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The normative and practical obstacles to effective prosecution of ill-treatment by official persons

Country study of the Czech Republic prepared for Hungarian Helsinki Committee

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Liga lidských práv/the League of Human Rights, Czech Republic

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I Overview of the criminal legal system and regulation of the police[1]

I.1 Brief description of the criminal legal system

The most basic pillars of the criminal legal system of the Czech Republic are formed by two acts – the Criminal Code[2] which contains substantive rules regulating e.g. criminal liability conditions, classification of offences or sanctions that can be imposed for these offenses, and the Criminal Procedure Code[3] which comprehensively governs the rules for criminal proceedings. The two codes are complemented by Juvenile Criminal Justice Act[4] which regulates criminal proceedings concerning minor offenders and by Act no. 418/2011 Coll.[5], governing criminal liability of legal persons as well as criminal proceedings against them.

The system of criminal courts is composed of district courts, regional courts, two high courts and the Supreme Court. The courts of first instance are generally district courts; in that case an appeal against their decisions goes to regional court. Regional courts can play role of the first instance courts in cases of more severe offences. Appeals against decisions adopted by regional courts on the first instance are assessed by one of the high courts. The Supreme Court decides mostly on extraordinary appeals filed against the final appellate decisions of regional or high courts. The extraordinary appeal is available only for reasons listed in the Criminal Procedure Code or if the sentence of life-imprisonment has been imposed. Except that, the Supreme Court adopts decisions on so called complaint for violation of law – special remedy which can be only filed by the Minister of Justice in case of substantial errors in the procedure, that may have caused unlawfulness of the decision. Special position in criminal procedure is occupied by the Constitutional Court which decides on constitutional complaint filed in case of breach of fundamental rights guaranteed by the Czech Charter of Fundamental Rights and Freedoms. Before appealing to the Constitutional Court, however, one must exhaust all other available remedies.

Before the court proceedings, there is a phase of preliminary proceedings which is composed of two stages – first of them is verification of the facts indicating that a criminal offence has been committed. This phase can be viewed as a sort of initial investigation which aims at determining whether (and which) crime has really been committed and who is a possible perpetrator. After findings of this initial investigation suggest that a certain crime has been committed by a certain person, the Police file a written charge which initiates a criminal prosecution. The charge, which contains the description of the criminal act, its legal qualification and instruction on remedy, has to

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[1] For more detailed information see KARABEC, Zdeněk; VLACH, Jiří et al. *Criminal Justice System in the Czech Repulic.* Prague: Institute of Criminology and Social Prevention, 2011. Available in English here: http://www.ok.cz/iksp/docs/386.pdf (Please note that since the publication was issued in 2011, not all of the information might be up to date)

[2] Act no. 40/2009 Coll. Criminal Code

[3] Act no. 141/1961 Coll. on Criminal Judicial Procedure

[4] Act No. 218/2003 Coll. on Juvenile Liability for Unlawful Acts and on Juvenile Justice and on the Amendment of Several Laws (Juvenile Justice Act)

[5] Act no. 418/2011 Coll. on Criminal Liability of Legal Persons an on proceedings against them

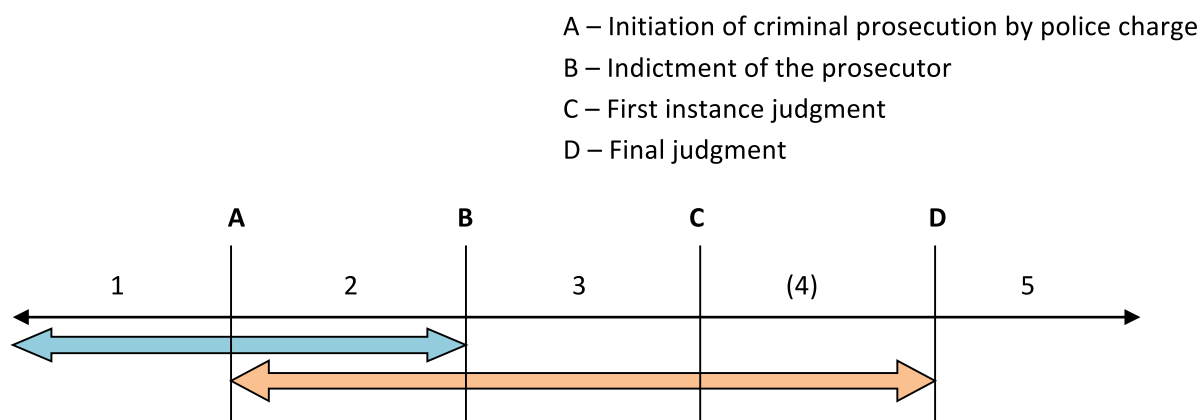
be delivered to the accused in person. The accused then has the right (not the obligation) to give his statement on the allegations, provide evidence for his defence, file motions and petitions and also the right to elect and consult a defence lawyer.

The preliminary proceedings are supervised by a public prosecutor who is entitled, for example, to transfer the case, discontinue or stop prosecution, or approve settlement. If the results of the police investigation are sufficient enough to bring the case before the court, the public prosecutor submits an indictment. There is no possibility of private indictment according to the Czech criminal law. The proceeding before the court starts with the oral presentation of the indictment. This stage is followed by an examination of an accused and presentation of other evidence. The proceedings end with the closing speeches.

The Court then adopts a decision on guilt and punishment of the accused or on the acquittal. Besides that, if certain conditions have been met, the Court can decide about termination of criminal prosecution; conditional stay of criminal prosecution; conciliation; interruption of criminal prosecution; transferring the case to another court of state authority; or about referring the case back to the public prosecutor if there is a need of further investigation. After adoption of the decision, an appeal process may follow.

For your better imagination, we enclose a graphic representation of the individual phases of the criminal proceedings:

A – Initiation of criminal prosecution by police charge
B – Indictment of the prosecutor
C – First instance judgment
D – Final judgment



1 – Verification of the facts indicating that a crime has been committed (initial investigation)
2 – Investigation
3 – Trial (main court proceedings)
4 – Appeal procedure (facultative phase)
5 – Enforcement proceedings (serving prison sentence etc.)

PRELIMINARY PROCEEDINGS

PROSECUTION

I.2 Brief description of regulation of the police and penitentiary system

I.2.1 Police

Legal regulation of the police of the Czech Republic is contained in the Police Act[6]. The police are subordinated to the Ministry of Interior[7], which creates conditions for successful implementation of the police tasks[8]. The organizational structure of the Police consists of the Police Presidium, units with republic-wide competencies, fourteen Regional Police Headquarters and units established within Regional Headquarters. The Police Presidium manages the activities of the Police[9]. It is headed by the Police President, who is accountable for activities of the Police to the Minister of Interior[10].

According to the Police Act, the task of the Police is to protect security of the persons and property and public order, prevent criminal activities, and perform tasks under the Criminal Procedure Code as well as other tasks in the area of internal order and security entrusted to the Police by national, European or international law.[11] One of the basic obligations of police officers is their duty to observe the rules of courtesy and respect the honour and dignity of persons.[12] While performing their duties, police officers shall respect the principle of proportionality. It means that they are obliged to act in such a way that any possible interference with the rights and freedoms of persons subjected to the act of the police officer must not exceed what is necessary for achieving the purpose pursued by the act. The police officer shall also ensure that nobody will suffer unreasonable harm.

The proportionality principle is reflected in the use of coercive measures. The Police Act contains an exhaustive list of coercive measures that can be used by the police officer to protect property, public order or safety of others or of his own.[13] Prior to the use of coercive measures, the police officer is obliged to call upon the person, to refrain from unlawful conduct, warning that otherwise the force will be used. This does not apply if the life of health of a person is endangered and the intervention cannot be delayed.[14] When using coercive means, the police officer must make sure that no harm disproportionate to the nature of the unlawful conduct is caused.[15] Use of certain coercive measures is prohibited against pregnant women, old persons, young children and persons with obvious physical defect or disease.[16] A police officer is authorised to use handcuffs and so called "means for preventing spatial orientation" (hood or tinted ski glasses) only if there is a reasonable concern that a person in question might endanger safety of persons, property or public order or if they may try to

[6] Act no. 273/2008 Coll. on Police of the Czech Republic
[7] Section 5(1) of the Police Act
[8] Section 5(2) of the Police Act
[9] Section 6(3) of the Police Act
[10] Section 5(3) of the Police Act
[11] Section 2 of the Police Act
[12] Section 9 of the Police Act
[13] Section 52, section 53(1) of the Police Act
[14] Section 53(2) of the Police Act
[15] Section 53(5) of the Police Act
[16] Section 58(1) of the Police Act

escape.[17] If the use of coercive measure led to injury or a person concerned, the police officer is obliged to provide first aid and to seek medical treatment as soon as possible.[18] Head of the police department has an obligation to inform a competent public prosecutor about injury or death cause by the use of coercive means.[19]

The problem connected to the use of coercive measures is that sometimes a certain coercive measure is not used as a means of prevention or coercion, but rather as a means of punishment for not respecting the warning. This issue was subject to criticism of the Czech Constitutional Court in two recent cases. First of these cases concerned an ill-treatment of a foreigner during his forced removal.[20] When the members of the police escort came to the detention facility, where the foreigner was held, he refused to cooperate and to voluntarily leave the room. To overcome his resistance, the police firstly used a coercive measure of defence clutches, grips, blows and kicks, but it was ineffective. The police thus decided to use a tear gas. Only after that they managed to handcuff him and get him out of the building. The Constitutional Court emphasized that any coercive measures need to be used only to the extent strictly necessary to achieve the legitimate aim pursued and in any case they cannot be used as a retribution or punishment for disobeying police calls. In this particular case, the Court, referring to ECtHR case law as well as CPT standards, concluded that the use of tear gas was unacceptable, given that the foreigner did not pose threat to other people and he only refused to obey the orders of the police.[21]

Another case considered alleged ill-treatment of a participant of a logging blockade in Šumava national park, who strapped himself to a tree which was supposed to be uprooted, using tubes and carbines.[22] He did not want to leave his position despite orders from the police. He then complained that (except other things) members of the police were strangling him. Police records documented use of coercive measures against the complainant, in particular they mentioned pressing of pressure point in the neck area. The Constitutional court concluded that using of this specific coercive measure was not capable of preventing the complainant from continuing in committing the act, which the police considered unlawful. The only aim of using the coercive measure could be only to force the complainant to voluntarily leave the logging area. The purpose of using the coercive measure was thus to affect the will of the complainant by causing physical pain in order to make him change his mind and leave the area. This ways of using the coercive measures is according to the Court unacceptable.

Although the Police Act requires the use of coercive measures to be proportionate and necessary to achieve the objective pursued, in practice these requirement are not always met. The inappropriate use of one of the coercive measures – so called "means for preventing spatial orientation" – was also

[17] Section 54 of the Police Act
[18] Section 57(1) of the Police Act
[19] Section 57(3) of the Police Act
[20] Judgment of the Constitutional Court of 27 October 2015, no. I. ÚS 860/15,
[21] Ibid., § 69 - § 74
[22] Judgment of the Constitutional Court of 24 May 2016, no. I. ÚS 1042/15,

addressed by former prosecutor,[23] who criticized excessive use of this measure in situations when it is not necessary. He demonstrates it on the case of a person accused of murder, whose picture was published in one of the Czech tabloids as he is sitting outside the courtroom handcuffed, with a tinted ski glasses on and surrounded by escorting policemen. Despite the fact that the Police Act only allows using means for preventing spatial orientation if the purpose of the act cannot be achieved in a different way,[24] is is being also used for example during police escorts of the accused to the courts. Given that the escorted person is handcuffed and fully under control of the police, the necessity of use of means for preventing spatial orientation is at least questionable.

The coercive measures seem to be misused by the Police in some cases. The problem might partly be in the law, which provides only very general guarantees against the misuse, such as requirements of necessity and proportionality, however more detailed regulation of use certain types of coercive measures is lacking. Restrictions on the use of some of the coercive measures are provided only for vulnerable persons, such as pregnant women, elderly or children. More comprehensive regulation regarding limitations on the use of particular coercive means, for example based on CPT standards might to a certain extent prevent the abuses.

When we now go back to the competencies of the police, some of them will necessary result in interference with fundamental human rights. The right to personal freedom can be interfered with by detaining a person for any of reasons specified in the Police Act. Generally, the detention can last no longer than 24 hours.[25] The Police Act expressly forbids subjecting detained person to torture, cruel or inhuman or degrading treatment and obliges police officers who witness such treatment to take measure for preventing it and to report it immediately to their superior.[26] Detained persons can be handcuffed to a suitable object while in the police cell, in case that they physically attack a police officer or another person, or endanger their own life, cause damage to the property or try to escape.[27] The handcuffing can last only as long as it is still necessary and in any case no longer than 2 hours.[28] If the police officer discovers that a person who shall be placed into police cell is injured or suffers from a serious disease, he is under an obligation to ensure medical treatment for this person.[29] If a person placed into police cell attempts suicide, suffers other injury or illness, the police officer must take necessary steps to protect life and health of such person, especially by providing first aid and calling a doctor.[30]

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[23] VUČKA, Jan. Porušuje Česko lidská práva zadržených osob? [Does Czech Republic violate human rights of detained persons?]. In: Trestněprávní revue vol. 10, issue 2013, p. 229

[24] Section 54 of the Police Act

[25] Section 26(3) of the Police Act; In case that a foreigner was detained for breaching certain obligations regarding his residence in the Czech Republic a duration of detention can be up to 48 hours.

[26] Section 24(1) of the Police Act

[27] Section 25(1) of the Police Act

[28] Section 25(2) of the Police Act

[29] Section 31(2) of the Police Act

[30] Section 32(1) of the Police Act

Another human rights interferences derive from the authorisation of the police under specific circumstances to enter home[31] or business premises[32] (without prior permission), to inspect cars[33], to withdraw (or destroy) certain movable objects[34] or to require identification.[35]

These interferences, naturally, cannot be arbitrary and the Police Act regulates specific situations in which the interference is allowed. A dwelling, other premises or parcel can be entered by the police without previous consent only in urgent cases and when entering the home is necessary to protect the life or health of persons or to avert a serious threat to public order or security.[36] Except this case, the police is entitled to enter one's dwelling, other premises or parcel only in case of reasonable suspicion that a deceased person might be there, in case of chasing of a person or in case of suspicion that abused animal might be there.[37] Prevention from arbitrary interference with the right to respect for privacy and home shall be ensured by the presence of an impartial third party. Only if there is a risk of delay or if life or health of this person might be endangered, a property may be entered without his or her presence.[38]

Business premises might be entered only as a part of preformation of a specific task and under condition that it can be reasonably presumed that other persons are present in the premises.[39]

Inspection of a vehicle is allowed only in connection with chasing or searching for an offender of a deliberate crime or objects related to such crime,[40] or if the vehicle has a part in committing a crime,[41] or in case of searching for wanted persons, persons unlawfully residing in the territory Czech republic, weapons, ammunitions, explosives, narcotics, poisons or crime – related objects. In any case there must be a reasonable suspicion that a person or objects are in the vehicle.[42]

Police is entitled to require proof of identity of a person only for reasons specifically listed in the section 63 of the Police Act. This competence of the police recently showed to be quite problematic and prone to abuse. Even though the Police Act does not explicitly provide that the policeman is obliged to inform the person, whose identification is required, about the reason for the identification, this obligation arises from the very nature of this competence. In practice however, the police sometimes require identification without providing or without having any reason.

[31] Section 40 of the Police Act
[32] Section 41 of the Police Act
[33] Section 42 of the Police Act
[34] Sections 34 – 35 of the Police Act
[35] Section 63 of the Police Act
[36] Section 40 (1) of the Police Act
[37] Section 40 (2) of the Police Act
[38] Section 40 (4) of the Police Act
[39] Section 41 (1) of the Police Act
[40] Section 42 (1) of the Police Act
[41] Section 42 (2) of the Police Act
[42] Section 42 (3) of the Police Act

I.2.2 Penitentiary

Penitentiary system is administered by Prison Service of the Czech Republic. It is governed by the Act no. 555/1992 Coll. on the Prison Service and Justice Guard of the Czech Republic (hereinafter also "Prison Service Act"), which lays down status and organisation of the Prison Service, as well as duties and obligations of the members of the Prison Service. Of relevance is also Act no. 169/1999 Coll. on execution of prison sentence, which primarily regulates treatment of the detainees and their rights and obligations. Similarly, execution of pre-trial detention is governed by Act no. 293/1993 Coll.

Main task of the Prison Service is to handle the carrying out of pre-trial detention, preventive detention and imprisonment. Besides, the Prison Service is responsible for maintaining order and safety in the buildings of the judiciary (i.e. courts, public prosecutors' offices etc.). Prison Service falls under the competency of the Ministry of Justice. It is headed by the Director General, appointed by the Minister of Justice. The Director General bears the responsibility for the work of the Prison Service towards the Minister.[43] The Prison Service comprises of the general directorate (headed by the Director General), remand prisons (for execution of pre-trial detention), prisons, preventive detention facilities and two education facilities.[44] All of these institutions (with the exception of the general directorate) are headed by the director appointed by the Director General. General directorate methodically manages and supervises the other organizational units.

Obligations and competencies of members of the Prison Service are regulated similarly to those of the Police. They shall treat the detainees with the respect to their rights and prevent cruel or degrading treatment of these persons.[45] Prison Service Act further requires that any interference with the rights and freedoms of persons concerned must meet the criterion of necessity and proportionality.[46] Above all this applies to use of force.[47] Members of Prison Service are entitled to use a gun, but only under exceptional circumstances in situations prescribed by the law and if the use of other coercive measures would be insufficient.[48] Use of coercive measures is limited with regard to vulnerable persons (pregnant women, children, the elderly or disabled persons)[49]. There is also an obligation to provide firs aid if the use of force led to injury.[50]

Ministry of Justice monitors compliance of members of the Prison Service with the laws and internal regulations governing their obligations regarding treatment of detainees.[51]

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[43] Section 1(2) of the Prison Service Act

[44] Education facilities are Secondary Vocational School, which educates persons in custody and prisons and the Academy of Prison Service, which is responsible for education of members of the Prison Service .

[45] Section 6(1) of the Prison Service Act

[46] Section 6(2) of the Prison Service Act

[47] Section 17 of the Prison Service Act

[48] Section 18 of the Prison Service Act

[49] Section 19 of the Prison Service Act

[50] Section 20(1) of the Prison Service Act

[51] Section 4b of the Prison Service Act

I.3 Description of the legal provisions regulating official misconduct

Criminal Code contains specific provision prohibiting torture and other inhuman or cruel treatment. section 149(1) provides: *"A person who causes to another person physical or mental suffering through torture or other inhuman and cruel treatment in connection with the exercise of his powers of a State authority, local government body, a court or other public authority, shall be punished by imprisonment between six months to five years."* As can be noticed from the wording of the provision, it does not cover degrading treatment.

Following paragraphs of the section 149 contain qualified version of this crime, meaning that if a certain circumstance is present in the commission of the act, the prison sentence will be higher. Crime of torture or other inhuman or cruel treatment is punishable by imprisonment for two to eight years, if the offender commits the act under one or more of these circumstances:

- in a position of a public official;
- on a witness, expert or interpreter in connection with the performance of their duties;
- on a person for their true or presupposed race, belonging to an ethnical group, nationality, political beliefs, religion or because of their true or presupposed lack of religious faith;
- together with at least two other persons or
- repeatedly.[52]

Sentenced to imprisonment for five to twelve years can be offender who commits such crime

- on a pregnant woman;
- on a child younger 15 years;
- by a particularly cruel or agonising manner or
- if the act committed results in grievous bodily harm.[53]

Finally, if the torture or other inhuman and cruel treatment results in death of the victim, the offender will face imprisonment from eight to eighteen years.[54]

Criminal Code does not contain a definition of torture and the Czech Republic was criticised by the Committee against Torture based on that.[55] According to Czech government, it is not necessary to include definition of torture into Criminal Code, given that Czech authorities are bound by the definition provided in the Convention against torture, which on the basis of article 10[56] of the Constitution is part of the Czech law and takes precedence over the law.

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[52] Section 149(2) of the Criminal Code

[53] Section 149(3) of the Criminal Code

[54] Section 149(4) of the Criminal Code

[55] see Consideration of reports submitted by States parties under article 19 of the Convention, CAT/C/CZE/CO/4-5, 13 July 2012, available here: http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.CZE.CO.4-5.doc

[56] Article 10 of the Constitution provides: „Promulgated international agreements, the ratification of which has been approved by the Parliament and which are binding on the Czech Republic, shall constitute a part of the

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In practice, however, this provision is not being used at all and since 2010, after the new Criminal Code came into force, there has been no conviction for the crime of torture so far. Therefore no relevant case law is available.

In case of alleged ill-treatment, police officers are investigated for a criminal offence of abuse of power by a public official under section 329(1) of the Criminal Code. In accordance with this provision, *"A public official who, with an intent to cause damage or serious harm to someone else or to acquire an unjust benefit for himself or for someone else (a) exercise his powers in a manner contrary to the law; (b) exceeds his authority; or (c) fails to fulfil a duty pursuant to his competency, shall be punished by imprisonment between one to five years or by a prohibition to hold a public office."* Further paragraphs of said section contain qualified versions of the offence. Aggravating circumstances justifying stricter punishment mostly concern the extent of damage or harm caused by the perpetrator.

Criminal Code provides exhaustive list of persons who are considered to be "public official" this list includes a member of the armed forces or security forces or a police officer of the municipal police.[57] Since members of the Police, as well as members of Prison Service are considered to be security forces, this provision applies to them. The notion of "damage" covers material damage, i.e. damage quantifiable in money, whereas the notion of "harm" covers immaterial harm, i.e. harm to the rights, health, moral damage etc[58].

This provision is very general and does not address situations when for example a bodily or mental harm is caused to the victim. In such cases, it is possible to prosecute the police officer at the same time for committing the crime of abuse of power by a public official under section 329 and the crime of bodily harm under section 146, which can be committed by anyone, not only by the public official.

I.4 Brief outline of the mechanisms for dealing with ill-treatment and torture

Police Act provides that *"anyone can draw attention to the fact that a police officer or employee of the Police has committed an act that has the features of a crime, an administrative offense of a disciplinary offense."*[59] It, however, does not further regulate the procedure of handling such complaint, thus general rules set in Administrative Procedure Act (hereinafter also "APA") must be applied.[60]

APA contains general regulation of filing a complaint against inappropriate behaviour of the public officials or against the procedure of the administrative authority in cases, where no other remedy is

legal order; should an international agreement make provision contrary to a law, the international agreement shall be applied."

[57] Section 127(1)(e) of the Criminal Code

[58] ŠÁMAL, P. a kol. *Trestní zákoník,* 1. vydání, Praha: C.H.Beck, 2009, s. 2874

[59] Section 97(1)(b) of the Police Act

[60] Act no. 5002004 Coll., on Administrative Procedure is subsidiary applicable to any procedures or public authorities, unless its application is explicitly excluded by another special act.

available.[61] The complaint can be filed either orally or in writing to the authority conducting the proceeding within which the misconduct occurred. This authority is obliged to investigate the complaint.[62] If it is appropriate, it may interrogate the complainant, persons, against whom the complaint is aimed as well as other persons who could possibly contribute to the clarification of the case.[63] There is no obligation to take these steps, though. The complaint must be settled within 60 days.[64] If the complaint was found to be justified or at least partly justified, the administrative authority shall immediately take necessary remedial measures.[65] The specific form of these remedial measures is not specified by the law. If the complainant believes that the complaint was not settled properly, they can request the superior authority to review the way in which the complaint was dealt with.[66]

The complaint under APA presents the most basic remedy against misconduct of the public officials and it is applicable against all of the officials, not only the members of Police or Prison Service. The law does not specify any particular formalities for the complaint. The general rule of administrative procedure is relevant, according to which any submission needs to be assessed by its actual content, regardless of its designation.[67] It means that even if the complaint is designated as "criminal complaint", concerned authority may theoretically evaluate it as mere complaint under APA and vice versa. The complaint may also be viewed as a suggestion to initiate disciplinary proceedings.

I.4.1 Criminal complaint

In case that the facts presented in the complaint convincingly suggest that a crime was committed, procedure under Criminal Procedure Act must be followed and the preliminary criminal proceedings shall be initiated.[68] If the complaint suggests that a crime was committed by a member of the Police or Prison Service, the preliminary proceedings must be carried out by General inspection of the Security Forces. Therefore, if the complaint was addressed to the Police, they are obliged to refer the case to the Inspection. General Inspection then carries out an investigation and after it is established that a crime was committed and it was sufficiently justified that it was committed by a particular person, a criminal prosecution shall be initiated. If on the other hand it turns out that the act committed does not qualify as a crime, the case can still be referred to the competent authority for disciplinary or misdemeanour proceedings.[69]

During the preliminary proceeding, the prosecutor supervises observance of legality. The prosecutor is authorised for example to give binding instruction for the investigation, require police files and other documents and materials, participate in the investigation, annul unlawful or unjustified

[61] Section 175 of the Administrative Procedure Act
[62] Section 175 (4) of the Administrative Procedure Act
[63] ibid
[64] Section 175(5) of the Administrative Procedure Act
[65] Section 175(6) of the Administrative Procedure Act
[66] Section 175(7) of the Administrative Procedure Act
[67] Section 37(1) of the Administrative Procedure Act
[68] Section 159 of the Criminal Procedure Code
[69] Section 159a(1) of the Criminal Procedure Code

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decisions and measures and replace them by his own or require that investigation is carried out by another officer.[70]

I.4.2 Disciplinary proceedings

All the members of security forces in the Czech Republic (including members of the Police and Prison Service, hereinafter as "officers") are subject to disciplinary proceedings under the Service Act[71] (hereinafter as "Service Act"), in case of a conduct that violates their obligations arising from their service, as long as the misconduct does not constitute a crime or misdemeanour.[72]

The proceedings are handled by the chief officer of the office, where the officer concerned performs his service. Disciplinary proceedings are initiated *ex officio.*[73] The officer must be relieved of duty if there is a risk that he might jeopardise the course of investigation of his misconduct.[74] This also applies if the officer is being investigated for a criminal offence. If the findings of the proceedings suggest that a misdemeanour constitute a crime, a chief officer is obliged to promptly refer the case to the General Inspection.[75]

The Service Act provides that an officer must be given an opportunity to present his view on the case, propose evidence and defend himself.[76] Chief Officer must also hear the person who lodged the suggestion to initiate disciplinary proceedings.[77] If the officer is found guilty, chief officer can impose one or more of the following disciplinary sanctions: written reprimand, reduction of their tariff (tariff is an essential component of the income of the officer) by up to 25% for a maximum period of three months, withdrawal of the Service Medal or withdrawal of the service rank.[78] What is important, withdrawal of the service rank constitutes an obligatory ground for dismissal from service.[79]

Disciplinary sanction can be only imposed within two months from the moment when the chief officer became aware of the disciplinary offence of the officer and no later than one year from the moment when the offence was committed.[80]

I.4.3 Administrative action to the court and compensation

There is also a possibility of the victim to file an action to the administrative court in accordance with the Act no. 150/2002 Coll., on Administrative Judicial Procedure. Under section 82, anyone whose

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[70] Section 174 of the Criminal Procedure Code
[71] law no. 361/2003 Coll., on Service of Members of Security Forces
[72] Section 50 of the Service Act
[73] Section 178 of the Service Act
[74] Section 40(1) of the Service Act
[75] Section 178(a) of the Service Act
[76] Section 186(2) of the Service Act
[77] ibid
[78] Section 51 of the Service Act, note that the Service Act regulates also other disciplinary sanctions, namely financial penalty, forfeiture and prohibition of certain activity, however, these sanctions can be imposed only after the officer was found guilty of misdemeanour, therefore, they are not applicable for disciplinary offence.
[79] Section 42(1)(e) of the Service Act
[80] Section 186(9) of the Service Act

right have been directly infringed by unlawful interference, instruction or coercion (hereinafter as "interference") of the administrative authority, may bring an action to the court and seek a declaration that the interference was unlawful. This type of action aims to provide protection against any acts of public authorities which are directed against an individual, and which are capable of interfering with their rights. These acts may be formal or informal in their nature; they may consist in action as well as in failure to act. Interference may, for example, consist in unlawful use of coercive measures.

Administrative action must be brought within two months from the day when the plaintiff became aware of the interference, and no later than within two years of the moments when the interference have occurred.[81] If the action is successful and the court declares that the interference was unlawful, the judgment may afterwards serve as a basis for requesting a just satisfaction from the State under the Liability Act[82], which regulates liability of the State for material damage or immaterial harm caused by an unlawful decision of a public authority or by maladministration. Although the administrative action is not a prerequisite for a subsequent claim for damages, the position of the claimant is much more advantageous once a judgment declaring unlawful interference is available to them. The claim for damages must be brought to the competent Ministry – in case of the Police it is Ministry of Interior and in case of the Prison service it is Ministry of Justice. Limitation period for bringing the claim is three years in case of material damage and six months in case of immaterial damage.[83] In the Ministry does not award the claimant damages, they may bring a civil action to the court.

I.5 Special oversight institution

I.5.1 National preventive mechanism

On the basis of Optional Protocol to the UN Convention against Torture, the role of the National preventive mechanism was entrusted to the Ombudsman (Public Defender of Rights) since 1 January 2006. The Ombudsman is elected by the Chamber of Deputies for a term of office of six years from among candidates, two of whom are nominated by the President of the Czech Republic and two by the Senate.[84] The Ombudsman is accountable to the Chamber of Deputies.[85]

The Ombudsman is entitled to systematically visit all places where persons are or might be restricted in their freedom by public authorities, or as a result of their dependence on care provided.[86] These places include remand prisons, prisons, preventive detention facilities, facilities which serve for

[81] Section 84(1) of the Judicial Administrative Procedure Act
[82] Act no. 82/1998 Coll., on the Liability for Damage caused in the Exercise of Public Authority by Decision or Maladministration
[83] Section 32 of the Liability Act
[84] Section 2(1) of the Act. no. 349/1999 Coll., on the Public Defender of Rights (the Act is available in English here: http://www.ochrance.cz/fileadmin/user_upload/VOP/Law-on-VOP-II-2016_en.pdf)
[85] Section 5(2) of the Public Defender Act
[86] Section 1(3) of the Public Defender Act

protective and institutional education or protective treatment[87], police cells, facilities for detention of foreigners, asylum facilities[88] and other places like health-care facilities and facilities providing social and legal protection of children.[89] The visits are usually conducted on the own initiative of the Ombudsman, but the person restricted on freedom is also entitled to lodge a complaint to the Ombudsman.

During visits, the Ombudsman and their staff are authorised to enter all the places within the facility, to inspect all the documentation (including medical records), to interview all the persons (including both the staff of the facility as well as the detainees or patients). The conversations with the persons restricted in freedom can be conducted without present of the members of the staff. The visits are carried out without prior notice at any time of the day (also during night or early morning), even on nonworking days and last for several days. Usually from twenty to fifty visits take place every year.[90] The Head of the facility is informed about the visit on site. The visits are carried out by the team of lawyers from the Office of the Ombudsman together with external experts (medical specialists, psychologists, etc.).

After every visit, the Ombudsman draws up a report containing recommendations or suggestions of remedial measures.[91] This report is afterwards sent to the concerned facility (or to its establisher or another competent authority), which shall provide its statement on the findings of the Ombudsman. If the facility, its establisher of competent authority does not accept the recommendations, the Ombudsman informs the superior authority and the case may be publicized.

In addition, findings and recommendations concerning conditions in a particular type of facility are afterwards generalized in the summary reports of the visits.[92]

I.5.2 Other oversight authorities

Except the Ombudsman, also prosecutors are authorised to exercise oversight of the places where persons are restricted in their freedom. The competence of prosecutors covers facilities serving for pre-trial detention, imprisonment, preventive detention, protective treatment and protective or institutional education, as well as other places, where personal freedom is restricted under legal

[87] Section 4 letter a) of the Public Defender Act
[88] Section 4 letter b) of the Public Defender Act
[89] Section 4 letter c) of the Public Defender Act
[90] In 2007 together 43 visits took place (the number includes all of the facilities visited, in 2008 – 29, in 2009 – 42, in 2010 – 55, in 2011 – 44, in 2012 – 32, in 2013 – 29, in 2014 – 19. Statistical data also including numbers of visit of particular type of facility are available here: http://www.ochrance.cz/ochrana-osob-omezenych-na-svobode/
[91] The Ombudsman may suggest mainly the following remedial measures: (a) initiating proceedings on review of a decision, act or procedure of the authority if it is possible to initiate such proceedings ex officio; (b) performing acts to eliminate inactivity; (c) initiating disciplinary or similar proceedings; (d) initiating prosecution for a criminal offence, infraction or some other administrative offence; (e) provision of indemnification or filing a claim for indemnification.
[92] Public reports are available here: http://www.ochrance.cz/ochrana-osob-omezenych-na-svobode/z-cinnosti-ombudsmana/zpravy-z-navstev-zarizeni/

authority.[93] The scope of competencies regarding the exercise of oversight is determined by special laws that govern different types of restrictions of freedom.[94] In all cases, however, the competencies are very similar.

If we focus on the oversight of pre-trial detention and imprisonment (although the same applies also to preventive detention and with little variations also to protective or institutional education), the prosecutor is entitled to visit at any time places where pre-trial detention or imprisonment are exercised; inspect the documents, based on which the person is being held there; speak with detainees without present of any third persons; check whether the orders and decisions of the Prison Service are in compliance with the laws and other legislation; and require members of the Prison Service to provide necessary explanations, and present relevant files, documents, orders and decisions. Unlike the Ombudsman, the prosecutor is also equipped with the power to issue orders requiring compliance with regulations concerning pre-trial detention or imprisonment and to order release of the person from the facility if the restriction of the personal freedom was unlawful. The Prison Service is under obligation to carry out the orders of the prosecutor immediately. Oversight is exercised by the prosecutor of the Regional Prosecutor's Office according to the location of the facility concerned. The oversight must first be authorised by the Supreme Public Prosecutor.

As it was already mentioned, also the Ministry of Justice is entitled to monitors compliance of members of the Prison Service with the laws and internal regulations governing their obligations regarding treatment of detainees.[95]

II The experience of police ill-treatment and torture

II.1 Statistics

It is not possible to obtain precise statistical data on number of registered cases of police ill-treatment and their outcomes. As it was mentioned before, if the victim claims to be ill-treated by the police, such misconduct is not being investigated as a crime of torture and other inhuman and cruel treatment, but either as a crime of abuse of power by a public official or in many cases it is not being investigated as a crime at all and instead only disciplinary proceedings is initiated. Older statistics of the Police Inspectorate that ceased to operate in 2011 thus include number of investigations of the crime of abuse of power by a public official, but it cannot be identified how many of them concerned police ill-treatment (given that also other kinds of misconduct are prosecuted as an abuse of power, such as for example the unauthorised use of data).

[93] Section 4(1)(b) of the Act no. 283/1993 Coll., on Public Prosecution

[94] Section 78 of the Imprisonment Act (no. 169/1999 Coll.); Section 29 of the Pre-trial detention Act (no. 293/1993 Coll.), Section 40 of the Preventive detention Act (no. 129/2008 Coll.) and Section 39 of the Act on Protective or Institutional education (no. 109/2002 Coll.)

[95] Section 4b of the Prison service Act

As regards the statistical data of General Inspection, according to its annual report for 2014[96] (no newer report is available) twenty cases of crimes related to torture and other inhuman and cruel treatment were documented. Criminal prosecution was initiated in thirteen of these cases, of which nine cases concerned member of the Police.[97] Ten of the thirteen cases were prosecuted as a crime of abuse of power by a public official and three cases were prosecuted as a crime of torture and other inhuman and cruel treatment. In none of these cases a judgment has been passed yet.

Annual reports for 2012 and 2013 only mention that the General Inspection dealt with cases of physical aggression of the officers in the performance of their duties. None of these cases, however, was prosecuted as a crime of torture.

II.2 Criticism concerning the legal system and practice plus specific issues

II.2.1 Procedural status of the victim

Is there any concern as to the status of the victims of police ill-treatment?

Procedural status of the victim is primarily governed by the Criminal Procedure Code (section 43 et seq). Victim of a crime has legal standing as a party to the criminal proceedings if he or she had suffered bodily harm, property damage or non-material damage as a result of a criminal offense.[98] This status brings a number of procedural rights, such as right to make proposals for additional evidence, right of access to the file, right to participate in the plea bargain negotiations, right to participate in the trial and public hearing held on the appeal or plea approval and right to provide closing speech before the end of the proceedings.[99] The injured party has also right to claim damages from the accused in respect of damage caused by a criminal offense.

Another relevant regulation can be found in the Act no. 45/2013 Coll., on Crime Victims which provides some additional rights of the victims of crimes. These rights include right for professional assistance (psychological, social and legal counselling or restorative programs) before during and after the criminal proceedings[100]; right to information relating to the case in which a person became a victim of crime[101]; right to protection from imminent danger[102]; right to protection of privacy[103]; right to protection from secondary victimisation[104] and right to financial assistance.[105]

[96] Available in Czech here: http://www.ceska-justice.cz/wp-content/uploads/2015/09/Zpr%C3%A1va-GIBS-2014.pdf (see page no. 42)
[97] It is not clear whom the other four cases concerned, since except the Police, General Inspection exercises competencies also over members of Prison Service and custom officers.
[98] Section 43 et seq of the Criminal Procedure Code
[99] Section 43(1) of the Criminal Procedure Code
[100] Sections 4 – 6 of the Crime Victims Act
[101] Sections 7 – 13 of the Crime Victims Act
[102] Section 14 of the Crime Victims Act
[103] Sections 15 – 16 of the Crime Victims Act
[104] Sections 17 – 22 of the Crime Victims Act
[105] Sections 23 – 37 of the Crime Victims Act

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Although the legal regulation gives victims of crimes rather significant position in criminal proceedings, in practice they are often denied the status of injured party as well as the related rights. Investigating authorities (the police or General Inspection) often argue that they were only verifying facts indicating that a crime has been committed (within the phase of initial investigation), which means that no criminal prosecution was initiated and the case was terminated and the complainant cannot be considered an injured party. Therefore, the complainant is not even entitles to access the file. This practice has lately been criticised by the Constitutional Court,[106] according to which right of the victim to access the file derives from the right to effective investigation itself and can be limited only if there are serious reasons, for example in the very early stages of the investigation, if the file contains sensitive information that could harm or endanger third parties.

Constitutional Court emphasised that purpose of the right of the victim to access the file is inter alia to enable the victim to assess whether the investigation was thorough and adequate and thus fulfilling the requirement of effectiveness. Conclusions of the Constitutional Court, however, have not been reflected in practice of the investigating authorities. Currently, there is another case of the League of Human Rights before the Constitutional Court regarding the procedure of the General Inspection, where the victim has been denied the right to access the file.[107]

II.2.2 Investigation of complaints of torture and ill-treatment

Is there any criticism as to the independence of the investigation of police ill-treatment or torture cases?

In 2012, the UN Committee against Torture expressed concern *"about the problematic registration of complaints and the independence of the system to assess them".*[108] Particularly, the Committee was concerned about *"the discrepancy between the number of complaints of torture and ill-treatment in places of deprivation of liberty, especially those described as justified and partially justified, and the absence of prosecution in this connection for torture or ill-treatment committed by police officers and prison staff".*[109]

Committee recommended the Czech Republic *"that the General Inspection of Security Forces promptly, impartially and effectively investigate all allegations of torture and ill-treatment by law enforcement officials and prison staff, prosecute the perpetrators of such acts and provide redress, including compensation to the victims".*

Serious deficiencies in the functioning of General Inspection also remains subject to criticism by League of Human Rights, which inter alia provides legal aid to persons allegedly subjected to police ill-treatment. General Inspection was established in 2012 in order to safeguard the independence of investigation of police ill-treatment cases, given that the former Police Inspectorate (*Inspekce Policie*) which together with the Police of the Czech Republic fell under the authority of the Ministry of

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[106] See judgment of the Constitutional Court of 2 March 2015, no. I ÚS 1565/14
[107] Case no. I ÚS 1042/15
[108] see Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention, Forty-eighth session, 7 May–1 June 2012, CAT/C/CZE/CO/4-5
[109] ibid

Interior was criticized (also by the European Court of Human Rights[110]) for the lack of independence. Newly established General Inspection now has a formal status of independent organizational unit of the State. However, some deficiencies as regards the independency of investigation carried out by General Inspection still persist.

To fully understand the issue with the General Inspection, a brief historical overview and a description of the predecessors of the General Inspection is needed.[111]

> Until 2009, criminal offences committed by police officers were investigated by the Supervision Department of the Minister of the Interior, an internal unit of the Ministry directly managed by the Minister. Director of the Supervision Department was appointed directly by the Minister of Interior. The Supervision Department was not subjected to any additional external control.
>
> As regards the investigation of the criminal offences, the Supervision Department was dealing with the case only until the initiation of the criminal prosecution. Since this moment, the case was transferred to the prosecutor, who has led further investigation. The Supervision Department then participated in the investigation only upon the instructions of the prosecutor. However, prosecutor often lacked the experience with the practical conducting of the investigation, so they were focused mostly on the supervision of the prosecution, which was rather formal than practical. Prosecutors conducted mainly some formal work with the file, which included deciding whether the initial phase of the investigation was sufficiently thorough and effective and they proposed, usually on the basis of complaints of injured parties, subsequent evidentiary procedures. The active role of the prosecutor in the investigation, and the supervision thereof, was significantly weaker than it would be necessary to ensure the effective control over the proceedings. This state of affairs was criticized by the ECtHR in Eremiášová and Pechová v. the Czech Republic. ECtHR was concerned by the lack of independence of the investigation.
>
> These problems were supposed to be addressed by the reform of the Police, which aimed at the change of the existing legislation regarding the control of the Police, so as to increase the efficiency of internal control as well as external control and to ensure its effectiveness in the terms of adequacy (eligibility to lead to the arrest and punishment of the perpetrators) and independence of the investigators vis-à-vis the investigated persons, not only as regards the hierarchical or institutional relations but also in practice.
>
> After evaluating all the aspects of the external control mechanism of the Police, an establishment of the new independent body standing outside the Ministry, was chosen as the optimal solution. Nevertheless, this solution would be extremely challenging step to take from the organizational, legislative and especially economic point of view. The Government was supposed to submit a draft bill that would comprehensively solve the problems of the new General Inspection by the end of 2008. Meanwhile, a partial solution was to convert the existing Supervision Department to the Police Inspectorate. This happened by entry to force of the new Police Act on 1 January 2009.

[110] See cases Eremiášová and Pechová v. Czech Republic, application no. 23944/04; and Kummer v. Czech Republic, application no. 32133/11

[111] For a brief comparison, see also the table below.

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The main differences of the Police Inspectorate from the Supervision Department include extension of the competencies of the Inspectorate towards civilian employees of the Police; the director was now being appointed by and responsible to the Government (after consultation the relevant committee of the Chamber of Deputies); newly also the control of the Police Inspectorate conducted by the control body established by the Chamber of Deputies was introduced. Within the criminal proceedings, the status of the Inspectorate was the same as status of the Supervision Department and the Inspectorate was bound by the instructions of the prosecutor, who supervised the preliminary proceedings. The Police Inspectorate remained to be a organizational unit of the Ministry of Interior and the members of the Police Inspectorate remained the same police officers who had been called to perform duties in the Ministry of the Interior, as was the case with the Supervision Department.

These partial changes thus failed to fulfil the requirement of the ECtHR case law, which was explicitly criticized by the ECtHR in Kummer v. the Czech Republic. Although the Court agreed that the appointing the head of the Inspectorate by the Government, rather than by the Minister of Interior increased the independence of the Police Inspectorate towards the police, but this sole difference according to the Court cannot fulfil the requirement of the independence.

The ECtHR also pointed out that the fact that the members of the Police Inspectorate remained police officers who had been called to perform duties in the Ministry of the Interior, alone "considerably undermined their independence vis-à-vis the police. In the Court's view, such an arrangement did not present an appearance of independence and did not guarantee public confidence in the State's monopoly on the use of force." According to the Court, not even the supervision of the prosecutor, despite being independent form the Police, is sufficient to make the police investigation comply with the requirement of independence.

As of 1 January 2012, the act establishing the General inspection of Security Forces came into force. Newly introduced General Inspection was supposed to meet the requirement of fully independent body responsible for investigation of crimes committed by police officers. The scope of the competencies was widened, compared to the former Police Inspectorate. The Inspection is no longer a department of the Ministry of Interior, but a separate organisational unit of the State with a status of armed security corps. The director of the Inspection is appointed by and responsible to the Prime minister.

Within the criminal proceeding, the Inspection holds a position of police authority and is competent to conduct not only the initial phase of investigation, but the whole preliminary proceedings. As regards the personal jurisdiction, the General Inspection was now responsible not only for crimes of police officers or civil employees of the police, but also for crimes of members, as well as civil employees, of the Prison service, Custom Service and the General Inspection itself. External control is secured by the Supervisory authority established within the Chamber of Deputies and composed by members designated by the Chamber of Deputies.

As regards the structure, the head of the Inspection is the director. Basic organisational parts of the Inspection are units, which are subordinated to the director, and departments subordinated to the deputy directors. Deputy Directors manage departments performing detection, verification and documentation of crimes and detection and investigation of its offenders; departments providing specific actions within criminal proceedings and maintenance activities in the field of information technologies and some other specific activities. Some departments are stationed all over the Czech Republic in the seats of self-governing regions and are entrusted by territorial scope.

Tasks of the Inspection are executed by members of the Inspection who are performing service duty in the Inspection (unlike before, the Inspectors are not members of the Police). However, the problem is that after the demise of the Police Inspectorate vast majority of its workers (if not all of them) became members of the General Inspection. So the new “independent” General Inspection de facto was composed of the same people who contributed to untrustworthiness of the former Police Inspectorate (see further).

Table showing the main differences between the investigating bodies

INVESTIGATING BODY	Supervision Department of the Ministry of Interior	Police Inspectorate	General Inspection of Security Forces
Period of functioning	1992 – 2008	2009 - 2011	2012 – until present
Legal basis	Act no. 283/1991 Coll. on the Police of the Czech Republic (old Police Act)	Act no. 273/2008 Coll. on the Police of the Czech Republic (new Police Act)	Act no. 341/2011 Coll. on the General Inspection of Security Forces
Position of the body within the organizational structure of the state	Department of the Ministry of Interior	Department of the Ministry of Interior	Separate organizational unit of the State
Status of the Head of the body	Appointed by and responsible to the Minister of Interior	Appointed by and responsible to the Government	Appointed and responsible to the Prime Minister
Status of the members of the body	Police officers(members of the Police) called to perform duties in the Ministry of the Interior	Police officers (members of the Police) called to perform duties in the Ministry of the Interior	Members of the General Inspection performing service duties in the General Inspection
Status of the body within the criminal proceedings	Police authority empowered to conduct only the initial investigation	Police authority empowered to conduct only the initial investigation	Police authority empowered to conduct the whole preliminary proceedings (initial investigation and the investigation)
Personal jurisdiction	Members of the Police	Members and civil employees of the Police	Members and civil employees of the Police, Prison Service, Custom Service and the Inspection itself
External control mechanism	none	Parliamentary	Parliamentary permanent commission

There are many problematic aspects of functioning of the General inspection, which does not entirely fulfil its role of an independent body that shall conduct effective investigation of crimes

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committed by the Police.[112] The main concern is registration of the complaints on ill-treatment, as pointed out by the Committee against torture. The problem is that after a victim of ill-treatment files a criminal complaint, General Inspection does not initiate the investigation and instead declares that no suspicion of committing a crime arises from the criminal complaint. Accordingly, the "criminal complaint" (governed by the Criminal Procedure Code) is evaluated as a mere "complaint against the inappropriate conduct of the official or maladministration" (governed by the Administrative Procedure Act) and is referred to the Police, which further deals with the complaint. This procedure then cannot lead to criminal conviction of the suspected officer. This way of dealing with complains concerning suspected police ill-treatment contradicts the requirement of independence of investigation of such complaints. The League of Human Rights advocates the view that any complaint of police ill-treatment shall by automatically investigated by General Inspection.

This problem results from other deficiencies in the functioning of the General Inspection. First of all, leading positions of the Inspection are occupied by persons with dubious past and questionable moral integrity. They are former police officers or former officials of previous Police Inspectorate, independence of which has been repeatedly questioned by the international bodies.

After the Police Inspectorate ceased to exist and the General Inspection was established, almost all of the former staff of the Police Inspectorate became staff of the General Inspection. Therefore, the same persons who have contributed to the untrustworthiness[113] of the former Police Inspectorate shall now provide guarantees of independency of investigation. The practice of failing to investigate allegations of ill-treatment caused by police officers still persists.

This issue was recently subject of criticism of Czech Constitutional Court.[114] The case took place in 2011 and the investigation was conducted by the Police Inspectorate. After the investigation was finished, the complainant was only very shortly informed that no criminal offence on the part of the police was committed and that the case is being terminated. The supervising prosecutor found this notice insufficient, because it lacked the reasoning of the conclusion. The prosecutor thus instructed the Inspection to elaborate the assessment of the case, in particular to address the specific allegations of the complainant and to indicate what steps have been taken in the investigation and what the result was. The new assessment of the case was conducted by General Inspection, however, the General Inspection did not carry out any new investigation and fully relied on the materials collected by the Inspectorate. The Constitutional Court criticized this approach pointing to the fact, that it is not surprising that General Inspection does not provide any new perspective on the

[112] For more detailed information, see analysis of the League of Human Rights, available (only in Czech) here: llp.cz/wp-content/uploads/Analyza_a_systemove_doporuceni_GIBS.pdf

[113] According to public opinion polls conducted in 2004 and 2007 vast majority of the public does not think that complaints of police misconduct are investigated thoroughly - in 2004 only 33% of respondents were satisfied with the investigation (survey is available here www.policie.cz/soubor/stemmark2004-ppt.aspx) and in 2007 it was 39% (survey is available here www.policie.cz/soubor/ipsos-tambor-pp-cr-a-kraje-ppt.aspx).

[114] It is the above-mentioned case of ill-treatment of a participant of a logging blockade in Šumava national park (judgment of the Constitutional Court, 24 May 2016, no. I. ÚS 1042/15)

case and evaluation of the evidence, given that the proposal to termination of the case was drafted and approved by the same persons as the previous proposal of the Inspection.

The Constitutional Court also expressed a concern whether General Inspection can be considered an independent authority in this case, if the investigation is carried out by the same persons as was in the Police Inspectorate, which lacked the independence. The Court particularly pointed to the fact that almost all of the member of the previous Inspectorate have now been taken over to General Inspection. Formal independence of the General Inspection (which is no longer subordinated to the Ministry of Interior) according to the Court is not sufficient to guarantee also independence in practice, especially providing that the General Inspection is predominantly occupied by former member of the bodies, whom it should investigate.

Work of General Inspection also lacks the transparency. For example the Inspection refuses to disclose information on whether persons who had committed serious misconduct in the past still work in the Inspection.

Finally, an insufficient control of the General Inspection is also an issue. Control of the Inspection in criminal proceedings shall be provided by prosecutors. In practice, however, in many cases prosecutors fail to thoroughly address the complaints of the victims of ill-treatment on the lack of effective investigation. Also control by the Prime Minister or by the parliamentary permanent commission[115] which controls the activities of the General Inspection has shown to be insufficient and non-functional.[116]

Do you think if the investigative body fails to carry out a thorough investigation the available remedies offer effective avenues for the victims to have the perpetrators punished? If not, what are the reasons for the shortcomings?

As it was mentioned above, a control of the thoroughness of the investigation shall be ensured by prosecutors. If the victim of the ill-treatment believes that their case was not investigated properly, they may file a request for a review of the procedure of the police authority to the competent prosecutor.[117] If the victim is not satisfied with the outcome of the prosecutor, he or she may further turn to the prosecutor of higher level with a request for execution of supervision. The prosecutors of lower levels are obliged to comply with the written instructions of the supervising prosecutors of the nearest higher level, with the exception of instructions which are in violation of the law.[118] The superior prosecutor is authorised to assess the correctness of the procedure of the supervised prosecutor[119] to the full extent, including possible defects in the investigation of criminal complaints.

[115] Under Section 57 of the Act no. 341/2011 Coll., on the General Inspection of Security Forces, control of the activities of the Inspection shall be ensured by the control body established by the Chamber of Deputies.
[116] Shortcomings as regards the control by the Commission, are also being highlighted by some of the members of Senate of the Czech Republic (see http://llp.cz/2015/10/gibs-by-mela-kontrolovat-komise-odborniku-zaznelo-v-senatu/)
[117] Section 157a of the Criminal Procedure Code
[118] Section 12d(2) of the Act no. 283/1993 Coll., on Public Prosecution
[119] Section 12d(1) of the Act no. 283/1993 Coll., on Public Prosecution

Legal regulation thus provide for remedy which in theory shall be sufficient to ensure that any deficiencies in the effectiveness of investigation conducted by the investigating authority (either the Police or General Inspection), could be fixed by the intervention of the prosecutors. The problem, however, arises in approach of some of the prosecutors to addressing such request, when often they are assessed only very superficially and the prosecutor rarely declares that the investigation of General Inspection was insufficient.

The only remedy left is the constitutional complaint where the complainant can claim breach of his right to life or right not to be tortured with respect to the lack of effective investigation. Some of the judges of the Constitutional Court have recently begun to apply the case law of European Court of Human Rights regarding state's obligation to carry out effective investigation. There are thus some recent decisions declaring lack of the effective investigation into potential cases of ill-treatment or infringement of the right to life.[120]

Are there any legal provisions prohibiting or limiting psychological ill-treatment or torture?

Prohibition of torture and other ill-treatment under the Czech Criminal Code (see subsection I.3) criminalizes not only causing physical harm, but also mental suffering. However, since no case law is available regarding crime of torture and other ill-treatment, it is hard to say which conduct would be considered as causing mental harm. According to the commentary to the Criminal Code, a mental suffering shall include for example strong fear, fear of the victim for their life or health or fear for life or health of close persons.[121]

How long does the whole legal procedure typically last (from the day an investigation was launched against officers who have allegedly ill-treated or tortured a victim until the delivery of the final court decision)?

It is impossible to reliably establish the length of the criminal procedure. The Criminal Procedure Code sets certain time limits in which the investigation shall finish. These time limits depend on the type of competent court (whether it is district court or regional court and whether the case is decided by single judge or by senate[122]). Determination of the competent court is dependent on the gravity of the crime committed. The time limits regarding criminal proceedings of particular crime will also vary, depending on whether there are any aggravating circumstances that would justify longer imprisonment.

Generally, the time limit for the initial investigation that takes place before the charges are filed shall last no longer then two or three months.[123] In cases where the Regional Court is competent[124] the time limit is six months. These time limits can be prolonged by the prosecutor. The same time limits

[120] See among others decision of the Constitutional Court of 19 January 2016, no II.ÚS 3436/14; or decision of 2 March 2015, no. I. ÚS 1565/14

[121] ŠÁMAL, P. et. al. Trestní zákoník *[Criminal Code]*. 2nd edition. Prague: C.H. Beck, 2012 p. 1588

[122] see § 16 - § 26 of the Criminal Procedure Code

[123] § 159 of the Criminal Procedure Code

[124] This is in cases where the law set the minimum penalty of five years imprisonment.

(two, three or six months) also apply in the phase of investigation which is carried out after the charges have been filed but prior to submission of the indictment by the prosecutor.[125]

After the indictment was submitted, the lengths of criminal judicial proceedings also depend on many factors. First of all, a fact whether the remedies were used is decisive (logically, if an appeal against the judgment was filed, the proceedings will last longer). The average length of judicial proceedings also differs among various courts. In 2014, the average length of the court criminal proceeding counted from the day of submission of the indictment until the day of adoption of final judgment (including potential use of remedies) was 168 days. However, if we compare the length of criminal judicial proceedings in particular courts, the results range from 59 day in District Court in Svitavy to 405 days in District Court in Chomutov. In case of Regional Court, the criminal judicial proceedings take much longer – from 318 days in the Regional Court in Hradec Králové to 706 days in Regional Court in České Budějovice.[126]

Since so far there is no ended criminal proceeding as regards the crime of torture or other ill-treatment, it is impossible to say how long the criminal proceeding on average takes in the cases of this particular crime. Above mentioned statistics thus cover all of the criminal judicial proceedings taking place in the Czech Republic in 2014.

Nevertheless, it can be mentioned that in *Kummer v. Czech Republic,* the European Court of Human Rights was concerned about the fact that the suspect police officers have been heard after three months after the event and only after the complaint of victim against inaction in the investigation to the prosecutor.[127] In *Bureš v. Czech Republic,* the whole investigation was concluded within six months and the ECtHR found the requirement of promptness to be fulfilled.[128]

II.2.3 Medical examination and medical documentation

Is there an obligation for the police and penitentiary (prison) officials to examine those detained upon admission or is it carried out only upon complaint/request?

There is no general obligation to carry out medical examination before a person is put into police cell. Such obligation only applies only in two situations. First of these situations it when a person concerned is visibly under the influence of drugs or alcohol. In that cases the person can be placed into police cell only after the doctor does not conclude that the person must be placed in sobering-up station or other healthcare facility.[129] Also if a police officer finds that a person is injured, if there is a reasonable suspicion that the person might suffer from serious illness or if the person informs the police officer of such illness, the police officer is obliged to ensure the medical examination of the person and observation of the doctor of medical condition of the person.[130]

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[125] § 167, § 170 of the Criminal Procedure Code
[126] For complex statistics please see following webpage: http://www.mapaprutahu.cz/mapa-prutahu
[127] Judgement of the European Court of Human Rights – *Kummer v. Czech Republic*, no. 32133/11.
[128] Judgement of the European Court of Human Rights – *Bureš v. Czech Republic*, no. 37679/08.
[129] Section 31 (1) of the Police Act
[130] Section 31 (2) of the Police Act

Doctor's opinion on further keeping person in a cell is also necessary if the person falls ill, suffer other injuries, or attempts a suicide after placing in a cell. If the opinion of the doctor suggests that further detention of the person cannot continue due to their medical condition, a police officer shall immediately release the person from the cell and if it is necessary with regard to their state of health, transportation to the medical facility shall be ensured.[131]

Is there any criticism regarding the possibility of, or the quality of, the medical examination upon admission to a police station or while detained in a penitentiary institution? If yes, please explain the concerns raised in this matter.

Generally, under the Act on Public Health Insurance, every patient has a right to choose a doctor as well as the medical facility where healthcare services will be provided. One of the exceptions from this general rule is a situation when a medical examination is carried out in order to determine whether a person can be placed into police cell, whether is it necessary to release them. Also persons in pre-trial detention or in prison are limited in choosing the doctor and medical facility.[132] In other cases, the police are obliged to respect the choice of the doctor of the detained person and enable the doctor an examination.[133]

The issue of medical examination prior to the placing of person into police cell is addressed in the Ombudsman's report from systematic visits to police cells in 2010.[134] The Ombudsman states that in practice the police officers prefer to let the detainee medically examine by a doctor to avoid potential problems in the future. Thus if a person requests a doctor, medical examination will almost always be ensured. This is also true if there is a suspicion of illness or injury. The problem however was found, regarding inter alia the right of the detainee to be examined by the chosen doctor. It turned out that the detainees are not allowed to be medically examined by the doctor of their own choice. Moreover, a right of the detainee to privacy during examination is also not respected and a presence of the police at each medical examination is deemed necessary.

A person is not entitled to choose a doctor and medical facility while being imprisoned.[135] Medical care of prisoners is provided by medical centre of the Prison Service, which employs its own doctors and nurses. Outer medical facilities are used only if the Prison Service is unable to provide medical care in its own facilities.

In a report from systematic visits to prisons in 2016[136], the Ombudsman drew attention to the lack of medical staff in the facilities of Prison Service, which carries a risk that prisoners would not be provided timely and proper medical care. The Ombudsman pointed to the fact that this issue has

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[131] Section 32(1) of the Police Act
[132] Section 11(2) of the Act no. 48/1997 Coll., on Public Health Insurance
[133] Section 24(5) of the Police Act
[134] See paragraph 18 in the document tiled "Poznatky ze systematických návštěv policejních cel v roce 2010." Available here: http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/2010/Policejni_cely_2010.pdf (unfortunately, no more recent report from systematic visits of police cells is available)
[135] Section 27 of the Act no. 169/1999 Coll., on Imprisonment
[136] Report is available here: http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Veznice/Veznice-2016.pdf

been repeatedly addressed also by the CPT, which in 2014 reported complaints of the prisoners on delays in visiting doctors. The CPT recommended that the Czech authorities make increased efforts to occupy the vacant positions of prison doctors. Findings of the Ombudsman indicate this being a very difficult problem. The Ombudsman recommended the Ministry of Justice to conduct an analysis of the overall concept of prison health services with a view to transferring the obligation to provide medical services to civilian medical institutions by the end of 2016.

What is the status of the medical doctors examining the victims? Has the status of the medical doctors examining the victims ever been criticized? If so, what is the reasoning of the criticism?

Police do not employ their own doctors for a purpose of medical examination of the detained persons. In acute cases, health emergency service is called, in other cases the detainee is transported to the medical facility which is in the contractual relationship with the police. Detained persons have a right to be medically examined by a doctor of their own choosing.[137] As mention above, this does not apply to medical examination performed in order to determine whether is it possible to put a person into the police cell or whether the detention can continue.[138]

As observed by the Ombudsman in 2010 (see above), right of the detainees to choose their own doctor is not being respected in practice. Chief Officers of the police stations have subsequently been alerted about the need to respect this right.

If it is possible for the victim to request a doctor of their own choosing, what is the proportion of examinations carries out by independent doctor?

This information is not available. According to our estimates, only minimum of medical examinations are carried out by doctors chosen by the detainees. Almost none of the detained seek this right, because they are not informed about it.

If it is possible for the victim to request a doctor of their own choosing, is there any evidence that the quality of these examinations is better than those carried out by doctors employed by the police or the penitentiary?

As mentioned above, this right is only very rarely being used so we cannot provide answer.

Do doctors receive special training on how to document injuries in case of possible or alleged ill-treatment or torture? (i.e. do doctors know which factors will be treated as relevant by the forensic medical experts, the prosecution or the court?)

Such training is not mandatory so it must only be assumed that doctors know good practice together with relevant legislation (as regards for example medical documentation). Given that detained persons are being examined by civilian doctors of emergency services or civilian hospitals, the doctors have no special training. We did not find any information that any special training on how to document injuries in case of possible or alleged ill-treatment or torture would be available to doctors. Forensic medicine is part of education at medical schools.

[137] Section 24(5) of the Police Act
[138] ibid

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II.2.4 Consequences

Is it possible for an officer to continue to be employed as a police officer after they have been found guilty of a criminal offence involving ill-treatment or torture of a person?

Generally, if a police officer has been convicted of any criminal offence committed deliberately (or although committed by negligence, but the act of committing the crime is inconsistent with the requirement imposed on the police officer), they must be released from service. Since the crime of torture and other inhuman or cruel treatment is always deliberately committed, it would be impossible for the police officer concerned to continue to be employed by the Police.

Is there any criticism of the gravity of typical sanctions imposed in ill-treatment or torture cases?

As already mentioned, there has been no final conviction for ill-treatment so far. This question thus cannot be answered.

III Analysis of the relevant provisions of the legal system with a view to a hypothetical case

III.1 Recording of police action

Would there be a recording of the actions of the police in the street (stopping and apprehension) e.g. through body or dash board cameras?

Members of the Police can use body cameras to record their actions but it depends on the officer to evaluate the situation and to decide whether it is necessary to get a camera recording or not. According to the interviews with police officers, they do not use the body cameras during every action but only if the person, against whom the action is taken, is "problematic" and does not fully cooperate. If such person is informed about being recorded on camera, they usually begin to cooperate with the officer. Body cameras are thus used for the protection of the police officers rather that for documenting of lawfulness of their actions. Lack of interest of the police to use cameras for recording their action has also been subject to criticism of the Ombudsman in 2006.[139]

Dash board cameras can be found in vast majority of the police vehicles but not in all of them (some of the old cars do not have cameras, but all of the new ones shall be equipped with them). If a vehicle is equipped with a camera, recording starts at the moment of departure of the vehicle from the police station and ends after the vehicle returns to the station.[140]

Would there be a recording of what happened in the police car?

Dash board cameras are placed behind the front and rear window of the car, but they do not record the inside of the vehicle. Record would thus only be available if a police officer decided to use their body camera.

Would there be a recording of what happened in the custody cell and in other parts of the police station?

It depends on the particular police station. Not all of them are equipped with cameras.

Would there be a recording of the interrogation?

Not necessarily. Criminal Procedure Code requires only to write a protocol of every action (usually during the action or immediately afterwards), unless it is explicitly provided otherwise.[141] Making an audio or video record is only optional.[142]

Would outsiders (e.g. people walking on the street) be entitled to record the police action by their cell phones or other suitable equipment? Would the person subject to the measure be entitled to do so?

Anyone can make a camera recording of the police action. When performing police action, police officers do not act as private individuals, which mean that making video or audio recording of their actions cannot be regarded as interference with their personal rights.[143]

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[139] see final statement of the Ombudsman no. 2875/2005/VOP/DU available in Czech here: http://eso.ochrance.cz/

[140] This information was provided by the Police Presidium upon a request for information.

[141] Section 55 of the Criminal Procedure Code

[142] Section 55a of the Criminal Procedure Code

With regard to all the different types of recording above: would it be possible for the officers to turn off the cameras at any point? If there would be a recording, for how long would it be kept and would the authority investigating the ill-treatment claim and the victim have unhindered access to it?

As mention before, a police officer can decide when to turn the body camera on and when to turn it off. As regards the dash board cameras, while the car is in use, they are turned on and it is not possible for the police officer to interfere with the camera recording.

Recording made by the cameras installed in the premises of police stations are kept for 30 days. Recordings made by body cameras or car cameras are preserved only if it is necessary. In that case they are kept also for 30 days.

If a police officer gratuitously turns the camera off during the action capable of infringing with human rights and freedoms of a person, consequences shall be drawn in subsequent proceedings concerning liability for such intervention. For example, in the case of supporters of squatting, who allegedly suffered injuries intentionally cause by police officers during police action, Czech Supreme Administrative Court (relying on the case law of European Court of Human Rights) concluded that it is a responsibility of the State to prove that the injuries were not caused by ill-treatment. Therefore, if a police video-recording is incomplete and misses key moments of the action, it is a failure of the State to bear the burden of proof.[144]

Lack of camera recording of a police action is a problem in general. The action itself is either not recorded at all, or the recording does not include the important part when there is a conflict between a police and other persons. This problem has been also addressed by the Constitutional Court,[145] which recommended the Police to take recording of a situations of conflict. The Court also pointed to the fact that although a policeman with a camera was present from the beginning of the police action against the complainant, and the beginning of the action was taken on the camera, it is very suspicious that the recording did not continue, given that nothing suggested any problems preventing him from continuing of the recording.

In this regard, legal regulation of use of camera recording during police action would be welcomed, requiring to take recordings in situations, where ill-treatment might occur. Availability of camera recording is very often crucial for the case, especially if there are no witnesses. Camera recording is thus usually the only evidence, apart from the testimonies of policemen and the victim.

As regards the access of the victim to the recordings, in practice it is denied. If the criminal proceeding is not initiated, the victim has no right of access to the file, which also includes these recording (see section II.2.1).

[143] Such is the official opinion of the Security Policy Department of the Ministry of Interior (available here: http://www.mvcr.cz/soubor/porizovani-zaznamu-policistu-pri-vykonu-sluzby-pdf.aspx)

[144] Judgment of the Supreme Administrative Court of 25 May 2015, no. 6 As 255/2014. Available here: http://www.nssoud.cz/files/SOUDNI_VYKON/2014/0255_6As__1400042_20150525093319_prevedeno.pdf

[145] case no. I.ÚS 1042/15, see above, § 48 - 49

III.2 Medical examination and medical documentation

Would the complainant always be examined by a doctor upon admission to the police station or at any other time (e.g. what happens if he complains that he was beaten up during the interrogation)?

Generally, the complainant will not always be examined. If, however, he/she is injured, the police officer is obliged to ensure the medical examination (see section II.2.3). Given that the complainant in the hypothetical case was under influence of alcohol, he would be examined in order to determine whether his condition does not prevent his placing into police cell.

Would he have to ask for it, or is it mandatory?

Obligation to ensure medical examination of the injured detainee is set by the law [section 31(2) of the Police Act]. In practice, medical emergency is only called only in very acute cases.

If a medical examination would take place, would it be by a doctor employed by the police or would it be in an independent civilian health care institution? Would it be possible for the victim to request to be examined by a civilian doctor or be transferred to a civilian hospital for the purposes of the examination?

As already mentioned, police do not employ their own doctors who would be performing medical examinations of detainees. In acute cases, health emergency service is called, in other cases the detainee is transported to the medical facility which is in the contractual relationship with the police. Detained persons have a right to be medically examined by a doctor of their own choosing, but such a doctor is not entitled to provide statement on the necessity to release a person from the detention (see section II.2.3).

Would someone from the police be present at the examination? If yes, would it be those officers who have apprehended the complainant, or different officers? Would the complainant or the doctor have the right to request that police officers escorting the complainant to leave so that they were out of sight and/ or hearing?

During the medical examination at least one police officer of the same sex as the detained person shall keep visual contact with this person.[146] No legal regulation provides that it shall be different police officer than that who was involved in apprehension of the complainant.

If the medical examination takes places in the hospital, the doctor may request the police officers to leave the room, but they are not obliged to do so, because the police officer will be responsible is the complainant managed to escape from the hospital. According to information from the police officers, if there is no risk of escape of the complainant and the doctor asks officers to leave, they have no problem to do so. Nevertheless, usually the police officers are present during the medical examination of the complainant, except the x-ray examination or examination of intimate parts.

It can happen that the police officer apprehended the person will also be the one present at the medical examination, because in practice, the officer who performs the action will be in charge the whole time.

[146] This information was provided by the Police Presidium upon a request for information

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If there would be a medical examination, would the doctor ask the complainant about the reason for his injuries and would he/she be likely to record the injuries accurately? Would the doctor record what he/she thinks to be the most plausible origin of the injuries if that differs from what the complainant states (e.g. if the complainant is afraid to tell what has happened)?

The doctor probably would ask the complainant about the origin of his injuries, and note it into the medical record. However, the doctors are not entitled to provide evaluations of the possible mechanism of injury.[147] This question shall be dealt with in the expert opinion, if requested in the criminal proceedings by any of the parties.

Would photographs be taken by the doctor or by another member of the relevant law enforcement agency of the injuries of the victims?

It is not common that the doctors would take photographs of the injuries. More probably the photographs would be taken by the police officers.

Would the doctor forward the medical documentation to the prosecutor (or to any other entity responsible for the investigation of police brutality) if

a) the complainant complained of ill-treatment,

b) injuries are detected but the complainant did not allege to have been subject to ill-treatment?

As mentioned above, there is a general notification obligation as regards the crime of torture and other cruel or inhuman treatment and if the doctor suspects that such crime was committed, they are obliged to inform the police. In practice, however, this does not happen (with the exception of serious cases) and it is up to the victim to take further steps, such as filing a criminal complaint. In any case, the doctor is not entitled to send the medical documentation to the prosecutor or any other investigative authority for this purpose.

It should be mentioned, however, that in a response to the report of the CPT from the visit to the Czech Republic in April 2014, the Czech government adopted a resolution (no. 609, dated 29 July 2015), by which, inter alia, an obligation has been imposed on the Minister of Health in cooperation with the Ministers of Justice and Interior to draft amendment to the Act on Healthcare Services that, in accordance with the recommendations of the CPT, would establish an obligation of doctors to report to the competent supervising authorities signs of possible ill-treatment of persons deprived of personal liberty.

Would the complainant receive a copy of the medical files? If so, would it be free of charge?

The complainant is entitled to request of copy of his medical documentation.[148] They may make the copies by their own means (e.g. by mobile phone) or ask the doctor to provide them the copies. In that case, the doctor can request only payment equal to the cost of making the copies.[149]

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[147] Such procedure is in accordance with the Recommended Practices for General Practitioners drafted by experts in the field of the forensic medicine and toxicology; available in Czech here: www.cls.cz/dokumenty2/postupy/t197.rtf

[148] Section 65(1) of the 372/2011 Coll., on health services and the terms and conditions for the providing of such services (The Act on Healthcare Services), as amended

Could the complainant submit opinions by experts commissioned by them, or is only the opinion of the expert appointed by the investigating authority taken into account?

Criminal Procedure Code provides that anything that can contribute to clarifying the case may serve as evidence. At the same time, each of the parties (including complainant as a victim of a crime) is entitled to seek out and submit the evidence. The fact that evidence was not provided by the investigative authority is not a reason for rejection of such evidence.[150]

Would the forensic opinion be conclusive as to the decision of the court, i.e. is it required for the expert to establish that what the complainant said about the way the injuries had been sustained were true beyond reasonable doubt for the court to sentence the suspect, or is it enough if the forensic expert opinion provides that it is possible that the victim's story is true?

In Czech criminal procedure, standard of proof beyond reasonable doubt applies. Moreover, the courts have to follow the principle of discretionary assessment of evidence which means that it depends on the judge which of the evidence proposed will be evaluated as conclusive for proving the guilt of the accused. All of the available evidence shall be taken into consideration and if some of are not, the court have to provide justification. Therefore, even if according to the forensic opinion it is "only" possible that story of the complainant is true, together with other available evidence; the judge may come to guilty verdict.

Could the complainant be prosecuted (e.g. for "false accusation") for telling the doctor that he has been ill-treated if the accused officers are acquitted or the criminal investigation is terminated for want of evidence?

It is possible that similar scenario might occur but only provided that the doctor based on the information from the complainant, would notify competent authorities and some steps in criminal procedure would be taken. However, according to the case law, when assessing the guilt of the perpetrator of the crime of false accusation, it is not enough to consider only the question whether the accused person actually committed the crime or whether this person was prosecuted and convicted. It is necessary to prove that the perpetrator was aware of the fact that they falsely accuse another person.[151]

III.3 Right to a lawyer

Would the complainant have a right to a lawyer whilst in police detention?

Detained person has a right to legal assistance and a right to talk with lawyer without the presence of a third party.[152]

Would the complainant's lawyer be present at the interrogation from the very first moment of the interrogation?

Right to legal aid during interrogation derives from article 37(2) of the Charter of Fundamental Rights and Freedoms, according to which *"everyone has the right to legal assistance in proceedings before courts, other state bodies or public authorities, from the very beginning of the proceedings"*.

[149] Section 66(3) of the the Act on Healthcare Services
[150] Section 89(2) of the Criminal Procedure Code
[151] e.g. judgment of the Constitutional Court judgment of 7 March 2002, no. IV.ÚS 485/01
[152] Section 24(4) of the Police Act

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Section 158(5) of the Criminal Procedure Code provides that everyone is entitled to legal aid when interrogated. Also under section 76(6) of the Criminal Procedure Code, detained person has a right to require lawyer to be presented during the interrogation and at the same time the Police are obliged to provide detained person full possibility to exercise this right.[153] It needs to be noted that these provisions apply only to interrogations conducted under Criminal Procedure Code and thus only after a criminal procedure has been initiated and the police is verifying facts indicating that a crime has been committed. Police Act, however, does not contain similar provisions and in practice some police officers tend to restrict this right by referring to the fact that the interrogation is held under the Police Act and there is no provision guaranteeing right to legal help. This issue has been subject to the Constitutional Court's decision, which came to a conclusion that anybody is entitled to the presence of lawyer, regardless of whether the interrogation is carried out under the Criminal Procedure Code or the Police Act.[154]

Are there any rules establishing a minimum period between informing the lawyer about the scheduled interrogation and the actual start of it?

Minimum period, in which the legal counsel of the detained person must be informed about the time of the interrogation, is not set.

Would the police wait for the arrival of the defence lawyer before starting the interrogation?

Right of the detained person to have a lawyer present at the interrogation does not apply if the lawyer is unreachable within the 48 hours which is a maximum period for detention of the person suspected of committing a crime.[155] If the requested lawyer cannot arrive immediately, considering the absence of minimum time period between informing the lawyer about the scheduled interrogation and the actual start of it, it depends on the police officers whether they will await arrival of the lawyer or not. Given that the detainee may refuse to testify without the presence of the lawyer, officers usually try to agree with the lawyer on a suitable time.

Would the complainant have the possibility to consult the lawyer before the interrogation starts?

Provided that the maximum periods set for detention would be respected (see answer to previous question). In practice, this possibility is given.

Would the lawyer be likely to take any action in relation to the complainant's claim of ill-treatment (insisting that it be placed on the record, taking photographs, filing a report with the competent authority, etc.)?

Yes. Lawyer is obliged to act in the interest of the client. According to experience of some police officers, some defence lawyers use strategy of accusing the officers of ill-treatment even in completely unfounded cases.

Would there be any difference in the course of action in relation to all the above depending on whether the lawyer was a retained or a legal aid lawyer?

There should not be any difference, but it will depend on the attitude of the particular lawyer which steps he or she decides to take. According to information from some lawyers, remunerations for the

[153] Section 76(6) of the Criminal Procedure Code
[154] See judgment of the Constitutional Court of 8 March 2005, no. I. ÚS 734/04
[155] Section 75(6) of the Criminal Procedure Code

defence do not significantly differ when paid by client or by the State, because the majority of accused cannot afford to pay more than the statutory fee (which also applies in case of legal aid lawyers paid by the State).

III.4 Right to inform a third person

Would anyone inform a third party of the fact that the complainant has been arrested by the police? If so, who would call the third person, the police or the complainant?

Detained person has a right to request that third person is notified about the detention. According to the Police Act the notification shall be given by the police.[156] Law thus does not guarantee a right of the detainee to speak with third persons. In practice it happens that the police allow the detainee to make a phone call themselves. Usually it depends on their behaviour.

What would be the latest time that the third person would be informed? What would happen if the person nominated by the complainant was not available?

There is no specified period in which the third person shall be informed about the detention. Law provides two reasons for which the notification does not need to be given - if there are unreasonable difficulties in contacting the nominated person or if the notification might jeopardise the fulfilment of another police action.[157] However, as soon as these obstacles cease to exist, the police shall give the notification.[158] In practice, if the detainee behaves well and does not make problems, they are allowed to inform the third person whenever they like and vice versa.

III.5 Investigation of the complaint of ill-treatment

What are the possible avenues by which investigation of the complainant's claim of ill-treatment would start?

The authorities responsible for criminal proceedings are obliged to proceed *ex officio* and thus when any reasonable suspicion of crime being committed arises, they are obliged to conduct necessary investigation. Crime of torture and other ill-treatment is listed among the crimes[159] for which there is a general duty of notification which means that anybody who in a credible manner learns that the crime of torture and other ill-treatment has been committed is obliged to notify the Police or public prosecutor about this, otherwise they expose themselves of being prosecuted for failure to report a crime. Therefore the doctor is obliged to inform the competent authority about the suspicion that their patient has been subjected to ill-treatment. Moreover, under the Police Act, the police officer, who witnessed ill-treatment, has the duty to immediately report it to their superior.

Most usually, however, the investigation is being initiated by the means of filing a criminal complaint by the victim of ill-treatment. A criminal complaint can be addressed either to the police authority or to the public prosecutor and it can be filed orally at the workplace of the competent authority or it

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[156] Section 24(2) of the Police Act
[157] Section 24(3) of the Police Act
[158] ibid
[159] Section 368 of the Criminal Code

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can be filed in writing (via email or via classical postal correspondence). It is also possible to file the criminal complaint anonymously.

Which state organ would investigate the alleged ill-treatment? (police, prosecutors, special part of the prosecutor service, special judge, special independent body, etc.) If there is any special feature about the investigative body's role, competence or independence, please elaborate on this aspect.

Investigation of all crimes (thus not only the ill-treatment) committed by member of the Police, by a custom officer or by a member of the Prison Service is task of the General Inspection of Security Forces. The independence of the General Inspection shall be ensured by the fact that, unlike the previous Police Inspectorate, it no longer falls under the competency of the Ministry of Interior, but it is a separate organizational unit of the State. Also the director of the Inspection is appointed by the prime minister, towards whom the director is solely responsible.

In the criminal proceeding, the General Inspection holds a position of "police authority" which means that its members have the same powers as members of the Police when carrying out an investigation. Members of General Inspection are thus entitled to carry out the initial phase of investigation as well as the phase which follows after the charges have been filed. This is one of the main differences from the Police Inspectorate, which had only the power to carry out the initial investigation, whereas the phase after filing the charges fell within the competence of the prosecutor.

If there is a special body/institution for investigating such complaints, could any other investigative organ investigate the case under any circumstances? If so, can the evidence collected in course of its action be used by the prosecutor/court?

Under the Criminal Procedure Code, criminal proceedings against a member of the Police, the Prison Service or custom officers shall always be conducted by the General Inspection.[160] There is one exception though. The prosecutor besides being entitled to participate in the investigation is also entitled to personally conduct the whole investigation (but only the phases after the criminal charges were brought against a particular person).[161] Nevertheless, this should happen only in very exceptional cases.

In practice it happens that criminal complaints are investigated by the Police themselves and not by the General Inspection. The problem is that after a victim of ill-treatment files a criminal complaint, General Inspection does not initiate the investigation and instead declares that no suspicion of committing a crime arises from the criminal complaint. Accordingly, the "criminal complaint" (governed by the Criminal Procedure Act) is evaluated as a mere "complaint against the inappropriate conduct of the official or maladministration" (governed by the Administrative Procedure Act[162]) and is referred to the Police, which further deals with the complaint. This procedure then cannot lead to criminal conviction of the suspected officer.

[160] Section 12(2)(b) combined with Section 161(3) of the Criminal Procedure Code
[161] Section 174(2)(c) of the Criminal Procedure Code
[162] Act no. 500/2004 Coll., on Administrative Procedure

It is also possible that the General Inspection will refer the case to the competent authority for disciplinary proceedings (if the Inspection finds that the misconduct of the officer concerned does not qualify for a criminal offence, but might qualify for a disciplinary offence). These proceeding are handled by the superior of the officer concerned. Once again, this procedure cannot lead to criminal conviction of the suspected officer. Although the superior has an obligation to refer the case to the General Inspection if the findings of the proceedings suggest that misconduct constitutes a crime, but once the case was refer by the General Inspection to the competent authority, it is not probable that the case would be referred back to the Inspection.

Would there be any remedy against a decision that no criminal action should be taken against the police officers?

If the initial phase of investigation does not result in criminal prosecution, there are two other ways of ending this phase of criminal proceedings – terminating the case or transferring the case to another authority either for misdemeanour proceedings or for disciplinary proceedings and by initiating criminal prosecution[163].

When it appears that there is no suspicion of a criminal offence, the case is terminated which means that no further steps will be taken in the investigation and nobody will be prosecuted. In that case a decision (in a form of a resolution) is adopted either by the General Inspection or by the prosecutor[164]. The injured party (the victim of a crime) is entitled to file a complaint against a decision to terminate the case. If the decision was adopted by the Police, the complaint will be dealt with by the prosecutor and if the decision was adopted by the prosecutor, the complaint will be dealt with by the superior prosecutor or by the court.[165] If the complaint is found to be substantiated, a prosecutor can order the General Inspection to reopen the case.[166] If the complainant is not satisfied with the outcome of the prosecutor, he or she may further file a request for execution of supervision to the prosecutor of higher level (see section II.2.2). After that, the only remedy left is filing a constitutional complaint, where the complainant can claim a lack of effective investigation.

In a situation when a case is being referred to another authority, no formal decision will be adopted and therefore the victim does not have a right to file a complaint. It is, however, possible to file a proposal for initiating an oversight to the competent prosecutor, followed again by further request to the prosecutor of higher level, and possibly complaint to the Constitutional Court.

It may also happen that the decision to terminate the case or to transfer it to another authority for disciplinary or administrative proceedings will be adopted only after the prosecution has already been initiated. In that case, the decision will be issued also if the case is transferred and it is always

[163] Section 159a of the Criminal Procedure Code

[164] One of the competencies of the prosecutor arising from his position of a supervisory authority is a power to annul unlawful or unjustified decisions of the police authority and replace them by his own decisions (see Section 174(2)(e) of the Criminal Procedure Code)

[165] Section 146 of the Criminal Procedure Code

[166] Section 149(1)(b) of the Criminal Procedure Code

adopted by the prosecutor.[167] It is possible to challenge these decisions by a complaint to the Supreme prosecutor[168], who is entitled to annul the decision if it is unlawful and order to continue in the criminal proceedings.[169]

Does the complainant run the risk of being accused by the officers of violence against them if he files a complaint against the officer?

Czech Criminal Code contains a provision on crime of violence against a public official[170] so this possibility cannot be excluded with certainty. In practice, however, this will not be very probable. There are cases, on the other hand, where the complainant who claimed to be ill-treated by the police authorities was later accused of a crime of false accusation (see section III.2).[171]

III.6 Procedural status of the complainant

Would the complainant have a legal standing in any criminal proceedings taken against the police officers? If so, what rights would the complainant have?

Person who had suffered bodily harm, property damage or non-material damage as a result of a criminal offense has a status of injured party and is considered a party to the criminal proceedings[172] which brings a number of procedural rights. The most important rights include a right to make proposals for additional evidence, right to inspect the files, right to participate in the plea bargain negotiations, right to participate in the trial and public hearing held on the appeal or plea approval and right to provide closing speech before the end of the proceedings.[173]

The injured party has also right to claim damages from the accused in respect of damage caused by a criminal offense. In order to exercise this right, the injured party is entitled to submit a motion asking the court to impose, in its sentencing judgment, the accused a duty to compensate such damage.[174]

If the complainant was a member of a vulnerable group, would he be heard under special circumstances?

Law on crime victims[175] which establishes rights of persons who had suffered bodily harm, property damage or non-material damage as a result of a criminal offense, provides special regulation of hearing of vulnerable victims. First of all, questioning of the vulnerable victims shall be done in particularly sensitive manner and with a respect to the specific circumstances that make the victim vulnerable.[176] If it is possible, questioning of the vulnerable victim in preliminary proceedings shall be

[167] Section 171 and 172 of the Criminal Procedure Code
[168] Section 171(2) and 172(3) of the Criminal Procedure Code
[169] Sectoin 174a of the Criminal Procedure Code
[170] See section 323 of the Criminal Code
[171] Media informed about such a case in 2015 – see article aclled „Muž si stěžoval na policisty u GIBS, dostal dva roky za křivé obvinění" [The man who complained on the police to the General Inspection got two years for false accusation]. Available herehttp://zpravy.idnes.cz/odsouzeni-vita-hassana-za-krive-svedectvi-fiw-/domaci.aspx?c=A150730_142338_domaci_cen
[172] Section 43 et seq of the Criminal Procedure Code
[173] Section 43(1) of the Criminal Procedure Code
[174] Section 43(3) of the Criminal Procedure Code
[175] Act no. 45/2013 Coll., on Crime Victims
[176] Section 20(1) of the Crime Victims Act

carried out by a person trained for this purpose. If the vulnerable victim is a child, questioning in the preliminary proceedings shall always be carried out by specifically trained person, unless the interrogation cannot be delayed (for example in case that interrogation carried out later might cause a loss of probative value of the testimony) and such person cannot be ensured.[177] Moreover, questioning shall be carried out in way that it does not need to be repeated later. In the event of further questioning, it shall be carried out by the same person.[178] If the vulnerable victim does not wish to have immediate visual contact with the suspect/accused, necessary measures shall be taken to avoid such contact (especially an audiovisual equipment is being used if it is technically possible), unless there are compelling reasons for not doing so. At the same time, however, it is important to ensure that right of the defence are not violated.[179]

Would the victim be entitled to any kind of protection measures? (who can have access to victim's personal data recorded in the case files, what happens if there is a real risk of retribution by the perpetrators, etc.)

If the victim acts in a capacity of a witness, regulation concerning protection of witnesses is applicable. General rule is set in section 55(2) of the Criminal Procedure Code, according to which if there is a suspicion that a witness or person close to them might be at a risk of bodily harm or other serious violation of their fundamental rights, while their protection cannot be ensured in a different way, measures to conceal the identity of the witness shall be adopted. In that case full name and other personal data are not recorded into protocols, are not included in the file and may only be known by the court, the prosecutor and the investigating authority. In the court proceeding, the judge is obliged to take the necessary measures to make it impossible to find out the true identity of the witness.[180]

Act no. 137/2001 Coll. furthermore regulates special protection of witnesses and other persons in connection with the criminal proceedings, who are at a risk of bodily harm or another serious danger. Special protection under this act covers three types of measures that can be adopted – personal protection, relocation of the protected persons including members of their household and concealing the real identity of the protected persons. Protection under this Act is not obligatory.[181] A motion for special protection can be filed by police authority, prosecutor or judge and it needs to be approved by the minister of interior.[182]

III.7 Evidentiary issues

Would police officers involved in the incident be required to write a report on the police measure/use of means of restraint?

Police Act stipulates the obligation of the police to write an official record about every case of detention of a person[183] as well as about every action in which coercive means of weapon had been

[177] Section 20(2) of the Crime Victims Act
[178] Section 20(3) of the Crime Victims Act
[179] Section 20(4) of the Crime Victims Act
[180] Section 209(1) of the Criminal Procedure Code
[181] Section 1(4) of the Act no 137/2001 Coll.
[182] Section 4(1) of the Act no 137/2001 Coll.
[183] Section 26(5) of the Police Act

used.[184] Moreover the police officer has an obligation to inform their superior about the use of coercive measures.[185]

Could these reports be used as evidence in any criminal prosecution of the police officers? If so, would there be any difference in terms of the "evidentiary force" of these reports compared to evidence provided by the complainant?

According to the Criminal Procedure Code, anything that might contribute to the clarification of the case may serve as evidence (as will be discussed below, there are certain exceptions, though).[186] There is no reason why official reports about detention and/or use of coercive measure could not be used as evidence. Whether they will actually be used or not depends on the proposal of parties. In case these reports will be used, there will be no difference in their evidentiary force. Section 89(2) of the Criminal Procedure Code expressly provides that the fact that evidence was not provided by the investigative authority is not a reason for rejection of such evidence. Moreover, the courts have to follow the principle of discretionary assessment of evidence (see section III.2).

Would all the police officers involved in the incidents of ill-treatment be heard as witnesses?

It depends on whether any of the parties to the criminal proceedings (prosecutor, defendant and potentially a victim) will propose hearing of all involved police officers as evidence.

Would the complainant and the police officers be confronted (would they be cross-examined) in any criminal proceedings?

Confrontation as a special mean of evidence may be used if there are some significant discrepancies between the testimony of the defendant and the testimony of a witness.[187] It follows that the confrontation is possible only after each of the person that are about to be confronted, had already been heard.[188] It shall be used only within court criminal proceedings. Its use in preliminary proceedings is not completely excluded, but it will be justified only in very exceptional cases.[189]

Confrontation may be initiated by the court or upon a motion submitted by any of parties. When confronting, the interrogated person is asked to present their statement on the circumstances, in which testimonies of the confronted person differ, or to present other related circumstances, which had not yet been presented in the testimony.[190]

This statement is presented directly to the other confronted person.[191] Confronted persons may ask each other questions only with the consent of the interrogator (the court or the investigative authority if the confrontation is taking place in the preliminary proceedings).[192] Confrontation is

[184] Section 57(2) of the Police Act
[185] ibid.
[186] Section 89(2) of the Criminal Procedure Code
[187] Section 104a(1) of the Criminal Procedure Code
[188] Section 104a(3) of the Criminal Procedure Code
[189] Section 104a(7) of the Criminal Procedure Code
[190] Section 104a(3) of the Criminal Procedure Code
[191] ibid
[192] ibid

impossible if the identity of the witness is being concealed. Persons younger 18 years can be confronted only very exceptionally.[193]

Would identity parades be held in the case? Would it be done in person or by showing photographs?

The decision whether or not to hold an identity parade once again depends on the investigative authority. According to the Criminal Procedure Code, an identity parade is hold if it is important for the criminal proceedings that the suspect, accused, or witness identified a person or a thing.[194] If a person is to be identified, he/she will be shown to the witness (or suspect or accused) between at least three other persons who do not significantly differ from each other.[195] Identity parade shall be hold by showing photographs only if it is not possible to hold it in person.[196] However, it is forbidden to hold recognition by showing photographs first and then repeating it in person.[197]

Would the doctor(s) who examined the detained person be heard as witnesses?

It depends on whether any of the parties to the criminal proceedings (prosecutor, defendant and potentially a victim) will propose hearing of the doctor(s) as evidence.

Would the complainant have the right to propose any question to be asked of other witnesses in the proceedings?

According to section 215(1) of the Criminal Procedure Code, injured party is entitled to ask the interrogated persons questions with the consent of the presiding judge.

What would happen if the complainant alleged that he had been subjected to ill-treatment in order to extract a confession? In a prosecution of the complainant for assault on the police, would the allegation of ill-treatment by the police be relevant to whether the evidence of his interrogation was admissible or to the weight given to that evidence (assume for the purpose of this question that the complainant confessed to assaulting the police in the interrogation)?

Section 92(1) of the Criminal Procedure Code provides that the accused must not in any way be forced to statement of confession. According to section 89(3) then any evidence unlawfully obtained by coercion or by a threat of coercion must not be used in the proceedings, except in a situation when such evidence is used against the person who used the coercion.

Therefore the allegation of the complainant that their confession to assaulting the police officer had been obtained by ill-treatment would be relevant and such confession could only be used in a criminal proceeding held against the police officer for the crime of ill-treatment.

Is there any relevant difference in the procedure where a police officer is accused of assaulting an accused compared to where a person is accused of assaulting a police officer (e.g., higher evidential threshold, difference in the level of sentence/sanction, etc)?

If a person assaults a police officer, this act would probably be qualified as a crime of violence against public official (section 325 of the Criminal Code). The offender of such crime faces imprisonment for

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[193] Section 104a(5) of the Criminal Procedure Code
[194] Section 104b(1) of the Criminal Procedure Code
[195] Section 104b(3) of the Criminal Procedure Code
[196] Section 104b(4) of the Criminal Procedure Code
[197] ibid

up to four years. On the other hand, a police officer who assaults a person, will probably be prosecuted for a crime of abuse of power by a public official under section 329 of the Criminal Code with a punishment of imprisonment between one and five years.

Except different level of prison sentence, the criminal procedure itself shall not differ. In practice, however, investigative authorities have tendencies rather to trust the testimony of the police officer than that of a "civil person".

Conclusions

Czech criminal law does not seem to show significant deficiencies as regards the regulation of prosecution of ill-treatment by official persons. Victims of crime of torture and other cruel or inhuman treatment have a number of procedural rights in the criminal procedure (such as right to make proposals for additional evidence, right to inspect the files or right to be heard in the court proceedings) which gives them an opportunity to influence the course of the criminal proceedings to some extent. Law provides persons allegedly subjected to ill-treatment with remedies against failure of the investigating authority to carry out effective investigation (review of the procedure of the police authority to the competent prosecutor and subsequent constitutional complaint). Investigation of ill-treatment by official persons falls within the competency of special and institutionally independent authority.

Certain deficiencies in the legal regulation concern use of coercive measures and camera recordings. Even though regulation of these areas does not have direct impact on the thoroughness of the investigation of ill-treatment, the more detailed regulation of coercive means might to a certain extent prevent some forms of ill-treatment in the first place and the regulation of camera recordings might, on the other hand, in some cases help to eliminate the lack of evidence.

The most problems, however, are connected to the practice, which shows that there are certain shortcomings in the investigation of allegations of ill-treatment by public officials. First of all, the victims are often being denied their procedural status of injured party and related rights, especially the right to access the file. Without ensuring this right, a victim cannot adequately assess how their criminal complaint has been dealt with and whether the investigation was effective enough. Consequently, using of available remedies is limited.

Also fundamental safeguards against torture and other ill-treatment of persons in detention, such as right of access to a lawyer, right to notify a third party, right to request a medical examination (also by the doctor of one's own choosing) are sufficiently enshrined, but practice shows that there are tendencies to restrict them, especially if the person concerned does not fully cooperate with the police. Right to request medical examination by the doctor of one's own choice seems to be the most problematic. Detained persons are not informed about this right and thus it is being exercised only in minimum cases.

Lack of factual independence of the investigation remains the main concern. Source of this problem does not lie within the legal regulation, but rather in the lack of interest of the officers of the General Inspection to deal with the complaints of ill-treatment. Arbitrary practice of delegating the investigation of ill-treatment allegations back to the police themselves undermines the efficiency of the investigation. Unless all of the complaints of police ill-treatment are thoroughly investigated by the General Inspection, the investigation will never meet the requirement of effectiveness. In the near future, the European Court of Human Rights will have an opportunity to express its views on this practice, since an application against the Czech Republic is currently being communicated. Nevertheless, practice in the Czech Republic has shown that institutional independency of the authority responsible for carrying out investigation of police ill-treatment is not sufficient to guarantee the actual independence of the investigation, if the competent investigators are of poor personal integrity.

Unwillingness to properly investigate the allegations of ill-treatment by public officials is also demonstrated by the fact that so far no one has been convicted for committing the crime of torture and other cruel or inhuman treatment. In this regard, another problem arises. Crime of torture and other ill-treatment, as governed by the Criminal Code, does not cover degrading treatment. This may then easily lead to situations that some cases of ill-treatment of lower severity will not be prosecuted even though they would fall under the scope of article 3 of the European Convention of Human Rights.

As regards the available remedies against the violation of the right to effective investigation, once again, another problem arises. Once again, the law provides sufficient means how the victim may obtain redress when the investigating authority fails to investigate the case properly. Prosecutors, who are competent to supervise the procedure, are entitled to give binding instructions and in such way eliminate possible defects in the investigation of criminal complaints. If, however, the prosecutors tend to cover the unlawful practices of investigating authorities, even the most complex legal regulation will not be sufficient to ensure respecting the right of victim to effective investigation of ill-treatment allegations. Errors in the proceeding are thus often corrected only upon the judgment of the Constitutional Court.

The problem is that even if the Constitutional Court declares lack of effectiveness of the investigation, it is questionable whether further investigation of the case could lead to punishment of the perpetrators, given the significant time lapse (it may take several months until the Constitutional Court adopts a decision). It is therefore all the more important that the errors in investigation are corrected by the intervention of competent prosecutors.