The Third Periodic Report on Measures Adopted for the Performance of Obligations Ensuing from the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment for the Period 1998 - 2001

Part 1
Information on New Measures and New Developments in the Implementation of the Convention

General Information

1. The Third Periodic Report of the Czech Republic, submitted in keeping with Article 19 Section 1 of the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (hereinafter referred to as the "Convention"), links up to the initial (CAT/C/21/Add.2) and second periodic (CAT/C/38/Add.1) report of the Czech Republic. The following documents have been taken into consideration when drafting this report:
    a) General guidelines on the form and content of the report on the implementation of obligations ensuing from the Convention submitted by the Contracting Parties (CAT/C/14);
    b) Committee conclusions and recommendations on the Second Periodic Report of the Czech Republic (CAT/C/XXVI/Concl. 5/Rev. 1);
    c) Relevant facts and new measures adopted by the Czech Republic for the performance of obligations stemming from the Convention during the monitored period.

2. The Third Periodic Report of the Czech Republic is submitted for the period from January 1, 1998 to December 31, 2001 (hereinafter referred to as the "monitored period"). During that period, the Czech Republic adopted, mostly at its internal level, new measures aimed

at eliminating some of the persisting shortcomings that hamper consistent implementation of its international legal obligations and internal norms, thus contributing to a further improvement of the situation in this particular sphere.

Information Concerning the Individual Articles of the Convention

Article 2

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

4. In addition to classifying torture and other inhumane and cruel treatment among criminal acts pursuant to the Penal Code, guarantees safeguarding detainee´s three fundamental human rights are perceived as a major component of the measures aimed at preventing torture[3]. The right to legal assistance from the onset of detention, the right to be examined by a physician of one's choice, and the right to contact one's next of kin or another chosen person at large.

5. The right to legal assistance in proceedings at courts, other state authorities and bodies of public administration is guaranteed pursuant to Act No. 2/1993 Coll., of the Charter of Rights and Freedoms, as amended by later regulations (hereinafter referred to as the

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

[2] Grievous bodily harm is understood to mean only a serious health defect or a serious illness. Under these conditions, the following shall be qualified as grievous bodily harm: a) permanent disfigurement, b) loss or substantial reduction of one's capacity to work, c) paralyzation of a limb, d) loss or substantial weakening of the function of a sense organ, e) damage of an important organ, f) disfigurement, g) induction of abortion or the killing of the foetus, h) excruciating anguish, or ch) health defects lasting for long periods (§ 89 Section 7 of the Penal Code).

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

"Charter of Rights and Freedoms") to anyone from the very onset of court proceedings (Article 37 Section 2). Under the provisions of Act No. 141/1961 Coll., on Criminal Court Proceedings, as amended by later regulations (hereinafter referred to as the "Penal Code"), a detainee, i.e. a suspected or accused person, is entitled to choose one's defence counsel and to consult with him already during detention (§ 76 Section 6).

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

7. The third safeguard against ill treatment - the right to contact next of kin or another chosen person at large - is not guaranteed in this particular form. After detaining a person, police officer is obliged, at detainee´s request, to notify the detainee´s next of kin (§ 12 Section 3)[4] or another appointed person (§ 14 Section 4).

Article 3

Extradition

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

[4] This involves a person who pursuant to § 12 Section 3 of the Police Act can deny providing an explanation to the police. This is a person whose explanation would incur - to itself, its relative in the direct line of descent, its sibling, foster parent, foster child, spouse or common spouse or other persons in family or similar relationship whose harm it would rightly regard as its own harm - the danger of criminal prosecution or the danger of a penalty for an administrative delict.

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

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

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

12. As for the application of the principle of "non-refoulement", in case of extradition pursuant to Article 3 of the Convention, the extradition provision does not explicitly mention this particular principle in the same way as does the legislative regulation on banishment and administrative banishment.

Banishment

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

14. Once a sentence of banishment has been imposed, and the judgement has come into force, a court shall call on the convict to leave the territory of the Czech Republic, and if there is no concern that the convict who is at large may hide or otherwise obstruct the execution of

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

[6] Provision § 67 regulates the grounds for imposing "standard" custody in preliminary proceedings and in court proceedings. These include facts justifying concern that the accused a) might flee or go into hiding to evade criminal prosecution or punishment, especially if his name cannot be immediately identified, if he has no fixed abode or if he is threatened with a stiff sentence, b) will influence the witnesses who have not yet been heard or co-accused or otherwise obstruct the process of clarifying facts substantial for criminal prosecution, or c) will continue committing criminal activities for which he is prosecuted, will complete the criminal act he had already attempted to commit or will commit a criminal act he prepared or threatened to commit.

the ruling, the court may then fix an appropriate time limit for travelling for the purpose of arranging the convict´s affairs.

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

16. The Penal Code Amendment enacted by Act No. 265/2001 Coll. has brought only minimum changes in the legislative regulation of the sentence of banishment and its execution. The new provision laying down the court's duty to desist from the execution of the sentence of banishment, should there arise facts for which the sentence of banishment cannot be imposed, is essential.

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

18. The application of the Act on Serving Custody to banishment custody appears to be problematic. As regards persons remanded in custody pursuant to the provisions of § 67 of the Penal Code[6], their limitations are - due to the ongoing criminal procedures - justifiably different, mostly stricter than those imposed on persons detained in banishment custody, i.e. persons lawfully convicted, whose guilt has already been proved in a criminal procedure. The only reason for which persons sentenced to banishment find themselves in custody is concern that they may hide or otherwise obstruct the execution of the sentence, and that it would be impossible to execute the sentence of banishment. That is why there is no reason for any other restrictions ensuing from the Act on Serving Custody, primarily those concerning the convict's limitation of his contact with the outside world. When deciding about remanding such persons in custody, on many occasions such persons are not heard by a judge. Equally problematic is the absence of a provision fixing maximum possible duration of banishment custody. In some cases, the process of arranging formalities connected with the issue of substitute travel documents may take unduly long, or such documents may not be issued at all, since the diplomatic authorities of foreign states are reluctant to cooperate. A partial problem is the uncoordinated practice of courts in deciding about the release from banishment custody if travel documents vital for the execution of the sentence of banishment cannot be secured.

Administrative Banishment

19. Act No. 326/1999 Coll., on the Residence of Aliens in the Territory of the Czech Republic, as amended by later regulations (hereinafter referred to as the "Residence of Aliens Act") has managed to unify the legal institutes of banishment and the prohibition of residence in the territory of the Czech Republic into the legal institute of administrative banishment with the duration of the validity of such ruling on administrative banishment replacing the sanction of the prohibition of residence in the territory of the Czech Republic. Chapter X of the Residence of Aliens Act lays down the terms for imposing administrative banishment, the period of time for which administrative banishment may be

imposed, the conditions for eliminating the strictness of administrative banishment, and the coverage of the costs connected therewith.

20. Administrative banishment is the termination of an alien's residence in the territory of the Czech Republic based on police decision. This type of banishment is not a form of punishment for a criminal act committed in breach of the Penal Code, but is invariably more or less connected with a serious violation of the regulations on residence. Depending on the seriousness of the offence involved, the police shall then stipulate the period of time for which the alien concerned cannot be allowed to enter the country's territory. The administrative banishment procedure is guided by the Rules of Administrative Procedure, the ruling administrative body in this case being the Alien and Border Police Service. Aliens may lodge an appeal against ruling on administrative banishment within five days of the day of notification of the pertinent ruling.

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

22. The Residence of Aliens Act lays down the terms under which it is by no means possible to implement the decision on administrative banishment. This involves the institute of "obstacle to travelling". An alien cannot have his residence terminated if he is to be banished to a state where he would be threatened with torture, inhumane or degrading treatment or punishment, where his life would be jeopardized by a war conflict, where his life or freedom would be endangered because of his race, religion, membership of a specific social group, or his political conviction, or to a state which requests his extradition for a criminal act for which the laws of that particular state stipulate death sentence.

Article 4

23. The Czech Republic has no new facts to supply to that particular Article.

Article 5

24. The Czech Republic has no new facts to supply to that particular Article.

Article 6

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

26. Under the assumption that there exists some of the grounds for custody[6], in urgent cases a police investigator may detain a person suspected of having committed a criminal act. A person accused of a criminal act may be detained if - due to the urgent character of the case - a ruling on custody cannot be obtained beforehand. In both cases, detainee must be handed over to a court within 48 hours at the latest, with the court ruling on the release of

the detainee or on taking him into custody. Detainee has the right to choose a defence counsel and consult him already during custody. Detainee is entitled to the appointment of a defence counsel at the cost of the state only in cases stipulated by law.[7] During the monitored period, the time period for handing over detainees to court mentioned above was extended from 24 to 48 hours by the Amendment to the Charter of Rights and Freedoms No. 162/1998 Coll., and by the subsequent Amendment to the Penal Code No. 166/1998 Coll. The original 24-hour deadline proved to be too short for appropriate determination of the grounds for custody for the purpose of deciding about the detainee. According to information of the Attorney's General Office, the new legislation has already proved its worth in practical life.

27. The Penal Code Amendment (Act No. 265/2001 Coll.) has also affected the provisions concerning custody. These provisions cover all the criminal acts, including the crime of torture and other inhumane and cruel treatment. The reasons for remanding into custody[6] have remained unchanged. These continue to include reasonable concern that the accused may flee or go into hiding to evade punishment or criminal proceedings, affect witnesses or co-accused, or otherwise obstruct the process of clarifying facts substantial for criminal prosecution or re-offend, complete an offence he had attempted to commit or commit a criminal act he had prepared or threatened to commit. However, this provision newly stipulates that the accused may be remanded in custody under the assumption of the fulfilment of some of the above mentioned grounds solely if and when the purpose of custody cannot be achieved by any another measure at the time of ruling (§67).

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

29. Courts decide about remanding in custody. In preliminary proceedings, i.e. at the stage of criminal prosecution from the notification of accusation to bringing an action, a judge decides about the remanding in custody following a proposal by State Prosecuting Attorney. Continued duration of custody is decided by court, in preliminary proceedings

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

[8] The new restrictions on remanding in custody do not apply to torture and other inhumane and cruel treatment as an intentional criminal act.

by a State Prosecuting Attorney. In the preliminary phase of the proceedings, a State Prosecuting Attorney may decide on the release of the accused from custody even without application. But if a State Prosecuting Attorney does not comply with an application for the release from custody, he is obliged to submit it to a court for ruling. After the submission of an indictment it is a court that takes decisions pertaining to the release from custody.

30. Only partly in compliance with Item 3 of this Article of the Convention, the law stipulates the duty of the court - if an alien is remanded in custody - to notify of this fact the Consular Office of the state whose citizen that alien is. The prevailing practice in this case corresponds with the Vienna Convention on Consular Relations[9], of which the Czech Republic is a Contracting Party: an alien remanded in custody is notified by the appropriate authorities of that duty of theirs, and they also tell the alien that if he does not wish so his taking into custody shall not be reported to the Consular Office concerned.

Article 7

31. In addition to the criminal act of torture and other inhumane and cruel treatment (§ 259a of the Penal Code), also the military criminal act of violating the rights and protected interests of servicemen is classified among criminal acts pursuant to Article 4 of the Convention (§§ 279a, 279b of the Penal Code[10]).

32. 165. The Table below gives the number of criminal cases investigated on the suspicion of the commission of the criminal act of torture and other inhumane and cruel treatment pursuant to § 259a of the Penal Code, and the criminal act of violating the rights and protected interests of servicemen according to §§ 279a, 279b of the Penal Code.

	1998	1999	2000

[9] Article 36 stipulates that the appropriate authorities of the recipient country shall inform the consular office of the sending state without delay of the cases occurring within his consular district when a foreign national of the sending state was arrested, imprisoned, remanded in custody or detained in any other way, provided that the given foreign national asks for that.

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

§ 279b - "(1) He who forces a subordinate or inferior into providing personal services or restricts him in his rights or wantonly aggravates the performance of his duty, shall be punished by imprisonment for six months to three years. (2) Punished by imprisonment for one year five years shall be an offender who, a) commits an act given in Section 1 by force or under the threat of force or under the threat of other grievous bodily harm, b) commits such an act with at least two other persons, or c) causes through such an act bodily harm. (3) Punished by imprisonment for three years to ten years shall be an offender who a) commits an act given in Section 1 in a particularly brutal manner or with a weapon, b) causes through such an act grievous bodily harm or other particularly serious consequences, or who c) commits such an act under the threat to the state or the state of war or in a combat situation. (4) Punished by imprisonment for eight to fifteen years shall be an offender who causes death through an act given in Section 1".

		Male	Female	Male	Female	Male	Female
§ 259a	Prosecuted	0	0	0	0	0	0
	Charged	0	0	0	0	0	0
	Convicted	0	0	0	0	0	0
§ 279a	Prosecuted	113	0	116	0	105	0
	Charged	79	0	101	0	84	0
	Convicted	47	0	98	0	73	0
§ 279b	Prosecuted	159	0	91	0	102	0
	Charged	139	0	74	0	90	0
	Convicted	84	0	114[11]	0	67	0

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

Article 8

34. As mentioned in the previous reports, there is no obstacle in the Czech legal system preventing the implementation of the obligations ensuing from this Article. The Convention is directly binding pursuant to Article 10 of the Constitution of the Czech Republic, therefore representing a sufficient legal instrument for the extradition of persons, suspected of committing criminal acts pursuant to Article 4 of the Convention, also to states with which the Czech Republic has no extradition treaty.

Article 9

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

Article 10

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

37. The elementary training level consists of initial ten-week training courses attended by all the Prison Service personnel. The following subjects are taught: fundamentals of law and social sciences (rudiments of psychology, rudiments of pedagogy, rudiments of law and professional ethics), specialized subjects (guard, escort and warden service, judicial guard service, serving prison terms, serving custody), and martial arts and self-defence practices. In terms of content, the training courses draw primarily on the Standard Minimal Rules for

[11] The actual course of criminal proceedings does not depend on calendar year and that is why the number of convicts in 1999 exceeded the number of initiated criminal proceedings.

the Treatment of Prisoners, the European Prison Rules, the Code of Behaviour of Law Enforcement Officials, the Charter of Rights and Freedoms, and other sources.

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

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

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

41. As regards respect shown by judges and State Prosecuting Attorneys for the prohibition of torture and other cruel, inhumane or degrading treatment, that should primarily be safeguarded by their legal training. Continued education of judges and State Prosecuting Attorneys is provided by the Institute for Further Training of Judges and State Prosecuting Attorneys, an institute which falls under the methodological guidance of the Ministry of Justice. During the monitored period, the Institute did not organize any systematic additional training courses in this field. However, the issues of prohibiting torture and other ill treatment are discussed during the workshops specializing in the protection of human rights. A series of specialized workshops aimed at expounding the European Convention on the Protection of Human Rights and Freedoms for judges was held between 1995 and 1998. State Prosecuting Attorneys are systematically trained in lifelong education in the compliance with the ethical rules of their profession. A Code of Ethics for State Prosecuting Attorneys and Judges has not yet been issued. Still, a Bill on the State Prosecuting Attorney's Office, currently debated by the Senate of the Parliament of the Czech Republic[12], contains a relatively extensive catalogue of duties to be discharged by

[12] According to status as of November 20, 2001.

State Prosecuting Attorneys, some of which have a distinctly ethical nature. Similar provisions are contained in the Draft Amendment to the country's Courts and Judges Act.

Article 11

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

Serving Prison Terms

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

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

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

46. One of the objectives of the new legislation was an effort to involve municipalities and non-state subjects in securing the service of prison terms. The law has paved the way for the establishment of "consultative councils" in prisons, composed of experts coming from different professions, and community officials not employed in the prisons. Consultative councils are expected to participate in solving day-to-day as well as conceptual problems in the service of prison terms. In practice, it is always difficult to find experts for this kind of work, as it is voluntary work and without any claim to remuneration, and those who could work in consultative councils are not motivated to participate. As a result, there are only few prisons which have already established such consultative councils that are now functioning. Another measure used by the law to promote cooperation between the community and non-state subjects in safeguarding the service of prison terms is the

possibility of setting up prisons in non-state objects - following agreement with their owners. And following agreement with the pertinent community it is possible to establish prisons for local execution of prison terms where the convicts with short prison terms would work for the benefit of the local community. Even though this legislation has set the stage for such developments, no prison has been opened as yet in a non-state object. Similarly, no community has yet displayed interest in establishing a prison for convicts serving prison terms locally. Meanwhile, communities seem to be supporting alternative punishment, primarily the execution of community service.

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

48. The right to receive visitors has been newly regulated. As a result, during one calendar month convicts are entitled to receive visits by their next of kin for a total period of up to 3 hours. For serious reasons, convicts may be allowed visits by other persons than next of kin. But the officially stipulated duration of such visits spells out their maximum and not minimum period, which provides scope for interpretation according to which convicts´ entitlement to visits is, in some cases, unjustifiably curtailed. A suitable solution pertaining to the duration of such visits would to be to fix a minimum entitlement in this respect.

49. Pursuant to the new Act, in justified cases convicts may be allowed to use the phone to contact a next of kin[13]. For serious reasons convicts may be allowed to use the phone also to contact other persons. The costs connected therewith are covered by the convict. In both cases, the Prison Service is entitled to get acquainted with the content of such phone calls through eavesdropping.

50. The law lays down the conditions for improving the situation of mothers of minors serving prison terms. Under the given circumstances, the law gives the convicted women serving their prison terms an opportunity to have their children up to the age of three with them. Under the new legislation, women who had properly looked after their minor children before starting their prison terms are allowed to extend their parole to visit their children by up to o 10 days in each calendar year. Since the practical provisions for the service of prison terms for mothers with children are demanding in material, technical and personnel terms, proper conditions have not yet been created for that. At present, a new concept for mothers with children serving prison terms is being drawn up in the Světlá nad Sázavou Penitentiary.

51. A major change - as compared with the previous legislation - is the abolition of the provision on minimum accommodation space without any compensation. The Czech Republic has had long-standing problems with overcrowded prisons, a predicament that culminated in 2000, when the accommodation capacities of the Czech prisons and detention prisons were filled to 117,2% of their capacity. The competent Czech authorities are fighting off efforts to reintroduce restrictions in the shape of fixing a minimum

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

accommodation space, justifying their position by saying that this would lead to an unlawful state of affairs. Even though the excessive occupancy rate of the Czech prisons has been systematically decreasing since 2000, their accommodation capacities are still being overstretched.

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

As of	Accused			Convicted			Total			Accommo-dation capacity	Occupancy rate of accommoda-tion capacities in %
	Male	Female	Total	Male	Female	Total	Male	Female	Total		
Jan.1, 1998	7413	323	7736	13347	477	13824	20760	800	21560	18 907	114,0
Jan.1, 1999	6779	346	7125	14423	519	14942	21202	865	22067	19 283	114,4
Jan.1, 2000	6566	368	6934	15510	616	16126	22076	984	23060	19 632	117,2
Jan.1, 2001	5604	363	5967	14966	605	15571	20570	968	21538	20 244	106,4
Nov.11, 2001	5332	310	5642	14443	559	15002	19775	869	20644	20 168	103,0

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

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

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

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

57. Equally controversial appears to be the provision containing the special definition of the actual purpose of life imprisonment[14]. As compared with the general legislation governing the purpose of life imprisonment pursuant to the Penal Code[15], the special definition substantially reduces its educational impact. However, according to the Penal Code, a prisoner sentenced for life imprisonment can - after serving twenty years - ask for parole. When deciding about parole, court is obliged to assess the parolee's degree of re-education and his ability to be resocialized. Seen in this light, the special definition appears to be superfluous, as it creates what can be called a contentual disharmony between the meaning of the general and special legislation. As for life imprisonment, it has not yet been possible to implement in practice the recommendations of the Committee on the Prevention of Torture (CPT) made during its monitoring visit in 1997 on the employment and education of those convicts, and efforts to reduce their isolation from the rest of the prison population, and from the outside world.

[14] "Execution of life imprisonment is primarily aimed at protecting society against the convict's continued criminal activities through his isolation in prison and adjustment of his acting in a way to correspond with good manners" (provision of § 71 Section 1 of the Execution of Punishment Act).

[15] "To protect society against perpetrators of criminal offences, to prevent convicts from re-offending and to educate them to lead proper life, thus working educationally on other members of the society" (provision of § 23 Section 1 of the Penal Code).

Serving Custody

58. The conditions of serving custody are governed by Act No. 293/1993 Coll., on Serving Custody, as amended by later regulations (hereinafter referred to as the "Serving Custody Act"). This legislation applies to three types of custody which can be imposed pursuant to the Penal Code. These include standard custody of the accused or the indicted in preliminary procedures and court proceedings pursuant to § 67 of the Penal Code[6] whose purpose is to prevent the accused or the indicted from evading criminal prosecution or to obstruct the process of clarifying facts substantial for criminal prosecution or to complete a criminal act or repeat a criminal activity for which he is being prosecuted. The Serving Custody Act also regulates the terms of serving banishment and extradition custody. Under the terms laid down by the Penal Code, a person may be remanded in extradition custody if such a person is not a Czech citizen for whose extradition the Czech Republic was requested by a foreign state for the purpose of criminal prosecution or execution of punishment. Only a person who is not a Czech citizen and who has lawfully received the sentence of banishment independently or in a combination with another sentence pursuant to the Penal Code, most frequently a prison sentence, may be remanded in banishment custody (unlike the two previous types).

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

60. Proceeding from the recommendations of the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment, as formulated by the Committee during its visit to the Czech Republic in 1997, the Amendment raises the frequency of visits to a person in custody from three to two weeks, the duration of each visit being extended from 30 minutes to one hour. In justified cases, director of a custodial establishment may grant an exception going beyond the framework of these limitations. Of equally great significance is the change in the regime of visits to persons in collusive remand, i.e. persons remanded in custody on the grounds of concern that they might obstruct the process of clarifying facts significant for criminal prosecution. According to the existing legislation, visits to the accused in collusive remand were dependent on preliminary written consent of a court or a State Prosecuting Attorney. This provision was then frequently interpreted to the detriment of the accused as an assumption of disapproval without any justification. That is why pursuant to the Amendment, conditions for a visit to a person in collusive remand, namely the date of the visit, the circle of visitors and the presence of investigative, prosecuting and adjudicating personnel, are laid down without any undue delay.

61. The Amendment has also extended the interval during which the accused is entitled to receive parcels containing food and things of personal use. The hitherto valid interval - once in two weeks - has been prolonged to once in three months, once in two months for juveniles. This restriction has been introduced especially because - in spite of appropriate control - habit-forming substances are finding their way into the prisons in such food parcels. Seen in this context, it should be emphasized that the regulation of the right of the accused to purchase food and things of personal use remains unchanged. A positive change is seen in the extension of the list of items that may be sent in parcels to which the

afro-mentioned interval is not applied. Under the previous legislation, these included solely clothing sent for the purpose of exchange. The Amendment stipulates that the limiting interval does not apply to parcels containing books, daily newspapers, magazines and toilet articles.

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

63. Based on the recommendations of the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment, the Amendment has introduced supervision over the compliance with the legislative regulations on serving custody. Just as in the case of serving prison terms, supervision is performed by an appointed official of the State Regional Prosecuting Attorney's Office in whose jurisdiction the custody is being served (See information on Article 13).

64. The application of the Serving Custody Act is particularly controversial when applied to banishment custody. As for persons remanded in custody pursuant to § 67[6], different, usually stricter limitations are justified due to the ongoing criminal proceedings than for persons remanded in banishment custody, i.e. persons lawfully convicted, whose guilt has been proved in criminal proceedings. Due to this reason, the only justified restriction relating to persons in banishment custody seems to be limitation of their personal liberty. There is no ground for imposing other limitations ensuing from the Serving Custody Act, primarily those involving reduced contacts with the outside world. Remanded in banishment custody are primarily persons who cannot be banished as yet, most frequently because they have no valid travel documents and there is a danger that they might try to obstruct the execution of their punishment. However, in some cases the process of completing the formalities connected with the issue of substitute travel documents lasts inappropriately long or documents are eventually not issued at all because the diplomatic missions of foreign states are reluctant to cooperate. As a result, it transpires that banishment custody lasts for several months or even years. Its maximum duration is not stipulated, and that is why it is regulated by the provisions governing the maximum duration of custody pursuant to the provisions of § 67 of the Penal Code, which specifies that not even in the most serious cases should custody exceed the period of four years. Between 2000 and 2001, there were several cases recorded in the Czech Republic whose banishment custody exceeded two years.

Legislation Concerning the Institute of Detention and Arrest

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

66. As noted in information on Article 6 and in the introduction to this Article, the Amendments to the Charter of Rights and Freedoms and the Penal Code have prolonged the period for handing over a detainee to court, which is to decide about remanding such a detainee in custody or releasing him, from 24 to 48 hours.

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

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

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

70. Such detention should not exceed 180 days from the moment of restricting alien's personal liberty. Detention must be terminated as soon as the reasons for it transpire or a court rules about the illegality of such detention (§ 125 Section 1).

71. Operated by the police, the facility for the detention of aliens is divided into two parts, a section with a strict detention regime and a moderate-regime detention ward. Placed in the strict-regime detention section are aliens who might jeopardize the very purpose of their detention, who are aggressive or under quarantine, aliens who fail to fulfil their duties or violate the internal rules of the facility, or eventually aliens whose identity cannot be

checked. If the police finds no reason for placing an alien in a strict-regime detention section, such an alien shall be placed in a moderate-regime ward. When placing aliens into this facility, care must be taken to separate men and women, and aliens under 15 years of age from older aliens. In both cases, exemption to the rule may be made in case of next of kin. The law also stipulates that when placing aliens in these facilities the division of families should be justified and adequate to the consequences of such family division (§ 133).

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

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

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

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

Serving Disciplinary Sentence of Imprisonment in the Army of the Czech Republic

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

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

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

79. In a similar vein, the Prison Code does not regulate any powers and duties of prison guards, their assistants or prison wardens in their behaviour towards incarcerated servicemen nor does it explicitly forbid them any type of behaviour. Relations between them are guided by the general provisions on service relations. Another moot point is the absence of any system of special training in a military prison for soldiers undergoing basic army service. The same applies to prison wardens who are professional servicemen.

80. It is the Inspection of the Ministry of Defence which controls the actual process of serving the disciplinary punishment of incarceration. Under control is the equipment of the objects of military prisons and documentation on soldiers serving prison terms. At the same time, interviews are conducted with incarcerated servicemen to find out whether any torture, inhumane or degrading treatment or punishment is involved. During those checks, inspectors uncovered several cases of non-compliance with the Prison Code involving primarily inadequate equipment of military prisons, which resulted in undue aggravation of soldiers serving their prison terms. Another frequent problem lies in the incorrect, inadequate or missing provisions in the guidelines "Duties of Prison Guards". The gravest lapse detected by the Inspection was the non-existence of records on the duration of prisoners´ work, a fact that made the task of checking the compliance with a maximum 8-hour work duty difficult. The recording system introduced by the new Prison Code, which has been valid since December 1, 2001, is expected to eliminate the shortcomings mentioned above.

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

Institutional and Protective Upbringing

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

83. Criticism of the Bill focused primarily on the fact that its list of punishment for a proved breach of law includes a ban on the child's temporary stay with the persons responsible for its upbringing or its next of kin[16]. The critics describe this provision as being contrary to the Charter of Rights and Freedoms, which guarantees the right to protection against unauthorized interference with the child's private and family life[17], also running counter to the Convention on Children's Rights, which stipulates that a child is entitled to keep in touch with both parents if separated from one or both of them[18].

Article 12

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

85. In keeping with the existing legislation, investigations were conducted by police investigators assisted by police authorities. However, the task of detecting criminal offences committed by police officers and identifying the offenders was discharged by the Ministry of the Interior's Division for Inspection Activities (hereinafter referred to as "Inspection of the Minster of the Interior"), i.e. a body which falls - just like the police itself - under the jurisdiction of the Ministry of the Interior. In many cases, this particular situation came under criticism of international as well as domestic human rights authorities and organizations. This happened most recently in connection with the results of the investigation of cases of alleged police violence during demonstrations against the session of the International Monetary Fund and the World Bank in Prague in September 2000.

86. The Amendment to the Penal Code No. 265/2001 Coll. newly entrusts the task of investigating criminal offences committed by police officers to State Prosecuting Attorneys. The State Prosecuting Attorney's Offices fall under the jurisdiction of the Ministry of Justice, therefore complying with the requirement of independence towards the members of the police. With the exception of investigation of criminal offences by police officers and members of the Security Information Service, investigations are

[16] According to the status prior to the third reading as of November 20, 2001, source: www.psp.cz, Parliament Print No. 837/4
[17] provision of Article 10 Section 2
[18] provision of Article 9

conducted - pursuant to the Amendment - by the Criminal Police and Investigation Service of the Police of the Czech Republic.

Article 13

Prison System

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

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

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

Year	Justified	Unjustified	Total
1998	118	1267	1385
1999	152	1296	1448
2000	178	1542	1720
as of June 30, 2001	87	830	917
Total	535	4935	5470

90. The new Act on Serving Prison Terms and the Amendment to the Serving Custody Act (208/2000 Coll.) have introduced a mechanism for external[19] monitoring of the compliance with the legality of the practice of serving prison terms on the part of State Prosecuting Attorneys. In this sense, the Amendment to Act No. 283/1993 Coll., on the State Prosecuting Attorney's Office, enacted by Act No. 169/1999 Coll. (hereinafter referred to as the "Amendment to the 1999 Act on the State Prosecuting Attorney's Office"), has extended the jurisdiction of the State Prosecuting Attorney's Offices. It stipulates that the State Prosecuting Attorney's Office performs - to the extent and under the terms laid down by special law - supervision over the compliance with the legislative regulations in facilities where custody, prison terms, protective treatment, protective or institutional upbringing are carried out, and in other facilities where personal liberty is restricted according to statutory powers. In the intent of the provision, special laws are laws on the practice of serving custody and prison terms.

91. Both laws regulate the supervision by State Prosecuting Attorneys similarly. Supervision of the compliance with legislative regulations of persons remanded in custody and serving

[19] In organizational terms, the Offices of State Prosecuting Attorneys are incorporated into the structure of the department of the Ministry of Justice. However, their position, powers and organization are governed by a separate law; as a result they are independent of the Ministry of Justice.

prison terms is performed by an appointed official of the Regional Prosecuting Attorney's Office in whose district the pertinent prison term or custody is being served. The appointed Prosecuting Attorney performs no other tasks facing the State Prosecuting Attorney's Office concerned. During his supervision he is entitled to: visit - at any time - the facilities where custody or prison terms are being served; inspect documents according to which persons have been deprived of their freedom and speak with them without the presence of third parties; check whether the orders and decisions of the Prison Service in the prison pertaining to the practice of serving custody or prison terms correspond with the laws and other legislative regulations: ask Prison Service personnel in the prison to provide necessary explanations, produce official records, documents, orders and decisions concerning the process of serving custody and prison terms; give orders to uphold rules valid for serving custody or prison terms, and give orders for the immediate release of persons found to be unlawfully serving custody and prison terms. The Prison Service is obliged to carry out the orders of the State Prosecuting Attorney without delay.

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

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

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

95. The establishment of the post of the Public Protector of Rights or the Ombudsman has undoubtedly enriched the country's system of external control of the prison system. However, the Ombudsman has no possibility to ensure swift and efficient correction in

cases when the institution in whose activities rules were violated or any deviation occurred is reluctant to implement the proposed corrective measures.

Police

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

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

Year	Complaints Handled	Justified Complaints	Justified Complaints in %
1998	4.953	907	21,8
1999	4.229	725	17,1
2000	5.280	786	14,9
as of Sept. 27,. 2001	4.193	474	11,3
Total	29.718	5.176	17,4

98. Up to now criminal offences committed by police officers have been investigated by the Inspection of the Minister of the Interior. This particular system was not perceived as sufficiently unbiased. That was why, among other things, the Amendment to the Penal Code No. 265/2001 Coll. (which came into effect on January 1, 2002) has transferred the task of investigating criminal offences committed by police officers to the State Prosecuting Attorney's Office (See also Item 87), which guarantees impartiality of investigation. The system of investigation of filings of non-criminal nature remains in the jurisdiction of the Complaints and Control Divisions of the Police of the Czech Republic. Even though the right to appeal is guaranteed, this particular system has been frequently criticized by international and domestic human rights organizations.

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

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

Education

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

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

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

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

105. Also the Czech School Inspection continued to discharge its control activities throughout the monitored period. Its "Report on Complaints and Stimuli Concerning the Violation of Children's Rights and Violation of the Compliance with Dignified Living Conditions" for the period from 1998 until August 2001 implies that in the period under review the

Inspection investigated complaints of bullying and physical violence against pupils committed by teachers or headmasters. In the school year 1998/1999, it registered a total of 24 complaints of bullying of which 6 were classified as justified, and 18 as unsubstantiated; 3 complaints of physical punishment of pupils by headmasters of which 1 proved to be justified, and 2 inconclusive, and 3 complaints of physical punishment of pupils by teachers of which 2 were found justified and 1 unjustified. In the school year 1999/2000, the Czech School Inspection registered 33 complaints of bullying of which 4 were classified as justified, 2 as partly justified, and 27 as unjustified or inconclusive; 12 complaints of physical punishment of pupils by headmasters of which 1 was assessed as justified, 10 as unjustified, and 1 was classified as unfounded, and 3 complaints of physical punishment of pupils by teachers none of which was proved. In the school year 2000/2001, the Inspection registered a total of 13 complaints of bullying of which 3 were classified as justified, 3 as partly justified, and 7 as unjustified or inconclusive; there were 5 complaints of physical punishment of pupils by headmasters of which 2 were classified as justified, and 3 as unjustified or inconclusive, and 3 complaints of physical punishment of pupils by teachers none of which was proved.

Protection of Witnesses

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

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

108. Protection may be granted under this legislation to three categories of persons. First, it is a person who provided or is to provide explanations, evidence or who testified or is to testify as an accused or who in any way helped or is to help in achieving the purpose of criminal proceedings. Secondly, it is a person who acts as an expert or interpreter or defence counsel if the accused whom this person represents testified or is to testify to help attain the purpose of criminal proceedings. The third category includes next of kin of the persons mentioned above.

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

such protection. If the person in danger is remanded in custody or is serving a prison term, this kind of protection shall be provided by the Prison Service with the consent of the Managing Director.

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

Article 14

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

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

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

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

115. The laws mentioned above do not regulate the actual mode and extent of compensation for the damages incurred, and the general legislation on the compensation of damages, as laid down by the Civil Code, is binding in this respect. According to its § 442 and following, he who suffered bodily harm (depending on the circumstances of each specific case) has the following claims to the compensation of damages:
   a) one-off compensation - reparation payment - for the injured party's pain and aggravation of one's social assertion;
   b) the loss of income resulting from incurred bodily harm is covered by an annuity; this is calculated from the inured party's average income received before injury;
   c) compensation for the loss of income during the injured party's sick leave - this amounts to the difference between his average earnings before injury and his work incapacity benefits;
   d) efficient costs connected with treatment (these include rehabilitation costs as well).

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

Article 15

117. The Czech Republic supplies no new facts to that particular Article.

Article 16

118. The Czech Republic supplies no new facts to that particular Article.

Part II
Reaction to Committee Conclusions and Recommendations

119. After discussion of the Second Periodic Report of the Czech Republic (CAT/38/Add.1) at the 466th, 469th and 476th sessions held on May 7, 8 and 14, 2001, the Committee approved its conclusions and recommendations on May 14, 2001 (CAT/C/XXVI/Concl.5/Rev.1) in which the following was recommended to the Czech Republic:

To secure complete and independent investigation of all the complaints of ill treatment generally, and specifically in connection with the session of the International Monetary Fund and the World Bank in September 2000, and in the following periodic report to provide the Committee with information on the found facts and the measures adopted, including eventual information on criminal prosecution and compensation of victims.

120. Under the still valid Police Act, the task of detecting criminal offences committed by police officers and finding the offenders lies with the Inspection of the Minister of the Interior (hereinafter referred to by the Czech abbreviation "IMV"). Investigation of matters of non-criminal nature falls under the jurisdiction of the Control and Complaints Division of the Police Presidium of the Police of the Czech Republic. Information supplied by the Ministry of the Interior implies that the police received 393 negative reactions to its methods in adopting security measures during the session of the

International Monetary Fund and the World Bank. Out of these, the police eliminated 89 complaints that were delivered repeatedly, and 47 complaints that did not fall under police jurisdiction. The remaining 297 complaints were handed over to the Police Presidium. Its analysis suggested that these complaints related to a total of 70 cases of criminal and non-criminal nature. By July 2001, 67 of those cases were concluded. According to the IMV statement, matters of criminal nature were involved merely in 16 cases. This information runs counter to the reports from private non-profit organizations monitoring compliance with human rights during the operations carried out by the Police of the Czech Republic against the demonstrators. Those organizations gave different figures concerning violence committed at police stations and directly during the operations in the streets. These reports referred to suspected criminal offences involving torture and other inhumane and cruel treatment, abuse of the authority of public officials and battery. [20]

121. As for matters of criminal nature, IMV has concluded 10 cases, saying that commission of criminal offences has not been proved, in 3 cases it was noted that police officers failed to act in keeping with the law but only one of those cases was qualified as a criminal offence - abuse of the authority of a public official, two of those cases were referred to the appropriate officials with a proposal to take disciplinary action. At present, 3 other cases are under investigation involving suspicion of committing criminal offences by police officers. The current state of investigation shows that in 3 cases out of 16, offences of abusing the authority of public officials were committed by using excessive violence against the injured parties. Specifically, this applies to cases at the local police station Žižkov, Prague 3, Lupáčova Street, the local police station Vysočany, Prague 9, Ocelářská Street, and the case involving physical violence by police officers in Štěpánská Street. On two occasions, cases were suspended as it was impossible to establish facts justifying the initiation of criminal prosecution of a specific person. A complaint has been lodged against the decision to suspend this particular case, which is being further investigated. Due to the fact that in some cases the commission of a criminal offence had been noted but the case had to be suspended due to the impossibility of starting criminal proceedings against a specific person, the question arose asking about the responsibility of police superiors for the unlawful behaviour of their inferiors during service. Answering the specific question whether - under the valid legislation - it is possible to rule out the responsibility of superiors for the behaviour of their subordinate police officers in carrying out their duties, the Ministry of the Interior has sent the following answer: "As for the question whether it is possible - according to the valid legislation - to exclude possible liability of superiors for the behaviour of their subordinates while discharging their duty, it is always vital to study the specific case, testimonies etc. Generally speaking, one may proceed from the basic duties of police officers, and the basic duties of their superiors, as laid down in § 28 and § 29 of Act No. 186/1992 Coll., on service relations of members of the Police of the Czech Republic, as amended by later regulations, namely in the sense that superiors cannot bear responsibility for all the acts of their subordinates, but that they do bear responsibility for the decisions, instructions to proceed, for the adopted measures, and also - at a general level - for not acting even though they should have had."

122. As implied by the information provided by Občanské právní hlídky (Civic Legal Watch Groups), in case of violence at the local police station at Ocelářská Street, one of the police officers who acted violently was identified from a photograph. There is no mention

[20] For instance, the background materials elaborated by Ekologický právní servis (Ecological Legal Service), specifically the legal department of the project known as Občanské právní hlídky (Civic Legal Watch Groups), imply that a total of 27 criminal notices were filed by that organization alone.

of this identification in the information of the Ministry of the Interior on the inquiry into the behaviour of police officers during the annual meeting of the International Monetary Fund and the World Bank. IMV suspended that case as it was impossible to establish facts justifying the initiation of criminal proceedings and because the identification of the police officer concerned from a photograph was inconclusive. The legal representative of the injured party lodged a compliant against this decision, which is now being handled by the District Prosecuting Attorney's Office in Prague 3.

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

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

a) a police officer refused to show an entitled person his own identification number;
b) dactyloscopic prints were taken from a person without sufficient grounds for that decision;
c) unjustified escort of a person presented to an Alien Police ward.

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

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

To adopt suitable measures to safeguard the independence of investigations of the delinquent behavior of law-enforcement officials by introducing an external control mechanism.

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

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

128. A major step in safeguarding greater objectiveness of the investigation of police officers´ criminal activities was the decision to transfer this task from IMV to the State Prosecuting Attorney's Offices which do not fall under the power of the department of the Interior but Justice. Complaints of the delinquent behaviour of police officers, which has, however, proved to fall short of the intensity of criminal offences, are still under investigation by the control authorities of the Police of the Czech Republic incorporated into its structure. So far, no independent body entrusted with the task of investigating all kinds of delinquent behaviour of law-enforcement officials and endowed with powers to ensure swift and efficient correction of the found defects has been established in the Czech Republic.

To ensure to all the persons deprived of their liberty the right to inform their next of kin or another person of their own choice, the right to their legal representative of their own choice from the very onset of the restriction of their freedom, and the right to have access to a physician of their own choice during any medical examinations arranged by the Police.

129. Detainee´s right to inform his or her next of kin or another person of one's own choice about his situation is not guaranteed. However, the Police Act stipulates that after detaining a person, police officer is obliged - at the detainee´s own request - to notify the person given in the provision of § 12 Section 3 of the Police Act[4] or any other appointed person of the detention.

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

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

132.The Police Act does not grant detainees the right to have access to a physician of one's choice during any medical examination. It also stipulates that if a police officer finds out that a person to be placed in a cell is injured or if such a person claims to be suffering from a more serious illness or if there is a reasonable suspicion that such a person really suffers from such an illness, the police officer shall arrange medical treatment for the detainee, requesting a physician's statement whether the person concerned can be placed in a cell. The law also stipulates that if a person placed in a cell falls ill, injures itself or makes a suicide attempt, the police officer guarding the cell shall take necessary measures conducive to the protection of the life and health of such a person, especially by providing first aid and by calling in a physician asking him for a statement on the possibility of the person's further stay in the cell or its placement in a health facility. The Police Act does not guarantee the detainee´s right to be examined by a physician of his choice even though under the provisions of § 9 Section 2 of Act No. 20/1966 Coll., on Care for Public Health,

as amended by later regulations, the right to a free choice of one's physician is restricted solely for persons in custody and those serving a prison term.

133. The Government's Council for Human Rights and officials of the non-governmental organizations dealing with human rights believe that more consistent compliance with the rights of detainees and a consequently reduced potential for ill treatment would be achieved by upgrading the quality of the mechanism of external control in the facilities where persons deprived of their personal liberty are detained. There is no external mechanism for the promotion of preventive and systematic control of the level of treatment of detainees in police cells.

To introduce an independent and efficient control system for the investigation of prisoners´ complaints as well as a mechanism for an external and civic supervision of the country's prison system.

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

To provide information on victims' possibilities to be granted compensation or to achieve any other form of alleviating the adverse consequences of torture and other cruel, inhumane or degrading treatment or punishment.

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

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

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