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Mr. Ambassador,

In my capacity as Rapporteur for Follow-up on the Concluding Observations of the United Nations Committee against Torture (hereafter, 'CAT' or 'the Committee'), I am writing to thank you for your Government's replies concerning CAT's follow-up procedure and to seek further clarification.

Our exchange of letters refers to the examination of the third periodic report of the Czech Republic (CAT/C/60/Add.1) by this Committee on 4 and 5 May 2004 (CAT/C/SR.594 and CAT/C/SR.597). At the end of that session, the Committee's concluding observations (CAT/C/CR/32/2) were transmitted to your Permanent Mission. In paragraph 6(o) of those concluding observations, the Committee requested, pursuant to its rules of procedure, that the Czech Republic provide further information regarding the areas of particular concern identified in paragraphs 6(a), (b), (i), (k), and (m). Your Government responded on 25 April 2005 (CAT/C/CZE/CO/3/Add.1), and I replied on 16 May 2006, expressing thanks and requesting further clarifications. Your Government responded to this second request on 14 January 2008 (CAT/C/CZE/CO/3/Add.2). Additionally, your Government provided information relevant to some of the issues raised in our correspondence in its fourth and fifth combined periodic reports (hereafter, 'the Report'), received on 22 March 2010.

I have reviewed the information provided with care, and would be grateful for further clarification of the following matters with regard to the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Czech Republic.

Definition of torture including acts based on 'discrimination of any kind' (paragraph 6(a))

With regard to paragraph 6 (a) of the Committee's concluding observations, thank you for the information provided regarding measures to combat racial intolerance and xenophobia and ensure that proposed anti-discrimination legislation included all relevant grounds covered by the Convention, including acts of torture based on discrimination of any kind. The Committee notes that the Anti-discrimination Act has entered into force and prohibits discrimination on the basis of "race, ethnic origin, nationality, sex, sexual orientation, age, disability, religion, belief or opinions." However, the Anti-discrimination Act does not prohibit torture or any form of intentional infliction of pain and suffering. Further, your letter of 14 January 2008 states in paragraph 7 that it is "not expected" that the "factual scope" of the Anti-discrimination Act will be extended. It thus appears that the Anti-discrimination Act does not, as stated in paragraph 122 of the Report, 'reflect[] the relevant grounds covered by the Convention'.

.../...

H.E. Mr. Tomáš HUSÁK
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The Committee also appreciates the information in the Report's section on follow-up regarding the amended Penal Code, which enhances the penalty for torture and ill-treatment when committed "on the grounds of [] actual or perceived race, ethnic group, nationality, political beliefs, religion, or in the actual or perceived absence of beliefs." However, torture and ill-treatment on such discriminatory grounds are only prohibited if they are "committed by at least two persons or repeatedly". Moreover, according to this periodic report "provisions on torture contained in the existing Penal Code and in the new Penal Code define only the crime of torture and other inhuman and cruel treatment, but do not define torture itself". Please clarify whether the Government intends to seek amendment of the Penal Code to remove conditions on the prohibition of torture committed on discriminatory grounds and to clarify the definitions of torture and other acts of cruel, inhuman or degrading treatment or punishment in conformity with the Convention.

The Committee notes with appreciation the information in the Report regarding human rights education for officers and employees of the police and the Ministry of the Interior related to racial intolerance and xenophobia. To clarify whether and how all 'relevant grounds' are addressed, the Committee would appreciate information on the number of complaints of torture or ill-treatment intentionally inflicted by or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity based on discrimination of any kind that have been registered under Section 196 of the Penal Code since 2004, including the alleged grounds for discrimination, whether an investigation into the complaint took place, and if so, its outcome, the punishment meted out to the perpetrator, and compensation or other redress provided to the victim, if any.

Measures to establish a complaints system for allegations of abuse (paragraph 6(b))

The Committee appreciates the extensive documentation provided with regard to the Committee's request for information on measures to establish a complaints system to undertake investigations into allegations of ill-treatment or torture by police or other public officials, as recommended in paragraph 6(b) of the concluding observations. The Committee is pleased to learn of the changes made to enable public prosecutors to investigate allegations of criminal offenses committed by members of the Czech Police. Please clarify how individuals in custody may confidentially allege torture or ill-treatment by members of the Czech Police. Also, we note with interest the information in paragraph 127 of the Report regarding a bill under debate in the Chamber of Deputies that would create a General Inspectorate of the Security Forces that will be financially, institutionally, and legally independent from the Ministry of the Interior and will have the capacity to investigate crimes by police officers, customs officers and members of the Prison Service. Please clarify the current legal status of the bill to create this institution and the process it envisages for individuals to submit claims of torture or ill-treatment to the new body.

Paragraph 23 of your response letter of 14 January 2008 indicates that, although an independent body, the Public Prosecutor, is authorized to conduct investigations into criminal offenses by police, there is a binding exemption that permits review and investigation of alleged crimes committed by police to be conducted directly by police officers from inspection bodies of the Czech Police when the maximum term does not exceed 3 years. Please clarify whether there have been any allegations against police officers which could constitute a violation of the Convention that fall under this exemption and details on the outcome of the reviews and investigations. Are there any such allegations which carry a maximum penalty of three years or more, and if so, please provide documentation as to their outcomes.

The Committee is concerned by the fact that the body responsible for investigating abuse by prison officials is comprised of members of the Prison Service. We would appreciate additional information on measures taken to ensure independence and impartiality of investigations into complaints of torture and ill-treatment by prison officials. Additionally, the Committee requests further information on the circumstances in which members of the Prison Service are permitted to employ "coercive measures", as noted in paragraph 31 of your 14 January 2008 letter, as well as definition of the conduct included in this term. Please also clarify the number of cases, annually, in which an investigating warden has found the use of coercive measures to be unjustified, as well as the nature of these measures, whether the official identified as being responsible for such measures was prosecuted, and the outcomes of the prosecution, including punishment for the perpetrator and redress or compensation for the victim.

The Committee appreciates the information provided on the number of complaints made regarding the conduct of Czech Police Force officers from 2001 to 30 July 2009. Please provide statistical information on the number of complaints specifically alleging torture or ill-treatment that have been lodged against police and

prison officials since 2005, including information regarding the nature of the alleged misconduct, the number of these complaints that were investigated, how many led to prosecutions, and with what outcomes for perpetrators (punishment) and victims (redress, compensation, etc.). If possible, please disaggregate this data by gender of the complainant and by location.

The Committee appreciates the extensive information provided on the complaints and investigation mechanisms in place for racially motivated violence by non-state actors, as addressed in paragraph 6(b) of the concluding observations. The Committee would welcome added information on the criteria used to determine whether cases are considered to be motivated by extremism.

Appreciating the statistical information provided in paragraph 16 of your response letter of 14 January 2008, on the number of criminal offenses motivated by racial, national, or other intolerance, we would appreciate learning whether further information is available on the outcomes of the 191 criminal offenses with extremist undertones that were conclusively investigated in 2005. The Committee would also appreciate data on the number and outcomes of offenses in this category from 2006-2010.

Detention policies (paragraph 6(i))

The Committee notes with interest the information regarding recommendation 6(i) concerning the arrangement where prisoners are required to cover a portion of their incarceration expenses, even after their release. As we understand it, there have been some amendments to this system ensuring that certain prisoners are not subjected to a daily rate, and other changes provide for exceptions to the requirement for prisoners to pay the prison system. The Committee remains concerned that this system of remuneration remains in place, despite recommendations made by the Committee and the Government's representative for human rights calling for the arrangement to be abolished entirely. Please provide the Committee with updated information on the status or outcome of the talks initiated by the ombudsman with the Prison Service to review this compensation system on imprisonment costs, as mentioned in paragraph 48 of your response letter of 14 January 2008. Please also clarify whether a convicted offender is required to pay 40 percent of his/her remuneration to the Prison Service regardless of his/her income, or whether there is a minimum amount that prisoners must earn before they are required to pay. Please clarify the exceptions made to this requirement, if any, particularly in cases where family members rely on the income, finances, assets or pension of incarcerated persons to cover their own expenses. In particular, in such cases, is the debt reduced to ensure family members do not face undue financial burdens or hardships?

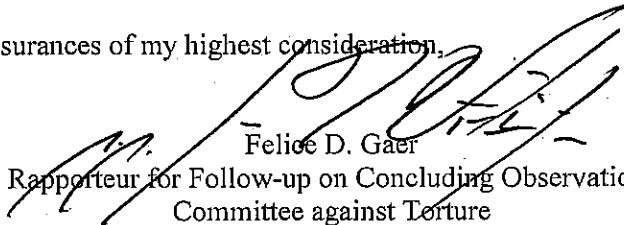
The Committee would appreciate receiving detailed, statistical information on the total number of persons currently paying the Prison Service, as well as the number of prisoners who have been entirely exempted from this requirement and the grounds for their exemption.

Measures to address excessive use of force by police (paragraph 6(k))

Thank you for information on paragraph 6(k) about investigations into excessive use of force by security officials in connection with the 2000 World Bank and International Monetary Fund demonstrations. According to paragraph 51 of your response letter of 14 January 2008, one police officer was disciplinarily sanctioned for using a bamboo stick instead of the standard police nightstick against three protestors "in a situation that did not warrant coercive measures." This paragraph also states that the actions of the police officer in this situation "were not qualifiable as the criminal offense 'torture and other forms of inhuman and cruel treatment.'" Please clarify why the above-mentioned actions of the police officer in question did not qualify as inhuman or cruel treatment, per article 259a of the Criminal Code, and what charges the officer did face, with what outcome, if any, including any disciplinary measures/punishments.

The Committee looks forward to pursuing the constructive dialogue it has started with the authorities of the Czech Republic on the implementation of the Convention, and in this context, to receiving clarification to these follow-up questions.

Accept, Mr. Ambassador, the assurances of my highest consideration.


Felice D. Gaer
Rapporteur for Follow-up on Concluding Observations
Committee against Torture