

Report

**to the Czech Government
on the visit to the Czech Republic
carried out by the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)**

from 21 to 23 October 2009

The Czech Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2010) 23.

Strasbourg, 21 July 2010

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Copy of the letter transmitting the CPT's report

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Strasbourg, 17 November 2009

Dear Ms Hrstkova,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Government of the Czech Republic drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to the Czech Republic from 21 to 23 October 2009. The report was adopted by the CPT at its 70th meeting, held from 2 to 5 November 2009.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours faithfully

Mauro Palma
President of the European Committee for the
prevention of torture and inhuman
or degrading treatment or punishment

I. INTRODUCTION

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to the Czech Republic from 21 to 23 October 2009. The visit was one which appeared to the Committee "to be required in the circumstances" (see Article 7, paragraph 1, of the Convention).

2. The visit was carried out by Aleš BUTALA (Head of delegation) and Pétur HAUKSSON (2nd Vice-President of the CPT). They were supported by Marco LEIDEKKER of the CPT's Secretariat, and assisted by Tomáš OPOČENSKÝ and Helena REJHOLCOVÁ (interpreters).

3. In the course of the visit, the CPT's delegation pursued certain issues raised in the Committee's report on the 2008 ad hoc visit and which were not adequately addressed in the response of the Czech authorities to that report. In particular, the Committee had grave misgivings as to the responses provided in respect of:

- i) access to medical documentation for members of CPT visiting delegations;
and
- ii) bringing an end to the application of surgical castration in the context of the treatment of sex offenders.

The CPT's delegation sought, through high-level discussions with Government ministers and officials, to resolve these two matters in a spirit of cooperation as provided for in Article 3 of the Convention.

Further, the CPT's delegation carried out a visit to Pankrác Prison Hospital, which had to be discontinued before it could be completed (see paragraph 6).

4. The delegation met with Jana JURÁSKOVÁ, Minister of Health, Michael KOCÁB, Minister of Human Rights, Pavel STANĚK, Deputy Minister of Justice, and Jan LITOMISKÝ, the Government Human Rights Commissioner, as well as with senior officials from the Ministries of Foreign Affairs and Health, and the Czech Prison Service.

5. The fundamental basis of cooperation with the Czech Republic continues to be undermined by the restrictions imposed by the Ministry of Health on the ability of CPT delegations to have access to medical data.

However, the Committee wishes to underline that its delegation received excellent cooperation from the Minister of Human Rights and his staff, as well as from officials of the Ministry of Foreign Affairs, all of whom made considerable efforts to create the necessary conditions under which the CPT's delegation could successfully carry out its visit to the Czech Republic. In particular, the delegation would like to thank the CPT's liaison officer, Ms Simona HRSTKOVA, for the assistance provided before and during the visit.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Access to medical documentation

6. As already indicated, the CPT's delegation undertook a visit to Pankrác Prison Hospital. However, the delegation was obliged to discontinue the visit before it could be completed.

The delegation found that a 'methodological instruction', signed by the Director General of the Prison Service on 20 October 2009, had been sent to all prison governors in the Czech Republic, indicating that, following the Ministry of Health's interpretation of Article 8, paragraph 2.d, of the Convention governing the work of the CPT, members of the CPT's delegation may only have access to a prisoner's medical data after having obtained the prior consent of the prisoner concerned. The delegation had been given no advance notice of this instruction, which constituted a significant divergence from the approach previously followed in establishments under the authority of the Ministry of Justice.

Further, the delegation discovered that the hospital was registering non-medical data, such as the use of security measures imposed by the governor (for example, placement in a security room) as well as means of restraint (both chemical and mechanical), only in the patient's medical file. Consequently, even this information was not readily accessible to the CPT's delegation. Consultations with the Deputy Minister of Justice and the Deputy Director General of the Prison Service did not resolve the problem, as neither official was apparently competent to overturn the Ministry of Health's stated position on access for the CPT to medical files at the prison hospital.

In the report on the 2008 visit, the CPT spelt out some of the reasons why access to medical records is necessary for the Committee to carry out its task¹. It should be noted that in the context of the visit to Pankrác Prison Hospital, the obstacles encountered prevented the delegation from exploring, inter alia, allegations of severe ill-treatment of an inmate by members of the Czech Police Force, which it had received prior to the visit².

In the light of the above, the delegation decided to discontinue its visit.

7. According to the Ministry of Health, members of CPT delegations cannot have access to personal medical data without the prior consent of the person deprived of his/ her liberty, provided that this person is in a physical and mental state to make such a decision. The CPT considers that the position taken by the Ministry of Health is legally unfounded and, more specifically, based on an erroneous interpretation of Article 8, paragraph 2 (d) of the Convention. The Committee's position has been clearly communicated to the Czech authorities on several occasions.

¹ See CPT/Inf (2009) 8; paragraph 7: "For instance, medical records can be instructive as a point of comparison with information gathered elsewhere (e.g. via direct medical observations, or from verbal accounts given by a particular detainee or other person) on specific subjects - the occurrence of physical ill-treatment in a given case, the psychological effects of a regime on a given prisoner, etc. More generally, an examination of medical records enables visiting delegations to assess in a thorough manner the organisation of the health-care service in a particular establishment of deprivation of liberty (including, inter alia, psychiatric establishments)."

² The detailed allegations were made in a letter delivered to the CPT's Secretariat prior to the visit.

As the visit to Pankrác Prison Hospital clearly illustrates, the impediments imposed on access to medical data are preventing the CPT from carrying out in an effective manner its treaty-based mandate in the Czech Republic.

8. Nevertheless, the CPT takes note of the initiative of the Czech Government, as conveyed to the delegation by the Minister of Health on 23 October 2009, to seek an amendment of Article 67b, paragraph 10 of the 1966 “Law on the care for the people’s health”.³ The amendment will add the CPT (and the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)) to the list of bodies that are granted access to medical files without the prior consent of the patient. **The CPT would like to be informed within one month of the expected time frame for the adoption and entry into force of the amendment referred to in this paragraph.**

³ By letter of 27 October 2009, addressed to the Czech Human Rights Commissioner, and forwarded to the CPT, the Minister of Health confirmed that her Ministry would prepare a draft Bill amending the Health Care Act in the manner indicated in paragraph 8.

B. Ending the application of surgical castration in the context of the treatment of sex offenders

9. As regards the application of testicular pulpectomy (“surgical castration”) in the context of the treatment of sex offenders, the CPT’s delegation was informed that the Czech authorities do not intend to cease having resort to this intervention. On the contrary, data provided by the Ministry of Health indicated that in 2008 and 2009 at least six sex offenders had undergone surgical castration in the course of their deprivation of liberty. Moreover, no efforts have been made to examine the conditions under which testicular pulpectomy could be replaced with other, less invasive, interventions, such as the administration of anti-androgens.

The reluctance of the Czech authorities to consider replacing testicular pulpectomy by other forms of intervention is disappointing and disturbing. It is a fundamental principle of medicine that when a medical intervention on a human being is carried out, the least invasive option shall be chosen. In this context, the importance of physical integrity as guaranteed by Articles 2, 3 and 8 of the European Convention on Human Rights cannot be overemphasised. The position of the Czech authorities ignores the divergence of views amongst practising sexologists in the Czech Republic as to the desirability of surgical castration⁴. Further, although the Czech authorities remain convinced that surgical castration is the most appropriate manner to reduce the re-offending rates of sex offenders, no proper comprehensive scientific study has been undertaken to determine the precise rate of re-offending among surgically castrated sex offenders in the Czech Republic, despite the fact that this intervention has been carried out for decades.

It is also noteworthy that, at present, surgical castration is not subject to any regulation or professional instruction, apart from Article 27a of the 1966 “Law on the care for the people’s health”⁵. In their response to the CPT’s report on the 2008 ad hoc visit, the Czech authorities indicated that the Bill on Specific Health Services would include a provision setting out procedural safeguards in respect of the application of surgical castration on persons detained “in prison, under protective treatment and in security detention”; inter alia, approval of such intervention by a court would be necessary following the entry into force of the Bill⁶. However, in March 2009, the Bill was withdrawn from discussion in parliament.

10. The CPT reiterates its view that surgical castration of detained sex offenders amounts to degrading treatment. In order to facilitate the abolition of surgical castration, the Czech authorities should examine the manner and conditions, including conditions of a legal nature, under which testicular pulpectomy can be replaced by other forms of treatment for sex offenders. In the intervening period, the Czech authorities should impose a moratorium on the application of surgical castration in the context of the treatment of detained sex offenders. **In the light of the above, the CPT once again calls upon the Czech authorities to bring an immediate end to the application of surgical castration in the context of the treatment of sex offenders. Pending its abolition, a moratorium on its application should be imposed without delay. The Committee requests the Czech authorities to provide within two months an account of action taken to implement this recommendation.**

⁴ See *Proč se v Česku kastruje? Je to levnější*, in Aktuálně.cz, 21 May 2009.

⁵ The CPT understands that a draft ‘methodological instruction’ has been drawn up by the Czech Sexological Society in cooperation with officials from the Ministry of Health, which is currently awaiting approval by the Minister of Health.

⁶ See CPT/Inf (2009) 9 ; under “Treatment of sexual offenders”.