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## **Classification of crimes committed between 1948 and 1989 and the prosecution of these crimes after 1990**

Dear Ms Němcová, ladies and gentlemen,

In introduction, let me present a brief overview of the most grievous crimes committed by the communist regime in Czechoslovakia between 1948 and 1989.

The period after the Communist Party's assumption of power in February 1948 saw severe violations of all principal human rights and freedoms as well as civic rights. The fabricated political trials that the communist regime used to eliminate the opponents of the regime, which were based on investigations carried out by the State Security Service ("StB") using torture and gross physical and psychological violence, resulted in the conviction of more than 257,000 people between 1948 and 1989, and if we include the people convicted by martial courts, the number exceeds 267,000 people. The very archival documents of the Central Committee of the Communist Party of Czechoslovakia ("UV KSČ") dating back to the 1950s list almost 27,000 people convicted for "anti-state crimes" between 1948 and 1952. The people were sentenced to severe imprisonment (15 or 25 years, or for life) and their personal property was forfeited and their civic and political rights taken away from them. A total of 248 people (including one woman) were executed for political reasons.

People who opposed the regime fell victims to political murders orchestrated by the StB both in Czechoslovakia and abroad. These did not happen in the 1950s only. Four priests (including two priests of what was referred to as the "secret church") and one layman died at the end of the 1970s and in the 1980s, and their deaths remain unexplained to this day. The official period investigations qualified them as suicides. Just around this time we remember the tragic death of Přemysl Coufal, a secretly ordained priest and abbot of the Benedictines. This man who used to be active in the underground (secret) church was found dead, his body in a terrible condition, in his apartment in Bratislava on 25 February 1981. He had been subject to StB's monitoring and investigations for several months prior to his death.

In this respect, it is necessary to mention the activities of the Czechoslovak intelligence service abroad (the "First Administration of the Ministry of Interior"). They include the preparations for assassinations, assassinations, and kidnappings of persons who the regime took issue with abroad.

For the period from the 1950s to the 1970s, we know of such activities having taken place in Strasbourg and Munich; there was an explosion at a military base in the FRG, and there was an attempted assassination of exiled Czechoslovak politician Pelikán in 1975 (he received a mail bomb).

There is a serious suspicion that Czech intelligence agent in Austria Alfred Petrovič murdered Bela Latuschnik, a Hungarian intelligence officer who had defected. The documents on this case are still classified as “top secret”!

In total, we have documented and clarified 20 kidnappings from the period until 1962. It was Czechoslovak citizens abroad who were kidnapped and brought back to the country.

We also know that the StB participated in the kidnapping of former East German state security officer Walter Thraene and his partner Ursula Schoene who successfully fled from the GDR to the FRG. They were kidnapped from Austria to Czechoslovakia and then deported to the GDR. The East German Stasi prepared and organised the kidnapping.

At least 4,500 people perished in prisons, in detention, and under the inhuman conditions in forced labour camps in uranium mines, and the upper limit of the estimations is about 8,000 people.

We must not omit violence committed on women and their unborn children in prisons and poor care for such women’s newborns.

Between 1951 and 1955, the forced collectivisation of agriculture involved what was referred to as “Project K” (K stands for “kulak”), which in reality was forceful destruction of an entire social category – the peasantry. Documents known to date indicate that this project, which involved forced withdrawal of property, arrests, and convictions of certain people followed by forced exile into pre-defined locations with poor social, health, and economic conditions, affected more than 2,000 people. The documents of the UV KSČ mention up to 3,000 families. Deportations included pregnant women, children, and individuals aged 80 or higher. The deportation meant death within a short period of time in particular for the elderly. Some children were taken away from families and placed in shelters and all of them faced issues accessing further and higher technical education.

At present, this crime is under investigation with a view to it being qualified as genocide. Its outcome is still open. The peasantry was eliminated by the local village and district authorities and the StB and everything was orchestrated by the Ministry of National Security and the Ministry of Interior, of course under the leadership of the KSČ.

In relation to the existence of the iron curtain after 1948, we have evidence that foreign sports and civilian aircraft were shot down (and pilots killed) by the Czechoslovak air force between 1963 and 1975. The civilian aircraft intruded the Czechoslovak airspace as a result of loss of navigation. Five people were killed in a total of three incidents (four Austrian citizens and one Bavarian).

A Polish agricultural airplane was also shot down as its pilot, a Polish national, tried to escape from Poland to Austria via Czechoslovakia.

Such acts are in conflict with the Convention on International Civil Aviation. The Czechoslovak Socialist Republic rejected any responsibility in all cases of the aircraft shot down. It bears reminding that none of the Czechoslovak civilian or military aircraft that lost their way and found themselves in the airspace of the FRG or Austria were exposed to open fire, much less shot down.

The serious crimes of the communist regime include the killings of more than 300 people on the Czechoslovak border by the Czechoslovak Border Guard between 1948 and 1989. The killings included Czechoslovak citizens as well as foreign nationals – the citizens of the Central and Eastern European countries who tried to flee to the free world. The armed actions against refugees included the endangered health and lives of the citizens of the FRG and Austria, some of whom were shot dead. This is a violation of the international law.

Let me pay special attention to the settlement – or rather failure of settlement – of crimes in two categories: the political trials and the killings on the Czechoslovak borders with Austria and the FRG.

I am convinced that the principal fact that needs to be taken into consideration is that the ČSR was not a legal and democratic state after the assumption of power by the KSČ. After February of 1948, Czechoslovakia became a totalitarian regime, a communist/proletarian dictatorship that destroyed the essence of democratic freedoms and fundamental human rights, keeping the formal traditional constitutional institutions and organisations as a façade to deceive both the domestic general public and the world around.

### **Fabricated trials**

The fabricated trials involved thousands of people who were deprived of their personal freedom systematically and for long periods of time on the basis of their political or religious convictions or membership.

The StB fabricated the trials under the leadership of the top KSČ officials. People under investigation were subjected to torture and gross physical and psychic violence, and they

would confess serious crimes (high treason, espionage, subversion) that they had never committed. In addition, the StB itself ignited many acts of resistance against the regime. The prisoners served time under inhuman conditions of slave labour and degradation of human dignity. Many of the convicts lived on the margin of the society for the rest of their lives after release, or died soon of the consequences of the imprisonment.

The conviction of those innocent people was not a miscarriage of justice – it was organised crime directed by the representatives of the communist state and the top officials of the KSČ. Such crimes – if the perpetrators were ever prosecuted at all – were only evaluated and investigated as excesses of individuals (abuse of authority of an official etc.).

In addition, the investigation into the serious crimes after 1990 was made difficult or even impossible due to the respect paid to the amnesties granted by communist presidents, in particular the 1960 amnesty of the President and the Government of Czechoslovakia. While this amnesty reduced or pardoned the rest of the punishment for political prisoners, it also prevented the punishment of the perpetrators of this injustice. The amnesty orders not to institute criminal prosecution, or where commenced already, not to continue prosecution of perpetrators except for the crimes of murder, robbery, intentional bodily harm, and crimes against human dignity. However, the communist interpretation of the penal law understood the last mentioned crime only in terms of sexual abuse etc.

But is human dignity not related with the absolute value of being a human, with every human being's uniqueness, and the ensuing human right to life and freedom?

Can long-term and systematic imprisonment of thousands of innocent people to 10 to 25 years or for life and to a loss of property and civic rights be considered anything else than a direct attack on the dignity and absolute value of a human being, or a crime against humanity?

For the political prisoners whose rest of sentence the regime pardoned at the time, there was nothing to be pardoned for: they were innocent. They would never have been sentenced in a legal state in the first place. In addition, it was de facto the politburo of KSČ that made the decisions on the amnesties in cooperation with the top officials of StB – it was not just the president, who was also a member of the politburo. For example, in 1956 the Inspectorate of the Ministry of Interior rejected amnesty for political prisoners who were also sentenced to a loss of civic rights and property, because such forfeited – that is to say, stolen – property would have to be returned to them.

The releases of particular people as part of the amnesties, the political prisoners, were again a matter of decision for the StB that observed the extent to which people's personalities were broken and degraded.

The reason cited for the amnesty was the “strength and solidity of the regime” and the “trust of the working people in KSČ and the socialist state”.

The amnesties also spoke about humanism as one of the reasons, but Russian scholar and philosopher Losski said in 1945 that there is nothing to be said about humanism where there is no recognition for the absolute value of a human being.

A majority of those who did the injustice, prepared and directed the trials, and participated in them directly could not be accused or sentenced: they remain unpunished and their crimes have not been declared clearly.

When assessing amnesties with respect to the crimes of communism, it was necessary to take into consideration the value discontinuity of the Constitution of the Czech Republic with the constitution of the communist Czechoslovakia. Also, it was and is necessary to respect the provisions of Act No 198/1993 on the illegality of the communist regime, in particular Section 1(1) e), which says “the communist regime and those who pursued it actively did not hesitate to commit crimes to achieve their objectives, allowed crimes to be committed without punishment, and gave unjust benefits to those who shared in the crimes and persecution”.

### **Killings at the border**

A massive amount of Czech and Slovak refugees, who chose to leave their country rather than to live without freedom and in oppression, fled the country after February 1948.

The totalitarian regime in Czechoslovakia could not exist without isolating its citizens from each other (using terror, violence, and an atmosphere of fear, distrust, and suspicion) and isolating its citizens from the free world around them. The communist ideology was based on a fictitious vision of the world, world order, and the human being. Thus, any confrontation of the ideology with reality posed a lethal threat to the regime.

When it comes to the killings on the border, it involved systematic and long-term use of automatic firearms on unarmed civilians during peace time – including women, pregnant women, and the disabled. The youngest victim was aged 14 and the oldest 90. Selected parts of the borders over a total length of 183 km were mined in the first half of the 1950s. The mines killed six people and seriously injured three.

The barbed wire barriers on the borders were connected to high electrical voltage (5,000 to 6,000 Volts) between 1952 and 1965. The high voltage killed almost 100 people.

When it comes to the border killings, the communist regime preferred its ideology and the pursuit of its goals to everyone’s right to life, personal safety, and freedom of movement (including the possibility to leave the country and return freely).

The deadly conditions on the border were in a direct conflict with the Universal Declaration of Human Rights adopted by the UN on 10 December 1948, though Czechoslovakia was a UN member state, as well as with the European Convention for the Protection of Human Rights and Fundamental Freedoms signed on 4 November 1950.

The responsibility for the murderous conditions on the border lies not only with the soldiers who served as the border guard – it is primarily attributable to those who designed, deployed, improved, supervised and enforced the approach between 1948 and 1989. This means the commanders of the Border Guard, Heads of Staff, Commanders of the Border Guard Brigades, and the Ministers of Interior and the top officials of the KSČ: the members of the politburo and Secretaries General of the KSČ.

None of them were tried or accused. Border killings were investigated merely as excesses of individuals on the lowest level, provided that they breached the communist regulations and laws in force at the time – i.e., again, not as organised crime.

The “Interim Service Guidelines for the Border Guard” was issued in July 1949 and it said that the chief task of the Border Guard is to secure and guard the state border and “eliminate anything” aimed against the state system and both internal and external security of the country. It also says that the “Border Guard shall, by all available means, prevent persons from leaving the country illegally, i.e. intercept and hold the persons or groups of persons who attempt to cross the border.” The wording of the regulations was softened later, but the task of preventing border crossing at all cost remained in force until the very end of the regime. This can be demonstrated.

Can such crime not be defined as a crime against humanity, as initially defined by the Charter of the Nürnberg International Military Tribunal as part of positive international law in 1945?

Czechoslovakia adopted the Charter and agreement in 1947, as a result of which it became and still is a part of the Czechoslovak/Czech legal system.

The Secretary General of SED (the East German communist party), Krenz, and two high state officials of the GDR, Kessler and Streletz, were sentenced to imprisonment in the FRG after 1990 on the basis of their responsibility for the killings on the border between the FRG and GDR. They filed a complaint with the European Court of Human Rights against their sentence on the grounds that, among other things, the ban on retroactivity of law had been violated. The ECHR in Strasbourg rejected their complaint in full on 22 April 2001. ECHR Judge Mr Levits says in his concurring opinion:

“The minimum elements of the offence [of crimes against humanity] appear to be the following: (a) murder; (b) committed against a civilian population; and (c) systematic or organised conduct in furtherance of a certain policy. The last element is implied from the combination of elements (a) and (b). But even if one is only guided by the concept of ‘crimes against humanity’ emerging from the Charter of the International Military Tribunal of Nuremberg and the present case is examined only by reference to the minimum requirements of such a concept, as far as it relates to the facts of the present case, there is no difficulty in concluding that the activities for which the applicants were found guilty did undoubtedly qualify as ‘crimes against humanity.’”

Ladies and gentlemen,

I am convinced that, based on the facts and our experience with communist regimes, it is inevitable to open an international debate on the crimes of communism as crimes against humanity.

A thorough settlement of such crimes and a clear declaration thereof is not only required in terms of justice – it is also of utter importance for our present and future.

The history is not over and we can see attempts at establishing other totalitarian regimes that may be much more refined and sophisticated than the previous ones. They test us – the extent to which we will make concessions. Our unwillingness or inability to deal with our past thoroughly may endanger our freedom and democracy and serve such regimes in the future.

Thank you