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The Permanent Mission of the Czech Republic to the United Nations and other International Organisations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and with reference to the letter from the Special Rapporteur in the field of cultural rights of 24 October 2012 has the honour to enclose its response.

The Permanent Mission of the Czech Republic avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration. *M.*

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Enclosure: 3 pages



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Response of the Czech Republic to the questionnaire on the right to artistic freedom

1. The right to artistic freedom is guaranteed by the Charter of Fundamental Rights and Freedoms which is part of the constitutional order of the Czech Republic. The relevant provisions are:

Article 15

(1) The freedom of thought, conscience, and religious conviction is guaranteed. Everyone has the right to change religion or faith or to have no religious conviction.

(2) The freedom of scholarly research and of artistic creation is guaranteed.

Article 34

(1) The rights to the fruits of one's creative intellectual activity shall be protected by the law.

(2) The right of access to cultural wealth is guaranteed under the conditions set by the law.

2. Artistic freedom is not a frequent theme of judicial decisions. Artistic expression is regarded as an integral part of human personality and its creative abilities and is protected as a part of personal rights of every human being (the judgment of the Supreme Court no. 30 C do 739/2007 of 30/04/2007). The artistic freedom is also closely linked with the freedom of expression. The freedom of expression includes also the freedom of artistic expression as a form of participation in the public exchange of cultural, political and social information and ideas of all kind; the artistic expressions may be critical, shocking, distressing or unsettling (the judgment of the Constitutional Court no. IV. ÚS 606/03 of 19/04/2004). The forms of artistic expression are treated in a similar matter when in conflict with other rights and freedoms (resolution of the Constitutional Court no. II. ÚS 468/03 from 25/11/2010).

3. The Government focuses mainly on the respect of artistic creation freedom and limits its influences in this area to a minimum. It provides subsidies and grants and seeks to create an open and friendly environment for artistic creation. There is the Concept for more efficient support of the arts in 2007 – 2013, adopted in May 2006 by the resolution of the government of the Czech Republic. It contains a program of artistic residencies and study scholarships and deals with the continuing education of artists.

4. In the Czech law system there is no legal definition of „artist“, but in the Copyright Act (No 121/2000 Coll.). A performing artist is someone who performs an artwork and can claim author's rights from the performance. The artistic performance is the performance of an actor, singer, musician, dancer, conductor, choirmaster, director or any other person who acts, sings, recites, presents or otherwise performs an artistic work. In the Copyright Act there is also a legal definition of author, who is the natural person who created the work - a literary work or any other work of art or a scientific work, which is a unique outcome of the creative activity of the author and is expressed in any objectively perceivable manner including electronic form, permanent or temporary, irrespective of its scope, purpose or significance. A work is, without limitation, a literary work expressed by speech or in writing, a musical work, a dramatic work or musical-dramatic work, a choreographic work and pantomimic work, a photographic work and a work produced by a process similar to photography, an audiovisual work such as a cinematographic work, a work of fine arts such as a painting, graphic or sculptural work, an work of architecture including an urban design work, a work of applied

art, and a cartographic work. The definition of performing artist does not limit the artistic freedom whatsoever.

5. The artisan or craftsman/woman is not generally defined in Czech law. Certain crafts or arts if being exercised as a living or entrepreneurship have to obtain state permission conditioned by appropriate education or training and practice to guarantee the adequate quality of the products. However, this does not limit the performance of these arts on an amateur basis as an expression of personal creativity.

6. The Constitution guarantees artistic freedom and the State attempts to limit barriers and create a free and open environment for artistic creation. It also encourages arts by subsidies and other means. There are no general legal or administrative impediments for artists.

7. Budgetary reasons may sometimes curtail the possibilities of public bodies to subsidize arts and artistic creations.

8. The State (Ministry of Culture) as well as regions, municipalities, other public and private bodies subsidize arts like theaters, galleries, orchestras, music groups and ensembles, museums, historic monuments and other art performing bodies or cultural institutions. The conditions for obtaining the financial assistance are mainly the artistic quality of the projects, evaluated by independent experts. The subsidies are being provided without any discrimination on illegal grounds forbidden by the Charter of Fundamental Rights and Freedoms as gender, race, color of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national or ethnic minority, property, birth, or other status.

9. According to the Charter of Fundamental Rights and Freedoms, the artistic freedom as such may be limited only by other fundamental rights and freedoms and constitutionally protected values according to the principle of proportionality. An artistic expression, e.g. the public expression of an artwork, may be limited by law when necessary in a democratic society for protecting the rights and freedoms of others, the security of the State, public security, public health, and morals. The above mentioned cases of the Constitutional Court are following this argumentation.

10. As mentioned above, artistic freedom is limited only by other fundamental rights and freedoms. When performed in the public space, it is treated as any kind of public assembly and may be restricted when necessary in a democratic society for the protection of the rights and freedoms of others, public order, health, morals, property, or the security of the state. However, any restrictions should be strictly limited to its purpose.

11. The television and radio stations are monitored by the Council for Radio and Television Broadcasting which is an independent body responsible for maintaining plurality and objectivity of information in the public radio and television broadcast and the fulfillment of legal obligations by radio and television broadcasters (like the obligation of objectivity, non-discrimination, restriction of hatred-initiation, protection of moral and physical development of children and youth etc.). The Council is composed of members elected by the Parliament. The Council is an administrative body exercising public authority and subject to general rules of administrative procedure. As a public body it has also the obligation to disclose information about its work like session records or anonymous decisions. Its decisions can be subject to judicial review by courts in judicial administrative procedure. In cases of other

media or art work, there are no special review bodies and disputes are dealt with by courts in judicial procedures.

12. There are no general rules on private public art performances. Performances aimed at general public like concerts or public gatherings are regarded as public assemblies and are subject to announcement to local authorities and subject to permissions on grounds of e.g. noise level or occupation of public space. Individual art performances like street artists may be subject to local regulations in some areas like historic city centers. These regulations vary in different towns; however, they may also be challenged before the courts.

13. The main topic of public debates which is relevant to the artistic freedom is the possibility of funding of cultural projects from different sources (state budget, municipal budgets, and private sources). Funding from different sources seems to be more suitable for cultural projects.

14. There are self-government bodies representing artists like actors, authors, interpreters, singers, concert performers etc.. They are regularly consulted by the Government.

15. There are organizations responsible for the protection of the interests of authors of artworks and performing artists. They are legally obliged to collectively administer the authors' rights, especially their rights to remuneration for the use of art works and to collect the remuneration sums and distribute them among the artist.