



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Comments by the Government of the CZECH REPUBLIC\* \*\* on the conclusions and  
recommendations of the Committee against Torture (CAT/C/CR/32/2)**

**[14 January 2008]**

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\* Previous replies to the conclusions and recommendations of the Committee are available in document CAT/C/CR/32/2/RESP/1.

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

## Introduction

1. The Czech Republic (hereinafter referred to as "CR") is a State party to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (hereinafter referred to as "Convention").
2. In 2002, the Czech Republic submitted to the Committee for a review the Third Periodic Report on Measures Adopted for Implementation of Obligations Arising under the Convention, which was approved by the Government under Resolution No. 88 of 23 January 2002. The Committee summarized its assessment of the Czech Republic from the viewpoint of upholding the rights set out in the Convention in the Concluding Recommendations (CAT/C/CR/32/2). This document summarizes the positive aspects of the report as well as subjects of concern, which are followed by a list of recommendations aimed at improving the implementation of the rights defined in the Convention. In paragraph 6. o) of the Concluding Recommendations, the Committee requests the Czech Republic to provide the Committee with information on its responses to the recommendations stated in paragraphs 6. a), 6. b), 6. i), 6. k), and 6. m) within one year of the review of the Report. These recommendations concern activities aimed at combating racial intolerance and xenophobia, the draft Antidiscrimination Act, the system for investigating allegations of ill-treatment by the police and other public officials, the system for investigating racially motivated crime, complaints against the use of excessive force in connection with the demonstrations held on the occasion of the International Monetary Fund and World Bank Summit in Prague in September 2000, the requirement that prisoners pay for the cost of imprisonment, and the conditions that exist in establishments used for detaining foreigners.
3. Under Resolution No. 1171 of 24 November 2004, the Government acknowledged the Committee's Concluding Recommendations and charged the Government Commissioner for Human Rights with drafting a statement on the above recommendations in response to paragraph 6. o) of the Concluding Recommendations and submitting the statement to the Government. The Czech Republic's statement regarding the recommendations was approved under Government Resolution No. 316 of 16 March 2005 and sent to the Committee in April 2005. In May 2006, the Committee assessed the Government's statement as generally satisfactory; nonetheless, the Committee requested the Czech Government to provide additional information on the implementation of some of the recommendations. The demand concerned the Committee's recommendations No. 6. a), 6. b), 6. i), and 6. k). This document contains supplementary information provided by the Czech Republic in respect of the abovementioned recommendations (hereinafter referred to as "Supplement Report"); references to the recommendations are stated in the text.

**Recommendation No. 6. (a)**

**The Committee recommends "exerting additional efforts to combat racial intolerance and xenophobia and ensure that the comprehensive antidiscrimination legislation being discussed include all relevant grounds covered by the Convention" (paragraph 6. a).**

**Request for Additional Information**

4. The Committee finds that the document lacks information whether the draft antidiscrimination law provides protection from intolerance and discrimination on any grounds, in particular against actions defined as torture under Article 1. of the Convention.

**Additional Information**

5. The draft antidiscrimination law<sup>1</sup> (hereinafter referred to as the "Antidiscrimination Act") has defined in detail the right to equal treatment in respect of labor-law relations and other similar relations relating to dependent activities, issues related to membership and activities in trade unions and in professional associations, issues related to social insurance and to the disbursement of social benefits, issues related to access and provision of medical care, education, goods and services, including housing. The draft legislation prohibited discrimination in these areas due to race, ethnic origin, gender, sexual orientation, age, medical condition, religion or faith, and other reasons, in particular, language, political and other beliefs, nationality, membership or due to activities in political parties or political movements, trade unions and other associations, due to social origin, means, ancestry, marital and family status, and family obligations.

6. The draft Antidiscrimination Act was conceived as a piece of legislation, where the aim was to ensure equal access for all people in the defined areas without any discrimination based on the defined grounds. Actions defined as torture under Article 1 of the Convention constitute a criminal offense in the Czech Republic. Protection against such actions is provided under Act No. 140/1961 Coll., the Criminal Code, as amended (hereinafter referred to as the "Criminal Code"), specifically Section 259a that defines the criminal offense of "torture and other forms of inhuman and cruel treatment" in accordance with the Convention. Further, the Criminal Code defines a number of criminal offenses, which encompass violence motivated by intolerance due to racial origin, appurtenance to an ethnic group, nationality, political beliefs, religion, the fact that a person has no religious beliefs, and other reasons. Such criminal offenses include violence against a group of citizens or an individual (Section 196 of the Criminal Code), defamation of a nation, ethnic group, race, and conviction (Section 198 of the Criminal Code), and incitement of

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<sup>1</sup> Parliamentary Press No. 866 and 867, Fourth Election Period of the Chamber of Deputies. The Czech Government presented to the Chamber of Deputies the draft legislation on 21 January 2005. The Chamber of Deputies passed the drafts of both laws on 7 December 2005 at the 51<sup>st</sup> session. The Senate discussed the draft antidiscrimination law and the applicable amendment under Parliamentary Press No. 201 and 202 and rejected both drafts on 26 January 2006. The Chamber of Deputies voted on the draft acts returned by the Senate on 23 May 2006 at its 56<sup>th</sup> session, where 83 deputies voted in favor and 45 against the legislation. The act was therefore not supported by the necessary 101 votes.

hatred against a group of persons or restriction of their rights and freedoms (Section 198a of the Criminal Code). Less serious violence motivated by intolerance due to appurtenance to a national minority, ethnic origin, race, complexion, gender, sexual orientation, language, faith or religion, political or other beliefs, membership or activities in political parties or political movements, trade unions, or other associations, social origin, ancestry, medical conditions, and marital or family status are punishable under the Act on Transgressions or under other special legal regulations.

7. In light of the fact that the Antidiscrimination Act was not passed by the Chamber of Deputies during its fourth election period, the Czech Government is currently preparing a new wording of the law. However, it is not expected that the factual scope of the legislation will be extended.

#### **Recommendation No. 6. (b)**

**The Committee recommends "taking measures to establish an effective, reliable, and independent complaint system to undertake prompt and impartial investigations into all allegations of ill-treatment or torture by the police or other public officials, including allegations of racially motivated violence by non-state actors, particularly any incidents that have resulted in death, and to punish the offenders" (paragraph 6. b).**

#### **Request for Additional Information**

8. The Committee would welcome additional information, particularly on the effectiveness and independence of investigations into racially motivated violence. Specifically, the Committee requests an assessment of the ability of the applicable mechanisms to investigate allegations of racially motivated violence and a description of specific ways that can be used to complain against torture and ill-treatment. Further, the Committee wants to know whether the Czech Republic has conducted investigations into all allegations of torture and ill-treatment, including cases that resulted in death, and whether the persons included in statistics as having been charged with abusing powers, committing violence against a group of citizens, or causing bodily harm have been convicted of torture or ill-treatment. In addition, the Committee requests information whether any of the applicable cases were related to racially motivated violence.

#### **Additional Information**

9. As regards the query concerning the effectiveness and independence of investigations, particularly investigations into racially motivated violence, and the assessment of the ability of the applicable mechanisms to probe suspected cases of racially motivated violence, we want to state the following facts. The Criminal Procedure Code<sup>2</sup> does not clearly stipulate the authority of specific bodies of the Czech Police (hereinafter referred to as "Czech Police") to perform tasks as part of criminal proceedings. The tasks of police bodies in criminal proceedings are defined in general in the Police President's Binding Guideline No. 130/2001 of 30 November 2001. Specific tasks performed as part of procedures completed by police bodies in the area of combating extremist crime are outlined in the Police President's Binding Guideline No. 100/2002 of 6 June 2002. This binding guideline defines extremism, among others, as activities usually conducted in a radical ideological or other similar context by individuals or groups or persons

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<sup>2</sup> Sections 158 to 159b of Act No. 141/1961 Coll., the Code of Criminal Procedure, as amended (hereinafter referred to as "the Criminal Procedure Code")

with beliefs that differ considerably from generally accepted social standards with clear aspects of intolerance, particularly racial, national, religious, other similar intolerance, which attack democratic principles, social order, life, health, property, or public order. The guideline orders the assignment of specialists at specialized district or regional units and the creation of teams responsible for uncovering extremist crime at the General Crime Department of the Criminal Police and Investigation Service of the Police Presidium of the Czech Republic, the Extremism Department at the Extremism and Terrorism Section of the Czech Police, and the Department for Uncovering Organized Crime of the Criminal Police and Investigation Service. Specialists working in specialized units organize training courses at least once a year (so-called instructional and methodical employment) for specialists from specialized regional centers and for selected specialists from district units. They provide information on such training to the Czech Police – the Department for Uncovering Organized Crime of the Criminal Police and Investigation Service. Among others, the emphasis put on activities conducted by the police in investigating this type of criminal activity stems from the fact that cases of extremist crime are reported in the manner defined by Ministry of Interior Regulation No. 32/1995, which requires reporting serious violations of internal order and other incidents.

10. As regards the approach of public prosecutors to supervising criminal cases, where investigations conducted by police authorities mainly focus on criminal offenses motivated by racial, national, and other similar intolerance, it is necessary to mention – in addition to the Criminal Procedure Code and the Act on the Public Prosecutor – the Highest Public Prosecutor's Instruction No. 3/1995 of 15 May 1995, as amended by subsequent instructions of general nature, which is a general instruction defining the details of the proceedings undertaken by public prosecution offices in prosecuting criminal offenses motivated by national and racial intolerance or perpetrated against other citizens due to their political beliefs or religion.

11. The instruction sets out procedures that differ from Instruction No. 12/2003, as amended, which is a general instruction that defines the course of action to be taken by public prosecutors in criminal prosecution of persons and in monitoring compliance with the law in preparatory criminal proceedings, and the course of action to be taken in-court criminal proceedings. The instruction requires public prosecutors to proceed as fast as possible in respect of the matters defined in the instruction. As regards the monitoring of lower-level public prosecution authorities by their higher-level counterparts in accordance with Section 12d of Act No. 283/1993 Coll., on the Public Prosecutor, as amended (hereinafter referred to as "Act on the Public Prosecutor"), the public prosecution authority at the nearest higher level must pay close attention to criminal proceedings related to crimes motivated by national, racial, and other intolerance and determine whether such cases are adequately assessed from the legal viewpoint and whether all actions necessary for clarifying the offender's motive are carried out.

12. Further, of key importance is the Highest Public Prosecutor's Instruction No. 3/2000 of 20 March 2000, which is a general instruction that defines the method for creating and filling specialized positions in public prosecution offices. The instruction specifies that supervising public prosecutors issue a written document that sets out specializations for assessing professional qualifications of individual public prosecutors, the structure of criminal activity committed in the jurisdiction of the applicable public prosecution office, the nature of the tasks performed by the public prosecution office, taking into consideration the necessity to ensure that public prosecutors have assigned equivalent number of cases. This way, a public prosecutor may be assigned more than one specialization. In addition, a specialization may be assigned to the

chief public prosecutor and his deputy or deputies, and – in the case of regional and high public prosecution offices and the Supreme Public Prosecution Office – also a department director or a section director. Among others, basic specializations for criminal offenses motivated by racial, national, and other intolerance are established in all public prosecution offices.

13. Law enforcement authorities pay close attention to racially motivated verbal or physical assaults. This type of criminal activity is continuously monitored as part of dealing with the problem of extremism in general.

14. Every year, the Czech Republic compiles a detailed document entitled *Information on the Problem of Extremism in the Czech Republic* as an independent part of the *Report on the Situation in the Area of Public Order and Interior Security in the Territory of the Czech Republic*, which is approved by the Government. This report is publicly available on the website of the Ministry of Interior, including an English version.

15. The share of criminal offenses motivated by racial, national, and other intolerance in the total amount of criminal activity has been declining constantly since 2002. As regards this form of criminal activity, the highest number of prosecuted and tried persons was registered in the mid-1990s. A considerable decrease in the incidence of most criminal offenses in this category was registered in 2005. Due to the relatively short-term nature of this trend, it cannot be determined at this time whether the said trend can be attributed to an increasing latency or the fact that closer attention has been paid to this form of crime since the mid-1990s. Criminal offenses motivated by racial, national, and other forms of hatred are mostly committed by socially displaced persons; in the majority of cases, such offenders are young persons, and the average age of offenders at times falls below the legal age. The social makeup of such offenders indicates that these persons mostly have low education, low income, and lacking social background. Most of these cases involve less serious verbal or physical attacks, where the offenders are significantly influenced by crowd behavior, including alcohol.

16. In general, as regards extremist criminal activity, 253 criminal offenses of the total of 344 060 criminal offenses registered in the Czech Republic in 2005 had extremist undertones, i.e. extremist crime accounted for 0.07% of the total volume of detected criminal activity (0.1% in 2004). Compared to 2004, the year 2005 brought a decline in registered extremist criminal offenses by 30.9%. A total of 191 criminal offenses, i.e. 75.5%, were investigated in conclusive manner, and 269 persons were prosecuted for committing the abovementioned criminal offenses.

17. Like in preceding years, there were no important changes in the makeup of extremist crime in 2005. Most of the offenses involved the crime defined under Section 260, Section 261, and Section 261a of the Criminal Code, i.e. "support and endorsement for movements aimed at suppressing personal rights and freedoms" – 111 cases for which 111 persons were prosecuted and the crime defined under Section 198 of the Criminal Code "defamation of a nation, ethnic group, race, and conviction" – 63 cases for which 69 persons were prosecuted. Further, there were 36 criminal offenses prosecuted under Section 196 of the Criminal Code "violence against a group of citizens or an individual" for which 47 persons were prosecuted, and 20 criminal offenses punishable according to Sections 221 and 222 of the Criminal Code "deliberate injury to health" for which 27 persons were prosecuted. No person committed a racially motivated offense classifiable as "murder" and "bodily harm causing death". No terrorist crime was committed in connection with extremism.

18. As regards the separate question concerning the review of and investigation into criminal offenses consisting of torture or ill-treatment, where a substantiated suspicion might exist that members of the Czech Police have committed such crimes, there are no relevant indications that would suggest discriminatory practices in police actions.
19. Complaints concerning torture and other forms of ill-treatment by the police can be made in several ways. A complaint can be filed with the supervisor of the police officer who is the subject of a complaint or criminal charges can be filed with the Inspection of the Minister of Interior or directly with a public prosecution office.
20. As to actions that have the nature of a violation of service discipline and rude or unethical comportment, complaints against police officers are processed by the applicable internal inspection departments of individual police units. Criminal offenses committed by police officers are reviewed by the Inspection of the Minister of Interior and investigated by the applicable public prosecution office. These mechanisms apply regardless of whether a police officer is accused of actions with or without racial subtext.
21. The Inspection of the Minister of Interior acts in criminal proceedings in accordance with Section 2(4) of Act No. 283/1991 Coll., on the Police of the Czech Republic, as amended (hereinafter referred to as 'the Police Act'), as a police body with a jurisdiction over all criminal offenses committed by members of the Czech Police. In accordance with Section 174 of the Code of Criminal Procedure, activities of the Inspection of the Minister of Interior are supervised by public prosecutors since the beginning of the preliminary proceedings. The Inspection of the Minister of Interior, which is a body of the Ministry of Interior consisting of officers holding a police rank, is therefore responsible for uncovering and reviewing facts suggesting that a criminal offense has been committed by a police officer, and to investigate such offenders.
22. Following an amendment to the Criminal Procedure Code in 2001, investigations into criminal offenses committed by police officers are conducted by an impartial and independent body, namely public prosecutors (Section 161[3][4] of the Criminal Procedure Code), which proceeds as a police unit in investigating criminal offenses committed by police officers.<sup>3</sup> In investigating criminal offenses committed by police officers, public prosecutors may request a body of the Inspection of the Minister of Interior to secure specific evidence, to carry out a specific action, to cooperate on securing evidence, to perform an investigation task, to take a person in for questioning, or to deliver documents, and the inspection must comply with such a request.
23. There is an exemption from the above procedure. According to a binding instruction of the Police President,<sup>4</sup> in some cases, police actions consisting of reviewing and investigating criminal offenses punishable by imprisonment, where the maximum term does not exceed three

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<sup>3</sup> Investigating criminal offenses committed by police officers by a public prosecutor was introduced by an amendment to the Criminal Procedure Code – Act No. 265/2001 Coll. 29 June 2001 which amends Act No. 141/1961 Coll., on Criminal Court Procedure, as amended, Act No. 140/1961 Coll., the Criminal Code, as amended, and some other acts effective as of 1 January 2002.

<sup>4</sup> Article 3e of binding Police President's Instruction No. 130 of 30 November 2001, which defines actions of the Czech Police in performing tasks as part of criminal proceedings.

years, are conducted directly by police officers from inspection bodies of the Czech Police. Such criminal offenses are reviewed and investigated by police officers from inspection bodies until a suspicion is established that such a criminal activity was committed by a member or employee of the Czech Police in connection with the performance of service or work duties.

24. Investigating delinquent actions of police officers, which are not criminal offenses, is in the authority of the Inspection and Complaints Department of the Police Presidium of the Czech Republic and other inspection and complaints units at individual levels of the administrative structure of the Czech Police. Complaints against police officers are also processed by the Complaints Department of the Office of the Minister of Interior at the Ministry of Interior. All the said bodies are part of the structure of the Czech Police or the Ministry of Interior.

25. The Ministry of Interior Regulation of 25 May 2004, which sets out the particulars for handling petitions, complaints, submissions, and suggestions, defines the responsibility for handling submissions<sup>5</sup> within the Czech Police as follows. Processing a submission, with the exception of submissions concerning supervisors, which are delivered to the Czech Police for the first time, is the responsibility of the immediate superior employees of the unit or lower organizational body concerned by the submission. Processing a submission concerning supervisory employees is responsibility of the managers of inspection units of the Czech Police who manage the same. Processing complaints delivered to the Czech Police repeatedly is the responsibility of the inspection bodies of the Czech Police that manage the bodies that handled the initially delivered submission. Processing submissions concerning the Police President or his deputies, directors of secondary police schools, if they are police officers, and police officers charged with tasks at the ministry is the responsibility of the director of the Inspection of the Minister of Interior.

26. According to the Civil Procedure Code,<sup>6</sup> starting on 1 January 2006, complaints against unsuitable comportment of public officials or actions carried out by administrative authorities, which are covered by the Civil Procedure Code, are to be investigated by the applicable administrative bodies defined in the Civil Procedure Code unless the Civil Procedure Code specifies a different means of protection. Adequate internal regulations should be issued for processing complaints not subject to the Civil Procedure Code.

27. The rules for accepting and processing complaints against municipal police officers are set by municipal councils in accordance with the Act on Municipalities.<sup>7</sup> Starting on 1 January 2006, processing complaints covered by the Civil Procedure Code is subject to this legal regulation. According to the Act on Municipalities, municipal or city police (hereinafter referred

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<sup>5</sup> A submission according to this regulation is a general term that includes petitions, complaints, submissions, suggestions, and complaints by means of which the submitting person in his interest points out deficiencies in the service or work duties of police officers, members of the Fire Rescue Corps of the Czech Republic, or ministry and police employees.

<sup>6</sup> Act No. 500/2004 Coll., the Administrative Procedure Code, as amended by Act No. 413/2005 Coll. (hereinafter referred to as "the Administrative Procedure Code")

<sup>7</sup> Section 102(2)(n) of Act No. 128/2000 Coll., on Municipalities, as amended



to as "municipal police") can be established by municipalities as their body.<sup>8</sup> Municipal police is controlled by the mayor of the applicable municipality or another member of the municipal assembly based on an authorization. Municipal police does not have the status of a police body; policing tasks in law enforcement proceedings concerning municipal police officers are performed by the Czech Police in accordance with the general provisions of the Criminal Procedure Code.

28. The bodies authorized to investigate complaints in detention facilities are members of the Prison Service of the Czech Republic (hereinafter referred to as "the Prison Service of the Czech Republic") who work in the Prevention and Complaints Department and members of the Prison Service of the Czech Republic who work in the Complaints Department of the General Directorate of the Prison Service of the Czech Republic. Complaints against wardens, their deputies, directors of convalescence facilities of the Prison Service of the Czech Republic and their deputies, and employees of the General Directorate of the Prison Service of the Czech Republic are processed by the Complaints Department of the General Directorate of the Prison Service of the Czech Republic. In addition, this body also handles appeals. Complaints against other members and civilian employees of the Prison Service of the Czech Republic are processed by the prevention and complaints departments of individual detention facilities.

29. At the Ministry of Justice, the body responsible for processing complaints is the Prison Department of the General Inspection of the Minister of Justice. The department may handle any complaint delivered to the ministry.

30. In investigating a complaint, the Prison Service of the Czech Republic proceeds in accordance with the rules and Instruction No. 78/2005 of the General Director of the Prison Service of the Czech Republic, which defines procedures for processing complaints and submissions in the Prison Service of the Czech Republic. Starting on 1 January 2007, the Prison Service of the Czech Republic processes disciplinary violations in accordance with Act No. 361/2003 Coll., on the Service Relationship of Members of Security Forces, as amended.

31. There are specific provisions for assessing whether the use of coercive measures is justified and appropriate. An instruction of the General Director of the Prison Service of the Czech Republic sets out a standard procedure for drafting a written record and report on the use of coercive measures by members of the Prison Service of the Czech Republic.<sup>9</sup> Circumstances and reasons for using coercive measures, including the compiling of reports, are subsequently investigated by the deputy warden. Based on a report describing the outcome of the circumstances and reasons for using coercive measures, the warden decides whether the use of coercive measures was substantiated and appropriate.

32. As regards the requirement for describing specific ways of complaining against torture and ill-treatment, it needs to be said that no currently valid and effective legal regulation contains a special definition of such a complaint or a list of specific means intended for this purpose.

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<sup>8</sup> Section 35a of Act No. 128/2000 Coll., on Municipalities, as amended, and Section 13a of Act No. 553/1991 Coll., on Municipal Police, as amended

<sup>9</sup> Instruction of the General Director of the Prison Service of the Czech Republic No. 40/2002 Laying Down the Method for Compiling Records and Reports of the Use of Coercive Measures, as amended

From the viewpoint of the jurisdiction of public prosecutors, this fact cannot be considered to mean that the law is lacking or deficient. As a rule, public prosecutors must review every received submission according to its content. This requirement is set out in Section 16a(1) of the Act on the Public Prosecutor and Section 59(1) of the Criminal Procedure Code. Both these laws require accepting submissions in any form, i.e. in writing, verbally into a record, and by telegraph, fax, telex, or electronic mail. If a submission contains facts suggesting that any criminal offense has been committed, a public prosecutor must act accordingly compliant with Section 2(3) of the Criminal Procedure Code, which sets out the principle of legality. This requirement also stems from Section 2(1) of the Act on the Public Prosecutor, which requires public prosecutors to employ all means afforded by the law in the fulfillment of their duties.

33. Under the conditions and in the manner defined under the law<sup>10</sup> public prosecution offices supervise compliance with legal regulations in places used for custody, imprisonment, protective treatment, and protective or institutional care, or other similar activity that restricts personal freedoms based on a legal authorization. Public prosecution offices have supervised compliance with legal regulations in places used for serving prison sentences and places used for keeping persons in custody since 1 January 2000 and 1 January 2001, respectively. In carrying out supervision, public prosecutors are authorized to visit facilities used for serving prison sentences and keeping persons in custody, to examine documents based on person are imprisoned, to speak to convicted and accused persons without the presence of other individuals, to verify whether instructions and decisions of the Prison Service of the Czech Republic in a detention facility, which concern serving a prison term or keeping a person in custody, are compliant with laws and other legal regulations, to demand from employees of the Prison Service of the Czech Republic in prisons necessary explanations, files, documents, orders, and decisions pertaining to serving a prison sentence or keeping a person in custody, to give instructions ensuring compliance with regulations that concern serving a prison sentence or keeping a person in custody, and to order the immediate release of a person imprisoned or held in custody unlawfully.

34. As to the legal options of accused and convicted offenders to contact the applicable government authorities, the following applies. According to Section 17 of Act No. 169/1999 Coll., on Imprisonment and Amendment to Some Related Acts, as amended (hereinafter referred to as the "Act on Imprisonment"), a convicted offender has the right to receive and at its own expense send correspondence in an unrestricted manner, unless otherwise stipulated by the law. The Prison Service of the Czech Republic is authorized to inspect correspondence with the exception of correspondence between a convicted offender and an attorney authorized to represent such a person, between a convicted offender and government authorities of the Czech Republic or a diplomatic mission or consular office of a foreign country, and between a convicted offender and an international organization that is authorized to process submissions concerning the protection of human rights according to an international treaty signed by the Czech Republic. Such correspondence is sent to the addressee and delivered to a convicted offender without delay.

35. Pursuant to Section 26 of the abovementioned law, a convicted offender may exercise his or her rights and defend his or her interests through filing complaints and demands to authorities responsible for handling such submissions; a complaint or a demand must be immediately

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<sup>10</sup> Section 4(1)(b) of the Act on the Public Prosecutor

forwarded to the authority to which it is addressed. A warden assigns the employees of the Prison Service of the Czech Republic who are authorized to receive, send, and register complaints and demands; it is necessary to create conditions for making complaints and demands by convicted offenders that ensure that such submissions are not handled by persons other than the authorized personnel. Employees of the Prison Service of the Czech Republic must immediately inform a warden, a public prosecutor, a judge, or an authority responsible for inspecting a detention facility of a demand of a convicted offender for a consultation and enable such a consultation in the detention facility at the request of the said persons. The Prison Service of the Czech Republic must execute orders of a public prosecutor without delay.

36. According to Section 20 of Act No. 293/1993 Coll., on Serving Custody, as amended (hereinafter referred to as "Act on Serving Custody"), an accused person may exercise his or her rights by making demands and complaints to the government authorities of the Czech Republic, which the applicable detention facility must forward immediately. If requested by an accused person, such a person must be allowed to have a consultation with the warden or the deputy warden without undue delay. Employees of the Prison Service of the Czech Republic must observe the rights of accused persons who are serving custody.

37. According to Section 39(1) of Act No. 109/2002 Coll., on Institutional and Protective Care in Educational Establishments, on Preventive Care in Educational Establishments, and on Amendment to Other Acts, as amended (hereinafter referred to as "Act on Institutional Care"), supervising compliance with legal regulations in the execution of institutional and protective care in establishments is the responsibility of an assigned public prosecutor from the public prosecution office in whose jurisdiction the establishment is located. In carrying out supervision, a public prosecutor is entitled to enter an establishment at any time, to examine obligatory documentation kept by the establishment, to speak to children in the absence of other persons, to demand necessary explanations from employees of the establishment and other persons participating in caring for children, to file petitions to a court demanding the revoking of imposed institutional or protective care, to make proposals for imposing protective care with regard to children placed in an establishment based on an order for institutional care, to verify whether decisions and actions of the director of an establishment conform to laws and other legal regulations, to give orders to adopt measures aimed at rectifying a situation contravening legal regulations, and, if applicable, to order that a child placed in an establishment unlawfully be immediately released after notifying authorities responsible for the social and legal protection of children. An establishment must execute orders of a public prosecutor without delay.

38. According to Section 20(1)(g) of the abovementioned act, a child subject to imposed institutional care has the right to be informed of his or her rights and obligations, to receive advice from his or her attorney or guardian appointed for proceedings according to a special law in the absence of third persons, and to receive and send correspondence without verification of its content. Section 20(1)(i) of the Act on Institutional Care gives a child the right to address demands, complaints, and proposals to the director and educational workers of an establishment and to demand that submissions addressed to central government authorities, local government authorities, and legal and natural persons, where they are charged with social and legal protection of children, are sent from an establishment on the business day following their handover to employees of the establishment without verifying the content of such correspondence. An establishment must keep records of such demands, complaints, proposals, and submissions. Further, a child has the right to demand a personal consultation with an

assigned employee of an authority responsible for social and legal protection of children, employees of the Czech School Inspection, the Ministry of Education, Youth, and Sports, or a regional authority, and to have such a consultation without the presence of other persons (Section 20[1][k] of the Act on Institutional Care).

39. As regards this issue, it is necessary to mention an amendment to Act No. 349/1999 Coll., the Ombudsman Act, as amended, which was implemented under Act No. 381/2005 Coll. and which starting on 1 January 2006, authorizes the ombudsman (hereinafter referred to as "ombudsman") to make systematic visits to places that are or are liable to be used for holding persons, where the freedom of such persons is restricted by public authorities or as a result of dependence on provided care, with the aim to strengthen the protection of such persons from torture, cruel, inhuman, and degrading treatment, punishment, and other forms of ill-treatment. These rights of the ombudsman apply to establishments used for serving custody, imprisonment, protective or institutional care and/or treatment, other places that are or could be used for restricting the freedoms of persons detained by the government, in particular police cells, establishments for detaining foreigners and refugee establishments, and places that are or could be used for holding persons whose freedoms are restricted due to dependence on provided care, especially social care institutes and other establishments providing similar care, healthcare establishments, and establishments providing social and legal protection for children. The law (Section 1[2] of the Act on Institutional Care) authorizes the ombudsman to enter, after notifying the directors of the applicable authorities (establishments), even without prior notification, all areas of authorities (establishments) to conduct inspections consisting of examining documents, questioning individual employees of authorities (establishments), and speaking to persons placed in such establishments without the presence of other persons. At the ombudsman's request, authorities and establishment must by a deadline set by the ombudsman provide requested information and explanations, supply files and other documents, provide a written statement regarding factual and legal issues, collect evidence based on the ombudsman's demands, and perform monitoring tasks for which they are authorized according to the law and which the ombudsman proposes.

40. The above facts therefore show that the Czech law contains adequate measures that allow potential victims of torture and other forms of inhuman and cruel treatment, as defined under Section 259a of the Criminal Code,<sup>11</sup> to exercise their rights. In addition, during 1998 up to the end of 2005, there was no person investigated, prosecuted, or convicted of the criminal offense "torture and other forms of inhuman and cruel treatment", as defined under Section 259a of the Criminal Code.

#### **Recommendation No. 6 (i)**

**The Committee recommends "reconsidering the arrangements where prisoners are required to cover a portion of their expenses with a view to abolish this requirement entirely" (paragraph 6. i).**

#### **Request for Additional Information**

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<sup>11</sup> Act No. 140/1961 Coll., the Criminal Code, as amended (hereinafter referred to as " the Criminal Code")

41. The Committee would welcome detailed information whether consideration is given to expanding existing measures that reduce the cost of imprisonment paid by prisoners.

#### **Additional Information**

42. The Government of the Czech Republic has already informed the Committee that the amended version of the Act on Imprisonment<sup>12</sup> has since 1 July 2004 increased the number of cases, where convicted offenders are exempted from the obligation to cover a portion of the cost of imprisonment. In particular, this applies to convicted offenders who are unable to work while serving a prison term, unless they have other income or cash savings, convicted offenders below the age of 18 years, convicted offenders participating in educational or therapeutic programs with training or therapy time at least 21 hours per week, and convicted offenders who take part in court proceedings as a witness or plaintiff.

43. Another change consists of the fact that the state no longer collects penalty interest on receivable costs of imprisonment.

44. According to the effective legislation, a warden may, based on a request made by a convicted offender, forgive a prisoner the payment of the full or partial cost of imprisonment after the offender's release, if such a course of action is justified by the social situation of the convicted offender. The cost of imprisonment is never collected if a convicted offender dies with no assets that could be used to satisfy the applicable debt as part of inheritance proceedings, if a convicted offender is released to a foreign country, if a convicted offender is released to a foreign country to serve a prison term, or if a convicted offender is deported after serving a prison term and the circumstances show that further collection of the applicable debt would be unsuccessful.

45. The abovementioned far-reaching amendment to the Act on Imprisonment was followed by an amendment to the Ministry of Justice regulation,<sup>13</sup> which starting on 1 April 2005, changed the rules for setting the cost of imprisonment that convicted offenders are obligated to pay. According to the previous legislation, the cost of imprisonment was formerly set as a flat daily fee (CZK 45), which, taking into account the long-term low employment of convicted offenders, resulted in an excessive increase in their debt after their release, where the collectibility of such debts was very low. Considering that the costs were set as a flat fee, the amendment to the Act on Imprisonment, which released convicted offenders from the obligation to cover the cost of imprisonment, where they could not work not at their fault and had no other income or cash savings during a calendar month, did not motivate other convicted offenders to work, if their earnings were lower or not significantly higher than the monthly cost of imprisonment.

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<sup>12</sup> Act No. 52/2004 Coll. amending Act No. 169/1999 Coll., on Imprisonment, as amended, and some other acts

<sup>13</sup> Regulation No. 135/2005 Coll. amending Regulation No. 10/2000 Coll., on Deductions from Remuneration of Persons Employed while Serving a Prison Term, on Execution of Decisions to Withhold a Portion of the Remuneration of such Persons and Inmates of Special Educational Establishments, and on Payment of Other Costs, as amended by Regulation No. 94/2001 Coll.

46. The new legislation introduced setting the cost of imprisonment as a percentage (40%) of the net remuneration paid to a convicted offender for work or a percentage of his or her other income,<sup>14</sup> where the total amount of costs is limited by CZK 1,500 per calendar month. If remuneration for work is low, the compensation for the cost of imprisonment a convicted offender must pay is low accordingly and vice versa. In the case of most convicted offenders, this change has practically eliminated the possibility that such persons would owe the cost of imprisonment after their release. An exception is retired convicted offenders who do not have their pension sent to prison and have no other income while serving a prison term. The method for setting the cost of imprisonment they must cover has not changed, and the calculation continues to be based on the flat daily rate.

47. The new legislation that has introduced setting the cost of imprisonment as a percentage of the income of convicted offenders instead of a flat daily rate is a positive change from the viewpoint of re-socializing convicted offenders after their release from prison and the from the viewpoint of motivating convicted offenders to work for lower income. Further, it can be expected that the legislation will have a positive effect on the state budget, as it will not be necessary to pay the cost of collecting uncollectible debts.

48. At the present time, the Ministry of Justice is not considering further reductions of the payment covering the cost of imprisonment or a complete abolishment of this requirement; however, this topic is the subject of specialized discussions. The ombudsman has initiated talks with the Prison Service of the Czech Republic, where the objective is to instigate a review of the entire system of compensation for the cost of imprisonment, especially from the viewpoint of its effectiveness and purposefulness. The Government's representative for human rights has recommended in the Report on the Observance of Human Rights in the Czech Republic in 2005 that the Ministry of Justice should in the future reconsider the complete abolishment of the requirement to cover the cost of imprisonment.

#### **Recommendation No. 6 (k)**

**The Committee recommends "reviewing the independence and effectiveness of investigations into complaints of excessive use of force in connection with the International Monetary Fund/World Bank Summit demonstrations in September 2000, with the aim to bring those responsible to justice and to provide compensation to the victims" (paragraph 6. k).**

#### **Request for Additional Information**

49. In connection with investigation into the excessive use of force by the police in their actions against demonstrating persons during the International Monetary Fund/World Bank Summit in September 2000, the Committee requests information whether some police officers have been punished for torture or ill-treatment and description of measures guaranteeing the independence of such investigations.

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<sup>14</sup> Other income may include money received by a convicted offender in prison or awarded social allowances, such as old age pension.

### **Additional Information**

50. The Inspection of the Minister of Interior has reviewed six cases of criminal charges, where three were dismissed because no criminal offense or transgression was suspected. Two of the cases were dismissed because no facts substantiating the initiation of criminal prosecution could be ascertained.<sup>15</sup> Until now, no facts that would substantiate initiating criminal proceedings or transgression proceedings against a specific person have been ascertained in the cases in question.

51. The last complaint against the comportment of a police officer was qualified as a transgression, and the matter was submitted to the applicable police body (superior police officer) for disciplinary action.<sup>16</sup> The offender was given disciplinary punishment, and he is presently no longer a member of the Czech Police. The case involved a police officer who used a wooden (bamboo) stick against three protesters instead of a standard police nightstick in a situation that did not warrant the use of coercive measures. In defending himself, the police officer stated that he had taken the stick from a protester who used it to hit him over his back. Because the police officer was not wearing a uniform and was not carrying a nightstick, he used the wooden stick against other protesters who tried to attack him. Investigations disproved his allegation that other protesters were trying to attack him. The Inspection of the Minister of Interior assessed the actions of the police officer as unlawful. However, his actions were not qualifiable as the criminal offense "torture and other forms of inhuman and cruel treatment", as defined under Section 259a of the Criminal Code.

52. In connection with investigations into the use of excessive force during police actions against protesters demonstrating during the International Monetary Fund/World Bank Summit in Prague in September 2000, it has therefore not been proven that a police officer should have committed the criminal offense "torture and other forms of inhuman and cruel treatment."

53. The impartiality and objectivity of the abovementioned investigations are guaranteed by the procedural position of the employees of the Inspection of the Minister of Interior, which is not a unit of the Czech Police and cannot therefore be influenced by the Czech Police as such, and the confirmation of the correctness of the conclusions reached by the Inspection of the Minister of Interior by the supervising public prosecutor.

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<sup>15</sup> Section 159a(4) of the Criminal Procedure Code. A police body immediately makes a decision to initiate criminal prosecution, if ascertained and substantiated facts suggest that a criminal offense has been committed and if it is sufficiently substantiated that such an offense was committed by a specific person, unless a reason exists to dismiss the case due to the inadmissibility or non-purposefulness of criminal prosecution pursuant to Section 159a(2)(3) of the Criminal Procedure Code or to dismiss the case temporarily pursuant to Section 159b(1) of the Criminal Procedure Code.

<sup>16</sup> Section 159a(1)(b) of the Criminal Procedure Code