



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

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COMMITTEE AGAINST TORTURE

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

**Third periodic report of States parties due in 2001**

**Addendum**

**CZECH REPUBLIC\***

[5 March 2002]

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\* The initial report submitted by the Government of the Czech Republic is contained in document CAT/C/21/Add.2; for its consideration by the Committee, see documents CAT/C/SR.197 and 198 and Official Records of the General Assembly, Fiftieth session, Supplement No. 44 (A/50/44), paras. 86-94.

The second periodic report submitted by the Government of the Czech Republic is contained in document CAT/C/38/Add.1; for its consideration by the Committee, see documents CAT/C/SR.466, 469 and 477 and Official Records of the General Assembly, Fifty-sixth session, Supplement No. 44 (A/56/44), paras. 106-114.

The information submitted by the Czech Republic in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in document HRI/CORE/1/Add.71.

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## I. GENERAL INFORMATION

1. The third periodic report of the Czech Republic, submitted in keeping with article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the “Convention”), links up to the initial (CAT/C/21/Add.2) and second periodic (CAT/C/38/Add.1) reports of the Czech Republic. The following documents have been taken into consideration when drafting this report:

(a) General guidelines on the form and content of the report on the implementation of obligations ensuing from the Convention submitted by the Contracting Parties (CAT/C/14);

(b) Conclusions and recommendations of the Committee against Torture on the second periodic report of the Czech Republic (A/56/44, paras. 106-114);

(c) Relevant facts and new measures adopted by the Czech Republic for the performance of obligations stemming from the Convention during the monitored period.

2. The third periodic report of the Czech Republic is submitted for the period from 1 January 1998 to 31 December 2001 (hereinafter referred to as the “monitored period”). During that period, the Czech Republic adopted, mostly at its internal level, new measures aimed at eliminating some of the persisting shortcomings that hamper consistent implementation of its international legal obligations and internal norms, thus contributing to a further improvement of the situation in this particular sphere.

## II. INFORMATION CONCERNING THE INDIVIDUAL ARTICLES OF THE CONVENTION

### Article 2

3. Act No. 140/1961 Coll., the Penal Code, as amended by later regulations (hereinafter referred to as the “Penal Code”), defines the criminal act of torture or other inhuman and cruel treatment as follows: “He who shall cause to another person physical or mental suffering through torture or other inhuman and cruel treatment in connection with the exercise of his powers of a State authority, local government body or a court, shall be punished by imprisonment for six months to three years.” As for subsequent qualified facts, duration of the sentence is increased. One to five years’ imprisonment shall be imposed on a perpetrator who committed such an act as a public official,<sup>1</sup> together with at least two other persons, or who keeps committing such acts for a longer period of time. A perpetrator who caused grievous bodily harm by such an act shall be punished by imprisonment of 5-10 years.<sup>2</sup> If somebody causes death by this act he shall be punished by imprisonment lasting from 8-15 years (art. 259a).

4. In addition to classifying torture and other inhuman and cruel treatment among criminal acts pursuant to the Penal Code, guarantees safeguarding detainee’s three fundamental human rights are perceived as a major component of the measures aimed at preventing torture.<sup>3</sup> the right to legal assistance from the beginning of detention, the right to be examined by a physician of one’s choice, and the right to contact one’s next of kin or another chosen person.

5. The right to legal assistance in proceedings before courts, other State authorities and bodies of public administration is guaranteed pursuant to Act No. 2/1993 Coll., on the Charter of Rights and Freedoms, as amended by later regulations (hereinafter referred to as the “Charter of Rights and Freedoms”) to anyone from the very outset of court proceedings (art. 37, sect. 2). Under the provisions of Act No. 141/1961 Coll., on Criminal Court Proceedings, as amended by later regulations (hereinafter referred to as the “Criminal Code”), a detainee, i.e. a suspected or accused person, is entitled to choose a defence counsel and to consult with him/her already during detention (art. 76, sect. 6).

6. The right to be examined after detention by a physician of one’s choice is not secured in the Czech legal system. Act No. 283/1991 Coll., on the Police of the Czech Republic, as amended by later regulations (hereinafter referred to as the “Police Act”), only stipulates that if a police officer discovers that a person to be placed in a cell is injured, or if such a person claims to be suffering from a serious illness, or if there is reasonable suspicion that this person really suffers from such an illness, the police officer shall secure medical treatment for such a person, and shall ask for a physician’s opinion whether such a person can be placed in a cell (art. 28, sect. 3). Medical care is provided also to persons placed in a cell. If such a person falls ill, injures him/herself or makes a suicide attempt, the police office guarding the cell shall take necessary measures aimed at saving the life and health of such a person, especially by providing first aid and by calling in a physician, and ask for a statement as to the further stay of such a person in the cell or his/her transfer to a medical facility (para. 32). Neither of the above-mentioned provisions, however, guarantees the right of such a person to be examined by a physician of his/her own choice. Pursuant to the provisions of article 9, section 2, of Act No. 20/1966 Coll., on the Care for Public Health, as amended by later regulations, the right to a free choice of physician shall be limited only for persons in custody and imprisoned, which means that according to this Act, detainees in a police cell have the right freely to choose their own physician.

7. The third safeguard against ill-treatment - the right to contact next of kin or another chosen person - is not guaranteed in this particular form. After detaining a person, a police officer is obliged, at detainee’s request, to notify the detainee’s next of kin (art. 12, sect. 3)<sup>4</sup> or another appointed person (art. 14, sect. 4).

### **Article 3**

#### **Extradition**

8. A far-reaching amendment to the Penal Code, enacted by Act No. 265/2001 Coll., which came into effect on 1 January 2002, was adopted in 2001. Pursuant to this amendment, it is the regional court with the local jurisdiction that decides on extradition on the basis of preliminary investigations performed by a State Prosecuting Attorney. Preliminary investigation may be launched at the request of a foreign State for extradition, or without it. The State Prosecuting Attorney is entitled to issue a writ for the detention of a person to be extradited. However, he is obliged - within 48 hours of detention at the latest - to give the court a proposal for remanding that person in custody, unless he himself decides on the detainee’s release on the basis of a completed inquiry.

9. Later on, a court shall rule at a public hearing whether extradition is admissible. If it rules that extradition is not admissible, and the person concerned is in custody, the court shall at the same time order his/her release from custody. If the court rules on the admissibility of extradition, custody shall be obligatory, and the court shall not be bound by the grounds for custody pursuant to the provisions of article 67 of the Penal Code. It is admissible to lodge a complaint against the ruling, which has a suspensory effect. At the same time, the suspensory effect of a complaint lodged by a State Prosecuting Attorney against a ruling to release from custody shall be limited. If a State Prosecuting Attorney's complaint is to have suspensory effect, it must be lodged immediately after the ruling is announced.

10. Acting on the basis of a proposal made by a State Prosecuting Attorney, the presiding judge of a regional court<sup>5</sup> may decide to remand a person in extradition custody if there is a danger that the person might escape. The duty of a court to hear the person before it rules on remanding him/her into custody is newly instituted. The deadlines stipulated in the Penal Code for custody within the framework of internally conducted criminal proceedings (provisions of article 67 of the Penal Code)<sup>6</sup> also apply to custody in extradition procedures.

11. If the reasons for which a person was remanded in extradition custody expire, a court shall order the person's release, at his/her request or without it. Likewise, the court is obliged to release such a person from custody if the preliminary investigation was initiated without a request for extradition from a foreign State and the request failed to be delivered to the Czech Republic within 40 days of the day of remanding into custody.

12. In case of extradition pursuant to article 3 of the Convention, the extradition provision does not explicitly mention the principle of non-refoulement in the same way as does the legislative regulation on banishment and administrative banishment.

### **Banishment**

13. Specific measures relating to the execution of the sentence of banishment were secured only by the 1997 amendment to the Penal Code. This legislation stipulates which particular measures and which deeds may be taken by the presiding judge (eventually by the Ministry of Justice) in connection with the sentence of banishment.

14. Once a sentence of banishment has been imposed and the judgement has come into force, a court shall call on the convict to leave the territory of the Czech Republic, and if there is no concern that the convict who is at large may hide or otherwise obstruct the execution of the ruling, the court may then fix an appropriate time limit for travelling for the purpose of arranging the convict's affairs.

15. If there is concern that the convict might obstruct the execution of the sentence of banishment, a court can issue a ruling to remand the convict in banishment custody. However, in this case (unlike with extradition custody), custody may be replaced by a guarantee, a pledge or a financial guarantee.

16. The Penal Code amendment enacted by Act No. 265/2001 Coll. has brought only minimum changes to the legislative regulation of the sentence of banishment and its execution.

The new provision laying down the court's duty to desist from the execution of the sentence of banishment, should there arise facts for which the sentence of banishment cannot be imposed, is essential.

17. The principle of non-refoulement is anchored in the provisions on the sentence of banishment in the Penal Code. It expressly states that - among other reasons - the sentence of banishment cannot be imposed if such banishment would expose the offender to torture or inhuman or degrading treatment or if, in the State to which the offender is to be banished, he/she would be persecuted for his race, nationality, membership of a specific social group, or political or religious thinking.

18. The application of the Act on Serving Custody to banishment custody appears to be problematic. Persons remanded in custody pursuant to the provisions of article 67 of the Penal Code, are - owing to the ongoing criminal procedures - subject to justifiably different and mostly stricter restrictions than those imposed on persons detained in banishment custody, i.e. whose guilt has already been proved in a criminal procedure. The only reason for why persons sentenced to banishment find themselves in custody is concern that they may hide or otherwise obstruct the execution of the sentence. That is why there is no reason for any other restrictions ensuing from the Act on Serving Custody, primarily those concerning the convict's contact with the outside world. When deciding about remanding such persons in custody, on many occasions such persons are not heard by a judge. Equally problematic is the absence of a provision fixing the maximum duration of banishment custody. In some cases, the process of arranging formalities connected with the issue of substitute travel documents may be unduly long, or such documents may not be issued at all if the diplomatic authorities of foreign States are reluctant to cooperate. Another problem is the uncoordinated practice of courts in deciding about the release from banishment custody if travel documents vital for the execution of the sentence of banishment cannot be secured.

### **Administrative banishment**

19. Act No. 326/1999 Coll., on the Residence of Aliens in the Territory of the Czech Republic, as amended by later regulations (hereinafter referred to as the "Residence of Aliens Act"), has managed to unify the legal concept of banishment and the prohibition of residence in the territory of the Czech Republic with the legal concept of administrative banishment, with the duration of the validity of the ruling on administrative banishment replacing the sanction of the prohibition of residence in the territory of the Czech Republic. Chapter X of the Residence of Aliens Act lays down the terms for imposing administrative banishment, the period for which it may be imposed, the conditions for modifying the strict conditions of administrative banishment, and the coverage of the costs connected therewith.

20. Administrative banishment is the termination of an alien's residence in the territory of the Czech Republic based on a police decision. This type of banishment is not a form of punishment for a criminal act committed in breach of the Penal Code, but is invariably more or less connected with a serious violation of the regulations on residence. Depending on the seriousness of the offence involved, the police shall then stipulate the period of time for which the alien

concerned cannot be allowed to enter the country's territory. The administrative banishment procedure is guided by the Rules of Administrative Procedure, the ruling administrative body in this case being the Alien and Border Police Service. Aliens may lodge an appeal against a ruling on administrative banishment within five days of the day of notification of the pertinent ruling.

21. Amendment to the Residence of Aliens Act came into force in July 2001, broadening the range of offences and acts for which administrative banishment may be imposed. Administrative banishment may be imposed for a maximum period of 10 years. A banishment ruling cannot be issued if such banishment would lead to an inappropriate interference with the alien's private or family life. However, there is information indicating that - in some cases - such interference was never investigated.

22. The Residence of Aliens Act lays down the terms under which it is impossible to implement a decision on administrative banishment. This involves the concept of "obstacle to travelling". An alien cannot have his residence terminated if he is to be banished to a State where he would be threatened with torture or inhuman or degrading treatment or punishment, where his life would be jeopardized by an armed conflict, where his life or freedom would be endangered because of his race, religion, membership of a specific social group or his political conviction, or to a State which requests his extradition for a criminal act for which the laws of that particular State stipulate the death sentence.

#### **Article 4**

23. The Czech Republic has no new facts to supply to this article.

#### **Article 5**

24. The Czech Republic has no new facts to supply to this article.

#### **Article 6**

25. A person suspected of having committed a criminal act may be detained, and an accused may be taken into custody; no special provisions apply to the crime of torture and other inhuman and cruel treatment pursuant to article 259a of the Penal Code.

26. Under the assumption that some of the grounds for custody exist, in urgent cases a police investigator may detain a person suspected of having committed a criminal act. A person accused of a criminal act may be detained if - owing to the urgent character of the case - a ruling on custody cannot be obtained beforehand. In both cases, the detainee must be handed over to a court within 48 hours, with the court ruling whether to release the detainee or take him into custody. The detainee has the right to choose a defence counsel and consult him during custody. The detainee is entitled to the appointment of a defence counsel at the cost of the State only in cases stipulated by law.<sup>7</sup> During the monitored period, the time period for handing over detainees to court mentioned above was extended from 24 to 48 hours by the amendment to the Charter of Rights and Freedoms No. 162/1998 Coll., and by the subsequent amendment to the

Penal Code No. 166/1998 Coll. The original 24-hour deadline proved to be too short for appropriate determination of the grounds for custody for the purpose of deciding about the detainee. According to information from the Attorney-General's Office, the new legislation has already proved its worth in practical life.

27. The Penal Code amendment (Act No. 265/2001 Coll.) has also affected the provisions concerning custody. These provisions cover all criminal acts, including the crime of torture and other inhuman and cruel treatment. The reasons for remanding into custody have remained unchanged. These continue to include reasonable concern that the accused may flee or go into hiding to evade punishment or criminal proceedings, affect witnesses or co-accused, or otherwise obstruct the process of clarifying facts substantial for criminal prosecution, or re-offend, complete an offence he/she had attempted to commit, or commit a criminal act he/she had prepared or threatened to commit. However, this provision newly stipulates that the accused may be remanded in custody under the assumption of the fulfilment of some of the above-mentioned grounds solely if and when the purpose of custody cannot be achieved by any other measure at the time of ruling (art. 67).

28. There are new provisions stipulating cases when custody cannot be imposed. The main criterion is the seriousness of the criminal act involved, which is measured by the sentence imposed for such an act by law. Therefore, a person prosecuted for an intentional criminal act which carries a prison sentence whose upper limit does not exceed two years, and a person prosecuted for a negligent criminal act for which the law stipulates a prison sentence whose upper limit does not exceed three years cannot be remanded in custody. The upper limit for the crime of torture and other inhuman and cruel treatment is fixed at three years.<sup>8</sup> However, the above-mentioned restrictions applying to the process of remanding in custody shall not be applied under the conditions precisely specified by law, which include when the accused has escaped or gone into hiding, continues to commit the type of criminal act for which he/she had been prosecuted, obstructed the process of clarifying facts substantial for the criminal proceedings, etc.

29. Courts decide on remanding in custody. In preliminary proceedings, i.e. at the stage of criminal prosecution from the notification of accusation to bringing an action, a judge decides on remanding in custody following a proposal by a State Prosecuting Attorney. Continued custody is decided by court, in preliminary proceedings by a State Prosecuting Attorney. In the preliminary phase of the proceedings, a State Prosecuting Attorney may decide to release the accused from custody even without application. But if a State Prosecuting Attorney does not comply with an application for release from custody, he is obliged to submit the decision to a court for a ruling. After the submission of an indictment, it is the court that takes decisions pertaining to release from custody.

30. Only partly in compliance with paragraph 3 of this article of the Convention, the law stipulates the duty of the court, if an alien is remanded in custody, to notify the consular office of the State whose citizen that alien is. The prevailing practice in this case corresponds with the Vienna Convention on Consular Relations,<sup>9</sup> of which the Czech Republic is a Contracting Party: an alien remanded in custody is notified by the appropriate authorities of that right, which may be refused.



### Article 7

31. In addition to the criminal act of torture and other inhuman and cruel treatment (paragraph 259a of the Penal Code), the military criminal act of violating the rights and protected interests of servicemen is also classified among criminal acts pursuant to article 4 of the Convention (article 279a and b of the Penal Code<sup>10</sup>).

32. The table below gives the number of criminal investigations into suspected acts of torture or other inhuman and cruel treatment pursuant to article 259a of the Penal Code, and the criminal act of violating the rights and protected interests of servicemen in accordance with article 279a and b of the Penal Code.

		1998		1999		2000	
		Male	Female	Male	Female	Male	Female
Art. 259a	Prosecuted	0	0	0	0	0	0
	Charged	0	0	0	0	0	0
	Convicted	0	0	0	0	0	0
Art. 279a	Prosecuted	113	0	116	0	105	0
	Charged	79	0	101	0	84	0
	Convicted	47	0	98	0	73	0
Art. 279b	Prosecuted	159	0	91	0	102	0
	Charged	139	0	74	0	90	0
	Convicted	84	0	114 <sup>a</sup>	0	67	0

<sup>a</sup> The actual course of criminal proceedings does not depend on calendar year and that is why the number of convicts in 1999 exceeded the number of initiated criminal proceedings.

33. As implied by this table, nobody was prosecuted, charged or convicted for the criminal act of torture or other cruel and inhuman treatment during the monitored period. The same held true of the previous period. This particular criminal act was incorporated into the Penal Code by the amendment to Act No. 290/1993 Coll., which came into force on 1 January 1994. Its provisions have not been applied since.

### Article 8

34. As mentioned in the previous reports, there is no obstacle in the Czech legal system preventing the implementation of the obligations ensuing from this article. The Convention is directly binding pursuant to article 10 of the Constitution of the Czech Republic, therefore representing a sufficient legal instrument for the extradition of persons suspected of committing criminal acts pursuant to article 4 of the Convention, including to States with which the Czech Republic does not have an extradition treaty.

### Article 9

35. During the monitored period, the Attorney-General's Office did not provide any legal assistance to another State in connection with criminal proceedings initiated pursuant to article 4 of the Convention.

## Article 10

36. Training of the staff of the Prison Service is safeguarded by the Training Institute of the Prison Service of the Czech Republic and is organized at several levels. Education in human rights, also covering issues of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, is contained in each of those levels, and is included in virtually all specialized subjects in which the Prison Service staff are trained.

37. The elementary training level consists of initial 10-week training courses attended by all the Prison Service personnel. The following subjects are taught: fundamentals of law and social sciences (rudiments of psychology, rudiments of pedagogy, rudiments of law and professional ethics), specialized subjects (guard, escort and warden service, judicial guard service, serving prison terms, serving custody) and martial arts and self-defence practices. In terms of content, the training courses draw primarily on the Standard Minimum Rules for the Treatment of Prisoners, the European Prison Rules, the Code of Behaviour of Law Enforcement Officials, the Charter of Rights and Freedoms, and other sources.

38. Specialized training courses represent a higher level of training. Their ultimate goal is to acquire new findings and skills in the specialized branches, in professional ethics, law and psychology. Organized periodically, such courses are tailor made according to the functions discharged by the Prison Service staff. All the training courses serve to broaden the horizon of the specialists in the given field, facilitate orientation in interpersonal relations, gain new information and - last but not least - to establish contact with other staff working in similar posts in other prison facilities, and to exchange information.

39. The Training Institute of the Prison Service of the Czech Republic has set up a Commission for Education in Human Rights. Translation into Czech of a handbook on education in human rights in the Prison Service has been completed under the Commission's auspices. This manual will now be used in initial training courses aimed at promoting respect for human rights. These activities will be introduced in the courses first on an experimental basis in the initial training of judicial guards in July 2001, after which such courses will be attended by all the teachers of the Training Institute to be in a position to use the new knowledge in teaching their own subjects. Part and parcel of this wide-ranging project will also be the training of other Prison Service staff in an effort to provide education in human rights both within the Training Institute and also in all the organizational sections of the Prison Service.

40. No changes occurred in the system of specialized training of servicemen in the Army of the Czech Republic, members of the Police of the Czech Republic and municipal police, and in the practice of reflecting the principle of prohibiting torture and other cruel, inhuman or degrading treatment or punishment. A conference entitled "Police and Human Rights" was held in 2001 as part of the training activities of the Police of the Czech Republic and - working in conjunction with the Ministry of the Interior - the Documentation and Information Centre of the Council of Europe published a booklet called "Visits of CPT - What Is Actually Involved?", which was later distributed to police units.

41. Respect shown by judges and State Prosecuting Attorneys for the prohibition of torture and other cruel, inhuman or degrading treatment, should primarily be safeguarded by their legal training. Continued education of judges and State Prosecuting Attorneys is provided by the Institute for Further Training of Judges and State Prosecuting Attorneys, which falls under the methodological guidance of the Ministry of Justice. During the monitored period, the Institute did not organize any systematic additional training courses in this field. However, the issues of prohibiting torture and other ill-treatment are discussed during the workshops specializing in the protection of human rights. A series of specialized workshops aimed at expounding the European Convention for the Protection of Human Rights and Fundamental Freedoms for judges was held between 1995 and 1998. State Prosecuting Attorneys are systematically trained in lifelong education in compliance with the ethical rules of their profession. A code of ethics for State Prosecuting Attorneys and judges has not yet been issued. Still, a bill on the State Prosecuting Attorney's Office, currently being debated by the Senate of the Parliament of the Czech Republic,<sup>11</sup> contains a relatively extensive catalogue of duties to be discharged by State Prosecuting Attorneys, some of which have a distinctly ethical nature. Similar provisions are contained in the draft amendment to the country's Courts and Judges Act.

### **Article 11**

42. Amendment to the Charter of Rights and Freedoms (Act No. 162/1998 Coll.) was approved back in 1998. This was followed by amendment to the Penal Code (Act No. 166/1998 Coll.). Proceeding from those legislative regulations, the time period within which an accused or a suspect is handed over to court after detention has been extended from 24 to 48 hours. Extension of the period was necessitated by efforts on the part of State Prosecuting Attorneys to determine more thoroughly whether there are grounds in specific cases for remanding a detainee in custody which is decided by a judge after the expiry of the deadline. According to information from the Attorney-General's Office, this particular legislation has proved its worth in legal practice.

### **Serving prison terms**

43. A new Act No. 169/1999 Coll., on Serving Prison Terms (hereinafter referred to as "Serving Prison Terms Act"), which came into force on 1 January 2000 and which replaced the previous outdated legislation from 1965, was approved in 1999. This law was followed by a new Directive of the Ministry of Justice No. 345/1999 Coll., laying down rules for confinement in penitentiary.

44. In its general provisions the new legislation explicitly formulated the main principles for serving prison terms. According to them, a prison term may only be served in a way that respects the dignity of the convict's personality and limiting the harmful effects of the deprivation of freedom, although under the condition that this shall not threaten the need to protect society. Convicts serving prison terms should be treated in a way so as to preserve their health and - if their prison term allows - their confinement should support the development of such attitudes and skills that will help them reintegrate into society and facilitate a self-sufficient law-abiding life after release from prison.

45. The legislation introduces a new classification of prisons, according to the mode of external guarding and safeguarding security, into four basic types, namely open prisons, prisons under supervision, specially guarded prisons and top-security prisons, with open prisons having the most lenient regime and the top-security penitentiaries the strictest one. This legislation lays down uniform rights and duties of the convicts in all types of prisons.

46. One of the objectives of the new legislation was to involve municipalities and non-State subjects in the serving of prison terms. The law has paved the way for the establishment of “consultative councils” in prisons, composed of experts from different professions and community officials not employed in the prisons. Consultative councils are expected to participate in solving day-to-day as well as conceptual problems in the serving of prison terms. In practice, it is always difficult to find experts for this kind of work, as it is voluntary work and without any claim to remuneration, and those who could work in consultative councils are not motivated to participate. As a result, there are only a few prisons which have already established such consultative councils that are now functioning. Another measure used by the law to promote cooperation between the community and non-State subjects in the serving of prison terms is the possibility of setting up prisons in non-State objects, following agreement with their owners. And following agreement with the pertinent community it is possible to establish prisons for the local execution of prison terms where the convicts with short prison terms would work for the benefit of the local community. Even though this legislation has set the stage for such developments, no prison has been opened as yet in a non-State object. Similarly, no community has yet displayed an interest in establishing a prison for convicts serving prison terms locally. Meanwhile, communities seem to be supporting alternative punishment, primarily the performing of community service.

47. The new legislation has introduced changes aimed at making it easier for convicts to maintain their social contacts. These changes concern primarily the provisions guiding the regime of visits, the convicts’ possibility to use the telephone, and the serving of prison terms by mothers of minor children. The provisions on receiving and sending correspondence have remained unchanged.

48. The right to receive visitors has been newly regulated. As a result, during one calendar month convicts are entitled to receive visits by their next of kin for a total period of up to three hours. For serious reasons, convicts may be allowed visits by persons other than next of kin. But the officially stipulated duration of such visits spells out their maximum, and not minimum, period, which provides scope for interpretation, according to which some convicts’ entitlement to visits is, in some cases, unjustifiably curtailed. A suitable solution would be to fix a minimum entitlement in this respect.

49. Pursuant to the new Act, in justified cases convicts may be allowed to use the phone to contact a next of kin.<sup>12</sup> For serious reasons convicts may also be allowed to use the phone to contact other persons. The costs connected therewith are covered by the convict. In both cases, the Prison Service is entitled to know the content of such phone calls through eavesdropping.

50. The law lays down the conditions for improving the situation of mothers of minor children serving prison terms. Under given circumstances, the law gives the convicted women an opportunity to have their children up to the age of 3 with them. Under the new legislation,

women who had properly looked after their minor children before starting their prison terms are allowed to extend their parole to visit their children by up to 10 days in each calendar year. Since the practical provisions for the serving of prison terms for mothers with children are demanding in material, technical and personnel terms, proper conditions have not yet been created for that. At present, a new concept for mothers with children serving prison terms is being drawn up in the Světlá nad Sázavou Penitentiary.

51. A major change - as compared with the previous legislation - is the abolition of the provision on minimum accommodation space without any compensation. The Czech Republic has had long-standing problems with overcrowded prisons, a predicament that culminated in 2000, when the accommodation capacities of the Czech prisons and detention prisons were filled to 117.2 per cent of their capacity. The competent Czech authorities are fighting off efforts to reintroduce restrictions in the shape of fixing a minimum accommodation space, justifying their position by saying that this would lead to an unlawful state of affairs. Even though the excessive occupancy rate of the Czech prisons has been systematically decreasing since 2000, their accommodation capacities are still being overstretched.

52. The table below gives the number of imprisoned persons and the occupancy rate of the accommodation capacities between 1998 and 2001.

As of	Accused			Convicted			Total			Accommodation capacity	Occupancy rate of accommodation capacities in %
	Male	Female	Total	Male	Female	Total	Male	Female	Total		
1 Jan.1998	7 413	323	7 736	13 347	477	13 824	20 760	800	21 560	18 907	114.0
1 Jan. 1999	6 779	346	7 125	14 423	519	14 942	21 202	865	22 067	19 283	114.4
1 Jan. 2000	6 566	368	6 934	15 510	616	16 126	22 076	984	23 060	19 632	117.2
1 Jan. 2001	5 604	363	5 967	14 966	605	15 571	20 570	968	21 538	20 244	106.4
11 Nov.2001	5 332	310	5 642	14 443	559	15 002	19 775	869	20 644	20 168	103.0

53. The measure which is expected to have a significant impact on reducing the number of imprisoned persons was the adoption of Act No. 257/2000 Coll., on Probationary and Mediator Service, and the amendment to the Penal Code by Act No. 265/2001 Coll. Both laws represent instruments of the country's new criminal policy consisting in an efficient enforcement of alternative sentences which are - primarily in cases of less serious criminal activities that account for the largest portion of cases passing through the system of criminal justice - more efficient than imposing prison terms. The change, in the form of pronouncing a high number of alternative sentences, may reasonably be expected to occur in connection with the just-developing system of probationary and mediatory service whose centres, operating in the seats of district courts (or local or municipal courts of corresponding level), are to exercise supervision over the accused, indicted or convicted and the execution of alternative punishment, but also to mediate out-of-court settlements in criminal cases. The anticipated drop in the number of imprisoned persons is expected to lead not only to an improvement in the accommodation capacities but primarily to greater possibilities of enhancing the educational impact on the prisoner, a goal which is still very difficult to achieve under the current circumstances.

54. Based on the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the new legislation has introduced supervision over compliance with legislative regulations guiding the process of serving prison terms. This type of supervision is performed by an appointed official from the Regional Prosecuting Attorney's Office in whose district the term involved is being served (see information on article 13).

55. In addition to its well-received changes, the new law on execution of punishment has also brought some changes which have not been praised by the professional public quite so unequivocally. One of them is the stipulated duty of all convicts to cover the costs of serving their prison terms, including those who have no chance to work. This particular duty also applies to convicts who supplement their education in daytime studies and who, therefore, cannot be assigned to work. This greatly affects their motivation for further education. It should be noted that even though convicts are obliged to cover only a fraction of the genuine costs of serving their prison terms, this particular legislation has had a negative impact on their ability to reintegrate into society after their release and to avoid reoffending. Especially in the case of prisoners sentenced to long-term imprisonment, practical experience has shown that on their release from prison their debts are so huge and their chances of getting a job so meagre that only very rarely do they find a legal method of gaining the means to satisfy their basic needs which - in some cases - leads them to reoffending.

56. Another moot point is the provision on the basis of which the convict who does not work is unable freely to dispose of virtually any part of his money. A non-cash payment system is used in the Czech prisons, and that is why prisoners physically have no money of their own. The sum of their money, stored in safekeeping in the prison, is used automatically and predominantly to deduct payments to cover the damages caused by their criminal acts, outstanding debts resulting from their criminal proceedings, and the costs of serving their prison terms. The money they put by on their arrival to serve their prison terms is used for those purposes. Most of the convicts at present do not work as the Prison Service is not in a position to provide work for them, and therefore they have no income of their own. If anybody sends them any money to the prison, it is used predominantly for the above-mentioned payments. As a result, many convicts are faced with a no-win situation where they cannot get any money in any legal way at all and where they cannot buy routine food supplements, including articles of personal hygiene. Under such circumstances, general disgruntlement and tensions are rising in relations among prisoners themselves and among the prison population on the one hand and the prison staff on the other.

57. Equally controversial appears to be the provision containing the special definition of the actual purpose of life imprisonment.<sup>13</sup> As compared with the general legislation governing the purpose of life imprisonment pursuant to the Penal Code,<sup>14</sup> the special definition substantially reduces the educational component. However, according to the Penal Code, a prisoner sentenced to life imprisonment can - after serving 20 years - ask for parole. When deciding about parole, the court is obliged to assess the parolee's degree of re-education and his ability to be resocialized. Seen in this light, the special definition appears to be superfluous, as it creates what

can be called a contextual disharmony between the meaning of the general and the special legislation. As for life imprisonment, it has not yet been possible to implement in practice the recommendations of CPT made during its monitoring visit in 1997 on the employment and education of those convicts and efforts to reduce their isolation from the rest of the prison population and from the outside world.

### **Serving custody**

58. The conditions of serving custody are governed by Act No. 293/1993 Coll., on Serving Custody, as amended by later regulations (hereinafter referred to as the “Serving Custody Act”). This legislation applies to three types of custody which can be imposed pursuant to the Penal Code. These include standard custody of persons accused or indicted in preliminary procedures and court proceedings pursuant to article 67 of the Penal Code whose purpose is to prevent the person from evading criminal prosecution, or obstructing the process of clarifying facts substantial to the criminal prosecution, or completing a criminal act, or repeating a criminal activity for which he/she is being prosecuted. The Serving Custody Act also regulates the terms of serving banishment and extradition custody. Under the terms laid down by the Penal Code, a person may be remanded in extradition custody if such a person is not a Czech citizen for whose extradition the Czech Republic was requested by a foreign State for the purpose of criminal prosecution or execution of punishment. Only a person who is not a Czech citizen and who has lawfully received the sentence of banishment independently or in a combination with another sentence pursuant to the Penal Code, most frequently a prison sentence, may be remanded in banishment custody (unlike the two other types).

59. In 2000 the Czech Republic promulgated Act No. 208/2000 Coll., amending the Serving Custody Act. The amendment came into force on 1 January 2001. In keeping with the European Prison Rules, the Prison Service employees are expressly prescribed the duty to uphold the rights of the accused serving custody. However, the serving of custody of pregnant women and mothers with children up to the age of one year is not regulated.

60. Proceeding from the recommendations of the CPT, as formulated by the Committee during its visit to the Czech Republic in 1997, the amendment increases the frequency of visits to a person in custody from three to two weeks, the duration of each visit being extended from 30 minutes to 1 hour. In justified cases, the director of a custodial establishment may grant an exception going beyond the framework of these limitations. Of equally great significance is the change in the regime of visits to persons in collusive remand, i.e. persons remanded in custody on the grounds of concern that they might obstruct the process of clarifying facts significant to the criminal prosecution. According to the existing legislation, visits to the accused in collusive remand were dependent on preliminary written consent of a court or a State Prosecuting Attorney. This provision was then frequently interpreted to the detriment of the accused and not approved, without any justification. That is why, pursuant to the amendment, conditions for visits to a person in collusive remand, namely the date of the visit, the circle of permitted visitors and the presence of investigative, prosecuting and adjudicating personnel, are laid down.

61. The amendment has also extended the interval at which the accused is entitled to receive parcels containing food and personal articles. The hitherto valid interval - once in two weeks - has been prolonged to once in three months, once in two months for juveniles. This restriction has been introduced especially because - in spite of appropriate control - habit-forming substances are finding their way into the prisons in such food parcels. Seen in this context, it should be emphasized that the regulation of the right of the accused to purchase food and personal articles remains unchanged. A positive change is seen in the extension of the list of items that may be sent in parcels to which the aforementioned interval is not applied. Under the previous legislation, these included solely clothing sent for the purpose of exchange. The amendment stipulates that the limiting interval does not apply to parcels containing books, daily newspapers, magazines and toilet articles.

62. Modelled on the European Prison Regulations, the conditions for serving the disciplinary punishment of solitary confinement have been newly stipulated. Unlike the previous legislation, a prerequisite has been set for imposing this type of disciplinary punishment, namely a physician's statement that the accused is fit to undergo such a punishment. The amendment also further extends the field of literature the accused is allowed to read in solitary confinement, stating expressly that the accused is allowed to receive and send correspondence and read daily newspapers as well as legal, educational and religious literature. Furthermore, the new concept of expunging a disciplinary punishment has been introduced. This gives the accused an opportunity to correct the consequences of inappropriate behaviour in custody. A prison director or a Prison Service body authorized by him may decide to expunge a prisoner's disciplinary punishment if - after serving that punishment - he/she duly fulfils his/her duties for a period of at least six weeks (23a, sect. 1). From the moment of the expungement of the punishment, the accused is regarded as if he/she had never received a disciplinary punishment.

63. Based on the recommendations of the CPT, the amendment has introduced supervision over compliance with the legislative regulations on serving custody. Just as in the case of serving prison terms, supervision is performed by an appointed official of the State Regional Prosecuting Attorney's Office in whose jurisdiction the custody is being served (see information on article 13).

64. The application of the Serving Custody Act is particularly controversial when applied to banishment custody. As for persons remanded in custody pursuant to article 67 of the Penal Code, different, usually stricter limitations are justified due to the ongoing criminal proceedings than for persons remanded in banishment custody, i.e. persons lawfully convicted, whose guilt has been proved in criminal proceedings. For this reason, the only justified restriction relating to persons in banishment custody seems to be limitation of their personal liberty. There is no ground for imposing other limitations ensuing from the Serving Custody Act, primarily those involving reduced contacts with the outside world. Persons remanded in banishment custody are primarily those who cannot be banished as yet, most frequently because they have no valid travel documents and there is a danger that they might try to obstruct the execution of their punishment. However, in some cases the process of completing the formalities connected with the issue of substitute travel documents lasts inappropriately long, or documents are eventually not issued at all because the diplomatic missions of foreign States are reluctant to cooperate. As a result, banishment custody lasts for several months, or even years. Its maximum duration is not stipulated, and that is why it is regulated by the provisions governing the maximum duration of



custody pursuant to the provisions of article 67, which specifies that not even in the most serious cases should custody exceed the period of four years. Between 2000 and 2001, there were several cases recorded in the Czech Republic where banishment custody exceeded two years.

### **Legislation concerning detention and arrest**

65. The placement of a detainee in a police cell is regulated by the Police Act. Detention is governed by the Penal Code (arts. 75-77). Arrest is governed primarily by the Police Act and also - in matters concerning the detention of aliens for the purpose of terminating their residence or banishing them - by the Residence of Aliens Act. The following changes were made in the legislative regulations governing both arrest and detention during the monitored period.

66. As noted in the information on article 6 and in the introduction to this article, the amendments to the Charter of Rights and Freedoms and the Penal Code have prolonged the period for handing over a detainee to the court which is to decide on remand from 24 to 48 hours.

67. The legal regulations governing detention for the purpose of terminating aliens' residence or banishing them pursuant to the Police Act were followed by the Aliens Act which regulates administrative banishment (see information on article 3) by establishing a special facility for detaining aliens and stipulating the rights and freedoms of persons placed in such facilities, and the duties and powers of their personnel.

68. The establishment of a special facility for the detention of aliens has been made imperative by the sharp criticism expressed by the CPT after its monitoring visit to the Czech Republic in 1997. The Committee perceived the prevailing situation in this country as serious enough to formulate its recommendations as immediate findings. It had critical words primarily about the conditions of detaining aliens in police cells where absolutely no daily regime existed and where legislative regulations governing the rights of detainees were completely lacking.

69. Pursuant to the Aliens Act, the police are authorized to detain aliens and place them in custodial arrest, once they receive notification of the start of the procedure on administrative banishment and if - at the same time - there is a danger that they might jeopardize the security of the State, seriously disturb public law and order, or obstruct or impede the execution of administrative banishment. Detained aliens must be informed of the possibility of a court review of the legality of their detention. Under the terms of the original Residence of Aliens Act (No. 326/1999 Coll.), the police were obliged to deliver this notification in the mother tongue of the alien concerned or in a language he was able to communicate in. If it proved impossible to make the alien understand this notification, the police did not notify him and drew up a report to that effect. The amendment to the Residence of Aliens Act No. 140/2001 Coll. has changed this provision in such a way that unless communication can be secured in the alien's mother tongue or in a language he is able to communicate in, the police shall notify the alien by giving him a written instruction in the Czech, English, French, German, Chinese, Russian, Arabic and Spanish languages.

70. Such detention should not exceed 180 days from the moment of restricting the alien's personal liberty. Detention must be terminated as soon as the reasons for it expire or a court rules such detention illegal (art. 125, sect. 1).

71. Operated by the police, the facility for the detention of aliens is divided into two parts, a section with a strict detention regime and a moderate-regime detention ward. Placed in the strict-regime detention section are aliens who might jeopardize the very purpose of their detention, who are aggressive or under quarantine, aliens who fail to fulfil their duties or violate the internal rules of the facility, or aliens whose identity cannot be checked. If the police find no reason for placing an alien in a strict-regime detention section, such an alien shall be placed in a moderate-regime ward. When placing aliens in this facility, care must be taken to separate men and women, and aliens under 15 years of age from older aliens. In both cases, exceptions to the rule may be made in case of next of kin. The law also stipulates that when placing aliens in these facilities the division of families should be justified and appropriate to the consequences of such division (art. 133).

72. Aliens detained in the facility are entitled to receive visitors, a maximum of two persons once in three weeks for 30 minutes. They are entitled to receive persons providing them with legal assistance without any limitation at all. Once in two weeks they are entitled to receive a parcel weighing up to 5 kg and containing food, books and personal articles.

73. The aliens' daily regime depends on the section of the facility they are placed in. Those staying in the strict-regime detention section are entitled to one daily walk in a limited space lasting at least one hour. Aliens in a moderate-regime detention ward are free to move within a limited perimeter at appointed times, and may keep in touch with the other aliens staying in that particular section of the facility.

74. Aliens placed in the facility are entitled to submit requests and lodge complaints to the State authorities of the Czech Republic which the detention facility is obliged to send without delay. At their request, aliens must be allowed to talk to the head of the facility or the deputy.

75. As compared with the previous law, the legislative regulation mentioned above undoubtedly represents a positive change. Still, shortcomings have appeared in the functioning of the facility for the detention of aliens, drawbacks which probably stem from the fact that facilities of this kind have previously not existed in the Czech Republic, and it will be necessary to draw a lesson from practical experience. Although the reason for placing aliens in this particular facility is their violation of the country's Alien Act and not any criminal legislation, in many respects the regime and conditions in these facilities are similar to those in prisons, furthermore without the benefits offered by the more advanced prison system. In addition to insufficient material and technical equipment, a serious problem is also a critical shortage of personnel with sufficient language skills, a deficit which is conducive to creating tensions between the detainees and the personnel, and to the detainees' undesirable psychological condition.

## **Serving disciplinary sentence of imprisonment in the Army of the Czech Republic**

76. The Act No. 220/1999 Coll., on the course of basic and alternative army service and military exercises and on some legal relations concerning reservists, came into force in 1999. This law also regulates disciplinary punishments and conditions governing their imposition. The type and degree of disciplinary punishments must be appropriate to the nature of the disciplinary offence involved and its consequences, the extent of fault, the circumstances under which the offence was committed, the previous behaviour of the serviceman involved, the anticipated effect of the punishment on the serviceman, and restoration of military discipline. Before punishment is imposed, servicemen are entitled to express themselves on the matter, give evidence and defend themselves. Servicemen may contest the decision to impose a disciplinary punishment within three days of its announcement. Appeal has a suspensory effect.

77. Incarceration remains an exceptional disciplinary punishment. This particular punishment may be imposed on servicemen undergoing basic or alternative service for up to 14 days, reservists called up to serve in a military exercise may be sentenced to a maximum of 4 days. Women soldiers are not given incarceration as a disciplinary punishment at all. This kind of punishment, which is served in army prisons, may commence only after a medical examination. This punishment consists in the restriction of a serviceman's personal liberty by keeping him in a military prison and assigning him to compulsory work for a maximum of eight hours a day. Servicemen are entitled to a walk within the military compound, accompanied by a guard, for 60 minutes a day.

78. A persisting drawback is that the establishment of military prisons, their operation and the conditions prevailing in them are not regulated by any legislation. They are governed solely by the Prison Code which forms an annex to the Elementary Rules of the Armed Forces of the Czech Republic. The Prison Code lays down the minimum standard conditions for serving disciplinary prison terms. As compared to the conditions and standards required by the norms for serving prison terms outside the armed forces, the Prison Code is a more restrictive. Specifically, this concerns differences in the equipment of cells, a prohibition on receiving visitors, including chaplains, and mail. Save for the differences in the furnishing of cells, these shortcomings have been eliminated by the new Elementary Rules of the Armed Forces of the Czech Republic, valid as of 1 December 2001.

79. In a similar vein, the Prison Code does not regulate any powers and duties of prison guards, their assistants or prison wardens in their behaviour towards incarcerated servicemen, nor does it explicitly forbid them any type of behaviour. Relations between guards and incarcerated servicemen are guided by the general provisions on service relations. There is also no system of special training for soldiers undergoing basic army service for serving in military prisons or for prison wardens, who are professional servicemen.

80. It is the Inspection of the Ministry of Defence which controls the actual process of serving the disciplinary punishment of incarceration. Under its control is the equipping of military prisons and the documentation on soldiers serving prison terms. Interviews are conducted with incarcerated servicemen to find out whether any torture or inhuman or degrading treatment or punishment is involved. During those checks, inspectors uncovered several cases of non-compliance with the Prison Code, involving primarily inadequate equipment of military

prisons, which resulted in undue aggravation of the conditions of serving of prison terms. Another frequent problem lies in the incorrect, inadequate or missing provisions in the guidelines “Duties of Prison Guards”. The gravest lapse detected by the Inspection was the non-existence of records on the duration of prisoners’ work, a fact that made the task of checking compliance with the maximum eight-hour work duty difficult. The recording system introduced by the new Prison Code, which has been valid since 1 December 2001, is expected to eliminate the shortcomings mentioned above.

81. In view of the aforementioned facts, and since a soldier’s personal liberty is restricted when serving the disciplinary punishment of incarceration, it would be necessary to regulate the establishment of military prisons and the conditions governing the practice of serving the disciplinary punishment of incarceration therein by legislation.

### **Institutional and protective upbringing**

82. The legislation pertaining to institutional and protective upbringing registered no changes during the monitored period. However, the Parliament is currently discussing a bill on institutional and protective upbringing in school facilities and on preventive educational care in school facilities. This bill outlines the powers and duties of the school facilities vis-à-vis minor children and their statutory representatives, and stipulates the rights and duties of minors committed to the care of such school facilities. At the same time, it lays down the extent of limitations of the right of statutory representatives, and specifies their duties vis-à-vis the school facility concerned. A positive change in this respect is also the transformation of all children’s homes into family-type children’s homes.

83. Criticism of the bill focused primarily on the fact that its list of punishments for a proved breach of law includes a ban on the child’s temporary stay with the persons responsible for its upbringing or its next of kin.<sup>15</sup> The critics describe this provision as being contrary to the Charter of Rights and Freedoms, which guarantees the right to protection against unauthorized interference with the child’s private and family life,<sup>16</sup> and runs counter to the Convention on the Rights of the Child, which stipulates that a child is entitled to keep in touch with both parents if separated from one or both of them.<sup>17</sup>

### **Article 12**

84. As mentioned above, torture and other inhuman and cruel treatment is a criminal offence pursuant to article 259a of the Penal Code. That is why the provisions of the Penal Code apply to the procedure during its investigation.

85. In keeping with the existing legislation, investigations were conducted by police investigators assisted by police authorities. However, the task of detecting criminal offences committed by police officers and identifying the offenders was discharged by the Ministry of the Interior’s Division for Inspection Activities (hereinafter referred to as “Inspection of the Minister of the Interior”), i.e. a body which falls - just like the police itself - under the jurisdiction of the

Ministry of the Interior. In many cases, this particular situation came under criticism of international as well as domestic human rights authorities and organizations. This happened most recently in connection with the results of the investigation of cases of alleged police violence during demonstrations against the session of the International Monetary Fund and the World Bank in Prague in September 2000.

86. The amendment to the Penal Code No. 265/2001 Coll. newly entrusts the task of investigating criminal offences committed by police officers to State Prosecuting Attorneys. The State Prosecuting Attorney's Offices fall under the jurisdiction of the Ministry of Justice, thereby complying with the requirement of independence vis-à-vis the members of the police. With the exception of investigation of criminal offences by police officers and members of the Security Information Service, investigations are conducted - pursuant to the amendment - by the Criminal Police and Investigation Service of the Police of the Czech Republic.

### Article 13

#### Prison system

87. Generally speaking, the process of handling complaints is regulated by Government Decree No. 150/1958 U.I. on Handling Complaints, Notifications and Stimuli Filed by the Working People. As for the Prison Service, complaint-handling is internally governed by the Managing Director's Directive No. 7/1995 on handling complaints and notifications in the Prison Service of the Czech Republic.

88. The Managing Director of the Prison Service of the Czech Republic is responsible for the complaints procedure. The actual process of investigating and handling complaints at the General Directorate is performed by the Complaints Department of the Control Division of the Prison Service's General Directorate. Pertinent directors are responsible for the process of handling complaints in the individual prisons and detention prisons. Investigations of the individual cases and the complaints procedures in prisons are made by appointed bodies composed of members of the Prevention and Complaints Departments in the given prison.

89. The Table below gives an overview of complaints lodged in the period under review.

Year	Justified	Unjustified	Total
1998	118	1 267	1 385
1999	152	1 296	1 448
2000	178	1 542	1 720
as of 30 June 2001	87	830	917
Total	535	4 935	5 470

90. The new Act on Serving Prison Terms and the amendment to the Serving Custody Act (208/2000 Coll.) have introduced a mechanism for external<sup>18</sup> monitoring of compliance with the legality of the practice of serving prison terms on the part of State Prosecuting Attorneys. In this sense, the amendment to Act No. 283/1993 Coll., on the State Prosecuting Attorney's Office, enacted by Act No. 169/1999 Coll. (hereinafter referred to as the "Amendment to the 1999 Act on the State Prosecuting Attorney's Office"), has extended the jurisdiction of the State

Prosecuting Attorney's Offices. It stipulates that the State Prosecuting Attorney's Office - to the extent and under the terms laid down by special law - supervises compliance with the legislative regulations in facilities where custody, prison terms, protective treatment and protective or institutional upbringing are carried out, and in other facilities where personal liberty is restricted in accordance with the rulings of statutory powers. In the intent of the provision, special laws are laws on the practice of serving custody and prison terms.

91. Both laws regulate the supervision by State Prosecuting Attorneys similarly. Supervision of compliance with the legislative regulations governing persons remanded in custody and serving prison terms is performed by an appointed official of the Regional Prosecuting Attorney's Office in whose district the pertinent prison term or custody is being served. The appointed Prosecuting Attorney performs no other tasks of the State Prosecuting Attorney's Office concerned. During his supervision he is entitled to: visit - at any time - the facilities where custody or prison terms are being served; examine documents relating to the deprivation of liberty of prisoners and speak with them without the presence of third parties; check whether the orders and decisions of the Prison Service in the prison pertaining to the practice of serving custody or prison terms correspond with the laws and other legislative regulations; ask Prison Service personnel in the prison to provide necessary explanations and produce official records, documents, orders and decisions concerning the process of serving custody and prison terms; give orders to respect the rules valid for serving custody or prison terms and give orders for the immediate release of persons found to be unlawfully serving custody and prison terms. The Prison Service is obliged to carry out the orders of the State Prosecuting Attorney without delay.

92. The system of external control of the prison system was also strengthened in the period under review with the adoption of Act No. 349/1999 Coll., on the Public Protector of Rights or the Ombudsman (hereinafter referred to as the "Public Protector of Rights Act"). Pursuant to the law, the Ombudsman works for the protection of persons against the practices of authorities and other institutions listed in the law, provided that their acts run counter to law, fail to comply with the principle of a democratic law-abiding State and good administration, as well as against their inactivity, thus contributing to the protection of fundamental rights and freedoms. The powers of the Public Protector of Rights or Ombudsman also apply to the Prison Service and the facilities in which detention, prison terms, and protective or institutional upbringing and protective medical treatment are carried out. The Ombudsman acts on the strength of complaints from physical persons or corporate entities or at his own initiative.

93. If - on the basis of a completed inquiry - the Ombudsman ascertains a violation of the rules or any other deviation, he shall call on the entity whose activities gave rise to the deviation or violation to express itself on his findings. Should the Ombudsman find the measures adopted by the institution for rectification in that matter to be sufficient, he shall send his final views in writing to the given institution, and to the complainant. This statement should contain the Ombudsman's proposed measure to rectify the situation. Within 30 days of the delivery of the Ombudsman's final position the institution concerned is obliged to notify the Ombudsman of the specific measures taken to correct the situation. Should the relevant institution fail to fulfil that duty, or should the measures taken for rectification be still deemed insufficient by the Ombudsman, he shall notify a superior body. If there is no superior authority, the Ombudsman shall directly notify the Government. He can also inform the general public about his findings.

94. The Ombudsman annually submits a comprehensive report on his activities to the House of Deputies of the Parliament of the Czech Republic. He also reports to the House of Deputies on his activities at least once every three months, and submits a report on matters in which no adequate corrective measures were taken. In view of his powers to recommend the issuance, change or repeal of legislative and internal regulations, he submits such recommendations to the House of Deputies as well.

95. The establishment of the post of the Public Protector of Rights or the Ombudsman has undoubtedly enriched the country's system of external control of the prison system. However, the Ombudsman has no possibility to ensure swift and efficient correction in cases when the institution where the rules were violated or any deviation occurred is reluctant to implement the proposed corrective measures.

### **Police**

96. Each person claiming to have been subjected to torture is entitled to lodge a complaint to the direct superior of the police officer at whom the complaint is levelled or to any other superior police official, the Police President included. Complaint or any other filing can also be lodged directly with the Internal Control Division of the Ministry of the Interior or a report on the commission of a criminal offence may be filed. Complaints filed by individuals against police behaviour are handled by the Control and Complaints Departments of the Police of the Czech Republic and the Inspection of the Minister of the Interior. Control and complaints authorities, part of the Police of the Czech Republic, deal with matters of non-criminal nature. During the monitored period, the Inspection of the Minister of the Interior discharged the task of detecting criminal offences committed by police officers. It is directly subordinated to the Minister of the Interior as a constitutional official.

97. The Table below gives an overview of the number of all complaints per one police officer of the Police of the Czech Republic during the monitored period.

Year	Complaints handled	Justified complaints (No.)	Justified complaints in %
1998	4 953	907	18.3
1999	4 229	725	17.1
2000	5 280	786	14.9
as of 27 September 2001	4 193	474	11.3
Total	18 655	2 892	15.5

98. Up to now criminal offences committed by police officers have been investigated by the Inspection of the Minister of the Interior. This particular system was not perceived as sufficiently unbiased. That was why, among other things, the amendment to the Penal Code No. 265/2001 Coll. (which came into effect on 1 January 2002) has transferred the task of investigating criminal offences committed by police officers to the State Prosecuting Attorney's Office (see also paragraph 87), which guarantees impartiality of investigation. The system of

investigation of complaints of a non-criminal nature remains in the jurisdiction of the Complaints and Control Divisions of the Police of the Czech Republic. Even though the right to appeal is guaranteed, this particular system has been frequently criticized by international and domestic human rights organizations.

99. Conditions for external control of compliance with legislative regulations governing the practice of detention in police cells have been partially created by the aforementioned amendment to the Act on the State Prosecuting Attorney's Office which stipulates that - to the extent and under the terms laid down by special law - the State Prosecuting Attorney's Office supervises compliance with the legislative regulations applied in facilities where custody, prison terms, protective treatment or protective or institutional upbringing are performed, and in other facilities where personal liberty is restricted in accordance with ruling of the statutory powers. It is beyond any doubt that police cells are such facilities; however, there is no special law laying down the extent and terms of supervision by State Prosecuting Attorneys, and that is why such supervision cannot be implemented in practical life.

100. Pursuant to the existing legislation, the powers of the Public Protector of Rights or the Ombudsman (see above) also apply to the Police of the Czech Republic. However, the Ombudsman's possibilities to secure rectification, as described above, are considerably limited, ensuing - as it does - from the very nature of that institution.

### **Education**

101. As compared with the period monitored by the previous periodic report, this particular sector has seen a strengthening of the control of the compliance with the rights of children placed in facilities providing institutional or protective care. Initially, control in this branch was the sole concern of the Czech School Inspection and the Departmental Control Division (now called Public Relations Department) of the Ministry of Education, Youth and Physical Training. Act No. 359/1999 Coll., on socio-legal protection of children, as amended by later regulations, was passed in 1999, setting up an authority for socio-legal protection of children by extending the powers of the Department of Care for the Child at district councils, i.e. local government bodies.

102. Under this law, the district councils are entrusted - among other duties - with the task of monitoring compliance with the rights of children staying in facilities providing institutional and protective care, where the grounds for the children's stay in such facilities continue. The law also stipulates that a district council employee is obliged - at least once every six months - to visit the child committed to a facility for institutional or protective care. Such an official is authorized to talk to the child without the presence of third parties and consult documentation kept by the institution on the child concerned. If he finds that the institutional facility involved has violated its duties, he is obliged to report this fact without delay to the pertinent district council, the founder of the institution, and to the court which had ordered the child's institutional or protective upbringing. The relevant district council then follows whether all the detected shortcomings are removed, bringing pressure to bear to adopt measures leading to their correction.



103. The above-mentioned amendment to the Act on the State Prosecuting Attorney's Office extending its supervision over compliance with the legislative regulations to facilities providing protective or institutional care can make a sizeable contribution to promoting external control of those facilities. Just as with the practice of detention in police cells, a special law stipulating the extent and terms under which State Prosecuting Attorneys would be authorized to perform their supervision is still lacking. The prepared Act on the school facilities providing institutional and protective care and on preventive-educational care in the school facilities mentioned above does contain provisions specifying the terms for supervision by the State Prosecuting Attorney's Office of compliance with the legislative regulations in those facilities. If the Parliament approves this bill as proposed, this particular supervision may be enforced in practice too.

104. The powers of the Public Protector of Rights - the Ombudsman, as described above, also apply to facilities providing protective or institutional upbringing.

105. The Czech School Inspection continued to discharge its control activities throughout the monitored period. Its "Report on Complaints and Suggestions Concerning the Violation of Children's Rights and Violation of Compliance with Dignified Living Conditions" for the period from 1998 to August 2001 implies that in the period under review the Inspection investigated complaints of bullying and physical violence against pupils committed by teachers or headmasters. In the school year 1998/99, it registered a total of 24 complaints of bullying of which 6 were classified as justified and 18 as unsubstantiated; 3 complaints of physical punishment of pupils by headmasters of which 1 proved to be justified and 2 inconclusive; and 3 complaints of physical punishment of pupils by teachers of which 2 were found justified and 1 unjustified. In the school year 1999/2000, the Czech School Inspection registered 33 complaints of bullying of which 4 were classified as justified, 2 as partly justified and 27 as unjustified or inconclusive; 12 complaints of physical punishment of pupils by headmasters of which 1 was assessed as justified, 10 as unjustified and 1 was classified as unfounded; and 3 complaints of physical punishment of pupils by teachers none of which was proved. In the school year 2000/01, the Inspection registered a total of 13 complaints of bullying of which 3 were classified as justified, 3 as partly justified and 7 as unjustified or inconclusive; there were 5 complaints of physical punishment of pupils by headmasters of which 2 were classified as justified and 3 as unjustified or inconclusive; and 3 complaints of physical punishment of pupils by teachers none of which was proved.

### **Protection of witnesses**

106. Act No. 137/2001 Coll., on the special protection of witnesses and other persons in connection with criminal proceedings, effective as of 1 July 2001, was approved in 2001 for the purpose of providing better protection to persons who might be threatened with danger in connection with criminal proceedings. This shall be applied solely in cases where the safety of a person cannot be secured in any other way, i.e. primarily pursuant to the existing provisions on the protection of witnesses contained in the Penal Code. No legal claim exists for the provision of such special protection and assistance.

107. Special protection and assistance is defined by the law as a package of measures encompassing personal protection, moving the protected person, including members of his/her household, to a different locality and the granting of assistance for the purpose of facilitating his/her social integration in a new environment, and also to cover up the true identity of the protected person. For the purpose of concealing the person's true identity it is possible to create a front involving another personal existence, storing personal data on this new identity into the existing information systems. Such data are not specifically marked, and are not kept separately from other personal data.

108. Protection may be granted under this legislation to three categories of persons: (a) a person who provided or is to provide explanations or evidence, or who testified or is to testify as an accused, or who in any way helped or is to help in achieving the purpose of criminal proceedings; (b) a person who acts as an expert or interpreter or defence counsel for an accused who testified or is to testify to help attain the purpose of criminal proceedings; (c) next of kin of the persons mentioned above.

109. As laid down by this law, special protection and assistance can be provided under the assumption that the endangered person agrees with the mode and terms of granting such protection and assistance, and the Minister of the Interior approves the proposal made by the police, a judge or a State Prosecuting Attorney for special protection and assistance to be granted to the threatened person. However, if such a person is in imminent danger the police - acting with the consent of the Police Presidium - shall provide special protection and assistance even before the Minister of the Interior approves the proposal to provide such protection. If the person in danger is remanded in custody or is serving a prison term, this kind of protection shall be provided by the Prison Service with the consent of the Managing Director.

110. The law further regulates the duties of the protected person, the powers and duties of the subject providing special protection and assistance, and the terms under which the provision of such special protection and assistance may be terminated.

#### **Article 14**

111. Under the Czech legal system, the right of a victim of torture to recover damages and receive adequate compensation stems from the constitutional right anchored in article 36, section 3, of the Charter of Rights and Freedoms, which stipulates that everyone is entitled to compensation for damages caused by an unlawful decision by a court, another State authority or local government body, or by an unauthorized official practice. Liability for damages incurred due to the decision of a State authority is laid down in greater detail and - one may say - more universally by Act No. 82/1998 Coll. on the liability for damages incurred by the execution of public authority through a decision or incorrect official practice.

112. Pursuant to the provisions of articles 3, 5 and 13 of the Law, the State is responsible for damages incurred by incorrect official practices caused by State authorities, corporate entities and physical persons during the exercise of State administration entrusted to them, or by territorial self governing bodies if the damages were incurred in the exercise of State administration transferred to them by law.

113. Neither Act No. 82/1998 Coll. (nor any other legislation) comprises a definition of incorrect official practices, and even though it is not known if such an issue has ever been resolved in judicial practice, it is evident that acting in the intent of article 1 of the Convention constitutes an act which can be qualified under the Czech legal system as incorrect official practice, namely in a case where the liability of the State (or any other subject) for such an act could not be established by any of the special laws which regulate the duties of the individual bodies of public authority, including determination of liability for the violation of such duties.

114. Special legislation governing such liability is found in many laws, of which mention should be made of Act No. 283/1991 Coll. on the Police of the Czech Republic, as amended by later regulations. Under its provisions in article 49, section 5, the State shall be held responsible for damages incurred by the police or police officers in connection with implementation of their duties laid down by this law; this does not apply to damages incurred by a person whose illegal act elicited a justified and adequate police action. Basically, the same meaning - although pertaining to a different armed corps - is anchored in article 23, section 5, of Act No. 555/1992 Coll., on the Prison Service and Judicial Guard of the Czech Republic, as amended by later regulations. Similarly, liability for damages is also regulated by the provisions of article 24 of Act No. 553/1991 Coll. on local police, as amended by later regulations. In this case, the responsible subject would not be the State but the relevant municipality. Violation of the duties laid down in the Convention could - as a rule - be classified as a breach of the duties regulated by the above-mentioned laws.

115. The laws mentioned above do not regulate the actual mode and extent of compensation for the damages incurred, and the general legislation on the compensation of damages, as laid down by the Civil Code, is binding in this respect. According to its article 442 and following, he who suffered bodily harm (depending on the circumstances of each specific case) has the following claims to the compensation of damages:

- (a) One-off compensation - reparation payment - for the injured party's pain and worsening of one's social circumstances;
- (b) The loss of income resulting from incurred bodily harm is covered by an annuity; this is calculated from the injured party's average income before the injury;
- (c) Compensation for the loss of income during the injured party's sick leave - this amounts to the difference between his average earnings before the injury and his work incapacity benefits;
- (d) Costs connected with treatment (including rehabilitation costs).

116. In case of death, the Civil Code lays down the liability for compensation consisting in an annuity to cover the costs for the maintenance of the survivors whom the deceased did or was obliged to maintain. Compensation of maintenance costs is due to the survivors unless these costs are covered by a pension scheme provided for the same reasons; the same applies to compensation of adequate costs connected with funeral expenses unless these are covered by funeral benefits provided under the Social Support Act.

### **Article 15**

117. The Czech Republic supplies no new facts to this article.

### **Article 16**

118. The Czech Republic supplies no new facts to this article.

## **III. REACTION TO THE CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE**

119. After discussion of the second periodic report of the Czech Republic (CAT/38/Add.1), the Committee approved its conclusions and recommendations on 14 May 2001. The present section responds to the Committee's concern.

### **Investigations of complaints of ill-treatment (A/56/44, para. 114 (b))**

120. Under the still valid Police Act, the task of detecting criminal offences committed by police officers and finding the offenders lies with the Inspection of the Minister of the Interior (hereinafter referred to by the Czech abbreviation "IMV"). Investigation of matters of a non-criminal nature falls under the jurisdiction of the Control and Complaints Division of the Police Presidium of the Police of the Czech Republic. Information supplied by the Ministry of the Interior indicates that the police received 393 negative reactions to its methods in adopting security measures during the session of the International Monetary Fund and the World Bank. Of these, the police eliminated 89 complaints that were duplicates and 47 complaints that did not fall under police jurisdiction. The remaining 297 complaints were handed over to the Police Presidium. Its analysis suggested that these complaints related to a total of 70 cases of a criminal and non-criminal nature. By July 2001, 67 of those cases had been concluded. According to the IMV statement, matters of a criminal nature were involved merely in 16 cases. This information runs counter to the reports from private non-profit organizations monitoring compliance with human rights during the operations carried out by the Police of the Czech Republic against the demonstrators. Those organizations gave different figures concerning violence committed at police stations and directly during the operations in the streets. These reports referred to suspected criminal offences involving torture and other inhuman and cruel treatment, abuse of the authority of public officials and battery.<sup>19</sup>

121. As for matters of a criminal nature, IMV has concluded in 10 cases that the commission of criminal offences has not been proved. In three cases it was noted that police officers failed to act in keeping with the law but only one of those cases was qualified as a criminal offence - abuse of the authority of a public official; two of those cases were referred to the appropriate officials with a proposal to take disciplinary action. At present, three other cases are under investigation involving the alleged commission of a criminal

offence by police officers. The current state of the investigation shows that in 3 cases out of 16, the offence of abusing the authority of public officials was committed by using excessive violence against the injured parties. Specifically, this applies to cases at the local police station Žižkov, Prague 3, Lupáčova Street, the local police station Vysočany, Prague 9, Ocelářská Street, and a case involving physical violence by police officers in Štěpánská Street. On two occasions, cases were suspended as it was impossible to establish facts justifying the initiation of criminal prosecution of a specific person. A complaint has been lodged against the decision to suspend this particular case, which is being further investigated. Owing to the fact that in some cases the commission of a criminal offence had been noted but the case had to be suspended due to the impossibility of starting criminal proceedings against a specific person, the question arose about the responsibility of police superiors for the unlawful behaviour of their subordinates. In response to this question the Ministry of the Interior has sent the following answer: “As for the question whether it is possible - according to the valid legislation - to exclude possible liability of superiors for the behaviour of their subordinates while discharging their duty, it is always vital to study the specific case, testimonies, etc. Generally speaking, one may proceed from the basic duties of police officers, and the basic duties of their superiors, as laid down in [articles] 28 and 29 of Act No. 186/1992 Coll., on service relations of members of the Police of the Czech Republic, as amended by later regulations, namely in the sense that superiors cannot bear responsibility for all the acts of their subordinates, but that they do bear responsibility for the decisions [and] instructions to proceed, for the adopted measures, and also - at a general level - for not acting even though they should have.”

122. As implied by the information provided by Občanské právní hlídky (Civic Legal Watch Groups), in the case of violence at the local police station at Ocelářská Street, one of the police officers who acted violently was identified from a photograph. There is no mention of this identification in the information of the Ministry of the Interior on the inquiry into the behaviour of police officers during the IMF/World Bank annual meeting. IMV suspended that case as it was impossible to establish facts justifying the initiation of criminal proceedings and because the identification of the police officer concerned from a photograph was inconclusive. The legal representative of the injured party lodged a complaint against this decision, which is now being handled by the District Prosecuting Attorney's Office in Prague 3.

123. Another moot point is how to classify the behaviour of another police officer who was identified from a photograph showing him in civilian clothes and using a wooden stick against demonstrators. This particular act was classified as behaviour running counter to the rules of the Police of the Czech Republic Act but since - in the opinion of IMV - the behaviour of that particular police officer did not reach what is called sufficiently dangerous degree for the society, as laid down by the Penal Code, the elements of the offence of abuse of the authority of a public official were not present.

124. **Of the 54 cases of a non-criminal nature, only 3 have been classified as justified. These involved the following cases:**

- (a) A police officer refused to show an entitled person his own identification number;**
- (b) Dactyloscopic prints were taken from a person without sufficient grounds for that decision;**
- (c) There was an unjustified escort of a person brought to an Alien Police ward.**

**The Ministry of the Interior has not provided information on the actual punishment of the police officers who committed those offences.**

125. **The other cases were settled as unjustified. Those cases pointed to violations of the detainees' rights, such as failure to provide food and water, failure to enable telephone contact, failure to notify detainees of the reasons for the restriction of their personal liberty, failure to provide legal assistance, failure to provide medical treatment, seizure of property, etc.**

**Independence of investigations of offences by law-enforcement officials (ibid., para. 114 (c)).**

126. **As mentioned above in the information on the individual articles, the amendment to the 1999 Act on the State Prosecuting Attorney's Offices has extended their powers by adding supervision of compliance with the legal regulations in facilities where personal liberty is restricted in accordance with the rulings of statutory powers. However, the performance of such supervision requires a special law to determine its conditions and extent. But such a special law covers only the practice of serving custody and prison terms. If approved, the scheduled act on school facilities for the performance of institutional and protective care and on preventive-educational care in school facilities could prove to be such legislation. But supervision performed by State Prosecuting Attorneys in the intent of the amendment mentioned above does not apply to the investigation of complaints of delinquent behaviour by law enforcement officials unconnected with restriction of personal liberty.**

127. **The powers of the Public Protector of Rights or the Ombudsman (see information on article 13) are broadly defined and apply even to law enforcement officials, but the Czech Ombudsman's possibilities of securing efficient correction are very limited indeed.**

128. **A major step in safeguarding the objectivity of the investigation of police officers' criminal conduct was the decision to transfer this task from IMV to the State Prosecuting Attorney's Offices which do not fall under the Department of the Interior but Justice. Complaints of the delinquent behaviour of police officers which proves to fall short of a criminal offence are still under investigation by the control authorities incorporated into**

the structure of the Police of the Czech Republic. So far, no independent body entrusted with the task of investigating all kinds of delinquent behaviour of law enforcement officials and endowed with power to ensure swift and efficient correction of defects found has been established in the Czech Republic.

**Rights of persons (ibid., para. 114 (d))**

129. A detainee's right to inform his or her next of kin or another person of his/her own choice about his/her situation is not guaranteed. However, the Police Act stipulates that after detaining a person, a police officer is obliged - at the detainee's own request - to notify the person given in the provision of article 12, section 3, of the Police Act, or any other appointed person, of the detention.

130. Cases of non-compliance with the rights of detainees to contact their next of kin or other selected persons emerged in connection with the street demonstrations against the IMF/World Bank. The IMV personnel who investigated the information on offences committed by police officers after the events in September 2000 justified and explained the across-the-board suspension of this particular right by the large numbers of detainees at the police stations at that time.

131. According to the Charter of Rights and Freedoms, the right to legal assistance in court proceedings and during procedures of other State authorities or local government bodies is guaranteed to everyone from the very onset of such proceedings. A person detained according to the Criminal Code, i.e. under the provisions of this law, a person suspected or indicted, is entitled to choose his or her own defence counsel and consult him/her even during detention. However, the right of persons detained under the Czech Police Act to their legal representatives is not guaranteed.

132. The Police Act does not grant detainees the right to have access to a physician of choice during any medical examination. It also stipulates that if a police officer finds out that a person to be placed in a cell is injured, or if such a person claims to be suffering from a more serious illness, or if there is a reasonable suspicion that such a person really suffers from such an illness, the police officer shall arrange medical treatment for the detainee, requesting a statement from the physician that the person concerned can be placed in a cell. The law also stipulates that if a person placed in a cell falls ill, injures him/herself or makes a suicide attempt, the police officer guarding the cell shall take the measures necessary for the protection of the life and health of such person, especially by providing first aid and by calling in a physician, asking him to state whether the person can continue to stay in the cell or should be sent to a health facility. The Police Act does not guarantee the detainee's right to be examined by a physician of his choice even though, under the provisions of article 9, section 2, of Act No. 20/1966 Coll., on Care for Public Health, as amended by later regulations, the right to a free choice of one's physician is restricted solely for persons in custody and those serving a prison term.

133. The Government's Council for Human Rights and officials of the non-governmental organizations dealing with human rights believe that more consistent compliance with the rights of detainees and a consequently reduced potential for ill-treatment would be

achieved by upgrading the quality of the mechanism of external control in the facilities where persons deprived of their personal liberty are detained. There is no external mechanism for the promotion of preventive and systematic control of the level of treatment of detainees in police cells.

**Effective and independent complaints - central mechanism (ibid., para. 114 (e))**

134. Supervision of the Czech prison system has been launched with the introduction of supervision by State Prosecuting Attorneys over the practice of serving custody and prison terms. Since the State Prosecuting Attorney's Offices - just as the Prison Service itself - fall under the jurisdiction of the Ministry of Justice, the question remains whether and to what extent this supervision can be regarded as external and independent. No form of civic supervision is regulated by any generally binding regulation in the country. However, officials of the Czech Helsinki Committee and the members of the Committee against Torture of the Council for Human Rights of the Government of the Czech Republic are allowed to enter prison cells. Their work cannot be called supervision primarily because of the absence of any authorization and because of the more or less informal nature of their cooperation with the Prison Service.

**Redress and rehabilitation (ibid., para. 114 (f))**

135. The very fact that it is usually the State (or another public law entity) which constitutes the responsible subject creates a sufficient prerequisite for the feasibility of attaining full and timely compensation in the intent of the legislative regulations given in paragraph 113 of this report. A central body relevant to the circumstances of the specific case would negotiate such compensation, with the Ministry of Justice or the Ministry of the Interior being the most likely candidates. If the injured party failed to win compensation with the appropriate central body in an out-of-court settlement, it would have a chance to assert its claim to damages in civil court proceedings. In such a case, local courts would decide about the damages, while in such proceedings the defendant - the Czech Republic (on whose behalf the pertinent central body would be acting) - would have the procedural position of a party to a dispute as if the defendant were any other corporate entity or physical person.

136. A certain possibility for alleviating the adverse effects of torture and other cruel, inhuman and degrading treatment or punishment may be seen in assistance granted under Act No. 209/1997 Coll., on Providing Assistance to Victims of Criminal Activities and on amendments to some other laws, provided that such behaviour would be classified as a criminal act.

137. It should be added for the sake of completeness that the Czech Republic ratified the European Convention on the Compensation of Victims of Violent Crimes (Directive No. 141/2000 Coll. m.s.) according to which it is possible - under the terms given therein - to provide damages also to foreign nationals who fall victim to violent crimes.



## Notes

<sup>1</sup> “Public official” is an elected office-holder or another kind of responsible employee of a State administration body, a local government authority, a court or other State authority, or a member of the armed forces or an armed corps, if and when participating in the discharge of tasks of the society and the State, using the powers entrusted to him within the framework of responsibility for the fulfilment of these tasks. When discharging the authorization and powers pursuant to special legal regulations, a physical entity appointed as a forest guard, nature protection guard, hunting guard or fishing guard is also a public official. Under the individual provisions of this Act, it is required for criminal liability and protection of a public official that a criminal offence be committed in connection with his powers and responsibility (article 89, section 9 of the Penal Code).

<sup>2</sup> “Grievous bodily harm” is understood to mean only a serious health defect or a serious illness. Under these conditions, the following shall be qualified as grievous bodily harm: (a) permanent disfigurement; (b) loss or substantial reduction of one’s capacity to work; (c) paralysis of a limb; (d) loss or substantial weakening of the function of a sensory organ; (e) damage to an important organ; (f) disfigurement; (g) induction of abortion or the killing of the foetus; (h) excruciating anguish; or (i) health defects lasting for long periods (article 89, section 7 of the Penal Code).

<sup>3</sup> The term “detainee” is used here as a comprehensive term for a person deprived of liberty and placed in a police cell. A person deprived of freedom and placed in a police cell can either be detained pursuant to the Police Act (Act No. 283/1991 Coll.) or pursuant to the Penal Code (Act No. 141/1961 Coll.). It is possible to detain a person who (a) directly endangers by his/her acts his/her life or the life or health of other persons, or property; (b) attempted to escape while presented to the police for the purpose of providing an explanation or proving his/her identity; (c) verbally offends another person or a police officer at a police station or intentionally pollutes or damages equipment or police property. A detainee pursuant to the Penal Code may be a person accused or suspected of having committed a criminal offence.

<sup>4</sup> This involves a person who, pursuant to article 12, section 3, of the Police Act can refused to provide an explanation to the police in light of the fact that such explanation would incur - to him/herself, a relative in the direct line of descent, a sibling, foster parent, foster child, spouse or common-law spouse or other persons in a family or similar relationship whose harm it would rightly regard as his/her own harm - the danger of criminal prosecution or the danger of a penalty for an administrative delict.

<sup>5</sup> It is a regional court sitting at a public hearing that decides about extradition. According to the Courts and Judges Act (Act No. 335/1991 Coll.) the court decides before the bench; thus, in preliminary proceedings it is the presiding judge who rules about remanding into custody.

<sup>6</sup> Article 67 regulates the grounds for imposing “standard” custody in preliminary proceedings and in court proceedings. These include facts justifying concern that the accused (a) might flee or go into hiding to evade criminal prosecution or punishment, especially if his/her name cannot be immediately identified, if he/she has no fixed abode or if he/she is threatened with a stiff sentence; (b) will influence the witnesses who have not yet been heard, or co-accused, or otherwise obstruct the process of clarifying facts substantial for criminal prosecution; or (c) will

continue committing criminal activities for which he/she is prosecuted, will complete the criminal act he/she had already attempted to commit, or will commit a criminal act he/she prepared or threatened to commit.

<sup>7</sup> Article 36 of the Penal Code stipulates that the accused must have a defence counsel already during preliminary proceedings if he is in custody, when serving a prison term, if he is in a medical facility under observation, if he is legally disqualified or if his qualification for legal acts is limited, in proceedings against a juvenile, in proceedings against a fugitive, and also in proceedings involving a criminal offence which carries the penalty of imprisonment whose upper limit exceeds five years. The accused must also have a defence counsel if a court, an investigator or State Prosecuting Attorney in preliminary proceedings regard this as necessary, especially when - owing to the mental or physical defects of the accused - they have doubts about his qualification to defend himself properly. The accused should also have a defence counsel in proceedings on extradition abroad and in proceedings in which protective medical treatment, with the exception of anti-alcoholic treatment, is to be imposed.

<sup>8</sup> The new restrictions on remanding in custody do not apply to torture and other inhuman and cruel treatment as an intentional criminal act.

<sup>9</sup> Article 36 stipulates that the appropriate authorities of the recipient country shall inform the consular office of the sending State without delay of the cases occurring within his consular district when a foreign national of the sending State has been arrested, imprisoned, remanded in custody or detained in any other way, provided that the given foreign national asks for that.

<sup>10</sup> Article 279a - "(1) He who forces a soldier of the same rank into providing personal services or restricts him in his rights or wantonly aggravates the performance of his duty, shall be punished by imprisonment for up to one year. (2) Punished by imprisonment for six months to three years shall be an offender who (a) commits an offence given in section 1 by force or under the threat of force or the threat of grievous bodily harm, (b) commits such an offence with at least two other persons, or (c) inflicts bodily harm through such an act. (3) Punished by imprisonment for two to eight years shall be an offender who (a) commits an offence given in section 1 in a particularly brutal manner or with a weapon, (b) causes through such an act grievous bodily harm or other particularly serious consequences, or (c) commits such an offence under the threat to the State or under the state of war or in a combat situation. (4) Punished by imprisonment for 8 to 15 years shall be an offender who causes death through such an act given in section 1."

Article 279b - "(1) He who forces a subordinate or inferior into providing personal services or restricts him in his rights or wantonly aggravates the performance of his duty, shall be punished by imprisonment for six months to three years. (2) Punished by imprisonment for one to five years shall be an offender who, (a) commits an act given in section 1 by force or under the threat of force or under the threat of other grievous bodily harm, (b) commits such an act with at least two other persons, or (c) causes through such an act bodily harm. (3) Punished by imprisonment for 3 to 10 years shall be an offender who (a) commits an act given in section 1 in a particularly brutal manner or with a weapon, (b) causes through such an act grievous bodily

harm or other particularly serious consequences, or who (c) commits such an act under the threat to the State or the state of war or in a combat situation. (4) Punished by imprisonment for 8 to 15 years shall be an offender who causes death through an act given in section 1.”

<sup>11</sup> As of 20 November 2001.

<sup>12</sup> “Next of kin is a relative in the direct line of descent, a sibling or a spouse; other persons in a family or similar relationship are regarded as persons mutually close to one another if harm one of them would suffer would be reasonably felt by the other person as [his/her] own harm” (provision of article 116 of Act No. 40/1964 Coll., Civil Code, as amended by later regulations).

<sup>13</sup> “Execution of life imprisonment is primarily aimed at protecting society against the convict’s continued criminal activities through his isolation in prison and adjustment of his acting in a way to correspond with good manners” (provision of article 71, section 1, of the Execution of Punishment Act).

<sup>14</sup> “To protect society against perpetrators of criminal offences, to prevent convicts from reoffending and to educate them to lead a proper life, thus working educationally on other members of the society” (provision of article 23, section 1, of the Penal Code).

<sup>15</sup> According to the status prior to the third reading as of 20 November 2001. Source: [www.psp.cz](http://www.psp.cz), Parliament Print No. 837/4.

<sup>16</sup> Art. 10, sect. 2.

<sup>17</sup> Art. 9.

<sup>18</sup> In organizational terms, the Offices of State Prosecuting Attorneys are incorporated into the structure of the Department of the Ministry of Justice. However, their position, powers and organization are governed by a separate law; as a result they are independent of the Ministry of Justice.

<sup>19</sup> For instance, the background materials elaborated by the Ekologický právní servis (Ecological Legal Service), specifically the legal department of the project known as Občanské právní hlídky (Civic Legal Watch Groups), indicate that a total of 27 criminal notices were filed by that organization alone.

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