Report on the State of Human Rights in the Czech Republic in 2006

The Government took note of this Report by its Resolution No. 815 of 18 July 2007.

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I. General part

1. Introduction

Every year since 1998 the Government Commissioner for Human Rights has prepared a Report on the State of Human Rights in the Czech Republic. The 2005 Report on the State of Human Rights in thus the ninth of its kind. Like the previous Reports,[1] it is primarily an update and is chiefly intended for the Government of the Czech Republic to help it in making decisions on priorities in the area of human rights protection. As such, it does not repeat general statements on fundamental democratic freedoms in the Czech Republic or the list of rights guaranteed by the Charter of Fundamental Rights and Freedoms (hereinafter referred to as the "Charter");[2] instead, it primarily addresses the progress achieved in the past year in the areas which were criticized in the past, and ongoing deficiencies.

The achieved progress and ongoing deficiencies are evaluated predominantly in the light of international treaties on human rights of which the Czech Republic is a signatory. For this purposes, the Reports also usually contain an evaluation made by the bodies controlling compliance with these treaties, which are the only bodies authorized to formally evaluate whether or not the states respect their international obligations. These supervisory bodies are independent in their evaluation; their evaluations are based on a wide range of information which they obtain from the governments of individual states as well as from non-governmental organizations involved in the area of human rights. Besides their evaluating role, these organizations also present their recommendations on how to achieve a higher level of human rights protection. In order to obtain a full picture, it is also essential to investigate the manner in which individual states have implemented this *de facto* manual of the supervisory bodies.

Like in the Reports on the State of Human Rights in the Czech Republic published in previous years, the layout of this Report is a compromise between the systemic and content-based interpretation of human rights, as contained in a whole series of international human rights treaties and in the Charter. Many parts of the Report include references to its other parts, thus preserving the links between the content of individual rights and the issues that pertain to them. In addition to this internal linking of its various parts, the Report contains references to other documents in general, i.e. also to materials compiled by the Government, both of a conceptual or a legislative nature, which are directly or indirectly related to issues of human rights protection in the Czech Republic. The Report does not look in depth at the issues of racism, xenophobia, extremism or the status of minorities, including the Roma minority, as these issues are regularly dealt with in separate reports.[3]

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1 As the name of this report is relatively long, reports on the state of human rights in the Czech Republic are referred to throughout this Report as the "Report" plus the relevant calendar year. If not specified otherwise, the word "Report" means this Report.

2 No. 2/1993 Coll. on the Charter of Fundamental Rights and Freedoms, as amended.

3 Reports on extremism are produced on an annual basis by the Ministry of the Interior and are available on the Ministry's website (http://www.mvcr.cz – presentation – documents – extremism). Report on the situation of national minorities and on the situation of Roma communities is available on the Government's website (http://www.vlada.cz – working and advisory bodies of the Government – Government Council for National Minorities – Documents – Council Documents, and http://www.vlada.cz - working and advisory bodies of the

Passages containing evaluations and recommendations that express the author's standpoint on the disputed problems are clearly marked in the text by italics.

2. Institutional safeguards on human rights protection

Of those institutions that could unequivocally be viewed as independent national human rights bodies, probably only the position of public defender of rights (ombudsman) meets the international criteria for such bodies. In addition, human rights questions are addressed by a number of advisory bodies of the Government with differing degrees of intensity and in various contexts. The following Government advisory bodies are unquestionably most closely linked to the issue of human rights:

- Government Council of the Czech Republic for Human Rights
- Government Council for National Minorities
- Council of the Czech Republic Government for Roma Community Affairs
- Government Council for Equal Opportunities of Men and Women
- Government Council for Seniors and Population Ageing
- Government Board for People with Disabilities.[4]

Although not directly involved in human rights, the ombudsman plays an important role in protecting the rights of individuals in relation to public administration. Besides resolving individual complaints, the ombudsman is authorized to submit advice to the Government or its members on specific matters. Such advice generally also contains a proposal for rectification.[5] The ombudsman also informs the Chamber of Deputies on his activities in the form of annual reports.[6]

3. The international dimension of human rights

3.1 Reports on the fulfilment of obligations under international human rights treaties and review thereof before the supervisory bodies

- The Third Periodic Report of the Czech Republic on the Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Following a review of this report for the year 2004, the Czech Republic provided to the Committee against Torture in 2005 certain initial supplementary information, which was

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Government – Government Council for Roma Community Affairs – Documents – Report on the Situation of Roma Communities).

4 All Government advisory bodies, notwithstanding the area they work in, are, with the exception of the National Security Council, obliged to prepare and publish annual reports on the activities of individual advisory and working bodies of the Government (see Government Resolution No. 175 of 20 February 2002 on the analysis of Government advisory and working bodies (http://racek.vlada.cz/usneseni/). Since 2003, reports on the activities of Government advisory bodies have been published on the website of the Government Office, in the section Government Advisory and Working Bodies (http://wtd.vlada.cz/vrk/vrk.htm).

5 For instance, the ombudsman published in 2006 The "Final Standpoint to the Procedure Used by the Police of the Czech Republic Against Participants of CzechTek 2005" and the "Final Standpoint on Civil Law Aspects of International Abductions of Children".

6 The report on the ombudsman's activities is available on the website of his Office (www.ochrance.cz).

evaluated as satisfactory by the Committee. In May 2006, the Committee asked for further supplementary information.

The attention of the Committee against Torture continues to be focused on the adoption of the Antidiscrimination Act, investigation of racially motivated violence, the amount of compensation collected from prisoners to cover the cost of their imprisonment and detention and investigation of excessive use of force by the security forces during demonstrations against the meeting of the International Monetary Fund and the World Bank in Prague in 2000.

- The Third Periodic Report of the Czech Republic on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women

The report for the period 1999 – 2003 was presented in 2004 and was reviewed by the Committee for the Elimination of All Forms of Discrimination against Women at its meeting held in New York on 17 August 2006. As a part of this review, the Committee did not only evaluate the report as such, but also answers on preliminary questions, which were provided by the Czech Republic in 2006, as well as materials presented by non-governmental organizations. The Committee summarized its evaluation in final recommendations,[7] where it referred to continuing problems and recommended the adoption of measures aiming at their resolution.

The Committee focused in particular on the absence of a comprehensive legislative framework of protection against discrimination, low representation of women in elected and executive positions, multi-faceted discrimination of Roma women, adoption of temporary special measures under Article 4 of the Convention and collection and analysis of data in all areas of the Convention.

- Introductory Report on Fulfilment of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts

The Introductory Report was reviewed by the Committee on the Rights of the Child (CRC) in Geneva on 17 May 2006. Results of this review were summarized in final recommendations of the CRC dated 2 June 2006.[8] In those recommendations, CRC appreciated a number of positive aspects, recommending at the same time namely an enhancement of the criminal legislation against enlistment of children to armed forces and their involvement in armed conflict, as well as a number of partial provisions ranging between the deepening of coordination in the given area through the strengthening of means of assistance to potential victims to restrictions on weapons trade with countries using child soldiers.

The CRC recommended to the Czech Republic to enact more rigorous provisions of the draft Criminal Code to ensure that criminalization of enlistment of children in armed forces is not limited to enlistment at the time of war or an armed conflict. Under the terms of universality,

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[7] CEDAW/C/CZE/CO/3. The Czech version of the recommendations is available on the website of the Government Office. The Government took note of these recommendations by its Resolution No. 96 of 5 February 2007. (See www.vlada.cz).

[8] CRC/OPAC/CZE/1/CO/1. The Government took note of these recommendations by its Resolution No. 95 of 5 February 2007.

the CRC suggested to designate expressly as a criminal offence the involvement of children in armed actions, including assistance in and support to such actions. The Czech Republic was also asked to ratify the Statute of the International Criminal Court.

- The Sixth and the Seventh Periodic Report on the Fulfilment of the Convention of the Elimination of All Forms of Racial Discrimination

The Report, which summarized information for the period from 1 June 2002 until 31 March 2005, was presented on 4 January 2006 and was reviewed by the Committee on the Elimination of All Forms of Racial Discrimination on 1 – 2 March 2007.

- The Second Report on the Implementation of the International Covenant on Civil and Political Rights

This Report was presented by the Czech Republic to the Office of the U.N. High Commissioner for Human Rights on 24 May 2006 and will be defended by the Czech Republic before the Human Rights Committee, established under the Covenant, in 2007.

- The Second Periodic Report on the Implementation of the Framework Convention for the Protection of National Minorities

As a follow-up of the Report presented by the Czech Republic in 2004, the Committee of Ministers of the Council of Europe adopted on 15 March 2006 a resolution on the implementation of the Framework Convention for the Protection of National Minorities in the Czech Republic. The Czech Republic was evaluated positively for its revision of the Concept of Integration of Roma Communities and for supplementing its legislation concerning protection of national minorities during the use of minority languages, and for the legal safeguarding of the participation of representatives of national minorities in decision-making processes at the central, regional or local level.

At the same time, the Czech Republic was asked to adopt the Antidiscrimination Act, to ensure effective implementation of the relevant legislation on the local level and to increase its involvement in combating racially motivated crime.

3.2 Report on the Implementation of Recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) resulting from CPT's visit in 2006

The third regular visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter the "CPT") to the Czech Republic took place on 27 March to 7 April and on 21 to 24 June 2006.[9] During this visit, the CPT visited selected police stations in Liberec, Jablonec, Jičín, Ostrava and in Prague; remand prisons in Liberec and in Ostrava; the prison in Mírov; psychiatric hospitals in Brno and Dobřany; the Social Care Home in Brandýs nad Labem, the Social Care Home in Prague 1 and the Social Care Home in Střelice.

Based on the findings from this visit, the CPT adopted at its 60th meeting held on 3 to 7 July 2006 the Report for the Government of the Czech Republic regarding its visit (hereinafter the

[9] See Chapter I/ 3.2 of the Report

"CPT Report"). In the introduction, the CPT Report stated that the director of the Institute of Social Care in Prague 1 refused the CPT access to medical records of clients. The CPT responded to this approach by remarking that "it understands the importance of medical confidentiality but wishes to stress at the same time that Article 8 paragraph 2.d) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the "Convention")[10] stipulates that the Parties to the Convention shall provide the Committee with information available to them which is necessary for it to carry out its task, i.e. also the access to medical documentation.

According to the CPT, the existing good cooperation was also marred by a denial of access to the Social Care Home in Brandýs nad Labem on 1 April 2006. The Deputy Head of the Regional Council of Central Bohemia Region informed the delegation that the council was of the opinion that the CPT mandate did not cover social care homes. He stated that the delegation would only be granted access to the home under the direct supervision of the staff, and that all interviews with residents would have to be conducted in their presence. The delegation explained that such conditions can never be accepted by the CPT. When the delegation did attempt to visit the social care home the next day, it was denied access.

Consequently, by letter of 12 June 2006 the CPT conveyed its intention to return to the Czech Republic from 21 to 24 June 2006 for the purpose of visiting the care home. On this occasion, the CPT's delegation encountered no obstacles in visiting the social care home. According to CPT, the misunderstanding over the denial of access during the first part of the visit, on 1 April 2006, has been fully resolved. Nevertheless, the CPT recalled in its Report that "a refusal to permit access to a place in which persons are deprived of their liberty constitutes a serious breach of cooperation. The CPT trusts that there will be no repetition of such a situation."

In the CPT's report, Czech authorities were asked to take steps ensuring that all patients are represented through the decision-making process on the lawfulness admissibility of admission to a mental hospital and to provide for a regular automatic review of placement measures ordering protective treatment in all psychiatric establishment in the Czech Republic (see also Chapter II/ 5.7 of the Report). According to the CPT, both visited psychiatric hospitals should pay attention to improving the decoration of patients' dormitories and bedrooms, should introduce a special register on the use of means restraining the movement of patients and should ensure that all patients who are immobilised are always subject to continuous, direct personal supervision by a member of staff. The psychiatric hospital in Dobřany should ensure that all patients (and their legal representatives) be informed in the introductory leaflet/brochure issued upon admission, should allow all patients at least one hour of outdoor exercise every day and, last but not least, should limit the use of net-beds and replace them by an alternative solution. CPT expressed serious reservations and a number of questions concerning surgical castration of some sex offenders and stated its grave doubts as to whether such an intervention should be applied in the context of persons deprived of their liberty.

Like in 2002, the CPT's report points to "insufficient safeguarding of rights of persons deprived of their freedom by the police authorities, abuse of net-beds and lack of professional staff in the Social Care Home Střelice and in the Social Care Home in Brandýs nad Labem and particularly to the conflicting interest that arises when a social care home or an employee

[10] The convention RE ETS no. 126, published in the Collection of Laws under No. 9/1996 Coll.

of such a home is appointed guardian over a resident within that same institution"[11] (details see in Chapter II/ 5.7 of the Report). Social care homes were recommended introducing a clear procedure for the examination of client complaints, both oral and written, and to keep a register on the use of restraining measures.

A number of the CPT's recommendations were aimed again on the treatment of persons sentenced to life imprisonment; the CPT criticized lack of leisure time activities and the condition of outdoor exercise spaces for remand prisoners in the detention facilities in Liberec and Ostrava. Czech authorities were asked again to give increased attention to the occurrence of violence among prisoners and to adopt particularly preventive measures. The CPT also recommended modernization, regular renovation and repair of all cells, particularly in remand parts of prisons in Liberec and Ostrava, which were visited by the CPT. [12]

In reference to Article 8 paragraph 5 of the Convention, the CPT requested the relevant Czech authorities to take actions in accordance with the recommendations set forth in the CPT Report and to inform the CPT within six months about the measures adopted by them.

The Government took note of the CPT Report in December 2006, ordered the Government Commissioner for Human Rights to ask the CPT for the publication of the Report and to prepare by 31 January 2007 a response of the Czech Republic, including a report on the implementation of recommendations contained in the CPT Report.[13] The response of the Czech Republic to the CPT Report was prepared by the secretariat of the Government Council for Human Rights with the use of materials provided by the Ministry of the Interior, the Ministry of Justice, the Ministry of Labour and Social Affairs, the Ministry of Health, the ombudsman, the Prison Service of the Czech Republic and the Governors of the South Moravian and the Central Bohemian Region. The response of the Czech Republic to the CPT Report was reviewed by the Committee of the Human Rights Council of the Czech Republic Government against Torture and Inhuman or Degrading Treatment or Punishment in a comments round on 16 January 2007 and recommended using "a less confrontational tone of certain parts of the Government's standpoint on the CPT Report, more extensive substantiation of changes which have been or are to be implemented in accordance with CPT's recommendations and a more accommodating response to the CPT's requests for information and remarks." Further comments on the response of the Czech Republic were provided in the standpoint of the Committee for Human Rights and Biomedicine of the Human Rights Council of the Czech Republic Government, which recommended in its resolution "to derive principal measures from the CPT Report, including legislative action, which will lead to systemic changes in all monitored areas and establishments."

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11 The CPT delegation noted that significant numbers of patients in the psychiatric institutions and of residents of the social care homes it visited were placed under guardianship: 51 patients in Dobřany Psychiatric Hospital; 127 patients in Brno Psychiatric Hospital; around 98 residents of Střelice Social Care Home; and 65 residents of the Brandýs nad Labem Social Care Home. A considerable number of these patients or residents were accommodated in locked wards or could apparently be restrained by the staff of the institution whenever it was considered necessary.

12 The CPT's recommendations were also taken into account in the elaboration of the relevant chapters of the Report (chapter II/3, chapters II/5.7 and II/ 5.8).

13 Government Resolution No. 1392 of 6 December 2006 č. 1392 concerning the Report for the Government of the Czech Republic on the visit of the Czech Republic by the European Committee against Torture and Inhuman or Degrading Treatment of Punishment, which took place on 27 March to 7 April 2006 and on 21 to 24 June 2006

The Government approved the standpoint of the Czech Report on the CPT Report and the information on the implementation of the CPT's recommendations in March 2007[14] and ordered the Government Commissioner for Human Rights to ask the CPT for its publication.[15] The response of the Czech Republic preserves the structure of the CPT Report, is divided in accordance with the list of CPT's recommendations, remarks and requests for information and is based on the reports of the Czech Republic on the implementation of CPT's recommendations in 2003,[16] 2004[17] and 2005[18], but contains only new facts, which describe the development in the monitored areas in 2006.

3.3 Contractual basis

3.3.1 Adoption of new commitments under international law

▪ Protocol No. 14 to the European Convention for Protection of Human Rights and Fundamental Freedoms

The objective of the Protocol, which was ratified by the Czech Republic on 19 May 2006, is a reform of the European Court of Human Rights (ECHR), which will enable the court to cope with an unprecedented growth of the number of complaints arising due to the increase of the number of member states of the Council of Europe and to the increasingly frequent submission of evidently unsubstantiated complaints.

The principal innovations brought about by the Protocol are as follows: providing ECHR with a possibility to reject more easily evidently groundless complaints (instead of a three-judge committee, these complaints will be resolved by a single judge, who shall be assisted by rapporteurs in his decision-making); a possibility to decide, in summary proceedings conducted by a committee of 3 judges, on repeated cases caused by a systemic defect of the law of a member state; a possibility to also declare as inadmissible, under certain circumstances, complaints in cases where the applicant has not suffered a significant disadvantage. The protocol also brings about certain changes aiming at the enhancement of the independence of ECHR's judges and allowing the European Union future accession to the Convention.

▪ Optional Protocol to the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment

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14 Government Resolution No. 223 of 12 March 2007

15 Like in last years, the CPT Report and the standpoint of the Government of the Czech Republic will be published on the Government's website (www.vlada.cz).

16 Government Resolution No. 79 of 21 January 2004 concerning the 2003 Report on the Implementation of Recommendations of the European Committee against Torture and Inhuman or Degrading Treatment or Punishment, arising from the visit of the Committee to the Czech Republic in 2002 (http://racek.vlada.cz/usneseni/)

17 Government Resolution No. 247 of 2 March 2005 concerning the 2004 Report on the implementation of Recommendations of the European Committee against Torture and Inhuman or Degrading Treatment or Punishment, arising from the visit of the Committee to the Czech Republic in 2002 (http://racek.vlada.cz/usneseni/)

18 Government Resolution No. 16 of 6 January 2006 concerning the 2005 Report on the Implementation of Recommendations of the European Committee against Torture and Inhuman or Degrading Treatment or Punishment, arising from the visit of the Committee to the Czech Republic in 2002

This protocol, which was ratified by the Czech Republic on 10 July 2006,[19] establishes a Subcommittee on the Prevention of Torture, with a mandate to make inspection visits to all detention facilities in the jurisdiction or under the control of the parties to the Optional Protocol, and binds all signatories to implement one or more similar mechanisms at the national level (in the Czech Republic, this authority is awarded to the ombudsman). In the first elections to the Subcommittee, which were held on 18 December 2006, JUDr. Zdeněk Hájek of the Czech Republic was elected as one of the 10 Subcommittee members.

- European Charter for Regional or Minority Languages

The Czech Republic ratified the European Charter for Regional or Minority Languages on 15 November 2006. Upon depositing the ratification instrument, the Czech Republic issued a declaration defining the scope of assumed undertakings resulting for it from the Charter. With respect to the Czech Republic, the Charter came into force on 1 March 2007. The aim of the Charter is to protect and to promote historical regional or minority languages in Europe. It sets forth objectives and principles which are to be applied by the parties to all regional or minority languages used within their territory.

The Charter further stipulates numerous measures promoting the use of regional or minority languages in public life. Every party undertakes to apply, not later than as of the date of deposit of its ratification instruments, at least 35 selected provisions of the Charter, some of which comprise the "mandatory core". The instrument of ratification has to specify each regional or minority language, or official language which is less widely used on the whole or part of the relevant party's territory, to which the selected paragraphs shall apply. The implementation of the Charter is supervised by a committee of experts, which also examines periodical reports on the implementation of the Charter, submitted by each of the parties.

3.3.2 Preparation of new international conventions

International Convention for the Protection of All Persons from Forced Disappearance

This Convention was adopted by the UN General Assembly on 19 December 2006 and was open for signature in February 2007. The Convention defines primarily the phenomenon of "forced disappearance" (meaning the deprivation of a person's freedom brought about by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by an absence of information, or refusal to acknowledge the deprivation of liberty or information, or concealment of the fate or whereabouts of the disappeared person). The Convention binds the parties to impose sanctions on the above phenomenon and to define as an offence in their national legislation. The fulfilment of the undertakings of the states parties shall be supervised by the Committee against Forced Disappearance, which shall be established for such purpose.

Convention on the Rights of Persons with Disabilities

This Convention was adopted by the UN General Assembly on 13 December 2006 and was open for signature on 30 March 2007. It provides a comprehensive overview of human rights

[19] Published as the Notice of the Ministry of Foreign Affairs in the Collection of International Laws under No. 78/2006

guaranteed by human rights conventions[20], monitoring safeguards for their implementation in specific conditions of life of persons with disabilities. The Convention does not constitute new rights but only orders systematic fulfilment of existing human rights and freedoms in relation to people with disabilities. It recognizes their dignity and equality of opportunity, their right to autonomy and independence, including to autonomy to make their own choices, promotes the involvement of all persons with disabilities in all policies affecting them. The Convention considers as exceptionally important to ensure access of people with disabilities to physical, economic, social and cultural environment, to education, rehabilitation, information and communication. The aim of the Convention is to protect and ensure equal access of persons with disabilities to rights and freedoms and the respect of their dignity.

Another objective of the Convention is to increase the attention paid by governments to persons with disabilities, which should enable them to increase their involvement in social life, and to remove barriers faced by them in the exercise of their human rights. The optional protocol, which adopted together with the text of the Convention, regulates the possibility of filing individual complaints and the investigation procedure of serious or systematic violation of duties resulting from the Convention by its states parties.

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

In June 2006, the UN Human Rights Council asked the working group which had been assessing since 2004 the possibilities of preparing an optional protocol to the International Covenant on Economic, Social and Cultural Rights, regulating the mechanism for notification of violations of these rights, to start negotiating its draft. The mandate of the working group was extended until 2008.

3.3.3 Complaints against the Czech Republic before the European Court of Human Rights

The office of the European Court of Human Rights (which is referred to in this chapter only as the "Court") reported a total of 2,755 complaints filed against the Czech Republic in 2006. Of the registered complaints, the Court communicated a total of 80 to the Czech Government. A certain decline in the notification of new cases occurred in the second half of the year, when the Court stayed a number of complaints against excessive length of proceedings, expecting that Act No. 160/2006 Coll., which amended Act No. 82/1998 Coll. on Liability for Damage Caused During the Exercise of Public Authority or Maladministration and on the Amendment to the Act of the Czech National Council No. 358/1992 Coll. on Notaries and Their Activities (hereinafter the "Act on Liability for Damage Caused During the Exercise of Public Authority"), would permit providing at the national level the compensation for immaterial loss caused by excessive length of proceedings (based on the judgment in *Hartman* of 10 July 2003). At present, the Court waits to see whether this amendment will prove its merits in practice.[21]

A total of 38 judgments were delivered in 2006 (i.e. by 9 judgments more than in 2006). In 36 of these judgments, the Court concluded that the Czech Republic had breached some of the rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (which is referred to in this chapter only as the "Convention").

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[20] International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention for the Protection of Human Rights and Fundamental Freedoms; Convention on the Rights of the Child; Convention on the Elimination of All Forms of Discrimination of Women

[21] With respect to the amendment see also paragraph 3.3.5 of the Report.

Like in 2005, the most frequently cited infringement was the breach of the right to fair trial (Article 6(1) of the Convention), specifically due to excessive length of the proceedings (in 26 cases); at the same time, the Court noted the absence of a national remedy for excessive length of the proceedings (Article 13 of the Convention). In three cases, the Court cited a breach of the Convention (Article 6(1)) by denial of access to the Constitutional Court and once due to the denial of access to the general court. In two cases, the Convention was breached by denying the opportunity to examine witnesses in criminal proceedings (Article 6 of the Convention) One case concerned the failure to destroy tapping records (breach of Article 8 of the Convention) and illegal restriction of ownership right (breach of Article 1 of Protocol 1 to the Convention). A breach of Article 11 of the Convention was stated due to the denial of registration of a political party. In four cases, the Court stated a violation of the right to family life (Article 8 of the Convention).

A brief characteristic of some judgments against the Czech Republic is stated below:

- Judgment of a Chamber of the former Second Section of the Court issued on 18 July 2006 – *Jiří Fiala versus the Czech Republic*

The Court came to an unanimous conclusion that the procedure applied by the national courts in the proceedings concerning the exercise of parental responsibility breached the complainant's right to respect for family life (Article 8 of the Convention) due to the absence of the exercise of his right to contact with minor children and the complainant's right to judicial proceedings with a reasonable time (Article 6(1) of the Convention). At the same time, the Court identified a breach of the complainant's right to an effective remedy (Article 13 of the Convention). Since the complainant did not file a motion for just satisfaction, the Court did not award him any amount under this title. In the reasoning of its judgment, the Court contended that the judicial proceedings held before two judicial instances, which lasted several years, were complicated to a certain extent, particularly due to disputes between the parents, and also pointed out that the complainant contributed by his conduct to the total length of the proceedings. On the other hand, the Court emphasised that the matter required an exceptionally expedient solution, particularly because the very tense situation in the family had a destructive impact on the mental state of the minor children. The Court further noted that the national court had failed to respond to the complainant's motions for preliminary ruling filed in 2001 and these motions were stayed without response even after the matter was assigned to another judge. The Court stressed that this error appears the more serious due to the fact that, given the age of the children and the disrupted family background, the passage of time had an adverse effect on the complainant's possibility to establish relations with his sons.

- Judgment of a Chamber of the former Second Section of the Court issued on 18 July 2006 – *Radan Balšán versus the Czech Republic*

The Court concluded unanimously that the complainant's right to defence as a part of the right to fair trial pursuant to Article 6(1) and (3) of the Convention was breached and awarded to the complainant €1,500 in just satisfaction, stating that it is desirable to renew the criminal proceedings. The Court emphasised that the co-defendant's testimony was virtually the sole evidence against the complainant, who denied his guilt and stated that such evidence cannot be used in proceedings before the court. The court further concluded that the safeguards of the right to defence in this case required that the complainant may examine the co-defendant. In the situation when the co-defendant decided not to testify, the national authorities were to

seek further evidence of the complainant's guilt. Since they settled for this sole evidence and the court of appeal did not grant the application for summoning the co-defendant (since the criminal proceedings had been already finally and effectively terminated at that time), the complainant's right to fair trial guaranteed in Article 6(1) and (3)(d) of the Convention was breached.

- Judgment of a Chamber of the Fifth Section of the Court issued on 26 October 2006 – *Emílie Wallová and Jaroslav Walla versus the Czech Republic*

The Court concluded unanimously that the complainants' right to family life pursuant to Article 8 of the Convention had been breached and awarded the complainants a total of €10,000 in just satisfaction. The Court stated that a measure amounting to splitting a family is a very palpable interference into the right to respect of the family life and, as such, just be based on sufficiently serious grounds. The Court mentioned that the sole ground for the decision to take away the children from the complainants' care was the inability of the complainants to secure permanent and adequate housing. In the eyes of the Court, however, this was only a material deficiency which the national authorities could and should overcome by means other than the division of the family, which was a too radical measure. On the contrary, the adequacy imperative required the use of less drastic means. The Court noted in this respect that it is the task of authorities for social and legal protection of children to assist persons facing difficulties of this kind who are not sufficiently familiar with the system, and to provide to them the necessary assistance with regard to various kinds of social support, the possibility to obtain social housing or other opportunities to overcome their difficulties. In this respect, the Court referred expressly to Section 14 of Act No. 114/1988 Coll. on the Competencies of the Authorities of the Czech Republic in Social Security, which imposes upon the relevant authorities the duty to search for citizens who need social care or to facilitate the provision of social allowances and services to such persons. As the Court stated, the relevant authority for social and legal protection of children confined itself to the monitoring of the complainants' efforts to improve their situation and strived to take away the children and to entrust them to institutional care, without demonstrating any "constructive approach" and "serious efforts" in the attempt to help the complainants overcome their destitute conditions, thus ensuring the most expedient re-unification of the family.

- Judgment of a Chamber of the Fifth Section of the Court issued on 7 December 2006 – *Václav Linkov versus the Czech Republic*

The Court concluded unanimously that, by denying the registration of the party named "Liberal Party", the national authorities breached the right of the complainant, who was a member of its preparatory committee, to freedom of assembly pursuant to Article 11 of the Convention. The Court awarded to the complainant a total of €850 in just satisfaction. The grounds for the decision of the national authorities consisted in the allegedly unconstitutional nature of one of the objectives of the political party, defined in its statute, i.e. the cancellation of the legal continuity with totalitarian regimes and punishment of certain acts which had not been considered criminal offences by the national law before 1989. According to the national authorities, such objective was in conflict with one of the fundamental principles of constitutional and international human rights law, prohibiting retroactive effect of the criminal law. In the reasoning of its judgment, the Court mentioned that the Czech legal system includes, *inter alia,* Act No. 480/1991 Coll. on the Period of Bondage and Act No. 198/1993 Coll. on Unlawfulness of the Communist Regime and Resistance Against It, which declare that the communist regime breached systematically human rights of its citizens, the principles

of democratic rule of law, as well as its obligations under international law. Moreover, the Convention itself stipulates in its Article 7(2) an exception from the prohibition of retroactive effect of the criminal law. Therefore, the Court stated that a change of the legislation for which the Liberal Party intended to strive was not incompatible with fundamental democratic principles of the rule of law. Since the party did not threaten the democratic regime by its project and intended to implement this project by legal means and without resorting to violence, the Court concluded that the rejection of its registration was inappropriate.

- Judgment of a Chamber of the former Second Section of the Court issued on 7 February 2006 - *D.H. et al. versus the Czech Republic*

The Court concluded that the Czech Republic did not breach the prohibition of discrimination under Article 14 of the Convention in conjunction with Article 2 of Protocol No. 1 to the Convention (right to education). The case concerned a complaint of eighteen Roma children against their placement in special schools in the Czech Republic. The Court stated that if any policy or general measure has an adverse effect on a certain group of persons, it does not mean that such measure or policy is automatically discriminatory. Even the statistics are not, as such, a sufficient indication of discrimination. The Court acknowledged that upbringing of children with special needs is a complicated matter and emphasised that the state should be allowed enough space to decide on the forms of its educational system. It is impossible to prohibit the establishment of various types of schools for children with special needs. The Court concluded that the Czech Republic had proved that the placement of pupils in special schools is not based on their ethnic origin but pursues legitimate objectives. Upon the application of the complainants, the case was referred to the Grand Chamber of the Court, whose judgment is expected to be delivered in 2007.

3.3.4 Notifications filed against the Czech Republic with the Human Rights Committee

The number of these notifications filed against the Czech Republic in 2006 is not known. A total of 10 new cases were communicated to the Government, all of them relating to the compliance of the restitution condition of Czech citizenship with Article 26 of the International Covenant on Civil and Political Rights. Some notifications were filed with the Committee by complainants who had failed to seek their rights with the Court. One notification was found to be unacceptable by the Committee.

3.3.5 Implementation of decisions of international supervisory bodies by the State

The Parliament approved in 2006 the amendment to the Act on Liability for Damage Caused during the Exercise of Public Authority. This amendment, which became effective upon its promulgation date, introduces chiefly the possibility to seek from the State compensation for immaterial loss caused by an unlawful decision or maladministration. The objective of the amendment in this field is to establish, in particular, grounds for settlement of applications for compensation of immaterial loss caused by excessive length of proceedings. The definition of maladministration operates with the notion of “adequate time limit”; for illustration, the Act refers in this respect to Articles 5 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The amendment may be also used retroactively to a significant extent with respect to excessively long proceedings so that complaints which have been filed with the European Court of Human Rights may be repatriated in accordance with the principle of solidarity. However, this court has not yet commented on the effectiveness of this new remedy but we can expect that it will do so relatively soon.

As the vast majority of judgments of the European Court of Human Rights issued against the Czech Republic concerned the issue of adequacy of the length of the judicial proceedings, the adoption of the above amendment to the Act on Liability for Damage Caused during the Exercise of Public Authority may be welcomed on the one hand as a positive step in the implementation of decisions of international bodies by the State; on the other hand, it is necessary to recall the continuing need for comprehensive solution of causes of procrastination of lawsuits, thus implementing these judgments of the Strasbourg court at the level of general (practical) measures. As stated by the previous Report, the implementation of decisions issued by non-judicial international supervisory bodies the nature of which is not made directly legally binding in the body of the relevant treaty is still an open issue.

3.4. Contribution of the Czech Republic to the promotion of protection of human rights and democracy in the world

3.4.1. UN – Human Rights Council

The UN General Assembly elected the Czech Republic in May 2006 a member of the newly established UN authority, the Human Rights Council (HRC), for the election period 2006 – 2007. At the first HRC session in June 2006, the Czech Republic was elected deputy chairman of the HRC for the Eastern European Regional Group. At the same time, the Czech Republic was appointed chairman of the working group for revision of mandates of special procedures (i.e. special rapporteurs, independent experts or working groups of the HRC, which examine either the state of human rights in a specific country or a defined human rights theme all over the world).

The Czech Republic considers the special procedures as a significant contribution to the international protection of human rights and strives to preserve the basic features and to improve the effectiveness of this system, to enhance and ensure transparency of the functioning of individual procedures and to improve the cooperation of the relevant states.

3.4.2 Transformation cooperation

The transformation cooperation comprises the promotion of democracy and defence of human rights in developing and transforming countries and in non-democratic regimes where human rights are breached. It concentrates on the establishment and strengthening of democratic institutions, the rule of law, the civil society and good governance.

This cooperation is implemented in particularly through projects of education, dissemination of information, opinions and experience with non-violent resistance against the totalitarian system and social transformation process which took place in the Czech Republic in the 1990s. The transformation cooperation is directed countries which represent the primary focus of the foreign policy of the Czech Republic (Belarus, Bosnia and Herzegovina, Georgia, Iraq, Cuba, Moldova, Myanmar (Burma), Serbia and Ukraine) and reflects the tendencies of EU policy towards these countries.

A total of 49 projects of Czech non-governmental organizations and activities implemented by the Ministry of Foreign Affairs were financed from the state budget in 2006. Moreover, 20

million CZK were allocated beyond the scope of the annual budget[22] as a response to events relating to the presidential elections in Belarus. The funds were used for extraordinary help to persecuted members of Belarus opposition, for promotion of the development of civic society in Belarus and for educational projects designated primarily to students prosecuted for their political activities and democratic thinking. A total of ca 52 million CZK was spent in 2006 in projects and activities relating to transformation cooperation.

4. The European Union

European Fundamental Rights Agency

Negotiations directed at the establishment of the EU Agency for Fundamental Rights, which was decided by the European Council in December 2003, were carried on in 2006. The principal task of this Agency is to provide assistance and technical knowledge to EU institutions and other bodies and to member states in connection with the implementation of EU law. Thus, the Agency is to become primarily a consultative body and will not have a mandate to investigate individual matters or any regulatory or decisive powers. The EU Council is expected to adopt the draft regulation establishing the Agency so that it may start its activities at the beginning of 2007.

The EU working group for human rights

In 2006, the Czech Republic participated in the formulation of the EU human rights policy in the EU working group on human rights (COHOM). COHOM prepares EU positions for sessions of the Human Rights Council, the Third Committee of the UN General Assembly, dialogues on human rights with Iran and China, consultations on human rights with Russia, EU Annual Reports on Human Rights and on implementation of EU rules against torture, against the death penalty, on children in armed conflicts and on defenders of human rights. In 2006, COHOM continued with involving human rights issues in the increasing range of EU policies (the "mainstreaming") – the priority areas in 2006 included the European Security and Defence Policy (ESDP), particularly civil crisis management and its human rights dimension.

[22] By Government Resolution No. 344 of 29 March 2006

II. Special part

1. Fundamental civil and political rights

1.1 Property rights

1.1.1 Property rights and public interest

1.1.1.1 Construction of the plant of Hyundai automobile company in Nošovice

The case of construction of a new plant of Hyundai automobile company in the Czech Republic on the lands of the owners' cooperative in Nošovice attracted attention of the media and broader professional public as early as in 2005.

The agricultural cooperative managing the lands where the plant was to be built, demanded safeguards for the conditions of its further existence. In the end of 2005, the cooperative approved the sale of its lands and the other owners also sold their lands, all of the above under considerable attention of the media, which informed that an indirect pressure of the surroundings also played its role in the sale.[23]

The sale of the last lands was followed by a process of assessment of environmental impacts (EIA), based on which the Ministry of the Environment expressed its consent with the project. The entire process of construction of the planned investment project with a focus on its environmental impact is documented by the non-governmental non-profit organization Ekologický právní servis (Environmental Law Service). Studies of this non-governmental organization indicate that the public administration authorities were unable to present reliable evidence on economic advantages and benefits of this investment project for the Czech Republic. Therefore, this organization initiated a series of lawsuits against their decisions.

In November 2006, the non-governmental organizations, the state and the Moravian-Silesian Region concluded the "Declaration of Understanding". In this declaration, the non-profit organizations undertook to stop filing lawsuits contesting the administrative decisions and project materials relating to the Nošovice zone in order to facilitate the preparation of the project and the construction of the industrial zone in Nošovice. The Ministry of Industry and Trade, the CzechInvest Agency and the Moravian-Silesian Region undertook to remove, to mitigate and to compensate any negative impacts of the plant of the Hyundai automobile company and the industrial zone in Nošovice, to stop the preparation of further strategic zones in the regions and to focus, with regard to future construction of industrial zones, on the regeneration of unused areas of industrial facilities (brownfields) rather than on the construction of greenfield facilities.

Even though the Declaration of Understanding relates only to the territory of the Moravian-Silesian Region, some of its aspects (e.g. the scheduled seminars on "brownfield " issued which will be organized by the Ministry of Industry and Trade in cooperation with the CzechInvest agency) have a national importance and it can only be hoped that industrial

[23] Respekt no. 3, 16 – 22 January 2006, p. 5, the article called "Štěstí milionářů z Nošovic" (Luck of Millionaires from Nošovice") stated that the inhabitants of Nošovice who refused to sell their lands became the target of negative reactions of their surrounding, the consequences of which made them sell their lands.

zones will be constructed so as to represent a minimum interference into the landscape and to minimize the impact on the life of the population.

1.1.1.2 Construction of NEMAK's plant

The beginning of the construction of the factory for aluminium motor heads of the Mexican company NEMAK in a location close to Havraň in the Most district and the related struggle of the farmer Jan Rajter, which lasted for several years, date back to 2001. Based on a petition of the non-governmental organization Ekologický právní servis, the ombudsman stated in 2002 that the process of withdrawal of the lands on which the factory was to be built from the agricultural land resources was accompanied by grave violations of the law. The Municipal Court in Prague abolished in November 2005 the decision of the Ministry of the Environment on the consent with the intervention into the landscape pattern, which was the basis for the planning permission, the building permit and the integrated permit for expansion of the NEMAK factory.

After lawsuits which lasted five years, the Government allocated in May 2006 234 million CZK to Most for the purpose of amicable settlement of disputes with the farmer Rajter.[24] After several months of hesitation, the municipal assembly of the City of Most accepted the amicable settlement of the dispute between the Rajter family on the one hand and NEMAK, the state and the City of Most on the other hand.[25]

1.1.1.3 Construction of the expressway R52

The Roads and Highways Directorate, the Ministry of Transport and the South Moravian Region promoted for a long time the construction of the expressway R52 in the section of Pohořelice - Mikulov as a part of the project of connecting Brno and Vienna by a highway-type road. A number of affected municipalities and their inhabitants voiced their disapproval with this project. Opponents of the projects pointed out, in particular, that the construction of the expressway R52 would cause serious damage to a unique landscape and would decrease at the same time its attractiveness for tourism and recreation purposes. According to the opponents of the construction, the SEA (strategic environmental assessment of impact of projects) process should assess primarily all feasible alternatives of the highway-type connection between Brno and Vienna, particularly the use of the existing highway D2 and the construction of a by-pass road around Břeclav with a sufficient capacity and to compare objectively their environmental impacts.

Despite the opposition of a number of the affected municipalities, owners of the affected real property and several civic associations in the Czech Republic and in Austria, the assembly of the South Moravian Region approved in November 2006 the territorial plan of the large territorial unit of Břeclavsko, which includes, among others, the expressway corridor R52 Pohořelice - Mikulov.

Based on a petition of the non-governmental organization Ekologický právní servis, this case was also reviewed in 2006 by the ombudsman. In his final report of November 2006, the ombudsman concluded that the principal defect of the planned communication is the effectuation of the EIA procedure for the single corridor Pohořelice - Mikulov/Drasenhofen.

[24] Government Resolution No. 550 of 10 May 2006, which was further specified by the Resolution No. 942 of 2 August 2006

[25] Source: www.aktualne.centrum.cz, the article: “Most Will Purchase Farmer Rajter's Lands”.

Moreover, no strategic assessment of other possible solutions of the capacity infrastructure between Brno and Vienna was made. "In addition to being an illogical step (the project EIA has its place only after the selection of appropriate corridors within the strategic assessment), such procedure has provided a possibility for misleading the public and manipulation with results."[26]

In January 2007, some municipalities[27] and civic associations[28] filed with the Supreme Administrative Court a petition for the abolishment of the territorial plan of the large territorial unit of Břeclavsko.

There is no choice than to share the ombudsman's opinion that the practical selection of the best alternatives of investment projects takes place outside the sphere of transparency and in a manner which actually prevents effective participation of the general public in partial processes of implementation of these projects. The problem cannot be seen in the legal system, because the law stipulates the participation of the public, but rather in the conduct of the authorities vis-à-vis the public and the actual "practical implementation" of the law. Therefore, it will be interesting to see the decision of the Supreme Administrative Court in this case.

1.1.1.4 Construction of the new takeoff and landing runway of the Ruzyně Airport

The planned construction of the takeoff and landing runway led to a number of protests of the inhabitants of the neighbouring Prague districts to which the airport operation would get closer. On the contrary, the construction of the new runway was supported by the Government and other authorities of the state and of the City of Prague. The Parliament of the Czech Republic even passed in 2005 a bill[29] which declared the construction of the new runway as public interest.

In autumn 2005, the municipal assembly of Prague approved a change of the urban plan of the city, which would permit the construction of the new runway in Ruzyně before 2010 as a "public benefit project". The approved change of the urban plan, as the measure of general nature, was contested by a petition of two property owners from the neighbouring city district, filed with the Supreme Administrative Court.[30] This was the first attempt of its kind to contest the urban plan before the court in such manner. The Supreme Administrative Court granted the petition and abolished the change of the urban plan with immediate effect by its judgment dated 18 July 2006. In its judgment, the Supreme Administrative Court confirmed that urban plans and their changes are measures of general nature and it is possible to apply to the court for their abolishment. According to the judgment, the court is not entitled to assess which type of future use of the territory stated in the urban plan is materially correct; however, the court is entitled to review the compliance with the requirements of the law relating to the approval procedure and to the content of the urban plan.

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26 Report on the result of the ombudsman's investigation of the plan of construction of capacity road connection between Brno and Vienna of 3 November 2006, file no.: 2453/2006/VOP/JC

27 Bavaria and Lower Danube District

28 Nebojsa, Občané za ochranu kvality bydlení a životního prostředí v Troubsku a Ekologický právní servis (Citizens for Protection of Quality of Housing and Environment in Troubsko and the Environmental Law Service)

29 Act No. 544/2005 Coll. on the Construction of the Takeoff and Landing Runway 06R - 24L at Prague-Ruzyně Airport

30 Pursuant to Section 101a of the Administrative Procedure Code (No. 150/2002 Coll.)

The decision of the Supreme Administrative Court is ground-breaking for the implementation of rights of the citizens not only with regard to changes of the territorial (urban) plans but also at the general level with regard to the conclusions relating to the Aarhus Convention.[31] The Supreme Administrative Court confirmed the "direct applicability" of the Aarhus Convention and its priority over Czech law. Moreover, the decision means, with regard to Prague inhabitants, a suspension of environmentally and socially disputable project of construction of the new runway, which would increase the air transport load of Prague.[32]

Labelling the takeoff and landing runway RWY 06R/24L as public interest is a remarkable method of promotion of a large-scale investment project despite resistance of the public. This process is, however, rather disputable. In the above judgment, the Supreme Court did not provide its opinion of such act, but only remarked that "it is impossible not to express serious doubts as to whether this is a standard-setting legal regulation, as well as about the extent to which the provisions of this regulation comply with the constitutional order of the Czech Republic".

1.1.1.5 Construction of Highway D3

The delimitation of the corridor of Highway D3 in the territorial plans of large territorial units in the Central Bohemian Region has been the subject of long-term disputes, particularly in relation to the highway route across the valuable territory of Posázaví. A conflict among central state administration authorities which occurred during the review of the concept of the solution[33] had to be resolved by the Government, which decided[34] to include the Highway D3 corridor into the territorial plan of the large territorial unit of the Benešov district in the stabilized variant. The summary opinion and thereafter also the territorial plan, which were prepared and agreed on the basis of this decision, was approved in December 2006 by the assembly of the Central Bohemian Region.

The principal arguments against the implementation of this "stabilized" variant include primarily its financial costs. The calculations of non-governmental organizations indicate that the costs of this variant are double in comparison with the so-called Promika variant.[35] On the contrary, its advantage lies in the possibility of expedient completion of the construction, given the progress which has been achieved in the preparation of the documentation. The supporters and the opponents of the construction and even of its "stabilized" variant cannot even agree whether such variant will or will not contribute to the improvement of the transport accessibility of Prague from the south.

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31 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. It was ratified by the Czech Republic in autumn 2004 and was promulgated in the Collection of International Treaties as the Notice of the Ministry of Foreign Affairs No. 124/2004. The Convention came to force for the Czech Republic on 4 October 2004.

32 Source: www.eps.cz

33 The Ministry of the Environment did not agree with the "stabilized" variant promoted by the Central Bohemian Region, the Ministry for Regional Development and the Ministry of Transport.

34 Resolution No. 1643 of 14 December 2005

35 The initiator of the "Promika" variant is the civic association Krajina 2000. This road falls within the expressway category, which would mean, in addition to reducing the costs to one half, also a minimum interference into the landscape. Its essential disadvantage is said to be a low level of elaboration of documents as opposed to the "stabilized" variant.

1.1.1.6 Complaints of house and apartment owners to the European Court of Human Rights

The Civic Association of House, Apartment and Other Property Owners in the Czech Republic filed with the European Court of Human Rights on 25 May 2005 a class action against the breach of the European Convention for the Protection of Human Rights and Fundamental Freedoms by the Czech Republic, which has been joined gradually by further lessors of rental housing in the Czech Republic. In this action, more than 4,000 house owners demand from the Czech Republic compensation of damage incurred by them in connection with the regulation of rent. This action was one of the grounds due to which the Act[36] on Unilateral Increase of Housing Rent was adopted in 2006.[37]

1.2. Right of access to healthcare documentation

The Ministry of Health presented to the Government in October 2006 a bill amending Act No. 20/1966 Coll. on Care for the Health of the Population, as amended (which is referred to in this chapter only as the "Bill"). This Bill reflects a number of deficiencies in the implementation of patient rights, which were repeatedly referred to by the past Reports.

One of the principal objectives of the Bill is a better regulation of the right of patients and some other persons to information contained in healthcare documents. Even though the law currently grants to patients the right to information contained in healthcare documentation, it does not specify the manner by which the patient must obtain information. Some physicians or healthcare facilities interpret this gap in the law to the detriment of patients and provide to patients, for instance, only excerpts from their healthcare documentation. Therefore, the Bill expressly stipulates that the patient is entitled to inspect his/her healthcare documentation and make transcripts, excerpts or copies from it. The bill also grants to the patient the right to appoint other persons to whom the information about his/her health condition may be disclosed or to name persons who may be prohibited to receive such information. Another principal change in comparison with the current legislation is the granting of the right to next of kin to information about the state of health of a patient who dies, the cause of his/her death and the right to inspect his healthcare documents or to make copies, excerpts or transcripts thereof. In cases where a deceased patient, prior to his death, expressly forbade the disclosure of information about his/her health condition, the right of next of kin to information about the patient's health condition will be limited to information necessary to protect their own health or the health of others.

For the sake of the patient's legal certainty, the Bill stipulates to healthcare facilities time limits within which they are obliged to arrange for making excerpts, transcripts or copies of healthcare documentation. Healthcare facilities will be entitled to demand payment for the above acts; however, such payments must not exceed the costs incurred in connection with the issue of these documents. With regard to the fact that the patient has the right to know to whom and which information about his/her health condition has been provided and to exercise the right of control whether the information (particularly the information provided without his/her consent) has been provided in accordance with applicable law, the Bill stipulates that healthcare facilities are obliged to make a record of this fact in the patient's healthcare documents (see also chapter II/ 5.6.1. of the Report).

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[36] Act No. 107/2006 Coll. on Unilateral Increase of Apartment Rent and on the Amendment to Act No. 40/1964 Coll., the Civil Code, as amended.

[37] Details of housing rent regulations see chapter 5.5.1 of the Report.

1.3 Rights to privacy and its protection

1.3.1 Introducing biometric elements into passports

Act No. 136/2006 Coll. Amending Certain Laws Concerning Travel Documents (which is referred to in this chapter only as the "Act") came into force on 1 September 2006.[38] This date was the start date of production and issue of travel documents with machine readable data and with a data carrier with biometric data, which contain the first biometric information (face image) in a contactless chip. The Act envisages that travel documents containing the second biometric information (fingerprints) will be issued since 1 May 2008. Under the Act, the Office for Protection of Personal Data, as the first instance authority, has held, since 1 September 2006, the competency to conduct proceedings on transgressions and administrative offences represented by unauthorized processing of data processed in the data carrier with biometric data.

The carrier containing biometric data is the RFID (Radio Frequency Identification) chip, i.e. a tablet installed in the passport. According to personal data protectors, the installation of this chip is problematic, since it allows remote reading.[39] Even the Ministry of the Interior admits that powerful scanners detect this chip at a distance of several metres, but are unable to read it because the date contained in the chip will be secured by a unique electronic access key. The protection of personal data saved in the contactless chip is based on requirements of the European Union.[40]

Non-governmental organizations involved in the protection of personal data and privacy object to the relatively short time taken by the preparation of the change of the Act.[41] *Beside the above possibility of remote reading of the chip, there still exist fears of potential misuse of the data. Thus, according to the Office for Protection of Personal Data, the misuse of the data would occur in case of the establishment of a central database processing personal data of document holders.*

1.3.2 Other problems of protection of privacy and personal data

1.3.2.1 Handling of personal data by the Ministry of the Interior and the Police of the Czech Republic, authorization of intelligence and security services

The Ministry of the Interior adopted in 2006 a new internal regulation concerning handling of personal data by the Ministry of the Interior and the Police of the Czech Republic.[42] The Office for Protection of Personal Data carried out in 2006 several controls of personal data processing by the Police of the Czech Republic and one control at the Ministry of the Interior. A total of four administrative proceedings were opened in 2006. One of these proceedings was stayed since it was found that the alleged breach of the law had not been sufficiently

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38 The Act was adopted on the basis of the Council (EC) Regulation No. 2252/2004 of 13 December 2004 o standards for security features and biometrics in passports and travel documents issued by Member States.

39 Statement of K. Neuwirth, former chairman of the Office for Protection of Personal Data, published in the weekly Týden on 10 July 2006 ("Lesk a bída e-pasů" (Glitter and Misery of e-passports).

40 Commission Decision of 28 February 2005 establishing the technical specifications on the standards for security features and biometrics in passports and travel documents issued by Member States

41 The criticism was also focused on the process of adoption of the Council Regulation, objecting to lack of professional discussion.

42 Regulation of the Ministry of the Interior No. 48/2006

proved; a fine for breach of the laws in the amount of 40,000 CZK was imposed in the second administrative proceedings; in the third administrative proceedings, a fine for breach of the laws in the amount of 60,000 CZK, and the fourth administrative proceedings were not finished as of 31 December 2006.

As early as in 2005, the Czech Republic adopted the National Action Plan to Combat Terrorism (updated version for the year 2005 - 2007).[43]

The new proposed powers of security forces contained in the document include the authority of intelligence services to access information on air traffic, social and health insurance, information from financial institutions and banks.[44] The police are to be granted the power to tap telephone calls in cases which cannot bear delay only with additional permission of the court.[45] Security forces are also supposed to be granted the authority to switch off the mobile telephone network.[46]

The proposals and their reasoning are based on the document "Analýza rozsahu zákonných oprávnění zpravodajských služeb a Policie ČR potřebných pro plnění jejich úkolů při potírání mezinárodního terorismu" (Analysis of the scope of legal authorization of intelligence services and the Police of the Czech Republic necessary for the performance of their tasks in combating international terrorism), which was taken note of by the Government in June 2005.[47]

The grounds for the introduction of a number of required authorizations for security forces may be considered insufficient. The more effective availability of certain investigation methods, like tapping, is justified only by the statement that "it is a reality in some states". Another disputable matter is also the necessity of access to health insurance database, which is justified by alleging that it would enable the police to find out where the suspect had received medical treatment, and to facilitate his arrest or tracing.

1.3.2.2 Problems of camera systems

With regard to the increasing number of cameras in city streets, shopping centres, offices and public spaces in general, the issue of camera system has become largely known to the general public and has become the subject of both professional and general discussion.

The issue whether and to what extent the "omnipresent" cameras interfere into personality rights of individuals was analysed by the Office for Protection of Personal Data. In its position,[48] it defined, in particular, the cases when the camera monitoring is and when it is not deemed processing of personal data. Such monitoring represents processing of personal data

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43 The plan was approved by the Security Council of the State at its meeting held on 5 October 2005 and by the Government Resolution No. 1466 of 16 November 2005 on the National Action Plan to Combat Terrorism (updated version for the years 2005 to 2007).

44 Part 5.3 of the Plan – Improvement of legislative conditions for the work of intelligence services and security corps of the Czech Republic

45 ibid, clause a.7)

46 ibid, clause c)

47 Government Resolution No. 737 of 15 June 2005 on the Analysis of the scope of legal authorization of intelligence services and the Police of the Czech Republic necessary for the performance of their tasks in combating international terrorism

48 Position of the Office for Protection of Personal Data No. 1/2006, published on www.uoou.cz.

in cases where the camera system is also equipped with a recording system. The issue of when such data are personal data was defined by the Office as follows: *"Data stored in a recording device, either images or sounds, are personal data on condition an individual might be identified directly or indirectly on the ground of these recordings (i.e. information from the image or sound recordings enable, if indirectly to identify a person)."*

This position further sets the following conditions under which the processing of person data by operating of a camera system is admissible:
- in fulfilling tasks imposed by the law;
- with the appropriate consent of the data subject; or,
- without the data subject's consent only if necessary for the protection of the rights and interests protected by the law of the data administrator, recipient or other affected person; however, such processing must not be in conflict with the data subject's right to the protection of his or her private life.[49]

Operation of camera systems with a recording device is not regulated by a separate law and its legality may be thus assessed in the light of general laws, which include, beside Act No. 101/2000 Coll. on Protection of Personal Data and on the Amendment to Certain Laws, as amended (hereinafter the "Personal Data Protection Act"), particularly the Civil Code[50] *and the Criminal Code.*[51] *The use of a hidden camera by journalists is virtually unresolved. For the future, it would be appropriate to consider enacting more comprehensive legislation of these areas.*

1.4 Suffrage

1.4.1 Election to the Chamber of Deputies in 2006

Elections to the Chamber of Deputies of the Parliament of the Czech Republic were held on 2 – 3 June 2006. For the second time since 2002, citizens of the Czech Republic who were abroad at the time of elections could vote at polling stations opened at diplomatic missions.

Act No. 247/1995 Coll. on Elections to the Parliament of the Czech Republic and on the Amendment to Certain Other Laws (hereinafter the "Act on Elections to the Parliament of the Czech Republic") provides a possibility to file a motion for scrutiny of the course of elections, both before and after they are held.

Thus, the court may also review, upon a motion, the steps taken by the authorities organizing the elections to the Chamber of Deputies of the Parliament of the Czech Republic taken before the elections. A political party, political movement or coalition which has submitted a ticket may apply to the court for protection with against the decision to reject the ticket, to strike out a candidate from the ticket or registration of the ticket within two days after the service of such decision. Such applications are then decided by the regional court having jurisdiction over the seat of the regional authority which has taken such registration measures. According to a notice of the Ministry of the Interior, none of the political parties, political movements or coalitions and no candidate exercised this option in 2006.

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[49] Section 5(2)(e) of Act No. 101/2000 Coll. on Protection of Personal Data and on the Amendment to Certain Laws

[50] Act No. 40/1964 Coll., the Civil Code, as amended

[51] Act No. 140/1961 Coll., the Criminal Code, as amended

After the end of the election, it is possible to file a petition for invalidity of election of a candidate. Such motion may be filed with the court, not later than ten days after the announcement of results of the elections by the State Electoral Commission, by any citizen registered in the permanent register in the electoral district where such deputy has been elected, and by any political party, political movement or coalition whose ticket has been registered in the relevant electoral region for elections to the Chamber of Deputies of the Parliament of the Czech Republic, if they believe that the Act on Elections to the Parliament of the Czech Republic has been breached in a manner that could have affected results of the elections. Such proceedings fall within the jurisdiction of the Supreme Administrative Court.

The State Electoral Commission received a total of 70 complaints, six of which were filed by political parties or political movements and the rest by voters. Nineteen complaints were rejected for being filed prematurely, by an unauthorized person, due to inadmissibility or for failure to remove defects of the petition. The Supreme Administrative Court did not grant any petition for invalidity of election of a candidate. Most of the petitions for court review of the elections to the Chamber of Deputies related to:

- the electoral campaign (its imbalance and preference of certain political parties)
- the electoral system used in elections to the Chamber of Deputies
- the nullity of election of a candidate due to incompatibility of the office of deputy and that of a senator
- allocation of preferential votes, unconstitutional conversion into mandates
- not providing a possibility to vote at a hospital or a psychiatric facility
- unjustified elimination of a ballot
- incorrect data concerning political affiliation
- processing of voting results.

1.4.2 Senate elections in 2006

Elections of one third of senators of the Senate of the Parliament of the Czech Republic were also held in 2006 in two rounds (the first round on 20 – 21 October 2006 and the second round on 27 – 28 October 2006). As opposed to the elections into the Chamber of Deputies, these elections take place solely in the territory of the Czech Republic and the citizens of the Czech Republic staying permanently or temporarily abroad cannot vote in them.

Like in the case of elections to the Chamber of Deputies, the Act on Elections to the Parliament of the Czech Republic permits the participants in the Senate elections to file before and after the elections a petition for review of their course.

Prior to the start of the elections, any independent candidate, political party, political movement or coalition which has filed an application for registration may appeal a decision to reject the application for registration or to register the application within two days after the service of such decision. Such proceedings are conducted before the regional court having jurisdiction over the seat of the delegated municipal authority at the seat of the electoral district, which has taken the registration measures. According to the information provided by delegated municipal authorities at the seat of electoral districts, no court review in the matter was held.

As to the elections themselves, a petition for invalidity of voting, nullity of the elections or nullity of election of a candidate as senator, may be filed not later than ten days after the

announcement of voting results by the State Electoral Commission by any citizen registered in the permanent list in the electoral district where such senator has been elected, and by any political party, political movement, coalition or independent candidate whose application for registration in the electoral district has been registered for the elections to the Senate, if they believe that the Act on Elections to the Parliament of the Czech Republic has been breached in a manner that could have affected results of the voting, of the election or the result of the election of such candidate. Such proceedings fall within the jurisdiction of the Supreme Administrative Court.

A total of eight petitions for court review were filed; three of them were rejected by the Supreme Administrative Court due to lack of jurisdiction, since they challenged municipal elections; one petition was rejected due to the failure to remove its defects within the time limit set forth by the court, and the court could not thus deal with such petition; four petitions were rejected because the Supreme Administrative Court did not find any illegality. One petition for court review of the elections to the Senate was filed with the Regional Court in Ostrava, which refused it due to lack of jurisdiction.

1.4.3 Municipal elections in 2006

The third elections held in 2006 were the elections to municipal assemblies, which were held on 20 – 21 October 2006. These elections were the first national municipal elections where citizens of other Member States of the European Union could vote and be elected, provided that they registered themselves in the supplement to the permanent voters register.[52]

Like the Act on Elections to the Parliament of the Czech Republic, Act No. 491/2001 Coll. on Elections to Municipal Assemblies and on the Amendment to Certain Laws (hereinafter the "Act on Elections to Municipal Assemblies") also includes mechanisms allowing to review, the course of the elections before their start and after their end. Such proceedings fall within the jurisdiction of the relevant regional court.

According to the Ministry of the Interior, none of the regional court received a petition for court review of a decision to reject a ticket, to strike out a candidate on the ticket or against registration of a ticket.

As to the review of the elections, a petition for nullity of voting, the elections or of the election of a candidate as a member of the assembly may be filed by anyone registered in the voters register of the electoral district where the contested voting or elections were held or where the relevant assembly member was elected.

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[52] Those citizens were informed about this possibility both in the media and on the website of the Ministry of the Interior, which is published, beside the Czech language, also in English and French. Pursuant to Section 4(1) of the Act on Elections to Municipal Assemblies (No. 491/2001 Coll.), the right to elect members of municipal assemblies is granted, beside the citizens of the Czech Republic, also to every citizen of another state whose citizens are granted the right to elect to municipal assemblies by an international treaty which is binding for the Czech Republic and which has been promulgated in the Collection of International Treaties, provided that such citizen reaches at least 18 years of age on the second day of the elections and is registered, as of the elections date, as a permanent resident in the relevant municipality. At present, these include only citizens of the Member States of the European Union, because the Treaty on Accession of the Czech Republic to the European Union (Notice No. 44/2004 of the Collection of International Treaties) is the sole treaty which has the nature of an international treaty meeting the particulars stipulated by the Act on Elections to Municipal Assemblies.

According to the Ministry of the Interior, a number of petitions challenging the validity of the elections, voting or election of a candidate was filed with the regional courts; however, the exact number is not known because the Ministry of the Interior and the State Electoral Commissions provided their opinion only upon request of regional courts and on petitions where they were named as parties to the proceedings.

Based on the decision of the court on nullity of voting, the Minister of the Interior declared repeated voting in six municipalities.[53] Such repeated voting was held on 16 December 2006. The grounds for court decisions on the nullity of voting in the relevant cases were as follows:

- some envelopes where the votes placed their ballots at the polling stations lacked the official stamp,
- incorrect procedure applied by the electoral commission in vote counting,
- votes cast for a deceased candidate were taken into account in the calculation of results of the elections,
- a citizen who was not permanently residing in a municipality became a candidate for such municipality and voted there,
- inadmissible electioneering organized on the elections day in immediate vicinity of the polling station.

A constitutional complaint was also filed in one of these cases. The Regional Court in Brno decided that a repeated voting will be held in the electoral district no. 113 in elections to the Municipal Assembly of the City Part Brno - Královo Pole as well as in elections to the Municipal Assembly of the City of Brno. In its finding,[54] the Constitutional Court states that the breach of the Act on Elections to Municipal Assemblies did not reach such intensity that would justify the decision on nullity of voting in the elections to the Municipal Assembly of the City of Brno and abolished the part of the decision of the Regional Court in Brno relating to the nullity of voting in elections to the Municipal Assembly of the City of Brno. Therefore, only the voting in elections to the Municipal Assembly of the City Part Brno – Královo Pole was repeated on 16 December 2006.

In four other cases, the Minister of the Interior declared repeated voting to be held on 31 March 2007 for the following reasons:

- the district electoral commission erred in the assessment of ballots and in vote counting,
- the electoral documentation was not sealed and it was thus impossible to rule out later tampering with cast votes; at the same time, it is impossible to rule out the relevant impact on the results of the elections.

1.4.4. National minorities

The Act on Elections to the Parliament of the Czech Republic and the Act on Election to Municipal Assemblies orders mayors of municipalities where at least 10% of citizens declared, during the last census, their affiliation to other than the Czech national origin, to publish in the manner commonly used in such place, not later than 15 days before the elections day, a notice on the time when and the place where the elections in the municipality will be held in both the Czech language and the language of the relevant national minority.

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53 By Notice of the Ministry of the Interior No. 521/2006 Coll.

54 of 12 December 2006 (I. ÚS 768/06)

Before the elections to the Chamber of Deputies, the Senate and municipal assemblies, the Ministry of the Interior sent to all municipalities having such duty the "Information on the Manner of Voting" in the languages of the relevant national minorities. This information in the languages of the national minorities was posted in the relevant municipalities at a place commonly used for such purpose, mostly at the official board of the municipal authority, and also in all polling stations located in territory of the municipality.

1.5 Freedom of assembly

1.5.1 Results of investigation of the case "CzechTek 2005"

The police intervention against the participants of the free electronic dance festival (technoparty) "CzechTek 2005" was investigated, on the basis of criminal charges, by the Inspection of the Minister of the Interior, which did not find that the manner in which the intervention of the police as a whole was carried out did not amount to a criminal offence. The matter was set aside.[55] The intervention was evaluated as justified by the employees of the Police Presidium of the Czech Republic.

The Inspection of the Minister of the Interior received a total of 128 submissions in connection with "CzechTek 2005", 99 of which were assessed as insufficiently specific, and reviewed 29 submissions in separate criminal proceedings (two acts were excluded for the purpose of separate criminal proceedings). In 27 cases, the police authority decided to set the matter aside.[56] In one case (damage to the left light and body of the vehicle belonging to one of the participants), the file was referred to disciplinary procedure. In the last case, the file was referred to the Public Prosecutor's Office with a motion for initiation of criminal prosecution (use of another policeman's textile identification number by a policeman participating in the intervention).

The case "CzechTek 2005" had already been dealt with in 2005 by a number of legislative and executive authorities. The Senate expressed an opinion that the intervention of the Police of the Czech Republic at the event was excessive and inadequate with regard to the situation and demanded expedient and thorough investigation of all circumstances and the presentation of the final report of such investigation.[57]

The Ministry of the Interior prepared a "Report on the Causes, Course and Consequences of Events at the Technoparty CzechTek 2005", which contended, *inter alia,* that the intervention of the Police of the Czech Republic, taken as a whole, complied with the law and only individual failures occurred during the event. The report was reviewed by the Chamber of Deputies[58] and by the Senate. While the Chamber of Deputies did not adopt any resolution on the Report, the Senate[59] stated that the report has a number of deficiencies, did not help evaluate the event and does not represent the report required by the above resolution of the Senate.

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55 Section 159a(1) of the Rules of Criminal Procedure

56 Section 159a(1) or Section 159(4) of the Rules of Criminal Procedure

57 Resolution No. 218 of 5 August 2005

58 On 20 September 2005

59 Resolution of 8 December 2005

The "Final Position on the Police Conduct against the Participants of the CzechTek 2005 'technoparty'" issued by the ombudsman was mentioned in the previous Report. On 14 February 2006, the ombudsman's final position was discussed by the Petition Committee of the Chamber of Deputies of the Parliament of the Czech Republic, which asked the Minister of the Interior for his response to objections set forth in the final position.[60] The Minister's response was dispatched on 3 March 2006.

The Ministry of the Interior issued in April 2006 guidelines which are to help the municipality resolve problems relating to the organization of "technoparty-type events". This material includes a model of generally binding ordinance issued by the municipality, an overview of the legislation relating to the organization of such event and guidelines for mayors of municipalities in the territory of which where such events are organized. The purpose of the material is to provide an instrument to municipalities to regulate the organization of similar large-scale events and to eliminate related problems (including interference into third-party rights) without breaching the freedom of assembly which is guaranteed by the constitution (the application of the model generally binding ordinance cannot forbid the organization of such events).[61]

The next CzechTek, organized in 2006, was not accompanied by any repressive police interference. Instead of police cordons, the police sent there its "anti-conflict teams", to provide information to the participants, which is a definitely positive experience.

1.5.2 Police interventions at demonstrations and assemblies

1.5.2.1 Intervention at the May 1st demonstration in Prague

A police intervention against Kateřina Jacques, the then candidate of the Green Party to the Chamber of Deputies, occurred on 1 May 2006 at a demonstration of the national socialist movement Národní odpor (National Resistance). While the police officer who carried out the intervention alleges that he used coercive means against Kateřina Jacques only after she failed to obey his order, Kateřina Jacques and a number of witnesses insist that she was beaten without any reason. A major part of the incident was visually recorded by the persons present at the scene. The police conduct gave rise to strong criticism of the media and politicians.[62] Even the police president Vladislav Husák stated that this action had been underestimated by the police.[63]

The intervening policeman was suspended. The case was investigated by the Inspection of the Minister of the Interior, who proposed to prosecute the policeman for abuse of powers of a public servant, personal injury and restriction of personal freedom. In November 2006, the criminal prosecution was stayed by the public prosecutor who stated that no criminal offence had been committed. On the contrary, the intervening policeman's lawyer filed against Kateřina Jacques in August 2006 charges for assault on a public servant, perjury and false

60 Resolution No. 278

61 The guidelines are available at the website of the Section of Supervision and Control of Public Administration, Ministry of the Interior (www.mvcr.cz/odk, section documents).

62 The intervention was also criticised by the then chairman of the Chamber of Deputies Lubomír Zaorálek and the former Primer Minister Jiří Paroubek.

63 "Husák: Prvomájovou akci jsme podcenili" (We Underestimated the First May Event) – the news server www.idnes.cz, 8 May 2006. The police president was quoted as saying the following: "A system failure is out of the question; this was rather due to the underestimation of preparation and of the implementing phase."

testimony. Three senior police officers were punished for the intervention against Kateřina Jacques and the Inspection of the Minister of the Interior also investigation errors of other four policemen, who stood by and watched this intervention.[64]

2. Judiciary, right to judicial and other protection

2.1 Changes of the legislation

The offence of breaching international sanctions (Section 171d), which was added to the Criminal Code,[65] is directed against anyone who commits a large-scale breach of an order, ban or restriction set forth to preserve or renew international peace and security, to protect human rights or to combat terrorism, which the Czech Republic is bound to observe due to its membership in the UN or EU. At the same time, this offence was added to the enumeration of offences the failure of which to frustrate or to report is punishable.[66]

2.2 Lodging deposits under the Code of Civil Procedure

The previous Report referred to an amendment[67] to the Code of Civil Procedure,[68] which introduced a general institute of lodging deposits in the amount of CZK 50,000 (CZK 100,000 in commercial matters). Such deposits are to be logged by all petitioners seeking an interim order for the subsequent coverage of any damage that may be incurred by the counterparty (details see the previous Report).

It has to be noted that no changes of the legal regulation of the content of this institute were made in the past year. The Committee for Civil and Political Rights of the Human Rights Council of the Czech Republic Government proposes either to wholly remove the obligation of petitioners seeking an interim order to lodge deposits or to stipulate that this duty and the amount of such deposit is to be determined by the court at its own discretion.

3. Persons whose freedom has been restricted

3.1 Legislative changes

The Parliament of the Czech Republic passed in 2006 Act No. 321/2006 Coll. amending Act No. 141/1961 Coll. on the Rules of Criminal Procedure, as amended (hereinafter the "Rules of Criminal Procedure"), and Act No. 283/1991 Coll. on the Police of the Czech Republic, as amended (hereinafter the "Police Act"). This Act expands the authority of the Police of the Czech Republic to carry out, subject to the fulfilment of the conditions stipulated by the law, identification acts (taking DNA by buccal smears) despite the disagreement and resistance of a suspect or defendant. This also applies to persons sentenced finally for an intentional

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64 Source: the news server www.idnes.cz, articles published on 1 May, 5 May, 7 May. 8 May, 24 May, 12 June and 20 November 2006 and the website encyclopaedia www.cs.wikipedia.org.

65 By Act No. 70/2006 Coll. amending certain laws in connection with the adoption of the Act on Implementation of International Sanctions

66 The offences under Sections 167 and 168 of the Criminal Code

67 Act No. 59/2005 Coll. amending the Code of Civil Procedure, as amended

68 Act No. 99/1963 Coll., the Code of Civil Procedure, as amended

criminal offence, who are currently in prison or who have been ordered protective treatment by a final and effective court decision.

The Prison Service of the Czech Republic made in 2006 an analysis of the application of Act No. 169/1999 Coll. on Imprisonment and on the Amendment to Certain Related Laws, as amended (hereinafter the "Imprisonment Act"), of Act No. 293/1993 Coll. on Detention, as amended (hereinafter the "Detention Act") and of Act No. 555/1992 Coll. on the Prison Service and Judicial Guard of the Czech Republic, as amended (hereinafter the "Prison Service Act"), which resulted in a summary of proposals for amendments of these acts. The aim of the proposed amendments is to further specify the legislation using the experience obtained public prosecutors in the performance of their supervisory activities and the experience of the Prison Service of the Czech Republic. These proposals include, among others, an amendment to the Imprisonment Act which would provide more possibilities to employ prisoners (see chapter 3.2.2. below).

3.2. Detention and imprisonment

3.2.1 Development of the number of prisoners and prison capacity

The decrease of the number of remand prisoners in 2006 to 18,578 persons may be considered as a positive tendency. On the contrary, the number of convicted persons remained relatively high in 2006, compared with previous years. The number of 16,179 prisoners was comparable with the number of convicted persons in 1999.[69] *Overcrowding of prisons has to be resolved mainly by conceptual measures, i.e. imposing alternative sentences whenever effective, which was also recommended by the CPT. Nevertheless, under the present circumstances where many alternative sentences end up in ordering imprisonment because they were not carried out, it is also worth considering an increase of the prison capacity.*

The development of the number of remand prisoners and convicted persons in the last eight years is shown in the following table.

Balance at 31/12	1999	2000	2001	2002	2003	2004	2005	2006
Remand prisoners	6,934	5,967	4,583	3,384	3,409	3,269	2,860	2,399
Sentenced prisoners	16,126	15,571	14,737	12,829	13,868	15,074	16,077	16,179
Total	23,060	21,538	19,320	16,213	17,277	18,343	18,937	18,578

The accommodation capacity of prisons and remand prisons (without prison hospitals) amounted as of 31 December 2006 to a total of 18,896 places. 2,899 places were allocated for detention, 15,997 for imprisonment. As of the same date, 82.8% of the accommodation capacity allocated for detention and 101.1% of the capacity allocated for imprisonment was used. The Prison Service of the Czech Republic registered the maximum daily number of prisoners on 21 April 2006 when a total of 19,601 prisoners were accommodated in remand prisons and prisons, 2,697 of them in detention and 16,904 in prisons. *The accommodation capacity for prisoners was exceeded by 8.1%, i.e. by almost 1000 persons.*

The average length of detention amounted in 2006 to 145 days, i.e. 7 days less than in 2005.[70] This can be explained by the total number of persons taken into custody in 2006 – 6,654 persons- which is by 669 persons less than in 2005.

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[69] The decrease of the staff numbers of the Prison Service of the Czech Republic may also be considered an undesirable trend. While the staff numbers fell in 2006 by 3.4% in comparison with 2003, the number of prisoners increased in the same period by 17%.

[70] The average detention period amounted in 2005 to 152 days (2004: 143 days).

By the end of 2006, the Prison Service of the Czech Republic lacked a total of 80 accommodation places for the sentenced prisoners. i.e. by 459 places less than in 2005. The biggest deficit existed in prisons with surveillance. All other types of prisons had sufficient accommodation capacity. Therefore, it was also necessary to apply in 2006 (albeit to a smaller extent) the exemption from the provision on minimum living space of 4 sq. m per one prisoner, which was allowed by the decree in case that the total number of prisoners in all prisons of the same type existing in the country exceeds the stipulated prison capacity.[71]

The development of the number of prisoners and average use of accommodation capacity in 2006 is documented by the following table:

Date	Remand prisoners				Sentenced prisoners				Inmates total
	men	women	total	use of capacity	men	women	total	use of capacity	
1. 1. 2006	2,695	164	2,859	86.5	15,326	742	16,068	105.1	18,927
1. 4. 2006	2,566	143	2,709	84.6	16,065	790	16,855	108.3	19,564
1. 7. 2006	2,351	124	2,475	82.1	15,912	785	16,697	106.3	19,172
1. 10. 2006	2,369	130	2,499	83.4	15,650	784	16,434	103.9	18,933
31. 12. 2006	2,277	129	2,399	81.9	15,376	803	16,179	100.6	18,578

Shortage of accommodation capacities in individual prison types was resolved in 2006 not only by changes in the purpose of the use of spaces which were used for purposes other than the accommodation of prisoners (storage space, offices, other unused spaces) but also by opening of new facilities (the Rapotice facility of the Remand Prison in Brno), repairs of existing facilities (Kynšperk Prison, Břeclav Prison) and by partial transformation of unused accommodation capacity allocated for detention to facilities used for imprisonment.

Due to all of the foregoing measures, the Prison Service of the Czech Republic succeeded to reduce in January 2007 overcrowding of prisons. The accommodation capacity of remand prisons and prisons (without capacities used by prison hospitals) was filled as of 11 January 2007 slightly below 100%.

3.2.2 Offer of treatment programmes and employment of prisoners

Like in 2005, no prison and remand prison areas were allocated to preventive education, educational activities, hobbies and sports of remand prisoners. The development of the number of remand prisoners will permit such allocation only in 2007.

As regards imprisonment, the number of prisoners in specialized prison wards increased in 2006 by 2% in comparison with 2005 while maintaining the quality of the implemented programmes. The number of activities for young generation designated for treatment of young prisoners grew by approx. 12%; the number of sentenced prisoners in pre-release wards of prisons and remand prisons and of implemented programmes of preparation of release of prisoners from prisons grew by 9%, and the number of prisoners serving their prison sentences in drug-free zones of prisons and remand prisons grew by 7%. At the same time, a specialized prison ward for mentally retarded male prisoners was opened on 1 January 2007 at the surveillance prison facility of the Prison in Stráž pod Ralskem.

[71] Section 17(6) of Decree No. 345/1999 Coll. publishing the Rules of Confinement, as amended

Employment of remand prisoners is governed by the Detention Act, which stipulates that remand prisoners may be employed during detention upon request. Their placement is governed by Act No. 262/2006 Coll., the Employment Code, as amended by Act No. 585/2006 Coll. Employment of sentenced prisoners is regulated in the Czech Republic by the Imprisonment Act. Section 28 of the Imprisonment Act stipulates basic duties of sentenced prisoners. One of these duties is the work duty, provided that the convict has been allocated work and is not recognized as temporarily incapable of work or is not recognized as incapable of work during his imprisonment due to his health condition. The Prison Service of the Czech Republic employed as of 31 November 2006 51.51% of all sentenced prisoners, i.e. 7,001 of 13 330 persons capable of work.[72] The average monthly work remuneration of sentenced prisoners amounted in the first half of 2006 to 4,286 crowns. Due to systematic effect, the employment level of sentenced prisoners was increased to 53% by 30 November 2006. The Prison Service of the Czech Republic plans to provide employment to 60% of prisoners in 2007. An average number of 41 persons out of 2,399 remand prisoners were employed in 2006. [73]

The Prison Service of the Czech Republic currently offers to prisoners employment in its own prison and manufacturing facilities, with businesses and in the centre of economic activities. The convicts sort out waste or used textile, work as cleaners, bookbinders, mount cables or connectors. The convicts in one of the heaviest prisons, Mírov, manufacture wooden furniture, blinds or aluminium chimney lining. However, the job offer as a whole is insufficient. Therefore, the Ministry of Justice has decided to allow to the convicts, by an amendment to the Imprisonment Act, to work for municipalities or non-governmental non-profit organizations, like those sentenced to public works. Even now, prisoners serving light sentences commonly work under supervision in private businesses outside prison facilities. For instance, convicts in the prison in Stráž pod Ralskem work in shifts in glass factories or in a company assembling lighting. These opportunities are, however, limited due to the declining numbers of sentenced prisoners who can be permitted to move freely.

Therefore, the Prison Service of the Czech Republic has been striving for a long time to further develop the centre of economic activities, whose establishments exist for the time being in 14 prisons and remand prisons. In addition to employment of prisoners, the economic activity also generates profit, which is re-distributed every year[74] and is then used for the development of the establishment and the prison. *With regard to the large number of unemployed convicts who are capable of work and to the problems relating to employment of convicts outside prison facilities, it is necessary to make maximum use not only of the existing manufacturing areas inside prisons but to also strive for their expansion, e.g. by the renovation of existing premises.*

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72 The long-term employment rate of sentenced prisoners since 2003 is 46%. As of 30 November 2005, this rate reached 47.29%, which means that 6,340 out of 13,406 employable sentenced prisoners were employed. The average percentage of employed convicts amounted in 2005 to 45.07%, which means that 5,995 out of 13,302 employable convicts were employed. In 2006, this rate amounted to 46.87%, which means that 6,262 out of 13,359 employable convicts were employed.

73 Employment of remand prisoners is governed by Act No. 293/1993 Coll. on Detention, which stipulates that remand prisoners may be employed during detention upon request.

74 While the profit amounts in 2005 to CZK 16,500,000, it increased in 2006 to CZK 26,608,000. The cost of reconstruction of prison spaces for manufacturing purposes are estimated by the Prison Service of the Czech Republic at approximately CZK 30 million.

3.2.3 Provision of health care in the prison system

In 2006, the Prison Service of the Czech Republic continued to provide health care to prisoners, because it is also a health care facility. The Prison Service of the Czech Republic provides general practitioner care for adults, outpatient specialist care and basic care, i.e. not the specialized and super-specialized inpatient care.

Health care provided to insured remand prisoners and convicts is paid out of the public health insurance to the extent specified by Act No. 48/1997 Coll. on Public Health Insurance, as amended. Health care which does not follow curative purposes and is provided under the laws regulating detention or imprisonment is paid out of the state budget through the Prison Service of the Czech Republic. The state budget also covers health care provided in treatment of persons who lack the status of the insured under the law or who are not insured otherwise to the extent stipulated by international documents or intergovernmental agreements, but at all times at least to the extent of urgent health care. Any health care demanded by the remand prisoner or the convicted prisoner in excess of the care covered by public health insurance or the state budget is paid by the relevant person himself. In his report on systematic visits to prisons, the ombudsman stated that the convicts who take only social pocket money or foreigners not participating in health insurance do not possess sufficient funds to pay for medicines subject to additional charge. As a tentative solution, the ombudsman proposed to open a "special account" for such convicts where it would be possible to send an amount which would not be further curtailed and such funds would serve solely to cover the cost of medicines. As a subsidiary measure, it would be possible to introduce a system of withholding a part of funds from the convict's income for health care purposes. However, the General Directorate of the Prison Service of the Czech Republic stated that such measure cannot be implemented under current legislation. [75]

In the opinion of the Prison Service of the Czech Republic, the quality of health care provided to convicts does not differ from the quality of health care provided to other people, because the qualifications of health care professionals authorized to provide health care is generally determined by special laws. *However, the law does not stipulate any supplementary or further qualification prerequisites for health care professionals providing health care in prisons. The relatively widespread presence of wardens at medical examination is an undesirable practice contradicting the law, which was criticized by the CPT and by the ombudsman, who recommended that this situation should be solved, for instance, by installing signalling devices in the physician's office or by drilling an aperture covered with acrylic glass in the door, which would enable the prison service staff to monitor the convict, if the physician so wishes, but would be out of earshot.*[76]

As to health care staffing, the Prison Service of the Czech Republic has been facing a long-term shortage of physicians, which results from unattractiveness of the performance of health care profession in prisoners and from lower remuneration of such work in comparison with the private sector. Most physicians providing health care are thus of an alder age category or

[75] The convicts who have been prescribed more expensive kinds of medicines, as agreed with the physician, or who have no money on their account may agree individually with the financial department of the prison through their tutor on the opening of a "special account". Thereafter, any monies sent by the family are designated solely for covering the medicines and are not subject to deductions.

[76] Medical examinations and checks of the convicts are regulated by Section 23(2) of the Decree of the Ministry of Justice No.. 345/1999 Coll. publishing the Rules of Confinements, which stipulates that "all preventive, entry, periodical, extraordinary and pre-release medical examinations of convicts have to be performed out of earshot and unless decided otherwise by the physician, also out of sight of the Prison Service staff, except for health care personnel."

of the retirement age. Another problem is the provision of health care by general practitioners for adults, which is due to the shortage of these physicians also outside prisons.

The above problems relating to the provision of health care cannot be resolved without a principal change of the laws regulating the provision of health care in the prison system. A key moment is to ensure financial funds or other motivation tools which would increase interest of medical specialists in working in prisons. Furthermore, it has to be considered whether to provide health care to the convicts by facilities outside the competencies of the Ministry of Justice or whether to provide primary health care service by health care facilities belonging to the Ministry and other specialized health care in cooperation with health care facilities outside prisons.

The envisaged solution of the existing problems by a "public health care organization" requires a special legal regulations because Act No. 245/2006 Coll. on Public Non-profit Inpatient Health Care Facilities, as amended, may be used for such purpose only if such facility is open to the public. At the same time, it is necessary to consider a change of the system of coverage of health care provided to insureds within the scope of public health insurance. Under the existing laws, insurance premiums for remand or convicted prisoners who are not employed are paid by the state. Health care to these persons is mostly provided by the Prison Service of the Czech Republic; however, the coverage provided by the relevant health insurance company does not represent an income of the Prison Service, because it has to be paid to the relevant chapter of the state budget.

3.2.4 Prison Information System

In 2006, the Prison Service of the Czech Republic put gradually into operation individual parts of the Prison Information System, the establishment of which was mentioned in the 2005 and 2004 Reports. The "Prisoner Administration" module, which was put into current operation in July 2006, will be used by the Prison Service of the Czech Republic to maintain records of remand prisoners and convicts. The module "Prison and Judicial Guards", designated for planning and carrying out escorts and keeping records of entry of persons and vehicles into organizational units of the Prison Service of the Czech Republic, was put into operation in October 2006. Other modules, called "Economy and Employment of Prisoners", "Stock Management" and "Administration", were analysed in detail in the course of the year and their commissioning is planned for 2007.

3.2.5 Participation of remand prisoners and convicts in elections to the Chamber of Deputies, the Senate and municipal assemblies [77]

All remand prisoners and convicts who are Czech citizens older than 18 years of age could participate in the elections to the Chamber of Deputies of the Parliament of the Czech Republic,[78] which took place on 2 – 3 June 2006. On 3 June 2006 at 2:00 p.m., i.e. at the moment of closing of the polling stations, there were 2,583 remand prisoners and 16,728 convicts, i.e. a total of 19,311 persons 17,564 were eligible voters. The suffrage was exercised

[77] Electoral commissions did not find any shortcomings in the activities of the Prison Service of the Czech Republic relating to the preparation and organization of the elections. The election process in prisons was also supervised by members of the State Electoral Commission.

[78] See chapter 1.4 of the Report

by 846 remand prisoners and 6,589 convicts, i.e. by a total of 7,435 persons (42% of the total number of eligible voters).[79]

The participation of remand prisoners and convicts in the elections was influenced particularly by the facts that 1/3 to 2/5 of the convicts have no identity document[80] *and the electoral commissions did not therefore allow them to vote, even if they had so wished. This affected 375 remand prisoners and 1,055 convicts.* [81] In this respect, the Prison Service of the Czech Republic stated that if a convict wishes to be issued a proof of identity (an identity card), the social worker in the prison will assist him/her in filing the relevant application. *A new provision which will be inserted into the Regulation of the General Director No. 40/2000 on Keeping Prison Administration will stipulate that a person without a proof of identity shall be instructed at the start of his/her detention or prison sentence that it is for his/her sake to possess a proof of identity during his/her detention or imprisonment.*

Elections to the Senate of the Parliament of the Czech Republic[82] were held only in the prisons in Břeclav, České Budějovice, Horní Slavkov, Kynšperk nad Ohří, Litoměřice, Olomouc, Prague - Pankrác, Rýnovice, Teplice and Všehrdy. 37 remand prisoners and 1387 convicts, i.e. a total of 175 prisoners (36% of the total number of eligible voters) participated in the first round of the elections, and 31 remand prisoners and 108 convicts, i.e. a total of 139 prisoners (29% of the total number of 479 eligible voters) participated in the second round of the elections. *The total number of eligible prisoners in these prisons was only 482 persons, because only convicts having permanent residence in the same electoral district where the remand prison or the prison where they served their sentence was situated could vote in the Senate elections. This condition should be open to discussion and another method not preventing the convicts from the exercise of one of their fundamental rights should be proposed.*

Only 3 persons participated in the elections of municipal assemblies, because the number of eligible voters (only from among the ranks of convicts) was principally restricted by the diction of the law. The Act on Elections to Municipal Assemblies does not include notions like the voter's card or a special voters register; thus, only convicts listed in the permanent voters register, i.e. those residing permanently in the same electoral district in which the prison where they were placed had its seat could vote. These conditions were only fulfilled by 14 convicts and only three of them exercised their suffrage.

3.3 Decision of the Supreme Court of the Czech Republic on parole

The judgment of the Supreme Court of the Czech Republic 4 TZ 48/2006 concerning the assessment of redemption of the convict as an obligatory condition for parole represents an important decision of the criminal justice relating to parole. In the reasoning of its judgment, the court defined redemption as "a development process of internal transformation of the

[79] A total of 1,237 remand prisoners and 5,349 convicts participated in the elections to the Chamber of Deputies.

[80] Those are mostly persons who are arrested while still at liberty and are transported to remand prisons or prisons by the Police of the Czech Republic. Persons coming to prisons from civil life must have an identity card, otherwise they would not be accepted to prison.

[81] A total of 4,756 prisoners (about 26%) lacked documents authorizing them to vote at the tome of elections to the Chamber of Deputies.

[82] See chapter 1.4 of the Report.

convict, where the convict's behaviour and performance of his duties are non-negligible but are not the only grounds for the assessment of the perpetrator's redemption. Therefore, the convict's behaviour during imprisonment has to be assessed in connection with his character properties …" and "only on such premise, it can be assessed whether the convict has reached such degree of rehabilitation that he has already got rid of the character features and bad habits which made him commit the crime." At the same time, it was stated that "the court can assess whether this legal condition has been fulfilled only with the help of expert reports from the field of health care, specialization of psychology or psychiatry." The significance of this decision is given mainly by the absence of uniform judicial practice in deciding on applications for parole and with regard to frequent formalism of court decisions in these matters.

3.4 Rights of persons deprived of freedom by the police authorities and conditions in police cells

A number of events accelerating changes in police cells occurred in 2006. An irregular thematic inspection of compliance with the laws and international management acts regulating the use of police cells, ordered by the Command of the Police President No. 96 of 12 September 2005, was held in the first half of 2006. Police establishments were also visited by the ombudsman[83] and the CPT (see chapter 3.2. of this Report). A draft new binding instruction of the police president, prepared in response to recommendations of the ombudsman[84] and the CPT, regulates the issues of police cells, including instruction of persons placed therein.[85] *The draft of the new binding instruction of the police president on police cells takes into account the comments of CPT and the ombudsman regarding the instruction of persons placed in police cells. The Ministry of the Interior prepared a new form of instruction on rights and obligations of a person placed in a police cell. The fact that the apprehended person has been instructed about his right is confirmed by his signature and such person will also receive a copy of the instruction. The right to the detainee to legal aid, medical treatment and examination by a physician of his own choice has also been perfected. Provision of food and compliance with the drinking regime of persons deprived of freedom has also been newly regulated,*[86] *and a double lighting regime in cells has been introduced. The metal rails – devices used to shackle prisoners to the wall, which the CPT criticised during its visits and the removal of which it recommended, were removed from police cells.*[87]

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83 In January and February 2006, the ombudsman visited 19 police establishments.

84 The ombudsman considers as a more serious shortcoming the fact that although each every cell should be equipped with toilet paper, a towel and soap, these things are not always placed in the cell. Toilet paper is often provided only upon request of the detainee and only at the discretion of the cell guards. No soap was placed in individual cases in the cells, even if the cell was occupied by a person deprived of freedom. In accordance with this finding, the ombudsman recommended including in the list of furnishings of a cell designated for keeping the detainee for more than one hour also plastic cups, a toothbrush and toothpaste.

85 The binding instruction of the police president no. 42 on police cells dated 30 March 2007 is effective as of 1 August 2007.

86 The ombudsman also pointed to a problem comprised of the fact that the applicable laws do not stipulate the possibility of a person deprived of freedom to purchase extra food for their own money, even though this occurs frequently beyond the limit of legal obligations of the policemen, out of their "good will" and usually upon request of a person deprived of freedom. The ombudsman's investigation pointed to systemic shortcomings relating to the observation of the drinking regime of persons deprived of freedom and to their access to drinking water.

87 The ombudsman designated the existence of rails serving to restrict the movement of persons, which were installed in eight out of nineteen visited establishments, as a principal and generally widespread problem.

Some recommendations of the ombudsman and the CPT will be also included in the new Bill on the Police of the Czech Republic.

3.5 Detention facilities for foreigners

Detention facilities for foreigners have been operated since 1 January 2006 by the Refugee Facilities Authority of the Ministry of the Interior (hereinafter the "Refugee Administration Facility"). These facilities include the facility in Velké Přílepy, Frýdek Místek, Poštorná and Bělá - Jezová. The change of the operator[88] has been the most significant legislative regulation in operation of these facilities. Other significant changes which have taken place defined the conditions of accommodation and scope of services provided in these facilities. The main tasks of the Refugee Administration Authority following the takeover of the facilities consisted in staffing of the operation of the facilities and setting up effective cooperation with the Foreigner and Border Police and the Asylum and Migration Policy Department of the Ministry of the Interior. The Refugee Administration Authority undertook in 2006 the necessary repairs and investment projects ensuring the fulfilment of the condition of accommodation in the facilities stipulated by the law and expanded the range of leisure time activities, preserving at the same time security in the facilities and observing their purpose. As a part of the improvement of accommodation conditions in the foreigner detention facilities, the Refugee Administration Authority furnished all spaces serving for accommodation with wardrobes, tables and chairs in the number corresponding with the number of foreigner accommodated in the facilities; allowed foreigners placed in facilities with a lenient regime to use, without restrictions imposed by the regime, other spaces which are parts of their accommodation spaces, particularly spaces for leisure time activities and for outdoor exercise; created conditions for separate accommodation of men, women, families and unaccompanied minors. The priorities of the Refugee Administration Authority in 2007 include the application of internal and external security elements, implementation of structural modifications which will further improve accommodation conditions in detention facilities for foreigners, as well as the development of cooperation with the non-governmental sector in this area, particularly with regard to securing the rules necessary for the operation of detention facilities for foreigners.

In the course of 2006, all detention facilities for foreigners were visited by employees of the Office of Public Defender of Rights (the Ombudsman). Beside their appreciation of the above changes, they found certain shortcomings in the conditions of accommodation, which were removed on the basis of the ombudsman's recommendations.[89] *Furthermore, the employees of the Ombudsman's Office found that the instruction concerning the rights relating to the legal status of a detained foreigner is not applied uniformly in the detention facilities for foreigner. The instruction provided in some facilities contained only an instruction on the possibility to apply for asylum; in other cases, this instruction also included information on the possibility to appeal the decision on the detention before an administrative court and to file a petition during detention concerning expiry of the grounds for detention. Based on the ombudsman's*

88 Until 31 December 2005, the detention facilities for foreigners of the Police of the Czech Republic had been operated by the Directorate of the Foreigner and Border Police.

89 Cameras were still installed in the accommodation rooms of a detention facility for foreigners with the lenient regime, even though the director of the facility and the police stated that they were not used. On the contrary, cameras installed in the strict regime were fully functional and were used. Based on recommendations of the ombudsman, who considers such measure as an inadmissible infringement on the right to personal immunity and privacy guaranteed by Article 7(1) of the Charter of Fundamental Rights and Freedoms and by Article 10S, the Refugee Administration Facility dismounted these devices from the foreigners' rooms".

recommendations, it was promised that the Directorate of the Foreigner and Border Police will include in its internal directives the duty of the police in the detention facilities for foreigners to provide a written instruction concerning the possibility to file an administrative action against the decision on detention and an instruction on the possibility to make a declaration on the intent to apply for asylum. Another shortcoming was found by the ombudsman in the fact that not all language versions of the internal rules were available an foreign language versions of the forms "Familiarizing Foreigners with the Internal Rules of the Detention Facility for Foreigners" and "Instruction of the Foreigner on Handling Deposited Financial Funds and Things". The Refugee Administration Authority promised to remedy these shortcomings.

4. Trafficking in persons, forced labour, domestic violence

4.1. Trafficking in persons for the purpose of sexual exploitation[90]

Trafficking in persons for the purpose of sexual exploitation is evidently connected with sexual industry and represents an apparent form of gender-conditioned violence, because the vast majority of victims are women. There are, however, other forms of such trafficking, which exist in other areas (e.g. construction works, agriculture, household or cleaning works) and where the representation of men and women is more balanced.

In case of trafficking in persons for the purpose of sexual exploitation, the "consumers" of sexual services form a special and limited group, with which the majority not only does not identify itself but often feels morally superior to such consumers. If we consider that the term trafficking in persons encompasses a broader range of areas than sexual industry, each of us is a potential consumer of such services, because e.g. the employment of migrants may dramatically decrease the final price of goods or services.

4.1.1. Migrants, employers and consumers[91]

Migrants arriving in the Czech Republic for work are a typical example of the public attitude to other forms of trafficking in persons. Some of them become, with differing intensity, victims of exploitation or coercion, which is not very serious or extreme in a number of cases. The relation between the employer and the migrant worker is also generally considered as advantageous for both parties and in the end also for the consumers.

Migrants come to the target countries to earn money. Despite being very low, their earnings are mostly higher that in their country of origin. A certain degree of coercion and exploitation is perceived merely as a negative (side) effect of migration, of which the migrant workers are often aware and even count on it. Employers hire these workers to save their own wage costs. This is indicated by the popular statement of a representative of the Association of Building Entrepreneurs that if not for migrant workers, the whole construction industry would have gone bankrupt. If the employers were unable to hire migrants and had to comply with all terms and standards arising from the relevant labour laws, such fact would have a negative impact on the final price paid by consumers. Moreover, it is possible that no domestic

[90] This chapter was prepared on the basis of documents provided by the non-governmental organization La Strada Česká Republika, o.p.s.

[91] This chapter was prepared on the basis of documents provided by the non-governmental organization La Strada Česká Republika, o.p.s. and of the Czech-Moravian Confederation of Trade Unions.

workforce would be found for certain types of work. Consumers wish to save money, thus creating pressure on the maintenance of low prices, which is helped significantly by the use of cheap migrant labour force.

4.2 Forced labour and other forms of exploitation

The applicable definition of trafficking in human beings has complied since 2004 with the Palermo Protocol[92] of 2000 and covers trafficking in areas other than the exploitation in sexual industry. To date, no case of trafficking in persons under this new definition has been reviewed by a court and there is thus no case law which could be applied as guidance for the interpretation of the new provision. Particularly the practical interpretation of the terms "forced labour and other forms of exploitation", which is a part of the definition of trafficking in persons, seems problematic for the time being.

The abuse of vulnerability of migrants has become almost a rule in cases of forced labour and exploitation; however, it is only rarely seen as a form of coercion within the meaning of the definition of trafficking in persons, even though the term "abuse of a position of vulnerability" is expressly stated in the definition[93]. The issue of defining and proving coercion as one of the characteristics features of trafficking in person is especially problematic in other forms of trafficking in persons.

Forced or compulsory labour is not a criminal offence, even though the Convention of the International Labour Organization No. 29 concerning Forced or Compulsory Labour (Article 25), which is binding for the Czech Republic, requires from the parties to punish forced labour as a penal offence. Therefore, one of the potential solutions is to prosecute forced labour as an offence of trafficking in persons, because a part of the definition of this offence which describes the purpose of the trafficking expressly mentions forced labour or other forms of exploitation.

Finally, it is very difficult if not impossible to punish effectively cases of forced labour and exploitation which do not result from trafficking in persons. The combating of trafficking with persons for purposes other than sexual exploitation is further impeded by the issue of definition of the limit between generally bad/risky working conditions and forced labour or exploitation within the meaning of the definition of trafficking in persons and of forced labour.

In this area, traffickers/exploiters tend to use more sophisticated methods of pressure than open violence, threats of violence or direct restriction of freedom, i.e. practices which are frequently used in sexual exploitation. Since working migrants have a significant motivation to work and to earn money, they are often prepared to sustain treatment which would be

92 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention on Transnational Organized Crime.

93 Section 232a of Act No. 140/1961 Coll., the Criminal Code, stipulates the following: Trafficking in persons (1) A persons who entices, engages, hires, lures, transports, hides, detains or gives over a person younger that eighteen years of age to be used for a) sexual intercourse or other forms of sexual harassment or abuse, b) slavery or servitude or c) forced labour or other forms of exploitation, shall be sentenced to a terms of imprisonment from two to ten years. (2) The same punishment shall be imposed on any person who entices, engages, hires, lures, transports, hides, detains or gives over another person, using violence, threat of violence, ruse or abusing the error, vulnerable position or dependence of such person, to be used for a) sexual intercourse or other forms of sexual harassment or abuse, b) slavery or servitude or c) forced labour or other forms of exploitation.

generally perceived as unjust, exploiting or even punishable. Unless such pressure/coercion takes really serious forms, these people are usually willing to sustain it and do not search outside help. Therefore, it is relatively difficult to prove coercion in these cases.

A department for documentation of crime in the area of illegal work and other forms of exploitation was established in 2006 at the Unit of the Police of the Czech Republic for Detection of Organized Crime.

Trafficking in persons is not carried out only for the purpose of sexual exploitation but also for other purposes. Trafficking in persons and exploitation in sectors other than sexual industry is often perceived differently and the response to these other forms of trafficking is frequently very far from uncompromising general condemnation of trafficking in persons for the purpose of exploitation in sexual industry.

Not only the general but also the professional public takes different attitudes to these other forms of trafficking, which are then reflected not only in the legislation, which is not always able to systematically cope with the differences brought about by these other forms of trafficking (the problematic interpretation of the terms "forced labour" and "exploitation"), but subsequently also in services which are provided to victims of such other forms of trafficking.

Persons trafficked in sectors other than sexual industry encounter problems which are different in a number of aspects from problems encountered by persons trafficked in sexual industry; however, almost none these differences has been examined. It is necessary that to adopt actions to protect persons trafficked in other sectors that correspond to the real needs of such persons and to prevent situations when even well-meant measures may have paradoxically a counterproductive effect.

4.3. Activities of the Ministry of the Interior focusing on care for victims of trafficking with persons

The Programme for the Support and Protection of Victims of Trafficking in Human Beings (hereinafter the "Programme") was carried on in 2006.[94] Since June 2006, the Programme has been implemented in accordance with the Council Directive[95], which regulates residence of persons who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with law enforcement authorities.

A total of 47 victims of trafficking in human beings were included in the Programme during its existence (2006: 14 victims).[96] Most persons included in the Programme were victims of sexual exploitation; only four persons were identified as victims of trafficking in human beings for the purpose of forced labour.

A pilot project focused on decreasing demand for sexual services was implemented in 2006. This project was directed at the depiction of symptoms of trafficking in human beings and

94 In 2006, Arcidiecézní charita Prague received an amount of CZK 1,721,000 out of a programme of subsidies.

95 Council Direction 2004/81/EC of 29 April 2004

96 The victims came mostly from the Czech Republic (10), Ukraine (10), Vietnam (7) and Bulgaria (6), from Slovakia, Romania or Moldavia. One client of the Programme – a victim of trafficking in human beings- was granted in 2006 permanent residence in the Czech Republic on humanitarian grounds.

involuntary prostitution and offered possibilities of safe and anonymous reporting of a suspicion and learning more about the phenomenon of trafficking in human beings through a newly established website, telephone lines and information materials.[97]

The National Strategy of the Fight against Trafficking in Human Beings (for the years 2005-2007)[98] orders the Ministry of the Interior, *inter alia,* to organize round tables with the aim of informing representatives of local and regional about forms of prevention of trafficking in human beings and about the possibilities of the Programme and to start up regional cooperation in this issue. Round tables concerning trafficking in human beings were held in 2006 in Litoměřice, Ostrava, České Budějovice and Znojmo.

4.4. Activities of non-governmental organizations focused on the care for victims of trafficking with human beings

Non-governmental organizations cooperate regularly with the Ministry of the Interior also in different educational activities (lecturing activities for law enforcement authorities, comments on materials, etc.).[99]

The report "Trafficking in Human Beings and Forced Labour and Labour Exploitation in the Czech Republic",[100] prepared by La Strada, is one of the first probes into this problem is the Czech Republic. It summarizes results of a research which took place in 2005 and which describes national and to a certain extent also international legislation in this area, including other mechanisms existing in the Czech Republic which are or should be used to suppress forced labour and labour exploitation and trafficking in human beings for such purpose.

Results of the research bring about, among others, also the first information about the citizenship of persons living in the Czech Republic in the conditions of forced labour and labour exploitation, about the forms of pressure used to keep the persons in these conditions or sectors in which the forced labour or labour exploitation occurs most frequently.

La Strada Czech Republic and other six European organizations providing assistance to trafficked women participated in a research focused on consequences of trafficking in human beings, which is carried out by the London School of Hygiene and Tropical Medicine. This research brings about detailed information about physical, mental, sexual and reproduction health symptoms of trafficked women and offers clear arguments in favour of provision of appropriate (not only medical) help and support to trafficked women with the aim of minimizing the consequences of trafficking, enabling them to gain control over their lives and to acquire again their autonomy and independence.

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97 The campaign was carried out by the International Organization for Migration (IOM) in the Pilsen Region and the South Moravia Region from April to September 2006 in cooperation with La Strada and Česká katolická charita – Projekt Magdala, which created jointly a platform named "SPOLu – Spolu Proti Obchodu s lidmi" (Together against Trafficking in Human Beings).

98 The Ministry of the Interior is preparing a third update of the Strategy. The Government Resolution No. 957 of 20 July 2005 ordered the Ministry of the Interior to assess the impact of the Strategy and to update its tasks by 30 June 2007.

99 The campaign was carried out by the International Organization for Migration (IOM) in the Pilsen Region and the South Moravia Region from April to September 2006 in cooperation with La Strada and Česká katolická charita – Projekt Magdala, which created jointly a platform named "SPOLu – Spolu Proti Obchodu s lidmi" (Together against Trafficking in Human Beings).

100 La Strada ČR, 2006. http://www.strada.cz/download/files/LS_report_CZ_20_10_06.pdf

4.5 Domestic violence

In the past years, the Report informed about the alarming scarcity of tools for protection of victims of domestic violence from acts which do not reach, for the time being, the intensity of a criminal offence. Moreover, practical cases have confirmed that it is necessary to search for an alternative solution which would prevent the escalation of violence rather than punishing the perpetrators after the violent act.

4.5.1. The act amending certain laws in the area of protection against domestic violence

Act No. 135/2006 Coll. amending certain laws in the area of protection against domestic violence (referred to in this chapter only as the "Act"), which came into force in March 2006, has brought about, with the effect from 1 January 2007, a number of preventive tools. This Act amends the Act on the Police of the Czech Republic, the Rules of Civil Procedure,[101] the Criminal Code,[102] the Social Security Act No. 100/1988 Coll., as amended (hereinafter the "Social Security Act") and the Act on Social Services No. 108/2006 Coll., as amended (hereinafter the "Social Services Act"). The most important institute which can be mentioned is the institute of expulsion and the establishment of the "intervention centres." In the health care area, cooperation in the resolution of domestic violence should lie in higher quality documenting of all injuries with which the patient comes, including a detailed description of the appearance and location of the injury, with drawing of the location of the injury in a human silhouette and recording of the so-called "negative" facts – e.g. where there is no injury. (Poor quality or insufficient documentation is a frequent obstacle of taking evidence in criminal and transgression proceedings). If the physician suspects domestic violence (admission of violence by the victim, an improbable description of the origin of the injury), he should record a number of other data (in addition to the above, also the possible origin of the injury, whether it corresponds to the patient's explanation, etc.). Knowledge of the physicians about these changes is still rather low and unbalanced.

4.5.1.1. Expulsion

This new institute[103] allows the intervening police to expel the batterer from the common dwelling for ten days; this time limit cannot be shortened. When leaving the dwelling, the expelled batterer may take with him his personal effects, valuables and documents which he needs. Within 24 hours after expulsion, the expelled person is allowed to take other things from the common dwelling at the presence of the Police of the Czech Republic. The police will inform the expelled person about accommodation possibilities in the vicinity or will allow him/her to arrange for accommodation by telephone from the police station.

Victims are advised of the possibility to file a petition with the civil court for preliminary order and of other means of assistance. The police then informs the relevant intervention centre, which will contact the person at risk and will provide counselling to him/her.

In this respect, the League of Human Rights points to the fact that although the law counts on the expulsion of the perpetrator from the common household for up to one year, it is still a

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101 Act No. 99/1963 Coll., the Rules of Civil Procedure, as amended

102 Act No. 140/1961 Coll., the Criminal Code, as amended

103 Section 21a of the Act on the Police of the Czech Republic (No. 283/1991 Coll.) "Authority to decide on expulsion from the common dwelling and to prohibit entry into it."

question whether this period will be sufficient to resolve the situation and how to resolve the situation when the perpetrator of domestic violence wants to return after one year to the common household.

4.5.1.2. Intervention centres

Intervention centres are specialized establishments providing social, legal, psychological and organizational assistance to threatened persons; thus, these centres provide individual psychological and social assistance. Since the establishment and operation of these centres was entrusted to autonomous competency of the regions without the relevant system and financial arrangements of the state, it is too soon to assess the impact of their establishment.[104]

4.5.2. Some other problems related to domestic violence

Even though the adoption of the Act will definitely contribute substantially to combating domestic violence, it does not understandably resolve all problems caused by the domestic violence phenomenon. These problems are identified by the League of Human Rights particularly in the financial situation of children of victims of domestic violence both during the existence of the marriage and after its divorce.

The League of Human Rights points out specifically the fact that, under the current legislation, "when it is necessary to decide at first on the regulation of the conditions of minor children, then to divorce the marriage and only then to settle common assets or joint apartment lease of the spouses, the perpetrator who wishes to take revenge on the victim for departure from the common household may procrastinate endlessly these proceedings and may cause during such period many other debts which will be also pitched on the victim's head"

Therefore, the League of Human Rights proposes in particular to consider the issue of regulation of tenancy in entirety of spouses, joint apartment lease of spouses and preliminary order so that the liabilities caused by the conduct of the violent spouse are not a part of the tenancy in entirety and the victim does not become a several debtor.

In this respect, the League of Human Rights suggests "re-working of the legal regulation on the institute of criminal prosecution with the injured party's consent so that such consent is not required in case of wilful criminal offences, and preparing an amendment to Act No. 200/1990 Coll. on Transgressions, as amended (hereinafter the "Transgressions Act"), which will change the regulation of the "petitioned transgressions" so that the petitioner is not ordered to pay the cost of proceedings in case of transgression against civil coexistence".

The new legislation brings about a number of new tools and also relatively broad changes in the work of the Police of the Czech Republic, the courts, municipal authorities and the non-profit sector. It also imposes higher requirements on cooperation among all relevant subjects and on the coordination of their activities. A number of measures will have to be adopted to fulfil the purpose of the Act.

First, it will be necessary to train the policemen, who will be sufficiently qualified to decide on the expulsion. The establishment of intervention centres, which appears to be potentially

104 Section 60a of Act No. 108/2006 Coll. on Social Services

problematic, will be mostly carried out by granting certain form of accreditation to a non-profit organization which has its own background and skilled employees to operate as an "intervention centre". Another problem will be the uneven dislocation of such organization throughout the Czech Republic – while a number of asylum homes or centres with a similar purpose exist in Prague, there are areas in the country without any "coverage". The opening of intervention centres attached to public administration authorities is most likely unrealistic and would not be probably functional.

5. Economic and social rights

5. 1 Legislative and other changes having significance for the implementation of economic and social rights

5.1.1. The Employment Act and job seekers

The amendment to Act No. 435/2004 Coll. on Employment, as amended (hereinafter the "Amendment"),[105] sets out, inter alia, new time limits within which a job seeker is to notify the labour office that he starts a job. Under previous legislation, a job seeker was obliged to report the start of a job within 8 calendar days; the Amendment stipulates that the job seekers is obliged to notify of the start of the job not later than on the working day prior to the day which has been agreed as the start date of the job and to document within 8 calendar days the establishment of a labour law relationship, including non-colliding employment.[106]

The ombudsman has reported that job seekers are eliminated from labour office records even if they miss a meeting with the job mediator. A job seeker who is struck out of the labour office records loses the entitlement to social allowances and to payment of health insurance by the state. Thus, the eliminated job seekers fall out of the social network for 6 months. Failure to report the change of permanent residence within 8 days has the same consequences as missing a meeting with the labour office.

As opposed to the former Employment Act, the job seeker's responsibility has shifted significantly from subjective to objective responsibility. According to the current diction of the Employment Act, labour offices have no possibility to "mitigate the harshness of the law" i.e. to assess the specific omission of the job seeker individually, because the Act does not make any room for administrative review. The ombudsman considers such decisions as excessively harsh and will strive in the nearest future for mitigation of such provisions of the Employment Act.

It may be said that such application of the provisions of the Employment Act is so strict that it contravenes in some case the meaning and purpose of the Employment Act.

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105 The Employment Act was amended with effect from 1 January 2006 by Act No. 382/2005 Coll. amending Act No. 435/2004 Coll. on Employment, as amended.

106 The Amendment also newly regulates the provisions on retraining and contribution to one socially useful job with setting wage limits. Furthermore, it is possible to include 6 months of systematic preparation for future occupation in the calculation of claim for unemployment benefits. Appropriate employment criteria applying to job seekers who are kept on the record for more than one year have been mitigated. The duty to prove the length of participation in pension insurance, imposed upon job seekers older than 50 years of age for the purpose of determination of the support period, has also been abolished.

5.1.2 The new Labour Code

The new Labour Code

The government draft of the new Labour Code was reviewed in the Parliament of the Czech Republic from 27 September 2005 to 23 May 2006. In that period, the Parliament of the Czech Republic discussed a number of bills, which also interfered into the issues regulated by the new Labour Code. Some of these bills were approved and promulgated in the Collection of Laws; however, other laws were not approved or their review was delayed in comparison with the Labour Code or was interrupted and was not completed due to the end of the election period. Due to these facts, the Labour Code is not linked with the adopted laws or counts on laws which were not approved.

The new Labour Code also contains shortcomings cause by some approved modifying proposals, as well as inaccuracies and mistakes caused especially by insufficient time for appropriate preparation and review during the legislation process.

To remove the above shortcomings, the Minister of Labour and Social Affairs decided on the preparation of an amendment to the Labour Code and some related laws. The amendment should integrate the Labour Code into the legal system, i.e. to link it to other laws or bills, and also further specifies the content of certain provisions and brings along legislative technical corrections and adjustments.

Failure to review or approve some laws has led, among others, to the following consequences:

- Due to the failure to approve the Antidiscrimination Act, the legal regulation of the former Labour Code, which was harmonized with the law of the European Union and the European Communities, is not harmonized in the new Labour Code.
- The government bill on health care, the review of which was interrupted, anticipated the existence of occupational medicine. This possibility is also counted on by the new Labour Code; however, since there is no occupational medicine, such situation has caused problems with the application of the Labour Code.
- The Labour Code does not reflect the consequences of the approval of the Registered Partnership Act and the Act on Public Non-profit Health Care Establishments, or amendments to the Act on the Legal Profession or of the new Act No. 108/2006 Coll. on Social Services.
- No links and connection between the new Labour Code and the Act on Safeguarding Further Conditions of Work Safety and Health Protection (No. 309/2006 Coll.) have been established.
- The Labour Code further contains some legal inaccuracies, legislative technical errors and some modifying proposals the application of which has had undesired consequences.

Principal conceptual amendments to the Labour Code

A group of deputies and senators submitted to the Constitutional Court of the Czech Republic in the second half of 2006 a petition for repealing certain provisions of the Labour Code. The petition objects specifically to the fact that the new Labour Code does not respect the autonomous sphere of an individual and encroaches upon fundamental rights and freedoms despite the absence of a public interest which would justify such encroachment at present and without respecting the principle of proportionality. Furthermore, the new Labour Code breaches the principle of predictability of a court decision. The new Labour Code does not

definitely constitute the declared freedom of contract and is thus in conflict the Article 1 of the Constitution and Article 11(1) of the Charter of Rights and Freedoms.

Further objections include the unequal position of the employer and the trade union organization, the unequal position of employee representatives and unequal status of employees. Giving priority to trade union organizations over the other representatives of employees who are not members of trade unions leads to indirect coercion to membership, which constitute a breach of the right to freely assemble stipulated by Article 27 of the Charter.

According to the petitioners, some provisions of the Labour Code may also represent an encroachment on privacy and personal freedom.

The Ministry of Labour and Social Affairs will await the decision of the Constitutional Court and will then file submit a proposal for principal conceptual changes of the Labour Code. In this respect, it will promote the removal of provisions hindering more flexible operation of the labour market.

In this respect, the Ministry wishes to support the pressure of the European Commission towards more flexible labour market in EU member states.

5.2 Labour law relationships

5.2.1 Employment of persons with disabilities

The Report informed last year about an increase of unemployment of disabled people. According to the Ministry of Labour and Social Affairs, the situation improved in 2006 both as regards unemployment and the number of vacancies for disabled people.

The number of unemployed disabled people kept by the end 2006 on the records of labour offices was by 4.9 % less than in 2005 (a total of 71,318). The number of vacancies for the disabled people increased by 75.9% (from 1,802 vacancies in 2005 to 3,170 by the end of 2006). The overall increase of employed disabled people amounted in the third quarter of 2006 to 96,900, i.e. by 7.9% more than in the same period of 2005.

5.3 Social security

5.3.1 Legislative and other changes

5.3.1.1 Act on Assistance in Material Destitution

The Parliament of the Czech Republic approved in March Act No. 111/2006 Coll. n Assistance in Material Destitution, as amended (hereinafter the "Act on Assistance in Material Destitution") which came into effect on 1 January 2007 and which fully supersedes the former Act No. 482/1991 Coll. on Social Neediness, as amended

The transition from the system of social care benefits bound to social neediness of a persons to the new system of assistance in material destitution will be gradual and will take four months. The Act on Assistance in Material destitution defines the basic situations relating to insufficient subsistence means, housing and extraordinary events.

A destitute person or family is entitled to assistance. This includes primarily cases of persons or families with insufficient income whose overall social situation and material condition does not allow them to satisfy their basic subsistence needs. At the same time, the Act helps resolve certain life emergencies which cannot be resolved otherwise but by immediate help.

Since 1 January 2007, citizens will be able to apply for three new benefits to assist them in material destitution – the subsistence benefit, which supersedes the social care benefit bound to social neediness, a supplementary housing benefit, which helps cover housing costs in conjunction with the housing contribution provided from the state social support system and an extraordinary immediate help in response to certain situation of people in material destitution, connected with lack of financial funds.[107]

5.3.1.2 Act on Subsistence and Existential Minimum

Together with the Act on Assistance in Material Destitution, the Parliament of the Czech Republic approved in 2006 Act No. 110/2006 Coll. on Subsistence and Existential Minimum, which changed principally the concept of the subsistence minimum. Until then, subsistence minimum was two-tier and included basic living costs (i.e. cost of food, clothing and other) and necessary household (including housing) costs.

According to the new legislation effective from 1 January 2007, the subsistence minimum has only one component. The subsistence minimum amounts for adults are newly differentiated according to the household type (a single person or a household with or without children) and graded according to the order of adults in the relevant household type – subsistence minimum for a single person, for the first adult in the household and for the second and the following adults in the household. Subsistence amounts for dependent children are still differentiated by their age.

At the same time, the institute of "existential minimum" has been introduced since 1 January 2007 with the aim of increasing the work motivation of adults in material destitution. The existential minimum fully covers the alimentary standard of an adult and about 40% of other basic living costs reflected in the subsistence minimum.

[107] The adoption of the Act on Assistance in Material Destitution was accompanied by an amendment to the Social Security Act No. 100/1998 Coll., as amended and the Decree of the Ministry of Labour and Social Affairs No. 182/1991 Coll. implementing the Social Security Act and the Act of the Czech National Council on Social Security Competencies of Authorities of the Czech Republic, as amended. The purpose of these changes was to simplify social benefits for persons with disabilities. Effective from 1 January 2007, the social benefits system for persons with disabilities consists of 11 benefits: one-off allowance for purchase of special aids, allowance for apartment modification, allowance for motor vehicle purchase, allowance for motor vehicle overhaul, allowance for special modification of a motor vehicle, allowance for motor vehicle operation, allowance for individual transport, allowance for increased living costs, allowance for payment for use of a barrier-free apartment, allowance for payment for use of a garage, allowance to totally or almost totally blind people. In addition to social allowances, people with disabilities are provided certain extra benefits (cards for the handicapped (TP), severely handicapped (ZTP) and severely handicapped with escort (ZTP/P) and interest-free loans.

5.4 Social services

5.4.1 Legislative and other changes

Act No. 108/2006 Coll. on Social Services, which was adopted in March 2006 with the effect from 1 January 2007 (hereinafter referred to in this chapter only as the "Act"), is based on the principle of an individual approach to potential social service users. The scope and form of help and assistance provided via social service must preserve human dignity of social service users, must be based on their individually identified needs and must have an active effect on these people, support the development of their autonomy, motivate them to engage in activities that do not lead to long-term persistence or worsening of their adverse social situation and prevent their social exclusion.

The Act regulates conditions for the provision of social services in the Czech Republic. The quality of provision of social services is guaranteed in the Act, *inter alia,* by compulsory registration of social service provides and a system of subsequent inspection of social services. As a part of the registration system, a provider must prove sufficient readiness for provision of social services in sufficient quality not endangering their users. Thereafter, the social service inspection will check repeatedly whether the social service parameters set up in the registration are complied with and whether the basic duties set forth by the law, including the rules for use of means of restraint and social service quality, are adhered to. An integral part of the increase of the quality of social services is the regulation of the requirements for the occupation of social worker not only with regard to the performance of social service activities but also under special laws concerning assistance in material destitution, social-law protection of children, in schools and educational establishments, in healthcare facilities, prisons, detention centres for foreigners and asylum facilities set up under Act No. 325/1999 Coll. on Asylum and on the Amendment to Act No. 283/1991 Coll. on the Police of the Czech Republic, as amended. The Act also sets qualification criteria for social service workers.

5.4.2 Use of means of restraint in the provision of social services

The criteria for use of means of restraint in social service facilities and the rules for keeping records of their use were newly and more specifically regulated in 2006 by the Act on Social Services. Section 89 of the Act on Social Services permits the social service providers to use means of restraint only in cases in which the user endangers his health and life or health of other persons. The only permitted means of restraint are physical holds and a room equipped for safe stay; medicines may be used upon recommendation of a physician. Therefore, placement of a social service user in a cage-bed or a netted bed has become illegal since 1 January 2007. Thus, every provider is obliged to ensure the provision of the social service in order to prevent situations necessitating the use of means of restraint; to use at all times the most moderate means and to call at all times a physician to obtain his with each use of such means. Every provider is also obliged to keep records of cases where restraining measures are used, containing the name, surname and date of birth of the person to whom the restraining measure relates, the reason for the application of the restraining measure, the date and time when and the place where the restraining measure was applied and the date and time when the application was stopped, the names of persons who used the restraining measure, the physician's consent, the description of the immediately preceding situation, a record on the fulfilment of the duty to notify the legal guardian of the person and the description of any injury. The compliance with the above legal duties will be checked by the inspection of the quality of the provided service.

The Committee against Torture and Other Inhuman or Degrading Treatment and Punishment and the Human Rights Council of the Czech Republic Government consider the fact that the use of restraining measures is not subject to a judicial decision as a shortcoming of the Act. In these cases, the rights of social service users are insufficiently protected because the physician's consent is sufficient for their application (see also chapter II/ 5.6.3 of this Report).

5.5 Housing and protection of socially excluded persons

5.5.1 Regulation of housing rent

Based on the Housing Policy Concept and in response to repeated findings of the Constitutional Court of the Czech Republic concerning regulation of rent[108] and the class action filed by house owners with the European Court of Human Rights in relation to the restriction of their ownership rights,[109] the Parliament passed in 2006 Act No. 107/2006 Coll., on Unilateral Increase of Housing Rent.[110]

The Ministry for Regional Development expects that, due to a unilateral increase of rent, which is limited to the years 2007 – 2010, and to the improvement of the position of house owners, this Act will remove the existing pricing and legal deformation and will contribute to the improvement of the operation of the rental sector, to a reduction of market rent, increased availability of rental housing and will thus improve the position of tenants.

On the contrary, better availability of housing for low-income groups of the population is not expected by the Association of Tenants of the Czech Republic and the ombudsman. According to their experience, priority on the housing market is give to people not facing existential problems, whose rental payments do not depend on being awarded and paid social benefits.

Some non-governmental non-profit organizations (e.g. the civic association Iuridicum Remedium and the Association of Tenants of the Czech Republic) expect that the practical application of the Act on Unilateral Increase of Housing Rent will cause some problems in 2007 and the following years. Therefore, they recommend to make, one year after the effective date of this Act, an analysis of its impacts on the population and on the state budget and to make, on the basis of conclusions of this analysis, any necessary amendments to the Act.

5.5.2 Housing of socially weaker and disadvantaged groups of the population

One of the forms of state intervention to ensure adequate housing and protection of access of disadvantaged persons to housing are social benefits. The new legal regulation of subsistence minimum[111] in 2006 excluded housing costs from the construction of subsistence minimum. Now, the housing support is provided within the scope of State social aid via the new concept of housing allowance and also within the mechanism of assistance in material destitution by a

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108 Details see Reports 2001 and 2002

109 Details see chapter II/ 1.1 of this Report

110 This is a temporary four-year regulation in the form of unilateral rent increase – the so-called deregulation. Following the expiry of such period, the rent amount will be agreed between the lessee and the lessor.

111 Act No. 110/2006 Coll. on Subsistence and Existential Minimum

new allowance – the supplementary housing benefit. Under the change in the construction of the housing allowance, the amount of household income is no longer the only quantifiable criterion in the assessment of the entitlement for this allowance. With effect from 1 January 2007, the adequate housing costs are also taken into account.[112] The supplementary housing allowance helps persons in material destitution in overcoming insufficient income to cover justified housing costs.[113] *It will be, however, necessary to continuously assess in 2007*[114] *whether the new conception of social benefits will sufficiently mitigate the increase of housing costs (rent, electricity etc.)*[115] *of low-income groups of the population.*

The above measures are criticized by the ombudsman, who points out that "the very construction of the housing allowance, the supplementary housing allowance and the very generally expressed duties of the municipality to take care of the satisfaction of social needs of the people, including housing needs,[116] do not represent system solutions of social housing allowing to prevent social exclusion".

Therefore, the ombudsman and the Human Rights Council of the Czech Republic Government[117] proposed last year the elaboration of a material intent of the Social Housing Act, which would regulate systematically and with all specifics the position of the State and the duties of municipalities in housing policy in relation to persons threatened with social exclusion, would define the target group of persons and the minimum housing standard, would create a legal framework for the creation of a housing fund for social housing purposes, would unify the existing special programmes in the housing policy area (special purpose flats, the "integration flats") and would resolve the links among the existing laws (Act No. 128/2000 Coll., the Civil Code, as amended; the Act on Assistance in Material Destitution and the Act on Subsistence and Existence Minimum).

It is also necessary to open a discussion on forms of social protection of socially weak and vulnerable groups of the population from destructive indebtedness, which leads e.g. to defaults of payment of rent or alimony. In the last years, there has been a growing number of people taking only social benefits or disability pensions who have succumbed to the significant pressure and targeted offer of easily available loans from non-banking financial

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112 The entitlement to a housing allowance belongs to the owner or tenant of a flat in which he is registered for permanent residence if 30% of the family income (or 35% in Prague) is not sufficient to cover the costs of housing and these 30% (35%) of the family income is lower than the relevant standard housing costs set by the law and calculated depending on the housing type, size of the municipality and number of household members.

113 The entitlement to a housing allowance belongs to the owner or tenant of a flat whose income, following payment of justified housing costs, is less than the subsistence amount. Justified housing costs include rent up to the target rent amount set in the notice of the Ministry for Regional Development, payments for services and necessary utilities.

114 60% of the rental sector is comprised of the housing fund of municipalities, formerly the housing fund of the State. About 40% of this sector is comprised by rental flats in houses owned or co-owned by natural persons (mostly people who were returned their property in restitution) and by legal entities. The cooperative sector is mostly comprised of flats of housing cooperatives founded in 1960 - 1990; a smaller part is comprised of cooperatives founded by tenants for the purpose of purchase of the house from the municipality.

115 The price level of new construction and housing in more attractive locations, as well as the acquisition cost of older housing exceeds financial possibilities of the majority of the population and puts the lessors in a position where they can impose excessive demands.

116 Section 35(2) of Act No. 128/ 2000 Coll. on Municipalities, as amended

117 See the resolution of the Human Rights Council of the Czech Republic Government of 19 June 2006, approving the motion to the Committee for Economic, Social and Cultural Rights on issues of housing of persons threatened by social exclusion (www.vlada.cz). The motion of the Council was distributed to external comments round and will be re-submitted to the Council.

institutions, while the conditions of these contracts and frequently also the instalment amounts result in progressive indebtedness of those persons and threaten their existence. State agencies have not yet paid systematic attention to these issues. The first steps have been taken by the Ministry of the Interior, which commissioned a legal analysis of this problem.

The offer of subsequent help to threatened groups of the population and households is also insufficient. The attempts to resolve problems with nonpayers of rent by their moving from the city centre to the outskirts or behind the city borders have become increasingly frequent. We referred to these problems as early as in out Report for the year 2002.[118] The establishment of so-called bare flats,[119] the inhabitants of which usually have a lease agreement for a limited period of time and pay amounts which are often several times higher than their original rent, is not considered by non-government non-profit organizations (e.g. Naděje and the Association of Tenants of the Czech Republic) as a good practice and an acceptable form of assistance.

According to Iuridicum Remedium, the most difficult situation is faced by people whose housing depends fully on the conduct of lessors, who violate, sometimes out of lack of knowledge but often intentionally, not only the civil rights of tenants arising from the lease relationship but also commit criminal offences relating to breach of rights to the house and flat and to unauthorized use of things belonging to tenants.[120] The most threatened groups are seniors and people with low legal awareness, in difficult social situation, often with mental or other handicap, who are not fully aware of their rights or do not enforce them fearing for their existential certainty. *These are the cases where the absence of high quality and systematic and free legal aid appears most prominently.*

The number of cases of the court consent with eviction from a flat, where the executors caused, by their conduct, damage to the movable effects of the evicted tenants and traumatized them, has been growing. Thus, the affected people lose not only their shelter, but find themselves in an insolvable social and mental distress, which often results in isolation from the society and in social exclusion. Iuridicum Remedium points out that the supervisory powers of the Chamber of Executors and of the Ministry of Justice are not exercised despite repeated appeals. The affected persons only have a possibility to seek damages under the Act on Liability for Damage Caused during the Exercise of Public Authority[121] and to initiate criminal prosecution against an executor who provably exceeds intentionally his rights and fails to comply with his legal duties. Such steps often have no immediate effect and the enforcement of damages and continuation of criminal prosecution of the executor is very difficult in a situation where the affected person usually has to devote increased efforts to the fulfilment of his basic existential needs, because (despite the provision of urgent legal aid to such persons) it is often very difficult to adhere to the time limits for assertion of individual rights towards the executor. *The absence of a law ensuring provision of free legal aid to*

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118 See chapter II/ 5.6.2 of the 2002 Report.

119 A bare flat is often comprised of one room with concrete floor and a coal stove, cold water and common toilets in the corridor. The inhabitants of such flats usually have lease agreements for a limited period of time, frequently in the form of hostel accommodation without legal protection of tenants. (Position of the civic association Naděje, p. 1.)

120 According to the civic association Iuridicum Remedium, lessors also try to abuse their position by limiting the tenants' access to the flat or by other restriction of the users right of tenants to the flat

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121 Act No. 82/1998 Coll. on Liability for Damage Caused during the Exercise of Public Authority or by Maladministration and on the Amendment to the Act of the Czech Republic No. 358/1992 Coll. on Notaries and their Activities (Notarial Code).

persons in such critical situation usually further accelerates their social decline. Such unsatisfactory situation may be remedied by the adoption of a legislation regulating the provision of free legal aid and by paying increased attention of all involved public administration authorities, including the Police of the Czech Republic, to the course of execution proceedings. [122]

For the purpose of preparing a new effective tool for the solution of housing of persons threatened with social exclusion, works checking the possibility of use of the new Commission Decision on the application of Article 86(2) of the EC Treaty to State aid in the form of compensatory payment provided to certain entities entrusted with the provision of social services of a general economic interest, which newly include "social housing" services. The above regulation of the European Commission allows – subject to exactly defined conditions – that this financial allowance, which has the nature of compensatory "equalizing" payment, could be declared as compatible public aid under Community law, and such programme need not be thus notified.

The Ministry for Regional Development has been cooperating on a ongoing basis with non-governmental non-profit organizations, to which it provides an annual financial subsidy for their activities. These organizations include, in particular, organizations providing free legal counselling in relation to housing. In 2006, the Ministry prepared, as a part of this methodological activities and in cooperation with civic counselling centres, a manual named "How Not to Lose Housing", which contains simple information on prevention of loss of housing and is addressed to socially excluded persons.

The year 2006 marked the completion of the bi-annual research of the Faculty of Science, Charles University, Prague, funded by the Ministry for Regional Development and named "Segregation in the Czech Republic, Status and Development, Causes and Consequences, Prevention and Remedy". The main objective of this research assignment was to capture the current state and development of segregation in the Czech Republic, to analyse principal mechanisms through which the segregation occurs, to identify existing and potential consequences and to propose appropriate procedures and instruments for prevention of undesirable extent of segregation and mitigation of its negative consequences.

5.5.3 Programme of construction of subsidized flats

In the past year, the Ministry for Regional Development continued in the implementation of the programme "Support for the Construction of Subsidized Flats".[123] In 2006, the Ministry provided a total of CZK 271,796,000 for the construction of 794 subsidized flats.[124] These are three types of municipal rental flats – those designated to seniors, to persons with disabilities and to socially excluded persons. With the exception of flats for seniors and persons with handicaps – the subsidies for construction of these forms of rental flats have been used to a minimum and the aid offered by the State is thus only used to a small extent by the municipalities.

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122 Prepared on the basis of materials provided by the civil association Iuridicum Remedium for the elaboration of the 2006 Report.

123 Details see chapter II/4.3.3. of the 2005 Report.

124 The Ministry for Regional Development subsidized in 2005 the construction of 577 subsidized flats by an amount of CZK 397,895,000.

In addition to the above, the Ministry for Regional Development prepared in 2006 in cooperation with the Institute for Spatial Development, as a part of guidance provided to municipalities, a new brochure mapping the experience of municipalities which received in the past years subsidies for construction of halfway flats and starter flats.

5.5.4 The homeless

Deficiencies in the protection of rights of the homeless, which were pointed out in the Reports for previous years,[125] *were rectified only to a small extent in 2006.* The questionnaire survey[126] on the availability of health care to the homeless indicated that the most serious problem is the approach of physicians.[127] Most asylum facilities do not cooperate officially with a medical service and if such cooperation exists, it is based only on informal arrangements. In opposite cases, clients of asylum facilities encounter unsympathetic and sometimes even negative attitude of healthcare professionals in the region.[128] The major problem indicated by the medical emergency employees was the problem of handing over the patient to a health care facility. In three out of ten cases, particularly in big cities, it was found that admission of a homeless person to a hospital is always problematic. The most problematic matter for the emergency vehicle crew during treatment of a homeless person is the difficult administration.[129] The research further confirmed that many homeless people neglect their health condition for a long time and are excluded, by their lifestyle, from the common health care system. Due to repeated experience with rejection of specific medical care, the homeless do not try to seek medical help in case of a health emergency, and emergency rescue service is called only after the change of an originally trivial illness to a life-threatening condition.[130] The above findings support opinions of experts[131] and of non-governmental non-profit organizations according to which *the right to health care guaranteed by the State is not always implemented in relation to the homeless and that the homeless people are discriminated against in the provision of health care.*[132]

Another serious problem is the vicious circle into which the homeless people fall after the loss or theft of their identity card. If they cannot be registered with a labour office, they cannot be pay subsistence minimum allowances, and they cannot conclude an employment contract. Without an identity card, they cannot collect registered mail containing documents necessary for the issue of a new identity card (e.g. the birth certificate, marriage certificate or divorce judgment). If they fail to collect a court document sent by registered mail, they are included after a certain time into the list of wanted persons who are to be apprehended and summoned

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125 See chapter II/ 5.6.2 of the 2002 Report, chapter II/5.5.1. of the 2003 Report and chapter II/4.4.2. of the 2005 Report

126 37 questionnaires from asylum homes were analysed.

127 Šupková, D.: Analýza dotazníků z azylových domů v ČR (Analysis of Questionnaires from Asylum Homes in the Czech Republic, 27 April 2006 (not published).

128 Šupková, D.: Analýza dotazníků z azylových domů v ČR (Analysis of Questionnaires from Asylum Homes in the Czech Republic), 27 April 2006 (not published).

129 Šupková, D.: Analýza dotazníků ze stanovišť zdravotních záchranných služeb (Analysis of Questionnaires from Emergency Rescue Service Stations), 26 May 2006 (not published).

130 Šupková, D.: Zpráva z monitoringu zdravotního stavu bezdomovců v Praze 5 (Report on Monitoring of Health Condition of the Homeless in Prague 5), 28 April 2006 (not published).

131 Barták, M.: Zdravotní stav populace bezdomovců v ČR a jeho determinanty (Health Condition of the Homeless Population in the Czech Republic and its Determinants) II. 2005, p. 12.

132 Research of the Institute of Social Policy and Economy (IZPE) carried out in 2005 documented, among others, the occurrence of a higher number of chronic diseases, higher prevalence of infectious diseases including TBC and more frequent mental health problems.

for interrogation by the police.[133] This vicious circle is very stressful for those people and deepens their feeling of a dead end. *Moreover, the number of attempts to resolve the "problems with the homeless" by assaulting them,*[134] *repressions against them,*[135] *or by their eviction from the city centre to the outskirts or outside the city borders*[136] *are still on the increase.*

Social service providers operating in Prague have been also trying for several years to establish a winter night shelter for the homeless who sleep outdoors. Their attempts are hindered by the fact that Prague is divided into 49 city parts, each with its own local self-rule over its territory, and the Prague Municipal Authority is unable to establish such winter night shelter in the territory of the city without the consent of these self-government authorities.[137] The most common argument for refusal to provide social services to the homeless is the designation of the place as a "residential locality". [138]

The Ministry of Labour and Social Affairs prepared in 2006 a specific subsidy programme co-financed by the European Social Fund and the state budget of the Czech Republic under the name "Ensuring Unified Approach to the Provision of Social Services to the Homeless."[139] The objective of the programme for the years 2006 and 2007 is to ensure effective work with the homeless, to strengthen and develop the abilities of non-governmental non-profit organizations to provide social services to the homeless and to increase quality of these

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133 A wanted person who fails to collect an action for failure to pay alimony is treated in the same manner as a person who avoids serving prison sentence for murder.

134 Several new cases of assault against the homeless occurred in 2006. An injured man and two dead bodies of homeless men aged 44 and 49 years were found on 12 April 2006 in the formed exhibition area in Pilsen. With regard to the nature of the injuries, the police, who investigate the case as double murder and a murder attempt, believe that the homeless people were clubbed to death by a hard object. A homeless man had been beaten brutally in the same location in 2004 and his treatment lasted for several weeks. The assailant has never been found.

135 Problems with the homeless were faced, for instance, by the Municipal Authority of Prague 5, which spent in 2006 CZK 450,000 on the services of a security agency, which guarded for several weeks without any significant success the public space near the Anděl underground station, and also commissioned a filed research among the homeless for which it paid 80,000 crowns.

136 Spatial and social segregation was the subject of a survey carried out in 2003-2006 by the Faculty of Science, Charles University in Prague with the support of the Ministry for Regional Development. One of the outputs of this survey is a manual for self-government authorities, which will be distributed to municipalities and cities at the beginning of 2007. This publication should serve as a part of guidance to municipalities in the housing policy area. Its purpose is to point to problems relating to segregation and possibilities of its prevention or mitigation of its results. It is expected that this research assignment, which was completed in December 2006, will propose tools for spatially focused policies.

137 Four remote locations in Prague were selected gradually in winter 2004 - 2005 for the establishment of a temporary winter shelter; however, all four self-government authorities of the relevant parts of Prague rejected the plan for such shelter. A temporary winter shelter was opened in winter 2005 - 2006 in leased spaces of an empty private house, but was soon closed due to pressure of the public.

138 This information was taken over from a thematic report prepared I. Hradecký for the European Observatory on Homelessness under the name Profily bezdomovství v České republice: Konflikt, bezdomovci a veřejný prostor (Profiles of Homelessness in the Czech Republic: Conflict, the Homeless and the Public Space (2006).

139 The programme of subsidies was joined by 50 asylum homes and 14 daily centres for the homeless. The financial aid for this programme amounts to CZK 216 million. The fulfilment of the quality standards is provided for in individual facilities; emphasis is put particularly on individual work with each service user an on the creation of individual plans, other professional education of employees and participation of service users in work rehabilitation. Another important step is the focus on assumption of responsibility by services users and on the protection of their rights and freedoms. The following step is the support and development of field programmes by asylum homes.

services, to support social inclusion of the homeless, their return to and stay on the labour market. The programme is also focused on the cooperation of the no-governmental non-profit sector and local self-government (regions, municipalities) in ensuring an available network of high-quality social services for the homeless, particularly in connection with the plans of the development of social services in the territory of the region or municipality.

This programme includes a system of monitoring the extent of utilization of the capacity of asylum homes for the homeless, which was introduced 2006. *The counts made to date indicate that the problem does not lie in insufficient number of free beds for the homeless but in their availability based on actual needs in the regions.* A unified database and information portal of social prevention services were also established in 2006.[140] This database provided effective and expedient overview of social prevention services, which are focused on the homeless and other disadvantaged groups of the population and on current number of free beds in asylum homes. The project of the Association of Asylum Houses "Strategy of the Social Inclusion of the Homeless in the Czech Republic",[141] which is to result, among others, in the definition of the term "homeless" and creation of the national definition.

Despite the above activities and efforts aimed at the development of services for the homeless and also with regard to the increasing tendency of the number of the homeless,[142] the protection of the rights of the homeless requires a conceptual solution. Therefore, the Human Rights Council of the Czech Republic Government recommended to the Ministry of Labour and Social Affairs in June 2006[143] to prepare an action plan of prevention of homelessness.

5.6 Health care

5.6.1 Legislative and other changes pertaining to protection of patient rights

The amendment to Act No. 20/1966 Coll. on the Care for Health of the People, as amended (hereinafter the "Amendment to the Act on the Care for Health of the People"), which will allow access to healthcare documentation is dealt with in chapter II/1.2.1. of this Report.

The Amendment to the Act on the Care for Health of the People is closely connected with the Decree of the Ministry of Health No. 385/ 2006 Coll. on Healthcare Documentation (hereinafter referred to in this chapter only as the "Decree"), which will come into effect on 1 April 2007. The Decree contains, *inter alia*, a mandatory list of information which is to be contained in the health documentation, including the minimum content of separate parts of the healthcare documentation. Separate parts of healthcare documentation are comprised of information contained in healthcare documents which are kept by the physician responsible for primary care, information necessary for requisitioning further care, information on completed medical examination (the medical report), on release from institutional care (the release report), a record of informed consent with the provision of health care, declaration of

140 See www.sluzbyprevence.mpsv.cz. The database was created within the project of the Ministry of Labour and Social Affairs "Organizing Education of Methodologists and Coordinators of Social Care of so-called socially maladapted persons", which is focused on the education of officials of regional authorities of municipal authorities with extended powers working with the homeless

141 See chapter II/ 4.4.2. of the 2005 Report

142 See chapter II/ 4.4. 2. of the 2005 Report

143 See the resolution of the Human Rights Council of the Czech Republic Government of 19 June 2006 on the issues of housing of persons threatened by social exclusion (www.vlada.cz)

refusal of health care by the patient or his legal guardian, a record on the consent with provision of information, a medical opinion, documentation of the emergency rescue service, documentation of the first aid service (the daily records book) and documentation of nursing care.

The record on informed consent with health care provision must contain identification data of the health care establishment and the physician who has provided the relevant instruction; data about the nature and expected development (prognosis) of the disease; data on scheduled treatment procedures, including indication whether such procedures have an alternative and whether the patient may elect one of several treatment option and a brief assessment of each possible procedure; data about the purpose of the health care intervention and the course of such intervention; data on potential risks and consequences of treatment and of individual health care interventions; data on presumed benefit of the treatment and individual treatment and examination interventions and their significance for the patient's health condition; data on potential restrictions in the usual way of life and work ability following the relevant intervention, if such restrictions may be presumed; data about the treatment regime and appropriate preventive measures, about the performance of controlling medical or examination interventions and in case of a change of health condition also the data on changes of health capacity; instruction on the patient's rights to decide freely on further proposed health care procedures unless such right is excluded by special laws; instruction of persons participating in medical research on their rights and guarantees stipulated by a special law for their protection and the consent of the patient or his legal guardian with the provision of health care.

The consent of the patient or legal guardian with the provision of health care includes a declaration of the patient that he has obtained and understood the above information, the patient's declaration that the physician who provided to him the relevant information and instruction explained to him in person everything contained in such written informed consent and the patient had an opportunity to ask supplementary question which were appropriately answered; the patient's declaration that he has fully understood the above instruction and information and agrees with the proposed health care and with the performance of specifically stated health care interventions; the patient's declaration that he agrees, in case of the occurrence of any unexpected complications requiring prompt performance of other interventions necessary for saving of life or health, that all other necessary interventions saving life or health are taken without delay; the date and signature of the patient or his legal guardian; the signature of the physician who provided the information to the patient. If the patient is unable to sign the record with regard to his health condition, a signature of another health care professional will be attached to it, stating the reasons why the patient could not sign the record and in which manner he manifested his will.

The declaration of refusal of health care by the patient or his legal guardian contains the following: identification data of the health care establishment and the physician who has provided the relevant explanation; a declaration of the patient that he was informed by such physician on the relevant day and hour about his health condition and necessary intervention and was expressly advised that it is desirable for him to submit, as a part of provision of health care, to specifically stated intervention or specified treatment; a declaration to the effect that the physician explained properly to the patient or his legal guardian the consequences of refusal of the necessary health care or intervention for his further life, health and health condition and specified potential consequences of which the patient was notified; a declaration that the patient or his legal guardian was allowed to ask the physician who

provided to him the appropriate explanation supplementary questions; a declaration of the patient or his legal guardian that, despite the above explanation, which he fully understood and took note of, the represents that he still refuses the recommended health care; a declaration that he issues such decision wholly freely and seriously and in full possession of his faculties and confirms it with his own signature; specification of the place and date, the patient's own signature and the signature of the physician who provided the instruction. The declaration of refusal of health care by the patient or his legal guardian who refuses to sign such declaration also contains a witness statement that the patient or the legal guardian has been informed to the extent stipulated by the law and that he refuses the necessary health care and refuses at the same time to sign the declaration. The witness statement will be confirmed by his signature and his name(s), surname and date of birth will be stated.

Beside the above positive changes, there are still some shortcomings in the protection of patient rights (see chapter II/ 5.6.2 below). *Extra-judicial mechanisms of defence of patient rights and particularly the rights of patients suffering from mental disorders (see chapter II/ 5.6. 3 below).* Representatives of patient associations point to a health care ombudsman who has been operating with positive results in a number of western countries. An important role is also played abroad by independent regional commissions for extra-judicial resolution of patient complaints, the membership of which includes not only experts on medicine, but also legal experts and representatives of patient organizations. Based on the decision of such commission, a patient may even received damages upon proved error of a physician or a health care establishment. *An increasing number of patients whose health was seriously damaged during provision of health care or who even died due to neglect of care and the excessive length of judicial proceedings on damage to the patient represent grounds for the establishment of a functioning system of resolution of patients' complaints and a mechanisms of extra-judicial settlement of justified patient claims* (see also chapter 5. 6. 3. below).

5.6.2 Unauthorized sterilization of women

The 2005 Report provided details on complaints of 80 women about sterilization made in conflict with the law, which were investigated in 2005 by the Ministry of Health and the ombudsman. *According to available information, none of the measures proposed by the advisory corps of the Minister of Health was implemented in the past year.*

The first sterilization case was finally and effectively decided on 2006 when the High Court in Olomouc upheld the judgment of the Regional Court in Ostrava, which decided that the sterilization was illegal. However, the court did not award pecuniary satisfaction to the injured woman, because the three-year limitation period had already expired. This case reopened a dispute inside the Czech judiciary whether the entitlement to pecuniary satisfaction resulting from protection of personality which is non-lapsable, becomes statute-barred.

The League of Human Rights pointed out in this respect that “due to non-functioning system of legal aid provided by the State, the vast majority of victims who were subjected to involuntary sterilization after 1991 cannot afford legal counsel, whereby they are de facto denied access to justice and that public prosecutors tend to set aside a number of criminal charges against illegal sterilization submitted by the ombudsman.”

The judgment of the High Court in Olomouc confirmed that if the injured women were to turn individually to the court, most of them will not receive adequate satisfaction due to the expiry of the limitation period. *At the same time, however, the affirmative commitments of the State*

resulting from Articles 3 and 8 of the European Convention on Human Rights may imply the responsibility of the Czech Republic for these intervention and its duty to indemnify the victims.

Protection of patient rights during sterilizations is insufficiently guaranteed by applicable laws, particularly with regard to minors or persons deprived of the capacity to perform legal acts. Under the law, the consent with sterilization given by a legal representative or guardian of such persons is not subject to mandatory court scrutiny. Section 27 of the Act on Care of Health of the People only stipulates that "sterilization may only be carried out with the consent of the person in whose case the sterilization is to be made, or with such person's own consent and subject to the terms set forth by the Ministry of Health." *The terms of sterilization are set forth by the Directive of the Ministry of Health of the Czech Socialist Republic No. LP-252.3-19.11.71. of 17 December 1971 on the performance of sterilization, which is still in effect but has become very obsolete in many aspects. This directive includes a condition, which is no longer acceptable nowadays, i.e. that the intervention requested by a woman up to 35 years of age is only indicated after to four children and in the case of women older than 35 years after three children. Protection of all patients during the performance of sterilizations is not guaranteed even by the new decree on healthcare documentation, which sets forth identical conditions for the patient's consent with less serious interventions as the conditions of his consent with more serious interventions (including sterilization, castration and electroconvulsive therapy); moreover, it still stipulates that the consent with such interventions given just by the patient's guardian is sufficient.*

The conditions of sterilization of women were to be fully incorporated in Czech law by the adoption of the Health Care Act, which contained detailed provisions on performance of sterilizations; however, the review of the bill in the Chamber of Deputies was stayed in the second half of 2006. According to the Ministry of Health, it may be expected that the material intent of the Health Care Services Act (formerly the Health Care Act) will be submitted by the end of 2007.

The conditions of performance of sterilizations in the Czech Republic, which are stipulated by the law, were reviewed in 2006 by the CPT and the CEDAW. The CPT expressed, *inter alia,* its concerns regarding legal guarantees in medical interventions on persons deprived of their capacity to perform legal acts and criticized the fact that intrusive medical interventions, like surgical castration and sterilization, may be performed in the Czech Republic merely with the guardian's consent. The CPT referred again to the Recommendations of the Committee of Ministers of the Council of Europe to member States on Principles Concerning the Legal Protection of Incapable Adults (hereinafter the "Recommendations of the Council of Europe") of 1999, where the governments are encouraged to determine whether decisions by a guardian on certain serious matters should require the specific approval of a court or other body (see chapter II/4.3 below*). According to CPT and Czech experts from among the ranks of protectors of human rights, all irreversible medical interventions on persons deprived of their capacity to perform legal acts, like sterilization or castration, should be approved by the court* (see also chapter II/ 4.3 and 5.7 below).

5.6.3 Protection of rights of persons with mental disorders

No principal changes occurred in 2006 in respect of protection of rights of persons with mental disorders. The problems pointed out in the Reports in the past years remained unresolved (see also chapter II/ 5.7 below). *This is also documented by the Report of the CPT,*

which visited in 2006 two psychiatric hospitals. According to CPT, more attention should be paid to the decoration of patients' dormitories and bedrooms; patients who are not bedridden should be more motivated to wear clothes other than pyjamas during the day and if their medical condition so permits, should be offered at least one hour of outdoor exercise every day. *Restriction of the right to such outdoor exercise should never be used as punishment.*

In the visited hospitals, the CPT generally observed a good relationship between staff and patients. At the same time, the CPT heard several allegations of patients of Dobřany hospital of slaps and other rough treatment of patients by staff. The CPT noted that "such unprofessional behaviour is unacceptable" and recommended that "staff at Dobřany Psychiatric Hospital be reminded that all forms of ill-treatment of patients are unacceptable and will be dealt with severely".

According to the CPT, "an effective complaints procedure" is another basic safeguard against ill-treatment in psychiatric establishments". *Therefore, specific arrangements should exist, enabling patients to lodge formal complaints with clearly designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment* (see chapter 5.6.1. above). Patients in Brno and Dobřany Psychiatric Hospitals could submit a complaint to the Director, the head nurse or staff at ward level. External complaints could also be lodged by patients and their legal representatives with the competent authorities or with the ombudsman. Complaints could be delivered orally or in writing and should be registered. However, at both Dobřany and Brno Psychiatric Hospitals, only oral information was provided to patients regard the existence of such possibilities. The CPT recommended that, in both psychiatric hospitals, patients be informed in the introductory leaflet/brochure issued upon admission about their rights to lodge complaints as well as how to exercise this right in practice.

Like in 2002, the CPT was informed that some hospitalized patients whose mental state no longer required them to be held in hospital nevertheless remained in-patients due to a lack of adequate care/accommodation in the outside community. Some hospital staff members estimated that 20% of current in-patients could benefit from community care if it were made available. In this respect, CPT reminded that "deprivation of liberty of person due to as absence of appropriate external facilities is a highly undesirable state of affairs". The CPT believes that this is a general problem and not confined to a few isolated cases. *Lack of community care facilities is seen as a serious problem currently facing Czech psychiatry.* According to the CPT, both hospitals could themselves contribute significantly to the re-insertion of patients in society through greater attempts to establish out-patient facilities.

As to treatment of patients placed without their consent in psychiatric hospitals, the CPT's opinion, which is also shared by representatives on non-governmental non-profit organizations, is that "all voluntarily or involuntarily hospitalized patients should, as a matter of principle, be in a position to give their free and informed consent to treatment". "The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as automatically authorising treatment without his/her consent. Every competent patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should based upon law and apply only in clearly and strictly defined exceptional circumstances". The CPT recommended taking appropriate steps, including by amending the relevant legislation, to distinguish clearly between the procedure for involuntary placement in a psychiatric establishment and the procedure of involuntary psychiatric treatment.

These recommendations of the CPT are also supported by the experience of non-governmental non-profit organizations (e.g. the League of human Rights and the association of users of psychiatric care Kolumbus), which see another problem in the absence of standardized procedures of identification of the extent to which the patient is dangerous for his surroundings or for himself, when such risk is the basic criterion for the patient's placement without his consent in a health care establishment. There are still cases when a legal counsel appointed by the court to represent the patient in the proceedings of his admission to a health care facility and to defend his interests does not even meet the patient in person and the patient thus remains de facto unrepresented. Proceedings on the legality of placement of persons deprived of their capacity to perform legal acts in a psychiatric hospital are often not even started by the courts, because the guardian has expressed consent with the hospitalization and treatment of the patient (including the possibility to use means of restraint).

In cases of the patient's disagreement with such placement, this represents an evident conflict of interest between him and the guardian, which results, among others, in the denial of the right of the person who has been deprived of his capacity to perform legal acts or whose capacity to perform such acts has been restricted to have the legality of restriction of his personal freedom scrutinized by the court.

Thus, the CPT's recommendations of 2002 and 2006 that the Recommendations of the Council of Europe be incorporated into the legal standards relating to guardianship in the Czech Republic should be promptly implemented. It is necessary to define decisions concerning persons deprived of their capacity to perform legal acts which have such personal nature and which are so principal that they require a special consent of the court, to regulate more precisely the guardian's liability for damage caused to his ward during the exercise of his office (e.g. property damage, damage to health) and to regulate the manner and amount of reimbursement of costs of those appointed to represent or assist such incapable person (see also chapter II/ 4.3 and 5.7 below).

5.6.4 Use of means of restraint in the provision of health care

During its visit to the Czech Republic in 2006, the CPT also paid attention to the use of means of restraint in the provision of health care (see chapter II/3.2 above). In its part called "Restraint of agitated and/or violent residents", the CPT's report states that "in any psychiatric establishment, the restraint of agitated and/or violent patients may on occasion be necessary; this is a subject of particular concern to the CPT, given the potential for abuse and ill-treatment".

The CPT Report states that the ban on the use of cage-beds, introduced by the Minister of Health in 2004, is still in force and appreciated the issue of the "Methodological measure on the use of means of restraints for patients in psychiatric facilities in the Czech Republic", pointing out that "although not legally binding, it represents good practice for regulating various aspects of the use of restraints, such as authorisation by a doctor, registration, and monitoring and care during the application of restraints".

During its visit to Dobřany Psychiatric Hospital in 2006, the CPT found that this hospital used net-beds, seclusion and instruments of mechanical restraint (in particular, straps).The use of such means was based on a written policy.[144]

According to CPT, the use of net-beds at Dobřany Psychiatric Hospital should be further reduced by developing alternatives to their use. In case, such beds should never be used in the presence of other patient, let alone when the restrained patient is naked. Individuals subject o restraints such as a net-bed should at all timed have their mental and physical state continuously and directly monitored by an identified member of the medical staff who can offer immediate human contact, communicate with the individual and rapidly respond to the individual's personal needs regarding oral intake, hygiene and urination and defecation. Such individualised staff supervision should be performed from within the room or very near the door (within hearing and so that visual contact can be established immediately).

The CPT Report also points out that, unlike Brno Psychiatric Hospital, no specific register for the use of restraints was kept in Dobřany Psychiatric Hospital. The CPT recommended that the use of restraints in psychiatric hospitals be recorded in such a way that their use can easily be monitored. Every instance of the physical restraint of a patient (manual control, use of instruments of physical restraint, seclusion) should be recorded in a specific register established for this purpose (as well as in the patient's file). The entry should include the time when such measure began and stopped to be applied, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by patients or staff.

Experts and representatives of non-governmental non-profit organizations propose that the use of means of restraint in all types of health care facilities is regulated not only by a methodological instruction but by the law, like in case of facilities providing social services. It is also necessary to further reduce the numbers of net-beds in health care establishment and to replace them in particular by trained staff.

5.7 Rights of persons with disabilities

A number of long-term problems faced by persons with disabilities in the area of housing, employment, social services and health care still existed in 2006.[145] *Shortage of adequate housing, high unemployment rate and insufficient job offer, problems with local and economic availability of social and health care service at the place of residence are adverse factors which prevent actual social inclusion of persons with disabilities into the society.*

As opposed to the tendencies existing abroad, the institutional social care prevails over community care in the Czech Republic.[146] The capacity of institutional care has been growing

144 During the CPT's visit, the Dobřany Psychiatric Hospital had fifteen net-beds and their use was commonplace. The net-beds on both ward 13B and 15 were monitored by cameras 24 hours a day. However, several patients told the CPT of their difficulties in attracting the staff's attention, especially at night. Further, one of the patients, who was ambulant, claimed that he was provided with bottles in order to urinate, as opposed to being able to go to the toilet. According to the CPT, such a practice is unacceptable.

145 See chapter II/ 4.1.2., chapter II/ 4. 4. 3., chapter II/ 4.6., chapter II/ 4.7. and chapter. II/ 4.8. of the 2005 Report and chapter II/ 5.7 of the 2002 Report

146 While a total of 15,473 persons with mental disorders live in institutional facilities, only 1,423 live in other types of establishments. The civic society Portus points out, for instance, that persons with mental disorders and their families have put up in many cases with the significant practical restrictions of their rights and with their becoming second-category citizens.

continuously in the past years, also due to high demand among users of social services, which is caused by the absence of adequate alternative services enabling them to live in their natural home environment.[147] Non-governmental non-profit organizations which provide social services to persons with disabilities point out that an opposite situation exists in the member states of the European Union. The number of residents in institutional-type establishments has been decreasing for a long time and most people with disabilities use other types of services: protected housing and supported housing, personal assistance, respite care, etc. While 198 out of every 100,000 inhabitants of the Czech Republic are placed in social care homes, this number reaches 50 people or less in EU member states. In some EU member states, like Sweden, the institutional care was totally abolished.[148] *One of the key problems of institutional care is the insufficient protection of rights of persons in residential facilities, particularly in social care homes.*[149] *The exercise of rights of users of social services is also hindered by the low level of legal awareness of both users and providers of social services concerning the client-provider relation in general and particularly in cases in which the client is deprived of his capacity to perform legal acts. The role of guardians, particularly their authority and competence to decide and to grant consent of behalf of their ward in matters which cannot be considered commonplace and when the person which the decision concerns disagrees with the relevant procedure, e.g. the use of restraints, placement in a psychiatric hospital or a social care home, performance of special medical intervention like sterilization, castration or electroconvulsive treatment, also lacks a clear definition.*[150] *With regard to the above cases and to cases of evident conflict of interests between the guardian and his ward (conclusion of a contract on provision of social service between the guardian and the client, settlement of complaints against the guardian, representation of the client and defending his interests against the guardian, etc.), it is necessary to ensure that the rights of persons with a mental disorder who are most frequently deprived of their capacity to perform legal acts or whose capacity to perform such acts is most frequently restricted*[151] *are better protected and that such persons are provided at all times with free legal aid and such principal matters are always decided by the court.*

The Council of Europe approved on 5 April 2006 the "Action Plan to promote the rights and full participation in society of people with disabilities: improving the quality of life of people with disabilities in Europe 2006-2015" (hereinafter the "Action Plan"). This Action Plan defines the objectives of the Council of Europe with regard to human rights, prohibition of discrimination, equal opportunities and participation of persons with disabilities in society and is based on the Malaga Ministerial Declaration on People with Disabilities "Enhancing a Coherent Policy for and through Full Participation,"[152] which set the improvement of the quality of life of people with disabilities and their families and their integration and full

147 According to the information of the Ministry of Labour and Social Affairs, the excess demand over the offer of institutional care has also been increasing due to the fact that people submit applications for placement in a residential facility "to be on the safe side", attempting to ensure such service which is in short supply for the future notwithstanding their actual current and future needs. This tendency is also enhanced by poor information of the public about alternative social services.

148 This part was prepared on the basis of materials elaborated by the civic association Portus.

149 See the Report of the Ombudsman on the Visit of Social Care Homes in 2006 (www.ochrance.cz).

150 See also chapter II/ 4.7.3. of the 2005 Report

151 Almost 90% of client of a number of social care homes, particularly those for persons with mental disorders, have been deprived of their capability of performing legal acts or their capability has been restricted. This is a relict from the practice which used to be commonplace before 1989.

152 This declaration was adopted at the Second European Conference of Ministers responsible for Integration Policies for People with Disabilities held on 7-8 May 2003 in Malaga, Spain .

participation in society as the key strategy of the Council of Europe in the next decade and pointed to the necessity of adopting an integrated approach toward the elaboration of national and international policies and legislation for people with disabilities and to duly reflect the needs of people with disabilities in all relevant fields of policies, particularly in key areas such as access to housing, education, vocational guidance and training, employment, the built environment, public transport, information, health care, and social protection.

Therefore, the key activities listed in this plan cover all aspects of life of people with disabilities and represents, in their summary, a general framework for formulation of the national policies of individual member states toward this group of the population. The Action Plan has a nature of recommendations and is not legally binding for the member states. However, the Statute of the Committee of Ministers of the Council of Europe allows the Committee to ask governments of the member states for information about activities carried out by them in respect of individual recommendations.

The key responsibility for monitoring of the Action Plan of the Council of Europe as regards people with disability is borne by the governments of the member states, which decide on the establishment of adequate national controlling and assessment mechanisms. For this purpose, the member states should consult all involved groups, particularly non-governmental organizations of people with disabilities. At the pan-European level, the monitoring of activities of this Action Plan should focus on the enhancement of cooperation in the field of disabilities and should enable an efficient and structure exchange of information experience and good practices. Efficient monitoring of the Action Plan requires the member states to provide regularly relevant information to the Council of Europe. In this respect, the Council of Europe considers as especially important the reports on individual governments to their parliaments, as well as reports and investigations elaborated by non-governmental organizations.

As regards legal protection of people with disabilities, the Council of Europe states in the document that "people with disabilities have the right to recognition everywhere as persons before the law. When assistance is needed to exercise that legal capacity, member states must ensure that this is appropriately safeguarded by law. Persons with disabilities constitute a varied population group, but all have in common, to a greater or lesser extent, the need for additional safeguards in order to enjoy their rights to the full and to participate in society on an equal basis with other members. The principle of non-discrimination should be the basis of government policies designed to deliver equality of opportunity for people with disabilities."

The Action Plan expects the member states of the Council of Europe, i.e. also the Czech Republic, to take the following steps in the field of protection of people with disabilities: "to provide protection against discrimination through the setting up of specific legislative measures, bodies, reporting procedures and redress mechanisms; to ensure that provisions which discriminate against disabled people are eradicated from mainstream legislation; to promote training on human rights and disability (both national and international) for law enforcement personnel, public officials, judiciary and medical staff; to encourage non-governmental advocacy networks working in defence of people with disabilities' human rights; to ensure people with disabilities have equal access to the judicial system by securing their right to information and communication that are accessible to them; to provide appropriate assistance to those people who experience difficulty in exercising their legal capacity and ensure that it is commensurate with the required level of support; to take appropriate measures to ensure that people with disabilities are not deprived of their liberty; to

take effective measures to ensure the equal right of persons with disabilities to own and inherit property, providing legal protection to manage their assets on an equal basis to others; to ensure that no person with a disability is subjected to medical experimentation against their will; to implement the relevant provisions included in the Recommendation No. R (99) 4 of the Committee of Ministers to member states on principles concerning the legal protection of incapable adults."

In connection with the above problems and with the measures proposed by the Action Plan, it is important to carry out in the Czech Republic a principal transformation of the institutional social care, which will lead to full integration of persons with disabilities into the society. The Ministry of Labour and Social Affairs submitted to the Government in January the "Concept of promotion of transformation of residential social services into other types of social services provided in the natural community of their user and promotion of social inclusion of the users into society". The main objective of the concept approved by the Government[153] is to promote through defined objectives and measures, in the period of 2007 to 2013, the transformation of residential social service establishments in individual regions of the Czech Republic. The concept also contains a number of measures directed at more effective protection of human rights of social service users, particularly the incapable persons.[154]

However, one of the fundamental human rights, the right to inclusion into society, will remain unfulfilled for clients of social service homes and residential establishment in the next five years, because the concept presumes that "the process of transformation of social services will be carried out several coming decades in the context of natural development of residential social services".

5.8 Status and rights of senior

In the 2005 Report, we pointed to a number of problems relating to insufficient protection of rights of seniors and elderly people.[155] *The problems which continued to exist in the past year was particularly the occurrence of verbal and physical violence against senior, high unemployment rate among people older than 50 years of age,*[156] *inadequate material and staffing conditions in residential facilities for seniors, unauthorized collection of entry fees as a condition for admission to a residential facility and last but not least the discrimination against seniors in the society. A separate problem is the implementation of rights of seniors with disabilities, which represent a large group among seniors.* (See chapter 5.7. of the Report).

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153 Government Resolution No. 127 of 21 February 2007 on the Concept of promotion of transformation of residential social services into other types of social services provided in the natural community of their user and promotion of social inclusion of the users into society.

154 The following tasks have been set as a part of objective 5 focused on the promotion of the implementation of human rights of users of residential social services: to revise, in relation to all users, the approach to the deprivation or restriction of capacity to perform legal acts; to prepare a legal and factual analysis of the current practice of appointment of guardians; to create an educational programme focused on high-quality performance of the guardian's function; to inform courts and court experts on the processes of humanization of residential social services and the related human rights aspects.

155 See chapter II/ 4.8 of the 2005 Report

156 Although the number of unemployed people over 50 years of age kept on records of labour offices decreased on a year-on-year basis (from 128,400 as of 31 December 2005 to 121,600 as of 31 December 2006), their share in the total number of job seekers kept on records of labour office has been increasing in the long term and their percentage amounted as of 31 December 2006 to 27.1% (31 December 2005: 25.2%).

During the exercise of his competencies, the ombudsman found out in 2006 that, to place clients in senior facilities, some municipalities demand funds in the form of donations or monthly recurring residence fees.[157] The ombudsman considers such conduct as circumventing the valid legislation, which recognizes no such notion as sponsorship donation or an entry fee and anticipates no such method of obtaining funds from clients of social care facilities. It is a practice that contravenes the purpose of the legislation, which is to make available social care services to people who in a majority of cases belong to socially deprived groups of the population."[158] The ombudsman's report on the visit of five respite care facilities in July 2006[159] pointed to the necessity of systemic solution of respite care, promoting geriatric education and opening a discussion on funding of social beds. The ombudsman recommended, *inter alia,* an increase of the number of qualified female and male nurses and other experts (psychologists, psychotherapeuts, etc.) and providing for social worker services.[160] In connection with the provision of health care,[161] the ombudsman notes that "none of the visited establishment coped correctly with legal position of the patient. The respite care facilities were not prepared to turn to the court or did not request the patient's consent with hospitalization, or the patient's consent was substituted by another person's consent." [162]

In the light of the above facts, the adoption of the new Social Services Act[163] and the establishment of a new advisory body of the Government, the Government Council for Seniors and Population Ageing (hereinafter the "Council")[164] in March 2006 can be considered as a positive step and a shift in the field of protection of rights of seniors. The Council, whose activities are defined by the statute,[165] will promote the establishment of the conditions for healthy, active and dignified ageing in the Czech Republic, active involvement of elderly people in the economic and social development of the society, equal position of seniors in all fields of life and protection of their human rights and the development of inter-generation relations in the family and in the society.[166] With regard to the competencies of the Council, its membership includes, beside representatives of public administration, self-administration and non-governmental non-profit organizations also the chairman of the

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157 Based on several individual complaints where the clients complained about their duty to pay funds in the form of donations, the ombudsman addressed directors of all regional authorities and asked them for assistance in this matter. Their responses indicated that the directors of regional authorities have not enough knowledge about such cases.

158 The ombudsman's information for the preparation of the special part of this Report of 24 January 2006, p. 20.

159 The ombudsman made his visits to respite care facilities within his new powers to make systematic visits of places (facilities) where there are or may be persons deprived of freedom; these powers were entrusted to him since 1 January 2006 by an amendment of Act No. 349/1999 Coll. on the Public Defender of Rights, as amended.

160 See The ombudsman's report on the visit of respite care facilities in 2006 (www.ochrance.cz).

161 See chapter II/ 5.6. of this Report

162 The ombudsman's information for the preparation of the special part of this Report of 24 January 2006, p. 3.

163 Act No. 108/ 2006 Coll. on Social Services became effective on 1 January 2007; the implementing decree to Act No: 505/2006 Coll. regulating standards of social services.

164 The Government Council for Seniors and Population Ageing was established on the basis of the Government Resolution No. 288 of 22 March 2006.

165 The activities of the Council secretariat are arranged for by the department of prevention of social and healthcare discrimination of the Ministry of Labour and Social Affairs.

166 Information about the Council's activities can be found on the website of the Ministry of Labour and Social Affairs (www. mpsv.cz).

Human Rights Council of the Czech Republic Government.[167] Four standing working groups were established at the first meeting of the Council which was held in April 2006: the working group for health care and social policy, the working group for promotion of information, social participation and elimination of discrimination of the elderly, the working group for the labour market, life-long learning and material security and the working group for housing and residential social services.

The improvement of the position of the elderly on the labour market and the preparation of measures ensuring their equal position will be dealt with by the working group for the labour market, life-long learning and material security. An increase of awareness of human rights of seniors, discrimination on the grounds of age ("ageism") and protection against abuse of seniors in various risky situations will be the focus of attention of the working group for promotion of information, social participation and elimination of discrimination of the elderly.

Discrimination on the grounds of age is understood not only as an issue of human rights of seniors, but also as a social problem with negative consequences for the entire society. According to the Ministry of Labour and Social Affairs, the risk of ageism is higher in cases of less skilled people and in areas with high unemployment. Seniors become one of the groups which are the most threatened with unemployment.[168] Protection against discrimination on the grounds of age and promotion o equal opportunities in the context of population ageing is a cross-sectional priority of the Czech Republic, formulated by the Government in the National Programme of Preparation for Ageing for the years 2003 to 2007. This programme emphasises the protection and implementation of economic, social, cultural, civil and political rights of seniors, their participation in social and economic development and life and contains measures in the labour market and employment fields, reform of the pension system, housing, education, transport, etc.[169]

The project "From Isolation to Inclusion", which was implemented in 2006 by the Ministry of Labour and Social Affairs in cooperation with the humanitarian civic association Život 90 and the Královéhradecký Region was focused on the integration of socially excluded seniors. Within the project, a plan of social inclusion of the elderly will be drawn, including the methodology of its elaboration, and a database of innovative actions and examples of good practice will be compiled.[170]

The issue of discrimination on the grounds of age (the "ageism") is less known and explored in comparison with other grounds of discrimination. Since it is a serious and also a complicated problem, it will require increased attention in the coming year and the adoption of measures for its solution. Beside the above-mentioned tools, one of the effective instruments

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167 The Council has 27 members and includes representatives of the Ministry of Health, Ministry of Finance, Ministry of the Interior, Ministry of Education, Youth and Sports, Ministry for Regional Development, the deputy chairman of the Czech Statistical Office, representatives of employees, employers, committees of the Parliament for social policy and health care, self-government authorities, health insurance companies, professional public, seniors' organizations and non-governmental non-profit organizations.

168 Based on an opinion poll commissioned by the Ministry of Labour and Social Affairs in 2006, the discrimination on the grounds of age is the most frequent kind of discrimination. See the material of the Ministry of Labour and Social Affairs "Discrimination on the grounds of age – a basic material for the National Strategy of the European Year of Equal Opportunities of 26 October 2006.

169 The programme is based, in particular, on the International Action Plan of Ageing adopted in Madrid in April 2002.

170 More information about the project and the database of examples of good practice can be found at the address www.i2i-project.net.

of protection against discrimination is the increased dissemination of information among the professional and general public, representatives of public administration and self-administration by way of targeted media campaigns, graduate and further education. [171] (see also chapter II/6 below)

6. Equal treatment and discrimination

6.1. Antidiscrimination legislation

After more than one year of review, the Antidiscrimination Bill and the relevant amending bill, submitted to the Chamber of Deputies[172] and thereafter to the Senate[173] in 2005, was voted down on 23 May 2006. The Chamber of Deputies did not succeed in finding absolute majority of all deputies necessary to outvote the Senate's veto.

A number of critical remarks in both chambers of the Parliament were raised against the Antidiscrimination Bill, both of a general nature (an unnecessary legislation, the regulation in the Charter of Fundamental Rights and Freedoms is sufficient, etc.) and against individual provisions of the Bill (vague definitions, inadmissibility of affirmative action, inappropriateness of entrusting the agenda relating to protection against discrimination to the ombudsman, etc.).

At the end of 2006, the Government ordered the Minister of Justice to prepare by the end of March 2007 a new Antidiscrimination Bill.[174] The Bill was approved by the new government appointed at the beginning of 2007.[175]

Failure to adopt a comprehensive legislation relating to protection against discrimination has been criticised for a long time by international human rights bodies of the UN (Final recommendations of the Committee on Elimination of All Forms of Discrimination of Women to the Third Periodic Report of the Czech Republic on the Implementation of Commitments Arising from the Convention on the Elimination of All Forms of Discrimination against Women),[176] *Final recommendations of the Committee on Elimination of Racial Discrimination to the Fifth Periodic Report of the Czech Republic on the Implementation on the Convention on the Elimination of All Forms of Racial Discrimination.*[177] *The adoption of the Antidiscrimination Act would also mean the fulfilment of transposition duties toward the European Union, which would result in the stay of proceedings for breach of the Treaty Establishing the European Community. Four proceedings for breach of the Treaty are currently pending against the Czech Republic in the field of equal treatment, two of which ate*

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171 Research activities have a major importance for the formulation of adequate policy in the context of ageing of the population. The Research Institute of Labour and Social Affairs published a research report "Age discrimination - ageism: introduction into theory and occurrence of discriminatory approaches in selected areas with an emphasis on the labour market" (Vidovičová, 2005), which deals with this problem both theoretically and empirically. The author also works at the project "Age mainstreaming", which should contribute to taking into account demographic development and needs of elderly people in the creation of the policy and conceptions in various areas and on various levels.

172 Releases of the Chamber of Deputies no. 866 and 867

173 Releases of the Senate no. 201 a 202

174 By its Resolution No. 1468 dated 20 December 2006

175 On 11 June 2007

176 CEDAW/C/CZE/CO/3

177 CERD/C/63/CO/4

in the phase of formal notification and two in the phase of reasoned opinion.[178] *Failure to adopt a comprehensive legislation relating to protection against discrimination would also means complications during the national review of the newly adopted UN Convention on the Rights of Persons with Disabilities, which bounds member states to prohibit all discrimination based on disability and to guarantee to persons with disabilities equal and effective legal protection against discrimination on any grounds.*

6.2 Prohibition of discrimination in labour-law relations and employment

A new Labour Code was adopted in 2006. According to the new Labour Code, employers are obliged to ensure equal treatment with all employees as to their working conditions, remuneration for work and the provision of other monetary performance or performance of monetary value, vocational training and an opportunity to achieve functional or other promotion in their employment. The Labour Code also permits employers to adopt temporary measures aimed at the achievement of balanced representation of men and women.[179] Despite the foregoing, the new Labour Code is conceived differently from Act No. 65/1965 Coll., the Labour Code, as amended, as regards protection against discrimination. The relevant terms, like direct and indirect discrimination, victimization, inciting discrimination, harassment or sexual harassment, are to be defined by a special law[180] - the Antidiscrimination Act, which was not adopted in 2006, as noted above.

6.2.1 Monitoring of compliance with labour laws, violations identified by labour offices and labour inspectorates

The monitoring of labour laws has been provided for traditionally by labour offices and since mid-2005 also by labour inspectorates.

The State Labour Inspection Office (hereinafter SLIO) carried out in 2006 an inspection campaign focused on potential discrimination and unequal treatment of foreigners working on the basis of a work permit with various companies in the Czech Republic. A total of 98 companies were controlled. However, no discrimination or unequal treatment of employed foreigners was found in any controlled subject. The SLIO obtained from the citizens 145 notifications which were assessed as notifications concerning also unequal treatment and discrimination. A total of 104 notifications were reviewed and settled. Notifications which could not be settled in 2006 will be or have already been included in the controlling activities in 2007.

Based on all controlling activities, unequal treatment and discrimination was found in 486 cases with 53 employers. It has to be noted that most employers (47) provided unequal remuneration for the same work, discriminated against their employees due to their health condition (3 employers), provided unequal length of vacation (2) or other (1 employer). No control was assessed as unequal treatment – discrimination on the basis of sex.

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178 Under Article 226 of the Treaty Establishing the EC, the European Commission may initiate proceedings against a member state for breach of the Treaty. Such proceedings have three phases: 1) formal notice, 2) reasoned opinion, 3) an action filed with the European Court of Justice. If the breach of the Treaty is not removed within the time limit set forth in the reasoned opinion, the European Commission may file an action against the member state with the Court of Justice.

179 Section 16 of Act No. 262/2006 Coll., as amended

180 Section 17 of Act No. 262/2006 Coll., as amended

It has to be noted that only a minimum (2.6%) of the total number of 5,485 notifications obtained by SLIO in 2006 concerned unequal treatment and discrimination. Employers in whose case violations relating to unequal treatment and discrimination were identified were imposed fines in the amount of CZK 90,000.

An overview of violations of labour laws detected by labour offices (according to information provided by the Ministry of Labour and Social Affairs) is stated in the table on the following page.

Act No. 435/2004 Coll., on Employment	Discrimination characteristics:	Total no. of cases	Of which discrimination			
			direct women	indirect women	direct men	indirect men
Section 4(1)	unequal treatment	28	12	1	15	
Section 4(2)	sex	31	9	5	15	2
	sexual orientation					
	racial or ethnic origin	2	1		1	
	nationality	5	4		1	
	citizenship	4	4			
	social origin	1			1	
	family					
	language					
	health condition	15	8		5	2
	age	15	7		7	1
	religion or belief					
	property	1	1			
	marital or family status or family duties	13	10	1		2
	political or other creed					
	membership and activities in political parties and movements					
	membership and activity in trade union or employer organizations					
	Total Section 4(2)	87	44	6	30	7
Section 4(9)	harassment on the ground of sex	4	4			
	harassment on the grounds of sexual orientation					
	harassment on the grounds of racial or ethnic origin					
	harassment on the grounds of disability					
	harassment on the grounds of age					
	harassment on the grounds of religion or belief					
	sexual harassment					
	total Section 4(9)	4	4			
	Total Section 4(1),(2) and (9)	119	60	7	45	7
Section 12(1)(a)	sex	1		1		
	sexual orientation					
	racial or ethnic origin					
	nationality					
	citizenship					
	social origin					
	family					
	language					
	health condition					
	age	5		3		2
	religion or belief					
	property					
	marital or family status or family duties					
	political or other creed					
	membership and activities in political parties and movements					
	membership and activity in trade union or employer organizations					
	Total Section 12	6		4		2
Employment Act - total		25	60	11	45	9

6.3 Discrimination on the grounds of sex

Discrimination on the grounds of sex overlaps to a great extent the topic of equal opportunities of men and women; therefore, this area is included in a separate chapter 7 (see below). In this place, we only summarize important court decisions and cases reviewed by courts in 2006.

6.3.1 Case law of the Constitutional Court – applications for participation in pension insurance

In 2006, the Constitutional Court decided[181] on the repealing of several provisions[182] of the Act on Pension Insurance (No. 155/1995 Coll.) and of the Act on Organization and Implementation of Social Security (No. 582/1991 Coll.), which it found discriminatory. Under the practical application of these provisions, only women had the period of parental leave or care for a disabled child included in their pension insurance period. Such periods were only included into pension insurance periods of men who filed an application for participation in pension insurance not later than two years after the end of the care for the child. A man who failed to do so was not entitled to have the period of care for the child included in the total period of participation in pension insurance. The petition to repeal the discriminatory provisions of these laws was submitted by the Supreme Administrative Court based on an appeal of Mr. M.H., who turned at first to social security bodies and then to general court with a petition for inclusion of the period of care for the child after the expiry of the period stipulated by the law. In its assessment whether the different conditions for women and men are legitimate and necessary, the Constitutional Court took into account, *inter alia*, the statement of the Ministry of Labour and Social Affairs under which it was necessary to select such regulation which will make it possible to identify the actual state of affairs even after several decades. Due to the small number of men taking care of children, it was them who were burdened with the administrative condition of documenting the care for children. Nevertheless, the Constitutional Court did not find the criterion of necessity of such different treatment as sufficient. It stated, among others, that "*The ministry possesses its own means to ascertain out of their own sources the facts decisive for inclusion of the period of care for the child"*. Therefore, the court concluded that imposing the duty to file an application on both men and women is not the only variant.

At the time of preparation of this Report, the relevant amendment to the Pension Insurance Act was discussed in the Chamber of Deputies of the Parliament of the Czech Republic.

6.3.2 Lawsuit in the matter of alleged discrimination on the grounds of sex in a selection procedure

In 2006, Czech courts examined the first case of discrimination on the grounds of sex in the field of labour law. Mrs. M.Č. filed in March 2006 a suit against Pražská teplárenská for

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[181] The finding of the Constitutional Court of 6 June 2006, Pl. ÚS 42/04, was promulgated in the Collection of Laws under number 405/2006 Coll. The relevant provisions of the laws were repealed with the effect from 1 July 2007.

[182] The following specific provisions were repealed: the second and the third sentence of Section 5(3) of Act No. 155/1995 Coll. on Pension Insurance, as amended, and Section 6(4)(a)(11) of Act No. 582/1991 Coll. on Organization and Implementation of Social Security, as amended, in parts stating "a man's care for a child up to four years of age, care for a child up to 18 years of age who is severally handicapped and requires exceptional care" and the words "these children".

alleged discrimination in the selection procedure for the post of chief financial officer. However, the action was dismissed by the court of first instance in September 2006. The defendant company Pražská teplárenská succeeded in proving at the court that the plaintiff was not selected to the above post due to her insufficient knowledge in some required specializations. This lawsuit will evidently continue in 2007, because Mrs. M.Č. filed an appeal against the judgment and the case will thus be reviewed by a higher-instance court.[183]

6.4 Discrimination on the grounds of sexual orientation

6.4.1 Registered partnership

The Chamber of Deputies of the Parliament of the Czech Republic approved on 15 March 2006 Act No. 115/2006 Coll. on Registered Partnership and on the Amendment to Certain Related Laws. This act was adopted despite the veto of the President of the Republic, which was outvoted in the Chamber of Deputies by the absolute majority of 101 votes.[184]

This Act grants to persons of the same sex, who enter into a registered partnership, the same rights and duties as related to the next-of-kin-status,[185] inheritance of the first group of heirs,[186] representation in ordinary matters and mutual alimentary obligation,[187] the right to deny testimony in criminal proceedings,[188] and a possibility to choose a defending counsel for the partner.[189] It does not allow the constitution of joint ownership of the partners, the use of common surname, automatic constitution of joint lease of the flat upon the execution of the lease agreement by one of the partners,[190] or adoption of children by partners.

An implementing decree to the Act[191], which was issued in June 2006, lists, for instance, the civil registry offices competent to issue a declaration on entry into the partnership, the manner of keeping the registered partnership logbook, the procedure used in the issue of partnership document or specimens of the relevant pre-printed forms.

The municipal authority of the city part Brno-Centre, i.e. the special civil registry office, as the office competent to make records of civil registry events (births, marriages and deaths) of citizens which occurred abroad, also registers partnerships concluded by the citizens abroad.

A total of 235 couples entered into the registered partnership since July 2006.

6.4.2 Lawsuit in the matter of discrimination at work on the grounds of sexual orientation

In 2006, Czech courts dealt with the first case of discrimination on the grounds of sexual orientation. The plaintiff, Mr. L.S., alleged that he had been discriminated against due to his

183 Source: ČTK, www.novinky.cz, www.diskriminace.cz

184 http://www.psp.cz/eknih/2002ps/stenprot/054schuz/s054223.htm#r8

185 Section 116 of Act No. 40/1964 Coll., the Civil Code

186 Section 473 of Act No. 40/1964 Coll., the Civil Code

187 Sections 9 and 10 of the Act

188 Section 100 of Act No. 41/1961 Coll., the Rules of Criminal Procedure

189 Section 37 of Act No. 41/1961 Coll., the Rules of Criminal Procedure

190 See accordingly Section 703 of the Civil Code

191 Decree No. 300/2006 Coll. implementing Act No. 115/2006 Coll. on Registered Partnership and on the Amendment to Certain Related Laws, and amending Decree No. 207/2001 Coll. implementing Act No. 301/2000 Coll. on Civil Registers, the Name and Surname and on the Amendments to Certain Related Laws, as amended

sexual orientation when he had not been hired as a masseur. The court upheld his case in January 2007 and ordered the defendant an apology and payment of CZK 70,000 in damages.[192]

Even though this was the first judgment of its kind in the history of the Czech Republic, it was given relatively minimum attention of the public. This judgment is important namely because the existing discrimination based on sexual orientation has become a topic of discussion not only in professional circles.

6.5 Discrimination on the grounds of race or ethnic origin

6.5.1 Crime motivated by racial intolerance

Crime with extremist undertone (from 1 January 2006 until 30 November 2006)

Crime	Number of offences in 2006	Number of offences in 2005	Difference
Intentional bodily harm [193]	15	20	-5
Disorderly conduct[194]	1	0	1
violence and threats against a group of citizens or an individual[195]	48	36	12
Incitement to hatred of a nation, ethnic group, race and creed[196]	52	63	-11
Instigating national or racial hatred	27	14	13
Support and propagation of movements aimed at suppressing citizens' rights and freedoms[197]	103	111	-8
Crimes against the constitutional order[198]	4	3	1
CZECH REPUBLIC	248	253	-5

Note.: These are police statistics, which are not comparable with the court statistics and with the statistics of the Supreme Prosecutor's Office.

6.5.2 Cases of racial discrimination investigated by the Czech Trade Inspection

The Czech Trade Inspection investigated in 2006 a total of 5 complaints of racial discrimination, only one of which was confirmed as justified - a ban on entry of the Roma into several restaurants and pubs in Krnov. Upon notification of the Municipal Authority, the Czech Trade Inspection made an inspection and imposed upon the owner of these establishments a fine in administrative proceedings in the amount of CZK 8,000.

6.5.3 Neo-Nazi concerts

The Ministry of the Interior established a working group which deals with the issue of concerts organized by right extremists with an aim of unifying the interpretation and

192 Mladá fronta dnes, 16 January 2007, Deník, 18 January 2007

193 Sections 221,222 of the Criminal Code

194 Sections 202,202a of the Criminal Code

195 Section 196 of the Criminal Code

196 Section 198a of the Criminal Code

197 Sections 260, 261, 261a of the Criminal Code

198 Sections 91-115 of the Criminal Code

application of Section 198a, Section 260 and Section 261 of the Criminal Code (which regulate the crimes of support, promotion or incitement of extremist conduct) to concerts of the extremists. The importance of this working group is reflected mainly in its efforts to find enough evidence for the police, which is necessary for successful prosecution and conviction of persons who suppress fundamental human rights and disseminate racial intolerance in connection with these concerts. For this purpose, a Position on the interpretation of grounds of criminal offences committed by right extremists and problems of their proving" was prepared and published in 2007.[199]

The Supreme Court issued on 13 December 2006 a streamlining opinion "On the interpretation of the objective aspect of the grounds of the criminal offence of support and promotion of movements directed at the suppression of human rights and freedoms under 260(1) of the Criminal Code", with a focus on the definition of the content of the term "movement".[200] In this opinion, the Supreme Court emphasised that, to fulfil the grounds Section 260, the movement had to exist at the time when it was supported or promoted by the offender. The Supreme Court also defined circumstances under which the support of movements of this type which no longer exist may also fulfil the grounds of some racial offences.[201]

6.6. Finding of the Constitutional Court on the reversal of the burden of proof in discrimination cases

The Constitutional Court decided in April 2006 on the motion of the Regional Court in Ústí nad Labem for repealing Section 133a of the Rules of Court Procedure[202], which enshrines the principle of reverse burden of proof.[203] The Court did not uphold the motion for repealing the above provision. On the contrary, it decided that the principle of reverse burden of proof does not contravene the principle of equality of the parties, because the unequal position of the parties is objectively and reasonably justified. The Constitutional Court further stated that a person who alleges that he/she was treated in a disadvantaging way must also prove such

199 The opinion is publicly available at the website of the Ministry of the Interior www.mvcr.cz, section Documents, subsection Extremism (in Czech).

200 File no. Tpjn 302/2005

201 " The promotion of a movement aimed provably at the suppression of human rights and freedoms which did not exist at the time of its promotion by the offender may fulfil, subject to the circumstances of the case, the grounds of the criminal offence of support and promotion of movements directed at the suppression of human rights and freedoms under Section 8(1) and Section 260(1) of the Criminal Code, if the offender intended to initiate by his conduct the establishment or renewal of such movement or the grounds of the criminal offence of support and promotion of movements directed at the suppression of human rights and freedoms under Section 261a of the Criminal Code, or the grounds of the criminal offence of defamation of a nation, an ethnic group, race and creed under Section 198 of the Criminal Code, or the grounds of the offence of inciting hatred against a group of persons or restriction of their rights and freedoms under Section 198a of the Criminal Code, which are not bound by their diction to the existence of such movement."

202 Section 133a of Act No. 99/1963 Coll., the Rules of Civil Procedure, as amended, reads as follows:
"(1) The allegations that the party has been directly or indirectly discriminated on the grounds of his/her sex, racial or ethnic origin, religion, belief, world opinion, disability, age or sexual orientation, shall be deemed proved by the court in labour matters unless the opposite has transpired in the proceedings.
(2) Allegations that a party has been directly or indirectly discriminated on the grounds of his/her racial or ethnic origin shall be deemed proved by the court in matters of provision of health and social care, assistance in material distress, access to education and vocational training, access to public contracts, membership in employee or employer organizations and membership in professional and special-purposes associations and during the sale of goods at a store or provision of services, unless the opposite has transpired in the proceedings."

203 This finding of the Constitutional Court was published under no. 419/2006 Coll.

allegation. Such person also has to allege that such unequal treatment had a racial motive but need not prove such allegation. The defendant may defend himself by proving that the difference in the treatment was not racially motivated.

By this finding, the Constitutional Court further specified the interpretation of the above provision to make it better correspond to the purpose and meaning of the relevant EC directives ES.[204] At the same time, the Constitutional Court stated that even though it is not its task to evaluate the quality in which the legislator managed to express commitments resulting from the directives in the clear language of the law, it is evident at first sight that the condition under which the plaintiff is to present to the court facts evidencing the occurrence of discrimination is not expressed with sufficient transparency in the current diction of Section 133a of the Rules of Court Procedure.

7. Equal opportunities for women and men

7.1 Reconciliation of family and professional life

The reconciliation of family and professional life is affected to a significant extent by both the parental allowance and the maternity benefit (and their amounts), as well as the regulation of nursing of a family member in the Act on Employee Sickness Insurance.

7.1.1. Parental allowance

Several changes of family allowances have occurred in the laws, aiming at the support of parenthood and reconciliation of the exercise of a profession and child care.

The amendment of the State Social Support Act,[205] which became effective on 1 April 2006, introduced a one-off school aids allowance for parents whose children start compulsory school attendance. By increasing the birth grant, it also improved the situation of parents of small children.[206]

Another adopted measure which results in a more significant increase of income of families with small children will come into effect on 1 January 2007.[207] It is represented by a new construction of the parental allowance, the amount of which is set to correspond to 40% of the average monthly wages in non-business sphere.[208]

No change is the use of parental allowance by men occurred in 2006. Central statistics of the state social support document that just 1.4% of the total number of recipients of parental allowance were men. This means that the share of men taking parental allowance stagnated in comparison with 2005. The new government considers now to introduce one-week parental leave especially for fathers.

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204 E.g. the Council Directive 2000/43/EC of 26 September 2000 implementing the principle of equal treatment between persons irrespective of their racial or ethnic origin.

205 Act No. 113/2006 Coll. amending Act No. 117/1995 Coll. on the State Social Support, as amended.

206 To 10 times the subsistence amount for personal effects of the child and to 15 times the subsistence minimum for person effects of the child in case of birth of twins, triplets or more children at a time.

207 Act No. 112/2006 Coll. Amending Certain Laws in Connection with the Adoption of the Act on Subsistence and Existence Minimum and the Act on Assistance in Material Destitution.

208 The parental allowance amounted in 2007 to CZK 7,582 a month.

7.1.2 Maternity benefit

The new Sickness Insurance Act (č. 187/2006 Coll.) partly eliminates the inequality in provision of maternity benefits upon taking a child into permanent care. As opposed to the current legislation,[209] it sets more favourable conditions for entitlement to maternity benefits in a situation when an insured (man) becomes entitled to maternity benefit due to care for a child whose mother died or for a child who has been entrusted to his custody under a decision of the competent authority, because it is no longer examined whether such insured man lives of does not live with a common-law wife. The current legislation gives priority in the provision of this benefit to the woman.

The new Sickness Insurance Act will allow alternative care by the child's mother and her husband or father of the child (the common-law husband). Each of them will be entitled, during such care, to payment of maternity benefit for the period and subject to the terms set forth in the Sickness Insurance Act. Such alternation is possible upon a written agreement since the beginning of the 7th week after childbirth and the frequency of alternation is not limited. In case of alternate care for the child, the payments of maternity benefits to the mother will be suspended and will be paid immediately to the man out of his sickness insurance, provided that he fulfils the conditions for its payment, or vice versa.

7.1.3 Support in nursing a member of the family

The purpose of the benefit during the treatment of a family member is to compensate the loss of income to the insured (man or woman) who has to stay at home due to emergency treatment of a member of his/her household, whose sickness or injury necessitates treatment of another natural person, or of a female household member who has given birth to a child and whose health condition necessitates treatment by another natural person.

A possibility of granting this benefit to two beneficiaries taking care of one and the same person consequentially subject to the compliance with the specified terms.

As stated in the previous Report, allowing alternation of the persons providing treatment is a positive step, which should be followed, for instance, by allowing deliberate alternation during the period set for treatment.

An Action Plan for Support of Families with Children for the years 2006-2009 was elaborated in 2006 in connection with the National Concept of Family Policy.[210] The aim of this Action Plan is to stimulate, *inter alia,* better compatibility of professional and family roles, to provide support to family services and financial assistance to families, and to promote family policy at the regional and the municipal level.

7.2 Representation of women at political and decision-making posts

The elections into the Chamber of Deputies of the Czech Republic, as well as the municipal elections and the Senate by-elections confirmed unfortunately the current situation where the representation of women in these elected bodies is still low.

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209 Act No. 54/1956 Coll. on Employee Sickness Insurance, as amended

210 See prior Report, chapter 4.5

The number of women in the 200-member Chamber of Deputies fell from the former 34 to the current 31 (i.e. 15.5%). After the by-elections held in autumn, women took 12 of the total 81 seats in the Senate (14%). There is no woman among the 13 governors of regions. Women constitute 19% of the assemblies of the statutory cities and only 12% of councillors.

According to the most recent opinion polls,[211] there is a relatively high demand for involvement of women in politics (89% of respondents) and also sufficient offer. Women comprise 30% to 50% of rank-and-file members of political parties but hold less than 10% if posts in their leadership: The key cause of low representation of women in politics is the difficult reconciliation of the carrier and family. Before the elections, only an average 26% of all candidates on the tickets (and only 19% of candidates on elective posts) were women. This was the main reason of the above decline in the number of female deputies.

The comparison of representation of women in the Chamber of Deputies of the Parliament of the Czech Republic in 2002 and 2006 is shown in the following table[212] :

Party	2002 Elections Number of female deputies	2002 Elections Share of female deputies	2006 Elections Number of female deputies	2006 Elections Share of female deputies	Increase/decrease in comparison with the previous period
ODS	8	14%	9	11%	+1
KDU-ČSL	2	9.5%	2	15%	0
SZ*	-	-	3	50%	+3
ČSSD	11	14%	9	12%	-2
KSČM *	12	29%	8	31%	-4
Total	34	17%	31	15.5%	-3

(as of 13 June 2006)
*The party applies quotas or recommendations in the compilation of tickets.

8. Children's rights

8.1. Institutional safeguards of the implementation of the Convention on the Rights of the Child

The Government Resolution on the Analysis of the Current State of Institutional Safeguards of the Implementation the Convention on the Rights of the Child[213] enjoined the Ministry of Labour and Social Affairs with coordination of the implementation of this Convention. Under the guidance of the Ministry of Labour and Social Affairs, a working group assembling representatives of ministries involved in children's protection in the Czech Republic was constituted and started its activities in 2006. Besides the coordinating Ministry, the membership of this working group includes representatives of the Ministry of Health,

211 Prepared by CVVM for the civic association Fórum 50 %.

212 Source: Fórum 50%, the article "České poslankyně se stávají ohroženým druhem: zastoupení žen v nově zvolené Sněmovně" (Czech Female Deputies Are Becoming Endangered Species, Representation of Women in the Newly Elected Chamber of Deputies), authors: Lenka Bennerová and Jana Smiggels Kavková

213 Government Resolution No. 530 of 4 May 2005

Ministry of Education, Youth and Sports and other representatives of the professional public. The task of this group is to analyze causes of shortcomings in the implementation of the Convention on the Rights of the Child and to seek jointly a conceptual solution.

8.2 Social and legal protection of children

The amendment to Act No. 359/1999 Coll. on Social and Legal Protection of Children, which came into force in 2006, took into account practical knowledge attained during more than five years of existence of this Act and responded to the need of increased protection of children in certain situation. In particular, the amendment brought the following:

- expansion of work with families from the part of the body responsible for social and legal protection of children,
- increased frequency of family visits and visits to children in institutional care or in establishments for children requiring immediate help,
- expansion of the institute of temporary foster care,
- specification and expansion of activities of establishments for children requiring immediate help,
- a state financial subsidy for founders of establishments for children requiring immediate help,
- new grounds of transgressions and administrative offences,
- increased cooperation of bodies responsible for social and legal protection of children and establishments for institutional and protective care.

This amendment also brings along increased protection of children threatened with violence, children placed repeatedly upon their parents' request to establishments providing continuous care for children or placed for more than 6 months in such establishments and children who are asylum applicants separated from their parents.

In the second half of 2006, the Government approved the "Concept of Care for Children Living outside Their Own Family.[214] This material identifies current problems in the whole area of social and legal protection of children. In its first part, it focuses on threatened children (children threatened in their own families, battered, abused and neglected children, children with educational problems, etc.). The second part describes all forms of substitute child care, beginning with institutional care up to adoption and foster care. The support of family care for children is considered a priority. The Concept indicates the need for elaboration of necessary methodological materials and for the establishment of expedient cooperation between ministries in the resolution of problems of social and legal protection of children.

There is still shortage of employees of bodies responsible for social and legal protection of children. This is a long-term problem, which has been accentuated in connection with the amendment to the Act on Social and Legal Protection of Children, which stipulated new duties for authorities of municipalities with extended competencies. According to the Concept, the main cause of insufficient social and legal protection of children is the shortage of financial funding for the exercise of delegated powers. Therefore, it was decided to set aside funds for covering of costs of the performance of social and legal protection outside the contribution to the performance of state administration. Thus, the funds should become

214 Government Resolution No. 180 of 10 October 2006

purpose-bound to a certain extent in the coming years, which will make it possible to claim more effectively their increase. In the course of 2007, the Ministry of Labour and Social Affairs will elaborate more detailed criteria of the use of capacities of individual authorities, as a basis for future-re-allocation of these funds.

The coordination of social and legal protection of children is hindered by the split of competencies in the field of rights relating to the child and the family among several ministries: the Ministry of Labour and Social Affairs, the Ministry of Health and Ministry of Education, Youth and Sports. An essential task of the above-mentioned working group is to bridge at least partly such fragmentation.

Another problem which has been criticized for a long time but has not yet been resolved is the conduct of social workers in cases of children taken away from their families only due to material destitution of the family, e.g. in cases of loss of housing. Separation of children from their families due to dissatisfactory housing situation is definitely in conflict with the best interests of the child and thus also contravenes the Convention on the Rights of the Child. However, the issue of provision of available social housing for families with children who are thrown out to the street (even due to their own fault) has not yet been resolved on both the central and local levels.

8.3 Violence against children; threatened children living outside their families

Despite the fact that the use of corporeal punishment definitely damages health of children (decreases their self-respect, increases negation emotions, contributes to the dissemination of violence in the family, the community and the society, the occurrence of corporeal punishment in the Czech Republic is still relatively high in the Czech Republic in comparison with western countries (the use of corporeal punishment has already been banned in 12 EU member states). 86% of children have personal experience with corporeal punishment by their parents, which is an initiating phase for the use of a corporeal punishment which meets the definition of violence; one quarter of children have experienced such violent punishment.

Another urgent problem which has not yet been sufficiently resolved is the contact of minor children with perpetrators of domestic violence. The right of the child to contact with both parents, which is enshrined in the Convention on the Rights of the Child, is often understood as a duty in the Czech Republic and priority is given to the parent's right to the contact with the child. The child's refusal of contact with the parent is often mistaken in practice for a situation where the child is manipulated by one parent against the other parent. The attitude of the children, who often refuse on their own the contact with the violent parent, is not sufficiently considered and sometimes not even adequately identified.

The courts should decide in the best interest of the child and should constitute at the same time a fair balance between the rights of the involved parties. It is necessary to distinguish in practice between cases where the child is manipulated by one of the parents and cases where the child itself refuses contacts with the parent. If in doubt whether the child refuses the contact with the parent out of its own will, the child should not be forced to such contacts in any way. Particularly the right of older children to decide independently whether they wish to contact their parent should be respected. Social workers and judges of family courts should be systematically trained on domestic violence issues.

8.4 Sexual abuse of children for commercial purposes

A pilot study on commercial sexual abuse of children in the Czech Republic, which was carried out in 2006, confirmed conclusively that children possess redundant and inappropriate information about sex, as opposed to the evident deficit of information on sexuality, erotic and relations. This imbalance, together with the reluctance of adults to provide adequate information to children, is the source of personal attitudes of children in this area. In the light of the foregoing, widespread acceptance of commercial sex by older children cannot be considered surprising.

The National Plan of Combating Commercial Sexual Abuse of Children for the years 2006-2008 was approved in 2006.[215] The key activities which are to be implemented in this period include increased effectiveness of coordination of the relevant government and self-government authorities involved in care for threatened children, enhancement of analysis and gathering of information about various kinds of pathological social phenomena connected with violence against children, more protection of children against abuse, e.g. by making mere possession of child pornography a criminal offence, strengthening of awareness about commercial sexual abuse of children among journalists, parents, professional and general public and increasing sensitivity of perception of this phenomenon and creation of friendly environment for child victims and witnesses in criminal proceedings.

8.5 Institutional and protective care

An important change brought about by the amendment[216] of the Act on Institutional Care[217] which became effective in December 2005 is the diversification of the regime of institutional and protective care. The amendment makes the protective care regime more stringent in that children with ordered protective care are not permitted to leave the facility or receive visits from persons other than those responsible for their care, next of kin and the authority for or social and legal protection of children. Visits and separate excursions of children with ordered protective care are newly considered as a measure in the upbringing and can thus be permitted as a reward subject to the conditions laid down by the Act. This measure is too strict with regard to children over 15 years of age and will hinder re-socialization of children after their return into ordinary life upon release from the institutional care facility.

The amendment further permitted installing into establishments where children with ordered protective care are placed construction elements preventing escape (e.g. bars, fences) and audio visual systems to control the vicinity of the building and corridors and separated rooms. Although the amendment tightened the protective care regime, it failed to physically separate protective care from institutional care in foster homes with a school. Thus, these children may still be placed in the same establishments (foster homes with a school). The Act leaves it up to the founder whether or not to establish separate facilities. Thus, the stricter protective care regime also affects children with ordered institutional care who are placed in the same establishments as children with ordered protective care (they live then in establishment with bars, fences and camera systems). In practice, diagnostic institutes try to place children with ordered protective care to establishments which are equipped for such care. However, for the sake of preserving the child's contacts with the family and due to scarcity of such

215 Government Resolution No. 949 of 16 August 2006

216 Act No. 383/2005 Coll.

217 Act No. 109/2002 Coll.

establishment in the catchment area of the diagnostic institutes, it is not always possible to place these children into the selected 2 – 3 establishments existing in the whole country. Therefore, such children are placed in ordinary facilities designated for institutional care; in there is a larger number of children with ordered institutional care in such establishment, such children are placed in a family-type protective care or a protective care group.

Another practical shortcoming is the imposition of a regime on children in foster homes and their punishment for every single breach of such regime. In such case, children do not improve their behaviour based on knowledge obtained through education, but adapt their behaviour to avoid punishment.

The fulfilment of the requirement of a more systematic separation of children with ordered institutional care from children with ordered protective care, the regime in school-type facilities, use of audio visual systems and performance of children's rights within the meaning of international conventions and the Act on Institutional and Protective Care was also the focus of attention of the ombudsman during his regular visits to these establishments. The ombudsman visited four of these establishments. As to the exercise of the regime of institutional and protective care, the ombudsman gained an impression from these visits that the requirement of the law for more evident separation of children with ordered institutional care from children with ordered protective care is mostly ignored and most children with ordered protective care are placed in a different upbringing group, which should be an exception under the law.

The ombudsman further focused on the installation of special construction elements and audio visual systems within the meaning of the Act on Institutional or Protective Care, which contains a legal authority to install camera systems for control of the vicinity of the buildings and areas of the establishments, spaces where the children have no access and corridors of the establishment. The ombudsman found that cameras were installed in two facilities. In the first one, they were installed in the part of the building designated for children with ordered protective care. At the same time, the ombudsman found that the cameras were also installed in the part inhabited solely by children with ordered institutional care, which is in conflict with the law. In the second establishment, the cameras were installed in the corridors, in common spaces and in teaching rooms – the Act does not allow installing cameras in such scope.

During his visits, the ombudsman noticed differences not only in material equipment, number and qualifications of the staff and presence of psychologists but also in the regime itself (e.g. setting up a points system or use of measures not supported by the law – e.g. taking away own clothing, etc.) and others. Such situation may endanger the principle of equality of rights of children. Other findings of the ombudsman related, for instance, to different set-up of the points systems, the possibility of children to visit parents at home, excursions, possibility of telephone contact with the family, etc.

The Czech Republic is characterized by a very large number of children placed in institutional care. Despite this, the work with families in cases when a child is placed in institutional care is insufficient. There is no work carried out with the child's family in the form of individual social work in the family and foster families are often given priority over biological parents. Keeping as extensive personal contacts with the child's parents is needed as a part of positive approach to work with the family of a child placed in an infant home or foster home. Nevertheless, the rules laid down in some of these establishments do not make it possible to

respect to the maximum extent the rights of the children to contacts with their parents. Therefore, state authorities have to see that the rights laid down by these facilities allow the maximum possible respect for the rights of the children to contacts with their parents.

Employees of the authority for social and legal protection of children or the institutional care establishments themselves are frequently inactive or mislead the parents by providing incorrect information and do not recommend or prohibit parental visits during the initial phase after the placement of the child in the institutional care establishment, alleging that the child needs space for adapting to the new environment. In many cases, this results in alienation and emotional deprivation of the child or in a petition to the court for declaration of lack of interest of the parents in the child.

On the contrary, it is in the interest of the child, especially if its parents were not deprived of their parental responsibility, to see its parents as often as possible and that the time limits to the visits do not prevent maintaining emotional and family links with children placed in institutional care.

8.6 Enforcement of judgments concerning custody of minor children (abductions of children from abroad)

Several cases of very drastic enforcement of judgments by taking away a child from one of the parents (the "distraint of the child") stirred the public opinion in 2006. Such intervention represent means of the last resort of the state not only in cases where the custody is granted to specific person but also in cases of hindering contacts or in the enforcement of a decision to return the child who has been abducted by one of the parents from abroad. Actually, these are very emotionally tense situation, where the obliged person refuses, sometimes even by violence, to surrender the child physically. The current problems lie mostly in lack of professional training of court executors, insufficient coordination with the employees of the authority for social and legal protection of children and also in disputes as to who is responsible for physical taking away of the child. It is a specific feature of international abductions of children that it is necessary to decide at first whether to return the child to the country from where the child has been abducted. The proceedings on the care for the minor child should be held only after the return of the child to the environment from which it has been abducted.

Current Czech laws do not sufficiently respond to Community law and do not reflect the regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility,[218] under which the court must issue its judgment within six weeks after the application for return of the abducted child is lodged. This regulation further specifies of the rules laid down by the Hague Convention on Civil Aspects of International Child Abduction.

The relevant judicial proceedings, including the enforcement of the judgment, should be short and should be completed preferably not later than six weeks after the relevant application is lodged. The State cannot relieve itself of its responsibility for ensuring prompt return of the abducted child by referring to unhelpful or negative attitude of one of the involved parties. The state authorities must provide sufficient information to the children and must make it

[218] Council Regulation No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000,

possible for the separated parent to properly and continuously contact the children before the enforcement of the judgment. The children should be prepared in advance for the contact with the parent and it is necessary to provide within the framework of such contact sufficient space to all involved parties to make an appropriate use of the contact, i.e. to ensure, among others, the right to privacy during the meeting. It is necessary to complete a new instruction for court and authorities for social and legal protection of children, which would clearly define the specific form of cooperation between court executors and social workers participating in the enforcement of such judgments, and to take proper regard of the human rights aspect of these problems.

8.7 Maintenance duty of parents towards children

In practice, a number of sole parents with children face financial difficulties due to the failure of the parent who does not live with the child/children in common household to fulfil his/her maintenance duties toward his/her children. At the same time, the determined maintenance amount is often inadequate to the actual financial situation and property of the obliged parent.

The Slovak legislation, which sets the maintenance amount to be paid by the obliged parent at 30% of the subsistence minimum irrespective of his/her actual income appears inspiring in this respect.

9. Foreigners

9.1 Basic migration trends in 2006

In the past years, the Czech Republic has become a destination country for a number of foreigners who wish to live and to work here. This fact is documented by statistics, which indicate that while a total of 278,312 foreigners were permitted to reside in the territory of the Czech Republic as of 31 December 2005, the foreigner police had on its records as of the same date of 2006 a total of 321,456 foreigner with permitted permanent or long-term residence (which represents, in absolute figures, an increase by 43,144 persons). Almost one third of foreigners holding residence permits in 2006 were citizens of EU member states.[219] The order of the first five nationalities in the statistics of residence permits in the territory of the Czech Republic (Ukraine, Slovakia, Vietnam, Poland and Russia) did not change from 2005.

9.2 Principal legislative and conceptual changes in the Czech Republic in 2006 pertaining to human rights

The terms and conditions of stay of foreigners in the Czech Republic are regulated by Act No. 326/1999 Coll. on Residence of Foreigners in the territory of the Czech Republic and on the Amendment to Certain Laws, as amended (hereinafter the "Foreigners Act"). Act No. 428/2005 Coll. amending Act No. 326/1999 Coll. on Stay of Foreigners in the Czech Republic and on the Amendment to Certain Laws, which came into effect on 24 November

[219] Statistical reporting is affected by the application of the right of EU citizens to freedom of movement and residence. Statistical overviews record only those EU citizens who applied for or were issued a special residence permit; however, those who only apply their right are not reflected in the statistics. Due to this, the numbers of EU citizens staying actually in the Czech Republic would be higher than those reflected in statistical analyses.

2005, contains new provisions concerning, in particular, the establishment, operation and conditions of stay of detained foreigners (for administrative deportation purposes) in detention facilities for foreigners (Chapter XII) with the aim of overall humanization of these conditions.

Furthermore, the amendment simplifies, for instance, the possibility to obtain visa for a stay more than 90 days for employment purposes; it allows foreigners to use a single one-year work permit in the application for both long-term and short-term visa, extends the maximum validity of short-term visa from 1 to 2 years and permits the issue of long-term residence permits for two years in certain cases (e.g. for business purposes).

Several other amendments to the Foreigner Act were adopted in 2006.[220] Act No. 161/2006 Coll., amending Act No. 326/1999 Coll. on Stay of Foreigners in the Czech Republic and on the Amendment to Certain Other Laws, as amended, brought about principal changes, particularly with regard to issues related to granting permanent residence to foreigners. In accordance with the Council Directive 2003/109/EC, this amendment permits every foreigner to obtain permanent residence in the territory of the Czech Republic after 5 years of uninterrupted stay in the Czech Republic. This shortened significantly the time limit for granting permanent residence, compared with the previous 10 years of uninterrupted stay. This change should affect approx. 38,000 foreigners.

From the viewpoint of foreigners, this actually represent a key change, because a number of rights depends on obtaining permanent residence and the permanent residence thus simplifies substantially the living conditions of foreigners. Such shortening of this time limit also enables foreigners to apply earlier for Czech citizenship.

Other important changes relate to issues of stay of citizens of the European Union and their family members in the Czech Republic.

9.3 Problems related to health insurance of certain categories of foreigners from third countries with long-term residence permit in the Czech Republic

A systemic solution of certain deficiencies of health insurance of foreigners, which were pointed out in previous Report, was not found even in 2006.

With regard to the serious nature of problems with insuring newborn children of long-term resident foreigners in the Czech Republic, the ombudsman communicated in 2006 with the Ministry of Health to seek possible solution of this matter. As an acceptable minimum solution, the ombudsman proposed the introduction of a substitute payment within the commercial insurance system, where the policy of the mother who holds a long-term residence permit in the Czech Republic and pays health insurance, would also apply to the child since its birth. Based on negotiations between the Ministry of Health and the General Health Insurance Company, the limit of coverage of care for newborn from the contractual insurance of its mother has been increased significantly to cover also the higher financial requirements of the care for the child. Thereafter, the ombudsman did not receive in 2006 any new complaint relating to insurance of children of foreigners.

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220 These changes were implemented by Acts No. 112/2006 Coll., No. 136/2006 Coll., No. 161/2006 Coll. and No. 165/2006 Coll.

Another lingering problem is the health insurance of persons enjoying subsidiary protection, where it is not clear whether this insurance is also covered by the state for persons who are not employed. This problem will be resolved in cooperation with the Ministry of Health.

9.4 Access of foreigners from third countries to education

The 2005 Report pointed to restrictions in the access of some children of foreigners from third countries to education and school services, which arose after the effective date of the new Education Act. Based on a motion of the Government Council for Human Rights, the Ministry of Education, Youth and Sport prepared in 2006 a bill amending Act No. 561/2004 Coll. on Preschool, Primary, Secondary, Higher Vocational and Other Education (the Education Act) and the Asylum Act. The purpose of these proposed amendments is to ensure to most foreigners from third country who stay legally in the Czech Republic the same access as the access of the citizens of the Czech Republic to preschool, primary artistic, language and special-interest education and school. The amendment should also resolve the access of foreigners without residence permits to primary education in order to remove a conflict of the current legislation with the Convention on the Rights of the Child.

9.5 Access of foreigners from third countries to employment and self-employment activities

At the beginning, the Czech Republic used to be a transit country for migrants. Nowadays, it is become a destination country, where the foreigners to come to reside here permanently, not only for political but also for economic reasons. The Czech society has been gradually realising the importance of arrival of foreigners, who supplement, among others, the decrease in the number of the population. In this respect, the last year also represented a continuation of this trend of slow increase of the share of foreigners (which is, however, still low in comparison with the developed EU member states).

Almost 185,000 foreigners worked legally in the Czech Republic last year. Those mostly represented at the labour market were the Slovaks, more 91,000 of whom found jobs here last year, followed by 43,000 Ukrainians and 17,000 Poles. Over 67,000 foreigners were registered as entrepreneurs in the Czech Republic and 8,000 foreigners registered a private trade. Almost 80% of businessmen were the citizens of Vietnam, Ukraine and Slovakia.

The most recent legislative changes simplified and removed administrative impediments in grating visa and issue of permits to foreigners for the purpose of employment or doing business in the Czech Republic. Under the amendment of the Foreigner Act,[221] which became effective on 24 November 2005, it is possible to conduct concurrent proceedings for issue of a work permit and granting a visa for a stay more than 90 days for employment purposes (see also chapter II/9.1 above). Another amendment of the Foreigner Act,[222] which became effective on 27 April 2006, simplified the possibility to obtain visa for a stay more than 90 days for business purposes so that the proceedings for granting this visa be conducted concurrently with the proceedings for obtaining a trade licence.

The amendment of Foreigner Act No. 161/2006 Coll. also amended the Employment Act. Under this amendment, foreigners from third countries holding long-term residence permit for employment purposes as residents of another EU member state may work in the Czech

221 Act No. 428/2005 Coll.

222 Act No. 161/2006 Coll.

Republic without a work permit after the lapse of 12 months after the issue of the long-term residence permit. Moreover, a long-term resident who holds a permanent residence permit does not need a work permit.

9.6 Situation at foreigner police offices

The approach to and treatment of foreigners at foreigner police offices is a serious systemic problem, which was dealt with by previous Reports. Based on a specific complaint and on his current knowledge, the ombudsman investigated the conditions and treatment at the foreigner police office in Olšanská Street in Prague. The ombudsman then proposed a number of organizational recommendations, for instance, improved signs on the offices, informing foreigners when and how to exercise their rights to inspect the file, better presentation and updating of acts posted on the internet, operation of the infoline not only in Czech but also in other languages (namely Russian and English) and others.

At the end of November 2006, the foreigner police office in Prague was moved from Olšanská Street to new, better adapted facility in Koněvova Street. *In may be expected, at least in the long-term perspective, that the situation at this office, which has been repeatedly criticized, will improve*.

9.7 Other problem areas

A key problem is still the complicated, vague regulation of the Foreigner Act, which is often incomprehensible not only to foreigners but also to officials. This fact sometimes results, *inter alia,* in a non-uniform interpretation of this Act by individual foreigner police departments.

In a number of cases, the ombudsman found out in 2006 that a visa application was dismissed without asking the applicant to remove deficiencies in this application, often in cases when such deficiencies could be very easily and quickly removed. According to the ombudsman, such situation represents an unnecessary burden not only for foreigners but also for state authorities.

9.8 Illegal migration and its human rights aspect

The number of foreigners staying illegally in the territory of the Czech Republic decreased significantly in comparison with the previous year. Since 2006, the Ministry of the Interior has been monitoring statistics of illegal migration and stay of foreigners in the Czech Republic also with regard to its gender aspect.

The "client system", which exists in the Czech Republic, relates particularly to persons coming from former USSR states (Ukraine). This system makes it difficult for a customer of the "client" (i.e. a person who organizes and offers labour force for his own gainful purposes) to make use of the existing instruments of prevention of illegal labour-based migration into the Czech Republic[223] and may result in violations of human rights of such person (by forced

[223] The instruments of prevention of illegal migration include, for instance, provision and distribution of information about the possibilities of legal employment in the Czech Republic and about the risks of illegal employment, particularly by means of an information flyer "Employment of Foreigners in the Czech Republic" in the Ukrainian language, which was distributed by non-profit organizations in the Czech Republic and in Ukraine, information brochures and texts published in several language versions on the Integrated Portal of the Ministry of Labour and Social Affairs.

labour or restrictions of personal freedom). Due to their decline to the bottom of the society and illegal participation in the labour market, such people do not represent a contribution to the Czech society, which they could actually represent under certain circumstances. *Therefore, it is desirable to provide to them and to their potential employers certain services supported by the Czech state, a kind of legal alternative to the "client system".*

The most appropriate solution of this situation appears to be the initiation of a project which would offer the Ukrainians legal brokering of employment in the Czech Republic and assistance in the settlement of the necessary administrative matters. The focus will be on the cooperation between the Ministry of Labour and Social Affairs and selected Czech legal entities (preferably non-governmental non-profit organizations), which would operate in both countries for a certain pilot period, within their existing social and legal counselling and immigration centres, also activities focused on the issues of employment of Ukrainian citizens in the Czech Republic. Cooperation in this respect has already been initiated with the Ukrainian state administration and non-governmental organizations which have experience with field work and research of this issue in both the Czech Republic and Ukraine.

9.9 Integration of immigrants into the Czech society

The Ministry of Labour and Social Affairs prepared in cooperation with other ministries a proposal of further steps to be taken within the framework of the Concept of Integration of Foreigners, which are based on priorities set out by the updated Concept from February 2006. The foremost priority of integration of foreigners is the promotion of knowledge of the Czech language. Therefore, preparations for the establishment of a system of teaching Czech to foreigners and the introduction of a uniform Czech language exam with regard to the legal duty of foreigners to prove the knowledge of Czech in connection with his application for permanent residence, which is to be introduced, continued in close cooperation among the Ministry of Labour and Social Affairs, the Ministry of the Interior and the Ministry of Education, Youth and Sports.[224]

The Concept also emphasises the necessity to disseminate information to enhance the foreigners' knowledge of the legal and social system in the Czech Republic. One of the important elements of the integration strategy is also the financial support of projects of non-governmental non-profit organizations, which are funded every year from the state budget. Individual ministries announce every year subsidy proceedings in support of integration of foreigners and several dozens of such projects were subsidized in 2006 (similarly, a number of these projects focused on foreigner integration were subsidized in 2006 by regions and municipalities). To provide detailed information about the situation and status of foreigners in the Czech Republic, the Ministry of Labour and Social Affairs initiated the elaboration of two surveys.

Two partial but important legislative amendments were adopted in the field of assembly right. Act No. 161/2006 Coll., which became effective on 27 April 2006, also amends Act No. 116/1985 Coll. on the Conditions of Activities of Organizations with an International Element in the Czechoslovak Socialist Republic. This legislation repealed the legal form of a legal entity called "organization of foreign nationals. The existing organizations of foreign national are currently considered as civic associations pursuant to Act No. 83/1990 Coll. on Assembly

[224] In these respects, the Ministry of the Interior prepared a *draft amendment to Act No. 326/1999 Coll. on Residence of Foreigners in the territory of the Czech and on the Amendment to Certain Laws, as amended;* the proposed effective date of the relevant provision of this amendment is 1 January 2009.

of Citizens, as amended. Furthermore, Act No. 342/2006 Coll. Amending Certain Laws Relating to the Population Register and Some Other Laws, which was also approved, contains an amendment to the Act on Assembly of Citizens, substituting, *inter alia,* the birth identification numbers of members of preparatory committee with their dates of birth.

Thus, the amendments have established the same conditions for assembly of citizens and foreigners, which is currently subject only to the registration principle pursuant to the Act on Assembly of Citizens. This also created conditions for ratification of Convention on the Participation of Foreigners in Public Life at Local Level, as regards its Article 3(b), which guarantees to the settled foreigners the right of assembly under the same conditions as the citizens of the Czech Republic.

Based on a material which is currently under preparation and is to be submitted to the Government of the Czech Republic should stipulate whether the Convention on the Participation of Foreigners in Public Life at Local Level will be ratified.

9.10 Citizenship, judicial review of decisions not to grant Czech citizenship

A total of 617 decisions not to grant Czech citizenship were issued in 2006. 329 of those decisions were appealed. The appeal was granted in 122 cases; in 185 cases, it was dismissed, one applicant withdrew his application and the appeal of 31 cases is still pending.

The decisions not to grant Czech citizenship are subject to judicial review. In this respect, a total of 9 administrative actions and 4 cassation complaints were filed in 2006. According to the order[225] of the extended senate of the Supreme Administrative Court dated 23 March 2005, applicants for Czech citizenship are entitled to file a complaint against the decision not to grant them the Czech citizenship, if they allege that the rights of the party to the administrative proceedings have been breached in the proceedings on their application. Due to this, it is no longer possible for the relevant courts to reject such complaints as non-reviewable, as it was mostly the case before the adoption of this legal opinion of the Supreme Administrative Court, which is legally binding for them.

A total of 921 Slovak citizens obtained Czech citizenship by the simplified way - declaration.

Act No. 193/1999 Coll. on Citizenship of Some Other Former Czechoslovak Citizens, which was amended[226] as of 23 February 2006, enabled former Czech citizens to obtain again Czech citizenship by the simplified way - declaration. This possibility was used by 205 former Czech (Czechoslovak) citizens.

According to the Centre for Issues of Foreigners, a number of citizenship applications of foreigners (asylum holders) who met all other legal conditions were rejected in 2006 due to the fact that they incurred at a certain period some debt on public health insurance. This fact was the reason for a negative decision even if such debt arose many years ago and was promptly paid after it had been discovered and not, for instance, immediately before filing the application for Czech citizenship. Thus, some foreigners are not allowed to complete their integration into the society and to attain full rights due to such relatively common and often minor problem.

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225 Ref. no. 6 A 25/2002–42

226 By Act No. 46/2006 Coll. amending Act No. 193/1999 Coll. on Citizenship of Some Former Czechoslovak State Citizens

The Ministry of the Interior prepared in 2006 a material intent of the Act No. 40/1993 Coll. on Obtaining and Loss of Czech Citizenship. A new trend is to be represented by the expansion of possibility of holding double citizenship. This regulation would be a logical outcome of the existing discussions and legislative measures (amendments to the Citizenship Act) relating to the abandonment of the double citizenship principle.

With regard to human rights protection, however, we cannot appreciate the intent to strike out from the bill the declaration of Czech citizenship,[227] which allows former citizens of the Czech and Slovak Federal Republic to attain Czech citizenship (under these provisions, they are legally entitled to it). The impact of dissolution of the federation has not yet been fully "resolved", which is documented by the constantly relatively large number of Slovak citizens who have gained Czech citizenship in this manner. According to the Counselling Centre for Citizenship, Civil and Human Rights, which has been dealing for a long time with this issue, the most complicated cases are currently being resolved – e.g. persons in detention and residential facilities, homeless persons, etc.

The preparation of the necessary more modern legislation was somewhat slowed down by the election; however, it would be desirable to continue in the preparation of the reform, because the current regulation of citizenship, does not reflect enough the necessity of integration of foreigners and particularly of their children and does not correspond to new needs.

10. Refugees and other persons in need of international protection

10.1 Overall situation and tendencies in asylum and provision of protection in 2006

The Czech Republic had on its records in 2006 a total of 3,016 asylum seekers. This represents a year-on-year decline in comparison with 2005, when 4,021 persons applied for asylum in the Czech Republic. The development in the Czech Republic corresponds to the pan-European trend, since the total number of asylum seekers in the member states of the European Union is falling every year.

The development in the field of asylum in the Czech Republic was affected in 2006 by two numerous flows of asylum seekers. The first one was represented by arrivals of citizens of Egypt and Kazakhstan; the numbers of citizens of these two countries who applied for asylum in the course of several months exceeded many times the previous numbers of applicants. The large number of asylum applications filed by Egyptian and Kazakh nationals was also reflected in the structure of asylum seekers in the Czech Republic. In 2006, Egypt represented the second and Kazakhstan the third main source country in the filed of asylum. Like in previous years, the source country with the highest numbers of asylum seekers in 2006 was Ukraine. Other sources with a large number of asylum seekers in 2006 included Byelorussia and Russian Federation.

In 2006, the Ministry of the Interior as the first instance authority issued a total of 3,015 decisions. A total of 364 foreigners were granted protection in the territory of the Czech Republic in that year. The number of persons granted protection increased by 10% in

[227] Stated in Section 18a) , 18b) and 18c) of the Act

comparison with the previous year, which was the highest number in the history of the Czech Republic. The total rate of granted forms of protection reached 14.2% in 2006.

The Ministry of the Interior granted international protection to a total of 268 persons. The most numerous among them were citizens of Byelorussia (66) and the Russian Federation (51). The other more numerous groups of citizens who were granted asylum in the Czech Republic in 2006 include Ukraine (31) and Kazakhstan (31), followed by stateless persons (23). Subsidiary forms of protection in the form of obstacles precluding travel or subsidiary protection were granted in a total of 96 cases, most frequently to citizens of Byelorussia (49), followed at a significant distance by citizens of Uzbekistan (11) and Cuba (10).

10.1.1 Resettlement of Uzbek refugees

In the second half of 2005, the Czech Republic joined the immediate assistance to a group of ca 450 Uzbek refugees who were forced to leave their country of origin in connection with violent oppression of social disturbances in eastern parts of Uzbekistan in May 2005.

The Czech Republic, acting in cooperation with UNHCR and the administration of the United States, offered a possibility of acceptance to a group of fifteen refugees. These persons were granted asylum and they obtained assistance for integration in the life of the Czech society. The resettlement of the group of Uzbek refugees was a humanitarian action with the aim of providing protection to endangered people, who would be facing in case of return to their homeland a real danger of being tortured or of other cruel, inhuman or degrading treatment and would be sentenced without fair trial to high prison sentences or even to death.

10.2 Changes of the legal framework of asylum and international protection in 2006

The year 2006 marked the completion of the legislative process of amending the Asylum Act,[228] which came into effect on 1 September 2006. This is yet another amendment transposing into the Czech legal system the European law, specifically the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection (the "Qualification Directive").

The purpose of the Qualification Directive is to help build a common European asylum system, which should also include the approximation of rules of recognition of refugees and on the content of the refugee status. Thereafter, the rules concerning refugee status should be supplemented with measures directed at subsidiary forms of protection. This is a relatively voluminous and principal amendment.

The amendments to the Asylum Act can be divided into two groups: amendments transposing the Qualification Directive into Czech law and amendments invoked by the needs of application practice (see also clause II/10.3.1 below).

There are three types of amendments to the Asylum Act invoked by the transposition of the above directive:

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228 Act No. 165/2006 Coll. Amending Act No. 325/1999 Coll. on Asylum and on the Amendment to Act No. 283/1991 Coll. on the Police of the Czech Republic, as amended, (the Asylum Act), as amended, and some other laws

- a principal change is represented by the establishment of the international protection, which has two forms – the existing asylum and the new subsidiary protection, which is a new institute replacing obstacles precluding travel under Section 91 of the Asylum Act ;
- amendments under substantive law related to the approximation of the rules of recognition and content of the refugee status – these are comprised of further specification of the existing act or reflect the relevant changes relating, for instance, to withdrawal of asylum or to the exclusion clause;
- changes invoked by the introduction of joint proceedings for both forms of international protection.[229]

10.3 Problems of asylum practice

10.3.1 Health insurance of applicants for international protection

Health insurance problems which had occurred in 2005 and 2006 were resolved by the amendment[230] to the Asylum Act and the amendment of Act No. 48/1997 Coll. on Public Health Insurance and on the Amendment to Certain Related Laws. Since 1 September 2006, when the provisions relating to health care came into force, applicants for international protection and their children born in the territory of the Czech Republic, foreigners who have been granted visa for the purpose of sufferance of their stay and their children born in the territory of the Czech Republic and children born to persons who were granted asylum or who enjoy subsidiary protection, are considered for health insurance purposes as foreigners holding permanent residence permit in the territory of the Czech Republic. Costs incurred by health care facilities in connection with the provision of health care are covered by public health insurance. Following an agreement among health insurance companies, this duty has been assumed by the General Health Insurance Company (VZP), where the entitled persons are automatically registered in the central register of insureds. There are, however, some problems with issuing the "insureds cards", which are caused by communication within VZP.

10.3.2 Asylum proceedings in the transit area of the Prague-Ruzyně International Airport and in the detached establishment in Velké Přílepy

A new reception centre with the capacity of 45 beds was opened in the transit area of the Prague-Ruzyně International Airport in 2006. According to the information of the Ministry of the Interior, this capacity was to provide a sufficient resolution for a capacity deficit which had resulted in release of applicants for international protection in territory of the Czech Republic. However, new problems with capacity arose after several months due to an increase of new arrivals of applicants for international protection. The situation was further complicated between June and October 2006 by hundreds of Egyptians who flew to the Czech Republic and applied here for international protection. At that time, the Ministry of the Interior decided to open a detached establishment of the reception centre in the transit area of the Prague-Ruzyně International Airport in Velké Přílepy with ca 120 beds.

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229 An applicant for international protection files only one application. The Ministry of the Interior will conduct administrative proceedings where it will examine whether the applicant has fulfilled the legal prerequisites for granting asylum or subsidiary protection; if it is ascertained in the proceedings that the applicant has met the conditions for granting both forms of protection, he will be granted asylum as a higher form of protection.

230 Act No. 165/2006 Coll.

According to the Ministry of the Interior, the above step was taken both due to shortage of capacities and to prevent abuse of organized entry into the territory of the Czech Republic. By the opening of the detached establishment, the competency for settling actions against decisions of the Ministry of the Interior was delegated to the Regional Court in Prague, which issued its decisions within the time limit stipulated by the law (unlike the Municipal Court in Prague), thus fulfilling the condition for preventing entry into the Czech Republic to foreigners who failed at the court of appeal. The opening of the detached establishment in Velké Přílepy has been criticised by non-governmental organizations and other involved bodies.

Another general problem which relates to granting asylum in the transit area of the Prague-Ruzyně International Airport and in the detached establishment Velké Přílepy is the possibility of efficient and fast review of the legality of deprivation of personal freedom. Non-governmental organizations state that the existing practice when the applicants for international protection staying in the transit area of the Prague-Ruzyně International Airport and in the detached establishment are deprived of their personal freedom for a number of months without a court decision and thus without the possibility to review the legality of deprivation of personal freedom breaches Article 5(1) of the Convention on the Protection of Human Rights and Fundamental Freedoms.

On the contrary, the Ministry of the Interior states in this respect that several foreigners placed in this reception centre or in its detached establishment filed a petition for protection against the illegal intervention of the Ministry of the Interior, which did not terminate their stay in this reception centre or in its detached facility and the court expressed an opinion that the detention of foreigners in this area is not in conflict with the above article of the Convention on the Protection of Human Rights and Fundamental Freedoms. As to the court review, the court believes that this efficient and fast court supervision is not excluded in the Czech Republic. The conditions stipulated by the above Convention are met by Section 200o of the Rules of Civil Procedure, under which a foreigner in such situation may initiate a civil suit and may apply to the court to order his release because the conditions of detention stipulated by a special law (in this case by the Asylum Act) were not met. This provision may also be applied to cases falling under the Asylum Act, because footnotes do not represent a mandatory reference, which is, in the given case, a reference to the Act on Residence of Foreigners.

The above problems are also the subject of the amendments of certain provisions of the Asylum Act, e.g. the determination of the maximum period of stay in the reception centre in the transit area of the international airport. However, no consensus was reached during the preparation of the amendment between the Ministry of the Interior on the one side and the ombudsman, the Government Commissioner for Human Rights and UNHCR on the other side. The conditions relating to the maximum period of stay in the reception centre at the airport, which could not be resolved, were presented as a disputed point at a government meeting+; however, the Government approved the original diction proposed by the Ministry of the Interior, which represents, according to the Government Commisioner for Human Rights, a restrictive regulation of the “airport proceedings”.

According to non-governmental organizations, the legal status of an applicant for international protection who filed his application in the transit area of the international airport is too weak in comparison with the other applicants (except for those who filed an application in the detention facilities for foreigners). The reception centre in the area of the international airport should play the role of a reception centre and not of a detention facility.

Based on his own initiative, the ombudsman also made an investigation in the matter of the detached establishment in Velké Přílepy. The ombudsman concluded that, despite his reservations regarding the systemic aspect of the current regime of stay, it is impossible to overlook the exceptional events which led to it and which may be repeated, threatening safety and health of the foreigners residing there and of the staff of this centre. According to the ombudsman, the regime introduced in the reception centre in Velké Přílepy is definitely restrictive but is justified to a considerable extent and corresponds to what has occurred in the centre. Thus, it cannot be concluded, in the ombudsman's opinion, that the regime of the centre breaches the provisions of the law which constitute the "hard core" in the form of an express stipulation of the rights and obligations of foreigners staying there.

10.3.3 The case of asylum seekers from Egypt

A mass organized arrivals of Egyptian nationals occurred in mid-2006. Dozens of them flew to the Prague-Ruzyně International Airport where they used the stopover to apply in the transit area for international protection. The capacity of the reception centre was not sufficient for such mass arrival, due to which the Egyptian applicants were released to the Czech territory for capacity reasons. After their arrival into the accommodation centres, they started leaving deliberately the centres.

At that time, the Ministry of the Interior adopted a measure to prevent illegal migration of the Egyptian nationals into EU member states. As noted above,[231] the Ministry of the Interior decided to open in August 2006 a detached establishment of the reception centre of the Prague- Ruzyně International Airport in Velké Přílepy. In cooperation with the Ministry of Foreign Affairs, the category of foreigners entitled to stay in the transit area of the international airport in the Czech Republic solely on the basis of airport visa was extended, effective from 22 August 2006, to apply to Egyptian nationals.

However, problems with these Egyptian nationals who applied for international protection started after their relocation to the detached establishment in Velké Přílepy, where the time limit for issue of the judgment of the local court in the relevant lawsuits began to apply, making it impossible for the foreigners to be released to the territory of the Czech Republic (Section 73(3) of the Asylum Act). Two incidents occurred at the beginning of September 2006 when these foreigners used violence to leave this establishment. At that time, the Ministry of the Interior started a campaign to provide to the remaining Egyptian nationals an objective explanation of their current status, which was to result in their voluntary return to the country of origin. More than 100 foreigners used this offer and returned to Egypt at the expense of the Czech Republic. This offer still applies to the remaining 35 Egyptian nationals.

According to the Ministry of the Interior, the reasons stated by the Egyptian nationals in their application for international protection were mostly irrelevant for asylum reasons and their applications were dismissed as manifestly unfounded.[232] In this case, the Ministry of the Interior held a different view with respect to this situation than the non-governmental organizations, particularly the Organization for Aid to Refugees as regards the legality of judgments issued by the locally competent regional court. This situation was resolved by the Supreme Administrative Court, which decided that the Regional Court in Prague had local

231 Paragraph II/10.3.2

232 Section 16 of the Asylum Act

jurisdiction in this case and even if it did not have such jurisdiction it would have been remedied by the principle of *perpetuatio fori (*principle of existence of local jurisdiction of the court).

10.3.4 Administrative deportation and family life of a foreigner – a family member of an EU citizen

The Organization for Aid to Refugees encountered several cases of foreigners who were subject to administrative deportation before the opening of the asylum proceedings (currently international protection). In the course of asylum proceedings, which may last a number of years, the foreigner may get married in the Czech Republic, may father or give birth to a child; after the end of the asylum proceedings, however, the police insists on the administrative deportation and refuses to grant permanent residence permit without prior abolishment of the decision on administrative deportation. In a number of cases, the police will not abolish the decision on administrative deportation.

After examining the objections of the non-profit sector relating to this case, the Ministry of the Interior informed that such issue and problem cannot be seen in any way as a general problem, because it has more levels and solution possibilities. This situation which is objected to may be resolved by the instruments of the rules of civil procedure (renewal of the proceedings) and of the Foreigner Act (issue of a new decision on the merits of the case in conjunction with the removal of harshness of the law with reference to the new family ties in the Czech Republic).[233]

10.3.5 Subsidiary protection in practice

Non-governmental organizations point out that the benefits of the granted subsidiary protection are still only theoretical, because the persons who were granted subsidiary

[233] First to the definition of affected categories of individuals. One of these categories comprises foreigners who received a decision on administrative deportation and initiate subsequently the proceedings on international protection and enter into marriage with an EU citizen during such proceedings. Another category is comprised of persons who have established their family or private life before the issue of the decision on administrative deportation during their legal or illegal stay in the Czech Republic.
The problem encountered by the non-governmental organizations lies in Section 119(2) of the Foreigner Act, which lists reasons that restrict principally the possibility to issue a decision of administrative deportation against an EU national or his/her family member, and in Section 119a(2) of the Foreigner Act. According to Section 15a, a family member is not only a spouse or parent but also a person sharing household with a citizen of the European Union. Therefore, the police must properly justify its decision on administrative deportation. Of the foreigner was not a family member of an EU national at the time of issue of the deportation decision – he had no family or private life – the police could not evidently take account of such fact and even a later status of a family member of an EU national may change nothing on such decision. Thus, these persons (if they failed in the appellate proceedings for other reasons or if such proceedings did not suffer from other defects) may use the institute of the "elimination of harshness of administrative deportation" pursuant to Section 122 of the Foreigner Act and particularly its paragraph 6, which applies to family members of an EU citizen. Of course, this institute may be also used by persons falling within the second category; however, they may also consider using other means offered by the Rules of Administrative Procedure, like judicial review, renewal of proceedings or a new decision, because they had the status of a family member of an EU citizen at the time of issue of the decision on administrative deportation and the police was limited in its issue by Section 119(2) and Section 119a(2) of the Foreigner Act. Finally, it has to be noted that Section 122(6) of the Foreigner Act presumes, beside the expiry of the grounds for issue of the decision on administrative deportation, also the lapse of one half or at least three years of the period during which an EU citizen or his/her family member cannot be permitted entry into the Czech Republic. Thus, given the passage of the period of administrative deportation, it is presumed that the foreigner will leave the country in accordance with the purpose of the decision of administrative deportation.

protection encountered at the very outset some difficult practical problems with registration with the labour office. Even though they are obliged to register as job seekers, their registration is refused because they do not have the necessary permanent residence status required by the Employment Act and are not exempt from the obligation to obtain a work permit. The mandatory registration with the labour office is connected inseparably with other duties the fulfilment of which is bound to the fulfilment of the primary duty, like health insurance or granting assistance in material destitution.

Despite the positive aspects of subsidiary protection, non-governmental organizations point out that the position of the persons whose travelling has been precluded and who have been granted sufferance visa has been paradoxically worsened. According to the temporary provisions of the amendment, the police will not renew their sufferance visa and they have to pass again the proceedings, i.e. have to apply again for international protection pursuant to the amended law. By filing a new application for international protection, the foreigner (who has held the sufferance status) becomes again an applicant and will lose, for instance, his right to employment.

According to the Foreigner Act, subsidiary protection is granted for a specified, limited period of time, at least for one year. Thereafter, it is presumed that the grounds for granting subsidiary protection will be re-examined. According to the previous law, decisions on the existence of obstacles precluding travel were to be issued for an unlimited period of time (were non-reviewable and could not be withdrawn). The diction of the temporary provisions had to be clear and non-discriminatory, i.e. could not put a category of persons at a disadvantage due to the construction of the subsidiary protection (subsidiary protection is granted for one year and after one year the grounds for its granting are to be reviewed). Therefore, the re-examination of the grounds for granting subsidiary protection and the issue of the relevant residence permit in accordance with the Asylum Act were chosen.

10.3.6 Publication of judgments on granting of protection

The disputable issue is namely the practice of the Supreme Administrative Court, which publishes its judgments on an electronic official board. This means that the name, date of birth, nationality, place of residence and course of proceedings on the international protection of the relevant foreigner are now publicly available on the website of the court in connection with the publication of decisions issued in the review of judgment of regional courts on international protection. In this case, the specific nature of these proceedings is not considered and such published information may endanger some individuals applying for protection in our territory and their family members.

The Ministry of Interior reminded the Supreme Administrative Court of this practice and the chairman of this court responded by stating that the Supreme Administrative Court will abandon this practice and will no longer publish summaries of the promulgated judgments in matters of international protection.

10.3.7 Problems of drawing finance from the European Refugee Fund

The authority charged with the administration of the European Refugee Fund in the Czech Republic is the Ministry of the Interior, whose ideas of provision of services to applicant for international protection and to asylum holders differ – to a certain extent naturally – from the ideas of the non-governmental non-profit organizations. The Ministry of the Interior was

criticized for non-transparency of its decision on re-distribution of these funds in favour of state organizations, particularly of the Administration of Refugee Facilities.

Non-profit organizations obtained in 2006 co-financing of 12 of their projects;[234] on the contrary, state organizations succeeded only in 10 projects,[235] three of which were partnership projects with the international organization IOM and related, moreover, to voluntary returns, i.e. an area where the non-profit organizations do not apply for co-financing of their projects from the European Refugee Fund.

10.4 Unaccompanied minor asylum seekers in 2006

In 2006, the Department for Asylum and Migration Policy of the Ministry of the Interior did not register any information documenting breach of human rights in connection with asylum proceedings relating to this category. At the same time, not a single case of abuse of or violence against these minors was recorded.

In 2006, a total of 92 unaccompanied minors applied for asylum in the Czech Republic. The most numerous of the total number of arrivals were minors from China, Ukraine and Egypt. Most of these minors (ca 70%) were 16-17 years old at the time of filing the asylum applications. Asylum applications were also filed in 2006 by court-appointed guardians (future foster parents) for eight children of foreigners, who were abandoned by their mothers after birth. Sixteen unaccompanied minors applied for asylum by the standard way, i.e. through the reception centre in Vyšní Lhoty; 47 of them applied at the Prague-Ruzyně airport. Twelve minors applied in diagnostic establishments and 17 in detention facilities for foreigners.

The institute of preclusions of travel stated in Section 91 of the Asylum Act was replaced in 2006 by subsidiary protection. The former provisions of Section 91(1)(c), which stipulated that if there is no adequate reception and care in the country of origin or in a third country available to the minor in accordance with the requirements of his/her age and degree of independence, such minor will be granted preclusions of travel, were abolished by the amendment to the Asylum Act (Act No. 165/2006 Coll.) and were subsumed by Section 14a(2)(d) of the Asylum Act, which presumes the existence of a "serious harm" in the case that the departure of the foreigner would contravene international commitments of the Czech Republic (in this case namely the Convention on the Rights of the Child).

More significant changes were brought about by the amendments to the Foreigner Act in the territory of the Czech Republic. A new institute of guardian for the purpose of detention proceedings was introduced in 2006. Section 124(3) of the Act on Stay of Foreigners stipulates that the police are obliged to appoint a guardian to an unaccompanied minor in such proceedings. At the beginning, the practical application of this provision was somewhat problematic, because the authorities for social and legal protection of children did not consider themselves as competent and referred to a potential conflict of interests. However, it was established in the first half of the year to appoint employees of non-governmental non-profit organizations as guardians for detention purposes.

234 The total co-financing amount from ERF amounted to CZK 14,347,885

235 The total co-financing amount from ERF amounted to CZK 11,555,570

The provision[236] permitting unaccompanied minors placed in institutional care who have reached 18 years of age to apply for permanent residence,[237] showed as problematic at the beginning. The foreigner police was not prepared to respond adequately to the first applications of this kind which were filed in 2006. However, after negotiations of all involved authorities, these applications are currently being processed. This legal provision is used by unaccompanied minors who have no adequate grounds for obtaining asylum or whose situation cannot be resolved by applying for international protection. Despite certain problems with obtaining all particulars for permanent residence, this legal provision is undoubtedly an important improvement of the status of unaccompanied minors in the territory of the Czech Republic.

A continuous problem is the departure of foreign children from the specialized facilities and ensuring their future in the Czech Republic. There is now no establishment which would provide subsequent care and integration of these children and young people into the Czech society.

10.5 Integration of asylum holders in 2006

Based on the amendment to the Asylum Act by Act No. 165/2006 Coll., which became effective on 1 September 2006, the Czech Republic will provide to foreigners another form of international protection – the subsidiary protection. This resulted in the amendment of Section 68 et seq. of the Asylum Act relating to the State Integration Programme, which affects to a limited extent also persons enjoying subsidiary protection and only with regard to the establishment of prerequisites for proficiency in the Czech language.

It is necessary to further monitor the effectiveness of assistance to asylum holders in their entry into the labour market, particularly by retraining programmes and individual action plans. In the relevant time perspective, it will be necessary to evaluate the situation of persons who have been granted subsidiary protection and to assess any changes in the scope of integration support.

236 Section 87(7)(a) of the Foreigner Act

237 Pursuant to Section 66(1)(a) of the Foreigner Act

III. Conclusion

The development of the situation in human rights in the Czech Republic in 2006 can be evaluated as more or less positive. Despite the change of the government after the parliamentary election held in mid-2006, when the left, which had ruled for eight years, was replaced by the right, it can be said that the continuity of human rights protection was preserved. The year 2006 also marked further strengthening of EU role in human rights, which will be brought about by the new EU Agency for Fundamental Rights (established as of 1 March 2007).

The issue of compensation of women who were illegally sterilized is still pending. For the second year in a row, the Czech Republic has been asked by the national and international non-governmental organizations and by the international organizations to take this step. According to the ombudsman, such responsibility of the state cannot be apparently inferred in cases in which such intervention was due solely to incorrect procedure used by the physicians. This issue may be fairly resolved by lawsuits for protection of personality, filed by the affected persons. The ombudsman has proposed to consider the adoption of a law which would allow providing compensation to the injured persons only for the period of 1973 – 1991.

The positive steps include the adoption of several new laws, which affect significantly human rights and resolve long-term shortcomings. The adoption of the Registered Partnership Act represents a totally groundbreaking – although only partial – elimination of discrimination of the gay and lesbian minority. Thus, after more than ten years of discussion about the necessity of this law, the Czech Republic joined the developed European countries. The law amending certain laws concerning protection against domestic violence enshrines the very necessary tools and instruments enabling victims of domestic violence to promote more effectively their rights. The Social Services Act protects better the rights of users of social services and sets the criteria for the use of personal restraints. One of its major positive features are the standards prohibiting the use of cage-beds in residential social service facilities.

An important systemic change concerning refugees is the introduction of the new institute of "subsidiary protection", which will replace "preclusions to travel". As one of the two forms of international protection (the second one being the asylum), such protection will be granted to foreigners who do not fulfil the conditions for granting asylum but who are threatened with serious detriment in their country of origin, e.g. a death penalty, torture and threat to life in armed conflicts. It will be, however, desirable to consider in future the need for more extensive integration measures targeting this group. As regards foreigners, the situation of foreigners from third countries has improved in particular by the introduction of the institute of long-term resident and the related shortening of the "waiting period" for obtaining permanent residence from ten to five years.

Problems continuing from the past years are especially those concerning housing and social exclusion. Even though the Roma issue is dealt with by a special Government report,[238] it is necessary to express here concerns regarding the eviction of Roma inhabitants which took place is 2006. A lingering problem is the implementation of the legal provisions concerning custody of minor children of divorced parents. Some cases discussed by the media last year

[238] The Report on the State of Roma Communities is prepared every year by the Office of the Council of the Czech Republic Government for Roma Community Affairs.

revealed certain shortcomings in the practice of the courts and authorities for social and legal protection of children which need a comprehensive solution.

Unfortunately the issue of health insurance of certain categories of foreigners who have been granted long-term residence permits (particularly their newborn children), which was pointed out by the past Reports, is still lingering. The case of "asylum applicants from Egypt", which was strongly criticised by non-governmental organizations, highlighted the necessity to adopt a more adequate regulation of the "airport procedure". As regards integration of foreigners into the Czech society, no discussion has been opened yet about the possibility of participation of foreigners from third countries in local elections.

Another lingering shortcoming is the absence of the Antidiscrimination Act. Due to this absence, the Czech Republic has become not only the target of international criticism from the part of the UN, but is facing a very real threat of sanctions due to insufficient implementation of the relevant directives of the European union. Despite the above, the court dealt in 2006 with several cases of discrimination. The development of the court practice and the related creation of precedents is definitely positive. The Antidiscrimination Bill was approved by the new government in 2007.

An increasingly urgent task is the search for the balance between the protection of personality and personal data on the one hand and the security requirements on the other hand; it can be said, however, that this balance is more frequently breached in favour of security (e.g. the spreading of camera systems, extensive tapping of telephone calls).

As regards health care, the Committee against Torture pointed to insufficient safeguards of the performance of irreversible medical interventions (e.g. sterilization and castration) on persons deprived of their capacity to perform legal acts and to the necessary to legally separate between involuntary hospitalization and involuntary treatment. Another problem is the use of means of restraint in the provision of health care, which is still regulated only by a guideline of the Ministry of Health. Net-beds are still used in health care facilities.

Numerous cases of construction of factories, industrial parks of public communications, which have been appearing for a longer time in the media, document that the past governments continued their policy which led to irreversible destruction of the most fertile agricultural land and damage to the nature, mostly in favour of assembly shops and warehouses, even in places with sufficient numbers of abandoned industrial facilities or other unused spaces. Such measures ignored sometimes the rights and justified interests of owners of the affected or adjacent lands, as well as the right of the general public to favourable environment and access to information. In some of these cases, the court stated formal breach of the law. The interest of property owners and the general public in the right to participate in the decisions on the construction of facilities which represent a major interference into the landscape and a more frequent application of the Aarhus Convention can be understood as an aspect of human rights which will become increasingly important in future.