I. General part

1. Introduction

The report on the state of human rights in the Czech Republic (hereinafter only as "CR"), which is submitted to the Government by the Commissioner for Human Rights, is the fifth of its kind since 1998. Similarly as previous reports, the report for 2002 aims to describe the present state of human rights in the CR, and is primarily intended for the Government of the CR to help it in making decisions on the priorities in the area of human rights protection. As such, it does not repeat the general statements on the fundamental democratic freedoms in the CR nor the extract of the rights guaranteed by the Charter of Fundamental Rights and Freedoms (hereinafter only the "Charter")[1], but is namely devoted to (1) the progress achieved in the past year in the areas which were the subject of criticism in the past, (2) ongoing deficiencies.

The progress achieved in the past year as well as ongoing deficiencies are evaluated predominantly in respect to international treaties on human rights binding on the CR. For this reason the Report also contains an evaluation of the bodies controlling compliance with these treaties, which are the only bodies authorised to formally evaluate whether or not the states generally respect their international obligations. These supervisory bodies are independent in their evaluation; their evaluations are based on a wide range of information, which they obtain from the governments of individual states as well as from non-governmental organisations active in the human rights area. Besides their evaluation role, these organisations also present their recommendations on the attainment of a higher level of human rights protection. Thus, to gain a complete picture it is also essential to investigate the manner in which individual states implemented the supervisory bodies' *de facto* manual.

Similarly as in the 2001 Report on the State of Human Rights in the Czech Republic[2], the lay-out of this Report is a compromise between the systematic and contents interpretation of human rights, as contained in a whole series of international treaties on human rights and in the Charter. Many parts of this Report contain references to its other parts, meaning that the interlinking of the contents of the individual rights and issues that pertain to them is retained. Besides this internal linking of the various parts, the Report makes use of references to other material compiled by the Government, be they conceptual or legislative in nature, which is directly or indirectly related to issues of human rights protection in the Czech Republic.

2. Institutional safeguards

2.1. The Government Council for Human Rights

In connection with the end of the election period and thus also the end of the Government's term of office, the first term of office of the Government Council for Human Rights (in this section referred to only as the "Council") also expired. The Council comprises the representatives of central state bodies and the civil, professional and academic public; representatives of central state bodies are, as a rule, appointed by the Minister, whereas members of civic, professional and academic community age appointed directly by the Government[3]. The term of office of the Council coincides with the term of office of the Government. As such, a new Council was appointed in the second half of 2002, which met for the first time on 12 December 2002. Members of the Council's individual Committees were also newly appointed.

The Council's individual Committees focused on the following topics:

- Committee for Civil and Political Rights focuses on the procedure of deregistering political parties predominantly for reason of the non-submission of an annual financial report pursuant to the Act on

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[1] No. 2/1993 Coll., as amended

[2] Due to the fact that the title of the report is fairly long, the short version in the form "Report of the Calendar Year" is applied throughout the text in place of the report on human rights in the Czech Republic. In the event of the word "Report" being used, this is understood to refer to the 2002 report.

[3] New members of the Council representing civic, professional and academic community were appointed under Government Decree No. 1124 dated 13 November 2002 (http://racek.vlada.cz/usneseni/).

Political Parties and Movements, as a consequence of an amendment to this act of 2000[4]. Despite the fact that, according to this amendment, a political party or movement is dissolved by operation of the law if it fails to present an annual financial report to the Chamber of Deputies of the Parliament of the Czech Republic, in 2001 and 2002 the Chamber of Deputies, the Government as well as the Supreme Court of the Czech Republic discussed submissions calling for the suspension or dissolution of political parties or movements as if this provision for dissolution under the law had not existed. For this reason this Committee is preparing a motion aimed at bringing about an amendment to the Act on Political Parties and Movements in such a way as to ensure that this does not result in political subjects being dissolved under the law.

- Committee for the Rights of the Child cooperated on comments made in respect of the bill on the protection of children at work and the bill on working with children and the youth. On the basis of the Council's recommendations, this Committee concentrated on the motion for a change in the legislation concerning the reasons for incarceration, especially as regards the sick**,** pregnant women and women with small children, as well as some of the conditions of this incarceration. The Committee also discussed the lack of detoxification facilities for children, particilarly children under 15 years of age. The Committee set up a work group that is involved in the ongoing preparation of a proposal for a change to the system of surrogate childcare.

- Committee for the Elimination of All Forms of Racial Discrimination participated in preparing comments on the Fifth Periodic Report on the Implementation of Obligations arising from the Convention on the Elimination of All Forms of Racial Discrimination[5], which was subsequently submitted to the Committee for the Elimination of Racial Discrimination as the supervisory body appointed under this Convention. This report will be discussed in the course of 2003.

- In 2001 the Committee for the Elimination of All Forms of Discrimination Against Women prepared a motion aimed at improving the criminal prosecution of persons suspected of committing crimes relating to human trafficking and at improving the protection of the victims of this criminal activity. This Committee also concerns itself with the question of eliminating discrimination of women and promoting equal opportunities for men and women in connection with the preparation of legislation on protection against discrimination.

- Committee Against Torture and Other Inhuman, Cruel and Degrading Treatment or Punishment has been working on the preparation of the following motions since 2001: (1) on pre-deportation detention, (2) on detention of pregnant women and mothers with small children and on amendments to certain conditions of detention on remand, and (3) on the establishment of a mechanism of independent control over places where people deprived of freedom may be kept. During 2002 these motions were approved by the Council and discussed by the Government. In order to ascertain the current status as regards the treatment of people deprived of freedom and the conditions in facilities where they are kept, the members of the Committee visited selected army villages, police stations, facilities for detaining foreigners and several villages and detention villages. The Committee will use the findings of these visits in its other activities during the course of 2003.

- Committee for Rights of Foreigners concentrated in 2002 mainly on two problems, both pertaining to children. These were; (1) the situation of unaccompanied children-foreigners without an escort and care for these children, and (2) health insurance of children-foreigners who reside in CR on a long-term visa. Under the current system these children are not covered by public health insurance, which brings with it serious problems. In both cases the Committee cooperated with the ministeries that were working at resolving this issue upon the Council's motion. It also concentrated on the problems associated with citizenship, concretely on bilateral treaties on the prevention of dual citizenship, actively participated in the discussion on the Principles of Government Policy in the Area of the Integration of Foreigners and also focused on other current questions, such as proposals of new legislations in the migration area.

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[4] Act No. 424/1991 Coll., on Association in Political Parties and Political Movements, as amended, Act No. 340/2000 Coll., which amends Act No. 424/1991 Coll.

[5] The Report was approved by Government Decree No. 823 dated 28 August 2002 (http://racek.vlada.cz/usneseni/).

- Committee for Human Rights and Biomedicine continued (in cooperation with the Ministry of Justice) in the preparation of a proposed amendment to Section 186 to Section 191b of the Civil Procedure Code[6], i.e. regulation of proceedings regarding legal capacity and admissibility of taking and detention of persons in health care facilities. The Committee prepared a pilot project monitoring the observance of human rights in psychiatric facilities (APEL – Audit of Rights and Ethics of Treatment), which entered the implementation phase in the second half of the year. In connection with the death of a prisoner as a result of a hunger strike the Committee prepared a proposed amendment to Decree No. 26/1999 issued by the general manager of the Czech Prison Service, which stipulates certain procedures applied to the provision of diagnostic and preventative medical care at medical facilities of the Czech Prison Service to persons in detention on remand or those serving a prison sentence in cases of damage to their health. The Committee also concerned itself with the question of mandatory vaccination and disproportional sanctions affecting families in this regard.

- Committee for Economic, Social and Cultural Rights participated, amongst other things, on the issue of housing, but did not submit any concrete motions to the Council in 2002, as was the case with the Committee for Human Rights Education. Both of these Committees, which were passive for a long time, were subjected to a thorough personnel reorganisation at the end of the year.

In 2002 the Government took the following steps on the basis of the Council's motions:

- The Ministry of Culture compiled a proposal for an amendment to the State Citizenship Act on the basis of the motion of the Council[7]. This proposal will allow those former state citizens of the Czech Republic, who forfeited their Czech citizenship because of the fact that they applied for and were granted with Slovak citizenship between 1 January 1994 and 1 September 1999, to be able to regain the Czech citizenship in a simplified manner. Furthermore, the list of documents that the Ministry of Interior may request of applicants for a Czech citizenship was specified in more detail. Above all, however, the wording of the legislative exemption for the retainment of Czech state citizenship in those cases where the Czech state citizen acquires the citizenship of another state at its own request was clarified. This clarification was needed in order that it would be clear to which situations this exemption applies (taking one's marriage vows).

- The Government approved[8] a motion of the Council aimed at improving the criminal prosecution of persons suspected of committing crimes relating to people trafficking and at improving the protection of the victims of this criminal activity, with the combined report on the fulfilment of duties contained in the Government Resolution is to be submitted to the Government by the end of March 2003.

- On the basis of the motion of the Council for the establishment of a supervisory body for detention supervision, the Government Commissioner for Human Rights was authorised[9] to compile, in cooperation with other ministries, a proposal of the legislation of detention supervision. The work group, which comprises of the representatives of the Ministers of Work and Social Affairs, Justice, Interior, Defence, Health, Education, Youth and Physical Training and the Government Commissioner for Human Rights, is currently preparing this proposal.

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

7 The motion of the Council for Human Rights pertaining to Act No. 40/1993 Coll., on the Acquisition and Loss of the State Citizenship of the Czech Republic, as amended, which also contains a proposal for its amendment, was discussed by the government on 15 May 2002 and adopted Resolution No. 493 (http://racek.vlada.cz/usneseni/). The proposed amendment, prepared by the Ministry of Interior, was approved by the government on 24 February 2002 (reference shall be added)

8 Government Resolution No. 117, dated 28 January 2002 (http://racek.vlada.cz/usneseni/)

9 The Government Commissioner for Human Rights was delegated this duty under Government Resolution No. 679, dated 26 June 2002 (http://racek.vlada.cz/usneseni/). The proposed legislation is to be compiled by the end of March 2003.

2.2. Government Council for National Minorities

As in the case of the Council for Human Rights, the composition of the Government Council for National Minorities was renewed following the parliamentary elections of 2002 (in this section referred to only as the "Council"). The new Government recalled the existing Chairman (who was the Deputy Prime Minister and the Chairman of the Legislative Council of the Government), naming to this post the Deputy Prime Minister for Research and Development, Human Rights and Human Resources[10]. In accordance with the Statute, the Council established two of its bodies in 2002 – the Committee for Subsidy Policy and the Committee for Cooperation with Local and regional government Bodies. The Committee for Subsidy Policy was the main active participant in the preparation of a proposal of specific and binding indicators in the draft state budget for the year 2003.

Four meetings of the Council were held in 2002, with the main points of these meetings being as follows:

- Expansion of advisory bodies of the Ministry of Culture and of the Ministry of Education, Youth and Physical Training with the addition of representatives of other national minorities (March 2002);
- Preparation and approval of the 2001 Report on the Situation of National Minorities in the Czech Republic (May 2002);
- Participation in the preparation for the announcement of tender proceedings in respect of subsidies granted by the Ministry of Culture and the Ministry of Education, Youth and Physical Training in programmes for the "Support of Cultural Activities of Members of National Minorities", "Support of the Expansion and Receipt of Information in Minority Languages" and "Support of Education in Minority Languages and Multicultural Education", and in the preparation of specific indicators aimed at the activities of national minorities (October 2002);
- Initiatives in the matter of the meeting of the rights of members of national minorities to broadcasts of minority-related programming on public television (December 2002).

Of significance is the Council's cooperation with committees for national minorities at the regional, city and municipal level. Pursuant to the relevant legislation[11], there exist at present committees for national minorities in 32 municipalities of the former districts of Karviná and Frýdek-Místek, in four regions (Moravia and Silesia region, South Moravian region, Liberec region and the Ústí region) and in three cities (Brno, Liberec and Most). There also exists a commission for the affairs of national minorities[12] in the event that the conditions of the act are not complied with, whilst at the same time there is a need to establish a body for working with minorities or especially with Roma communities.

2.3. Government Council for Roma Community Affairs

In view of the transformation of the Inter-Ministerial Commission for Roma Community Affairs into the Government Council for Roma Community Affairs (in this section referred to only as the "Council") in December 2001, new members were appointed and new Committees established at the start of 2002 according to the statute approved by the Government[13]. The newly appointed Council has 28 members, 14 public administration representatives and fourteen Roma members. The Deputy Prime Minister and Chairman of the Legislative Government Council was appointed as Chairman of the Council, with the Government Commissioner for Human Rights and one of the civil Roma Council members appointed as Vice-Chairs. After the parliamentary elections, the Deputy Prime Minister for Research and Development, Human Rights and

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[10] The government appointed the new composition of the Council by Government Decree No. 1094 dated 6 November 2002 (http://racek.vlada.cz/usneseni/).

[11] Act No. 273/2001 Coll., on Rights of Members of National Minorities, as amended

[12] For example, in the City of Prague the Council of the City of Prague established a Commission for National Minorities, the members of which are representatives of national minority organisations active in Prague.

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

Human Resources was appointed as the new Chairman of the Council.[14] Five meetings of the Council were held in 2002.

The Government approved an updated Roma Integration Policy Concept[15], obligating members of the government to adopt measures aimed at the more thorough fulfilment of duties pertaining to the integration of Roma communities and calling upon regional commissioners and other representatives of local government to participate in fulfilling the concept of the outlined objectives, i.e. the full integration of the Roma community during the next 20 years. Emphasis was placed mainly on developing existing programmes restricting the exclusion of the Roma community (i.e. field social work) and the education programmes (preparatory years for Roma students, support of Roma secondary school students and teaching assistants). The concept will be updated annually.

In August 2002 the Government, at the Council's proposal, adopted an Action Plan to Restrict the Filing of Applications for Asylum in Foreign Countries by Members of the Roma Community in the Czech Republic[16]. This action plan outlined a number of duties aimed at restricting the causes of Roma migration. The Government Commissioner for Human Rights was charged with the task of compiling an analysis of the Roma migration and a strategy for the prevention of social exclusion – An Analysis of the Possibilities of Intensifying and Improving Work Effectiveness in Order to Prevent Social Exclusion in Roma Communities and Eliminating its Effects Via an Agency Appointed for this Purpose (short-form - "Analysis of Social Exclusion"). This analysis identified a lack of institutional safeguards for Roma integration programmes and proposed the establishment of a new body, which could act as an instrument of the state's Roma integration policy in relation to local government in the new environment resulting from the reform of public administration and the fragmentation of the network of Roma advisors at existing district offices. The proposal for the establishment of such an agency (as a state contributory organisation or a publicly beneficial society co-founded or entrusted by the state) was inspired by practical experiences from the social policies of EU member states dealing with similar problems. The Government did not decide on the establishment of such an instrument, but took note of the Analysis of Social Exclusion[17]. The search for an institutional solution in relation to local Government will continue in the next update of the Plan.

The Council repeatedly expressed its dissatisfaction in regards to the network of Roma advisors at district offices being jeopardised by the current public administration reform process and called upon the Minister of Interior to take measures aimed designed to guarantee the further engagement of these Roma advisors at municipalities charged with the execution of public administration. During 2002 most of the Roma advisor coordinator positions vacant at regional offices were filled, partly by experienced members of the Roma community and with the Council's participation.[18]

The office of the Council devoted great effort in ensuring assistance to Roma communities during the August floods and implemented programmes to support Roma secondary school students (2350 students supported) and field social work involving Roma communities (subsidies were granted to employ 73 field workers). October's out of town meeting in Ostrava focused on evaluating the integration activities in the Moravian-Silesian region (namely the Villages of Cohabitation project), with December's out of town meeting in Brno focusing on the

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[14] Government Resolution No. 768 dated 7 August 2002 on the recall and appointment of a chairman of the government advisory body (http://racek.vlada.cz/usneseni/)

[15] Government Resolution No. 87 dated 23 January 2002 to the Information on the Fulfilment of Government Resolutions concerning the Integration of Roma Communities and an Active Approach by Public Administration in Implementing Measures adopted by these Resolutions as of 31 December 2001 and to the proposed Roma Integration Policy Concept(http://racek.vlada.cz/usneseni/)

[16] Government Resolution No. 761 dated 5 August 2002 to the Action Plan to Restrict the Filing of Applications for Asylum in EU Countries and Norway by Members of the Roma Community in the Czech Republic (http://racek.vlada.cz/usneseni/ and http://www.vlada.cz/1250/vrk/vrk.htm)

[17] Government Resolution No. 1113 dated 13 November 2002 to the An Analysis of the Possibilities of Intensifying and Improving Work Effectiveness in Order to Prevent Social Exclusion in Roma Communities and Eliminating its Effects Via an Agency Appointed for this Purpose (http://racek.vlada.cz/usneseni/)

[18] Government Resolution No. 781 dated 25 July 2001 on the establishment of the post of Roma advisor coordinator at higher regional local administration units (http://racek.vlada.cz/usneseni/)

problems faced by the Museum of Roma Culture. In the course of the campaign against racism[19] the office of the Council oversaw the Roma field social work media presentation project, with Council members taking a major part in this project.

2.4. Government Council for Equal Opportunities for Men and Women

The Government Council for Equal Opportunities for Men and Women (in this section referred to only as the "Council") is a new Government advisory body[20] that supplements the existing system of advisory bodies concerned with the issues of eliminating other major discriminatory aspects. Originally the chairman of this Council was the Minister of Work and Social Affairs; but at the date of this report a female deputy of the Czech Parliament chairs this Council[21], which, in the case of Government advisory body (as bodies with executive powers), is rather atypical. Besides ministerial representatives, the Council also includes representatives of social partners, the civic and professional public; regional commissioners, the Lord Mayor of the Capital City of Prague, representative of the Federation of Cities and Municipalities of the Czech Republic and chairperson of the Permanent Commission of the Chamber of Deputies for the Family and Equal Opportunities have the status of permanent guests. The Council met twice in 2002. At these meetings the Council focused mainly on mapping the actual state of equal opportunity policy at the individual ministries (also see Chapter II/6. of the Report).

3. The International dimension of human rights

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

In the course of 2002 the Czech Republic discussed the following reports on the implementation of international treaties on human rights before supervisory bodies:[22]

3.1.1. Initial report on the implementation of the International Covenant on Economic, Social and Cultural Rights

The initial report on the implementation of the International Covenant on Economic, Social and Cultural Rights (in this section referred to only as the "Covenant") for the years 1993– 1999 was compiled at the start of 2000. At the end of 2001, on the basis of a request of the Preparatory Work Group of the Committee for Social, Economic and Cultural Rights (in this section referred to only as the "Committee") an "Amendment of the Czech Republic to the Report of the Czech Republic in regards to the Implementation of the Covenant" was compiled and submitted to the Committee. Discussions on the initial report, including the Amendment, were held on 30 April and 1 May 2002 in Geneva.

In the course of these discussions the Committee focuses, among other matters, on the Covenant's position within the Czech legal system, the social situation of endangered groups, Roma's access to social rights, the right to housing, equality of men and women and domestic violence. However, the Committee's concluding recommendations dated 15 May 2002 do not always take the information provided into full consideration. The positive aspects as seen by the Committee were mainly the adoption of many laws, adopted by the CR in order to enforce the economic, cultural and social rights, as well as the establishment of the Council for Human

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[19] Government Resolution No. 419 dated 22 April 2002 to the preparation of a campaign against racism (http://racek.vlada.cz/usneseni/)

[20] The Council was established on the basis of Government Resolution No. 1033 dated 10 October 2001 (http://racek.vlada.cz/usneseni/).

[21] The deputy Anna Čurdová was appointed the chairperson of the Council pursuant to Government Resolution No. 1095 dated 6 November 2002 (http://racek.vlada.cz/usneseni/)..

[22] Reports on the implementation of individual international UN treaties on human rights are available in Czech at the Internet address of the Office of the Government of the Czech Republic: http://www.vlada.cz, in the sections headed "Advisory and Work Bodies" – "Government Council for Human Rights" – "Documents of the Government Council for Human Rights". In English (or French) these reports and concluding recommendations relating to them are available at http://www.unhchr.ch/tbs/doc.nsf

Rights and the post of the Public Protector of Rights (Ombudsman). The Committee judged the initial report to be comprehensive and also welcomed the non-governmental organisations‘ cooperation in the preparation of the Report. The Committee is due to submit a second periodic report by 30 June 2007. The Government Commissioner for Human Rights will submit the material, which will form the basis for the implementation of the recommendations by the ministries and the monitoring of this implementation, to the Government by 31 March 2003.

3.1.2. Second periodic report on the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women

This report was discussed before the Committee for the Elimination of Discrimination Against Women in New York (in this section referred to only as the ”Committee”) on 8 August 2002. The Committee’s attention focused predominantly on the effective level of equality between men and women in the CR and at the instruments in place for the promotion of women’s equality. In its final report the Committee evaluated favourably the large number of legislative changes, especially in the area of labour-law relations, and the effort exerted in compiling a uniform system of legislative regulations aimed at protection effected parties against discrimination. The Committee also acknowledged the establishment of new institutional mechanisms aimed at protecting the human rights of women and the enforcement of equal opportunities for men and women, such as the Government Council for Equal Opportunities of Men and Women and the Council for Human Rights, as well as the establishment of the post of Public Protector of Rights (Ombudsman). The Committee also welcomed the speedy ratification of the Option Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women.

However, in connection with the implemented legislative changes, it was with an air of concern that the Committee warned of the lack of instruments for the practical implementation of the anti-discrimination provisions contained in the amended regulations. According to the Committee this fact has resulted in a lack of court decisions awarding women damages for discriminatory behaviour and a low level of application of these laws in protecting effected parties against discrimination. Even though the Committee appreciated the establishment of new institutional mechanisms in the enforcement of equal opportunities, it also expressed its concern that its effectiveness will be lessened by insufficient powers as well as a lack of financial and human resources. The continuing low representation of women at the elected bodies and posts having decision-making powers also came up for criticism. Insufficient legislation and the lack of other effective instruments in the areas of eliminating acts of violence against women and protecting women mainly against domestic violence and people trafficking were also subjects of interest.

3.1.3. Second periodic report on the implementation of the Convention on the Rights of the Child

At the start of October 2002 the representatives of non-governmental organisations submitted to the Committee for the Rights of the Child (in this section referred to only as the ”Committee”) a so-called shadow reports on the implementation of the Convention on the Rights of the Child (in this section referred to only as the ”Convention”). On the basis of the second periodic report of the CR on the implementation of the Convention on the Rights of the Child report, which was submitted by the CR in 2000, and utilising information from the non-state sector, the Committee presented the CR with a set of supplementary questions concerning the implementation of the Convention, the answers to which it received almost immediately. The Committee‘s main and continuing area of interest include the issue of adoptions (including the rights of children to know their identity of their biological parents), the conditions in place for children in institutional care, legislative and practical protection from physical punishment and sexual abuse and a series of other problems that remain relevant. Discussion of the second periodic report of the CR was set for January 2003[23].

3.1.4. Initial report on the implementation of the International Covenant on Civil and Political Rights

In the course of the discussions in July 2001 concerning the initial report on the implementation of the International Covenant on Civil and Political Rights (in this section referred to only as the ”Covenant”), the

[23] The Section discussed this report for the Rights of the Child on 24 January 2003.

Human Rights Committee, as the Covenant's supervisory body, requested information on the implementation of three of the more than twenty final recommendations[24] by August 2002. The information on the implementation of the selected final recommendations has yet to be submitted to the Committee[25] by the CR.

3.1.5. Third periodic report on the implementation of the Convention Against Torture and Other Inhuman, Cruel and Degrading Treatment or Punishment

In March 2002 the third periodic report on the implementation of the Convention Against Torture and Other Inhuman, Cruel and Degrading Treatment or Punishment was submitted to the Committee Against Torture for assessment[26]. November 2003 was set as the preliminary deadline for the discussion of this report before the Committee. The third periodic report was submitted for the period from 1 January 1998 to 31 December 2001, in the compilation of which the recommendations made by the Committee in respect of the second periodic report of the CR were taken into account.

3.2. The second regular visit of the European Committee for Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT)

In the period of 21–30 April 2002 the European Committee for Prevention of Torture and Inhuman and Degrading Treatment or Punishment (Committee for Prevention of Torture, hereinafter only as the "CPT") held its second regular visit to the CR. Amongst the places visited were police stations, the receiving facility at the Prague–Ruzyně International Airport, facilities for the detainment of foreigners in Balková, selected jails and detention facilities, the psychiatric facility in Opava and the youth social care institute in Ostravice. In CPT's report issued at the end of the visit the head of the delegation states that the delegation was refused immediate entry to one of the police stations, which is contrary to the principle of cooperation agreed between CPT and the Convention party, as stipulated in Article 3 of the Convention Against Torture and Other Inhuman, Cruel and Degrading Treatment or Punishment[27] (in this section referred to only as the "Convention").

The fact that foreigners detained in the receiving facility at the Prague–Ruzyně International Airport do not have any possibility to leave the building for the entire period of their stay (which may last up to six weeks) was judged by the CPT delegation to be unacceptable. Referring to Article 8(5) of the Convention, CPT requested the appropriate Czech authorities to take immediate measures to rectify this deficiency and to inform CPT of the measures implemented within three months. The Ministry of Interior began to take steps towards rectifying this situation immediately upon the conclusion of the CPT visit, with CPT being informed accordingly. Outdoor walk areas went into operation on 25 October 2002, after the required formalities were resolved and the completion of the necessary construction and technical modifications.

The report by the head of the delegation also mentioned the lack of guarantees in place to protect the rights of persons deprived of their freedom by police bodies and the excessive use of beds made from netting at the psychiatric facility in Opava as well as at the social care institute in Ostravice. The situation of people sentenced to life and the lack of free-time activities organised for people accused and detained at the Prague-Pankrác detention facility, as well as foreigners in the detention facility at Balkov also came in for criticism from CPT.

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[24] The final recommendations of the Section for Human Rights were discussed by the government on 19 December 2001 and adopted by Government Resolution No. 1362 (http://racek.vlada.cz/usneseni/). The overall information material for the Section for Human Rights was to be discussed by the government on 11 September 2002. But this information was withdrawn from government discussion (http://racek.vlada.cz/usneseni/). Following further discussions, this report on the implementation of selected recommendations made by the Section is to be submitted to the government by the end of April 2003.

[25] Discussions on the initial report on the implementation of the International Covenant on Civil and Political Rights, together with the resulting recommendations, were described in detail in Chapter I./3.1.2 of the 2001 Report.

[26] Third periodic report approved by the government by Government Resolution No. 88 dated 23 January 2002 (http://racek.vlada.cz/usneseni/).

[27] Pertains to Council of Europe Convention ETS No. 126; the convention is published under No. 9/1996 Coll. in the Collection of Acts.

The CR obtained the final report on the second regular visit of CPT to the CR in December 2002. A proposal of the measures directed at implementing the recommendations contained in this final report is currently under preparation.

3.3. Contractual foundation

3.3.1. Adoption of new international legal commitments

In the course of 2002 the CR became a party to the following international treaties[28]:

• European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS No. 51)[29]
This convention is based on the reasoning that at the state level alternative sanctions to the serving of a prison sentence have proven to be an effective means of reforming and reintroducing criminal offenders back into society and contribute to preventing repeat offences. The aim of this convention is to put in place such conditions of international cooperation as to ensure that these means of reform can be applied regardless of whether the offender is a Czech citizen or a foreigner.

• Criminal Law Convention on Corruption (ETS No. 173)[30]
The aim of the criminal law convention on corruption is to coordinate the criminalisation of a wide spectrum of corruptive practices. It focuses on harmonising local laws and on improving international cooperation in such a way as to make it possible to prosecute those that offer as well as those that accept bribes, or to speed-up criminal prosecution.

• Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS No. 167)[31]
The Additional Protocol resolves some of the fundamental situations whereby the prosecuting state issued a legally binding decision but where this decision is unenforceable under the existing conditions, or where it would be difficult to enforce even with the application of further financial resources and capacities of judicial bodies.

In 2002 the CR signed the following international treaties[32]:

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[28] As at 31 December 2002 the CR was a party to 82 conventions of the Council of Europe and a signatory of 24 of these. This placed the CR first among all Central and Eastern European countries. The present state of the number of parties to the Council of Europe conventions generally, including their individual texts and "explanatory reports", or the texts of reservations and declarations, as the case may be, is available on the Council of Europe web page: http://conventions.coe.int/treaty/EN/cadreprincipal.htm.

[29] This convention came into effect for the CR on 11 July 2002 and was published under No. 75/2002 in the Collection of International Treaties.

[30] This convention came into effect for the CR on 1 July 2002 and was published under No. 70/2002 in the Collection of International Treaties.

[31] This convention came into effect for the CR on 1 February 2003 and was published under No.26/2003 in the Collection of International Treaties.

[32] Despite the fact that the CR signed Protocol No. 12 to the ECHR in November 2000 and the government approved a proposal for its signing and ratification, the CR is still not a party to this Protocol. In September 2002 the Deputy Prime Minister and Minister of Foreign Affairs requested the Prime Minister of the Government of the Czech Republic to defer the ratification of the Twelfth Protocol to 1 September 2004. The state of the so-called restitution laws contributes to the Czech Republic's restrained approach: in the event of the ratification of the protocol the restitution laws will probably find themselves in conflict with this protocol, which could result in a situation analogous to the one that occurred in the case of the International Covenant for Civil and Political Rights, whose supervisory body – the Section for Human Rights, found that, in several cases, the application of the condition of state citizenship was discriminatory.

• Second Optional Protocol to the International Covenant on Civil and Political Rights
This Protocol prescribes an absolute ban on the death sentence.

• Protocol on the Prevention, Suppression and Prosecution of People Trafficking, Namely Women and Children, Supplementing the Convention on the Suppression of Supranational Organised Crime[33]
Despite the fact that the Protocol as well as the Convention belongs more into the "criminal law" category, these are international treaties that strive to regulate, in a comprehensive manner, the approach to the problems associated with the present-day slave trade with an emphasis on the following areas: repression of perpetrators, protection of victims, prevention of the slave trade and international cooperation.

• Protocol No. 13 to the Convention for the Protection of Human the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances (ETS No. 187)[34]
The aim of the Protocol is to strengthen the right to life, which is an inforeignerable attribute of all human beings and the highest value in the international hierarchy of human rights guaranteed by the Convention. Protocol No. 6 to convention pertaining to the death sentence does not rule out the awarding of the death sentence for acts committed during the war or in the event of the immediate threat of war.

• Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS 158)[35]
The basic control mechanism of the European Social Charter (hereinafter only as the ”Charter") is based on the periodic submission of reports by the charter-signing states on the implementation of the obligations adopted. These reports are subject to investigation and assessment by the Committee for Social Rights and the Governmental Committee for the Charter. The Committee of Ministers of the Council of Europe decides on the proposed recommendations.

With the growing number of parties to the Charter, the above-mentioned system became cumbersome and the period from the discovery of a breach of the Charter to the adoption of the recommendation of the Committee of Ministers and the subsequent reaction of the Charter parties. This was the reason for the compilation of a new control instrument, which introduced a system of collective complaints based on the submissions (complaints) of competent non-governmental organisations (e.g. the international organisation of employers or unions) over and above the framework of the existing system of submitting and evaluating regular reports even without the need to turn first to the state’s authorities. The Additional Protocol specifies, to a large part, the procedural questions pertaining to the submission and discussion of the collective complaints mentioned above.

• European Convention on Social Security (ETS No. 78)[36]

• Supplementary Agreement for the Application of the European Convention on Social Security (ETS No. 78A)

• Protocol to the European Convention on Social Security (ETS No. 154)

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[33] The proposal for the signing of the Protocol on the Prevention, Suppression and Prosecution of People Trafficking, Namely Women and Children (hereinafter only as the "Protocol") was approved by Government Resolution No. 1119 dated 13 November 2002. The CR signed the Protocol on 10 December 2002. However, because the CR has yet to ratify the Convention (which it signed on 13 December 2000), it cannot ratify the Protocol (http://racek.vlada.cz/usneseni/). This is the reason why the proposal for the ratification of the Convention is being proposed together with the proposal for the ratification of the Protocol.

[34] The proposal for the signing and ratification of Protocol No. 13 to the ECHR was approved by Government Resolution No. 405 dated 17 April 2002 (http://racek.vlada.cz/usneseni/). The CR signed Protocol No. 13 to the ECHR on the date of its opening for signing (3 May 2002) at the meeting of the Committee of Ministers of the Council of Europe held in Vilnius.

[35] The proposal for the signing and ratification of Additional Protocol was approved by Government Resolution No. 21 dated 8 January 2002. The CR signed this Protocol on 26 February 2002 (http://racek.vlada.cz/usneseni/).

[36] This and the subsequent two treaties were signed on 21 June 2002.

The following bilateral treaties also address the issue of human rights:

- Treaty concluded between the CR and Germany on amendments to the European Convention on Extradition[37] and on facilitating its application (No. 67/2002 of the Collection of International Treaties),
- Treaty concluded between the CR and Thailand on the transfer of offenders and on cooperation in the execution of criminal sentences (No. 107/2002 of the Collection of International Treaties),
- Treaty concluded between the CR and Germany on amendments to the European Convention on Mutual Legal Aid in Criminal Matters[38] (No. 68/2002 of the Collection of International Treaties)

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

According to the statistics[39] of the European Court of Human Rights (in this section referred to only as the "Court") there were a total of 465 complaints filed against the CR in 2002. The number of complaints filed against the CR in 2002 did not change markedly against their 2001 and 2000 levels. According to information provided by the office of the Court a total of 570 complaints were filed against the CR in 2000 and 437 in 2001. The Ministry of Justice only keeps statistics for so-called communicated complaints[40]. These statistics are a reflection of the activity of the office of the Court and subsequently the work load that the office of the Government Commissioner representing the Czech Republic before the Court. The main problem of communicated complaints tends to be the question of the length of state court proceedings.

Overview of the number of communicated complaints from 1995

Year	*Number of communicated complaints*
1995	3
1996	1
1997	4
1998	6
1999	11
2000	6
2001	16
2002	50

In 2002 the Court issued four guilty judgments against the Czech Republic:

- In the matter of Pincová and Pinc v. the Czech Republic (dated 5 November 2002) the Court ruled that the Czech Republic had unreasonably intervened in the ownership of the complainants in their position as persons liable under to the Land Act. It ordered the CR to pay fair compensation amounting to €35,000 and the costs of the proceedings amounting to almost €10,000.[41]

- In the matter of Zvolský and Zvolská v. the Czech Republic (dated 12 November 2002) the Court ruled that the Czech Republic had unreasonably intervened in the ownership of the complainants in their position as persons liable under to the Land Act[42], as well as ruling that the state had not granted the right of access to

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[37] This pertains to the treaty of the Council of Europe ETS No. 24. The CR succeeded to the treaty, which is published under No. 549/1992 in the Collection of Acts.

[38] This pertains to the treaty of the Council of Europe ETS No. 30, which was published under No. 550/1992 in the Collection of Acts.

[39] These statistics tend to be published in the yearbook of the Court during the spring months of the subsequent year.

[40] The so-called communicated complaint is a complaint that the Court forwarded to the government of the state to take a standpoint. Here it is important to state that the Court declares over 90 % of the complaints as inadmissible without communication to the government.

[41] In view of the fact that neither the government nor any of the complainants requested for the matter to be submitted to the grand jury of the Court, the given rulings became final in the course of February 2003, with their Czech translations being published on the web pages of the Ministry of Justice.

[42] Act No. 229/1991 Coll., on the amendment of ownership relations to land and other agricultural property, as amended

a court by refusing the constitutional complaint filed after the appeal, which the Supreme Court designated as being inadmissible. It ordered the CR to pay fair compensation amounting to € 50,000 and the costs of the proceedings amounting to € 3,000.

- In the matter of Běleš and others v. the Czech Republic (dated 12 November 2002) the Court ruled that the Czech Republic had not granted the right to have access to a court on two occasions: municipal courts did not hear the complaint of the complainants concerning the breach of a right upon expulsion from the civil association and the Czech Constitutional Court (hereinafter only as the "Constitutional Court") rejected a constitutional complaint on the grounds that all appeals had not been exhausted. The Court ordered the CR to pay the costs of the proceedings amounting to € 330.

- In the matter of Bucheň v. the Czech Republic (dated 26 November 2002) the Court ruled that the Czech Republic was in breach of the ban on discrimination in the matter of the right for a payment of army severance pay to former army judges and procurators, ordering the CR to pay fair compensation amounting to € 3,000.

In view of the fact that not one of these sentences was final as at 31 December 2002, the payment of the above amounts is a topic for consideration during the first half of 2003. The above cases are currently the subject of analysis by the Ministry of Justice, with other competent ministries also being involved when appropriate, mainly the Ministry of Agriculture and the Ministry of Defence. The reason is that it is wholly possible that it will be necessary to adopt other measures in order to comply with the sentences, both at an individual level, in order that the CR may prevent further breaches of the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter only as the "ECHR")[43] in the matter of the complainant, as well as at a general level, i.e. legislative changes aimed at preventing breaches of the ECHR for the same reason.[44] The rulings will be published in Czech on the web pages of the Ministry of Justice.

3.3.3. Notice filed against the CR with the Human Rights Committee

The notice filed against the CR with the Human Rights Committee (in this section referred to only as the "Committee") for a breach of the International Covenant on Economic, Social and Cultural Rights (in this section referred to only as the "Covenant") pertained mainly to so-called restitution legislation or the procedure employed by public administration bodies in processing restitution applications. In this area a difference of opinion persists between the Committee and the CR in regards to the character of the Czech citizenship as a legal condition for exercising a restitution claim. The Committee finds this condition discriminatory, whereas the CR – including the Czech Constitutional Court – considers this condition as one of the sensible and objective criteria used to demarcate the scope of the restitution process. In 2002 the CR received decisions from the Committee in the following cases:

- The decision on notice No. 774/1997[45], in the case of Brok v. the Czech Republic, dated 31 October 2001, was delivered to the CR on 21 January 2002. The subject of the dispute was the unsuccessful restitution where the property question was first put under national administration and subsequently nationalised. The CR considered the notice as inadmissible because of the fact that the notifying party had not exhausted all available remedies (even in the post-war period) and that the notifying party had argued before state courts for a right to property, not discrimination. The Committee found that the Covenant had been breached in this case, due to the fact that the property was first confiscated by the German occupating regime and that the notifying party was not allowed restitution (as opposed to those persons whose property was also confiscated but not nationalised, enabling for its restitution in the 1990s). The notifying party's wife, as the heir and successor in the proceedings, will be probably compensated by the Endowment Fund for Victims of the Holocaust.

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[43] This pertains to the treaty of the Council of Europe ETS No. 5, which was published under No. 209/1992 in the Collection of Acts. Additional Protocol No. 9 (ETS No. 140) was published under No. 46/1996 Coll. and Additional Protocol No. 11 (ETS No. 155) under No. 243/1998 Coll.

[44] In this regard the Ministry of Justice is drafting a proposed amendment to Act No. 182/1993 Coll., on the Constitutional Court, as amended.

[45] This notice was filed on 8 February 1997.

- The decision on notice No. 765/1997[46], in the case of Fábryová v. the Czech Republic, dated 30 October 2001, was delivered to the CR on 28 January 2002. The subject of the dispute was the restitution of the property of an individual who had never lost Czech citizenship. Originally, this property was confiscated contrary to decree No. 12/1945 Of Coll. In 1951 the appeal against this confiscation was rejected with final effect. In the restitution process certain state bodies, including the Jihlava Land Office, then applied such an interpretation of the act that would paradoxically exclude from the restitution process precisely those persons who had never lost Czech citizenship[47]. A court review was refused for formal reasons. The Committee found that the Covenant had been breached in this case, stating that the review outside of the appeal proceedings did not proceed in the correct manner and that the notifying party was thus not provided with conditions identical to those made available to others. The case has not been closed yet, because proceedings are currently underway before the Regional Court in Brno. But developments to date indicate that the notifying party could be compensated from the Endowment Fund for Victims of the Holocaust.

- The decision on notice No. 946/2000[48], in the case of Patera v. the Czech Republic, dated 25 July 2002, was delivered to the CR on 19 August 2002. The Committee found that the International Covenant on Economic, Social and Cultural Rights had been breached due to the inadequate safeguards in place to ensure the execution of a court decision on the regulation of a parent's contact with his underage child. (Nevertheless, one of the members of the Committee published a dissenting standpoint.)

- Decision on notice No. 757/1997[49], in the case of Pezoldová v. the Czech Republic, dated 9 December 2002. In this case the Committee stated that the Covenant was breached because the notifying party was not allowed access to archive material, essential in exercising her restitution claim.

In the course of 2002 the Human Rights Committee also commenced proceedings to discuss notice No. 1054/2002 in the case of Z. Kříž v. the Czech Republic. This is a notice against Czech citizenship as a legal condition for exercising a restitution claim.

3.3.4. State execution of decisions made by international supervisory bodies

Even though relevant legislation[50] stipulates that the Ministry of Justice is the body competent in representing the CR before the European Court of Human Rights and the Government has adopted a procedure for executing decisions handed down by this court[51], in the case of other international supervisory bodies, authorised under international treaties to decide in individual cases whether or not rights protected under these treaties have been breached, this is as yet not so.

In its final recommendations the Human Rights Committee stated that the CR does not have any mechanisms in place for executing its decisions on individual notices pertaining to the breach of rights protected under the International Covenant on Civil and Political Rights, and invited the CR to adopt such a measure. In connection with these recommendations the Government also approved, among other things, a procedure for the execution of the decisions (opinions) of the Human Rights Committee on notices filed by individuals.[52] In an amendment

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46 This notice was filed on 28 May 1997.

47 The Czech Constitutional Court subsequently judged this interpretation as unconstitutional, but in another case.

48 This notice was filed on 17 May 1999.

49 This notice was filed on 30 September 1996.

50 Section 11(5) Act No. 2/1969 Coll., on the establishment of ministries and other Czech central public administration bodies, as amended

51 The state procedure for execution of decisions handed down by the European Court of Human Rights was adopted by Government Resolution No. 488 dated 14 May 2001 (http://racek.vlada.cz/usneseni/). This concerns ensuring the implementation of amendments to the act on distribution of powers of 1996 by Act No. 135/1996 Coll., by which the previously mentioned competence of the Ministry of Justice to represent the CR before the European court of Human Rights was determined.

52 Government Resolution No. 527 dated 22 May 2002, on the proposed mechanism for preparing government standpoints in proceedings before the UN Human Rights Committee pertaining to notices filed by

to the act on distribution of powers[53] the Ministry of Justice was entrusted to represent the state before the Human Rights Committee and coordinate the execution of the decisions.

Nevertheless, the amendment to the act on distribution of powers retained the general competence of the Ministry of Foreign Affairs in representing the CR and coordinating the execution of decisions in the case of other international supervisory bodies that are authorised under international treaties to decide in individual cases whether or not rights protected under these treaties have been breached. This mainly concerns the Committee for the Elimination of All Forms of Discrimination Against Women, whose mandate is contained in the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women[54], and the Committee Against Racial Discrimination, that is competent to handle individual notices pursuant to Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination[55]. The CR is a signatory to all the mentioned international treaties, which were ratified and published in the Collection of Acts or Collection of International Treaties. *In view of the fact that individual notices filed against the CR with internationally agreed supervisory bodies are handled in court, it would be appropriate to weigh up whether a single state body should not be entrusted with the duty of handling these notices and representing the CR in the course of these proceedings.*

3.4. Report of the European Commission on the Czech Republic's progress towards Accession for 2002

The regular report of the European Commission on the Czech Republic's progress towards Accession for 2002 (in this section referred to only as the "Report"), published on 2 October 2002[56], states, like all reports published since 1997, that the CR respects human rights and freedoms. Some problematic areas identified as requiring further attention include the improper behaviour of members of the Police of the Czech Republic and the fight against people trafficking. In the context of the right to freedom of expression the Report was critical of the low transparency and stability of the Czech television sector. It also points out the criticism levelled at the Act on Churches and Religious Societies by minority religions and the Czech Bishop Conference.

As far as the standing of Roma is concerned, the Report repeats that whilst the general situation of national minorities in the Czech Republic is satisfactory, Roma continue to suffer from wide-ranging discrimination in education, employment and housing. The Report states that the Government's efforts at rectifying this situation has yet to attain a level that would bring about structural changes. As regards the wider ambit of fulfilling political criteria (in the part headed "Democracy and the Rule of Law") the report valued the introduction of an administrative judicature and the reform of criminal proceedings. However, the Report states that it is essential to shorten the length of the court proceedings, as well as criticising the situation concerning the Commercial Register.

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individuals, on the proposed mechanism for the implementation of the opinions of the UN Human Rights Committee on notices filed by individuals and on the proposed standpoint of the government to the restitution process in the CR for the UN Human Rights Committee (http://racek.vlada.cz/usneseni/).

[53] This pertains to Act No. 517/2002 Coll., which implements certain measures in the system of central public administration bodies. This act took effect on 1 January 2003.

[54] No. 62/1987 Coll. and No. 57/2001 of the Collection of International Treaties

[55] No. 95/1974 Coll.; In filing the ratification instruments on 29 December 1966 the former Czechoslovak Socialist Republic failed to declare that it recognised the competence of the Section Against Racial Discrimination to receive individual notices pertaining to the breaching of rights protected under the Convention on the Elimination of All Forms of Racial Discrimination, to discuss them and decide whether or not this international convention was breached. This declaration, the character of which was a *de facto* recall of the reservation and thus went through the entire ratification process, was made by the CR as one of the successors to the former Czechoslovak Socialist Republic, when in 2000 it filed with the Secretary General of the United Nations, who is the Depositary of the Convention, a declaration on the recognition of the competence of Section Against Racial Discrimination (this declaration came into effect on 11 October 2000), and was published under No. 24/2002 in the Collection of International Treaties.

[56] Regular Report on the Czech Republic's Progress Towards Accession, COM (2002) 700 final, Brussels, 9 October 2002.

3.5. PHARE/EU programs

3.5.1. Twinning project for the equality of men and women

A twinning project was launched at the Ministry of Labour and Social Affairs in August 2002, which is part of the PHARE program. The responsible country of the project is Sweden, generally recognised for the practical results it has achieved in enforcing the equality of men and women. The project is aimed at improving the institutional safeguarding of the equal opportunities for men and women. It counts on an assessment being made of the existing institutional safeguards and namely on the compilation of the foundations of its vertical structure on a state-wide as well as local level. It will also include educational and information activities.

3.5.2. Twinning program for the Support of Racial and Ethnic Equality

This project from the PHARE 2000 program, which was implemented by the department for human rights of the Office of the Government in cooperation with the Home Office of the United Kingdom and Northern Ireland, was successfully completed on 18 June 2002. The project main purpose was to assist in the preparation of a new anti-discrimination legislation that would be in compliance with the directives issued by EU bodies. A report on the project and an extensive final report compiled by the pre-accession advisor were submitted to the Government for information purposes.

II. Special part

1. Fundamental rights

1.1. Restrictability of fundamental rights

The boundaries of the rights protected by the Charter may only be set by law, including an investigation of its substance and meaning. The conditions for stipulating the boundaries of these rights are, save for exceptions[57], directly stipulated by the Charter and must relate to all cases that meet these conditions. On the other hand, the International Covenant on Economic, Social and Cultural Rights explicitly states that the rights protected under it may only be restricted in the case of the official announcement of an exceptional situation, simultaneously stating that the right to life, prohibition of torture, prohibition of slavery and serfage, prohibition of the imprisonment of "debtors", prohibition of the imposition of sentence not based in law, the right to be entitled to rights and freedom of religion are rights which may not be restricted from even in such a situation.

The Czech legal code regulates exceptional situations, namely then the manner of their announcement and the length of their duration, in the Constitutional Act on the Security of the Czech Republic[58]. In 2002 a state of emergency was announced in connection with a natural disaster. The Prime Minister announced the state of emergency on 12 August 2002 on the basis of there being a danger of delay, and the Government approved this step the following day.[59] At the same time as the state of emergency was announced for several regions, the Prime Minister also announced a restriction of the following rights:

- the right of the inviolability of persons and dwellings in the course of the evacuation of people from a place where the lives and health of these people was in immediate danger,
- the property rights of individuals and legal entities in connection with the obligation to provide material means that are necessary to resolve a crisis situation,
- the freedom of movement and the movement of persons within the area that was evacuated, with the exception of persons carrying out rescue and disposal work according to the instructions of the relevant crisis staff,
- the right to carry on business activities that would threaten the crisis measures or infringe or prevent their execution,
- the right to strike, if the exercising of this right would lead to impeding or preventing rescue and disposal work.

The crisis measures announced concurrently also correspond to the degree to which rights are restricted:
- evacuation of endangered persons from the afflicted and endangered territory,
- prohibition of entry and stay in afflicted or evacuated territory, with the exception of persons carrying out rescue and disposal work according to the instructions of the relevant crisis staff,
- the possibility of imposing the duty to render assistance and the duty to provide material means to be used in resolving the crisis situation,
- implementation of building modifications and terrain work and the removal of buildings and structures, should this essential in order to moderate or prevent a threat to the public,
- mandatory reporting of a temporary change of persons' residential addresses,
- calling on persons serving a mandatory civil service to assist in the implementation of crisis measures.

On the other hand, in the case of the holding of the NATO summit in November 2002 a state of emergency or endangerment was not announced even in respect of individual parts of the Capital City of Prague, even

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[57] The system of exceptions, whereby rights protected by the Charter may be claimed only within the boundaries set by law, is contained in Article 41(1) of the Charter: "The rights listed in Article 26, Article 27, par.4, Articles 28 to 31, Article 32, pars.1 and 3, and Articles 33 and 35 of the Charter may be claimed only within the scope of the laws implementing these provisions.". This pertains to economical, social and cultural rights contained in Chapter Four of the Charter.

[58] Constitutional Act No. 110/1998 Coll., on the Security of the Czech Republic, as amended

[59] The announcement of a state of emergency by the Prime Minister was approved by Government Resolution No. 777 dated 13 August 2002 (http://racek.vlada.cz/usneseni/).

preventively or subsequently. Despite this, several local bodies took such preventative measures, required a legal justification, resulting in peoples' rights being restricted. Because some property rights (see Chapter I./1.2.2.), as well as the freedom of movement and residence (see Chapter I./1.5.) were restricted, and given the character and scope of restrictions, such across the board and systematic restrictions should have been preceded by an announcement of a state of endangerment by the Lord Mayor of the Capital City of Prague pursuant to the Crisis Act[60]. But it seems highly probable that the conditions of the Crisis Act, i.e. endangerment of lives, health or also property, as the case may be, but only as a consequence of natural disasters, ecological or industrial disasters, accidents or other threats[61], were not complied with for this step to be taken. Thus, the state of endangerment cannot be announced pursuant to the Crisis Act before to the occurrence of a situation that cannot be said will certainly occur at some time in the future.

Despite the fact that the Municipalities Act[62] authorises the municipality mayor to request the Police of the Czech Republic for cooperation in securing public order and that some of the fundamental duties of the Police of the Czech Republic include acting securing public order, protecting Czech constitutional officials and facilities of special significance[63], not even the Police Act, nor the Municipalities Act and the Municipal Police Act entrusts these bodies the power to restrict certain fundamental rights or the exercise thereof in a designated territory, i.e. meaning security zones. *It will thus be necessary to elaborate on the Police Act and the Municipal Police Act in such a manner as to ensure that the defined duties and activities of both police forces do not lead to an across the board restrictions of the rights of persons on the grounds of preventative reasons.*

1.2. Property rights

1.2.1. Development of the relationship between property rights and the public interest

Effective 31 December 2002, the Czech Constitutional Court (hereinafter only as the "Constitutional Court") repealed part of the Railway Act[64] on the basis of it being contrary to the principle of the reasonableness of intervention into property rights in order to protect the public interest.[65] In discussing the legal complaint filed against the Ministry of Transport and Communications, the High Court in Prague adjourned the proceedings and petitioned the Constitutional Court for a revocation of the stipulated part of the Railway Act, because it was of the opinion that this part of the Railway Act was in discrepancy with constitutional order. The subject of the proceedings before the High Court in Prague was the fact that the Prague Railway Authority ordered the

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60 Section 3(1) of the Crisis Act: "*A state of endangerment may be announced as an immediate measure if lives, peoples' health, property, the environment are threatened in the event of a natural disaster, an ecological or industrial disaster, an accident or another danger, if the intensity of the endangerment does not reach a significant extent, and if it is not possible to avert this danger by the normal activities of administrative offices and units of the integrated rescue system.*"

61 Section 103(4)(d) of Act No. 128/2000 Coll., on Municipalities, as amended: "*The mayor may request the Police of the Czech Republic for cooperation in the securing of local matters of public order, …*"

62. Section 2 of Act No. 283/1991 Coll., on the Police of the Czech Republic, as amended

63 Act No. 266/1994 Coll., on railways, as amended

64 Section 10 of the Railway Act: "*The Railway Administration Authority ascertains sources of danger, damage or interruption to railway operations, railway transport, railway telecommunication equipment and wiring and railway security equipment (hereinafter only as the "source of danger"). In the event of a source of danger being discovered it shall order the operator or owner of the source of danger for its removal. Should the operator or owner of the source of danger fail to comply with this order, the Railway Administration Authority shall decide to eliminate the source of danger at the operator's or owner's expense. An appeal against this decision has no suspensory effect.*" Finding No. 144/2002 Coll repealed sentence second to fourth of this section.

65 The Prague Railway Authority issued this order after a passenger train ran into a tree that had fallen on the rail track from the plaintiff's land. The Railway Authority also stated that there is a threat of a recurrence of this accident, which was confirmed by an on-the-spot investigation as well as by an expert opinion which stated that the tree had fallen under normal wind conditions, and order that Czech Railways eliminate the source of danger to the railway at the expense of the plaintiff, who had failed to comply with its earlier call to cut down the trees on his land.

plaintiff to eliminate the source of danger to the railway by cutting down trees from the plaintiff's forested land[66].

Nevertheless, the Constitutional Court did not fully agree with the opinion of the High Court in Prague that if the owner is obliged, at the call of the Railway Authority, to perform the required act at its expense, the act must also impose a corresponding duty on the owner to care for his property in such a manner as to minimise the risk to public interest; but this duty cannot be imposed on the owner by the Railway Authority and restrict his ownership right without a legislative basis and without compensation[67]. The Constitutional Court accepted this opinion in an modified form: *"... an obligation imposed pursuant to the challenged provision is imposed in the public interest and does not serve to protection a private right..."* and *"... thus the elimination of the source of danger to the railway should not be performed at the expense of the owner of the source of danger.*" According to the Constitutional Court the provisions of the Civil Code[68] on compensation of the expenses incurred in averting damage[69] should be applied in protecting ownership rights. The Constitutional Court also explicitly stated that in several cases the obligation on the owner to protect the public interest may be over and above that owner's capabilities and as such this obligation is contrary to the principle of the reasonableness of intervention into property rights in order to protect the public interest.[70]

The finding, by which the Constitutional Court repealed part of the Railway Act, was issued on 6 March 2002, with the stipulated part of the act being repealed as of 1 January 2003. At the same time, the legislative process pertaining to the amendment of the Road Act[71], into which one of the submitter proposed an addition to his own submission with an amended Section 10 of the Railway Act[72]. The Senate of the Parliament of the Czech

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66 Because such an obligations is not prescribed in either the Railway Act or another act regulating this obligation on owners, it is not possible for this obligation to be prescribed to the owner by the Railway Act; if the prescribed obligation is not complied with, the owner shall decide on the steps to be taken to protect public interest himself. The fact that the Railway Act does not give the administrative body the option of consideration (From the words "order" and "decide" it is clear that the obligation of the authority in discovering the presence of a source of danger to the railway is to proceed strictly in accordance with the act, i.e. to eliminate the source of danger at the owner's expense.), results in intervention into ownership rights under the law.

67 Act No. 40/1964 Coll., the Civil Code, as amended

68 Act No. 240/2000 Coll., on crisis management, as amended

69 Section 419 of the Civil Code: "A person who averts impending damage is entitled to compensation of expenses sensibly incurred and at the compensation of damage that this person suffered in the process, albeit even against the party in whose interest this person acted, limited to an amount corresponding to the damage that was averted." The commentary to the Civil Code then emphasises that the right to compensation of damage and expenses incurred is also directed towards the party in whose interest this subject acted (Jehlička, Švestka and collective, Civil Code, commentary, 3rd issue 1996, C. H. Beck).

70 The Czech Constitutional Court evaluated the then valid legislation as follows "… *the legislation contained in the Czech Railway Act is overly strict, explicit and undifferentiated, so that the blanket provision contained in Section 10 on the elimination of the source of danger to the railway at the expense of the owner of this source does not impact proportionately on those cases when the owner of the land cannot be fairly required to cover the given expenses.*" Act No. 175/2002 Coll., which amends Act No. 111/1994 Coll., on road transport, as amended, Act No. 266/1994 Coll., on railways, as amended, Act No. 247/2000 Coll., on obtaining and improving professional driving qualifications and on amendments to certain acts, as amended, and Act No. 56/2001 Coll., on the conditions of operating vehicles on roads and on a change to Act No. 168/1999 Coll., on insurance of liability for damage caused by a vehicle, as amended

71 In the case of Act No. 175/2002 Coll. this pertained to a draft submitted by parliamentarians to the Chamber of Deputies as chamber press No. 1007 from the 3rd electoral term. The Chamber of Deputies approved these proposals for amendments (see http://www.snemovna.cz/forms/tmp_sqw/238001bb.doc) by its resolution No. 2083 dated 13 February 2002, i.e. almost a month prior to the Czech Constitutional Court's finding being handed down.

72 Pursuant to Act No. 182/1993 Coll., on the Constitutional Court, as amended, the Collection of Acts is used to "*publish those findings in which the Constitutional Court decided on a proposal for the revocation of an act or another legal regulation or the individual provisions thereof ...*" [Section 57(1)(a)]. These findings "*are executed on the day of their publication in the Collection of Acts, unless the Constitutional Court decides otherwise.*"[Section 58 (1)].

Republic returned the draft act to the Chamber of Deputies, which voted it down on 9 April 2002, i.e. more than one months after the finding was handed down, meaning that on 9 May 2002 the amendment of the Road Act was published in the Collection of Acts. However, the finding of the Constitutional Court, by which this provision was repealed, was published in the Collection of Acts on 17 April 2002, i.e. after Parliament approved the amendment of the new Road Act and before it was published in the Collection of Acts. Then, from the viewpoint of its impact on the valid legislation, the finding of the Constitutional Court "applied" for approximately three weeks.[73] As a consequence of this legislative development the Railway Act once again contains a provision under which the owner is obliged to pay the expenses connected with eliminating the danger to public interest without the possibility of being compensated. *Hence, it would be appropriate for the subjects with legislative initiative to begin concerning themselves with the valid legislation contained in the Railway Act from the viewpoint of finding No. 144/2002 Of Coll. of the Constitutional Court.*

1.2.2. Placing the legal significance of the record of the official residence ahead of property law relationships

The freedom of residence guaranteed under the constitution is expressed in the Act on the Registration of Inhabitants[74], in which the place of permanent residence is defined as the address that an individual elects, usually in the place of that citizen's family, parents, apartment or employment. This permanent residence is conditional on it being in a building designated for the purposes of residential, accommodation or individual purposes by the Building Act[75]. Despite the fact that, in the case of a Czech citizen, the Act on the Registration of Inhabitants states explicitly in several places that registration to permanent residence is merely of a record keeping rather than permissive nature, the significance of this formal record tends to be overrated – even by bodies of public administration – to such an extent that it is considered as having legal significance in the exercise of property rights. In 2002 this distorted understanding of the significance of the permanent residence manifested itself primarily in two situations:

- in the case of arranging for temporary and subsequently also alternative housing in the event of the original housing being damaged in the course of the floods,

- in the case of a ban on entry into so-called security zones at the time of the NATO summit for persons who were not registered as permanent residents in these zones.[76]

Whilst the Office of the Prague 2 Precinct stated that all persons who work or live in the so-called security zones will be allowed entry during the course of the NATO summit[77], the Office of the Prague 4 Precinct declared that those people not registered as permanent residence of this zone, as stated in their ID pass. In so doing the Office placed more importance on the legal significance of the record of the official residence than the property rights of individuals, but more importantly it disregarded the fact that a whole number of people who had concluded the required documentation establishing their legal right to use predominantly residential premises (namely lease and sublease agreements), were precluded from doing so during the course of the NATO summit.

A specific regime was elected by the Office of the Prague 4 Precinct in respect of persons who operated in a so-called security zone an income generating activity, with the business-licensing department issued these people with ID cards allowing them to enter this zone. In the end this regime was also used to enable those persons not

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73 Act No. 133/2000 Coll., on the Registration of Inhabitants and Birth Index Numbers, as amended

74 Act No. 50/1976 Coll., on zoning and the building code, as amended

75 This part was compiled using information from the web pages of the Municipal Office of the City of Prague and the offices of the Prague 2 and 4 precincts (at present the information pertaining to the Office of the Prague 4 Precinct in respect of the restrictions at the time of the NATO summit are only available via the web pages of the Municipal Office of the City of Prague).

76 see http://www.praha2.cz/odkaz.asp/id=187

77 Act No. 141/1961 Coll., the Criminal Code, as amended, regulates the seizing of property or chattels for the purpose of its latter use to compensate the damaged party (Section 47 et seq.), seizure for the purpose of the latter execution of the sentence of forfeiture of property (Section 347 et seq.) and seizure on the basis of an application filed by a foreign state or on the basis of an acknowledgement of the judgment handed down by a foreign court on the forfeiture of property (Section 384).

registered as permanent residents in this zone to enter their residences; but in order to gain entry to this zone these people had to repeatedly present a signed agreement on whose basis they were using their apartment, together with a notarisation of this signed agreement. This option did not cover those cases where there was a change in the landlord's identity, regardless of the reasons for such a change. Originally, the Office was calling upon all its residents to register themselves to permanent residence in Prague 4, if they were indeed living in this precinct, thereby burdening not only these people but also its own staff, who had to issue new ID cards outside of normal office hours. *Public administration bodies should treat the permanent residence of Czech citizens as being of a purely record-keeping nature, without any information value, particularly as far as a person's property rights acquired pursuant to the law, and should afford to property rights the standing that such rights are truly conferred under the Czech legal system.*

1.2.3. Protection of ownership during criminal proceedings

The Ministry of Justice compiled a draft act on the seizing of property and chattels in criminal proceedings. Broadly speaking, this act should be an organisational standard regulating the procedure to be taken by state and other bodies in seizing property resulting from criminal activity, and its subsequent management. The existing legislation recognises the institute of seizing property and chattels, but is divided and in some cases merely provides a framework.[78] It is clear that this is part of efforts aimed at providing for effective international cooperation in the fight against organised crime by seizing the proceeds from criminal activities. On the other hand, it is essential to ensure disposal with the seizing property is limited to acts enabling the property rights to be restored to their original state. The actual seizing of the property itself from a person who has yet to be legally sentenced and is thus innocent under the law, represents a significant legislative as well as constitutional conformal intervention into the inviolability of ownership rights guaranteed under the constitution.

1.3. Protection of personal data

1.3.1. Client information register[79]

At the very close of 2001 several banks launched a campaign aimed at obtaining their clients' consent to the processing of their personal data of an extent over and above the framework stipulated in the Banking Act[80]. The subject of the inspection performed by the Office for Protection of Personal Data (hereinafter only as the "OPPD") at these banks was whether and in respect of what type of personal data processing may or must banks request their clients for consent to such processing. In asking their clients to give their consent to the processing of their personal data over and above the framework given by the Banking Act, and thus also their inclusion in the client information register, which is to serve the banks in evaluating the credit worthiness of clients, the banks argued that it would lead to an improvement in the speed of service provision, namely as regards the granting of loans. The OPPD recommended that clients not give their banks this consent – if only because of the fact that this procedure or any further processing of personal data was not permitted under the Banking Act valid at that time.

1.3.2. Exclusion of personal data processed by banks from the Act on Protection of Personal Data

In the amendment to the Banking Act[81], which came into effect on 1 May 2002, banks are obliged to "*ascertain and process data, for the purposes of banking transactions, on parties, including sensitive data on individuals,*

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78 This part was compiled using information from Bulletin No. 2/2002 of the OPPD, "Clients' consent asked by banks, client information register and the amendment to the Banking Act", also http://www.uoou.cz/dokumenty.php3.

79 Act No. 21/1992 Coll., on banks, as amended

80 Act No. 126/2002 Coll., on an amendment to Act No. 21/1992 Coll., on banks, as amended

81 Section 37(2) of the Banking Act. However, the government proposal did not contain this provision - see chamber press No. 1041 from the 3rd electoral term (http://www.snemovna.cz/forms/tmp_sqw/173b0098.doc) This provision was inserted into the proposed amendment to the Banking Act upon the initiative of the Budgetary Committee of the Chamber of Deputies of the Parliament of the Czech Republic in the course of discussions as new point number 109a of this chamber

essential for the realization of the given banking transaction without exposing the bank to unreasonable legal and material risks"[82]. The amendment to the Banking Act also contains other provisions under which banks are released from certain obligations contained in the general legal regime established by the Act on Protection of Personal Data:

- The amendment to the Banking Act released banks from the regime established by the Personal Data Protection Act, according to which the banks would otherwise be obliged to provide their clients with free information annually on all personal data that their banks have compiled about them.

- Banks may transfer personal data abroad, with the consent of OPPD being required only at the first instance of such data being provided. Banks may also transfer personal data abroad via non-bank legal entities. This means that banks gained authority to make available their clients' personal data, including sensitive data, to another entity, which has no relationship to the provision of banking services to the client, without the knowledge of the particular client.

- Under the amendment to the Banking Act, client information that is subject to bank secrecy provisions may be transferred in connection with the bank's conditions to the territory of another state even without the client's consent should this be necessary in order to fulfil an obligation stipulated by the legal code of the state where it does business.[83] In this way banks get into a position whereby a whole series of principles of the Personal Data Protection Act pertaining to foreign countries are eliminated.

However, unlike the treatment stipulated in the amendment to the Banking Act, the regulation of the processing of personal data is regulated differently in the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data[84]. This convention gives persons, whose data is compiled by the data administrator, the right to obtain information on whether the data administrator is keeping personal data on them and, if so, what sort of information is being kept.[85] The convention also prohibits the use of personal data in a manner that is incompatible with pre-determined and justified purposes for which it was compiled (Article b) and allows sensitive data to be processed only in the event that a domestic legal code provides for suitable guarantees (Article 6). In this way the amendment to the Banking Act is in direct conflict with these provisions, which is particularly evident if one considers the insufficient guarantees and the loss of control over the data processing in the event of the data being transferred abroad, i.e. even to states with inadequate legal protection of personal data. Under this convention this right is conditional on the simultaneous meeting of two conditions: this must be an exception pursuant to the law and this must be a measure essential in a democratic society for reason of the protection of national and public safety, the justified interests of the data subject itself, the

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press – see Committee Resolution No. 572 dated 9 January 2002 (http://www.snemovna.cz/forms/tmp_sqw/6f2c002c.doc). Both chambers of Czech Parliament accepted this parliamentary proposal for amendment– see Resolution No. 2051 of the Chamber of Deputies dated 7 February 2002 and Resolution No. 288 of the Senate dated 13 March 2002 (http://www.senat.cz/ISO-8859-2.cgi/cgi-bin/sqw1250.cgi/new/sqw/text.sqw/CID=1550&pub=1&K=KTUS).

[82] Section 38(10) of the Banking Act: "*A report on matters pertaining to the client, that are the subject of bank secrecy provisions, shall be submitted by the bank in connection with its business operations in another state even without its client's consent should this be necessary in order to fulfil an obligation stipulated by the legal code of the state where it does business.*"

[83] Council of Europe ETS No. 108, published under No. 115/2001 in the Collection of International Treaties

[84] Article 8(b) of ETS No. 108: "*Any person shall be enabled to obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored in the automated data file as well as communication to him of such data in an intelligible form*;…"

[85] Article 9(2) of ETS No. 108: " Derogation from the provisions of Articles 5, 6 and 8 of this convention shall be allowed when such derogation is provided for by the law of the Party and constitutes a necessary measure in a democratic society in the interests of:
a) protecting State security, public safety, the monetary interests of the State or the suppression of criminal offences;
b) protecting the data subject or the rights and freedoms of others."

monetary interests of the state or the suppression of criminal offences[86]. But the justification given for this provision (i.e. an interest in reducing the volume of classified loans in the banking sector) has no direct conditional relationship to the state's monetary policy. By the same token, the services provided by banks as private business entities, who also require a banking licence issued by the Czech National Bank in order to conduct their business activities, do not constitute the state's monetary interests. *As such this provision of the Banking Act may be considered as inapplicable pursuant to Article 10 of the Constitution, because the data subject has the right to obtain from the bank information on whether and what data is being processed in respect of that data subject.*

The OPPD has also voiced serious reservations to the amendment to the Banking Act. The reason for these reservations is the fact that "*the provisions of this act obligate banks to process data on clients, including sensitive data, without the client being given any guarantees that data that is in fact surplus to the prescribed purposes, and the processing of which threatens the privacy not only of the bank's client but also of that client's relatives, will be included as data "essential" for the bank.*"[87] This could occur if the client databases are connected to the databases of other non-bank business entities, e.g. power suppliers, telecommunication or leasing companies. The European Commission focused on the amendment to the Banking Act for reasons identical in their content, albeit mainly from a EU law aspect, stating that the amendment to the Banking Act was highly incompatible with EU law in the area of personal data protection.[88]

1.3.3. So-called public camera systems

In the past a number of municipalities decided to install fixed automatic camera systems in public areas as a means of securing public order. The actual monitoring and use of the resulting video records was the subject of discussions and criticism due to, amongst other things, the fact that until the end of 2002 these public camera systems were being operated by the municipal police without any legal authority contained in Municipal Police Act[89]. This is the reason why its amendment, which took effect on 1 January 2003, already contains an explicit authority for making records from these camera systems.

However, the amendment to the Municipal Police Act merely stipulates the authority to operate public camera systems. In view of the large volume of personal data made in this manner and thus the greater probability of their use for purposes different from that of fulfilling the duties entrusted to municipal police, it would be appropriate to draft special regulation that would namely serve in governing the treatment and use of these records.

1.3.4. National medical registers

The Ministry of Health compiled a proposed decree stipulating the scope and manner in which medical facilities would transfer information to the National Medical Information System. The forms, forming an attachment to this decree, contained sensitive information such as nationality or ethnicity, sexual orientation, diagnosis of sexually transmitted disease and HIV positive status together with the birth index number of the said person, with all this data to be collected in one central database. The proposal evoked significant criticism from the

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[86] see Bulletin No. 3/2002 of the OPPD, also http://www.uoou.cz/dokumenty.php3

[87] Standpoint of the EC to the compatibility of the amendment to the Banking Act with directive 95/46/EC of the European Parliament and Council of 24 October 1995, on the protection of individuals in connection with the processing of personal data and the free movement of this data, is also published on the web pages of the OPPD: http://www.uoou.cz/leg_ek.php3.

[88] Act No. 553/1991 Coll., on the municipal police, as amended. The following section 24b was inserted into the Municipal Police Act by Act No. 311/2002 Coll.: "(1) The municipal police is authorised, if required in order to fulfil its duties pursuant to this or another act, to make audio, visual or other records of publicly accessible places or, as the case may be, also audio, visual or other records of the course of a police action or act.
(2) If fixed automatic technical systems are installed for the purpose of making the records stipulated in paragraph 1 above, the municipal police is obliged to publish information, in an appropriate manner, on the installation of such systems."

[89] Act No. 101/2000 Coll., on personal data protection, as amended

OPPD, the Government Commissioner for Human Rights, the mass media and the interested public (in including the Gay Initiative, which brings together homosexually oriented persons). The Ministry of Health later stated that the criticised registers (e.g. the register of sexually transmitted diseases) were inserted into the proposal over and above the empowering provision.
In the subsequently submitted draft Health Care Act the Ministry of Health calls for the establishment of specific registers under a special act.

The problem of the protection of sensitive data on medical status recorded in medical registers has several levels. To begin with, the existing data collection practice is problematic from the viewpoint of the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data and is not supported by specific legal authority; a precise legislative definition of the purpose and type of personal data to be collected, reported, transferred and processed is still missing. In particularly, however, the fundamental rights of citizens at any level of the collection, reporting or administration of personal data have not been regulated in any act. According to the standpoint of OPPD the existing practice as well as the regulation proposed in the decree is contrary to the Personal Data Protection Act[90]. From this viewpoint the potential proposal for the establishment of registers under a special act (e.g. by the Health Care Act) appears as a positive step, which does not by itself eliminate the doubts pertaining to the manner of identification, peoples' rights to information and the scope of data sought:

- Identification of persons by their birth index number is the simplest method, but also has the biggest potential for misuse, as this number is presently used as an almost universal access number in various situations and relationships, including property relationships.

- Peoples' right to know what sort of data is being kept on them ensues from the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (see also Chapter I./1.3.2. of the Report). But the rule thus far is that in practice persons are not informed on what sensitive data is included in the registers, so that they do not even exercise their right to know what data is being kept about them.

- The material scope of the data sought and the degree of their protection needs to be differentiated. Careful consideration must always be given as to the degree to which such an intervention in the rights of the individual is justifiable in view of the proportion of sensitive information and their indispensability for the formulation of public health policy (not everything that is potentially useful is indispensable). Certain proposed data, e.g. nationality, may not, without the knowledge of the persons concerned, be monitored at all in their individual form, because this would be contrary to Article 3 of the Charter.

In many situations all that is necessary for the formulation of health policy is non-individual data of a statistical nature. In other situations individualised are indeed necessary, but they should be subject to various degrees of protection, ranging from basic (register of joint replacements) to very high protection. In certain cases (sexually transmitted diseases, HIV positive) it would be appropriate to either renounce the intention to create central registers, or to make the supply of data to these registers conditional not only on full foreknowledge but also the conclusive consent of the patient. This problematic area can be resolved by way of a special act drafted in accordance with the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data.

1.4. Personal rights

1.4.1. The right to access official medical documentation

By itself the term "official medical documentation" can be considered as problematic. The Public Health Care Act[91] uses this term, despite the fact that logically it would be more correct to talk about medical documentation". This is because the primary consideration is the relationship of this documentation to the

[90] Act No. 20/1966 Coll., the Public Health Care Act, as amended
[91] Section 11 of Act No. 40/1964 Coll., the Civil Code, as amended

patient's health, with the fact that it is compiled by medical staff being of secondary consideration. Adherence to the term "official medical" instead of "medical", which continues even in the draft of the new Health Care Act, attests to the paternalistic interpretation of this documentation as something belonging to medical officers.

The draft of the new Health Care Act includes a new regulation of the right to access medical documentation. But the question that presents itself is whether it would not be appropriate to specifically define components of this documentation with which patients have the right to become familiar with. Otherwise we could end up with an overly wide-ranging interpretation (where patients would demand access to all of the doctor's notes, e.g. in psychiatric practice) or, on the other hand, a restrictive interpretation (which is justified in practice by the citing of the fact that specific components are not defined).

The dispute about who was entitled to the posthumous protection of the deceased person's personal rights was the subject of significant attention from the professional as well as lay public. The Public Protector of Rights submitted to the Government its notification, in which it requested that the Ministry of Health make medical documentation available to the survivors of a sentenced person who died suddenly in the performance of a jail sentence. The Ministry of Health argued against this by saying that the application of the survivors cannot be satisfied because of the fact that under the Public Health Care Act every medical officer is obliged to keep confidential all facts that he/she becomes privy to in connection with the performance of his/her employment, save for cases when he/she divulges such fact or facts with the consent of the patient, or when he/she was absolved of this duty by a superior body in serving an important national interest. Having said this, the close persons (survivors) are not included in the enumerative list of subjects entitled to familiarise themselves with the documentation.

As was later admitted by the Ministry of Health, such an assessment is one-sided. It can certainly not be deduced – nor does 99% of normal medical practice bear it out – that close persons do not have an a priori right to familiarise themselves with information on the medical state or the causes of death of the deceased, despite the fact that this right is not positively regulated in the said act or in other legal regulations. The reason for this is that if the regulation does not contain a special legal provision it is necessary to apply the relevant general legislation, which in this case is the Civil Code[92], according to which everyone has the right to protection of his/her person, namely his/her life and health, civil honour, human dignity, privacy, name and manifestations of a personal nature from unauthorised interference by third parties – in the event of the death of a person the entitlement to exercise this right is assigned to the spouse and children, and in the event of their absence, the deceased person's parents (i.e. not to the medical facility, the state or another subject). This namely concerns the right to the protection of life and health, guaranteed by the Charter and international treaties on human rights. The motivation as well as the legal title of survivors to access information are thus entirely different than is the case in the enumerative list of subjects stipulated in the Public Health Care Act [Section 67b(10)], which are entitled to view the documentation in connection with their employment or official positions. Having said this, survivors cannot exercise the right to the protection of life and health other than by viewing the medical documentation of the deceased, which can clear up whether the right to life was indeed respected in the case of their family member.

Furthermore, the fact that the medical documentation of the deceased is not made available by the state body is also contrary to an important state interest. The full explanation of all aspects of the death of a person incarcerate in a state facility (not only in a prison, but in medical facilities generally) is undoubtedly in the state's interest; that is to say that it is necessary to strengthen the populace's confidence in state bodies and institutions, which should under all circumstances avoid actions that would weaken this confidence. The non-availability of medical documentation in any case that was the subject of a complain looks like an effort to conceal any errors – even when there was in fact no question of any errors being made.

Furthermore, from the judgments of the European Court of Human Rights (in this section referred to only as the "Court") it ensues that Article 2 of the European Convention on Human Rights (right to life) is strictly applied. The Court repeatedly emphasised not only the right of the family of the deceased to information, but also the right of this family to participate in the investigation. Cases involving the death of an individual incarcerated in a state institution – e.g. in a prison or a psychiatric facility – are considered by the Court as cases requiring an

[92] Decision in complaint No. 21986/93, Edwards v. United Kingdom

especially high level of openness and investigative thoroughness. In the case of such a death the state is obliged to provide a satisfactory explanation, otherwise the Court will conclude that the death came about as a consequence of acts or omissions by state authorities.[93]

The Ministry of Health is planning to resolve the problem of the unclear legislation in this area by way of new health legislation. This regulation, which incorporates the explicit right of close persons to familiarise themselves with the official medical documentation of the deceased (with the exception of cases in which the patient explicitly prohibited it whilst still alive), is contained in the proposal of the new amendment to the Health Care Act. Until the time of its adoption the Ministry of Health proposes that this question be resolved by Section 55(2)(d) of the Public Health Care Act pertaining to release from the confidentiality duty on medical workers by a superior body, which appears to be desirable[94]. *But until such time as the state law is lacking positive legislation on the treatment of medical data in the event of the death of a patient, this gap may be bridged either by the use of the more general legislation contained in the Civil Code, or by the direct application of the European Convention on Human Rights.*

1.4.2. Right of survivors to dispose with the body of the deceased close persons

Another contentious regulation is that pertaining to the so-called right of survivors to dispose with the body of the deceased close persons, which is de facto denied in the relevant acts – the Transplantation Act[95], the Funeral Act[96]. This means that the hospital may, without the survivors‘ consent, transport the body to another institution, that the settlement of any potential disputes that the survivors may have with the hospital in regards to the performance of the autopsy is not regulated in any way, that the survivors have no guarantee of the performance of an independent autopsy in the event of errors, etc.

1.5. Restriction of the freedom of movement and movement during the course of the NATO summit

Besides an intervention into the right of peaceful enjoyment of property, the fact that the institute of permanent residence was overrated in the course of the NATO summit (see Chapter I./1.2.1. of the Report) also led to restricting the freedom of movement of all persons who were not allowed access to the properties that they were using at that time. There are different opinions on whether this right may be restricted under to the powers entrusted to the Police of the Czech Republic in the Police Act[97], which authorises police officers to order

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[93] However, as is demonstrated in another notification issued to the government by the public protector of rights (in the matter of Ms Boháčová), the exact opposite is still happening in practice. Whereas in regular cases the survivors are naturally provided with truthful information on the causes of the patient’s death, it is in the cases when the survivors file a complaint that they are denied information, with the institution claiming that by so doing it is protecting the patient’s personal rights.

[94] Act No. 285/2002 Coll., on donation, drafts and transplantation of tissues and organs

[95] Act No. 256/2001 Coll., on funerals

[96] Act No. 283/1991, on the Police of the Czech Republic, as amended

[97] Section 20 and Section 2(1) of the Act on the Police of the Czech Republic: "*If so required in order to ensure the effective fulfilment of duties stipulated in this act, a police officer is authorised to order anyone to refrain, for the necessary period of time, from entering in or remaining on the designated area. Everyone is obliged to obey the police officer’s order. Technical means may be used to mark or demarcate the designated area.*
The police perform the following duties:
a) protects the safety of persons and property;
b) cooperates in maintaining public order and, in the event of a disruption in public order, take measures aimed at its renewal; …
g) provides for the security of constitutional representatives of the Czech Republic and the security of protected persons who, during their stay in the Czech Republic, are provided with personal protection pursuant to international agreements;
h) provides for the security of representative offices, the security of Parliamentary buildings, unless stipulated otherwise in the act, the President of the Czech Republic, the Constitutional Court, the Ministry of Foreign Affairs, the Ministry of Interior and other buildings of special significance for state order and security, as

anyone to refrain from entering or remaining in a designated area, if so required in order to ensure the effective fulfilment of Police duties[98], or whether they may be restricted "preventatively" only on the basis of the announcement of a crisis situation under the Crisis Act[99] or consequently after the occurrence of a situation allowing public administration bodies to adopt such measures. The reason is that neither a state of endangerment pursuant to the Crisis Act nor a state of emergency pursuant to the Constitutional Act on the Security of the Czech Republic[100] may be announced before the occurrence of a situation which one cannot say for certain will actually occur[101]. The appropriateness or otherwise of the intervention with these rights in individual cases could only be evaluated by the court, with an evaluation of the degree of correspondence with constitutional order and international commitments being solely within the jurisdiction of the Czech Constitutional Court.

Furthermore, freedom of movement was also restricted in the course of the summit, because entry into the so-called security zones was only permitted upon the presentation of a proof of ID showing the address of the holder's permanent residence to be within the so-called security zone. Paradoxically, the application of this procedure favoured persons were formally registered as having their permanent residence in these zones, without having a verifiable and legally protected interest in being in the security zone over the owners or users of real estate or persons working in this zone.

1.6. Repeal of certain provisions of the Act on Churches by the Constitutional Court

The Act on Churches[102] took effect on 7 January 2002, replacing the existing legislation dating from 1991 and 1992[103]. Unlike the earlier legislation, the new act also allows numerous small churches and religious societies to be registered, albeit under different conditions.[104]

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designated by the government at the proposal of the Minister of Interior; the police also provides security of buildings which are entitled to such security under an international agreement signed by the Czech Republic; ...". The Ministry of Interior and the Ministry of Foreign Affairs as the organiser of the NATO summit hold the opinion that rights may be restricted on the basis of Police powers.

98 Act No. 240/2000 Coll., on Crisis Management, as amended

99 Constitutional Act No. 110/1998 Coll., the Constitutional Act on the Security of the Czech Republic, as amended

100 Section 3(1) of the Crisis Act: "*A state of endangerment may be announced as an immediate measure if lives, peoples' health, property, the environment are threatened in the event of a natural disaster, an ecological or industrial disaster, an accident or another danger, if the intensity of the endangerment does not reach a significant extent, and if it is not possible to avert this danger by the normal activities of administrative offices and units of the integrated rescue system."* and Article 5(1) and (3) and Article 6(1) of the Act on Czech State Security: "*The government may announce a state of emergency in the event of natural disasters, ecological or industrial disasters, accidents or other dangers, which to a significant degree threaten the lives, health or property values or state order and security. The Prime Minister may announce a state of emergency should there be a danger of delay. The government shall either approve or overrule the Prime Minister's decision within 24 hours of its announcement.…A state of emergency, including the reasons for this announcement, may only be announced for a definite period and in respect of a definite area. When announcing this state, the government must also define which rights, as stipulated in a special act, shall be restricted in accordance with the Charter of Fundamental Rights and Freedoms, the extent of these restrictions, and which duties shall be assigned and the extent to which they are assigned.*"

101 Act No. 3/2002 Coll., on freedom of religion and status of churches and religious societies, as amended

102 Act No. 308/1991 Coll., on freedom of religious faith and the status of churches and religious societies and Act No. 161/1992 Coll., on the registration of churches and religious societies

103 This possibility was utilised by the following churches and religious societies: The Church of Christian Society, the Community of Christians in the Czech Republic, The International Society for Krishna Consciousness– The Hare Krishna Movement and the Czech Hinduistic Religious Society. These were registered in 2002. Registration was not successful in the case of Ecumenical Church of Saint John of Jeruzalem, the Order of the Knights of Rhodos and Malta, because the preparatory committee of this church retracted its registration. The other religious society did not submit an application for registration.

In February 2002 the Constitutional Court received a proposal of a group of deputies calling for a repeal of the entire Act on Churches, or for a repeal of selected provisions of this act. In their justification of this proposal the deputies claimed that the act was contrary to Article 16(2) and (4) and Article 4 and 11 of the Charter. The Constitutional Court rejected the proposal for a repeal of the entire act. It also rejected the claim that the regulation of the establishment of legal subjectivity of churches and religious societies was contrary to the constitution [Section 6(1)]. But the Constitutional Court ruled that the fact that the registration of church legal entities at the Ministry of Culture was restricted only "*for the purposes of organisation, confession and the spreading of religious faith*" [Section 6(2)], was a breach of Article 16(2) of the Charter, which guarantees the right of churches and religious societies to administer their own affairs, in particular to appoint their organs and their priests, and establish religious orders and other church institutions, independently of organs of the State. The repealed provision of Section 6(2) of the act also defined the term "church legal entity" as a sphere of subjects registered pursuant to this act by the Ministry of Culture. But because the Constitutional Court did not repeal the provision regulating the procedure used to register bodies or church institutions, including monastic institutions (Section 16(1), a dispute arose between the Ministry of Culture and certain church representatives on the necessity of registering business subjects, or medical, social and educational facilities[105]. But the Constitutional Court did not deal which this issue, even over and above the framework of the proposal for a repeal of selected provisions of the act. As the finding of the Constitutional Court, handed down on 27 November 2002, was not published in the Collection of Acts until January 2003, the solution of the given problem will continue in 2003.

The Constitutional Court ruled that the fundamental provisions in the area of special rights[106] assigned to churches, which are in accordance with legislative conditions, were not unconstitutional; it only repealed the provision on the cancelling of a licence for the performance of special rights, if the church or a religious society does not publish an annual report every year [Section 21(1)(b)]. Furthermore, the Constitutional Court found that the restriction of the use of profits generated by churches and religious societies [Section 27(5)] and the setting of an annual period from the effective date of the act for the provision of additional data [Section 28(5)] to be unconstitutional, but did not cite the reasons for repealing the second of the above-mentioned provisions.

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[104] According to the Ministry of Culture the registration of such institutions as medical facilities under the act on churches is prohibited by Act No. 160/1992, on health care in non-state medical facilities, as amended, which clearly prescribes the duty of their registration generally on regional offices. However, this problem was not a topical on in 2002, because churches and religious societies did not exercise their right to the one-year period for supplying additional data on their registration pursuant to the act on churches.

[105] The act on churches defines the group of special rights in Section 7(1): "*A registered church and religious society may, under the conditions stipulated in this act for the fulfilment of its mission, obtain a licence for exercising these special rights:*
a) teach religion at state schools pursuant to special legislation,
b) empower persons performing spiritual activities to render spiritual services to the Armed Forces of the Czech Republic, in places where custody, imprisonment, treatment in protective custody and protective care is being performed,
c) be financed under a special pursuant to special legislation on the financial security of churches and religious societies,
d) perform ceremonies during which church weddings are concluded pursuant to special legislation,
e) establish church schools pursuant to special legislation,
f) observe church confidentiality duty in connection with the enforcement of confessional secrets or with the execution of rights comparable to confessional secrets, if this duty is a traditional part of the teachings of the church and religious society for a period of at least 50 years; this does not prejudice the duty to thwart a criminal act prescribed under a special act."

[106] By its finding published in the Collection of Acts under No. 4/2003 Coll., the Constitutional Court repealed, as of the date of publication in the Collection of Acts, i.e. as of 13 January 2003, Section 6(2), Section 21(1)(b), Section 27(5) sentences two in the part "*and the reported profit may be used only for the purpose of fulfilling the aims of the church and religious society"* and Section 28(5) of the act on churches.

According to the opinion of the Ministry of Culture the changes carried out by the Constitutional Court are only partial and do not affect the overall concept of the act.[107]

2. Political rights

2.1. Participation in public life

2.1.1. Incompatibility of a representative's position with the execution of public service

In connection with the adoption of the Public Service Act[108], an act on the amendment to acts connected with the adoption of the Public Service Act[109], which, by amending acts on regional and municipal elections[110], prescribed that acting as a member of a regional or municipal council at the same time as carrying on public service under the Public Service Act was incompatible, was also adopted. Despite the fact that the regional council has restricted legislative initiative, it is not clear from the reasoning provided for the legislative proposal why this incompatibility does not also pertain to future public servants who are elected as deputies or senators.[111] *That is to say, the question that needs to be resolved is whether the suspension of the execution of public service also relates to a public servant elected as a deputy or senator.*

2.1.2. Extension of elections by two days

Unlike elections of pervious years, some of the elections held in the course of 2002 were characterised, inter alia, by the fact that the elections were again held over a period of two day. Elections held during the course of one day were held in 2000, namely elections to regional councils organised pursuant to the new Regional Elections Act and elections to the Senate of the Parliament of the Czech Republic pursuant to the amended Act on Czech Parliamentary Elections[112]. Other state elections were held over two days. The return to a two-day period for elections to all representative bodies means an improved level of comfort for voters.

2.1.3. Participation of foreigners in public life

There was no progress recorded in this respect in 2002, so the problems pertaining to association and the definition of "municipal citizenship", as described in the 2001 Report, persist. Despite the fact that, back in 2000, the Government ordered the relevant ministries to ensure that by 31 December 2001 the conditions necessary for exercising the rights stipulated in Chapters B and C of the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144)[113], pertaining to the establishment of advisory bodies for the representation of resident foreigners at the local level and the possibility of foreigners participating in local elections, would be in place, but as yet no visible measures have been adopted in these

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[107] Act No. 218/2002 Coll., on public service at administrative offices and on the remuneration of these employees and other employees employed at administrative offices

[108] Act No. 309/2002 Coll., on a change to acts relating to the adoption of the act on public service at administrative offices and on the remuneration of these employees and other employees employed at administrative offices

[109] Act No. 130/2000 Coll., on elections to regional councils, as amended, and Act No. 491/2001 Coll., on elections to municipal councils, as amended

[110] Chamber Press No. 794 from the 3rd electoral term (http://www.snemovna.cz/forms/tmp_sqw/676a0027.doc) states concisely: "*If a public servant is elected to an office of an elected body of a self-government entity, that public servant's execution of public service is suspended under the law for the period that he/she holds an office in this body.*"

[111] Act No. 204/2002 Coll. which amends Act No. 247/1995 Coll., on elections to the Parliament of the Czech Republic, as amended and on changes and supplements to certain other acts

[112] The Government, by its Resolution No. 311, dated 29 March 2000, on the proposal for the ratification of the Convention on the Participation of Foreigners in Public Life at the Local Level (http://racek.vlada.cz/usneseni/), assigned this task to the Ministers of Interior, Culture and Local Development.

[113] The Final Report of the Election Observation Mission on the course of the elections and the voting right in the Czech Republic is available on the OBSE web pages: http://www.osce.org/odihr/documents/reports/election_reports/cz/cz_pe_june2002_efr.php3.

areas. Unlike the establishment of advisory bodies, where the valid law governing the establishment of such bodies does not stipulate any obstacles, the participation of all foreigners in local elections is not possible without the adoption of new legislation. According to the existing legislation in this area, this possibility is given on the basis of reciprocity, i.e. it is given to citizens of those countries where Czech citizens are entitled to participate in municipal elections under similar conditions.

Therefore the Ministry of Culture should consider preparing an amendment to the municipal elections and the regional election act so as to ensure that all foreigners are able to participate in the next local elections pursuant to the above-mentioned Convention of the Council of Europe, i.e. those that reside legally in the Czech Republic for at least 5 years.

2.2. Elections to the Chamber of Deputies of the Parliament of the Czech Republic

The elections for the Chamber of Deputies of the Parliament of the Czech Republic were held on the 14th and 15th of June 2002. On this occasion the Election Observation Mission of the Office for Democratic Institutions and Human Rights (OBSE/ODIHR) was invited to the Czech Republic for this occasion. The observer mission concluded[114] that the elections for the Chamber of Deputies of the Parliament of the Czech Republic met international standards and commitments for democratic elections. It also stated that the electoral paperwork functioned well, that electoral representatives were well trained and that the technical preparation was carried our effectively. The possibility of Czech citizens being able to cast their votes whilst abroad was seen in a positive light.

2.2.1. Voting in elections to the Chamber of Deputies of the Parliament of the Czech Republic whilst abroad

For the first time since the establishment of an independent state, Czech citizens had the possibility of casting their votes even if the found themselves abroad at the time of the elections. The amendment to the Act on Czech Parliamentary Elections[115] allowed for votes to be cast in special electoral district outside of the state. These Special Constituency Commissions special voting districts were established at embassies and consulates abroad.

A total of 2,957 voters with a residential address outside of the Czech Republic registered themselves to vote at representative offices by the deadline prescribed in the Act on Czech Parliamentary Elections. A total of 3,763 voters turned up to cast their vote. This meant that the possibility to cast their votes outside of the state was exercised by voters registered on these special voter rolls, as well as holders of voter passes who availed themselves of opportunity of casting their votes because they happened to be abroad at election time.[116] It is apparent that a substantial part of Czech citizens living permanently abroad did not take advantage of the option

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[114] This pertains to Act No. 204/2000 Coll., which amends Act No. 247/1995 Coll., on Czech Parliamentary Elections, as amended. The subsequent amendment (Act No. 171/2002 Coll.) regulated, in connection with the course of the voting is held abroad, the system whereby preliminary results may be published the moment that the poling stations in the Czech Republic are closed, at the earliest. This amendment regulated the course of the voting is held abroad in such a manner that in states where the same hour of the day passes more than four hours later than is the case in the Czech Republic the elections shall be held on Thursday and Friday, i.e. a day earlier than in the Czech Republic.

[115] As stated by the Ministry of Interior, the number of Czech citizens residing permanently abroad and not registered as residents in the Czech Republic cannot be determined.

[116] Practice shows that the existing wording of the Act on Czech Parliamentary Elections contains certain deficiencies that complicate the organisation of elections abroad. This is given firstly by the fact that at the time that the legal basis for the opportunity to vote at embassies and consultants was established there were no practical experiences available with this form of voting, as well as partially by the fact that the original version of the Act on Czech Parliamentary Elections never envisaged this form of voting. Another factor reflected in the imperfect legislation is the fact that the Act on Czech Parliamentary Elections has gone through numerous amendments, most of these adopted to resolve immediate practical considerations, which have therefore been implemented hastily and inorganically.

of casting their votes at their nearest embassy or consulate. In contrast, and against original expectations, a higher proportion of the voters holding voter passes turned up to cast their votes at embassies and consulates.[117]

Some voters as well as some representative offices raised objections against alleged bureaucratic obstacles. These comprised namely of the fact that voters had to register in only one specific voting list. This is a formal systematic measure aimed at preventing the possibility of one voter casting multiple votes, thereby preserving the regularity of the elections.

2.2.2. Court review submitted before election day and pertaining to the procedures applied by the election organisation in organising the elections to the Chamber of Deputies of the Parliament of the Czech Republic

Under the Act on Czech Parliamentary Elections a political party, political movement or a coalition having submitted a candidate list (as well as the actual candidate, in the event of this candidate being crossed off) may file an appeal for protection with the competent court against a decision on the refusal of a candidate list, crossing a candidate off the candidate list and the registration of a candidate list to courts within two days of having received the decision. Petitions for the issue of a decision on the registration of a candidate list and petitions for the issue of a decision on the cancellation of a registration of a candidate list were filed with the competent regional courts pursuant to the Act on Czech Parliamentary Elections (Section 86) in connection with the Parliamentary elections held 14-15 June 2002. As a rule, the regional courts rejected these petitions, or judged these petitions as having been filed after the deadline stipulated in the act.[118]

The "Action for the Abolition of the Senate and against Embezzlement of Pension Funds " political party (hereinafter only as "AAS") declined to pay the contribution to election costs[119] in any region in which it sought to register candidate lists. As a result, regional offices refused to register its lists.[120]. The party filed appeals against those refusals to the competent regional courts, stating that it considers the obligation to pay a contribution to election costs as unconstitutional and contrary to finding No. 64/2001 Of Coll. of the Czech Constitutional Court in this matter. The regional courts concerned took different standpoints in this matter. Some of them upheld the petition and obliged regional offices to register the party without payment of the contribution, whereas others quashed the petition, stating that the decision of the district office did not contravene the act. The remaining regional courts decided for suspending the proceedings, justifying their decision by stating that the petition had been filed too late. In cases where its petitions were quashed by regional courts or proceedings suspended, the AAS filed a constitutional complaint with the Czech Constitutional Court against the judgment of the regional court, and petitioned the court to repeal Section 31(4)

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[117] The Ministry of Justice does not keep more detailed statistics on the petitions for court review of decisions in electoral matters. From the available information it was ascertained that in 2002 regional and district courts decided in 106 disputes pursuant to Act on Czech Parliamentary Elections. Therefore it is not possible to characterise the petitions for court review.

[118] This concerns the obligation stipulated in Section 31(4) of Act on Czech Parliamentary Elections, which superseded the institute of the election bond. Constitution Court finding No. 64/2001 Coll repealed this. An election bond amounting to CZK 40,000 per election region had to be previously paid by every political subject that wished to participate in the Parliamentary election, with every political subject also being obliged to pay a contribution to election costs amounting to CZK 15,000 for every region in which it participates for the Parliamentary election. Whereas the amount set per one region decreased, the number of electoral regions increased from eight to fourteen, in accordance to the state's administrative division into regions. If a political subject takes part in the elections in all regions, then it would have been obliged to pay CZK 320,000 before the repeal, whereas at present it must pay only CZK 210,000.

[119] The preparation, course and results of the elections at the local level were ensured by district offices at the seat of the individual electoral regions, which correspond to regions, into which the territory of the Czech Republic is divided pursuant to Constitutional Act No. 347/1997 Coll., on the establishment of higher-level self-government entities, as amended.

[120] The Ministry of Justice does not keep more detailed statistics on the petitions for court review of decisions in electoral matters. From the available information it was ascertained that in 2002 regional and district courts decided in 106 disputes pursuant to Act on Czech Parliamentary Elections. Therefore it is not possible to characterise the petitions for court review.

Act on Czech Parliamentary Elections. The Czech Constitutional Court constitutional rejected the constitutional complaint as well as the petition, stating that the petitions filed with the regional courts, which were the subject of the constitutional complaint, were filed too late, and that this lax approach by the AAS prohibited its petition from being properly reviewed. As such, the Constitutional Court could not investigate the accordance of the institute of election contributions with standards of higher legal power or with standards for which application priority applies.

2.2.3 Court review of the election of a candidate as a deputy

The Act on Czech Parliamentary Elections also includes a provision on court protection against the election of a candidate by a senator. Every citizen, registered on the permanent electoral list in the electoral district where the senator was elected, and every political party, political movement or coalition, whose candidate list was registered in the electoral district for elections to the Chamber of Deputies of the Parliament of the Czech Republic, may file a petition for the invalid election of a candidate.

A total of 25 petitions to invalidate the election of a candidate were lodged with the Supreme Court of the Czech Republic. Eight of these were filed late, and so the Supreme Court turned them down without reviewing their merits. In two cases the proceedings were suspended due to formal defects. In the remainder of cases the Supreme Court considered the merits of each petition to invalidate the election of a candidate, even though in all cases it decided to reject the petition. The most frequent reason leading to a rejection of the petition to invalidate the election of a candidate was that the Act on Czech Parliamentary Elections was not contravened, or was not contravened in such a manner that could influence the outcome of the candidate's election. In other cases the petitions were rejected on the grounds that they did not identify a specific candidate or candidates, the election of whom the petitioner was demanding be ruled invalid and in respect of whom the petitioner was inferring a link between their election and the alleged contravention of the Act on Czech Parliamentary Elections. In certain cases the petitioner was not a person entitled under the act to file a petition for the court review of the validity of the election of a candidate by a senator. In one case the petitioner alleged that the 7% threshold prescribed by the act for the relevance of preference votes, such that the mandate went preferentially to that candidate who gained this percentage of votes from the total number of valid votes in the given electoral district for the political party or movement as unconstitutional. However, the Czech Supreme Court is not competent to review whether the challenged provisions violate constitutional order; this competence rests with the Czech Constitutional Court.

2.3. Elections to the Senate of the Parliament of the Czech Republic

Elections to the Senate of the Parliament of the Czech Republic were held 25-26 October (1st round) and 1-2 November 2002 (2nd round). However, unlike the elections to the Chamber of Deputies of the Parliament of the Czech Republic, these elections are held exclusively in the Czech Republic, with those Czech citizens that either permanently or temporarily reside outside of the Czech Republic being barred from voting.

The Czech Supreme Court is the competent body for hearing petitions for declaring invalidity of a vote, the elections itself or the invalidity of a candidate being elected as a senator. Every citizen, registered on the permanent electoral list in the electoral district where the senator was elected, and every political party, political movement or coalition, whose application was registered in the electoral district for elections to the Senate of the Parliament of the Czech Republic, may file a petition for the commencement of a court review of the elections.

The Ministry of Interior, as the central body of public administration in the election area, only receives the court judgments on voting invalidity and judgments on the invalidity of the elections. But the Ministry of Interior did not receive any such judgments in connection with the elections to the Senate of the Parliament of the Czech Republic.[121]

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[121] Act No. 491/2001 Coll., on elections to municipal councils, as amended

2.4. Local elections

2.4.1. The effect of the floods on local elections

In 2002 the time periods prescribed in the Act on Municipal Elections[122] for the organisation and safeguarding of local elections was specially regulated by the Act on Periods for the 1-2 November 2002 Municipal Elections[123]. This act extended the time periods for the lodgement of candidate forms that were already underway, as some of the registration offices, as a consequence of August's floods, were not operational enough to be able to receive the candidate forms, or appraise and decide on their registration. Potential candidates in municipalities affected by the floods welcomed the extension of the lodgement periods. This meant that those that intended to candidate did not forfeit their right to lodge candidate forms and their due appraisal pursuant to the law.

2.4.2. Court review of the validity of voting, elections and the election of a candidate as a representative

As the relevant electoral legislation, the Act on Municipal Elections also contains mechanisms for the court protection against the voting procedure, against the course of the elections or against the election of a candidate as a representative. Every citizen registered on the permanent electoral list in the electoral district in which the challenged voting or elections were held or where the senator was elected or where the representative was elected, may file a petition to invalidate the voting, election or election of a candidate as a representative. The Regional Court is the competent court in this matter. The only submissions made by regional courts to the Ministry of Interior are resolutions on the invalidity of the voting and resolutions on the invalidity of the elections.[124]

Two decisions under which voting was invalidated in connection with the regional council elections to held 1-2 November 2002 were as follows:

- In the first case the voting was invalided by reason of deficiencies in ascertaining the results, when a provision of the Act on Municipal Elections, under which every member of the district electoral committee may peruse the electoral lists and the chairman of the electoral committee inspects the accuracy of the vote count, was breached. This breach then influenced the number of votes gained by individual candidates and the number of mandates allocated to individual political parties.

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[122] Act No. 390/2002 Coll., on the setting of certain time periods for elections to municipal councils held 1-2 November 2002

[123] Furthermore, regional courts sent the Ministry of Interior for its information some of their negative resolutions, or resolutions on the invalidity of a candidate's election or resolutions on the suspension of proceedings. However, the Ministry of Culture has yet to receive all the decisions of the regional courts in electoral matters connected with the municipal elections held 1-2 November 2002. For this reason the Ministry of Interior has yet to compile the total number of submissions made to and decided upon by regional courts. Based on the negative regional court resolutions received by the Ministry of Interior, the only statement that can be made is that the most common reason for refusing the petitions calling for voting to be invalidated, for the elections to be invalidated or for the election of a candidate to be ruled as invalid was that the court did not find that the Act on Municipal Elections had been breached or that this act had not been breached in a manner that could influence the results of the voting, the election result or the election of a candidate as a representative.

[124] Section 33(7) of the Act on Municipal Elections: "*A voter may, for serious reasons, particularly for medical reasons, request the municipal office and, on the election day, the district electoral committee, for permission to vote outside of the polling station, but only within the electoral district for which the district electoral committee was established. In such a case the district electoral committee shall send two of its members to the voter's residence with a mobile ballot box, an official envelope and voting papers. In the course of voting the members of the district electoral committee shall proceed in such a manner as to ensure that vote secrecy is maintained.*"

- In the second case the negative stance taken by the district electoral committee to the application for allowing votes to be cast into a mobile ballot box prevented the exercise of the right to vote[125], thereby breaching, in a gross manner, not only the Act on Municipal Elections, but also denying entitled voters from exercising their constitutionally-guaranteed right to vote in the regional council elections. The court came to the conclusion that such a serious interference in voters' constitutionally guaranteed rights meets the conditions for declaring the voting as invalid.

Furthermore, the following four decisions invalidating the regional council elections were handed down:

- In one case the district electoral committee breached the Act on Municipal Elections when it added to the number of votes cast by voters. It thereby breached not only Section 40(1)(a) of the Act on Municipal Elections, but also the principle of direct voting and free elections expressed in Section 2 of the Act on Municipal Elections, Article 21(1) and (3) of the Charter and in Article 102 of the Constitution of the Czech Republic, in a manner that may have influenced the results of the regional council elections.

- In the second case the persons who performed activities pertaining to members of the district electoral committee failed to make the pledge in the manner prescribed by law. This means that the committee did not exist in law and the court ruled this to be a serious breach of the electoral process that could have resulted in influencing the results of the municipal elections.

- In the third case the district electoral committee counted the votes in two rooms, with its members being divided into groups of two. But the district electoral committee is supposed to count votes as a whole, seated in one room, so as to order the control mechanism. The court was of the opinion that in this case the act was breached in a manner that could have resulted in influencing the results of the municipal elections.

- The district electoral committee breached a provision[126] of the Act on Municipal Elections pertaining to the counting of votes in a manner that influenced the results of the municipal elections by not including the votes on those voting papers where the candidate for the Association of Independents was crossed out without alteration in its count of all deposited and valid votes.

2.5. Right of assembly

2.5.1. The course of the legislative process

In 2002 the Parliament of the Czech Republic discussed the draft of the new Right to Assembly Act, which was designed to entirely replace the existing legislation contained in the Right to Assembly Act [127]. In the course of these discussions the comprehensive draft act was replaced by a draft amendment to the Right to Assembly Act [128].

A positive aspect of the new legislation may be considered as being the elimination of the previously unconstitutional state, whereby assemblies held on roads were conditional on the obtainment of permission,

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[125] Section 40(5)(b) of the Act on Municipal Elections: "*After assessing the voting paper, the district electoral committee shall count a valid vote towards the candidate as follows: ... if the only item marked is a political party, every candidate of this party shall receive one vote, limited to the number of candidates, according to the order stipulated on the electoral list, equivalent to the number of elected council members, ...*".

[126] Act No. 84/1990 Coll., on the right to assembly, as amended

[127] A draft of new legislation contained in chamber press No. 1163 from the 3rd electoral period (http://www.snemovna.cz/forms/tmp_sqw/58b80005.doc) was replaced in its entirety by a draft of an amendment to the Right to Assembly Act after the constitutional law committee proposed to the Chamber of Deputies of the Parliament of the Czech Republic, in Resolution No. 245 dated 27 February 2002 (http://www.snemovna.cz/forms/tmp_sqw/676a0017.doc), to interrupt discussions, and the petition committee proposed, in Resolution No. 279 dated 28 February 2002 (http://www.snemovna.cz/forms/tmp_sqw/676a0018.doc), for the tabled draft act to be refused.

[128] Section 7(4) of the Right to Assembly Act

rather than just notifying the holding of this assembly. Other positive aspects include the provision restricting one person or organisation from permanently reserving a particular location for the purpose of assembly; this was misused in such a way as to prevent other people or organisations from using this location for the purpose of their assemblies. A plus, as far as the right of assembly is concerned, is also represented by explicitly defining intentional interference with an assembly as a misdemeanour and increasing the ease and comfort enjoyed by an organiser in delivering a notification of assembly.

On the other hand the new legislation also contains provisions that remain the subject of discussions, despite the fact that in the end they were adopted in a relatively compromised form. This namely pertains to an extension of the deadline for notification of an assembly, the marked increase in the fines levied for breaching the act, and the obligation on assembly participants to not hide their faces "*in a manner that hinders or prevents their identification*"[129], in the event of the Police of the Czech Republic intervening in the assembly. Thus far, there has not been conclusive proof that any of these provisions have had a marked practical impact on the implementation of the right to assemble, with none of these provisions being challenged as unconstitutional before the Czech Constitutional Court.

2.5.2. Exercise of the right to assembly during the holding of the NATO summit

Despite the fact that the original draft of the new Right to Assembly Act contained transitory provisions pursuant to which an assembly notified prior to the effective date of the new legislation was deemed as being notified, for a period of three months, pursuant to this new piece of legislation[130], and the amendment to the Right to Assembly Act regulated the expiry of the assembly notification, which was to be held six months of this amendment taking effect, some notified assemblies were not held during the course of the NATO summit because it was scheduled to be held within the so-called security zones, whose demarcation was set at a later date. Regardless of the general legal deficiencies associated with the establishment of so-called security zones, it is apparent that the offices of individual city parts were under an obligation to offer the organisers of assemblies alternative locations for holding their assemblies; only if the organisers refused the alternative location offered could the relevant office prohibit the assembly.

3. Judiciary, court protection and other forms of control

3.1. Comprehensive review of the decisions of public administration bodies

By its finding[131] the Czech Constitutional Court repealed, effective 31 December 2002, the legislation pertaining to the review of the legality of decisions made by administrative bodies, contained in part five of the Civil Procedure Code[132]. This means that 2002 was the last year that, for one thing, the decisions of administrative bodies were not subjected to full review by independent bodies, and for another, the last year that the Constitution of the Czech Republic[133], as far as the existence and operation of the Supreme Administrative Court, was not adhered to. The introduction of a fully-fledged administrative judiciary represents another significant period in the reform of judiciary. Generally speaking, regional courts are competent in the execution of administrative judiciary.

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129 Compare Section 24 of the draft Right to Assembly Act and Article V of Act No. 259/2002 Coll.: "*Notifications submitted before the effective date of this act are deemed as being notifications made pursuant to this act. No regard is given to notifications submitted pursuant to existing legislation, under which assemblies that are to be held six months following the day on which this act takes effect are notified.*" (http://www.snemovna.cz/forms/tmp_sqw/58b80005.doc).

130 The finding is published in Collection of Acts under No. 276/2001 Coll.; the Constitutional Court of the Czech Republic had stated previously, e.g. in its finding No. 1/1997 Coll. dated 27 November 1996 (file reference Pl. Constitution Court 28/95) expressed the opinion that "*the right to full review of decisions made by administrative offices by an independent and impartial tribunal is not distinctly and clearly established*" in the Czech legal system. Chapter 3.1.2. of the 2001 Report focused on this problem in a similar degree.

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

132 Constitutional Act No. 1/1993 Coll., the Constitution of the Czech Republic, as amended

133 Act No. 150/2002 Coll., on administrative procedure

According to the Administrative Procedure Code[134], which took effect on 1 January 2003, courts in administrative judiciary will decide within its powers. Thus, this will not concern a mere review of the legality of decisions made by administrative bodies, as was the case hitherto under the legislation contained in part five of the Civil Procedure Code. In this way the relevant articles of the Charter as well as the European Convention on Human Rights are finally fulfilled:

- Article 6(1) of the above-mentioned Charter is fulfilled, because it pertains to a full review by an independent body.

- Article 36(2) of the Charter is also fulfilled. Even though this article stipulates, as a minimum general standard, only a review of the legality of a decision made by public administration body, it simultaneously prohibits all decisions pertaining to fundamental rights and freedoms pursuant to the Charter to be excluded from the court review.

An act was adopted to amend certain acts in connection with the adoption of the Administrative Procedure Code.[135] This implemented an amendment of acts that are connected with the introduction of a fully-fledged system of administrative judiciary. Of importance is namely the new wording of part five of the Civil Procedure Code, regulating court proceedings in private law matters, which were decided under special parts of the act by public administrative bodies. The new regulation enables the filling of a lawsuit with a court, which, if it finds the lawsuit to be justified, will decide in the matter.

3.2. Repealing certain provisions of the Act on Courts and Judges[136] by the CzechConstitutional Court

By its finding [137] the Constitutional Court repealed those parts of the Act on Courts and Judges pertaining to the assessment of the professional competencies of judges, their mandatory inclusion in an education program at the Judicial Academy and the performance of state administration by courts. The constitutional complaint was submitted by the President of the Czech Republic for reason of the violation of the principle of the division of

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[134] Given the fact that both acts take effect on 1 January 2003, the first findings pertaining to the operation of administrative judiciary in relation to the rights protected under the Charter and international treaties on human rights will be contained in the 2003 Report.

[135] Act No. 6/2002 Coll., on courts, judges, lay judges and state court administration, as amended

[136] Finding of the Czech Constitutional Court, dated 18 June 2002, was published in the Collection of Acts under No. 349/2002 Coll. and repealed, as at the date of its publication, the following provisions or parts thereof: Section 50(1)(f), (g), (3) and (4), Section 51(1)(f), (g), (3) and (4), Section 52(1)(f), (g), (3) and (4), Section 53(1)(e), (3) and (4), Section 71(4), the last sentence of Section 72(2), the second sentence of Section 82(2), Section 94(d), Section 123(3) and (4), Section 124(4), Section 125(3), Section 126(3), Section 127(3), the words "categorisation of judges" in Section 130(2), Section 131(1)(a), (b), the words "judges and" in Section 132(1)(a), (b),(2) and (3), Sections 134 - 163, Section 185, the words "three attorneys as members of the Council for Professional Competence of Judges and their three replacements and" in Section 187, and Section 188 of the Act on Courts and Judges. Subsequently, the provisions contained in the second sentence of Section 15(2), the second sentence of Section 26(2), the second sentence of Section 30(2), the second sentence of Section 34(2), the words "ministry or" in Section 68(1), Section 74(3), the words "ministry or" in Section 99(1)(c), Section 106(1), Section 119(2) and (3), Section 120, Section 121, Section 124(1), (2) and (3), Section 125(1), (2) and (4), Section 126(1), (2) and (4), Section 127(1), (2) and (4), and Section 128 of the Act on Courts and Judges were repealed, effective 1 July 2003.

[137] Because the Czech Constitutional Court also repealed the provisions regulating the performance of state administration in the judiciary, proposals for amendments to the Constitution and the Act on Courts and Judges were compiled, by which the performance of state administration in the judiciary and certain questions pertaining to increasing the qualification of judges are to be newly regulated in a manner that is fully compatible with constitution. The proposal for an amendment to the Act on Courts and Judges was approved by the government on 22 January 2003 by Resolution No. 70 (http://racek.vlada.cz/usneseni/). The Chamber of Deputies is discussing this government proposal, recorded in Chamber Press No. 209 (http://www.snemovna.cz/forms/tmp_sqw/70f5002a.doc).

power between the legislative, executive and judicial branches, as well as the derived right of the individual for matters to be discussed by an independent court.

The opinion of the Constitutional Court on the assessment of the professional competencies of duly appointed judges is that *"... the challenged mechanism of the review of the professional competencies of judges, as regulated by law, must be refused and deemed as being unconstitutional for reason of the violation of the division of power principle and the related principle of the independence of judges. This, as stipulated above, has an unconditional character, excluding the possibility of such a method of interference of executive power, as it is an unreasonable and disproportional review of the professional competencies of judges.*" Thus, the Constitutional Court repealed the provisions regulating the assessment of the professional competencies for reason of their discrepancy with Article 1, Article 2(1), Article 81, Article 82(1) and (2) and Article 93 of the Czech Constitution.[138] In doing so, it made reference to the case law of the European Court for Human Rights, which is developing the right to a fair trial, such that "… *in order to fulfil the condition of independence it is essential for a court to be able to base its decision on its own free opinion of the facts and their legal aspect, without having any commitments towards parties and public bodies and without its decision being subject to review by another body, which would not be equally independent."*

As regards the mandatory inclusion of judges in the Judicial Academy, the Constitutional Court stated that *"... the actual establishment of the Judicial Academy under the act has its justification with regards to the function which it is meant to fulfil in the education of judicial candidates and other court employees, but in relation to the continuous education of judges it may be ... understood as merely one of the possible sources, freely elected by the judge himself."*

3.3. The influence of the amendment to the Criminal Code on the activities of the Police of the Czech Republic

As was already mentioned in the 2001 Report, an important amendment to the Criminal Code[139], coming into effect on 1 January 2002, represents a fundamental reform of the criminal procedural law. Its main objective is to make all stages of the criminal process more effective and to remove unnecessary professional and institutional barriers. It creates the preconditions for reducing the time delays between the moment of a criminal act being committed and its punishment. The main newly introduced changes are the elimination of duplicity in the collection of evidence during the course of the preparatory proceedings, strengthening the position of the state attorney and an emphasis on the main hearing before the court.

The objective of the Criminal Code amendment was to improve and fast-track the process of enforcing rights, which reflects significantly on the right to fair proceedings, as the unreasonable length of the criminal proceedings was hitherto an evident breach of this right in many cases. This fast-tracking – together with the fact that the amendment also contains a new regulation of complaints filed against custody – should have also been reflected in the average length of the prosecution in custody, which has been one of the subjects of the justified criticism of the Czech Republic from the European Commission, the Human Rights Committee and other institutions. This expectation was indeed fulfilled in practice, as it is obvious that the amendment to the Criminal Court contributed to the further reduction in the number of accused in custody and thus also the overall decrease in the number of persons in custody (see Chapter II./4.1.1. of the Report).

The amendment to the Criminal Code is also reflected in the activities of the Police of the Czech Republic, which used this amendment as the basis on which it carried out a reorganisation of its criminal and investigative services. But above all, the amendment has brought about a change [Section 161(3)] in the procedure applied during the investigation of crimes committed by police officers. The state attorney is now performing an investigation of these crimes. But the amendment did not affect the status of the Inspectorate of the Ministry of Interior (hereinafter referred to as the ”Inspectorate”); the Inspectorate continues to act as a police body, but with jurisdiction for all crimes committed by police officers irrespective of the severity of the sentence. The Inspectorate is obliged to make a record of the launch of acts in criminal proceedings aimed at clearing up and verifying facts allegedly indicating that a crime was committed by a police officer. In this record it shall state

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[138] Act No. 265/2001 Coll., which amends Act No. 141/1961 Coll., the Criminal Code, as amended

[139] Act No. 169/1999 Coll., on Imprisonment, as amended, took effect on 1 January 2000.

the facts on the basis of which it is launching proceedings, and the manner in which it learned of these facts. A copy of this record must be sent to the state attorney, who shall decide in the matter thereof, within 48 hours of the commencement of criminal proceedings. In the course of his investigations the state attorney can then request the Inspectorate to obtain individual evidence, to perform individual investigative acts, or to call up people as required, etc. In order to avoid disputes pertaining to the exercise of competence in the course of performing acts of criminal proceedings, a "cooperation agreement" was concluded between the Supreme State Attorney's Office, the Police Presidium of the Czech Republic and the Inspectorate on the basis of information supplied by the Ministry of Interior, which defines, more in detail, the responsibility for carrying out individual acts of criminal proceedings. It would be premature at this stage to evaluate the practical results of this amendment.

4. People deprived of freedom or people whose freedom has been restricted

4.1. The prison system

4.1.1. The general situation in the prison system in 2002

The positive trend of a decrease in the number of persons imprisoned continued in 2002. Under this situation it was possible to recalculate the minimum living area per prisoner, and as of 1 January 2003 to increase its value from 4.0 m^2 to 4.5 m^2. In connection with the decreasing prison population the 2001 Report had stated that this development opens up opportunities for more intensive and wider ranging individual work with prisoners. During 2002 the number of prisoners dropped by almost 4,000 people.

The drop in the number of prisoners allowed the expansion of the area that could be used in the implementation of activities as part of programmes developed for handling prisoners and to expand the specialised division for the performance of preventative institutional anti-toxicological treatment at the Znojmo prison, for the performance of sentences handed out to people with personality disorders and behaviour caused by the use of psychotropic substances in the Bělušice and Příbram prisons, and for the serving of sentences by prisoners without permanent work classification in the Pardubice and Karviná prisons. In the nearest period premises for the implementation of preventative educational, special interest and sporting programmes will be made available, which shall be made available to those sentenced to detention on remand.

The following table contains data on the number of prisoners and the occupancy of the prisons as at 24 January 2003:

	Accused	Sentenced	Total
Men	3,250	12,411	15,661
Women	162	510	672
Total	3,412	12,921	16,333
Occupancy rate	102.90%	106.24%	104.12%

4.2. Imprisonment

In 2002 a series of flaws identified in the Act on Imprisonment[140], which came in for criticism in the 2001 Report, failed to be eliminated. However, the Prison Service of the Czech Republic (hereinafter referred to as the "PSCR") has prepared a draft amendment to the Act on Imprisonment, which will introduce new legislation of these criticised areas. Besides the motion of the Council for Human Rights of 2001, the amendment shall also take into account the recommendations ensuing from the second regular visit of the CPT to the Czech Republic in April 2002 (see Chapter I.3.2. of the Report).

4.2.1. Covering the costs of imprisonment

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

In order to mitigate the negative impacts of the across-the-board duty to cover the costs of imprisonment, the amendment to the Act on Imprisonment prepared by the PSCR proposes for the stipulation of exceptions to this across-the-board duty to cover the costs of the imprisonment for various categories of sentenced persons, including those not having access to a source of legal income and for whom work has not been secured, as well as those who are engaged in a course of study.

4.2.2. Work with prisoners sentenced to life imprisonment

The isolation of people sentenced to life imprisonment was justified thus far by the fact that a sentence of life imprisonment could only be handed out to a perpetrator in whose case there was no hope of rehabilitation by imprisonment of between 15 and 25 years. The provision of the Act on Imprisonment, under which the purpose of life imprisonment is defined independently as being to protect society from the sentenced person committing further crimes by isolating this person within the prison, is connected to this regulation contained in the Criminal Code[141]. An extensive amendment to the Criminal Code[142] expanded the possibility of handing down sentences of life imprisonment, without the need to fulfil the condition of the absence of hope of rehabilitation by imprisonment of between 15 and 25 years. In connection with this amendment, as a consequence of which we can expect an increase in the number of people sentenced to life imprisonment, the PSCR is preparing a draft amendment to the Imprisonment Code. The draft presupposes that the objectives of individualised treatment programmes shall be regulated in such a manner as to ensure that people sentenced to life imprisonment, who were not handed down this sentence for reason of the fact that there existed no hope of their rehabilitation by imprisonment of between 15 and 25 years, shall receive support as regards their attitudes, skills and knowledge, thus enabling them to integrate into society and live according to the law upon their release.

However, restricting the implementation of individualised treatment programmes to only those prisoners sentenced to life imprisonment, who were not handed down this sentence for reason of the absence of any hope of rehabilitation by the serving of a jail sentence of 15 to 25 years, does not appear to be a consistent measure. Every person sentenced to life imprisonment may be released after serving not less than 20 years of this sentence. This means that the possibility of release also exists for those sentenced persons in the case of whom the court stated that there exists no hope of rehabilitation by imprisonment of between 15 and 25 years. For this reason the act of abandoning any activities aimed at preparing the sentenced person for release does not seem to be an appropriate solution from the viewpoint of protecting society from the eventual release of such a sentenced person, and the extreme isolation of such a person during the course of imprisonment supports, to a certain degree, antisocial elements in that person's behaviour.

4.2.3. Change in practice as regards the possibility of a sentenced person to make purchase in prison shops

A significant volume of discussion between interested bodies was evoked by the cancelling of the practice of allowing sentenced persons to make purchases in prison shops. This practice was allowed under standpoint issued by the general manager of the PSCR on 10 February 2000 as one of the concrete measures contributing towards ending the mass prison unrests in January 2000. The sense of this practice was to compensate for the restrictions that ensued from the then new Act on Imprisonment – restricting the number of packages that the sentenced person receive in the course of imprisonment, and a restriction of the possibility of sentenced persons to freely dispose with their own money deposited at the prison. The suitable solution under these circumstances was to allow sentenced persons to visit prison shops in order to make the required purchases and thereby improve their material conditions.

The general manager of the PSCR justified the cancelling of this practice by mentioning improvements in the prison situation (the percentage of sentenced persons employed is growing gradually, along with a reduction in the number of sentenced persons), as well as the standpoint of the state attorney of the Supreme State Attorney's Office in Prague. According to this standpoint the practice of allowing sentenced persons to make purchases in prison shops did not have a legal basis and that this practice in fact circumvented the limiting provisions on packages and on disposing with the sentenced persons' money. But this standpoint was not shared by the Public Protector of Rights, who took it upon himself to launch an investigation, the conclusion of which

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

142 Act No. 265/2001 Coll., an amendment to the Criminal Code and some other acts

he summarised in his report dated 11 November 2002. A solution should be provided by the mentioned amendment to the Act on Imprisonment, which sets a percentage of the money that the sentenced person has deposited at the jail with which he or she can freely dispose and which is not subject to the duty of the preferential coverage of claims pertaining to the criminal proceedings, the costs of the imprisonment etc.

4.2.4. Imprisonment of mothers with children

The legislative prerequisites for the imprisonment of mothers with children were established back in 2000 in the Act on Imprisonment. But the conditions for the practical implementation of the relevant provisions at the prison in Světlé nad Sázavou were not put in place until 2002.

4.3. Detention

An extensive amendment to the Criminal Code has had a favourable impact on the number of persons in detention as well as the average length of this detention. During 2002 the number of people held in detention dropped by approximately 1,000. In the course of the year the average length of detention decreased by approximately 30 days. Reducing the number of people in detention enabled prison conditions to be improved, namely by the placement of more people in the detention on remand division with a lighter regime, and offering a higher number of predominantly younger adults to be able to participate in preventative educational, special interest and sporting programmes. But there continues to be a lack of legislative conditions for the imprisonment of mothers with children.

4.4 Facilities for the detention of foreigners

Following criticism by the CPT of the conditions for the detention of foreigners prior to their expulsion from the Czech Republic, special facilities have been constructed for this purpose since 1998.[143] The facilities for detaining foreigners will house foreigners for the purpose of their administrative expulsion or transfer according to so-called readmission agreements. Since 1 February 2002, when the amendment to the Asylum Act[144] came into effect, these facilities have also housed foreigners who are seeking asylum. Currently, five such detention facilities for foreigners are maintained in the Czech Republic. As the 2001 Report pointed out, visits to the facilities maintained under the Aliens Act[145] have revealed that the internal regime, equipment and material conditions are almost identical to prisons or remand prisons. The placing of foreigners in these facilities, however, is in no way connected with criminal proceedings; it is simply the result of a breach of the residence regime under the Aliens Act. Children are also placed in detention facilities, despite the fact that most such facilities have in no way been adapted to cater for them. *The restriction of the rights and freedoms of a foreigner should therefore reflect the reasons that led to his/her being placed in the facility and should definitely not exceed the degree essential to resolve the matter that led to his/her rights and freedoms being restricted*.[146]

The conditions in these detention facilities led to an investigation by the Public Protector of Rights, who in his report described the situation as unsatisfactory.[147] Like other bodies[148], it noted that in some facilities the detainees have restricted access to toilets and washrooms. Often, access is denied by the facilities' staff, whose inadmissable behaviour is in some cases supported by the unsuitable spatial organisation of the facilities'

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143 Information on the course of the second regular visit of the CPT is contained in the Report in chapter I./3.2.

144 Act No. 2/2002 Coll., which amends Act No. 325/1999 Coll., on Asylum

145 Chapter XII of Act No. 326/1999 Coll., on the Residence of Foreigners on the Territory of the Czech Republic, as amended

146 In this case to prevent a further breach of the residence regulations and to ensure the administrative expulsion or transfer according to readmission treaties.

147 The full text of the Report can be found at www.ochrance.cz.

148 The CPT and the Committee for Torture and Inhuman or Degrading Treatment or Punishment of the Council for Human Rights.

accommodation sections. Restricted access to toilets and washrooms provides ample opportunity for degrading treatment, particularly with regard to foreigners with a language barrier. In many instances, foreigners only communicate with staff by means of gestures. *The implementation of this practice is unacceptable and measures should be adopted as soon as possible in order effectively to prevent such treatment*.

The situation regarding foreigners' awareness of their rights[149] and contact with the outside world is also unsatisfactory. A foreigner who has been placed in the facility is entitled in the presence of police to receive a visit of thirty minutes by at most two persons once every three weeks[150]. A foreigner may receive unlimited visits from a person that is providing him/her with legal aid. However, information from several non-governmental, non-profit organisations that provide legal aid to foreigners reveals that the foreigner police do not provide them with adequate access to the facilities. *Allowing non-government, non-profit organisations that provide legal aid to foreigners access to facilities for the detention of foreigners, on the same principle as their regular access to residential centres for asylum seekers, would probably significantly increase foreigners' awareness, and at least provide them with some limited contact with the outside world and offer the real possibility of using legal aid to protect their interests*.

The facilities offer foreigners only a highly limited range of activities for the sensible use of free time. Apart from their hour-long daily walk, limited possibility for reading books and magazines or watching television (usually in Czech), there are generally no other activities available. Given the relatively long period that foreigners may spend in these facilities[151], the expansion of leisure activities is more than welcome.

According to the Aliens Act, the facilities are divided into a section with a moderate regime and a section with a strict detention regime. Foreigners whose identity has yet to be ascertained, who are isolated for health resons, or men who are alone, without family or partner, are often automatically placed in the section with strict detention regime, which is analogous to the regime in a prison with surveillance or heightened surveillance, i.e. the two strictest types of prison. *With regard to the extremely strict regime, only the most serious cases judged on an individual basis (e.g. obviously aggressive behaviour, involvement in serious criminal activity, repeated serious breach of internal rules) should be placed in this section of the facilities*.

In 2002, the Ministry of the Interior adopted measures to improve the situation. With regard to the special needs of children and families with children, the Velké Přílepy II.–Jezová facility was opened 10 June 2002 in the Bělá-Jezová residence centre complex for asylum seekers in order to provide priority treatment for families with children. The facility has an open regime in which foreigners are permitted free movement throughout the complex, unlike at other facilities. School attendance is organised for children; younger children are placed in a nursery school that forms part of the facilities.

The situation in facilities for the detention of foreigners is monitored by a working group that was set up in April 2002 by decision of the chief deputy to the Minister of the Interior. The decision was taken to commence work on a bill to amend the regulation of facilities for the detention of foreigners under the Aliens Act. The amendment under consideration does not remedy all the aforementioned shortcomings, but it should lead to a substantial improvement in the situation inside these facilities. It aims to ensure that the facilities' regime is comparable to that of the reception centres of asylum facilities. Detention in a strict regime should only occur in justifiable circumstances and for a period essential to ensure the permissibility of both regimes. The amendment should also stipulate that the internal rules of the facilities contain provisions for pyschological and social care

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149 The essential meaning has chiefly information on the possiblity of a judicial review on the filing of an application for asylum.

150 This refers to a period stipulated by the Aliens Act. As comparison: in the execution of imprisonment the convict is entitled to recieve visits from people close to him for up to three hours a month; in custody, the accused may recieve visits of at most four persons once every two weeks lasting one hour.

151 The detention of foreigners often ends after 180 days, i.e. after the longest possible period of detention, and expulsion of the foreigner does not happen. The main impediments in attempting to implement expulsion are the ongoing asylum proceedings and the absence of identification documents, or the invalidity of such documents. In the case of foreigners from European countries, expulsion is easier than in the case of foreigners from other, generally Asian states. The problem, however, is that the majority of foreigners come from Asian states, in particular from India, China and Vietnam.

and leisure activities. Movement in parts of those facilities that have a moderate regime should be subject to the minimum of restriction. Children up to 15 years of age should be allowed to leave the facilities for reasons of mandatory school attendance if this is not available within the facilities' complex.

With regard to the proposed amendment to the Act, it is also being considered whether to transfer the rights for the establishment and running of facilities for the detention of foreigners from the police to the Ministry of the Interior, which is undoubtedly welcome. The question of the police's competence regarding the facilities and the foreigners detained in them should be regulated by the Act.

4.5. Expulsion custody

Significant problems remain concerning the imposition and enactment of expulsion custody. Although expulsion custody is a detention, and not a punitive measure, and the restriction of freedom should therefore be as brief as possible and should contribute to the rapid and efficient imposition of the expulsion order, in practice this often lasts a long time and the imposition of the sentence is ultimately frustrated.

One of the reasons for the extension of the expulsion custody, or the release of the convicted foreigner and subsequent frustration of the expulsion order, is the filing by the foreigner of an application for asylum in the Czech Republic. A slight improvement has been recorded in the impact of the asylum application by the convicted foreigner in expulsion custody on the length of such custody. However, the question of whether the convicted foreigner's asylum application actually impedes the expulsion order remains unresolved. It is being addressed by the criminal law college of the Supreme Court of the Czech Republic, whose opinion should help to unify the decision-making procedure of the general courts in this matter.

Other problems, which consist in regulatory shortcomings and which were raised in the 2001 Report, also remain: (1) There is no guarantee of a hearing before the decision is reached on expulsion custody. During the decision-making process, the chairman of the senate must decide whether there is a risk that the convicted foreigner will go into hiding or otherwise attempt to frustrate the expulsion order and whether custody cannot be replaced by a guarantee, promise or financial guarantee. The Criminal Code[152], however, does not specify any obligation on the part of the judge to hear the foreigner before deciding on expulsion custody. Only the internal and official rules for district, regional and high courts refer to hearing the convicted foreigner before making a decision on his/her being taken into expulsion custody, and then only on an optional basis, i.e. that if it is necessary to hear the convicted foreigner before reaching a decision, the relevant court may be used for such purposes. This leads to the inconsistent interpretation of the necessity for a hearing before reaching a decision on expulsion custody and, in the final instance, if the convicted foreigner is not given a hearing, to the breach of Article 38 par 2 of the Document and Article 5 par 3 of the European Convention on Human Rights.

(2) The inconsistent interpretation of the maximum assessment of the expulsion custody, the length of which depends on the legal qualification of the act for which the convicted foreigner has been found guilty (although the Criminal Code [Section 71 par 8] specifically does not state whether the maximum assessment of the expulsion custody as a purely judicial custody must be shortened by one third [i.e. in the manner specified in Section 71 par 9]). In practice, the length of the expulsion custody for foreigners convicted of criminal acts often differs from the same upper boundary.

(3) In most cases, an expulsion order is imposed in addition to a prison term and the convicted foreigners, after completing the prison term, if they have been taken into expulsion custody find themselves in custodial conditions with all restrictions.[153] Although expelled convicted foreigners comprise a different category to the accused, require different treatment and also have different rights and obligations (e.g. concerning the degree of restriction of freedom of movement and contact with the outside world), the Custody Act does not contain any specific provisions in relation thereto. The Custody Act (Section 2 of the Custody Act) states that during custody the accused may only be subject to those restrictions that are necessary to fulfil the purpose of the custody and to maintain the stipulated internal order and safety. Expulsion custody, however, takes place in conditions close to the custody of the accused, i.e. it is performed in worse conditions than those for

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152 Act No. 141/1961 Coll., on the Criminal Procedure Code.

153 Expulsion custody is governed by Act no. 293/1993 Coll., on Custody, as amended.

imprisonment, which convicted foreigners in many cases have already served. *It is desirable that the relevant bodies should begin to devote due attention to the matter of expulsion custody and that it should be resolved both by an amendment to the Criminal Code and an amendment to the Custody Act*.

4.6. Disciplinary prison sentences in the army

Conditions of imprisonment and the rights and obligations of prisoners are regulated by the Prison Rules, which is an internal regulation approved by the President of the Republic. The restriction of a person's freedom in the form of a disciplinary prison sentence is not the decision of an independent court, which contravenes the European Convention on Human Rights. In this respect, therefore, the Czech Republic constituted an exception when signing the Convention. Given this situation, it is particularly desirable that the conditions of imprisonment and the rights and obligations of prisoners should be regulated by a legal norm, and not only by internal departmental regulation, as the Charter also ultimately demands.

The permanent monitoring of the observance of human rights in the Army of the Czech Republic, including the observance of human rights in a disciplinary prison sentence, is conducted by the Inspection of the Ministry of Defence, which carries out inspections in military prisons and checks that legal and service regulations have been adhered to during the disciplinary imprisonment. In 2002, a total of 1,915 disciplinary imprisonments were imposed in the armed forces with an average length of 3.51 days. This represents a reduction of 20 per cent in the number of prison sentences against the previous year. Disciplinary imprisonments made up 10 per cent of the total number of disciplinary sentences imposed on soldiers in basic service. The inspections this year found continuing shortcomings in prison equipment, discrepancies between internal directives and the law and ignorance of the relevant regulations by the supervisory bodies. As a result of measures adopted after the findings of inspections in 2001, however, an overall improvement in the situation was recorded against the previous period.

Bullying, which is the most highly monitored and most serious matter with regard to the protection of human rights, registered a reduction both in terms of numbers and the seriousness of the cases. In all, the military police dealt with 113 cases that could be classified under bullying. This is the same number as the previous year. They included cases of unfitting and sometimes degrading treatment on the part of commanders (professional soldiers) towards their subordinates. Soldiers in basic service considered the most serious problem to be the scheduling of work activities, inclusion in full-day shifts and performance of service tasks. These problems *inter alia* are linked to the falling number of professional soldiers and the number of unplanned tasks during the period of the floods. This situation is also partly attributable to the ongoing means of organising employment by the majority of commanders from the period before the adoption of the new defence legislature in 1999. This demonstrates the continuing poor legal awareness on the part of service bodies and the inability or unwillingness to consistently abide by and properly to apply legal regulations. The attempt to enforce discipline and ensure that specified tasks are fulfilled is often given priority over the rights of soldiers and civilian employees as specified by legal and service regulations. *The relevant bodies of the Ministry of Defence should concentrate their energies primarily on remedying the aforementioned shortcomings*.

4.7. Persons whose freedom has been *de facto* restricted

4.7.1. Definition of *de facto* restriction of freedom under international human rights treaties

The prevailing interpretation of the legal code of the Czech Republic only considers restriction of freedom to constitute situations such as imprisonment or custody effected by police bodies, or imprisonment in the army. Such a narrow definition, however, does not include many other situations in which, although the remand of persons in a variety of facilities is not a penalty from a legal standpoint, their freedom is restricted *de facto* by the system's measures as enforced, or by their reliance on the care of others (children, old people, the mentally handicapped and the mentally ill). Nevertheless, the Optional Protocol to the Convention against Torture, other Cruel, Degrading or Inhuman Treatment or Punishment (hereinafter in this section the "Optional Protocol"), which was approved by the General Assembly of the United Nations as of 18 December 2002, also considers such persons' freedom to be restricted. Under the Optional Protocol, a characteristic sign of the removal or restriction of freedom is the absence of the freedom to leave the facility in which the person is held or placed.

The dependence of such persons on the facilities in which they are placed, and on the care that the facilities provide, significantly restricts their possibility freely to decide whether to stay in the facility or leave it. In this instance, restriction of freedom does not lie in the legal provision that contains the instruction to comply with the restriction of freedom, but in the factual situation, which results largely or wholly in the person being deprived of his/her choice whether to leave the facility, even if he/she is subjected to mistreatment.

The Council of Europe's system of conventions adopts a similarly broad interpretation of the subject. As the supervisory body established by the European Convention on the Prevention of Torture, the CPT's mandate applies not only to police facilities, prisons and remand prisons or facilities for protective or institutional care, but also to institutes for social care or psychiatric facilities.

4.7.2. Regulation of the rights of persons in institutional care

The protection of the rights of persons whose freedom has been restricted *de facto* – as a result of being placed in various types of institutional care – remains a matter of peripheral interest for the public, legislators, lawyers and, with exceptions, also for the protectors of human rights. In the majority of cases, the rights and obligations of these persons are not adequately addressed by any act or even decree, but are governed only by the internal rules of the facilities concerned. Compliance of these internal rules with the Charter and international human rights treaties is generally unchecked, not to mention the actual situation in the various types of institute. Persons placed in institutional care (particularly persons that are mentally ill or mentally handicapped) are clearly disadvantaged *per se* through their dependence on care or their intellect being handicapped, and if they do complain their complaints generally do not reach beyond the walls of the relevant facility.

In health institutions, patients' rights and obligations are not even regulated in respect to protective treatment as a clearly criminal-law institute under the criminal code,[154] or in relation to other instances of restriction of freedom authorised by law[155], let alone in cases of voluntary placement in a health institution[156]. Even specific forms of permissible or impermissible treatment are not stipulated. The internal supervision of health institutions generally focuses on the level of health care, not on the upholding of human rights; in practice, moreover, supervision is complicated by the transfer of the administrative function of such facilities to local authorities or private subjects. External supervision in this area is practically non-existent.

Likewise, neither the conditions in social care institutions nor the rights and obligations of the persons placed inside them are stipulated in law; a supra-legal norm only partially regulates this area. A social services act has yet to be adopted that would at least stipulate binding standards of care. The internal supervision, conducted by the institutions' administrators or the Ministry of Labour and Social Affairs, focuses chiefly on health and hygiene rules and financial supervision. No external supervision exists in these institutions as to whether the rights of the people placed there are respected; they are subject neither to the supervision of the Public Prosecutor's Office nor the competence of the Public Protector of Rights. The only exception is the obligatory supervision by the body for the social-legal protection of children of institutional or protective care, where this is in social care institutions.

A particularly urgent problem is represented by the protection of persons deprived of legal capacity and the procedural status of persons in proceedings on legal capacity, as well as in proceedings on the admissability of transfer (involuntary) to, or detention in, a health care institution. The Council for Human Rights drew attention to shortcomings in the procedural regulation contained in the civil court regulations[157] in 2000 in a report to the Minister of Justice. The status of persons involved in proceedings for the deprivation of legal capacity is very weak, their representation remains purely formal and moreover the law expressly permits the non-delivery of a

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

155 E.g. the transfer and placement of ill people in a health care insititution without his/her consent under the Civil Procedure Code, placement in anti-alcohol centres etc.

156 Actual restriction of freedom through de iure voluntary hospitalisation may consist of measures taken for patients with mental illnesses, depending on the facilities and the provision of care in treatment centres for the long-term ill etc.

157 Act No. 99/1963 Coll., Civil Procedure Code, as amended.

decision (see 2001 Report). The chief shortcoming in the regulation of proceedings for transfer to a health care institution is the fact that the court will only hear the patient and his/her doctor; in accordance with the Council of Europe's recommendations, the legislation of most advanced countries and the tradition of interwar Czechoslovakia, the court should reach its decision on the basis of an opinion of at least one body of a specialist independent of the patient's doctor. In the current situation, where the person is generally only formally represented by the guardian for proceedings, the courts decide on the legality of transfer *de facto* by automatic confirmation of the opinion of the patient's doctor.[158]

Also problematic is the fact that the court decides on whether involuntary transfer has taken place on legal grounds within seven days of notification. (Information from practice indicates that some medical institutions even exceed the 24-hour deadline for notification of transfer and some courts exceed the seven-day limit for a decision). The seven-day limit is itself relatively long, if we admit the possibility that involuntary transfer may not have occurred on legal grounds. In practice, moreover, under this regulation courts only decide whether grounds for (involuntary) transfer existed at the moment of actual transfer, i.e. up to one week before the court's decision; and do not address the question whether grounds for the person's involuntary stay in the health facilities still exist. As a result it may happen that the court decides that transfer was based on legal grounds because at the time of transfer the person represented a threat to himself or his surroundings – despite the fact that at the time the court makes its decision this situation no longer applies. In addition, the decision on the admissability of transfer often means that the person has to undergo any means of involuntary treatment that the doctor recommends. *It would therefore be advisable either to move the court's decision-making process closer to the act of involuntary hospitalisation (transfer), or to separate the assessment of admissability of transfer and the decision on whether grounds for involuntary hospitalisation still exist*.

No less serious a matter is the total absence of substantive regulation in the area of guardianship, which significantly lags behind not only the legal codes of the advanced countries but also that of the former First Republic. The level of rights of persons in institutional care is directly linked to the fact that neither the law, nor judicature, rule out the appointment of guardians – often *en masse* – by the director of the facility in which their charges are placed. *This situation is typical for former socialist states and is the subject of ever-stronger criticism at an international level*[159]*; it should therefore be altered very quickly. The rapid adoption of the amendmend to civil court regulations, submitted by the Council for Human Rights, is an essential, if partial, improvement. The remedy must, above all, include new (far more thorough) substantive regulation with regard to guardianship, the adoption of the new Act on Social Services etc*.

4.7.3 The real level of rights of people in institutional care

The essential problem in the practical implementation of fundamental rights guaranteed by the Charter is not only the absence of positive regulation but also the fact that in general substantially higher numbers of people are placed in institutional care – whether this be institutes of social care, institutional and protective care, or residential psychiatric facilities – than is normal in the advanced countries of the EU. In addition, many of these facilities are for historical reasons extremely large, which also hinders their reform. Maintenance of these over-sized facilities is financed in part by payments for beds, which does not stimulate the development of alternatives to institutional care (protected accommodation, community care) and on the contrary actually penalises those institutional facilities that take steps to integrate ill people in the community.

Although the situation is not mapped systematically, it is evident that major differences exist between institutional facilities. These frequently reflect a difference in approach on the part of managerial staff. Some

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158 According to information acquired by members of the Committee of the Council for Human Rights, in thePsychiatric Treatment Centre in Prague-Bohnice, a single judge decided on 389 cases of involuntary transfer over the first five months of the year (until 23 May); in another treatment centre (Jihlava) members of the Committee of the Council for Human Rights were told that none of the specialist employees knew of a case where the judge's decision went against the recommendation of the examining doctore etc.

159 Most recently the seminar of Human Rights of Persons suffering mental illness, organised by the Commissioner for Human Rights of the Council of Europe with the attendance of the World Health Organisation in Copenhagen between 5 and 7 February 2003.

institutional facilities take real steps to humanise the conditions, from multi-bed rooms to 2-3-bed rooms, from a paternalistic-repressive approach to new thinking in respecting the privacy of patients (charges, "clients") and their wishes as active subjects. They are opening up to the outside, expanding visiting possibilities, creating cultural programmes integrating people both "inside" and "outside" the facility. On the other hand, however, many other facilities continue to resemble those before 1989 in the authoritarianism of their regime and insensitivity of approach. *For example, a variety of restrictions – sometimes drastic – of personal freedom continue to be employed on a very broad basis, e.g. the so-called cages or wire-surrounded beds in psychiatric facilities, which are the subject of increasing criticism from international human rights organisations and which should be limited to the lowest possible extent or removed altogether.*

The APEL project (Audit of Medical Rights and Ethics), launched at the instigation of the Committee for Human Rights and Bio-Medicine of the Council for Human Rights, is involved in the assessment of problems in certain residential psychiatric facilities. The question of ensuring European standards of human dignity, however, also concerns other health institutions, as well as facilities for children that provide institutional and protective care, social care institutions etc. It is evident that in all these facilities the situation can only be substantially influenced by establishing an independent system of systematic supervision in specific ministries. Without such supervision it is impossible under present circumstances to properly assess the situation in hundreds of (often remote) facilities, let alone propose concrete steps for their improvement, with the exception of the *ad hoc* remedying of the most problematic procedures.

4.8 Independent system for the supervision and prevention of mistreatment

The Optional Protocol to the Convention against Torture creates a two-tier system for the prevention of torture and other cruel, degrading or inhuman treatment or punishment. It establishes an international mechanism, whose purpose will be to carry out supervisory visits in places where people are held whose freedom has been restricted. In addition it also obliges signatories to set up one or more similar mechanisms internally no later than within one year of the effective date, ratification or accession of the signatory to the Optional Protocol. EU countries and candidate countries, including the CR, expressed absolute support for the Optional Protocol's proposal throughout the entire approval process.

Persons whose freedom is restricted – whether by law or *de facto* – are subjected to an increased risk of torture or cruel, degrading or inhuman treatment or punishment (hereinafter "mistreatment"). Such behaviour cannot be prevented completely, but by introducing effective supervisory mechanisms it is possible to prevent or minimise its occurrence. Supervision is an effective instrument, conducted systematically and with preventive effect and not focusing exclusively on compliance with the law but also monitoring the dignity of conditions inside facilities and treatment of persons held there in accordance with international obligations under human rights treaties. An important precondition for the supervision's effectiveness is ensuring its total independence from the supervised subjects and the bodies to which they are subordinated.

In the Czech Republic, no body exists that conducts systematic, preventive, external supervision of places that contain people whose freedom is restricted. In the six ministries under whose competence these places fall (justice, education, youth and physical training, defence, the interior, health and work and social affairs), elaborate supervisory mechanisms work in different degrees. Only in one case, however, do they meet all the aforementioned criteria[160].

The Government thus asked the deputy prime minister to prepare a bill to regulate the supervision of detained persons[161] and to set up a working group for this purpose. The result of its work is a material plan for an

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[160] This involves the ministry of Education, Youth and Physical Training – supervision by social-legal body for the protection of children outside institutional and protective care.

[161] Government Resolution No. 679 dated 26 June 2002, to the proposed legislation for supervision of arrests.

amendment to the Act on the Public Protector of Rights.[162] The proposed amendment consists in broadening the material and personal competence of the Public Protector of Rights. His material competence would be broadened to include the task of determining the treatment of persons whose freedom is restricted in order to strengthen these persons' protection against mistreatment. The broadening of personal competence should mean that those places that contain persons whose freedom is restricted are subject to supervision, irrespective of whether this restriction is based on an official decision or authorised by law or is the practical result of the situation in which a specific individual finds him/herself. The major benefit in introducing a system of supervision is in the possibility of implementing spot controls, which in many cases act as a deterrent to wrongdoers who might otherwise have committed acts of torture or bad treatment. The consequences of the latter may be so serious that it is undoubtedly better to prevent them than try to remedy the results, which in many instances are irreversible.

5. Economic, social and cultural rights

5.1. The principle of equal treatment in labour-law relationships

5.1.1. Introduction of equalisation measures in labour legislation

The amendment to the Employment Act[163] introduces the possibility of implementing so-called equalisation measures in the relevant area of legal relations. Under the amendment, state employment policy will include measures to support the equal treatment of men and women, persons with altered work capacity and other categories of people who have a compromised status on the labour market. This provision applies to the approach to employment, requalification, preparation for work and specialised courses. State employment policy also includes measures to support the employment of citizens with alerered ability to work and other categories of citizen who have a compromised status on the labour market.

The reform of public administration led to the creation of a legislative framework to implement equalisation measures in the Act on Officials of Self Administration Units[164]. The Act requires that, when selecting applicants or appointing executive officers, the self administration units shall always seek to ensure the equal representation of men and women among officials or at a certain level of management. Under the Act, the existence of unequal representation justifies the adoption of measures that under other circumstances would be regarded as discriminatory[165].

5.1.2. Unequal status of persons entitled to compensation for loss of earnings after the end of work incapacity

The unequal status of persons entitled to compensation for loss of earnings after the end of work incapacity has long been a problem. It affects a group of employees who have suffered injury at work or work-related illness and have thus been entitled to compensation for loss of earnings after the end of work incapacity. The Labour Code and related regulations, as well as the way in which compensation is provided and particularly its calculation, are in practise not only complicated but also, and more seriously, anachronistic since they do not reflect changes in the socio-economic environment in which labour-law relations apply. Under the Labour Code (Section 193)[166], the employer is obliged to compensate the employee for loss of earnings in an amount that corresponds to the damage suffered. The employer shall pay the employee compensation for loss of earnings (Section 195) after the end of work incapacity, or in the event of invalidity or partial invalidity, so that together with his/her earnings following the work accident or after ascertaining the work-related illness and with the addition of any invalidity or partial invalidity allowance provided for this reason, the total sum should be the equivalent of the employee's average earnings before the damage suffered.

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162 The material draft for an Act to amend and supplement Act no. 349/1999 Coll., on the Public Protector of Rights, as amended, should be submitted to the government by 31 March 2003; it is passing through the inter-ministerial comments proceedigs as this Report is put together.

163 Act No. 220/2002 Coll., which amends Act No. 1/1991 Coll., on Employment, as amended.

164 Act No. 312/2002 Coll., on Officials of Local Administrative Units

165 Discrimination generally is covered by Chapter 7 of the Report.

166 Act No. 65/1965 Coll., the Labour Code, as amended.

A specific and seriously affected category are employees (generally former employees) who suffered damage (accident at work or work-related illness) before 1 January 1993 and whose employers, who became liable as of that date and underwent transformation or other organisational change, are insolvent, in liquidation and the subject of a bankruptcy order. If the administrator of the bankrupt's assets does not have the funds to satisfy these claims he shall cease to provide compensation and in a large majority of cases these citizens, who are generally invalids, find themselves in distressed circumstances and dependent on welfare benefits.

Employees whose entitlement to compensation for loss of earning arose before 1 January 1993, shall not see this entitlement transferred to an insurance company if the employer was not contractually insured for this claim. The obligations are assumed through the Ministry of Labour and Social Affairs by the state, which concluded an agreement with the appropriate insurance companies on managing the agenda and satisfying the claims of the employees affected. The state assumes this obligation on behalf of employers only from the time at which the employer is wound up without legal successor. The insurance company thus does not begin (on behalf of the state) to perform its obligations until the employer is wound up. Therefore, in order for the insurance company to commence payment of compensation for loss of earnings, the employee must submit a document on the company's erasure from the commercial register. Erasure is preceded by bankruptcy proceedings, which in many cases can take several years, during which compensation for loss of earnings is not paid to the employee. The employee thus finds him/herself in an impossible social situation, because, chiefly due to his/her poor health, the possibility of his/her finding new work is practically non-existent, and as a result they generally find themselves dependent on social welfare. It is within the powers of the Ministry of Labour and Social Affairs to make an exception and ask the insurance company to make payments during bankruptcy proceedings, but this is entirely insufficient and, given the number of those affected, ineffective. On the one hand, there is no legal entitlement to make such exception and on the other, even in making this exception the insurance company faces a major problem in obtaining the necessary documents, and it may happen that even despite the exception being made the compensation is not paid.

It may be said that in a sense the state shifted the negative weight of the results of the bankruptcy proceedings to those whom the transfer of obligations should protect against the negative consequences of the employer's winding up without legal successor. There is also an inequality of status and approach to the rights of persons who meet the same conditions (entitlement to compensation for loss of earning and bankruptcy order on the employer) simply because in some cases their labour-law entitlement arose before 1993.

It would be desirable to resolve the different status of employees whose accident at work or work-related illness occurred before 1 January 1993 by means of a simple, specific regulation which would make it possible to use similar principles to those mentioned in the Act on the Protection of Employees in the event of the employee's insolvency. *The optimal solution to the aforementioned systemic faults in current legislation should be seen in comprehensive new legislation with regard to liability for damage from accidents at work or work-related illnesses as part of the recodification of labour law.*

5.2. Work remuneration

5.2.1. Difference in the incomes of women and men

The difference in work incomes of men and women in the Czech Republic has statistically fluctuated at around 25 per cent to the detriment of women. The reasons for this discrepancy, however, do not lie only in discrimination. There are also other causes. In order to unravel these causes and find the appropriate methods to measure the level of discrimination, the Ministry of Labour and Social Affairs asked the Work and Social Affairs Research Institute to process an analysis of the differences in men and women's work incomes. The results were passed to the Ministry in September 2002. A preliminary assessment suggests that it has been possible to establish qualitative factors. These factors are the polarisation of the difference between male and female work into branches of the economy that on the one hand have high (male) and on the other hand low (female) monthly wages; the fact that work conducted by men is more often classified in standardised tariff levels; the larger volume of hours worked and overtime work on the part of men; the time taken out by women

during their career to look after children etc. As yet, however, it has not been possible to quantify the weight of specific factors due to the lack of gender statistics.

5.2.2. Inequality of employees in the event of the employer's insolvency

The Act on the Protection of Employees in the event of the Employer's Insolvency[167] enables an employee whose employer does not pay him a salary for work carried out to ask any labour office for satisfaction of his/her salary entitlements, and to do so in a scope corresponding to the salary entitlements payable for three months in the six-month period preceding the month in which the banruptcy order was proposed. The Act states (Section 5 par 3) that the employee's salary entitlements can be satisfied if his/her employment relationship or work agreement concluded with the employer who is insolvent was valid as at the date on which the employer became insolvent, or if this relationship ended in the decisive period stipulated for the extent of the compensation. The Act thus binds the entitlement to satisfaction of salary entitlements to the employee's entitlement to payment of remuneration for work, but makes it conditional upon his existence during the decisve period (Section 5 par 1). An employee who is entitled to payment of remuneration for work under generally binding regulations, but whose labour-law relation with the employer was terminated before the decisive period, shall not be entitled to satisfaction of his/her salary entitlements under the Act. As a result, there is an inequality of approach to social rights among employees who are in a wholly identical social situation due to the fact that the employer did not fulfil its fundamental obligation to pay remuneration for work carried out.

The aforementioned provision (Section 5 par 3) is consequently at variance with the principle of equality of approach to rights and also prevents fulfilment of the legislator's intention to provide protection for employees in the event of an employer's insolvency[168]. *As the Act's wording is quite unambiguous, an approach based on its interpretation cannot be considered and remedies can only be achieved through amendments to the Act. From a legislative point of view the amendment would be very straightforward.*

5.3. The provision of pensions – the problem of so-called Slovak pensions

The International Treaty on Social Security between the Czech Republic and the Slovak Republic[169] was intended to regulate the entitlements of citizens from both countries with regard to pension insurance following the division of the Czechoslovak Federal Republic. In concluding the Treaty, the parties evidently underestimated the future division of economic and legal development, which had a negative impact on the benficiaries of so-called Slovak pensions. This concerns approximately two thousand people, most of them citizens of the Czech Republic living permanently in the Czech Republic. The core of the problem is (with a little simplification) the following situation:

If, as of 31 December 1992, a citizen worked for an employer with registered office in Slovakia, regardless of whether he/shw worked in a branch in the CR, under Article 20 par 1 of the Treaty between the Czech Republic and the Slovak Republic on Social Security, the relevant insurance company for the calculation and payment of old-age pension (all years worked are considered to have been worked in the Slovak Republic) is in Bratislava. In Slovakia, different rules apply to the calculation of pensions (Act No. 100/1988 Of Coll., on Social Security, formerly valid in the Czech Republic) and the assessment pension allowance is therefore far lower than would be the case under Czech regulations. The pension assessment in Slovak koruna and paid in the Czech Republic is converted according to the Czech-Slovak exchange rate, which reduces it even further.

A variety of modifications to this state of affairs directly affects the rights of pension beneficiaries affected by the division of the fomer Czechoslovak Federation, and potentially threatens their right to adequate material

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[167] Act No. 118/2000 Coll., on the Protection of Employees in the event of the Employer's Insolvency.

[168] This provision (Section 5 par 3) is superfluous as the employer is adequately specified in Section 3a) and the scope of compensation is then stipulated by Section 5 par 1. Par 3 of Section 5 stipulates the definition of an employee who is contrary to Section 3a), and illogically links it to the "decisve period" for the scope of the compensation.

[169] The Treaty is published in the Collection of Laws under no. 228/1993 Coll., on the Treaty between the Czech Republic and the Slovak Republic on Social Security.

security in old age guaranteed under Article 30 of the Charter[170], or the pension allowance issued often does not even reach the minimum sum needed to secure a citizen's basic living needs.

In practice, the Ministry of Labour and Social Affairs systematically applies the Treaty between the Czech Republic and the Slovak Republic on Social Security, as amended by the Addendum effective as of 21 January 1994, under which it is possible in exceptional circumstances to apply an extraordinary solution to the pension entitlement by removing the rigidity of the Act. The following criteria are taken into account for the qualification of a citizen's individual situation behind the use of such a solution:

- as of the date of division of the CSFR (Czechoslovak Federal Republic) the citizen worked for an employer with registered office in Slovkaia, even though the office was on the territory of the present Czech Republic;

- the beneficiary of a pension paid during the existence of the Federal Republic, up to 31 December 1992, moved to Slovakia and following the division of the Federal Republic back to the Czech Republic;

- always had permanent residence on the territory of the present Czech Republic and only commuted to work in Slovakia;

- finds him/herself in an extremely difficult social situation, is powerless, is over 80 or being cared for by a person close to him/her.

The above solution, however, is conditional upon the filing of an application to remove the rigidity of the Treaty and decision of the Welfare Committee of the Ministry of Labour and Social Affairs on the fulfilment of the conditions. This system is therefore relatively complicated with regard to the exercise of a social right to adequate material security in old age, even if rigidity is removed following a positive decision on the pension beneficiary's rights. Failure to meet the aforementioned conditions means that it is impossible under present application practice to enforce this social right.

5.4. Health care

5.4.1. Health care legislation

The year 2002 saw the drafting of new, comprehensive legislation: the Health Care Act, which the Ministry of Health submitted for comments in December 2002. One of the imperatives of the new legislation should be greater rights for patients as active subjects who participate in decisions on their fate and are not just passive objects of health care, in accordance with the Convention on Human Rights and Biomedicine. The new Act should also introduce elements of transparency into health care and create an efficient complaints system, counting on either professional defenders of patients' interests[171], or with the participation of a qualified lay public. It has also proven appropriate to legislate for the rights of especially vulnerable groups (persons suffering mental illness, children, old people etc.) who require a higher degree of protection. The current Act on People's Health Care[172] is in all these respects already clearly anachronistic and inappropriate since it conforms to a paternalistic concept of health care[173].

5.4.2. Possibilities of paying for treatment not paid for by public health insurance

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170 The Charter of Basic Rights and Freedoms No. 2/1993 Coll., as amended.

171 For example by means of the "health ombudsman" at a local level, as exists in Hungary.

172 Act No. 20/1966 Coll., on People's Health Care, as amended.

173 The newly submitted bill on health care brings some improvements, but fails to fully meet the aforementioned requirements. The size of the problem, however, means that a detailed commentary on the bill is beyond the scope of this Report; moreover, it is clear that the bill will be changed substantially in the commentary proceedings at an inter-ministerial level. A detailed commentary would therefore be premature.

In Article 31 of the Charter, the right to health protection is defined as an entitlement to free health care and health aids under the law. This law is the Act on Public Health Insurance[174], which entitles everyone who is insured (i.e. not only a citizen) to health care provision without direct payment in the scope and under the conditions of the Act, and to the issue of medication without direct payment, where this concerns medication paid for under health insurance and prescribed in accordance with the Act. The Act stipulates everything that is or isn't paid for by health insurance from public health insurance. In extraordinary cases, the insurance company pays for health care that is otherwise not paid for, if its provision is the only possible health care given the state of health of the insured party (Article 16). In this case, the provision of health care is dependent on the prior consent of the review doctor, except in situations where a risk might ensue from delay. The review doctor may permit payment from public health insurance for treatment, medication, health care technology or other forms of health care not paid for by health insurance. He/she may also permit full payment of medication otherwise paid for only partially.

When looking into the background to the Act, the Public Protector of Rights found that the review doctor had either not given an opinion on some applications for payment of health care otherwise unpaid for, and the health insurance company's management had directly rejected the application, or the review director had rejected the application, although not on the basis of an assessment of the applicant's state of health and the possiblity of his/her further treatment, but on the basis of internal instructions from the management of the health insurance company. Under the Act, the appropriate review doctor should assess and then approve or reject an application without any influence from the management of the health insurance company.

The right of everyone to the highest possible level of physical and mental health is expressly stated as a right acknowledged by the parties to the International Covenant on Economic, Social and Cultural Rights[175]. Under the Public Health Insurance Act, the purpose of health care provision should be to improve, or at the least to maintain the patient's state of health. In this regard, the treatment for a specific patient should always be evaluated. Health insurance companies, however, also reject applications for payment of health care otherwise unpaid for in situations where other health care possibilities exist, the provision of which is, however, entirely inappropriate for the specific patient in his/her state of health, or would not even ensure that the patient's existing state of health is maintained. The chosen method of treatment should, however, either improve or at least maintain the patient's state of health, and certainly not cause it to deteriorate.

Since under current practice it is evident that the health insurance companies often interpret the cited provisions of the Act on Public Health Insurance only with regard to their own financial situation and interfere with the approval process in an unacceptable way, it would be proper to stipulate a supervisory mechanism for such instances so that patients are not forced to pay for treatment themselves (often up to hundreds of thousands of koruna) and, alternatively, are not deprived of such treatment (if they cannot pay for it) and consequently are at risk of deteriorating health. Patients can then find themselves in a very difficult situation, despite by law participating through their payments in the public health insurance system. By ratifying the Convention on Human Rights and Biomedicine the parties thereto undertook within their jurisdiction to adopt the necessary measures ensuring equal accessibility to health care that is of appropiate quality (Article 3).

5.4.3. Health insurance for foreigners

The public health insurance system fails with regard to foreigners who have other than permanent residence in the Czech Republic. One of the groups of foreigners who aren't included in the public system are the children of foreigners who live long-term in the Czech Republic. This status, however, can lead to situations that are at variance with the rights accorded to children under the Convention on Children's Rights. Upon a motion of the Government Council for Human Rights[176], the Ministry of Health thus prepared a bill on health insurance for the children of foreigners who are resident long-term in the Czech Republic. The bill entitles parents to insure

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174 Act No. 48/1997 Coll., on Public Health Insurance, as amended.

175 Act No. 120/1976 Coll., Article 12 par 1: "*States, signatories to the Covenant, acknowledge the right of everyone to the highest level of physical and mental health.*"

176 Government Resolution No. 546 dated 6 June 2001 (http://racek.vlada.cz/usneseni/).

these children on a voluntary basis in the public health insurance system.[177] *It will, however, remain necessary to resolve at a systemic level the health insurance of other categories, e.g. the spouse in a marriage of foreigners that cares for children full-time and lives in the Czech Republic long-term with the purpose of bringing up a family*

5.5. Right to education

5.5.1. The education of Roma children

A constant subject of criticism by the supervisory bodies of the various international human rights treaties (Committee for Children's Rights, Committee for Social, Economic and Cultural Rights, Committee for the Elimination of Racial Discrimination) and the European Commission's regular evaluation report, not to mention domestic and international non-governmental organisations monitoring human rights, remains the unsatisfactory state of education for children from the Roma community. A target of particular criticism is the fact that a large proportion of pupils from the Roma community go to special schools, which practically – albeit not legally – diminishes their chances of gaining a higher level of education and significantly hinders them in integrating socially. In a situation where qualifications are ever more important in order to gain employment, it may be said that this fact ultimately reduces their chances of finding work on the labour market.

It is impossible to give the precise percentage of pupils from the Roma community attending special schools. Existing, qualified estimates apply to specific schools or localities and it is not possible to generalise from these for the whole of the Czech Republic. Nevertheless, the fact that in many special schools a substantially larger percentage of children come from the Roma community than that for Roma children as a proportion of the population for that year is indisputable. This is a problem that requires long-term, fundamental measures, both legislative and in establishing the conditions to get Roma children into elementary schools and inform parents of the possibilities they have in deciding on their children's education.

In the Czech Republic, pupils attend special schools at the proposal of the school with the consent of parents or upon the parents' request. In both cases, in order for a pupil to be sent to a special school the professional recommendation of a pedagogic-psychological board or special pedagogic centre is required. This should protect the pupil from a possible error in a decision made purely by the parents or director of the school. Roma parents, whose own lack of an adequate education makes it difficult for them to properly appreciate the disadvantages of placing children in a special school, often don't enforce their children's attendance at elementary schools, and are often more susceptible to suggestions that their children be transferred to a special school. The success of pupils from a socially disadvantaged background in the educational process is generally also influenced by their parents' education (including pupils from beyond the Roma community). Moreover, where education focuses on acquiring high levels of information, children from socially and educationally weaker groups may underperform at elementary school even if they don't suffer from any intellectual handicap.

It's clear that most Roma children attending special schools do not have any real mental handicap but suffer other, objective handicaps that place enormous barriers before their success at ordinary elementary schools. Roma children come from a socially weaker, culturally different, less stimulating background; they have a smaller vocabulary and an imprecise understanding of terms (particularly abstract); they have worse social habits and most did not go to nursery school; they don't have conditions conducive to learning at home (in the majority of cases); parents are unable to help them with their homework and don't understand the importance of education; there is also a lack of examples of successful, educated relations. These are problems analogous to those faced by children from poor ghettoes anywhere in the world – problems that pre-school facilities or elementary schools should be able to resolve in a culturally sensitive manner.

The Ministry of Education, Youth and Physical Training (hereinafter in this section the "Ministry") is developing a number of activities in order to improve this situation.

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[177] After a relatively complicated development (repeatedly included in Act No. 48/1997 Coll., and its subsequent removal), the bill was sent 12 February 2003 for repeated inter-ministerial commentary proceedings with the request for comments to be reported within 20 business days (according to the government's legislative rules).

(1) In previous years the Ministry expended great energy in putting together a network of educators-teachers' assistants (Roma pedagogic assistants) in schools. The purpose of the assistants and field social workers is *inter alia* to inform the Roma community of their rights and the importance of education for their children.

(2) Since the 1997/98 school year preparatory classes have been set up for children from socially and culturally disadvantaged backgrounds[178], which in 2002 were newly equipped with the necessary school needs and classroom aids so that they can fulfil their vocation as far as possible. Previous experience shows that the best approach is to establish these preparatory classes as part of the elementary schools. Despite this, in many places they form part of special schools, which seems problematic given their primary aim, i.e. to prevent the unnecessary inclusion of Roma children in special schools. A class of this type in a special school has meaning only as long as the children who attend them go on to attend an elementary school. By the end of 2003 an assessment will have been made of the effectiveness of preparatory classes at elementary and special schools with regard to the further education of Roma children.

(3) Since 1999 an experiment has been conducted termed the Reintegration of Roma pupils from special schools to elementary schools, realised Step by Step in five localities. The chief intention was the systematic individualisation of teaching, a condition of which was the participation pf the educator-teacher's assistant (Roma pedagogic assistant) from the Roma community, the involvement of parents and the community in the educational process, and training teachers in the methodology of multicultural teaching. It transpired that more than half of Roma pupils at special schools would, with a greater or lesser degree of support, be successful at elementary schools. The experiment was comprehensively assessed in November 2002 after three years and the results will be used in the Ministry's future planning.

(4) The Ministry is also closely concerned with elementary schools which have a high percentage of Roma pupils (sometimes referred to as community schools) which occur more or less spontaneously in areas with a high concentration of Roma people. This tendency has a number of negative features and the emergence of such schools most definitely cannot be considered a positive development; nevertheless, due to the high concentration of children from socially and culturally disadvantaged backgrounds, the Ministry if prepared to react adequately to this situation and to provide the schools with support. In the calendar year 2003 the Ministry is launching an experimental project for schools with full-day program, i.e. ensuring complete, full-day school operations and school facilities.

Nevertheless, in spite of all the Ministry's efforts, the overall situation remains unsatisfactory. A major problem is the low preparedness of certain elementary schools to provide pupils from the Roma community with education in such a way that they can benefit from it in the same way as pupils from the majority group and be educated up to their personal maximum. Roma children often finish school with incomplete elementary education and their prospects for further education are no better than those completing special school. Another problem is the anxiety felt by school directors over creating the conditions for educating Roma children with regard to the possible change in the social make-up of their school's pupils.

The question of educating pupils from Roma communities is also affected by the fact that the schools are no longer run by the Ministry but in the majority of cases by the local authorities. In some places, preparatory rocniky years for children from socially and culturally deprived backgrounds are only provided with difficulty due to the lack of interest on the part of the authorities. There are also reasons for concern in relation to the differences of approach on the part of regional authorities when it comes to financing schools with a majority of Roma children. In order that a school be able to react to the specific educational needs of such pupils, in specific cases it will have a smaller number of pupils in classes and therefore the teaching will be more demanding in financial terms. Some authorities, however, refuse to approve applications for an exception to the number of

[178] In 2002 the Ministry spent more than CZK 30 million on running preparatory classes with 1,467 children.

pupils and payment for the above-average, non-investment costs resulting therefrom, which the authority must guarantee the schools.

The school legislation under preparation (bill on primary education) assumes the legal cancellation of special schools and their replacement with elementary schools, although the pupils of these schools should continue to be educated in classes for children with specific educational needs. This represents progress of a sort, but in itself cannot be regarded as a satisfactory solution to the situation. Such a solution would not simply ensure the attendance of Roma children with different educational needs in the normal classes of an elementary school without any assistance and support or specific preparation. School educational programs should permit the required degree of individualization and internal differentiation in the educational process (particularly regarding social and cultural disadvantages), without however mirroring the current divided system of special schools. The preconditions for success in this area are chiefly the establishment of a system of prompt care and the expansion and improvement of existing forms of individual assistance in elementary schools, i.e. above all the activities of educators-teachers' assistants (Roma pedagogic assitants), as well as the systematic preparation of pedagogues for work with children from sociall and cultrually disadvantaged backgrounds and ethnic minorities.[179] A systemic solution of this sort to the problem of Roma education should be considered one of the absolute priorities in the protection of human rights, as for members of Roma communities education is the beginning to the real implementation of all other rights.

The attempt to improve the education of members of the Roma community also includes initiatives in high school education, i.e. chiefly the program to support Roma pupils at high school, which got under way successfully in 2002.

5.5.2. Education of foreigners

Under the Convention on Children's Rights[180], children have the same right to receive education as the citizens of the Czech Republic. Despite this, in some cases the need has been clear to create further conditions by which to implement this right. In 2001, the Ministry prepared an Integration Policy Plan to guarantee education for foreigners, not only in elementary schools but also in schools of a higher level. In 2002, the Ministry also prepared an Action Plan for the Education of Foreigners. The plan regulates for example the criteria for exams from Czech, data collection in the statistical information system which would provide an overview of foreign pupils according to citizenship, mother tongue and category of residence as well as ongoing monitoring by means of thematic inspections of education for foreigners.

The Ministry monitors on an ongoing basis the education of foreigners in elementary schools and high schools, in specialist high schools and universities and in conjunction with the UTV and the Czech Statistical Office makes statistical researches.[181] In all, 3,110 foreigners were educated in nursery schools, 10,406 foreigners in elementary schools and 2,938 foreigners in high schools and training establishments. The majority of these foreign pupils live in the Czech Republic on a long-term basis, have a good command of Czech and do not encounter any serious problems. A problem area, however, was the education of the children of asylum seekers, generally attending transit elementary schools in the vicinity of the asylum facilities. The parents in particular, for whom the Czech Republic was the target country, did not show any interest in the progress and results of the education. Teachers had to deal with truancy, lack of interest on the part of pupils in their education, disciplinary problems and problems resulting from an inadequate knowledge of Czech as well as a different social and cultural background. The Ministry of Education, Youth and Physical training responded to the

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179 In greater detail, the question of education of Roma pupils and possible affirmative measures is dealt with the Roma Integration Policy Concept approved by Government Resolution No. 87 dated 23 January 2002 (http://racek.vlada.cz/usneseni/)

180 The Convention is published in the Collection of Laws under No. 104/1991 Coll.

181 The Czech School Inspection found that every fourth elementary school (24.6 %) and every sixth to seventh high school (15.6%) provided education to foreigners. Foreigners came from 63 states. More than half of foreigners (54.2%) originally lived in countries of the former Soviet Union, particularly the Ukraine, in Russia and in Kazakhstan. Large numbers of foreigners came from Vietnam (12.1%) and Slovakia (9.4%). Almost half of foreigners (533 or 46.9%) are educated in Prague.

situation with a new methodological instruction for the school attendance of asylum seekers[182], which should provide better conditions for the education of these children and improve the work of pedagogues in all elementary schools with a large contingent of children of asylum seekers.

5.5.3. Right of judicial review of decision not to enrol for study at university

By its decision of 26 March 2002, the Constitutional Court of the Czech Republic overruled the decision of the Regional Court in Brno[183] as being contrary to the right for just procedure according to Article 36 pars 2 and 4 of the Charter and Article 6 par 1 of the European Convention on Human Rights. By the decision, the Regional Court in Brno had suspended proceedings to review the decision of the Rector of the Masaryk University, which confirmed the decision of the Dean of the Law Faculty of Masaryk University on non-enrolment for study in the MA study program Law and Legal Science.

Whereas the Chairman of the Senate of the Regional Court in Brno, in his statement for the proceedings before the Constitutional Court, referred to the grounds for the contested decision, by which proceedings before the Regional Court in Brno were suspended because the action challenged a decision that had been excluded from review[184], the Constitutional Court considered the constitutional complaint with regard to practice and theories of confirmed general approaches for the review or exclusion from review of the University Rector's or Faculty Dean's decisions on non-enrolment for study at university.

The Constitutional Court stated "*...that in the matter under consideration, the Rector of Masaryk University or the Dean of the Law Faculty of Masaryk University decided in the position of a body of public administration, as understood under Article 36 par 2 of the Document…"* and specified part five of the Civil Procedure Code because the decision of the Rector or Dean had the character of a decision by other legal persons, if the law entrusts them with decision-making powers on the rights and obligations of private individuals and legal entities in the are of public administration. The Constitutional Court of the Czech Republic went on to state that under the Universities Act[185], decision-making "*... cannot be subordinated to generally listed administrative acts in Section 248 pars 1 and 2 of the Civil Procedure Code... "* where *" ...similarly Annex A ... expressly does not stipulate the impossibility of reviewing such a decision ... theory and practice insufficient for express legal exclusion from review under the new Act states that in such a case review is possible."* In conclusion, the Constitutional Court added that neither did the Universities Act exclude judicial review and thus it was not a matter of the regulation of non-verifiability under a special Act, as the wording of the Civil Procedure Code required.

5.6. Housing

5.6.1. Rent regulation for apartments

Neither in 2002 was it possible to achieve a turn-around in the regulation of rent for apartments, under which, according to previous legal regulations, regulated rent, or specifically regulated rent (so-called "old rent") applied; on the other hand, the situation came to a head at a political and legal level. As the 2001 Report stated, it did not prove possible in 2001 to adopt an Act that would react to Finding No. 231/200 Of Coll., of the Constitutional Court, which repealed Decree No. 176/1993 Of Coll., on Regulated Rent for Apartments and Payment for Actions Perfomed in relation to the Apartment's Use, as amended (with deferred time-limit for the adoption of a new legal regulation by 31 December 2001). Instead, as of 28 November 2001, the Ministry of

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182 Ref. No. 10149/2002-22.

183 Decision ref. No. 30 Ca 480/2000-35 dated 7 February 2001.

184 Appendix A to the Civil Procedure Code contained a list of those areas in which decisions are not subject to judicial review even regarding their legality. As of 31 December 2002, however, the Constitutional Court repealed the whole of Section Five of the Civil Procedure Code on Judicial Procedure by finding no. 276/2001 Coll. (see chapter 3.1.2. of the 2001 Report). All references henceforeward on the then legislation of judicial procedure are in the past.

185 Act No. 111/1998 Coll., on Universities, as amended.

Finance issued price assessment no. 01/2002[186], which came into effect 1 January 2002. This assessment, together with the connected new assessment no. 06/2002[187], assumed in its essential points the regulation of rent in the form of a decree that the Constitutional Court cancelled as unconstitutional. This meant that the matter was again returned to the Constitutional Court, which received a proposal from the Public Protector of Rights for the cancellation of the assessment no. 01/2002, issued by the Ministry of Finance, concerning the specification of a maximum price for the rent of an apartment and services provided with the use of the apartment; and subsequently also a proposal from a group of 18 senators for the cancellation of this assessment in the section relating to rent, and for the cancellation of Section 10 of the Prices Act, under which the assessment had been issued. The Constitutional Court decided to deal with both matters together under joint proceedings and, with regard to the similarity in content of both assessments, admitted the inclusion of a proposal for cancellation of assessment no. 06/2002.

By its decision of 20 November 2002, the Constitutional Court cancelled the Ministry of Finance's assessment no. 06/2002, while it rejected the proposal to cancel Section 10 of the Prices Act[188]. In its evaluation of the constitutional basis of price assessment 06/2002, the Court stated that the Minister of Finance was, for the third time (firstly in the form of a Decree; secondly and thirdly by means of a price assessment), trying to implement rent regulation with practically the same content as that which had already been deemed unconstitutional. Contrary to Article 89 par 2 of the Constitution, the opinion of the Constitutional Court had thus clearly not been respected. The Constitutional Court considered the issue of assessment no. 06/2002 (which replaced assessment 01/2002, meaning that the proceedings already under way on the constitutional basis of assessment no. 01/2002 had to be suspended) as an attempt to impede the performance of the constitutional judicial system.

In its finding, the Constitutional Court confirmed its opinion, expressed in finding no. 231/200 Of Coll., that landlords' rights of ownership had been breached. However, it again returned to the objection to the breach of parity of rights, to which in 2000 it had not paid sufficient attention, and came to the conclusion that the application of the existing regulation also resulted in a breach of parity and in discrimination, since the property of one group of owners did not legally have the same content as the property of other landlords. With the course of time and the fact that the situation remains unresolved, the discriminatory features of the regulation continue to worsen. The Court thus stated that assessment no. 06/2002 was at variance with constitutional order, the Czech Republic's international obligations and laws, both regarding their content and the corresponding legal forms.[189]

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[186] Assessment of the Ministry of Finance No. 01/2002 dated 28 November 2001, which gives a list of goods with regulated prices.

[187] Assessment of the Ministry of Finance No. 06/2002, which stipulates the maximum rent for an apartment; maximum price for services provided for the use of an apartment and the rules for the materially regulated rent in a flat and also amends assessment of the Ministry of Finance no. 01/2002. The assessment should be effective from 15 November 2002 until 30 June 2003.

[188] Constitutional Court Finding No. 528/2002 Coll., dated 20 November 2002. The Consitutional Court justified rejection of the petition to repeal Section 10 of the Prices Act on the grounds that the petitioner would have to prove the unconstitutional nature of the legal provision of price regulation for all legal regulations that it covers; i.e. it would have to prove that any regulation made under this form is unconstitutional, which however it did not do.

[189] According to the Constitutional Court there was a specific "*breach of Article 2 par 2 of the Charter and Article 2 par 3 of the Constitution relating to Article 1, Article 4 par 3 and 4a and Article 11 par 1 of the Charter and Article 1 of the Supplementary Protocol to the Convention relating to Article 14 of the Convention, when the Ministry of Finance failed to respect its legally stipulated competence in the area of price regulation and interfered in regulation reserved by Acts. Through its action it also discriminated against a particular group of landlords without ensuring "reasonable relation" thereto between the means used and the monitored objective with regard to the period following 1989. In also exceeded the competence of the Ministry of Finance by regulating price decisions and relations and defining the terms which should be reserved by Acts and procedural regulations issued thereto. It thereby also breached Articles 1 and 15 of the Constitution which stipulate the principle of a democratic legal state abd the constitutional division of powers. Because through its content and function assessment no. 06/2002 replaced the legal regulation the Constitutional Court was compelled to cancel it with regard to its content and form.*

The cancellation of the price assessment led to increased uncertainty among all interested parties and to a variety of opinions on the legal situation that ensued, i.e. whether it made it possible to seek an increase in rent, e.g. through the courts, or whether, on the other hand, any increase in rent would be excluded until the adoption of new legislation. In this situation, the Government resorted to a Decree[190] that stipulated a price moratorium on rent for a period of three months.

The problem is highly politicised and is caricatured in the mass media as a conflict between rich (the landowners) and poor (tenants). This, however, is essentially misleading as many of the ”protected” tenants are not in need of social protection, while other tenants actually face social problems as a result of this regulation (due to the deformation of the market for apartments), as well as some landlords. In the long-term, it is in the joint interest of both tenants and landlords to establish a functioning market for apartments without differences caused by across-the-board rent regulation in part of the housing stock; absolute deregulation is definitely not a suitable solution, instead the current form of regulation should be replaced with a proper form of protection for socially vulnerable tenants.

The adoption of a new Rents Act is therefore one of the most urgent tasks, not only because it is a pre-requisite for the establishment of a functioning market for apartments but also now because the whole situation concerning the legislation of rent regulation results in the Constitutional Court's findings either not being respected or openly flouted.

5.6.2. Deteriorating housing conditions for socially vulnerable citizens

The municipal housing stock originated in the transfer of state property to the ownership of the municipality. The transfer of apartments into the ownership of the municipality was not connected with any conditions concerning the means of operating this housing stock. Only the Act on Municipalities stipulates that the municipality is responsible for developing social welfare and satisfying the needs of its citizens. This fact, together with the regulation and deregulation of rent, means that the function of the municipal housing stock is unclear. Nowhere is it stated whether or under what conditions the municipal housing stock should fulfil its social function. Neither does other current legislation include a definition of so-called ”social housing”, often the only means for socially vulnerable families to obtain adequate housing. In response to this situation, the Ministry for Local Development prepared a Program to Support the Construction of Apartments for Rent and a draft Government Decree to subsidise the construction of apartments for rent for households with middle-level and low incomes.

The municipalities, however, often reduce the problems associated with housing for certain categories of people to a mere reduction in the quality of housing. These are referred to as ”bare apartments” and generally cover accommodation below the normal level and for disproportionately high prices over the normal regulated rent, and without any corresponding solution of the overall social situation of people through standard instruments of social policy (non-resolution of debts, absence of social work with families). *This blindly repressive social (or rather asocial) policy on the part of some local authorities can only have one effect i.e. to worsen the social distress and sense of hopelessness of these wretched people, most of whom come from the Roma community (see also Chapter II./7.3.3. of the Report).*

The Czech state has still fully to address the situation of tens of thousands of homeless people, including mothers and children, who as a result of unfortunate circumstances are without shelter. Existing capacity of so-called asylum accommodation is quite insufficient for these social cases. *The provision of shelter and housing for homeless people requires fundamental planning in order for this problem to be resolved.*

5.6.3. Contributions to mortgage loans

With the aim of helping young people find housing, the Government adopted a decree regulating the provision of contributions for mortgage loans to persons younger than 36[191]. Unlike previous loan support policy the order

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190 Government Order No. 567/2002 Coll.

191 Government Order No. 249/2002 Coll., on the Conditions for Providing Mortgage Support to Persons under 36.

makes it possible to provide contributions for the acquisition of older housing, although on the other hand it openly discriminates on the basis of age and can therefore be considered controversial from a constitutional point of view[192]. Moreover, limiting support simply on the basis of age – and not any other objective social situation (e.g. whether the family has children, size of income etc.) – is also illogical with regard to meeting the objectives of the Housing Policy Plan. *The regulation should therefore be replaced by a different form of mortgage support which would be more flexible, fairer and would not give rise to charges of discrimination.*[193]

5.7. Social rights of disabled people

5.7.1. Adopted legislation and practical measures

According to many representatives of disabled people, the development of rights in this category of citizen has stagnated somewhat in recent years. This has evidently been caused *inter alia* by a certain reduction in the activities of non-government, non-profit organisations operating in this area.

Despite a variety of legislative measures (see 2000 Report), significant problems remain with regard to employment, wheelchair access and the quality of social services. A certain fall in interest is also apparent on the part of the public and mass media on the question of the disabled, a fact that is reflected in the status that this matter is given by public administration.

Other measures to benefit the disabled which were implemented for the first time in 2002 include the following changes:

(1) On the basis of proposals made by memebers of parliament, an amendment to the Employment Act[194] was adopted that attempts to raise the motivation to employ disabled people. Changes were introduced by the Act in the way that the obligation to employ citizens with altered work capacity is met. The changes simplified the calculation and made it possible for more employers to fulfil their obligation through the consumption of products and thereby indirectly to increase the numbers of new employment positions.

(2) Section 24a, newly inserted in the Act, stated with effect from 1 January 2002 the conditions by which contributions are to be paid to employers who employ more than 50 per cent of employees with altered work capacity in their workforce. A contribution entitlement was stipulated for these employer subjects[195]

(3) The amendment to the Income Tax Act[196] increased the amount by which the employer can reduce tax for each employee with altered work capacity (from the previous CZK 9 thousand to CZK 18 thousand) as well as for those with severe disabilities (from CZK 32 thousand to CZK 60 thousand).

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[192] The Public Protector of Rights looked into the age limits for the loan and gave a legal opinion following the request of a citizen of the CR for these "discriminatory" conditions to be abolished. In his opinion, however, the Public Protector of Rights had no material objections to the age condition to acquire an advantageous loan limiting the target group; he only advised the government to define the recipients of the funds from the State Fund for Housing Development by means of a higher legal regulation than a government order. ČMKOS supports this measure as a measure whoe objective is "to reduce the disadvantages of this group of the population". These opinions overlook the fact that people who are in no way disadvantaged are also supported by universally available funds.

[193] According to the plan of legislative work, the Ministry for Local Development should submit an amendment to Act No. 211/2000 Coll., on the State Fund for Housing Development by 31 March 2003; at the time of writing the Report, comments proceedings were being held in which the opinion of the Public Protector of Rights concerning the need to regulate mortgage support through a higher legal regulation than government order was included as a fundamental comment

[194] Act No. 474/2001 Coll., which amends Act No. 1/1991 Coll., on Employment, as amended.

[195] The total amount spent in 2002 on this contribution was CZK 41.1 million.

[196] Act No. 99/2001, which stated the full wording of Act No. 586/1992 Coll., on Income Tax.

(4) Corporate entities employing at least 50 per cent of the overall workforce with altered work capacity are eligible to a further contribution of an investment character and returnable financial assistance[197].

5.7.2. Planned changes to social rights for the disabled

Another improvement in the employment of people with altered work capacity should result from the draft amendment to the Employment Act. This proposes removing the term ”citizen with altered work capacity”, which should be considered anachronistic and inappropriate. It also proposes broadening the instruments for work rehabilitiation and proposes a new form of material stimulation for employers who create new employment positions for disabled people. In the proposal, work rehabilitation is defined as an instrument of employment policy in relation to a person with a disability, to equalising their opportunities on the labour market and as a part of a collection of activities and measures leading to full integration of disabled people in the work process. It takes place on the basis of an individual plan which stipulates procedures that will maximise the efficiency of the process. In addition to advisory activity, work preparation, placement, the creation of suitable conditions and material stimulation for employers, the services may also be used of another person who provides support for people with severe disabilities through assistance or looking for an employment position. Work rehabilitation of this type conforms to the definition stated by the Standard Rules for Equal Opportunities for Private Individuals with Disabilities issued by the General Assembly of the United Nations.

Positive changes are also contained in the draft plan for targeted rehabilitation, which is being prepared by the Ministry of Labour and Social Affairs. The plan addresses the access of disabled people to all areas of rehabilitation with the aim of optimising the level of their state of health, independence in their personal lives and preparation for suitable employment. The proposed plan is derived from international documents.

The changes under preparation also include a Social Services Act, which stipulates the standards for social services and at the same time allows for the more active participation of disabled people in making decisions on their own destiny by means of a contribution to care. This should also speed up the development of alternatives to institutional care. It is clear that the transfer of decision-making powers (or a large part thereof) to disabled people can only be successful if they are guaranteed standards of care under the Social Services Act. If this were not the case there would be a risk that this vulnerable category of people would be exposed to the possibility of worse care.

6. Women’s rights

6.1. Updating Government Priorities and Procedures to Ensure Equality between Men and Women

A national action plan to secure equal opportunities for women and men is contained in the document Government Priorities and Procedures to Ensure Equality between Men and Women (hereinafter ”Priorities”), which is prepared by the Ministry of Labour and Social Affairs as the government-assigned coordinator for the agenda of sexual equality.[198] It contains around thirty measures intended to improve matters in this sphere; their fulfilment is assessed yearly by the Government. Assessment also involves updating the measures for the following year.

Since their updating in 2001[199], a further measure has been introduced which requires individual ministries to draw up their own priorities and procedures to ensure equality in their own departments. These should more accurately take into account the targets and needs of the specific ministries. The procedure is one of the first cases where so-called gender mainstreaming has been used to ensure equal opportunities for men and women.

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197 CZK 113 million was set aside for this subsidy in 2002.

198 The first ”Priorities” were approved by the government through Resolution No. 236 of 8 April 1998 (http://racek.vlada.cz/usneseni/)

199 Government Resolution No. 456 dated 9 May 2001, on the Comprehensive Report on the Fulfilment of the Government’s Priorities and Procedures in ensuring Equality between Men and Women in 2000 (http://racek.vlada.cz/usneseni/)

The method means that the requirement to create and maintain equality of opportunity is automatically included in every activity of public administration.

The updating of the Priorities in 2002[200] added further measures. One of the most important is the requirement for all members of Government to continue in educational activities in the sphere of human rights with regard to equal opportunity for men and women and the methods designed to achieve this equality. All planning employees with decision-making powers must attend the educational activities. All members of the Government were also required to perform an analysis of the current state of sexual equality in their ministry's material affairs. The Minister of Education, Youth and Physical Training was given the important task of preparing an analysis of teaching systems, textbooks and teaching aids and, on the basis of such analysis, to assess how these help create and reproduce stereotypes and prejudices. The analysis should include all school levels and types of education, including the training of future pedagogues and pedagogic employees and their further education.

6.2. Research projects

In 2002, the Ministry of Labour and Social Affairs conducted research into public opinion in order to establish the public's standpoint on the question of equal opportunity. This showed that the vast majority of Czech society acknowledges the principle of equality of the sexes to be just, although traditional stereotypical opinions appear in its practical application. The research also established that in order to monitor developments in this area, it would be appropriate to repeat the research in following years[201].

In 2000, the Ministry of Labour and Social Affairs asked the Work and Social Affairs Research Institute to conduct an analysis into the differences in the incomes of men and women. Statistically, the difference in income between men and women in the Czech Republic fluctuates around 25 per cent to the detriment of women; however, because the causes for this difference do not lie exclusively in discrimination, it was necessary to analyse these causes and find the appropriate methods to measure the proportion of discrimination in this situation. The results of the analysis were passed to the Ministry in September 2002. A preliminary conclusion is that it was possible to define qualitative factors that play a part in the salary differential. These are the polarisation of dividing men and women's work into economic branches with high (men) monthly salaries on one hand and low (women) on the other, a higher level of classification for work performed by men in the standardised tariff levels, higher hours worked and overtime on the part of men, interruptions in women's careers caused by looking after children etc. It has not yet been possible, however, to quantify individual factors due to a lack of gender statistics.

6.3. Domestic violence

No progress was made in 2002 in legislation on domestic violence. Non-government, non-profit organisations continue to point out that under present legislation, victims of domestic violence have to resolve all the consequences of the fact that either she or her children have suffered violence. Inadequate criminal legislation is only one of many problems. Irrespective of the fact that culprits are rarely prosecuted, the victim is moreover often exposed to secondary victimisation due to the insensitive approach of bodies active in the criminal proceedings. At present it is not the culprit but the victim who, in the majority of cases, is forced to leave the joint residence and, in a far more vulnerable social situation, often also has to care for the children. Cases of domestic violence thus lead to a conflict between the interest of the state in protecting the family, health and life of the victim (or their children) and the interest in protecting the privacy and property of the culprit. Nevertheless, it is unacceptable that the victims of domestic violence should bear the results of the confusion of priorities in this conflict.

The year 2002 saw progress in the fight to combat domestic violence with a model, inter-disciplinary project to create a legal framework and methodological procedures to introduce inter-disciplinary teams combining health,

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200 Government Resolution No. 486 dated 15 May 2002 on the Comprehensive Report on the Fulfilment of the Government's Priorities and Procedures in Ensuring Equality between Men and Women in 2000 (http://racek.vlada.cz/usneseni/)

201 The results of the research are available to the public on the website of the Ministry of Labour and Social Affairs: http://www.mpsv.cz.

social and police assistance in revealing and prosecuting cases of domestic violence. The project, which at present is being conducted under the leadership of the Ministry of the Interior, has been developed by a team of public administration experts and independent organisations involved in helping victims of domestic violence. The project's findings, which should be available at the beginning of 2004, will include proposals for practical measures and strategies intended to provide a comprehensive solution to the problem of domestic violence in the Czech Republic.

It is essential that a comprehensive solution to the problem of domestic violence is sought that would include both legislative measures (in both criminal and civil law) and changes in the procedures and strategies of public adminstration bodies. As far as legislative changes are concerned, inspiration can be found in contemporary developments in EU countries, e.g. Austria or Germany (the possibility of an injunction banning contact etc.). Outside the legislative sphere, possible organisational measures include the implementation of social programs to help victims of domestic violence, the creation and training of specialised police units to deal with this problem, systematic work with key professional groups and last but not least involving the public at large.

6.4. Human trafficking

In November 2002, a project was officially launched in the Czech Republic for the prevention, suppression and punishment of human trafficking, especially of women and children. The project was proposed for the Czech Republic and Poland as part of the Global Program for the Fight against Human Trafficking by the Centre for International Crime Prevention as part of the Office of the UN for the Control of Drugs and Crime Prevention. The Ministry of the Interior guarantees the project on behalf of the Czech Republic. The program's objective is, among other things, to collect data on human trafficking in the Czech Republic, assess the efficiency of measures adopted and judge the level of institutional cooperation in the countries of origin and the transit and target countries. To support this data a plan will be developed for an efficient system for the protection of victims/witnesses of human trafficking in the Czech Republic. Its application should improve the prevention, investigation and prosecution of this criminal activity. The project will compare the Protocol on the prevention, suppression and punishment of human trafficking, especially with women and children, which supplements the UN Convention on the fight against international organised criminal activity, with current internal legislation and will then assess the readiness of the Czech Republic to ratify it.

The question of human trafficking also profoundly affected the amendment to the Criminal Code [202] through Act No. 134/2002 Of Coll., which changed the definition of the matter at issue in a criminal act of trafficking withwomen under Section 246. The new definition introduces the term "human trafficking for sexual purposes" and stipulates criminal prosecution irrespective of whether the victims of trafficking are women, men or children. Unlike the previous regulation, which only considered trafficking to mean trafficking from the Czech Republic to abroad, the new definition also makes trafficking in the opposite direction a criminal offence. And yet, under international law as outlined in the Protocol, the new definition also has shortcomings. It does not apply to trafficking inside a state and does not cover trafficking for another purpose than sexual relations. In international documents, the purpose of trafficking is not restricted to sexual abuse but also covers marriage trafficking, forced work in shops, restaurants or in so-called sweatshops or households. A characteristic feature in this respect is not the type of work performed but the conditions under which the trafficked persons are compelled to perform the work. As the work is generally illegal and unregulated the working conditions are often comparable to slavery[203]

The Protocol also contains undertakings for the signatory states concerning the protection of and help for the victim. The major questions to remain unresolved relate to the sojourn in the Czech Republic of victims of human trafficking and the conditions under which they should be provided with health care and social security. Proposed solutions to these problems should be contained in comprehensive material on human trafficking,

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202 Act No. 134/2002 Coll., amending Act No. 140/1961 Coll., the Criminal Code, as amended.

203 Article 1 par 1 of the Convention on Slavery (1926): "*Slavery is a state or relation of a person over whom are exercised some or all elements of ownership*".

which the Ministry of the Interior submits to Government in conjunction with the representative for human rights.

7. Discrimination

7.1. Changes in the law

As the 2001 Report stated, the initial breakthrough in the status of victims of discrimination came with the amendment[204] to the Civil Procedure Code, which transferred the burden of proof from the victm of discrimination to the person responsible for discrimination. Under the emendment, however, the transfer of the burden of proof was only restricted to cases of sexual discrimination in labour-law relations. Persons discriminated against for other reasons or in another area still have to prove this fact before a court. Their status materially improevd following another amendment to the Civil Procedure Code[205], adopted in 2002, which expanded the transfer of the burden of proof in the labour law sphere to include other reasons for discrimination: racial or ethnic origin, religion, faith, world opinion, disability, age or sexual orientation. Following the 2002 amendment, the person responsible for discrimination must prove that he/she wasnot guilt of such discrimination, including if it happened during the provision of health and social care, approach to education and professional training, approach to public contracts, membership in employee or employer organisations and membership in professinal and leisure associations and in the sale of goods in a shop or in providing services, although only if the discriminated person complains of racially or ethnically motivated discrimination. Although the Civil Procedure Code covers the transfer of the burden of proof in accordance with EU directives[206], the question remains whether the regulation is sufficient. For example, a person discriminated against during the provision of services for reasons of disability will continue, in the event of a court action, to have to prove that the accused committed the discriminatory action.

Legal protection against discrimination is best provided for in the sphere of labour law. In addition to the Labour Code, a provision for protection against discrimination was included in 2002 in the newly adopted State Employees Act,[207] which makes equality of treatment for all state officials obligatory and prohibits any form of discrimination in service relations for a wide variety of reasons. The Act thus expressly regulates the right of a victim of discrimination to relief from the discriminatory behaviour, elimination of the consequences of such behaviour and the right to commensurate compensation. If the state employee's dignity or authority in his/her function have been seriously compromised, he/she is entitled to financial compensation for non-material loss. Here also the burden of proof is transferred: under the Act, in proceedings on a person's function, the service authority shall consider as proven the allegations that the participant of the proceedings was directly or indirectly discriminated against for reason of sex, nationality or race, unless the proceedings indicate otherwise.

The Act on Professional Soldiers also contains anti-discriminatory provisions prohibiting discrimination for a number of reasons. These were expanded by the amendment[208] of 2002 to include reasons of nationality, pregnancy or motherhood or because the soldier is breastfeeding. The draft amendment to the Act on Basic or Reserve Military Service and Military Training and certain Legal Relations of Soldiers in the Reserves[209] also contains similar anti-discriminatroy provisions. In the end, however, Parliament only approved a small amendment, from which these provisions were removed.

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[204] Act No. 30/2000 Coll., which amends Act No. 99/1963 Coll., the Civil Procedure Code, as amended, and certain other acts

[205] Act No. 151/2002 Coll., which amends certain acts in relation to the adoption of the Civil Procedure Code

[206] Council Directive No. 2000/43/EU, which introduces the principle of equal treatment of persons irrespective of their racial or ethnic origin, and Council Directive No. 2000/78/EU, which established the general framework for equal treatment in employment and professions

[207] Act No. 218/2002 Coll., on the Service of State Employees in Administrative Authorities and on the Remuneration of these Employees and Other Employees in Administrative Authorities

[208] Act No. 254/2002 Coll., which amends Act No. 221/1999 Coll., on Professional Soldiers, as amended

[209] Act No. 220/1999 Coll., on the Course of Basic or Reserve Service and Military Training, as amended.

Following the example of the Civil Procedure Code, the Administrative Procedure Code[210] also allows a participant who alleges that he/she has been discriminated against by an administrative body to be represented by a civil association, if he/she demands judicial protection. In the same spirit, the Act on Consumer Protection[211] was also amended to make it possible for an association to file a petition to begin court proceesdings preventing unlawful action in relation to the protection of a consumer. In both cases the possibility of representation is limited only to civil associations whose activities as stated in their statutes include protection against discrimination.

Legal protection against discrimination should be strengthened by the draft[212] amendment to the Act on Operating Radio and Television Broadcasting[213], which introduces a new obligation for the broadcasting operator not to broadcast advertisements or teleshopping that attack religous or political convictions or advertisments or teleshopping that discriminates on the basis of sex, race, skin colour, language, national or social origin or membership of a national or ethnic minority.

Partial changes have also been effected in criminal law. In the past, isolated cases occurred in judicial practice where the term ”race” or ”racial” was interpreted very narrowly and racially motivated attacks directed chiefly against members of the Roma minority weren't considered to be racially motivated during criminal proceedings, despite clearly having a racial subtext.[214] This fact was one of the reasons that led to a new amendment[215] to the Crimnal Code. This expands the matter at issue of criminal acts of violence against a category of the population and against an individual (Section 196), slandering a nation, race and conviction (Section 198) and a criminal act of inciting hatred against a group of persons or restricting their rights and freedoms (Section 198a), harming someone's health (Sections 221-224) and murder (Section 219), so as to provide protection under criminal law against serious attacks motivated by hatred against an ethnic group. The amendment to the criminal code also stipulates stricter prosecution of a criminal act inciting hatred against a category of persons or restricting their rights and freedoms where this is committed through the mass media, including publicly accessible computer network, or where the culprit actively takes part in the activity of a group of organisations or associations that avow discrimination, violence or racial, ethnic or religous loss of freedom. Perpetrators of this criminal act may be imprisoned for from six months to three years.

7.2. Proposal for a comprehensive legislative solution to protect against discrimination

Despite changes for the better, legislation for protection against discrimination remains inadequate and piecemeal. The CR's criminal legislation still does not define direct and indirect discrimination; in some areas the legislation of protection against discrimination simply does not exist; in other areas the provisions are only declaratory or extremely general. The enforceability of the prohibition on discriminatioon is inadequate, as is legislation authorising a victim of discrimination to obtain satisfaction or receive compensation for loss caused by discriminatory behaviour. From experience it is also wholly evident that in the CR no institution addresses the question of equality of treatment and protection against discrimination in a systematic manner; from free assistance to victims of discrimination on one side through mediation, independent studies and reports and the fulfilment of educational and training commitments on the other. For the above reasons, the Government

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210 Act No. 150/2002 Coll., Administrative Procedure Code

211 Act No. 634/1992 Coll., on Consumer Protection, as amended

212 Government Resolution No. 942 of 2 October 2002 on the bill to amend Act No. 231/2001 Coll., on Operating Radio and Television Broadcasting and an amendment to other Acts, in the wording of Act No. 309/2002 Coll. (http://racek.vlada.cz/usneseni/)

213 Act No. 231/2001 Coll., on Operating Radio and Television Broadcasting, as amended

214 For example the verdict of the District Court in Hradec Králové of 20 November 1996, ref. No. 3 T 196/96, which in its reasoning stated ”*it is necessary to distinguish three large racial groups – Indo-european, Negro-australian and Mongolian; citizens of Roma extraction are, like citizens of Czech nationality, members of the same Indo-european race. Violent attacks by culprits who are of the same race cannot therefore be prosecuted as racially motivated behaviour”.* (Machalová, T., and collective: *Human Rights against Racism*, Doplněk Brno, 2001)

215 Act No. 134/2002 Coll., which amends Act No. 140/1961 Coll., the Criminal Code, as amended

asked[216] the Deputy Prime Minister and the Chairman of the Legislative Council to draft a material draft for an Act for Protection against Discrimination. The material draft on Ensuring Equal Treatment and Protection against Discrimination was prepared during 2002[217]. The bill implements Council Directives No. 2000/43/ES, which sets forth the princpal of equal treatment between persons irrespective of their racial or ethnic origin, No. 76/207/EHS, which sets forth the principal of equal treatment for men and women in respect to the approach to employment, professional training and employment procedure and work conditions, and No. 2000/78/ES, which stipulates the general framework for equal treatment in employment and professions.

The material draft legislates for equal treatment and protection against discrimination for reason of race, skin colour, family, national or ethnic origin, sex, sexual orientation, age, disability, faith and religion. The Act applies to employment, approach to employment and profession, self-employment, professional training, counselling and requalification, membership and participation in employees' or employers' organisations, social protection including social welfare and health care, fringe benefits, education and approach to the public and services that are available to the public, including accommodation. The material draft defines direct and indirect discrimination, where discrimination is also considered to mean harassment and victimisation; rule of equal treatment are stipulated, including exceptions where different treatment is not considered discriminatory, and rules for positive measures. The Act also regulates the legal means to help protect against discrimination, including institutional measures.

7.3. Implementing the law and examples of discrimination in practice

7.3.1. Discrimination in employment

Although in employment legislation, protection against discrimination is relatively the best (see chapter II/7.1. of the Report), members of the Roma community in particular continue to report that they are often turned down for employment for a variety of reasons. These commonly concern instances where the position advertised is "free" in a telephone conversation but, after the arrival of an applicant who is a member of a visible minority, the position is sudddenly "taken". It is, however, difficult to prove that the position at this time is in fact not "taken". Isolated instances also occur of open rejection on racial grounds. In 2002, the labour authorities carried out 10.583 inspections. With regard to discrimination, 76 violations of the Employment Act were found, 193 violations of the Labour Code and 57 violations of the Act on Wages, Remuneration for Stand-By, and Average Earnings. These figures include violations which are discriminatory irrespective of the reason for discrimination – they therefore also include cases of discrimination for reasons of age, state of health etc.

7.3.2. Discrimination in the service sector

According to the statistics of the Czech Business Inspection (hereinafter "CBI") it would seem that racial discrimination in the service sector is almost non-existant. Of the 1,117 inspections conducted in 2002, which allegedly monitored (among other things) racial discrimination, not a single violation was found of discrimination against the consumer. The number of complaints of racial discrimination is also low: in 2002 these amounted to 14, of which only two were subsequently found to be authorised.

On the other hand, according to spontaneous accounts by many members of minorities, particularly Roma, the consumer's right to equal treatment continues frequently to be flouted. According to members of the Roma communities, in certain localities (in 2002 Náchod, for example, was the centre of attention), it is common for them to be systematically refused service in the majority of the town's restaurants. The victims of this discrimination commonly did not report these cases because they consider any effort to be futile and complaints to be pointless. This explanation for the low number of complaints is supported by, for example, the testing

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[216] Resolution No. 170 of 20 February to the Report on the Possibilities for Measures to Eliminate Discrimination (http://www.vlada.cz/1250/vrk/vrk.htm)

[217] Material Draft on Ensuring Equal Treatment and Protection against Discrimination will be submitted to the Government by 31 May 2003.

carried out by the Advisory Bureau for Citizenship, Citizens' and Human Rights in 2002, which in more than half the tested cases recorded discrimination against the consumer (not being served)[218].

7.3.3. Discrimination in housing

The possibility of discrimination in the approach to housing applies to all forms of privatisation of apartments, rent allocation of apartments owned by the municipality, the mediation, lease and sale of apartments. Together with the lack of municipal apartments, occupation of rented apartments and occupation of apartments traded on the black market, new phenomena have emerged in this area, in particular the extremely heavy-handed approach by municipal bodies in moving out occupiers – especially members of the Roma communities – from apartments which they need to vacate[219].

The process is continuing of segregating the Roma minority in so-called "bare apartments" with the aim of moving Roma out of the more attractive parts of towns. Roma are often moved into hostels on the peripheries of towns without access to services. Proving racial discrimination in such cases, however, will be difficult, even after the adoption of new legislation (which specifically prohibits discrimination in housing) as the process often involves families who are not only of a different ethnic background but also have a variety of social problems, or disturb communal relations.

7.3.4. Discrimination in imprisonment

With regard to the principle of equality between men and women, the Act on Imprisonment contains two provisions that are at variance with the general principle of prohibiting discrimination. Under Section 15 of the Act on Imprisonment, persons performing their sentence enjoy the same rights in the scope and under the conditions stipulated by the Act. Under the Act, only sentenced women – and not men – may care for their child while performing their sentence. Equally, only a sentenced woman who before starting her sentence duly cared for a child not yet of age may under the Act prolong the term of her sentence by up to ten days in the calendar year to visit the child, who is in the care of another person.

7.4. Criminal activity motivated by racial intolerance

In 2002, the courts of the CR convicted 150 people of criminal acts motivated by racial intolerance. Altogether, 14 of the convicted received unconditional prison sentences, 111 suspended prison sentences, while 36 were required to perform community service.

Matter at issue of criminal act	number convicted
Section 260	11
Section 261	69
Section 196	35
Section 198	31
Section 198a	2
Section 221	9
Section 222	5
Section 202	6
Section 238	1
Section 155	3

[218] In all these instances an action for protection of person was filed with the regional court, but in none of the cases has a decision yet been delivered.

[219] There are many instances of such an approach by the municipality in solving the accomodation of socially vulnerable Roma families: relocating Roma from Mladá Boleslav to the country by selling property to a private person; moving out Roma from the so-called St. Anna colony in Prostějov to neighbouring communities; the many years that Roma victims of the 1999 floods have had to endure in so temporary homes in Ostrava-Liščina etc.

Section 247	0
Total	172

Isolated instances of criminal behaviour were also found in the police force and military. In Karlovy Vary a group of police officer appeared before the court chargewith a violent, racially motivated criminal act against members of the Roma community. Military police investigated five cases in which the culprits‘ behaviour could be termed as racially motivated or xenophobic. No proof has been found of extremist groups operating in the Czech police force or the Army and no complaints have been made about racial (or other) discrimination.

The Ministry of the Interior realises the importance of training members of the Czech police force for police work in an open, culturally diverse society. A National Strategy for the Work of the Police Force of the CR relating to Nationalities and Ethnic Minorities[220] has been submitted to the Government; this deals on the one hand with citizens of the CR who are members of national minorities (chiefly Roma), and on the other hand various categories of foreigner living in the CR. The Strategy proposes mechanisms and measures to communicate with minorities and also seeks ways to actively include members of national minorities in police work. *This is an important, positive step whose practical implementation will be one of the key tasks for the years ahead.*

8. The rights of children

8.1. New legislation for institutional and protective care

The Act on Institutional or Protective Care[221] was approved in 2002. The Act’s adoption meant the end of an unacceptable situation where the performance of institutional and protective care was only regulated by decree of the Ministry of Education, Youth and Physical Training, at variance with the terms of the Charter. Organisational matters for institutional or protective care will be covered according to legal powers by decree of the Ministry of Education, Youth and Physical Training. The decree has yet to be adopted.

8.1.1. ”Contractual” family

As mentioned in the 2001 Report, a new institute, referred to as the contractual family institute, has been established under the Act on Institutional and Protective Care in order to limit the number of children in institutions and enable children who have been deprived of their own family to stay in a substitute family environment and not in an institutions. The incorporation of contractual families in the Act is only a partial solution, however, and was not linked to an attempt to reach a comprehensive solution to substitute family care. The Act does not specify in detail the content and does not stipulate the rights and obligations of members of the contractual family and the child, as well as the relations between the contractual family, the diagnostic institute and the child’s legal representatives.

Under the Act on Institutional and Protective Care, the scope of rights and obligations relating to the contractual family institute should be regulated by a decree. This, however, is at variance with the Charter and the Constitution, as the limits of the basic rights and freedoms may only be stipulated by law. For these reasons, the President of the Republic proposed that those terms in the Act on Institutional and Protective Care concerning the contractual family institute be cancelled.[222]

8.1.2. The facility director’s right to prohibit visits

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220 Resolution No. of 22 January 2003 for the National Strategy for the Work of the Police Force of the CR relating to Nationalities and Ethnic Minorities (http://racek.vlada.cz/usneseni/); The strategy is published on the Ministry of the Interior’s website: http://www.mvcr.cz.

221 Act No. 109/2002 Coll., on the Performance of Institutional or Protective Education in School Facilities and on Preventive Educational Care in School Facilities

222 The text of the President’s constitutional complaint of 4 September 2002 is available on the website of the President’s Office at http://www.hrad.cz - ”1990 – 2003” – ”Signed and Returned Acts” – ”Submission to the Constitutional Court”.

A problem area is the use by the director of a facility of a prohibition on a child staying with people resonsible for its upbringing or people near to it (Section 23). There is insufficient information to determine whether this is used in practice – either in reality or as a threat. According to information provided by the Public Protector of Rights, it happens in practice that a child's personal contact with parents, whether in the form of visits by the parents to the educational facilities or the child's staying with the family, is incorporated in a system of rewards and punishments implemented in the facility. There is insufficient telephone contact between the child and the family, while in educational institutions not only telephoning the parents but also receiving telephone calls sometimes functions as a reward. The Public Protector of Rights also criticised the installation of certain special building-technical features in the educational facilities which have no basis in legal regulations and which call to mind prison facilities, such as bars in windows, eyeholes in the doors to bedrooms. The Public Protector of Rights and the Ministry of Education, Youth and Physical training are involved in a dispute on the installation of a bugging and camera system in all areas, i.e. also in the children's bedrooms, of some educational facilities. This is in breach of the law on the privacy of children placed in these facilities.[223]

8.2. Placing children in institutional care

The statistical data available to the Ministry of Labour and Social Affairs points to a continual fall in the number of applications for injunctions by which children can be placed in institutional care. The reasons by which such a decision is reached are assessed on a subjective basis. Despite the more positive trend of recent years the number of children in institutional care remains excessive. In many cases, the decision on whether to place children in an institution is not preceded by sufficient effort on the part of public administration bodies to seek a solution through modern methods of social work and communication that improves the family situation and enables the child to remain with its family. There are problematic situations where the parents live an alternative lifestyle or the family, for a variety of reasons, loses its housing.

As non-governmental, non-profit organisations have pointed out, families from socially excluded communities or parents who are incapable of fulfilling certain social tasks in many instances find themselves deprived of their housing instead of being offered assistance. Although municipalities know that a family (often with many children) doesn't pay rent they don't use the possibility of special welfare under the State Social Support Act and prefer to allow the families debts to rise before evicting the tenants. There are also cases where the parents lose their apartment without having done anything wrong and given their difficult social situation can't afford to pay for an apartment at market prices and where, even in such an onerous situation, the municipality refuses to provide them with assistance. In cases where the family loses its housing the children are often placed in institutional care. This approach, whereby the child is placed in an institution simply due to the bad social situation of its parents is wholly impermissible. Municipalities are generally motivated to act in this way by financial reasons. Whereas they have to meet housing costs for a family at risk in this way from its own budget, the costs for institutional care, which are very high, are paid by the state or the region. This is against Article 16 of the European Social Charter[224], upon the adoption of which the CR undertook to take measures to protect family life *inter alia* by providing family housing.

It's also worth mentioning the admittedly infrequent but highly unsatisfactory approach towards parents in situations where they have doubts about the suitability of various medical procedures performed on children or refuse to let their children undergo compulsory vaccination, either because they are concerned about the side-effects of the vaccine or because they lead an alternative life style. The mere refusal to vaccinate their children was sometimes perceived by bodies concerned with the socio-legal care of children as constituting inadequate care by parents of their children, although in fact the truth is often that the parents are providing the child with greater care than is normal. Several complaints addressed by parents to the Public Protector of Rights state that they were openly threatened with the removal of the child in cases where the child did not undergo vaccination. Such an insensitive approach to parents is entirely counter-productive. From the information available to the

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[223] In practice, a single case was recorded of regular personal monitoring of children's bodies after removing all clothing where this was not a medical inspection.

[224] Notice no. 14/2000 Coll.

Public Protector of Rights, it is clear that the error is often on the side of the medical facilities, which instead of providing qualified information only frighten the parents.

The Committee for Human Rights and Biomedicine of the Council for Human Rights concluded in 2002 that it would not be appropriate to withdraw from the principle of compulsory vaccinations, although modifications could be introduced to replace the mechanical repressive approach:

- The extent of compulsory vaccinations should be the subject of open discussion (including representatives of the lay public) due to the fact that legislation in advanced countries differs markedly.
- Even compulsory vaccinations should provide some flexibility for exceptions.
- Penalties for compulsory vaccinations should be the final solution and should always be commensurate so that the child is not threatened with far more legally repressive (e.g. placing in institutional care) measure than the absence of vaccination.

According to some information from the practice of bodies involved in the socio-legal protection of children, after a child has been removed from the family on the basis of an injunction, they sometimes do not work together with the family to enable the child to return. There are also instances where these bodies fail to suggest the cancellation of the injunction and continue to insist on institutional care even if the situation in the family improves without their own endeavours. According to a notice of the Ministry of Labour and Social Affairs, however, these problems are not the rule and 80 per cent of children placed in institutional education on the basis of an injunction are ultimately returned to their family.

8.3. The juvenile justice system

In 2002, a bill was drawn up for the Act on the Juvenile Justice System[225]. The bill comprehensively deals with the means by which the state in conjunction with other subjects reacts to serious cases of delinquency both by minors below the age of 15 and juveniles and young adults, by which are meant persons below the age of 21. Depending on the seriousness of the act committed, the degree of the violation and the culprit's age, the possibility exists to react with educational and protective measures and in the last two categories also penal. The Act should thus also apply to persons younger than 15 years of age who because of their age are not criminally responsible for acts that otherwise would be defined as criminal and in which cases the state should thus react with educational measures.

8.4. Child abuse

Changes have been introduced to the criminal code in order to reinforce children's protection against commercial sexual abuse . The amendment to the Criminal Code[226] included a definition of child pornography. The original formulation on pornographic works that depict sexual relations with children was very narrow and was thus replaced by a new and far broader definition of "pornographic works that depict children". The amendment also made punishable the receiving of child pornography with the purpose of its further circulation, dissemination, making it publicly accessible, production, import, smuggling or export. The amendment also stipulates harsher penalties for people who disseminate child pornography via the mass media or commit the relevant act as members of an organised group. On the other hand, however, having child pornography "for own consumption" remains unlegislated for in the criminal code and is thus unpunishable, which should be regarded as a shortcoming.

The version of the criminal code valid until the end of 2001 was extremely insensitive with regard to the protection of children as the victims of criminal activity and often led to so-called secondary victimisation whereby the child was repeatedly forced, firstly during criminal proceedings and then during judicial

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[225] The bill was approved by government Resolution no. 71 of 22 January 2003, on the bill on the responsibility of juveniles for unlawful acts and on the judicial system with regard to juveniles and on the amendment to certain Acts (Act on the Juvenile Justice System) (http://racek.vlada.cz/usneseni/).

[226] Act No. 134/2002 Coll., which amends Act No. 140/1961 Coll, the Criminal Code, as amended.

proceedings, to give evidence as a witness and thereby repeatedly to return to the traumatising experiences. The extensive amendment to the Code of Criminal Procedure[227] resulted in a change for the better, stipulating that if a person younger than fifteen is questioned as a witness about circumstances whose recall may due to the person's age have a disturbing impact on his/her mental and moral development, the questioning should be conducted particularly carefully and in terms of content so that the examination in future proceedings generally doesn't have to be repeated and such person only has to be questioned where absolutely necessary. The Criminal Procedure Code also enables persons selected for examination (pedagogues, other persons with experience of educating young people, parents) to suggest the suspension, interruption or postponement of the action where there is a fear that this might have a negative impact on the child concerned.

The police president's updated Binding Instruction No. 8 of 2002 should help protect child victims of criminal acts during criminal proceedings. The Instruction stipulates that children should be questioned in places that are conducive to the procedure involved with regard to the child's mental state and development. Priority should be given to environments that are known by the child and which are untraumatic, e.g. school, the child's home, office of another state body etc.

Harsh sanctions, including prosecution under the criminal code, should be imposed on the responsible employers and other persons who knew or should have known of the bullying or abuse of a child. The amendment to the Act on the Social-Legal Protection of Children[228] at least partially broke the obligatory silence of health workers in cases where the bodies for the social-legal protection of the child have recourse to them with a request for data on suspected cases of bullying, abuse or neglect of the child. The Act on People's Health Care[229], however, still does not require health workers to report such a suspicion. Experience in practice shows that health workers often really do not report these cases. This situation should have been remedied by the health care bill, but the Chamber of Deputies failed to approve it. *The shortcoming should be remedied as soon as possible because the insufficient protection of the child against abuse represents a real practical problem and is also the subject of criticism from the supervisory body of the Convention on Children's Rights – the Committee for Children's Rights.*

8.5. Right of the child to have regular contact with both parents

In the event of the parents' divorce or separation the child is still generally entrusted to the care of the mother. This stereotypical approach was criticised in the previous Report. Often there is a breach of the child's right to have regular personal contact with both parents. The chief problem remains the inconsistent approach of state bodies and courts in enforcing court rulings on the parents' contact with the child. In practice, the provisions of the Act on the Family[230] are rarely applied. According to the Act, the repeated groundless prevention of the authorised parent to have contact with the child is considered a change in relations which requires a new ruling of the care environment. One of the most serious socio-pathological phenomena linked to family break-ups is the syndrome of the rejected parent, caused in many children by resentment against one of the parents.

8.6. Protection of the child in employment

The prohibition on children being employed before completing mandatory school attendance is often contravened by children under 15 performing various jobs outside labour-law relations. Typical jobs are delivering advertising leaflets or selling newspapers and children are often used to work in family businesses. These children do not enjoy the protection comparable to that for juvenile employees (15 to 18 years of age).

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227 Act No. 265/2001 Coll., which amends Act No. 141/1961 Coll., on the Criminal Procedure Code, as amended , Act No. 140/1961 Coll., the Criminal Code, as amended

228 Act No. 518/2002 Coll., which amends Act No. 359/1999 Coll., on the Social-Legal Protection of Children, as amended, Act No. 114/1988 Coll., on the Competence of CR Bodies in Social Security, as amended, Act No. 582/1991 Coll., on the Organisation and Implementation of Social Security, as amended, and Act No. 320/2002 Coll., on the Amendment and Repeal of Certain Acts in connection with the Termination of the Activities of the District Authorities, as amended by Act No. 426/2002 Coll.

229 Act No. 20/1966 Coll., on People's Health Care, as amended.

230 Section 27 par 2 of Act No. 94/1963 Coll., on the Family, as amended

Moreover, the employee protection contained in the Labour Code does not apply to children involved in artistic, advertising or sporting activity. *The legislation in preparation for child labour should be included in the Labour Code and in the Employment Act. The Labour Code shall contain a prohibition on work for children younger than 15 years of age, with the exception of artistic, advertising and sporting activity and defined by the material conditions of the performance of these activities. The new Employment Act should cover the process of permitting the performance of artistic, advertising and sporting activity, this to be decided by labour offices in administrative proceedings. The prepared legislation thus does not conceive a change in the conditions whereby children older than 13 and younger than 15 would be able to perform so-called light work on an extraordinary basis*.

9. Minorities

9.1. National minorities

For the first time, the Government was submitted a Report on the Situation of National Minorities in the CR for 2001. This comprehensively describes the status of national minorities not only in the stated year but also during the entire term of office of the previous Government with regard to demographic relations, legislative and non-legislative government and administrative measures, as well as the real relations inside the different national minorities. The Report also mentions ongoing problems refered to by the minorities (Polish, German, Croatian).[231]

In 2002, Government Decree No. 98/2002 Coll., came into effect. This stipulates the conditions and means of providing subsidies from the state budget for activities of the members of national minorities and to support the integration of members of the Roma community. The power to issue the Decree came from the Minorities Act[232], which defines the state's policy on subsidies by focusing on creating the conditions to enforce the rights of national minorities. This regulation placed the financing of the activities of national minorities on a systematic basis, rather than the *ad hoc* approach that had prevailed hitherto. The preparation of the Decree and its implementation were among the chief tasks of the Government Council for National Minorities and its secretariat during the monitored period (see also Chapter I./2.2. of the Report).

In addition to financing the activities of national minorities in the narrow sense (i.e. activities connected primarily to the collective effort of the minorities to maintain and develop their own cultures), the Decree also covers for the first time the integration of members of the Roma community. Not only do Roma receive the standard subsidy programs for national minorities, they also have the support of programs aimed at preventing and eliminating the social exclusion of Roma communities.

9.2. Gay and lesbian minorities

Gay and lesbian minorities again failed in 2002 in their long-term struggle to have partner relations between members of the same sex recognised in law. As the 2001 Report recorded, the Government bill on partner relations between members of the same sex (inspired by the motion of the Council for Human Rights) was returned to the Government by the Chamber of Deputies in October 2001 "to be reworked". The task of submitting the reworked version of the bill remains part of the legislative agenda for 2003. Even though the planned legislation on partner relations between persons of the same sex did not form part of the Government's announced program following the parliamentary elections, the outlook for its adoption is relatively positive, chiefly as a result of changes in the EU, whose member states are gradually adopting a similar norm.[233]

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231 The Government responded to the report with Resolution No. 600 of 12 June 2002 (http://racek.vlada.cz/usneseni/).

232 Act No. 273/2001 Coll., on the Rights of Members of National Minorities, as amended.

233 In 2002, the Belgian Parliament debated an act that would open marriage to persons of the same sex. The Act was definitively approved in January 2003 by a large majority (91 for, 22 against and 9 abstentions). After the Netherlands, Belgium thus became the second EU country in which gays and lesbians can get married. In addition to the traditionally liberal Scandinavian countries, the more conservative Germany and France also

In November 2002, spokespersons of the gay and lesbian minorities voiced concerns over the Ministry of Health's plan to create by power of decree a central health register, including a register of sexual diseases, which should contain sexual orientation and information on whether HIV positive on an individualised form (with personal identification number). The inclusion of such data on the register would, according to the Ministry of Health's plan, not be subject to the consent of the individual concerned, who would have communicated it to his/her doctor in good faith that it would remain confidential. The plan provoked criticism that it was a step back to the pre-November 1989 system of control. The Ministry of Health subsequently backed down from creating the register in the aforementioed decree, but it also submitted a bill for its creation in the new Health Care Act. It remains unclear whether in this case data such as sexual orientation will also be included, and if so, whether their inclusion will be subject to the patient's consent (see also Chapter II./1.3.4. of the Report). Spokespersons of the Gay Initiative also remain unhappy about the fact that all men who have had sexual relations with another man are barred from giving blood.

10. Foreigners[234]

10.1. Overall development of immigration in 2002

As of 31 December 2002, the Police of the CR registered 231,608 foreigners with residence on the territory of the CR, of which 75,249 enjoyed permanent residence and 156,359 had a visa over 90 days.

Immigration rates in 2002 registered certain changes in comparison with the previous periods.[235] In the sector of illegal immigration, 2002 recorded a fall in the number of persons who crossed the state border illegally to the lowest level since the creation of the CR; on the other hand, the number of persons arrested in the CR for breaching their terms of residence rose slightly. This development may be considered the result of the establishmen of the line-managed Department of Foreigner and Border Police Service, which commenced operations as of 1 January 2002.

In 2002, the Ministry of the Interior received 291 applications from state citizens of the CR for the granting of state citizenship of the CR, and 20,101 other foreign state citizens. State citizenship of the CR was granted to 1,152 foreigners (not including citizens of the Slovak Republic), which is 30 more than in 2001. The largest number were state citizens from Russia (304), Romania (107) and the Ukraine (251), of which 205 cases involved people who had been relocated in the CR as part of aid provided to people from Chernobyl. In 2002, the Ministry of the Interior issued 947 negative decisions. The rise in the number of state citizenships of the CR granted to Polish citizens (8 in 2000) was caused by the termination of the Treaty between the Czechoslovak Socialist Republic and the Polish People's Republic governing matters of dual nationality. For these applicants the Ministry can waive the submission of a document renouncing previous citizenship if they have lived in the CR for more than 20 years. These can remain Polish citizens even after being granted citizenship of the CR.

10.2. Measures to integrate foreigners

The Plan for the Integration of Foreigners continued in 2002. The inter-ministerial Committee of the Minister of the Interior for the Preparation and Implementation of Government Policy in the area of Integration of Foreigners and the Development of Relations between Communities discussed measures to implement this plan, e.g. integration policy plans of the Ministries and projects to support the integration of foreigners. The projects

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have laws that make possible a certain form of cohabitation by members of the same sex, even if not directly marriage.

[234] Because the Report is classified under individual laws, and not according to their bearers, the questions of the individual rights of foreigners contained in the materially relevant chapters: participation of foreigners in public life (chapter II./2.1.4.), education of foreigners and asylum seekers (chapter II./5.5.2.), health insurance and health care provided thereunder (chapter II./5.5.2.), ending foreigners' residence (chapter II./4.4 and 4.5.).

[235] Similar information on the development of immigration is contained in the annual Reports on immigration to the CR.

focused particularly on providing social and legal advisory services, developing relations between communities, supporting multi-cultural activities, preventing racism and xenophobia, raising the awareness of the public and training officials in the question of integrating foreigners. Sixteen million koruna were set aside to realise these plans in 2002. In December 2002, the Ministry of the Interior prepared the document Effectiveness of the Plan for the Integration of Foreigners on the Territory of the Czech Republic up to 2002 and the further Development of this Plan following the CR's Accession to the EU, which contains planning proposals and organisational measures for the period between 2003 and 2006.[236]

In 2002, district advisory bodies on matters of the integration of foreigners continued their activity in all districts of the CR. As of 31 December 2002, the termination of the activities of the district authorities also unfortunately meant the termination of these bodies' activity. According to the Ministry of the Interior, however, measures are currently being planned to establish similar bodies at a regional level, or in selected municipalities with wider powers.

11. Refugees and other persons who need international protection

11.1. Refugees and the provision of asylum

11.1.1. New legislation and judicial review of proceedings on granting asylum

As of 1 February 2002, the amendment to the Asylum Act[237] came into force. Its objective was to speed up asylum proceedings in cases where the facts stated by the asylum seekers are not relevant with regard to the Convention on the Legal Status of Refugees[238]. The amendment defined more precisely the rights and obligations of asylum seekers. It also introduced a judicial review by the decisive court of unlawful decisions made by the Ministry of the Interior according to part five of the Civil Procedure Code and also cancelled the argumentation proceedings. As stated in the 2001 Report, this meant that temporarily a full judicial review would not be possible. The year 2002 saw further, uncoordinated legislative development in the matter of a judicial review.

As of 1 January 2003, the new Act on the Administrative Justice Procedure[239] came into effect. The new legislation on administrative justice also meant the adoption of two further amendments to the Asylum Act.[240] The changes affected the course of asylum proceedings. According to the first of these amendments[241], administrative proceedings concerning matters of asylum are only of first instance. A foreigner is entitled to file an action against a legitimtate decision by the Ministry of the Interior; the action is then considered by the regional court in administrative proceedings under part three of chapter two of the first section of administrative justice procedure. According to the second amendment to the Asylum Act[242], the judicial review of administrative decisions on asylum matters is, for reasons of expedience and economy, passed on to the individual regional courts, where local competence is given according to the reported residence of the asylum seeker at the time the action was filed. If the amendment had not been adopted, the competence of the court would have been governed by the Ministry of the Interior, which would mean all actions being dealt with by the Municipal Court in Prague.

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236 Government Resolution No 55 of 13 January 2003 no. 55 on the effectiveness of the Foreigners' Integration Plan in the CR and further development of this plan following the CR's accession to the EU (http://racek.vlada.cz/usneseni/).

237 Act No. 2/2002 Coll., which amends Act No. 325/1999 Coll., on Asylum, as amended

238 The Convention was published in the Collection of International Treaties under no. 208/1993 Coll.

239 Act No. 150/2002 Coll., Administrative Justice Procedure, see chapter II./3.1. of the Report

240 Act No. 217/2002 Coll., and Act No. 519/2002 Coll., which amends Act No. 325/1999 Coll., on Asylum, as amended by Act No. 2/2002 Coll.

241 Act No. 217/2002 Coll., which amends Act No. 326/1999 Coll., on Foreigners' Residence in the CR, as amended, Act No. 329/1999 Coll., on Travel Documents, as amended, and Act No. 325/1999 Coll., on Asylum, as amended.

242 Act No. 519/2002 Coll., which amends Act No. 325/1999 Coll., on Asylum, as amended.

These changes signify on the one hand an important shift in ensuring the protection of asylum seekers and on the other a substantial slowdown or blocking of asylum proceedings. The new legislation also raises some practical problems. For example, the provisions defining when a foreigner has the status of an asylum seeker given that the decision of the Ministry of the Interior becomes effective as of the date of delivery to the asylum seeker. The foreigner holds the status of an asylum seeker throughout the period of the proceedings before the administrative body and throughout the administrative proceedings. An asylum seeker living in a residential centre of the Ministry of the Interior (i.e. in a centre that is established only for asylum seekers) loses the status of an asylum seeker immediately upon delivery of the decision of the Minsitry of the Interior and is therefore compelled forthwith to decide whether to file an action with the court the very same day, or whether the same day to leave the residential centre, to decide whether to file the action within the 15 day time limit and return to the relevant centre (or other centre to which he has been taken). Asylum seekers who have no accommodation except for the residence centre (which is the large majority) do not have sufficient space to consider all possibilities and have to reach decisions under pressure of time.

At least from a legislative point of view, there seem to be problems with Section 54a, under which the Ministry of the Interior may bear the costs, where this is in the public interest, relating to the voluntary return of an asylum seeker or may bear the repatriation costs on the basis of a written application by the foreigner submitted during proceedings on a complaint over funds or within 24 hours of the legal effect of the decision on such complaint before the Supreme Administrative Court. This possibility, however, does not exist following completion of administrative proceedings and judicial review, which may result in serious practical difficulties in returning unsuccessful asylum seekers. It is therefore in the interests not only of unsuccessful asylum seekers, but also the whole of society, that the unproblematic payment of repatriation costs also be made possible in direct relation to the completion of adminstrative proceedings and/or judicial review.

11.1.2. Asylum practice in 2002

In 2002, 8,480 people applied for asylum in the CR. Against 2001, when 18,094 people applied for asylum, this represented a reduction of 53 per cent, which undoubtedly reflects the impact of the new Asylum Act. A fifth of applicants expressed the intention to apply for asylum in detention facilities for foreigners. Over the course of the year, asylum was granted to 98 people, of which 77 were in first instance.[243] Against 2001, the number of asylum cases granted rose by 15. In 46 cases asylum was granted for reasons of bringing together families and on humanitarian grounds; other persons were granted asylum due to fears of harassment. The number and percentage of asylum cases granted remains very low in comparison with the advanced and attractive countries of the EU, where it may be estimated that the percentage of economically motivated asylum seekers who do not fulfil the conditions of the Convention on the Legal Status of Refugees must logically be at least as high as in the CR. In part this low percentage can be explained by the fact that a significant proportion of asylum seekers do not wait for the result of the asylum proceedings and leave the CR (e.g. because following the prolonged proceedings they lose hope in a positive resolution to their application, or because from the beginning they only considered the CR as a staging post). However, the low number and percentage of asylum cases permitted must be explained not by one cause but by the comprehensive impact of normative, interpretational and application reasons. As far as interpretational reasons are concerned, the role must also be admitted of the narrowing interpretation of the term ”membership of a particular social group”,[244] or the absence of more precise criteria for granting humanitarian asylum. Application difficulties occur when judging situations in the specific countries of origin, where sonme information on the facts of the situation are not accessible, which exacerbates the failure of evidence that generally characterises such proceedings.

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[243] Asylum was granted to 17 citizens from Afghanistan, 6 from Armenia, 3 from Azerbaijan, 1 without state nationality, 1 from Ethiopia, 26 from Belorus, 8 from Iraq, 1 from Jordan, 1 from Yugoslavia, 4 from Cuba, 23 from Russia, 4 from Syria, 2 from the Ukraine and 1 from Vietnam.

[244] The interpretation of the term “membership of a particular social group” is problematic not only in Czech asylum practice. For this reason, in May 2002 the UNHCR issued a Directive for the interpretation of this term (doc. HCR/GIP/02/02, Guidelines on International Protection: Membership of a particular social group within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees. Likewise, an *ad hoc* Council of Europe Committee of Experts for legal questions of asylum, refugees and persons without state citizenship worked during 2002 on a draft Recommendation of the Ministries of the Council of Europe concerning the proper interpretation of this term.

The 2000 and 2001 Reports referred to problems relating to the provision of financial benefits to asylum seekers who live outside asylum centres. The ”extensive” amendment (Act No. 2/2002 Coll.) introduced a change in the legislation of financial benefit by limiting the time during which funds may be accessed to only three months during the period of the proceedings and also changed the place of payment of financial benefit from the district authorities to the asylum centres. The amendment did not include transitory provisions for financial benefit which had been requested by asylum seekers according to legislation valid as at 1 February 2002. In the opinion of the Ministry of the Interior, it is impossible to say that decisions on applications submitted according to previous legislation should also be made according to the previous legislation. Although the Ministry's interpretation is formally correct, the adoption of this legislation is not fully in conformity with the principle of a legal safeguard. Moreover, in autumn 2001, the administration of funds was practically suspended (in expectation of a change in the principle of providing such benefits). At least that is how the situation seemed from the point of view of applicants who had waited several months for a decision but who only received notification after 1 February 2002 that the proceedings had been terminated due to the expiry of a total period of three months. Significant numbers of asylum seekers thus found themselves in a difficult situation immediately after the amendment took effect.

The optimal form of material and social security for asylum seekers is a problem faced by every advanced European country. It involves ensuring that the asylum seekers receive the minimum level of a dignified existence in relation to the overall living standard of the population of the host country, and yet that this should not act as a motivating factor for expedient applications for asylum and should not complicate the asylum proceedings. The introduction of a broad possiblity to draw benefits under the Asylum Act as of 1 January 200 clearly did not reflect overall conditions in the CR, including the capacity of relevant bodies to operate this system satisfactorily. Neither the new reduction in the period of drawing benefits nor non-entitlement to the benefit can justify the high-handedness in allocating the benefit or the administrative delays before the benefit was allocated – although after reducing the period for drawing the period to three months the problem of delays effectively became meaningless[245].

The first amendment to the Asylum Act also introduced changes to the Employment Act. An asylum seeker may therefore legally work only after one year from commencement of the proceedings for granting asylum and must obtain a work permit in the CR. In practice, however, asylum seekers who look for work after a year come up against very large obstacles. For an asylum seeker to obtain a work permit he has to go to the labour office with his application and pay a fee of 500 koruna, as must the future employer who also has to pay a further 2000 koruna for the application for the work permit. Even if the labour office decides to grant a work permit this is usually only for the duration of the asylum seeker's visa, which is two months. Both parties must then go through the process again, in other words every two months. *As this procedure includes repeated payments the employment of asylum seekers is almost impossible. It should therefore be replaced by a more convenient, simplified procedure when submitting subsequent (repeated) applications for a work permit, and unifying practice so that no further fees are required.*

The first amendment to the Asylum Act resulted in difficulties for asylum seekers in the approach to health care. Asylum seekers living on their own may only visit doctors who have a contract with the Ministry of the Interior. Given that there is a large shortfall in the number of these contractual doctors the asylum seekers find themselves in a difficult situation. Moreover, like any Czech citizen, all asylum seekers must pay for some of the medications prescribed by the doctor. For asylum seekers, who live in asylum centres and receive 12 koruna a day for adults and 6 koruna for children, and who have no other earnings, this is practically impossible.

11.1.3. Children as asylum seekers (unaccompanied minors)

As in other countries, there is a serious problem in the CR concerning the care of unaccompanied children – asylum seekers, as well as other children of foreigners unaccompanied by legal representatives. From a motion

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[245] Legislation is still understood so that the asylum seeker and foreign who has been granted a sufferance visa should pay the costs for residence outside asylum facilities him or herself. Ther is no legal entitlement to financial support.

submitted by the Council for Human Rights[246], the Ministry of Education, Youth and Physical Training prepared a Plan for the Placing, Education and Care of Children with a Language Barrier, including Unaccompanied Minor Asylum Seekers, which was approved by the Government in April 2002.[247] This requires the Ministry to set up and from 1 July 2003 to begin running facilities for children – foreigners which will form part of the system of facilities for institutinal and protective care. It is evident that this matter will require ongoing attention in order to create a comprehensive and optimal system of care for these children which would prepare them ultimately for permanent integration in Czech society.

In 2002, a total of 215 unaccompanied minors applied for asylum in the CR. Of this number, 53 were accompanied by family members or near relations, while 162 applied for asylum independently.[248] Applications were submitted both in reception centres, where 132 unaccompanied minors applied for asylum in the standard manner, and in facilities for foreigners, where a further 83 minors (i.e. 40 per cent of the total number of arrivals) submitted applications. The overwhelming majority of these minors were aged 16 or 17 at the time of entering the asylum proceedings. Cases of unaccompanied minors below the age of 15 are still rare. After completing the initial procedures in the reception centres, the unaccompanied minors generally stayed in residential centres in Kostelec nad Orlicí, Zastávka and Červený Újezd. Individuals who applied for asylum were transferred after the legally stipulated period to one of the residential centres. The highest numbers of minors according to country of origin were from India, China, without citizenship (particularly from Palestine), some countries of the former Soviet Union, Iraq and Slovakia.

11.1.4. Integration of asylum seekers

The integration program for asylum seekers, which has been in place since 1994[249], continued in 2002. In December 2002, the Ministry of the Interior submitted a new Integration Plan for Asylum Seekers to the Government which was prepared by the Inter-ministerial Commission for the creation of a new integration plan for asylum seekers and for allocating integration apartments to authorised persons. The new plan makes participation in the integration program conditional upon attendance of all of its component parts, which in practice means that an integration apartment will be provided to those asylum seekers who successfully complete the Czech language courses (or who are waived this obligation by the aforementioned Commission). In order that the program function properly and fairly, it is therefore important that decisions be taken on an individual basis and are sensitive. The continuing absence of a social housing system across the whole of society thus makes this form of aid the only real chance for most refugees to acquire adequate, independent housing, and thereby to suddessfull integrate in society and emancipation.

11.2. Other persons requiring international protection

11.2.1. Temporary protection for state citizens of the Russian Federation

Government Order No. 290/2001 Coll., on the provision of temporary protection for state citizens of the Russian Federation, made it possible up to 30 June 2002 to provide protection for 250 state citizens of the Russian Federation who had fled to the CR to escape the armed conflict in Chechnia. This was subsequently not renewed. In the opinion of non-governmental organisations (the Refugee Advisory Bureau), citizens of the

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246 Government Resolution No.. 1083 of 22 October 2001, on the motion of the Government Council for Human Rights to prepare a special plan for the placement, education and care of children with a language barrier, including under age asylum seekers, in facilities of institutional care (http://racek.vlada.cz/usneseni/)

247 Government Resolution No. 395 of 17 April 2002 (http://racek.vlada.cz/usneseni/)

248 The number of arrivals of unaccompanied minors has fallen consistently over the last three years, regardless of the general increase in the number of asylum seekers. In 1999, 7,220 people applied for asylum, of which 329 were under age and unaccompanied; in 2000 8,788 people applied for asylum, of which 298 were under age and unaccompanied and in 2001 18,088 people applied for asylum, of which 280 were under age and unaccompanied.

249 The Ministry of the Interior concluded a total of 20 contracts with municipalities on the provision of subsidies to help integrate 44 asylum seekers. The Ministry of Finance provided funds exceeding CZK 6.5 million for integration purposes.

Russian Federation who escaped to the CR from the armed conflict in Chechnia did not use the possible temporary protection because according to the information that they received from the Ministry of the Interior they would not have been able to apply for asylum after the temporary protection had come to an end.

11.2.2. New legislation for temporary protection

As of 20 July 2001, the EU Council approved a new directive on minimal norms for the provision of temporary protection in the event of a mass inflow of evacuees and on measures to ensure that member states expend equal effort in accepting these persons and the consequences thereof ("Directive 2001/55/EC"). In its content, the Directive differs from current legislation under the Aliens Act.[250] The assessment on whether the situation is appropriate to declare temporaroy protection (mass migration, threat to individuals etc.) will depend on the assessment of the Council. In the decision, member states will provide information on the number of evacuees that they are capable of receiving. The Directive's adoption made it necessary to change the existing legislation and the Ministry of the Interior thus prepared a bill for the temporary protection of foreigners[251], which should partially come into effect as of 1 August 2003 (and in its entirety upon the CR's accession to the EU).

11.2.3. Sufferance and supplementary forms of protection

The 2001 Report pointed out the necessity of introducing so-called supplmentary forms of protection. The year 2002, however, did not see the long-awaited positive development in this area. A comprehensive solution to the question of sufferance is still lacking. The legal status of foreigners who have been granted a visa on the basis of sufferance of stay under the Aliens Act is currently very weak and not covered by law. Apart from health care, foreigners are not entitled to any other advantages by which they might ensure their stay in our country. They don't have access to employment and are excluded from the entire system of social security and social aid; this results in a situation where even people who can be called de facto refugees are not provided with the minimal protection. *One of the tasks that is constantly overlooked, although extremely important from the point of view of human rights, is the unequivocal legislation and unified practice of public bodies in relation to persons with a sufferance visa – particularly persons who enjoy this protection under the fulfilment of the CR's international obligations.*

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[250] Unlike current legislation under the Aliens Act the Directive stipulates that temporary protection is an extraordinary measure dealing with the consequences of a mass inflow of evacuated persons from third countries who can't return to the country of their origin, particularly if the asylum system is incapable of handling this inflow without negative results. The Directive considers evacuated persons to be chiefly persons fleeing from areas in the grip of armed conflict or persons exposed to great risk, or persons who have become victims of systematic or general contravention of human rights. The Council decides on whether the numbers of evacuated persons constitute a massive inflow. Temporary protection will then be introduced in all states in conformity with the Directive's provisions by decision of the Council.

[251] The government approved the bill for temporary protection of foreigners by means of Resolution no. 107 of 29 January 2003 (http://racek.vlada.cz/usneseni/)

III. Conclusion

The Report on the State of Human Rights in 2002 is the first report in the term of office of the new Government. It therefore offers the opportunity to outline medium-term priorities in the protection of human rights for the future and to reflect on other dilemmas that are emerging in this area.

During the term of office of the previous Government, not only did the situation in specific areas of human rights become the subject of regular material evaluation in these "Government" reports, but more importantly the CR began to fulfil its undertakings more consistently towards the various supervisory bodies that monitor compliance with international human rights treaties. As mentioned in the 2001 Report, the former shortcomings in communication with the supervisory bodies were largely remedied, particularly the persistent waste of energy in defending the *status quo* in matters which are generally known to be unsatisfactory in the CR.

The concrete measures taken by relevant departments in order to implement the recommendations of the supervisory bodies do not, however, always correspond to the due submission of reports prepared by the Human Rights Commissioner. The difference is widening between the level of the CR's official communication with supervisory bodies (reports are repeatedly evaluated as material and with high-quality content) on the one hand, and the often formal approach of public administration on the other. The fact that the supervisory bodies' evaluations may contain occasional inaccuracies is a pretext for these evaluations being rejected across the board. Since questions of human rights are often politicised in the CR, the evaluations of supervisory bodies are often (incorrectly) perceived on the Czech side as being part of the foreign policy agenda of countries whose citizens sit on the relevant committees[252].

It thus remains a fixed priority to systematically implement the concrete recommendations of the international supervisory bodies of the human rights treaties. The objective of Government policy must be to continue to improve the level of protection of human rights at an internal state level, and also to continue in a constructive dialogue with these international supervisory bodies of human rights treaties in individual cases.

The medium-term concrete priorities, on the basis of information from the activity of the Government Council for Human Rights, which is reflected in this Report, include the following measures:

(1) To adopt and effectively to implement integrated anti-discriminatory legislation which addresses both the real state of society and the need to incorporate the relevant EU directives in Czech law, the immediate adoption of which forms part of the *acquis communautaire*. The legislation includes the necessary institutional measures. The pressing nature of this task is further underlined by the fact that inadequate protection against discrimination has long been a target of criticism of the CR by many supervisory organs of the international human rights treaties.

(2) To adopt effective comprehensive measures of a legislative and non-legislative nature against domestic violence, the victims of which are predominantly women. Violence against women is closely connected with a stereotypical concept of the social roles of men and women and patriarchal thinking. For this reason, greater attention should be paid to the attempt to change these opinions, while the achievment of real equality between men and women as in all advanced democratic countries should rank among the priorities of Government policy.

(3) To adopt new legislation for the systematic supervision of places that hold people who have been deprived of their freedom or whose freedom has been restricted (ideally through broadening the powers of the Public Protector of Rights), and to establish the material conditions for its implementation. This requirement stems not only from real need but is also an imperative of the new Optional Protocol to the UN Convention against Torture and other Cruel, Degrading or

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252 The UN Human Rights Commission, for example, which is made up of state representatives, is often confused with the Human Rights Committee (UN), which is made up of experts with an individual mandate, etc.

Inhuman Treatment or Punishment. The status of persons in institutional care, which has been reduced *per se*, should be regarded as one of the priorities in protecting human rights in the entire advanced world.

(4) To establish new legislation – both procedural and material – to protect the rights in particular of vulnerable groups, firstly, of the mentally ill, the mentally handicapped and in general of people who are not competent to perform legal acts. The rights of these people need to be strengthened in proceedings that concern them (amendment to the Civil Procedure Code), to regulate in greater detail the conditions of guardianship and to stipulate concrete, positive rights for these specific groups that require special protection (e.g. by means of a special mental health act or the inclusion of a new section in the Health Care Act).

(5) To improve the approach to implementing the law both in the criminal sphere, i.e. consistent continuation of reforms to criminal law (recodification of the Criminal Code), and in the civil sphere – by improving the legal approach by means of new legislation for free legal aid for persons on low income.

(6) To change the concept of patients' rights in legislation and practice so that they reflect the modern concept of the patient as an active subject, not just as an object of treatment (questions of informed consent, joint decision-making etc), in accordance with the Convention on Human Rights and Biomedicine and with current trends in advanced countries.

(7) To enter the debate on a radical conceptual change to the concept of state citizenship so that firstly, access to citizenship is made generally available as a right that opens the way to all other rights and permanent integration in Czech society is made possible (especially for so-called second-generation immigrants), and secondly, so that the current prevailing stance on dual nationality be changed to conform with similar liberalisation measures adopted in most advanced countries over the last decade. In 1999, the amendment to the State Citizenship Act essentially concluded the process of remedying the problems that had bee created through the inadequate initital definition of citizens by the newly-independent Czech state. During the last decade, however, problems of state citizenship connected to the break-up of the CR have tended to overshadow more general questions, such as the strictness and restrictiveness of Czech law as regards obtaining or holding dual nationality and the naturalisation of immigrants, particularly so-called second and third-generation immigrants, where this strictness does not meet the legitimate expectations of the persons affected or the interests of society as a whole. The growing attraction of the CR as a target country for immigration makes these problems ever more urgent, as is the case in neighbouring countries. The adoption of new legislation on state citizenship must therefore be one of the priorities of the next period.

(8) To establish the conditions for the practical enforcement of the social rights of members of the Roma community, for the prevention and elimination of their social exclusion and for their successful integration in society. This objective requires more than just anti-discrimination legislation, it needs target policies on the part of the state – so-called affirmative measures (e.g. the introduction of Roma field social workers, the parallel solving of the question of accommodation and employment), implemented in close cooperation with local authorities.

Developments in the protection of human rights are not progressing towards a sort of static ideal but are a dynamic process in which new possibilities and problems, promises and doubts constantly emerge. Few problems can be said to have been solved "once and for all". For the sake of brevity and by way of illustration, we can give some examples of questions that will clearly be the subject of intense discussion over the coming years and to which the answer is definitely not unambiguous:

- Clearly the most current of these is the creation of the Charter of the Fundamental Rights of the EU. On the one hand, there is no question as to the importance of this measure as a foundation for human rights in the newly-built society; on the other hand, there are practical consequences, particularly in relation to the European Court for Human Rights, whose collective jurisdiction applies to the European

Convention on Human Rights, i.e. the instrument of the Council of Europe. The possibility exists that the European Union as a whole could sign the Convention, but even that would not be without problems.

- In the new situation following 11 September 2001, there are attempts to place doubt on the limits of individual rights due to the threat of terrorism. It is impossible to mention all the security aspects of this new situation but it is important to balance security requirements with the imperatives of protecting human rights and to resist any opportunistic attempts by repressive bodies to interfere unjustifiably in individual rights. Finding this balance will not be easy and its result cannot be estimated in advance. In any case, the protection of human rights will be linked far more than previously to security aspects, while quality argumentation on behalf of human rights will increasingly depend on expert knowledge of security questions.

- The impact of new technology in IT and data-processing on human rights will undoubtedly be closely connected to the previous point. New possibilities will emerge, but with them also new threats relating to the marked increase in the importance of protecting personal data and new technical requirements to secure data against its abuse.

- The development of new technologies in biology and medicine, such as reproduction technology, transplants, cloning etc. will raise qualitiatively new questions, to which the solution will not always be by any means clear (due to the frequent conflict of two or more legitimate interests). All these new possibilities also bring completely new types of decision-making, many of which are nor legislated for even at an international level.

- The protection of the human rights of particularly vulnerable categories such as the disabled continues to grow in profile at an international level. There is much discussion as to the need or otherwise to adopt a new UN convention on the rights of the disabled. There are several pros and cons: on the one hand the imperative to adopt such a convention as a ”fourth pillar” from the area of special conventions (following the conventions against racial discrimination, discrimination against women and the rights of children), while on the other hand there is the risk that such a convention would be unrealisable in many poorer countries and the subsequent widening of legal differences between the planet’s rich ”North” and poor ”South”.

- Also linked to the differences beteen rich and poor countries is the theme of the right to a favourable environment – one of the human rights of the ”fourth generation” which is beginning to implemented primarily in the advanced countries (only the first indications are becoming evident in the CR). In the countries of the poor ”South”, the political, economic and cultural realities mean that they will long remain backward with regard to social and economic rights and potentially also civil and political rights. It is evident that this right may come into conflict with other rights and that its practical implementation will in many situations be extremely difficult. However, its increasing implementation is extremely important not only for the individuals concerned who will enforce this right, but also for the continuing, sustainable development of human civilisation as a whole.