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

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Consideration of reports submitted by States parties under article 19 of the Convention

Combined fourth and fifth periodic reports of States parties due in 2009

Czech Republic*,**,***

[22 March 2010]

* For the third periodic reports of the Czech Republic, see CAT/C/60/Add.1; it was considered by the Committee at its 594th and 597th meetings held on 4 and 5 May 2004 (see CAT/C/SR.594 and CAT/C/SR.597). For its consideration, see CAT/C/CR/32/2.

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

*** Annexes to the present document may be consulted in the files of the Secretariat.

Contents

I. General information

1. The fourth and fifth periodic reports of the Czech Republic, submitted in accordance with Article 19(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the "Convention"), follows up on the initial (CAT/C/21/Add.2), second (CAT/C/38/Add.1) and third (CAT/C/60/Add.1) periodic reports of the Czech Republic. The following were taken into account in the preparation of the report:

(a) General Guidelines on the form and content of reports on the fulfilment of undertakings under the Convention to be submitted by the states parties (CAT/C/14);

(b) Conclusions and recommendations of the Committee on the third periodic report of the Czech Republic (CAT/C/CR/32/2);

(c) Relevant facts and new measures taken by the Czech Republic to meet the obligations under the Convention in the reporting period.

2. The fourth and fifth periodic report of the Czech Republic is submitted for the period from 1 January 2002 to 31 July 2009 (hereinafter referred to as the "reporting period"). In this period, the Czech Republic adopted new measures (mainly at national level) to remedy certain continuing weaknesses in the consistent fulfilment of international-law obligations and national standards, thereby contributing to further improvements in this area.

II. Information relating to individual articles of the Convention

Article 1

3. The statutory definition of torture has remained unchanged since the last (third) periodic report. Act 140/1961, the Penal Code, as amended (hereinafter referred to as the "Penal Code") defines the crime of torture and other inhuman and cruel treatment as follows: "Whosoever causes physical or mental suffering to another by means of torture or other inhuman and cruel treatment in connection with the exercise of the powers of central government authorities, local authorities or a court shall be punished by imprisonment of between six months and three years". Imprisonment of between one year and five years shall be imposed on an offender who commits this offence as a public official[1] with at least two other persons, or who commits this offence over an extended period. Imprisonment of between five and ten years shall be imposed on an offender who causes serious injury to

[1] Public officials are elected officials or other responsible members of staff of a body of central or local government, court or other State authority, or members of the armed forces or armed corps, if they contribute to the functioning of society and the State and, in doing so, exercise powers delegated to them as part of their responsibility for the performance of such tasks. In the exercise of powers and privileges under special laws, public officials may also be natural persons appointed forest wardens, nature wardens, hunting wardens or fishing wardens. For the criminal liability and protection of public officials to be acknowledged according to the provisions of this Act, the offence must be committed in connection with their powers and responsibilities (Section 89(9) of the Penal Code).

health[2] as a result of such offence. An offender who causes death as a result of that offence shall be punished with imprisonment of between eight and fifteen years (Section 259a).

4. On 8 January 2008, the Czech Republic adopted a new Penal Code,[3] which will enter into force on 1 January 2010,[4] as part of the re-codification of criminal law. The new Penal Code defines the crime of torture and other inhuman and cruel treatment as follows: "Whosoever causes physical or mental suffering to another by means of torture or other inhuman and cruel treatment in connection with the exercise of the powers of central government authorities, local authorities, courts or other public authorities shall be punished by imprisonment of between six months and five years". For the qualifying criminal provisions below, the penalty is increased. Two-year and eight-year prison sentences shall be imposed on offender who commit this offence as an official against a witness, expert or interpreter in connection with the performance of their duties, against another person on the grounds of his actual or perceived race, ethnic group, nationality, political beliefs, religion, or in the actual or perceived absence of beliefs, if such an act is committed by at least two persons or repeatedly. Imprisonment of five to twelve years shall be imposed on an offender who commits the offence on a pregnant woman, on a child under the age of fifteen years, in a particularly savage or harrowing manner, or if he causes severe injury as a result of such act. An offender who causes death as a result of committing the offence shall be imprisoned for between eight years and fifteen years.

5. Provisions on torture contained in the existing Penal Code and in the new Penal Code define only the crime of torture and other inhuman and cruel treatment, but do not define torture itself. Basic elements of the definition of torture under Article 1 of the Convention are acts, intent, the effect of severe pain or physical or mental suffering, an objective and the existence of a state element. Although national legislation does not contain a definition of torture, all these factors are included in the constituent elements of the crime of torture and other inhuman and cruel treatment. According to the current provisions of the Penal Code, intention is a necessary element for all criminal offences, unless the law expressly states that culpability through negligence is admissible.[5] The same provisions are incorporated into the new Penal Code (Section 13(2)). Therefore, intent is envisaged as an element of the crime of torture and other inhuman and cruel treatment.

Article 2

6. The Czech Republic has signed and ratified the Optional Protocol to the Convention against Torture (hereinafter referred to as the "Protocol"). The Protocol was signed on behalf of the Czech Republic on 13 September 2004 in New York, on the basis of Government Resolution No. 613 of 16 June 2004, by Hynek Kmoníček, the Permanent Representative of the Czech Republic to the United Nations in New York. In the period between the signing and the ratification of the Protocol, the Czech Republic met the

[2] Serious injury to health is limited to a serious health disorder or serious illness. Under these circumstances, serious injury to health means a) mutilation, b) loss or substantial reduction of working capacity, c) limb paralysis, d) loss or significant reduction of sensory system functions, e) damage to an important organ, f) disfigurement, g) miscarriage or foeticide, h) harrowing suffering or ch) a longer-lasting health disorder (Section 89(7) of the Penal Code).

[3] I.e. Act No. 40/2009, the Penal Code.

[4] In the Penal Code's scheme, the crime of torture and other inhuman and cruel treatment is included under Title I, "Crimes against life and health", Part 3, "Crimes endangering life or health". Unlike the previous Act No. 140/1961, the Penal Code, there is more stress on protected interest.

[5] Section 3(3) of Act No. 140/1961, the Penal Code.

requirements necessary for its ratification. The Protocol came into force for the Czech Republic on 9 August 2006. As of 1 January 2006, Act No. 381/2005 amending the Ombudsman Act entered into force, granting the Ombudsman the power to act as the national preventive mechanism in full compliance with the requirements of the Protocol.[6]

7. The Ombudsman was appointed the national preventive mechanism in the Czech Republic further to Articles 17 to 23 of the Protocol. Under an amendment to Act 349/1999 on the Ombudsman,[7] the Ombudsman's responsibilities were extended to include the new task of systematically visiting all places (facilities) where detained persons are or may be held (Section 1(3) and (4), Section 21a). It does not matter whether these persons are detained on the basis of a decision or order of a public authority or as a result of the factual situation in which they find themselves. During his visits, the Ombudsman determines how these persons are treated, and tries to ensure respect for their basic rights and to strengthen their protection from ill-treatment. The amendment of the Act entered into effect for the Ombudsman and the relevant institutions on 1 January 2006.

8. The new Act on the Police Force of the Czech Republic clearly stipulates that detained persons must not be subjected to torture or to cruel, inhuman or degrading treatment and must not be treated in any way that does not respect human dignity. Police officers who witness such treatment are obliged to take measures to prevent such treatment and to report it to their supervisor immediately.[8] Similar arrangements apply to members of the Prison Service.[9] They are required to treat all persons in security detention, in custody or serving a custodial sentence seriously and decisively, to respect their rights, to prevent the cruel or degrading treatment of and between these persons, and to work towards fulfilling the purpose of the security detention, custody or custodial sentence. In carrying out implementing interventions and actions in the course of their work, officers are required to ensure their own honour and dignity and that of the persons with whom they are in contact, not to allow such persons to sustain undue injury, and to prevent any interference with their rights and freedoms from exceeding the level necessary to achieve the purpose pursued by their interventions or actions.

9. Right to legal assistance in proceedings before courts, other state bodies or public authorities is guaranteed to everyone from the beginning of the proceedings under Constitutional Act 2/1993, the Charter of Fundamental Rights and Freedoms, as amended (hereinafter referred to as the "Charter of Fundamental Rights and Freedoms") (Article 37(2)). Persons apprehended under Act No. 141/1961 on the Rules of Criminal Procedure, as amended (hereinafter referred to as the "Criminal Procedure Code"), i.e. suspects or accused persons, have the right to choose their defence counsel and seek his advice during detention (Section 76(6)). The right to the legal assistance of a lawyer also exists in the pre-detention phase, when persons are required to provide explanations (Section 158(4)).

10. The right of persons detained in any way by the police (i.e. detained under the Criminal Procedure Code or arrested or brought in under the Police Act) to be examined by a doctor of their choice is now guaranteed in Czech law (unlike the previous situation). This right is guaranteed by Section 24(5) of the Act on the Czech Police Force. The only

[6] Therefore, in the subsequent ratification of the Protocol the Czech Republic was not obliged to make the declaration under Article 24 of the Protocol and suspend the effect of certain "parts" of the Protocol. The Protocol was promulgated on 22 August 2006 in the Collection of International Treaties, Volume 38, under number 78/2006.

[7] The change was implemented by Act No. 381/2005.

[8] See Section 24 of Act No. 273/2008 on the Police Force of the Czech Republic.

[9] Act No. 555/1992 on the Prison Service and Judicial Guard, as amended, Section 6.

exception is an examination to determine whether a person, in view of his medical condition, can be placed in a police cell or whether he must be released. In these cases, because of the need to maintain objectivity it is logical that the person who is to be detained cannot choose the doctor because this could frustrate the purpose of the examination.

11. The police obligation to report any detention in general, not just in the event of an arrest under the Police Act (as was the case before), is contained in Section 24(2) and (3) of the Act on the Czech Police Force. Exceptions to this requirement are cases where such notification would jeopardize a major police task (e.g. the apprehension of an organized group of offenders at the same time) or would pose disproportionate difficulties (e.g. a request by a person to inform an alleged relative abroad who cannot be traced, a request to inform a large number of relatives or other persons, etc.). However, in this case, the police must inform the public prosecutor, as the public prosecutor's office is responsible for overseeing the detention of persons.

12. Detained persons' entitlement to legal assistance is now clearly covered by the fourth paragraph of Section 24 of the Act on the Czech Police Force.

13. With regard to educational establishments providing institutional and protective care,[10] the most important legislative events were the adoption of Act 109/2002 and Decree of the Ministry of Education, Youth and Sports No. 438/2006.[11] These regulations govern the whole field of institutional and protective care.

14. Orders to provide institutional or protective care are issued by a court on the basis of Act 359/1999 on child protection in civil proceedings or Act No. 218/2003 on the accountability of young people for unlawful acts and juvenile justice and amending certain laws, of 25 June 2003 (hereinafter referred to as the "Juvenile Justice Act"), as amended.

15. Under the National Action Plan to Transform and Unify the Care of Vulnerable Children in the period from 2009 to 2011, approved by the Government on 13 July 2007, a significant amendment to Act No. 109/2006 is being prepared to limit the numbers of children in institutional care, substantially increase the quality of care, and extend the range of advisory services.

16. On 1 September 2009[12] the Act on Equal Treatment and Legal Means of Protection against Discrimination (the Antidiscrimination Act)[13] entered into effect. Under this Act, in legal relations individuals have the right to equal treatment and not to suffer discrimination.[14] Legal means of protection against discrimination are set out in Title II, Section 10 of this Act. Anyone whose rights are prejudiced by such actions may seek a court order to have the discrimination discontinued, to eliminate the discriminatory effects of the actions and to receive reasonable satisfaction. If remedy pursued in this manner is not considered to be adequate, persons whose rights have been prejudiced are entitled to

[10] I.e. children's homes, children's homes with a school attached, diagnostic and educational institutions. In other words, places where children are detained further to a court decision.

[11] I.e. Act No. 109/2002 on institutional care or protective care in educational establishments and on preventive educational care in educational establishments and amending other laws, of 5 February 2002, as amended. Also, Decree of the Ministry of Education, Youth and Sports No. 438/2006 of 30 August 2006 modifying the details of institutional care and protective care in educational establishments.

[12] With the exception of certain provisions which are to enter into effect on 1 December 2009.

[13] Act No. 198/2009.

[14] Section 1(3) of Act No. 198/2009 on equal treatment and on legal means of protection against discrimination.

financial compensation for non-property loss. For more details about the Antidiscrimination Act, see paragraphs 122 and 123 of this report.

Article 3

1. Extradition

17. The last major amendment to the Criminal Procedure Code relating to extradition was made by Act No. 457/2008, which entered into force on 1 January 2009. Extradition proceedings may take place in two ways – in standard or fast-track procedure. The public prosecutor from the competent provincial public prosecutor's office initiates a preliminary investigation at the request of a foreign country for extradition or if it learns of an offence for which a foreign country could seek extradition in order to determine, in particular, whether extradition to the foreign country is not prevented by statutory factors. If the findings justify the concern that the person whose extradition is sought is a flight risk, the competent provincial court may decide to take that person into temporary custody.

18. In standard procedure, after the preliminary investigation the competent provincial court decides whether extradition is permissible. An appeal, carrying suspensive effect, may be lodged against such a decision. If the court rules that extradition is permissible, the final decision on whether or not to permit extradition is issued by the Minister for Justice.

19. Fast-track extradition procedure takes place if the persons whose extradition is sought agree to their extradition to a foreign country in proceedings before a court, at which their defence counsel must be present. In this case, in the preliminary investigation the competent public prosecutor does not examine all grounds for the inadmissibility of extradition, and no ruling in the case is issued by either the court or the Minister for Justice.

20. Following a decision by the Minister for Justice granting extradition or, in fast-track extradition, upon a proposal by the public prosecutor, or even without such a proposal, the provincial court decides whether to take the person concerned into extradition custody, or reclassifies preliminary custody as extradition detention. The person is then held in extradition custody until extradition. Extradition custody may last for a maximum of three months; if extradition cannot take place due to unforeseen circumstances, custody may be extended by up to another three months.

21. The principle of "non-refoulement" under Article 3 of the Convention is enshrined in the provisions on the inadmissibility of extradition (Section 393(b), (k) and (l) of the Criminal Procedure Code). In the case-law of the Constitutional Court, Finding sp. I. ÚS 752/02 of 15 April 2003 was of fundamental importance. Here, the appellant challenged the decision of the court of first instance, which had ruled on the admissibility of the appellant's extradition to the Republic of Moldova for prosecution. His appeal against that decision was dismissed by the appeal court. Further to a decision of the Minister for Justice, the extradition of the appellant to the Republic of Moldova was granted. However, in this case the Constitutional Court upheld the appellant's constitutional appeal and annulled the contested decisions because it reached a conclusion opposite to that of the ordinary courts, i.e. it ruled that the appellant was in real danger of torture and inhuman or degrading treatment or punishment in the Republic of Moldova. The Constitutional Court noted, with reference to the jurisprudence of the European Court of Human Rights, that the ordinary

courts did not address the issue of whether there were substantial grounds for believing that the appellant is in danger of torture.[15]

22. Another significant decision of the Constitutional Court is Finding sp. Pl. ÚS 66/04 of 3 May 2006, in which the Constitutional Court rejected a proposal from a group of MPs and a group of senators to repeal contested provisions of the Criminal Procedure Code in connection with the implementation of the European arrest warrant. Here, the Constitutional Court also addressed a citizen's right not to be subjected to torture or other inhuman or degrading treatment or punishment. The Constitutional Court concluded that this risk does not apply to Czech citizens handed over to another Member State of the European Union for prosecution because all Member States of the European Union are also signatories to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which in Article 3 prohibits torture and other inhuman or degrading treatment or punishment.

23. From the perspective of the jurisdiction of the Supreme Administrative Court (hereinafter referred to as the "SAC"), the Convention is fully implemented in national legislation.[16] The Supreme Administrative Court generally invokes Article 3 of the Convention for the interpretation of the principle of non-refoulement. For example, in Judgment 2 Azs 71/2006-82 of 26 March 2008, the SAC decided to grasp the principle of non-refoulement in its broader sense, i.e. not only in terms of Article 33(1) of the Convention relating to the Status of Refugees (the principle of non-refoulement in the strict sense), but by reference to Article 3 and other articles of the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3 of the Convention and, where appropriate, other relevant international-law obligations of the Czech Republic.

24. In Judgment 9 Azs 23/2007-64, 1336/2007 NSS of 14 June 2007, the SAC concluded that this principle has application precedence over national law. Therefore, a statement on whether a foreign national's outbound travel is impeded must be included by the Ministry of the Interior in its decision if it decides to refuse or withdraw asylum. If the facts of the case indicate a real threat to the lives of the applicant in his country of origin and the applicant submits sufficient convincing evidence, it is necessary to consider whether his outbound travel is impeded even if a decision to terminate the proceedings is issued.

25. In the reporting period, fundamental legislative changes were also made in this area. They were subsequently reflected in the case law of the SAC. In new legislation (i.e. after the amendment of the Asylum Act by Act No. 165/2006), the concept of impediments to outbound travel (Section 91 of the Asylum Act) has been abolished; at the same time, the new concept of subsidiary protection has been created (Section 14a of the Asylum Act; Section 179 of the Foreign Nationals Act was amended in the same vein). Although these two concepts are not identical in nature, they both pursue a similar purpose: not to return applicants seeking international protection to a country where they would be faced with a real risk of serious injury. Both the previous version of the Act and subsidiary protection primarily enshrine the principle of non-refoulement. This de facto means the undertaking not to deport or return a refugee in any manner whatsoever to a country where his life or

[15] In this regard, see also Finding of the Constitutional Court No. I. ÚS 733/05 of 20 December 2006 and Finding No. III. ÚS 534/06 of 3 January 2007.

[16] In particular as regards international protection and the residence of foreigners, and specifically the issue of administrative expulsion, the detention of foreigners and the application of the international-law principle of non-refoulement.

freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. Administrative expulsion

26. Act No. 326/1999 on the residence of foreign nationals in the Czech Republic and amending certain laws, as amended (the Foreign Nationals Act) governs the concept of administrative expulsion in Title X.[17] Administrative expulsion is an action leading to the termination of the residence of foreigners from the Czech Republic, which is associated with the setting of a time limit for them to leave the country and a period during which such foreigners are barred from entering the country. Although it is not part of criminal law, it is inherently a specific measure to control immigration. It is imposed by the Foreigner Police, in the form of an administrative decision, for the sole purpose of ensuring that a foreign national residing in the Czech Republic in contravention of national law leaves the country. The whole procedure on administrative expulsion is conducted in a language in which the foreign national is able to communicate, with the involvement of an interpreter appointed in accordance with Act 500/2004, the Rules of Administrative Procedure, as amended (hereinafter referred to as the "Rules of Administrative Procedure"). In this procedure, it is possible to draw on both regular and extraordinary remedies enshrined in the Rules of Administrative Procedure; the final decision on administrative expulsion is subject to judicial review.

27. Amendments to the Foreign Nationals Act adopted between 2002 and 2009 resulted in changes in the field of administrative expulsion (not only because of the transposition of the Community legislation of the European Union). Conditions were tightened for the residence of foreigners failing to meet the obligation to leave the Czech Republic within the set time limit. This conduct, as a serious breach of public policy, is a compulsory reason authorizing the detention of the foreign national prior to leaving the country. The concept of voluntary return was introduced to prevent foreign nationals who do not meet the legal conditions for residence but cannot comply with a decision on administrative expulsion from staying in the country. Under this concept, the Ministry of the Interior and the Foreigner Police contribute financially and organizationally to the voluntary return of foreigners to their country of origin or to another country granting them permission to enter its territory. The voluntary return of foreigner nationals is carried out in cooperation with the IOM, but was limited to 15 December 2009. This possibility was taken up by about 110 foreigners.

28. In 2010, there are plans to amend the Foreign Nationals Act in connection with the implementation of Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (the "Return Directive"). In connection with this implementation, standards and procedures for returning illegally staying third-country nationals will be regulated in accordance with fundamental rights as general principles of Community law and international law, including obligations relating to the protection of refugees and respect for human rights.

29. Special conditions were set for the administrative expulsion of EU nationals or their family members, as well as foreigners residing in the country under a long-term residence

[17] The Act lays down conditions for the imposition of administrative expulsion, the period during which foreigners are not to be granted entry into the country, the coverage of the costs of administrative expulsion, the conditions for alleviating the harshness of such expulsion, and circumstances precluding the imposition of administrative expulsion.

permit for the purpose of family reunion, studies or scientific research, foreigners allowed to stay as a resident of another Member State of the European Union, and foreigners with permanent residence permits.

30. The reasons preventing the imposition of administrative expulsion were extended, compared to the original grounds of disproportionate intervention in the private or family life of foreigners, to include foreigners seeking international protection when coming directly from a country where they face persecution or serious injury. Concerning the possibility for foreign nationals to leave the Czech Republic, in its decision-making the Foreigner Police is bound by a binding opinion of the Ministry of the Interior issued for each individual case based on an assessment of whether a foreign national returning to the state of destination is in danger of serious injury.

31. The enforcement of administrative expulsion is barred by law if the foreign national's outbound travel is impeded, if proceedings have been initiated to hear the foreigner's application for international protection, if a judicial review of a decision on international protection is in progress, in cases where a subsequent appeal is lodged, during proceedings on temporary protection, and if the foreigner has applied for or been granted long-term residence in the country for his protection.

32. To alleviate the harshness of any administrative expulsion imposed, the Foreign Nationals Act lays down conditions under which the police may, at the request of a European Union citizen, his family member or the foreign national, issue a new decision annulling the decision on administrative expulsion. According to applicable case law, circumstances affecting the police decision include changes in a foreigner's private and family life occurring after the decision on administrative expulsion. Other issues related to the detention of foreigners are addressed in paragraphs 86 to 91 of this report.

33. Other mechanisms that facilitate the expulsion of a person in the country illegally and refusing voluntary return are readmission agreements concluded between the Czech Republic and certain states and between the European Community and third countries (i.e. agreements on the handover and acceptance of unauthorized residents). The main purpose of these agreements is to facilitate and speed up as much as possible the process of readmission. At present, the Czech Republic has concluded readmission agreements with 14 states around the world. In provisions relating to transit, these agreements contain the possibility of refusing transit if the person to be readmitted runs the risk of being subjected to torture or inhuman or degrading treatment in the state of destination or in another state of transit.

Article 4

34. In addition to the crime of torture and other inhuman and cruel treatment (Section 259a of the Penal Code, see paragraph 5 of this report), the military offence of violating the rights and protected interests of soldiers (Sections 279a and 279b of the Penal Code)[18] is

[18] Section 279a – "(1) A person who forces a soldier of the same rank to carry out personal favours, restricts his rights or wilfully impedes the exercise of his duties shall be punished by imprisonment for up to one year. (2) Imprisonment for six months to three years shall be imposed on any offender who a) commits the act referred to in paragraph (1) by means of violence or the threat of violence or by threatening other serious injury, b) commits such an act at least with two persons, or c) causes bodily harm by that act. (3) Imprisonment for two years to eight years shall be imposed on any offender who a) commits the act referred to in paragraph (1) in a particularly brutal manner or with a weapon, b) causes severe injury or other particularly serious consequences by that act, or c) commits

classified among the crimes referred to in Article 4 of the Convention. The new Penal Code provides for even stricter rules than previous legislation. Not only has the penalty for such offences been increased, but the new offence of preparing for these criminal acts will be added.

35. The following table shows the number of criminal cases that were investigated on suspicion of the crime of torture and other inhuman and cruel treatment pursuant to Section 259a of the Penal Code, and the crime of violating the rights and protected interests of soldiers under Sections 279a and 279b of the Penal Code.

Overview of the numbers of persons prosecuted, accused and convicted persons between 2001 and 2008

		2001		*2002*		*2003*		*2004*	
		Men	*Women*	*Men*	*Women*	*Men*	*Women*	*Men*	*Women*
Section 259a	Prosecuted	0	0	1	0	0	0	0	0
	Accused	0	0	1	0	0	0	0	0
	Convicted	0	0	0	0	0	0	0	0
Section 279a	Prosecuted	37	0	51	0	87	0	16	0
	Accused	33	0	44	0	80	0	12	0
	Convicted	41	0	24	0	59	0	31	0
Section 279b	Prosecuted	20	0	62	0	43	0	10	0
	Accused	12	0	61	0	40	0	8	0
	Convicted	52	0	35	0	27	0	17	0

		2005		*2006*		*2007*		*2008*	
		Men	*Women*	*Men*	*Women*	*Men*	*Women*	*Men*	*Women*
Section 259a	Prosecuted	0	0	0	0	0	0	0	0
	Accused	0	0	0	0	0	0	0	0
	Convicted	0	0	0	0	0	0	0	0
Section 279a	Prosecuted	0	0	0	0	0	0	0	0

such an act in a state of national emergency or war, or in a combat situation. (4) Imprisonment for eight to fifteen years shall be imposed on any offender who causes death by the act referred to in paragraph (1)."

Section 279b – "(1) A person who forces a subordinate or inferior to carry out personal favours, restricts his rights or wilfully impedes the exercise of his duties shall be punished by imprisonment for six months to three years. (2) Imprisonment for one year to five years shall be imposed on any offender who a) commits the act referred to in paragraph (1) by means of violence or the threat of violence or by threatening other serious injury, b) commits such an act at least with two persons, or c) causes bodily harm by that act. (3) Imprisonment for three years to ten years shall be imposed on any offender who a) commits the act referred to in paragraph (1) in a particularly brutal manner or with a weapon, b) causes severe injury or other particularly serious consequences by that act, or c) commits such an act in a state of national emergency or war, or in a combat situation. (4) Imprisonment for eight to fifteen years shall be imposed on any offender who causes death by the act referred to in paragraph (1)."

		2005		2006		2007		2008	
		Men	*Women*	*Men*	*Women*	*Men*	*Women*	*Men*	*Women*
	Accused	0	0	0	0	0	0	0	0
	Convicted	5	0	0	0	0	0	0	0
Section 279b	Prosecuted	0	0	0	0	0	0	0	0
	Accused	0	0	0	0	0	0	0	0
	Convicted	7	0	0	0	0	0	0	0

Source: Criminal Statistics Yearbook [Statistická ročenka kriminality].

36. As is apparent from the table, in the reporting period one person was prosecuted and indicted for the crime of torture and other cruel and inhuman treatment. Crime of torture and other cruel and inhuman treatment was included in the Penal Code by the amendment implemented as Act No. 290/1993, which entered into effect on 1 January 1994.

37. Since the submission of the third periodic report, there has been no amendment to Sections 279a and 279b of the Penal Code, which concern relations between soldiers. This issue is identically regulated in the newly adopted Act No. 40/2009, the Penal Code, which will enter into force on 1 January 2010.

38. In connection with the decrease in the number of troops conscripted to military service between 2002 and 2004, there was a significant drop in the number of disturbances in relations between soldiers (bullying). A small number of cases of bullying have been handled since 2005, i.e. in a period when the Czech armed forces have consisted solely of professionals. Between 2002 and 2008, there were no recorded cases of violations of rules involving the use of force by soldiers in the Czech Army while on duty, either during deployment in the Czech Republic or on foreign missions.

39. In the Czech Republic, decisions on guilt and punishment are in the sole competence of the courts as independent and impartial bodies exercising powers conferred on them directly by the Constitution.[19] Guarantees of the right to a fair trial are enshrined not only in the Title Five of the Charter of Fundamental Rights and Freedoms, but are also included in Section 2 of the Criminal Procedure Code. These principles are integral to criminal proceedings as a whole.

40. In the Czech Republic, criminal proceedings are divided into two phases. The first phase is the preparatory procedure, which is initiated either on the basis of a complaint or other initiative, in order to determine whether the deed in question happened, whether this deed is a crime, and whether it was committed by the suspect/accused. Law enforcement agencies duly cooperate in their examinations and investigations into suspected crimes. The preparatory proceedings are supervised by a public prosecutor, who also decides on complaints about the procedure followed police authorities. It follows from the principle of legality, which requires the public prosecutor to prosecute all crimes of which he learns, that the public prosecutor is the sole party entitled (and obliged) to bring charges before a court. By bringing charges, the public prosecutor also initiates the second phase of criminal proceedings, including proceedings before the court. The public prosecutor becomes a party

[19] Article 90 of the Constitution of the Czech Republic, Constitutional Act No. 1/1993, provides that the courts are required, first and foremost, to ensure the protection of rights in a statutory manner. Only a court is competent to rule on guilt and punishment for criminal offences.

to the dispute, representing the people before the court. The purpose of this phase is for the court to rule on the guilt and punishment for the offence.

Article 5

41. In the current Penal Code, the principle of universality is enshrined subsidiarily in Section 20. According to this principle, under the Penal Code the crime of torture and other inhuman and cruel treatment can be prosecuted even when committed abroad by a foreign national or a stateless person who has not been granted permanent residence in the Czech Republic only if such action is criminal and under the law in effect where it was committed and if the offender has been apprehended in the Czech Republic and has not been extradited or handed over to a foreign state for criminal prosecution. However, a punishment more stringent than that provided by the law of the state in whose territory the offence is committed may not be imposed on an offender.

42. The Penal Code will lead to a shift in this principle by including the crime of torture and other inhuman and cruel treatment in the exhaustive list of offences to which the principle of protection and the principle of universality apply without further restrictions. When the new Penal Code enters into force, the crime of torture will become one of the offences listed in Section 7, which can be prosecuted in the Czech Republic even if it is committed abroad by a foreign national or a stateless person who has not been granted permanent residence in the Czech Republic. The subsidiary principle of universality is transferred to Section 8 of the new Penal Code.

Article 6

43. The Czech Republic has nothing new to report in relation to this Article.

Article 7

44. See paragraphs 34 to 42 of this report.

Article 8

45. As already stated in previous reports, in Czech law there is no obstacle to prevent fulfilment of the obligations arising from this Article. The Convention is directly applicable under Article 10 of the Constitution of the Czech Republic and therefore is a sufficient legal instrument for the extradition of a person suspected of committing a criminal offence under Article 4 of the Convention even to a state with which the Czech Republic has not signed an extradition treaty.

Article 9

46. The Czech Republic has nothing new to report in relation to this Article.

Article 10

47. In the Prison Service, training activity is covered legislatively by Regulation of the Director General of the Prison Service on the organization of educational activities within the Prison Service.[20] The training of Prison Service employees is provided by the Prison Service Training Institute in Stráž pod Ralskem. Training activities within the Prison Service comprise a systematic and internally differentiated system of various forms of staff training under the Basic Training Programme and Lifelong Learning Programme, run by the Training Institute or organized in collaboration with universities and other educational bodies. Human rights training, which includes issues of torture and other cruel, inhuman or degrading treatment or punishment, is covered at each level and is included in virtually all subjects and courses taken by Prison Service staff.

48. The basic level of Prison Service staff training comprises basic vocational training for all new employees entering the service or employment of the Prison Service. It is structured to reflect their placement in the service or employment of the various organizational units and is organized with a view to meeting the essential requirements and qualifications needed to perform the job. Classification of basic training:

(a) A – for Prison Service officers, regardless of their status;

(b) B/1 – for civilian employees who work in direct contact with prisoners, but do not participate directly in the implementation of treatment programmes;

(c) B/2 – for civil employees who work in direct contact with prisoners and participate directly in the preparation and implementation of treatment programmes;

(d) B/3 – for medical staff;

(e) B/4 – initial training of external staff and Prison Service staff working part-time;

(f) I – induction training.

49. In the basic training under A, the emphasis is on compliance with and implementation of laws and regulations governing prison sentences, custody and the performance of the Judicial Guard services, prisoner rights and the duties and privileges of Prison Service staff. In all subjects, students are encouraged to respect basic human rights in specific situations they encounter in their everyday work.[21]

50. The training of new civil servants is targeted at ensuring that graduates of the basic training under B gain the professional rudiments needed to carry out their work, learn their way around the penitentiary system in the Czech Republic, know basic legislation on imprisonment, custody and other selected legislative provisions associated with their work and their assignment to the relevant organizational unit. Graduates should also gain an insight into related areas of humanities, especially the psychological and educational aspects of penitentiary issues. Part of the teaching is conducted through lectures and seminars; another part is realized in a modified form of social training and focuses on skills training aimed at negotiating with people and active management of difficult situations. The aim is to teach students to understand and know themselves, and to gain an insight into

[20] Regulation of the Director General of the Prison Service No. 5/2007 on the organization of educational activities within the Prison Service of the Czech Republic, as amended.

[21] The teaching draws mainly on the Standard Minimum Rules for the Treatment of Prisoners, the European Prison Rules, the Code of Conduct for Law Enforcement Agents, the Charter of Fundamental Rights and Freedoms, and other sources.

their own experiences, attitudes and reactions. This essential if staff taking the course are to be able to understand others, understand their surroundings and navigate their way effectively in and around interpersonal relationships.

51. The specialist courses and training that underpin the Lifelong Learning Programme for Prison Service staff are of a higher educational level. Their aim is primarily to obtain new knowledge and skills in areas of expertise, especially professional ethics, law, education and psychology. The courses are organized periodically and are tailored to the positions held by employees. All courses broaden the horizons of specialists in the relevant issue, ensure easier orientation in interpersonal relationships, the acquisition of new information and, not least, are used to establish contact with other workers in similar positions in other prisons and to exchange experience.

52. In 2001, the Prison Service Training Institute established a Commission for Human Rights Education, whose main task was to prepare a concept of human rights education. All organizational units within the Prison Service were distributed a manual on human rights education, all teachers working at the Training Institute were trained, and specialist courses on human rights and freedoms were organized for lecturers responsible for providing education on human at organizational units rights as part of the periodic professional training of officers and civilian employees.

53. As for soldiers, information about the content of the Convention and penalties for any violation is included in all types of training (initial, career, secondary, tertiary). This area is closely linked in the training to the teaching of international humanitarian and military law, especially before the deployment of troops on foreign missions.

54. The system for the training of police officers has recently shown substantial progress. The Ministry of the Interior drew up a "Concept of Compulsory Lifelong Learning for Officers and Employees of the Czech Police Force and the Ministry of the Interior" (hereinafter referred to as "Concept 2001").[22] An integral part of Concept 2001 is the training of officers and employees of the Czech Police Force in human rights and guidance towards respecting such rights.[23]

55. Another systemic step is the Concept of Lifelong Learning for Officers of the Czech Police Force, which develops the police officer training system in the field of human

[22] The concept was drawn up on the basis of Government Resolution No. 28/2001 of 3 January 2001 on the Report on Human Rights Education in the Czech Republic. The proposed system of education was based on a new concept of policing characterized by the following main principles: police work must be a service to citizens; police officers must be highly professional, skilled, motivated, and possess high ethical standards; education and training must be based on a competency approach; in education and training, the personal responsibility of the individual for professional readiness to perform duties must be stressed alongside the liability and responsibility of officials.

[23] This measure is a comprehensive systemic move forward in forming the correct attitudes of police officers at the beginning of the work for the force as it integrates such nurturing even in the initial training programme. The main objectives of training police officers in human rights are: to adopt generally accepted ethical values; to expand police officers' knowledge in those areas of the law and provisions concerning human rights; to eliminate racial prejudice and xenophobic views acquired within the family, in civilian schools or through other social influences; to reinforce the ability to recognize human rights violations, particularly crimes motivated by race, class or other similar hate, and to prevent potential belittlement of the circumstances when victims are first in contact with the police; to strengthen the skills necessary for a partnership style of policing.

rights.[24] Other long-term measures in the reform of police training include the process of harmonizing police training in the context of EU requirements.

Information on the sterilization of women in the Czech Republic

56. The Czech Republic has not yet taken any action enabling sterilized women to gain compensation. Reparations in civil proceedings are impossible in most cases. In an action to protect personal rights, it is possible to seek only an apology for interference with privacy rights, which two sterilized women have achieved. Under the current unified case law of the Supreme Court, however, financial compensation is subject to a three-year limitation period. As a result, financial compensation is out of reach of most sterilized women. Until a compensation mechanism is established, virtually none of the victims of wrongful sterilization will be able to obtain financial reparation. In most cases this is because the three-year limitation period has expired or because the medical records of the sterilized women have been shredded, or due to a lack of funds for litigation.

57. Provisions on sterilization are currently laid down in Act No. 20/1966 on public health care, as amended. This law requires the informed consent or own request of the person concerned to have such surgery performed.[25] The comprehensive regulation of this issue was due to be included in the new Act on Specific Health Services, but this bill was withdrawn from debate in the Chamber of Deputies in March 2009. The adoption of this law has therefore been shelved indefinitely. Sterilization is also governed by Directive of the Ministry of Health of Czechoslovakia LP-252.3-19.11.71 of 17 December 1971 on the implementation of sterilization.

58. Helena Ferenčíková filed a constitutional complaint concerning her case. On 23 October 2009, the Constitutional Court upheld the original court decision, in which the court ruled that the doctors had engaged in wrongful conduct by performing sterilization without informed consent, but also rejected the applicant's proposal for financial redress – because the three-year limitation period for claims had expired. As such, the Constitutional Court did not uphold the complainant's claim to financial compensation, but granted her an entitlement to an apology from the hospital in which her surgery was performed.

59. An Advisory Board of the Ministry of Health was established to investigate complaints made by women regarding sterilization performed on them during the provision of health care. This board found that errors had occurred in the performance of sterilization, but in no way could they be regarded as a nationwide policy or a policy targeting race or ethnicity; rather, it was only a case of errors by individual healthcare facilities. The investigation by the Advisory Board has not shown that the errors identified in the performance of sterilization were planned, systematic and intentional. The sterilization of women in the Czech Republic was by no means ethnically or racially motivated. In all cases, sterilization was carried out on the basis of a medical indication stated by a doctor. Following its investigation, the Advisory Board was dissolved and is thus no longer active.

[24] The following principles are mainly at issue in this respect: the education and training of police officers is based on the fundamental values of pluralist democracy, rule of law and the protection of human rights in a manner consistent with the status and activities of the Police Force of the Czech Republic; all levels of police training include practical training in the use of force and in how its use is limited by the principles of human rights, in particular by the European Convention on Human Rights.

[25] Section 27 of Act No. 20/1966 on public health care reads: "Sterilization may be carried out only with the consent or at the request of the person on whom sterilization is to be performed, such being under the conditions set by the Ministry of Health."

60. Nevertheless, the initial results in the issue of sterilizations involved the adoption of a Government Resolution in which the Government expressed regret at the individual errors identified in the performance of sterilization in contravention of the Directive of the Ministry of Health,[26] and approval of an initiative drawn up by an advisory body to the Government – the Government Council for Human Rights, which has dealt with this issue long term. This initiative proposes further steps and procedures to ensure that such actions never happen in the future. The initiative was submitted to the Government by the Minister for Human Rights and approved by the Government in November 2009. The public and the sterilized women welcomed the apology and the first steps in this matter.[27] Under this Resolution, the Government ordered the Ministry of Health to carry out other tasks aimed at preventing a recurrence of similar cases which happened in the past. These tasks include the Minister's obligation to provide the Government with information about the implementation of recommendations proposed by the advisory body to the Minister for Health, the incorporation of the sterilization issue into the programme of the Expert Forum for the Creation of Standards of Care and the Concentration of Selected Highly Specialized Care, and, as part of prevention and further training, contact with directly managed organizations and healthcare facilities in the Czech Republic which provide care in the field of gynaecology – obstetrics to verify and ensure compliance with legislation in the performance of sterilization.

Article 11

1. Punishment of imprisonment

61. The Act on Freedom of Religion and the Status of Churches and Religious Societies[28] amended provisions relating to the provision of religious services in places where custodial sentences are carried out. Now religious services in places where custodial sentences are carried out may be provided only by registered churches and religious societies granted permission to exercise this right under a special legal regulation. This special legal regulation is the adopted new Act on Churches and Religious Societies.

62. The Act Amending and Repealing Certain Laws in Connection with the Closure of District Authorities[29] stated that prisons would allow convicted juveniles to be visited by the child protection officers of municipalities with extended powers assigned to a municipal authority, instead of the child protection officers of district authorities.

63. The new Act on Juvenile Liability for Unlawful Acts and on Juvenile Justice[30] (hereinafter referred to as the "Juvenile Justice Act") expanded the purpose of enforcing the imprisonment of juveniles. Such imprisonment now also monitors the achievement of the purpose specified in this Act. Further, the provisions on which facility a juvenile subject to protective care is to be sent to upon completing his prison sentence were also amended.

64. An amendment to the Imprisonment Act[31] replaced the option of setting up an advisory body to the governor of a prison with the duty to establish that advisory body, composed of experts who are not prison employees. The Act includes other changes. The

[26] Directive of the Ministry of Health of Czechoslovakia LP-252.3-19.11.71 of 17 December 1971 on the implementation of sterilization.

[27] For the reaction, see also http://www.ipsnews.net/news.asp?idnews=49444.

[28] Act No. 3/2002 entered into effect on 7 January 2002.

[29] Act No. 320/2002 entered into effect on 1 January 2003.

[30] Act No. 218/2003 entered into effect on 1 January 2004.

[31] Act No. 52/2004 amending Act No. 169/1999 entered into effect on 1 July 2004.

age limit for juveniles who serve prison sentences separately from other prisoners rose from 18 to 19 years. The obligation to keep life prisoners separate from other prisoners was repealed. In addition, prisons were set the obligation to provide a social allowance of CZK 100 to those prisoners who do not have income or other cash flow of at least CZK 100 in a calendar month. The Prison Service is not entitled to acquaint itself with telephone calls between prisoners and lawyers, the public authorities of the Czech Republic, diplomatic missions or consular offices of foreign states, international organizations competent to deal with complaints relating to human rights under international conventions binding on the Czech Republic, and child protection officers of municipalities with extended powers who have been incorporated into municipal authorities. Nor may the Prison Service present during conversations between a prisoner and lawyer. The prison governor's authority to allow prisoner visits without visual and auditory checks by Prison Service employees only in exceptional cases was repealed. The Act also contains provisions further regulating the provision of religious services to prisoners. The provisions prohibiting convicted persons failing to pay the damages, set out in the judgment, arising out of claims related to criminal proceedings, or failing to compensate for damage caused to the Prison Service, from freely disposing of their money placed in the safekeeping of the prison were relaxed. Now, convicted prisoners may freely dispose of half the funds placed in the safekeeping of the prison. Convicted prisoners' duties were extended to include the obligation to promptly notify the prison that they receive a social security pension, a service pension, or a service allowance, or have income subject to income tax. Following amendments, convicted prisoners were prohibited from possessing and distributing printed matter or materials promoting national, ethnic, racial, religious or social intolerance, fascism and similar movements aiming to suppress human rights and freedom, violence and cruelty, as well as printed matter or materials containing a description of the manufacture and use of addictive substances, poisons, explosives, weapons and ammunition. It was stipulated that the obligation to pay the costs of imprisonment does not apply to convicted prisoners:

(a) Who, through no fault of their own, have not been assigned work and had no other income or other cash in the calendar month;

(b) Who are not yet 18;

(c) During any period of hospital care, if they are medically insured;

(d) Over any period of inclusion in an educational or therapeutic programme with teaching or therapy time of at least 21 hours per week;

(e) Over the period of any suspension of their sentence;

(f) Over any period of participation in court hearings as a witness or victim;

(g) Over any period of temporary transfer to a foreign country;

(h) Who are on the run.

65. The prison governor may wholly or partially waive the obligation to pay the costs of a sentence from which a prisoner has been released, and the obligation to pay other costs, where this is justified by the prisoner's oppressive social situation, and may decide that interest on account of late payment will not be charged on any claims to the reimbursement of the costs of imprisonment. Juveniles are entitled to receive visits for five hours during one calendar month. Disciplinary punishment of the non-receipt of one package in three calendar months, which may be imposed on juvenile prisoners, was reduced to the non-receipt of one package in the calendar year. The rules providing that the main purpose of a life sentence is to protect society from further crime by the prisoner by isolating him in prison and guiding his behaviour towards to standards of public decency were deleted from the Act.

66. In an amendment to the Criminal Procedure Code,[32] there was a change in the terminology used in the provision stipulating that the recovery of the costs of imprisonment may be waived inter alia if a prisoner is extradited or transferred abroad. In another law,[33] it was stated that prisons allow the municipal authorities of municipalities with extended powers to provide prisoners with social services.

67. The amendment to the Act on Imprisonment[34] changed the requirement of a convicted prisoner's prior written consent to work for an entity whose founder or majority owner is not the state. A list of entities for which an accused's prior written consent is not required was extended to the employment of convicted prisoners by the Czech Republic, provinces, municipalities, voluntary associations of municipalities or entities set up by them and in which they hold a majority ownership interest, a majority share of voting rights or in which they hold a controlling influence on the management or operations.

[32] Act No. 539/2004 amending Act No. 141/1961 on the Rules of Criminal Procedure, as amended, and certain other laws entered into effect on 1 November 2004.

[33] Act No. 109/2006 amending certain laws relating to the adoption of the Social Services Act.

[34] Act No. 346/2007 amending Act No. 169/1999 on imprisonment and amending certain related laws, as amended, entered into effect on 5 January 2008.

The table lists the number of prisoners and use of accommodation capacities in 2002-2009

	Accused prisoners			*Convicted prisoners*			*Security detention inmates*			***Total***				
Date	*Men*	*Women*	***Total***	*Men*	*Women*	***Total***	*Men*	*Women*	***Total***	***Men***	***Women***	***Total***	*Accommodation capacity**	*Accommodation capacity used (%)*
1.1.2002	4 341	242	**4 583**	14 190	547	**14 737**	-	-	**-**	**18 531**	**789**	**19 320**	20 122	96.0
1.1.2003	3 222	162	**3 384**	12 321	508	**12 829**	-	-	**-**	**15 543**	**670**	**16 213**	17 625	92.0
1.1.2004	3 244	165	**3 409**	13 298	570	**13 868**	-	-	**-**	**16 542**	**735**	**17 277**	15 407	112.1
1.1.2005	3 084	185	**3 269**	14 437	637	**15 074**	-	-	**-**	**17 521**	**822**	**18 343**	18 405	99.7
1.1.2006	2 697	163	**2 860**	15 336	741	**16 077**	-	-	**-**	**18 033**	**904**	**18 937**	18 784	100.8
1.1.2007	2 277	122	**2 399**	15 376	803	**16 179**	-	-	**-**	**17 653**	**925**	**18 578**	19 202	96.8
1.1.2008	2 110	144	**2 254**	15 792	855	**16 647**	-	-	**-**	**17 902**	**999**	**18 901**	19 250	98.2
1.1.2009	2 214	188	**2 402**	17 209	891	**18 100**	-	-	**-**	**19 423**	**1 079**	**20 502**	19 471	105.3
31.7.2009	2 192	158	**2 350**	18 618	1 007	**19 625**	2	-	**2**	**20 812**	**1 165**	**21 977**	19 381	113.4

* As at 1 January 2002, the cited accommodation area was calculated so that the accommodation area per person was 3.5 m2 in a bedroom or cell.

As at 1 January 2004, the cited accommodation area was calculated so that the accommodation area per person was 4.5 m2 in a bedroom or cell.

As at 1 January 2003, 1 January 2006, 1 January 2007, 1 January 2008, 1 January 2009 and 31 July 2009 the cited accommodation area was calculated so that the accommodation area per person was 4.0 m2 in a bedroom or cell.

2. Custody

68. An amendment to the Act on Serving Custody and an amendment to the Imprisonment Act[35] transferred supervision of compliance with legislation related to custody and imprisonment from a delegated public prosecutor at the provincial public prosecutor's office to the provincial public prosecutor's office.

69. The Act on Freedom of Religion and the Status of Churches and Religious Societies[36] amended provisions relating to the provision of religious services in custody facilities. Religious services in custody facilities may be provided only by registered churches and religious societies granted permission to exercise this right under a special legal regulation. This special legal regulation is the newly adopted Act on Freedom of Religion and the Status of Churches and Religious Societies and on amendment of certain laws.

70. Where possible, the prison is required to offer accused persons during their detention the possibility of participating in preventive, educational, special-interest and sports programmes.[37] Moreover, prisons must place persons who are in custody in anticipation of deportation (extradition custody) separately from other accused, and grant use of a telephone to contact relatives and other persons for prisoners who are not in custody due to concerns that they will frustrate the investigation into facts relevant for criminal prosecution. Visits of accused persons in custody were extended from 60 minutes once every 14 days to 90 minutes once every 14 days. Now, in justified cases the prison governor, for security reasons, may decide that the visit will take place in a room where the visitor is separated from the person deprived of his/her liberty by a partition. The provision of religious services to accused is now regulated in more detail. Provisions governing the right of accused to buy food and personal effects have been clarified, so that the internal rules stipulate a guaranteed range that prisoners can purchase, and so that purchases are generally made by non-cash payments. Those persons are also allowed to use their own portable radio and television sets provided that they are battery-operated and that the technical parameters have been checked (at the prisoner's expense) to determine whether undesirable devices have been installed. The power to restrict or cancel the temporary release of accused has been transferred from the prison governor to the Director General of the Prison Service or his authorized employee from the Prison Service. Obligation of accused to compensate for damage caused to the Prison Service, increased security costs, transportation costs and transfers to medical facilities has been extended to cases where he or she intentionally enable another person to inflict injury on them, repeatedly fail to comply with their prescribed treatment, abuse health care by feigning health disorders or decide not to undergo a medical procedure to which they had given prior consent or which they had requested. Juvenile accused, who are subject to compulsory full-time schooling must be provided with such schooling by the prison. Those, who are placed in extradition custody and do not violate the prescribed rules and discipline, are held in a low-security custody unit. Female who, during custody, give birth to a child, may keep the child with them and take care of it. At her request, the prison governor can decide that she may keep her child with her, as a rule, up to one year of age.

[35] Act No. 7/2009 amending Act No. 99/1963, the Rules of Civil Procedure, as amended, and other related laws, effective as of 1 July 2009.

[36] Act No. 3/2002 entered into effect on 7 January 2002.

[37] Act No. 293/1993 on custody, as amended, Section 4a.

3. Security detention

71. The new protective measure of security detention in security detention institutions is governed by the new Security Detention Act.[38]

72. The imposition of security detention is regulated by the Penal Code. A court imposes security detention in the case referred to in Section 25(2) of the Penal Code[39] or in cases where the perpetrator of an act that would otherwise be a criminal act with the constitutive elements of a particularly serious crime is not criminally liable on grounds of insanity, allowing him to remain at large would be dangerous, and, given the nature of his mental disorders and the possible effects on the perpetrator, any protective treatment that is ordered cannot be expected to provide society with adequate protection. A court may impose security detention in view of the offender's personality and with regard to his life thus far and his circumstances even if the offender committed a deliberate crime for which the law provides for imprisonment with a maximum limit of more than five years in a state induced by a mental disorder, allowing him to remain at large would be dangerous, and, given the nature of his mental disorder and the possible effects on the perpetrator, any protective treatment that is ordered cannot be expected to provide society with adequate protection. A court may impose security detention of its own accord, in conjunction with a decision either to refrain from punitive measures or to impose a penalty.

73. Security detention takes place at a security detention institute with medical, psychological, educational, pedagogical, rehabilitation and activity programmes. Security detention lasts for as long as it is required for the protection of society. At least once every 12 months, and for juveniles once every 6 months, a court examines whether reasons for continuing the detention remain in place. A court may change security detention to institutional protective treatment if the reasons for ordering the detention cease to exist and if conditions for institutional protective treatment are met.

74. Security detention must respect the human dignity of persons in such detention (hereinafter referred to as "inmates"), be consistent with the personality of the inmate, and limit the effects of the deprivation of liberty. However, this must not compromise the protection of society. Inmates must not be treated in a way that could adversely affect their health, and all available expertise must be used; the attitudes of inmates, which, if possible in light of their health, will encourage them to decide to undergo protective treatment must be promoted.

75. The classification of inmates into groups is the task of an expert committee appointed by the institute director, consisting primarily of professional staff from the institute. Members of the expert committee must include at least two doctors, one of whom must be a psychiatrist, plus a psychologist and a lawyer. When classifying inmates into groups, the expert committee considers, in particular, their gender and age, their health assessment, personality traits and criminal history. The content of specific activities carried out in the groups is set out in the therapeutic, psychological, educational, pedagogical, rehabilitation and activity programmes in which the inmate is required to participate. When

[38] Act No. 128/2008 on security detention and amending certain related laws, effective as of 1 January 2009.

[39] Section 25(2) of the Penal Code reads: "A court may also waive punishment if the offender commits a deliberate crime, for which the law provides for imprisonment with an upper limit of greater than five years, in a state of diminished responsibility or in a state induced by a mental disorder, and, given the nature of the mental disorder and possible effects on the offender, protective treatment cannot be expected to result in the adequate protection of society, and the court considers that security detention (72a) imposed on the offender will ensure the protection of society more than a punishment."

assigning inmates to a programme, the expert committee ascertains and takes account of the inmate's opinion. If inmates are included in a programme including the provision of health care, they are required to undergo this health care, with the exception of treatment ruled out by the doctor in view of an inmate's state of health. Therapeutic programmes are carried out in collaboration with medical institutions. A programme contains a specifically formulated objective as to the effect it should have on inmates, treatment methods to achieve this objective, and the method and frequency of assessments. Each programme also specifies the method of employment of inmates, and their participation in occupational therapy, education or other alternative activities. If several variants of a programme are deemed appropriate for an inmate, he may be allowed to make the choice himself.

76. The committee composed of professional staff from the security detention facility (hereinafter referred to as the "expert committee") draws up a comprehensive report on the status of inmates, including an evaluation of the effect of existing programmes, every three months of their security detention. Inmates must be demonstrably acquainted with these comprehensive reports. In comprehensive reports, the expert committee focuses on forecasting how the inmate will progress with a view to switching from security detention to protective treatment.

77. The institute director, in collaboration with the expert committee, monitors developments in the behaviour of each inmate, evaluates the success of security detention, and assesses whether conditions are in place to propose a change from security detention to protective treatment, or whether conditions for the release of inmates from security detention have been met. If the expert committee finds, based on a proposal from a specialist employee, that there is no reason to continue security detention, it prepares a special detailed report for the institute director, with a recommendation for the release of the inmate from security detention or for a change transferring the inmate from security detention to protective treatment. The institute director, if he agrees with the expert committee's recommendation, quickly submits a proposal for the release of the inmate from security detention or for a switch from security detention to protective treatment to the district court in whose district the security detention is carried out, and informs the competent public prosecutor. If the institute director does not agree with the expert committee's recommendation, he sends its report, together with his own opinion, to the district court in whose district the security detention is carried out without undue delay.

78. The new Penal Code will make changes to the regulation of security detention; in particular, it will expand the opportunity to impose security detention on offenders who indulge in the abuse of addictive substances and commit another particularly serious crime, even though they have already been imprisoned for at least two years for a particularly serious crime committed under the influence of addictive substances or in connection with the abuse thereof and it is not expected that society will be adequately protected if protective treatment is ordered.[40]

4. Probation and Mediation Service

79. The Probation and Mediation Service[41] strives to mediate efficient and socially beneficial solutions to conflicts associated with criminal activities and organizes and ensures the efficient and dignified implementation of alternative penalties and measures, with an emphasis on the interests of the victims, the protection of the community, and

[40] Act No. 40/2009, the Penal Code, as amended by Act No. 306/2009, Section 100(2) (b).

[41] On 1 January 2001, Act No. 257/2000 on the Probation and Mediation Service entered into effect, and on the same date the Probation and Mediation Service was established.

crime prevention.[42] The head of the Probation and Mediation Service is its director, who is appointed and removed by the Minister for Justice.

80. The Probation and Mediation Service's duties in relation to courts, public prosecutors and Czech Police authorities are carried out by its centres, which operate on the premises of district courts or local or municipal courts on the same footing. The competence of the centres to perform probation and mediation tasks depends on the jurisdiction of the court and, in pretrial proceedings, of the public prosecutor in whose district the centre operates.

In the period from 1 January 2002 to 31 December 2008 (statistical data for the first half of 2009 are not yet available) the Probation and Mediation Service handled the following number of new cases:

Year	***Total***	*Of which PTP*	*Of which SS and PMSS*	*Of which RPS and MPS*
2002	**29 291**	6 323	2 527	not monitored*
2003	**28 365**	6 823	2 691	748
2004	**28 403**	5 042	2 617	756
2005	**26 338**	5 847	3 069	1 418
2006	**24 885**	5 169	3 104	1 563
2007	**27 648**	5 802	3 522	2 126
2008	**25 465**	5 092	3 358	2 120

* Release on probation with set obligations and restrictions was monitored.

PTP – pretrial proceedings and proceedings before a court for adults and juveniles.

SS – suspended sentences of imprisonment with supervision (Section 60a of the Penal Code).

PMSS – penal measures of a suspended sentence with supervision (Section 33(2) of the Juvenile Justice Act).

RPS – release on probation with supervision (Section 63 of the Penal Code).

MPS – measures prescribing supervision (Section 93(1) (a) of the Juvenile Justice Act).

81. The Probation and Mediation Service also worked with NGOs in projects contributing to the greater enforceability of alternative penalties and the reduced risk of reoffending upon the release of prisoners. The main focus of activities was the work carried out by the Association for Probation and Mediation in the Judiciary in collaboration with the Probation and Mediation Service.

82. MENTOR Service: a service helping to reduce the risk of relapse and to diminish the social exclusion of Roma clients. The main target group is members of the Roma minority who have been subjected to an alternative penalty or measure. The principle of

[42] Probation and mediation are specified in Section 2 of Act No. 257/2000.

Probation means the organization and performance of supervision of an accused, indicted or convicted person (the "accused"), checks on penalties unrelated to imprisonment, including any obligations and restrictions, the monitoring of the accused's behaviour during a probationary period entailing conditional release from imprisonment, individual assistance for the accused and guidance to encourage him to lead an orderly life, to comply with conditions set by a court or public prosecutor, and thereby to restore impaired legal and social relations.

Mediation means extra-judicial mediation to resolve a dispute between the accused and the victim and to work towards the settlement of a conflict in connection with criminal proceedings. Mediation is possible only with the express consent of the accused and the victim.

cooperation between a Roma mentor — a trained ethnic Roma volunteer, working with the Probation and Mediation Service — and clients can establish contact with convicted Roma and increase the enforceability of alternative sentences, including sentences of community work and supervision by a probation officer, which, in the absence of a mentor, would otherwise probably end up as prison sentences. This service, introduced in 2004, involves collaboration between 39 mentors and 18 centres. Between 1 March 2006 and 30 September 2008, mentors worked with a total of 544 clients. The success of the mentor service depends on the types of cases in which mentors are involved. In relation to clients with which whom it is difficult to establish contact, the success rate is approximately 37%. For clients who undergo alternative penalties with difficulties, the rate is about 50%; for clients who cooperate with the Probation and Mediation Service but face a number of problems and social exclusion, the rate is as high as 63%.

83. "Debt Rescue" is a pilot project to test the feasibility of establishing the Swiss model of debt rehabilitation in the Czech Republic. The project offers selected clients of the Probation and Mediation Service the chance of a fresh start, motivates them to seek and maintain employment, and minimizes their re-borrowing. The project is aimed at reducing the risk of relapse by addressing the over-indebtedness of clients.

84. Motivational and learning programmes for people with a criminal past as a means of economic and social integration and the prevention of relapse: this project took place from 1 September 2006 to 30 June 2008. Under this project, ZZ (Get a Job) Incentive Programmes were implemented for convicted prisoners, prisoners about to be released, ex-prisoners on being released, and those with suspended sentences.

85. Since mid-2008, the Probation and Mediation Service has also actively been involved in preparing the ground for a new alternative penalty, home detention, in the new Penal Code and amended provisions of the Criminal Procedure Code (Sections 60 and 61 of the Penal Code and Sections 334a to 334g of the Criminal Procedure Code). The penalty of home detention, in combination with the use of an electronic control system, opens up an entirely new chapter and possibilities for Czech criminal policy in the field of alternative penalties and measures. It is incorporated into the Penal Code as a "direct" alternative to imprisonment which replaces the role of community work. Home detention is governed by the law as a separate penalty which may be imposed only by a court. This punishment can, if properly applied in practice, ensure that the number of people in prison does not rise further.[43] However, in the absence of funding it will not be possible to switch immediately to the electronic control system. However, in 2010 random physical checks of persons sentenced this penalty will be conducted by staff from the Probation and Mediation Service. In autumn 2009, the Ministry of Justice also approved the schedule and implementing regulations concerning the introduction of an electronic control system.

[43] In practice, however, there is a need to ensure that the courts impose these punishments efficiently and specifically on offenders who are identified as "suitable" for such a punishment. Such assessments are the responsibility of the Probation and Mediation Service, which by law is also required to play the main supervisory role in the performance of the penalty. In this respect, it is essential to ensure that conditions exist for the quality imposition of home detention and, potentially, an electronic control system, including the precisely-defined organization of home detention, and, not least, the necessary material and human resources in the judiciary and at the Probation and Mediation Service, which, under the current wording of the Act, will bear the greatest responsibility for the execution, control and overall organization of home detention.

5. Detention

86. The Foreign Nationals Act permits the detention of foreigners for administrative expulsion, for deportation on other grounds specifically laid down by law, and for the transfer or transit of such persons under an international treaty or directly applicable law of the European Communities.[44] As in the case of administrative expulsion, between 2002 and 2009 the Foreign Nationals Act was amended in relation to the detention of foreigners and, especially, in the way detention takes place. Foreigners may be detained under the Foreign Nationals Act only under the conditions and for the reasons set out in that law.

87. The concept of detaining foreigners is governed by the Foreign Nationals Act. The reasons and conditions for detention set out in this legislation are in a form compatible with the law of the European Communities. The legislation is based on the principle that restrictions in the rights and freedoms of detained foreigners should not go beyond what is necessary to achieve the purpose of detention. The legal certainty of detained foreigners and of foreigners who are to be deported has been reinforced. Judicial protection of the rights of detained foreigners is guaranteed in two ways. Detained foreign nationals are entitled to lodge appeals against detention decisions by administrative authorities and, under the Rules of Civil Procedure, may petition a court to order their release on the grounds that conditions for their continuing detention have not been met. In addition, under the Convention on the Rights of the Child (published under number 104/1991), there are specific conditions concerning the detention of children aged 15 to 18 years residing in a territory unaccompanied by a legal guardian.

88. The Foreigner Police is authorized to detain foreigners over 15 years who have been served notice of the initiation of proceedings on administrative expulsion, or if a final decision on their administrative expulsion has been reached, if there is a danger that they could threaten national security, seriously disrupt public order, or frustrate or impede the enforcement of the administrative expulsion. This possibility is used in particular if it is found that a foreign national's conduct amounts to risks envisaged by the law, if a foreigner is registered in the register of non-admitted persons, or if, as a non-admitted person, he is included in an information system of the states parties. If an unaccompanied minor foreigner is detained, the police appoint him a guardian. Detention must not exceed 180 days or, in the case of a foreigner under 18 years, 90 days from the moment of their apprehension. The police are required, throughout a foreign national's detention, to consider whether the grounds for detention remain valid and, immediately after detaining a foreign national, to advise him, in a language in which his is able to communicate, of the possibility of a judicial review of the legality of such detention. The whole procedure for the detention of a foreigner is conducted in a language in which the foreigner is able to communicate and with the participation of an interpreter.

89. Authorization to set up and run detention facilities for foreigners has been transferred to the Ministry of the Interior and is realized through a previously established government department, the Refugee Facilities Administration Office. Therefore, conditions exist so that, in terms of their internal regime, detention facilities for foreigners are similar to the reception centres of refugee facilities, with the difference that a foreigner, other than on statutory grounds, is not permitted to leave the facility during his detention. As a result, even foreigners in detention facilities receive adequate care in order to

[44] In certain cases, the transfer or transit of a foreign national will require his detention for longer than 48 hours; such a foreign national must be placed in detention facilities for foreigners in accordance with a decision of the Foreigner Police Service to detain the foreign national with a view to his transfer or transit.

minimize the impact of confinement on their psyche. Their treatment is based on standards guaranteed by international documents on human rights. Only in justified cases (e.g. a detained foreigner is aggressive towards other detainees or personnel at a facility, or is repeatedly in material breach of the obligations imposed on him by internal rules) can a foreigner be transferred from a low-security part of the facility to a high-security section for as long as needed.

90. The competence of the Foreigner Police in relation to facilities and the foreigners detained there has been overhauled. Currently, its powers include deciding whether to place foreigners in the low-security or high-security sections of facilities (based on a proposal from the operator), conducting personal inspections of detainees, guarding facilities and providing escorts.

91. The overall humanization of facilities is underlined by the fact that in the guidelines for the issuance of the internal rules of facilities, the issues of leisure activities, movement around the premises, and compulsory education for children under 15 years are highlighted. Foreigners are guaranteed medical care and, if necessary, may be admitted to a medical facility providing inpatient care. The conditions for visits to detained foreigners have also been reviewed. In terms of the possibility for foreigners to exercise their rights, it should be added that detention facilities for foreigners are regularly visited by nongovernmental organizations, whose staff provide the detained foreigners with legal assistance and advice. They also receive psychological and social care from the operator's employees.

6. Education

92. In educational establishments providing institutional or protective care (i.e. children's homes, children's homes with schools, educational institutions or centres for diagnosis), checks are conducted by public prosecutors from the competent public prosecutors' offices, the Czech School Inspectorate, and the Ombudsman.

93. The Czech School Inspectorate's activities are regulated by Act No. 561/2004 on preschool, primary, secondary, higher vocational and other education of 24 September 2004, as amended, which replaced the previous Act No. 29/1984 on the system of primary and secondary schools (the Schools Act) and Act No. 76/1978 on educational facilities. Under the new law a basic criterion is an evaluation of the effectiveness of the support channelled into the development of the personality of the child, pupil and student. The supervision of compliance with legislation (including in places where protective or institutional care is provided) is the responsibility of the public prosecutor's office.[45] Here, public prosecutors generally oversee compliance with the law. Particular attention is paid to whether institutional and protective care is provided on the basis of enforceable court rulings.

94. The general principle of a bill on the ombudsman for children is now being prepared; this law would focus exclusively on issues faced by children, including children in institutional and protective care. The National Action Plan — the implementation of the 2009–2010 National Strategy to Prevent Violence against Children in the Czech Republic, approved by the Government of the Czech Republic on 20 July 2009 — set the task of establishing the concept of a "school" commissioner for children, whose mission is to promote and protect the rights of children in facilities for institutional and protective care.

[45] This takes place in accordance with Act No. 283/1993 on the public prosecutor's office, as amended by Act No. 14/2002 amending Act No. 283/1993 on the public prosecutor's office, as amended, of 18 December 2001, effective from 1 March 2002.

7. Ombudsman

95. Under an amendment to Act No. 349/1999 on the Ombudsman, the Ombudsman's responsibilities were extended to include the new task of systematically visiting all places (facilities) where persons deprived of their liberty are or may be held. (See also paragraph 7 of this report.) The amendment to the Act does not significantly affect the Ombudsman's existing powers. The Ombudsman still holds no decision-making or sanctioning powers. His activities are carried out by means of his investigative powers, which entitle him to visit facilities without prior notice, to talk alone with people, to inspect any and all premises at facilities, to study files and other documents, to ask questions without the presence of facility staff, etc. Visits to facilities where persons may be detained are made by the Ombudsman in accordance with a pre-established plan for a specific period of time. In this sense, the visits are regular, with a significant focus on prevention. Staff at the Office of the Ombudsman visited several similar facilities within the scope of a planned thematic focus. The selection of specific facilities is guided, for example, by the Ombudsman's previous observations, gained by references from the public or detainees (positive or negative), or by the outcome of activities carried out in the scope of departmental control mechanisms.

96. After conducting a visit, the Ombudsman draws up a report on his findings, with recommendations to implement certain corrective measures. Within 30 days of receipt of the final opinion, the authority is required to notify the Ombudsman of the corrective measures that have been implemented. If the authority fails to comply with this obligation, or if the Ombudsman believes that the corrective measures are inadequate, the Ombudsman informs a superior authority or, if no such authority exists, the Government. He may also inform the public of his findings. In addition to systematic visits, the Ombudsman also investigates individual complaints lodged by persons placed in individual facilities.

97. The Ombudsman, when making and evaluating systematic visits, focuses not only on formal compliance with the law, but also on cases where the conduct of responsible persons or the situation in facilities is inconsistent with the principles of democratic rule of law and good governance, and would or could result in the threat — to the persons in such facilities — of torture, cruel, inhuman or degrading treatment or punishment, ill-treatment or disrespect for humans and their rights.

98. Penitentiary facilities in the Czech Republic are also monitored on a mutual voluntary basis by nongovernmental organizations such as the Czech Helsinki Committee (hereinafter referred to as the "CHC"). General provisions applicable to nongovernmental organizations are contained in Section 43 of the Imprisonment Act and are developed in more detail in Decree of the Ministry of Justice No. 345/1999.[46] Monitoring is an important activity carried out by the CHC in its monitoring of human rights in the prison system. The principal aim of this monitoring is to obtain information about physical conditions related to imprisonment and custody, ascertain standards in the treatment of prisoners and accused persons during their imprisonment or custody, and to verify clients' factual communications contained in correspondence. The basic methods used in monitoring include local investigations at specific prisons and controlled interviews with convicted prisoners and accused, as well as Prison Service staff. In 2006, the CHC introduced the new method of in-depth monitoring, in which authorized CHC members conduct in-depth investigations at selected prisons lasting from several days to a week. So far, there has been one case of in-depth monitoring (at Příbram Prison in 2006). Monitoring, as well as the conditions of in-depth investigations and the subsequent presentation thereof, are governed by an agreement concluded between the CHC and the Prison Service. The result is a CHC

[46] Sections 74 and 75 of Decree No. 345/1999.

report on the state of the prison which has been subjected to in-depth monitoring. This report makes recommendations and contains a summary of positive and negative findings, along with possible suggestions and recommendations for the future operation of the prison system. The report is also published publicly.

99. In 2006, a global review of the treatment of vulnerable prisoners located in Valdice Prison was carried out. The performance of tasks laid down in the then-effective Regulation of the Director General of the Prison Service of the Czech Republic No. 41/2002 on the prevention of violence between accused and convicted prisoners was examined as part of a thematic inspection carried out at Valdice Prison by staff of the Custody and Imprisonment Department of the Directorate General of the Prison Service of the Czech Republic. During this inspection, the prison governor was ordered to ensure strict compliance with the frequency of visual inspections of convicted prisoners as set out in Section 11(1) of the above Regulation.

100. To violence among prisoners, including sexual violence and abuse, Regulation of the Director General of the Prison Service of the Czech Republic No. 82/2006 on the prevention and early detection of violence between accused and convicted prisoners was adopted, replacing the previous Regulation No. 41/2002. The purpose of this Regulation is to establish and secure conditions for the prevention and early detection of violence between accused and convicted prisoners in custody facilities and prisons for sentenced prisoners and to establish procedure for identifying and evaluating individual cases of violence and for collecting and evaluating data on violent conduct. According to this Regulation, all staff from the custody and imprisonment units at all prisons and custody facilities must be trained in the prevention of violence. To increase the qualifications of prison staff in the Czech Republic, there is also a comprehensive system of lifelong learning (see paragraphs 47–55). Checks on whether the various provisions are duly respected among prisoners and accused persons at Valdice Prison in order to ensure their effective implementation are carried out by the Directorate General of the Prison Service on a regular basis. For more details on Regulation No. 82/2006, see paragraphs 151 to 157 of this report.

101. According to Section 5 of Imprisonment Act, the penal measure of imprisonment for juveniles who are not yet 19 is carried out separately from other convicted prisoners, i.e. in prisons or special units for teenagers with internal differentiation ("juvenile prisons"). Further provisions are contained in the Juvenile Justice Act, which governs the procedure for imprisoned juveniles upon completing their nineteenth year. In such cases, the juvenile court may decide to transfer juveniles to the same prison as other convicted prisoners.[47] The law also regulates the obligation to keep juveniles separate from adults in cases where they are detained.[48]

102. Cage beds are no longer used in medical facilities. Net beds as a means of restraint are used in medical establishments in the provision of health care in order to restrict the free

[47] Section 79 of Act No. 218/2003 reads: "1) Where a juvenile serving a prison sentence reaches nineteen years of age, the juvenile court may decide to transfer him to a prison for other convicted prisoners. The decision shall take account, in particular, the extent to which he has been re-educated and the remaining length of his sentence. If the juvenile court transfers a convicted prisoner to a prison for other convicted prisoners, it must also decide into which type of prison the convicted prisoner is to be placed to serve his sentence."

(2) A decision on the transfer of a convicted prisoner to prison for other convicted prisoners shall always be regarded as a decision on a transfer to a prison with a stricter regime.

[48] Section 51 of Act No. 218/2003.

movement of the patient. Applying these restraints must be considered as a last resort when it is necessary to sedate a patient whose behaviour is a threat to himself or others and to his surroundings, and other more moderate procedures have been unsuccessful. Restraints may be used only for the shortest time necessary and only on serious medical — not educational — grounds. The use of restraints must be recorded and justified in the medical records and may be used only as long as the grounds for applying them remain in place. Decisions on the use of these restraints are taken by the attending physician or a physician from the inpatient emergency service at a medical establishment who is present in a situation where the restraints may be used. Medical establishments must comply with guidelines set out in MoH Journal No. 7/2009 when using restraints.

103. In matters relating to restraints, on 1 October 2009 the Government Council on Human Rights adopted an initiative in which it makes the proposal to the Government to order that the Minister for Health submit a draft amendment to Act No. 20/1966 on public health care, as amended, to the Government by 31 March 2010. The initiate is primarily intended to incorporate provisions into the Act relating to the use of measures restricting the movement of patients in the provision of health care and control mechanisms for their application thereof. The measures proposed include a clear specification that initial attempts to sedate aggressive and agitated patients should not, as far as possible, involve contact (e.g. verbal instructions) and that, where physical restraint becomes necessary, this should essentially entail bringing patients under control with hands and arms. Physical restraints should be usable only in exceptional cases and only after an explicit order from a doctor or with his consent. The use of restraints must end as soon as possible; restraints must not be used as a form of punishment. Any case where a patient is physically restrained (using arms, restraints, solitary confinement) is recorded in a separate book kept for that purpose and also in the patient's medical records.

Article 12

104. Currently it is in force legislation which places investigations into criminal offences committed by police officers, members of the Security Information Service and the Office for Foreign Relations and Information into the competence of the public prosecutor. The examination of crimes by police officers is now in the hands of the Police Inspectorate, which replaced the previous Inspectorate of the Minister for the Interior; the director is no longer appointed by the Minister for the Interior, but by the Government, and reports directly to the Prime Minister. This has made the original inspectorate more independent of the Minister for the Interior. At the same time, however, the previous Government approved and submitted to the Chamber of Deputies a bill on the General Inspectorate of the Security Forces. Under this bill, originally an institution entirely independent from the institutional, staffing, legal and economic perspectives was meant to be formed as of 1 January 2010 to verify and investigate crimes by police officers, customs officers and members of the Prison Service. The bill has been submitted to the Chamber of Deputies for debate in its first reading.

105. Supervision of prison system management has two basic forms on a legal level. Internal checks are conducted by the Prison Service itself, in particular through the Inspection and Prevention Department of the Directorate General of the Prison Service, the prevention and complaints departments in individual prisons, and the Ministry of Justice (the Prison System Unit of the Minister's General Inspectorate Department). External supervision is exercised by the public prosecutor's office by means of delegated public prosecutors at provincial and higher public prosecutor offices (Section 78 of the Imprisonment Act). For more details, see also paragraphs 106 to 111 of this report.

Article 13

1. Prison system

106. In general, the handling of complaints up to 31 December 2005 was governed by Government Decree No. 150/1958 on the handling of complaints, notifications and initiatives of workers. Within the Prison Service, the handling of complaints was internally regulated by the Regulation of the Director General No. 7/1995 on the handling of complaints and notifications at the Prison Service of the Czech Republic. Act No. 500/2004, the Rules of Administrative Procedure, as amended, entered into force on 1 January 2006 and the Government Decree was repealed. Within the Prison Service, this issue is enshrined in the internal Regulation of the Director General of the Prison Service of the Czech Republic No. 78/2005 on the handling of complaints and notifications at the Prison Service of the Czech Republic.

107. The Director General is responsible for handling complaints at the Directorate General of the Prison Service. The actual investigation and handling of complaints at the Directorate General is carried out by the Complaints Unit of the Inspection Department at the Directorate General of the Prison Service. The handling of complaints in individual prisons, custody facilities, the security detention prison and institute and the security detention custody facilities and institute is the responsibility of their governors. Investigations in individual cases and the settlement of complaints in prisons are carried out by the delegated bodies, i.e. members of the prevention and complaints unit (autonomous unit) at the relevant prison.

The following table provides an overview of complaints submitted in the reporting period (2002 to 2009):

Year	*Justified*	*Partially justified*	*Justified for objective reasons or not caused by the Prison Service*	*Unfounded*	***Total***
2002	98	0	32	1 202	**1 332**
2003	91	0	30	1 280	**1 401**
2004	117	0	39	1 231	**1 387**
2005	97	0	38	1 495	**1 630**
2006	62	60	27	1 327	**1 476**
2007	48	42	30	1 276	**1 396**
2008	43	52	25	1 384	**1 504**
As at 31 July 2009	32	33	20	830	**915**
	588	187	241	10 025	**11 041**

108. The mechanism for the external supervision of compliance with the law in relation to imprisonment, custody and security detention by public prosecutors is operational. On 1 January 2009, Act No. 129/2008 on security detention and amending certain related laws, as amended, entered into force, thereby extending the competence of public prosecutor offices in their supervision of the prison system. As of 1 January 2009, Act No. 283/1993 on the public prosecutor's office, as amended, provides that the public prosecutor's office supervises, to the extent and under the conditions stipulated by a special law, compliance with legislation in places of custody, imprisonment, protective treatment, security detention, or protective or institutional care, and in other places where freedom is restricted under statutory authority.

109. Specific laws on the prison system — the Custody Act, the Imprisonment Act, and the Security Detention Act — similarly regulate supervision by public prosecutors. Supervision of compliance with legislation in relation to custody, imprisonment and security detention has been carried out since 1 July 2009 by the provincial public prosecutor offices in whose district the imprisonment, custody or security detention takes place. In their supervisory activities, public prosecutors may:

(a) At any time visit places used for custody, imprisonment and security detention;

(b) Inspect the documents under which persons are detained and talk to them without the presence of third parties;

(c) Verify that the orders and decisions of the Prison Service in a prison concerning custody, imprisonment or security detention comply with acts and other legislation;

(d) Request from Prison Service staff in the prison the necessary explanations, the presentation of files, documents, orders and decisions relating to custody, imprisonment or security detention;

(e) Issue orders to maintain regulations governing custody, imprisonment or security detention and order that persons held unlawfully in custody, prison or security detention be immediately released.

110. The Prison Service is required to execute the public prosecutor's commands without undue delay. Public prosecutors carry out supervisory activities in those places used for custody, imprisonment and security detention regularly every month. In addition, the public prosecutor's office carries out special supervisory work.

111. The Ombudsman continues to be active within the scope of external control mechanisms, acting on the initiative of natural persons or legal entities or on his own initiative. The adoption of the Security Detention Act also amended Act No. 349/1999 on the Ombudsman, as amended, by expanding the Ombudsman's mandate as of 1 January 2009 in relation to places used for security detention. With regard to the protection of the rights of persons placed in security detention, such persons may exercise their rights and legitimate interests to lodge complaints and requests to the authorities competent to handle them. A complaint or request must be sent promptly to the authority to which it is addressed. The institute director has a designated group of Prison Service employees responsible for collecting, sending and keeping records of complaints and requests, and fosters conditions conducive to the submission of complaints and requests by security detention inmates to ensure that only authorized persons handle them. Section 15(3) of the Security Detention Act directly states that Prison Service staff must immediately notify the court-appointed guardian, the institute director, public prosecutor, judge, Ombudsman or body responsible for checking the institute of any request by a security detention inmate for an interview and, at their request or instruction, to make such an interview possible at the institute.

2. Police Force of the Czech Republic

112. Any person who claims to have been subjected to torture has the right to complain to the direct superior of the police officer against whom the complaint is directed, or to any higher police official, including the Police President. It is also possible to submit a criminal charge. Complaints about police conduct are heard by the supervisory bodies of the Czech Police Force and the Police Inspectorate. The supervisory bodies, which are part of the Czech Police Force, investigate non-criminal cases; the Police Inspectorate investigates criminal cases. The Police Inspectorate reports directly to the Prime Minister; its director is

appointed by the Government after consultation by the relevant committee of the Chamber of Deputies.

113. Police activity in pretrial proceedings is supervised by the public prosecutor, who oversees compliance with the law. Therefore, the person against whom the criminal proceedings are held or the claimant have the right, at any time during the pretrial proceedings, to ask the public prosecutor to examine the procedure followed by the police authority. This request is not bound by any deadline, but the public prosecutor has a duty to handle any such request without undue delay and to notify the requesting party of the outcome of the review.[49]

The following table provides an overview of the number of all complaints about the conduct of Czech Police Force officers in the reporting period:

Year	*Number handled*	*Number warranted or justified*	*Percentage warranted or justified*
2001	5 205	728	14.0
2002	5 247	654	12.5
2003	5 725	698	12.2
2004	5 471	721	13.2
2005	5 094	653	12.8
2006	3 107	455	14.64
2007	3 184	493	15.48
2008	2 697	350	12.99
as at 31 July 2009	1 274	165	12.95

Article 14

114. Victims of torture and other inhuman and cruel treatment may seek under the Criminal Procedure Code compensation for damage caused to them by the offence. If victims wish to make a claim in pending criminal proceedings, they must lodge it, at the latest, during the trial before the initiation of evidence-taking by petitioning the court to impose the obligation to pay damages in its sentencing. The compensation is decided in *partie civile* proceedings. Victims who do not lodge this petition within the time specified in the law may submit a claim for compensation in civil proceedings, where a decision is taken in separate procedure. These proceedings are subject to the Civil Code (Act No. 40/1964, as amended) and a general limitation period of three years. For more information about claims for damages, see paragraphs 56–58 of this report.

Article 15

115. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is enshrined in Article 7(2) of the Charter of Fundamental Rights and Freedoms, and is considered a fundamental human right that is guaranteed to all without discrimination. It also follows from Article 1 of the Charter of Fundamental Rights and Freedoms that it is indefatigable, inalienable, imprescriptible and inviolable. These principles reflect the fact that nobody can be deprived of this right by law or by choice. It

[49] Act No. 141/1961, the Rules of Criminal Procedure, Section 157a.

cannot be revoked in any way, not even by legislation of any legal force. It applies to everyone, hence the duty of every person not to interfere with anybody else's exercise of this right. Article 7(2) of the Charter of Fundamental Rights and Freedoms can be seen as a specific case of the inviolability of a person, but unlike the provisions in paragraph (1) cannot be restricted even in cases specified by law. By interpreting the terms indefatigability, inalienability, imprescriptibility and inviolability of the prohibition of torture, we are de facto referring to its absolute nature, which does not allow derogation under any circumstances.

Article 16

116. Statistics on the number of convicted persons, their dividing by sex, age and nationality, as well as the use of accommodation capacities in prisons and custody facilities between 2002 and 2008, form Annexes 1 to 4 of this report.

117. In 2009, a new prison was opened in Rapotice. Kynšperk Prison expanded its accommodation capacity, which will start to be filled in early 2010. Otherwise, no other new prisons are being built. There are currently 36 prisons and custody facilities in the Czech Republic.

118. In connection with the entry into force of the new Penal Code from 1 January 2010, the list of types of sentences imposed by courts for crimes has been extended to include further penalties, i.e. home detention and a ban from attending sports, cultural and other social events. These new alternative sentences to imprisonment, along with the existing alternative penalties, should be imposed for crimes posing a lower danger to society. Together with other penalties which may be imposed as alternatives to imprisonment (such as a suspended prison sentence, community work and fines) this should also help to tackle overcrowding in prisons (see also paragraph 85 of this report).

119. Life imprisonment is governed by Section 71 of the Imprisonment Act, which states that the treatment of prisoners must also take into account the nature of the penalty and the danger posed by the convicted persons sentenced to that punishment. Paragraph (2) of that section provides for visits, out-of-cell time and disciplinary sanctions, which normally take place separately from other convicted prisoners. Visits usually take place under the direct supervision of a Prison Service officer. These prisoners may be allowed to visit cultural and common rooms with other convicted prisoners at the times specified in the internal rules. They may also work, usually in workplaces within their section with reinforced structural and technical security. Prisoners may take part in out-of-cell time and outdoor activities in keeping with their personal interests, but must respect the times stipulated in the internal prison rules for letting prisoners out. During these exercise periods, prisoners may take part in sports.[50] Life prisoners are offered a variety of activities based on the prison's possibilities as part of their treatment programme. The involvement of prisoners in the offered activities is voluntary; they cannot be forced to participate in activities. These activities include work activities, education, special educational activities, special-interest activities or activities aimed at forming external relations.[51] Prisoners are set a minimum treatment programme, the basis of which comprises work activities appropriate to the medical condition of prisoners, if they themselves do not select any of the alternatives offered by the treatment programme. The number of hours which life prisoners spend outside their cell every day depends very much on the prisoners themselves. Further

[50] Section 20 of Act No. 169/1999.

[51] Section 36 of Decree of the Ministry of Justice No. 345/1999.

provisions on how to treat life prisoners are defined in Regulation of the Director General of the Prison Service of the Czech Republic No. 55/2007 on the conditions and means of dealing with convicted prisoners placed in sections with reinforced structural and technical security, which entered into effect on 1 August 2007 (see paragraphs 149 and 150 of this report).

III. Response to the Committee's concluding observations and recommendations

120. After discussing the Third Periodic Report of the Czech Republic (CAT/C/60/Add.1) at the 594th and 597th meetings held on 4 and 5 May 2004, the Committee adopted its concluding observations (CAT/C/CR/32/2), in which the following recommendations were made to the Czech Republic.

A. Response to the recommendation made in paragraph 6 (a) of the conclusions and recommendations of the Committee (CRC/C/CR/32/2)

121. The combating of racial intolerance and xenophobia is covered by the Penal Code, which sets out the various constituent elements of criminal acts related to this issue. The new Penal Code will adopt these provisions from 2010. Attacks motivated by intolerance based on race, ethnic group, religion or political beliefs may be qualified not only as the crime of violence against a group of inhabitants and against individuals, but also the crime of the defamation of a nation, ethnic group, race, or beliefs, or the crime of incitement to hatred against a group persons or to restrict their rights and freedoms.[52]

122. On 23 April 2009, Act No. 198/2009 on equal treatment and on legal means of protection against discrimination and amending certain laws (the Antidiscrimination Act), which reflects the relevant grounds covered by the Convention, was approved. This Act entered into force on 1 September 2009.

123. The Antidiscrimination Act was conceived as a standard to ensure equal access for all persons in designated areas without any discrimination on grounds listed in the Act. Attacks motivated by intolerance based on race, ethnic group, religion or political beliefs are a criminal offence under Section 196 of the Penal Code.

124. As regards the prevention of discrimination in the police corps, the *Concept of Compulsory Lifelong Learning for Officers and Employees of the Czech Police Force and the Ministry of the Interior*[53] integrates human rights education directly into police training programmes; the aims are, inter alia, the elimination of racial prejudice and xenophobic views acquired in the family, in civilian schools, or via other influences in the social environment. Another aim is to strengthen the ability to recognize violations of human rights, particularly racially motivated crime, or class or other similar hatred, and to prevent possible belittlement in a victim's initial contact with the police.

[52] Act No. 140/1961, the Penal Code, as amended, Section 196(2), Section 198, Section 198a, and Act No. 40/2009, the Penal Code, as amended by Act No. 306/2009, Section 352(2), Section 355, Section 356.

[53] This concept (Ref. No. VO-983/2001) was drawn up by the Ministry of the Interior on the basis of Government Resolution No. 28/2001 on the Report on Human Rights Education in the Czech Republic.

B. Response to the recommendation made in paragraph 6 (b) of the conclusions and recommendations of the Committee

125. During the monitored period, there was a growing tendency to foster legal conditions for the most objective possible investigation into criminal activities perpetrated by members of the security forces.

126. Legislation is currently in force which places investigations into criminal offences committed by police officers, members of the Security Information Service and the Office for Foreign Relations and Information into the competence of the public prosecutor. The examination of crimes by police officers is now in the hands of the Czech Police Inspectorate, which replaced the previous Inspectorate of the Minister for the Interior; the director is no longer appointed by the Minister for the Interior, but by the Government, and reports directly to the Prime Minister. This has made the original inspectorate more independent of the Minister for the Interior.

127. At the same time, the previous Government approved and submitted to the Chamber of Deputies a bill on a General Inspectorate, drawn up by the Ministry of the Interior, under which, originally, an institution entirely independent from the institutional, staffing, legal and economic perspectives was meant to be formed as of 1 January 2010 to verify and investigate crimes by police officers, customs officers and members of the Prison Service. The bill has been submitted to the Chamber of Deputies for debate in its first reading.

128. In response to this fact — the announced formation of a *General Inspectorate of the Security Forces* — the Prison Service is preparing a general principle setting out the transfer of department heads and autonomous prevention and complaints units to the direct management of the Inspection Department of the Directorate General of the Prison Service. The preparation and subsequent implementation of the Concept effort is being driven forward by the Prison Service's efforts to ensure that conditions exist which will permit, to the fullest extent possible, the independent and impartial performance of duties by members of the Prison Service.

Investigation of delicts by Prison Service officers

129. All members of the Prison Service assigned to prevention and complaints units (autonomous units) in custody facilities, prisons, the security detention custody facilities and institute, and the security detention prison and institute (hereinafter referred to as "prisons") and members of the Prison Service assigned to the Prevention Unit of the Inspection Department at the Directorate General of the Prison Service are Prison Service bodies responsible for police operations in the performance of tasks in criminal proceedings; in investigations, they proceed as police authorities under the Criminal Procedure Code.

130. The competent police authority investigates suspected criminal activities by Prison Service officers with jurisdiction at the prison, except the governor, first deputy governor, deputy director of staff and head of the prevention and complaints unit (autonomous unit). Offences where the suspects are the above persons or officers assigned to the Directorate General of the Prison Service are investigated by the Prevention Unit of the Inspection Department at the Directorate General of the Prison Service. Cases where a member of the Judicial Guard or an escort officer is suspected of having committed a criminal offence are investigated by the prevention and complaints unit of the prison where this person works.

131. The commencement of actions related to criminal proceedings within the meaning of Section 158(3) of the Criminal Procedure Code to clarify and verify facts plausibly indicating that a Prison Service officer has committed a crime is recorded without undue delay by a police authority in a report stating the circumstances leading to the

commencement of proceedings and the manner in which they came to light. The police authority sends a copy of the report to the public prosecutor within 48 hours of the initiation of criminal proceedings; the initiation of criminal proceedings is also notified to the Inspection Department of the Directorate General of the Prison Service. Investigations into the suspected criminal activities of Prison Service officials may be concluded by the delegated police authority of the Prison Service in the following ways:

(a) It defers the case by means of a resolution in accordance with Section 159a of the Criminal Procedure Code if no offence has been committed and the case cannot be resolved otherwise;

(b) If the activity in question is classified not as an offence but as a misdemeanour, the police authority submits the case to the prison governor for disciplinary procedure (Section 159a(1) (b) of the Criminal Procedure Code);

(c) It temporarily defers the case (Section 159b of the Criminal Procedure Code);

(d) It submits the case to Czech Police Force authorities for a decision on the initiation of criminal prosecution (Section 160(1) of the Criminal Procedure Code);

(e) In some cases, the police authority may itself decide to initiate criminal prosecution (Section 160 of the Criminal Procedure Code) and then forward the case to the body of the Czech Police Force authorized to investigate (Section 162 of the Criminal Procedure Code).

132. Under Section 20 of Act No. 293/1993 on Serving Custody, as amended (hereinafter referred to as the "Custody Act"), to exercise their rights accused persons may make requests and complaints to the state authorities of the Czech Republic; the prison must send such requests and complaints without undue delay. If accused requests, they must be granted an interview with the prison governor or his deputy without undue delay. Prison Service staff are required to ensure that the rights of prisoners in custody are duly respected.

133. The protection of the rights of prisoners, including means of legal protection, is governed in a similar manner. In accordance with Section 26 of Act No. 169/1999 on Imprisonment and amending certain related laws, as amended, prisoners, in order to exercise their rights and legitimate interests, may make complaints and requests to the authorities competent to handle them. A complaint or request must be sent promptly to the authority to which it is addressed. The prison governor has a designated group of Prison Service employees responsible for collecting, sending and keeping records of complaints and requests, and fosters conditions conducive to the submission of complaints and requests by convicted prisoners to ensure that only authorized persons handle them. Prison Service staff notify the prison governor, public prosecutor, judge or authority inspecting prisons without undue delay of any request by a prisoner for an interview and, further to their instructions, make such an interview possible at the prison. A prisoner have the right to legal assistance from a lawyer, who is entitled, within the limits of his authorization, to maintain correspondence with the prisoner and speak with him without the presence of a third party. Prison Service staff are required to ensure that the rights of prisoners are duly respected.

134. The bodies responsible for investigating complaints in the prison system are members of the Prison Service assigned to prevention and complaints units (autonomous units) at prisons, and members of the Prison Service working for the Complaints Unit of the Inspection Department at the Directorate General of the Prison Service. Complaints against prison governors and their deputies, the directors of Prison Service convalescent homes and their deputies, and employees of the Directorate General of the Prison Service are investigated by the Complaints Unit of the Inspection Department at the Directorate

General of the Prison Service. This unit also acts as an appeal body. Complaints about other officers and civilian employees of the Prison Service are handled by the prevention and complaints units (autonomous units) in the individual prisons.

135. At the Ministry of Justice, the body competent to investigate complaints is the Prison System Unit of the General Inspection Department at the Ministry. It is in a position to handle essentially any complaint that is received by the Ministry.

136. In its investigation of complaints, the Prison Service proceeds "by analogy" with Section 175 of Act No. 500/2004, the Rules of Administrative Procedure, as amended, and an internal regulation – Regulation of the Director General of the Prison Service of the Czech Republic No. 78/2005 on the handling of complaints and notifications at the Prison Service of the Czech Republic. When dealing with disciplinary issues, as of 1 January 2007 the Prison Service has proceeded in accordance with Act No. 361/2003 on the service of members of security forces, as amended.

C. Response to the recommendation made in paragraph 6 (c) of the conclusions and recommendations of the Committee

137. A summary of cases of ill-treatment by the police is kept in the statistics of the Internal Control Department of the Police Presidium and in the statistics of the Police Inspectorate; in the future, an overview will also be maintained in the statistics of the General Inspectorate of Security Forces. It is also possible to draw from the statistics of the Ministry of Justice, i.e. public prosecutor offices and the courts.

138. In light of the tasks performed by the Czech Army, two sets of cases may be considered. The first is the activity of troops deployed in foreign operations; the second is the approach by military police officers towards soldiers and civilians in the country. Any use of force by troops deployed in foreign operations is recorded and evaluated. So far, no cases of infringements by Czech soldiers of rules set for soldiers on each mission have been recorded. The military police keeps central records of all cases of the use of coercive means and evaluates them. In the period under review, there were no cases of inappropriate behaviour that needed to be addressed in disciplinary or criminal proceedings.

D. Response to the recommendation made in paragraph 6 (d) of the conclusions and recommendations of the Committee

139. The right to legal assistance in proceedings before courts, other state bodies or public authorities is guaranteed to everyone from the beginning of the proceedings under Act No. 2/1993, the Charter of Fundamental Rights and Freedoms (Article 37(2)). Persons apprehended under Act No. 141/1961 on the Criminal Procedure Code, i.e. suspects or accused persons, have the right to choose their defence counsel and seek his advice during detention (Section 76(6)). Following the Czech Republic's accession to the European Union, the right to legal assistance was expanded to include the possibility of the provision of legal services by "visiting European lawyers" and "established European lawyers", who can represent the citizens of other European Union countries before the Czech courts. This is enshrined in Part III of Act No. 85/1996 on the legal profession, as amended.

140. The right to report any detention in general, not just in the event of an arrest under the Police Act (as was the case before), is contained in Section 24(2) and (3) of the Police Act. Exceptions to this provision are cases where such notification would jeopardize a major police task (e.g. the apprehension of an organized group of offenders at the same time) or would pose disproportionate difficulties (e.g. a request by a person to inform an alleged relative abroad who cannot be traced, a request to inform a large number of

relatives or other persons, etc.). However, in this case, the police must inform the public prosecutor, as the public prosecutor's office is responsible for general monitoring of the detention of persons.

141. Detained persons' entitlement to legal assistance is now clearly covered by the fourth paragraph of Section 24 of the Police Act. Detained persons have the right to secure, at their own expense, legal assistance and to speak with their counsel without the presence of a third party. To this end the police immediately provide the necessary assistance, if requested by such persons.

E. Response to the recommendation made in paragraph 6 (e) of the conclusions and recommendations of the Committee

142. The separation of juveniles from adults when placing them in police cells is expressly stipulated by Section 30(b) of the new Act No. 273/2008 on the Police Force of the Czech Republic. Juveniles under 19 years of age are housed separately from adult prisoners in prisons. Unless, upon reaching 19 years of age, a juvenile court decides that such a convicted juvenile is to be transferred to a prison for convicted adults, he continues to serve his sentence in a prison for juveniles.

143. The Security Detention Act states that inmates under 19 years are kept separately from adult inmates.

144. In proceedings against children under the age of 15 years who are suspected of an act which would otherwise be a criminal offence, the court proceeds in accordance with special laws governing civil proceedings because children under fifteen years of age are not criminally liable and therefore cannot be subject to criminal proceedings. In such cases, juvenile courts may order the following measures, as a general rule based on the results of a previous educational and psychological examination:

(a) Care order;

(b) Care restriction;

(c) Warning;

(d) Placement in a therapeutic, psychological, or other suitable educational programme at an educational care centre;

(e) Supervision by a probation officer;

(f) Protective care.

A juvenile court imposes protective care on children who have committed an act for which the Penal Code allows the imposition of an exceptional sentence and who, at the time of the act, were aged between 12 and 15 years. Protective care may also be imposed on a child who, at the time of the act, was under 15 years of age, if justified by the nature of the act which would otherwise be a criminal offence and if necessary to ensure their proper upbringing. Educational measures may also be imposed. Another measure is institutional care under Section 46 of the Family Act.[54] The monitoring of facilities for institutional care or protection care is entrusted to the public prosecutor, who holds a number of powers in this respect, e.g. the right to talk in isolation with the children, to request explanations from

[54] Act No. 94/1963, on the family, as amended.

the facility staff and other persons, and to petition a court to annul an institutional care or protective care order.[55]

145. Children in such facilities are regularly visited, once every three months, by a child protection officer. Compliance with this requirement is continuously monitored in the provincial authority's inspection activities.

F. Response to the recommendation made in paragraph 6 (f) of the conclusions and recommendations of the Committee

146. Act No. 52/2004 amending Act No. 169/1999 on imprisonment and amending certain related laws, as amended, which entered into force on 1 July 2004, paved the way for an expansion in activities accused and life prisoners, in order to encourage them to occupy themselves and reduce the amount of time spent in idleness.

147. A provision was inserted into the Act on Serving Custody stating that, during periods of custody, custody facilities and prisons are required, where possible, to offer accused the chance to take part in preventative care, educational, leisure and sports programmes.

148. Accused persons that are held in expulsion custody have more opportunities for activity under a new provision which states that those persons who are detained in anticipation of deportation are housed in a low-security custody facility provided that they do not infringe the established rules and discipline.

149. Opportunities for an expansion in activities for life prisoners have been created by deleting provisions from the Imprisonment Act stating that life prisoners are kept separately from other prisoners and that a life sentence is focused on the protection of society from further crime by the prisoner by isolating him in prison and on guiding his behaviour towards standards of public decency.

150. Accused as well as life prisoners are allowed to work provided that appropriate work is available for them. The Prison Service is gradually preparing the suitable areas in which these groups of prisoners can work. Accused persons must consent to the assignment of work. Finding appropriate work for all groups of prisoners is difficult. The Prison Service of the Czech Republic has faced long-running problems in finding appropriate work for accused and life prisoners. From an economic point of view, the employment of accused is less favourable than the employment of convicted prisoners for those contracting the work because the minimum wage in the Czech Republic must be respected for accused persons.

G. Response to the recommendation made in paragraph 6 (g) of the conclusions and recommendations of the Committee

151. The Prison Service of the Czech Republic has paid long-standing significant attention to the issue of violence among prisoners. This issue is currently governed by Regulation of the Director General of the Prison Service of the Czech Republic No. 82/2006 on the prevention and early detection of violence between accused and convicted prisoners, as amended by Regulation of the Director General of the Prison Service of the Czech Republic No. 39/2006. Before these regulations entered into effect, the issue was

[55] Act No. 109/2002 on institutional care or protective care in educational establishments and on preventive educational care in educational establishments and amending other laws, Section 39(1).

governed, by turns, by Order of the Director of the Remedial Education Authority of the Czech Republic No. 14/1991, Regulation of the Director General of the Prison Service of the Czech Republic No. 32/1994, and Regulation of the Director General of the Prison Service of the Czech Republic No. 41/2002. Incidents of inter-prisoner violence, including related data, such as numbers of prisoners identified according to set criteria, targets of violence, and perpetrators of violence, including the handling of incidents of violence, are duly statistically covered; every year, they are assessed at coordinating meetings of the Directorate General of the Prison Service of the Czech Republic and the appropriate measures are taken. Statistics on incidents of violence between prisoners and complaints about Prison Service staff are contained in the tables attached to this report as Annexes 5 and 6.

152. The tables list, by year (2002 to 2008), the number of accused persons by type (a), the number of prisoners by type (b), the number of detected cases of physical violence in relation to prosecuted persons , including the number of targets of violence, perpetrators of violence, and, since 2006, the number of incidents of and participants in mutual violence (c), and the number of detected cases of physical violence in relation to convicted prisoners, including the number of targets of violence, perpetrators of violence, and, since 2006, the number of incidents of and participants in mutual violence (d).

153. In accordance with Regulation of the Director General of the Prison Service No. 82/2006 on the prevention and early detection of violence between accused persons and prisoners, all custody facilities and prisons (“prisons”) identify persons according to the following criteria: people with significantly reduced body weight and people with obviously low levels of intellect, potential targets of violence and potential perpetrators of violence. The identification of persons belongs to the category of preventive measures and the relevant members of staff deal with this difficult issue thoroughly even though it is impossible to rationally determine the successfulness of this identification process. However, it can reasonably be assumed that, in the absence of this concept, the incidence of violence between accused or convicted prisoners would be much higher. Increased attention is consistently paid to identified persons, and in this context it should be emphasized that those identified as potential targets of violence include persons who might attract unwanted attention from other prisoners, such as sexual deviants or those who are in custody or prison for serious violent offences or crimes against morality. Prisons are relentless in their efforts to identify persons in accordance with the relevant criteria, and the responsible prison staff carry out this activity consistently and responsibly. All those identified, except potential perpetrators of violence, are subject to regular preventive medical and visual examinations to determine whether there are obvious signs of physical violence on the bodies of these prisoners.

154. Prison guards on duty must have an overview of all identified accused or convicted prisoners and must check them at set intervals. Any prison employee who discovers a case of physical violence among prisoners or who detects signs of physical violence on their bodies must immediately notify this fact to his direct superior. Any finding of physical violence must be reported to the prison governor, the head of the custody or imprisonment unit, and the head of the prevention and complaints unit. The prison employee must immediately draw up a report on the stipulated form on incidents of physical violence discovered.

155. If any case of violence is identified, the target of the violence or participants in mutual violence must be examined by a doctor and then by a psychologist; other appropriate measures are taken on the basis of their examinations.

156. The performance of tasks related to physical violence among prisoners is evaluated semi-annually at prison management meetings or at meetings of heads of units and heads of teams.

157. Written information about the implementation of measures for the prevention and early detection of violence among prisoners is drawn up by the head of the custody or imprisonment unit once a year on the set form, which is submitted by 31 January to the Custody and Imprisonment Department at the Directorate General of the Prison Service.

Numbers of incidents of violence detected

(The table below provides basic information on the numbers of accused and convicted prisoners and the numbers of cases of violence in the years 2002–2008).

Year	*Average number of accused persons*	*Number of incidents involving accused persons*	*Average number of convicted prisoners*	*Number of incidents involving convicted prisoners*	***Total incidents***
2002	3 412	136	13 881	295	**431**
2003	3 410	123	13 559	306	**429**
2004	3 323	103	14 773	334	**437**
2005	3 045	106	16 122	401	**507**
2006	2 582	74	16 542	400	**474**
2007	2 369	104	16 734	442	**546**
2008	2 381	91	17 765	429	**520**

H. Response to the recommendation made in paragraph 6 (h) of the conclusions and recommendations of the Committee

158. Medical examinations are carried out in accordance with the procedure laid down in general rules of confidentiality imposed on medical staff in relation to access to information on health, as contained in Section 55(2) (d) of Act No. 20/1966 on public health care, as amended. This provision obliges health professionals to keep confidential any facts of which they learn in the pursuit of their profession, except where such information is communicated with the consent of the person treated. Section 23(2) of Decree No. 345/1999 publishing the Rules of Imprisonment provides that preventive initial, periodic, emergency and exit medical examinations of convicted prisoners should be conducted out of the hearing and, unless decided otherwise by the doctor, and out of sight of employees of the Prison Service, with the exception of medical staff.

159. Medical confidentiality is guaranteed. Prisons and custody facilities were ordered to adjust the door to surgeries by fitting apertures with blinds into the surgery to ensure the safety of medical workers. The presence of a guard-escort during a medical examination was modified so that he is out of earshot, and unless otherwise decided by the doctor, out of sight.

160. The Prison Service of the Czech Republic, which under the law is also a healthcare facility, is an organizational unit of the state and manages national budget funds. This system has been enshrined in legislation because health services to convicted and accused persons have specific characteristics which cannot currently be guaranteed by transferring them to another entity, including the Ministry of Health. The Ministry of Health does not have the conditions to deal with the services provided by the Prison Service to accused or convicted prisoners. An assessment of the possible transfer of health services from the Prison Service, and by extension the Ministry of Justice, would have to be preceded by an analysis evaluating the pros and cons of any changes in the healthcare service system.

I. Response to the recommendation made in paragraph 6 (i) of the conclusions and recommendations of the Committee

161. The Czech Government has previously informed the Committee that the amendment to the Imprisonment Act made by Act No. 52/2004 extended, with force from 1 July 2004, the list of cases in which convicted prisoners are exempt from the obligation to pay the expenses of their custodial sentence. In particular, this applies to convicted prisoners who, through no fault of their own, are unable to work during their sentence (unless they have other income or other monies), convicted prisoners under 18 years of age, convicted prisoners placed in educational or therapeutic programmes with a teaching or therapy period of at least 21 hours per week, and convicted prisoners who participate in court hearings as a witness or victim.

162. Another change is that the state no longer demands penalty interest on claims for the costs of imprisonment. Under current legislation, the prison governor may, at the request of a convicted person, waive in whole or in part the liability for the costs of any imprisonment from which the convicted person has been released where justified by the person's oppressive social conditions. The recovery of the costs of imprisonment is dropped in all cases where a convicted person dies and leaves no property from which the claim could be satisfied in the settlement of the inheritance, where a convicted person is extradited or transferred abroad or is deported upon release from prison and it is clear from all the circumstances that further recovery would be unsuccessful.

163. The above fundamental amendment to the Imprisonment Act was followed up by an amendment to Decree of the Ministry of Justice No. 10/2000, implemented by Decree No. 135/2005, under which, with effect from 1 April 2005, the rules for calculating the expense of serving a prison sentence that convicted persons are required to pay were changed. Under previous legislation, the costs of the sentence were set at a flat daily rate (CZK 45), which, given the long-term low employment levels among convicted persons, led to a disproportionate increase in claims on their release from prison, the collectability of which was very low. The amendment to the Imprisonment Act, which exempted convicted prisoners from the obligation to cover the cost of their imprisonment if, through no fault of their own, they were not assigned work and had no other income or cash in a calendar month, did not, in the setting of costs at a flat rate, motivate other convicted prisoners to work in cases where their earnings were not much higher than — or were below — the monthly cost of their imprisonment.

164. The new legislation introduced the setting of imprisonment costs as a percentage (40%) of the net remuneration of a prisoner for work or other income; the overall amount of costs is limited to CZK 1,500 per calendar month. Therefore, where the pay for work is low, the cost which a convicted person is required to pay is also lower (and vice versa). For most convicted prisoners, this change virtually ruled out the possibility that debts related to the cost of their imprisonment would be outstanding after their release from prison. An exception to this rule is convicted prisoners who are pensioners that have their pension sent to the prison and do not have any other income during their imprisonment. The method used to set the cost of confinement which accused in custody are obliged to cover has not changed; the costs continue to be calculated from a flat daily rate.

165. The new legislation, which introduces a level of imprisonment costs based on a percentage of the convicted prisoner's income rather than a flat daily rate, is undoubtedly a positive change from the aspect of the re-socialization of convicted prisoners once they are released from prison, and in terms of the convicted prisoners' motivation to find lower-paid work. Positive effects on the national budget can also be expected as it will eliminate the cost of trying to recover what are usually irrecoverable debts.

166. The Ministry of Justice is not currently planning any further reduction in the reimbursement of the costs of a sentence or the abolition of this obligation altogether.

J. Response to the recommendation made in paragraph 6 (j) of the conclusions and recommendations of the Committee

167. Concerning the independent investigative authority, see the response to recommendation (b); concerning the statistics on criminal offences investigated, see the response to recommendation (c).

K. Response to the recommendation made in paragraph 6 (k) of the conclusions and recommendations of the Committee

168. Regarding the investigation of complaints in connection with the demonstrations at the International Monetary Fund meeting, 29 complaint files were maintained, three of which were assessed as legitimate complaints. In addition, three checks were carried out, two of which were found irregularities.

L. Response to the recommendation made in paragraph 6 (l) of the conclusions and recommendations of the Committee

169. No one has been convicted of the crimes of torture or inhuman treatment in the Czech Republic. Therefore, no one has been compensated.

M. Response to the recommendation made in paragraph 6 (m) of the conclusions and recommendations of the Committee

170. The new Section 46a and amended text of Section 73 of Act No. 325/1999 on asylum lay down a different system for all foreigners applying for international protection involving unaccompanied minors, parents or families with minor or adult disabled children, persons with serious disabilities, pregnant women or persons who have been tortured, raped or subjected to other serious forms of psychological, physical or sexual violence. Section 81(2) of this Act states that after initial urgent tasks in the proceedings, unaccompanied minor foreigners are placed, by a court decision, in educational facilities for institutional care or into the care of a person identified in the court decision. In cases involving parents with children, the whole family is placed together, capacity permitting.

171. Act No. 326/1999 on the residence of foreign nationals in the Czech Republic stipulates that unaccompanied minor foreigners are housed separately from adults. Facilities for these children are managed by the Refugee Facilities Administration.

N. Response to the recommendation made in paragraph 6 (n) of the conclusions and recommendations of the Committee

172. The issue of sterilization has been previously been the subject of a report by the Ombudsman[56] and a meeting of the advisory body to the Ministry of Health. The issue of

[56] See the Closing Opinion of the Ombudsman regarding unlawful sterilization and proposed remedial

sterilization was also discussed by the Government Council for Human Rights. Its 2007 initiative on this matter, proposing the compensation of victims, has been discussed by the Government on account of major discrepancies. In 2009, the Government Council for Human Rights and the Minister for Human Rights prepared a new initiative which aims primarily to inform the Government about the existence problem of sterilization carried out in breach of the law. The initiative proposes certain measures that should help clarify the practice of illegal sterilization and prevent a recurrence of similar cases. In addition to providing information to the Government, the initiate also proposes that the Government should take note of the long-term violation of the law in cases of illegal sterilization and express regret at the individual errors identified in such sterilization. The initiative does not, however, address the issue of compensation for the female victims. The initiative also proposes certain measures to prevent a recurrence of similar cases. These are mainly measures to verify compliance with the law in the performance of sterilization in the Czech Republic and to strengthen the teaching of medical ethics and respect for the human rights of patients at medical faculties in the Czech Republic. The initiative of the Ministry of Human Rights regarding illegal sterilization was approved in November 2009 by a Government resolution in which the Government expressed regret at the individual errors identified in the implementation of sterilization in the past, and ordered the Ministry of Health to take additional measures to prevent the possibility of a recurrence of similar cases in the future (for more on sterilization, see also paragraphs 56–60).

O. Response to the recommendation made in paragraph 6 (o) of the conclusions and recommendations of the Committee

173. This information has been provided to the Committee.

P. Response to the recommendation made in paragraph 6 (p) of the conclusions and recommendations of the Committee

174. Reports submitted by the Czech Republic and the Committee's conclusions and recommendations regarding these reports are published, inter alia, on the website of the Office of the Government of the Czech Republic (www.vlada.cz).

action of 23 December 2005.