2000 REPORT ON THE STATE OF HUMAN RIGHTS IN THE CZECH REPUBLIC

I. GENERAL

The report on the state of human rights, which is submitted to the government by the Human Rights Commissioner and Chairman of the Council of the Government of the Czech Republic for Human Rights, is the third report of its kind. Based on the Government Resolution No. 537 on Report on Cooperation of Central State Administration Authorities with Non-state Non-profit Organizations dated 31 May 1999, the report includes an evaluation of the cooperation between the central state administration authorities with non-state non-profit organizations operating in the human rights area. In accordance with the Government Resolution No. 822 on Report on Implementation of Recommendations of the European Committee for Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT), dated 23 August 2000, the report also includes information regarding the implementation of these recommendations in the period from August until December 2000 (see paragraph 3.6.). The report also contains information regarding the performance of tasks which the Government Resolution No. 28 on Report on Human Rights Education in the Czech Republic dated 3 January 2001 imposed on the Minister of Education, Youth and Physical Training, the First Deputy Prime Minister, Minister of Labor and Social Affairs and Minister of Interior

1.1. Council of the Government of the Czech Republic for Human Rights[1]

1.1.1. The Council of the Government of the Czech Republic for Human Rights (hereinafter only „CHR“) held in 2000 six regular meetings and discussed motions presented by its members, the chairman and special sections.

1.1.2. CHR was presided over by the Government Commissioner for Human Rights, Petr Uhl, who held at the same time the office of chairman of the Council for National Minorities and of the Inter-ministerial Commission for Roma Community Affairs.

1.1.3. By its Resolution No. 1104 issued on 8 November 2000, the government approved an amendment to its Resolution No. 132 regarding CHR's statute, which was issued on 17 February 1999. The new statute allows CHR members to appoint their permanent representatives, who have, as opposed to the former statute, also voting rights. CHR's chairman appointed until the end of 2000 permanent representatives of the Deputy Ministers of Interior, Foreign Affairs, Defense, Culture, Justice, Health, Education, Youth and Physical Training, of the Deputy Minister for Local Development and of the Deputy Chairman of Public Information Systems Office.

1.1.4. CHR's member Ladislav Lis died on March 17, 2000. Public representative in CHR Ruth Šormová resigned from her office in May. By its Resolution No. 15, the Government appointed on 3 January 3 2001 the following new members of CHR - Pavla Boučková, head of the office of the civic association Counselling Centre for Citizenship, Civil and Human Rights as the public representative, and Anton Otte, dean of the German Prison Service, a clergyman, member of the presidium of Ackermann's Community in Germany and head of the office of Ackermann's Community in Prague. The chairman of CHR appointed on 28 March

[1] See also http://www.vlada.cz/rady/RLP/RLP.win.shtml

2000 Alexander Kratochvíl, director of Public Information Systems Office, as a new member of CHR in lieu of Karel Berka, who had resigned. On 31 March 2000, CHR's chairman appointed as a new member the newly appointed First Deputy Minister of Health Michal Pohanka, who replaced Karel Hlaváček. On 7 June 2000, CHR's chairman appointed as a member of CHR the new Deputy Minister for Local Development Jaroslav Gacka, who replaced the former Deputy Minister Jaroslav Král. On 5 September 2000, CHR's chairman appointed as a new member the Deputy Minister of Defense Prokop Dolejší, who replaced the Deputy Minister Petr Tax.

1.1.5. The activities of specialized CHR sections continued in 2000. The sections provided their comments to the materials prepared by the human rights department or by CHR secretariat, and prepared their own motions for CHR's sessions.

- Section for Civil and Political Rights focussed in the first half of 2000 particularly on the preparation of a recommendation for CHR to work out a factual intent of act on partnership cohabitation of persons of the same sex. At the same, the section submitted to CHR several motions regarding the justice reform and the Criminal Procedure Code, which concerned, inter alia, a regulation regarding the provision of information on criminal proceedings to the public, free legal aid, restrictions of the use of penal orders and regulation of time limits applying to the service of judgments and to the decision on application for probationary release from prison. In the second half of the year, the section dealt with matters regarding the breach of freedom of association (in connection with the ban on some announced demonstrations that were to be organized before the annual session of the International Monetary Fund and the World Bank) and elaborated a summary of principal comments on the factual intent of the act on proceedings before administrative authorities (the Administrative Code).
- Section against Manifestations of Racism prepared three motions for CHR. The first one, which was adopted by CHR on 4 May 2000, was addressed to the Minister of Interior and recommended preparation of a study on the activities of the Republic Party of the Czech republic. The second motion proposed to resolve the situation of persons who had to live in hiding in the years 1939-1945 due to racial persecution or were placed in special work camps in the Slovak State and in Hungary. (This motion was approved by CHR on 23 January 2001, together with the third proposal to adopt measures resulting out of the conclusions of the deliberations of the Committee for Elimination of Racial Discrimination[2].)
- Section for Equal Opportunities for Men and Women further cooperated with the Gender Equality Department of the Ministry of Labor and Social Affairs (hereafter only "Ministry of Labor and Social Affairs") and with the Inter-ministerial Commission for Gender Equality. The section focused particularly on the efforts to improve the possibility of criminal prosecution of domestic violence and prepared in this respect a motion for CHR (for detailed information see paragraph 4.3.2). The section also established intensive cooperation ties with the non-profit sector in connection with the preparation of a campaign on unacceptability of domestic violence, which is to be prepared by the Minister of Interior and by the Government Commissioner for Human Rights pursuant to Government Resolution No. 236 of 8 April 1998 on Government Priorities and Procedure Applied in Fostering Gender Equality and to related resolutions.

[2] The government approved this material on 26 February 2001 in the form of Resolution No. 197 regarding the proposal of the Council of the Government of the Czech Republic for Human Rights to adopt measures to mitigate certain injustice caused to persons who had to be in the years 1939 – 1945 in hiding due to racial prosecution or who were placed in military work camps.

- Section for Economic, Social and Cultural Rights participated in the preparation of the initial report on the implementation of the International Covenant on Economic, Social and Cultural Rights. At the same time, the section prepared a motion for CHR's discussions, which focused on the Treaty on Social Security between the Czech and the Slovak Republic, i.e., on the problems arising from such treaty in respect of the equalization of the amount of pensions paid from Slovakia. CHR adopted on 4 May 2000 a resolution addressing the Minister of Labor and Social Affairs in this matter. Furthermore, the section focussed on the protection of clergymen of churches and religious societies in the Czech Republic and prepared a motion for CHR in this respect. On 4 May 2000 CHR addressed to the Minister of Culture a motion to consider its proposal in the context of the amendment the Act of Freedom of Religion and Status of Churches and Religious Societies that is currently under preparation.

- Section for Rights of Foreigners participated in 2000 in the preparation of a motion adopted by CHR on 18 February 2000 regarding the amendment of the Foreigner Act, and provided its comments to the proposed amendment. At the same time, the section paid a great attention to the urgent problem of poor level of treatment of foreigners at the offices of the Alien Police, and submitted a motion regarding to this matter through CHR to the Minister of Interior, who adopted relevant remedial measures. In the end of the year, the section focussed on complementary protection forms (status of persons holding sufferance visa, possibilities of introducing temporary protection status for refugees from Chechnya).

- Section Against Torture and Other Inhuman, Cruel or Degrading Treatment or Punishment focussed its activities on the improvement of the situation in prisons. In this respect, the section proposed to the Human Rights Council in December 2000 an amendment to the Act on Imprisonment. The section further analyzed complaints on the police treatment of detained participants of demonstrations against the sessions of the International Monetary Fund and the World Bank Group held in September 2000 (see page 13? - paragraph 2.6.7.) and the attempts to improve protective medical treatment of prisoners and the possibility of establishing detention facilities for such prisoners. By its Resolution No. 1180 of 22 November 2000, the government amended its Resolution No. 112 of 1995 and appointed Office of the Government of the Czech Republic – CHR Secretariat as the new liaising office with respect to the European Committee for Prevention of Torture and Inhuman and Degrading Treatment or Punishment. By the same resolution, the government appointed the secretary of the Section against Torture and Other Inhuman, Cruel or Degrading Treatment as the new liaison officer with the European Committee for Prevention of Torture and Inhuman and Degrading Treatment or Punishment.

- Section for the Rights of the Child analyzed in 2000 the implementation of the Act on Social and Legal Protection of Children, international adoption, children's labor, pornography and its effects on children. A special attention was focussed on the draft amendment of the Family Act, which was presented to CHR for review. At the same time, the section initiated on-site inspections in substitute family and educational care facilities. These inspections were carried out by members of this section and of the Section against Torture and Other Inhuman, Cruel or Degrading Treatment. The inspections took place in the last quarter of 2000 and will be evaluated in the first quarter of 2001.

- Section for Human Rights Education contributed a great deal to the elaboration of the Report on Human Rights Education in the Czech Republic, which was prepared in

accordance with Government Resolution No. 385 on the 1999 Report on the State of Human Rights in the Czech Republic, by which the government instructed the Human Rights Commissioner to prepare such report. The report, of which the government took cognizance in its Resolution No. 28 on the Report on Human Rights Education in the Czech Republic dated 3 January 2001, focussed on human rights education of the following professional groups: education, armed forces (Police of the Czech Republic, Army of the Czech Republic, Prison Guard employees, customs officials), judges and state attorneys, social workers and medical staff. The content of the report is based on U.N. Directive No. A/52/469/Add.1. on the Decade for Human Rights Education.

1.1.6. Information on the activities of each of the specialized sections of CHR, minutes of CHR's meetings and documents prepared in cooperation with CHR secretariat, as well as information on the activities of the Inter-ministerial Commission for Roman Community Affairs and Council for National Minorities, is available on the web pages of the Government Office of the Czech Republic (http://www.vlada.cz).

1.1.7. Following is a summary of reports that were submitted in 2000 by the Human Rights Commissioner in coordination with the Minister of Foreign Affairs to the appropriate international mechanisms on the basis of the Government Resolution no. 809 of December 1998 regarding the improvement of human rights protection of the Czech Republic and Government Resolution No. 132 of 17 February 1999 on the draft statute of the Human Rights Council of the Government of the Czech Republic and on candidates for public representatives in the Council:

- Initial Report of the Czech Republic on Implementation of Obligations Arising from the International Covenant on Civil and Political Rights in the period from 1 January 1993 until 30 November 1999. The government took cognizance of the report on 16 February 2000 in the form of Resolution No. 189, and the report was delivered to the Human Rights Committee in March 2000.
- The second periodic report of the Czech Republic on measures adopted for the implementation of obligations arising from the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment within the period from January 1, 1994 until December 31, 1997. The government took cognizance of the report on 22 December 1999 and the report was delivered to the Human Rights Committee in February 2000.
- The second periodic report of the Czech Republic on the implementation of obligations arising from the Convention on Elimination of all Forms of Discrimination of Women. The government took cognizance of the report on 22 December 1999 and the report was delivered to the Committee for Elimination of All Forms of Discrimination of Women in February 2000.
- The second periodic report of the Czech Republic on measures adopted to implement the obligations arising from the Convention on the Rights of the Child, which included information for the period from 1 January 1995 until 31 December 1999. The report, which was submitted to the government for information on 24 January 2000, was delivered to the Committee for the Rights of the Child in February 2000.

  The initial report of the Czech Republic on measures adopted to implement the obligations arising from the International Covenant on Economic, Social and Cultural Rights in the years 1993 - 1999. The government took cognizance of the report by its

Resolution No. 442 of 3 May 2000 and the report was delivered to the General Secretary of the United Nations Organization in September 2000.

1.2. Council of the Government of the Czech Republic for National Minorities[3]

1.2.1. The Council of the Government of the Czech Republic for National Minorities (hereafter only „CNM"), which is an advisory government body with respect to affairs of national minorities, comprises of representatives of ministries on the level of Deputy Ministers of Education, Culture, Interior, Labor and Social Affairs, Finance and Foreign Affairs, of the representative of the Office of President of the Republic and of the Chamber of Deputies, and of representatives of seven national minorities. Each of the Roma and Slovaks have three representatives, the Germans and the Polish have two representatives, and the Hungarians, Greeks and Ukrainians have one representative. CNM's sessions which were held in 2000 were regularly attended by the representatives of the Senate, of the Prague Jewish Community of the Slovak-Czech Club in the Czech Republic, the Polish Expatriate Center in Prague and of the Municipal Office of the City of Prague as guests.

1.2.2. A total of six meetings of CNM were held in 2000. The discussions focussed on the preparation of the minority bill, the execution of the European Charter of Regional or Minority Languages, implementation of the principles of the General Convention on Protection of National Minorities, support of minority press, opening of the National Minorities House in Prague, etc.

1.2.3. In connection with the review of the implementation of principles set out in the Framework Convention on Protection of National Minorities in the Czech Republic, members of the advisory committee of the European Council regarding the Framework Convention on Protection of National Minorities visited Prague in October 16 – 18, 2000. Their discussions with the representatives of national minorities focussed on the status of individual minorities in the Czech Republic and on the implementation of the principles stipulated by the Framework Convention.

1.3. Inter-ministerial Commission for the Roma Community Affairs[4]

1.3.1. Based on Government Resolution No. 279 of 7 April 1999, chairman of the Inter-ministerial Commission for the Roma Community Affairs submitted a Draft Government Policy toward Members of the Roma Community, which is to assist the members of this community in their integration into society. The draft was approved by the government in its Resolution No. 599 of 14 June 2000. By the same resolution, the government took cognizance of the Report of the Government Commissioner for Human Rights on Current Situation of Roma Communities and assigned in this respect a set of tasks to the ministers, the Human Rights Commissioner and to the chairmen of district municipal offices.. Those tasks are being implemented in the years 2000 – 2001.

1.3.2. The Inter-ministerial Commission laid down the Principles of Allocation of Subsidies amounting to CZK 21 million, which are designated for support of projects focussed on integration of the Roma community. The subsidies were approved by the government in its

[3] See also Ethnic Minorities Council of the Government of the Czech Republic: http://www.vlada.cz/rady/rnr/rnr.win.shtml.
[4] See also http://www.vlada.cz/rady/krp/krp.win.shtml.

Resolution No. 386 on Principles of Allocation of Restricted Subsidies within the Item "Support of Integration Projects of the Roma Community", Chapter "General Treasury Administration", Act No. 58/2000 Coll. on State Budget of the Czech Republic for the Year 2000. The Inter-ministerial Commission participated in the organization of a two-day conference of Roma consultants, which was held at Velké Karlovice on 15- 16 May 2000 and in the organization of three Roma festivals. Since January, the office of the Inter-ministerial Commission got one and since September two new staff members. Based of the proposal of the executive vice chairman, the chairman of the Inter-ministerial Commission appointed six new members, recalled one member and accepted the resignation of one member of the Roma part of the Commission.

1.4. Human rights programs organized by PHARE

1.4.1. The Human Rights Department of the Office of the Government participated in 2000 in PHARE programs that support the preparations of the Czech Republic for the admission in the European Union. The implementation of the project "PHARE 1997" was carried on in 2000, together with the preparation of the projects "PHARE 1999" and "PHARE 2000".

1.4.2. The human rights part of the program PHARE 97 consisted of two projects - "Preparation of Concept of Nationwide Campaign against Racism " a "Research of Ethnic Relations among Citizens of the Czech Republic ". The first of those projects was carried out by the Czech Mediation and Conflict Resolution Center, the second one by the beneficial society Člověk v tísni (Man under Duress). The project of "Research of Ethnic Relations among Citizens of the Czech Republic " consisted of three parts: (i) requalification training for higher-grade pupils or graduates of special schools, (ii) research of ethnic and cultural identity of the Roma and (iii) research of the status of the Roma from the Czech Republic living in the County of Kent (UK).

1.4.3. The implementation of the program PHARE 1999 (CZ9901) named *Improvement of Relations between the Roma and the Czech Community* started in 2001. This program is comprised of four independent projects (lots), which are to be implemented by the beneficial society Člověk v tísni, which has won the tender organized by the Foreign Aid Center of the Ministry of Finance. The program consists of educational activities carried out within the scope of the state school system and should outline measures focused on the introduction of multicultural concept of the educational process and corresponding changes in the curricula. The proposed changes are to contribute to the elimination of prejudice directed namely against the Roma and of the discrimination of Roma pupils and students. The project will involve pupils and students of all types of schools (elementary, secondary and universities, namely pedagogical faculties). The second project is focused on training of Roma advisors and assistants, Roma pedagogic assistants and field workers. The third project is focussed on the research of inter-ethnical relations, namely on mapping critical aspects of relations between the Czech and the Roma community. The fourth project is a media campaign with the aim of making the majority society more open toward other cultures, namely the Roma culture.

1.4.4. The human rights department worked out in 2000 the project PHARE 2000 named *Promotion of Racial and Ethnic Equality*. The project, which is expected to start on April 1, 2001 and which will continue for 12 months, will be carried out in the form of twinning with the Racial Equality Department of the British Ministry of Interior. The principal task of the advisor who has been delegated to the Czech Republic is help the Czech party work out the

possibility of adoption of the new EU directive on equal treatment of persons irrespective of their racial and ethnic origin into Czech law. The project includes round table sessions on tolerance and discrimination, which will be held on the nationwide and local level. These platforms will offer public administration representatives an opportunity to exchange experience with EU experts in various areas of improvement of inter-ethnic relations and elimination of discrimination.

1.5. The Tolerance Project

1.5.1. The first extensive campaign against racism financed from public funds took place from 2 December 1999 until 30 June 2000 under the name "Tolerance Project". The campaign was carried out by a private company who won a public tender. The project was implemented through the media (systematic provision of information on problems faced by minorities and foreigners and on projects aimed at elimination of such problems), at the promotional level (posters, radio, television ads, statements of popular musicians, cartoon) and at schools (discussions organized at secondary schools and vocational training centers, teacher training), where it was supported by the Ministry of Education, Youth and Physical Training (hereafter only „MŠMT"). The most visible element of the campaign was the advertising part, which brought along (as expected) most of the negative responses. The part carried out by the media was, on the other hand, entirely successful. Press conferences organized by the Tolerance Project had high attendance, drew attention to a number of important topics and the communication with journalists was very good. The educational part, namely the "Tolerance Ride" focused on adolescents, was generally estimated as an indisputable success.

1.6. Report of the European Commission

1.6.1. In its chapter dealing with human rights protection, the regular report of the European Commission on the progress achieved in the approach to the European Union, which was issued in the year 2000, paid most attention to the situation of the Roma community. The report emphasized the necessity to intensify the struggle to overcome prejudice against the Roma and to extend the police and court protection. It also noted the high unemployment rate, worse health problems and housing conditions of the Roma. In other chapters, the report focused on the situation in prisons, the status of detainees, trafficking in women and children and problems of foreigners.

1.6.2. The report pointed anew to the problem of the wall in Matiční Street in Ústí nad Labem. It criticized the educational level of Roma children and the high percentage of those children in the special schools. In this respect, the report mentioned the complaint submitted by the European Roma Rights Centre to the European Human Rights Court. The report further criticized the fact that the Inter-ministerial Commission for Roma Community Affairs has no funds to implement strategies whose implementation the government undertakes, no executive powers and sufficient staff. On the other hand, the report positively evaluated the amendment to the School Act, which facilitates the access of the Roma community to education, the allocation of funding for Roma assistants in kindergartens, elementary and special schools, as well as some positive steps toward improvement of the housing conditions (renovation of two buildings in Brno that are inhabited mostly by the Roma).

1.6.3. The criticism of the insufficient staffing of the office of Inter-ministerial Commission for the Roma Community Affairs was resolved by the Government Office, which created two new vacancies in the office (which is a part of the Human Rights Department of the Government Office).

1.7. The partaking of the Czech Republic in international human rights treaties

1.7.1. The European Ministerial Conference on Human Rights was held in Rome on 4 November 2000 on the occasion of the 50th anniversary of the Convention for the Protection of Human Rights. The conference presented for execution the 12th Protocol of the European Convention on Human Rights, which was signed on the same day also by the Czech Republic[5]. In order to come into force, the Protocol has to be ratified by ten member states of the Council of Europe which are bound by the Convention. The Protocol broadens the application of Article 14 of the Convention, whose purpose is to regulate the general prohibition of discrimination and allow protection not only in connection with the rights and freedoms protected by the Convention.

1.7.2. The government issued on 16 October 2000 the Resolution No. 1029 approving the proposal to execute the European Charter of Regional and Minority Languages. The essential purpose of the Charter is the protection and support of historical regional or minority languages with the aim of ensuring the use of any such regional or minority language in private and public life, thus protecting and developing traditions and European cultural heritage. The Czech Republic signed the Charter on 9 November 2000.

1.7.3. In 2000, the Czech Republic ratified two agreements relating to the rights of the child. On 8 September 2000, the Czech Republic ratified the European Convention on the Adoption of Children and on 22 March 2000 the European Convention on Recognition of Decisions and Enforcement of Decisions on Concerning Custody of Children and Restoration of Custody of Children. On April 26, 2000, the Czech Republic signed the European Convention on Legal Status of Children Born out of Wedlock and the European Convention on the Exercise of Children's Rights.

1.7.4. On 22 May 22 2000, the Czech Republic filed in New York the ratification instrument on the adoption of Article 43(2) of the Convention on the Rights of the Child, which increases the number of members of Committee on the Rights of the Child from ten to eighteen. On 6 October 2000, President Václav Havel signed at the Millennium Summit in New York the Optional Protocol to the Convention on the Rights of the Child regarding the involvement of children in armed conflicts. The Optional Protocol increases the age limit for direct participation in fighting and for mandatory conscription of children to armed forces from 15 years stipulated by the Convention to 18 years of age.

1.7.5. The Czech Republic ratified on 11 February 2000 the Hague Convention on Protection of Children and Cooperation in International Adoption and on 13 March 2000 the Hague Agreement on the Power of Authorities, Applicability of Laws, Recognition, Execution and Co-operation in Matters of Parental Responsibility and Measures for the Protection of Children.

1.7.6. On 7 June 2000 the Czech Republic signed the European Agreement on Participation of Foreigners in Public Life at Local Level, which is an agreement of the Council of Europe responding to the increased mobility of individuals in the European area by guaranteeing a settled foreigner the rights that are historically bound to the citizenship, *i.e.,* the political rights; unfortunately, the Czech Republic did not accede to Chapters B and C of the

[5] The government approved the execution of the Protocol by its Resolution No. 1056 regarding the proposal to execute and ratify Protocol No. 12 to the Convention on Protection of Human Rights and Fundamental Freedoms.

Convention (or raised an objection thereto). The provisions of these chapters concern the possibility to establish advisory bodies representing settled foreigners at the municipal level and the rights of foreigner to elect and to run for office at such level..

1.7.7. On 6 April 2000, the Czech Republic signed the European Convention on Transfer of Responsibility for Refugees. This convention is linked to the Convention relating to the Status of Refugees, which ensures to the refugees, based on the right to freedom of movement, the right to be issued a travel document. The convention further develops this right subject to the place where the refugee stays by defining the terms and conditions under which the State parties are obligated to issue to the refugees a travel document even if the refugees have been granted the refugee status in another state..

1.7.8. An important step towards the elimination of racial discrimination is the declaration of the Czech Republic made pursuant to Article 14 of the International Convention on Elimination of All Forms of Racial Discrimination, which allows to individuals or groups to address their complaints regarding the violations of rights specified in the Convention directly to the Committee on the Elimination of Racial Discrimination.

1.7.9. The Czech Republic signed in December 1999 the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, which allows individuals to submit to the Committee against Discrimination of Women complaints regarding failure to comply with the rights guaranteed by the Convention. The ratification process continued in 2000. The Chamber of Deputies expressed its consent with the ratification of the Optional Protocol on 25 January 2000, considering it as an international treaty on human rights pursuant to Article 10 of the Constitution. The Senate expressed its consent therewith on 22 November 2000.

II. SPECIAL

2. Civil and Political Rights

2.1 Public protector of rights (Ombudsman)

2.1.1. Act No. 349/1999 Coll. on Public Protector of Rights came into effect on 28 February 2000[6]. The technical and organizational aspects of the operation of this institution were being prepared throughout year 2000. On 8 December 2000, the Chamber of Deputies elected Otakar Motejl as first public protector of rights (ombudsman).

2.2 Freedom of press and free access to information

2.2.1. Act No. 46/2000 Coll. on Rights and Duties regarding the Issue of Periodicals and Amendment to Certain Other Laws (the Press Act), as amended by Act No. 303/2000 Coll., was adopted in 2000. The act regulates the protection of source and content of information, which may be considered as the enhancement of the protection of freedom of expression during the performance of the journalist profession. At the same time, the act has introduced the institute of right to reply and right to further information, which contribute to the protection of rights of individuals from any misuse of the freedom of expression by periodicals.

[6] The powers of the ombudsman are described in detail in the 1999 Report on the State of Human Rights.

2.2.2. The publisher is obligated to publish a reply to a factual statement affecting the honor, dignity or privacy of a natural person, or the name or good reputation of a legal entity. The act also sets out the right to request the publisher to publish information regarding the final result of criminal proceedings or proceedings relating to transgressions or administrative offences in the case that the periodicals published any information on such proceedings being conducted against a natural person whose identity may be disclosed by such information and such proceedings were not finally resolved. Both those rights shall pass, upon the death of such natural person, to his/her spouse, children or parents. Part Three of the Press Act amends Act No. 468/1991 Coll. on the Operation of Radio and Television Broadcasting, as amended, by regulating in the same manner the right to reply and further information and the protection of the source and content of information.

2.2.3. Act No. 106/1999 Coll. on Free Access to Information, as amended, came into effect on 1 January 2000. The act ensures free access to information and defines the terms and conditions under which the information is provided. Its application has been accompanied by numerous disputes, namely on the local administration level. Some self-government authorities imposed upon the citizens relatively high fees to pay for information, which impeded the access to information or made it virtually impossible.

2.2.4. The crisis which burst out in the end of 2000 in the Czech Television ("CT") substantially limited the provision of balanced and impartial information by both rival groups, *i.e.*, by the management appointed by the general manager Jiří Hodač, and by the editors who refused his leadership. News bulletins broadcast by both groups were characterized by subjective selection and biased interpretation of information. Moreover, news broadcast by the general manager Hodač failed to bring essential information (like the content of the resolution of the Chamber of Deputies) and tried to depict the opponents of the general managers as criminals. On the other hand, the crisis in CT revealed the professional weaknesses of the Council for CT, showed that the system of its election from among persons delegated by political parties is inappropriate and revealed shortcomings of Act No. 483/1991 Coll. on Czech Television, as amended[7].

2.2.5. The government draft amendment of Act No. 468/1991 Coll. on the Operation of Radio and Television Broadcasting, as amended, which is to be reviewed by the Chamber of Deputies in April 2001, has left untouched the provision relating to the freedom and independent broadcasting of programs, whose content may be interfered with only under the law and within its limits. On the other hand, the operators are obligated to prevent broadcasting of any programs that are in conflict with the Constitution of the Czech Republic and with the Bill of Fundamental Rights and Freedoms, and to ensure that the broadcast programs do not promote war or depict any cruel or otherwise inhuman acts in a disparaging, apologetic or conniving manner. The amendment also proposes to expand the protection of children and juveniles and the regulation of the duty of the operators to ensure that no programs promoting hatred or violence against a group of population defined by race, ethnic origin, gender or religion are broadcast.

[7] The amendment to this act was discussed in the Chamber of Deputies in January 2001 in the state of legislative emergency. The wording, which was approved by the Chamber of Deputies after protracted discussions, is based to a considerable extent on the principles specified in the government draft both with respect to basic tasks of the public service and to the manner of nominating candidates for membership in the Czech Television Council. The adopted amendment stipulates that the candidates proposed to the Chamber of Deputies shall be nominated by organizations and associations representing cultural, regional, social, trade union, employer, religious, educational, scientific, ecological and national minority interests “.

2.2.6. A problem that has not been resolved in this respect is the vague legislative regulation of the provision of information to the public by authorities active in criminal proceedings, which grants them considerable discretion in this respect. The 1999 Report on the State of Human Rights stated that the offices of the state attorneys refuse to provide to non-government organizations monitoring the adherence to human rights any information, including information that cannot jeopardize the investigation of facts that are material for the evaluation of the relevant matters or breach the presumption of innocence. At the same time, some state attorneys or investigators use the communications media to launch campaigns against the accused, and present themselves in the media (namely tabloids) by theatrical or populist declarations, etc. On 4 May 2000, CHR adopted a motion addressed to the Minister of Justice, in which it recommended issuing a regulation under which the authorities active in criminal proceedings shall be obligated, subject to restrictions set out in the second sentence of Section 8a of Act No. 141/1961 Coll. on Criminal Process (the Criminal Procedure Code), as amended, to provide on demand information to the public, *i.e.,* not only to communication media. CHR's motion was intended to determine the kind of information that may not be published, not the party to which it may not be disclosed. This motion was not incorporated in the draft amendment of the Criminal Procedure Code.

2.3. Political rights

2.3.1. The establishment of higher-level self-government entities (regions) in 2000 became an important step towards the implementation of political rights of the citizens. The regions were established *de iure* effective from 1 January 2000 by the Constitutional Act No. 347/1997 Coll. A certain setback in this respect may be seen in the fact that more than one half of entitled voters failed to demonstrate their interest in the establishment of the regions and did not make use of their right to vote in the first elections into regional bodies.

2.3.2. An amendment to Act No. 451/1991 Coll. Specifying Certain Other Prerequisites for Holding Certain Offices in State Authorities and Organizations of the Czech and Slovak Federal Republic, the Czech Republic and the Slovak Republic (the "Screening Act") became effective on December 13, 2000 as Act No. 422/2000 Coll. The amendment repeals the derogation clause and the restrictions stipulated by the act that should have been repealed as of 31 December 2000 thus remain in force. This time, the renewal of those restrictions was not accompanied by such intensive public discussion as in the past; however the fact that there exists, 11 years after democratic changes, blanket restriction prohibiting certain categories of the population from access to certain functions in the state authorities and organizations is at least controversial.

2.4. Freedom of religion

2.4.1. The contemplated liberalization of the existing terms of registration of churches and religious societies has now reached only the phase of preparation of bill on freedom of religious creed and status of churches and religious societies and on the amendment to certain other acts (Bill on Churches and Religious Societies). The factual intent of this bill, which was approved by Government Resolution No. 715 dated 19 July 2000, proposes that a church or religious society needs 300 members to demonstrate its legal personality. This represents a substantial decrease in the number of members in comparison with the 10,000 members required by Act No. 38/1991 Coll. that is currently in force. As indicated in the 1999 Report on the State of Human Rights for the Year 1999, such desirable step will open access to

registration to important denominations that have only few members in the Czech Republic (like the Anglicans) or to world religions (the buddhists, muslims, etc.).

2.5. Citizenship

2.5.1. Act No. 194/1999 Coll., amending Act No. 40/1993 Coll. on Acquisition and Loss of Citizenship of Czech Republic, as amended, resulted in a fundamental change in the acquisition of the citizenship of the Czech Republic, thus becoming closer to the requirements of the European Convention on State Citizenship[8]. The Chamber of Deputies consented on 25 May 2000 to the ratification of the Convention and recommended at the same time to consider the Convention as an international treaty on human rights and fundamental freedoms under Article 10 of the Constitution. The approach of the Chamber of Deputies may be clearly welcome, as the Czech Republic has not acceded yet to any of the citizenship conventions, save for the Convention on Citizenship of Married Women, which prohibits certain discriminating legislative regulations of the citizenship.

2.5.2. Despite the aforementioned amendment of Act No. 40/1993 Coll., the standards required by the Convention have not yet been fully applied in practice. The Counselling Centre for Citizenship, Civil and Human Rights has registered the following problems:

- The statutory limits for processing of citizenship applications have not been complied with in a number of cases.
- As to the verification of citizenship, there are no statutory limits set in Sections 20 and 24 of Act No. 40/1993 Coll., and those limits are thus subject to the general regulation set out in the Administrative Procedure Code; even those limits are frequently not complied with by the relevant authorities.
- There are also problems regarding the compliance with the procedural principle set out in Article 12 of the Convention, because the Ministry of Interior justifies its rejections in many cases only formally and does not specify the grounds on which the relevant authority issued its decision, or shortcomings of the rejected application.
- In some cases, the Ministry of Interior requests from the applicant documents that are not listed in the law (like copies of tax returns or certificates of the health insurance company regarding payment of the insurance premiums), arguing that, according to the Administrative Procedure Code, the administrative authority is obligated to fully and accurately disclose at all times the true facts of the matter, or to verify the information presented by the applicant in his application for the Czech citizenship. The party preparing this report disagrees with this opinion, because Act No. 40/1993 Coll. is a special law, which has in the given case a precedence over the general law.
- There still exist specific problems arising from bilateral agreements with former socialist states on the prevention of dual citizenship, which are binding for the Czech Republic. In this respect, there have appeared suggestions to rescind or terminate those agreements or to conclude new agreements whose content shall comply with the aforementioned Convention of the European Council.

[8] The Convention is comprised of a general part including provisions relating to the acquisition, change and loss of citizenship, basic principles applying to the procedure of granting of citizenship and special provisions applying to multiple citizenship, state successorship and conscription in cases of multiple citizenship. The regulation has two levels: while it determines the principles of legislative resolution of those matters, some of its articles regulate decisions in individual cases.

2.5.3. The objections relating to arbitrary conduct of the relevant authorities may be also raised in connection with the use of the declaration on citizenship of the Czech Republic pursuant to Section 18a of Act No. 40/1993 Coll., as amended. Non-state organizations have registered cases in which the relevant authority verbally refused requests of persons who wanted to make such declarations and some employees of those bodies even tried to prevent them from making such declarations. There also exist different legal opinions regarding persons sentenced to deportation who meet the conditions for making the declaration under Section 18a of Act No. 40/1993 Coll. Although the act does not determine that such sentence is an impediment for making such declaration, there exists a case in which the competent authority, after disclosing such fact, commenced proceedings for renewal in the matter of the certificate of the citizenship of the Czech Republic, which had been granted to the sentenced person on the basis of his declaration.

2.5.4. The increasing number of citizens of the Czech Republic holding dual citizenship has given rise to the problem of conscription. The European Convention on State Citizenship includes principles allowing a general resolution to this problem: the State parties are obligated to draft persons who hold the citizenship of two or more State parties to fulfill their conscription duty only with respect to one of them. The Czech Republic signed the European Convention on State Citizenship in 1999 and ratified it in 2000; the ratification instruments have not yet been filed.

2.6 Activities of the Police of the Czech Republic

2.6.1. As early as on 1 September 1999, the government approved by its Resolution No. 876 the factual intent of the Act on the Police of the Czech Republic. On the basis thereof the Ministry of Interior worked out a bill on the Police of the Czech Republic and on the Inspection of the Minister of Interior (the „Police Act“) and a bill amending certain laws. Despite partial critical comments voiced in the 1999 Report on the State of Human Rights in the Czech Republic, the Report considered this bill as an essential improvement, appreciating in particular that the bill brings about an enhancement of the guarantees for the citizens against any unjustified curbing of their personal liberties.

2.6.2. The bill, which passed the round of inter-ministerial comments, was submitted to the government by the Minister of Interior Václav Grulich on 31 March 2000. The new Minister of Interior Stanislav Gross, who was appointed immediately thereafter, withdrew both bills from the government „due to the necessity to generally review namely the selected solution of the relations between the Minister of Interior and the Police of the Czech Republic and of the status and tasks of the Inspection of the Minister of Interior and to consider the overall philosophy of the bill in the light of this essential part of the proposed legislation“ (quoted from the underlying materials used in this report, which were provided by the Ministry of Interior). At the same time, Stanislav Gross asked the Prime Minister to change the date of submission of both bills to the government to 30 June 2000. The application was granted by the Resolution of the Government of the Czech Republic No. 770 of 26 July 2000 regarding the report on fulfillment of tasks imposed by the government to be fulfilled between 1 June until 30 June 2000, and the date for the submission of the material was postponed until 30 November 2000. On 18 December 2000, the government resolved, by its Resolution No. 1298, to cancel some legislative tasks, including the Police Bill, stating that the new legislation is currently not necessary. Due to the fact that the Police Bill was extensively described in the 1999 Report on the State of Human Rights as a definite improvement, giving up its implementation may not be understood otherwise but a significant setback.

2.6.3. Instead of the new law, the Ministry of Interior worked out only a partial amendment to the Police Act, which was approved by the Chamber of Deputies on 6 December 2000.[9]. This amendment concerns in particular the handling of personal data in the course of the police activities. The Ministry of Interior considers the amendment as an enhancement of the protection of persons from unjustified use of their personal data.

The new amendment fully corresponds to the Convention of the Council of Europe on Protection of Individuals with respect to the Processing of Personal Data, which was concluded on 28 January 1981, to the Europol Treaty, the Schengen Agreements and the agreements and recommendations of the Committee of Ministers of the Council of Europe R (87) 15 dated 17 September 1987. The authorization of the police to process personal data for the purpose of prevention, detection, clarification and investigation of crime is strictly linked to the necessity of such processing for the aforementioned purpose. The police shall be obligated to regularly review whether the purpose for which the personal data are processed still exists. While processing the personal data, the police shall be supervised by the Office for Protection of Personal Data. Everyone shall have access to his/ her personal data processed by the police and shall be entitled to apply for information which of his personal data are being processed by the police, and the police shall be obligated to advise him thereof. The police shall not have such duty only if such information would jeopardize its activities. Everyone who learns that the police processes inaccurate or untruthful personal data will be entitled to request the destruction or correction of such data. The police shall be obligated to fulfill such request (provided that it does not jeopardize its activities) but shall be obligated to designate any untruthful or inaccurate data as such. Those applications shall be decided by the police presidium.

2.6.4. The amendment is focussed, however, only on the partial problems relating to the personal data protection and does not substitute in any case a complex new Police Act. At the same time, it does not resolve problems that were noted by the CPT in the aforementioned recommendation (the right of a person deprived of freedom to immediately inform his close persons, the legal counsel and physician of his choice, to receive written information on all his rights and a protocol of each such restriction of freedom, etc.), a new concept of controlling activities (performed by the Inspection of the Ministry of Interior), or any other systemic matter resolved in the new Police Bill. Thus, there is still a need to adopted a new Police Act, which will contribute, *inter alia*, to the improvement of the protection of human rights in the Czech Republic.

2.6.5. The police activities evoked in 2000 criticism of organizations monitoring human rights and of the representatives of the public in CHR and its sections, namely in respect of the negative factors which appeared in specific police activities, particularly in Prague. The criticism is focussed namely on the activities of the Alien Police of the City of Prague, which adopted in 2000 a number of positive measures. The criticism of the non-state organizations was also focussed on individual police measures taken against politically motivated rallies, again particularly in Prague. This concerned namely the police intervention against the leftist activities on 1 May and the intervention against a demonstration organized by the international ecological organization Greenpeace. The police strictly rejected such criticism. In the opinion of the Ministry of Interior, which was provided to the Council for Human Rights, „there is no general definition of the conduct of police towards a dissolved rally of persons; such conduct is based on tactical considerations“, while „the aim of the police

[9] It was adopted by the Senate in January 2001.

intervention is to maintain or restore public order and to maintain the continuity and safety of the road traffic".

2.6.6. As to the police interventions against the participants in the demonstrations during the annual session of the International Monetary Fund („IMF") and the World Bank Group („WB"), all observers agree that the police conduct in the streets was mostly adequate. Rare excesses include the beating of the ecological activist Slavomír Tesárek by a wooden pole, which was confirmed by the Inspection of the Minister of Interior and evaluated as a disciplinary offence, and the assault on Matthew Price, Timothy Edwards and Jane Dennet-Thorpe in front of the Renaissance Hotel, which was not investigated by the Inspection of the Minister of Interior as a suspected criminal offence and was referred to the controlling and complaints department of the City of Prague. On the contrary, there are differences in the evaluation of the conduct of the police towards the persons at the police stations, which was the subject of the vast majority of criminal charges and complaints of inappropriate treatment. The view of the police and the Ministry of Interior differs totally from that of the non-state organizations monitoring the observance of human rights and of certain members of CHR and its sections from among the ranks of the citizens. In the chapter *Activities of Members of the police of the Czech Republic during the Session of IMF and WB* included in the basic materials provided by the Ministry of Interior for this report, the Ministry stated the following:

The Police of the Czech Republic manifested its approach to human rights through the measures taken during the Annual Session of the Board of Governors of the International Monetary Fund and the World Bank Group in September 2000 in Prague, during which it showed its full respect namely to the right of assembly and freedom of expression, although those rights were misused by certain aggressive persons for illegal acts and violent attacks on the policemen. When failing to provoke the police in the streets, they at least stirred a campaign in the media in which they accused the police of breach of human rights and of applicable laws and regulations by its treatment of persons brought to the police stations.

2.6.7. Neither the Commissioner nor the Council for Human Rights is entitled to carry out any investigations regarding the actual situation at the police stations during the demonstrations against IMF and WB. As of the date of submission of this report, CHR has not made any statements as to the results of the investigation of the Inspection of the Minister of Interior and the controlling bodies of the police. However, independent observers and some members of CHR and its sections perceive that the blanket labeling of the complainants as provocateurs is only an attempt not to admit criticism, and consider the results of the investigation[10] as a

[10] The Ministry of Interior states in this respect: „As to the overall evaluation of the course of investigation of events connected with the IMF session held in Prague in September 2000, it may be said that, as of 1 March 2001, 17 reports were evaluated as criminal charges containing specific facts that indicate an abuse of powers by a public official, represented by inadequate use of physical or psychological violence or by gross breach of human rights when curbing person freedom. Out of the above number, 11 cases were concluded and only in 1 case the police authority stated that there exists a suspicion of a criminal offence of abuse of power of a public official committed in connection with the use of inadequate violence against summoned persons. Two other cases were referred by the police authorities during investigation to the competent officer with a proposal of a disciplinary measure. 49 reports were assessed as not having criminal nature, because they concerned less serious mistake, like the failure to ensure suitable conditions for a person who was summoned, apprehended or detained whose personal freedom was otherwise restricted, failure to provide food, water, to allow telephone contacts, to inform on the reason for the restriction of personal freedom, failure to allow the provision of legal aid or medical treatment, failure to provide sufficient quantity of blankets, to close the windows, excessive ventilation and so forth. 48 of such petitions have been resolved until the present; in two of those cases, the controlling bodies concluded that there occurred an error, evaluated such reports as justified and proposed to take disciplinary or personnel measures against specific policemen.

proof of lack of effectiveness of the controlling mechanisms. The split of powers between the Inspection of the Minister of Interior and the controlling bodies of the police gives rise to doubts. The Inspection investigated only four cases and referred other reports, which also had the nature of criminal charges, to the controlling bodies of the Police Presidium or the Police Administration of the City of Prague. Before the events connected with the IMF and WB session, the Human Rights Commissioner proposed to strengthen the internal controlling system of the Ministry of Interior and to supplement it with an external mechanism, which would be governed by applicable laws and regulations. In December 2000, the Council ordered the Commissioner to prepare a draft regulation regarding the establishment of an independent controlling body which would have authority over places of detention of persons deprived of freedom or persons whose freedom has been restricted. The Ministry of Interior supported this proposal.

2.6.8. An attempt at an *ad hoc* civil control was represented by the cooperation between the police and the so-called civil right watches ("CRW"), whose aim was to monitor the observance of human rights during demonstrations. The watches were a joint project of two non-state organizations, the Ecological Legal Service and the Movement of Civic Solidarity and Tolerance. At first, the Ministry of Interior welcomed the formation of the watches in its statement of 4 August 2000, declaring that it considers the content and aim of the project as very valuable, and proposed further negotiations to specify in more detail the possibility of access of the watches to places that will be closed to the public. After series of negotiations, which were mediated by the Human Rights Commissioner and the Office of the President of the Republic, the Minister of Interior submitted on 31 August 2000 to the government information on possibilities of use of the CRW project, in which he called the idea of access of CRW to places that will be otherwise closed to the public as unacceptable. The Minister underlined that CRW members would have the same status as „ordinary citizens without any special advantages“, who would participate „at their own risk“, and would not be „principally prevented from monitoring any protests“. It has to be noted that CRW members would have had the rights of ordinary citizens without any special advantages even if the Ministry of Interior and the police had refused their project from the very beginning.

2.6.9. At the negotiations held immediately after the end of the IMF and WB session, the representatives of the Police Presidium stated that the civil control by CRW appeared positive during the demonstrations and contributed to the limitation of excesses. Despite that, the communication between the Ministry of Interior and CRW was getting worse in the subsequent months. The Ministry of Interior and the police repeatedly objected that the CRW pressed criminal charges only against the police and not against the participants in the protests, thus taking sides with them. It is, however, obvious that it is not the task of non-state organizations monitoring the observance of human rights by the state to document the criminal activities of private persons; this is the task of the police.

2.6.10. A positive phenomenon are the activities of the police and the Ministry of Interior directed at the dissemination of information regarding human rights, at the human rights education and the overall humanization of the police activities. An example of this is the participation of the Ministry of Interior in the Program of the Council of Europe "Police and

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As of 1 March 2001, there remain 10 cases of both criminal and non-criminal nature to be investigated. As to criminal cases, it is necessary to undertake certain steps in the criminal process by way of seeking legal assistance abroad, elaboration of court expertise and investigation of other circumstances found out through contacts with the persons who filed the charges. The pending cases of non-criminal nature consists mostly of motions regarding unjustified checking of identity, seizure of a thing, physical violence while curbing personal freedom, inadequate use of physical or psychological violence, damage of a video camera during intervention, use of prisoner clothes, failure to provide vegetarian and vegan food and so forth.“

Human Rights 1997 - 2000", which has organized several seminars, international conferences and issued a number of publications, like the human rights textbook for secondary police schools.

2.7. Justice

2.7.1. The basic problems of the Czech justice relating to human rights protection remained in the year 2000 the same as in the previous years, i.e.:

- *Frequent protraction in various types of proceedings.* It is necessary to point to certain improvement, for instance with respect to the most serious problems from the view point of human rights, i.e., the duration of detention on remand. While the average length of the detention proceedings before the district courts was reduced in 2000 by mere 4 days, the duration of detention proceedings before the regional courts was reduced by 33 days in comparison with the year 1999. On the other hand, the number of detention matters that stayed pending at the district courts for one year to 18 months increased in 2000 by 9 and at the regional courts acting as the first instance courts by 11. The Ministry of Justice states that the causes of this situation lie namely in the more extensive factual and legal complexity of the cases, difficulties in the service of documents, lack of discipline of summoned persons, frequent excuses of defense lawyers and experts, increase in matters containing foreign element, lack of courtrooms and defective works of individual judges.
- Specific problems of the *criminal* justice, namely an inadequately repressive approach, which is reflected, among others, in the first place held by the Czech Republic among EU members and candidates in the number of prisoners per the number of population[11] and in the lack of proportionality of sanctions. It is still common that property crimes, even minor, are punished very severely in comparison with crimes against life and health, or that the courts issue totally different sentences for crimes of similar nature.

2.7.2. The causes of this unsatisfactory situation lie in the legislation and in the application of law. In the introduction to the factual intent of the new Criminal Code, the Ministry of Justice states that, despite a significant number of amendments, the concept of the existing Criminal Code still bears the marks of the political and legal doctrine of the socialist state, which gives to the protection of collective interests of the society and the state a priority over the protection of fundamental human rights and freedoms of individuals. Many specific manifestations of this concept of the criminal law have been removed by the amendments enacted during the 1990s, but the system of the special part of the Criminal Code still reflects the system of values based on collectivist ideology and suppression of subjective rights of the citizens. The Material concept of the crime as the basis of criminal responsibility still underlines in the first place the „danger to the society“ represented by the crime, which is defined by rather vague formal criteria.

2.7.3. Despite numerous amendments that were in many cases lacking any concept, the existing Criminal Code is based in many aspects on pre-November law. On the one hand, it defines grounds of crimes which show that the legislator feared using accurate definitions of the factual grounds of the crimes, because such accuracy could be an impediment to the effective protection of the „interest of the society“.. On the other hand, the Criminal Code includes grounds of crimes that regulate certain conduct in a overly detailed manner. Moreover, the attempt to ensure criminal law protection to the new institutes stipulated in

[11] Lidové noviny, 15 February 2001, p. 14, quoted from *The Economist* 2000.

special laws frequently led in the 1990s to the inclusion of too specific grounds with very narrowly defined characteristics.[12].

2.7.4. The basic shortcoming of the existing Criminal Code is, from the viewpoint of protection of human rights, the concept of the *system of sanctions*, whose prevailing punishment is still the prison sentence, which may be imposed for all crimes. The imposition of alternative punishment and measures is not sufficiently provided for, namely in the case of first offenders, minors and person who have repeatedly committed crimes but whose crimes are only negligible and arising from circumstances.

2.7.5. Part of the problem also lies in the application of the existing Criminal Code. Despite the aforementioned deficiency, this Criminal Code allows even today to the courts to use alternative sentences, to apply the institute of bail, to choose less repressive resolution of through probationary and mediation service, etc. This is apparently caused mostly by certain inertia of the courts (namely lower-instance), which are used to impose almost exclusively prison sentences. For instance, the courts impose (usually through penal orders) prison sentences on persons who stole a thing of negligible value and who had been sentenced or punished for the same crime within the last three years (pursuant to Section 247(1)(e) of the Criminal Code. Organizations monitoring the observance of human rights have recorded cases of persons who were sentenced under this provision to prison for an attempt to steal a thing with a value of less than 20 CZK[13]), even though this provision of the law allows to impose much more moderate sanctions (forfeiture of the thing, pecuniary punishment). A specific example of frequent imposition of disproportional sanctions is the prosecution of dissemination of drugs, which also most probably reflects lack of expertise of judges as to the risk represented by each drug. This was repeatedly reflected in long prison sentences imposed upon person for dissemination of marijuana (compared to light prison sentences which were imposed in individual cases on real dealers of dangerous drugs, like pervitin).

2.7.6. The change of judicial practice may be achieved solely by education of judges, which is carried out by the Ministry of Justice. Namely the change in the approach of judges will require a longer time. Information of the Ministry of Justice indicates, however, that it is already possible to document a certain positive shift toward an increased use of alternative sentences. For instance, while the courts imposed in 1996 a total of 725 sentences of public works, this number rose in 1997 to 1598, in 1998 to 1776 and in 1999 to 3214 sentences.

2.7.7. Throughout the year 2000, the Ministry of Justice developed intensive efforts to promote a far-reaching legislative reform. The principal amendment to the Criminal procedure Code, which was supposed to come into effect on 1 January 2001, was rejected by the Chamber of deputies, but after making certain adjustments, the government submitted the bill again to the Chamber of Deputies in November 2000. The principal goals of this amendment include the simplification and acceleration of the criminal process, and the removal of unnecessary protraction in the proceedings (Article 38(2) of the Bill of Fundamental Rights and Freedoms), i.e., ensuring that the matter is reviewed within an adequate time limit (Article 14(3)(c) of the International Covenant on Civil and Political

[12] The last attempt to promote such type of amendment is taking place at the beginning of 2001 (the „anti-graffiti“ amendment adopted by the Chamber of Deputies on the basis of an MP's proposal).

[13] E.g., for an attempt to steal a pole from a fence with the price of 6.50 CZK or half a loaf of bread with the value of 11.50 CZK. The extent of repression is in such cases obviously inadequate. Therefore, the Human Rights Commissioner proposed in the comments to the factual intent of the Criminal Code issued in December 2000 to stipulate the amount of damage in the provision of Section 247(1)(e), or to repeal this provisions in its entirety.

Rights, Article 6(1) of the Convention on the Protection of Human Rights and Fundamental Freedoms). The bill enhances the role of the court in the criminal process, which further enhances the legislative protection of the victim of criminal activity and, at the same time, guarantees the rights of the accused. The bill also includes an amendment to Act No. 209/1997 Coll. on Provision of Financial Assistance to Crime Victims and on the Amendment to Certain Other Laws, whose aim is to simplify the proceedings on the granting of such assistance and its more extensive availability.

2.7.8. Another shortcoming from the human rights viewpoint is the preservation of the possibility to impose a prison sentence by a penal order (pursuant to Section 314e of Act No. 141/1961 Coll. on Criminal Trial, as amended). In his motion submitted in August 2000 to the Council for Human Rights, the Human Rights Commissioner stated that a criminal process not providing a possibility to review the matter at the trial, connected with a danger of further increase of the imposed sentence in the case of filing a protest, inadequately restricts the rights of the accused. Therefore, he proposed to delete Section 314e(a) of the government draft of the Criminal Procedure Code. This motion was rejected by the representative of the Ministry of Justice in the Council for Human Rights, who argued that the current law is in conflict with the recommendation of the Council of Europe, but is based on practical needs of the justice system. On the contrary, the proposed amendment of the Criminal Procedure Code has extended the range of sentences that may be imposed by penal orders by deportation (which may be imposed, of course, only on a foreigner) and prohibition of stay.

2.7.9. Together with the reform of the litigation law, the Ministry of Justice prepared in 2000 also the recodification of the substantive criminal law. The factual intent of the new Criminal Code brings about a principal shift in comparison with the current legislation, because the proposed system of the special part of the Criminal Code stipulates the priority of protection of fundamental rights and freedoms of individuals over the collective interests of the society and the state, and puts at the first place crimes against life, health and crimes against freedom and human dignity. The basic approach to the new concept of the special part of the Criminal code is based on the decriminalization and de-penalization principle, which forms a stable part of the penal policy of democratic states. The Human Rights Commissioner expressed in December 2000 his full support to the draft factual intent of the Criminal Code.

2.7.10. In June 2000, the Minister of Justice submitted to the government a factual intent of the Act on Juvenile Justice, whose aim is to introduce a change in the concept of prosecution of juvenile delinquency, including the quasi-delinquency (committed by children younger than 15 years of age). The purpose of such act is to ensure that the state, in cooperation with other subjects, including non-state organizations, responds adequately to more serious manifestations of juvenile delinquent behavior and chooses measures that direct the future development of the minors in the right way, i.e., namely measures of educational nature. The implementation of this intent should be supported by the probationary and mediation service system, established on the basis of Act No. 257/2000 Coll., on Probationary and Mediation Service, which became effective on 1 January 2001. This service should ensure more extensive use of such sentences in the criminal process that are not connected with imprisonment, and should contribute in appropriate cases to the achievement of satisfaction for the crime victim.

2.7.11. Beside the aforementioned changes in the area of criminal law, the Ministry of Justice proceeded in the preparation of the recodification of private law. A principal, totally new legal regulation of private relations is to replace the existing Civil Code (Act No. 40/1964 Coll., as amended). The objective of this recodification is to introduce a more complex regulation of personal rights and their protection (protection of honor and dignity, good reputation and privacy. protection of personal documents). The new Civil Code is expected to assume the

private law provisions of the family law and will balance the requirements relating to all aspects of the protection of children and parents. The protection of personal rights shall also have a significant impact on the patient rights (see Chapter 12, Patient Rights).

2.7.12. In its resolution of 4 May 2000, CHR appreciated the principal legislative changes prepared by the Ministry of Justice as an important attempt to overcome problems that are among the most serious in respect of the protection of human rights in the Czech Republic. Despite the overall positive evaluation, CHR noted some pending problems, like the inadequate manner of elaboration of court records, which does not provide an objective picture of the course of court hearings and has an adverse effect on the length of the records. Another shortcoming is the lack of a complex legislation regarding the provision of free legal aid, which would include legal aid provided in civil litigation and proceedings before administrative authorities, and also legal aid provided to the aggrieved in criminal matters. The current regulation of defense *ex offo* is also disputable, because the allocation of advocates, which is based only on an internal by-law (and not determined by law), is non-transparent and difficult to control, thus jeopardizing the independence of the advocates on the courts[14]. Clients often complain of the passive approach of advocates and vice versa, some advocates complain that they are not appointed as defense lawyers *ex offo*. The efforts developed by CHR in order to introduce transparent rules ensuring the right to free legal aid were supported by the Czech Bar Association in its statement of 23 October 2000.

3. Treatment of Persons Deprived of Freedom

3.1. Legislation applying to the execution of the prison sentence

3.1.1. A new Act No. 169/1999 Coll. on Imprisonment, as amended by Act No. 359/1999 Coll., came into effect on 1 January 2000. This new legislation brought about a number of problematic changes. The non-state organizations criticized mostly the duty to cover the costs of the prison sentence (Section 35 of the above act), although the act does not ensure to the imprisoned person the possibility to work and to earn the necessary financial funds. Moreover, the act does not allow the sentenced person to dispose of other income (savings, money from relatives); if he is indebted, he may not buy even the supplements to prison food or personal effects (like cigarettes)[15].

3.1.2. The new act further worsened the conditions for education of prisoners. The prisoners placed in regular daily studies have to pay the costs of the prison sentence, and as they cannot simultaneously work, their debt toward the state is growing, which dampens their educational efforts. The prison service is unable to ensure work to those sentenced persons who want to work. Their reintegration in normal life is made more difficult by their indebtedness, which often represents an unbearable load and leads in most cases to repeated offence. Under the new legislation, the prisoners may not dispose of other financial funds, like savings or funds supplied by relatives. Such funds are also applied towards the costs of the prison sentence if such costs may not be deducted from the work remuneration.

[14] On the one side, there are the economic interests of the lawyer, and on the other hand, there is the „good“ or „bad“ experience of the judge with the lawyer; such „bad“ experience may lie in the active involvement of the lawyer in the defense of his client.

[15] According to prisoners, this provision contributed to the outburst of protests in January 2000 (See also 3.3.2.).

3.1.3. The new amendment to the Act on Imprisonment further stipulates that the visit, outdoor exercise and disciplinary punishment of prisoners sentenced for life take place separately from the rest and that each such prisoner shall have a single cell. In Czech prisons where the prisoner serving a life sentence has a minimum opportunity to leave his cell and less possibility to participate in educational or leisure activities or to work than the other prisoners, a single cell resembles solitary confinement.

3.1.4. On the other hand, it is possible to consider as partial improvement that the Act on Imprisonment has allowed to women prisoners to have their children with them in prison, usually until the child reaches three years of age. (For the time being, detained women do not have such possibility and this problem is not resolved even in the new amendment to the Act on Detention.) However, none of the prisons has had until now the conditions necessary for such service of the prison sentence.

3.1.5. Act No. 169/1999 Coll. has also amended Act No. 555/1992 Coll. on Prison Service and Justice Guard of the Czech Republic, as amended. The latter act has newly amended the use of some coercive means. It is possible, for instance, to use shackles or chains, handcuffs with shackling belt when summoning prisoners if there exists, based on previous behavior of the prisoner sentenced to a prison with guard or extended guard, justified fears that he may behave violently, even if the general terms and conditions stipulated by this act for the use of such coercive means are not met. Coercive means may be generally used if it is necessary to ensure order and safety. against persons endangering life or health, willfully damaging property or using violence to frustrate the purpose of the exercise of the prison sentence, or breaching order or safety at the premises of the prison service, in prisons or court administration facilities and in immediate vicinity of guarded facilities. Such definition, which refers to the previous behavior of the prisoner and the resulting justified fears that he could behave violently, leaves room for an excessively broad interpretation of this provision, i.e., for the preventive shackling. This is in conflict with the U.N. Convention against Torture and Other Cruel or Degrading Treatment or Punishment, with the European Convention on Protection of Human Rights and Fundamental Freedoms, the European Prison Rules, the Bill of Fundamental Rights and Freedoms and, last but not least, also with the Act on Imprisonment.

3.2. Legislation applying to detention on remand

3.2.1 Act No. 208/2000 Coll., amending Act No. 293/1993 Coll. on Detention, was adopted in 2000. The European Prison Rules expressly prescribe to Prisoner Service employees an obligation to take care of the preservation of rights of the detained person while in custody.

3.2.2. An important change has occurred in the legislation regarding visits of the accused in the so-called collusion detention. In such cases, it is necessary to determine without undue delay the conditions of the visit, namely its date, the group of eligible visitors and the presence of a body active in criminal proceedings[16].

3.2.3. The intervals within which the detained are entitled to a parcel with food and personal effects weighing not more than 5 kg have been extended. The existing two-week interval has

[16] The existing provision stipulating the duty of prior written consent of the court or the state attorney with the visit has been interpreted to the detriment of the accused as a presumption of rejection to grant consent without any reasons.

been extended to three months or two months with respect to minors. The main reason for the adoption of such restriction is the fact that, despite appropriate controls, parcels sent to prisons contain drugs. It is necessary to point out in this respect that the right of the accused to purchase food and personal effects has not been changed. A positive change is the increase of number of items in the parcel to which the interval does not apply. Until now, such parcel could only contain a change of clothes, while the amendment stipulates that the interval does not apply to parcels containing the change of clothes, books, newspapers, magazines and hygienic effects.

3.2.4. In accordance with the European Prison Rules, the amendment newly defines the conditions of the disciplinary sentence of solitary confinement for up to ten days. Unlike the previous legislation, the new act stipulates that the placement in solidarity confinement for a period of up to ten days requires the opinion of a physician that the health of the accused permits to subject him to such punishment. Unlike the adults, the period during which a juvenile is subjected to a disciplinary punishment is counted within the period decisive for entitlement to a visit. The amendment further extends the scope of the literature which the accused who is subjected to a disciplinary punishment may read and expressly determines that he may receive and send correspondence and read the daily papers.

3.2.5. The amended legislation newly introduces the institute of deletion of a disciplinary punishment, which provides to the accused a possibility to correct the consequences of his inappropriate behavior while in detention. The director of the prison or a member of the prison service authorized by him may decide on the deletion of the disciplinary punishment if the accused duly performs his obligations for at least six weeks after the execution of such punishment. Upon such deletion, the accused is viewed as if such punishment has never been imposed on him.

3.2.6. Other problems resolved by the aforementioned amendment of the Act on Detention are set out in paragraph 3.6. of this report, which is deals with the implementation of the recommendations of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

3.3. Actual developments in the situation in prisons

3.3.1. The accumulation of problems in prisons ensued at the beginning of 2000 in protests of prisoners. The protests burst out namely in prisons in which the prison sentences are executed and only a limited number of accused participated in them. A significantly positive feature of those protests was their non-violent character; the sentenced persons submitted their requirements through their spokesmen and petitions. The non-violent character of the protests was due to a great extent to the cautious and diplomatic approach of the Prison Service headed by its general manager Kamila Meclová. It is also positive that the protests drew attention of the public to chronic problems of prisons[17] and to the necessity of their systemic resolution.

3.3.2. According to the prisoners, the immediate cause that triggered the protests was the adoption of Act No. 169/1999 Coll. on Imprisonment, as amended, namely its provisions regarding the compensation of costs of the prison sentence. The long-term reasons of the

[17] With respect to the effect on the public, it was very important that the protesting prisoners and the representatives of the Prison Service shared their evaluation of the material conditions of prisons as unsatisfactory.

protests lie in the unsatisfactory conditions in prisons, caused by excessively repressive penal policy and lack of financial funds, the long-surviving problem of unemployment of the prisoners, etc. The protests appeared mostly in large, most overcrowded prisons with low employment rate of the prisoners. The overcrowding of prisons deteriorates the quality of the living conditions of the prisoners and leads to the increase of tension among the prisoner themselves (e.g., between the Czech and foreign prisoners) and between them and the prison staff. The overcrowding has also a major impact on the purposeful use of the leisure time of the prisoners. If the premises designated originally for leisure time activities are used to expand the accommodation capacities and the staff shortages grow due to the growing number of prisoners, it is nearly impossible to systematically implement the programs of treatment of prisoners, which are focussed on their re-education and resocialization and contribute also to a meaningful use of the leisure time.

3.3.3. The material *Information on Prison Unrest*, which was submitted by the Minister of Justice and discussed by the government at its session held on 2 February 2000, pointed to the necessity of finding a systemic resolution of the overcrowding of prisons, namely by the change of the penal policy of the state, which should be reflected in a conceptual, systematic and effective use of alternative types of punishment, probation and mediation and of the institute of suspended sentence. In this respect, the Ministry of Justice pointed in its information also to the necessity to amend the Act on Imprisonment. No steps have been taken until now in this respect. The Prison Service referred to the necessity to update the concept of employment of prisoners and to strive by all means to increase it.

3.3.4. At the time of the outburst of the protests, the overcrowding reached in average approximately 120%, but was much higher in some wards. In the following months of the year, the situation in the Czech prisons got somewhat better as to the number of prisoners. While the number of prisoners reached in the Czech Republic as of 1 January 2000 23,060 (6,934 of whom were in detention on remand and 16,126 were serving a prison sentence), this number fell as of 31 December 2000 to 21,538, 5,967 out of whom were in detention on remand and 15,751 were serving a prison sentence. The decline in the number of prisoners in 2000 exceeds the growth recorded in the previous year.

3.3.5. Despite the measures adopted after the protests of January, i.e., the increase of tariff wages of the prison staff, the meal allowances of the prisoners and the minimum wage tariff of their reward for work, the amount of budget funds allocated in 2000 to the prison service was actually reduced. All the above measures were financed from the original allocations for the prison service for the year. That is why there were no funds left for the resolution of problems relating namely to the treatment of prisoners (leisure and educational activities, systematic implementation of the treatment programs, etc.) and the conditions for the work of the staff which directly affect prisoner treatment. The number of employees was increased in 2000, but without allocating the necessary payroll funds. In connection with the increase of tariff wages in the year 2001, the Prison Service had to reduce the number of employees to make up for the reduction of payroll funds. Even this measure will not be sufficient and it may be necessary to reduce the staff wages by reducing the risk surcharge. This may lead to further reduction of the current number of prison staff, which is alarmingly low, and will directly affect the quality of their work.

3.4. Absence of detention facilities

No legislative conditions were created in 2000 for the establishment of detention facilities. The proposed factual intent of the recodification of the substantive criminal law, prepared by the Ministry of Justice, contains, however, a provision regarding the establishment of a detention facility as a part of the system of penal measures. These facilities are to host three categories of persons – particularly dangerous sexual deviants, pathologically aggressive persons, repeated violent offenders who repeatedly fled from psychiatric facilities and especially dangerous offenders who are not criminally liable for their acts due to insanity. The detention facilities should provide specialized medial care and be sufficiently guarded to ensure the protection of the society from dangerous insane offenders.

3.5. Disciplinary prison sentence used in the army

A new Act No. 220/1999 Coll. on Basic or Alternative Military Service and Military Exercises and on Certain Legal Relations of Reservists, which also regulates the imposition and exercise of the disciplinary prison sentence. The year 2000 was marked with the problems of interpretation and application of this law. These problems were closely connected with the failure to adopt the Basic Code of Armed of Forces of the Czech Republic, which was to include more detailed rules implementing the provisions of the above law. Due to this situation, the military prison code, which should regulate in detail the recording of work, outings, CPT control, visits of the clergymen, etc. is still insufficiently elaborated. The discrepancies in the interpretation of the law by the military authorities affected their measures taken in individual cases.

3.6. Implementation of the recommendations of the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (CPT)

3.6.1. By its Resolution No. 822 dated 23 August 2000 and regarding the Report on the Implementation of the Recommendations of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment and Punishment, the government took cognizance of the Report on Implementation of CPT's Recommendations and ordered the Government Commissioner for Human Rights and the chairman of CHR to include the implementation of CPT's recommendations in the relevant year in the report on the state of human rights in the Czech Republic. Due to this, the following information only includes changes that occurred since August 2000.

3.6.2. Immediate findings pursuant to Article 8(5) of the Convention: CPT believes that the plan to provide other accommodation to foreigners awaiting deportation will be promptly implemented.

At the time of CPT' visit in the Czech Republic in 1997, foreigners awaiting the execution of administrative deportation were detained at the police headquarters at Kongresová street in Prague. CPT declared the conditions of their detention as totally unacceptable and requested immediate steps to find substitute premises for the accommodation of such persons. Act No. 326/1999 Coll. on Stay of Foreigners on the Territory of the Czech Republic and on the Amendments of Certain Laws (the „Act on Stay of Foreigners“), which came into effect on 1 January 2000, regulates the legal aspects of the establishment of special facilities to detain foreigners awaiting deportation under the act. The first of those facilities was put into

operation on 5 November 1998 in Balková in the district of Plzeň – North with the capacity of 324 persons. The second such facility in Poštorná with the capacity of 166 beds was put into operation on 5 September 2000[18].

3.6.3. It should be appreciated that since the effective date of the Act on Stay of Foreigners, the conditions for placement and stay of foreigners awaiting deportation in intercepting centers were stipulated by a generally binding law and not by the regulations of the Ministry of Interior and the Police Presidium as it was before the adoption of the aforementioned act. Despite that, CPT has been receiving since 1999 regular critical reports on the conditions of detention of foreign nationals in the Czech Republic. These complaints concerned namely the facility in Balková[19] and informed that the foreigners detained in this facility have no sufficient possibility to maintain contacts with the outside world, because they have only a limited access to the telephone, legal aid or competent organizations. Due to this, they have little information on their legal status. According to some information received by CPT, several foreigners in Balková were physically assaulted by the staff (those complaints are currently under investigation). The conditions in this facility were described as unsatisfactory. The Ministry of Interior responded positively to this criticism by a measure facilitating the communication with the outside world, i.e., by the installation of a payphone and enabling the detainees to purchase telephone cards (some foreigners, however, have no funds to purchase them). The situation of foreigners awaiting the execution of the administrative deportation order in the intercepting facilities continues to be monitored by CPT.

3.6.4. *Ad A – <u>Police facilities</u>*

The Presidium of the Police of the Czech Republic informed that no changes occurred in the period from August 2000 until February 2001 in the implementation of CPT's recommendations. Pursuant to the Government Resolution No. 528 of 12 August 1998 regarding the Follow-up Report of the Government of the Czech Republic to the Report of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment regarding the Visit of the Czech Republic on 16–26 February 1997, the recommendations were to be incorporated in the new Police Act; its adoption was, however, abandoned by the Ministry of Interior in 2000 (see 2.6.3.).

3.6.5. *Ad B – <u>Prisons</u>*

The amendment to Act No. 293/1993 Coll. on Imprisonment (i.e., Act No. 208/2000 Coll.) reflects several recommendations of CPT included in the report on its monitoring visit that took place in 1997:

The current standard of 3,5 m2 per prisoner in cells for more prisoners does not provide sufficient living space. CPT recommends to increase the standard.

[18] The planned renovation of the facility in Velké Přílepy, designated for the region of central Bohemia, counts with the capacity of approximately 120 beds. It is also planned to open another intercepting center in Javorník nad Veličkou, where a suitable facility has been found. Negotiations on the transfer of the real property from the Land Fund of the Czech Republic to the Ministry of Interior are under way now (February 2001).

[19] There also appeared complaints regarding the conditions in the reception and residence facility for asylum seekers in Červený Újezd.

The amendment of the Act on imprisonment cancelled the existing accommodation space per one accused, which had to be at least 3,5 m2. According to the information provided by the Prison service, this is to make room for a more favorable regulation based on generally applicable hygienic standards. It has to be added, however, that even the Act on Imprisonment does not regulate the minimum accommodating space per one prisoner.

3.6.6. *CPT requests from the Czech authorities to find out whether the censorship of the correspondence of the prisoners causes excessive delays and if so, to take remedial measures. CPT believes, in general, that the current system of correspondence checks may be an unnecessary waste or personnel sources.*

This recommendation is reflected in the amendment of Act on Imprisonment, which determines a 14-day time limit during which the body conducting the proceedings is obligated to check the correspondence of the accused kept in collusion detention. This provision significantly restricts the possibility of excessive delays in the delivery of the correspondence to this category of the accused. Furthermore, the amendment extended the list of correspondence whose checks are inadmissible by the correspondence between the accused and the diplomatic mission or the consular office of the foreign state and the correspondence between the accused and an international organization that is, according to an international treaty which is binding for the Czech Republic, competent to deal with motions relating to the protection of human rights.

3.6.7. *In the opinion of CPT, the entitlement of the accused placed in detention to a visit (10 minutes per week) is insufficient to maintain good relations with the family and friends. Moreover, the visit entitlement of the accused in the C and D category is by far not ideal. CPT recommends to extend the visit entitlements of those prisoners.*

The amendment has fully accepted CPT's recommendations to increase the number and time limit of the visits of the accused and stipulates that the interval between individual visits is shortened from three to two weeks and their length is extended from thirty minutes to one hour. In justified cases, the director of the prison may permit a visit in a shorter interval or for more than one hour.

3.6.8. *CPT asks the Czech authorities to create a system allowing visits of a independent body in the detention and prison facilities.*

As in the case of the Act on Imprisonment, the amendment regulates the supervision over the compliance with applicable laws during detention, which is carried out by a state attorney delegated by regional state attorney's office in whose jurisdiction the detention takes place. Within the scope of such supervision, the state attorney may visit at any time the places of detention; inspect documents under which the accused are being detained and talk to the accused in the absence of any third party; to check whether the orders and decisions of the prison service in the relevant prison, which concern the detention, comply with applicable laws and regulation; request from the prison staff necessary explanations, presentation of files, documents, orders and decisions regarding detention; issue orders to observe the laws and regulations applying to detention, and order immediate release of any person who has been detained in conflict with, or in the absence of, the applicable decision of a body active in criminal proceedings. The prison service is obligated to promptly carry out the orders of the state attorney.

Although the state attorneys, as bodies supervising detention and imprisonment, have relatively extensive powers, it is disputable whether they may be considered as actually independent bodies in the sense of the above recommendation, because the are subordinated to the same minister. The actual effectiveness of such control is also disputable. Experience of the prison service staff indicates that some authorized state attorneys do not pay virtually any attention to the legality and conditions of the detention and imprisonment. According to the information provided by the Supreme Office of the State Attorney ("NSZ"), this activity of the state attorneys is very important with respect to the protection of fundamental rights of the prisoners; however, NSZ failed to support this argument by any specific information regarding the results of this type of controls.

3.6.9. The specialized Section of CHR against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been analyzing the possibilities of establishing an independent body to supervise the places where people deprived of freedom or whose freedom is limited in the long run are kept. Based on the motion of this section, CHR ordered its chairman to prepare and to submit to it until 31 March 2001 a draft regulation regarding supervision over the places where the people deprived of freedom or whose freedom has been restricted in the long run are kept.

3.6.10. *CPT recommends taking prompt steps to reduce the number of prisoners in the escorting cells of Building „E" of the detention facility of Praha–Pankrác and furnishing those cells with a rest facility.*

After CPT's notice regarding inappropriate conditions in the cells of the detention facility Praha–Pankrác, which are known as „escorting premises", the escorting center was moved on 1 September 2000 from this detention center to the prison at Jiřice, whose cells better comply with CPT's recommendations.

3.6.11. Ad C – Juvenile facilities: The staff at the juvenile facilities should be carefully selected, should undergo the relevant training before taking up the job and during employment. The staff should be also provided necessary outside support and the performance of its duties should be checked. The management of such facilities should be entrusted to capable managers, able to actively respond to complex conditions and the requirements of the staff and the inmates.

From August until December 2000, MŠMT granted accreditation to other specialized training programs for pedagogues. The number of pedagogical centers authorized to provide continuing education to pedagogues, including the staff of custody facilities, has increased from five to fourteen. Diagnostic institutes train workers of institutions in their respective regions in the form of regular guidance sessions. No changes occurred in the monitored period with respect to the implementation of other recommendations of CPT.

4. Gender Equality

4.1. General mechanisms of protection of equal opportunities of men and women

4.1.1. The Parliament approved in November 2000 the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination of Women (the "Convention"), on whose basis it is possible to address to the Committee for Elimination of Discrimination of Women

any individual complaints regarding discriminating conduct and breach of rights determined in the Convention. The fact that a new mechanisms protecting women from discrimination has been added to the existing ones is positive.

4.1.2. On the other hand, there is still no institution to ensure the promotion of gender equality, whose competencies would not be limited to mere coordinating and advisory activities. The establishment of such body has been fostered by the Ministry of Labor and Social Affairs, which submitted last year within the scope of the PHARE program a project focusing on the development of an institutional mechanism promoting equal opportunities and monitoring the equality. If approved, the project is expected to start in the third quarter of the year 2001.

4.1.3. Despite the progress achieved in the area of law, the lay and professional public still points to the shortcomings of practical implementation of the principle of gender equality. This is connected particularly with the existing level of education of the state officials in the problems of equal opportunities of men and women. Due to such lack of knowledge or inadequate understanding of those problems, the decision-making and evaluation processes are not carried out with a view of such gender equality (i.e., with the use of the gender mainstreaming method).

4.1.4. The 23rd Special Session of the General Assembly of the U.N., called "Women 2000: Gender Equality, Development and peace for the 21st Century" was held in June 2000. At this session, the member states evaluated the results achieved in the implementation of the conclusions of the 4th World Conference on Women held in 1995 (the Beijing Conference) and its platform of action, and adopted a worldwide program document.

4.2. Labor law relations

4.2.1. Act No. 155/2000 Coll., amending Act No. 65/1965 Coll., the Labor Code, as amended, and certain other laws, was adopted in 2000. The principal purpose was to ensure the compliance of the Czech labor law with European Law. The key provisions of the act include the principle of gender equality in respect of working conditions, including remuneration, professional training and opportunities of functional or other promotion (Section 1(2) of the Labor Code), and the prohibition of direct and indirect discrimination due to gender in labor law relations, the prohibition of undesirable sexual conduct at the workplace, and the specification of the types of individual employee claims in cases of the breach of the equal treatment principle, including the prohibition of retribution by the employer in the case that the employee seeks the implementation of his rights. The amendment of the Labor Code also amended the Act on Professional Soldiers in such manner that the principle of equal treatment of men and women applies mutatis mutandis to the members of the armed forces while in service. The introduction of the institute of parent leave allows either of the parents to take care of the child. The purpose of this institute is to ensure sharing family duties by both parents for the sake of improvement of equal position on the labor market and the same access of both parent to employment. Under the amendment, the employers are obligated, while placing the employees on shift, to take note of the needs of employees taking care of children and to allow to them in specified cases the shortening or other suitable adjustment of their working hours.

4.2.2. An important change with respect to the struggle against discrimination of women is the amendment of the Civil Procedure Code, which reflects the EU directive regarding the burden of proof in cases of gender discrimination. The new provision stipulates that the

burden of proof in gender discrimination matters stays with the defendant and not with the plaintiff[20]. Such regulation fully conforms to the experience of the developed states.

4.2.3. Act No. 217/2000 Coll. amending Act No. 1/1992 Coll. on Wages, Remuneration for Standby and Average Earnings, as amended, and Act No. 143/1992 Coll. on Salary and Standby Remuneration in Budgetary and Certain Other Organizations and Bodies, as amended, came into force on 1 August 2000[21].
The amended law regulates the terms and conditions of equal remuneration in accordance with the standards of the European Union (the „EU"), particularly the EU directive 75/117/EEC, and with the Convention of the International Labor Organization No. 100 of 1951 on Equal Remuneration of Working Men and Women for the Same Work with the Same Value, published under no. 450/1990 Coll. The aforementioned provisions of the acts of wages and salaries are based on the amended Labor Code (specifically on the provision of Section 1(3) and (4) and Section 7(2) thereof), which expressly stipulates the principle of equal treatment of all employees by the employers and stresses the equal approach to male and female employees in respect of their remuneration. The new legislation should eliminate any future discrimination of employees as to their wages (salaries) and provide for further protection of employees from differentiation of wages (salaries) according to criteria that may not be considered as equitable. The acts on wages and salaries stipulate that an employee is entitled to the same wage (salary) for the same work or for the work of the same value. At the same time, both acts define the notion of the same work and the work of the same value.

4.2.4. In connection with the amendments to the acts on wages and salaries, an analytical work assessment method has been elaborated for the purpose of dividing various types of work and activities to wage categories and granting of the tariff wage component. With the help of such method, it will be possible to assess the complexity, responsibility and level of efforts required by the activities of public servants for the purpose of the public service code that is currently under preparation. As to the business sphere, this method will be applied in the division of various types of work into tariff levels and the application of minimum wage tariffs. The content and focus of this assessment method ensures its neutrality as to the discrimination in the remuneration and in the allocation of the basic salary component to the employees of budgetary and certain other organizations, or the minimum wages to the employees in the business sphere. A similar analytical method of evaluation of equal remuneration, supplemented by other aspects and adjusted to the court practice and for inspection purposes, is to be finished until the end of 2001.

4.3. Violence against women

4.3.1. On the basis of the Summary Report on the Implementation of Government Priorities and Procedures Promoting Gender Equality in the Year 1999, which was approved by Government Resolution No. 565 of 7 June 2000, the section regarding legislative measures aimed at better prosecution of various forms of violence against women was deleted in its entirety from the program document *Government Priorities and Procedures Promoting Gender Equality*. The Summary Report states that no government task had ensued from the evaluation of the effectiveness of the laws and regulations that are currently in force and that prosecute manifestations of violence against women, and these problems were therefore

[20] In labor law matters, the court deems the allegations that a party has been directly or indirectly discriminated on gender basis as proven, unless proved otherwise at the lawsuit (Section 33a of the Civil Procedure Code).
[21] The act became effective on 1 January 2001.

referred to individual ministries. There are, however, substantial differences in the attitudes of the ministries towards this kind of violence.

4.3.2. The non-state organizations ProFem and ROSA, which deal with domestic violence, filed with the Council for Human Rights through the specialized Section for Gender Equality a motion with the aim of achieving at least partial protection of victims of domestic violence under the Criminal Code. The motion presented a draft amendment to the provision of Section 215 of the Criminal Code, which changed the factual grounds of the criminal offence referred to therein, i.e., the maltreatment of a person entrusted to custody, in such manner that it covers, apart from the maltreatment of person entrusted to custody, also the maltreatment of a close person. Such change was supposed to deal with the frequently neglected impact of long-term and intensifying domestic violence on its victim. Another benefit of such change was the fact that the provision of Section 215 of the Criminal Code is not listed in Section 163a of the Criminal procedure Code among criminal offences whose prosecution may be commenced or carried on solely with the consent of the aggrieved party. The requirement regarding such consent makes it difficult or even impossible to prosecute most cases of domestic violence, which are typical by their emotional and economic dependence of the victim on the perpetrator, who enforces such dependence by means of violence. The Ministry of Justice responded to this motion by an allegation that such step is not in line with the overall concept and is not systemic and that the current wording of the Criminal Code sufficiently prosecutes the criminal activity, which is generally characterized as domestic violence. The activities of non-state organizations which provide practical assistance to the victims of domestic violence indicate, however, that the existing legislation is by far not sufficient.

4.3.3. The attitude of the Ministry of Interior to the problem of domestic violence is more open. For the sake of improvement of the police approach and treatment of victims of crime, with an emphasis on victims of domestic violence, whose position is especially difficult due to lack of information regarding this crime among the general public, the Ministry of Interior is preparing, together with the association „Bílý kruh bezpečí“ (the „White Circle of Safety“) a project with the aim of further training of the police to ensure their highly professional and humane approach to victims of crime

4.3.4. The social situation of victims of domestic violence is also very difficult. There is only one asylum facility with a secret address in the Czech Republic. This form of asylum is common abroad and the experience of non-state organization indicates that it is needed in the Czech republic as well, particularly in cases in which the violent partner refuses to accept that the victim no longer wants to share household with him. The number of specialized asylum homes, which ensure professional help and safety to victims of violence, is insufficient and the vast majority of them do not receive any funding from the state. Due to this, such specialized facilities for the female victims of violence are substituted by facilities maintained by charities, which do not provide sufficient care as regards the professional approach and knowledge of the problem.

4.3.5. The situation of the victims of trafficking in women has not undergone any significant change. The problems connected with the legalization of their stay still exist, even in cases in which the victims testify in criminal process against the perpetrators, namely those involved in such serious organized criminal activity as the trafficking in women undoubtedly is. In a number of cases, such women are repatriated, after the termination of the trial and sentencing of the perpetrators, to their country of origin where many of them may expect cruel punishment for their assistance to the authorities active in criminal proceedings. The care for

the victims of this crime is still provided only by non-state organizations (La Strada, Rozkoš bez rizika). The state does not allocate any funds for the assistance to victims of trafficking in women.

4.3.6. Nevertheless, the Ministry of Interior monitors this negative social phenomenon and tries to resolve it. In this respect, it has become the guarantor representing the Czech republic in the project *Response of the Criminal Justice to Trafficking in Women*, which is a part of the global U.N. program directed against trafficking in women. The participants of the European part of the project are the Czech Republic and Poland, together with Germany, Austria, the Netherlands and Finland. The objective of the project is to improve the detection and prosecution of traffickers in women, namely through care for potential witnesses, who may be found particularly among the victims of this criminal activity.

4.4. Female surnames

The new legislation (Act No. 301/2000 Coll. on Civil Registers, Name and Surname and on the Amendment to Certain Related Laws), which will come into effect on 1 July 2001, stipulates that female surnames shall be still registered in the registers and in the excerpts thereof in accordance with the Czech grammatical rules, i.e., with the relevant ending. At the same time, a new provision of Section 69 of the above act stipulates that the civil registry may register the surname, at the request of the respective woman who bears, in the form not corresponding with the Czech grammatical rules. The woman bearing such surname may use only one of these forms, which she will elect when filing the application. Such form will be included in the civil registry documents. Such procedure will be possible in cases prescribed by an international treaty (like the Framework Convention on the Protection of National minorities – Notice of the Ministry of Foreign Affairs No. 96/1998 Coll.). If the name of a woman has already been registered in the civil registry maintained by the registry office in accordance with the Czech grammatical rules, such woman may apply pursuant to Section 93 for the registration of the surname in the form not corresponding with the Czech grammatical rules. The legislation is still problematic in respect of foreign women.

4.5. Gender equality in the army

4.5.1. The Ministry of Defense has taken an active attitude towards gender equality and has established a working commission for the resolution of the problem of gender equality in the army. One of the principal goals of this commission is to foster the principle of equal opportunity in decisions taken at all levels (the gender mainstreaming process).

4.5.2. The Inspection of the Minister of Defense has been charged with investigating complaints of specific discriminating conduct and of all other symptoms of breach of the principle of gender equality whenever it comes across such symptoms during its supervisory activities. During its controls of the observance of human rights performed in 2000, the Inspection of the Minister of Defense did not come across any case of gender discrimination, but identified one case of sexual harassment.

5. Rights of the Child

5.1. The Act on Social and Legal Protection of Children

5.1.1. Act No. 359/1999 Coll. on Social and Legal Protection of Children, as amended by Act No. 257/2000 Coll., came into effect on 1 April 2000. This act separates the child protection problems from the problems of social care and defines the powers of public administration authorities in respect of protection of children, thus implementing the provisions relating to the protection of children as referred to in the Bill of Fundamental Rights and Freedoms and in international treaties that are binding for the Czech Republic. At the same time, the act allows to non-state non-profit organizations to perform, subject to the terms and conditions stipulated therein, certain activities in the area of social and legal protection of children; however, the Fund of Children in Jeopardy has expressed its fears that its powers in this area may be actually reduced.

5.1.2. The non-state organizations note that, when the act is implemented by the municipalities which exercise their powers thereunder, some employees or representatives of these offices avoid contacts with problem families. At the same time, the courts sometimes ascribe excess importance to biological kinship and give priority in their decisions to biological parents or relatives, despite their obvious neglect of the family care and long-term absence of any interest in and contact with the child, over the placement of such children in foster families.

5.2. Coordination of the activities of bodies involved in child's rights

5.2.1. MŠMT elaborated in 2000 a report on the fulfillment of tasks ensuing from the Concept of State Policy toward the Young Generation until the Year 2002. The government took cognizance of this report by its Resolution No. 459 of 10 May 2000. The Children's and Youth Institute of MŠMT also opened a web page "Rights of Children and Youth" and incorporated in its research tasks also the monitoring of the implementation of the Convention on the Rights of the Child in the Czech Republic.

5.2.2. By its Resolution No. 696 on the Statute and Staffing of the Republic Committee for Children, Youth and Family, the government approved on 7 July 1999 the statute of this committee. The Committee, which launched its activities at its first session held on 1 February 2000, should create concepts and guidelines of cooperation among competent ministries in this respect.

5.2.3. Lack of field social and pediatric activities is being felt in practice. The pedagogical and psychological consulting centers do not focus on those activities, which are not covered by health insurance companies and the social and pediatric consulting is thus carried out in the form of volunteer activities performed by professionals employed in infant institutes and foster care facilities.

5.3. Institutional and protective care

5.3.1. By its Resolution No. 77 dated 22 January 2001, the government approved the articulated draft wording of Act on Exercise of Institutional Care, Protective Care and Preventive Care in Educational Facilities. The draft brings along a number of positive changes, like an exact definition of rights and duties of the directors of such facility, the rights

and duties of the child, an accurate determination of all financial matters (pocket money, reimbursement of the costs of the care by legal guardians, private gifts, material aid). At the same time, the draft contains some serious defects.

5.3.2. A potential conflict with Article 10(2) of the Bill of Rights, which stipulates the right to protection from unjustified interference with the private and family life, appears in Section 18(1)(g) of the draft (and Section 20(1)(i) relating thereto), which reads as follows …"…*the following restrictive measures may be imposed upon a child for a demonstrable breach of duties specified herein: prohibition of temporary stay of the child with persons responsible for his care or with close persons for a period not exceeding one month in each quarter of the year*." A similar problem appears when comparing the draft with Article 9 of the Convention on the Rights of the Child, which stipulates that:"…the child is also entitled to maintain contacts with both parents, if separated from one or both of them." The provision of Section 19 of the draft (and the related provision of Section 20(1)(k)) is also problematic. It reads as follows „… *the child may be placed in a secluded room for the purpose of his claming down and stabilization of his mental condition* …". It is possible to imagine situations directly determined by the draft in which such measure is justified, but only in specifically defined facilities. The draft does not specify, however, which facilities may have such secluded rooms; they have no place in foster care facilities.

5.3.3. Section 2(7) of the draft stipulates that the relevant groups of children may …*be provided the reimbursement of: a) the effects necessary for the use of the leisure time and recreation, b) costs of cultural, artistic, sport and leisure activities, c) costs of contests and recreation.* Article 31 of the Convention on the Rights of the Child guarantees the right of the child to leisure time, play and participation in cultural and artistic activities; the act should therefore define the minimum mandatory scope of those activities that *must* be provided to the child.

5.3.4. A positive change is the transformation of all foster care facilities into family type facilities. Child care institutions are changed into foster homes with elementary schools. The non-state organizations object in this respect that such tendency lacks the integration element. Pursuant to the draft, foster homes with elementary schools are supposed to also serve underage mothers; this may be accepted only if such mothers have at the same time formative problems.

5.3.5. Practical experience of non-state organizations points to some problems appearing in the work of diagnostic facilities. Children in those institutes are sometimes „labeled" and if the diagnostic institute accepts to re-examine the child, such child is forced to leave „his own" facility and spend 2 – 3 months in the strange environment of the diagnostic institute. Such examined children then naturally reach worse results. The draft wording determines the time limits and conditions applying to the repeated diagnostic examination. The key condition is that the examined child shall not leave his original facility. If it is not necessary to examine the child in a special facility (for instance a child whose parent dies and which has no formative problems), the child is placed in the relevant facility without having to spend some time in the diagnostic institute. This is stipulated in Section 5(8) of the articulated draft wording of the act. However, this provision should be more specific. Section 9(3) of the draft wording allows to establish in the diagnostic institute an educational group for long-term care purposes, although it is not, unlike other facilities, designated for long-term care. In this manner, the diagnostic institute substitutes the activities of another facility, which is not defined in the act.

5.3.6. Act No. 359/1999 Coll. on Social and Legal Care of the Child, as amended, prescribes to social workers in the child care department („OPD“) (as the body ensuring social and legal protection of the child) the duty to visit at least once every six months every child placed in institutional care and find out whether the reasons for his stay in the facility still exist – see Section 29(2) of Act on Social and Legal protection of the Child. OPD workers frequently have no contact with the family of the child and are thus unable to properly evaluate whether there are still reasons for the stay of the child in the facility. Serious doubts may be voiced under the current circumstances about the possibility of cooperation of OPD workers and the parents on the potential return of the child and about the attempts of those workers to contact the original family.

5.3.7. The concept of activities of MŠMT and the Ministry of Labor and Social Affairs still lack programs for support of parenthood and good family to be implemented in both the state and non-state sector, as well as the institute of professional foster families providing short-term diagnostic and long-term therapeutic stay, which would respect the rights of the child and would limit the secondary damage caused to children. The current legislation, as well as the draft wording of the Act on Exercise of Institutional Care, Protective Care and Preventive Care in Educational Facilities still support the institutional care, although such care could be substituted, by way of good social work and correct court decision, by foster family care or the care in family type foster homes.

5.3.8. On of the major problems is still the housing situation of the children whose stay in the foster home or foster family has come to an end. This problem is partly resolved by half-way houses, the vast majority of which is established by non-state organizations; otherwise the children who have no opportunity to return to their biological family may only resort to renting a home, which in nearly all cases exceeds their financial means. Neither the resolution in this respect and the municipalities, which should resolve individual urgent cases, do not pay any attention to a number of them.

5.4. Surrogate family care

5.4.1. The part of Act No. 94/1963 Coll. on the Family has significantly affected the destiny of children in foster homes. A survey carried out by a surrogate family care facility indicated that the impossibility to grant consent to adoption immediately after childbirth extended the stay of the children from the average 17.5 days in 1997 to 68.3 days in 1999, moreover in a stage that is critical for the emotional and social development of the child. The amendments granted to biological parents, apart from the whole period of pregnancy, and extra six-week period to decide. The current experience of the facilities demonstrates, however, that no mother who had declared before childbirth her intention to give up the child for adoption has even revoked her consent. Unnecessary delays have a negative impact namely on the child.

5.4.2. Even more problematic is the part of the amendment of the Family Act which concerns the six-month absence of parental interest. Thus, the relatively short stay of the child in a surrogate family care facility has changed into a long-term stay (while the average length of stay of a child in such facility due to absence of parental interest was in 1997 261.5 days, it grew in 1999 to 655.1 days). This has undoubtedly a serious negative impact on the mental and emotional life of the child. Thus, the law again provides to the biological parents an unjustified possibility to make use of repeated semi-annual periods, in which they do not show any interest in the child, in the court defense of their attitude to the child, which they

have already sufficiently demonstrated. The courts try to order hearings and decide the matters within the shortest possible time. Despite that, there occur unnecessary delays and the children have to await the decision of the competent authorities in the foster home. The Ministry of Justice reviewed the court procedure applied in motions for a decision on qualified absence of parental interest in the child placed in a specific facility, and find out that the courts did not commit any errors in the checked custody matters which would negatively affect the length of the court proceedings. Therefore, it may be said that the main reason of unnecessary protraction of the stay of children in foster care facilities is the legislation, which has to be promptly amended, as it causes irreparable damage to the mental condition of those children.

5.4.3. No change occurred with respect to entrusting the child to the care of a natural person other than the parent, if such person provides a guarantee of proper care for the child, agrees with such care and if so required by the interest of the child as specified in Section 45 of Act No. 94/1996 Coll. The length of stay of infants in the foster care facilities has been growing and the courts do not sufficiently use the aforementioned provision.

5.4.4. The Hague Convention on Protection of Children and Cooperation in International Adoption came into force with respect to the Czech Republic on 1 June 2000. The Convention provides a legal framework for international adoption. The Office for International Legal Protection of Children based in Brno, which is subordinated to the Ministry of Labor and Social Affairs, has been appointed to mediate international adoption. This body has currently established good cooperation ties with the Adoption Centre, which has been appointed to mediate international adoption in Denmark. In 2000, 16 children were adopted in Denmark and one in Austria and negotiations are currently under way regarding the adoption of another child in France. Until now, no child from abroad has been adopted in the Czech Republic

5.5. Maltreatment, abuse and neglect of children

5.5.1. The provision of Section 28(1)(e) of the amendment of Act No. 200/1990 Coll. on Transgressions, as amended, is directed at the prevention of corporal punishment of children which degrade human dignity. The grounds of this transgression only affect the types of punishment that intentionally degrade the human dignity of the child (*anyone who uses an inadequate measure against a minor child with the intention to degrade his human dignity*). Such intention may hardly be proven, due to which this provision is virtually ineffective.

5.5.2. The non-state institutions, like the Help Line, crisis centers and similar facilities still play an important role; interpersonal teams provide crisis intervention and significantly contribute to timely detection of the problems.

5.6. Sexual exploitation and sexual abuse

5.6.1. Act No. 359/1999 Coll. on the Social and Legal Protection of Children formed the basis for the binding instruction of the president of the police no. 179/2000, which amended the internal by-law regulating the work with youth. This by-law regulates the work system and procedures applied by the police in the detection and documenting of child crime and crime against youth. Moreover, the Ministry of Interior prepared in 2000 the National Plan of Struggle against Commercial Sexual Abuse of Children, which was approved by the Government Resolution No. 698 dated 12 July 2000, together with controlling mechanisms

which are to check the implementation of measures specified in the National Plan of Struggle against Commercial Sexual Abuse of Children in the form of submission of periodic reports to the government. It was ordered to prepare the first such report and submit it to the Minister of Interior and to the chairman of the Committee of the Republic for Prevention of Crime in cooperation with the First Deputy Prime Minister and the Minister of Labor and Social Affairs and with the Ministers of Health, Justice, Education, Youth and Physical Training until 30 June 2002.

5.6.2. Another step that may contribute to the protection of children from commercial sexual abuse is the accession to the Convention of the International Labor Organization No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor. By its Resolution No. 395 of 19 April 2000, the government expressed its consent with the execution and subsequent ratification of Convention No. 182. The convention defines the worst forms of child labor, which include the use, recruitment or offering of children for prostitution, production of pornography or for pornographic shows and binds the State parties to create a program of action, which would specify measures directed at the elimination of the worst forms of child labor.

5.6.3. The improvement of the protection of children from these phenomena should be also guaranteed by the ratification of the Hague Convention on Protection of Children and Cooperation in International Adoption. The aim of the convention is to ensure international adoption in compliance with the requirements determined by the Convention on the Rights of the Child and to establish a system of cooperation among the State parties, which would prevent child abduction and trafficking.

5.6.4. „Růžová linka“ and other non-state organizations continue to provide their assistance to sexually abused children, inter alia, by organizing professional training sessions. In this respect, it is necessary to point out frequent secondary damaging and maltreatment of the child, who is often placed in an institution under the pretext of protection from further abuse, while the perpetrator may enjoy his freedom. These factors, together with the breach of emotional solidarity with the family, cause further damage to the child, who may resort to drugs in his attempt to overcome the trauma. In this respect, it necessary to promote more intensively the prevention and systematic social work with the family.

5.6.5. Together with mandatory introduction of the Internet to schools, it is also necessary to find financial funds for the purchase of programs barring the access of children to risk web pages disseminating pornography, offers of sexual activities and so forth.

5.7. Education

5.7.1. In order to prevent school failure of children, particularly of those coming from handicapping socio-cultural environment (particularly the Roma children), experimental preparatory classes in elementary and special schools and, in exceptional cases, also in kindergartens (see 6.2.4.), have been opened on the basis of Section 58(a) of Act No. 29/1984 Coll. on the System of Elementary and Secondary Schools (the "School Act").

5.7.2. The new draft of the School Act includes an independent regulation of the protection of rights of children – pupils or their legal guardians, while respecting all provisions of national

and international documents that are binding for the Czech Republic[22]. The Act will also regulate the rights and duties of the schools and educational facilities and of pupils or their legal guardians and shall clearly guarantee namely the right to free elementary and secondary education at schools established by the state, the right to religious education within the scope and under the conditions determined by this Act, and the guarantee of the same rights to all irrespective of their gender. At the same time, this act will include a provision regarding the prohibition of all forms of discrimination and protection and respecting of rights and dignity of every child /pupil/student irrespective of his/her gender.

5.8. Child labor

The provision of Section 28(1)(g) of Act No. 200/1990 Coll. on Transgressions, as amended, stipulates that anyone using a minor child to perform physical labor that is inadequate to his age and the level of his physical and intellectual development shall commit a transgression for which he may be fined by an amount of up to CZK 10,000. This provision should prevent, for instance, inadequate exploitation of children by their parents, as it is sometimes common in the so-called family firms.

5.9. Quasi-delinquency

The following situation described in the 1999 Report on the State of Human Rights remained unchanged even in 2000: minors between 12 up to 15 years of age may be tried in civil trial if they commit an otherwise criminal act for which it is possible to impose an exceptional punishment under the Criminal Code. On the other hand, the minors are not guaranteed the rights granted to the accused under the Criminal Procedure Code. This situation is in conflict with the requirement of Article 40 of the Convention on the Rights of the Child.

5.10. Child custody after divorce

5.10.1. The situation in which the women-mothers are favored by the courts in matters regarding custody of minor children continues to exist. Children are entrusted to mothers in all cases, even in circumstances that are unsatisfactory for the child. The long-term statistical data show a virtually unchanged ratio - 92% of decisions grant the custody of children to mothers, 6% to fathers and the rest to other persons. A change in the way of thinking and decision-making of the courts and other competent authorities will probably require more time. The current legislation provides to those bodies a possibility to ensure the contacts of the child with both parents, namely with the father, who is in a number of those cases deprived of the contact with the child. In such case, the mother's conduct represents frustration of the execution of an official decision under the Criminal Code.

5.10.2. Some non-state organizations points to the fact that the courts are in conflict with the law when they fail to commence the appropriate action *ex officio;*, in cases in which the father does not file a request for the custody of the child, the court does not carry out any substantiation of facts to prove which of the parents is more suitable to have custody of the child and which arrangement may better protect the rights of the child.

[22] This will lead, for instance, to the implementation of the provision of the Convention on the Rights of the Child, the Convention on Protection of Human Rights and Fundamental Freedoms, the Convention on the Elimination of All Forms of Discrimination of Women, etc.

6. Minority Rights

6.1. General matters concerning national minorities

6.1.1. The Council for National Minorities (the „CNM“) dealt in 2000 with general matters, giving priority to the preparation of a bill on rights of members of national minorities. By its Resolution No. 597 dated 14 June 2000, the government approved the factual intent of the act and the Deputy Prime Minister and the Chairman of the Legislative Council of the Government prepared and submitted in accordance with Article II of this resolution a draft articulated wording of the act. The government approved the bill on rights of member of national minorities by its Resolution No. 1069 of 1 November 2000. This bill was reviewed by the Chamber of Deputies in the first reading on 1 December 2000. The Chamber of Deputies instructed its Petition Committee, Constitutional Law Committee, Committee for European Integration, the Committee for Science, Education, Culture, Youth and Physical Training and the Permanent Commission of the Chamber of Deputies for Communication media to review the bill (which was reviewed on 1 February 2001 by the Committee for European Integration; by its resolution no. 140, the committee recommended to the Chamber of Deputies to approve the bill).

6.1.2. By its Resolution No. 1029 of 16 October 2000, the government expressed its consent with the execution of the European Charter of Regional and Minority Languages. The Czech Republic signed the Charter on 9 November 2000. Section III(2) of the Government Resolution No. 1029 orders all members of the government, the Government Commissioner for Human Rights and the Chairman of CNM to review until 30 June 2001 the compliance of applicable laws with the Charter and to adopt any necessary measures to ensure that any obligation ensuing to the Czech Republic after the Charter comes into effect may be implemented to the fullest extent. The resolution of individual topics is coordinated by the Ministry of Foreign affairs in cooperation with the Chairman of the RNM.

6.1.3. On 12 November 2000, CNM reviewed and recommended the provision of subsidies from the state budget to the publishers of minority periodicals for the year 2001 in the total amount of CZK 30 million. The amount of subsidies to the publishers forms a separate item in the chapter „General Treasury Administration“. The subsidies for the year 2000 were granted to the publishers of the following minority periodicals: Hungarian (one quarterly), German (two biweeklies), Polish (one bi-daily, one biweekly and two monthlies), Roma (one biweekly and three monthlies), Slovak (three monthlies) and Ukrainian (one quarterly).

6.1.4. The Municipal Office of the City of Prague took in cooperation with the CNM secretariat steps for the establishment of the House of National Minorities – a multicultural center in Prague[23].

6.1.5. CNM secretariat cooperated in 2000 with the Czech Statistical Office in the preparation of information flyers on the 2001 census. The materials were also printed in minority

[23] By its Resolution No. 173 regarding the consent with an exception for tender on transfer of real properties from the Fund of Children and Youth for the purposes of the establishment of the House of National Minorities in Prague, which was issued on 19 February 2001, the government took cognizance of the project and approved measures allowing the establishment of the House of National Minorities.

languages (in Polish, German and Roma) and were provided to all boards of editors of the minority press for publication.

6.1.6. On 12 December 2000, CNM decided to recommend a representative of the national minorities to the Czech Forum for Information Society. In accordance with the statute of the Council of the Government of the Czech Republic for the State Information Policy (Government Resolution No. 850 of 16 December 1998), and with Government Resolution No. 525 of 31 May 1999 regarding the draft of the state information policy, the representative of the national minorities shall present in this body the minority interests relating to the state information policy system.

6.2. The Roma

6.2.1. Concept of the government policy toward the Roma community, assisting its integration into the society

6.2.1.1. Based on Government Resolution No. 279/99 of 7 April 1999, the Human Rights Commissioner and the Chairman of the Inter-ministerial Commission for the Roma Community Affairs was ordered to work out the concept of the Roma integration and submit it until 31 December 1999. The Chairman of the Inter-ministerial Commission formed a specialized team for the elaboration of the concept. The final draft of the concept was prepared by the employees of the Human Rights Department of the Office of the Government, the Roma advisers and assistants, employees of various state authorities, the Roma members of the Commission and independent experts. The concept proposed the establishment of a new central state administration authority – the Office for Ethnic Equality and Integration. The government returned the proposed concept to the rapporteur for completion and instructed him to submit it in several versions. The proposal was thus submitted again to the government, which approved it by its Resolution No. 599 dated 14 June 2000 as the Concept of the Government Policy toward the Members of the Roma Community, Assisting Their Integration into the Society. The government selected the variant proposing the extension of the existing advisory body of the government – the Inter-ministerial Commission for the Roma Community Affairs.

6.2.1.2. The government emphasized in the concept that it considers the integration of the Roma as an ethnic minority into the Czech society as an urgent matter and that it is possible to get integrated in the multicultural society, maintaining at the same time one's own culture, traditions, history and language. The concept and the tasks prescribed by it will be updated every year. The time limit stipulated for the existing set of tasks assigned to individual ministers and to the Human Rights Commissioner is the year 2000 – 2001 and the tasks have mostly an analytical nature. Based on those analyses, new assignments are to be formulated in the coming years, whose implementation should contribute to the full-fledged integration of the Roma into the society.

6.2.2. Support of integration projects of the Roman

6.2.2.1. In 2000 the government allocation for the first time budget funds for the support of the projects directed at the integration of the Roma community. The allocated funds amounted to CZK 21 million. The general distribution of those funds was proposed and approved by the Inter-ministerial Commission for the Roma Community Affairs at its session; the approved proposal was then submitted to the government, which approved it by its

Resolution No. 386 of 19 April 2000. A part of those funds was used in the program of the social integration and coexistence – they were distributed in accordance with the number of the Roma at each district among the district offices, which then announced a tender for the provision of grants to local projects. Those funds were further used for the social and education program for the Roma children and youth. Part of those funds was provided in the form of support of field social workers, of the Roma secondary school students, and of the maintenance of graves of the victims of the camp in Lety u Písku (the Mirovice cemetery).

6.2.2.2. By its Resolution No. 387 adopted on 19 April 2000, the government approved the development project of community housing of the Roma citizens in Brno and of the improvement of inter-ethnic relations in the society, and agreed with the provision of a state guarantee to secure the payments of a loan provided by the Development Bank of the Council of Europe in the amount of CZK 32.5 million and with the provision of state support for the implementation of the above project in the form of a subsidy provided to the city of Brno to participation in the financing of the project. The subsidy, which amounts to CZK 32.5 million, shall be provided from the budget chapter of the Ministry for Local Development in the years 2000 and 2001; CZK 12.5 million was to be provided in 2000 and CZK 20 million in 2001. This project is comprised of the renovation and modernization of two rental apartment buildings in Brno. This project may be called a pilot project, as it is the first time when the state invests into the renovation of apartments in the location with an increased and increasing concentration of the Roma population with the aim of increasing the contribution of the Roma in better housing and changing the location into an example of potential coexistence of the Roma and the mainstream population.

6.2.2.3. It turned out during the preparation of the concept of the Roma integration policy that the majority of the mainstream population, including some public administration officials and elected representatives of the self-government bodies, maintain distorted views of the Roma and of the coexistence of the mainstream society with the Roma community. A large number of attitudes held by the society are marked with prejudice or generalized partial experience, either personal or only passed on. Therefore, the government adopted on 11 October 2000 its Resolution No. 994 regarding the measures to organize an overall discussion in the society and the Parliament in order to improve the relations between the mainstream society and the Roman minority. By this resolution, the government assigned to the Minister of Education, Youth and Physical Training, to the Minister of Culture and to the Government Commissioner for Human Rights some tasks that are to improve the image of the Roma and other national minorities and foreigners in the mainstream society.

6.2.3. Employment of the Roma

6.2.3.1. The high unemployment among the Roma existed also in 2000. Most of the Roma job seekers are unemployed for a long time and belong to the group of person who have difficulties in finding a place on the labor market. The Ministry of Labor and Social Affairs prepared the National Action Plan of Employment for the Year 2001, which strives to give priority in employing those categories of job seekers who have difficulties in finding a place on the labor market, including the Roma.

6.2.3.2. The Ministry of Interior provided maximum support to the Roma applicants for work in the police forces in meeting the prescribed admission requirements. The ministry introduced a specific system of studies, which may be broken down into the above-standard type (preparation of the members of national minorities for service in the Police of the Czech

Republic, and a five month preparatory course for members of national minorities who have already joined the police force and did not complete secondary school education) and the standard follow-up (a 12-month basic professional training for the policemen with completed secondary school education and a two-year specialized course „Police Activities“ for the policemen who have not completed secondary school). This program is carried out at the secondary police School in Brno. In October 2000, the Ministry of Interior submitted to the government a Report on the Activities of Roma Advisers at the District Offices, which was approved by the Government Resolution No. 1052 dated 23 October 2000.

6.2.4. Education of the Roma

6.2.4.1. 114 preparatory classes with a total number of 1425 children were established to in the academic year of 1999/2000 to resolve the problem of education. The aim of those classes is to prevent failure of the Roma and other children coming from handicapping socio-cultural environment, who were frequently reassigned without cause to special schools. The preparatory classes are intended to do away with the handicap of children who have not been sufficiently prepared for the admission to Grade 1, and who are then unsuccessful in their elementary education and are sometimes placed in the special school. MŠMT has established a professional team of teachers and psychologists, which came to the conclusion that the preparatory classes are a necessary part of the preparation of children coming from handicapping socio-cultural environment for the admission to the elementary school. However, the fact that a substantial part (approximately one third) of those classes is opened directly at the special schools deserves criticism. For the time being, MŠMT has no information regarding the rate of success of those who attended the preparatory classes, or the influence of such preparation upon their results in Grade 1. These preparatory classes ate still opened as experimental and their establishment is not regulated by any law.

6.2.4.2. An important step that is to reduce the placement of the Roma children in the special schools is the standardization of a new test WISK-III-UK, which is less culture-dependent that the existing tests. A team of psychologists working in the pedagogical and psychological counseling centers has been trained to test children with a different cultural background in the form of five daily seminars focussed on the testing and evaluation of test results achieved by the Roma children. A guidance manual regarding the application and evaluation of the test was completed at the end of the year.

6.2.4.3. Based on Section 60 of the School Act, the elementary or secondary schools may organize classes for elementary education. According to the Methodical Guideline on Supplementing Elementary Education Provided by Elementary Schools for Special School Graduates, which was issued by MŠMT in 1995, those classes may be also attended by special school graduates. The possibility of supplementing elementary education at the elementary school and the special school level which is granted to citizens suffering from severe disabilities and which is provided, inter alia, through elementary education classes established at special schools (in the form of pilot project under Section 58(a) of the School Act) was extended effective as of 1 September 1998 by a decision of the Deputy Minister of Education, Youth and Physical Training.

6.2.4.4. MŠMT issued on 25 December 2000 a methodical guideline to introduce the Roma assistants to schools and school facilities, including kindergartens (and in the future also in foster homes). The guideline recommends that the office of the assistant is held by a person who is well known in the environment from which the pupils come – like the Roma

community. Nowadays, there are 175 assistants working at schools, who are funded by the school offices, and other 25 assistants paid out of the funds of the employment office of the Roma Community in Moravia.

6.2.4.5. MŠMT currently reworks the curricula into a framework model program, including elements of multicultural education in all subjects. It will be possible to expand this program at schools with a larger number of pupils from national minorities.

6.2.5. Support of the Roma culture

6.2.5.1. The subsidy provided to cultural project of the Roma minority amounted in 2000 to 2,455,000 CZK, i.e., 28% of the total subsidy provided to the national minorities. The year 2000 witnessed another increase in the number of applications of the Roma organizations for grants to support cultural activities. This is apparently the result of the work of the Roma advisers at the district municipal offices. The projects carried out in the last year which deserves a special attention are the world Roma festival Khamoro 2000 and the TV education cycle Amare Roma, 12 parts of which were produced and broadcast until the end of 2000.

6.2.5.2. The renovation of the Museum of Roma Culture in Brno (Bratislavská Street 67) took place in 2000 based on the Government Resolution No.. 790 of 28 July 1999 on the Renovation of the Museum of Roma Culture in Brno, in which the government granted its consent with transferring the unused balance of the total amount of 34,905,000 CZK allocated for the renovation of the museum to the chapter of the Ministry of Culture in the draft state budget for the year 2000. In 2000, the Ministry of Culture provided to the museum subsidies in the amount of 1,750,000 CZK. The Inter-ministerial Commission for the Roma Community Affairs has further allocated 210,000 CZK for the establishment of an educational and leisure center for Roma children, which launched its activities in the renovated building by the end of 2000.

7. Foreigners

7.1. New act on the stay of foreigners on the territory of the Czech Republic

7.1.1. Act No. 326/1999 Coll. on the Stay of Foreigners on the Territory of the Czech Republic and on the Amendment to Certain Laws came into effect on 1 January 2000. This act superseded the previous legislation regulating the entry and stay of foreigners (Act No. 123/1992 Coll. on the Stay of Foreigners on the Territory of the Czech and the Slovak Federal Republic). The objective of the act was to respond to the overall change of the conditions applying to the entry and stay of foreigners in the Czech Republic, taking into accounts the legislation of the member states of the European Union and the Schengen Agreement.

7.1.2. The practical implementation of the above act was, however, accompanied by considerable problems and confusion. This was due to a great extent to insufficient time limit between the adoption of the act and its legal effect. The act was passed on 30 November 1999, published in the Collection of Laws on 23 December 1999 and came into effect as of 1 January 2000. Due to this, the state administration authorities were insufficiently prepared for the implementation of the act. This caused major problems to many foreigners, who could not learn about the change of conditions in time and often found themselves in a deadlock.

7.1.3. Some problems that accompanied the act from its effective date were so serious in the light of the principles of protection of fundamental human rights and freedoms that CHR recommended to the government as early as on 18 February 2000 to order the Minister of interior to submit a draft amendment to the act. Based on CHR's motion, the government dealt with some negative consequences connected with the application of Act No. 326/1999 Coll. By its Resolution No. 295 of 22 March 2000, the government ordered the Minister of Interior to consider in coordination with the Minister of Foreign Affairs and the Minister of Labor and Social Affairs the impacts connected with the application of certain provisions of Act No. 326/1999 Coll. and submit to the government until 30 June 2000 a draft amendment of the act.

7.1.4. The most serious problems connected with the new act included a strikingly restrictive and selective regulation regarding the granting of residence permits for the purpose of reunification of the family. This regulation represented a gross breach of rights children arising from the Convention on the Rights of the Child. Beside inadequate interference in the private and family life, the regulation created a situation in which the children of foreigners who were permitted permanent residence in the Czech Republic are not entitled to be granted permanent residence permit since birth. Therefore, such children are not entitled to public health insurance and must be insured only on a contract basis. This problem is, however, resolved by the draft amendment of the act in relation to children of foreigners holding a permanent residence permit.

7.1.5. Under Article 24 of the Convention on the Rights of the Child, the State parties acknowledge the right of the child to achieve the highest available health level and to use medical and rehabilitation facilities. In this respect, the Convention on the Rights of the child prescribes to the states to take measures necessary to ensure the required medical assistance and health care for all children. Most foreigners living on the territory of the Czech Republic hold a temporary residence permit on the basis of long-term visas, which are usually granted for a one-year period and repeatedly renewed thereafter by the foreigners. The children of these foreigners, irrespective whether they were born in the Czech Republic or abroad, are also not covered by the public health insurance system. They may be insured on the contract basis but it is left to the discretion of the specific health insurance company (which operates in this respect as a private entity) whether it decides to insure them or not. in such cases, the children usually do not have access to health insurance since birth, and the conclusion of an insurance policy depends at all times on their health condition. This situation cannot be considered as satisfactory in the light of the Convention. The problem should be resolved, for instance, by an amendment of the Public Health Insurance Act so that the children staying in the Czech Republic on the basis of long-term visas are covered by the public health insurance system or by another form which would provide to them full and unlimited access to health care.

7.1.6. Inadequate interference with the private and family life of foreigners staying in the Czech Republic is also caused by the provisions of the act which significantly restricted the possibility to file an application for residence permit on the territory of the Czech Republic. This regulation does not allow to a foreigner (save for certain exceptions) to file the application while on the territory of the Czech Republic, even if he applies for the change of the type or purpose of stay. The same interference with the private and family life is represented by the provisions under which it is possible to document solely by the formal means listed in the act that the foreigner has funds to cover his stay in the Czech Republic.

The provision of such evidence is required also from foreigners who only apply for the renewal of the proof of residence.

7.1.7. The same lack of adequacy characterizes the sanctions on the failure to comply with the time limit for filing the application for renewal of the proof of residence. In such case, the residence permit is cancelled and the police is obligated to determine a time limit for the foreigner to leave the country. The failure of the foreigner to leave the country within such time limit constitutes the grounds for his administrative deportation. The regulation does not allow to consider the adequacy of consequences of such sanctions for the private and family life of the foreigner. The foreigner is not entitled to apply for the residence permit if he missed the relevant time limit by his own fault and the regulation does not grant the police the powers to renew the residence permit *ex officio* after the expiry of such time limit. Due to mere failure to apply in time for the renewal of the proof of residence, which is qualified by the law as a transgression, it is possible to cancel the residence of a foreigner who was born in the Czech Republic and has here his spouse, children and employment. Such sanction is obviously inadequate and is not justified by any legitimate purpose. It may be compared – with certain overstatement – with a situation in which a citizen with an invalid identity card would have his citizenship cancelled. The proposed amendment unfortunately preserves this deficiency in the Act on Stay of Foreigners.

7.1.8. Another unjustified restrictive provision of the act is the provision which does not allow that the period of stay of the foreigner in the Czech Republic before 1 January 2000 is counted within the eight- or ten-year period after whose expiry the foreigner is entitled to apply for permanent residence. This provision significantly jeopardizes the legal certainty of foreigners who have been living in the Czech Republic for a number of years, because it equals them with newcomers and evokes justified fears that the Czech Republic may decide at any time to start counting such period from any other date.

7.1.9. Although the aforementioned deficiencies (save for the exception referred to in section 7.1.7) are resolved in the draft amendment of the Act on Stay of Foreigners, which the government reviewed and approved by its Resolution No. 747 dated 26 July 2000, it is not possible to ignore that the act was applied throughout the year 2000 in its existing version. Therefore, it appears as necessary to adopt temporary measures to resolve the situation of those foreigners who have encountered especially difficult problems as a result of the disputable provisions of the act.

7. 2. Certain problems of practical application

7.2.1. Some serious chronic problems of practical application are not directly connected with the new Act on the Stay of Foreigners, but are of a more general nature. First of all, there is the practice of ignoring the suspensory effect of an appeal under Section 55(2) of the Administrative Procedure Code against of decision to suspend the proceedings on the renewal of a visa for a period exceeding 90 days and of the period of stay pursuant to such visa. Although such procedure may be applied only in the case of a compelling public interest and if all other particulars specified in the Administrative Procedure Code have been met, the information provided to non-state organization indicates that the alien police bodies considered as such compelling public interest the mere fact that a foreigner may not stay on the territory of the Czech Republic without visa (although the suspensory effect of the appeal would rule out such result).

7.2.2. Another serious problem is the poor standard of conduct toward the foreigners at the offices of the alien police. CHR also reviewed this matter and submitted to the Minister of Interior on 6 December 2000 a motion requesting him to adopt remedial measures in this respect. The basic deficiencies lie in frequent disrespect of applicable laws and regulations (which includes, apart from the aforementioned case, rejection of petitions that are marked as incomplete) and also in the poor system of provision of information to the foreigners and in the incomplete scope of such information, and often in improper, incompetent, negligent and arrogant behavior of some officials. This poor condition was described in the media by some foreign journalists, who personally experienced such approach. The published complaints are only a tip of the iceberg; most foreigners do not complain of their frequently traumatic experience for fear of not getting into worse troubles. The knowledge and experience of non-state organizations, including some CHR members, confirms that it is a deep-rooted systemic problem, whose rectification requires some efforts[24].

7. 3. Political rights of foreigners and their possibility to participate in public life

7.3.1. No changes occurred in 2000 in this respect. The current legislation does not allow foreigners to participate in local elections. The amendment of Act No. 152/1994 Coll. on Election to Municipal Boards, as amended by Act No. 247/1995 Coll., was returned by the Senate of the Parliament of the Czech Republic to the Chamber of Deputies together with proposed modifications. This amendment grants the right of election to a citizen of another state if he is registered as of the election date for permanent residence in the municipality and if he is granted the right of election by an international treaty that is binding for the Czech Republic. Although the amendment meets the requirements of admission to the EU by creating lawful conditions for EU citizens to participate in municipal elections, it is still insufficient, as there are no essential reasons not provide such right to other foreigners having permanent residence in the Czech Republic. On the contrary, the broadening of the right of election would contribute to the implementation of the policy of integration of lawfully settled foreigners into the society.

7.3.2. A step supporting the participation of foreigners in public life and particularly their involvement in the discussion on matters concerning them is the requirement to establish advisory bodies for foreigner integration. This requirement is included in Government Resolution No. 1315 of 13 December 1999 regarding the progress in the implementation of the principles of the concept of integration of foreigners in the Czech Republic and the preparation and implementation of the concept in the year 2000. Such bodies are to be established at the district level until 31 May 2001, together with the preparation of their transformation t o the regional level.

7.4. Foreigners in criminal proceedings, pre-deportation and extradition detention

7.4.1. The problems connected with the position of foreigners in criminal proceedings and in pre-deportation and extradition detention that exist in certain cases are reflected namely in the length of restriction of personal freedom. Problems connected with the extradition detention are resolved by the government draft amendment of the Criminal Procedure Code, which stipulates a 40-day time limit for curbing the personal freedom by the pre-extradition detention and determines that the relevant person must receive the extradition documents within such time limit, otherwise he shall be released. The current Criminal Procedure Code

[24] Some partial measures regarding the provision of information to foreigners were adopted by the alien police in 2000.

does not limit the extradition detention in any way and there have occurred some cases in which the foreigner spent more than one year in the extradition detention.

7.4.2. The pre-deportation detention is still being extended in some cases due to administrative obstacles, when the foreigners who are to be deported on the basis of a court decision do not have the necessary documents enabling the alien police to execute the sentence.

7.5. Social and Economic Rights of Foreigners

7.5.1. A serious problem lies in the necessity to clearly define and ensure minimum social rights of foreigners who have been granted sufferance visa. As this topic is mostly related to the provision of the so-called „other international protection" to foreigners (apart from asylum), the report deals with it in the next chapter. In is, however, necessary to note in this respect that the government ordered the Minister of Labor and Social Affairs by its Resolution No. 612 of 14 June 2000 to consider the possibility of employment of foreigners who were granted the sufferance visa under Section 35(1) of Act No. 326/1999 Coll. and to subsequently adopt relevant measures. The official information on these measures is not available, although it may be concluded from the government agenda that the measures were to be adopted within 30 days after the adoption of the resolution.

7.5.2. The 1999 Report on the State of Human Rights referred to the problem of illegal employment and business activities of foreigners, which is accompanied by violations of labor law and tax laws and laws applying to payment of legal insurance premiums, on work safety, on wages and on health protection, committed by persons who employ foreigners. Practically no changes occurred in this area in 2000. By the end of 2000, the government established in connection with its Resolution No. 1044 of 23 October 2000 (which was further specified in Item 6 of the schedule of measures arising from the updated Concept of Struggle against Organized Crime) an inter-ministerial body for combating illegal employment of foreigners. This body will coordinate the activities of competent authorities, perform partial legislative measures to resolve the problem of illegal employment and propose a resolution of this problem.

7.6. Illegal migration

7.6.1. The number of persons who illegally crossed or evidently tried to cross the borders of the Czech Republic reached in 2000 32,720; 30,761 of those were foreigners from 115 countries of the world. The number of foreigners detained in 2000 in connection with their illegal crossing of the borders of the Czech Republic is almost equal to the number of foreigners detained in 1999.

7.6.2. The main illegal migration route across the Czech Republic led in 2000 as well from southern Moravia to northern Bohemia and to the borders with the federal lands of Saxonia. The number of migrants detained during the illegal crossing of the borders out of the Czech Republic permanently exceeds the number of illegal migrants detained when entering the territory of the Czech Republic. The Czech Republic has remained a transit country for most illegal migrants.

7.6.3. In the opinion of the Ministry of Interior, the Czech Republic is not the target country for many asylum applicants. The ministry documents this by the fact that the substantial increase of applications in 2000 was accompanied by a large number of deliberate departures

of those foreigners from the refugee camps and repeated attempts of the asylum applicants at illegal crossing of the borders of the Czech Republic into the EU countries. The Ministry of Interior also notes that some foreigners use the asylum procedure to avoid administrative deportation. According to non-state organizations working with asylum applicants[25], some applicants try to illegally cross the border after many months or several years, when their asylum applications have been rejected and they spent efforts learning Czech, etc. Those are people who try that the Czech Republic becomes a target country for them.

7.6.4. The alien police bodies detected in 2000 22,355 foreigners who stayed on in the Czech Republic without permission. The total number of foreigner staying illegally in the Czech Republic cannot be accurately determined.

7.7. Prohibition of stay, administrative deportation, apprehension of the foreigner and execution of deportation

7.7.1. The problem of detention of foreigners prior to their administrative deportation is dealt with in detail in Chapter XI – Detention of Foreigner and Chapter XII – Facilities of Act No. 326/1999 Coll. The act defines the rights and obligations of the foreigners detained in those facilities and the duties and authority of the police.

7.7.2. The Ministry of Interior proceeded in 2000 in the implementation of measures necessary to ensure the detention of foreigners in special facilities designated for this purpose (the intercepting facility in Balková and Poštorná – see 3.6.2.), and not in police cells. The alien police bodies issued in 2000 10,091 decisions on administrative deportation; 1,065 out of those decisions were execution by direct transport of the foreigners to the border crossings.

7.7.3. The right of the foreigner to file a petition to the court to commence proceedings which will decide on the legitimacy of the detention may be considered as a positive measure. The length of detention may not exceed 180 days and the police is obligated to notify the diplomatic mission or the consular office of the relevant state of the detention of the foreigner for the purpose of administrative deportation, if such mission or office is based on our territory and if so requested by the foreigner, unless specified otherwise in an international treaty. The police is further obligated to review during the entire period of detention of the foreigner whether the reasons for such detention still exist. The detention must be terminated without delay after the extinction of the reasons or if so decided by the court.

7.7.4. The provision of the Act on Stay of Foreigners regulating the technical conditions and the regime of the detention facilities for foreigners awaiting administrative deportation or extradition under an international treaty has a positive effect on the observance of human rights.

7.7.5. The alien police also ensured in 2000 the execution of the court sentence of deportation in accordance with applicable regulations included in the Criminal Procedure Code and deported a total of 1,242 foreigners.

7.7.6. Transgression proceedings against a large number of foreigners were commenced in connection with the demonstrations against the IMF and WB (see also 2.6.5.); those foreigners were placed in Balková facility and their stay was subsequently terminated. The blanket application of the institute of termination of stay was a simple measure preventing the

[25] Namely the Counseling Center for Refugees of the Czech Helsinki Committee.

substantiation and review of the transgression, which was the blanket charge pressed against all those foreigners and which was defined in the tickets received by those foreigners as „the participation in the demonstrations against IMF and WB“. It is obvious that the participation at the demonstration cannot constitute by itself a transgression despite the violence that occurred during them, and the subsequent blanket application of the institute of termination of stay is very disputable from the legal viewpoint.

7.8. Integration of foreigners

7.8.1. The Czech Republic has been striving for several years to formulate an active policy directed at the integration of foreigners residing for a long time in the Czech Republic in the Czech society. The government policy is based on its Resolution No. 689 of 7 July 1999 regarding the Principles of the Concept of Integration of Foreigners in the Czech Republic and on the Preparation and Implementation Thereof. The objective of this policy is to create legal and factual conditions for the protection of legally settled foreigners and of their political, economic, social and cultural rights, and to ensure the conditions for the implementation of projects supporting practical integration of foreigners. One of the grounds of the state policy is the presumption that the status of legally settled foreigners is to be as close as possible to the status of the citizens, and that it is therefore necessary to gradually remove all unjustified handicaps of foreigners as compared to the citizens[26].

7.8.2. Based on the adopted principles, the government issued on 13 December 1999 its Resolution No. 1315 on the Progress in the Implementation of the Principles of the Concept of Integration of Foreigners in the Czech Republic and the Preparation and Implementation of this Concept in 2000. This resolution also approved the allocation of an amount of 13,900,0000 CZK for the performance of tasks connected with the implementation of the principles of the integration concept in 2000. Approximately 3,000,000 CZK out of this amount were drawn. mostly for support of the integration projects at the central, regional and local level or in relation to individual foreign communities. A part of those funds was applied towards the payment for expert studies relating to the problems of integration of foreigners in the Czech Republic.

7.8.3. The commission of the Minister of Interior for the preparation and implementation of the policy of the government of the Czech Republic in the area of integration of foreigners and the development of inter-community relations proceeded in 2000 in its activities. The government adopted on 11 December 2000 its Resolution No. 1266, by which it took cognizance of the information on the implementation of principles of the concept of integration of foreigners, which was prepared with significant participation of the commission. By this resolution, the government also approved the allocation of an amount of 20 million CZK for the implementation of tasks connected with the coordination, introduction and implementation of the concept of integration of foreigners in 2001. The material maps the current status of foreigners, identifies the areas in which the public administration lacks sufficient information regarding the actual situation (like the housing conditions of foreigners) and sets out specific tasks and long-term tendencies of the work of state authorities and for the focus of their cooperation with non-governmental organizations and the academic community. The basic shortcoming referred to in the resolution, which has to be overcome in the process

[26] A number of provisions Act No. 326/1999 Coll. on Stay of Foreigners evidently contradicts these principles; this applies in particular to the provision not allowing to count the period of stay before the effective date of the act within the period required for granting permanent residence – see 7.1.8.).

of further establishment of an active policy of integration of foreigners, is the current uncoordinated approach of individual ministries to these problems and the absence of coordination in this respect.

8. Refugees and Other Persons in Need of International Protection

8.1. Changes in the legislation applying to the provision of asylum in the Czech Republic

8.1.1. Act No. 325/1999 Coll. on Asylum and on the Amendment of Act No. 283/1991 Coll. on the Police of the Czech Republic, as amended (the „Asylum Act“) came into effect as of 1 January 2000. Except for the matters concerning independent appellate instance, this law conforms to the existing EU legislation and takes into account the practice of EU member states. It is expected, however, that the EU will adopt in the next few years new directives regarding refugees and related matters, like the provision of supplementary protection and reunification of families. These directives will also have to be reflected in the area of law.

8.1.2. The new act has brought certain liberalization of conditions of asylum applicants. The applicants are no longer obligated to stay for the whole period of asylum proceedings in the asylum facilities and no longer need the consent of the Ministry of Interior when they want to leave them. After the identification procedure, medical check and expiry of the quarantine period, the asylum applicants may leave the facility, register for residence in another place and apply to the Ministry of Interior for financial support. The act also newly regulates the status of persons who have brought an action against a negative decision of the Ministry of Interior. This is reflected in the institute of suffering of stay (pursuant to the Asylum Act), on whose basis the Ministry of Interior provides accommodation for persons unable to ensure it by themselves. Those foreigners may also apply for financial subsidy.

8.1.3. In comparison with the previous legislation, the act extends the categories of persons who may be granted asylum for the purpose of reunification of the family, and introduces again the institute of asylum for humanitarian reasons. At the same time, the act newly regulates the provision of free legal aid to asylum applicants by setting out the terms and conditions for the conclusion of a contract on the contribution towards the costs connected with the provision of legal aid between the Ministry of Interior and the natural person or legal entity providing free legal aid. Moreover, the Employment Act that is currently in force does not require from the asylum applicant to obtain an employment permit (effective as of 1 October 1999).

8.1.4. New problems also arose with respect to the practical application of this act after its coming into effect. Therefore, the Ministry of Interior drafted an amendment to the Asylum Act; the draft was submitted to the government on 4 December 2000. The intent behind the amendment is to accelerate the asylum process in cases in which it is obvious that the reasons specified by the applicant in the application are not covered by the Convention regarding Legal Status of Refugees of 1951. The draft also details the rights and obligations of foreigners who apply for asylum while in detention or serving a prison sentence or foreigners apprehended for the purpose of administrative deportation and airport proceedings. The act regulates the status of unaccompanied minors: if there is no adequate reception or care corresponding to the minor's age and level of independence available for the minor in the country of origin or in a third country, such fact is considered as an impediment for departure. The amendment also proposes the resolution of the problem of the independent appellate body. The decisions of the first instance administrative bodies are to be subject to the review

of the regional courts, which will have full jurisdiction over such matters and which may not only uphold or cancel, but also modify the contested decision and may decide on the granting of the asylum.

8.1.5. Some partial steps toward the improvement of the situation of the applicants were also adopted in 2000 by other central state administration bodies. For instance, the Minister of Education issued instructions to organize Czech language courses for asylum holders (i.e., the convention refugees) and an instruction to ensure mandatory school attendance for children of asylum applicants staying in asylum facilities.

8.2. Asylum practice in 2000

8.2.1. The number of asylum applicants which started growing in October 1998, continued to grow in 2000 as well. The number of foreigners who applied for asylum in 2000 reached 8,786, which is a 22% increase in comparison with the 7,220 applicants in the year 1999. The number of persons who initiated asylum proceedings reached since 1990 33,892. One quarter (26%) of them are applicants who submitted their applications in 2000.

8.2.2. During the year, there appeared a shift in the number of applicants, broken down into individual countries of origin, from the originally high numbers of applicants from Afghanistan, Sri Lanka, India and other Asian countries to high numbers of applicants coming from Europe, particularly from the states of the former Soviet Union. The most numerous group of asylum applicants came in 2000 from Ukraine (13%), followed by Afghanistan (13%), Moldavia (9%), Slovakia (8%), India and Russia. Apart from the significant increase of the number of applicants from Ukraine, Moldavia and Slovakia, a significant growth was also registered in respect of newcomers from Vietnam, whose number grew from 34 persons in 1999 to 586 persons in 2000.

8.2.3. The number of persons who were granted asylum by both instances reached in 2000 133 (namely from Bielarussia, Afghanistan, Armenia and Yugoslavia). As of 31 December 2000, there were 1,192 asylum holders living in the Czech Republic. As of the same date, there were registered 5,022 participants in the asylum proceedings. As stated above, the new legislation allowed the applicants to stay during the proceedings outside the asylum facilities, wit a possibility to apply for a subsidy to cover the relevant costs. This possibility was used in 2000 by nearly 3000 applicants.

8.2.4. In connection with the increase in the number of asylum, application, new accommodation facilities for asylum seekers were opened in Seč, Kostelec nad Orlicí, Stráž pod Ralskem, Bruntál, Kašava, Zbýšov and Havířov. The Department of Asylum and Migration Policy opened its offices in selected newly established facilities. Another office of the Department of Asylum and Migration Policy was also opened at the Airport Prague – Ruzyně.

8.2.5. One third of the total number of asylum applicants expressed their intention to apply for asylum in the intercepting facilities for foreigners (Balková, Poštorná). This means that approximately 72 % of the total number of foreigners placed in those facilities, i.e., persons against whom the action for administrative deportation has been initiated, applied for asylum. Under the law that is currently in force, it is necessary to transfer those persons, after they have expressed their intention to apply for asylum, to the reception center, which they may leave after the completion of the necessary measures. A high percentage of these persons

repeatedly attempt to cross illegally the state borders. In its attempts to resolve this situation, the Ministry of Interior proposed in the amendment of the Asylum Act to conduct the asylum procedure with these persons directly in the intercepting facilities for foreigners without a possibility to leave such facility. In 2000, there were also 502 foreigners placed in prisons who expressed their intention to apply for asylum.

8.2.6. In connection with the adoption of the new act, there also appeared a change in the ration of the issued procedural decisions and decisions in the matter. While 83% of applicants abandoned the proceedings in 1999 before the issue of the decision in the matter, only 34% of applicants who filed their applications in 2000 abandoned the proceedings as of 19 January 2001. This number is not yet definite and is expected to grow moderately, but it is obvious now that the number of deliberate departures is on the decline. This fact is probably connected with the change in the structure of asylum applicants and the growing number of applications from the countries of the former Soviet Union, for most of whom the Czech Republic represents a target country. According to the Ministry of Interior, another factor in this respect is the possibility to legalize the stay in the country in this manner.

8.2.7. The government of the Czech Republic did not grant in 2000 any temporary protection (temporary refuge) to any group of people.

8.3. Some problems relating to the protection of human rights of asylum applicants, refugees and some other persons

8.3.1. When the Asylum Act came into effect, the non-state non-profit organizations providing to assistance to refugees pointed to some partial practical problems, like late provision of financial subsidies to applicants staying outside the asylum facilities. Despite the argument of the Ministry of Interior that there is no legal entitlement to such subsidy, it is impossible to ignore that procrastination in the payment of those subsidies causes serious difficulties to the applicants and does not contribute in any case to the good reputation of the state administration authorities.

8.3.2. Despite the aforementioned partial shortcomings, it may be said that the basic problems relating to the protection of human rights are not caused by the asylum procedure by itself, which may be compared, together with the security that is subsequently provided to the applicants and refugees in the Czech Republic, to the level provided by other developed countries and by EU members. The serious problem lies in the situation of the foreigners who do not meet the conditions for granting asylum (and were not granted asylum for humanitarian reasons) and who are unable to return to their country of origin. The status of these foreigners is theoretically resolved by the Act on Stay of Foreigners, which allows to grant them the visa for the purpose of suffering of stay. The non-state organizations, however, justly note that the overall situation of those foreigners is so difficult that it does not allow them to lead dignified life. CHR's efforts to determine the status of these persons in order to provide for them a possibility of employment did not lead to a definite result. The question of their entitlement to social subsidies is also unresolved. In practice, the holders of the sufferance visa find themselves in a legal vacuum, without any certainty or perspective. In such situation, the only „solution“ available to them may be the repeated filing of the application for asylum.

8.3.3. Based on the compliance with the obligations specified in Article 3 of the European Convention on Human Rights (relating to degrading treatment) and other international

obligations, the state is obligated to regulate in a more systematic manner the legal status of the foreigners in whose cases there exists reasons for the provision of international protection due to a potential threat to their fundamental rights existing in their country of origin[27]. It is necessary, in particular, that those foreigners are allowed to get a legal source of income either by work or in the form of social support payments. At the same time, it is possible to agree with the opinion that the social situation of those persons should be resolved by laws applying in the social sector, not by laws applying to foreigners. From the humanitarian viewpoint, the minimum level of security should be also provided to those foreigners who are unable to leave for practical reasons, which are not directly related to the provision of international protection[28]. While such systemic resolution should be brought about by the new legislation, which would take into account the development of EU law[29], the status of holders of sufferance visa should be determined and temporary measures to resolve their situation should be adopted as soon as possible.

8.4. Integration of asylum holders

8.4.1. The government proceeded in 2000 in the implementation of the program of integration of refugees as a special group of foreigners who deserve special care. By its Resolution No. 25 of 5 January 2000 regarding further integration of persons who were granted refugee status and foreigners who were granted permanent residence permit in the Czech Republic due to their disabilities, which is to be carried out in the year 2000, the government approved the allocation of an amount of 15,500,000 CZK for the integration of a maximum number of 130 persons in the year 2000. The district municipal offices (and the statutory cities of the Ministry of Interior) concluded in 2000 35 contracts on the provision of financial funds to integrate a total of 90 refugees and disabled persons; the Ministry of Finance released in this connection financial funds amounting to 11,360,000 CZK.

8.4.2. The project solving the situation of persons in the temporary refuge who, due to their disabilities, could not return as of the date of termination of provision of the temporary refuge (i.e., on 30 September 1997) back to the territory of the Republic of Bosnia and Herzegovina, was terminated by the end of 2000.

[27] Those are foreigners covered by the provision of Section 179(1) of Act No. 326/1999 Coll. on the Stay of Foreigners on the Territory of the Czech Republic (the „Act on Stay of Foreigners“), which refers to the obstacle of departure; this applies if such foreigner is forced to depart or is deported 1. to a state where his life or freedom is in danger due to his race, religion, ethnic origin, his belonging to a certain social group or his political creed, 2. to a state where he is in danger of being tortured or subjected to inhuman or degrading treatment of punishment or where his life is in danger due to war, or 3. to a state which asks for his extradition for a criminal offense for which such state imposes the death penalty, or 4. if it is in conflict with an obligation arising from an international treaty.

[28] Those are foreigners whose departure from the country is hindered by an obstacle that is out of their control (Section 35(1)(a) of the Act on Stay of Foreigners; e.g. if such person has no travel documents, if there is no travel connection, the person is hospitalized, etc.

[29] The EU Commission plans the publication of the first draft of the directive relating to the "subsidiary protection" in September 2001, together with the directive defining the term „refugee“.

9. Discrimination and Racism

9.1 Conclusions of the Committee for Elimination of Racial Discrimination

9.1.1. The Committee for the Elimination of Racial Discrimination (the „Committee“) assessed on 7-8 August 2000 the third and fourth periodic report submitted by the Czech Republic. Apart from the report submitted by the government of the Czech Republic, the Committee also received information from non-state organizations, which were much more critical than the government report.

9.1.2. The Committee delivered its opinion to the Czech Republic in the form of written conclusions, in which it welcomed the third and fourth periodic report of the Czech Republic as comprehensive and appreciated it as a introduction to an open and constructive dialogue. The Committee also appreciated the progress achieved by the Czech Republic from the presentation of its previous report. The Committee welcomed namely the adoption of Act No. 194/1999 Coll., amending Act No. 40/1993 Coll. on Acquisition and Loss of the State Citizenship of the Czech Republic, as amended, the establishment of new advisory bodies in matters related to combating of racism and intolerance, particularly the appointment of the Government Commissioner for Human Rights and the establishment of CHR, the anti-racist campaign (the Tolerance Project) and other positive steps.

9.1.3. The Committee welcomed the measures adopted for the purpose of support and protection of human rights of the Roma minority, namely the measures that are the part of *Concept of the government policy toward the Roma community, assisting its integration into the society* (see 6.2.1.). At the same time, the Committee expressed its concern over the fact that the Roma population is exposed to discrimination in the housing, education and employment areas, and criticized the fact that „some organizations, including political parties, promote racial hatred and superiority and are hiding behind legally registered civic associations, whose members promote xenophobia and racism“ (Item 11 of the Conclusion of the Committee). In the light of Article 4 of the International Convention of Elimination of All Forms of Racial Discrimination, the Committee recommended to the Czech Republic to intensify the implementation of the law in order to ensure that such organizations are dissolved and their members prosecuted. The Committee also recommended to the Czech Republic to develop the adopted measures for the sake of conclusive application of the Criminal Act on the racially motivated crimes, and repeated its concern regarding insufficient effectiveness and lack of trust in the criminal justice system in relation to the prevention and combating racially motivated crime. The Committee also referred to cases of degrading treatment of national minorities by the police, and recommended to carry on and intensify the training programs of the police and all officials responsible for the implementation of the law in matters concerning the implementation of the aforementioned Convention.

9.1.4. The Committee expressed again its concern over the insufficient anti-discriminatory legislation and recommended to the Czech Republic the implementation of legislative reforms, which would ensure to all components of the population a possibility to enjoy, free of any discrimination, all economic, social and cultural rights listed in Article 5 of the Convention. At the same time, the Committee recommended that such reform provides appropriate indemnification to all victims of racial discrimination.

9.1.5. The conclusions of the Committee were discussed at three sessions of the Section of CHR against Manifestations of Racism, which submitted to the Council for Human Rights,

upon consultations with the Ministry of Justice and its specialized Institute of Criminology and Social Prevention, a draft resolution approved by CHR on 23 January 2001. By this resolution, the government would express its conviction that the Czech Republic must develop, until the date of submission of the fifth periodic report (i.e., until 22 February 2002), efforts to achieve improvement in all areas that were the subject of critical comments of the Committee. The draft resolution also assigned specific tasks to the Human Rights Commissioner, the Deputy Prime Minister and Chairman of the Legislative Council of the Government in coordination with other ministers, to the Minister of Education, Youth and Physical Training and to the Minister of Foreign Affairs[30].

9.2 Discrimination in individual spheres of life

9.2.1. *Housing discrimination*

9.2.1.1. The civil and administrative laws and regulations do not contain any provisions which would specifically prohibit racial discrimination in housing. The is also no notion of equal housing opportunities. According to non-state organizations, there appear two types of practical problems: indirect discrimination and placement of the Roma in the so called bare (reduced standard) apartments.

9.2.1.2. An indirect discrimination means a situation in which a formally unbiased system of allocation of municipal apartments or requirements relating to the applicants for such apartments contain conditions that have an inadequate impact on members of the Roman minority and do not have at the same time any specific purpose. Such conditions include, for instance, the requirement to produce an excerpt from the Criminal Register, which is moreover in conflict with the Act on Protection of Personal Data. Another disputable condition which the applicant for the lease of a municipal apartment is obligated to meet is the permanent residence in the municipality; some municipalities even determine a specific time limit during which the applicants must be registered as residents[31]. This condition applies to all applicants for the lease of apartments owned by the relevant municipality, but affects more frequently the Roma, because a number of them are registered until now as permanent residents in the Slovak Republic or in other municipalities of the Czech Republic than those in which they actually live (and potentially apply for lease of an apartment). The role of municipalities is defined by Act No. 128/2000 Coll. on Municipalities; if the municipalities exceed in their criteria the limits set down by the law, they actually discriminate against certain groups of population.

9.2.1.3. The so-called bare apartments (this term is no defined by the law, but is generally used in connection with the accommodations of the tenants who default on rent payments) are officially supposed to provide housing for a certain category of the population irrespective of its ethnic origin. In fact, the number of persons of Roma origin living in those facilities is higher than the number of the mainstream population. Although the percentage of the Roma in the total number of population in the Czech Republic reaches, according to various estimates, 1,5-3%, the percentage of the Roma living in bare apartments fluctuates between

[30] The government approved the proposal by its Resolution No. 198 of 26 February 2001 regarding the proposal of the Council of the Government of the Czech Republic for Human Rights to adopt measures ensuing from the conclusion of the Committee for Elimination of Racial Discrimination.
[31] E.g., five years in Chomutov and Teplice, three years in Prague 3, Prague 5 and Pardubice.

60% - 80% and reaches in some places even 100%[32]. The problem of the so-called bare apartments is dealt with in more details in Chapter 10 (see 10.5.3. and 10.5.4.).

9.2.2. *Discrimination in the service sector*

9.2.2.1. As noted in the previous reports, the discrimination of the Roma or foreigners in the service sector has remained a widespread problems, which has been, until now, very difficult to prosecute and which is paid great attention abroad. Administrative sanctions imposed by the Czech Business Inspection are apparently not too effective, because they prosecute the only systematic discrimination that comes to light during controls carried out by its inspectors. Moreover, the Czech Business Inspection employs currently only three Roma inspectors and none of its inspectors is a foreigner. As a result, the random and non-systematic discrimination avoids any punishment.

9.2.2.2. In December 2000, the Human Rights Commissioner proposed in his comments to the draft factual intent of the new Criminal Code the introduction of the new grounds of the offense of *ethnic or racial discrimination*. His motion is based on the famous proposal of the prominent Czech penologue Professor Ota Novotný of the year 1998, modified as follows: *Anyone selling products or providing other services who refuses to provide a service to the consumer due to the consumer's actual or presumed*[33] *racial, national or ethnic origin, shall be punished by ….* The original proposal of Professor Novotný further stipulated „by imprisonment for a period of up to one year or by ban on activities or by a fine"; even her, it applies, however, that the prison sentence represents the *ultima ratio*. The factual intent of the Criminal Code distinguishes between misdemeanors and crimes, which allows to qualify the as misdemeanor any acts that are currently qualified as transgression and represents a good opportunity to create new factual grounds for this misdemeanor. The Ministry of Justice promised to review this motion during the preparation of the articulated wording of the Criminal Code.

9.2.2.3. Not all acts of a discriminatory nature may be considered as criminal offences. It is therefore justified to increase the protection against discriminatory transgressions. For this purpose, the government draft of the amendment to the Act on Rights of Members of National Minorities and on the Amendment to Certain Laws contains an amendment of the Act on Transgressions, which introduces new factual grounds in Section 49(e), which qualifies as transgression against civic coexistence the conduct of anyone,…"*who causes detriment to another person due to his belonging to a national minority or his ethnic origin, race, skin color, sex, sexual orientation, language, belief or religion, political or other creed, membership or activity in political parties or political movements, trade union organizations and other associations, due to his social origin, property, family origin, health condition, marital or family status*."

9.2.3. *Investigation of the situation in the criminal justice system*

The civic association Tolerance and Civic Society states on the basis of the results of a pilot project that the Roma are more frequently detained than the accused of the mainstream origin

[32] According to the data of the Counselling Centre for Citizenship, Civil and Human Rights, the Roma represented 60% of inhabitants of bare apartments in Havlíčkův Brod and Tachov, 70% in Chrastava and Liberec, 75% in Karviná; 79% in Beroun; 80% in Louny and Nymburk, 90% in Most and 100% in Slaný (Ouvalová street – „Mexiko"), Prachatice and Rakovník.

[33] It would be suitable to also insert the words "actual or presumed" in the provisions of Sections 196 and 198a of the Criminal Code (see 1999 Report on the State of Human Rights).

who have committed the same criminal offences under similar conditions. The Roma also get higher sentences by the courts, although the offences for which they are sentenced have been committed under the conditions that may be compared to criminal offences committed by members of the mainstream population. The Roma are also more frequently sentenced to prisons with more strict regime. Due to this, the Roma complaint more frequently and have a subjective feeling of being discriminated against in criminal proceedings by the investigators, state attorneys and judges.

9.2.4. *Directive of the EU Council on equal treatment*

The Council of the European Union adopted in 2000 the directive no. 43/2000/EC regarding equal treatment of persons irrespective of their racial or ethnic origin („on racial equality"), which will be reflected in Czech law. The directive concerns the elimination of discrimination in housing, education. employment, services, the criminal justice system and the state administration. An important provision in this respect is the provision of Article 8 of the directive, which transfers the burden of proof in discrimination cases to the defendant. The amendment of Act on Transgression, included in the draft minority act (9.2.2.3.) is directed that the incorporation of this directive in Czech law. This directive is also taken into consideration in the draft amendment of the Civil Procedure Code, which is being submitted the Ministry of Justice at the time of the preparation of this report, which is to ensure compliance with the law of the European Community.

9.3 Racially motivated crime

9.3.1. Czech courts sentenced in 2000 a total of 148 persons for crimes motivated by racial intolerance. This close to the statistics of the previous year when the courts sentenced 166 persons. Out of these data, it is not possible to estimate the developments in the frequency of this type of crime; those were mostly crimes committed before 2000, which were tried in 2000. Most of those offenders (57) were sentenced for support and promotion of movements directed at the suppression of human rights and freedoms under Section 260 or Section 261 of the Criminal Code. 29 persons were sentenced for violence against a group of population and against an individual pursuant to Section 196 of the Criminal Code), 24 persons were sentenced for defamation of race, nation or creed (under Section 198 of the Criminal Code) or for instigation of hatred towards a group of persons or for curbing their rights and freedoms (Section 198a of the Criminal Code) and 16 persons were sentenced for the criminal offence of bodily harm (Section 221 of the Criminal Code). Smaller numbers of persons were sentenced for other racially motivated criminal offences (public disturbance, blackmail and other).

9.3.2. Like in 1999, none of the racially motivated assaults committed in 2000 was lethal. Despite that, it is impossible to definitely conclude that the situation has got better. According to the identical opinion of the Committee, the Human Rights Commissioner and a number of public representatives in CHR and its sections, the prosecution of perpetrators of the most serious crimes – racially motivated violent offences – is in no way more systematic than before. A rather tolerant attitude of bodies active in criminal proceedings is in sharp contrast with excessive harshness used against perpetrators of crimes against property. Even in the most serious cases, which receive the greatest deal of attention from the part of non-state organizations and the media, the belittlement of the importance of racially motivated criminal activities of the skinheads appears to be a rule rather than an exception:

- Some racial attacks are considered as mere transgressions („an ordinary fight"), even if committed repeatedly by their perpetrators - organized neo-Nazi[34] .
- The perpetrators are mostly investigated while at large, despite that fact that they carry on their neo-Nazi activities and commit further violent crimes[35] and the detention prerequisites are thus met (Section 67(1)(c) of the Criminal Procedure Code). This is in evident contrast with the otherwise common excessive use of detention.
- Even if the attackers are sentenced, they receive, as a rule, a sentence at the bottom of the sentence range for very violent crimes against the Roma or foreigners[36].
- Some prominent neo-Nazi, like the former leader of the Republican Youth Tomáš Kebza, have actually received a prison sentence after committing a series of crimes, but avoid the taking up of the sentence and openly carry on their neo-Nazi activities.

9.3.3. The Minister of Justice filed in two cases a complaint for breach of law against the accused. The first complaint concerned the judgment of the District Court in Jeseník, which acquitted four skinheads accused of acts qualified as the criminal offences of defamation of a nation, race and creed and public disturbance. The Supreme Court of the Czech Republic decided on 29 August 2000 that the judgment of the District Court in Jeseník represents a breach of the law in favor of the accused, cancelled the judgment of the District Court and the decision of the Regional Court in Ostrava, Branch Olomouc, and returned the matter to be further reviewed and decided by the District Court in Jeseník. The trial has not been scheduled yet by the court.

9.3.4. The other complaint for breach of law filed by the Minister of Justice concerned the failure to find a racial or ethnic motive by the District Court in Hodonín and the Regional Court in Brno in the case of an assault on the 61 year old American teacher Robert Joyce. The District Court imposed on the assailant Nikola Holub for brutal assault, which could have lethal consequences and caused permanent brain damage to the victim, the lowest sentence permitted by the law – two years with one year suspension. Moreover, the court gave to the accused a positive credit in the judgment, and declared in reference to his past criminal prosecution for shooting on the Roma that it is impossible to consider this as aggravating circumstance for the accused[37]. The judgment evoked major outrage in the English-speaking community in the Czech Republic. The case appeared several times on the title pages of the Anglo-American weekly The Prague Post, which presented it as a deterrent example of the operation of the Czech justice. As of the date of submission of this report, the Supreme Court has not yet issued its decision in this case

9.3.5. At the trial held on 19 December 2000, the District Court in Karviná sentenced four perpetrators of the assault at Milan Lacko, which took place on 17 May 1998 and ended with

[34] Like the series of attacks on the Roma in Jeseník and vicinity, one of whose participants was the local neo-Nazi leader Jiří Tůma. In his case, those „transgressions" were repeatedly laid aside.
[35] Apart from the aforementioned Jiří Tůma, there is the Prague neo-Nazi František Sobek, who was prosecuted at various times for four violent crimes committed in the years 1997-2000 and who received in one case a suspended sentence and in another one an unsuspended prison sentence (but the judgment has not come yet into legal effect). Sobek is still at large and takes an active part in neo-Nazi activities.
[36] Examples of such judgments issued in 2000 include the judgment of the District Court in Hodonín (see. 9.3.5.) 2000 or suspended sentences issued by the District Court in Třebíč for an organized attack on a Roma settlement at Dvorek u Ohrazenic, which had all characteristics of a pogrom.
[37] The court called the search for racial motivation as „fashionable"; in its opinion, attacks against the Roma are caused particularly „by the relation of the Roma to the property of others".

the death of the victim. Two of the assailants got unsuspended prison sentences[38]. Thus, the court totally changed its previous assessment, which was reflected in the original judgment and very low sentences for the assailants and which was later (in 1999) cancelled by the Regional Court in Ostrava for gross deficiencies contained therein.

10. Economic, Social and Cultural Rights

10.1. Detailed information regarding the fulfillment of the obligations arising from the International Covenant on Economic, Social and Cultural Rights in the period from 1 January 1993 until 31 December 1999 forms a part of the Initial Report of the Czech Republic on Implementation of Obligations Arising from the International Covenant on Civil and Political Rights, which was prepared and submitted to the government by the Human Rights Commissioner. The government took cognizance of the report by its Resolution No. 442 of 3 May 2000 .

10.2. Employment and remuneration for work

10.2.1. Effective as of 1 January 2001, Act No. 155/2000 Coll. amended Act No. 65/1965 Coll. (the Labor Code), as amended, and certain other laws. The principal objective of such amendment was to ensure the conformity of Czech labor law with European law. The key provisions appearing for the first time in Czech law include the principle of equal treatment of men and women with respect to working conditions and remuneration, professional training and opportunities of functional or professional promotion and the prohibition of any discrimination (see 4.2.1.).

10.2.2. The Labor Code, Act on Wage, Standby Remuneration and Average Earnings and Act on Standby Remuneration in Budgetary and Certain Other Organizations and Bodies stipulate that the wage (salary) may not be lower than the minimum wage. The minimum wage amount is determined by a government decree. Since 1 January 2000, the minimum wage amounted to 4,000 CZK for employees remunerated on a monthly basis. The government newly determined on 1 July 2000 the minimum wage at 4,500 CZK per month, or 25 CZK per hour[39].

10.2.3. In its policy statement, the government undertook to gradually increase the minimum wage above the minimum sustenance level of an adult living alone The commitment to increase the minimum wage is also included in the National Employment Plan with the aim of providing preferential treatment to the economically active over the non-active, or to increasing the importance of working income in respect of social (welfare) benefits. On 1 July 2000, the net minimum wage became slightly higher (by 0,4%) than the sustenance minimum[40]. Such increase, however, cannot still be considered as sufficiently motivating.

10.2.4. The number of recipients of the minimum wage and the minimum wage tariff in the first tariff category remains relatively limited, although it has been slightly growing together

[38] Together with them, the court sentenced the policeman M. T., who ran over Lacko with the car, for unintentional criminal offence.

[39] The most recent modification of the minimum wage occurred as of 1 January 2001, when this wage was increased to 5,000 CZK, or 30 CZK per hour. The minimum wage adjustment mechanism set down in the Labor Code came into effect on the same date.

[40] Such excess was increased as of 1 January 2001 to 424 CZK (11.2%); this, however, has only a temporary effect (until the expected valorization of the sustenance minimum).

with the gradual increase of both those figures. According to the data of the Ministry of Labor and Social Affairs, the minimum hourly wage not exceeding 25 CZK, i.e., 4,500 CZK per month, was earned in the second quarter of 2000 by approximately 0.5 % of the employed persons and the hourly wage not exceeding 30 CZK, i.e., not more than 5,000 CZK per month was earned by 1.7 % of employees. The minimum wages were paid most frequently in the business and the personal service sector. This wage is paid more frequently in smaller-size organizations.

10.2.5. Act No. 118/2000 Coll. on Protection of Employees in Case of the Employer's Insolvency and on the Amendment of Certain Laws came into effect on 1 July 2000. Within the scope and under the terms and conditions set down by the Act, an employee is entitled to the reimbursement of his due wages, which have not been paid to him by his insolvent employer. Such wages are paid by the employment office of competent jurisdiction under the terms and conditions set out in this act.

10.3. Sustenance minimum and welfare benefits

10.3.1. The amounts of sustenance minimum have been increased based on the growth of the aggregate consumer price index. The last adjustment was made by the Government Decree No. 56/2000 Coll., increasing the sustenance minimum effective as of 1 April 2000. This is the eight valorization enacted since the effective date of the Act on Sustenance Minimum No. 463/1991 Coll.[41]. Welfare benefits linked with the sustenance minimum level, which are designated for temporary provision of the basic sustenance needs (for the protection from material destitution) have remained demotivating for more numerous households as compared with employment income in the Czech Republic, which is still generally low.

10.3.2. The 1999 Report on the State of Human Rights in the Czech Republic referred to the problem connected with the condition of permanent residence of the entitled person and persons considered together with him in respect of the entitlement for the state welfare benefits. The Act on State Welfare Benefits was amended in 2000 in connection with the new Act on Stay of Foreigners. Since 1 April 2000, the place where the foreigner has resided after the lapse of 365 days from the date of registration of residence is deemed to be his permanent residence for the purpose of Act No. 117/1995 Coll. on State Welfare Benefits is, effective as of 1 January 2001, the authority to waive the condition of permanent residence was entrusted to the regional authorities, i.e., to the Regional Office.

10.3.3. Information on entitlement to welfare benefits or the eligibility of citizens or persons living on the territory of the Czech Republic to receive such benefits is provided by the employees of district welfare offices and social departments of the municipalities and cities where such persons live. Those bodies do not frequently have sufficient capacities for work with clients.

10.4. Social services

10.4.1. The Ministry of Labor and Social Affairs proceeded in 2000, in cooperation with many state and non-state providers of social services and with the representatives of their

[41] Provided that the valorization condition stipulated by the law, which is still in force, will be met, a valorization of the sustenance minimum for the year 2001 is expected to be effected in July.

users, in the preparation of the factual intent of the Act on Social Services. The prepared act was to be based directly on the European Social Charter. It presumes

- on the part of service providers, full equalization of the state and non-state providers as to the access to financial funds provided by the state budget, the application of quality standards (including the ethical ones) in their assessment process based on the registration and accreditation system, and the introduction of a system of professional training of social workers, which will include education in the observance of human rights;
- on the part of the users, the right to social assistance and a significant strengthening of the position of the user in the decision on the form of such assistance;
- as to users who are foreigners, the draft factual intent of the act defines the terms „citizen“ a „legal residence“, thus opening to the foreigners access to social services.

10.4.2. In cooperation with British partners, the Ministry of Labor and Social Affairs proceeded in the preparation of a three-year project of „Formation of Social and Economic Solidarity through the Improvement of Fair and Perceptive Social Policy and Practice of Social Service“. The project intends to ensure that the social services assist the people threatened by social exclusion and are based on the cooperation with representatives of the civic society who develop the rights of the citizens and protect their dignified life. Pilot projects are currently carried out in the area of community planning (District of Písek) and in the area of setting and application of quality standards (District of Olomouc). The interrelation between the project and the act that is currently under preparation is evident.

10.4.3. By its Resolution No. 28 of 3 January 2001, the government ordered the Minister of Labor and Social Affairs to prepare in coordination with the Minister of Education, Youth and Physical Training, the Minister of Interior, the Minister of Health and the Minister of Justice a draft concept of continuous education of social workers who are employees of public service and organizations managed thereby, which will include human rights education, and to submit such concept to the government until 31 August 2002. At the same time, the government ordered to the Minister of Labor and Social Affairs to ensure ongoing creation and supplementing of good quality programs for further education of social workers who are public servants so that such programs are available not later than 1 March 2002.

10.5. Housing

10.5.1. According to the estimates of non-state organizations, there are still approximately 100,000 homeless people living in the Czech Republic. They include people who have left social care facilities, have been thrown out of their families, but also people who have left their place of abode by their own. Major part of the homeless depends on the assistance provided by charity organizations, which establish asylum homes for them. Such solution is insufficient in the long run, but the state administration has not undertaken any measures that would allow to provide effective assistance to those groups of the population.

10.5.2. The Constitutional Court issued on 21 June 2000 a finding published under no. 231/2000 Coll., which cancelled the Decree of the Ministry of Finance of the Czech Republic No. 176/1993 Coll. on Apartment Rent and Payments for Performance Provided with the Use of the Apartment. Thus, the court granted the complaint raised by 14 senators. In this respect, the Constitutional Court identified the breach of several articles of the Bill of Rights, the Constitution, the International Covenant on Economic, Social and Cultural Rights and the

European Social Charter. This matter is dealt with in another finding of the Constitutional Court, published under no. 167/2000 Coll., in which the court stated as follows: *The state (public) regulation, based on considerations regarding important factors, must take into account, in the determination of the price, also the possibility to attain profit*. The competent ministries, i.e., the Ministry of Finance and to a considerable extent also the Ministry for Local Development, have been preparing a bill on the regulation of rent (at the time when this report was submitted, the bill as approved by the government and submitted to the Chamber of Deputies). The bill cannot resolve all problems of the housing sphere, particularly the problem of social housing, but might become one of the prerequisites for the establishment of a functioning housing market.

10.5.3. The so-called bare apartments are rather disputable in the light of human rights (see also 9.2.1.4.). This denomination is not accurate, because this term applies to two different types of housing – rental apartments of the third and fourth category and lodging facilities. Construction and technical standards should be preserved on both those types of housing, which is not always the case; on the other hand, modest housing should not be degrading to human dignity. Moreover, the location of lodging facilities or apartments for tenants defaulting on rental payments on the city outskirts, out of reach of services and with poor transit connections (or even as isolated facilities outside the city or town) is evidently inappropriate. In addition to that, the lodging facilities have problematic house rules, which allow very significant interference in the private and family life of the persons living there (presentation of a certificate of absence of contagious diseases, the necessity to obtain the consent of the manager with visits, etc.).

10.6. Right to favorable living environment

The right to receive information on the living environment (Article 35(2) of the Bill, Act No. 123/1998 Coll. on the Right to Receive Information on Environment) is important for the exercise of the right to favorable environment. The newly adopted Act No. 153/2000 Coll. on the Treatment of Genetically Modified Organisms and Products and on the Amendment to Certain Related Laws guarantees the provision of information to the public that an organism capable of reproduction has been genetically modified. The implementation of the right to favorable living environment should be also supported by Act No. 100/2001 Coll. on the Assessment of Impacts on Environment and some other bills that were at the time of submission of this report discussed in the Chamber of Deputies or in the Senate (bills on water and waste) or laws that are still under preparation (Act on Protection of Atmosphere and the Ozone Layer of the Earth, Act on Packaging, Act on Integrated Prevention and Reduction of Pollution and on Integrated Pollution Register).

10.7. Right to Establish Trade Union Organizations

10.7.1. The Czech Republic undertook to guarantee the so-called freedom of coalition by the ratification of a number of international documents, namely the Convention of the International Labor Organization (ILO) No. 87 on Freedom of Association and the Protection of Right to Organize (No. 489/1990 Coll.), Convention No. 98 on Implementation of Principles of Right to Organize, the European Social Charter (Turin 1961) and Convention No. 135 on Workers' Representatives (which shall come into force in respect of the Czech Republic upon the expiry of 12 months after the filing of ratification instruments). The coalition freedom means namely founding employee or employer associations, established with the aim of formulating, promoting, defending and support of their interests in the formation and determination of work, social or economic conditions. The coalition agreement

forms the basis not only for the right to free establishment of trade unions and employer organizations and to free performance of their activities without any interference of the state, but also of the right to free collective bargaining of social partner, as well as the right to use means of working struggle, including the right to strike. Despite the long-term and permanent demands of the Czech and Moravian Confederation of Trade Unions, the Czech Republic has not yet ratified the ILO Convention No. 154 on Collective Bargaining Support.

10.7.2. The proposed act on public service and remuneration of public servants (the „Public Service Act"), which has been prepared by the Ministry of Labor and Social Affairs reflects the attempts to impose legislative restrictions on trade union freedoms of a substantial number of public servants. The bill deprives a considerable number of public servants of the right collective bargaining. The bill is in conflict with the general global tendency, whereby the practice of the developed states is more and more inclined to the guaranteeing of the collective bargaining right to those who did not have it before**.** The Ministry of Interior currently prepares the Act on Service of Members of Security Forces, which proposes to deny the collective bargaining right to members of the intelligence service. Members of other security forces are not limited in any manner as to their right to organize, even for the purpose of the conclusion of collective bargaining agreements

10.7.3. Many employers still try various practical means to deprive their employees to organize trade unions. Such attempts hinder the activity of trade unions in companies. This happens not only in Czech companies, but also in firms with foreign, namely German capital participation. The employers use, for instance, the threat of dismissal to deter the employees from becoming members of trade unions; the trade unions are forbidden access to the companies and the trade union officials are dismissed under various justifications.

10.8. The disabled

10.8.1. The following numerous measures concerning the disabled was adopted in 2000:

- Government Decree No. 494/2000 Coll. on the Conditions of Provision of Subsidies State Budget Subsidies to Support Regeneration of Prefab Suburbs**,** which plans to build parking spots and stationing for vehicles of the disabled. The subsidy is provided to municipalities and its amount may reach up to 70 % of the budget costs.
- Act No. 492/2000 Coll., which amends, effective from 1 January 2001, Act No. 586/1992 Coll. on Income Taxes Act. This amendment increases the amount of tax allowances provided to employers who employ disabled persons. In case of employing a person with modified working ability, the annual allowance shall be increased from 9,000 CZK to 18,000 CZK and in respect of a severely disabled employee from 32,000 to 60,000 CZK. This act has also increased the deductible amounts of taxpayers whose dependents suffer from the most severe disabilities.
- Government Decree No. 481/2000 Coll. on the Use of Means of the State Fund for Housing Development pursuant to which it is possible to receive a subsidy from this fund in case of buildings with fifteen and more rental apartments only if at least 5% of those apartments (i.e., at least one) comply with the requirements regarding unobstructed access. The State Fond for Housing Development provides increased subsidies to such apartments and the portion of the subsidy may exceed 50%.
- Act No. 460/2000 Coll., which amends Act No. 555/1992 Coll. on Prison Service and Justice Guard**,** which prohibits the use during a service intervention of self-defense blows

and kicks, handcuffs and shackling belt, tear gas means, truncheons, service dogs, water cannons, intervention detonators and other means against persons who are visibly disabled or aged and against pregnant women in the situations which are not threatening to life or health and if there is no danger of substantial property damage.

- Government Decree No. 426/2000 Coll. Determining Technical Requirements Applying to the End Devices of Radio and Telecommunication Equipment, which expressly requires in Section 2(3) such construction solutions that support the functions facilitating the use of such devices by disabled users. Act No. 361/2000 Coll. on Road Traffic also orders the drivers to pay increased attention to the disabled and regulates some exceptions for vehicles marked with the relevant symbol.

- Government Decree No. 228/2000 Coll. on the Determination of the Mandatory Share of Citizens with Modified Working Ability in the Total Number of Employees cancelled the existing divided quota, distinguishing between citizens with modified working ability and severely disabled citizens and determined a unified 5% share whereby one severely disabled citizen counts for three citizens with modified working ability.

- Act No. 155/2000 Coll. amending the Labor Code, prohibits any kind of discrimination, including discrimination due to health condition. The ban also applies to such conduct of the employers that does not discriminate by itself, but in its consequences. Government Decree No. 134/2000 Coll. on the Provision of Material Support for Creation of New Jobs introduces, among others, a 10% increase of the reimbursement of the costs of the employers incurred in connection with employee requalification in case of citizens with modified working ability or employees taking care of a severely disabled family member.
- Act No. 132/2000 Coll.[42] orders the district municipalities to cover in connection with the system of regions the necessary increase of costs connected with the schooling of disabled children. Section 37 of Act No. 121/2000 Coll. (the Copyright Act) determines that anyone who reproduces or commissions the reproduction of an issued work for non-profit purposes solely for the needs of the disabled and within the scope justified by their disability, is not in breach of copyright. Section 38, which regulates the use of the work by lending or renting the original, stipulates an exception concerning computer programs, which allows to lend them solely for the needs of the disabled in connection with their disabilities. Act No. 102/2000 Coll., which amended Act No. 13/1997 Coll. on Land Communications, has exempted motor vehicles used for transport of severely disabled persons. The exemption also applies to the transport of family members of the vehicle owner and of children who are treated for hemoblastosis or malignant tumor.
- Decree No. 40/2000 Coll. specifies new point assessment of disabilities for pension insurance purposes. As to the types of disabilities, such assessment is of prominent importance for persons suffering from tumors, to whom it grants full disability pension for a two-year period after the termination of their treatment.
- Act No. 17/2000 Coll., amending Act No. 588/1992 Coll. on Value Added Tax, which has extended the categories of persons to whom this tax is being refunded by the disabled, who shall be granted a subsidy for purchase of a motor vehicle. The entitlement to the tax

[42] The Act on Amendment and Cancellation of Certain Acts Relating to the Act on Regions, Act on Municipalities, Act on District Offices and Act on the Capital City of Prague.

refund may be applied each five years in respect of one automobile purchased in the Czech Republic. The tax refund may not exceed 100,000 CZK.

10.8.2. The above survey indicates that the laws and regulations adopted in 2000 are of principal importance and concern also the disabled. Despite these measures, there still exists factual inequality of the disabled in a number of areas. This appears in the most striking manner with respect to employment. Despite a major decrease in the unemployment rate in 2000, the number of unemployed disabled persons was reduced by mere 8 persons. This is caused mainly by the low amount of tax paid to the state budget by the employers who do not comply with the duty to employ a specific percentage of disabled persons or to purchase their goods or services. The most serious consequence of the long-term unemployment of the disabled is its impact on their pension insurance claims. Although the cases in which a disabled person could not be granted full disability pension due to his failure to fulfill the condition regarding his period during which he was insured were very rare in 2000, it may be expected that, due to the long-term unemployment of the disabled, such fact will represent, starting from 2006, a very serious social problem, which may affect up to one thousand disabled persons every year.

10.8.3. The status and namely the prospects of the disabled were affected to a significant extent by Government Resolution No. 667 of 3 July 2000, which postponed a number of measures specified in the National Plan of Equalization of Opportunities for Disabled Citizens. The changes affected namely the chapter devoted to services. The consequences of such postponement will result in the preservation of the current unsatisfactory condition.

10.8.4. Negotiations between the Ministry of Health and the Ministry of Labor and Social Affairs held on 1 July 1999 resulted in the establishment of an inter-ministerial work team whose task is to define complex rehabilitation processes and system. The commission was extended in 2000 by a representative of MŠMT and of the Government Committee for the Disabled (VVZP).

10.8.5. Based on a request of the Government Committee for the Disabled, a Concept of Care for Disabled Employees in the Sector Supervised by the Ministry of Agriculture of the Czech Republic was worked out in 1991. Pursuant to this concept, the following programs were carried on in 2000:

- prevention of disability and impact of unfavorable working conditions in the basic agricultural and food production namely on manual workers in this sector,
- employment of the disabled and their social integration in agriculture at two agricultural farms in Neratov and Týn nad Vltavou, where a professionally trained staff and foster families take care of clients who would not probably find other employment.

10.8.6. Based on the general intensification of the protection of rights of the disabled, the Minister of the Government of the Czech Republic has proposed to the government to amend Article 3(1) of the Bill of Rights so that the prohibition or discrimination and privileges is extended by the health condition category.

11. Patient Rights

11.1. The rapid growth of biomedical research and new possibilities of medical practice leads to the worldwide increase of the importance of protection of human rights and dignity of the

patients. This is due to the increasing complexity and lack of transparency of these problems, whose resolution may no longer depend solely on the physicians. This fact is reflected in the Convention on Protection of Human Rights and Dignity of a Human Being in Connection with the Application of Biology and Medicine (referred to under the abbreviated title "Convention on Human Rights and Biomedicine") and in the Additional Protocol to this Convention, stipulating the prohibition of cloning of human beings. The Czech Republic signed the Convention and the Protocol on 24 June 1998 in Strasbourg. The Convention is included in the so-called hard-core list of the conventions of the Council of Europe, which are expected to be ratified by the candidates for EU membership.

11.2. By its Resolution No. 855 dated 30 August 2000, the government decided to submit the Convention on Human Rights and Biomedicine together with the Additional Protocol to the Chamber of Deputies for ratification[43]. The submission of the Convention for ratification was preceded by a discussion as to whether it is suitable to adopt the Convention as an international treaty on human rights before the adjustment of the local law to its requirements. Czech law is not in complete conformity with the Convention, because it does not specifically reflect its provisions, but only its principles, which are in some cases reflected only partially. The government based its decision to submit the Convention for ratification on the assumption that its ratification will become a desirable motive for incorporation the specific principles of the Convention in the local law, particularly in the Act on Health Care, which is currently under preparation.

11.3. Another legislation that should contribute to the overcoming of the discrepancies between the local law and the requirements of the Convention on Human Rights and Biomedicine is the new Civil Code prepared by the Ministry of Justice. According to its factual intent, the Civil Code will generally stipulate that an individual may disagree with the intervention in his physical integrity, even in the case of medical interventions. The Civil Code will also generally stipulate that an individual is entitled to know how his body parts which he has lost during his life have been disposed of, and to express his opinion thereon. The Civil Code will also newly stipulate that the medical or other facility must ask the person for consent with the use of his body parts for transplantation, or other medical or scientific research purposes. Exceptions shall be permitted in case of public interest and under the conditions set down in special laws. The Civil Code further sets out the necessity of the consent with the taking of blood and blood derivatives and of the consent of the patient with the testing of new medical knowledge. The protection of dignity of the individual shall also apply to his bodily remains after his death.

11.4. The new Civil Code will also resolve the matters regarding the consent of the deceased with the use of his bodily organs for transplantation and scientific research purposes. This matter will be based on the presumption of disagreement in case of persons who do not have full legal capacity, and on the presumption of consent in case of other persons. A person who has full legal capacity and wants to prevent the taking of his bodily organs for such purposes must express his disagreement therewith in advance. Therefore, it is proposed to establish a registry of disagreements with post-mortem taking of bodily organs.

11.5. The mentally ill represent a specific patient group, whose rights were ignored for a long time. While the relics of the paternalistic tradition of the pre-November period have been gradually removed in many other spheres, nothing of this kind has happened yet in respect of

[43] The Chamber of Deputies approved the Convention as a convention under Article 10 of the Constitution on 27 February 2001.

the rights of the mentally ill (and the mentally disabled). This is due particularly to the fact that persons who have been deprived of their legal capacity or have been hospitalized without their consent are unable to effectively defend their rights and moreover are still seen by the public as not reliable. The current regulation of the procedural rights of persons in the proceedings regarding legal capacity and admissibility of taking and detention of persons in health care facilities is unsatisfactory with respect to the protection of human rights. The provision of Section 186 of the Civil Procedure Code allows, for instance, not to inform the person whose legal capacity is being assessed about the initiation of the proceedings; Section 187 allows to waive the examination of the person and instructing him of the purpose of the examination and Section 189 explicitly specifies the possibility to waive the hearing and even the service of the decision upon the concerned person. Those restrictions of the right of the patient are justified either by vague „suitability reasons“ of by the paternalistic fears of an „unfavorable effect“ of the process on the person deprived of his legal capacity. Such reasons are unacceptable, because if the person is unable to understand the meaning of the decision, it cannot have unfavorable effect, and if the person is able to understand it, it will be more unfavorable for him when he finds out about the result of the proceedings later on. This procedure is applied in a large number of cases; the person is not informed about the initiation of the proceedings, is not heard, the hearing is waived and the decision regarding such interference in civil right is even not served on the relevant person.

11.6. CHR approved on 6 December 2000 a motion addressed to the Minister of Justice, which was prepared by the representatives of non-state non-profit organizations active in the field of psychiatric care (the Center for Development of Care for Mental Health, the Czech Association for Mental Health) and the Union of Patients of the Czech Republic. The motion requests to make, before the recodification of the civil litigation procedure, essential amendments to the provisions of Sections 186 to 192 of the Civil Procedure Code, which apply to the proceedings on legal capacity and admissibility of taking or detention in health care facilities. CHR's motion is intended to strengthen the procedural rights of persons in respect of whom the proceedings on legal capacity are conducted and of persons who are hospitalized without their consent in health care facilities. Such persons must be allowed to select their own legal counsel, and only if they fail to do so, the court will be allowed to appoint to them a legal guardian for the process. Due to the fact that, under the current circumstances, the court usually appoints as legal guardians court officials, who perform their tasks in a totally formal manner, the act should also regulate the duties of the guardian when representing the interest of the relevant person. The Ministry of Justice responded favorably to the motion and is currently considering whether to include the regulation of procedural rights of the mentally ill in the amendment of the Civil Procedure Code, which is to take place in 2001, or in the recodification, which is to be effected in the years 2002-2003. In the opinion of CHR, such delay in the resolution of protection of rights of this chronically neglected category of people would not be desirable.

11.7. In January 2001, CHR approved the formal grounds of the activities of a team of experts, which prepared the proposal referred to in section 12.6., extended it and constituted it as a work team pursuant to CHR's statute. The activities of the groups will contribute to the implementation of the obligations of the Czech Republic arising from the Convention on Human Rights and Biomedicine, and will consist of the monitoring of the observance of patient rights arising from this Convention in the medical practice and proposing measures to overcome the existing discrepancies between the obligations arising from the Convention and the current state of the local law. Members of the team are state administration employees, representatives of the professional public dealing with patient rights and a representative of the general patient organization. Due to its membership, the work team may become a

platform for the cultivation of much needed discussion of professionals and civic activities about the problems of medicine viewed in the light of human rights.

12. The Gay and Lesbian Minority

12.1. On 4 May 2000, CHR submitted to the government a proposal that the Minister of Justice prepares a bill that would define, in a legal basis, the partnership cohabitation of persons of the same sex. By this proposal, CHR expressed its support to the lengthy efforts of the gay and lesbian minority aiming at the adoption of such act. In its proposal, CHR pointed to the necessity to ensure equal dignity of the gays and lesbians pursuant to Articles 1 and 3(1) of the Bill of Fundamental Rights and Freedoms, and also to the development in other European countries, which are adopting laws regulating the partnership cohabitation of couples of the same sex. On 14 June 2000, the government adopted Resolution No. 598, in which it ordered the Minister of Justice to submit to it until the end of the year, a factual intent of an act on partnership cohabitation of persons of the same sex. This factual intent was also sent for comments to member organizations of SOHO (Association of Organizations of Homosexual Citizens, which was renamed as of 1 January 2001 to the Gay Initiative), which expressed their support, and to the lesbian activists associated in Call 2002.

12.2. In compliance with CHR's proposal[44] the factual intent proposes to introduce the institute of partnership cohabitation solely for the same sex couples, which is the model that has proven itself in the Scandinavian countries. The rights and obligations of the partners are based on the model of rights and duties of the spouses, except for the rights and duties towards children. The act, which will regulate the principal matters of establishment and extinction of the partnership and the rights and duties of the partners, will be accompanied by an act that will reflect the impact of the new act in other laws. The draft of this act is to be prepared until May 2001; subject to its approval by the Parliament, the act may come into force as of 1 January 2002.

13. Cooperation of Central State Administration Authorities with Non-state Non-profit Organizations

13.1. By its Resolution No. 260 of 15 March 2000, the government approved the principal focus of the policy of provision of state subsidies to non-profit organizations for the year 2001. The Government ordered the State Minister and Chairman of the Council of the Government for Non-profit Organizations ("CNNO") to submit until 31 May of every year a proposal regarding the principal areas of the policy of provision of state subsidies to non-state non-profit organizations („NNO“)[45] for the next year. The government also ordered him to prepare and publish, until 30 June 2001, Information on the Provision of State Subsidies to NNO in 2001 and to prepare and publish such information until the same date of every subsequent year.

13.2. The human rights were not included in an independent chapter among the principal sectors of the state subsidy applied toward the NNO in the year 2001. The policy includes

[44] Approved by the government on 26 February 2001.

[45] In other parts of its text, this report uses the term „non-state organizations“ (as we do not consider the definition of a non-profit organization as crucial). In this place, the report uses the acronym NNO with reference to the name of the Council of the Government for Non-state Non-Profit Organizations and to the relevant material.

several topics relevant to the human rights protection, like *the protection and support of health, including the care for the disabled* (programs of the Ministry of Health, the Ministry of Culture, the Ministry of Agriculture, the Ministry for Local Development, the Ministry of Education, Youth and Physical Training and the Ministry of Environment), *protection of rights of national and ethnic minorities, including the Roma minority* (programs directed at the implementation of all forms of national rights of national minorities, integration of foreigners and struggle against racism and discrimination, which are organized by the Ministry of Culture, MŠMT, the Ministry of Interior, the Inter-ministerial Commission for the Roma Community Affairs and CNM), *consumer protection and protection of rental relations* (the Ministry for Local Development and the Ministry of Industry and Trade). Despite that, we have to note that the policy of provision of subsidies to non-state organizations did not cover some areas of human rights, like projects relating to the protection of the rights of the child or rights of women,.

13.3. Like in 1999, the State Minister and the Chairman of CNNO prepared in 2000 an analysis of the financing of NNO from the state budget in the previous year. The analysis of which the government took cognizance by its Resolution No. 1050 of 23 October 2000, specified the quantity and structure of the funds provided from the state budget, from the budget of the district offices and cities, which were provided in 1999 to NNO activities. Among others, the analysis criticizes the uncoordinated approach of the central state administration bodies and their organizational units to the purpose of the subsidies and the role of the non-state sector a refers to the necessity of support of horizontal cooperation among ministries a coordination of programs of subsidies provided to NNO: *The introduction of rules applying to the relations among the providers of public budget subsidies, established at both the horizontal level (relations among ministries regarding the main areas on which the subsidies are to be focused), and at the vertical level (relations between the central state bodies, the district offices, cities and municipalities) would increase the transparency and effectiveness in the provision of subsidies to the NNO. All measures directed at the reunification and coordination of the practice of providing subsidies by individual central state administration authorities represent specific steps in the process of creation of the state subsidy policy. On the other hand, they must not interfere with the operation of the stabilized NNO groups, which fulfill specifically designated tasks, which are included in the priorities. Ongoing provision of information on changes in the state subsidy policy is of key importance and its prerequisite lies in objective disposal of the limited public funds, which may be controlled by the public and which is as effective as possible*.

13.4. The analysis also includes a survey of procedures and methods of provision of subsidies by individual minorities and some advisory bodies of the government. Unlike the last year's report on the state of human rights, we may appreciate as definitely positive the fact that most ministries gradually apply tenders and extend the variety of non-state organizations that may apply for subsidies

13.5. By its Resolution No. 1050 of 23 October 2000, the government also ordered the Minister of Finance to ensure that the information on organizations that will be granted subsidies from the state budget for the year 2002 is filed on a publicly accessible system providing information on NNO in the Central Register of Budget Subsidies.

13.6. The Ministry of Finance completed in 2000 in cooperation with the CNNO a software for this part of the system. Starting from March 2001, individual ministries will load the first data regarding the NNO that have been granted the subsidies in 2000 in this part of the central

register of state budget subsidies. The publicly accessible system of information on NNO will be put into operation on the internet until the end of the first half of 2001. It is expected that starting from 2002, the information system will also register NNO which have applied for the subsidies or other NNO that will express their wish to be placed on the system and provide the necessary identification information.

13.7. Such central system may significantly improve the insufficient coordination of financing of individual projects, which was referred to in the 1999 report on the state of human rights. In some cases, the quality of methods of assessment of individual projects supported by the state administration bodies is still not good.

13.8. Some non-state donors initiated again in 2000 coordinated support of those projects. For instance, the Open Society Fund referred to better use of financial funds in cases in which the tender commissions established by a non-state donor include a representative of a central state administration body, which is involved in the provision of grants by the body in which he works. The experience of such member allows to the non-state donors to adjust their measures taken within the scope of the grant program to the current procedure followed by the state administration authorities.

13.9. The government ordered the CNNO in 1998 to distribute in two stages the financial funds acquired through the sale of shares designated for the joint stock company Nadační investiční fond (the Endowment Investment Fund)[46]. These funds were designated solely to the increase for the capital of the fund in such manner that the fund may divide only the annual proceeds to other entities. Under Act No. 171/1991 Coll. on Powers of the Bodies of the Czech Republic in Matters of Transfer of State Property to Other Persons and on the National Property Fund of the Czech Republic, CNNO has been authorized to distribute the financial means of Nadační investiční fond, including organization of tenders. The financial means of the NIF category are designated not only for mere support of the fund activities, but are aimed at the creation of relatively independent endowment sources for activities of other subjects operating in the non-profit sector.

13.10. The distribution of those financial funds is divided into two stages. The first stage, during which 500 million CZK[47] were distributed, was completed in 1999. In 2000, 38 selected endowment funds increased their capital and collected their proceeds, the first of which will be distributed in 2001.

Nadace rozvoje občanské společnosti (the Endowment Fund for the Development of Civic Society) was the only fund operating in the area of human rights protection which succeeded in the tender for NIF funds distributed in the first stage. The tender for projects relating to the protection of human rights, which are financed from the proceeds of this contribution, will be announced by the fund in the first quarter of 2001. There are, however, other endowment funds that will distribute proceeds of the NIF contribution to projects applying (though indirectly) to the protection of human rights. The total amount of those finances will reach approximately 30 million CZK.

13.11. CNNO participated in 2000 in the preparation of the second stage of distribution of the balance of financial means set aside for Nadační investiční fond. The government approved

[46] Government Resolution No. 360 of 27 May 1998.
[47] See also the 2000 Report on the State of Human Rights in the Czech Republic, which was approved by the Government Resolution No. 385 of 19 April 2000.

this process by its Resolution No. 12 of 3 January 2001 and ordered at the same time to the minister and director of the Government Office and chairman of CNNO to announce from 31 January until 30 April 2001 a tender for the contribution from financial funds designated for the Nadační investiční fond, which are to be distributed within the second stage, and to submit the results of the tender to the government for review until 30 September 2001. If the government approves the proposal and its decision is confirmed by the Chamber of Deputies, it may be expected that the selected endowment funds will receive the subsidies from NIF until the end of 2001.

13.12. The criteria for assessment of the endowment funds admitted to the tender for the contribution to be distributed within the second distribution stage of NIF funds include also the importance of the endowment fund for the sector in which it distributes financial means. According to the resolution of the Chamber of Deputies No. 413 of 8 July 1999, preferences are to be given to the activities of endowment funds focusing on environmental protection and on the protection of human rights. The endowment funds that will be admitted to the tender and undertake to provide contributions in these areas will get additional points in the tender.

13.13. NNO's activities were supported in 2000 by nearly all ministries, except for the Ministry of Defense and the Ministry of Justice, which did not have their own subsidy programs. The Ministry of Finance of the Czech Republic administers the chapter of „General Treasury Administration“ and releases the finances for activities of the NNO that are administered by the Inter-ministerial Anti-narcotics Commission and other advisory bodies of the government. Apart from that, the Ministry of Finance provides by itself unique state subsidies to selected NNO, whose activities may not by included, by their nature, in the program of any of the ministries (like Konfederace politických vězňů (Confederation of Political Prisoners), Sdružení bývalých politických vězňů (Association of Former Political Prisoners), Český svaz bojovníků za svobodu (Czech Union of Freedom Fighters) and Masarykovo demokratické hnutí (Masaryk's Democratic Movement)). Other specific support is provided by the Ministry of Foreign Affairs, which provides every year a grant for the activities of České sdružení pro Spojené národy (the Czech Association for the United Nations). In 2000, the ministry also provided a subsidy to the Czech Section of DCI for the project named "Coordination of the Preparation of Supplementary Report of Non-governmental organizations on the Implementation of the Convention on the Rights of the Child in the Year 1995 –99“. The ministry also provided financial support to Sdružení pro multietnické soužití - humanitárně vzdělávací organizace (Association for multi-ethnic Coexistence – a Humanitarian and Educational Organization) for its project "To Kosovo Children", and a subsidy to the Czech Committee of the Wold Organization for Pre-school Care to cover the registration fee at the foreign congress and seminar with international participation on "The Implementation of the Convention of the Rights of the Child in Pre-school Care".

13.14. Many ministries support projects that are focused even indirectly on the protection of human rights. An example is the Ministry of Health, whose program of support of civic associations and humanitarian organizations is designated for projects focused on the increase of the participation of the disabled and chronically ill citizens in the improvement of their own health. The Nation Plan of Equalization of Opportunities of the Disabled Citizens is directed at services, removal of barriers and education.

13.15. While many central state administration bodies still prefer to provide financial support to other forms of cooperation with the NNO, some ministries have shown namely in the last

two year some efforts to use other possibilities. An example is the Ministry of Labor and Social Affairs, which cooperates with the NNO in matters related to equal opportunities of men and women, to violence against women and protection of children. The cooperation consists mostly of consultations regarding changes in the concepts of the ministry and proposed legislation, and of the use of professional knowledge and practical experience of those subjects of the given problems. For instance, the Center of Surrogate Family Care published in cooperation with the Ministry of Labor and Social Affairs the journal „Surrogate Family Care"; employees of the Ministry of Labor and Social Affairs are members of the board of editors and participate in the content of this journal. Its publication costs are covered by Ministry of Labor and Social Affairs. Another example of such cooperation is the Inter-ministerial Commission of the Minister of Interior for the Preparation and Implementation of the Government Policy of the Czech Republic in the Area of Integration of Foreigners and Development of Inter-Community relations, whose members are (apart from the representatives of several ministries, district offices, the academic community, etc) also NNO. representatives. NNO representatives are also members of several advisory bodies of the government, like CNNO, CHR or Council for National Minorities. Bílý kruh bezpečí appreciated its cooperation with the Ministry of Justice in the area of further education of judges and state attorneys, and its cooperation with the Ministry of Interior in the area of training of policemen focused on the problems of crime victims. This organization also cooperates with the Ministry of Justice in the provision of financial support to specific crime victims and or in the preparation of amendments to certain acts.

13.16. The materials of the NNO, which are involved in the protection of human rights, indicate that the majority of those organization still uses mostly sources other than those supplied by the programs of subsidies provided by central state administration authorities. Like in the previous year, those NNO criticize the limited or totally non-existent support of operating or payroll costs, which often makes impossible to their workers to perform systematic, high quality and professional activities[48].

[48] By its Resolution No. 114 dated 7 February 2001, the government approved the Principles of the Provision of Subsidies from the State Budget of the Czech Republic to Non-state Non-profit Organizations by the Central State Administration Authorities, which provide in Part Two, Section 7, a possibility of reimbursement payroll costs, including employer contributions, which represent a reward for the implementation of an approved project. A specific amount of those wages may be determined in accordance with the level of wages paid in the budgetary sector for the comparable activities. This regulation is in force since 7 February 2001.