Report
on the State of Human Rights
in the Czech Republic
in 2001

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I. General Part

1. Introduction

1.1. Since 1998, the Human Rights Commissioner of the Government of the Czech Republic has been preparing every year a report on the state of human rights in the Czech Republic (hereinafter also "CR"). Thus, this Report on the State of Human Rights in 2001 is the fourth of its kind. Like the previous reports, this report is also an update. Its principal objective is to describe the current state of human rights in CR, particularly in reference to international human rights treaties to which CR is a party. Therefore, the report also includes opinions prepared by the bodies that supervise the compliance with these treaties, which are the only bodies that are formally authorized to assess the general compliance of the states parties with their international obligations. Such bodies are independent in their assessment, which is based on a broad range of information provided not only by the governments of each state party but also by non-governmental organizations operating in the human rights area, whose evaluation may sometimes contain criticism. At the same time, the supervisory bodies recommend to all state parties the appropriate ways to improve the state of human rights. Therefore, it is necessary, in order to get a full picture, to also explore the manner in which the state parties have implemented such *de facto* guidelines provided by the supervisory bodies.

1.2. Unlike the last report, this report does not include information regarding the implementation of the final recommendations of the European Committee for Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT)[1]. It would not be appropriate that such information on the implementation of final recommendations of an international supervisory body, which is, by itself, a controlling body, becomes at all times a special part of such report, as it would not fit into the structure of the report. Therefore, it is proposed, together with the presentation hereof, that the report on the implementation of CPT recommendations be further presented separately by the Human Rights Commissioner of the Government. Thus, the report on the implementation of CPT recommendations will become a supplement to an existing and well-tested model under which all reports regarding the implementation of the recommendations of each supervisory body have been submitted either separately or as part of reports regarding the implementation of obligations set out in each international treaty.

1.3. At the same time, this report does not include information on the cooperation with non-state non-profit organizations (the „NNOs"), which was part of the previous reports. All such information was presented in the past in the form of a summary regarding the cooperation with NNOs irrespective whether or not such NNOs are involved in the human rights sphere. This was due to the difficulties in separating the organizations specializing solely in human rights matters and organizations whose activities are linked in one way or another to the human rights sphere, even if their proclaimed objectives do not encompass

[1] Government Resolution No. 822 of 23 August 2000 ordered the Human Rights Commissioner of the Government to include information regarding the implementation of CPT recommendations into the report on the state of human rights in CR for the appropriate year.

human rights. Beginning with 2003, each advisory body of the Government shall submit its annual report until 31 May.[2]

1.4. The structure of the report represents a compromise between the systemic concept of human rights and the approach based on their content. This is reflected in a number of international human rights treaties and in the Charter of Fundamental Rights and Freedoms No. 2/1993 Coll. (the "Charter"). It would be certainly possible to adopt a purely systemic approach, but such approach would fit academic criteria rather than practical needs. Many parts of the report contain cross-references, linking the content of each individual right to the problems relating thereto.

2. Institutions

2.1. Government Council for Human Rights

The Council of the Government for Human Rights (the "Human Rights Council") underwent only marginal changes within the process of rationalization of advisory bodies of the government[3]. In this respect, the Government approved a new statute of the Human Rights Council[4], which stipulates, *inter alia*, that the sections of the Human Rights Council be changed into committees. Consequently, the deliberations of each committee shall be chaired, instead of the secretary, by its chairman elected from among its members. At the same time, a new Committee for Human Rights and Biomedicine was established to deal with matters relating to patient rights, including, *inter alia*, those connected with the ratification of the Convention of the Council of Europe for the Protection of Human Rights and Biomedicine (ETS 164) and the Additional Protocol on the Prohibition of Cloning Human Beings (ETS 168). The committees considered the following matters:

- The Committee for Civil and Human Rights cooperated in the preparation of comments on the bill on the right of association and the proposed administrative procedure code, i.e., on both the material intent and the wording of those bills. At the same time, the committee also prepared a petition regarding Act No. 148/1998 Coll. on Protection of Secret Facts, as amended. The petition focused namely on the rectification of deficiencies in the material reasons for the denial of an authorization to come into contact with secret facts and on the personal separation between the first instance decision-making body and the appellate body. The Committee also prepared an extensive petition regarding Act No. 40/1993 Coll. on Acquisition and Loss of Citizenship of the Czech Republic, as amended (the „Citizenship Act"), focused on a change of practical application of the Act in the case of the loss of Czech citizenship under the law, on the rectification of deficiencies in the reasons for rejection of a citizenship application and on the possibility of granting double citizenship to those Slovak citizens who were granted the Slovak citizenship after 1 January 1994, thus losing the Czech

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[2] Government Resolution No. 537 of 31 May 1999 ordered the Human Rights Commissioner of the Government to include information regarding the cooperation with NNOs into the report on the state of human rights in CR for the appropriate year. Government Resolution No. 175 of 20 February 2002 ordered all chairmen of advisory and working bodies of the Government to submit to the Government until 3 May of each following year, beginning with 2003, a report on the cooperation with NNOs. Thus, such report shall be also submitted by the chairman of the Government Council for Cooperation with NNOs.

[3] Government Resolution No. 14 of 3 January 2001, regarding analysis of advisory and working bodies of the Government and proposal of their systemic resolution, Government Resolution No. 422 of 2 May 2001.

[4] Government Resolution No. 1082 of 22 October 2001 on the Statute of the Council of the Government of the Czech Republic for Human Rights.

citizenship. The Committee also participated in the preparation of a petition for the implementation of final recommendations of the Human Rights Committee, which was based on the review of the Initial Report on the Implementation of the International Covenant on Civil and Human Rights (see Chapter I/3).

•The Committee for the Rights of the Child contributed to the preparation of comments on the proposed material intent of Act on Protection of Children at Work and, based on a petition of its members, proposed together with the Committee Against Torture and Other Inhuman, Cruel or Degrading Treatment or Punishment to perform a survey to collect basic comparative data and to map the situation for potential inhuman or degrading treatment of children in children's homes, educational facilities and diagnostic institutes. In November and December 2000, members of a work team of those two committees collected the relevant data in 42 facilities operated by the Ministry of Education, Youth and Physical Education. Based on the results of the survey, the Human Rights Council presented a petition that included a number of recommendations for the Ministry of Education, Youth and Physical Education, Ministry of Labour and Social Affairs, Ministry of Justice, Ministry for Local Development and Ministry of Health.

•The Committee for Elimination of All Forms of Racial Discrimination provided its comments to the Report on Potential Measures to Eliminate Discrimination[5], which will become a basis for the preparation of a new anti-discriminatory legislation. The Committee prepared a petition regarding the activities of British consular officials at the Prague-Ruzyně Airport[6], which resulted in the decline of trust in the government from the part of representatives of the Roma community and, at the same time, in the decline of trust of the general public in the credibility of the British (and even European) anti-racist policies. In 2001, the Human Rights Council and, subsequently, the government approved a petition of the Committee for a change of the practices applied in relation to the issue of Czechoslovak Political Prisoner Certificates pursuant to Act No. 255/1946 Coll. on Officers of the Czechoslovak Army Abroad and on Certain Other Participants in the National Liberation Struggle, as amended. Such change was to be effected through an amendment of an internal regulation of the Ministry of Defence. The adoption of this incentive allowed the Committee to at least partly rectify the injustice suffered by two groups of victims of Nazi persecution – persons in hiding and persons placed in military work camps in Slovakia.

•The Committee for Elimination of All Forms of Discrimination of Women focussed its long-term attention on insufficient institutional coverage necessary for the implementation of policy of equal opportunities for men and women. Therefore, the Committee prepared a declaration of the Human Rights Council in support of the incentive of the Ministry of Labour and Social Affairs regarding the establishment of the Government Council for Equal Opportunities of Men and Women as an advisory body of the government in this area. The Committee further prepared a petition to increase the quality of criminal prosecution of persons suspected of criminal activities relating to trade in people and to improve the protection of victims of this type of crime. The petition includes, *inter alia,* a proposal for the change of the definition of trade in women set out in Act No. 140/1961 Coll., the Criminal Code, as amended (the „Criminal Code“), and for ensuring the implementation of Act No. 326/1999 Coll. on Stay of Foreigners on the Territory of the Czech Republic, as amended (the “Foreigner Act”) in a manner allowing legalisation of the stay of victims of trade in people in the Czech Republic during the period of criminal prosecution of the offenders.

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[5] The Report on Possible Measures to Eliminate Discrimination was approved by Government Resolution No. 170 of 20 February 2002.

[6] Within the meaning of the Technical Appendix to the Note on the Consular Treaty between the Czechoslovak Socialist Republic and the United Kingdom of Great Britain and Northern Ireland dated 3 April 1975.

• The Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prepared its opinion on the concept of Prison Service of the Czech Republic relating to imprisonment of persons sentenced to life in prison and persons in whose case an increased need for detention has been diagnosed. The Committee submitted to the Human Rights Council a petition for the expansion of protective measures regarding "protective custody" as specified in the Criminal Code, focussing on the resolution of the problems relating to protective medical treatment of serious offenders in health care facilities that are insufficiently equipped for such purpose. The Committee further prepared a broad-based petition regarding pre-expulsion custody, whose aim is to remove any ambiguities in applicable laws and to unify the interpretation of certain provisions of the Criminal Code and of Act No. 141/1961 Coll. on Judicial Criminal Proceedings, as amended (the "Criminal Procedure Code"). At the same time, the Committee also prepared a petition to establish an independent controlling mechanism over facilities for detention of persons deprived of freedom or persons whose freedom has been restricted, and another petition to amend the legislation relating to grounds for detention, namely with respect to individuals suffering from a disease, pregnant women and women with small children, and to change some conditions of custody.

•The Committee for Rights of Foreigners explored the situation of persons who fled to the Czech Republic due to the war in Chechnya, and prepared a petition of the Human Rights Council, which resulted in the issue of Government Order No. 290/2001 Coll. on Provision of Temporary Protection to the Citizens of the Russian Federation. The Committee further analysed deficiencies in health insurance of foreigners, and prepared a petition of the Human Rights Council regarding health insurance of children of foreigners staying in the Czech Republic on the basis of long-term visas. Another petition of the Human Rights Council, which was prepared by the Committee, was based on the analysis of the situation of unaccompanied minor asylum applicants and their placement in institutional education facilities.

•The Committee for Human Rights and Biomedicine (formerly a working group) focussed, in connection with the petition of the Human Rights Council dated 6 December 2000 regarding the amendment of Act No. 99/1963 Coll., the Civil Procedure Code, as amended ("CPC"), on the status of persons at the suit regarding legal capacity and the admissibility of admitting or keeping persons in health care facilities. The Committee also participated in the preparation of comments on health laws and initiated a survey of the actual level of observance of human rights at in-patient psychiatric facilities, which is to be carried out in 2002.

2.2. Government Council for National Minorities

The Government Council for National Minorities was established in 2001. 2 August 2001 was the effective date of Act No. 273/2001 Coll. on Rights of Members of National Minorities (the "„Act on Rights of Members of National Minorities"), according to which the government established the Government Council for National Minorities as its advisory body to present incentives in matters relating to national minorities and their members. The Council is headed by a cabinet minister. In relation to the Act on Rights of Members of National Minorities, the government approved a new Statute of the Government Council for National Minorities[7]. The Council has a total of 29 members – representatives of eleven national minorities that have been traditionally living on the territory of the Czech Republic. Those

[7] Government Resolution No. 1034 of 10 October 2001 on the Establishment of the Government Council for National Minorities.

include the representatives of national minorities (Bulgarian, Croatian, Hungarian, German, Polish, Romany, Ruthenian, Russian, Greek, Slovak and Ukrainian – a total of 18 members) and of public authorities (representatives of the Ministry of Finance, Ministry of Culture, Ministry of Education, Youth and Physical Education, Ministry of Labour and Social Affairs, Ministry of Interior, Ministry of Justice and Ministry of Foreign Affairs at the level of deputy ministers, the representative of the Office of the President of the Republic, of the Office of Public Protector of Rights and the Government Commissioner of Human Rights – a total of 11 members). The Government Council for National Minorities is presided over by the Deputy Prime Minister and the Chairman of the Legislative Council of the Government. One of the deputy chairmen is a representative of a public authority (Government Commissioner for Human Rights), the other one is appointed from among the representatives of national minorities.

The Government Council for National Minorities, which took up the activities of the Government Council for Minorities, discussed suggestions relating to the legislative processing of the government draft of the Act on Members of National Minorities, comments on the opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities (No. 96/1998 Coll.) relating to the Czech Republic, petitions relating to principles of subsidizing activities of national minorities from the state budget, namely to the draft government order determining the conditions and method of provision of state budget subsidies to activities of national minorities and in support of integration of the Romany community, to projects of publication of periodicals of national minorities (tender for subsidies), radio broadcast of national minorities, etc.

2.3. Inter-ministerial Commission/Government Council for Roma Community Affairs

Like the Human Rights Council, the Inter-ministerial Commission for Roma Community Affairs (the "Inter-ministerial Commission") underwent a process of rationalisation of advisory bodies of the government. Upon the approval of the new statute,[8] the Inter-ministerial Commission was transformed into a government council presided over by a cabinet member. This was one of the requests that had been raised a long time ago by the representatives of the Roma community. The first deputy chairman of the Inter-ministerial Commission is the Government Commissioner for Human Rights (who represents 14 of its members – representatives of public authorities); the other deputy chairman will be appointed from among the 14 Roma civic representatives (each of whom represents one higher-level political sub-division).

The Inter-ministerial Commission submitted to the government, through the Deputy Prime Minister and the chairman of the Legislative Council, of the Government a draft Measure to Intensify the Implementation of the Concept of the Government Policy towards Members of the Roma Community, Facilitating Their Integration into the Society[9]. The government assigned to the Minister of Education, Youth and Physical Education and to the Minister of Labour and Social Affairs a number of tasks whose implementation is essential for the success of programs focussing on the improvement of the status of members of Roma

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[8] Government Resolution No. 1371 dated 19 December 2001 on the Statute of the Government Council for Roma Community Affairs.

[9] Government Resolution No. 1145 dated 7 November 2001 on the Draft Measure to Intensify the Implementation of the Concept of Government Policy toward Members of the Roma Community, assisting their integration into the society.

communities, namely of the support programme focussed on Roman secondary school students and of the programme of social field work in Roma communities affected by social seclusion.

The government also approved an updated Roma Integration Concept [10] and was informed about the measures taken by the state administration in the implementation of this Concept, in particular through the following documents:

- an interim report on the development programme of community housing for Roma citizens in Brno and on the improvement of inter-ethnical relations in the society;
- a summary of state funding provided to the implementation of the Concept of the Government Policy toward Members of the Roma Community, Facilitating Their Integration into the Society;
- a report of the Government Commissioner for Human Rights regarding programmes implemented in 2000 and 2001 with the participation of the Government Council for Roma Community Affairs, which were focussed on Roma integration and
- a report on the results of survey regarding bare housing in relation to the Roma community.

The updated Roma Integration Concept emphasises further development of successful programmes (see above). At the same time, it proposes the implementation of a subsidised housing programme, development of programmes focussed specifically on finding solution for the unemployment of members of Roma communities, on the introduction of a motivation system for municipalities to apply measures facilitating the resolution of housing problems of the Roma citizens and on the elaboration of a programme of timely care for children from disadvantaged socio-cultural environment.

2.4. Government Council for Equal Opportunities of Women and Men

The institutional coverage of the exercise of the policy of equal opportunities for men and women had been criticized for a long time and at all levels, namely at the regional, district and municipal level. This deficiency was addressed by the programme document „Government Priorities and Procedures Applied in the Promotion of Equality of Men and Women “[11]. Section 1.11 of the document orders to the Minister of Labour and Social Affairs to submit a proposal for the establishment of the “Government Committee for Equal Opportunities of Men and Women”.

The Government Council for Equal Opportunities of Women and Men[12] (the “Council for Equal Opportunities”) was established as an advisory body of the government, whose principal task is to prepare consensual proposals regarding the creation and promotion of equal opportunities for men and women. The Council for Equal Opportunities will have 23 members, including 15 representatives of ministries (mostly deputy ministers [13]), two

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[10] Government Resolution No. 87 of 23 January 2002 on the Information on Implementation of Government Resolutions on Integration of Roma Communities and Active Approach of State Administration Authorities to the Implementation of Measures Adopted by those Resolutions as of 31 December 2001.

[11] Government Resolution No. 456 of 9 May 2001 on the Summary Report on the Implementation of Government Priorities and Procedures Relating to Promotion of Equality of Men and Women in 2000.

[12] Government Resolution No. 1033 of 10 October 2001 on the Establishment of the Government Council for Equal Opportunities of Women and Men.

[13] The Council for Equal Opportunities shall be presided over by the 1st Deputy Prime Minister and the Minister of Labour and Social Affairs. The vice chairman will be the Deputy Minister of Labour and Social

representatives of social partners, five civic representatives and one representative of specialists. In order to link the Council's activities with the activities of political sub-divisions, regional commissioners were granted the status of permanent guests with the right to attend meetings and present petitions. They will not, however, have voting rights.

Based on its statute, the Council for Equal Opportunities prepares proposals directed at promotion and ensuring equal opportunities for men and women. It also reviews and recommends to the government the basic principles of its policies and coordinates the basic focus of equal opportunity policies of the ministries. The Council further determines the priorities for projects of implementation of equal opportunity policies carried out by the ministries, identifies current problems faced by the society in this respect and assesses the effectiveness of the implementation of the principle of equality between men and women.

The above summary indicates that the Council for Equal Opportunities, like all of its predecessors, will not have any executive powers or a possibility to directly affect the exercise of the policy of equal opportunities for men and women implemented by the ministries. On the other hand, the establishment of the Council may be understood as an initial step in the formation of an effective mechanism for the promotion of equality between men and women.

3. International dimension of human rights

The Czech foreign policy focussed in the human rights area on topics that had been considered as essential for several years, namely on the right of ethnic minorities (including problems of the Roma community), rights of women and children and refugee problems. Special attention in this respect was paid last year to the U.N. World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which was held from 31 August until 8 September 2001 in Durban (South Africa)[14].

3.1. Consideration of reports on the implementation of international treaties held before their supervisory bodies

In 2001, CR reviewed before the supervisory bodies the following reports on the implementation of international human rights treaties[15]:

3.1.1. The Second Periodical Report of the Czech Republic on the Implementation of the Convention Against Torture, Other Cruel, Degrading or Inhuman Treatment or Punishment (No. 143/1988 Coll.)

Affairs for European Integration and International Relations. Membership of the Council for Equal Opportunities will also include the Government Commissioner for Human Rights. The Council is to hold its sessions at least three times every year.

[14] For detailed information see http://www.unhchr.ch, Report of the World Conference against Racism, Durban Declaration and Programme of Action

[15] Reports on the implementation of U.N. human rights treaties are available in the Czech language on the website of the Office of the Government of the Czech Republic at the address http://www.vlada.cz, part „Councils, Committees, Commissions – Government Council for Human Rights – Documents of the Government Council for Human Rights“. Those reports and related final recommendations are also available in the English (or French) at the address http://www.unhchr.ch/tbs/doc.nsf.

The report was heard before the Committee Against Torture ("CAT") on 7-8 May 2001. CAT focussed on events relating to the detention of demonstrators against the session of the International Monetary Fund and the World Bank, which was held in September 2000 and on the implementation of CPT's recommendation to ensure availability of forms in several languages at the police stations, which would inform the detained persons about their rights. CAT further inquired about the manner of settlement of complaints against abuse by the police and members of the Prison Service and about measures adopted by CR in connection with the struggle against racism and xenophobia and in support of the Roma minority.

CAT's conclusions and recommendations evaluated positively CR's endeavours to implement an overall reform of its legal system so that it may provide effective protection of fundamental human rights. CAT particularly appreciated the adoption of new laws – the Foreigner Act, Act No. 325/1999 Coll. on Asylum, as amended and Act No. 349/1999 Coll. on Public Protector of Rights, as amended. CAT also appreciated the establishment of the office of the Government Commissioner for Human Rights. CAT's critical comments focussed on:

- the absence of thorough and independent investigation of all cases of mistreatment of arrested, apprehended or detained persons,
- the absence of independent investigation of offences committed by members of law enforcement bodies and
- legal status of persons deprived of freedom (right to legal aid since the moment of arrest, access to a physician of one's own choice and right to inform a third party). In this respect, CAT recommended introducing an effective and independent mechanism to supervise the settlement of prisoner complaints and an external civil control of the prison system.[16]

3.1.2. Initial Report of the Czech Republic on the Implementation of Obligations Resulting from the International Covenant on Civil and Political Rights (No. 120/1976 Coll. – hereinafter only „Covenant" or „Covenant on Civil and Political Rights")

The report was heard on 11 and 12 July 2001 before the Human Rights Committee. Beside systemic matters relating to the domestic law, like the status of international human rights treaties and other international treaties and international case law in the domestic legal system of the Czech Republic, the Committee focussed its attention namely on:

- the implementation of the decisions of the Committee in cases of individual complaints of breach of rights protected by the Covenants, which may be raised by individuals pursuant to the Optional Protocol to the Covenant,
- the need for / status of anti-discrimination legislation, namely in connection with high unemployment of the Roma population and frequent placement of Roma children in "special schools",
- the legal status of persons whose freedom has been restricted or who have been deprived of personal freedom, namely detained persons, persons in custody or in prison. In this respect, the Committee referred to the necessity to ensure that those persons may exercise, since the moment when they are deprived of their freedom or their freedom is restricted, their right to legal aid and medical treatment and the right to inform a third person. The Committee also inquired about the independence of the body supervising the investigation of offences committed by the police of the Czech Republic, i.e., of the Inspection of the Ministry of Interior.

[16] Information regarding the implementation of final recommendations of CAT is a part of the 3rd periodic report approved by Government Resolution No. 88 of 23 January 2002.

Those aspects in which the Committee showed interest became the basis of its recommendations. At the same time, the Committee asked to be provided information on the implementation of these recommendations until 30 June 2002. This information is to refer to:

- the establishment of a mechanism for implementation of decisions (views) issued by the Committee in cases concerning individuals;
- investigation of complaints regarding activities of the Police of the Czech Republic by an independent body. This is resolved in the case of any criminal offences by the amended Criminal Code (No. 265/2001 Coll.), which newly vests the power to investigate criminal activities of the Police of the Czech Republic to the state attorney (Section 161(3)); however, matters regarding the investigation of misconduct of the police that does not have the nature of a criminal offence has not been resolved yet;
- the manner of resolution of the problems relating to the education of children of the Roma or other minorities through special preparation and affirmative measures[17].

3.1.3. Initial report on the implementation of obligations arising from the International Covenant on Economic, Social and Cultural Rights (No. 120/1976 Coll. – hereinafter only the "Covenant on Economic, Social and Cultural Rights")

The Committee for Economic, Social and Cultural Rights, which is the supervisory body of this Covenant, determined in May 2001 a set of problems that were to be discussed with CR. CR submitted in November 2001 a Supplement to the Initial Report of the Czech Republic on Measures Adopted to Implement the Obligations Arising from the Covenant[18].

The Supplement contains answers to questions relating, for instance, to the implementation of the Covenant at the local or regional level, employment of foreigners and disabled persons, access to education and housing, including the resolution of problems of the homeless and health care.

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[17] Government Resolution No. 1362 of 19 December 2001 regarding the proposal to implement final recommendations of the Human Rights Committee ordered the Minister of Justice and the Deputy Prime Minister and Minister of Foreign Affairs to prepare until 31 March 2002 a mechanism of the implementation of decisions of the Committee in matters concerning individuals, which is to be applied within the Czech Republic. This resolution represented a follow-up of Government Resolution No. 488 of 14 May 2001, under which the above cabinet ministers were ordered to prepare a unified mechanism by which the Ministry of Justice was to implement the decisions of the Committee in cases concerning individuals in accordance with the Optional Protocol to the Covenant (No. 169/1991 Coll.) and of complaints raised before the European Court of Human Rights in accordance with the European Convention on Human Rights (No. 209/1992 Coll. and No. 243/1998 Coll.). As of the same date, the Minister of Education, Youth and Physical Education is to submit a proposal to resolve problems relating to education of children of the Roman minority or of other minorities through their special preparation and affirmative measures, while the Minister of Interior is to prepare and submit a memorandum on the investigation of the police misconduct (http://www.vlada.cz/1250/vlada/cinnostvlady_usneseni.htm).

[18] The initial report regarding measures adopted in the period from 1 January 1993 until 31 December 1999 to fulfil the obligations of the Covenant on Economic, Social and Cultural Rights was submitted by the Czech Republic to the UN secretariat in Geneva in September 2000. The government took note of the report by Government Resolution No. 442 of 3 May 2000. The report shall be reviewed on 30 April and 1 May 2002.

3.1.4. Report on the implementation of the Framework Convention for the Protection of National Minorities (No. 96/1998 Coll. – hereinafter only the "Framework Convention")

On its 10th meeting held in April 2001, the Advisory Committee established under Article 26 of the Framework Convention adopted an opinion on CR's implementation of the obligations arising from the Framework Convention.[19] In its opinion, the Advisory Committee appreciated the efforts directed at the support of national minorities and their culture, the efforts of the Czech Republic to complete the legislative framework for the protection of national minorities and the establishment of advisory bodies of the government of the Czech Republic to guarantee the implementation of the minority policy. In addition to such positive evaluation, the opinion also included a recommendation to reinforce legal guarantees of principles of the constitutional order of the Czech Republic or to intensify practical implementation of the existing principles in certain areas. At the same time, the discrimination appearing in many areas, which is directed mostly against the Roma, was considered by the opinion as disquieting.[20]

3.2. Contract basis

3.2.1. Amendments to the Convention for Elimination of all Forms of Racial Discrimination (No. 95/1974 Coll. – hereinafter only "CERD Convention")

The government approved the amendment of Article 8(6) and adoption of a new Article 8(7) of the CERD Convention, which regulates a change in the financing of the Committee for Elimination of All Forms or Racial Discrimination (hereinafter only „CERD") from direct financing by the parties to indirect financing through the U.N. budget, consisting of membership fees paid by member states. Apart from the strengthening of CERD's independence, the above change is also directed at the unification of its financing method with the financing of other bodies overseeing the implementation of U.N. treaties.[21]

3.2.2. Assumption of new obligations under international law

CR acceded in 2001 to the following international treaties[22]:

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[19] The issue of the opinion was preceded by the initial report of the Czech Republic regarding the implementation of obligations arising from the Framework Convention for the Protection of National Minorities, which was submitted in 1999, and by the visit of the Advisory Committee to CR in October 2000.

[20] On 27 August 2001 CR delivered to the Council of Europe its national comments on the opinion of the Advisory Committee, which shall be reviewed by the Committee of Ministers together with the opinion of the Advisory Committee and the proposed conclusion and recommendations set out therein. Upon their review, the conclusions and recommendations shall be published by the Council of Ministers. Their publication may be expected in spring 2002.

[21] Government Resolution No. 25 of 9 January 2002 regarding the proposed adoption of an amendment to Article 8(6) and insertion of a new Article 8 (7) of the International Convention on the Elimination of all Forms of Racial Discrimination.

[22] As of 31 December 2001, CR was a party of 79 conventions of the Council of Europe and executed 17 of its treaties, thus occupying the first place among Central and Eastern European countries. The current number of all parties of CE treaties and "explanatory reports", or the wording of any reservations or statements, may be found on the websitehttp://conventions.coe.int/treaty/EN/cadreprincipal.htm. By its Resolution No. 1104 of 29 October 2001, the government expressed its consent with the execution and ratification of the Additional Protocol to the European Social Charter, establishing a collective complaints system. Due to the fact that the basic controlling mechanism of the European Social Charter, as amended by the Protocol of Amendment (based

1. the Optional Protocol to the Convention on the Rights of the Child, regarding involvement of children in armed conflicts – the ratification documents were deposited on 30 November 2001;
2. the Convention for the Protection of Human Rights and Dignity of Human Being with regard to the Application of Biology and Medicine (ETS 164) and the Additional Protocol on the Prohibition of Cloning Human Beings (ETS 168) - the ratification documents were deposited on 22 June 2001;Agreement Convention on Privileges and Immunities of the Council of Europe (ETS 028) – the accession documents were deposited on 9 February 2001;
3. the European Convention on the Legal Status of Children Born out of Wedlock (ETS 85) – the ratification documents were deposited on 7 March 2001;
4. the European Convention for the Protection of Individuals with regard to Automated Processing of Personal Data (ETS 108) – the ratification documents were deposited on 9 July 2001;
5. the European Convention on the Exercise of Children's Rights (ETS 160) - the ratification documents were deposited on 7 March 2001.

3.2.3. Complaints against CR before the European Court of Human Rights

The following complaints against the Czech Republic were heard before the European Court of Human Rights:
- a final resolution of the Council of Ministers issued on 4 and 5 December 2001 ended the supervision over the execution of the decision in the matter of Krčmář *et al versus* CR;
- the matter of Kuchař & Štis *versus* CR was deleted from the court register on 18 December 2001 due to an out-of-court settlement, under which CR paid to the complainants an amount of CZK 62 939.50 as satisfaction in equity and reimbursed legal costs.
- On 19 December 2001, the court ruled as inadmissible the complaint of Bankovič *et al versus* the European member states of NATO.

3.2.4. Individual complaints against CR decided by the Human Rights Committee

The Human Rights Committee reviewed three complaints against CR and issued in all those a ruling against it *(*R. Brok *vs.* CR, K. Walderode *vs.* CR and M. Blažek, G. Hartman & G. Křížek *vs.* CR). All three matters concerned the condition under which a restitution claim may be asserted only if the relevant person holds the Czech citizenship. This condition, which is set out in the "restitution laws", is considered by the Human Rights Committee as discriminatory and breaching the principle of equality before the law (see Chapter 3.1.2.).

3.3. Report of the European Commission on the Progress in the Approach to the European Union Achieved in 2001

In its chapters dealing with the protection of human rights and the rights of national minorities, the regular Report of the European Commission on the Progress in the Approach to the European Union ("EU") Achieved in 2001 pays again great attention to the situation of the Roma. The report states that the government took in 2001 further important steps to improve the situation of the Roma minority. On the other hand, the report refers to long-lasting problems (low level of education, worse housing conditions than those of the

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on periodical reports submitted by the states parties) has become clumsy, a protocol was agreed, introducing a system of collective complaints filed by competent non-governmental organisations.

mainstream population, etc.) and concludes by emphasising that "*matters relating to the improvement of the situation of the Roma is to be briskly and resolutely dealt with* ". Then the report appreciates the adoption of the Act on the Rights of National Minorities and states that the adoption of such act means the first step toward the transposition of the "anti-discriminatory acquis".

The document further concentrates on the prison system (referring to an improvement of conditions in prisons), on the conflict in the Czech TV, support of the civic sector (formation of the Endowment Investment Fund) and on the efforts to rectify past injustice (transfers of property to the Association of Jewish Communities). In the opinion of the European Commission, there still exists an urgent problem represented by trade in women and children. The report notes that it is necessary to adopt more effective measures for protection of victims of trade in people. The report also criticises the status of women, stating, for instance, that the ratio of average income of men and women has got worse and that there is no woman among the members of the government.

3.4. PHARE programmes

3.4.1. Support of racial and ethnic equality

18 April 2001 marked the start of the implementation phase of PHARE 2000 project "Support of Racial and Ethnic Equality". This "twinning" project in the amount of 0.5 million EUR has been implemented in co-operation with the racial equality department of the British Home Office. The objective of the project is to mediate exchange of experience between CR and member states of the European Union, namely Britain, Ireland and Spain, regarding protection against various forms of racial discrimination. The foreign partners have been co-operating in the preparation of a proposal for the implementation of EU Directive 2000/43/EC on Equal Treatment of Persons Irrespective of Race or Ethnic Origin. A legal analysis of this problem has already been submitted to the government as part of the Report on Possible Measures to Eliminate Discrimination[23]. The project will last until mid-June 2002.

3.4.2. Improvement of public institutional mechanism for the introduction, implementation and monitoring of equal treatment of men and women

The project named the "Improvement of Public Institutional Mechanism for the Introduction, Implementation and Monitoring of Equal Treatment of Men and Women", which was applied for by the Ministry of Labour and Social Affairs as part of the programme PHARE 2001, is expected to further promote and improve the mechanism of provision of institutional resources necessary to ensure equal opportunities for men and women. The project was approved by the European Commission and a tender was organized, in which Sweden was selected from among EU member countries that were interested in implementing this project through their experts. The expected result of the project is a proposal of institutional resources necessary for the exercise of the policy of equal opportunities for men and women, which would be suitable for CR and would enable it at the time of its admission to the EU to operate with respect to equal opportunities on the same level as the other member countries. The proposals should be focussed on more effective implementation of the policy of equal opportunities and on the improvement and further development of the co-operation among

[23] The report was prepared on the basis of Government Resolution No. 198 of 26 February 2001 (see Chapters 1.1. and 6.4.) and approved by Government Resolution No. 170 of 20 February 2002.

individual bodies of the national mechanism. The project also plans training for a sufficient number[24] of public servants in the formation, implementation, evaluation and promotion of the policy of equal opportunities for men and women is all sectors and at all levels of life of the society.

II. Special Part

1. Fundamental rights

1.1. Property rights

1.1.1. Owner's status and public interest

Modern society does not understand ownership in accordance with its former definition, i.e., as an "absolute rule over a thing". The current notion of ownership right ascribes an important role to the ownership, which is represented not only by a relation to a thing, but also embodies the owner's responsibility toward other people. The current ownership-related legislation is very broad and exceeds, as a whole, the former core of the notion of ownership as a fundamental right (e.g., the protection of rights of minority owners in commercial law, etc.). Therefore, the past reports on the state of human rights did not deal with the protection of ownership as a separate specific area. Some events that occurred in the last year indicate, however, that it is necessary to initiate a broad-based discussion in the society on certain conceptual elements of ownership and its impacts.

First of all, there is the question of delineating the protection of interests of an individual owner and the possibility of effective promotion of interests of the entire society. Practice has indicated that the current legislation regarding condemnation or forced restriction of ownership right is not sufficiently and clearly worked out. Therefore, the Ministry for Local Development prepared in 2001 the material intent of an act on condemnation of rights and title to lands and buildings.[25] While it is possible to welcome the idea of a more detailed regulation of condemnation, it will be necessary to concentrate in any future legislation namely on a systematic defence of rights of the weaker (i.e., individual owners) against the interests of strong entities (e.g., major corporations). The economic strength of certain entities operating on the market – particularly the multinationals – is such that those entities may easily pass their own interests as a public interest and may, for instance, claim that their interest in finding a favourable location for their establishment in a specific area is, in fact, a public interest, which may ensure increase of employment, development of the relevant region, and so forth. [26]

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[24] Approximately 300 employees.

[25] The material intent of the act on condemnation of rights and title to lands and buildings was prepared by the Ministry for Local Development in co-operation with the Ministry of Justice based on Government Resolution No. 612 of 20 June 2001.

[26] E.g., the Constitutional Court of the Federal Republic of Germany states that the protection of rights of the “minor” owner is the same as the protection of the right of an economically very strong owner and that it is inadmissible to use the institute of public interest for the protection of rights of an economically stronger owner, since such strong owner, who is involved in business, is also a private business entity that has to bear the risk of business failure.

1.1.2. Property restitution

Another unresolved problem is the matter of restitutions and remediation of property injustice. The right to protection of property does not infer that the society is obligated to return the property that was unjustly confiscated in the past. If, however, the state is ready to take such step, it must respect the principle of non-discrimination and equal treatment of persons who are in the same situation. The Public Protector of Rights accepted in 2001 537 complaints regarding restitution. The people complained namely of delays in the resolution of restitution disputes by the courts and of the inactivity of the authorities that are to surrender the property to its owners. A part of those petitions was without merit under applicable laws. Delays in court proceedings may be partly explained by the complex character of the matters, new opening of probate proceedings, etc.

Beside dissatisfaction with specific decisions on restitution matters, another matter that is being re-opened - at least at the theoretical and ethical level – is the question regarding the definition of persons entitled to get back property within the restitution process. The Human Rights Committee, which is authorised to deal with individual complaints, has come in certain cases to the conclusion that "*the effects of Act No. 87/1991 Coll. breach the provisions of the International Covenant for Civil and Political Rights, particularly the provisions of Article 26 of the Covenant – the prohibition of discrimination.*"[27] The Human Rights Committee insists that the provision relating to the Czech citizenship as a prerequisite for restitution entitlements is discriminating. At the same time, the Human Rights Committee described as breach of prohibition of discrimination also certain cases involving persons who were formerly Czech citizens (see chapter 3.1.2. of the General Part). The opinions of the Human Rights Committee on individual breaches of obligations of international law should not be taken lightly.

"*It is necessary to note in this context that the European Court of Human Rights currently deals with several actions brought against CR for alleged breach of the prohibition of discrimination due to the stipulation of the condition of Czech citizenship in restitution laws. The bodies of the Convention have based their conclusions on the fact that the Convention does not guarantee the right to court or out-of-court vindication and, as the discrimination under Article 14 of the Convention relates solely to a breach of other substantive rights guaranteed by the Convention, the breach of prohibition of discrimination may not be even inferred.*[28]*Due to the adoption of Protocol No. 12 to the Convention, it may not be ruled out, however, that the disputable condition may be qualified in future as discriminatory.".*[29] Any other "opening" of individual possibilities of property restitution may certainly harm current owners and seriously breach the principles of legal certainty. *Therefore, the government and the parliament should consider with utmost care and without prejudice a possibility of another form of compensation of those who became in the past victims of property injustice and do not meet the prerequisite of the Czech citizenship.*

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[27] E.g., the opinion of the Human Rights Committee issued in the matter of Šimůnek *vs.* CR (Complaint No. 516/1992), Adam *vs.* CR (Complaint No. 586/1994), Walderode *vs.* CR (Complaint No. 747/1997).

[28] Decision of the European Human Rights Commission of 4 March 1996 in the matter of Brežný & Brežný *vs.* the Slovak Republic, Pezoldová *vs.* CR of 11 April 1996, Nohejl *vs.* CR of 13 May 1996 and Jonáš *vs.* CR of the same date.

[29] Report on the status of settlement of complaints filed against CR with the European Court of Human Rights within the period from 1 June 2000 until 31 May 2001, p. 3 (the report is submitted every year by the Minister of Justice based on Government Resolution No. 611 of 16 June 1999).

Another matter connected with restitutions as a means of remediation of injustice is the remediation of certain property injustice caused by holocaust, which became possible due to Act No. 212/2000 Coll. on Mitigation of Certain Property Injustice Caused by Holocaust. Based on Government Decree No. 335/2001 Coll., which became effective on 1 November 2001, the title to certain lands and buildings was transferred to Jewish communities in CR. In this case, the symbolic value of the efforts to mitigate consequences of the holocaust exceeds the price of the property handed over to Jewish communities.

1.1.3. Relation of easements to ownership right

With respect to property rights, there appear more and more problems concerning easements[30] and their relation to ownership right. Easements mostly mean the use of one of the adjacent lands in cases in which a plot of land may be accessed only through another plot of land. The title of the owner of such plot of land is restricted by the easement of the owner of the other plot of land. If there is a structure erected on such plot of land (whereby the owner of such structure need not be the same as the owner of the plot of land on which such structure is erected), such owner of the structure may seek protection of his title – the right to use the property – before the court, which may establish, based on a petition of the owner of the structure, an easement represented by the right of way across the adjacent plot of land (Section 151o(3)). Such explicit right is not granted by Act No. 40/1964 Coll., the Civil Code, as amended (hereinafter only the "Civil Code") to every owner of the real property, but only to the owner of the structure. Therefore, the owner of a plot of land accessible only through the adjacent plot of land who fails to agree with the owner of the adjacent plot of land or does not otherwise acquire the right to such plot of land (e.g., by inheritance or by prescription), is unable to fully exercise his ownership right.

The statement of reasons of certain decisions of courts of general division indicate that, in cases in which the owner holds the title to a plot of land and not to a structure erected thereon and may access such plot of land only through an adjacent plot of land, the courts do not consider themselves as competent to decide on the establishment of a right of way through the adjacent plot of land. Therefore, there exists a double standard relating to the protection of ownership right – one for owners of the buildings and a different one for owners of land.

Such inconsistent legal concepts may be overcome by unified interpretation of the courts (namely by the Constitutional Court); it is, however, impossible to disregard the double standard of protection of title, which is applied by the courts and which does not correspond with the principle of unified content of ownership right. *Therefore, this problem deserves increased attention of the Ministry of Justice in its current preparations of the new Civil Code.*[31]

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[30] Easements are regulated and arise under Act No. 40/1964 Coll., the Civil Code, as amended (hereinafter only the "Civil Code") under a written contract, by inheritance, decision of the competent body or directly by the law.

[31] The proposed material intent of the act on condemnation, which was prepared in the end of 2001 by the Ministry for Local Development in co-operation with the Ministry of Justice, counts on a restriction of ownership right in favour of public interest. This also includes a possibility to enter a plot of land that cannot be otherwise accessed. In the course of further works on the Civil Code, the Ministry of Justice shall check the possibilities that have not yet been covered by the Civil Code in order to ensure a comprehensive resolution of the access to real properties within one law – the Civil Code.

1.2. Personal data protection

1.2.1. Office for Public Information Systems

The Office for State Information System was transformed by Act No. 365/2000 Coll. on Information Systems Used by Public Administration (hereinafter only the "Act on Public Information Systems") to the Office for Public Information Systems (hereinafter only "OPIS"). Until the adoption of the Act on Public Information Systems, most ministries collected and processed information without sufficient legal support[32].

Thus, all public administration bodies may operate since 1 July 2001 only such information systems that meet the conditions necessary for granting an authorisation (attestation) for their operation. At the same time, all public administration bodies are obligated to ensure protection and security of information contained in information systems operated by them. It happened, however, that the information system administrator provided personal data without consent of persons whose data were on the information system. Such cases fall under the competency of the Office for Protection of Personal Data.[33] The purpose of the existence of a unified standard applying to public information systems is to ensure that public information bodies exchange information solely in a predetermined manner (through a reference interface), and to prevent any unnecessary duplicate collection of information by various bodies.[34]

1.2.2. Authorisation of the Police of the Czech Republic, intelligence services and the Security Information Service (Bezpečnostní informační služba, hereinafter only „BIS") to handle data registered in public information systems

The events of 11 September 2001 led to an increased focus on security matters, which was accompanied by appeals to strengthen the powers of the security bodies of the state. On 30 October 2001, the Senate returned to the Chamber of Deputies the proposed amendment of the asylum act (see Chapter 10.1.), which provides to BIS an actually unlimited access to personal data which are kept and processed, under Act No. 101/2000 Coll. on Personal Data

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[32] Statement of reasons to the government draft of Act No. 365/2000 Coll., p. 2, Press of Chamber of Deputies No. 457 (http://www.snemovna.cz/forms/sqw_tmp/272a0005.doc).

[33] The Office for Protection of Personal Data was established under Act No. 101/2000 Coll. on Protection of Personal Data to exercise the powers of a central state administration authority in the area of protection of personal data and electronic signature. The Act applies to all types of processing of personal data, whether automated or by other means.

[34] The experience of the Counselling Centre for Citizenship, Civil and Human Rights indicates that the data that are collected by the administration authorities prior to the issue of a certificate of citizenship of the Czech Republic by declaration under Section 18a of Act No. 40/1993 Coll. on Acquiring and Losing Citizenship of the Czech Republic, as amended, frequently include data whose presentation is not required by the Citizenship Act as a condition to granting the citizenship (fulfilment of tax obligations, proper payments of health and social insurance, etc.). The requests for such information have its logic, but it is necessary to amend the applicable law. At the same time, the Act does not stipulate any condition under which the citizenship may not be granted to a person who was to be deported under a final decision of a court or an administrative authority. The Ministry of Interior has been addressed several times by a court requesting not to grant Czech citizenship to a person who is to be deported. The court considered granting the Czech citizenship to such persons as defeating the execution of a court decision. In such cases, the Ministry of Interior notified the court that the expulsion sentence has no effect on granting Czech citizenship. With respect to personal data protection, it is also disputable whether the Ministry is authorised to ask the Police of the Czech Republic for information regarding expulsion. Under Act No. 283/1991 Coll. on the Police of the Czech Republic, as amended, the police may process sensitive data (including data on criminal activities) solely "*if it is, based on the nature of the offence, necessary for the performance of the tasks of the police connected with criminal litigation*." (Section 42g(3)).

Protection, by bodies performing public administration tasks. The Police of the Czech Republic and the intelligence services would thus acquire, during the performance of their tasks, an unlimited access to information relating to telephone contacts of monitored persons.[35] The Chamber of Deputies then approved the amendment to the asylum act without the above powers of security bodies. Nevertheless, the government submitted to the Parliament a draft amendment to Act No. 153/1994 Coll. on Intelligence Services of the Czech Republic, as amended, which includes a provision expanding the powers of the security bodies in the same manner as the regulation that was proposed as part of the asylum act.[36]

1.2.3. Granting access to files of the former State Security

A group of senators prepared in 2000 a bill on granting access to documents arising from the activities of the former state security and some security bodies of the communist regime, which amends Act No. 140/1996 Coll. on Granting Access to Files of the Former State Security.[37] Although several positive amendments were made to the bill during its review by the Chamber of Deputies, its adoption raises certain concerns relating to due protection of personal data, which may be published even without the consent of the relevant person.[38]

1.3. Rights of personality

1.3.1. Protection of personality at the radio and TV programmes

Like Act No. 46/2000 Coll. on Rights and Obligations Relating to Issue of Periodicals, as amended (the "Press Act"), Act No. 231/2001 Coll. on the Operation of Radio and Television Broadcasting (the "Broadcasting Act") has also introduced new institutes of right to response and additional notice.[39]

Additional notice means the right of a natural person or a legal entity in whose case a radio or television programme published information on proceedings relating to a criminal offence or misdemeanour (administrative misdemeanour) committed by such person or entity,

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[35] The government draft of the amendment to No. 325/1999 Coll. on Asylum, which is published in Parliamentary Press No. 921 (http://www.snemovna.cz/forms/sqwtmp/272a0008.doc), does not contain the proposed amendment to Act No. 283/1991 Coll. on the Police of the Czech Republic, as amended and of Act No. 153/1994 Coll. on Intelligence Services of the Czech Republic, as amended. Such proposal for an increase of powers of the Police of the Czech Republic and the intelligence services, including BIS, was included in the amendment to the Act on Asylum on the basis of a resolution of the Defence and Security Committee of the Chamber of Deputies No. 167 of 7 June 2001 (http://www.snemovna.cz/forms/sqw_tmp/272a000a.doc). The Chamber of Deputies approved the proposed amendment of the act with modifying proposals by the Senate on 27 November 2001 (http://www.snemovna.cz/sqw/historie.sqw?O=3&T=921).

[36] The proposed amendment to Act on Intelligence Services of the Czech Republic was approved by Government Resolution No. 52 of 16 January 2002. The Chamber of Deputies currently reviews the amendment (Press of the Chamber of Deputies No. 1231) (http://www.snemovna.cz/sqw/text/tiskt.sqw?O=3&CT=1231&CT1=0).

[37] The Senate submitted this amendment to the Chamber of Deputies on 14 August 2001. The Chamber of Deputies approved the proposed amendment to the Act on Granting Access to Files of the Former State Security by its Resolution No. 2056 of 8 February 2002. (Press of Chamber of Deputies No. 1021: http://www.snemovna.cz/forms/sqw_tmp/576e000a.doc). The Senate reviews the proposed amendment to the act as Senate Press No. 198 (http://www.senat.cz/tmp_sqw/1b190001.DOC).

[38] This refers namely to the wording of Section 10(a), which does not fully correspond to Act No. 101/2000 Coll. on Protection of Personal Data, as amended.

[39] See also The Report on the State of Human Rights in the Czech Republic in 2000, Chapter 2.2.

which were not terminated by a valid decision, to request from the operator of such broadcasting service publication of the results of such proceedings in the form of an additional notice. The operator of such broadcasting service may fulfil such request only if he does not commit, by publishing such notice, any administrative misdemeanour or criminal offence, or if such information is a quotation of a third party or a true interpretation of same and is presented as such. This indicates that, despite some erroneous interpretations, such right is not absolute.

The right to response means the right of a natural person or a legal entity to generally request that the operator of the broadcasting service publishes a response to information published in its programmes, which affects the honour, dignity or privacy of such person or the name and reputation of such legal entity. The operator is obligated to fulfil such request and publish the response.

In both cases, i.e., with respect to additional notice and the right to response, the Broadcasting Act determines limits for assertion of such rights with the operator of the broadcasting service and for their subsequent broadcasting, including conditions under which the operator is relieved of such duty. The duty of the operator of the broadcasting station to publish the additional notice or response does not terminate by the death of the natural person, but such right passes to the spouse, children or parents of the entitled person.

1.3.2. Excess use of protection of personality under criminal law

The general public – particularly the media – paid increased attention to libel charges filed under Section 206 of the Criminal Code. This was also due to the fact that such charges were pressed by persons who were known to the public, or against such persons.

Year	*Prosecuted*	*Accused*	*Sentenced persons*[40]	*No. of offences sentenced*
1993	71	33	12	14
1994	76	38	23	26
1995	86	45	19	26
1996	56	36	16	17
1997	73	47	15	21
1998	57	13	8	10
1999	92	57	12	18
2000	85	63	18	25
2001	118	70	20	24

One of the reasons for the increase in the number of libel charges is the financial aspect. While pressing criminal charges is free, filing a civil claim for protection of personality is subject to a fee. This is one of the reasons why the protection of rights under criminal law, which is generally provided as subsequent protection, is frequently used as the first one, and only after the failure of such step, the affected persons resort to those means of protection of rights that are to precede criminal charges.

[40] As to sentences for libel under Section 206 of the Criminal Code, the statistics of the Ministry of Justice shows that, during the above period, only one of 108 sentenced persons got a prison sentence without probation. At the same time, the statistics does not show whether such sentence was imposed on a recidivist in the case of concurrent offences.

Until the end of 2000, the amount of court fees to be paid for the initiation of a civil action for protection of personality, including compensation for non-property damage, was CZK 4,000, irrespective of the claimed amount of damages. Under Act No. 255/2000 Coll. amending Act No. 549/1991 Coll. on Court Fees, as amended (hereinafter only „Amendment to the Act on Court Fees"), the court fee relating to a claim for protection of personality in which the plaintiff requests cash damages in an amount exceeding CZK 15,000 is equal to 4% of the claimed damages. The Amendment to the Act on Court Fees has removed the imbalance due to which it was possible to acquire, for a relatively low amount, compensation for property or non-property damage, which sometimes amounted to several millions. At the same time, this amendment has indirectly opened the question relating to the value of protection of personality of persons whose financial situation justifies the waiver of court fees that would have to be paid by them, as compared to persons who are able to cover all legal costs since the commencement of the trial. Based on the foregoing, a person in a less favourable financial situation who is unable to pay court fees equal to 4% of the requested cash damages will be able to seek only such damages for which he will be able and willing to pay court fees.

The excess use of protection of personality under criminal law, as well as other unjustified criminal charges (e.g., for suspected spreading of alarming news) has a negative impact on the development of legal culture in the Czech Republic and evokes justified criticism by the media and foreign observers. This applies namely to cases in which such protection is sought by famous public personalities or public officials.

1.4. Freedom of movement

1.4.1. Performance of "pre-entry" checks at the Praha-Ruzyně Airport

In mid-July 2001, Great Britain started performing the so-called pre-entry controls of departing passengers at Praha-Ruzyně Airport[41]. The purpose of this step was to reduce the number of asylum applicants from CR in Great Britain. Such measure of the British party has met, since the very beginning, with critical response from the part of the Czech and the British public, because it meant a *de facto* primary exclusion from transport clearance of such passengers in whose case the British consular officers came to the conclusion that such passengers might apply for asylum after their arrival in Britain.

Based on the structure of asylum applicants coming from the Czech Republic, such measure affected mainly Czech citizens of Roma ethnic origin. The pre-entry checks evoked criticism due to the fact that they represent a restriction of the right of a citizen to leave the state whose citizenship such person holds (i.e., the right to leave any country, including one's own), and due to possible participation of the Czech Republic in such discriminatory activities taking place on its own territory. Such rights are guaranteed not only by a large number of international human rights treaties, to which the Czech Republic is a party, but also by the Charter.[42] On the other hand, it is necessary to note that it is the sovereign right of every

[41] By its Resolution No. 131 of 7 February 2001, the government approved the measure undertaken by Great Britain in the form of consent with the exchange of interpretation notes to Article 36 of the Consular Treaty between the Czechoslovak Socialist Republic and the United Kingdom of Great Britain and Northern Ireland No. 135/1976 Coll.

[42] The activities of the British consular officers and the place and method of exercise of the pre-entry checks are in conflict with the technical requirements relating to the exercise of the consular agenda by consular officers set out in the Vienna Convention on Consular Relations (a separate facility, as to its construction,

country to decide to whom it will allow entry into its territory. Moreover, the government faced the alternative of introduction of visas, which would have had a negative impact on Czech citizens and on the cultural, economic and other relations of both countries.

This situation was discussed at the meetings of the Council for Roma Community Affairs and the Human Rights Council. Each of those advisory bodies adopted a resolution requesting the government to strive in its negotiations with the British party to limit such measure for the shortest possible time. Since July 2001, the implementation of this measure was interrupted a number of times, but the British party renewed it after a several weeks' interruption.[43] At the same time, the Public Protector of Rights notified the British Commission for Racial Equality of the problematic nature of such pre-entry checks, and the Commission subsequently confirmed its reservations to this practice.

1.5. Freedom of religion

The government presented to the Parliament of the Czech Republic a bill on freedom of religion and status of churches and religious societies (hereinafter only the „Act on Churches").[44] Under the Act on Churches, every church or religious society seeking registration (gaining legal personality) must document that it has 300 members, which represents a significant reduction in comparison to the currently required 10 thousand members (Act No. 308/1991 Coll.). Such reduction of the"„registration limit" will allow registration in the Czech Republic to the world religions (e.g., Buddhists, Moslems) or to confessions that are important abroad but have a few members in the Czech Republic (e.g., the Anglicans). At the same time, however, the Act on Churches divides churches and religious societies into "simply" registered or those registered churches that are authorised to exercise special rights, which include namely teaching religion at state schools, serving as clergymen in the armed forced and in facilities for persons whose personal freedom is restricted or who are deprived of personal freedom, and the performance of church wedding rites. Apart from the effective period of registration and from the performance of obligations prescribed by the law (Section 11(1)), the authorisation to exercise the key rights in the special rights list is subject to the acquisition of such number of signatures of supporters from among Czech citizens or foreigners holding permanent residence permit that represents 1 ‰

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marked with sovereign signs of the state that carries out the consular agenda). The consular officers also checked travel documents, including those of the Czech citizens, which may be checked, pursuant to Act No. 329/1999 Coll. on Travel Documents, solely by the Police of the Czech Republic (Section 3(3): „*The Police of the Czech Republic is the only body authorised to request the presentation of, and check, travel documents ...*").

[43] By its Resolution No. 831 of 22 August 2001, the government expressed at Great Britain's request its consent with re-introduction of pre-entry checks, without resolving the question whether such re-introduction means repeated consent with controls performed in July (i.e., only one repetition), or whether the government approved, by such consent, any future repetition of such checks irrespective of the number of instances in which such checks will be re-introduced. An extensive opinion on this matter was also prepared by the Czech Helsinki Committee – see http://www.helcom.cz.

[44] The government approved the bill by its Resolution No. 383 of 25 April 2001. The act was published in the Collection of Laws under No. 3/2002 Coll. on Freedom of Religion and Status of Churches and Religious Societies. The Act came into effect on 7 January 2002. The bill on churches and religious societies was approved by the Chamber of Deputies on 21 September 2001 but was rejected by the Senate on 30 October 2001. The Chamber of Deputies approved the bill again on 27 November 2001, but the President of the Republic refused to sign it and returned it on 6 December 2001 back to the Chamber of Deputies, which overran his veto on 18 December 2001. (http://www.snemovna.cz/sqw/historie.sqw?O=3&T=919).

of the population of the Czech Republic as determined by the most recent census. The former bill required 2 ‰, i.e., 20,000 church members.[45]

Thus, granting special rights under the Act on Churches requires, like in the case of the former act, the support of 10,000 persons. Moreover, a new condition has been imposed in connection with the granting of those rights, i.e., the length of "simple" registration of the church and its financial results. Thus, some churches are not granted the same rights as would have been granted to them under the previous law. Due to that, the act separates between churches with "higher" and those with "lower" status. Therefore, the churches or religious societies striving to acquire equal footing with traditional churches consider the new act as stricter than the previous one.

2. Political rights

2.1. Freedom of expression and free dissemination of information

2.1.1. Possibilities to restrict freedom of expression

Journalists working for some media frequently expressed in 2001 their view that the freedom of speech is absolute and may not be restricted, using the argument that the Charter and some international human rights treaties to which CR is a party guarantee freedom of expression. This view relied on vague lay interpretation of those documents or on the legal systems of Anglo-Saxon countries, as if their standards were superior to international and to Czech law. It has to be noted in this respect that the restriction of freedom of speech is allowed, in justified cases, by the Charter (Article 17(4)), as well as by the Convention for the Protection of Human Rights and Fundamental Freedoms (No. 209/1992 Coll. – hereinafter only "ECHR"– Article 10(2)) and by the Covenant on Civil and Political Rights (Article 19(3)). The requirement of unlimited freedom of expression is also in direct conflict with the Convention on Elimination of All Forms of Racial Discrimination, which orders to CR to prohibit by the law all manifestations of racial hatred. The frequent opinion that the freedom of expression is or should be absolute may be considered as a proclamation following a specific purpose rather than a legal opinion or a guideline for the exercise of rights.

The media sometimes criticised even the Police of the Czech Republic if it pressed criminal charges for verbal criminal offences. In certain cases, this criticism may appear as justified.[46]

Thus, it is necessary to generally reject any claims for "absolute freedom of speech" because they are in conflict with Czech law and with international law. On the other hand, it is necessary to try to avoid any misinterpretation of the applicable provisions of the Criminal Code.

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[45] http://www.snemovna.cz/forms/sqw_tmp/3276000f.doc

[46] This applies, for instance, to the cases of the rightist radical Jan Kopal and the journalist Tomáš Pecina, which were frequently discussed in the media and in which the Police of the Czech Republic prosecuted those persons on the grounds of suspected approving of a crime (Section 165 of the Criminal Code) for their alleged approval of the terrorist attacks in the USA, although both of them dissociated themselves at the same time from those attacks. Another well-known example was the criminal prosecution of the priest Václav Protivínský for his legitimate criticism of the past of the Communist Party of Bohemia and Moravia, under the charges of defamation of the nation, race and creed (Section 198(1)(b) of the Criminal Code).

2.1.2. Protection of source of information

The Broadcasting Act (see also Chapter 1.3.1.) has introduced the institute of "„protection of source and content of information". This means the right of a natural person or a legal entity that participated in the acquisition or processing of information to be published or published in a radio or television programme to refuse to disclose to the court, another state authority or a public administration authority the origin or content of such information. Like the freedom of expression, the right to protect the source or content of information is not an absolute right and may not be invoked in cases in which its exercise would constitute a suspicion of aiding and abetting perpetrators of a criminal offence under Section 166 of the Criminal Code, failure to frustrate a criminal offence under Section 167 of the Criminal Code, or failure to report a criminal offence under Section 168 of the Criminal Code.

Despite some erroneous interpretations, this right belongs not only to professional journalists but to any person who has participated in the acquisition or processing of information for the purpose of its publication in a radio or television programme.

2.2. Right of assembly

Based on various considerations, including, *inter alia*, a response to the excesses committed on the occasion of various events, including the session of the International Monetary Fund and the World Bank in 2000, the Ministry of Interior submitted a proposal for amendment of the legal regulation of the right of assembly. The draft includes several disputable provisions:

- It is proposed to extend the time limit for the notification of the assembly from the current five calendar days to seven *working* days, i.e., a *de facto* double the current time limit.
- The draft introduces a new institute of notification of the assembly within a shortened time limit in justified cases; moreover, it will be necessary in these cases to ask for permission to hold the assembly instead of mere notification[47].
- The draft also proposes a significant increase of fines for misdemeanours of the assembly law from the current CZK 1,000 up to CZK 10,000 or, with respect to certain misdemeanours, to CZK 15,000.[48]

The discussion also focussed on the personal extent of the right of assembly. The proposal newly divides the right of assembly to the active and passive right, whereby the only persons who may call an assembly (i.e., hold the active right) should be the persons who are registered for permanent residence in the Czech Republic or to whom such permanent residence has been permitted.

The amendments to assembly laws[49] include an amendment to Act No. 13/1997 Coll. on Land Communications, as amended (hereinafter only the "Land Communications Act"),

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[47] At the same time, the draft considers as misdemeanour, and imposes the relevant sanctions for, the organisation of any assembly that has not been previously announced. Therefore the rejection of any notification of an assembly submitted in the shortened time limit shall operate as a *de facto* announcement of the organiser to the competent bodies that an unannounced assembly is to be held, i.e. a misdemeanour is to be committed.

[48] The fine in the maximum amount of CZK 1,000 was enacted in 1990, when the average monthly income reached close to CZK 2,000; the current average monthly income exceeds CZK 15,000.

which includes provisions regarding common, special and prohibited use of land communications. The Land Communications Act, which includes, *inter alia,* an exact definition of an owner of a land communication, also expressly defines the purpose of the use of land communications[50] and the procedure to be applied in respect of its special use[51], where the special use of a land communication includes holding an assembly[52]. In the case of an assembly held on a land communication, its organiser has, apart from the notification duty, also an obligation to ask for permission for special use of the land communication. Therefore, an assembly held on a land communication is still subject to the principle of permission, not to the notification principle defined in Article 21 of the Covenant on Civil and Political Rights[53]. The amendment to the Land Communications Act would thus mean that it would be no longer necessary to ask the owner or manager of a land communication for permission to organise assemblies thereon.

2.3. Participation in public life

2.3.1. Election right of EU citizens and foreigners[54]

A new law has been adopted in respect of elections to municipal assemblies. Act No. 491/2001 Coll. on Elections to Municipal Assemblies (hereinafter only the "Municipal Elections Act") confers the right to vote and to stand for election to any foreigner who is registered for permanent residence in the respective municipality and to whom such right has been granted under an international treaty of which the Czech Republic is a party and which has been published in the Collection of International Treaties (Section 4). Such treaties undoubtedly include the Convention of the Council of Europe on the Participation of Foreigners in Public Life at Local Level (ETS 144 - hereinafter only the "Convention").

Due to the fact that CR has not yet ratified the Convention[55], only citizens of EU member states will have the election right after the admission of the Czech Republic to EU.

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[49] In the second half of February 2002, the bill on right of assembly was reviewed by the Committee for Constitutional Law of the Chamber of Deputies, which interrupted the review and asked for an opinion of the Ministry of Interior**.**

[50] Section 19(1) of Act No. 13/1997 Coll. stipulates as follows: "*Land communications may be used free of charge, within the limits set out in special laws regulating land communications traffic and under the terms specified herein, by anyone in the usual manner and for the purposes for which they have been designated (hereinafter only the "common use"), unless specified otherwise herein or by a special law in special cases (with a reference to act on municipal fees) …*".

[51] Section 25 (1) and (2) of Act No. 13/1997 Coll. stipulates as follows: "*The use of motorways, roads and local communications in other than the usual manner or for purposes other than those for which they have been designated (hereinafter only the "special use") requires a permission of the competent road administration authority, which shall be issued with prior consent of the owner of the relevant land communication and, if the special use may affect the safety or uninterrupted flow of the road traffic, also with prior consent of the Ministry of Interior in the case of a motorway or a freeway, in all other cases with prior consent of the competent body of the Police of the Czech Republic.*

The Road Administration Office shall issue the permission for special use to a legal entity or a natural person on the basis of a written application and for a limited period of time and shall stipulate in such permission the conditions of such special use. The permission of special use shall not relieve the user of his obligation to provide compensation for damage or pollution of the highway, road or local communications".

[52] Section 25(6) of Act No. 13/1997 Coll. stipulates as follows: "*The special use of a highway, road and local communication means …e) organisation of sports, cultural, religious, entertaining or similar events and assemblies, if such assemblies may threaten the safety or uninterrupted flow of the road traffic,…*".

[53] *"The right of peaceful assembly shall be recognized."*

[54] Problems of foreigners are dealt with in Chapter 9.

Such restrictive approach not only contradicts the objective of creating conditions for fast and effective integration of all lawfully settled foreigners, but does not respect Government Resolution No. 311 of 29 March 2000, which ordered the Minister of Interior, the Minister of Culture and the Minister of Local Development to create until 31 December 2001 the terms and conditions for the exercise of the right of *"every foreign resident to vote and to stand for election in local authority elections, provided that he fulfils the same legal requirements as apply to nationals and furthermore has been lawful and habitual resident in the State concerned for the 5 years preceding the elections"* (Article 6 of the Convention). This means that if there is no further bilateral or multilateral treaty, the election right is *de facto* still denied to foreigners – save for the above exception.

The provision of the Act on Municipal Elections regarding the permanent residence within the municipality as the condition for the exercise of the election right may cause problems. Act No. 133/2000 Coll. on Population Register and Birth Identification Numbers, as amended (hereinafter only the "Population Register Act") stipulates that the data regarding foreigners that are entered in the population register are the data regarding foreigners with residence permits; according to the Foreigner Act, the residence permit means permission for permanent residence in the Czech Republic. Under the strict interpretation of the law, only a foreigner who has been granted such permission may be registered for permanent residence within a municipality. Thus, the act excludes foreigners living in the Czech Republic on the basis of long-term visa, which are issued for employment or business purposes, for unification of families, etc. If this interpretation of the law were applied, the legal regulation of the election right would be in conflict with Article 19 of the Treaty Establishing the European Community, which confers the right to vote and to stand for election to every citizen of the European Union *"residing"* in a member state whose citizenship he does not hold.

It is therefore necessary to quickly take steps to resolve such situation so that the right to vote may be granted to all foreigners who are lawful residents in our country at least within the scope prescribed by the Convention. It would be therefore appropriate that the Ministry of Interior arranges for the delivery of the Convention to the Parliament to express consent with its ratification. The fact that this has not happened yet will have an impact on the municipal elections that will be held in 2002, because the foreigners with permanent residence permit will be unable to take part in those elections.

2.3.2. Access to public office

An extensive amendment of Act No. 483/1991 Coll. on the Czech Television, as amended (hereinafter only the "Czech Television Act") was adopted in 2001 under No. 39/2001 Coll. in connection with the situation in the Czech Television that occurred in the end of 2000 and at the beginning of 2001. As of the effective date of this amendment, the tenure of all current members of the Council of the Czech Television (hereinafter only the „CT

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[55] The proposal to sign and ratify the Convention on the Participation of Foreigners in Public Life at Local Level (ETS 144) (with reservations to Parts B and C thereof) was approved by the government in the form of Government Resolution No. 311 of 29 March 2000. CR signed the Convention on 7 June 2000; however, the Ministry of Interior, as the guarantor of the Convention, has not sent yet to the Parliament of the Czech Republic the proposal to express the consent therewith, thus breaching the rules of procedure of the government (http://www.vlada.cz/1250/vlada/cinnostvlady_jednacirad.htm,http://www.snemovna.cz and http://conventions.coe.int). Moreover, the government ordered the Minister of Interior, the Minister of Culture and the Minister of Local Development to ensure until 31 December 2001 the terms and conditions for the exercise of rights set out in chapters B and C of the Convention.

Council") was terminated. Thus, the Chamber of Deputies elected new members of the entire CT Council. Candidates to the CT Council were selected by the Election Committee of the Chamber of Deputies, which checked whether each candidate meets the terms and conditions of the nomination that are specified by the law. Subsequently, the Election Committee recommended to the Chamber of Deputies 45 candidates, 15 out of whom were to be elected by the Chamber of Deputies as members of the CT Council. Although the Czech Television Act does not stipulate that the election of members must be based on recommendations of the Chamber of Deputies or on a "pre-election" by a body of the Chamber of Deputies, such procedure complies with Act No. 90/1995 Coll. on Rules of Procedure of the Chamber of Deputies, as amended.

3. Court protection and the judiciary

3.1. Civil and administrative litigation

3.1.1. Amendment to the Civil Procedure Code

An extensive amendment to the CPC (No.30/2000 Coll.) came into effect as of 1 January 2001. The amendment represents a breakthrough regarding the principle of the necessity to prove allegations, which transfers the burden of proof in matters of gender discrimination at work (for details see Chapter 6.1.1).

3.1.2. Repeal of Part Five of the CPC (Section 244 – Section 250s) by the Constitutional Court of the Czech Republic

As of 31 December 2002, the Constitutional Court repealed by its finding Part Five of the CPC – the Administrative Justice System, which was in conflict with the right to full review of decisions of administrative authorities by an independent and impartial court as requested in Article 6(1) of ECHR and in Article 36(2) of the Charter[56]. In the rationale to the finding, the Constitutional Court states that *"the entities whose rights or obligations were obviously dealt with or whose rights could have been affected by the decision of the state administration authority lack the right to file an administrative claim, although it may not be ruled out that such rights were their fundamental rights.*" The Constitutional Court expressly stated that such absence of full judicial review may concern the ownership right as well, and that the situation constituted by the amendment to the CPC adopted in 1991 (Act No. 519/1991 Coll.) *"was understood as a temporary solution"*, referring to the fact that the Constitutional Act No. 1/1993 Coll., the Constitution of the Czech Republic, as amended (hereinafter only the "Constitution") expressly establishes the Supreme Administrative Court without postponing its formation. This problem was resolved by the adoption of the Administrative Justice Act (Chapter 3.1.5.).

3.1.3. Repeal of certain provisions of Act No. 148/1998 Coll. on the Protection of Secret Facts, as amended (hereinafter only the "Act on Secret Facts"), by the Constitutional Court of the Czech Republic

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[56] Finding No. 276/2001 Coll.; even before that, the Constitutional Court had expressed in its Finding No. 1/1997 Coll. of 27 November 1996 (file no. Pl. ÚS 28/95) its opinion that Czech law *"does not clearly and distinctly constitute the right to full review of decisions issued by administrative authorities by an independent and impartial tribunal"…*

Due to the absence of a possibility of full and independent judicial review of the decisions of the National Security Office (hereinafter only „NSO“) given in administrative proceedings regarding the issue of the certificate for contact with secret facts, the Constitutional Court decided as of 30 June 2002 as follows:

- repealed the part of the Act on Secret Facts, which excluded such decisions from judicial review[57];
- repealed the provisions of the Act on Secret Facts under which NSO was not obligated to notify of the reasons for rejection of the application for the certificate and due to which the certificate was not issued.

This decision of the Constitutional Court also defined in a more precise manner the legal definition of a “security risk”, whose meaning had been determined until then by NSO at its own discretion.

Thus, NSO's decisions will be subject to full review, will have to specify reasons why NSO decided that the respective person does not meet the conditions for the issue of the certificate, and NSO will lose its current very broad possibility to assess what is and what is not a security risk in accordance with the Act on Secret Facts.[58] As a follow-up to this finding of the Constitutional Court, the government submitted to the Parliament a draft amendment to the Act on Secret Facts, which complies with the requirements determined in the finding of the Constitutional Court.[59] It is worth mentioning in this respect that the objective of the petition of the Human Rights Council regarding the amendment to the Act on Secret Facts, which was presented on 21 June 2001, was to implement the same changes as were later effected by the Constitutional Court of the Czech Republic.

3.1.4. Repeal of Section of Act No. 200/1990 Coll. on Misdemeanours, as amended (hereinafter only the “Misdemeanours Act”) ruling out the possibility to review decisions on fines up to CZK 2,000, by the Constitutional Court of the Czech Republic

Like in the case of the Act on Secret Facts, the Constitutional Court found a conflict between the provision of Act on Misdemeanours that rules out the possibility of judicial review of a decision of a public administrative body authorised to impose fines in misdemeanour proceedings, and Article 6(1) of ECHR. The Constitutional Court further found a conflict between this provision on the one hand, and Article 36(1) and (2) of the Charter and Articles 1 and 4 of the Constitution on the other hand[60]. In this case, the

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[57] Finding No. 322/2001 Coll. repealed the provision of the third sentence of Section 36(3): *“The Office shall not specify in its notice the reasons for not issuing the certificate”* and the provision of Section 73(2) of Act on Protection of Secret Facts, which stipulated that: *“The decisions, measures and other acts performed hereunder are not subject to judicial review, save for decisions on fines”* and deleted the word *“particularly”* in Section 23(2).

[58] Complaints against NSO's decisions were also filed with the Office of the Public Protector of Human Rights by persons who failed NSO's checks for the higher secrecy level. The complaints were raised against unjustified decisions and against the fact that the appeals had been decided by NSO's director. One complaint was directed against the checking procedure as such.

[59] The government draft amendment of the Act on Secret Facts was approved by Government Resolution No. 1129 of 7 November 2001. The Chamber of Deputies, which reviewed the amendment as the Press of the Chamber of Deputies No. 1165 (http://www.snemovna.cz/forms/sqw_tmp/68e4004a.doc), returned it to the government by its Resolution No. 1925 after the first reading held on 7 December 2001 (http://www.snemovna.cz/sqw/historie.sqw?O=3&T=1165).

[60] By its Finding No. 52/2001 Coll., the Constitutional Court repealed as of 28 February 2002 Section 83(1) of the Misdemeanours Act, which read as follows: *“Decisions regarding misdemeanours for which it is impossible to impose a fine exceeding CZK 2,000 or prohibition of performance of the activities shall not be*

Constitutional Court based its decision on the case law of the European Court of Human Rights, namely on the ruling in the matter of Lauko *vs.* the Slovak Republic and in the matter of Kadubec *vs.* the Slovak Republic [61]. In both those cases, the course of action followed by the Slovak administration authorities and courts was based on a legislation equal with the legislation in the Czech Republic, and the European Court of Human Rights consequently decided that the provisions of ECHR had been breached.

3.1.5. Bill on Administrative Justice System

The main purpose of the bill on administrative justice and proceedings held before administrative courts[62] is to ensure the compliance of Czech law with Article 6 of ECHR, i.e., to grant the courts full competence to review decisions of administrative authorities and to overcome the existing situation when the courts were only allowed to examine whether the conclusions of the administrative authorities regarding the merits of the case comply with the law. The necessity of a procedural regulation that would not imitate the regulation of the Civil Procedure Code arises from the public nature of the matters which are to be heard and decided by the administrative courts.

The Act on Administrative Justice will allow the establishment of the Supreme Administrative Court, thus implementing, ten years later, the provisions of the Constitution. Until the end of 2002, the role of the administrative courts shall be fulfilled by general courts together with the Constitutional Court, which has decided until now on the admissibility of constitutional complaints against decisions of public administration bodies if it could be reasonably expected that such decisions breach the rights and freedoms guaranteed by the Charter and by international treaties on human rights to which the Czech Republic is a party.

The existence of an administrative justice system headed by the Supreme Administrative Court will ensure not only the unification of decision-making practices, but also the court supervision over the execution of public administration, which is currently fragmented, with the Constitutional Court playing a *de facto* role of the Supreme Administrative Court, although Article 87(2) of the Constitution provides for the contrary. This means that the Supreme Administrative Court will be able to decide, if so authorised by the law, in certain matters that have been entrusted until now to the Constitutional Court.

3.2. Criminal litigation

3.2.1. Amendment to the Criminal Procedure Code and re-codification of the Criminal Code

In the middle of 2001, the Parliament of the Czech Republic approved an extensive draft amendment of the Criminal Procedure Code, which was published under No. 265/2001 Coll., and which came into effect as of 1 January 2002 (hereinafter only the "amendment to the Criminal Procedure Code" and the "Criminal Procedure Code"). The basic aim of the amendment of the Criminal Procedure Code is to increase the expediency of the criminal

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subject to court review. This shall not apply in the case of a decision on forfeiture or seizure of a thing whose value exceeds CZK 2,000.".

[61] All rulings of the European Court of Human Rights are available at its website http://www.echr.coe.int.

[62] The government bill was approved by Government Resolution No. 947 of 26 September 2001 and was adopted by the Resolution of the Chamber of Deputies No. 2015 (http://www.snemovna.cz/sqw/historie.sqw?O=3&T=1080) of 15 February 2002 in the form of the Press of the Chamber of Deputies No. 1080 (http://www.snemovna.cz/forms/sqw_tmp/648e0012.doc).

litigation, to ensure that more offences are solved and that the court plays a more significant role in criminal litigation. The amendment also strengthened the position of the state attorney, who has now more responsibilities, namely as regards the substantiation before the court.

The amendment to the Criminal Procedure Code also conferred three important powers upon the state attorney's office. The institute of recourse[63] (Section 265a et seq.) allows the supreme state attorney and the convicted person to contest a valid decision of the court on the merits of the case where the supreme state attorney may file a recourse against the accused. The supreme state attorney may further repeal unlawful decisions of lower level state attorneys on discontinuance of criminal prosecution or on the removal of causes (Section 174a) within two months after the date when such decisions become final. Another important development is the fact that the amendment of the Criminal Procedure Code vests in the state attorneys the powers to investigate criminal offences committed by members of the Police of the Czech Republic (Section 161(3)).

The material intent of the new Criminal Code[64] will establish, as a new institute, the criminal liability of legal entities, which will be applied alongside with the liability of natural persons. The entire conception and hierarchy of punishments shall be changed to ensure that imprisonment is taken as the last resort and to emphasise individual approach to the resolution of criminal matters with a possibility to use a large scale of alternative sanctions.

3.2.2. Repeal of Section 272 and the fourth sentence of Section 276 of the Criminal Procedure Code by the Constitutional Court

As of 31 December 2001, the Constitutional Court repealed the right of the Minister of Justice to file a complaint for breach of the law to the detriment of the accused as an extraordinary remedy of a valid decision issued in criminal litigation.[65] The Constitutional Court pointed in this respect namely to the fact that this remedy is used by an executive authority against a judicial authority (and the affected person), while the judicial authority and the person have no such opportunity. This represents a breach of the principle of equality of tools that is part of the right to a fair trial under Article 6(1) of ECHR and under Article 37(3) and Article 40 of the Charter.

3.3. Right to legal aid

The right to legal aid in proceedings before the courts, other state authorities or public administrative bodies is guaranteed, in accordance with Article 37(2) of the Charter, to

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[63] This is a complementary institute to the institute of complaint against breach of the law, by which the Czech criminal procedure further develops the legal traditions, because the general prosecutor had held until 1950 the right to contest a final decision of "bodies active in criminal proceedings".

[64] The government approved the proposed material intent of the new Criminal Code by Resolution No. 319 of 9 April 2001 to the Proposed Material Intent of the Criminal Code (codification of substantive criminal law). The new Criminal Code is to be prepared and submitted to the government for approval until the end of 2002.

[65] By its Finding No. 424/2001 Coll. of 31 October 2001, the Constitutional Court has significantly restricted the institute that has been included in it during the period when the law was amended in accordance with the Soviet model by Act No. 87/1950 Coll. Thus, it is no longer possible to achieve, by a complaint filed by the Minister of Justice for breach of law to the detriment of the accused, the cancellation of the contested decision, but only an academic verdict of the Supreme Court of the Czech Republic that the law has been breached. The amendment to the Criminal Procedure Code has introduced since 1 January 2002 the recourse as a universal extraordinary remedy (new authority of the supreme state attorney see Chapter 3.2.1.).

anyone since the commencement of such proceedings. Such qualified legal aid for people unable to pay for such service is still not guaranteed, except for necessary criminal defence.

3.3.1. Right to legal aid in administrative and civil litigation

The regulation included in Act No. 71/1967 Coll. on Administrative Procedure, as amended (hereinafter only the "Administrative Procedure Code"), which regulates proceedings held before administrative authorities, has not undergone any changes. The amendment to CPC further developed the possibility of a party that was exempt from payment of court fees to apply to the court for the appointment of a representative to protect his interests and his right to have such representative appointed at the expense of the state. At the same time, the amendment to CPC orders the court to notify the party of such right.

3.3.2 Legal aid provided in criminal litigation and in connection therewith

The amended Criminal Procedure Code newly regulates the possibility of the accused who does not have enough funds to pay the defence attorney to apply to the court for the appointment of an *ex offo* defence attorney even if the defence is not considered as necessary defence (Section 33(2)). At the same time, the aggrieved party who meets the same condition has also been granted a new right to legal aid provided by an attorney-in-fact for reduced remuneration or free of charge (Section 51a). Despite the amendment of the Criminal Procedure Code, there still exist problems with necessary defence in cases in which the court decides on the placement of the sentenced person in expulsion custody. The convicts in the expulsion custody who have already finished their prison sentence usually do not have a defence attorney, although their possibility of self-defence is obstructed, due to their being in custody, to the same extent as the self-defence of the accused. Such fact is serious namely because the expulsion custody represents deprivation of freedom that goes over and above the valid sentence, and not all deported foreigners can speak Czech, which language barrier further aggravates their situation (see also Chapter 4.3.2). The Ministry of Justice filed in 2001 a petition to the Supreme Court to initiate proceedings in the matter of unified interpretation of the right to defence and its guarantees in relation to the decision to take a person on expulsion custody. The proceedings have not been finished yet.

In accordance with the Criminal Procedure Code, a detained person has the right to select a defence counsel and ask for his advice during the detention period (Section 76(6)). On the other hand, Act No. 283/1991 Coll. on the Police of the Czech Republic, as amended, (hereinafter only the "Police Act") does not include any such provision that would apply to apprehended persons or to persons summoned to provide explanation under the Act. Due to such situation, persons whose personal freedom has been restricted or who have been deprived of their personal freedom are subject to different legal regimes. With respect to provision of professional legal aid, the person whose activities may be less dangerous for the society has at the moment when he is deprived of his personal freedom less rights than a person whose activities may be more dangerous to the society.

Therefore, even the amended Criminal Procedure Code does not guarantee sufficient right to legal aid. The allocation of a lawyer for reduced fees or free of charge is still being decided by the Czech Chamber of Advocates (Bar Association) (hereinafter only "CCA") as a professional organisation under Act No. 85/1996 Coll. on Advocacy, as amended. Thus, the right for free legal aid in criminal litigation is still left at the discretion of the court or, in all

other proceedings, at the discretion of professional bodies. It would be useful to unify the legal system of provision of free legal aid[66].

3.3.3. Legal status of victims of crime[67]

The amendment to the Criminal Procedure Code has also amended Act No. 209/1997 Coll. on Pecuniary Assistance to Victims of Crime, as amended. The maximum amount of such assistance has been significantly increased from CZK 60,000 to CZK 150,000. Another significant change occurred in respect of the calculation of the time limit for filing an application for assistance: the one-year time limit will no longer commence to run since the date of the crime but since the date when the victim learns about the damage.

3.3.4. Repeal of Section 44(2) of the Criminal Procedure Code by the Constitutional Court of the Czech Republic

By its Finding No. 77/2001 Coll., the Constitutional Court of the Czech Republic repealed as of 23 February 2001 Section 44(2) of the Criminal Code,[68] because it results in an unequal status of the aggrieved party in the criminal litigation depending on the fact whether the proceedings are held before the district court or before the regional court. The Constitutional Court notes that it *"does not consider the difference in the status of the aggrieved party before such courts in this respect as justified and meaningful due to the fact that both the regional court and the district court may deal in such proceedings with matters relating to state secrets, the criminal matter that is being heard before either of these courts my be serious, complex or extensive, and the decision on damages may go beyond the scope of criminal prosecution ... etc. Due mostly to this reason, the Constitutional Court has come to the conclusion that the contested provision is in conflict with the Constitution, as it leads, in its consequences, to an unjustified inequality as regards the assertion of rights of the parties to the proceedings held before the district court in comparison with the rights of the parties to the proceedings held before the regional court. This represents a breach of Article 1 and Article 3(1) of the Charter in connection with Article 36(1) of the Charter.*".

4. Persons deprived of personal freedom and persons whose personal freedom has been restricted

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[66] According to the information of the Czech Chamber of Advocates, there are every year approximately 1200 cases in which CCA decides that the attorney appointed by it will provide its services for a reduced fee or free of charge. Such situation is no longer sustainable due to the fact that the provision of legal services by an attorney is a service provided by a private person who earns his living by his profession.

[67] The amendment to the Criminal Procedure Code will also contribute to the change of the status of victims who are close persons of the perpetrator, because (to put it simply) it will be no longer necessary to ask in the case of certain offences for the victim's consent with the criminal prosecution. Due to the fact that such measure should significantly improve the situation of women (who represent more than 90% of victims of criminal activities known as domestic violence), such amendment to the Criminal Procedure Code is discussed in Chapter 6.5.1.

[68] Section 44(2) of the Criminal Procedure Code reads as follows "*The participation of the aggrieved party in the proceedings regarding criminal offences that are within the jurisdiction of the regional court (Section 17(1)) shall be decided by the court subject to the nature of the matter".* The wording of Section 44(2) was replaced in the amendment to the Criminal Procedure Code by a new provision, which concerns the attorney-in-fact of the aggrieved parties in cases in which the number of the aggrieved parties is so high that it would hinder the expediency of the criminal litigation.

4.1. General situation in prisons in 2001

An important positive change is the continuing decrease of the number of imprisoned persons, which has occurred since 2000 when the overcrowding of prisons and detention facilities reached the alarming 117.2%. In connection with this positive development, which should continue in future, the General Directorate of the Prison Service of the Czech Republic (hereinafter only "GD PS") is preparing a new profile of prison facilities, including an increase of the number of specialised wards and an improvement of the conditions for further expansion of the special treatment of selected categories of convicts, as well as measures necessary to adhere to the principle under which the convicts must be placed in prisons in the same region in which they reside. The reduction of the prison population would also have a significant effect on the application of the treatment programmes, leisure time activities, and individual work with the convicts, and on general improvement of conditions of imprisonment[69].

The following table shows the number of prisoners and the use of the accommodation capacities as of 31 December 2001.

	Accused	Sentenced	Total
M	4 341	14 190	18 531
F	242	547	789
Total	4 583	14 737	19 320
Accommodation capacity	*5 980*	*14 142*	*20 122*
Used	76%	104%	96%

4.2. Imprisonment

The facts criticised in the Report on the State of Human Rights in the Czech Republic in the Year 2000, specifically the duty of the convicts to cover the costs of their imprisonment even if they cannot be employed due to objective reasons, and the extreme isolation of persons serving a life sentence, were not remedied.[70] At the same time, the conditions for imprisonment of mothers with children have not been implemented as well. Another problem lies in the return of some employees who left the prison service after 1989 without undergoing security checks. The legal regulation of imprisonment set out in Act No. 169/1999 Coll. on Imprisonment, as amended (hereinafter only the "Act on Imprisonment") did not undergo in 2001 any significant changes[71].

4.2.1. The blanket obligation of the convicts to cover the cost of their imprisonment

The blanket obligation of all convicts to cover the cost of their imprisonment was introduced by the Act on Imprisonment in 2000. This obligation also applies to convicts who wish to work but cannot find work due to the lack of jobs. Under such circumstances, the debt

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[69] A serious problems is still the insufficient budget of the Prison Service of the Czech Republic, which is reflected namely in poor level of equipment and technical condition of all prisons and in inadequately low remuneration of the difficult work of the Prison Service employees.

[70] The defects referred to in the Report on the State of Human Rights in the Czech Republic in the Year 2000 are linked to the applicable provisions of Act No. 169/1999 Coll. on Imprisonment, as amended.

[71] A minor change was brought about by the new Act on Churches and Religious Societies (No. 3/2002 Coll.).

toward the state is growing during their stay in prison, even if they are unable to get funds with which they could repay it. Thus, they may be heavily indebted after their release from the prison and such indebtedness may represent a serious impediment in their re-integration to the society, given the problems encountered by them on the labour market. Moreover, retroactive enforcement of the costs is not too effective.

This problem was referred to in the petition to amend the Act on Imprisonment, submitted by the Human Rights Council on 28 March 2001.[72] The government took note of the petition by its Resolution No. 545 of 6 June 2001, which ordered to the Minister of Justice to submit to the government an analysis of the petition of the Human Rights Council with a proposal for the resolution of matters set out therein and with a time schedule for such resolution. The Ministry of Justice informed that it does not plan to amend this act, at least not in 2002. *The Government Commissioner for Human Rights still considers the amendment to the Act as desirable.*

4.2.2. Treatment of prisoners for life and of some prisoners placed in high security prisons

Aiming at the unification of the prison regime of life prisoners and other prisoners who were diagnosed as needing more intensive detention, the GD PS issued Guideline No. 13/2001 (hereinafter only the "Guideline"),[73] which applies to two groups of prisoners:

- prisoners for life (who are divided under the Guideline into three different groups, the first one having the most moderate regime and the third one the strictest regime) and
- convicts imprisoned in high security prisons (who are classified as the fourth group).

The new Guideline does not mitigate, however, the isolation of life prisoners. With respect to each of other categories to which the Guideline applies, it determines that outdoor exercise is performed separately from other groups. Except for the first group, visits of prisoners for life are usually without direct contact.[74]

The Guideline requires that the employees in high security prisons lodging persons sentenced to life in prison or placed in the fourth category must have high professional skills and adequate experience. It also stipulates an obligation to prepare for each such employee an individual education plan focussing on communication skills and other aspect of treatment of prisoners with long-term or life sentences.[75]

With respect to the reasons for which the Guideline has been issued and to its overall focus, it has to be emphasised that there are no security measures that would prevent all possibilities of escape and that any measures may only limit such possibilities. In this

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[72] The petition also dealt with the possibility to allow prisoners to retain minimum funds that cannot be seized, extension of the period of visits guaranteed by the law, the stipulation of a minimum accommodation space and less restricted access to convicts in prisons with supervision or heightened supervision to the telephone (preserving at the same time the possibility of monitoring the calls).

[73] Guideline No. 13/2001 was issued by the director of the section of detention and imprisonment of the General Directorate of the Prison Service of the Czech Republic.

[74] The extreme isolation of life prisoners from other prisoners was criticised in the report from the last visit of CPT in CR, which took place in February 1997. The report is available in English on www.cpt.coe.int/en/reports/inf1999-07en.pdf and in Czech at the Secretariat of the Human Rights Council (Office of the Government of the Czech Republic). The chairperson of CPT announced in November 2001 that the Committee intends to visit CR again in 2002.

[75] It would be appropriate to supplement these positive measures of the Guideline by the establishment of an "intervention team", consisting of psychologists, clergy and other professionals, who would be available to those employees and who would help them overcome and cope with consequences of situation that may be difficult with respect to their mental well being.

connection, some prisons apply as a blanket policy the use of coercive means – manacles – with all life prisoners without any specific reasons for applying those measures. The experience of specialists working with prisoners indicates, however, that the following principle applies in guarding prisoners: more isolation means less actual control.

It is necessary to keep in mind, even when treating prisoners who are subject to the strictest regime, that the essential goal is to re-educate and reform them as specified in Article 10 of the Covenant on Civil and Political Rights.

4.2.3. Negative consequences of collective accommodation of prisoners

Collective accommodation of prisoners is a serious problem. Violent behaviour of mentally or physically stronger prisoners against some of their fellow prisoners may be hardly prevented in conditions in which it is impossible to separate prisoners if there occurred any problems. On the contrary, some prisoners must be placed, despite their protests, among other prisoners of whom they are legitimately afraid due to threats or direct experience with mental, physical or sexual violence. This results in the feeling of absolute helplessness or resignation, which frequently leads to a misdemeanour or a criminal offence with the aim of getting away from such environment. In some cases, such situation led to suicide attempts.

An appropriate resolution would be the implementation of gradual and systematic changes in the accommodation of prisoners ensuring that there are one or two prisoners per one cell, with a possibility to implement various measures directed at the elimination of violence among prisoners.

4.3. Custody

4.3.1. Pre-trial and trial custody

The extensive amendment to the Criminal Procedure Code, which introduces now time limits applying to custody and restricts the type of persons who may be placed in custody,[76] should have an important impact on the conditions of custody and namely on the number of accused persons held in custody.

The amended Criminal Procedure Code determines that, subject to the compliance with further conditions set out in Section 67, it is possible to take into custody only such accused in whose case it is impossible to fulfil the purpose of the custody by any other means due to his personality, character and serious nature of the offence for which he is prosecuted. The Criminal Procedure Code explicitly rules out a possibility to take into custody persons prosecuted for intentional criminal offence in whose case the maximum limit of the sentence does not exceed two years or for negligent offence with a maximum limit of the sentence not exceeding three years (Section 68(2))[77].

[76] The legal regulation of custody in No. 293/1993 Coll. on Custody, as amended, was not changed in 2001. Some non-state non-profit organisations object that the act still does not regulate the custody of pregnant women and mothers with small children, the provision prohibiting the accused in collusion custody to speak with the attorney about other matters without the consent of authorities active in criminal proceedings and absence of a provisions that would order those authorities to justify the exclusion of a person close to the accused who may visit him in the collusion custody.

[77] Those restrictions shall not apply if the accused escaped or was in hiding, failed repeatedly to attend when summoned and it was impossible to apprehend him or to otherwise ensure his attendance at an act

Another important change is the new time limit for custody (Section 71 and Section 72), which introduces regular review of the grounds for custody during the pre-trial and trial period. As a rule, such review must take place every three months. The amended Criminal Procedure Code explicitly stipulates that collusion custody (Section 67(b)) may not last more than three months, except for cases in which the accused has already influenced the witnesses or fellow accused or otherwise frustrated the clarification of facts that are relevant to the criminal prosecution.

The duration of custody differs in accordance with the serious nature of the offence for which the accused is being prosecuted. The overall duration of custody in a summary offence (i.e., an offence that is decided by the judge alone and is subject to a maximum five years sentence) may not exceed one year (Section 314a); or

a) two years in the case of an offence falling, in the first instance, within the jurisdiction of the senate of a district or regional court (Section 16 and Section 17), which is not a particularly serious offence or an offence that may be subject to the exceptional sentence; or
b) three years in the case of a particularly serious intentional offence (Section 41(2)); or
c) four years in the case of an offence that may be punished by the exceptional sentence (Section 29).

One third of the custody is the pre-trial custody and the rest is represented by the trial custody.

The amendment of the Criminal Procedure Code may be considered as important progress. Its practical effect will depend, however, on the approach of the court, because the maximum permissible duration of custody in each category remains relatively long.

4.3.2. Expulsion custody

The amended Criminal Procedure Code did not amend the duration of the expulsion custody.[78] Even though the Criminal Procedure Code expressly specifies that the provisions regarding pre-trial and trial custody (Section 67 et seq.) apply *mutatis mutandis* to the proceedings regarding the expulsion custody, their application to the expulsion custody, namely as regarding its maximum duration, is rather problematic.

The overall duration of trial custody may not exceed the determined time limits (Section 71(8)). The problem with the application of this provision to the expulsion custody lies mostly in the different interpretation of the institute of custody. According to some views, the pre-trial and trial custody (hereinafter only the "custody under Section 67") and the expulsion custody are one and the same institute and therefore their durations are to be summed up for the determination of the maximum duration. In other views, those are two separate institutes and the maximum duration thus applies to each of them separately.

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performed as a part of the criminal proceeding; if his identity is unknown and could not be ascertained by available means; if he has already influenced witnesses or fellow accused or otherwise frustrated the clarification of facts that are important for the criminal prosecution, or if he carried on the criminal activities for which he is prosecuted (Section 68 (3) of the Criminal Procedure Code).

[78] The possibility to place the person sentenced to expulsion to the expulsion custody is set out in Section 350c et seq. of the Criminal Procedure Code.

Another problematic aspect of the application of provisions regarding the pre-trial and trial custody to the expulsion custody is the appointment of a necessary defence attorney and the right to be heard by the judge before being placed into custody (see Chapter 3.3.2.).

At the same time, the amendment of the Criminal Procedure Code introduced the waiver of the execution of the expulsion sentence (Section 305h of the Criminal Procedure Code) or of its rest, if there occurred after the issue of the ruling certain facts due to which it is impossible to impose such sentence (Section 57(3) of the Criminal Code). This provision should contribute to the resolution of the problem of expulsion of asylum applicants who have been granted asylum or in whose case the court acknowledged the existence of an impediment to departure.

Act No. 293/1993 Coll. on Custody, as amended, does not include any special provisions regarding the expulsion custody. Its Section 2 only indirectly refers that its provisions also apply to this kind of custody. Due to the fact that the legal status of persons placed in the expulsion custody is totally different from the legal status of persons placed in custody under Section 67 of the Criminal Procedure Code, the Act should specifically regulate the terms and the regime of the expulsion custody in a manner ensuring that it meets its purpose.

4.3.3. Extradition custody

The amendment of the Criminal Procedure Code also affected the provisions of Section 381 on extradition custody. It is possible to take into extradition custody a person who is to be extradited if the facts that have been ascertained justify the fear that such person may escape. The amendment stipulates a new obligation of the court to hear such person before deciding to place him in the extradition custody.

The amended Criminal Procedure Code stipulates the duty to release a person from the extradition custody if the preliminary investigation[79] has been started without the application of a foreign state for extradition and such application is not delivered to the Czech Republic within 40 days after the date when the person was placed in the extradition custody. Practical problems arise in connection with the date as of which the application is to be considered as delivered. The application may be sent to the diplomatic mission of the Czech Republic in the foreign state, which will send it to the Ministry of Justice, which will send it, in its turn, to the state attorney having jurisdiction. The law does not stipulate, however, which of those deliveries to the above bodies marks the start of the forty-day time limit whose futile lapse constitutes the reason for the release of the extradited person from custody. It may thus occur in practice that such time limit will not always be adhered to.

One of the general international principles, which is also recognized by the Czech Republic, is the principle of not extraditing one's own citizens. However, extradition of foreigners based on their personal status is not restricted by any generally binding law. The current legislation does not distinguish between a foreigner who stays in the Czech Republic

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[79] The preliminary investigation is carried out by the state attorney who has received the extradition application from the foreign state or who has learned about a criminal offence on whose grounds the foreign state may apply for the extradition of the offender. The purpose of such preliminary investigation is to find out where the conditions for extradition have been met (if the committed act is considered as a criminal offence by the law of both states, whether it is admissible to extradite the offender, whether the person that is to be extradited is not a Czech citizen, etc.).

on the basis of the Foreigner Act, and a foreigner who has been granted asylum, i.e., the refugee status under the U.N. Convention Relating to the Status of Refugees (No. 208/1993 Coll.).[80] Therefore, it may happen in practice that the Czech Republic will be asked to extradite a foreigner by a state where such foreigner was persecuted within the meaning of the Convention concerning the Status of Refugees and who was granted asylum in another state.[81] *Therefore, it would be appropriate to unify through a generally binding law the personal scope of the institute of extradition custody and, subsequently, the extradition itself.*

4.4. Arrest and apprehension by police authorities

In order to prevent potential mistreatment of persons deprived of freedom, specialised international bodies[82] require that every state guarantees in its law three fundamental rights of persons deprived of freedom:

1) the right to legal aid since the moment when the person was deprived of his freedom (see Chapter 3.3.2.)
2) the right to be checked by a physician of his own choice after being deprived of personal freedom (see Chapter 5.8.2)
3) the right to inform about his situation a close person or another person of his own choice who is free.

The right of an arrested or apprehended person to inform a close or other selected person about his situation is not guaranteed by the law in this specific form. The Police Act only stipulates that, at the request of the arrested or apprehended person, the police officer is obligated to notify of the arrest or apprehension a person listed in Section 12(3) of the act or another designated person.

Such defects of the legislation relating to fundamental rights of persons deprived of freedom are serious also due to the absence of any mechanism of preventive and systematic supervision over the standards of treatment of persons placed in police cells. The establishment of such mechanism would be indisputably desirable to ensure systematic

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[80] In this respect, it is necessary to distinguish whether the foreigner was granted asylum by the Czech Republic or by another state that is a party to the Convention Relating to the Status of Refugees. Extradition of a foreigner who was granted asylum by another state would deny the bodies of such state that are competent to decide in asylum cases the ability to assess individual foreigners who have applied for asylum in such state. In many cases, such persons who were granted asylum in another state have travel documents corresponding the model set out in the Convention on the Legal Status of Refugees, which would mean disregarding their refugee status from the part of the Czech Republic.

Similar problems appear in proceedings relating to extradition of persons who have been granted an impediment of departure under the Foreigner or the Asylum Act. In accordance with both acts, such impediment is granted by the Ministry of Interior, but the admissibility of extradition is decided by the courts, which do not feel bound by the decisions of the Ministry of Interior in their rulings in those matters.

[81] This concerns not only the case of M. Solich, known through the media, who was granted refugee status in Turkey and, as such, settled in Norway, but also the case of S. Sahin, who had been granted asylum in the Federal Republic of Germany and spent in 2000, after his legal entry in the Czech territory, more than half a year in the extradition custody until the court decided that his extradition to Turkey would threaten his life, which would represent, with respect to the Czech Republic, not only a breach of the European Convention on Extradition (No. 549/1992 Coll.), but also a breach of Article 3 of ECHR.

[82] The European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which was established under the European Convention for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and the Committee against Torture established under the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

adherence to the rights of persons deprived of freedom and minimizing of possibilities of their mistreatment.

4.5. Disciplinary prison sentence in the army

4.5.1. Prison rules

The conditions of imprisonment are regulated by the Prison Rules, which is an appendix to the Basic Rules of the Armed Forces of the Czech Republic. The most recent amendment of those Basic Rules was effected in 2001[83]. The new Prison Rules define in a more specific manner the conditions of the execution of the sentences. Nevertheless, the regulation applying to soldiers is much more restrictive that the regulation of custody or of a prison sentence.

Due to the fact that the disciplinary prison sentence, which represents a restriction of personal freedom, is not decided in the army by an independent court, it is important to clearly stipulate at least the conditions of the execution of such punishment, which are set out in the aforementioned Prison Rules. The compliance with those conditions within the Ministry of Defence is supervised by the Inspection of the Minister of Defence.

4.5.2. Inspection of the Minister of Defence

The respect for human rights in the army is monitored and ensured namely by all levels of command. A special role within the controlling mechanisms in the army is played by the Inspection of the Minister of Defence (hereinafter only the "Inspection"), which has jurisdiction over the protection of human rights. Such special status also reflected in the establishment of the office of the chief inspector for protection of human rights within the defence sector, who is at the same time a deputy general director of the Inspection.

The Inspection performs random checks in military prisons to control the compliance with legal and service regulation in the execution of the disciplinary prison sentences. During their checks performed in 2001 the employees of the Inspection found such deficiencies as the discrepancies between internal directives and the law, insufficient records of the period of restriction of personal freedom of soldiers and the period of ordered work activities, shortening of outdoor exercise periods of the punished soldiers and confiscation of their personal documents. Some shortcomings were also found in the material and technical equipment of the cell. According to the information of the Ministry of Defence, such deficiencies were promptly removed.

4.6. Rights of persons placed in health care facilities

4.6.1. Mentally ill persons placed in health care facilities

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[83] The provisions regarding disciplinary sentences in the army are set out in Act No. 220/1999 Coll. on the Course of Compulsory or Substitute Military Service, on Military Exercises and on Certain Legal Relations of Reservists. The strictest military disciplinary punishment is a prison sentence for a maximum of 14 days. The duration of the sentence is determined by a service body, commencing with the battalion commander and up. Due to this procedure, which contradicts Articles 5 and 6 of the ECHR, the Czech Republic assumed the reservation made by former Czechoslovakia upon the deposition of the ratification documents.

The rights of persons placed in health care facilities due to their mental illness have come into focus only in the last years. This is evidently due to the fact that persons falling in this category are hindered in their effective contacts with the general public by their mental disease and by the stigma ascribed to it. At the same time, the nongovernmental organisations focussed on the protection of rights of the mentally ill, which operate in the Czech Republic, are little developed in comparison with other countries[84]. There is, in fact, no organisation focussing specially on the monitoring of the conditions in psychiatric facilities or on the provision of legal aid to such persons.

In practice, the mentally ill do not frequently receive equal treatment even at the court proceedings that are to decide on their placement in an institution. This is mostly due to the existing paternalism, which is often based on a *bona fide* humanistic conviction. On the other hand, such situation also exists due to the fact that the legislation regulating the rights of such persons has not undergone any changes since 1989, which is in strict contrast with the development of the human rights of other handicapped groups (the convicts, the disabled, etc.). Therefore, the Human Rights Council proposed in its petition of 6 December 2000 to strengthen procedural rights of those persons by amending the applicable provisions of the CPC (Section 186 to Section 193), which regulate the proceedings on admissibility of placing or keeping a person in a health care facility and proceedings on legal capacity[85]. The basis of the proposed legislation is an expressly specified obligation to inform the person about each step taken in those proceedings and about his rights, including the right to be represented by a legal counsel. Until now, the Minister of Justice has not prepared any draft amendment of those provisions of the CPC, but its form (either a partial amendment to come into effect in 2002 or inclusion in the re-codification process of civil procedural law in 2003) is still under discussion.

Another problematic aspect of the placement of the mentally ill in health care facilities is the assistance of the Police of the Czech Republic in the apprehension and transfer of the mentally ill to the institution. While the physicians frequently find such assistance as insufficient, because it is provided only if such person directly threatens himself or his surroundings, the defenders of patient rights often point to cases in which the Police of the Czech Republic used inadequate force or assisted with the transfers to the facility of a person who did not represent any threat for himself or his surroundings. The Constitutional Court decided in 2001 a case of a person who was transferred against her will and with police assistance to a facility although there was no objective reason to do so. [86]

The above problems relating to the placement or keeping of a person in a psychiatric facility appear as partial in comparison with a far more serious – and mostly unexplored – problem of the rights of hospitalised patients, i.e., the terms and conditions of such hospitalisation. The first systematic fact finding is represented by a survey proposed by the relevant committee of the Human Rights Council and by the Council for Human Rights and Biomedicine, which is to be carried out in 2002. The existing information on various cases indicates that there are often enormous differences between various facilities or even between various departments of one and the same facility as to the standards of treatment of patients,

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84 Not only in comparison with EU member states, but also, for instance, with Hungary.

85 The legislation applying to the proceedings on legal capacity appears as more problematic than the legislation applying to the admissibility of placement or keeping in a health care facility.

86 The Finding of the Constitutional Court issued in file no. IV ÚS 636/2000 of 18 May 2001 was incorrectly interpreted in the press as the prohibition of involuntary hospitalisation.

of the respect for their human dignity, providing information to them about their cure, the level of control over restrictions of their personal freedom or interventions in their personal integrity and complaints resolution mechanisms. While the best establishments try to develop the humanistic element in the psychiatric care according to models existing in developed EU members, the situation in other facilities has undergone since 1989 only minimum changes. Patient association still complain that the users of the care are in many cases not considered as partners, are treated like children, are not properly informed, the privacy is not respected and their freedom is restricted in accordance with the needs of the staff rather than with their own needs. Such complaints do not concern only patients kept involuntarily in hospitals, but also patients who came to the facility on their own will. Departments of certain facilities that care for patients who have come to the hospital voluntarily apply a distinctly restrictive regime, and a patient who expresses his intent to leave the facility is informed of the possibility of being transferred to involuntary care (which means further restrictions of his personal freedom). By this, the hospitalisation becomes *de facto* forced, despite the absence of a court decision on the admissibility of the restriction of personal freedom.

According to the existing level of knowledge in this area, the basic problem does not lie in the above partial defects of the procedural law, but the absolute absence of provisions of substantive law applying to the mentally ill, to persons in voluntary or involuntary hospital care and to persons deprived of their legal capacity or whose legal capacity has been restricted. The law of the developed European countries usually contains detailed provisions applying in these matters, either in the form of a special law relating to mental health, or in the basic regulations of substantive civil law[87].

Therefore, the short-term goal to be achieved in respect of the protection of rights of the mentally ill is a partial amendment of the existing provisions of procedural law, while the medium- or long-term goal should be either the enactment of a special law on mental health or a comprehensive regulation enacted within the prepared re-codification of the Civil Code.

4.6.2. Persons suffering from a somatic disease placed in health care facilities

This category of persons cannot be generally considered as being deprived of their freedom or having their freedom restricted, because they are in the hospital on their own will (save for certain cases of contagious diseases) and may leave the health care facility even against the will of the physician. On the other hand, the position of those persons, namely of the elderly and helpless ones, may be much weaker in comparison with the status of the hospital staff or of the healthy members of their families. Examples of insensitive treatment similar to the treatment that is the subject of complaints of users of psychiatric care are known even from inpatient facilities like the sanatoriums for chronically ill (childlike treatment, lack of respect for privacy, unjustified prohibition of using the telephone, etc.). Like in the case of inpatient psychiatric establishments, the problems are partly caused by inadequate material conditions.

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[87] A more detailed and from the current viewpoint more "progressive" regulation under substantive law, namely in matters relating to guardians, existed in Austrian law and was assumed in 1918 by the Czechoslovak Republic.

4.7. Supervision of the conditions of detention of persons deprived of freedom or of persons whose freedom is restricted

4.7.1 Differences in the legislation and conditions applying to the restriction or deprivation of personal freedom

In the light of the obligation to respect human rights, namely the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, it is necessary to consider as deprivation or restriction of personal freedom any situation in which a person may not use, on the basis of an official decision, his freedom of movement. This is the situation of persons in prisons, in custody, in police cells, as well as of persons placed in foster homes, diagnostic or educational institutions or social care facilities, in health care or other establishments. Those are the places where there appears a distinct inequality of the position of detained persons in comparison with the position of the persons who are to ensure the restrictions of their freedom or of other employees of those institutions. In order to prevent any abuse of such inequality, it is necessary to clearly set out the conditions of the detention and the rights and obligations of both the detained persons and the staff of such institutions. Due to the fact that this represents an actual deprivation or restriction of personal freedom, such regulation has to be included in the act. This should be logically connected with the system of control of the determined conditions, rights and responsibilities.

Although the restriction or deprivation of freedom may actually occur in many different cases, the conditions of detention and rights and obligations of detained persons and the staff of the facilities where these persons are detained are regulated by the law only in several cases.[88] Such legislation is absent in many other situations.[89] The control mechanisms operate nearly exclusively within the ministries within whose competency the controlled subjects fall. The controlling system within the given sectors is indisputably positive, but cannot be considered as sufficient, as it is difficult to exclude the attempts within the ministries to hide or trivialise any defects. The existing information indicates that the best control is exercised by the Ministry of Defence.

In its report from the visit in the Czech Republic, which took place in February 1997, CPT noted the absence of independent control of the conditions of detention of persons deprived of freedom or persons whose freedom is restricted, namely in prison facilities. Similar criticism, applying also to the police facilities, was voiced in the conclusions and recommendations of CAT resulting from the review of the 2nd periodic report of the Czech Republic on the implementation of obligations arising from the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

4.7.2. The role of the office of the state attorney in the control of places where there are persons whose personal freedom is restricted or who are deprived of personal freedom

The amendment of Act No. 283/1993 Coll. on State Attorneys, as amended, (hereinafter only the "Act on State Attorneys") introduced the supervision of the state attorney

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[88] This applies to the custody (Act No. 293/1993 Coll.), imprisonment (Act No. 169/1999 Coll.), detention in detention facilities for foreigners (Act No. 326/1999 Coll.) and protective and institutional education.

[89] Such legislation is absent, *inter alia*, in cases of detention in police cells, in admission centres of refugee facilities, in social care facilities, during the exercise of protective institutional cure, in involuntary keeping of persons in health care facilities or in the case of the execution of the disciplinary prison sentence in military prisons.

over the implementation of applicable laws in detention facilities, prisons, protective treatment facilities, protective or institutional education and in all other places where the freedom of persons is restricted under the law. Such supervision is carried out within the scope and under the terms set out in a special law. Such special law, however, exists only in three cases. Provisions regarding the scope and conditions of supervisory activities of the state attorneys are included in the Act on Custody, in the Act on Imprisonment and in a newly adopted Act on Institutional Education or Protective Education in School Facilities and on Preventive Educational Care in School Facilities. Apart from the above, there exists no other law that would contain similar provisions applying to other facilities in which the personal freedom is restricted on the basis of an authorisation under the law. Although the competencies of state attorneys are rather broadly defined, they exercise their supervisory activities in prisons, custody facilities and preventive or institutional care facilities.

The powers of the state attorneys in this respect apply only to the supervision over the compliance with applicable laws at places in which the personal freedom is restricted on the basis of an authorisation under the law. Any control or supervision that would exceed such authorisation awarded under the law and would focus on the monitoring of dignified conditions of detention in such place or of dignified treatment of the detained persons as determined by international human rights treaties is not included in the powers of state attorneys.

This situation is not substantially affected by the fact that the powers of the Public Protector of Rights apply to the prison service, custody facilities, prisons, protective or institutional education facilities and protective cure facilities. The Public Protector of Rights deals with those matters namely on the basis of specific complaints. The concept of the Act on Public Protector of Rights and particularly the capacity of his office do not allow him to ensure comprehensive and systematic supervision.

Due to the above insufficient mechanisms of control over places for restriction of personal freedom by the authorisation under the law, it seems adequate to establish an independent controlling mechanism that will apply in all such places and will be authorised not only to supervise the compliance with applicable laws, but also the dignity of the conditions of detention and treatment of detained persons. Such supervision should be systematic and conceptual and the possibility of its exercise should have a distinct preventive effect. At the same time, it is necessary to adopt such legislation that will stipulate the scope and conditions of the supervisory activities of the state attorney in the areas where there applies no such legislation.

5. Economic, social and cultural rights

5.1. Employment and work remuneration

5.1.1. Prohibition of discrimination in labour law relations

The principal objective of the amendment of Act No. 65/1965 Coll., the Labour Code, as amended, published under No. 155/2000 Coll. (hereinafter only the "Labour Code") was to harmonise Czech labour law with European law. The key provisions include the principle of equal treatment of men and women as to work conditions, including remuneration,

professional training and possibilities to be promoted or achieve other progress at work. The amended Labour Code also expressly prohibits discrimination on any other grounds (see Chapters 3.1. and 8.2.1.).

5.1.2. Protection of children at work

The Czech Republic ratified in 2001 the Worst Forms of Child Labour Convention of International Labour Organisation, concerning the prohibition and immediate elimination of the worst forms of child labour (No. 182).[90] The convention defines the worst forms of child labour, which include all forms of slavery and practices similar to slavery; use, enticement or offering children for prostitution, for production of pornography or pornographic shows; the use, enticement or offering children for illegal activities, namely for the production of and trafficking in drugs as defined in applicable international treaties; any work that may due to its nature or to the circumstances under which it is performed damage health, threaten the safety or morals of children.

The convention binds the states parties to adopt immediate and effective measures to implement the prohibition and elimination of the worst forms of child labour, and orders them to create a so-called action programme, which is to set out measures directed at the elimination of such worst forms of child labour.

Czech law has not yet defined and regulated the matter of work of children less than 15 years of age.[91] Although the work of children under 15 years of age is prohibited, such children are commonly employed, for instance, in family businesses, in the artistic or sports sphere, help distribute printed materials, etc. Therefore, a proposed material intent of act on protection of children at work was prepared last year to do away with such undesirable situation. This proposal absolutely prohibits the work of children under 13 years of age, save for children involved in artistic or in sports activities. Thus, the new act would allow children over 13 years of age to perform so-called light work, subject to specific conditions under which such works may be performed. Children will be allowed to work either on the basis of a notification or a permit issued by the employment office, which will be also authorised to supervise, together with the bodies involved in social and legal protection of children, the performance of the work and impose sanctions.

5.1.3. Leave

Section 110a of the Labour Code allows employees changing jobs within the same calendar year to transfer the relevant portion of their annual leave. It stipulates that – if so requested by the employee not later than before the termination of employment – the employers agree on the transfer of the relevant portion of the employee's annual leave to the new employer and on the wage compensation relating thereto. However, neither the Labour Code nor any other applicable law orders the former and the subsequent employer to even commence such negotiations if so requested by the employee. Under the practice that is currently being applied in an increasing number of cases, the employee is ordered to use the

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[90] The Parliament of the Czech Republic expressed its consent with the convention on 28 March 2001. The ratification documents were deposited on 19 June 2001. The Convention shall come into force in CR on 19 June 2002. It has not been published yet in the Collection of International Treaties.

[91] Pursuant to ILO Convention No. 138 stipulating the lowest age when an employment is admissible, the lowest age relating to admissibility of employment or work shall not be lower than the age of the termination of compulsory school attendance, and in no case less than 15 years. CR is not a party to this convention.

remaining portion of his annual leave entitlement before the termination of employment irrespective of his personal or family needs, even in cases in which the agreement of the employers on the transfer of the remaining portion of the leave would not have any impact on their needs. The reason lies in the fears of the employers from the difference in the employee's earnings paid by the former and the new employer, i.e., that the wage compensation would be calculated from a different basis.

Therefore, it would be appropriate to amend labour laws in a manner which would create a mechanism for actual implementation of the aforementioned rights of the employees guaranteed by the Labour Code, which would take at the same time into account the needs and justified interests of the employers.

5.1.4. Work remuneration and minimum wage

The Labour Code, Act No. 1/1992 Coll. on Wages, Standby Remuneration and Average Earnings, as amended, and Act No. 143/1992 Coll. on Salary and Standby Remuneration in Budgetary and Certain Other Organisations and Bodies, as amended (hereinafter only the "Wages Act" and the "Salary Act") stipulate that the wage/salary may not be lower than the minimum wage, which is determined by a government decree.

Period	Minimum monthly wage	Minimum hourly wage
since 1 January 2000	4000	22.30
since 1 July 2000	4500	25
since 1 January 2001	5000	30
since 1 January 2002	5700	33.90

The increase of the minimum wage/salary in accordance with the increase of the subsistence minimum for adults living alone is set out in the National Employment Plan[92]. The aim is to provide advantages to economically active persons as compared to inactive persons, or to increase the respect for income from work in comparison with social benefits. A minor excess (4%) of the net minimum wage over the life subsistence minimum had been achieved since 1 July 2000, and this excess has grown even more since 1 January 2001 – to approximately 11 %. This growth, although rather steep, may not be still considered as sufficiently motivating. Translated into crowns, this amount represents CZK 424.[93]

Despite the aforementioned increase, the number of recipients of the minimum wage and the minimum wage tariff applying to the first tariff level has remained relatively limited and stable. Statistics of the Ministry of Labour and Social Affairs indicate that number of

[92] The NEP was approved by Government Resolution No. 418 of 5 May 1999. The National Action Plan on Employment was approved by Government Resolution No. 165 of 19 February 2001. In accordance with the NEP and with EU Directives, the measures are divided into four categories ("pillars"), each of which includes, beside the measures of the Ministry of Labour and Social Affairs, also measures and programmes implemented by other ministries, which represent a significant contribution to the resolution of the situation on the labour market, thus becoming a part of the employment policy. Pillar 1 of the NEP includes measures leading to the increase of employability of the labour force, a part of which is the increase of motivation of the labour force to be and remain employed and the improvement of the position of the labour force on the labour market as compared with foreign labour force. Another measure aims at gradual increase of the weight of income from work as compared to social income, namely in respect to person with expected low income, and at providing advantages to economically active persons. This tendency also includes the increase of the minimum wage at the level exceeding the subsistence minimum of a separately living adult.

[93] The subsistence minimum reached in the monitored period CZK 3,770, while the minimum wage reached CZK 4,194.

persons who were paid hourly wages not exceeding CZK 30, i.e., a maximum of CZK 5,000 per month, reached in the second quarter of 2001 approximately 0.4 % of all employed persons, while the number of persons whose hourly wages did not exceed CZK 34, i.e., approximately CZK 5,700 per month reached approximately 1.3 % of all employed population[94]. Taken by sectors, most of those who are paid the minimum wage work in business services and in public social and personal services. Another sector where low wages are also frequent is the small business sector.

5.2. Subsistence minimum

Subsistence minimum has grown in connection with the development of consumer prices.[95] The subsistence minimum was increased in 2001 following the fulfilment of the condition set out in Act No. 463/1991 Coll. on Subsistence Minimum, as amended (hereinafter only the "Act on Subsistence Minimum"), which permits to increase the subsistence minimum if the aggregate consumer price index has grown since the last increase by at least 5%. The valorisation clause was changed by the amendment of the Act on Subsistence Minimum (No. 271/2001 Coll.).[96]

Due to the generally low level of employment income in the Czech Republic (even after the increase of the minimum wage), social security benefits relating to the level of the subsistence minimum, which are designated as a temporary guarantee of basic life necessities (to protect from material poverty) are still de-motivating.

The opinion regarding the inappropriate ratio between the amounts of the subsistence minimum and low income of larger households is generally accepted. In some views, the reason of the problem lies in the de-motivating amount of the subsistence minimum, in other views, such factor lies in the small amounts by which the minimum wages exceed social benefits (see Chapter 5.1.4.). This difference of opinion is important, as it presumes the different, if not contradicting, approach to the resolution of the problem.

5.3. Social benefits – social care benefits

The Parliament of the Czech Republic was submitted by the government a bill amending Act No. 482/1991 Coll. on Social Needs, as amended, which intends to increase the work motivation of recipients of social care benefits depending on social needs. The amendment should also regulate the general rules for assessment of social needs.[97] Until now, social care benefits may be provided only to beneficiaries with permanent residence within

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[94] Within the same period of the year 2000, this number represented 0.5 % employed persons with hourly wages not exceeding CZK 25 , i.e., those being paid maximum monthly wages of CZK 4,500 , and 1.7 % of employed persons whose hourly wages did not exceed CZK 30, i.e., a maximum of CZK 5,000 per month.

[95] The subsistence minimum amounts were increased in 2001 by Government Decree No. 333/2001 Coll. of 1 October 2001.

[96] Every subsequent valorisation shall be effected as of 1 January for the calendar year in which the growth of consumer prices exceeds the percentage of the growth of consumer prices triggering the valorisation (this shall be possible for the first time as of 1 January 2003). In the case of an exceptional growth of consumer prices, the subsistence minimum amounts may be increased even as of a date other than the regular valorisation date.

[97] The bill amending Act No. 482/1992 Coll. was approved by Government Resolution No. 953 of 26 September 2001, and has been reviewed by the Chamber of Deputies as the Press of Chamber of Deputies No. 1065 (http://www.snemovna.cz/forms/sqw_tmp/72ae001d.doc).

the territory of the Czech Republic. Necessary social care benefits may be provided to minors who are not permanently residing in CR in an in-kind or cash form if they are exposed to a threat of serious health impairment or their proper education is in jeopardy. In order to mitigate the harshness of the law, social care benefits may also be provided to adults who do not fulfil the condition relating to permanent residence. Exceptions from the condition of permanent residence for social care purposes are granted by the regional office.

5.4 Social benefits – state social support benefits

5.4.1. The institute of "jointly considered persons"

The Report on the State of Human Rights in the Year 1999 noted the problems with the condition relating to the permanent residence of the entitled person and persons assessed jointly with the beneficiary to determine their entitlement for state social support benefits pursuant to Act No. 117/1995 Coll. on the State Social Support, as amended (hereinafter only the "State Social Support Act"). The State Social Support Act was amended in 2000 in connection with the new Foreigner Act. Since 1 April 2000, the permanent residence for purposes of the State Social Support Act means, with respect to foreigners, the residence exceeding 365 days after the date of registration for residence. Effective as of 1 January 2001, the authority to waive the condition of permanent residence has been vested in the regional offices under delegated competencies.

The general condition regarding the expiry of 365 days after the registration of residence is not examined in the case of children of foreigners who are younger than one year of age, were born within the territory of the Czech Republic and have been registered as residents in CR. This further contributed to the care for children of foreigners who were born in CR, which had been resolved until then, for the purposes of provision of the state social support, by the waiver of the condition of permanent residence.

5.4.2. Child allowance

The proposed amendment to the State Social Support Act, which has been submitted to the Parliament, aims at *"defining the child allowance as a state social support benefit that belongs to any child irrespective of the family income"*, together with the implementation of the principle of *"solidarity of the socially stronger with the socially handicapped"*.[98] According to the proposed amendment, the difference between the child allowance amount paid to families whose income does not exceed 1.1 times the subsistence minimum and the amount paid to families whose income exceeds triple the subsistence minimum will range in 2003 (i.e., in the first year when the new system will apply), subject to the age of the child, from CZK 69 to CZK 99 a month.

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[98] The amendment was approved by Government Resolution No. 921 of 17 September 2001. The Chamber of Deputies adopted it by Resolution. 2033 of 6 February 2002 published as the Press of Chamber of Deputies No. 1055. The Senate rejected the proposed amendment by its Resolution No. 294 of 14 March 2002. (http://www.snemovna.cz/forms/sqw_tmp/5f61001f.doc and http://www.snemovna.cz/sqw/historie.sqw?O=3&T=1055).

5.4.3. Parent allowance

The amendment of the State Social Support Act (No. 271/2001 Coll.), which came into effect on 30 September 2001, allowed the parent who cares for a small child to contribute to the increase of the living standard of the family. Until the effective date of the amendment, the act did not grant the parent allowance to a parent who performed gainful activities and whose income from these activities exceeded the amount covering personal needs set out in the Act on Subsistence Minimum. The amendment has increased this limit to 1.5 times the amount covering personal needs. *The disproportion between the amount of parent allowance paid to a parent taking care of a child and the minimum wage or average income has remained unresolved.*

5.5. Widow and widower pensions

The conditions of pension entitlement depend on the laws under the effective period of which the entitlement arose (e.g., Act No. 155/1995 Coll. on Pension Insurance, as amended, Act No. 100/1988 on Social Security, as amended, Act No. 121/1975 Coll. on Pension Security and previous laws). Existing entitlements survive any change of the law. While the widow pension has been a traditional type of pension paid for dozens of years, the widower pension was introduced on 1 August 1991. The terms of entitlement for widow and widower pensions have been changed with the lapse of time, so there are currently several groups of recipients of widow and widower pensions. Their entitlements are generally balanced but differ in individual aspects.

One of these groups consists of women whose widow pensions were granted before 1 January 1996 based on a higher percentage assessment element (60%), but subject to a pre-determined maximum concurrence limit of the widow pension and any other income. Some of these women consider it as justified to cancel the maximum concurrence limit, referring to the fact that such limit does not apply to widow pensions granted after 1 January 1996. In this respect, however, it is necessary to note that the widower pensions granted before 1 January 1996 were subject to the same maximum concurrence limit, while both the widow and widower pensions granted after 1 January 1996 are not subject to any such limit.

Another group of citizens who feel disadvantaged by the legislation applying to widow and widower pensions are the single and divorced persons. This group calls for the cancellation of widow and widower pensions as a sign of inequality among citizens. A typical representative of such group is a divorced woman who has brought up 2-3 children and has worked for approximately 30 years, pointing to widows with the same destiny who will have a lifelong extra income to their old age pension. Such divorced women consider as discrimination namely the fact that the widows receive their widow pension even at the time when they no longer care for children.

All legal systems are governed by the principle of retention of acquired entitlements and of prohibition of retroactivity. A retroactive cancellation of terms of entitlement (e.g., a reduction of the percentage assessment element, cancellation of the maximum concurrence limit, etc.) would introduce in the legal system the retroactive effect of later amendments, which is inadmissible from the viewpoint of legal certainty. One of the basic principles of democratic legal systems is the prohibition of retroactivity, i.e., the prohibition to regulate previous conditions by the legislation that was adopted later. *The matter of further existence*

and form of widow and widower pensions must be resolved as a part of the pension reform. It is, however, evident even now that it is unlikely to find a resolution that will be considered as just by all of the above groups of citizens.

5.6. Trade unions

5.6.1. Collective bargaining

A number of international treaties, namely the ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise (No. 489/1990 Coll.), the ILO Convention No. 98 concerning the Application of Principles of Right to Organise and to Bargain Collectively (No. 470/1990 Coll., Collection of International Treaties), the European Social Charter and Convention No. 135 concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking (No. 108/2001 of the Collection of International Treaties) guarantee the so-called freedom of coalition. This freedom means namely forming employee or employer associations, whose objective and purpose is to formulate, promote, defend and support their interests in the establishment and determination of working, social or economic conditions. The freedom of coalition forms the basis not only of the right to freely establish trade unions or employer organisations and to carry out their activities without any interference from the part of the state, but also the right to free collective bargaining of social partners and the right to use the means of the labour struggle, including the right to strike.

Despite long-term and permanent requests of the Czech-Moravian Trade Union Chamber (hereinafter only „ČMKOS"), CR did not start even in 2001 the ratification process of the Convention of the International Labour Organisation concerning the Promotion of Collective Bargaining (No. 154). Such approach is due to the fact that once the Convention is ratified, it will be necessary to extend the list of entities authorised by the law to get involved in collective bargaining and to execute collective agreement to include several employers that are not members of the association.[99] The Convention concerning the Promotion of Collective Bargaining allows that any labour law matter becomes a subject of collection bargaining, while Act No. 2/1991 Coll. on Collective Bargaining, as amended (hereinafter only the "Collective Bargaining Act") stipulates only one reason for collective bargaining, i.e., the negotiations regarding the execution of the collective agreement. Until now, there exists a difference of opinion on the expansion of collective bargaining between the Ministry of Labour and Social Affairs and ČMKOS.[100]

Once CR ratifies the Convention concerning the Promotion of Collective Bargaining, it will be necessary to prepare at the same time other measures and laws in support of the more extensive scope of the collective bargaining.

Although the legislation framework existing in the Czech Republic provides (save for the aforementioned exceptions) a sufficient space for trade union activities, ČMKOS noted that the trade unions have to resolve in practice not only cases of breach of rights of individual

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[99] This is currently not permitted by Czech legislation. Under the Collective Bargaining Act, collective agreements may be concluded by the competent trade union bodies and the employers or employer organisations.

[100] The Ministry of Labour and Social Affairs, whose competencies cover this area, noted in its materials submitted as a basis for this report that it does not exclude future changes in this respect. It presumes, however, that there will always exist certain labour law provisions that will not be subject to change by collective bargaining.

trade union members, but also encounter procedures followed by the employers, which are directed against the right to organise.[101]

Trade union rights were breached in 2001 in two firms that are parts of multinational corporations. A conflict occurred between the management and the trade union organisation in Siemens Automobilová technika, s.r.o., Stříbro, due to a dispute regarding the participation of the trade union representative responsible for safety and health protection at work in negotiations relating to hygienic breaks at work.[102] The second breach occurred in Bosch Diesel, s.r.o., Jihlava.[103]

As to the formation of trade union organisations in firms with foreign capital participation, the National Contact Point of OECD (hereinafter only „NCP“) discussed in its three meetings a motion filed by ČMKOS regarding the disputes between the employees and the employer, which occurred in Siemens automobilové systémy s.r.o. Stříbro and Bosch Diesel s.r.o., Jihlava. In the first case, the dispute was resolved before the commencement of the extraordinary meeting of NCP. On its extraordinary meeting held in October 2001, NCP discussed the situation at Bosch Diesel s.r.o. in the presence of the employer's representative. The meeting came to the conclusion that the dispute between the representatives of ČMKOS and of OS KOVO on one side and Bosch Diesel s.r.o. Jihlava on the other side still exists. The company representatives stated at the meeting that they would co-operate with any employee organisation that would be established. Due to the fact that the company is not a member of any employer association, NCP recommended to it to consider co-operation or membership in the employer association of the relevant sector. NCO will further monitor the developments in the company.

5.6.2. Right to strike

The only strike that is specifically regulated by the law[104] is the strike organised in the dispute over the execution of the collective agreement. There is no special law regulating the strike as a tool for promotion of other economic or social rights set out in the Charter and in the Covenant on Economic, Social and Cultural Rights. This leads sometimes to an incorrect conclusion that any strike other than for the execution of the collective bargaining agreement is illegal. The Ministry of Labour and Social Affairs tried to resolve this problem in 1997 and prepared a proposal of a general law on strike. Such proposal was and is still rejected by the social partners.

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101 In this statement, ČMKOS pointed to persistent cases of direct (verbal) or indirect pressure on retail trade employees. This pressure is directed against the establishment of a trade union organisation and against members of existing organisations. This problem appears with small employers and with large-scale retail chains like Billa, Penny market and Plus discont, which are owned by foreign capital. This pressure is mostly represented by bullying “supervision” over the performance of work tasks by trade union members, by a verbal pressure, attempting to persuade the employees that the trade union membership is not a part of the company philosophy, etc.

102 During the dispute, the general manager of the company sent an electronic message to the chairman of the trade union organisation that the chairman “may not demand anything, but may only very politely beg and if he (i.e., the chairman) does not change the tone, he will quickly find himself and his office outside the premises of the firm”.

103 In this case, the employees called a meeting outside the premises of the firm with the aim of founding a trade union organisation. In the meantime, the employer organised, through lower level management, a petition against the founding of the trade union organisation and collective transport of employees to the meeting where they were to express their rejection of the trade union organisation. During the meeting, there occurred some disturbances, in which the employer did not directly participate, and the trade union organisation was not founded.

104 Act 2/1991 Coll. on Collective Bargaining, as amended.

5.7. Housing

5.7.1. Homeless persons

Homeless persons include people who have left their residence on their own will or under the pressure of circumstances, as well as young adults who were released from institutional care for reasons of age (see Chapter 5.7.3.). A great part of the homeless depends on the assistance of charities, which establish asylum homes (shelters) for them. Such solution is insufficient in the long run because the persons who have successfully completed their re-socialisation process do not have, due to the current situation on the housing market, virtually any chance to get separate, albeit modest accommodation. There are only a very few projects offering to the homeless not only assistance but also a possibility to earn funds that would allow them to start re-establishing their disrupted social links (the first place among those projects is held by the project established by the civil association "Nový prostor").

5.7.2. Subsidised housing construction programme

Until recently, there were no measures that would provide effective assistance to those groups of population. A means that may currently assist in the resolution of this problem is the subsidised housing programme, which was prepared by the Ministry for Local Development.[105] The programme plans the construction of half-way housing facilities for persons who need further social assistance in this respect, and the construction of "starter apartments", i.e., small and simple apartments, including those in less attractive locations. This is to ensure the entry into the housing market to persons lacking the necessary background and is focussed namely on young adults whose stay in a foster home (educational facility) or in foster care has ended after they reached 18 or 19 years of age[106] and on a part of Roma communities. Beside the principal objective of the programme, i.e., the expansion of offer of municipal rental apartments whose properties meet the specific needs of the above groups of population, this programme is also aimed at the prevention of social exclusion, improvement of general social awareness of vulnerable persons and elimination of prejudice. Therefore, the social components of the programme are prepared in co-operation of the Ministry for Local Development as the guarantor of the subsidies for this type of construction activities, and the Ministry of Labour and Social Affairs, which guarantees the provision of social services to those groups.

The state budget for the year 2002 did not, however, allocate any financial funds for the implementation of this programme. This has to be considered as a serious deficiency, which has a negative effect on the credibility of the proclaimed efforts of the state to ensure social integration of people threatened by social exclusion. It is therefore necessary to ensure the allocation of funds to finance this programme in the 2003 state budget.[107]

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105 It is a specialised programme of the Ministry for Local Development, which is declared by the Minister.

106 According to the estimates of the Ministry of Labour and Social Affairs, there are approximately 450 such young adults every year.

107 The subsidised housing programme is considered as one of the key objectives for the nearest future also by the updated version of the government-approved Roma Integration Concept.

5.7.3. Housing conditions of persons following the termination of substitute family care

Chapter 5.3.8. of the Report on the State of Human Rights in 2000 refers to the persistent problematic situation of young adults following the termination of their stay at a foster home (educational facility) or in foster care. The absolute majority of those young adults have no place to return to and need further social assistance and advice in the process of their integration into the ordinary life. This need is currently satisfied to a certain extent by the so-called half-way houses, which are established by nongovernmental organisations. There are, however, only a few of those houses and their capacity is not sufficient. Another form of assistance in the resolution of the problem would be the aforementioned subsidised housing programme, which includes the obligation to provide social services to an extent enabling future tenants to acquire skills necessary for successful independent life.[108]

5.7.4. Repeal of the Decree of the Ministry of Finance No. 176/1993 Coll. on Apartment Rents and on Payments for Performance Connected with the Use of the Apartment by the Constitutional Court of the Czech Republic

The Constitutional Court found the breach of right to undisturbed use of property (Article 1 of Additional Protocol to ECHR), of the principle of lawful restriction of rights and equality and protection of ownership (Articles 4 and 11 of the Charter).[109] The problems of regulation of rent are directly connected with the Finding of the Constitutional Court No. 167/2000 Coll., in which the Constitutional Court stated that *"the state (public) regulation, based on the consideration of important factors, must take into account in the determination of the price also possible generation of profit."*.

The Ministry of Finance and the Ministry for Local Development have prepared a new bill on rent[110], which was to start the process of deregulation of rents, which have been regulated until now, on the basis of an agreement between the lessee and the owner of the flat.

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[108] A lease of a half-way flat may be concluded only with a provider of social services. The lessee of such apartment may enter into a sublease agreement pursuant to Section 719 of the Civil Code only with the entitled person, i.e., a person who is, for the purpose of this programme, a person with special housing needs.

[109] Finding of the Constitutional Court No. 231/2000 Coll., of 21 June 2000 reads as follows: *„... because, as opposed to the other owners, the category of owners who actually "subsidise" the rent - which includes in a number of cases also municipalities that own renting houses – is unjustifiably denied the content and exercise of a number of basic entitlements that are parts of the ownership right. While there are no doubts that such discriminated categories of owners are obligated to comply with certain restrictions regarding the increase of rents, this may be applied solely when the conditions arising from Article 4(3) and (4) of the Charter have been met. Under paragraph 3 of the above Article, the lawful restrictions of fundamental rights and freedoms must apply equally to all cases meeting the set conditions, and paragraph 4 stipulates that the application of provisions determining the limits of fundamental rights and freedoms must observe their essence and meaning. This, however, is not the case in this matter ... because certain categories of owners are forced to comply with substantial restrictions of their ownership rights, while other categories are not obligated to do so, and such restriction is imposed by the contested decree, which has hardly anything in common with the essence of the ownership right. ... In the opinion of the Constitutional Court, the principle of adequate (equitable) balance requires taking into consideration, during the implementation of requirements specified in Article 11 of the Covenant (on Economic, Social and Cultural Rights – reporter) the process of destruction of the ownership right namely with respect to the owners of rental houses, who are discriminated as compared to other owners, e.g., the owners of family homes, by being denied the use of the fruits and benefits of their ownership, because they are virtually ...forced to cover a part of the rent by themselves. In other words, there exist in our society, due to the existing legislation, certain social groups or entities paying out of their own pockets what is to be ensured by the state for the purposes of the implementation of the aforementioned Article 11 of the Covenant."*

[110] The bill on apartment rent and payments of services provided in connection with the use of the apartment was approved by Government Resolution No. 210 of 7 March 2001.

The above bill was rejected by the Chamber of Deputies in April 2001.[111]Due to that, the Ministry of Finance whose generic jurisdiction applies to the apartment rent, issued on 5 December 2001 the Price Assessment No. 01/2002, issuing the list of goods and services with regulated prices[112], which regulates the process of calculation of the maximum and materially regulated rent and prices of services provided in connection with the use of the apartment. As to its material aspect, this regulation means the continuation of the existing system of regulation of apartment rent.[113]

The adoption of a new act on rent is thus very urgent, as such act should become, beside the housing development, one of the main prerequisites for the establishment of a functioning housing market. Such law may not resolve all problems in the housing sphere, namely the social housing problems.

5.7.5. "Bare" (low-standard) apartments

The generic, but not legally defined term "bare" apartments means housing of a very different nature, commencing with regular lower-standard flats and ending with facilities with restrictive regime and inappropriate material conditions (see the Report on the State of Human Rights in the Czech Republic in 2000). Another problem is the growing concentration of the Roma population in such "bare" flats, threatening that those apartments may turn into a *de facto* segregated type of housing "for the Roma" in the same manner as the apparently neutral "special schools" have turned to a considerable extent into schools for Roma children.

The Ministry for Local Development assigned in 2001 in co-operation with the Inter-ministerial Commission for Roma Community Affairs a survey under the name "Survey of Bare Apartments in Relation to the Roma Community". The survey confirmed that the process of ousting out the Roma population is a direct consequence of the housing policy in many municipalities, which is not limited only to certain locations that were made famous by the media.[114] Many municipalities also try to expel problematic tenants and to resolve their problems on the account of other municipalities.

5.8. Health care

5.8.1. Health care provided to foreigners[115]

There exist a number of serious problems relating to the provision of health care to foreigners. The current regulation of health insurance is inadequate, because it causes difficult problems to some foreigners and to providers of medical services, particularly hospitals. Based on a petition of the Human Rights Council, which highlighted certain deficiencies in the regulation of health insurance of children of foreigners residing in CR on

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111 The Chamber of Deputies reviewed the bill as Press of the Chamber of Deputies No. 883 (http://www.snemovna.cz/forms/sqw_tmp/71510015.doc) and rejected the bill in the first reading on 4 April 2001 by Resolution No. 1509 (http://www.snemovna.cz/sqw/historie.sqw?O=3&T=883).

112 Price Bulletin No. 18/2001.

113 This situation is no longer sustainable namely with respect to the observation of the ownership right of owners of buildings and apartment who are not municipalities (i.e., public law entities). If the owners of homes and apartments want to live in them because they find their current housing inadequate, they are obligated to provide at their own expense adequate substitute housing to their current tenants.

114 The survey is not available to the public.

115 General problems concerning foreigners are discussed in Chapter 9.

the basis of long-term visa (i.e., valid for more than 90 days), the government ordered the Minister of Health to prepare a law that would overcome the situation in which some of those children, namely those who are seriously ill, have no access to health insurance.[116] *As regards children, such situation is also incompatible with the requirements of the Convention on the Rights of the Child (No. 104/1991 Coll.).*

Similar problems as problems of those children are faced by other groups of foreigners, e.g., parents who stay at home and take care of a small child. Pursuant to Act No. 48/1997 Coll. on Public Health Insurance, as amended (hereinafter only the "Act on Public Health Insurance"), a parent who takes care of one child under 7 years of age, or of two children under 15 years of age and who is a Czech citizen or a foreigner holding a permanent residence permit is covered by the general health insurance and his insurance premiums are paid by the state. Thus, a foreigner who stays in the Czech Republic on the basis of the long-term visa for the purpose of unification of the family has to resort only the commercial insurance, for which there is no legal entitlement, and insurance companies mostly refuse to insure "high-risk" individuals.

The provision of health care to foreigners should thus be thoroughly analysed as to the justification and fairness of differences between the status of the insureds resulting from the Act on Public Health Insurance and certain specific group of foreigners (like those depending on the residence status or length of stay). Subsequently, it is necessary to adopt measures to remedy the system, i.e., to ensure general health insurance coverage to certain groups of foreigners. Such inclusion of those foreigners into the Act on General Health Insurance seems more logical than a special law.[117]

5.8.2. Right of apprehended and arrested persons to health care

Pursuant to the Police Act, a police officer is obligated to ensure medical treatment to a person who is to be placed in a police cell and who is injured or notifies the policeman of that he suffers from a serious disease or if there exists a justified suspicion that the person suffers from such disease. At the same time, the police officer is obligated to ask for the opinion of a physician whether such person may be placed in the cell (Section 28(3) of the Act). Medical care is also provided to a person placed in a police cell, who becomes sick, hurts himself or attempts suicide. In such case the policeman guarding the cell shall take the necessary steps to save the person's life and health, namely by providing first aid and calling a physician, whom he will ask for his opinion as to further stay of the person in the cell or the placement of such person in a health care facility (Section 32). None of those provisions, however, ensures the right of those persons to be examined by a physician of their own choice.

Pursuant to Section 9(2) of Act No. 20/1966 Coll. on the Care for the Health of the People, the right to a free choice of a physician is limited only to persons in custody or those

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116 The government approved the petition of the Human Rights Council by its Resolution No. 546 of 6 June 2001. The material intent of the law was approved by Government Resolution No. 1210 of 21 November 2001 regarding the material intent of the act on provision of health care to children of foreigners residing on the territory of the Czech Republic on the basis of long-term visa (for more than 90 days). The initial works on the act have indicated, however, that the selected solution, i.e., through a special law, may result in excessive "mandatory contractual" premiums.

117 E.g., the inclusion of foreigners holding long-term visa in the general health insurance system subject to a certain length of stay. Another alternative is the introduction of a surrogate insurance system under which the insurance policy of a family member, e.g., the employed spouse, covers the treatment of children and the dependent spouse.

serving a prison sentence. The fact that such right is not guaranteed to apprehended or arrested persons has been repeatedly criticised by CPT. A similar criticism was voiced in 2001 by the Human Rights Committee during its review of the Initial Report of the Czech Republic on the Implementation of the Covenant on Civil and Political Rights.

6. Discrimination

6.1. Changes of civil and criminal law and in misdemeanour legislation

6.1.1. Passage of the burden of proof in civil litigation

A number of laws include provisions prohibiting any conduct that may lead to discrimination or may have a discriminatory nature. Most of those provisions are declaratory and the victims of the discriminatory conduct have very little protection. A change in the position of victims of discrimination in civil litigation was brought about by the adoption of an amendment of CPC (No. 30/2000 Coll.), which provides for the passage of the burden of proof. Thus, the victim of discrimination need not prove at the trial that he has been discriminated against, but the perpetrator must prove that he did not commit any such act. Such procedural advantage has been granted, however, only to victims of gender discrimination that occurred in labour law relations. It means, for instance, that an employee that was discriminated against due to his race must still prove this fact.

Another amendment of CPC[118], which was prepared in 2001, would mean (if adopted) the transfer of the burden of proof from the victim of discrimination to the perpetrator if such discrimination occurred in labour law relations due to racial or ethnic origin, religion, belief, creed, disability, age or sexual orientation. According to the draft amendment, the transfer of the burden of proof will also apply to victims of discrimination due to race or ethnic origin in the provision of health or social care, in the access to education and professional training, to public tenders, membership in employee or employer organisations, in professional and special interest association, in the retail sale of goods or provision of services.

The prepared amendment relating to the transfer of the burden of proof is still insufficient, since the burden of proof would pass in civil litigation in cases of discrimination in labour law relations on a number of grounds, while it would pass in other than labour law relations only in cases of discrimination on the grounds of race or ethnic origin. *Thus, the proposed amendment does not reflect the fact that discrimination in other than labour law relations may occur, for instance, on the grounds of religion, creed, disability, age or sexual orientation. The victim of discrimination would still have to prove such fact*.

6.1.2. Change of the grounds of criminal offences grossly disturbing civic coexistence

A draft amendment of the Criminal Code[119] that was prepared in 2001 expands the grounds of violence against a group of population or an individual, defamation of a nation,

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[118] The government approved the amendment to CPC by its Resolution No. 748 of 25 June 2001. The Chamber of Deputies reviewed it as the Press of the Chamber of Deputies No. 1025 and returned it in third reading by its Resolution No. 1780 of 25 October 2001 for finalisation. (http://www.snemovna.cz/sqw/historie.sqw?O=3&T=1025).

[119] The proposed amendment to the Criminal Code was approved by Government Resolution No. 579 of 13 June 200 and was reviewed by the Chamber of Deputies as the Press of the Chamber of Deputies No. 972 and

race or creed, incitement of national and racial hatred against a group of persons and calling for restriction of their rights and freedoms, injury to health and murder in such manner that they may also provide protection under criminal law against serious assaults motivated by hatred of a certain ethnic group. The amendment also proposes stricter penalty for incitement of national and racial hatred against a group of persons and to the restriction of their rights and freedoms if such offence is committed by mass media of communication, including public computer networks, or if the perpetrator is actively involved in the activities of groups, organisations or associations that promulgate discrimination, violence or call for racial, ethnic, or religious oppression (Section 198a (3)). According to the draft amendment, the perpetrators of these crimes may be sentenced to imprisonment from six months up to three years.

6.1.3. Amendment to the Misdemeanour Act

Due to the fact that not every discriminatory act reaches the intensity of a crime, the Act on Rights of Members of National Minorities (see Chapter 2.2. of the General Part) also amended the Act on Misdemeanours. The grounds of misdemeanour against civic coexistence were expanded to cover any conduct causing detriment due to discrimination[120]. Such misdemeanour may be punished in administrative proceedings by a fine of up to CZK 5,000. The discrimination victim may become a party to such proceedings only if it deals with property damage caused to such person by such misdemeanour. However, discrimination results much more frequently in non-property damage, like harming the victim's honour or dignity.

6.1.4. Special law prohibiting discrimination in the Army of the Czech Republic / in the armed forces

Act No. 221/1999 Coll. on Professional Soldiers, as amended (hereinafter only the "Act on Professional Soldiers") includes, like many other laws regulating employment or service relations, an anti-discrimination clause, prohibiting any discrimination on the grounds of race, skin colour, sex, sexual orientation, language, belief or religion, ethnic or social origin, property, family, marital and family status or obligations towards the family. The Act on Professional Soldiers also prohibits such acts of the services bodies that are not directly discriminatory but have discriminatory consequences. As opposed to the Labour Code, the Act does not expressly grant to professional soldiers the possibility to seek damages, e.g., in the form of pecuniary satisfaction. An amendment[121] to this act, which was prepared in 2001, prohibits discrimination on the grounds of national origin, pregnancy or maternity or the discrimination of breastfeeding female soldiers. A material intent of the amendment to Act No. 220/1999 Coll. on the Course of Compulsory or Substitute Military Services, on Military

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approved by Resolution No. 2061 of 8 February 2002 (http://www.snemovna.cz/sqw/historie.sqw?O=3&T=972). The Senate reviews the amendment as the Senate Press No. 200.

[120] Section 49(1)(e) of the Act on Misdemeanours reads as follows: *"Anyone who causes harm to another person on the grounds of his national or ethnic origin, race, skin colour, sex, sexual orientation, language, belief or religion, political or other creed, membership or activity in political parties or political movements, trade unions or other associations, social origin, property, family, health condition, marital or family status, commits a misdemeanour."*

[121] This proposed amendment was approved by Government Resolution No. 56 of 16 January 2002, and reviewed by the Chamber of Deputies as Press of the Chamber of Deputies No. 1233. Based on its Resolution No. 2093 of 14 February 2002, the Chamber of Deputies returned the draft amendment for finalisation (http://www.snemovna.cz/sqw/historie.sqw?O=3&T=1233, http://www.vlada.cz/1250/vlada/cinnostvlady_usneseni.htm).

Exercises and Certain Legal Relations of the Reservists, which was prepared at the same time, is also supposed to include an anti-discrimination clause.[122]

Article 18 of the new Basic Rules of the Armed Forces of the Czech Republic (i.e., the military regulation with the supreme legal force), which became effective on 1 December 2001, a soldier may file a complaint relating to gross breach of human rights and freedoms, including racial discrimination, directly with the Chief Inspector for Protection of Human Rights at the Ministry of Defence, thus circumventing the standard procedure that is binding in all other cases.

The amendment to the Labour Code (see Chapter 5.1.1.) has also brought about a change in the protection from discrimination in service relations of members of the Police of the Czech Republic and of the Security Intelligence Service. These service relations are subject to the same provisions of the Labour Code that deal with protection from discrimination on a number of grounds. The protection from discrimination in the establishment of the service relation shall be governed by the applicable provisions of the Employment Act.

6.1.5. Discrimination in the service sector

As noted in the previous reports, the current protection of consumers from manifestations of racial discrimination is insufficient. Act No. 634/1992 Coll. on Consumer Protection, as amended (hereinafter only the "Consumer Protection Act") only includes a declaratory provision under which the seller may not behave during the sale of products and provision of services in conflict with good morals, particularly may not discriminate against the consumer in any manner. The body that is competent to oversee the compliance with the prohibition of discrimination is the Czech Trade Inspection (hereinafter only "CTI"). Discrimination in the service sector occurs mostly against members of the Roma community. Nevertheless, CTI currently employs only two female inspectors of the Roma ethnic origin. Although the checks are performed on site, it is difficult to reconstruct in many cases the respective situation. Out of sixteen complaints of racial discrimination raised in 2001, only two were confirmed as justified. Apart from that, 639 checks, which also monitored manifestations of racial discrimination, were made in the presence of the Roma female inspectors or other Roma activists.

At the same time, a petition filed by the victim of discrimination does not constitute grounds for the initiation of administrative proceedings but only as a suggestion for CTI to perform a check. Thus, the administrative proceedings with the service provider will be commenced only if the discrimination is found during the check performed by CTI inspectors. Moreover, the victim of discrimination is not a party to those proceedings, unless he suffered property damage.[123]

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[122] The government approved the material intent of the amendment to the Act by its Resolution No. 1246 of 26 November 2001 (http://www.vlada.cz/1250/vlada/cinnostvlady_usneseni.htm).

[123] Section 79(b) of Act on Misdemeanour reads as follows: "*The parties to the misdemeanour proceedings include the aggrieved party if the proceeding deals with compensation for property damage caused by the misdemeanour.*".

6.2. Protection from discrimination

6.2.1. Mechanisms for protection of equality of men and women

A relatively significant progress was achieved in the past years in the establishment of legislative conditions for the promotion of equality of men and women. However, no law can automatically guarantee the actual implementation of equal opportunities in practical life, where the problems still persist. The reason may be seen in the persistent deep-rooted stereotypes regarding the division of roles between men and women, in the underestimation of the significance of this problem by the society and in the poor knowledge of matters relating to equality of men and women, which may be found even with high-level public officials with decision-making authority, who have a say in the creation of concepts and strategies.

The existing bodies responsible for ensuring equal opportunities are the Equal Opportunities Department, which is part of the Section for European Integration and International Cooperation of the Ministry of Labour and Social Affairs, the Inter-ministerial Commission for Equal Opportunities of Men and Women, the Committee of the Human Rights Commission for Elimination of All Forms of Discrimination against Women and the Council for Equal Opportunities of Women and Men. The above department of the ministry, which also organises the agenda of the Inter-ministerial Commission and of the secretariat of the Council for Equal Opportunities of Women and Men, has only five staff members. Only one half of one position is designated to organise the agenda of the committee. None of those bodies has sufficient powers to effectively promote measures to ensure equal opportunities of men and women and does not have any specific financial sources to promote this policy (see Chapter 2.4. and 3.4.2. of the General Part).

The establishment of a separate body that would supervise the implementation of the principle of equal treatment of men and women is also required by the draft amendment of EU Directive No. 76/207/EEC concerning the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. Such independent institution should accept, investigate and review complaints of discrimination on the grounds of sex, initiate surveys and polls and publish reports relating to the problems of gender discrimination.

6.2.2. Absence of an effective mechanism of control of the implementation of anti-discrimination provisions of applicable laws

Another persistently criticised deficiency is the absence of an effective mechanism of control of the implementation of anti-discrimination provisions of applicable laws. A similar institution as the institution referred to in EU Directive No. 76/207/EEC, is to be established by EU member states pursuant to EU Directive No. 2000/43/EC, introducing the principle of equal treatment of persons regardless of their race or ethnic origin. With respect to the anticipated admission of the Czech Republic to EU, it is necessary to take specific steps to establish an institution for protection from discrimination.

It appears appropriate to establish such institution by a uniform anti-discrimination law, which would provide protection from discrimination on various grounds.[124] *It is*

[124] This modern tendency has been assumed by the majority of states that have recently adopted the anti-discrimination legislation (Ireland, Hungary, etc.). The Slovak government will present to the Slovak Parliament

impossible to ensure unified protection in the situation in which the provisions on prohibition of discrimination are scattered in many laws and the protection from discrimination is ensured by several different bodies (divided, for instance, according to the type of discrimination). This has even now a negative effect on the legal certainty in this area. This resolution is supported by cases of multiple discrimination which occur in practice (e.g., on the grounds of sex, ethnic origin and age) or by cases in which the victim does not know on which grounds he was discriminated. Under such circumstances, the protection against discrimination, which is stipulated in various laws or regulated differently by grounds for discrimination or other criteria, would be difficult to access by the victims and would thus have little effect.

6.3. Violence against women

6.3.1. Domestic violence

Despite partial success achieved in the last year in the field of prevention and suppression of violence against women, the overall situation has not undergone any significant changes. High tolerance of this type of violence is widespread namely in private relations (cases of domestic violence) and in areas that are not clearly defined by the legislation, like prostitution or sexual industry (trade in people).

Until the effective date of the amendment of the Criminal Procedure Code, the effective criminal prosecution of perpetrators of domestic violence was hindered and in many cases made impossible due to the provisions of Section 163a. Under this section, the criminal prosecution of offences that are the most frequently committed[125] in connection with domestic violence was subject to the consent of the aggrieved party. It is understandable that a victim who is threatened by the violent partner, with whom she mostly shares household, does not frequently give such consent and often withdraws it under pressure. The amended Criminal Procedure Code resolves this problem in the amended provisions of Section 163a, which includes a list of situations in which the consent of the aggrieved party in not required. One of them is a situation where it is evident from the existing circumstances that the consent was not given or was withdrawn under duress evoked by threats, pressure, dependence or subordination. The amendment of the Criminal Procedure Code also shortens to 30 days the time limit in which the aggrieved party may give consent with the criminal prosecution, and stipulates explicitly that such consent may no longer be given after the futile lapse of such time limit. At the same time, the criminal prosecution of perpetrators of domestic violence may be initiated only if the bodies active in criminal proceedings get to know that such offence has been committed.

The essential problem persisting in this area is the insufficient protection of victims of domestic violence. If the violent partner is not taken into custody or imprisoned, there are no laws under which he would be forced to leave the common household. Sharing household with a violent partner thus exposes the victim to permanent stress and risk comparable with mental torture. If there are children in the family, who frequently witness violence between

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in the first half of the current year its uniform anti-discrimination bill together with a bill relating to the relevant institutional guarantees.

[125] These include the following crimes: violence against a group of citizens and against an individual (Section 197a), injury to health (Sections 221, 223, 224), restriction of personal freedom (Section 231(1)), extortion (Section 235(1)), rape (Section 241(1)).

parents, such situation has a distinctly adverse effect on their future development. Thus, it is not the perpetrator who actually bears the consequences of his unacceptable behaviour.

The only solution of this unbearable situation seems to be the adoption of a legislation that would force the violent partner to leave the common household. Similar measures have already been adopted in the Federal Republic of Germany and in Austria.

Another frequently criticised matter is the shortage of shelters for victims of domestic violence and the level of care provided in those facilities. Although it is indisputable that such shelters play under the existing circumstances an irreplaceable role in the protection of victims, they still represent an attempt to resolve the consequences. Thus, the only long-term, resolution, which will bring more future effect, seems to be the improvement of the legislation, or the introduction of other measures for the purpose of prevention of domestic violence and suppression of its early manifestations so that no one will be forced to leave his home and seek rescue in shelters.

6.3.2. Trade in people

The regular report of the European Commission on the progress achieved by CR in its negotiations regarding admission to EU has noted for the second successive year the problem of trade in people.[126] In comparison with the previous years, when CR was mostly the country of origin or a transit country, the Czech Republic is now increasingly becoming a target country. This development indicates that the problems relating to trade in people are not yet on the decline in the Czech Republic. The non-state non-profit organisations dealing with this problem criticise in particular the insufficient social and legal protection of victims of this type of crime.

Another problem lies in the definition of trade in women set out in the Criminal Code, which does not comply with the definition set out in the Protocol on Prevention, Suppression and Punishment of Trade in People, Namely Women and Children, which is part of the U.N. Convention against Transnational Organised Crime (hereinafter only the "Protocol" and the "Convention"). From the viewpoints of these international legal documents, the current definition of trade in women set out in the Criminal Code[127] suffers from several serious defects. First of all, only the trade whose victim is a woman is considered as a criminal offence, moreover only if such woman was enticed, hired or transported from the Czech Republic abroad. Thus, the definition does not prosecute trade in men or trade in people within the territory of the Czech Republic or in people transported to the Czech Republic from abroad. The attributes of the grounds of this type of crime are met only if the trade were concluded for the purpose of sexual intercourse. These attributes do not also include coercion, although it is considered as one of the basic elements defining the trade in people.

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[126] USA adopted in 2000 an act on protection of victims of violence and trade in people, which orders the US State Department to publish every year a report on the struggle against trade in people. This report placed CR together with Brazil, China, Mexico, Poland and a number of developing countries among states that have failed until now to fully comply with the minimum standards set out in this act, but make significant efforts in the resolution of this problem. This evaluation is a positive development in comparison with the year 1999, when the report on trade in people was prepared by CIA and CR was placed together with Russia, China, Vietnam, Mexico and Thailand among states that are the countries of origin of most women offering sexual services in the USA.

[127] Section 246(1) of Act No. 140/1961 Coll., the Criminal Code, as amended, stipulates as follows: "A person who entices, hires or transports a woman abroad with the intent to have her used there for sexual relations with another shall be sentenced to a term of imprisonment from one to five years".

Some of the above defects may be removed by the amendment to the Criminal Code[128], which was approved by the Parliament. The definition of trade in people contained therein applies to all people irrespective of their sex and to the trade from the Czech Republic to a foreign country and *vice* versa. The amendment also introduces new qualified grounds of this crime with longer sentences; however, coercion represents only an indirect attribute and applies solely in cases where the conduct that meets the definition of trade in people causes serious injury, death or a particularly grave consequence. Moreover, the amendment does not resolve any other defects.

In its efforts to contribute to better protection of victims of criminal activities connected with the trade in people and to remove some defects of the legislation, the Human Rights Council adopted a petition for the government regarding measures directed at the improvement of possibility of criminal prosecution of persons suspected of committing crimes connected with the trade in people and at the improvement of the status of victims of this type of crime.[129] The petition includes a proposed change of the definition of trade in women in the manner corresponding with the definition set out in the Protocol to the Convention. In accordance with the international documents[130], the petition further proposes to legalise the stay of victims of the trade in people in the Czech Republic for the duration of criminal litigation against the perpetrators under the institute of tolerance referred to in the Foreigner Act. Such measure is very important for effective prosecution of perpetrators of this type of crime, in which the victims are frequently the only witnesses and their testimonies are often indispensable for the criminal process. The petition also includes a proposal to ensure to the victims of this type of crime access to the labour market, or entitlement to social security for the duration of the criminal litigation against the perpetrators. The victims, who return from the environment of forced prostitution, are often in a very bad physical and mental state, are afraid to return to their countries of origin, do not have any identity documents and are totally destitute. In many cases, they also suffer from social discrimination. Therefore, it is necessary to provide to them social support, which will allow them to return to the ordinary lifestyle and will also serve as a prevention against another involvement with the traffickers in people.

The trade in people represents a serious breach of human rights. Therefore, the international organisations try to form effective strategies directed at its elimination. The effectiveness of such strategies depends on close co-operation and approximation of the relevant legislation and standards of assistance to the victims. The proposed measures included in the petition should become the first steps in the implementation of those objectives in the Czech Republic.

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[128] Upon its approval by the Chamber of Deputies in the form of Press No. 927 (http://www.snemovna.cz/forms/sqw_tmp/5a110051.doc), the amendment of the Criminal Code was approved by the Senate as Senate Press No. 200.

[129] The petition relating to trade in people, which was prepared by the Committee for Elimination of all Forms of Discrimination against Women, was approved by the Human Rights Council on 29 November 2001. The Government approved it by its Resolution No. 117 of 28 January 2002.

[130] E.g., the aforementioned Protocol to the Convention; Ministerial Declaration on European Rules for Effective Measures Directed at the Prevention and Fight Against Trade in Women for the Purpose of Sexual Exploitation, adopted at the EU Conference of Ministers held in The Hague in 1997, Recommendations of the Committee of Ministers to Member States of the Council of Europe regarding measures against trade in people connected with sexual exploitation, which were issued in 2000, Decision No. 1 of the Council of Ministers of the Organisation for Security and Cooperation in Europe (OSCE) of 28 November 2000 regarding the intensification of efforts of OSCE in the struggle against trade in people.

6.4. Female surnames

The Report on the State of Human Rights in the Year 2000 noted that the current legislation applying to female surnames is the focus of justified criticism. Foreign women who marry a Czech citizen and Czech female citizens who marry a foreigner and want to use the surname of their husband, are forced by this legislation to use such surname with the Czech suffix. The situation of foreigners is even worse than the situation of the Czech women, as the Czech female citizens may state, for practical reasons, that they belong to a national minority, thus circumventing the bureaucratic insistence on the Czech grammatical rules.[131]

6.5. Criminal activities motivated by racial intolerance

The courts of the Czech Republic issued in 2001 a final sentence against 150 perpetrators of crimes motivates by racial intolerance.[132] 19 of those offenders received prison sentences, 115 of them suspended sentences, 14 of those offenders were sentenced to community work and 7 of them were sentenced to a pecuniary penalty as the principal or secondary punishment.

Total number of sentenced persons	Out of which: juveniles	Out of which: repeated offenders	Males/females
150	25	19	130/20

Grounds of the offence	Number of sentenced persons
Section 260, Section 261 of the Criminal Code	19
Section 196	34
Section 198 and Section 198a	36
Section 221	6
Section 222	9
Section 202	7
Section 238	5
Section 155	2
Section 247	3

As to the number of offences, these criminal activities are relatively small-scale, but their impact on the society is not negligible. Each of these offences may have – and often has – far-reaching negative consequences, because it evokes a feeling of jeopardy, namely among the Roma community, whose members are the most frequent victims of this type of crime. Moreover, the experience of other countries indicates that these offences are quite frequently latent, as many assaulted persons do not report the crime.

As opposed to the last year, only two particularly serious offences were committed. In one of those cases, three Roma were assaulted in Ostrava-Poruba by a group of perpetrators, who used knives and gas pistols. One of the assaulted suffered a serious, life-threatening

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131 Act No. 301/2000 Coll. on Civil Registers, Name and Surname allows the civil register to include in the documents of the bearer of the surname at her request a surname that does not comply with Czech grammar only if so stipulated by an international treaty, e.g. the Framework Convention for the Protection of National Minorities (No. 96/1998 Coll.).

132 This number represents 0.25 % of the total number of 60,180 validly sentenced persons. The total number of persons sentenced for those offences in 1999 reached 166, i.e., 0.26% of the total number of 62,594 sentenced persons. The total number of persons sentenced for those offences reached in 2000 148, i.e., 0.24% of the total number of 63,211 sentence persons.

injury.[133] The second case concerned the assault at a member of the Roma community in Svitavy, who died from his injuries on 21 July 2001.[134] Other two cases registered in 2001 concerned offences motivated by racial intolerance, which were committed by members of the Police of the Czech Republic.[135] A sporadic occurrence of criminal offences motivated by racial intolerance in the Army of the Czech Republic is also worth mentioning.[136]

Criminal activities motivated by racial intolerance are substantially overlapping with the criminal activities with extremist implications. Those two types of criminal activities are, however, not identical, as the notion of "extremism" is defined otherwise, rather in the terms of political science than in the terms of law. Therefore, extremist criminal activities include, beside acts motivated by racial intolerance, also offences committed by extreme leftist or rightist demonstrators. On the other hand, not all offences motivated by racial intolerance are (or should be) considered as extremist, as they may be committed (based on the occurrence of racial prejudice among the population) by individuals who are not political extremists. According to official crime statistics, 452 criminal offences with extremist implications were recorded in the Czech Republic in 2001, i.e., 88 (24.2) more than in 2000.[137]

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[133] The investigator initiated the investigation of attempted injury to health under Section 8(1) in relation to Section 222(1) and (2)(b) of the Criminal Code and of rowdyism under Section 202(1) of the Criminal Code. On 3 July 2001, the investigator of the City Investigation Office of the Police of the Czech Republic in Ostrava charged the perpetrators pursuant to Section 160(1) of the Criminal Procedure Code with injury to health under Section 222(1) and (2)(b) of the Criminal Code and rowdyism under Section 202(1) of the Criminal Code, committed as accomplices. On 5 July 2001, the investigator charged other persons with injury to health under Section 222(1) and (2)(b) and of rowdyism under Section 202(1) of the Criminal Code, committed as accomplices. The charges pressed against one of the accused were later re-classified as attempted murder under Section 8(1) in connection with Section 219(1) and (2)(g) of the Criminal Code. All accused were taken into custody.

[134] A 23-year old V.P. was charged on 21 July 2001 and was taken into custody on 22 July 2001. The investigator of the Regional Investigation Office in Hradec Králové ended the investigation on 19 December 2001 by proposing to file a claim. V.P. was sentenced on 29 March 2002 to 13 years in prison.

[135] One police officer was accused of support and promotion of movements aimed at suppressing citizens' rights and freedoms (Section 261 of the Criminal Code) and rowdyism under Section 202(1) of the Criminal Code, committed as an accomplice under Section 9(2) of the Criminal Code (chanting "Sieg Heil" at a bar and a physical assault on a person in front of the bar with accomplices). The state attorney filed a claim against the police officer on 3 December 2001. As to an assault on a member of the Roma community by members of the Police of the Czech Republic, five police officers were charged with abuse of power of a public official under Section 9/2 in relation to Section 158(1)(a) of the Criminal Code. Four of them were further changed with violence against a group of citizens or an individual under Section 9/2 in relation to Section 196(2) of the Criminal Code; the matter is still under investigation.

[136] In all those cases, the acts of the accused were classified as suspected support and promotion of movements aimed at suppressing citizens' rights and freedoms under Section 260 and Section 261 of the Criminal Code (in one case in concurrence with defamation of a nation, race and creed under Section 198 of the Criminal Code). The illicit acts committed by the accused consisted of one case of chanting fascist and Nazi slogans and public use of the Nazi greeting, of two cases of showing video cassettes and reproductions of tapes with racist and Nazi texts at military barracks and of one case of physical assault, murder threats and racial insults directed against a dark-skinned soldier. In two cases, the Military Police found with the perpetrators materials promoting Nazism and racism. Five soldiers in compulsory service were suspected of racially motivated criminal offences (one soldier committed a similar offence twice).

[137] 506 persons were prosecuted for crimes with extremist implications; namely for support and promotion of movements aimed at suppressing citizens' rights and freedoms – 269 persons (52,8%), for defamation of a nation, race and creed - 86 persons (17%), and for violence against a group of citizens or an individual - 59 persons (11,7%). 19 persons (3.8%) were prosecuted for intentional injury to health. The proportion of resolved offences with extremist implications reached 89,8% of the total number of those offences (406 cases). Most of those offences were recorded in Northern Moravian Region (128, i.e., 28.3%), in the City of Prague (79, i.e., 17.5%), in the Region of Central Bohemia (65, i.e., 14.4%) and Northern Bohemia (61, i.e., 13,5%). The lowest

The development of extremism has been described in periodical government reports (under the title "Report on Problems of Extremism on the Territory of the Czech Republic"). Those reports also provide detailed information on the activities of the state authorities in their struggle against extremism.[138] A list of those activities and a discussion regarding the unified interpretation of individual key terms goes beyond the scope of this report.

7. Rights of children

7.1. Substitute care

Like in other European countries, approximately 1% of children living in the Czech Republic may not grow up with their own biological families. Only 2% of those children are complete orphans, but those mostly stay with a relative. Thus, the majority of abandoned children have their own family (or at least one parent), who is, for a number of reasons, unable, unwilling or does not know how to take care of them. Those children do not have the same perspective of growing up in an "ordinary family environment" as the abandoned children living outside their families in developed European countries, because the most common form of care for abandoned children in the Czech Republic is the institutional care. Problems of a child who cannot stay in his current environment are now frequently resolved by preliminary placement of such child in an institutional care facility, without seeking any other solutions. The placement in an institutional care facility represents, however, a rather traumatising experience for the child, which may often damage his mental and emotional development and may continue to have adverse effects on his adult life.

A long-term, regular and frequent social work in the family (including daily care, if needed), provided not only by social and legal protection authorities but also by non-state organisations, is non-existent in the Czech Republic. Such care would be useful namely to families in which the parents wish to bring up their children and take care of them, but whose care shows significant ups and downs, i.e., is not systematic. If those families were provided systematic social assistance, no institutional care would be necessary. Due to the absence of social work in the area of prevention of rent arrears and to total neglect of social housing for poor families, some children are placed in institutional care facilities only because their parents do not have sufficient funds to provide appropriate housing for them.

Some assistance in the prevention of placement of children into institutional care facilities is provided by educational care centres. These centres ensure preventive care through the provision of pedagogic and psychological services to children exposed to risk of behavioural disorders or showing developed symptoms of such disorders and negative

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number of those offences was registered in Southern Bohemia (16, i.e., 3.5%). Criminal offences with extremist implications represented 0.1% the total number of criminal offences detected in the Czech Republic in 2001.

[138] The report for the year 2000 was approved by Government Resolution No. 903 of 12 September 2001. Such report is presented until 30 June of every year by the Minister of Interior and the Minister of Justice (reports for the previous years may be found online under the appropriate year number: v roce 1997, v roce 1998,1999, 2000, and also on the website of the Ministry of Interior: http://www.mvcr.cz – documents - extremism). Detailed information regarding those problems will be included in the Report for the Year 2001, which shall be submitted by the Minister of Interior in accordance with Government Resolution No. 1356 of 19 December 2001 concerning the Plan of Non-legislative Tasks of the Government for the First Half of 2002 and on the Overview of Proposals for the Plan of Non-Legislative Tasks of the Government for the Second Half of 2002.

phenomena in their social development, in whose case the authorities did not order institutional care or impose protective education, as well as to persons responsible for the education and pedagogues. *Due to the importance of these centres, it would be useful to complete their network, so that such care may be provided in all parts of the country.*

Other problems concern the effectiveness of the provisions of Act No. 359/1999 Coll. on Social and Legal Protection of Children, as amended (hereinafter only the "Act on Social and Legal Protection of Children")[139], ordering the employees of the department of social and legal protection of children to visit at least once every six months every child placed in an institution to see whether there are still the reasons for his staying in the institutional care. Most of those employees do not have any contact with the child's family and the fact finding frequently consists of an inquiry regarding the number of parental visits. Therefore, the assessment of the reasons for further stay of the child in the institutional care facility has become distinctly formal. *In addition to identifying such reasons, the employees of the department of social and legal protection of children should also find whether the institutional care fulfils its purpose.*

The situation of young adults who have reached 18 or 19 years of age and therefore have to leave the institutional care facility is still very difficult. Those problems are partly resolved by half-way houses, which assist those young adults in the first months with their integration into the society. The capacity of the half-way houses is, however, totally insufficient compared to the number of young adults leaving institutional care facilities. Some of them are unable to take care of themselves and end in another institution – a social care institution, mental hospital or a prison (see Chapter 5.7.3.).

7.2. Surrogate family care

The ratification of the Hague Convention on Protection of Children and Co-operation in Intercountry Adoption (No. 43/2000 of the Collection of International Treaties) created legal conditions for intercountry adoption. The number of children adopted abroad has been increasing and reached in 2001 24 children; most of them were adopted in Denmark. On the other hand, Czech citizens do no adopt children holding foreign citizenship. At the same time, there are problems concerning the situation of children holding other than the Czech citizenship (namely Slovak), who were born on the territory of the Czech Republic. These children, who are legally available for adoption, must wait until they are granted the Czech citizenship, which may last several months, although there exist no legal impediments regarding the adoption of such child in the Czech Republic based on intercountry adoption procedures. The Office for International Legal Protection of the Child refers in this respect to one technical obstacle – the child must have a travel document, for the issue of which the Slovak party requires a Slovak birth certificate (which means that the child must be registered in a special civil register) and the citizenship certificate. The parties did not start any negotiation to expedite this process, and the children, although legally available for adoption, have to stay several months longer in infant care facilities, which damages them.

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[139] The Amendment to Act on Social and Legal Protection of Children No. 272/2000 Coll., which became effective on 1 January 2002, delegates from the district to the regional offices all activities relating to the mediation of substitute family care and to all decisions on the issue of authorisations to non-state non-profit organisations. The delegation of competencies regarding the decisions concerning authorisation from the district to the regional level appears to be useful, namely because such political subdivisions will have better knowledge of the activities of non-state non-profit organisations in the regions and will be thus better equipped to assess the applications and issue decisions, which may increase support to the non-profit sector.

Moreover, there still exist problems relating to lengthy court procedures relating to surrogate family care. The interval between the expiry of the reasons for institutional care and the issue of a decision regarding some form of surrogate family care is relatively long – up to one year in some districts.

A very unusual phenomenon at the European level is the absence of a special family law board of the Supreme Court and of family specialists at higher instance courts. As a result, family law matters (e.g., decisions on forms of surrogate family care or in guardian matters) are dealt with by specialised judges of first instance courts.[140] This means that the specialisation in family law virtually excludes any extensive carrier promotion, which discourages judges who might specialise in this branch of law. Moreover, those matters are decided at the second instance court by judges who do not have such level of specialisation as the first instance judges. *It would be useful that the Supreme Court of the Czech Republic establishes a family law board, which would further promote the development of the family law specialisation at higher instance courts.*

7.3. New legislation regarding institutional education

A new act on institutional or protective education at school facilities and on preventive educational care at schools facilities was prepared and submitted to the Parliament in 2001.[141]

The act distinguishes four institutional education facilities: the diagnostic institute, foster home, foster home with school and educational institute. Positive changes brought about by the act include the reduction of the number of children in groups and the obligation of the facility to arrange for psychological testing of the aptitude of every pedagogue applying for work at such facility. The act defines the rights and obligations of the child placed in such facility and the rights and obligations of its principal, including the obligation to instruct the child on his rights and duties. The approved wording of the act includes detailed provisions regarding the placement of the child into separation, which was much criticised namely by nongovernmental organisations. The new act prohibits placing in such separate rooms children younger than 12 years of age and children living in foster homes, where there is no reason to establish such room.

During its review of the wording of the act, the Chamber of Deputies amended some provisions that were criticised by the nongovernmental organisations and by the Report on the

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[140] This is a typical example of hidden discrimination of women (i.e., of "glass ceiling"), because family has been traditionally understood as a "female" discipline.

[141] The institutional and protective education has been regulated until now by Act No. 76/1978 Coll. on School Facilities, which also regulated school facilities designated for institutional and protective education and for preventive educational care (Section 23 to Section 31). Activities of school facilities designated for institutional and protective education and for preventive educational care were regulated only by the Decree of the Ministry of Education, Youth and Physical Education No. 64/1981 Coll. on School Facilities Designated for Institutional Education and Protective Education.

The government approved the act by its Resolution No. 77 of 22 January 2001. The Chamber of Deputies approved to by Resolution No. 1922 of 6 December 2001 as the Press of the Chamber of Deputies No. 837 (http://www.snemovna.cz/forms/sqw_tmp/47ab001b.doc). Thereafter, the act was rejected by the Senate on 18 January 2002, but the Chamber of Deputies confirmed on 5 February 2002 the original wording of the act (Resolution No. 2016). The President did not sign it and returned it to the Chamber of Deputies, which confirmed its previous wording by Resolution No. 2121 of 12 March 2002 (http://www.snemovna.cz/sqw/historie.sqw?O=3&T=837).

State of Human Rights in 2000. The Chamber of Deputies prohibited placing in the separate rooms children younger than 12 years of age and children living in foster homes, where there is no reason to establish such rooms,[142] and deleted the provisions relating to the "educational measure", allowing to punish the child for proven breach of legal duties by prohibition of temporary stay with persons responsible for his education, or with close persons for not more than 30 days within the following three months. The proposed provision was thus in conflict with the Convention on the Rights of the Child (No. 104/1991 Coll.), whose Article 9 stipulates the right of the child who is separated from one or both parents to maintain regular personal contacts with both parents, unless such contacts contradict his interest- It is therefore inadmissible to use the prohibition of personal contacts as a punishment. The wording of the act approved by the Chamber of Deputies preserves the right of the principal of the facility to prohibit the stay of the child with such persons for up to 30 days within the following three months on serious educational grounds. The act, however, does not define such serious educational ground, providing to the principal a relatively broad space for decision[143]. *It is urgent to amend the wording of the act in a manner that will fully correspond with the Convention on the Rights of the Child and eliminate any possibility to use such prohibition as punishment.*

The act introduces a new institute of contract family, which allows to place the child, in specially justified cases and if it is in the child's interest, outside the facility and into a contract family, which will provide for the tasks of the diagnostic institute. This should be used namely in the case of children who are not fit for the stay in a group. The adopted act also allows the principal of the diagnostic institute to decide without further review on the placement or relocation of the child from the family back to the institute. Due to the fact that it is a new institute, which is not regulated in detail by the act, it will be possible to start using it only after the determination of detailed terms of its appropriate use in order to ensure the protection of the child in the contract family. *The act stipulates that such conditions should be determined by the Ministry of Labour and Social Affairs in the form of a decree, which would set out details regarding the selection and preparation of contract families and the manner of co-operation of the family with the diagnostic institute and of the checks to be performed by the diagnostic institute.*

The institute of the contract family was included in this act during its review by the Chamber of Deputies. Provided that it operates properly, such institute may be positive for children growing outside their own families. However, its inclusion into an act regulating institutional or protective education did not quite fit into the system. The act does not define the contract family as a facility (Section 2(1)), due to which the decision of the principal of the diagnostic institute to place the child in such family may represent a change of the court decision on institutional care or protective care.

According to the adopted act, the principal may decide on the payment of the following benefits to this category of children "*…: a) needs for leisure and recreation, b) costs of cultural, artistic, sports and recreational activities, c) costs of contests and competitions, holiday …"*(Section 2(9)). Based on Article 31 of the Convention on the Rights

[142] The placement of children in separate rooms was very frequently criticised by nongovernmental organisations because there were no pre-determined conditions under which the child may be placed in such separate room and the rooms used for such purpose were often inappropriate for such placement. Thus, the adopted act may bring about some improvements, because it defines the conditions for the stay of the child and the criteria that must be met by such room.

[143] Some principals use such prohibition or threat as a punishment, or use the promise of the "permission" of the contact with parents as a common "educational tool".

of the Child, which guarantees the right of the child to free time, play and participation in cultural and artistic activities, it will be necessary to define the mandatory minimum scope of those activities that are to be ensured for the child.

Despite the partial improvements resulting from the Act on Institutional or Protective Education and the development of activities of the NNOs involved in the search for families who will be willing to receive abandoned children, it is not possible to consider the level of implementation of alternatives to institutional education as sufficient. Moreover, the institutional education itself is not sufficiently focussed on integration, which causes a number of problems in the adult life of children growing up in the institution, like difficult integration into the society, problems with establishing relations with other people, with playing their role as parents, or reaching lower level of education.

The entire substitute care system should be focussed primarily on the work with the family, on its therapeutic and material support, which will enable the family to perform its basic functions. If the situation cannot be resolved by the stabilisation of the family, various forms of surrogate family care should be used and the institutional care should be used only in exceptional cases when it is impossible to apply any of the above solutions. Thus, such facilities should be designated only for children suffering from exceptionally serious educational problems, addicted to alcohol, drugs, gambling or serious child delinquents, unless such problem arose only from wrong family environment and do not disappear after the change of the environment. If a child has to be taken away from a family, it is still necessary to work with such family to ensure that the child may return to it as soon as possible. Such new trend of substitute care would apparently require further legislation.

7.4. Cruelty to children, child abuse and neglect

Qualified professional estimates and partial studies comparing the situation in CR with the situation in other European countries indicate that one third of children has been exposed to a form of interpersonal violence. Due to the same culture and traditions, these results are not different from the results of such studies performed in the other European countries. There is, however, a significant difference in the availability of professional assistance to mistreated, abused and neglected children. Due to the fact that this problem is a multidisciplinary problem, the practical assistance has to overcome many obstacles relating to lack of willingness of each separate sector to co-operate with the other sectors. Another problem is the absence of conditions for therapy of the victim and the aggressor and for the work with the entire family. One of the immediate causes of such absence lies in the insufficient undergraduate training of professionals working with mistreated, abused and neglected children and with their families. An important role in this respect is played by the non-profit sector, namely several specialised children's helplines. The Safety Helpline (Linka bezpečí) received in 2001 4055 telephone calls from mistreated and abused children from the whole Czech Republic, asking to be heard, to receive advice or assistance.

7.4.1. Breaking the obligation of confidentiality in cases of suspected violence against children

When identifying cases of violence against children, it is often very difficult to get information regarding their mistreatment, abuse or neglect, particularly from the physicians, who refuse to disclose such facts, referring to their obligation of confidentiality. This problem

has been resolved by the amendment of the Act on Social and Legal Protection of Children, which became effective of 1 January 2002. Under this amendment, it is not allowed to appeal to the obligation of confidentiality under the Act on the Care for the Health of the People,[144] if the person is required to provide information regarding suspected mistreatment, abuse or neglect of a child (Section 53(1)).

7.4.2. Impact of domestic violence on children

Children may be victims or witnesses of domestic violence. The former amendment to the Criminal Procedure Code impeded the prosecution of perpetrators and contributed to the long-term impact of stress to which the children are exposed. Children also suffer in situations in which the women decide to leave their house, which mostly results for the child in the relocation to a shelter, the change of school, etc. The protective function of the state in such situations mostly fails and any state intervention in this respect usually turns against the child, who is taken away from the family and placed in an institution. *Such situation is inadequate and it is necessary to adopt such solution under which the person who will have to leave the household is the rightfully suspected perpetrator of such acts, and not his victims (see Chapter 6.5.1.).*

7.4.3. Sexual exploitation of children

Sexual exploitation of children for commercial purposes is one of the most serious forms of sexual abuse of children. The Ministry of Interior prepared in 2000 in co-operation with other central state administration authorities the National Plan of Struggle against Sexual Exploitation of Children (i.e., the sexual exploitation of children and minors under 18 years of age in prostitution, pornography and trafficking in people). This material represents a set of long-term measures, namely preventive, which are gradually implemented.

Another contribution to the struggle against sexual exploitation of children in the broadest sense is the Worst Forms of Child Labour Convention of International Labour Organisation, concerning the prohibition and immediate elimination of the worst forms of child labour (No. 182), which include the use, enticement or offering children for prostitution, production of pornography or for pornographic shows.[145]

The amendment to the Criminal Code that is currently under preparation will impose stricter punishments on the most serious types of spreading pornography, like the press, film, television, public computer network or any other similarly effective methods. Such offences will be punished by a term of imprisonment from six months to three years or by a pecuniary penalty.

There are also a number of new international documents dealing with the sexual exploitation of children. One of the most important documents is the Optional Protocol to the

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[144] Section 55(2)(d) of Act No. 20/1966 Coll. on the Care for the Health of the People, as amended, reads as follows: *"Each health care worker is obligated particularly to keep confidential any facts that he has learned in connection with the exercise of his profession, except for cases in which he shall disclose such fact with the consent of the treated person or when he has been relieved of such duty by its superior authority in a compelling state interest;.."*

[145] The Committee of Ministers of the Council of Europe adopted recommendation no. Rec(2001)16 **on the protection of children against sexual exploitation.**

U.N: Convention on the Rights of the Child against Sexual Exploitation of Children, whose ratification by the Czech Republic is currently under way[146].

7.4.4. Insufficient representation of children as aggrieved parties in criminal litigation

Children that become victims of violence do not enjoy sufficiently qualified representation at the criminal process. While the perpetrator is represented by an attorney, the aggrieved child is usually represented by an attorney-in-fact who has no legal experience, i.e., by a legal guardian or a guardian appointed under Section 45(2) of the Criminal Procedure Code, i.e., by a social and legal protection body.

7.5. Juvenile justice system

The government bill on juvenile justice system should introduce a change in the concept of prosecution of criminal activities of minors under 15 years of age, juveniles between 15 to 18 years of age and young adults under 21 years of age[147]. The amendment proposes to resolve criminal activities of minors younger than 15 years of age in civil litigation and criminal activities of the other groups in criminal litigation. The decision in all of those cases will be vested in a specialised senate, which will guarantee not only the necessary expertise, but also the expediency of adopted measures and their adequacy with respect to the case. The bill does not anticipate the reduction of the age limit of criminal liability. The growth of the number of criminal offences committed by children under 15 years of age, their increasing brutality and serious character of those crimes must be resolved by an overall reform of juvenile criminal justice, which will allow the application of some specific educational and protective measures determined by the law even against the category of children who are not criminally liable and who have committed an act that would be otherwise considered as a crime. Measures imposed by the juvenile court in civil litigation may be sufficiently firm to positively affect the behaviour of the child offender and to ensure at the same time adequate protection of the society.

In accordance with the legislation that is common in EU member countries and in the spirit of the recommendations of the Council of Europe, the bill newly defines the group of young adults, i.e. offenders between 18 and 21 years of age (not including perpetrators of serious crimes), which is proposed to be covered by the juvenile criminal justice system for the purpose of their better re-integration to the society. The above solutions should create in the Czech Republic an adequate legal environment for the development of a modern penal policy.

7.6. Measures to improve the work with children and youth

The a number of persons working with children and young people who do not have the necessary knowledge of child psychology, safety of work with children or first aid has been

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[146] The strategy of the European countries regarding the protection of children against sexual violence abides by the principles adopted at the Second World Congress on the Commercial Sexual Abuse of Children, which was held in Yokohama in December 2001.

[147] The government approved the bill by its Resolution No. 718 of 18 July 2001on the bill on liability of youth for unlawful acts and on juvenile justice system (the Juvenile Justice System Bill). The bill is discussed in the Chamber of Deputies as Press No. 1017 (http://www.psp.cz/sqw/historie.sqw?O=3&T=1017).

growing. Such fact is one of the causes of many injuries of children at summer camps and during other activities designated for children and youth. The conditions of work with children and youth should be regulated by future legislation[148] in a manner that will reduce the risk of emergencies to a minimum. The proposed legislation sets out the tasks of administrative authorities and political subdivisions relating to the support of work with children and youth, the terms of the organisation of selected events and activities designated to children and youth and the conditions that must be met by persons working with children and youth.

7.7. Child support payments

The amendment to Act No. 94/1963 Coll. on the Family, as amended, published in the Collection of Laws under No. 91/1998 Coll. (hereinafter only the "amended Family Act") set out more definitely than the previous amendment the principles for the assessment of child support payments and has introduced new institutes. On the other hand, the amended Family Act did not remove the existing differences in court decisions, particularly in respect of the determination of the amount of child support payments. The current practice applied in the determination of child support payments frequently damages the interests of minor children because the parents misrepresent or conceal their income to reduce as much as possible the amount of child support that is to be paid them. *It is therefore necessary to improve the co-operation of all involved authorities and institutions, namely tax offices, trades licensing offices and bodies active in criminal proceedings.*

Another type of problems relating to child support payments are the cases when the parents fail to fulfil their support duty imposed by the court decision. The other parent may seek the payment of the outstanding amounts in a new court process. This is often too expensive and time-consuming for the parent who has custody of the child. The financial situation of such parents is mostly critical and they frequently live on the verge of the subsistence minimum. In some cases the obliged parent even transfers his property to his relatives, common-law spouses, etc., to frustrate the levy of the execution due to child support debts.

7.8. The right of the child to regular contact with both parents

In their decisions on child custody, the courts still do not sufficiently use the possibility of joint or alternative custody of the child by both parents. In most cases, the custody is granted to the child's mother (93% of cases), while the father is only granted the right to have contacts with the child, often only once every fortnight. At the same time, the increasing numbers of parents hinder contacts of the other parent with the child, or do not return the child to the parent who has custody of the child. In those situations, the competent bodies often do not act expediently and consistently. Such acts of one parent cause mental harm to the other parent, who is separated from the child, and namely to the child, who is mostly emotionally attached to the parent.

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[148] The government approved the material intent of the act on support of work with children and youth by its Resolution No. 895 of 12 September 2001 and ordered the Minister of Education, Youth and Physical Education to submit to the government until 30 April 2002 the wording of this act.

8. Minorities

8.1. National minorities[149]

The Act on the Rights of Members of National Minorities came into effect on 2 August 2001. The act defines the notion of the national minority as a community of Czech citizens living on the territory of the Czech Republic, who differ from the other citizens mostly by common ethnic origin, language, culture and traditions, and who constitute, as to their number, a minority of the population, and the notion of the member of the national minority, which means a Czech citizen who considers himself of other than Czech nationality and manifests his wish to be considered as a member of a national minority together with other citizens who consider themselves as members of the same minority. The act grants to the national minorities that have been living traditionally and for a long time on the territory of the Czech Republic special language rights (to the dissemination and receipt of information in the language of the national minorities, to the use of the language of the national minority in official contacts and before the courts and the education in the language of the national minority), the right to the development of the culture of the national minority, and the right to resolve by themselves the matters concerning them.

This was also connected with the amendments of laws to ensure the establishment of necessary conditions of the exercise of minority rights (Parts Two to Seven of the Act). The Act on the Rights of Members of National Minorities also amended the Misdemeanours Act, which newly determines measures against discrimination, including sanctions for misdemeanours against civic coexistence.[150] The government decree determining the conditions and method of provision of state budget subsidies for the activities of members of national minorities and for the support of the integration of members of the Roma community will come into effect on 15 April 2002.

Some representatives of the national minorities that have been living traditionally and for a long time on the territory of the Czech Republic consider the implementation of the Framework Convention in the form of the adopted Act on the Rights of Members of National Minorities as insufficient. They criticise namely the failure to meet the expectations regarding the establishment of an independent institution that will deal with the problems of the national minorities (the National Minorities Office) and the failure to ensure larger participation of representatives of the national minorities in the decisions on matters concerning them. The representatives of the national minorities also consider as insufficient the regulation applying to the education of members of the national minorities, namely the possibility of bilingual education, i.e., in the Czech language and the language of the national minority (these problems are resolved, however, by the proposal of the new school act).

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[149] The status of the national minorities in 2001, the terms of exercise of rights of the national minorities and the specific situation of each minority shall be dealt with in a separate report, which shall be submitted to the government until 31 May 2002 by the chairman of the Council for the National Minorities in co-operation with the Council for the Roma Community Affairs and with the ministers whose ministries have provided, from their respective state budget chapters, the subsidies for the activities of members of the national minorities. This task results from the Statute of the Council and from the draft government decree, which determines the terms and manner of provision of state budget subsidies for the activities of members of the national minorities and in support of the integration of members of the Roma community.

[150] This amendment is one of the first steps towards the incorporation into Czech law of EU Directive No. 2000/43/EC on the Implementation of the Principle of Equal Treatment of Persons Irrespective of Their Racial or Ethnic Origin (see Chapter 6.1.3.).

Another open question is the definition of the term "national minority", i.e., its application only to the Czech citizens. In this respect, the law does not apply to the growing communities of immigrants, whose position has become the same as the position of the national minorities, and addresses only the status of the traditional national minorities that have been settled for a long time on the territory of the Czech Republic. The presence of growing numbers of immigrants requires from the state further development of the programme of integrations of foreigners. Those communities, however, are not covered by the effects of the new law. Although the Framework Agreement on the Protection of the National Minorities does not define the term "national minority", some international documents acknowledge that the immigrants form a special category of national minorities.

The number of persons who identified themselves at the 2001 population census as the Polish, Slovak, Roma, German and other nationalities, was significantly less than in the previous census held in the year 1991. It is, however, a question whether such results may be interpreted as a manifestation of declining identification with the relevant national minorities or a manifestation of unwillingness or fears to register to other than the Czech nationality.

8.2. The gay and lesbian minority

8.2.1. Prohibition of discrimination on the grounds of sexual orientation

Under the influence of EC/EU law, namely Article 13 of the Treaty Establishing the European Community, the explicit prohibition of discrimination on the grounds of sexual orientation is being gradually incorporated into Czech law. The amendment to the Labour Code (see Chapter 5.1.1.) prohibits, *inter alia,* the discrimination on the grounds of sexual orientation in labour law relations. A similar prohibition of discrimination on such grounds is included in the amendment of Act No. 221/1999 Coll. on Professional Soldiers, which also came into effect as of 1 January 2001.

The general protection from discrimination on the grounds of sexual orientation is newly provided by the Misdemeanours Act under which a person commits a misdemeanour "*by causing detriment to another person due to his/her ... sexual orientation*".[151]

8.2.2. Bill on Partner Cohabitation of Persons of the Same Sex

The long-term efforts of the gay and lesbian minority striving for the adoption of an act which would regulate the partnership cohabitation of persons of the same sex met with another failure in 2001 as well.[152] Due to the approaching elections, it is highly improbable that this act will be reviewed again by the Parliament in the current election term. Moreover, it would be rather difficult to finalise the bill because it is evident that it was rejected not due to the disagreement with its design, but rather due to a principal resistance of some deputies

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[151] An amendment to the Misdemeanours Act was effected by Act No. 273/2001 Coll. on the Rights of National Minorities.

[152] The government approved the material intent of the act on partnership cohabitation of persons of the same sex by its Resolution No. 179 of 26 February 2001 and the draft act by its Resolution No. 925 of 17 September 2001. (The government charged with the preparation of the draft the Minister of Justice based on the petition of the Human Rights Council – see the Report on the State of Human Rights in the Czech Republic in 2000, Chapter 12.). However, the Chamber of Deputies returned the draft on 25 October 2001 to the government for finalisation (Pressof the Chamber of Deputies No. 1075 and No. 1076).

against the very objective of this act, i.e., the legalisation of partnerships of couples of the same sex and the guarantee of respect of this form of cohabitation. This means that the gay and the lesbian living in stable relationships will still have to cope in their everyday life with various disadvantages and difficulties, which the act was supposed to remove. The Gay Initiative (formerly SOHO), the umbrella organisation defending gay and lesbian rights, noted that its legal section provided in 2001 its assistance to approximately one hundred persons, whose problems were directly connected to their sexual orientation (e.g., with property transfers, preparation of a will, problems with apartment lease, etc.).

The discussions on the proposed act have shown, however, that the public opinion tends to accept the relations between persons of the same sex. More than half of the respondents in the opinion polls expressed either an accommodating or a neutral attitude to the legalisation of such institute. The opponents of this institute were mostly persons whose opinion reflected their religious belief that homosexual relations are wrong, or an open intolerance of all persons with different sexual orientation. Although such form of intolerance (homophobia) is evidently more acceptable for the society than a similarly open racial or national intolerance, the supporters of these opinions formed a distinct minority in the media and it is probable that they have damaged their cause[153].

The public discussion relating to the proposed act contributes even now to the cultivation of the public opinion by the media, which have started to distance themselves from openly homophobic opinions. Thus, the discussion may forsake any irrational wishes that the homosexuality disappears, and try to find an answer to a rational question whether or not it is in the interest of the society to support the stable relations of these persons. With the growing number of publicly known personalities showing their different sexual orientation, it is possible to expect further increase of support (namely among the emerging generation)of the legalisation of partnership cohabitation of the persons of the same sex.

9. Foreigners

9.1. General aspects of the problems of foreigners

9.1.1. Relation of the society to foreigners

Surveys show that the overall level of xenophobia in CR is a little lower than in other post-communist countries.[154] The state authorities, assisted by advisory bodies, like the Commission of the Minister of Interior for the Integration of Foreigners and Inter-community Relations, strive to support an open multicultural environment. Despite that, foreign nationals who have been residing in the Czech Republic or who visit CR as tourists frequently experience various disadvantages, exclusion, disregard or attempts to misuse their lack of information. Even foreigners with better social status are not protected from various practices that are widespread in both the public and private sector. The problem of double prices and provision of access to services or various discounts only to Czech citizens still exists, although in more concealed forms[155] (see also Chapter 6.6.).

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153 One deputy insisted that homosexuals should undergo medical treatment, another one recommended them to join a monastery, etc.

154 See e.g. Burjanek, A.: Xenofobie po česku – jak si stojíme mezi Evropany? *(Xenophobia in the Czech Way – Where Do We Stand among the Europeans?)* Sociální studia 6, 2001, 73-89.

155 One of the most recent examples of unjustified disadvantages and exclusion of foreigners is the procedure applied by České dráhy a.s. (Czech Railways), which permit only Czech citizen to purchase their

9.1.2. Amendment to the Foreigner Act

Apart from the rectification of some practical problems arising after 1 January 2000 (like requesting photographs for border passes), the Amendment of Act No. 326/1999 Coll. on the Stay of Foreigners on the Territory of the Czech Republic, as amended (hereinafter only the "Foreigner Act")[156] also responded to the petition of the Human Rights Council. It includes a more favourable wording of provisions that are important to the human rights aspect, like those applying to unification of families, to the status of children who were born on the territory of the Czech Republic to foreigners holding a permanent residence permit, or documenting sufficient funds for the stay.[157] Another measure that has a positive effect on the exercise of the rights is the new wording of provision of Section 165, which charges the Ministry of Interior with supervision over the Police of the Czech Republic in relation to the execution of state administration. The Ministry of Interior prepared in 2001 the so-called "Euro-amendment" of the Foreigner Act, which is to assume EU acquis granting the right to EU citizens to „freely move and reside on the territory of the member states ".[158]

Despite partial improvements of the key legislation concerning foreigners, the legal regulation of the stay of foreigners on the territory of the Czech Republic is still an open question. The foreigner legislation should be based on a clearly defined migration and immigration strategy of the state and should reflect its priorities and the obligations of the society to protect human rights and humanitarian aspects. The current situation should be resolved in connection with the adoption of a migration policy[159]. At the same time, such policy should be based on a consensus of the entire society.

9.1.3. Measures focussing on integration of foreigners

The implementation of the Concept of Integration of Foreigners was carried on in 2001 in accordance with the principles of the government policy in the area of integration of foreigners and with all resolutions adopted by the government in 1999 – 2000.[160] The government adopted measures to improve the co-ordination of activities of individual ministries. Such improvement is to be achieved through the adoption of integration policy plans by each ministry. All district authorities in the Czech Republic established advisory bodies for matters of integration of foreigners, which prepared reports on monitoring of the situation of foreigners in each respective district. The amount allocated from the state budget

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"customer card" (granting an approximately 40% fare discounts)- see e.g., the article *Second-Class Residents*, The Prague Post, 6-12 December 2002.

156 Act No. 140/2001 Coll., amending Act No. 326/1999 Coll.

157 The Act came into effect as of 1 July 2001, save for certain provisions, which came into effect as of 1 January 2002 (new structure of the foreigner and the border police) and for the provisions regulating the status of children born on the territory of the Czech Republic as regards health insurance, which came into effect on 25 April 2001.

158 The proposed "Euro-amendment" of the Foreigner Act was approved by Government Resolution No. 1126 of 7 November 2001. The amendment is currently reviewed by the Chamber of Deputies (Press of the Chamber of Deputies No. 1164).

159 By its Resolution No. 1360 of 19 December 2001, the government ordered the Minister of Interior to prepare until 30 September 2002 a proposal of Principles of the Policy of the Government of the Czech Republic in the Area of Migration of Foreigners and to submit this proposal to the government until 30 November 2002.

160 The specific measures were based in 2001 namely on Government Resolution No. 1266 of 11 December 2000 on the Implementation of Principles of the Concept of Integration of Foreigners on the Territory of the Czech Republic and on the Proposed Concept of Integration of Foreigners on the Territory of the Czech Republic.

for the implementation of projects supporting the integration of foreigners reached in 2001 20 million CZK.

The process of gradual settlement of foreigners in the Czech Republic is accompanied with a growth of numbers of foreign children at schools. The survey monitoring the education of foreign pupils at primary and secondary schools in the academic year 2000/2001 found out that there were 200 schools providing education to foreigners. The Czech language proficiency of most of those foreigners (670) was checked by an entry interview. Only a few of them (26) passed the enrolment exam from the Czech language (at the secondary schools) or a test (before an official examining board or otherwise). The cases in which the schools resolved the language problem by placing the foreigner into a lower grade were exceptional. Nearly 80 % of foreigners were given marks within the regular schedule. Only a smaller part of schools has introduced multicultural education, and most of those understand this type of education only as an education to tolerance and do not sufficiently understand that this education is not aimed at the assimilation but at the integration of foreigners, thus enriching the mainstream culture.

9.2. Involvement of foreigners in public life

9.2.1. Impact of defects in the Association Act on foreigners

No changes occurred in respect of the association right as compared to the year 2000. Act No. 84/1990 Coll. on Citizens' Associations, as amended (hereinafter only the "Association Act") still grants this right only to Czech citizens, while the Charter grants this right to everyone.[161] This discrepancy was to be resolved by the government draft of Act on Societies, which was rejected by the Chamber of Deputies in May 2000. The group of persons to whom the proposed act is to apply (foreigners holding long-term visa or permanent stay permit) was determined in full compliance with the definition of lawfully residing foreigners set out not only in the international treaties to which CR is a party but also in EC/EU law.[162]

As the Ministry of Interior insists on such interpretation of the sense of the Association Act, according to which a "citizen" is the Czech citizen, the right of the foreigners to association is being restricted, specifically with respect to the registration of a new association. In this case, the Ministry of Interior requires that the application for registration be filed by three Czech citizens. The practical consequences of such restriction are particularly noticeable when foreigners who belong to more recent communities want to establish an association. Such people depend on the willingness of their Czech fellow citizens, who have to register the association instead of them. Even after the rejection of the Act on Societies, the Ministry of Interior did not take any steps toward expedient rectification of these defects or at least toward their bridging by an interpretation that would comply with the Constitution.

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[161] Article 20 of the Charter; in its Articles 2, 3 and 43, the Charter further stipulates that *"the foreigners ... shall enjoy the human rights and fundamental rights and freedoms guaranteed by the Charter unless expressly awarded to the citizens*" and „ *wherever the current legislation uses the term "citizen", it is to be understood as any person in relation to fundamental rights and freedoms extended by the Charter irrespective of the citizenship"*. Thus, the Charter allows the exclusion of foreigners only in respect of rights relating to citizenship, not in respect of rights that the Charter extends to anyone.

[162] The government approved the draft act on societies by its Resolution No. 71 of 17 January 2000. The draft was then reviewed by the Chamber of Deputies as Press of the Chamber of Deputies No. 520 (http://www.snemovna.cz/forms/sqw_tmp/52c40035.doc) and was rejected by the Resolution of the Chamber of Deputies No. 987 (http://www.snemovna.cz/sqw/historie.sqw?O=3&T=520).

9.2.2. Municipal citizenship

The current legislation regarding the institute of "citizenship of a municipality" is totally inadequate. Pursuant to Act No. 128/2000 Coll., on Municipalities, as amended (hereinafter only the "Municipalities Act") a citizen is a natural person who is registered for permanent residence in the municipality and is at the same time the citizen of the Czech Republic. Thus, all foreigners living in the Czech Republic are excluded from the local communities. Apart from this symbolic "excommunication", the act also allows the municipality to disregard the foreigner in its acts by which it performs its tasks relating to the "satisfaction of needs of its citizens", which are stipulated by the law. An example is the fact that foreigners are commonly denied the possibility to apply for lease of a municipal apartment on both social or market grounds. Until the adoption of the new act, all natural persons residing permanently within the territory of the municipality were considered as its citizens.[163] This regulation did not cause any practical difficulties. One of the by-products of this peculiar notion, alleging that only the citizen of the state may be a full-fledged member of the local community, is the fact that even EU citizens who will be elected into the municipal assembly will not be considered as citizens of the municipality.

9.3. Foreigners on the labour market

9.3.1. Survey of employment of foreigners

Foreigners holding a residence permit or a visa for more than 90 days represent approximately 2% of the population of the Czech Republic, but at the same time about 3.2% of its work force. A survey focussing on the employment of foreigners in CR which was performed in 2001[164]indicated that the most numerous group on the legal labour market are (beside the Slovaks) the Ukrainians, followed by the Vietnamese and the Polish. The net monthly income of legally employed foreigners is a little, but not substantially lower than the average income in the Czech Republic. The survey thus refuted the widespread assumption that the wages of the foreigners do not often reach the minimum wage level. Most of the legally employed foreigners reside in hostels (62%). The survey notes that the current wage level of those foreigners does not allow them to bring their families into the Czech Republic, because that would lead to a significant increase in the housing and household expenses. The authors even believe that most of those foreigners will fall into the social safety net. The conclusions of the survey also indicate that the labour migration from central and eastern European countries has been changing into permanent migration.

9.3.2. Survey of illegal employment of foreigners

The survey of illegal employment of foreigners which was carried out in 2001[165] indicates that illegal employment of foreigners and various forms of circumventing the regulations relating to the employment of foreigners are widespread in CR to a similar extent

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163 The amended Act on Municipalities came into effect on 12 November 2000. The previous amendment of the Act on Municipalities (No. 367/1990 Coll.) was in force since 4 September 1990.

164 Údaje v této části vycházejí z výzkumu Zaměstnávání cizinců v ČR, který v rámci projektu Postavení cizinců na trhu práce s ohledem na jejich kvalifikační předpoklady v porovnání s občany ČR provedl v roce 2001 Výzkumný ústav práce a sociálních věcí.

165 Nelegální zaměstnávání cizinců jako překážka jejich žádoucí integraci na trhu práce. Výzkumný ústav práce a sociálních věcí. Prosinec 2001.

as in other European countries. Cases of breach of applicable laws abound (e.g., the payment of only a part of wages in the legal way). There are, however, no specific data are available which would indicate whether this aspect of the situation of foreigners is worse than the situation of the Czech citizens. The above survey also confirmed frequent breach of laws relating to overtime and breach of limitations applying to work on days of rest and night work.

The conclusions of a survey performed in 2000 by the Institute of Health Policy and Economy indicate, however, that such conditions do not always result from the pressure from the part of the employer: "The long working hours and inadequate work efforts are not required by the Czech employers (who may hire more workers and pay them lower wages), but by the Ukrainian workers themselves. The workers are supported in their efforts to work with as much intensity as possible during long work shifts also by the clients, who may thus charge higher commission. Such approach results in 16-hour work shifts, work on Saturdays, Sundays, etc."[166] The authors of the survey warn that such work regime may be endured only for a short time. Despite that, there is a risk that the worker will not endure such workload.

Since the work migration will more or less continue, the state must reinforce its controlling function over the employment of foreigners. The state may not relieve itself from the responsibility for inhuman work conditions of the foreign workers by referring to the fact that the workers themselves accept such conditions.

9.4. Problems relating to illegal migration[167]

The number of persons who were cleared at the border crossings of the Czech Republic reached in 2001 276 million persons (i.e., 5 million less than in 2000)[168], 204 million of them foreigners (-1 mil.). Approximately 95,000 foreigners were denied entry (-16,000). The number of persons who were detected as having illegally crossed the state borders of the Czech Republic or having demonstrably tried to do so, fell approximately to the level of the year 1996. The total number of persons who were detected reached 23,834, 21,090 out of whom were foreigners and 2,744 Czech citizens. Illegal migration is organized by professionals (people smugglers, travelling with invalid or forged documents, in special hideouts in transport vehicles), who often abuse the desperate situation of migrants or refugees. The analysis of testimonies of detained persons indicate that the number of refugees who cross the border with the assistance of people smugglers or in hideouts in trucks or trains is much higher than the numbers set out in the statistical data relating to persons who were detected. In order to reduce the serious risks threatening the life and health of those trying to illegally cross the border, it is necessary to improve the struggle against organised people smuggling and to introduce a more flexible migration policy, which would at least partly mitigate the pressure leading to illegal migration.

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166 The Analysis of Health Care Provided to Foreigners in the Czech Republic (a project of the Ministry of Interior, Institute of Health Policy and Economy, Kostelec nad Černými lesy, 2001, p. 94

167 Detailed information regarding migration and granting asylum will be set forth in the Report on the Situation in the Sphere of Migration on the Territory of the Czech Republic for the year 2001, which is submitted every year to the Government by the Minister of Interior. The Report for the year 2000 was reviewed by the Government in the form of its Resolution No. 669 of 2 July 2001 and Resolution No. 94 of 23 January 2002. According to Resolution No. 1356 of 19 December 2001, the Minister of Interior is to submit the Report on the Situation in the Sphere of Migration on the Territory of the Czech Republic for the year 2001 until the end of June 2002.

168 A change as compared to 2000.

The measures necessary to reduce the serious risks threatening the life and health of the migrants are represented, on the one hand, by the improvement of the struggle against organised smuggling of people and on the other hand by the introduction of a more flexible migration policy. In this respect, it is possible to welcome the efforts of the Ministry of Labour and Social Affairs to create an active immigration policy,[169] which represent the first step in this direction despite the fact that some proposed criteria (the "geographic proximity ")[170] are disputable.

9.5. Administrative expulsion

The amendment of the Foreigner Act extended since 1 July the possibility of administrative review so that it is possible to assess in all cases that may be resolved by administrative expulsion the adequacy of the impact of such decision on the private and family life of the foreigner.[171] Information provided by the nongovernmental sphere and by the Public Protector of Rights indicates that the state authorities do not sufficiently assess in practice the adequacy of the impact of the decision on administrative expulsion on the private and family life of the foreigner and the statements of reasons are often formal.

The decisions on administrative expulsion were issued in 2001 against 11,064 persons, 2,258 out of whom were "escorted", i.e., transferred to a border crossing to leave.[172] The two detention facilities for foreigners (Balková and Poštorná) were operating and the third one at Velké Přílepy was gradually put into operation. The number of persons detained for the purpose of administrative expulsion reached 7,240, 4,661 out of whom were released from the detention facilities on the basis of an asylum application. 1,057 foreigners who were punished by expulsion based on a final court ruling were placed in the records of *persona not grata*. Out of those foreigners, 761 were escorted by the Prison Service or by the police to a border crossing, or were provided transport and travel documents by the Directorate of the Foreigner and Border Police Service (see Chapter 4.3.2.).

10. Refugees and other persons requiring international protection

10.1. Legislative amendments

The amendment to Act No. 325/1999 Coll. on Asylum (hereinafter only the "Asylum Act"), which was prepared during the entire year 2001, became effective on 1 February 2002[173]. This report does not therefore assess the practical application of this amendment. It cannot, however, ignore some legal matters, which have become the subject of disputes between the nongovernmental sphere[174] and the state authorities.

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169 Government Resolution No. 975 of 26 September 2001 on the Principles and Procedure of the Implementation of the Pilot Project of Active Selection of Skilled Foreign Workers. The Ministry of Labour and Social Affairs is to prepare a detailed draft of the project until 31 March 2002.

170 In the proposed criteria, geographic proximity means the distance between the applicant's residence and the place of performance of the work. Such criterion is unfavourable to applicants of different skin colour, who usually come from more distant countries and is *de facto* indirectly discriminatory. Moreover, it is illogical, as there is no reason why a citizen of Argentine may have more difficulties with integration than, say, a citizen of Romania.

171 Act No. 326/1999 Coll. was amended by Act No. 140/2001 Coll.

172 This procedure is applied under Section 128(1) of Act No. 326/1999 Coll.

173 Act No. 2/2002 Coll., amending Act No. 325/1999 Coll. on Asylum and on the Amendment to Act No. 283/1991 Coll. on the Police of the Czech Republic, as amended.

174 Critical opinions regarding the amendment of the Asylum Ac may be found in issue no. 4 of the magazine of the Czech Helsinki Committee *Lidská práva* (Year 3, winter 2001/2002).

10.1.1. Some aspects of the amended Asylum Act

The adoption of the amendment may be considered as necessary. The amendment responds to identified defects of the system, which have substantially contributed to the increase of the number of asylum applicants. Certain restrictive measures, although not popular among asylum applicants, are relatively justified. These measures include a one-year prohibition of work applying to the asylum seekers. The former legislation allowed the abuse of the system by some persons, namely by citizens of Ukraine and other former republics of the Soviet Union, who thus legalised their work stay in the Czech Republic. Due to the fact that the Chamber of Deputies shortened during its review of the amendment the period during which it is possible to provide financial subsidy to applicants residing outside asylum facilities to mere three months, the results of the review appear as a shift of the practical policy from the efforts to disperse the applicants in the society back to their concentration in the asylum facilities. Although such approach is not in conflict with the obligations arising from the U.N. Convention concerning the Status of Refugees (No. 208/1993 Coll.), the statement of reasons to the proposed amendment did not refer to any such intention. Any possible deterrent of the quasi-asylum applicants may be welcome; however, such measure may force the working migrants to seek illegal work. At the same time, it may jeopardise the final integration of persons accepted as refugees into the society. The long-term isolation in refugee facilities seriously diminishes the ability to take an active approach to one's own life and to adapt to the new environment.

Other measures may not be considered as compatible with the obligations arising from the above Convention. Such measures include the provision regarding the extinction of the right of the foreigner placed in a detention facility for foreigners to apply for asylum after seven days from the date when he was informed by the police about the possibility to apply. Another provision that is in conflict with the right to seek asylum is the provision under which any foreigner who has already applied for asylum in CR may file a new application for asylum not sooner than two years after the date of issue of the final ruling in the previous proceedings.[175]

10.1.2. Judicial review of rulings in asylum proceedings

One of the objectives of the amendment is to ensure in accordance with EU requirements the review of the decision by an independent body. The manner in which the amendment resolves this matter has proved to be, however, the most disputable provision of the entire amendment. The amendment introduces a judicial review of administrative decisions that have not come into legal effect, and cancels at the same time the existing review procedure. This means, however, that the courts shall decide until 31 December 2002 in accordance with Part Five of CPC, which was repealed by a finding of the Constitutional Court (see Chapter 3.1.2.). According to the opinion of nongovernmental organisations, such approach will worsen the position of the party to the proceedings, since it does not allow full judicial review and the merits of the case will be decided only in one instance. The legal aspects of this situation will be resolved only by the new regulation of the administrative justice system, which will become effective as of 1 January 2003 (see Chapter 3.1.5.). It is not sure, however, whether the selected variant, i.e., the review under the general regime of the administrative justice, will bring about the much desired expediency of the asylum

[175] This provision may not be justified even by the fact that the Ministry of Interior may waive such time limit in cases deserving special consideration.

proceedings. *Taken from this viewpoint, it would be more appropriate to have those matters resolved by a special asylum tribunal, which exists, for instance, in Austria.*

10.2. Asylum practice in 2001

The number of persons who applied for asylum in CR in 2001 reached 18,096, which means a 106% increase in comparison with 2000, when the number of applicants reached 8,878 persons. This is a very sharp increase in comparison with the small increase of asylum applications in the years 1999, and has been caused namely by the response to the change of the asylum legislation as of 1 January 2000. The structure of asylum applicants has also changed. The statistics show that the groups which prevailed in the end of the 1990s (Afghanistan, Sri Lanka, Bangladesh) were on the decline, and the last one has virtually disappeared.[176]Many applications are probably motivated by the possibility to work legally in CR.

One quarter of the applicants expressed their intent to apply for asylum in the interception facilities for foreigners, 1% of the applicants applied for asylum in prison, in custody or when serving their sentence. An asylum procedure department was opened in 2001 at the airport. This department manages the agenda of applicants who have applied for asylum at the airport, in prisons, in custody and since 1 February 2002 also in interception facilities for foreigners.

The number of persons who were granted asylum in 2001 reached 83; 75 of those were granted asylum in the first instance. The number of cases of granted asylum fell by 50 in comparison with the year 2000. The asylum was granted to 25 citizens of Byelorussia, 10 citizens of Iran, and to 9 citizens of Afghanistan and Yugoslavia. Most cases were granted for the purpose of unification of families and for humanitarian reasons; only 30 persons were granted asylum due to fear from prosecution. The number of people who were granted asylum reached as of 31 December 2001 1283 and 11,635 applications were being processed. Full 70% of applicants lived in private homes and only 30% of them in asylum facilities.

The Report on the State of Human Rights in 2000 pointed to the problem of late provision of the financial subsidy to applicants living outside asylum facilities. This situation did not change even in 2001 and the financial subsidy was paid very irregularly. This problem was dealt with in several cases also by the Public Protector of Rights. Employees of nongovernmental organisations (like the Consulting Centre for Refugees of the Czech Helsinki Committee) have informed about applicants who did not get the subsidy for six to seven months. Moreover, the Ministry of Interior will not pay after 1 February 2002 any subsidies to the applicants to whom it did not manage to pay the subsidies for several months.

The placement of minor asylum applicants or of other children with language barrier to educational facilities has not been resolved in a satisfactory manner. This problem was dealt with in 2001 by the Human Rights Council and by the government[177], but the selected resolution seems too lengthy given the serious nature of the problem.

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[176] The dominant group of asylum applicants were in 2001 the citizens of the Ukraine (4,416, i.e., 24% of all applicants). Other 14% were the applicants from Moldavia (2,459 persons), 10% were the citizens of Romania (1,848 persons). 8% of the applicants came from Vietnam (1,525 persons), 7% from India and Georgia (1,304, resp. 1,290 persons), and 6 % came from Armenia (1,021 persons).

[177] See Government Resolution No. 1083 of 22 October 2001 concerning the proposal of the Government Council for Human Rights for the preparation of a special policy of placement, education and care for children with language barrier, including minor asylum applicants, in educational institutional facilities.

10.3. Integration of asylum holders

The implementation of the programme of integration of asylum holders, which started in 1994,[178] was carried on in 2001. The Ministry of Interior concluded a total of 23 contracts with municipalities for provision of subsidies for the integration of 49 asylum holders, and the Ministry of Finance allocated for this purpose a total amount of CZK 7,680,000. Although the programme may be considered as quite successful,[179] it cannot be ignored that it represents a costly and centralised resolution in the conditions of a non-functioning housing market in big cities and of the absence of a comprehensive social housing system. A new form of the integration programme is to be submitted by the inter-ministerial commission for the formation of new integration policy regarding asylum holders.

10.4. Other persons requiring international protection

10.4.1. Provision of temporary protection to citizens of the Russian Federation

Based on a petition of the Human Rights Council, the government adopted on 18 July 2001 its Decree No. 290/2001 Coll. on the Provision of Temporary Protection to the Citizens of the Russian Federation. The decree allowed providing temporary protection until 30 June 2002 to 250 citizens of the Russian Federation who fled from its territory due to the armed conflict in Chechnya and who were as of 18 April 2001 the parties to asylum proceedings. As of 7 March 2002, there were only 8 out of 219 persons entitled to ask such protection who actually asked for it. This was mainly due to the fact that the potential applicants for temporary refuge were allegedly informed by the Ministry of Interior that they would not be able to apply for asylum after the end of the temporary protection period, or that their asylum proceedings would be discontinued. Such approach is in conflict with the purpose of the institute of temporary protection and with the regulations of EU and of the Council of Europe,[180] which consider the institute of temporary protection not as an alternative to asylum but as a transitory measure that is to be applied if there is an increased number of asylum applicants from one region. Thus, the persons who are under temporary protection may include persons who are entitled to apply for asylum (i.e., genuine refugees). If CR does not allow such people to reinstate (or to carry on) the asylum, it will be in breach of the right to seek asylum.

This disputable attempt to introduce temporary protection[181] confirms that it is necessary to develop and regulate the legal aspects of the complementary forms of protection, which will permit more flexible and fair solution of the situation of persons who are not refugees within the meaning of the U.N. Convention concerning the Status of Refugees but who still need international protection in the case in which there is no sudden and mass influx

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[178] The housing assistance is regulated by Sections 68 to 70 of Act No. 325/1999 Coll. on Asylum. Every asylum holder and his family are offered assistance in the provision of housing, which is supported through subsidies. The housing subsidy amounts since 1998 to CZK 150,000 per one asylum holder who is the lessee plus CZK 50,000 per each other asylum holder who will share household with the lessee. The amount of subsidies for the development of infrastructure amounts to CZK 100,000 per the asylum holder who is the lessee and CZK 10,000 per each other asylum holder who will share household with the lessee.

[179] See the conclusions of the study *Housing of Foreigners in the Process of Integration into the Society.* Prepared by The Gallup Organisation Czech Republic for the Ministry for Local Development, Prague, December 2001.

[180] EU Directive on Minimum Standards for Giving Temporary Protection (55/2001/EC) of 11 December 2000 and Recommendation No. (2000) 9 of the Committee of Ministers of the Council of Europe on Temporary Protection.

[181] According to some views, the importance of the measure will lie in the fact that such temporary protection will be granted to some persons who are entitled to apply for asylum but whose application will be rejected. This question is still open.

of displaced persons from one country, which is adequately resolved by the provision of temporary protection. The relevant recommendation in this respect has already been adopted by the Council of Europe[182], and a binding EU standard[183]is currently under preparation. The Ministry of Interior has informed that it will introduce the complementary forms of protection in connection with the applicable EU directive, which is to be adopted in 2004. As regards the protection of foreigners, it is, however, desirable to adopt new measures as quickly as possible. This is directly connected with the current imperfect regulation of the so-called institute of tolerance, which was criticised by the Report on the State of Human Rights in 2000 (see Chapter 8.3.2) and which has been also referred to by the Public Protector of Rights. The legal status of those foreigners is still very weak and not ensured by legislation. It may be noted in this respect that Germany, from which this institute was taken over, considers its replacement by new approaches. Briefly said, no foreigner or group of foreigners should be – except for short-time and really unique cases - "tolerated" within a state. A foreigner either deserves protection based on the protection of human rights or on humanitarian aspects (and should thus be granted a regular status), or does not deserve it, in which case it is upon the state to adopt effective measures to have the foreigner leave the country.

11. Human rights education

11.1. Report on Human Rights Education in the Czech Republic

During its review of the Report on Human Rights Education in CR, the government decided that the information on the implementation of the assigned tasks will be included in the annual report on the compliance with human rights.

The Ministers of Interior, Justice, Finance and Defence were to submit until the end of 2001 a concept of compulsory continuing education, which will include training and education in human rights[184]. The concepts were to apply not only to the employees of each of those ministries, but also to the employees of the Police of the Czech Republic, the Prison Service of the Czech Republic, the Customs Administration, the Finance Administration and the Army of the Czech Republic. All those authorities have already included the human rights education to a lesser or higher extent and in various manners in their educational activities. It is not known, however, whether they have submitted their concepts to the government. An exception in this respect is the Ministry of Interior, which stated in its critical report that the completion of the continuing education system must take place in connection with the process of building a professional army and the related process of reform of the military school system. Significant changes in the content of this type of education, including human rights education, should be ready at the beginning of the academic year 2003/2004.

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182 Recommendation No. (2001) 17 of the Committee of Ministers of the Council of Europe on Complementary Protection.

183 Draft EU directive concerning minimum standards for qualification of citizens of third countries or of the displaced persons as refugees or persons who need international protection. Proposal of the Commission issued on 12 September 2001, COM (2001) 510 final.

184 An exception is a similar task assigned to the Minister of Labour and Social Affairs, directed at the education of social workers active in public administration. As this includes a wide range of specific professions in various organisations, which fall under the competencies of other ministries, the Minister of Education, Youth and Physical Education is supposed to co-operate with the Ministers of Interior, Justice and Health and the task is to be fulfilled until 31 August 2002. The programmes for further education of social workers are to be ready until the end of March 2002. Information on the implementation of these tasks will be included in the Report on the State of Human Rights in CR in 2002.

Although the work group of representatives of central administrative bodies involved in education referred to certain problems connected with the assigned tasks and their conflict with the approved Rules of Preparation of Employees of Administrative Authorities and of the Office of the Government (see Chapter 11.2.), such objections were raised as late as in November 2001. Thus, a long time was not used and some ministries did not take any measures that would remove those problems (like a proposal to repeal or amend the government resolution).

The Ministry of Education, Youth and Physical Education prepared, however, its own document named "Strategy of the Ministry of Education, Youth and Physical Education concerning Education in Human Rights and Tolerance with an Emphasis on Practical Application", which sets out ten key strategic areas necessary for the creation of tolerant and multicultural environment at schools and school facilities, enhancement of knowledge of law and support of racial and ethnic equality. The activities of the ministry relating to the implementation of this strategy concerned the curriculum, further education of teachers, furnishing schools with specialised publications and information materials, etc. The ministry has also prepared conditions necessary for the establishment of the Department of Education to Democratic Citizenship at the Faculty of Arts, Charles University, Prague and established the posts of multicultural education co-ordinators at the pedagogic centres. Practical experience has shown, however, that the human rights education has not yet been sufficiently incorporated in the education provided at all school levels.[185]

11.2. System of education of public administration employees and public administration education

The government approved in April 2001 [186] the "System of Education of Public Administration Employees and Public Administration Education" and ordered the minister and the chairman of the Office of the Government to prepare draft Rules Determining the Method of Preparation of Employees of Administrative Authorities and of the Office of the Government. Those Rules, which were later approved,[187] include blocks and modules that also deal with human rights education. The system is currently in its preparatory phase (pilot testing of each project), so that it may be put into operation as of 1 July 2003. Therefore, the ministries share the view that it is not possible for each ministry to prepare a concept that would fully correspond to the system that is currently under preparation. It is, however, possible and necessary for the central administrative authorities to fill those blocks and modules, based on their current educational activities in this area, with adequate projects, which – if universally applicable – may be accredited for selected groups of employees of administrative authorities or for all of those authorities.

Education programmes of the administrative authorities (including human rights education) is currently regulated by government resolutions, which results in certain inconsistencies and incomprehensive approach. *It is therefore advisable to consider whether to regulate this area by a generally applicable law.*

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185 A step towards the increase of this level should also be taken through gradual implementation of the Long-term Plan of Development of Education and of the Education System in the Czech Republic, which was prepared by the Ministry of Education, Youth and Physical Education in January 2002 and which is to be presented to the government until the end of March 2002.

186 Government Resolution No. 349 of 18 April 2001 concerning the System of Education of Public Administration Employees and Public Administration Education.

187 Government Resolution No. 1028 of 10 October 2001 on the Rules Determining the Method of Preparation of Employees of Administrative Authorities and of the Office of the Government.

III. Conclusion

The Report on the State of Human Rights in 2001 is the last report submitted during the office term of the current government. Therefore, it provides an opportunity to asses the developments that have taken place since the first (1998) report on the state of human rights. A brief summary should show the areas that have achieved some progress and the other areas which need further attention.

An indisputable success is the fact that the report has provided regular factual assessment of the state of various areas of human rights and that the Czech Republic has started systematically fulfilling its obligations toward individual U.N. committees, which monitor the compliance with international treaties on human rights and on the rights of members of national minorities. In some cases, CR fulfilled some of its obligations to submit reports to those committees, which were outstanding for a long time. The Human Rights Committee, which deals most extensively with the human rights matters, presented an initial report. Despite persistent critical remarks of a number of those international bodies to the level of practical implementation of some of these rights, the reports submitted by the Czech Republic have been appreciated as matter-of-fact, comprehensive and balanced. Nearly all former shortcomings in the communication with individual committees, which were manifested by excessive politicisation of factual problems and in which the Czech party often excessively tried to defend the *status quo*, were removed. On the other hand, it is necessary to pay increased attention to the partial critical suggestions of those committees, namely because most of them are identical with the critical comments of the professional public in CR.

One of the key problems relating to the protection of human rights in CR that have been criticised for a number of years are the delays in court proceedings, the excessively long period of custody and ineffective justice system. A number of positive changes have been brought about by the adopted principal re-codification of the criminal procedural law (the Criminal Procedure Code). The amendment of the Criminal Code, which is being currently prepared, also counts on far-reaching changes and should contribute to a new orientation of the penal policy, to a more distinctive differentiation between serious and less serious crimes and to more extensive use of alternative types of punishment. Positive developments could be also seen in the prison administration, where it is still necessary to resolve in future some problems arising from the Act on Imprisonment, which may have a negative effect on the rehabilitation of the convicts and cause difficulties to the prison service (see Chapter 4). An extensive amendment of CPC, which became effective on 1 January 2001, has focussed on expediting civil litigation. It has introduced, for instance, a seven-day time limit for the issue of injunctions, which may not be exceeded, applied the case management principle with respect to some proceedings and contributed to effective execution of court decisions.

The Ministry of Justice also prepares re-codification of the substantive civil law, which is to become the platform of the protection of civil rights at a level corresponding to the standards applied by modern democratic societies. A persistent deficiency in this respect is the insufficient legislation relating to free legal aid (particularly in civil litigation and in proceedings before administrative authorities). This situation virtually prevents access to law to people with low income. The resolution of this problem through new umbrella legislation will be undoubtedly demanding, but must become one of the priorities in the future protection

of human rights. As to the activities of administrative authorities, the establishment of the office of the Public Protector of Rights represents an indisputable additional guarantee of the rights of the individual. A principal change in this respect will occur on 1 January 2003 with the start of the operations of the Supreme Administrative Court and of the whole administrative justice system.

One of the principal problems that will have to be dealt with in the next period is the protection of rights of the disadvantaged or handicapped groups of persons (children, seniors, the physically and mentally handicapped and the mentally ill). This matter is becoming a focus of attention of the modern world trends of the human rights protection. It is necessary to concentrate, in particular, on the reform of the institutional care, which is still considered in the Czech Republic as the best solution for an excessive number of those people. Despite partial progress, the level of the institutional care is still far from the standard of the most developed European countries not only as to material equipment, but namely as to the respect of individual freedom and dignity. Principal legislative changes have to be also adopted in the nearest future with respect to the institutional and protective education of children and to the protection of rights of the mentally ill, legally incapacitated or helpless persons. The practical implementation of these changes is, however, a long-term task, which has to be carried out namely by focussed human rights education of all categories of professionals who care for such persons.

A permanent subject of criticism coming not only from abroad, but also from the relevant committees and from professional public in the Czech Republic is the insufficient protection against discrimination (particularly on racial and ethnic grounds). Therefore, the government prepares an enhancement of anti-discrimination laws, which will also be a necessary prerequisite for the admission of the Czech Republic in the European Union (Chapter 3.3. of the General Part and Chapter 6.4.2. of the Special Part). Apart from anti-discrimination legislation, it is also necessary to introduce a focussed policy aiming at the resolution of persistent problems of the Roma community relating to education, employment or housing and to further develop the atmosphere in the society toward higher tolerance of national minorities and foreigners. A partial step toward the implementation of the rights of members of the national minorities would be the newly adopted Act on Rights of Members of the National Minorities.

A number of important legislative changes took place in the years 1998-2001 in relation to foreigners and refugees. The introduction of a relatively stricter regime applying to foreigners was later balanced by the amendments of applicable laws, initiated by the Human Rights Council. The tasks that are to be resolved include, however, not only partial matters (like the introduction of a fair and operable health insurance system for foreigners), but namely the adoption of a comprehensive immigration policy of the state, which will serve as a basis for new immigration legislation.

The amendment of the Citizenship Act, which was adopted in 1999, resolved the most sensitive problem, which was criticised by international organisations and institutions and by the domestic professional public. As to citizenship, there still exist problems connected with the restrictive application of the Act not only with respect to former Czechoslovak citizens, but also to other persons (Chapter 1.1. of the General Part). For the purpose of creation of a modern open society, it would be evidently necessary to start considering in the near future some more principal policy changes, like the permission of double citizenship, shortening of time limits for naturalisation, etc.

On the other hand, there appear new areas of human rights protection, which are brought about by the scientific and technological development. This does not mean any "dilution" of human rights, as some people who are not specialised in this field sometimes allege. For instance, the development of biotechnologies (from transplantations to cloning) will require a precise legislation, and many questions regarding the new definition of individual integrity have not been resolved even at the ethical level. The development of information technologies also brings about new dilemmas in the human rights sphere. On the one hand, this development grants the general public access to information that has been recently available only to the informed, and opens new possibilities for the democratic participation of citizens in the decision-making process. On the other hand, the expansion of information technologies requires far more sophisticated legal and practical measures to protect data from intrusion into privacy. A lot of concepts will have to be worked out in the nearest future not only in the Czech Republic but also in the whole world.

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