



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

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Held at the Palais Wilson, Geneva,
on Wednesday, 5 May 2004, at p.m.

Chairperson: Mr. MARIÑO MENÉDEZ

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.597/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 6) (continued)

Third periodic report of the Czech Republic (CAT/C/60/Add.1, CAT/C/32/L/CZR)
(continued)

1. At the invitation of the Chairperson, the members of the delegation of the Czech Republic took places at the Committee table.
2. Mr. JAŘAB (Czech Republic) said that the delegation would attempt to answer all the questions raised during the previous session.
3. Mr. BURKIEWICZ (Czech Republic), responding to the questions concerning the penitentiary system, said that a misunderstanding had arisen with regard to the Roma situation. The Roma were not treated as an ethnic minority in the prisons and therefore did not receive any special treatment or additional rights or responsibilities. There was no evidence of any racially motivated ill-treatment of Roma prisoners by prison staff, although that did not exclude the possibility of violence between prisoners.
4. With regard to the obligation to reimburse the cost of imprisonment, under the amendment to the Serving Prison Terms Act, a new system of reimbursement had been introduced, whereby the obligation no longer applied to prisoners under the age of 18, to those who were assigned to educational or therapeutic programmes or to those who were not responsible for not having been assigned work. Employment had to be explicitly offered to prisoners, and if they rejected the offer of work, they were held responsible for not being assigned work and therefore obliged to reimburse the cost of imprisonment. It should be noted that the costs prisoners were obliged to reimburse represented approximately 10 per cent of the real cost of the prison stay. It was estimated that, in the future, the obligation would apply to only 30 per cent of all prisoners.
5. Regarding staff training, the educational system had been systematically improved, particularly in the area of human rights. A special commission on human rights education had been established and special programmes developed.
6. A misunderstanding had arisen in respect of one of the responses to preliminary questions, which stated that although punishment could be executed only in a manner respecting the dignity of prisoners and reducing the harmful effects of imprisonment, it should not be at the expense of the need to protect the community. What that meant was that, in certain cases and on the basis of risk assessment, special measures were required, such as the use of handcuffs.
7. Regarding health care, the use of handcuffs during examination depended on the instructions of the psychiatrists, but was generally limited to extreme situations. Prison officers were present during examination only if expressly requested by the doctor. Transfer of responsibility for prison health care from the Ministry of Justice to the Ministry of Health Care was a complicated issue, and would be included in the development plan for the Prison Service up to 2015, which was currently being prepared.

8. In general, it was the Managing Director of the Prison Service who was responsible for handling complaints and deciding whether they were justified or not. However, if a prison governor received a complaint directly, he handled it himself. In deciding whether a criminal offence had been committed, the police authority of the Prison Service carried out only initial investigations before forwarding documents to the police, who made the final decision.
9. Regarding education of young offenders, under the amendment to the Serving Custody Act, prisons were obliged to offer them, and indeed all detainees, participation in education, hobby and sport programmes. There were special units for juvenile prisoners in some prisons, and adult prisoners up to the age of 26 were also placed there. Work with juveniles and young adults was oriented towards two basic goals: purposeful use of time and education.
10. The Government would definitely follow the recommendations of the Council of Europe and the European Committee on the Prevention of Torture regarding life sentences and other long-term sentences. The new Act on life imprisonment that would come into force in June abrogated the provision concerning the separation of prisoners serving life sentences and also the provision concerning the purpose of life imprisonment.
11. Mr. MACHOŇ (Czech Republic), responding to the question on procedural delays in the judicial system, said that the root causes of the problem included the continuing transformation of the judiciary, a lack of material resources and lengthy procedures. However, the Government was addressing the issue systematically. The recently amended Courts and Judges Act provided for an extension of the mechanism of appeals to the higher authority of the State administration of courts in the case of procedural delays. Additional appeals to the courts could be lodged if the original claim had not been satisfactorily reviewed. If the complainant filed a claim with the High Court to set a time limit for a delayed procedural motion, such a decision became binding on the inferior courts concerned. An amendment to the Constitutional Court Act had clarified the situation with regard to the commencement of the 60-day deadline for introducing constitutional appeals.
12. The amendment had also introduced a new instrument for review procedures with respect to criminal proceedings. If the decision of the Constitutional Court was considered in breach of human rights and fundamental freedoms by the international tribunals, including the European Court of Human Rights, a petition to review the proceedings could be filed. If substantiated, the Constitutional Court would cancel its former decision and start a new procedure.
13. In civil procedure, a number of amendments had aimed to concentrate procedure in the first instance, with stricter time limits on certain steps. The numerous amendments to the criminal procedure act had also contributed to shortening procedures, particularly for the least serious criminal offences. Improvements had been achieved by merging the Investigation Service with the police authorities, setting a time limit for the investigation phase, employing the shortened preparatory phase and extending the use of facilitated procedures.
14. In response to questions concerning the acquisition and loss of Czech citizenship, it should be clarified that the loss of citizenship was provided for only by the Act on the acquisition and loss of citizenship. The provision contained in article 12 of the Constitution stating that

nobody would lose their citizenship against their own will was reflected in national law. Citizenship could be lost only through a voluntary declaration or the voluntary acquisition of the citizenship of another State.

15. Regarding the status of conventions on statelessness, the Czech Republic had been a party to the Convention on the Reduction of Statelessness since 2001, and the President was expected to issue the instrument of accession to the Convention relating to the Status of Stateless Persons in the coming months.

16. Ms. MAREČKOVA (Czech Republic), responding to questions concerning the provision of legal aid in judicial proceedings, said that conditions were regulated by the Code of Civil Procedure, the Code of Administrative Procedure, the Code of Criminal Procedure and the Constitutional Court Act. According to the Code of Criminal Procedure, legal assistance could be provided if applicants testified that they did not have sufficient funds to pay for representation by an attorney. In cases where mandatory legal representation was required by law, free legal assistance could be provided, depending on the decision of the court. If it was not provided, the accused was obliged to pay his own expenses. The conditions and procedures governing the provision of legal assistance in judicial proceedings, especially with regard to the objective assessment of resources, were not covered by legislation but only by an instruction issued by the Ministry of Justice. Free legal assistance could also be provided in accordance with the Act governing the legal profession, which stated that any person who could not afford legal services was entitled to apply for assistance to the Bar Chamber. The latter could appoint a specific attorney to provide a legal service for a reduced fee or free of charge.

17. One of the problems of providing free legal assistance was that no detailed process had been established for the assessment of entitlements, and the criteria used to evaluate an applicant's situation were insufficient. Therefore, the Government had approved the general principle of a bill regulating the provision of free legal assistance, with the aim of unifying the individual areas of legislation governing the issue, while respecting the specific nature of different judicial proceedings.

18. Regarding banishment custody, the situation whereby many banished persons had not been heard by a judge had arisen as a result of the inconsistent interpretation of the law by the courts. Both the Supreme Court and the Constitutional Court had recently addressed the issue and had concluded that, when deciding whether to remand a person in banishment custody, the courts should always hear the person in question according to the Rules of Criminal Procedure.

19. The Supreme Court had also addressed the issue of the maximum duration of banishment custody. The maximum duration for custody in general, which was laid down by the Code of Criminal Procedure, also applied to banishment custody. However, the courts had not been consistent in deciding whether the maximum duration ran separately when the court decided to remand a person in banishment custody, or whether it applied to all stages of the proceedings together. The Supreme Court had reached the conclusion that the maximum duration of banishment custody, as a special type of custody, should be counted separately.

20. The amendment to the Remand Act, based on the Ombudsman's recommendations, introducing improvements to the conditions of prisoners in banishment custody, had been approved in 2003. The amendment regulated the separation of persons in banishment custody, and their mandatory placement in a low-security remand unit.
21. Regarding the disciplinary sentence of imprisonment in the Army, the reduction in the number of imprisonments in 2003 might have been caused by the reduction in the number of military prisons due to structural and technical deficiencies, and the subsequent replacement by alternative sanctions. Imprisonment could be imposed only on persons carrying out compulsory military service, and as the army would be fully professional from 2005, that disciplinary punishment would cease to exist.
22. Despite a number of preventive measures, acts of bullying among persons on compulsory military service continued to be reported, although some positive trends had been noted in that area. In 2002, the police had investigated 113 cases of alleged violation of rights and protected interests of servicemen; in 2003, the number had dropped to 83. As bullying predominantly occurred among soldiers doing compulsory military service, it was hoped that the potential for bullying would decrease in the fully professional army.
23. Ms. SVECKOVÁ (Czech Republic) said that the Ministry of Education, Youth and Physical Training had issued a directive in 2001 regarding measures to prevent bullying among children. The directive specified measures to be taken by institutions and the role to be played by individual educational establishments. It also obliged the directors of educational institutions to inform the police of any particularly serious incidents that required police intervention. The main aim of the directive was to increase awareness of bullying among pedagogical staff, and to educate them in methods of preventing it.
24. Regarding the amendments made to legislation on institutional and protective care in educational establishments and preventive care in educational facilities, a new law had been drafted by the Ministry of Education, Youth and Physical Training, which would be discussed in the near future in a management meeting in the Ministry, following which it would be circulated among other ministries and interested bodies for comments, sent to the Cabinet for approval and passed by Parliament. It was hoped that the legislation would come into force within the following two months. New legislation would allow the directors of children's institutions to grant permission for a child to spend time outside the establishment, even if it was an establishment responsible for protective care, a decision that could currently only be made by a court. The Government believed that such a legislative change would improve the legal status of children in such institutions and allow for a more flexible approach to their treatment. The Government was, however, aware that more complex measures needed to be taken, including extra staff training, in order to ensure sustainable change.
25. Mr. BUREŠ (Czech Republic) said that the Police Act ensured that the next of kin of persons under arrest were informed of their detention at the detainees' request. The next of kin of minors under arrest would be notified of their detention in all cases. The Police Act also provided for informing other parties about an arrest, including lawyers. Detainees had constitutional rights to legal aid and health protection. According to the Health Care Act, those

held in pre-trial detention or imprisoned persons had the right to consult a physician of their choice. The fact that the Police Act did not oblige police officers to contact a physician at the request of a detainee did not hamper the enjoyment of that right.

26. Regarding asylum, since 1990, 74,000 asylum requests had been submitted, of which 2,450 had been granted. Although the percentage of successful asylum applications was low, the 1951 Geneva Convention was strictly applied in all cases. Recent changes to asylum laws had not been detrimental to genuine asylum-seekers, but had been implemented to discourage the use of asylum claims for the purposes of labour migration. In the past, the Czech Republic had granted temporary protection to asylum-seekers from Bosnia, Kosovo and Chechnya. Article 91 of the Alien Act on obstacles to leaving the country stated that persons could not be forced to leave the Czech Republic if doing so would endanger their life or freedom due to their race, religion or political beliefs, or if they were in danger of being subjected to torture or involved in armed conflict. The provision was often applied to asylum-seekers whose asylum applications had been rejected.

27. Asylum-seekers were normally not held in alien detention centres. People detained there could still, however, apply for asylum. Such detainees would remain in the detention centre for a maximum period of 180 days, following which, if their asylum applications had not been processed, they would be transferred to asylum detention facilities. During the 180-day period, it was compulsory for police to continue to verify that the reasons for detention remained valid.

28. Responding to the Committee's question regarding aliens being held in police cells, he said that that had been a temporary measure used in the past due to overcrowding in detention facilities. Aliens were placed in strict regime detention facilities only if they were prone to aggressive behaviour or breaking the internal rules of alien detention institutions, as specified in article 132 of the Alien Act. Article 132 (e), which provided for the detention of persons whose identity was unknown in strict regime detention facilities, had been removed from the Alien Act. The Ministry of the Interior was taking continuous measures to ensure the improvement of living conditions in alien detention facilities. In one such institution, separate facilities had been set aside for women and children. Leaflets containing information on the rights of alien detainees were available to the public in all major languages. The Government was planning to transfer the management of alien detention centres from the police to the Ministry of the Interior.

29. Responding to the Committee's questions concerning offences committed by the police, he said that the Code of Criminal Procedure had recently been amended to give the State Prosecuting Attorneys' Offices responsibility for investigating offences committed by police officers, thus allowing the Inspectorate of the Ministry of the Interior to deal with specialized policing procedures. The Government believed that the amendment would have far-reaching consequences, and would become increasingly effective as the Prosecuting Attorneys became accustomed to their new role.

30. Regarding the meeting of the International Monetary Fund held in the Czech Republic, the Czech police and the public had been unprepared for the shocking eruption of street violence, which had been perpetrated predominantly by foreigners. That feeling of shock did not, however, justify the ill-treatment of detainees. The majority of the large number of complaints made by anti-globalization networks with political intent had been rejected, although that had not influenced the treatment of complaints made by protesters from the International Monetary Fund

meeting. The outcome of the investigation of the majority of the complaints was that they were not found conclusively justified, since contradictory testimonies had been given and very little material evidence had been produced. It should be noted, however, that the Ministry of the Interior was aware that some cases of ill-treatment had occurred. One particular case in which a police officer had used violence against a peaceful protestor had resulted in the police officer in question being punished for misdemeanour and the protestor being awarded damages and an apology by court decision.

31. Regarding trafficking in persons, new rules had been drafted and approved by the Government, and were currently being discussed in Parliament. They contained provisions that were in line with the Anti-Trafficking Protocol to the United Nations Convention against Trans-National Organized Crime. A national strategy for combating trafficking in persons had also been developed, which included measures for improving investigation and prosecution procedures in cases of human trafficking, prevention measures and system of protection and assistance for victims, financed by the State and implemented principally by non-governmental organizations (NGOs).

32. Comprehensive information concerning superior orders could be found in the written replies that the Czech Republic had submitted to the Committee. All types of crime were specified in the Penal Code, with which all police officers were familiar. It was for the State Prosecuting Attorney to decide whether an act was an offence or not.

33. The Government felt it was necessary to develop an ethical code for the police force. Such a code was currently being drafted for police servicemen, and one had already been adopted for Prison Service personnel. The Government monitored the application of such codes extremely carefully. Human rights training for police officers had been considered inadequate, and two measures had recently been taken, the first of which was the development of a collection of training materials, ranging from legislative reviews to case studies originating with the European Court of Human Rights. Role-play was also becoming an increasingly important aspect of human rights training. The second measure taken was the implementation of a joint project with the Netherlands for human rights training, which included opening a human rights resource centre in one of the Czech police academies. A comprehensive system of training for officials of the Ministry of the Interior had also been developed, with input from members of NGOs, including the Czech-Helsinki Committee.

34. Mr. JAŘAB (Czech Republic) said that measures had not been taken to provide specific protection for whistleblowers, but that the Government might contemplate the issue in future. The Committee had asked why only active members of racist organizations were punished. The Ministry of the Interior actively disbanded any racist organizations that attempted to obtain official registration. Existing organizations were therefore unregistered and membership thereof was not formally recognized. Only active racist activity could therefore be punished.

35. The Committee had reportedly received information from an NGO, according to which a recent amendment to the Code of Criminal Procedure had reduced the power of the Ombudsman over the Inspectorate of the Ministry of the Interior. The delegation had consulted with the Deputy Ombudsperson, who had stated that such information was incorrect. Neither the original Code of Criminal Procedure, nor the amended version had granted the Ombudsman power over the Inspectorate. The Deputy Ombudsperson had also contested the statement made by the

European Roma Rights Center (ERRC) regarding allegations concerning the sterilization of members of the Roma population. The Committee had been told that information on the alleged cases had been presented to the Ombudsman. Regrettably, that information was incorrect. In fact, the Ombudsman had received only the names of the alleged victims and the towns in which the incidents were alleged to have taken place. Full addresses and case descriptions had not been provided. The Ombudsman had requested further information, but as yet had received no response from the ERRC.

36. No statistics were kept on the number of foreign detainees asking to contact their Consulates. Figures were available concerning the number of foreigners arrested and detained, but not all such detainees requested contact with Consulates. In response to the question regarding the reason why victims of ill-treatment did not receive compensation, he said that there was no conclusive answer. The delegation had been in contact with several lawyers regarding the issue, who had stated that the majority of people who sought compensation tended to file lawsuits for the defence of personality rights, as that was more advantageous than filing for compensation for damages. The number of successful cases of that kind was unknown, as they could not be distinguished from other civil cases.

37. Mr. EL-MASRY (Country Rapporteur) thanked the delegation for their replies. He wished to know why aliens who submitted asylum applications while in detention were not transferred to asylum detention facilities immediately, but had to remain in alien detention centres for 180 days.

38. Mr. BUREŠ (Czech Republic) said that asylum applications had to be processed before the transfer of detainees took place, in order to prevent aliens from submitting asylum applications simply as a means of being released from alien detention facilities. The transfer usually took place after asylum had been granted, a decision which took approximately 75 days. It was therefore only in exceptional circumstances that such detainees remained in alien detention centres for the duration of the 180-day period.

39. Mr. GROSSMAN (Alternate Country Rapporteur) wished to know whether statistics were available regarding the number of cases of violence among prison inmates and what measures were being taken to prevent such violence. He asked who was responsible for deciding whether an inmate was allowed to work or not, and whether inmates had the opportunity to appeal the decision. He wondered to what extent medical issues and the different types of work available were taken into account when deciding which prisoners would work.

40. He asked whether in cases where the Ombudsman established that ill-treatment had taken place and the victims sued public officials for damages, the officials concerned could plead immunity on the grounds that they were acting under colour of official authority or law enforcement. Were there any statutes or precedents in the Czech Republic that made it difficult to sue for damages in either criminal or civil cases with some prospect of success?

41. Mr. JAŘAB (Czech Republic) said that although it should be possible to obtain reliable statistics on the number of proceedings brought by individuals against public bodies, it might not be easy to distinguish between cases in which the core of the claim concerned ill-treatment, and which therefore fell within the Committee's mandate, from the arguably far more numerous cases in which the complaint concerned some form of bureaucratic mismanagement.

42. Mr. BURKIEWICZ (Czech Republic) said that there were no statistics on violence between Roma prison inmates and other members of the prison population because no distinction was made between prisoners on ethnic grounds. Statistics were, however, available on violence between prisoners in general.

43. Mr. GROSSMAN said he assumed that the statistics provided some indication of the causes of violent incidents, including perhaps ethnic or racial prejudice. Such data might be useful in developing policies aimed at preventing violence.

44. Mr. BURKIEWICZ (Czech Republic) said that the reasons for outbreaks of violence were recorded in each case. One source of friction was that only 40 per cent of prisoners were employed and the remainder were liable to become bored and irritable. Another problem arose from attempts by members of gangs involved in organized crime to exercise power over other inmates.

45. With regard to prison employment, a committee made up of educational experts, psychologists and social workers assessed the suitability of individual detainees for particular kinds of work, taking into account, for example, their social and family background. The committee submitted recommendations each week to the head of the employment unit in the detention centre, who took the final decision in each case. However, there was a general shortage of employment opportunities.

46. Mr. MACHOŇ (Czech Republic) said that public officials who exceeded their authority did not enjoy immunity from prosecution or liability for damages. There were two procedures for seeking compensation or some other remedy. Under Act No. 82/1998 on liability for damage caused in the enforcement of public authority, the Ministry of Justice dealt with questions of liability. Where a breach of duty was established, the official concerned was held liable for the transgression and the Ministry paid compensation to the victim. The same principle was applied in civil proceedings where a person claimed moral or material damages from the State. He would forward details of specific cases to the Committee in due course.

47. Ms. GAER asked for further clarification of the State party's response to a complaint by the European Roma Rights Center (ERRC) that the Czech authorities and the Ombudsman had failed to respond to allegations of sexual sterilization without consent in nine individual cases. She wished to know whether the authorities intended to investigate the allegations fully. She also wondered whether inquiries had ever been conducted into claims of torture under the previous regime.

48. Although there were no specific figures on inter-prisoner violence involving Roma inmates, she asked whether the authorities would consider taking action in response to expressions of concern or whether they viewed such complaints as anti-Government propaganda that did not merit investigation. Had any steps been taken to monitor sexual violence in places of detention and, if so, with what result? What was the procedure for filing complaints?

49. Mr. JAŘAB (Czech Republic) said that he had been an advocate on behalf of the Roma community and other minorities for many years before being appointed to the office of Commissioner for Human Rights. The complaint by the ERRC referred to by Ms. Gaer had not been addressed in the same way as previous complaints because none of the allegations had been

substantiated by a shred of evidence. The communication to the Ombudsman contained no details about any of the cases. He assured the Committee that every single case of sterilization without full and informed consent would be investigated by the authorities, regardless of who the victim was, if the requisite evidence was provided. It was in fact deeply frustrating for those used to a certain standard of documentation to receive complaints that could not be addressed in a meaningful way.

50. With regard to violence in prisons, if an incident that could be characterized as a criminal act was found to have been racially motivated, it would certainly be included in the statistics. However, the level of violence in Czech prisons was actually quite low compared with other countries.

51. Mr. BURKIEWICZ (Czech Republic) said that sexual violence in prisons was a sensitive topic. Some cases had been documented and he would provide the Committee with statistics and other details in due course. If the prison units responsible for the prevention of violent crime obtained evidence of anything untoward through their daily contact with prisoners, they initiated an investigation. How the situation was addressed was then a matter of policy.

52. The CHAIRPERSON, noting that applicants for asylum were held in detention centres or similar facilities for an average of 75 days while their application was being considered, asked whether there was any provision for an expedited procedure.

53. Had agreements been concluded with specific countries such as the Russian Federation or Ukraine on the return of nationals of those countries who entered the Czech Republic irregularly or whose papers were not in order?

54. Mr. JAŘAB (Czech Republic) said that the 75-day average related to first-step decisions on asylum applications. The procedures sometimes took far longer but cases that had less merit were generally decided more quickly. The Czech Republic had no bilateral readmission agreement with any country. As the matter was currently being discussed by the European Union, it would comply with whatever decision was made at that level.

55. The CHAIRPERSON invited the delegation to return later in the session to receive the Committee's conclusions and recommendations.

The public part of the meeting rose at 5.05 p.m.