

Struggle against Torture

The Implementation of the Convention against Torture in
the Czech Republic

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*This won't leave marks; no one will believe
you.*

(Cambodian policeman to a prisoner, 2000)

In: Rejali, Darius, *Torture and Democracy* (2007), p. 35

Paradox of torture

- ❑ Normative definition of torture in international law
- ❑ Strong commitment to criminalize and punish torturers
- ❑ Requirement for a distinct crime of torture
- ❑ Effective investigation in compliance with Istanbul Protocol (IP)
- ❑ Rapport-based interrogation
- ❑ Redress to victims
- ❑ Independent monitoring of places of detention
- ❑ Absence of normative definition of torture on national level
- ❑ Widespread impunity
- ❑ Torture “criminalized” under various provisions of criminal law
- ❑ Formal investigation without applying standards of IP
- ❑ Confession-based interrogation
- ❑ Limited or no redress to victims
- ❑ Lack of oversight

Obligation to establish a distinct crime of torture

- A specific offence different from traditional crimes such as a crime of abuse of power, a crime of bodily injury, a crime of abuse, etc.
- No amnesties and immunities
- No statute of limitations
- Adequate penalty
- Attempt, complicity, participation
- Incorporation of full definition of Article 1 of the Convention:
 - Intentional and purposeful crime,
 - reaching a level of severe pain or suffering both physical and mental and
 - committed in relation to public authority.

Implementation of the Convention against Torture

An ongoing process

X

Not a process of progressive realization

"The principles of control and discipline ought to be abandoned in favor of self-control and self-discipline."

Václav Havel



**Ratification of the CAT
by the Czechoslovak
Socialist Republic**

**The newly established Czech
Republic accepted to the United
Nations and succeed to CAT**

1988

1989

1993

1994

**Fall of the
Communist Regime**

Initial state report

Photo: Levan Ramishvili,

CAT Concluding Observations (I. cycle, 1995)

- Adoption of definition of torture which is close to that in the Convention and has taken the steps necessary to ensure that it is a crime in that country.
- All the necessary democratic institutions and safeguards are in place to ensure the implementation of the Convention.
- Expeditious and effective way in which the Czech authorities have dealt with allegations of abuse.
- The Czech Republic is a good example of a democratic State that has taken its commitments under the Convention seriously, and this is reflected in its institutions and practices.
- There are no serious matters currently of concern to the Committee regarding implementation by the Czech Republic of the Convention.

CAT Concluding Observations (II. cycle, 2001)

- Adoption of new Aliens Law and new Asylum Law
- Amendment of the Citizenship Law, which resolved most problems of statelessness that had disproportionately affected the Roma population
- Creation of the Government Commissioner for Human Rights and Council of Human Rights as well as the institution of Ombudsperson
- Compensation provided to former political prisoners
- Authorization of the CAT to receive individual complaints
- Racism and xenophobia
- Discrimination against Roma people
- Excessive use of force against demonstration with connection to International Monetary Fund (IMF)/World Bank in Prague in September 2000
- Lack of external control mechanism of police
- Lack of external control mechanism of prisons
- Instances of inter-prisoner violence and bullying
- The lack of adequate guarantees of detained person to notify a close relative or a friend and has an access to doctor

CAT Concluding Observations (III. cycle, 2004)

- The amendments to the Residence of Aliens Act, establishing an independent judicial second instance body to review asylum cases.
- The amendment to the Act on Serving Prison Terms, which define conditions in prison in accordance with the standards required and offer greater protection to detainees.
- The Law on Probation and Mediation and, resulting, inter alia, in the decrease in the number of prisoners.
- The Law on the Special Protection of Witnesses.
- Amendments to the Penal Code providing for the direction of investigation of criminal offences allegedly committed by members of the Police to the State Prosecuting Attorney instead of the police investigator, as was previously the case.
- The introduction in 2003 of the National Strategy on Combating Trafficking in human beings.
- The intention to ratify the Optional Protocol to the Convention in 2005 and the related Amendment to the Act of the Ombudsman
- Occurrence of acts of violence against the Roma and the alleged reluctance on the part of the police to provide adequate protection and to investigate such crimes.
- The lack of explicit legal guarantees of the rights of all persons deprived of liberty to have access to a lawyer, and to notify their next of kin from the very outset of their custody.
- The fact that minors are not kept separately from adults in all situations of detention.
- The occurrence of inter-prisoner violence and the lack of statistical data.
- Medical consultations may not always be confidential and the decision to resort to restraints is not always covered by the law or regularly reviewed.
- Inadequate investigation of the excessive use of force against demonstration with connection to IMF/World Bank in Prague in September 2000
- The lack of complete information from the State party on redress and compensation provided to victims of acts of torture.
- Allegations regarding some incidents of uninformed and involuntary sterilizations of Roma women, as well as the government's inability to investigate due to insufficient identification of the individual complainants.

CAT Concluding Observations (IV. - V. cycle, 2012)

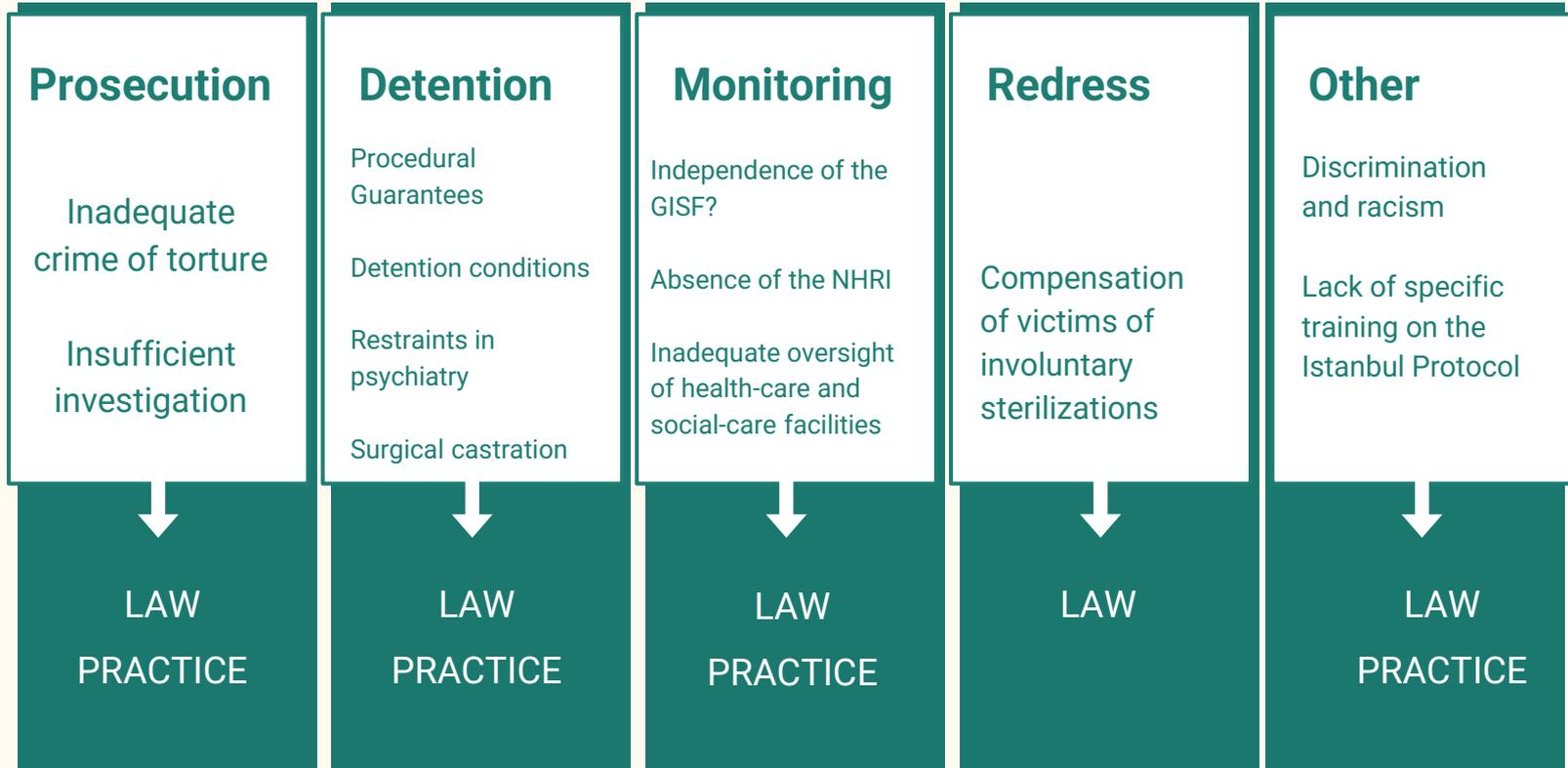
- Ratification of the OPCAT and establishment of the NPM
- Ratification or accession to other documents, such as the CRPD, the Rome Statute of the ICC
- Amendments to the Code of Criminal Procedure relating to extradition and claims to compensation by victims of crime, including torture
- The entry into force the Antidiscrimination Act
- Adoption of the National Strategy against Human Trafficking
- Establishment of the General Inspection of Security Forces in January 2012
- A new crime of torture in Criminal Code does not define torture in terms of the Convention (art. 1).
- Acceptance of diplomatic assurances in relation to extraditions of persons from its territory to States where those persons would be in danger of being subjected to torture
- Inadequate conditions in detention places
- Marginalization of and discrimination against the members of the Roma minority
- Sterilization of Roma women without free and informed consent
- Absence of statistical data concerning compensation to victims of torture and ill-treatment
- Time limits set for filing complaints regarding torture and ill-treatment
- Placement of Roma children in educational facilities for children with slight mental disabilities
- Inadequate investigations and prosecution of acts of torture and ill-treatment
- Not sufficient protection for all victims of trafficking in person.
- Continuous practice of detention of asylum seekers, including families with children and minors
- Use of surgical castration for detained sex offenders
- Frequent placement of persons with intellectual or psychosocial disabilities in social, medical and psychiatric institutions without their informed and free consent
- Absence of legislation explicitly prohibiting corporal punishment
- Absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill treatment

CAT Concluding Observations (VI. cycle, 2018)

- Ratification of the Council of Europe Convention against Trafficking in Human Organs
- Adoption of the Act on Victims of Crime
- Adoption of the Crime Prevention Strategy for the period 2016–2020
- The Campaign against Racism and Hate Violence, in 2014

- Definition of torture does not contain all the elements, including the purposes, set out in article 1 of the Convention.
- Free legal aid is not available from the very outset of deprivation of liberty.
- Police officers do not always respect the right of detained persons to be informed of their rights and to notify a relative of their detention.
- Medical examinations of detained persons take place in the presence of prison guards and police officers.
- Law prevents medical professionals from reporting suspected cases of torture and ill-treatment.
- The right of detainees to have a doctor of their own choosing for a medical examination is not respected.
- Police and prison staff routinely and indiscriminately conduct strip-searches
- Investigative capacity and the independence of the General Inspection of Security Forces is inadequate
- Continued prison overcrowding
- Detainees have inadequate access to health-care services, including a lack of psychological care, and the absence of interpretation services during medical examinations.
- Detaining individuals seeking international protection, including those in particularly vulnerable situations, and at the lack of alternative accommodation for families.
- Absence of a legal definition of statelessness in the domestic legislation, and the lack of a separate mechanism to identify and protect stateless persons.
- Roma children remain overrepresented in specialized educational programmes for children with mild mental disabilities.
- Continued occurrence of hate crimes against minorities, including the Roma and Muslim communities, and at the xenophobic statements endorsed by some politicians, including members of parliament
- Failure to establish an extrajudicial mechanism to provide effective reparation to all persons who were subjected to involuntary sterilization, particularly Roma women.
- Continued use of net beds in psychiatric institutions.
- Reports that recommendations made by the Public Defender of Rights have not been fully implemented.
- Persisting practice of surgical castration.
- Absence of consolidated national human rights institution in compliance with the Paris Principles
- Lack of specific training on the Istanbul Protocol for medical professionals dealing with

Implementation gaps



Section 149 Torture and other Cruel and Inhumane Treatment

(1) Whoever causes bodily or mental suffering by means of torture or some other inhuman or cruel treatment to another person in connection to exercise of powers of a public authority, a local authority, a court, or another public authority, shall be sentenced to imprisonment for from six months to five years.

(2) An offender shall be sentenced to imprisonment for two to eight years, if he/she

a) commits an act referred to in Sub-section (1) as a public official,

b) commits such act against a witness, an expert or an interpreter because of performance of their duty,

c) commits such an act on another person for their true or presupposed race, belonging to an ethnical group, nationality, political beliefs, religion or because of his/her true or presupposed lack of religious faith. commits such act with at least two other persons, or

(3) An offender shall be sentenced to imprisonment for five to twelve years, if he/she:

a) commits the act referred to in Sub-section (1) against a pregnant woman,

b) commits such an act against a child under fifteen years of age,

c) commits such act in an especially cruel or agonising manner, or

d) causes grievous bodily harm by such an act.

(4) An offender shall be sentenced to imprisonment for eight to eighteen years if he/she causes death by the act referred to in Sub-section (1).

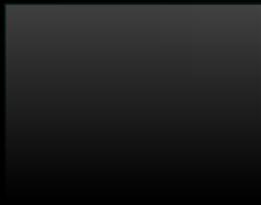
(5) Preparation is criminal

*We are very happy here. It is the best place.
And nurses are kind to us.*

(Common statements of clients in residential elderly homes when encountered the NPM monitors for the first time - hours prior a severe ill-treatment came to the light)

My personal observations as an NPM monitor

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Thank you for attention



"picture" made of faeces on the wall next to a client's bed

carpet soiled with blood in a client's room

Source: Public Defender of Rights of the Czech Republic