



**International covenant
on civil and
political rights**

Distr.
GENERAL

CCPR/CO/72/CZE/Add.2
25 July 2003

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

CZECH REPUBLIC

Addendum

Comments by the Government of the Czech Republic (CCPR/CO/72/CZE)

[24 July 2003]

I. Introduction

1. The Czech Republic as a State Party to the International Covenant on Civil and Political Rights submitted its initial report on the implementation of the obligations arising from this international instrument in the years 1993-1999 (hereinafter referred to as "the Czech Republic", "the Covenant", "the initial report") on 3 March 2000 (CCPR/C/CZE/2000/1). The initial report was considered by the Human Rights Committee (hereinafter referred to as "the Committee") during its seventy-second session on 11 and 12 July 2001.

2. The Committee's concluding observations on the Czech Republic are presented in document CCPR/CO/72/CZE of 27 August 2001. In paragraph 27 of this document the Czech Republic is asked to forward information on the implementation of the Committee's recommendations under paragraphs 6, 9 and 16 within 12 months.

3. Recommendations under paragraphs 6, 9 and 16 run as follows:

6. The Committee is concerned at the apparent absence of procedures for dealing with the implementation of the Views of the Committee under the Optional Protocol. The Committee deeply regrets the position adopted by the State party in the cases of Simunek (516/1992) and Adam (586/1994), regarding the restitution of property or compensation under Act 87/91. The Committee also regrets the State party's response to its decision that the precondition of Czech citizenship for restitution or compensation under Act 87/91 was discriminatory and in violation of article 26 of the Covenant. A decision by the Constitutional Court on the constitutionality of the relevant law cannot exonerate the State party from its obligations under the Covenant (art. 2; Optional Protocol, arts. 1, 4).

The State party should reconsider its present law regarding the right to seek restitution of property or compensation. It should also put in place procedures to deal with views of the Committee under the Optional Protocol. In both cases, the Committee wishes to be informed about the outcome of this recommendation.

9. The Committee is particularly concerned about the disproportionate number of Roma children who are assigned to special schools designed for mentally disabled children, which would seem to indicate the use of stereotypes in the placement decisions, in contravention of article 26 of the Covenant, and which would make it difficult, if not impossible, to secure admission to secondary schools (art. 26).

The State party should take immediate and decisive steps to eradicate the segregation of Roma children in its educational system by ensuring that placement in schools is carried out on an individual basis and is not influenced by the child's ethnic group. Where needed, the State party should also provide special training to Roma and other minority children to secure, through positive measures, their right to education.

16. The Committee is concerned that complaints against the police are handled by an internal police inspectorate, while criminal investigations are handled by the Interior Ministry, which has overall responsibility for the police. This system lacks objectivity and

credibility and would seem to facilitate impunity for police officers involved in human rights violations (arts. 2, 7, 9).

The State party should establish an independent body with authority to receive and investigate all complaints of excessive use of force and other abuses of power by the police.

II. Special Part

Procedures for the implementation of the views of the Human Rights Committee concerning communications from individuals

4. According to Act No. 318/2001 to regulate the provision of information and other cooperation for the purposes of proceedings before the European Court of Human Rights and before the United Nations Human Rights Committee, the national implementation of the Committee's Views concerning violations of the Covenant is the responsibility of the Justice Ministry.

5. As soon as the Committee's Views concerning a communication are made public, the Justice Ministry informs the Constitutional Court and other bodies dealing with the case and asks them to report in writing on the measures that they have adopted (intend to adopt) or proposed (intend to propose) for the national implementation of the Committee's views. It sets a time-limit for the presentation of these reports.

6. The Minister of Justice then presents to the Czech Government his own summary report on the Committee's Views. The Minister's report sums up the information received from the competent bodies and recommends to the Government the steps to be taken to implement the Committee's Views. If the Committee holds that the violation is due to an existing national law, the Government informs the Chamber of Deputies of the Czech Parliament and possibly presents a bill to eliminate the conflict between the national law and the Covenant.

7. The Government then reports to the Committee on the measures taken to implement its Views.

Position on the pre-condition of Czech citizenship in restitutions legislation

8. The Committee's Concluding Observations state that the Czech Republic "should reconsider its present law regarding the right to seek restitution of property or compensation". The Committee "deeply regrets the position adopted by the State party [Czech Republic] in the cases of Simunek (516/1992) and Adam (586/1994), regarding the restitution of property or compensation under Act 87/91 [to regulate extrajudicial rehabilitations as amended]". The Committee's Views on these cases declared that the Czech citizenship pre-condition for restitutions or compensations was discriminatory and in violation of Article 26 of the Covenant.

9. The following is the position of the Czech Government on the Committee's Views concerning restitution laws:

- a) The restitution laws, primarily Extrajudicial Rehabilitations Act No. 87/1991 and Act No. 229/1991 to regulate the ownership of land and other agricultural property, were adopted after the fall of the communist regime that had caused to the Czechoslovak people immense wrongs, whether in the field of property ownership or in many other fields.
- b) In the early 1990's the legislator pursued two goals: to partly alleviate some of the wrongs committed in the past, and to speed up the economic reform and transition to a functioning market economy. Some of the rules have in the meantime been changed (or even repealed by the Constitutional Court), but the combination of past-oriented and future-oriented policies remains at the core of Czech restitutions legislation.
- c) For a nation seeking internal reconciliation after four decades of the totalitarian regime, dealing with its own past was an overriding concern. Today, in the light of the Committee's criticism, the Czech Republic would possibly choose a different solution, if it could once again start from the beginning in 1990. However, at that time the Czechoslovak Parliament thought it legitimate that the entitlement to restitutions and compensations should be confined to people who had a formal tie with the State, i.e. citizenship status (and initially also residence in the Czechoslovak territory) as a proof of their lasting allegiance.
- d) Likewise, at that stage of the economic reform it seemed adequate that, when seeking a settlement in the area of property relations, preference should be given to the country's own citizens. From this perspective, restitution of property can be regarded as a form of its privatization, i.e. its return into private hands, on the assumption that a private owner will manage it with due care and diligence.
- e) While the economic reform quickly gained momentum and today the transition from planned to market economy is practically completed, restitutions of property are still under way. Like any attempt to deal with the past, they have given rise to many controversies that the independent judiciary may sometimes find hard to resolve.
- f) In the Government's opinion there can be no question of a new round of restitutions or compensations, i.e. a new policy to permit the filing of additional restitution claims by persons who in the material period did not meet the citizenship precondition. Such policy would conflict with the rights of third parties who are not identical with the State. The restitutions process has led to tens of thousands of judicial and administrative decisions affecting a considerable volume of property, chiefly real estate. In other words, the present property relations are to a great extent the product of the restitutions legislation. Moreover, in all likelihood the creation of a universal right to seek redress for past wrongs would be beyond the real capacity of the state budget.
- g) The Government's present position is also based on the fact that it was the Czechoslovak State which, after the fall of the totalitarian regime in 1989, sought to deal with past wrongs on the broadest possible scale which the legislator found

feasible. By contrast other Central and East European countries did not restitute properties at all, or did so very hesitantly and on a very limited scale.

- h) The Government is well aware of its legal obligations arising from international human rights treaties to which the Czech Republic is a party, and is committed to progress in their implementation. Therefore it has given serious consideration to the recommendations and views of the Human Rights Committee, including the views on the discriminatory nature of the citizenship pre-condition in its restitutions legislation. While it regrets that some people might subjectively feel wronged again in the restitution process, it does not deem it feasible to change the system established by the restitutions legislation almost ten years ago, and to further prolong the process of alleviating the past wrongs in the field of property ownership.

Measures in the education system to enhance individual approach to the specific needs of children belonging to minorities, especially the Roma minority
Education of children belonging to the Roma minority

10. A certain number of children belonging to the Roma minority spend their compulsory school attendance term in special schools. Today, as in the past, a child can be referred to a special school on the basis of a psychoeducational assessment of his/her intellectual ability. Importantly, such referral can (and could) be ordered only with the prior written consent of the child's parents or statutory representatives. Children belonging to the Roma minority may end up in special schools not because they are Roma, but chiefly because of their language problems that make learning very difficult. The child's profile may also be influenced by different personality development, different set of values and different social and cultural environment of the Roma family. An important factor is that many parents are familiar with the special school system and automatically send their children to the school that they themselves attended.

Changes to the intellectual ability assessment method

11. To eliminate the social and cultural factors that differentiate Roma children from their peers, the primary step was to change the method of assessing the child's overall intellectual ability and its structure. In 1997 the Government instructed the Minister of Education "to prepare new tests for the purposes of referral to special schools, with greater emphasis on the specific talents and skills of Roma children, in order to eliminate the existing practice of too many Roma children placed in special schools without a reasonable justification based on their intellectual and learning ability"¹.

12. A working group established at the Ministry of Education, Youth and Sports (hereinafter referred to as "the Education Ministry") recommended, as the first step, the national standardization of WISC-III UK tests. Wechsler Intelligence Scales (WISC) and their latest revised version WISC-III UK are the most widely used and world-known tests for assessing a child's intellectual ability. Compared with the previous assessment method, their results are less affected by the child's social and cultural background.

¹ Government Resolution No. 686 of 29 October 1997 concerning the Report on the Situation of the Roma Community in the Czech Republic and on the Present Situation in the Roma Community.

13. The national standards for WISC-III UK were set in 1998-2000 by the Czech Republic's Psychoeducational Guidance Institute in consultation with 120 psychologists from guidance centres in all parts of the country. Their experimental group of 1,457 children included 93.7% Czechs, 6.2% Roma and 0.1% other nationalities.

14. The national standards and adjustments of the test were presented to psychologists specializing in psychological assessment of children from multicultural backgrounds. Seminars were organized to teach the staff of guidance centres about the use and interpretation of the tests in assessing Roma children. A handbook reflecting the specific characteristics of Roma children was distributed to guidance centre psychologists. The training programmes offered by the Psychoeducational Guidance Institute regularly include seminars for teachers on assessing the learning abilities of Roma children.

Transfer from a special school to the ordinary school system

15. A child's placement in a special school is not irreversible. Like the procedures for referral to a special school, there exist procedures for transfers to the ordinary school system. Again, the change requires the consent of parents or statutory representatives; otherwise the child cannot leave the special school. Transfers from special schools on the basis of good academic performance are governed by Education Ministry Regulation No. 127/1997 concerning special schools and special kindergartens. The head of a special school must, following a consultation with parents, recommend the transfer of any child whose academic performance shows that he/she would be able to attend an ordinary school. He must inform the parents of all pupils about the possibility, as well as the conditions of such transfer. The parents are also entitled to take the initiative and set the transfer procedure in motion by asking for reassessment and equivalence tests. In deciding on a transfer, the primary consideration is the child's best interest. The two schools, special and ordinary, work closely with the guidance centre to make the transfer easy; if necessary, an individual study plan is prepared for the child.

16. In the academic year 2001/2002 the Czech Schools Inspection carried out a survey on children transferred from special schools in 1999-2002, i.e. since the introduction of the Education Ministry's Methodical Instruction regulating transfers from special to ordinary schools. The inspectors worked with data on 25 special schools, i.e. just over 10% of the total number of 240 special schools.

Pupils transferred from examined special schools in the academic years 1999/2000-2001/2002

<i>Pupils, total</i>	<i>Academic year</i>			<i>Type of class at ordinary school</i>		<i>Result of transfer</i>	
	1999/2000	2000/01	2001/02	Special	Ordinary	Success	Failure
10	8	2	0	2	8	6	4

17. The effectiveness of the cited instruction was also examined by the Psychoeducational Guidance Institute. Questionnaires were distributed to 98 guidance centres, 73 of them responded (74.5%).

Transfers handled by psychoeducational guidance centres in the academic years 1998/1999-2000/2001:

<i>Academic year</i>	<i>Transferred pupils, total</i>
1998/1999	10
1999/2000	9
2000/2001	12

Head-start classes

18. Since 1993, the Education Ministry's policies to encourage the education of Roma children have included the establishment of "head-start classes" for pre-schoolers, as well as support for alternative education programmes. Initially the head-start classes existed only at special schools with specialist teachers experienced in working with Roma children. However, since their purpose is to prepare children from different social and cultural backgrounds for regular school attendance, the classes have gradually appeared at ordinary primary schools and, to a lesser extent, at some kindergartens.

19. In the trial period in 1997-2000, the Education Ministry found the project useful and decided to include it in the education system. A methodical instruction was issued to regulate the establishment of head-start classes for socially disadvantaged children and to create the post of assistant teacher. Head-start classes have been offered by kindergartens, ordinary and special primary schools. The current trend is to open them at primary schools, so that the children can get used to the environment in which they will spend their compulsory school attendance term.

Head-start classes and children attending them in the academic years 1993/1994-2001/2002

<i>Academic year</i>	<i>Head-start classes</i>	<i>Attending children</i>
1993/1994	18	*
1994/1995	26	*
1995/1996	36	*
1996/1997	69	*
1997/1998	69	658
1998/1999	100	1,237
1999/2000	114	1,425
2000/2001	110	1,364
2001/2002	109	1,467

* Data not available.

20. The methodical instruction permits the establishment of head-start classes for socially disadvantaged children, i.e. for children from families in a poor economic and social situation, children endangered by socio-pathological phenomena, child asylum seekers and children with asylum status. The percentage of Roma pupils is high due to their language problems and different social and cultural background.

Assistant teachers

21. The Education Ministry's Methodical Instruction to regulate the establishment of head-start classes for socially disadvantaged children and to create the posts of assistant teachers enables the head of schools and educational facilities with a high percentage of socially disadvantaged pupils to create the posts of assistant teachers (hereinafter referred to as "assistants"). In fact, the posts have existed at some schools since 1994 when the staff was known as "Roma pedagogical assistants".

Initially the assistants were trained and paid by the non-governmental non-profit organizations New School Prague (Nová škola Praha) and the Open Society Fund. Since 1998 they have received wages from the state budget². In 2000 the cited Education Ministry's instruction permitted the heads of schools to create the posts on their own initiative. Since then the number of assistants has grown steadily by 60-70 per year. On 31 December 2001 there were more than 230 assistant teachers working at kindergartens, primary and special schools.

22. After the initial steep rise in the number of schools with head-start classes and assistant teachers, the process has slowed down. The current offer of head-start classes and assistant teachers still does not fully cover all Roma communities in the Czech Republic.

Roma assistants – assistant teachers since their introduction

<i>Calendar year</i>	<i>Roma assistants – assistant teachers</i>
1997	20
1998	62
1999	160
2000	175
2001	230
2002	297

23. Candidates for the post must be familiar with the typical environment and background of the pupils. Assistants, especially those working with Roma children, usually come from a similar linguistic, social and cultural environment. Their function is to make the pupil-teacher relationship easier, to assist the communication between the parents and the school and possibly to liaise with the local Roma community and provide advice and guidance to other teachers.

24. At the end of 2001 the Government instructed the Education Minister to more intensively support and promote the establishment of head-start classes and assistant teaching posts and to encourage the creation of these posts at the 6th-9th grade of primary schools, at vocational schools and facilities providing institutional care and reformatory treatment.³

² Government Resolution No. 686 of 29 October 1997 concerning the Report on the Situation of the Roma Community in the Czech Republic and the Present Situation in the Roma Community.

³ Government Resolution No. 1145 of 7 November 2001 concerning the proposed measures to intensify the implementation of the Concept of the Government Policy in respect of Persons Belonging to the Roma Community Promoting their Integration into the Society.

Access of special school pupils to secondary schools

25. A radical change took place in 2000 when an amendment to Act No. 29/1984 to regulate the system of primary and secondary schools as amended opened the secondary schools system to pupils who have completed their compulsory school attendance term at special schools. Today, the only criterion is their score in the secondary school admission test. Completed ordinary school attendance is no longer the necessary pre-condition for admission to secondary schools.

26. Already since 1997 the Secondary School of Social Studies in Prague has been running an experimental project of two-grade extramural secondary study for Roma advisors and assistants working for the Government (Evangelical Academy). The course has received Education Ministry approval as an "experimental study programme –social work in an ethnic minority environment". The school has been fully funded from the state budget since 1998.

27. The Roma School of Social Studies (Romská škola sociální, s.r.o.) in Kolín, established in 1997 is a similar project. It intends to provide full secondary vocational education: the curriculum is tailored to the specific needs and social and cultural environment of the Roma community. The school prepares students for social work in Roma communities. Government subsidies (paid from the budget of the Central Bohemia region) account for 90% of its funding.

Other fields of education

28. In-service training on issues related to national minorities for the staff of psychoeducational guidance centres, educational counselling specialists and teachers is provided by the Psychoeducational Guidance Institute in Prague and by educational counselling centres. In 2001 an experimental arts school for Roma pupils was established under the aegis of the Czechoslovak Hussite Church (40 students, five teachers, including two Roma teachers).

29. The "Strategy for Improving the Education of Roma Children (2001)" is available on the Education Ministry website. It describes the plans for the education of Roma children through various programmes at all levels of the education system.

30. A significant element in the education of young Roma is the local community centre. There are more than one hundred community centres, mostly established by Roma or pro-Roma civic associations and offering leisure time activities and standard club programmes.

The minority education policy

31. The establishment and operation of schools or classes providing instruction to children of non-Czech nationalities in their own language usually depends on the interest of their parents, typically expressed through a civic association. In the State-run education system persons belonging to national minorities have the right to education in their own language.

32. To resolve the practical problems associated with the exercise of this right, the Education Ministry has created an Advisory Group on the questions of minority education. In 2001 the group

comprised representatives of the Polish, German, Roma, Slovak, Hungarian and Ukrainian minorities, as well as the Jewish community in the Czech Republic.⁴

33. In the State-run school system the education in minority languages can be provided only for larger groups concentrated in a certain area and able to fill the mandatory quota of pupils per class. These requirements are fully met only by the Polish minority. Other communities (Bulgarian, Croatian, Ruthenian, Russian, Greek and Ukrainian minorities, but even larger groups such as the Hungarian, German, Roma and Slovak minorities) pose a serious problem in the field of minority education because they are too dispersed or their numbers are too low. The State-run school system supports full minority education for the Polish, German and Roma communities, while other minorities are offered only complementary courses funded by the State from subsidies intended for extracurricular activities. For this reason the detailed information below refers only to Polish and German schools.

Polish minority education

34. The Polish national minority in Karviná and Frýdek-Místek districts uses a network of schools providing instruction in the Polish language. It includes kindergartens, primary schools, a grammar school and classes providing instruction in the Polish language at secondary vocational schools.

Children in Polish-language kindergartens

<i>District</i>	<i>Kindergartens</i>	<i>Children</i>
Frýdek-Místek	24	426
Karviná	14	275
Total	38	701

Children in Polish-language primary schools (academic year 2001/2002)

<i>District/Grade</i>	I	II	III	IV	V	VI	VII	VIII	IX	Total
Frýdek-Místek, primary schools, total	114	153	147	153	166	152	173	179	184	1,421
Karviná, primary schools, total	83	79	95	86	93	119	105	116	129	905
Primary schools, total	197	232	242	239	259	271	278	295	313	2,326

⁴ In 2002 the group was enlarged to include representatives of the Bulgarian, Croatian, Ruthenian, Russian and Greek minorities.

Students at Polish-language secondary schools (academic year 2001/2002)

<i>Secondary school/Year</i>	6-I gram. III	I	II	III	IV	Total
Grammar school in Český Těšín	23	122	124	105	93	467
incl.:Grammar School in Český Těšín and its classes located in Karviná		94 28	97 27	86 19	66 27	366 101
Secondary Technical School in Karviná (classes)		13	14	17	19	63
Business Academy in Český Těšín (classes)		25	30	17	30	102
Nursing College in Karviná (classes)		13	14	13	14	54
<i>Secondary school, total</i>	23	173	182	152	156	686

German minority education

35. The dispersed German minority does not meet the requirements for a full minority education system. The Education Ministry supports the study of the German language, *inter alia*, by encouraging primary schools to offer optional language courses outside their main curriculum. The policy in respect of the Hungarian and Greek minorities is the same, with optional courses of the minority language offered at schools.

36. The State-run schools system includes the Primary School of Czech-German Understanding, established in 1991 and fully funded by the State. The Education Ministry's network includes also Bernhard Bolzano Primary School, opened at Tábor in 1997. State subsidies account for 60% of its funding, the rest is raised from Czech and German sponsors. The curriculum is based on the programme for "Primary Schools with Intensified Language Instruction".

37. Thomas Mann Grammar School was established in 1995 by the Union of Germans – Prague and Central Bohemia Region – at the request of parents whose children attended the Primary School of Czech-German Understanding. During eight years of study it provides full secondary education, with instruction partly in German (mathematics, geography, biology, German history, German literature).⁵ The Education Ministry subsidies account for 90% of its funding.

38. Other important activities of the German minority in the field of education include the network of fourteen "Begegnungszentren" (meeting centres) in Brno, Havířov, Hlučín, Horní

⁵ Like in the cases of the Primary School of Czech-German Understanding, Thomas Mann Grammar School is supported by the German Government (assignment of "programme teachers", grants for the purchase of teaching aids). The classes in the highest grades are very small, and 25-30 students are admitted to the first grade.

Slavkov, Cheb, Chomutov, Kravaře, Liberec, Moravská Třebová, Opava, Plzeň, Smržovce, Šumperk and Trutnov. The network is fully funded by the German Government.

The control system of the Interior Ministry and the Czech Republic Police for investigating policemen's crimes

The term "complaint" in Czech legislation

39. The definition of "complaint" as a legal term slightly differs from the common meaning of the word. The operative legislation distinguishes between two types of complaints:

- a) Complaints under Government Regulation No. 150/1958 concerning the processing of complaints, reports and suggestions from workers,
- b) Complaints under Act No. 141/1961 concerning the criminal procedure as amended (hereinafter referred to as "the Code of Criminal Procedure").

40. "Complaints" are communications from natural and legal persons who in their individual interest seek the protection of violated or jeopardized rights or justified interests or draw attention to other shortcomings in the work of government authorities and other institutions, including the Interior Ministry or the Czech Republic Police. A "complaint" is not a communication from a natural or legal person seeking to assert his justified or jeopardized interests in the public interest.

41. Since all received communications are categorized according to content, the references in this chapter to "communications" should be understood as references to all complaints and other communications, except for reports on the commission of a crime and communications under the Code of Administrative Procedure (Act No. 71/1967). The processing of communications under Regulation No. 150/1958 is governed by the following rules:

- a) All communications must be examined within 10 days from the date of delivery to the competent authority. If the communication cannot be disposed of within 10 days from the date of delivery, it must be disposed of within 30 days. This time-limit can be extended only in exceptional cases, with the consent of the competent senior officer or a person authorized by him. The author of the communication must be informed about the reasons for such extension;
- b) A communication which falls within the competence of another authority must be referred to such authority within 5 days from the date of delivery. The author must be informed about this step;
- c) It is inadmissible to refer a communication for processing to departments or staff members against whom it is directed;
- d) The author must be informed about the final disposal of the communication, even if it is found unsubstantiated.

42. "Complaints" under the Code of Criminal Procedure are the only regular remedy against resolutions of a police authority in criminal proceedings. These complaints can challenge any resolution of a police authority. Regarding the resolutions of courts and Prosecuting Attorneys, the complaint is admissible only against first instance resolutions, insofar as the Code of Criminal Procedure expressly permits the lodging of complaints.

43. The complaint has a suspensory effect only in cases expressly defined in the Code of Criminal Procedure. The resolution cannot be executed until it becomes final.

44. The complaint must be lodged with the authority against which it is directed within three days from the date on which the resolution was notified to the author.

45. The authority against which the complaint is directed can accept it, unless the change to the original resolution would affect the rights of another party to the criminal proceedings. The principle of *error coram nobis* is thus enshrined in the Code of Criminal Procedure (Section 146, paragraph 1).

46. The above explanation shows that the legal term "complaint" does not refer to complaints about offences. In these cases, it is necessary to immediately report that a crime has been committed. It is important to note that a report may be made by anyone who believes that a crime has been committed, regardless of the status of the alleged offender. The law enforcement authorities must initiate criminal prosecution in the course of their duties (*ex officio*) as soon as they learn about an unlawful activity (the principle of officiality in the criminal procedure).

47. A complaint directed against unlawful (but not criminal) conduct of a policeman may eventually lead to his criminal prosecution, if any of the control authorities examining the complaint finds that the unlawful conduct identified in it actually constitutes a crime. Such cases must be referred to a Prosecuting Attorney. On the other hand, if a criminal prosecution is initiated against a policeman, whether by a criminal report or by a Prosecuting Attorney acting *ex officio*, but it is found that his unlawful actions do not actually constitute a crime, the Prosecuting Attorney must refer his case to the control authorities of the Czech Republic Police.

The control system of the Interior Ministry and the role of the Interior Ministry and the Czech Republic Police in criminal prosecutions against policemen

The internal control system

48. The internal control system of the Interior Ministry and the Czech Republic Police is based on a network of control bodies and teams, closely coordinated to ensure full and effective coverage.

49. The highest body responsible for internal control of all departments of the Interior Ministry and the Czech Republic Police is the Interior Ministry's Internal Control Department. Other internal control structures include

- a) the Control and Complaints Department at the Police Presidium
- b) the competent lower organizational units of the Czech Republic Police
- c) the Interior Minister's Inspection.

50. The competent lower organizational units of the Czech Republic Police are, at the first instance level, the District Directorates. Each District Directorate includes a control team that also handles complaints concerning the conduct of policemen. The second instance authority is the competent Regional Administration of the Czech Republic Police – see 4.2.2. below.

51. The mission of the Interior Minister's Inspection is to detect and ascertain facts indicating that a crime has been committed by a member of the Czech Republic Police personnel – see 4.2.4. below. Every unit of the Czech Republic Police must receive these complaints, and if they are outside the scope of its duties, refer them to the competent department.

52. The internal control is governed by Interior Ministry Directive No. 9/2000. The control bodies prepare half-yearly plans of main control tasks. The plan briefly states the reasons for including the control task and specifies its form and subject, the controlled departments as well as the timeframe and required coordination with other structures.

Control and complaints departments of the Czech Republic Police

53. The internal control system of the Czech Republic Police is based on a network of control bodies and teams, closely coordinated to ensure full and effective coverage. Any of them can handle communications concerning the conduct of policemen. The control structures of the Czech Republic Police include

- a) the control body of the Czech Republic Police Presidium – the Control and Complaints Department
- b) control departments at the regional and district Czech Republic Police Administrations, at the Czech Republic Police Administration in the Capital City of Prague and the Czech Republic Police Directorates in towns and cities.

54. The Control and Complaints Department of the Czech Republic Police Presidium is the highest control body of the Czech Republic Police. It has general powers and carries out specialized internal control of the police service, as well as control of the measures necessary for the proper functioning of all departments responsible to the Police President.

55. Beside the regular control activities it handles all communications concerning the conduct of policemen or the work of police departments in terms of Regulation No. 150/1958 and in terms of Petitioning Right Act No. 85/1990. Every communication is categorized according to its content, even if the heading or format is not correct. If the author is not satisfied with the final disposal and sends a new communication, the handling of his original communication is always reviewed. The new communication is referred to a superior department. The handling of repeated communications is the responsibility of the principal officer with supervision over the department that processed the original communication.

56. Communications directed against the Czech Republic Police are handled by a director authorized to manage personnel, or by a member of the department against which the communication is directed, provided that the director authorizes him to do so. Communications against the director are handled by his superior officer. The handling of repeated communications is the responsibility of the principal officer with supervision over the department that processed the original communication. If the author is not satisfied with the handling and results of the

communication, he may directly contact the Control and Complaints Department at the Police Presidium or the Interior Ministry's Internal Control Department.

57. Complaints can be made orally or in writing. Oral complaints are recorded by the authorized staff and signed by the author. Complaints can also be sent by e-mail to the special address stiznosti@mvcz.cz which can be found on the Interior Ministry's official website.⁶

58. Every department of the Czech Republic Police has the duty to receive communications. If the communication is outside the scope of its competences, it must refer it to the competent department and inform the author about the fact.

59. If it is proved that the actions of a Czech Republic Police officer or employee were unlawful, the violator is held personally liable and the competent senior officer takes measures to prevent the recurrence of such incidents. The measures are regularly reviewed.

60. Police President's Order No. 127 of 7 November 2001 provides that one of the main control tasks in 2002 would be a review of the measures adopted by senior officers to eliminate the identified shortcomings as regards the official duties, powers and means available to the Czech Republic Police personnel. Special attention would be paid to the observance of correct procedures in taking an official action which leads to interference with a person's statutory rights and freedoms.

Controlling the control system – the Internal Control Department at the Interior Ministry⁷

61. The Internal Control Department at the Interior Ministry handles communications from natural and legal persons and records them in a central register. The data from the register are presented in annual Reports on the final disposal of communications. They show the overall situation in the processing of communications at the Interior Ministry and the Czech Republic Police, including the categories, time limits, etc. The department also organizes, coordinates and supervises the work of the control system. It identifies defects in the system and shortcomings in the work of the Interior Ministry as an administrative authority, including the monitoring of the related tasks.

62. The department includes a supervisory team that conducts inspections to check the effectiveness of the system, the organization and management of work, observance of the applicable laws and internal regulations and the effectiveness of the State control functions of the Interior Ministry and the Czech Republic Police.

⁶ The website contains practical information about the structures of the Interior Ministry and the Czech Republic Police, as well as the competences of each department. Visitors are also advised how to deal with the authorities.

⁷ On 1 June 2002 the Internal Control Department was divided into the Internal Audit and Supervision Department and the Financial Audit Department. On 1 May 2002 the Communications Unit was transferred to the Minister's Secretariat.

63. Another team within the department handles communications from individuals. In accordance with Interior Ministry Directive No. 10/2000 it keeps a central register of communications from individuals (hereinafter referred to as "the register"), including their final disposal, and analyses their content. The register includes also data reported by other departments of the Interior Ministry, the Interior Minister's Inspection, the Control and Complaints Department of the Czech Republic Police, regional control and complaints departments of the Czech Republic Police and, in 2001, also the Czech Republic's Investigating Authority.

64. The Internal Control Department conducts in-depth inspections and random checks of the processing of communications. If it finds a mistake in the procedure, the responsible staff member is cautioned and the communication must be reviewed. After the review, the staff member must report to the Internal Control Department on the final disposal of the communication.

65. The Internal Control Department may check the formalities as well as the decision on the merits of the communication. The handling of communications is also checked by the Czech Republic Police Presidium.

66. According to the legislation cited above, complaints are processed either by the department competent to handle the merits of the case, or by specialized control structures.

67. In 2001 the registered communications totalled 6,703, including 797 repeated communications (11.9%). A total of 6,405 communications were disposed of; 819 of them were found substantiated (12.89%). 171 communications were referred to authorities outside the Interior Ministry structure (2.67%); 1,004 communications were filed away without an inquiry or disposed of in another way (15.68%).

68. The communications disposed of in this period concerned mostly the conduct of police officers in the course of criminal investigations (2,259 communications, 33.7%); 15.98% were found substantiated.

69. Comparison with the situation in previous years (1997-2000) shows that the number of received communications remains roughly the same and there is no rising trend.

70. The figures are roughly the same also as regards the total number of communications that were found substantiated – 12.89%, repeated communications – 11.9%, of which 10.77% were eventually found substantiated.

71. Analysis of received telephone calls and e-mails shows that the nature of communications is changing. Instead of complaints, the Interior Ministry is receiving requests for assistance from individuals and companies, including legal consultations or expert advice. Communications directed against police officers or Interior Ministry employees concern mostly inaction, improper conduct, mistakes or delays in investigating crimes or minor offences (mostly traffic offences) or incorrect handling of previous communications in terms of Regulation No. 150/1958.

72. In most cases the author is advised how to address his problem and whom to contact. Sometimes he is immediately put into touch (by telephone or e-mail) with the competent department at the Interior Ministry or the Czech Republic Police. Reports concerning alleged

criminal activities are referred to the competent police departments in accordance with the Code of Criminal Procedure. Telephone calls or e-mails concerning misconduct of policemen are referred to the competent complaints and control departments of the Czech Republic Police for examination and decision on further steps.

The Interior Minister's Inspection and its work

73. The Interior Minister's Inspection (hereinafter referred to as "the Inspection") is a department at the Interior Ministry with status and tasks defined in Act No. 283/1991 to regulate the Czech Republic Police as amended (hereinafter referred to as "the Czech Republic Police Act"). The Act provides that the Inspection's main task is to detect and ascertain facts indicating that a crime has been committed by a policeman, and to take measures to identify the offender according to the procedure laid down in the Code of Criminal Procedure. The Inspection's inquiries are ordered on the basis of communications from natural and legal persons; the inquiry is mostly conducted by the Inspection staff themselves.

74. The Inspection is an Interior Ministry department directly responsible to the Interior Minister. It is headed by a director, assisted by deputy directors and heads of units. The Inspection has seventeen units. The First Unit is responsible for criminalistic analyses, logistics and support services necessary for the work of the whole Inspection. The Third Unit specializes in identifying criminogeneous factors and initial indications of individual types of crime committed by policemen. It has direct jurisdiction over policemen serving in Czech Republic Police units and services with nationwide powers and deals with extensive and serious cases which are beyond the scope of territorial police departments. The Second and Fourth to Sixteenth Units have territorial jurisdictions. The newly established Seventeenth Unit with a nationwide jurisdiction specializes in detecting and investigating economic and financial crimes committed by policemen.

75. The Inspection examines communications indicating that a member of the Czech Republic Police has committed a crime. It also examines communications categorized as complaints in terms of Regulation No. 150/1958 if they are directed against the Police President and his deputies, members of the Czech Republic Police personnel assigned to other Interior Ministry structures, as well as heads of police schools, if they are policemen. Other complaints are referred to the competent departments of the Czech Republic Police.

76. In 2001, in contrast to the generally declining crime rates, the number of policemen's crimes detected and documented by the Inspection reached yet another record level.

77. In 2001, on the basis of the Inspection's documentation, the Czech Republic Police investigators filed charges against 468 policemen for a total of 665 criminal acts, including 244 cases of abuse of authority under Section 158 of Act No. 140/1961, the Criminal Code, as amended (roughly 37% of the overall crime rate), and 11 cases of neglected official duties under Section 159 of the Criminal Code (roughly 1.65% of the overall crime rate). The second largest category were insurance frauds under Section 250a of the Criminal Code which accounted for roughly 15% of policemen's crimes (98 cases).

78. Since the establishment of the independent Czech Republic in 1993, the statistics on policemen's crimes in 2001 show the highest clearance rate, the highest number of policemen

facing criminal charges and the highest total number of crimes committed by policemen. By then, the rising trend had been obvious for four consecutive years; as regards the number of policemen facing criminal charges, the growth rate rose steeply from 10% in 2000 to 20% in 2001.

79. The number of criminal prosecutions against policemen was highest in the area under the jurisdiction of the Czech Republic Police in the Capital City of Prague, followed by areas under the jurisdiction of the Czech Republic Police Administrations in Northern Moravia and Northern Bohemia.⁸

80. The number of cleared crimes committed by policemen while on duty also rose visibly in comparison with their crimes committed in off-duty periods. 77% of policemen's crimes were committed during on-duty periods.

81. The number of offenders among the riot, traffic and criminal police personnel rose, while the previous dynamic growth in the number of criminal charges against the investigating services personnel stopped.

82. On the whole, the rise in policemen's crime rates is attributable to the suppression of latent crime, rather than an absolute growth of criminal activity within the Czech Republic Police.

83. The improved detection of latent crime was due to the increased number of the Inspection's staff, consistent efforts to improve their qualifications, as well as the creation of new departments to ensure a strong presence of inspectors in all regional structures of the police force.

84. The training of the Inspection's staff focuses on thorough knowledge of the laws and regulations concerning the conduct of policemen during police operations interfering with the rights of persons, in order to have every violation detected and documented and the violator brought before the competent authority.

Investigation of crimes committed by the Czech Republic Police personnel Situation as of 31 December 2001

85. Until the introduction of the amended Code of Criminal Procedure, the investigation of crimes committed by policemen was in the hands of the Inspection and investigators at the Investigating Authority of the Czech Republic Police.

86. The Inspection conducted criminal proceedings against policemen within the scope of its powers as a "police authority" in terms of the Code of Criminal Procedure. In accordance with the Code of Criminal Procedure, the Inspection also examined communications from natural and legal persons concerning alleged criminal activities of policemen. In these cases the Inspection had exclusive jurisdiction. No other police authority had the right to conduct criminal proceedings

⁸ It is worth noting that the territorial jurisdictions of the Czech Republic Police departments are not fully identical with the "regions" as higher local government units under Constitutional Act No. 347/1997 to regulate the establishment of higher local government units as amended. The structure of the Czech Republic Police as defined in Interior Minister's Directive No. 71/2001 is different. The names of some regions may differ accordingly.

against a policeman. If the results of the inquiry indicated that a crime had been committed and that the suspected offender was a policeman, the Inspection referred the case to an investigator (at all levels of the Investigating Authority of the Czech Republic Police) and requested him to initiate criminal prosecution. If the Inspection concluded that no crime had been committed or if the inquiry did not identify the alleged violator, it resolved to discontinue the case. Complaints against this resolution could be lodged by any person directly affected by it or by the author of the original communication. They were lodged with the authority against which the original communication was directed within three days from the notification of the resolution. The complaint was reviewed by a Prosecuting Attorney who either dismissed it as unsubstantiated and upheld the resolution, or found the complaint justified and ordered the authority against which it was directed to review and resolve the case. If the policeman's identity was known and his actions did not constitute a crime, but merely a minor offence, the Inspection referred the case to the officer competent to exercise disciplinary authority over the policeman.

87. The Inspection was permitted to exercise the above powers only if the alleged offender was obviously a policeman who was still a member of the police force at the time of investigation.

88. If the allegations surfaced only after the policeman had left the police force, the Inspection could take action only if the crime was directly connected with his service in the police force. In other situations it did not have this power.

89. The Inspection functioned as a police authority in examining communications concerning alleged crimes committed by policemen. If the crime carried a more than three years' prison sentence, the Inspection did not investigate, but functioned only as a police authority in terms of the Code of Criminal Procedure, i.e. its role was limited to inquiries, searches and documentation. Other investigative functions under the Code of Criminal Procedure were performed by the investigator.

The situation since 1 January 2002

90. Under the amended legislation the investigation of policemen's crimes is in the hands of the Prosecuting Attorney (Section 161, paragraph 3 of the Code of Criminal Procedure as amended by Act No. 265/2001). The Prosecuting Attorney is not part of the Interior Ministry structure.

91. The amendment did not affect the status of the Inspection as established in the Czech Republic Police Act. Like under the previous legislation, the Inspection functions as a police authority – but its powers cover all crimes committed by policemen, irrespective of the length of the prison sentence. If the Inspection takes measures which fall within the framework of criminal proceedings in order to detect and ascertain facts indicating that a crime has been committed by a policeman, it must make a record of these facts and the way in which they became known to it. Within 48 hours from the beginning of such proceedings, a copy of this record must be sent to the Prosecuting Attorney who will take over the case.

92. A Prosecuting Attorney investigating a policeman's crime may ask the Inspection, within the limits of its powers, to obtain individual items of evidence or to perform individual investigative acts, to secure the presence of the suspect or to deliver a document. The Inspection must promptly execute his requests.

93. A Prosecuting Attorney investigating a policeman's crime must observe, *mutatis mutandis*, the provisions regulating the investigative work of a police authority.

94. Complaints against the Prosecuting Attorney's decision can be lodged by any person directly affected by it or by the author of the original communication. They are lodged with the authority against which the original communication is directed within three days from the notification of the decision. The complaint is reviewed by a superior Prosecuting Attorney who either dismisses it as unsubstantiated and upholds the decision, or finds the complaint justified and orders the authority against which it is directed to review and resolve the case.

95. The Prosecuting Attorney investigates also the co-offenders who are not policemen, if all offenders whose crimes are interconnected, or all instances of a perpetual and multiple crime, or all parts of a perpetual crime are tried in a joint trial, unless there exist overriding grounds against such investigation.

96. In order to prevent disputes concerning the exercise of jurisdiction and powers in criminal proceedings and other assistance necessary for criminal proceedings in cases where the Prosecuting Attorney conducts criminal proceedings against policemen, an agreement has been concluded between the Supreme Prosecuting Attorney's Office, the Czech Republic Police Presidium and the Inspection. The agreement sets out their respective responsibilities in the criminal proceedings and other assistance necessary for criminal proceedings, as well as the particular procedures which they wish to be followed if the assistance is provided at the request of a party to this agreement.

Plans for the future development of the control function within the Czech Republic Police

97. The Government intends to set up an independent control body to supervise detention facilities and to conduct preventive visits in places where persons deprived of their liberty are being held. The need to control the treatment of detainees and prisoners and the conditions of detention in various types of facilities in the Czech Republic has been noted by the relevant international human rights bodies.

98. The European Committee for the Prevention of Torture and Other Inhuman and Degrading Treatment or Punishment in its report on the visit to the Czech Republic carried out in 1997 invited the Czech Republic to establish a system of "visits to all prison establishments by an independent body ... with authority to receive – and, if necessary, take action on – prisoner's complaints". The Committee against Torture, a monitoring body of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in its Concluding Observations on the Czech Republic's second periodic report on the fulfilment of the obligations arising from the Convention of May 2001, recommended the Czech Republic to "set up an effective and independent system of control over prisoner's complaints and for the external and civic inspection of the prison system". In addition, the draft Optional Protocol to the Convention envisages the establishment of a Subcommittee on Prevention of Torture that should visit the places under the jurisdiction of the States Parties to the Protocol where persons are or may be deprived of their liberty. It also requires that each State Party should set up such visiting bodies at the national level.

99. As concerns the possible policies for independent control over the Czech Republic Police, with regard to the amendments to the Code of Criminal Procedure which took effect on 1 January 2002 (see description above), a possible solution would be to broaden the Prosecuting Attorney's powers to include not only crimes, but also non-criminal unlawful acts of policemen.