

List of Issues for the Czech Republic Prior to Reporting

United Nations Human Rights Committee

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I. Authors

The Wrongful Conviction International Law Task Force (WCILTF) is a global coalition of law professors, attorneys and activists working together to fill the "Innocence Gap" in international law. The WCILTF is supported by a pro bono legal team at the international law firm Proskauer Rose (www.proskauer.com/) located in New York City.

In the past twenty-five years, wrongful conviction of the innocent has emerged as a major problem in criminal justice systems around the world. Research indicates that the problem has always existed but has only come to light in recent decades due to forensic advancements allowing for post-conviction DNA testing of crime scene evidence. Wrongful convictions occur because of human limitations in investigation and evidence collection, such as memory weaknesses and malleability (leading to misidentifications by eyewitnesses), unreliable or faulty forensic evidence, false confessions, confirmation bias or tunnel vision on behalf of investigators, inadequate defense lawyering, and many other human problems. Thus, wrongful convictions exist in all legal systems around the world, as all nations use the same types of evidence and investigation techniques regardless of the precise legal procedures employed in their courtrooms.

NGOs called "Innocence Projects" have sprung up around the globe to combat this problem, and now entire networks of innocence projects exist in Asia, Europe, North America and South America. Innocence Projects are often housed at law schools and are operated by law professors and law students. In one member state, for example, more than 3,000 innocent people have been released from prison in recent years due to the work of NGOs like Innocence Projects. Exonerations of the innocent have occurred across the globe in the past three decades.

For a brief video overview of the global problem of wrongful convictions, and the efforts of Innocence Projects to combat the problem, please view: https://youtu.be/jMATkuFaRU8?si=fO0wXGhPr-oCyhBA

As the innocence movement has developed a global presence in recent years, it has become apparent to legal scholars that an "Innocence Gap" exists in international law. The WCILTF formed to combat this problem and help fill the Innocence Gap. The WCILTF is comprised of more than twenty-five law professors and Innocence Project leaders from across Asia, Europe, North America and South America.

II. Filling the Innocence Gap

Due to the relatively recent discovery of wrongful convictions, international law covenants and treaties predate awareness of this problem and thus do not speak directly to issue. In recent years, however, the United Nations Human Rights Committee (HRC) has identified key rights to the benefit of incarcerated person claiming innocence to be derived from the right to a fair trial and other existing rights. For example, in *Abdiev v. Kazakhstan*, 2023, the HRC stated that ***the right of incarcerated persons to re-open a criminal case in order to present new evidence of innocence after conviction and appeal have concluded, in order to achieve exoneration and freedom, is essential to the right to a fair trial under Article 14(1) of the ICCPR***. Similarly, on October 3, 2023, in Concluding Observations on the Fifth Periodic Report of the Republic of Korea, the HRC observed that South Korea should "provide adequate legal and financial assistance to enable individuals sentenced to death to ***re-examine convictions on the basis of newly discovered evidence, including new DNA evidence***." Likewise, on July 25, 2024, in Concluding Observations on the Second Periodic Report of Maldives, the HRC expressed concern "about the lack of information on the existence of a procedure enabling individuals sentenced to death to seek a review of their convictions and sentences based on newly discovered evidence of their innocence, including new DNA evidence, and, if wrongfully convicted, to provide them with compensation." The HRC recommended that Maldives take all necessary measures to ensure that "death sentence can be reviewed based on ***newly discovered evidence of their innocence,*** including new DNA evidence, adequate legal and financial assistance is provided to enable this review and, ***if wrongfully convicted, individuals have access to effective remedies***, including compensation" para. 28(e). *See* Brandon Garrett, Laurence Helfer and Jayne Huckerby, *Closing International Law's Innocence Gap*, S. Cal. L. Rev. 95 (2021), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3803518#

III. Rights of Innocent Incarcerated Persons in Czech Republic

The Czech Republic has a legal mechanism for re-opening closed convictions based on new evidence of innocence, but its restrictive interpretation undermines any effectiveness. The institute of reopening criminal proceedings (obnova řízení) is regulated by Sections 277 to 288 of the Code of Criminal Procedure (Act No. 141/1961 Coll.). This extraordinary legal remedy allows a final criminal case to be reheard if new facts or evidence, previously unknown to the court at the time of the original decision, emerge and could lead to a different decision regarding

the defendant's guilt. According to Section 278(1) of the Code of Criminal Procedure: "Reopening of proceedings, in favor of or to the detriment of the accused, may be permitted if facts or evidence previously unknown to the court come to light which, either on their own or in conjunction with previously presented evidence, could lead to a different decision regarding the guilt of the accused."

Although the law formally allows for the submission of an application for reopening of proceedings, in practice the approach of Czech courts is extremely restrictive. Over the past ten years, approximately 1,000 applications for reopening of proceedings have been filed in the Czech Republic in criminal cases where the upper limit of the sentence exceeded ten years. In all of these cases, not a single reopening was permitted in favor of the convicted person on the basis of new evidence of innocence. Courts have systematically rejected such applications, even in cases where new expert opinions, witness statements, or other fundamental evidence have been submitted that could have called the original finding of guilt into serious question. The institute of reopening proceedings in the Czech Republic is therefore de facto inaccessible and, in practice, non-functional for wrongfully convicted persons, despite being expressly provided for by law.

There is only one known case in which the reopening of proceedings was granted in a more serious criminal matter (where the upper limit of the sentence was five years or more)—the case of David Šnajdr. He was originally sentenced to ten years in prison for kidnapping, served one year, and during his imprisonment, he himself identified the actual perpetrators. In the subsequent reopened proceedings, he was finally acquitted. Experts in the Czech Republic are not aware of any other case in which the reopening of proceedings was granted for offenses with an upper limit of more than ten years. In such cases, motions for reopening are systematically denied, and actual exoneration and release on the basis of new evidence of innocence has practically not occurred in the Czech Republic in recent decades. In fact, experts in the Czech Republic are aware of serious cases where substantial evidence of innocence has been discovered, but the Czech courts refuse to offer relief.

In addition, the Czech Republic does not have a specific law or legal provision that expressly regulates postconviction DNA testing of crime scene evidence at the request of a person serving a sentence. The Czech legal system does allow a convicted person, in proceedings for the reopening of a case, to propose the introduction of new evidence, including forensic DNA analysis, if they believe that such evidence may affect the assessment of their guilt or innocence. According to Section 283(2) of the Code of Criminal Procedure, when deciding on a motion for the reopening of proceedings, the court may take new evidence if it is relevant to the assessment of guilt. A convicted person may propose a new expert opinion or forensic test, including DNA analysis, and if the court considers this evidence significant, it may be admitted and conducted as part of the proceedings for reopening. In practice, however, there is no legal right to the automatic admission of any proposed evidence—the decision to conduct new testing, including DNA analysis, is always at the discretion of the court and is conditional on meeting the statutory requirements for the reopening of proceedings. Although DNA evidence is often the most powerful exonerative evidence, only inmates who have other, substantial, non-DNA evidence of innocence such that they can re-open the proceedings are able to seek DNA testing.

As a result, Czech courts permit new forensic testing and DNA analysis in the context of reopening proceedings only in extremely rare cases.

Furthermore, the Czech legal system does not establish any explicit obligation for law enforcement authorities to retain biological evidence collected from a crime scene for the purpose of future DNA testing. The Code of Criminal Procedure (Act No. 141/1961 Coll.) generally addresses, in Sections 79a and 81, the handling and safekeeping of items important for criminal proceedings but does not set specific rules for the storage of biological samples or their retention after the conclusion of criminal proceedings. In practice, the retention of biological evidence is governed by the internal regulations of the Czech Police and forensic institutes; these are not publicly available and are not legally binding for the courts. Thus, in the Czech legal environment, there is no legally enforceable duty to preserve biological materials for potential future forensic testing. A striking and serious example of the consequences of this legal situation is the case of Petr Kramný, in which the histological preparations of the hearts (a crucial piece of evidence for determining the cause of death) were irreversibly destroyed during the course of the criminal proceedings—even though the case was not finally concluded and further review would have been possible. This act made any subsequent independent review and possible new testing of evidence impossible, which fundamentally limited the options for the defense and the review of guilt.

One area where the Czech Republic has recently improved involves access to records in closed cases. The Czech Republic has Act No. 106/1999 Coll., on Free Access to Information, which generally guarantees public access to information from public authorities. However, this law does not automatically apply to criminal case files, police records, or court files in individual criminal matters—these remain protected due to the safeguarding of personal data, classified information, or the integrity of criminal proceedings. According to Section 65 of the Code of Criminal Procedure, defense attorneys have the right to inspect criminal files even after a final judgment, i.e., access to closed files. This right is also granted to the convicted person and, in some cases, to the injured party. This right of access does not automatically extend to NGOs, journalists, or the public, who must apply to the relevant authority (court, prosecutor's office, police) for access; such applications are decided individually and granted only in justified cases. In practice, access to closed files is often complicated, and some courts—even despite the legal right—do not grant requests from defense attorneys or convicted persons without thorough justification. Legal experts in the Czech Republic therefore welcomed the July 2025 decision of the Constitutional Court, which emphasized that participants (especially the defense) have the right to access the file even after the case has been finally decided, and that any restriction of this right must be convincingly and specifically justified.

Although Czech law requires information favorable to the accused to be disclosed pre-trial, this right is often ignored by authorities. The Czech Code of Criminal Procedure establishes in Section 2(5) the principle of material truth, according to which law enforcement authorities are obliged to ascertain circumstances both in favor of and against the accused. The police and public prosecutor are therefore required to investigate and document evidence that may be significant for the defense. According to Section 65(2) of the Code of Criminal Procedure, the defense counsel has the right to inspect the file and review all materials, including those that may exculpate the accused. The court, public prosecutor, and police authority must ensure that the defense has access to all evidence relevant to the assessment of guilt or innocence. Furthermore, if there is evidence favorable to the accused, law enforcement authorities must not withhold such evidence. This obligation arises not only from the Code of Criminal Procedure but also from constitutional principles of fair trial and from the case law of the European Court of Human Rights.

In practice, however, legal experts have repeatedly observed cases where some exculpatory evidence was not duly disclosed or was made available to the defense only belatedly. There are situations where, during the pre-trial (investigative) phase, the defense is not granted access to certain evidence, such as wiretap recordings. This practice has been repeatedly criticized because it prevents the defense from being fully effective and may result in a violation of the right to a fair trial. Although the law requires disclosure, some prosecutors or police authorities do not always comply strictly, and access to all materials is often only ensured by the court at the trial stage.

Regarding compensation for the wrongfully convicted, the Czech Republic has Act No. 82/1998 Coll., on Liability for Damage Caused in the Exercise of Public Authority, which provides compensation for unlawful conviction or execution of a sentence. A person who has been finally acquitted or whose prosecution has been terminated as unfounded is entitled to compensation for: pecuniary damage, such as lost income or legal defense costs; • non-pecuniary damage, including moral harm, reputational loss, psychological suffering, and impact on personal and family life. A claim must be submitted to the Ministry of Justice. If the claim is denied, the person can pursue the claim in civil court. Practical scope of compensation: According to legal experts in Czech Republic, typical compensation awards range from CZK 100,000 to 200,000 (approx. USD 4,000–8,000), depending on sentence length and harm severity. For instance, in May 2025, a man wrongfully imprisoned for 13 years was awarded CZK 45,000 as compensation for health damage and moral harm—an amount near the lower end of the compensation scale for wrongful convictions and imprisonment.

In terms of control and regulation of police interrogaton, Czech law imposes only a partial obligation on law enforcement authorities to record police interrogations. According to Section 55a(2) of the Code of Criminal Procedure, an audio or audio-visual recording of an interrogation must be made if:requested by the person being questioned, their defense counsel, or legal representative, or if the court, public prosecutor, or police authority deems it appropriate given the nature of the interrogation. Importantly, this provision also applies to interrogations conducted via videoconference—the recording can be either audio-only or audio-visual, depending on the circumstances. Recording is also mandatory in specific cases: interrogation of minors or juveniles (Section 93 of Act No. 218/2003 Coll.), interrogation of persons with mental disorders or other health limitations, when necessary to protect the rights of the person being questioned. In standard cases involving adult suspects, recordings are not mandatory and a written protocol may suffice. However, recordings may be made at the initiative of the police or prosecutor.

Eyewitness misidentification is leading cause of wrongful convictions globally, and the Czech legal system does not contain any special statutory regulation for police eyewitness identification procedures that would meet the highest scientific standards (such as the “double-blind” method). Identification of persons in criminal proceedings is regulated by Section 104b of the Code of Criminal Procedure, which provides only basic rules (e.g., persons presented for identification should be of similar appearance, the suspect’s photograph must not be shown in advance, etc.). More detailed methodological procedures are set out in the directive of the President of the Police, which defines organizational and technical aspects of line-ups and identification procedures. However, this directive also does not require the use of the scientifically recommended “double-blind” method. In practice, identification is conducted according to police methodology, which sets some standards for impartiality and organization of

the procedure, but the "double-blind" method is neither mandatory nor commonly used. In sum, best practices are neither mandated or used in practice.

IV. Questions to the Czech Republic

1. Does the Czech Republic have a legal procedure for post-conviction revision or re-opening of convictions based on new evidence of innocence?
2. If so, what is the legal standard that the incarcerated person must meet to re-open the case.
3. Please provide a justification as to why legal experts in the Czech Republic report that the provisions are near useless in practice because of the strict interpretation by courts.
4. Why does the Czech Republic not have a law that allows inmates claiming innocence to apply for DNA testing of crime scene evidence? What is the justification for allowing post-conviction DNA testing only in some limited cases where the inmate already has substantial new evidence of innocence such that he may successfully re-open the case independent of DNA test findings?
5. Does the Czech Republic have a legal procedure requiring biological evidence collected from the crime scene to be properly stored and preserved for future DNA testing post-conviction??
6. If so, how long must the biological evidence be preserved?
7. Why do legal experts and scholars in the Czech Republic report that the laws regarding the pre-trial disclosure of evidence favorable to the accused are often ignored by the authorities? Is there any training for police or prosecutors regarding these duties of disclosure?
8. Does Belgium have laws or regulations ensuring that police identification procedures for eyewitnesses adhere to best practices devised by the scientific community, such as the double-blind eyewitness identification requirement? *See* https://www.ojp.gov/ncjrs/virtual-library/abstracts/double-blind-sequential-police-lineup-procedures-toward-integrated. If not, why?

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