

# PERMANENT REPRESENTATION OF THE CZECH REPUBLIC TO THE COUNCIL OF EUROPE

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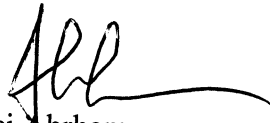
Strasbourg, 21 February 2006

Dear Mr. Secretary General,

Referring to your letter of 21 November 2005 in which you requested from the Czech Republic explanations under Article 52 of the European Convention on Human Rights I have the pleasure to forward to you information obtained from the Czech authorities in this respect.

Please find enclosed the letter of Minister of Foreign Affairs of the Czech Republic, Mr. Cyril Svoboda, drawn up in response to your initiative. The authentic version of the letter will follow shortly.

Yours sincerely,

  
Ondřej Abrham  
CDA a.i.

Mr. Terry Davis  
Secretary General of the Council of Europe  
Council of Europe

Strasbourg

MINISTER OF FOREIGN AFFAIRS  
OF THE CZECH REPUBLIC

CYRIL SVOBODA

Prague, February 10, 2006  
Ref. No. 139135/2005-LP

Dear Secretary General,

*Dear Terry,*

I refer to your letter requesting, in accordance with Article 52 of the European Convention on Human Rights and Fundamental Freedoms, information on the manner in which the Czech Republic's internal law ensures effective implementation of the provisions of the Convention. Please find a detailed answer to this request enclosed with this letter.

According to information obtained from the competent Czech authorities, there is no knowledge of any facts indicating that, from 1 January 2002 until now, any public officials or other persons acting in an official capacity have been involved in the unacknowledged deprivation of liberty, or transport of individuals so deprived of their liberty, including such acts occurring at the instigation of agents of another State.

I highly appreciate your initiative in this matter and I am confident that it will contribute to the strengthening of the human rights protection in the member states of the Council of Europe.

Yours sincerely,



Mr Terry Davis  
Secretary General  
of the Council of Europe  
Strasbourg

**Information on the manner in which the Czech Republic's legislation ensures effective implementation of the European Convention on Human Rights and its additional Protocols**

**(Response to the request of the Secretary General of the Council of Europe of 21 November 2005)**

The legal basis for effective implementation of the provisions of the European Convention on Human Rights and its additional Protocols ("the Convention") is Article 10 of the Czech Republic's Constitution ("the Constitution"):

*Promulgated international treaties, the ratification of which has been approved by the Parliament and which are binding on the Czech Republic, shall constitute a part of the legal order; where the provisions of an international treaty differ from those of a law, the international treaty shall be applied.*

According to Article 1, paragraph 1 of the Constitution, the Czech Republic is a sovereign, unitary and democratic, law-abiding State, founded on respect for the rights and freedoms of man and citizen. Article 2, paragraph 3, states that the State power serves all citizens and may be applied only in cases, within limits and by methods defined by law.

Czech intelligence services have no executive powers. Their activities are subject to control by the Government and the Parliament. Their cooperation with foreign intelligence services is subject to the Government's permission (pursuant to Act No. 153/1994 on intelligence services of the Czech Republic, as amended).

Act No. 154/1994 to regulate the Security Information Service, as amended, and Act No. 289/2005 to regulate military intelligence services provide that, if the parliamentary body supervising the Security Information Service has grounds to believe that its activities unlawfully restrict or infringe upon the rights and freedoms of citizens, it may ask the Director for explanation. The supervisory body must notify the Director of the Security

Information Service and the Attorney General of any breach of law committed by members of the Security Information Service about which it has learned.

Czech legislation does not include any rules specially designed to control the activities of foreign agencies, and does not establish any bodies for this purpose. In these situations, laws pertaining to personal liberty are enforced in the same manner as in any other cases.

In case of unlawful activities of foreign agents in the Czech Republic that might be deemed to constitute a violation of international law on the part of a foreign State, remedies could be sought under relevant provisions of international law.

Czech legislation contains a number of safeguards to prevent unacknowledged deprivation of liberty.

Fundamental rules to guarantee personal freedom are laid down in Article 8 of the Charter of Fundamental Rights and Freedoms which is a part of the constitutional legislation of the Czech Republic:

- 1) *Personal liberty is guaranteed.*
- 2) *Nobody may be prosecuted or deprived of his or her liberty except on grounds and in a manner specified by law. Nobody may be deprived of his or her liberty merely because of his or her inability to meet a contractual obligation.*
- 3) *Any person accused or suspected of having committed a criminal offence may be detained only in cases specified by law. Such detained person shall be informed without delay of the reasons for the detention, questioned, and not later than within twenty-four hours released or brought before a court. Within twenty-four hours of having taken over the detained person, a judge shall question such person and decide whether to place the person in custody or to release him/her.*
- 4) *A person accused of a criminal act may be arrested only on the basis of a written warrant issued by a judge, which includes the grounds for its issuing. The arrested person shall be turned over to a court within twenty-four hours. A judge shall question the arrested person within twenty-four hours and decide whether to place the person in custody or to release him/her.*

5) Nobody may be placed in custody except for reasons specified by law and on the basis of a judicial decision.

6) The law shall determine the cases when a person may be admitted to or kept in a healthcare institution without his/her consent. Such move shall be reported within twenty-four hours to a court which shall then decide on such placement within seven days.

Czech legislation permits the following forms of deprivation of liberty:

- prison sentence (Act No. 140/1961, Criminal Code, as amended, and Act No. 218/2003, Juvenile Justice Act, as amended);
- protective medical treatment, as one of the protective measures (Criminal Code);
- custody ("vazba") (Act No. 141/1961, Code of Criminal Procedure, as amended, and Juvenile Justice Act);
- detention ("zadržení") (Code of Criminal Procedure);
- arrest ("zatčení") (Code of Criminal Procedure);
- confinement ("zajištění") (Act No. 283/1991, on the Czech Republic Police, as amended);
- placement of an alien in a detention facility for aliens (Act No. 326/1999 on residence of aliens, as amended);
- institutional medical care (Act No. 20/1966, on public healthcare, as amended, and Act No. 99/1963, Code of the Civil Procedure, as amended).

A person may be deprived of his/her liberty only upon decision of a court. Short-term deprivation of liberty (detention, arrest, confinement) is not subject to the court's decision but there are time limits within which the person must be brought before a court or released.

Czech legislation does not recognize "unacknowledged deprivation of liberty". Unlawful deprivation of liberty, unacknowledged or not, is an illegal act. According to Czech laws and regulations, deprivation of liberty without legal basis is a crime.

Crimes against liberty are defined in Chapter VIII of the Criminal Code. This category includes in particular restriction of personal liberty (Section 231), deprivation of personal liberty (Section 232) and abduction to a foreign country (Section 233).

In the Czech Republic, crimes against liberty are examined, investigated and decided upon by the court. Penalties are imposed in standard criminal proceedings, in accordance with the Code of Criminal Procedure.

Due to the principle of territoriality in terms of Section 17, paragraph 1, of the Criminal Code, it is irrelevant whether a crime against liberty has been committed by an agent of a foreign agency as long as it has been committed in the territory of the Czech Republic. The only exception is provided for in Section 10 of the Code of Criminal Procedure, which excludes persons enjoying privileges and immunities under national or international law from the competence of law enforcement authorities.

The act of aiding and abetting crime is covered by Section 10 of the Criminal Code, which recognizes three elementary forms of participation in a crime (organizing, instigating and aiding). Unless provided otherwise by law, a person participating in a crime is subject to the same provisions on criminal liability and punishment as the offender.

According to Act No. 349/1999 on Public Protector of Rights, as amended, the Public Protector is authorized to regularly visit facilities for detention of persons deprived of liberty by a decision of a public authority or persons fully dependent on institutional care, in order to strengthen the protection of these persons against torture, cruel, inhuman or degrading treatment or punishment, or other maltreatment. All authorities and institutions are bound to provide to the Protector necessary information, explanations and cooperation.

The Czech Republic is a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. In accordance with this Convention, it must enable the European Committee for the Prevention of Torture to visit facilities where persons are deprived of liberty.

According to Act No. 209/1997 on financial assistance to victims of crime, persons who have suffered bodily harm as a consequence of crime are entitled to financial assistance.

Act No. 82/1998 regulates liability for damage incurred in the exercise of public authority, as a result of a wrongful decision or maladministration. This Act provides for compensation for damage caused by a decision remanding a person in custody, where criminal proceedings were discontinued or the defendant acquitted or where the case was referred to another authority. A person who has served a prison sentence, in whole or in part, is entitled to

compensation for damage caused by the sentence if such sentence has been found unlawful in subsequent proceedings. Compensation is also payable to a person who has been fully or partly subjected to protective measures which have been found unlawful in subsequent proceedings.