have constitutionally enshrine the rule that a change of state borders can only be made by a constitutional act (cf. Articles 3 and 64(1) Constitution 1920,¹¹ Article 166 Constitution 1948¹² and Article 107(2) Constitution 1960¹³). Over the years, several constitutional acts have been gradually adopted, which (mostly only slightly) have modified the borders of the territory of the Czech Republic or Czechoslovakia. More than ten such norms regulating the delimitation of the border with neighbouring states are in force. Changes to state borders have two aspects: international and national. Negotiating a bilateral international treaty with the relevant state regularly precedes adopting a constitutional act on the change of state borders. The Constitutional Act effectively approves of this treaty. Border adjustments with the Republic

constitutional laws of the Czech National Council adopted after 6 June 1992.’ Constitutional order in the Czech Republic refers to a set of legal regulations of constitutional legal force.

6 Mikeš, 2018, p. 4.

7 Cf. Art. 3(1) of the Constitutional Act No. 121/1920 Coll., Constitutional Charter of the Czechoslovak Republic, which read: The territory of the Czechoslovak Republic shall form a single and indivisible whole, the borders of which may be altered only by constitutional act.

8 Sládeček et al., 2016, pp. 172–173.

9 The unity of the state excludes the division of the Czech Republic into units with the power of the state; it does exclude the division into other territorial-administrative or territorial-self-governing divisions of the Czech Republic. In this regard, cf. in particular Art. 8 of the Constitution of the Czech Republic, which guarantees self-government of local self-government units and which is further developed in Title 7 of the Constitution, entitled Territorial Self-Government. Cf. also Act No. 51/2020 Coll., on the territorial administrative division of the State.

10 For this cf. e.g. Gronský, 2005, p. 43.

11 Constitutional Act No. 12/1920 Coll., Constitution of the Czechoslovak Republic.

12 Constitutional Act No. 150/1948 Coll., Constitution of the Czechoslovak Republic.

13 Constitutional Act No. 100/1960 Coll., Constitution of the Czechoslovak Socialist Republic.

of Austria (Constitutional Act No. 76/2004 Coll.) were preceded by negotiating an international treaty published under No 85/2004 Coll. IT.¹⁴

For completeness, it should be added that territorial indivisibility is further mentioned at the constitutional level, in addition to the abovementioned Constitution, in the Constitutional Act on the Security of the Czech Republic,¹⁵ which allows the Parliament¹⁶ to declare a state of national emergency¹⁷ upon the proposal of the government. A state of national emergency can be declared, among other situations, in the event of a threat to the territorial indivisibility of the Czech Republic and can be declared for limited or the entire territory of the state.¹⁸ During a state of national emergency, for example, deliberations on draft laws can be curtailed, the president cannot exercise veto power, elections can be postponed, and selected entities (e.g. the government, ministries, or the Czech National Bank) can take emergency or extraordinary measures in their fields of competence.

■ 2.2. Act level

2.2.1. Act on State Borders

At the act level, the Czech Republic's state borders are regulated by two basic laws: Act No. 312/2001 Coll. on State Borders and Act No. 191/2016 Coll. on the Protection of State Borders of the Czech Republic. This Act replaced the only act regulating state borders from the beginning of the independent (Czechoslovak) state (Act No. 245/1921 Coll. on state borders). By nature, it is primarily an organic piece of legislation, the subject of which is the regulation of the exercise of state administration and the rights and obligations of natural and legal persons in matters of the state borders of the Czech Republic.¹⁹ According to its systematics, the Act can be divided into four parts: defining basic concepts; the course and marking of state borders; regulation of state border administration, which the Act entrusts primarily to the Ministry of the Interior;²⁰ and regulation of the rights and obligations of natural or legal persons in connection with state border administration.

14 In the Czech Republic, legislation is published in the Collection of Laws (hereinafter referred to as Coll.), while international treaties are published in the Collection of International Treaties, for which the abbreviation 'Coll. IT' was used. For details, cf. Act No. 309/1999 Coll., on the Collection of Laws and the Collection of International Treaties.

15 Constitutional Act No. 110/1998 Coll. on the Security of the Czech Republic.

16 The Parliament of the Czech Republic is bicameral and consists of the Chamber of Deputies and the Senate – cf. Art. 15(2) of the Constitution. of the Czech Republic. The adoption of a resolution declaring a state of national emergency requires the consent of an overall majority of all deputies and the consent of an overall majority of all senators – cf. Art. 7(2) of the Constitutional Act on the Security of the Czech Republic.

17 Art. 2(1) and Art. 7(1) of the Constitutional Act on the Security of the Czech Republic.

18 Art. 2(2) of the Constitutional Act on the Security of the Czech Republic.

19 Para. 1(1) of the Act on State Borders.

20 The competence of the Ministry of the Interior in the field of state borders generally stems from the provisions of Art. 12(1)(j) of Act No. 2/1969 Coll., on the Establishment of

The Act also regulates several offences in its conclusion,²¹ but these are not related to illegal migration or any other topic that is the primary focus of this paper. The offences in this act are associated with destruction, damage, or other negative interference with the course of the state border or negative interference with the management of the state border. These offences are punishable with fines of up to CZK 500 000.

2.2.2. *Act on the Protection of the State Borders*

As mentioned above, the Act on State Borders is primarily an organic legal regulation, the subject of which is the exercise of state administration and the regulation of the rights and obligations of natural and legal persons in matters of the Czech Republic's state borders. The object of the second Act, the Act on the Protection of the State Borders of the Czech Republic,²² regulates the protection of the state borders of the Czech Republic against illegal crossing and defines the competencies of the Ministry of the Interior and the Police of the Czech Republic in this area of state administration, by European Union law.²³

It is necessary to elaborate on what was stated at the beginning of this paper. The introduction to the paper emphasised that the issue of state borders and their protection is significantly influenced by European law thanks to the Czech Republic's membership in the European Union and the Schengen area. It should be added that the Czech Republic, by its geographical location, is a state at the heart of the European Union. Therefore, according to European law, no land border in the Czech Republic is external.²⁴ In contrast, all the land borders of the Czech Republic are internal, since the Czech Republic borders the Federal Republic of Germany, the Republic of Poland, the Slovak Republic and the Republic of Austria—other Member States of the European Union—all of which are also members of the Schengen area.

The Act on the Protection of the State Borders of the Czech Republic distinguishes between standard and nonstandard regimes. The standard regime is not expressly provided for in the Act, as it is based on the fact mentioned above

Ministries and Other Central Bodies of State Administration of the Czech Republic (the Competence Act). According to the above provision, the Ministry of the Interior is the central state administration authority for internal affairs, inter alia, for state borders, their demarcation, maintenance and the keeping of documentary work.

21 Art. 18 of the Act on State Borders.

22 Art. 1 of the Act on the Protection of the State Borders of the Czech Republic.

23 In particular the Schengen Borders Code (Directive EU 2016/399) and the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

24 Cf. the definition of 'internal' and 'external' borders in Art. 2(1) and (2) of the Schengen Borders Code. The Czech Republic's external borders are located only at its international airports – e.g. [Online]. Available at: <https://www.mvcr.cz/migrace/clanek/schengenska-spoluprace-schengenska-spoluprace.aspx> (Accessed: 14 January 2024).

that the Czech Republic is a Member State of the European Union, a member of the Schengen area, and borders only with other such states, and its land borders are therefore internal borders in the sense of European law. The standard regime is therefore conceived under the act as ‘zero,’ based on the abolition of internal border protection and the abolition of border controls when crossing internal borders.

Non-standard regimes are collectively referred to by the act as ‘Temporary Reintroduction of Internal Border Protection,’ which are distinguished into two types, depending on the entity that can introduce them. In the first type, the government is empowered to take such steps through a government decree; in the second type, the Ministry of the Interior is empowered by means of emergency measures.²⁵ In the case of the temporary reintroduction of internal border protection, the police provide border protection.²⁶ In principle, the law confers three powers on the police to border protection during the temporary reintroduction of border protection: carrying out checks at the nearest appropriate place from the border (in particular, checks on means of transport within a distance of 10 kilometres from the internal border; police officers are authorised to enter land other than publicly accessible land, within a distance of 50 meters from the internal border; and police are authorised to use technical means to prevent illegal crossing of the internal border using transport.²⁷

3. On migration and refugeeism

■ 3.1. *Administrative law means*

In connection with the focus of the paper, the issue of migration, border protection and refugeeism is regulated in the Czech Republic primarily by two acts, which are the Asylum Act²⁸ and the Act on the Residence of Foreigners on the Territory of the Czech Republic (hereinafter referred to as ‘the Act on the Residence of Foreigners’).²⁹

The initial act in this area was the Act on the Residence of Foreigners. Its subject of regulation follows a directly applicable regulation of the European Union³⁰ to regulate the conditions of entry of foreigners into the territory of the Czech Republic and departure of foreigners from the territory, to establish the conditions of stay of foreigners in the territory, and to define the competence of

25 Art. 12(1) of the Act on the Protection of the State Borders of the Czech Republic.

26 All the above is enshrined in Art. 14 and 15 of the Act on the Protection of the State Borders of the Czech Republic.

27 Art. 14 and 15 of the Act on the Protection of the State Borders of the Czech Republic.

28 Act No. 325/1999 Coll., Asylum Act.

29 Act. No. 326/1999 Coll., on the Residence of Foreigners on the Territory of the Czech Republic.

30 The aforementioned Schengen Borders Code.

the Police of the Czech Republic, the Ministry of the Interior, and the Ministry of Foreign Affairs in this area of state administration.³¹ As already mentioned in the introduction to this chapter, this act supplements the Asylum Act, the subject of which is to regulate the conditions of entry and stay of a foreigner who has applied to the Czech Republic for international protection on the territory of the Czech Republic and the stay of an asylum seeker or a person enjoying subsidiary protection on the territory, international protection proceedings and other proceedings conducted under this act, the rights and obligations of an applicant for international protection, an asylum seeker, a person enjoying subsidiary protection in the territory and a foreigner covered by this act, the competence of the Ministry of the Interior and the Police of the Czech Republic in this area of state administration, the state integration programme and asylum facilities.³² The duality of the two acts is expressed primarily in Article 2 of the Act on the Residence of Foreigners, which states that this act does not apply to a foreigner who is an applicant for international protection, a foreigner who is tolerated in the territory, an asylum seeker or a person enjoying subsidiary protection, unless this act or a special legal regulation provides otherwise, or has applied to the Czech Republic for a residence permit to grant temporary protection in the territory, and a foreigner who is staying in the territory based on a residence permit granted for temporary protection unless this act or a special legal regulation provides otherwise. In such cases, the Asylum Act applies by the application rule *lex specialis derogat legi generali*.

The definition of foreigners in the Czech Republic is again included in the Act on the Residence of Foreigners, which defines foreigners as natural persons who are not citizens of the Czech Republic,³³ including citizens of the European Union.³⁴ It should be noted that the Act on the Residence of Foreigners distinguishes three types of subjects: foreigners, citizens of the European Union, and family members of citizens of the European Union who are not themselves citizens of the European Union. Considering the topic of this article, the article will focus on the first group, namely foreigners, and it can be concluded that foreigners logically have the strictest conditions for entering the territory of the Czech Republic, followed by family members of EU citizens, and the least requirements are imposed on EU citizens.

31 Art. 1(1) of the Act on the Residence of Foreigners.

32 Art. 1 of the Asylum Act.

33 The Act on the Residence of Foreigners refers here to Act No. 186/2013 Coll., on the State Citizenship of the Czech Republic.

34 The Residence of Foreigners Act refers here to the Treaty on the Functioning of the European Union.

3.1.1. *Entry into the Czech Republic*

When entering the Czech Republic, foreigners must comply with the conditions set out in the Schengen Border Code. Furthermore, upon request, foreigners are obliged to fill in and sign a state border-crossing report³⁵ or submit to the verification of the authenticity of the travel document and their identity utilizing the personal data entered in the travel document or a comparison of the biometric data processed in the data carrier using a technical device enabling the comparison of the currently displayed biometric data of foreigners with the biometric data processed in the data carrier of the travel document, if it is a travel document containing a data carrier with biometric data.³⁶

The Act on the Residence of Foreigners, Article 9, regulates situations where police refuse foreign entry into Czech Republic territory. This can happen if the foreigner does not have a valid travel document, presents a forged or altered travel document, visa or residence permit, does not present a visa if the foreigner is subject to a visa requirement or residence permit, does not present documents proving the purpose and security of the conditions of stay in the territory, does not have sufficient means to stay in the territory and to leave the territory, is an undesirable person,³⁷ is included in the information system³⁸ set up by States bound by international treaties on the elimination of controls at common borders for the purpose of obtaining an overview of foreigners who cannot be allowed to enter the territory of the Contracting States, there is a reasonable risk that the foreigner, while staying in the territory, could endanger the security of the state, seriously disturb public order or endanger the international relations of the Czech Republic, there is a reasonable risk, that the foreigner, while staying in the territory of another Contracting State, could endanger the security of the state or seriously disturb public order therein or endanger the international relations of the Contracting States, or does not meet the requirements set out in the measure of the Ministry of Health against the introduction of an infectious disease from abroad pursuant to the Act on the Protection of Public Health.

35 Pursuant to Art. 14 of the Act on the Residence of Foreigners, a State Border Crossing Report is a registration document containing data on the first and last name, day, month and year of birth of the foreigner and fellow foreigners under 15 years of age, the series and number of the foreigner's travel document, their nationality and gender. The border pass shall also contain the visa number, the make of the vehicle with which foreigner enters the territory, the international registration number and the national registration number of that vehicle and its colour, the date and place of entry into the territory and the date of departure from the territory, the purpose and place of stay in the territory.

36 In summary Art. 5 of the Act on the Residence of Foreigners.

37 Pursuant to Art. 154(1) of the Act on the Residence of Foreigners, an undesirable person is an foreigner who is not allowed to enter the territory on the grounds that the foreigner's stay in the territory can endanger the security of the state, seriously disturb public order, endanger public health or the protection of the rights and freedoms of others, or a similar interest protected under an obligation arising from an international treaty.

38 Here the act refers to the Schengen Information System II.

3.1.2. *Departure of a foreigner from the territory of the Czech Republic in case of refusal of entry*

The Act on the Residence of Foreigners is based on the basic rule that foreigners who refuse to enter the territory must return abroad without delay unless otherwise provided.³⁹ If foreigners who have refused entry into the territory at an international airport cannot be immediately transported back to the foreign country, the police arrange for them to be transported to another international airport, from which they will be immediately transported back to the foreign country. If foreigners cannot be transported immediately back abroad from another international airport and if no room for persons who refused entry into the territory is provided at the international airport where they refused entry into the territory by the Act on the Protection of State Borders, the police shall arrange for foreigners to be transported to another suitable international airport where such a room is provided and, where appropriate, for their departure from the territory to an international airport from which they will be transported back abroad. Such foreigners shall be entitled to remain in the territory only for the time strictly necessary; remaining in the territory shall not be deemed a stay under the Act on the Residence of Foreigners. For the transfer of foreigners to an international airport and the scope of the police authority, such foreigners shall be regarded as foreigners detained under Title XI of the Act.⁴⁰

However, the Act on the Residence of Foreigners also regulates situations in which foreigners refusing entry into the territory are not obliged to travel abroad. This is the case when a foreigners' life is in imminent danger due to an accident or sudden illness, failure to provide foreigners with urgent medical care causes permanent medical changes, or it is necessary to provide foreigners with urgent medical care in connection with childbirth. These were followed by other provisions governing specific procedures of the authorities involved. For example, if the health condition of foreigners not subject to the obligation to travel requires an immediate transfer to a health service provider, the police will arrange for the foreigners to be transported to a health service provider in the territory. Foreigners who are not subject to the obligation to travel are entitled to stay in the territory only for a strictly necessary period; staying in the territory is not considered a stay under the Act on the Residence of Foreigners. For medical care and the scope of police authority, such foreigners shall be treated as foreigners, again detained under Title XI of the Act. If foreigners are admitted to a healthcare provider providing inpatient care, the police may waive the need to guard foreigners during hospitalisation. The police shall transport foreigners to the border-crossing point to return to the foreign country as soon as they can travel.⁴¹

39 Art. 9(5) of the Act on the Residence of Foreigners.

40 Title XI of the Act contains special measures for the purpose of removal of the foreigner from the territory and detention of the foreigner.

41 In summary Art. 10 of the of the Act on the Residence of Foreigners.

This is followed by Article 92 of the Act on the Residence of Foreigners, which regulates the refusal of departure from the territory of the Czech Republic by a foreigner accompanied by their child under the age of 15. Thus, the Act on the Residence of Foreigners provides that the police, by a decision issued on the spot, shall refuse to allow foreigners to leave the territory if they leave a foreigner under the age of 15 of whom they are the legal guardian, unless they present at the border control a document, certified by the police, that the foreigner under the age of 15 is staying in the territory with a travel document and has been granted a visa, if it is a condition of stay in the territory, and that a natural person over the age of 18 or a legal person has undertaken to cover the costs of the foreigners' subsistence, accommodation, and medical treatment for the period of stay in the territory until departure and the costs incurred by the police in connection with any decision on administrative expulsion, or a certificate from a health care provider that the foreigner under the age of 15 are hospitalised. The police shall authorise departure from the territory even in the absence of a certificate from the health care provider, if the legal representative signs an affidavit stating that their departure is not contrary to the interests of the foreigner they are keeping in the territory.

Finally, under Article 171 Paragraph 1 b) of the Act on the Residence of Foreigners, decisions to refuse a foreigner's entry and decisions on an application for a new assessment of the grounds for refusal of entry are excluded from judicial review. The exclusion from judicial review has been repeatedly confirmed by case law, both at the level of the Supreme Administrative Court⁴² and the Constitutional Court.⁴³ All cited decisions are based on similar conclusions. Their basic premise is that exclusion from judicial review is not contrary to the Charter of Fundamental Rights and Freedoms of the Czech Republic,⁴⁴ as it does not concern decisions that affect fundamental rights and freedoms. None of the rights listed in the Charter entitle foreigners to enter or reside in the territory of the Czech Republic; such a right is granted only to citizens of the Czech Republic⁴⁵ and after the Czech Republic accedes to the EU, as well as EU citizens and their family members who are not EU citizens themselves.

42 In particular, the judgments of the Supreme Administrative Court of 16 October 2003, No. 2 As 29/2003-36, published under No. 224/2004 Coll.; of 15 January 2004, No. 2 As 67/2003-63; of 29 January 2004, No. 2 Azs 89/2003-49; of 17 March 2004, No. 2006, No. 8 Azs 137/2005-79; and of 10 September 2009, No. 9 As 95/2008-45, published under No. 1955/2009 Coll.; the case law of the Supreme Administrative Court cited here is available at <https://www.nssoud.cz/>.

43 See the resolutions of the Constitutional Court of 19 December 2000, file No. II ÚS 345/2000; of 29 April 2004, file No. III ÚS 99/04; of 13 May 2004, file No. IV ÚS 85/04; of 12 July 2005, file No. I ÚS 38/04; of 8 November 2006, file No. I ÚS 394/06 and of 18 March 2010, file No. III ÚS 2909/2009; the case law of the Constitutional Court cited here is available at <https://nalus.usoud.cz/Search/Search.aspx>.

44 Constitutional Act No. 2/1993 Coll., Charter of Fundamental Rights and Freedoms.

45 Art. 14(4) of the Czech Republic.

3.1.3. *Obligations of particular subjects in the field of protection against illegal migration*

Although this paper primarily focuses on the procedures of the police, the prosecutor's office, and the courts, it is relevant to mention that the Act on the Residence of Foreigners requires the cooperation of several other entities, as specified in Article 107. For example, everyone is obliged to immediately hand over the foreigners' document found to the police, a university or a higher vocational school is obliged to inform about various facts (in particular, the commencement, interruption, and termination) concerning the foreigners' studies, or the foreigners' employer is obliged to inform about the termination of the foreigners' employment. The obligations of other state administration bodies are regulated by the previous Article 106 of the on the Residence of Foreigners, which sets out the obligations of regional branches of the Labour Office, the Trade Licensing Office, the Material Needs Assistance Authority, the General Directorate of the Labour Office, the District Social Security Administration and the State Labour Inspection Office. Finally, Article 107 Paragraph 7 of the act sets out the obligations of the Ministry of Education.

It is also worth mentioning Article 104 of the Act on the Residence of Foreigners, which is aimed at establishing obligations for air carriers and, operators of water transport and operators of regular bus routes. An air carrier may not transport foreigners who do not have a travel document or visa from the territory of a non-contracting state⁴⁶ to the territory if it is necessary given the purpose and destination of the journey or if it is a condition for staying in the transit area of an international airport in the territory. The operator of water transport and the operator of regular bus services shall not transport foreigners who do not have a travel document or visa from the territory of a State which is not a Contracting State into the territory if the purpose and destination of the journey make it necessary. The carrier is obliged, based on instruction from the police, to arrange, by directly applicable European Community legislation,⁴⁷ for the transport of a foreign country if the foreign country has refused entry into the territory. The obligation to transport the foreigner abroad also applies to the air carrier who has transported the foreigner to the territory if the foreigner does not present a travel document or an airport transit visa if the condition for staying in the transit area of an international airport in the territory, has transported the foreigner to

46 By Contracting States, the Act on the Residence of Foreigners refers to States that are bound by international treaties on the abolition of controls at common borders, by which the Act means Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders and Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

47 Here again, the act refers to the Schengen Borders Code.

the territory. This or another carrier has refused to transport the foreigner to the state of destination or has transported the foreigner through the territory if the foreigner has been refused entry to the territory of another state. If the carrier is a water or land transport operator, it must arrange transport abroad within 48 hours of receipt of the police instruction; if it is an air carrier, it must provide transport within seven days. The time limit is suspended for the duration of the proceedings for granting international protection under a special legal regulation or for the duration of the foreigner's stay with a health care provider under Article 10. The air carrier that transports the foreigner to the territory is also obliged, based on an instruction from the police, to arrange for the foreigner's transport abroad if the foreigner's airport transit visa has been revoked. The foreigner refuses to continue their journey to another state, or if the foreigner is staying in the transit area of an international airport and refuses to continue their journey to another state. Certain grounds for refusing the foreigner entry to the territory of the Czech Republic referred to in Article 9 of the Act on the Residence of Foreigners are established.⁴⁸ The carrier is obliged to bear the costs associated with the stay of foreigners in the territory or the transit area of the international airport in the territory until they are transported abroad by the Schengen Borders Code.

The most relevant provision of the Act on the Residence of Foreigners is its Article 105, which sets out the obligations for courts, detention centres,⁴⁹ remand prisons and prisons. A court that has decided on the conviction of a foreigner, on the restriction of the foreigners' legal capacity, on the declaration of foreigners as dead or missing, on divorce, on the dissolution of a registered partnership or on the nullity or non-existence of a marriage or partnership in cases where a foreigner is a party to the proceedings, on the appointment of a guardian for a minor foreigner, where the guardian or the spouse of the guardian is an foreigner, or on the entrustment of a minor foreigner to the substitute family care of an foreigner with the right to reside in the territory or their spouse, informs the competent police department according to the place of the foreigner's registered residence. The security detention centre, detention centre, or prison shall immediately inform the police department locally competent according to the seat of the security detention centre, detention centre, or prison of the decision to release foreigners from security detention, custody or to terminate foreigners' imprisonment.

However, it is insufficient to determine the powers of individual authorities involved in the Act on the Residence of Foreigners. About the powers of the police,

48 Art. 9(1) f), g), h) or i).

49 A detention centre is a type of protective measure in the Czech Republic (protective measures are a type of criminal sanctions imposed for criminal offences in addition to penalties – cf. Art. 36 of the Criminal Code), which is carried out in special institutions where various psychological, therapeutic, pedagogical and other programmes are implemented for persons placed there who are dangerous to society. These institutions are guarded by the prison service.

it is necessary to draw primarily on Act No. 273/2008 Coll., on the Police of the Czech Republic. Regarding the role of the courts and judicial review, it is necessary to draw primarily on Act No. 150/2002 Coll., the Administrative Procedure Code, which constitutes the basic legal regulation governing administrative justice in the Czech Republic, and Act No. 141/1961 Coll., the Criminal Procedure Code, which governs criminal proceedings in the Czech Republic.

3.1.4. *Administrative expulsion*

The ‘informal’ or ‘*de facto*’ forms of protecting the Czech Republic against migration, consisting of refusing entry to the territory and deporting the foreigner from the territory, have already been described above; now it is necessary to introduce the basic ‘formal’ instrument used to protect the borders and to intervene against illegal migration. In the Czech Republic, this was administrative expulsion. Its regulation is laid down in Title X of the Act on the Residence of Foreigners, namely in Article 118 et seq.

Administrative expulsion refers to the termination of foreigners’ stay in the territory, which is associated with the setting of a period for departure from the territory of the Member States of the European Union and a time during which foreigners cannot be allowed to enter the territory of the Member States of the European Union. The period during which foreigners may not be allowed to enter the territory of the member states of the European Union shall be determined by the police in the decision on the administrative expulsion of foreigners. In justified cases, the decision may provide a border-crossing point for departure from the territory. The period of departure is normally set between seven and 60 days. It is important to note that the law prohibits collective administrative expulsion of foreigners based on a single decision. Therefore, each case must be assessed on a strict individual basis.⁵⁰ The period during which a foreigner may not be allowed to enter the territory of the Member States of the European Union may be a maximum of 10 years. However, in the case of illegal migration, the most common period is a maximum of 5 years.⁵¹

The police must request a binding opinion of the Ministry of the Interior as to whether the foreigner’ departure is possible when deciding on administrative

⁵⁰ In summary, Art. 118 of the Act on the Residence of Foreigners.

⁵¹ Cf. Art. 119(1) b), (3), (4), (5), (6) or (7) of the Act on the Residence of Foreigners, according to which the police shall issue a decision on administrative expulsion,
 (3) if the foreigner stays in the territory without a valid travel document, although they are not entitled to do so,
 (4) if the foreigner stays in the territory without a valid residence permit, although they are not entitled to do so,
 (5) if the foreigner fails to submit to border control at the request of the police,
 (6) if the foreigner crosses the state border in hiding or attempts to do so,
 (7) if the foreigner crosses the state border outside the border crossing point.

expulsion.⁵² This does not apply if the police decide on administrative expulsion when the foreigner is deported at a border crossing point and the foreigner explicitly states that their departure is possible or if the foreigner comes from a safe country of origin according to another legal regulation and has not stated facts indicating that they may be exposed to real danger according to Article 179. Suppose reasons preventing foreigners' departure arise after the date of entry into force of the expulsion decision. In that case, the police shall issue a new decision only on whether the foreigners' departure is possible, by a special legal regulation, after a request, and based on a new binding opinion of the Ministry. If the foreigners' departure is not possible, the police shall state this fact in the decision on administrative expulsion, and the Ministry shall grant the foreigners a visa for a stay exceeding 90 days to tolerate their stay in the territory. If the reasons preventing foreigners' departure are no longer applicable, the police shall issue a new decision only on setting a new deadline for departure by a special legal regulation after requesting and based on a new binding opinion of the Ministry. On the date of entry into force of this decision, the visa issued under Article 33 Paragraph 3 or the long-term residence permit to stay in the territory shall expire; the police shall issue an exit order to the foreigner.

Foreigners whose deportation is impossible are entitled to apply for international protection under the Asylum Act immediately after the decision on administrative expulsion is issued. If foreigners do not apply within two months from the date of entry into force of the decision on administrative expulsion, the right to apply for international protection shall expire. The right to apply does not expire if reasons beyond the foreigners' control prevent the application and the foreigners apply within three days after the expiry of such reasons. The validity of

52 The Act on the Residence of Foreigners refers here to its Art. 179, which regulates the grounds preventing departure of foreigner. Departure of a foreigner is not possible if there is a reasonable apprehension that the foreigner would be in real danger if returned to the State of their nationality or, if he/she is a stateless person, to the State of their last permanent residence. Under the act, actual danger is deemed to be a return in violation of Art. 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. However, the foregoing shall not apply if there are reasonable grounds for suspecting that the foreigner (a) has committed a crime against peace, a war crime or a crime against humanity within the meaning of international instruments containing provisions on such crimes, (b) has committed a particularly serious crime, (c) has committed acts contrary to the principles and objectives of the United Nations, or (d) constitutes a danger to the security of the State, and further, if the foreigner (a) incites or participates in the commission of the acts referred to in paragraph 3, or (b) has committed one or more offences outside the territory other than those referred to in para. 3, if they have left the State of which the foreigner is a citizen or, in the case of a stateless person, the State of their last permanent residence, with the aim of avoiding prosecution for those offences, provided that the offences are punishable by imprisonment in the Czech Republic. In such a case, the foreigner shall be allowed to seek admission in another State within a maximum of 60 days. If the foreigner proves that they have not obtained admission in another State, the police shall allow them to apply for a visa.

the decision on administrative expulsion expires if foreigners are granted asylum. In the case of an administrative expulsion decision under Article 119(1)(a), the administrative expulsion decision shall cease to be valid if the decision granting asylum is valid for some time equal to the period specified in the administrative expulsion decision for the restriction of the foreigner's entry into the territory. Furthermore, the validity of a decision on administrative expulsion shall be extinguished if the decision granting subsidiary protection or authorising long-term residence to tolerate stay in the territory is valid for a period (a) equal to the period laid down in the decision on administrative expulsion for restricting the foreigner's entry into the territory, if it is a decision under Article 119(1)(a) of the Act on Administrative Expulsion. (b) equal to one and a half times the period set out in the decision on administrative expulsion to restrict foreign entry into the territory if the decision is under Article 119(1)(c) or Article 120(1)(c). If another state consents to the admission of a stateless person, they may be expelled to that state based on an administrative expulsion order.⁵³

At the request of the foreigner, the police may issue a new decision cancelling the validity of the administrative expulsion decision or reducing the period for which the foreigner cannot be allowed to enter the territory of the Member States of the European Union, as specified in the administrative expulsion decision, by at least one-third of that period, if the reasons for issuing it have ceased to exist and half of the period during which the foreigner cannot be allowed to enter the territory has elapsed the reasons for which it was issued, or the foreigner is a foreigner placed in foster care (Article 87) who has reached the age of 18 and, according to the statement of the child welfare authority, the foreigner is showing a desire to integrate into the territory. At the request of foreigners who have become citizens of another Member State of the European Union after the decision on administrative expulsion has become final, the police shall issue a new decision revoking the administrative expulsion unless there is a risk that they might endanger the security of the state, seriously disturb public order, or endanger public health during their stay in the territory. Similarly, the police proceed in

53 As an addition to this paragraph, attention should be drawn to a recent judgment of the Court of Justice, which was issued on the basis of a Czech preliminary question, in which the Court held that EU law precludes the adoption of a return decision against a third-country national after he or she has lodged an application for international protection but before that application has been decided at first instance, irrespective of the period of stay to which that return decision relates (judgment of the Court of Justice of 9 November 2023, *CD v Ministry of the Interior of the Czech Republic*, C 257/22). In doing so, the Court contradicted the case-law of the Czech Supreme Administrative Court, which, only a month before the Court's judgment, had reached the opposite conclusion that an administrative authority may initiate proceedings for the administrative expulsion of a foreigner even after that foreigner has applied for international protection, but that the expulsion decision cannot become enforceable during the asylum proceedings (Czech Supreme Administrative Court decision of 3 October 2023, No. 5 Azs 50/2021 33).

the case of foreigners who, following a final decision on administrative expulsion, become family members of citizens of the European Union.

Finally, it should be noted that the Act on the Residence of Foreigners also provides special measures for departing foreigners from the territory and detaining foreigners. The special measures include the obligation of the foreigner to notify the police of the address of the place of residence, to stay there, to notify the police of any change thereof on the following working day and to stay at the address of the place of residence to carry out a residence check within a specified period, and the deposit of funds in freely convertible currency in the amount of the estimated costs of administrative expulsion by the foreigner subject to the special measure for deportation; the funds may be deposited on behalf of the foreigner by a citizen of the Czech Republic or a foreigner with a long-term or permanent residence permit in the territory, the foreigner's obligation to report in person to the police at the time specified by the police, or the foreigner's obligation to stay at the place specified by the police and to be present at that place at the time specified in order to carry out the residence control. A special measure may be imposed if there is a reasonable risk that the foreigner may obstruct or impede the proceedings for their removal by failing to prove their identity or address of their residence, refusing to provide such information, or appearing when summoned by the police. Furthermore, a special measure for departure may be imposed if there is a reasonable risk that an foreigner will not leave within the period specified in the decision subject to their departure. The police decide the type and manner of execution of special measures for departure.⁵⁴

The police are authorised to detain a foreigner over 15 years of age who has been served with a notice of initiation of administrative expulsion proceedings or whose administrative expulsion has already been finally decided or who has been subject to an entry ban imposed by another Member State of the European Union and valid for the territory of the Member States of the European Union and the imposition of a special measure for the purpose of departure is not sufficient, if there is a danger that the foreigner could endanger the security of the state or seriously disturb public order, that the foreigner could obstruct or hinder the execution of the decision on administrative expulsion, in particular by providing false information in the proceedings concerning their identity, place of residence, refusing to provide such information or expressing an intention not to leave the territory or if such intention is evident from their actions, the foreigner has not left the territory within the time limit set in the decision on administrative expulsion, the foreigner has seriously violated an obligation imposed on him/her by the decision on the imposition of a special measure for the purpose of departure, or the foreigner is registered in the information system of the Contracting States. In the decision on detention, the police shall determine the duration of the detention,

⁵⁴ Art. 123b of the Act on the Residence of Foreigners.

taking into account the expected complexity of the preparation for administrative expulsion. When determining the duration of detention, the police are obliged to consider cases involving unaccompanied minors, families, or other persons with children. If this is necessary to continue preparations for administrative expulsion, the police are entitled to extend the duration of detention, even repeatedly. The police shall issue a new decision on detention if the Ministry has not decided under the Asylum Act in the case of an foreigner—detained under this Act, who has applied for international protection. There are reasonable grounds for believing that, although they could have applied for international protection earlier, they have applied for international protection to avoid or delay the threat of expulsion, extradition, or transfer for prosecution abroad. The police will issue a new detention decision within three days of the Ministry making the detention decision. The police shall inform the detained foreigners of their right to submit a request to the police for release from the facility and of their right to file a lawsuit in the administrative courts against the detention decision or the extension of the detention period. In the case of an unaccompanied foreigner minor or an foreigner minor in a similar situation, the police shall inform the guardians of these rights.⁵⁵

The period of detention should not exceed 180 days and should be calculated from the time of the restriction of personal liberty. In the case of foreigners under 18 or a family with minor children, the period of detention may not exceed 90 days. The police are entitled to extend the period of detention according to and beyond the time limit, provided that the expulsion of the foreigner is feasible within the period of detention. Suppose the foreigner has obstructed the execution of the administrative expulsion or deportation during the detention. In that case, the foreigner provides false information necessary for securing a replacement travel document or refuses to provide it, or in the course of obtaining the necessary documents for the execution of the administrative expulsion, there is a delay on the part of third countries despite the efforts of the police.⁵⁶

■ 3.2. *Criminal law means*

The penultimate section of this paper focuses on criminal law that protects against illegal migration. The central legal norm of substantive criminal law in the Czech Republic is Act No. 40/2009 Coll., Criminal Code. About the topic of this article, its part two—special part, Title X—crimes against public order, Part 4—other interference with the activity of a public authority—Articles 335–351 is relevant. The Criminal Code regulates four offences related to illegal migration.

The first offence is the violent crossing of the state border, enshrined in Article 339. This offence consists in the fact that whoever crosses the state border using violence or threat of imminent violence shall be punished by imprisonment

⁵⁵ Art. 124 et seq. of the Act on the Residence of Foreigners.

⁵⁶ In summary, Art. 125 of the Act on the Residence of Foreigners.

for one to five years. Imprisonment for three to ten years or confiscation of property shall be imposed if the perpetrator (a) organises the act referred to in subsection 1, (b) commits such an act with a weapon or with at least two persons, (c) commits such an act to conceal or facilitate another offence, (d) causes serious bodily injury by such an act, (e) causes substantial damage by such an act, or (f) commits such an act in a state of national emergency or war. The perpetrator shall be punished by imprisonment for a term of eight to 15 years, or, in addition to this punishment, by forfeiture of property, if they (a) cause death by the act referred to in subsection 1, (b) cause grievous bodily harm to at least two persons by such an act, (c) cause damage to a great extent by such an act, or (d) commit such an act as a soldier in a state of national emergency or war. It should be added that the preparation of this offence is already punishable. Finally, it should be noted that this offence (the only one related to illegal migration listed here) cannot be committed by a legal person in addition to a natural person.⁵⁷

The second offence is the organisation and facilitation of the illegal crossing of state borders, enshrined in Article 340 of the Criminal Code. This criminal offence consists of the fact that whoever organises for another the illegal crossing of the state border, enables or assists another to cross the state border illegally, enables or assists another to cross the territory of the Czech Republic after the illegal crossing of the state border, or organises such a crossing shall be punished by imprisonment for up to two years or by prohibition of activity. The perpetrator shall be liable for imprisonment for a term between six months and five years, forfeiture of property, or a fine if (a) they commit the act referred to in subsection 1 as a member of an organised group, (b) they subject another to inhuman or degrading treatment by such an act, (c) they commit such an act in return for payment, (d) they commit such an act repeatedly, or (e) they commit such an act to conceal or facilitate another offence. The perpetrator shall be liable to imprisonment for a term of two to eight years or to forfeiture of property if they (a) commit the act referred to in subsection 1 as a member of an organised group and for pecuniary gain; (b) place another in danger of death by such an act; (c) if by such an act they cause serious bodily injury; (d) if by such an act, they obtain a substantial benefit for himself or another; (e) if they commit such an act with a weapon; or (f) if they commit such an act in a state of national emergency or war. The perpetrator shall be punished by imprisonment for five to twelve years, or, in addition to this punishment, by forfeiture of property, if (a) the act referred to in subsection 1 causes death, (b) the act causes serious injury to at least two persons, (c) the act confers a large benefit on himself or another, or (d) the act is committed as a soldier in a state of national emergency or war. Here, too, mere preparation

57 Cf. Art. 418/2011 Coll., on Criminal Liability of Legal Persons and Proceedings Against Them, which contains an enumerative list of offences that cannot be committed by a legal person.

for the offence is punishable. In connection with this offence, it is appropriate to add that the police may, in detecting it and if a terrorist group commits it, make use of the activities of an agent who is not criminally liable for such an offence if they have committed such an offence to detect or prevent the commission of a crime committed by members of a terrorist group, in association with a terrorist group, or for the benefit of a terrorist group.⁵⁸

Furthermore, Article 341 of the Criminal Code regulates the offence of aiding and abetting an unauthorised stay in the territory of the Republic. This offence consists of the fact that whoever, to obtain an unjustified property or other benefit, assists another to stay illegally in the territory of the Czech Republic, shall be punished by imprisonment for up to one year or by prohibition of activity. The perpetrator shall be liable to imprisonment for up to three years if they (a) organise the act referred to in subsection 1, (b) commit such an act as a member of an organised group, (c) commit such an act repeatedly, or (d) commit such an act to conceal or facilitate another offence. The perpetrator shall be liable to imprisonment for a term between six months and five years, forfeiture of property, or a fine if they (a) obtain a substantial benefit for himself or another by the act referred to in subsection 1 or (b) commit such an act in a state of national emergency or war. The perpetrator shall be liable to imprisonment for a term of two to eight years or, in addition to this penalty, to forfeiture of property, if (a) they obtain a large benefit for himself or another by the act referred to in subsection 1 or (b) they commit such an act as a soldier in a state of national emergency or war.

Finally, Article 343 of the Criminal Code establishes the offence of violating regulations on international flights. This consists of the fact that whoever violates the laws on international flights by entering the territory of the Czech Republic by means of air transport shall be imprisoned for six months to three years. The regulations on international flights within Article 343 of the Criminal Code are primarily the Convention on International Civil Aviation—Decree No. 147/1947 Coll.—and the rules of flying issued by the International Civil Aviation Organization (ICAO), Decree No. 29/1957 Coll.⁵⁹

From the procedural perspective, we are in the realm of criminal law. While the administrative expulsion referred to in the previous chapter is within the competence of the police and its review is ensured by the Czech administrative courts, in this area, the police, the prosecutor's office, and the criminal courts as criminal authorities clash⁶⁰ (or build on each other). First, it is important to note that the offences mentioned above can, in principle, be committed by anyone else. The Criminal Code does not distinguish certain groups of foreigners

58 Art. 312c(2) of the Criminal Code.

59 For a more detailed analysis of all these offences, cf. in particular Šámal et al., 2012.

60 Art. 12(1) of the Criminal Procedure Code.

according to their nationality.⁶¹ Neither does the Criminal Procedure Code (i.e., as already mentioned, the law governing criminal proceedings in the Czech Republic) provide for any comprehensive special regulation of prosecution for the offences mentioned above. Therefore, from a procedural point of view, the standard criminal procedure, which in the Czech Republic follows the following procedure, applies in principle: Criminal proceedings can be divided into two basic stages: (a) preparatory proceedings and (b) proceedings before the court. Preparatory proceedings are the pretrial stage of the proceedings, the purpose of which is to prepare the grounds for the trial. It is a private proceeding in which the prosecuting authorities investigate suspicions that a crime has been committed; obtain the grounds for bringing charges, that is, determine whether the suspicion of a crime against a particular person is justified to the extent that charges should be brought and the case referred to court, or whether there is a case for a different decision and a different course of action; and seek and secure evidence to clarify all the basic facts relevant to the assessment of the case, including the perpetrator and the consequences of the crime. The police conducted these activities. Its activities are supervised by the public prosecutor, who decides whether to bring charges to court.

Pre-trial proceedings also consist of two basic phases: the examination phase (the procedure before prosecution is initiated) and the investigation phase (the procedure after prosecution is initiated). The investigation phase: In this phase, facts indicating that a crime had been committed are clarified and investigated. The investigation includes providing explanations, obtaining documents, examining the crime scene, examining objects, obtaining expert opinions, and securing traces (e.g. fingerprints and carrying out urgent and non-repeatable actions). At the end of this phase, the law enforcement authority initiated criminal prosecution, followed by an investigation phase. It does not initiate criminal prosecution on the grounds of referral of the case to the competent authority, for example, for the investigation of an offence or other administrative offence, for disciplinary or disciplinary proceedings adjournment of the case for inadmissibility or impracticability of the prosecution, or for failure to establish a fact justifying the initiation of criminal proceedings (a complaint may be lodged against the order of adjournment), or for temporary adjournment of the case if necessary for clarification.

The investigation phase begins with an order for prosecution. Police authorities seek evidence to clarify crimes. This phase included interviewing

61 According to Art. 22 of the Criminal Code, the perpetrator of a criminal offence is the person who, by their conduct, has fulfilled the elements of the offence or its attempt or preparation, if it is punishable. For the perpetrator to be criminally liable, the Criminal Code requires them to be over 15 years of age (Art. 25) and of sound mind (Art. 26). Between the ages of 15 and 18 years, the perpetrator is a juvenile, and criminal proceedings against such a person are different under Act No. 218/2003 Coll. on Juvenile Justice.

witnesses, providing explanations, examining objects, obtaining expert opinions, and other acts. It is unnecessary to repeat acts carried out before the prosecution was initiated. At the end of this phase, at the suggestion of the police authority, the prosecutor files the indictment, followed by the trial stage of the proceedings, namely, the main trial or preliminary hearing, diversion (e.g. opening of plea bargaining, conditional discontinuance of prosecution, etc.), referral of the case to another authority (e.g. for consideration of a misdemeanour or other administrative offence, or disciplinary or disciplinary proceedings), or discontinuation of criminal prosecution (e.g. on the grounds of failure to prove that the act occurred or that the accused committed it or on the grounds of inadmissibility of the prosecution due to the death of the perpetrator, lack of age, etc., if the criminality of the act has ceased or the accused was not criminally responsible at the time of the act due to insanity).

The legislature chose relatively low penalties for all four offences concerning illegal migration. For the offence of forcible crossing of the state border, imprisonment for a maximum of one to five years; for the offence of organising and facilitating the illegal crossing of the state border, imprisonment for a maximum of two years; for the offence of aiding and abetting an unauthorised stay in the territory of the Republic, imprisonment for up to one year; and for the offence of violating regulations on international flights, imprisonment for six months to three years. Owing to the relatively low criminal penalties, it is possible to proceed with an abbreviated pre-trial procedure for these offences, to bring the perpetrator to trial as soon as possible. This may occur if the following conditions are met: the offence is a crime for which the district court has jurisdiction in the first instance, the maximum penalty does not exceed five years of imprisonment, the suspect was caught in the act or immediately after that, or facts have been established in the course of the investigation which otherwise justifies the initiation of criminal proceedings; it can be expected that the suspect can be brought to trial within two weeks. In summary proceedings, the suspect has the same rights as the accused (Articles 33 Paragraphs 1 and 2). The detained suspect has the right to choose defense counsel and to consult with him without the presence of a third person during detention. The suspect must be informed of this before interrogating and allowed to exercise their rights. At the beginning of the questioning, the suspected offender shall be questioned and told at the latest what offence they are suspected of having committed. The authorities conducting the summary pretrial procedure recorded this act. A copy of the record shall be delivered to the suspect and their defense counsel; the police authority shall also send a copy to the public prosecutor within 48 hours. The Provisions on Questioning the Accused shall apply *mutatis mutandis* to the procedure of questioning the suspect. The summary pretrial procedure shall be concluded within two weeks of the date on which the police authority has informed the suspect of the act they are suspected of having committed and the offence they are suspected of having committed.

In the event of an indictment by a prosecutor, the investigation phase is followed by proceedings before the court. The proceedings before the court included a preliminary hearing of the indictment (not necessarily), the main trial and, if necessary, an appeal. The main trial decides on the main issue of the criminal proceedings, the guilt of the defendant, and the sentence, and where appropriate, on protective proceedings and compensation for damages ('adhesion proceedings'). The main trial comprises the following: the beginning of the main trial, including, among other things, the announcement of the case to be heard; the determination of whether the persons who have been summoned or notified have appeared; the presentation of the indictment; and the determination of whether the victim proposes that the offender be ordered to pay compensation for damages. Taking of evidence, including the taking of evidence, for example, examination of the accused, witnesses, and experts, reading of records of previous testimony, production of reports, reports, other documents, and physical evidence. Conclusion of the main trial includes the presentation of closing arguments or an order to supplement the evidence. The victim's attorney made a closing argument. Court decision: The court may decide to return the case to the prosecutor, discontinue prosecution, conditionally discontinue prosecution and approve a settlement, discontinue prosecution, or decide by judgment.

The previous section described the standard course of criminal proceedings in the Czech Republic. However, at the same time, it is necessary to describe the differences from the standard course, which results from the fact that criminal proceedings related to illegal migration are very often conducted with foreigners. Therefore, anyone who declares they do not know the Czech language is entitled to use their mother tongue or the language they claim to know before law enforcement authorities.⁶² This also entails that such an accused shall be appointed a lawyer who, according to the information on the waiting list, shall provide his services in the language in which the accused has declared that they are proficient in the language of the nationality of the accused, in the official language of the state in which the accused is a citizen, or, if the accused is a stateless person, in the official language of the state where the accused is permanently resident, or which is his state of origin.⁶³ If the content of a document, statement or other procedural act needs to be interpreted or if the accused makes use of the right referred to in Article 2 Paragraph 14, an interpreter shall be engaged; the same shall apply if it is necessary to provide an interpreter for a person who cannot be communicated with otherwise than utilizing one of the communication systems of deaf-blind persons. The interpreter may also have been a recorder. If the accused does not indicate the language they know or indicate a language or dialect that is not their national language or the state's official language, they are citizens. No person

⁶² Art. 2(14) of the Criminal Procedure Code.

⁶³ Art. 39(4) of the Criminal Procedure Code.

is registered on the list of interpreters for such a language or dialect; the law enforcement authority shall appoint an interpreter for his national language or the official language of the state of which they are citizens. For a stateless person, this refers to the state of their permanent residence or origin. If the accused uses the right referred to in Article 2 Paragraph 14, the assigned interpreter shall, at their request, also interpret their consultation with their defence counsel directly related to the procedural acts and the consultation during the procedural acts.⁶⁴ It is, therefore, apparent from the above that in criminal proceedings, the emphasis is primarily on foreigners being able to understand all relevant facts and proceedings. The cited provisions have legal effects on Article 37 Paragraph 4 of the Charter of Fundamental Rights and Freedoms, according to which 'anyone who declares that he or she does not know the language in which the proceedings are conducted has the right to an interpreter.'⁶⁵

In addition to the linguistic specifics mentioned above, another significant difference concerns the proceedings against a fugitive provided for in Articles 302 et seq. of the Code of Criminal Procedure. Such proceedings may be brought against someone who evades criminal proceedings by staying abroad or hiding. In such proceedings, the criminally accused must have defense counsel from the outset and, in principle, all communication from the criminal law enforcement authorities takes place with that counsel, who has the same rights as the accused. If the reasons for proceedings against the fugitive are overlooked, criminal proceedings will continue by the general provisions. If the accused requests, the evidence taken in the previous proceedings shall be retaken in the proceedings before the court, where its nature permits or where no other compelling factor prevents its repetition; otherwise, the accused shall be read out the reports of the taking of such evidence or be shown video and audio recordings of the acts carried out by videoconferencing equipment, and shall be allowed to comment on them. The proceedings against the fugitive ended with a final conviction and the grounds on which the proceedings were conducted have ceased to exist. The court of first instance shall, on application by the convicted person lodged within eight days of the delivery of the judgment, set aside such judgment and, to the extent provided for in Paragraph 1, conduct the main hearing afresh. The right to move to set aside a final conviction shall be notified to the convicted person in service of the judgment. The Court proceeds accordingly if an international treaty to which the Czech Republic is bound is required. The period from the legal force of the conviction until its revocation under Article 2 shall not be counted as part of the limitation period. The decision may not change to the accused's detriment in the new proceedings.

64 Art. 28(1) of the Criminal Procedure Code.

65 For more details on this article, including extensive citation of relevant case law of the Czech Constitutional Court and the European Court of Human Rights, cf. Husseini et al., 2021, pp. 1173–1181.

4. Statistical data

In the final section of this paper, additional statistics are presented. The Czech Republic Foreign Police Service provided these. This paper mentions the most up-to-date comprehensive statistics summarising illegal migration in the Czech Republic from 1 January 2022 to 31 December 2022.⁶⁶

From 1 January 2022 to 31 December 2022 a total of 29,235 people were detected illegally migrating to the Czech Republic. Since the beginning of 2022, the police have faced a significant year-on-year increase in illegal migration through the territory of the Czech Republic. Compared with 2021, there has been an increase of 18,065 people (i.e. + 161.7%). The fundamental influence on the increase in illegal migration in 2022 was the migration wave, especially of Syrian refugees, for whom, given the current internal political and security situation in their home country, there is an obstacle to their departure; that is, international law does not allow their return to their home country. Most were third-country nationals heading to Europe, mainly from Western Balkan countries. Although the number of irregular migrants in transit has increased by several hundred percent annually, this has not yet been reflected in crime statistics. The Czech Republic remains a transit country, not a destination country. Migrants rarely used the possibility of applying for international protection in the territory of the Czech Republic.

Of the total number, 29,034 persons (99.3%) were detected during illegal stays, and 201 (0.7%) were detected during illegal migration across the external Schengen border of the Czech Republic.⁶⁷ In terms of nationality, illegal migration was most frequently committed by citizens of Syria (20,981 persons, 71.8%), Ukraine (2,850 persons, 9.7%), Moldova (1,010 persons, 3.5%), Turkey (772 persons, 2.6%), and Georgia (309 persons, 1%).

A total of 259 persons were found to be illegally staying with irregular travel documents, 44 fewer than in the same period in 2021. The most common citizens were from Syria (131), Moldova (47), and Ukraine (23).

Simultaneously, the number of decisions on administrative expulsion from the territory of the Czech Republic increased to 6,449 (an increase of 1,462 cases) compared to 2021. The most frequent cases were still citizens of Ukraine (1,960 persons), followed by citizens of Syria (1,382 persons) and Moldova (991 persons).

21,852 people were detected in transit, illegally migrating through the Czech Republic, with a high increase of 20,522 people (i.e. + 1,643%) per year.

66 Policie České republiky – Služba cizinecké policie (2023) Policie České republiky, 23 January 2023. [Online]. Available at: <https://www.policie.cz/docDetail.aspx?docid=22776535&doctype=ART&prev=true> (Accessed: 14 January 2024).

67 On the external borders of the Czech Republic, cf. footnote 24 of this paper.

21,639 persons (99%) were detected in connection with the land border, and 213 persons with an air border. The highest number of detections was for citizens of Syria (20,387 persons, 38.6%), Turkey (487 persons, 29.6%), and Afghanistan (224 persons, 10%). The most frequent means of transport were trains (2,830 persons), followed by vans and minibuses (1,658 persons) and cars (1,144 persons). It should be mentioned that for many people, the mode of transport could not be ascertained.

For 2022, 277 people who facilitated illegal migration, including smuggling,⁶⁸ were examined. Compared to 2021, there is a significant increase of 225 persons (i.e. + 432.7%). This increase was mainly due to the high number of illegal migrations in transit and the corresponding number of detected smugglers. The detection of criminal activities (smuggling) continues to be emphasised, among other things, because of the threat to the lives of smuggled persons when transported, for example, in vans and trucks where more than 30 persons are in one vehicle.

5. Conclusions

As mentioned in the Introduction, this paper aims to present the overall border defence of the Czech Republic. Therefore, this study focuses on constitutional, administrative, and criminal legislation. As can be seen, no single piece of legislation in the Czech Republic contains the legal regulation of border defence, but legal regulation is instead spread over several acts, mainly in administrative and criminal law. The most important legislation is the Act on the Residence of Foreigners (supplemented by the Asylum Act) and the Criminal Code. The asylum procedure takes precedence over the use of mechanisms involving the return of foreigners from Czech Republic territory. Thus, foreigners are left in the territory of the Czech Republic until the asylum procedure is finally concluded, and their return from the territory occurs only after the asylum procedure is concluded. About the relationship between administrative and criminal law instruments, it is necessary to bear in mind the principle of subsidiarity of criminal repression, according to which the criminal liability of the perpetrator and the criminal law consequences associated with it may be applied only in socially harmful cases in which the application of liability under another legal provision is not sufficient.⁶⁹ Thus, in most cases, only administrative legal remedies are used against irregular migrants without criminal prosecution.

The fact that foreigners are in an administrative or criminal law regime determines judicial review. In the administrative law regime, foreigners undergo

68 A 'smuggling' is referred to as an offence under Art. 340 of the Criminal Code. Cf. p. 12 and 13 of the paper.

69 Art. 12(2) of the Criminal Code.

a two-stage administrative procedure. They are subsequently guaranteed a two-stage judicial review (except for the abovementioned exception of the exclusion from judicial review in the case of a decision on refusal of entry and a decision on a request for a new assessment of the grounds for refusal of entry)⁷⁰ in the administrative justice system, in the criminal law regime which foreigners fall within the criminal justice system, where they are also guaranteed a two-stage judicial procedure with the subsequent possibility of filing an extraordinary appeal—an appeal to the Supreme Court. All procedural proceedings (administrative proceedings, administrative court proceedings, and criminal proceedings) emphasize foreigners' understanding of the proceedings and, thus, their ability to exercise their rights effectively.

70 Cf. 3.1.3. point.

Bibliography

- Gronský, J. (2005) *Komentované dokumenty k ústavním dějinám Československa*. Praha: Karolinum.
- Husseini, F., Bartoň, M., Kokeš M., Kopa, M. (2021) *Listina základních práv a svobod: komentář*. 1st edn. Praha: C.H. Beck.
- Mikeš, P. (2018) *Přehled právních předpisů o státních hranicích České republiky: (podle stavu k 1. červenci 2018)*. Praha: Ministerstvo vnitra České republiky, Odbor všeobecné správy.
- Pikna, B. (2005) 'Schengen – právní a funkční aspekty', *Právník*, 144(3), pp. 228–259.
- Sládeček, V., Mikule, V., Suchánek, R., Syllová, J. (2016) *Ústava České republiky. Komentář*. 2nd edn. Praha: C. H. Beck.
- Šámal, P. et al. (2012) *Trestní zákoník*. 2nd edn. Praha: C.H. Beck.
- Zoubek, V. (2008) 'Několik poznámek ke státní hranici České republiky a Schengenskému prostoru', in Jermanová, H., Masopust, Z. (eds.) *Metamorfózy práva ve střední Evropě. Sborník příspěvků z mezinárodní konference*. Plzeň: Aleš Čeněk, pp. 349–365.
- Policie České republiky – Služba cizinecké policie (2023) *Policie České republiky*, 23 January 2023. [Online]. Available at: <https://www.policie.cz/docDetail.aspx?docid=22776535&doctype=ART&prev=true> (Accessed: 14 January 2024).