I. General part

1. Introduction

The Government Commissioner for Human Rights has been preparing every year since 1998 a Report on the State of Human Rights in the Czech Republic (hereinafter only "CR"). Thus, the 2003 Report on the State of Human Rights is a sixth one of its kind. Like the previous reports, it is mostly an update 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 an extract of the rights guaranteed by the Charter of Fundamental Rights and Freedoms (hereinafter only the "Charter")[1] but is devoted in particular to the progress achieved in the past year in the areas which were criticized in the past and to ongoing deficiencies.

The progress achieved in the past year as well as ongoing deficiencies are evaluated predominantly in the light international treaties on human rights of which the CR is a signatory. For this purpose, the Report also contains an evaluation made by 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 involved 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. In order to obtain a full picture, it is also essential to investigate the manner in which individual states implemented the supervisory bodies' *de facto* manual.

Like in the Reports on the State of Human Rights in the Czech Republic for the previous years,[2] the layout of this Report represents a compromise between the systematic and content interpretation of human rights, as contained in a whole series of international human rights treaties and in the Charter. Many parts of the Report include references to its other parts, thus preserving the links between the content of individual rights and the problems that pertain to them. Besides this internal linking of its various parts, the Report contains references to other materials compiled by the Government, both of conceptual or legislative nature, which are directly or indirectly related to issues of human rights protection in CR.

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

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1 No. 2/1993 of Coll., as amended

2 As the name of the report is relatively long, reports on the state of human rights in CR are referred to in the entire text of this Report by an abbreviation "Report for the Calendar Year". The word "Report" means this 2003 Report.

2. Institutional safeguards

2.1. The Government Council for Human Rights

2.1.1. Topics reviewed by individual Committees of the Council:

Individual Committees of the Council reviewed the following topics:

The Committee for Civil and Political Rights discussed the draft of the legislation relating to administrative proceedings. Together with the government proposal of the new Administrative Procedure Code, the Chamber of Deputies reviews a proposal of the deputies for an amendment of the current Administrative Procedure Code[3]; therefore, the Committee focused on positive and negative aspects of the draft legislation, which was adopted by the Council as a recommendation to the new regulation of the administrative proceedings. The Committee further discussed the interference into civil rights represented by ordinances issued within the independent competencies of municipalities, and selected aspects of the legislative process. Members of the Committee also contributed to comments on the proposed amendments to the Charter and the Constitution, where they focused on the changes in the process of extradition of Czech state citizens abroad, particularly outside EU member states, under the so-called "European Arrest Warrant". Members of the Committee further contributed to comments on the proposed re-enactment of the Criminal Code, on the Bill on Secret Information and on the proposed legislative intent of the Act on Prostitution.

The Committee for Elimination of All Forms of Discrimination of Women dealt in 2003 with issues of equal representation of women and men in elected and appointed bodies, particularly in relation to the Election Act that is currently being drafted and to its amendments with the aim of ensuring increased representation of women. The Committee further discussed the issue of domestic violence and reviewed also other than its criminal law aspects.

The Committee for the Rights of the Child reviewed the Final Recommendations of the U.N. Committee on the Rights of the Child and prepared a motion for the adoption of measures intended for the elaboration of quality standards relating to the exercise of social and legal protection of children. This motion was approved by the Council on 24 June 2003. The elaboration of work quality standards for social workers should contribute to an increase of the quality of social and legal protection of children. The Committee further prepared a motion regarding violation of the right of children separated from one or both parents to maintain regular personal contacts with both parents. This motion, which was approved by the Council on 6 November 2003, contains tasks for the Ministry of Justice and the Ministry of Labour and Social Affairs. Other issues discussed by the Committee included a motion of the Committee for the Prevention of Torture regarding the use of cameras and bugging in school facilities.

The Committee for the Elimination of All Forms of Racial Discrimination reviewed the Final Recommendations of the U.N. Committee on the Elimination Racial Discrimination and formed two working groups, one of which will elaborate a national action plan against

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[3] See the government draft of the Administrative Procedure Code – Release of the Chamber of Deputies No. 201 (http://www.snemovna.cz/forms/tmp_sqw/6763002a.doc) and the proposal of the deputies for an amendment of the Administrative Procedure Code – Release of the Chamber of Deputies No. 152 (http://www.snemovna.cz/forms/tmp_sqw/67630035.doc)

racism, racial discrimination, xenophobia and related intolerance and the other one will deal with social exclusion in the housing area, particularly in relation to the Roma community.

The Committee on Economic, Social and Cultural Rights discussed the issue of housing and housing policy, particularly as regards provision of necessary living conditions. The Committee also dealt with the issue of actual limits of the right to information.

The Committee Against Torture and Other Inhuman, Cruel and Degrading Treatment and Punishment prepared a motion for the necessary regulation of conditions of the execution of the disciplinary prison sentence imposed upon soldiers, based on which the Chief of Staff of the Army of the Czech Republic issued an order regulating disciplinary imprisonment in military prisons which resulted in certain changes of the Basic Rules of the Armed Forces. The Committee further prepared a motion regarding the use of cameras and bugging in school facilities designated for institutional or protective care. It also paid attention to the situation of pregnant women and mothers of newborns held in detention and to the conditions of imprisonment of especially dangerous persons coming from the environment of organized crime. The Committee further reviewed draft amendments of Act on the Prison Service of the Czech Republic, Act on the Imprisonment, Act on Custody and Act on the Public Defender of Rights. Members of the Committee participated by their comments in the preparation of a report on the fulfilment of recommendations of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter only the "CPT") for the year 2003, which resulted from CPT's visit in the CR in 2002. In order to obtain updated information regarding the treatment of persons whose freedom has been restricted and the conditions in which they live, members of the Committee visited several prisons, an educational institute and a youth diagnostic institute.

The Committee for Human Rights Education discussed at its sessions concepts of continuing education with a focus on human rights education and training within the competencies of the Ministry of Labour and Social Affairs, the Ministry of Defence and the Ministry of Justice.

The Committee on Rights of Foreigners reviewed the participation of foreigners in local public life and decided to try to promote by appropriate methods the expansion of suffrage in elections to municipal and regional assemblies to encompass permanent residents from the so-called "third countries". The Committee further dealt in detail with the situation of foreigners in detention centres for foreigners. Its members visited the Balková facility and the Committee then prepared a motion for the Minister of Interior. Other issues included the new citizenship legislation, particularly with respect to granting citizenship to second- and third-generation immigrants, and the implementation of a concept of placing children with a language barrier, including unaccompanied minor asylum applicants, to institutional care facilities.

The Committee for Human Rights and Biomedicine further reviewed the issues of procedural rights of mentally handicapped person, the scope of compulsory vaccinations and adequacy of sanction for refusal of such vaccinations.

2.1.2. Government activities initiated by the Government Council for Human Rights

The government took the following steps based on motions of the Council:

The Government prepared a draft amendment of the State Citizenship Act[4], which was approved by the Parliament in the course of the year.[5] The amendment of the State Citizenship Act[6], which came into effect on 29 October 2003, allows further groups of Slovak citizens to attain Czech citizenship by a simplified way – by declaration without having to forfeit the Slovak citizenship. Following the attainment of the Czech citizenship by declaration, these persons can thus have dual citizenship. This measure applies to the following categories of persons:

- former Czech citizens who attained the Slovak state citizenship from 1 January 1994 to 1 September 1999;
- Slovak citizens born in the territory of the Slovak Republic after 1 January 1975 who were as of 31 December 1992, i.e. before attaining the age of 18 years, the citizens of the Czech and Slovak Federal Republic and also of the Slovak Republic and one of their parents held the citizenship of the Czech Socialist Republic or of the Czech Republic and the second one held the citizenship of the Slovak Socialist Republic or of the Slovak Republic.

The amendment to the State Citizenship Act also stipulated an exception from the loss of the Czech citizenship in cases in which a Czech state citizen attains during his/her marriage with a foreigner the citizenship of the state of which the other spouse is a citizen. In these cases, it will be possible to retain the Czech citizenship and to have thus dual one. Another fact that is of importance to the possibility to acquire citizenship rights is the expansion of grounds for waiving the obligation of applicants for the Czech citizenship to submit evidence of the forfeiture of the current state citizenship, which is one of the conditions prescribed by the law for the awarding of the Czech citizenship. This further increases a possibility of holding multiple citizenships together with the Czech citizenship.[7]

The government also prepared in 2003 a draft amendment of the Detention Act[8], which was approved by the Parliament[9] and signed by the President at the beginning of 2004. This amendment changes, *inter alia*, the provisions relating to the expulsion custody, the deficiencies of which were noted in 2001 by the motion of the Council, which referred to the necessity to amend of the institute of expulsion custody (see the chapter Expulsion Custody and Execution of the Sentence of Expulsion).

Based upon a motion of the Council relating to the necessity to regulate conditions of the disciplinary imprisonment of soldiers, the Minister of Defence ordered to the Chief of Staff of the Army of the Czech Republic to ensure to soldiers engaged in basic military service their rights during their disciplinary imprisonment. The Chief of Staff of the Army of

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[4] Act No. 40/1993 of Coll., on Attainment and Loss of the State Citizenship of CR, as amended

[5] See Release of the Chamber of Deputies No. 254 (http://www.snemovna.cz/forms/tmp_sqw/67630039.doc)

[6] Act No. 357/2003 of Coll. amending Act No. 40/1993 of Coll., on Attainment and Loss of the State Citizenship of CR, as amended

[7] At the same time, the amendment defined the child in accordance with Article 1 of the Convention on the Rights of the Child (No. 104/1990 of Coll.) and the European Convention on State Citizenship (ETS 166) and determined the limit of maturity in accordance with the Civil Code (No. 40/1964 of Coll.) and the Family Act (No. 94/1963 of Coll.). The amendment further expanded the list of conditions for the awarding of the Czech citizenship by a fifth one, i.e., the fulfilment of duties arising from laws regulating public health insurance, social security, pension insurance, taxes, levies and charges and fulfilment of duties under the Aliens Act (No. 326/1999 of Coll.).

[8] Act No. 293/1993 of Coll., on Execution of Custody, as amended

[9] See Release of the Chamber of Deputies No. 353 (http://www.psp.cz/forms/tmp_sqw/4ac7001f.doc)

the Czech Republic issued an order to regulate imprisonment in military prisons,[10] which should serve as a means of interpretation of certain provisions of the prison rules and should remove all identified deficiencies until 1 March 2004 when an amendment of the Basic Rules of the Armed Forces will come into effect.

Based on an earlier motion of the Council, the Ministry of Justice prepared a draft amendment to the Civil Procedure Code relating to the proceedings on the ability to perform legal acts and to the proceedings on the admissibility of admission or holding a person in a health care facility.

2.2. Government Council for National Minorities

The principal issues discussed at the sessions of the Government Council for National Minorities (referred to in this section only as the "Council") held in 2003 included:

- the preparation of an act on the establishment of the Museum of Roma Culture in Brno;
- participation of representatives of national minorities in advisory bodies for affairs of national minorities at the Ministry of Culture and the Ministry of Education, Youth and Sports;
- participation in the preparation of the announcement of tenders for subsidies provided by the Ministry of Culture and the Ministry of Education, Youth and Sports in programmes of "support of cultural activities of members of national minorities", "support of expansion and receipt of information in languages of national minorities" and "support of education in languages of national minorities and of multicultural education";
- preparation of a proposal of a specific binding indicator of activities of members of national minorities and of support of integration of members of the Roma community in the draft state budget for 2004;
- preparation of the Information on the Current Situation of the German National Minority and on Selected Issues of the Croatian and Polish National Minority in the Czech Republic (February 2003);
- activities of the work group of the Council for National Minority Broadcasting of the Czech Television.

The Secretariat of the Council prepared in 2003 a publication named *Policy of the Czech Republic Toward National Minorities. Basic Document*.[11] The publication, which was issued in a Czech and an English version, provides an overview of the basic documents of legal and conceptual nature relating to the rights of national minorities and a translation of the Act on Rights of Members of National Minorities into eleven minority languages, i.e. to the languages of those national minorities that have their representatives in the Council.

One of the Council's priorities is the cooperation with committees for national minorities in regions, cities and municipalities. Such committees currently exist in 32

[10] Order of the Commander in Chief of the Army of the Czech Republic amending the conditions of execution of prison sentences in military prisons of 2 October 2003

[11] The publication was published by the Office of the Government of the CR (ISBN 80-86734-07-2).

municipalities in former districts of Karviná and Frýdek-Místek, in three regions (Moravia and Silesia, South Moravian Region and Liberec Region) and in three cities (Brno, Liberec and Most). At the same time, commissions for the affairs of national minorities have been established in cases in which the conditions of the Act on Municipalities, Act on Regions and Act on the Capital City of Prague[12] are not complied with whilst there is at the same time a need to establish a body for working with minorities or especially with Roma communities. For instance, the Capital City Council in Prague established a Commission for National Minorities, the membership of which includes representatives of active organizations of national minorities operating in Prague. In this respect, the Council's Secretariat monitors and evaluates the exercise of the policy of municipalities with extended competencies toward national minorities in relation to contracts concluded under public law that ensure the exercise of the delegated competencies as regards rights of members of national minorities.

2.3. Government Council for Roma Community Affairs

The Government Council for Roma Community Affairs (referred to in this section only as the "Council") reviewed the second updated Roman Integration Policy Concept, which was subsequently approved by the government[13]. The concept orders members of the government to adopt measures aimed at a 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. The government based the update on the Information on the Fulfilment of Government Resolutions Relating to Roma Communities. Emphasis was placed in the Concept mainly on developing existing programmes restricting social exclusion of the Roma community, i.e. field social work and support of the preparatory years for Roma pupils, of Roma secondary school students and teaching assistants. The Council subsequently agreed that it is necessary to carry out an in-depth review of the existing Concept to adapt it to new needs arising after the public service reform. The review of the Concept started in October 2003 and will end in October 2004.

The Council paid attention to school issues. One of the proposals resulting from this review was the introduction of a multilevel extramural studies for Roma pedagogic assistants, which is currently being prepared in Most for the school year 2004/5 v Most.

In a press release published in October 2003, the Council expressed its concern over the conduct of municipalities which apply excessive repressive measures against socially vulnerable Roma, particularly as regards housing.

As for the activities of its Committee for Cooperation with Self-administration Entities, the Council searched for new forms of cooperation with coordinators of Roma advisors and with newly appointed employees of municipal offices with extended competencies, who are charged with carrying out, within the jurisdiction of their municipality, tasks assisting in the exercise of rights of members of the Roma community and their integration into the society. This Committee initiated jointly with the Ministry of Interior the

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[12] Act No. 128/2000 of Coll., on Municipalities, as amended, Act No. 129/2000 of Coll., on Regions, as amended, and Act No.131/2000 of Coll., on the Capital City of Prague, as amended

[13] Government Resolution of 12 March 2003 No. 243, 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 2002 (http://racek.vlada.cz/usneseni/)

formation of a programme of further education for coordinator of Roma advisors, for Roma advisors and social field workers employed by the municipalities.

Based on an Analysis of Current Migration and Settlement of Members of Roma Communities from the Slovak Republic in the Territory of the Czech Republic[14], the president of the Council initiated the establishment of a Czech-Slovak commission for migration of members of Roma Communities from the Slovak Republic to the territory of the Czech Republic. The Commission met in Bratislava in December 2003 and is presided over by deputy ministers of interior of the Slovak Republic and of the CR.

The Council's office devoted major efforts to the development and streamlining of field social work in Roma communities. Municipalities received in 2003 subsidies for 91 field social workers and a work group for field social work was established in November 2003, which was charged with the task of preparing a proposal for streamlining the social field work as a part of provision of social services, and setting up a system of methodological guidance of field social workers employed by municipalities. The office also focused on the programme named *Support of Social Inclusion of Members of Roma Communities*, within which it provided through regions and municipalities a total amount of 29,385,000 CZK in subsidies to 78 projects.

2.4. Government Council for Equal Opportunities for Men and Women

The Government Council for Equal Opportunities for Men and Women held four sessions in 2003, in which it raised several recommendations to the government. The most important of these include:

- preparation of a methodological tool (information material) for budgeting of public funds pertaining to equality of men and women (gender budgeting);
- a proposal for including in the Rules of Procedure and the Legislative Rules of the Government a requirement that the statistical and other data in all materials that are reviewed by the government are also divided by men and women, and for providing an explanation of any differences, including expected impacts or developments;
- preparation of a legislative intent of the election act that would ensure legislative aspects of mechanisms for equal representation of men and women in elected representative bodies in line with similar French and Belgian legislation;
- preparation of draft legislation concerning protection from domestic violence, which would provide a comprehensive resolution of criminal law and civil aspects of effective protection against domestic violence and would particularly introduce the institute of temporary banishment of the aggressor from the dwelling used jointly with the victim.

[14] Government Resolution of 19 November 2003 No. 1160, on the Report on Current Migration and Settlement of Members of Roma Communities from the Slovak Republic in the Territory of the Czech Republic (http://racek.vlada.cz/usneseni/)

3. The international dimension of human rights

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

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

The report was discussed before the Committee on the Rights of the Child (referred to in this section only as the "Committee") on 23 and 24 January 2003. The Committee focused its attention particularly on the following issues:

- the absence of a body that would coordinate and monitor the implementation of the Convention, insufficient and un-coordinated collection of information pertaining to children;
- the principle of the best interest of the child, its incorporation into the legal code and its interpretation;
- provision of support to families in crises and in social difficulties;
- position of children in institutional care, quality of provided care and implementation of educational measures;
- position of the child in criminal proceedings (both as a victim or as a perpetrator of a criminal offence);
- the existing stereotype of entrusting the child to his/her mother's custody in proceedings on custody and support of minor children held in connection with the divorce or separation of parents;
- the meaning and substance of the Act on Social and Legal Protection of Children and the qualifications and number of social workers;
- health condition of children – high rate of injuries of children during traffic accidents;
- violence against children, absence of express ban of corporal punishment;
- sexual exploitation of children – child prostitution, trafficking in children and sexual tourism.

In this Final Recommendations[15], the Committee welcomed the amendments to existing laws and the adoption of new laws concerning, *inter alia,* increased protection against trafficking in children and against commercial sexual exploitation of children and integration of children with special needs into ordinary schools. The Committee further welcomed the ratification of The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption of 1993 and the Convention of the International Labour Organization No. 182 Concerning Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. The Committee noted a very good level of protection of mothers, including satisfactory maternity leave and excellent health care indicators relating to infant mortality, mortality of children below five years of age and vaccination.

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[15] See the Government Resolution of 10 September 2003 No. 898, concerning final recommendations of the Committee for the Rights of the Child as the supervisory body controlling the compliance with the Convention on the Rights of the Child (http://racek.vlada.cz/usneseni/); the Czech translation of the final recommendations forms part of Annex No. 2 of the resolution and the English version of the document CRC/C/15/Add.201 of 18 March 2003 is available online at the website of the Office of U.N. High Commissioner for Human Rights www.uhnchr.ch (http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/8d1d33234e16f309c1256d2b004a7845?Opendocument).

The Committee addressed to the CR a whole number of recommendations, including, *inter alia*:

- the ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,
- the establishment or appointment of a single permanent body, which is adequately mandated and resourced, to coordinate implementation of the Convention at the national level,
- the development of a coherent and comprehensive rights-based national plan of action with shared responsibilities, clear priorities, timetable and preliminary estimates of resources required to implement the Convention;
- strengthening of legislative efforts to fully integrate the right into all relevant legislation concerning children.

3.1.2. Fifth periodic report on implementation of the Convention on the Elimination of All Forms of Racial Discrimination

The report was discussed before the Committee on the Elimination of Racial Discrimination (referred to in this section only as the "Committee") on 7 and 8 August 2003. The Committee focused its attention particularly on the status of the Roma in the society, with an emphasis on overrepresentation of Roma children in special schools and on the necessity of a culturally sensitive approach in the education, on the position of rejected asylum seekers, the work of the police with national minorities, numbers of policemen sentenced for crime with an extremist background and particularly on the preparation of a unified anti-discrimination law.

In its final recommendations[16], the Committee welcomed legislative efforts focusing on the implementation of provisions of the Conventions, particularly those concerning protection of national minorities, the amendment to the Criminal Code adopted in 2002,[17] and the amendments of the Civil Procedure Code under which the burden of proof was transposed from the plaintiff to the defendant. The Committee also appreciated specific measures, programmes and strategies adopted with the aim of improving the situation of the Roma and other marginalized groups, including refugees.

The Committee also adopted a whole number of recommendations, including, *inter alia*:

- expediting the efforts aimed at the preparation of a comprehensive anti-discrimination law ;
- pursuing and intensifying efforts to achieve more effective application of existing legislation against racially motivated violence and racial discrimination;
- continuing and intensifying poverty reduction and employment programmes for the Roma, and also considering the establishment of functional loan system for socially weak sections of the population, including the Roma, devising measures to prevent

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[16] See the Government Resolution of 28 January 2004 No. 90 concerning final recommendations of the Committee on the Elimination of Racial Discrimination as the supervisory body controlling the compliance with the Convention on the Elimination of All Forms of Racial Discrimination (http://racek.vlada.cz/usneseni/); recommendations forms part of Annex No. 2 of the resolution and the English version of the document CERD/C/63/CO/4 of 22 August 2003 is available online at the website of the Office of U.N. High Commissioner for Human Rights www.uhnchr.ch

[17] Act No. 134/2002 of Coll., see Chapter II./6.1. 2002 Reports

evictions or mitigate their negative effects, in particular on the most vulnerable groups;
- continuing and intensifying the efforts to improve the educational situation of the Roma;
- continuing and intensifying its anti-racism campaigns and other efforts aimed at combating racial and ethnic stereotyping.

3.2. The 2003 Report on implementation of recommendations of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (hereinafter only the „CPT"), which resulted from CPT's visit in the CR in 2002

CPT's second regular visit in the Czech Republic took place in the period of 21-30 April 2002.[18] The final report from the visit, which was submitted to the CR in December 2002, summarizes CPT's findings gathered during its visit and contains recommendations that should be adhered to by the Czech Republic in its efforts to ensure sufficient protection to persons deprived of freedom, comments on the current situation and requests for information.

The report on the implementation of CPT's recommendations in 2003, which resulted from CPT's visit in the the CR in 2002, was prepared by the Secretariat of the Government Council for Human Rights with the use of materials provided by the Ministry of Interior, the Ministry of Justice, the Ministry of Health, the Ministry of Labour and Social Affairs, the commissioner of the Region of Moravia and Silesia and by the Office of the Ombudsman. The report responds to the recommendations and comments contained in the final report from the visit and also includes information requested by CPT in its report from the visit in 2002.[19]

3.3. Contractual foundation

3.3.1. Adoption of new international legal commitments

The ratification process of the following international treaties were passing in 2003:
- Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms,[20] which contains an absolute abolition of the death penalty. The ratification of this Convention was approved by the Chamber of Deputies;[21]
- The Second Optional Protocol to the International Covenant on Civil and Political Rights, which lays down a universal abolition of the death penalty. Unlike Protocol No. 13 to the ECHR, this protocol allows for an exception in relation to perpetrators of especially serious criminal offences committed during the war. The ratification of this Convention was approved by the Chamber of Deputies.[22]

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[18] See Chapter I./3.2. of the 2002 Report

[19] Government Resolution of 21 January 2004 No. 79, on the Report on the Implementation of Recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (http://racek.vlada.cz/usneseni/)

[20] Government Resolution of 17 April 2002 No. 40 concerning the proposed signing and ratification of the 13th Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (http://racek.vlada.cz/usneseni/); the CR signed the protocol subject to ratification in May 2002.

[21] See Release of the Chamber of Deputies No. 251 (http://www.snemovna.cz/cgi-bin/win/docs/tisky/tmp/t025100.pdf)

[22] See Release of the Chamber of Deputies No. 247 (http://www.snemovna.cz/cgi-bin/win/docs/tisky/tmp/t024700.pdf)

Following are the international treaties signed by the CR where the ratification process has not been started yet:

- Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, containing a universal prohibition of discrimination. The CR signed the Protocol subject to ratification on 4 November 2000. The motion for consent with the ratification has not yet been submitted to the Parliament of the CR and there are hesitations whether to ratify this Protocol due to the current Czech restitution acts setting forth state citizenship as a necessary prerequisite for the implementation of a restitution claim. The ratification of this Protocol could thus mean a legal and practical problem. The submission date of the motion for approval to the Parliament of the CR has been adjourned to 1 September 2004;
- European Charter for Regional or Minority Languages (ETS No. 148) – this treaty was signed by the CR subject to ratification on 9 November 2000. The ratification is being postponed until the adoption of a new Administrative Procedure Code, the provisions of which would be the most affected by the adoption of the Chapter. The adoption of the new Administrative Procedure Code will permit a more detailed determination of commitments assumed by the CR, which the CR will be able to fulfil.

The third category consists of international treaties the ratification process of which is still under preparation:

- Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment[23] (hereinafter only the "Optional Protocol"), which forms a two-tier system of prevention of torture and other cruel, inhuman or degrading treatment or punishment. It establishes an international mechanism – the Subcommittee for Prevention, with the task of making controlling visits to places of detention of persons whose freedom has been restricted, which will be similar to those of the European CPT. In addition to the foregoing, the Optional Protocol binds the states parties to set up one or more similar mechanisms also at the national level. As such commitment concerning the existence of such national mechanism has to be reflected in the national legislation before the ratification of the Optional Protocol, a motion has been submitted together with the motion for the amendment of entrust, it is proposed to entrust to the Ombudsman[24] the performance of tasks of such supervisory body over places of detention of persons whose freedom has been restricted by a decision of a public authority or in connection with the provision of care. TheOmbudsman, furnished with the proposed authority, shall fulfil all criteria concerning national prevention mechanisms imposed by the Option Protocol and it will not be thus required to take any further steps towards the implementation of this Protocol;[25]
- U.N. intensified in 2003 its works on the preparation of the Convention on Rights of People with Disabilities. The draft wording is prepared by a working group established for this purpose[26]. The Czech Republic supports without reservation the adoption of

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23 No. 143/1988 of Coll.

24 Act No. 349/1999 of Coll., on the Public Defender of Rights, as amended

25 See Chapter II./4.6. of the Report

26 The second meeting of the Ad Hoc Committee of the U.N. General Assembly for the preparation of the convention on the protection of rights of people with disabilities, which was held in New York in period of 16-27 June 2003, decided on the establishment of a working group consisting of 27 representatives of member states and 12 representatives of non-governmental organizations, which was charged with preparing., based on contributions from states, their regional conferences and seminars, U.N. agencies, international and non-

the new convention on protection of human rights of people with disabilities. To ensure a more effective coordination on the national level, the Ministry of Foreign Affairs started to cooperate with the Government Board for People with Disabilities and with the Ministry of Labour and Social Affairs. In this respect, the CR participated in the preparation of the draft prepared by the EU as a contribution to the working group of the Ad hoc Committee.

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

The office of the European Court of Human Rights (hereinafter only the "Court") records a total of 874 complaints filed against the CR. As the Court office does not make any statistical evaluation of all filed complaints, their composition (unlike the composition of communicated complaints) is not known.

In 2003 the Court issued four guilty judgments against the Czech Republic:

- The judgment of the Second Section of the Court issued on 7 January 2003 in the matter of *Dana Bořánková v. the Czech Republic* concerned the length of the judicial proceedings about the settlement of cancelled tenancy in entirety of spouses. The Czech Republic was sentenced for excessive length of these proceedings, i.e., for the breach of Article 6(1) and was ordered to pay to the complainant a total of 15,500 EUR in compensation of property and non-property damages and legal costs.
- The judgment of the Second Section of the Court issued on 10 July 2003 in the matter of *Jan Hartman and Jiří Hartman v. the Czech Republic* concerned three restitution proceedings conducted by the complainants and the question whether the Czech Republic has effective remedies of excessive length of court process. The Czech Republic was sentenced for both the excessive length of these proceedings (Article 6(1) of the Convention) and for the fact that Czech law does not provide a possibility to effectively complain against excessive length of court proceedings (Article 13), and ordered to pay to both complainants a total amount of 11,500 EUR in compensation of moral detriment and legal costs.
- The judgment of the senate of the Second Section of the Court issued on 22 July 2003 in the matter of *Berta Schmidtová v. the Czech Republic* concerned the excessive length of restitution proceedings held alternatively before the Land Office and the court. Also in this case, the CR was sentenced for excessive length of these proceedings, i.e., for the breach of Article 6(1) and was ordered to pay to the complainant a total of 6,500 EUR in compensation of moral detriment and legal costs.
- The judgment of the senate of the Second Section of the Court issued on 29 July 2003 in the matter of *Margita Červeňáková et al. v. the Czech Republic* concerned alleged breach of the prohibition of inhuman and degrading treatment (Article 3), of the right for protection of family life (Article 8), the right for court process within an adequate time limit (Article 6(1)), the right for an effective remedy (Article 13) and ban on discrimination (Article 14). The Czech Republic concluded on 26 May 2003 a compromise with the legal representative of the complainants, which was proved by the judgment of the court, and undertook to pay a total of 900,000 CZK in compensation for the caused detriment.
- The judgment of the senate of the Fourth Section of the Court issued on 21 October 2003 in the matter of *Kreditní a průmyslová banka v. the Czech Republic* concerned

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governmental organizations, independent experts, etc. a draft wording of the convention, which will become the basis of the deliberations of the third meeting of the Ad Hoc Committee held in 2004.

insufficient access to court in the matter of review of a decision on forced administration, which was imposed by the Czech National Bank upon the complainant bank. The CR was sentenced for the breach of the right to access to court (Article 6) and was ordered to pay to the legal representative of the bank 10,000 EUR in legal costs.

- The judgment of the senate of the Second Section of the Court issued on 2 December 2003 in the matter of *Růžena Koktavá v. the Czech Republic* concerned the length of the proceedings for the determination of invalidity of a contract. The Czech Republic was sentenced for excessive length of these proceedings (breach of Article 6(1)) to pay 1,700 EUR in compensation of moral detriment.

Where the judgment became final and the term set up for payment of equitable satisfaction in accordance with the judgment has expired, the Ministry of Justice paid in time under a budget measure of the Ministry of Finance.

Apart from these judgments, the Court also issued a number of decisions concerning admissibility of complaints against the CR, in which it did not state, of course, that the CR breached the Convention or its Protocols. An issue of concern is the 88% increase in the number of complaints filed with the Court in 2003 in comparison with 2002. This increase will become apparent later on. Also the structure of newly submitted complaints has changed in comparison with 2002, with complaints against the excessive length of proceedings no longer being so dominant, although they still form a majority of all complaints.

The Court communicated to the CR in 2003 the CR a total of 16 new complaints, nine of which concerned the alleged excessive length of proceedings (Article 6(1)), seven complaints concerned a breach of other right for fair trial (Article 6), six complaints concerned a breach of the right to protection of assets (Article 1 of Protocol No. 1), four complaints concerned prohibition of discrimination, one complaint concerned the right to freedom (Article 5(3) and (4)), one complaints concerned the right to education (Article 2 of Protocol No. 1), one complaint concerned inhuman and degrading treatment (Article 3) and one complaints concerned the right to private life (Article 8).

The complainants who addressed their complaints to the Court in 2003 addressed also the general public with their comments. The association Justice to Children provides a complaint form at its website[27]; according to this association, the interest in filing complaints against the CR with the Court increased from the part of parents who are unable to actually enforce their right to maintain regular personal contacts with their children although such right has been acknowledged by the court.

3.3.3. Notices filed against the Czech Republic with the Human Rights Committee

The Human Rights Committee[28] did not adopt in 2003 any opinion on an individual notice filed against the CR, nor did it communicate to the CR in 2003 any individual notice.

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[27] www.iustin.cz

[28] It is an international supervisory body established under the International Covenant on Civil and Political Rights (No. 120/1976 of Coll. and No. 169/1991 of Coll.), which supervises the fulfilment of obligations stipulated in the Covenant.

On the other hand, the Committee declared one notice as inadmissible without requesting the opinion of the government.[29]

3.3.4. Implementation of decisions of international supervisory bodies by the state[30]

The criticism of the Czech legal system by the Court and the Human Rights Committee, focusing on the absence of legal means for review of a matter, which these international supervisory bodies considered as a breach of the treaty by the CR, resulted in the preparation of an amendment of the Act on Constitutional Court[31], which was to regulate the relation between extraordinary remedies, specifically the appeal to the Supreme Court and the constitutional complaint so that it becomes clear that, except for retrial, the filing of a constitutional complaint must be preceded by a decision on the appeal to the Supreme Court.

The requirement which is set in the Act on the Constitutional Court and under which it is necessary (except in case of retrial) to use up all remedies before filing a constitutional complaint does not sufficiently distinguish between regular and extraordinary appeals. This gives rise to application problems also in relation to procedural means which arose after the adoption of the Act on the Constitutional Court, i.e., after 1993. Filing an appeal to the Supreme Court as a remedy in the case of which the admissibility depends in each case on the review and decision of the relevant body thus does not fully depend on the will of the party to the proceedings. Therefore, it cannot become in all cases a prerequisite necessary for filing a constitutional complaint or to link to it the time limit for filing a constitutional complaint.

This situation is also criticized by the Court, because constitutional complaints are being dismissed under the pretext that the complainant did not use up all remedies, or because the complainant did file an extraordinary remedy which was dismissed and, in the meantime, the prescribed period for filing the constitutional complaint has already expired.[32] Judicial

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[29] An overview of individual notices against the CR filed with the Committee is shown in a report prepared by the Ministry of Justice (Office of the Attorney for Representing the Czech Republic before the Court), which was presented to the government at its meeting held on 14 January 2004 (http://wtd.vlada.cz/vlada/cinnostvlady_archiv.htm).

[30] This Chapter was prepared with the use of an expose to the amendment of the Act on the Constitutional Court.

[31] Act No. 182/1993 of Coll., on the Constitutional Court, as amended, see Government Resolution of 26 March 2003 No. 291 concerning the bill amending Act No. 182/1993 of Coll., on the Constitutional Court, as amended (http://racek.vlada.cz/usneseni/); the amendment was published as Act No. 83/2004 of Coll.

[32] See ruling of the Court in the matter of Zvolský and Zvolská *v.* the Czech Republic and Běleš et al. *v.* the Czech Republic, available in Czech on the website of the Ministry of Education http://portal.justice.cz. The Court indicated that as regards the possibility of concurrent filing of a second-instance appeal and a constitutional complaint, this way has no support in the legal system and it was not easy for the complainants to this practice. This resolution of the problem does not comply with the requirement of legal certainty also due to the fact that nothing prevents the Constitutional Court to rule on the constitutional complaint. Thus, there may exist two rulings in a single matter. The Court also referred to other two complaints filed against the Czech Republic, which indicate that even the concurrent filing of an appeal to the Supreme Court and a constitutional complaint does not prevent the dismissal of the constitutional complaint.

As regards the matter of Běleš et al., the Court stated that the admissibility of the appeal to the Supreme Court is subject to of the principal legal importance of the appealed ruling, which is fully within the competence of the Supreme Court. Therefore, it cannot be expected from the complainants or from their legal representatives that they will be able to correctly assess the admissibility of the appeal. If the complainants filed an appeal to the Supreme Court, they risked a dismissal of the constitutional court for default.

As regards the matter of Zvolský and Zvolská, the Court stated that the matter was not considered due to a disputable interpretation of the procedural law, specifically Section 75(1) of the Constitutional Court Act, which does not distinguish between regular and extraordinary remedies, requires the use of all procedural means

practice knows a case in which a constitutional complaint in one and the same matter was dismissed at first due to the failure to use all remedies, and after the removal of this defect, the Constitutional Court dismissed the subsequent constitutional complaint for default.

The amendment was preceded by a notice of the Constitutional Court assembly of the change of its procedure in respect of the concurrence of a constitutional complaint and an appeal to the Supreme Court for which there is no legal entitlement.[33] Since the beginning of 2003, the Constitutional Court has proceeded as follows "…*In the case of filing an appeal, the constitutional complaint shall be considered as admissible only after the issue of a decision on the extraordinary remedy, except for a decision on retrial" and "…the sixty-day time limit for filing a constitutional complaint shall commence to run as of the date of service of the decision of the extraordinary remedy, except for retrial*. This Constitutional Court substantiated this decision by the criticism of the Court.

Furthermore, the amendment to the Constitutional Court Act was to allow, if so decided by the Court, reopening proceedings ended by a final effective judgment of the Constitutional Court, i.e. to introduce retrial before the Constitutional Court under a general decision of an international court. The Chamber of Deputies and subsequently the Senate adopted, *inter alia,* an amending proposal that would retrial before the Constitutional Court solely in criminal cases, thus excluding the possibility of retrial in administrative judiciary and in civil law proceedings.[34] This change was one of the reasons why the President of the Republic subsequently refused to sign the amendment of the Constitutional Court Act and returned it to the Chamber of Deputies.[35]

The persistent inability of the CR to implement opinions of the Human Rights Committee, whether those relating to the state citizenship as a prerequisite for restitution, to some procedures applied by the state authorities in restitution proceedings, or to a progress in a specific custody proceeding, seems to be a serious deficiency. In this respect, the draft amendment to the Constitutional Court Act does not mean a change in comparison with the existing condition, because it does not resolve the problem of implementation of decisions of those international supervisory bodies that are not formally called courts, even though such

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of protection of right, except for a motion for retrial. Thus, if the complainants were forced to file an appeal to the Supreme Court to ensure that their constitutional complaint is not dismissed, the Court believes that the time of the Supreme Court or should be at least stayed.

In both cases, the Court ruled as follows: the obligation to use up all procedural means of protection of right without distinguishing between regular and extraordinary means and the impossibility to foresee whether it is admissible to file a constitutional complaint pursuant to Section 239(2) of the Civil Procedure Code represent an excessive burden for the complainants and thus interfere with the very essence of the right to appeal. An especially strict interpretation of procedural rules by the Constitutional Court thus deprived the complainant of their right to access to the court, which represents a breach of Article 6(1) of the Convention. (http://portal.justice.cz/ms/ms.aspx?j=33&o=23&k=390&d=9132,http://portal.justice.cz/ms/ms.aspx?j=33&o=23&k=390&d=8267). The same ruling was issued by the Court also on 24 February 2004 in the matter of *Vodárenská, a .s* v. the Czech Republic.

[33] Notice of the Constitutional Court No. 32/2003 of Coll.

[34] This is a modifying motion of the Deputy J. Pospíšil (see Part C. of the modifying motions to the amendment of the Constitutional Court Act – Release of the Chamber of Deputies No. 284/2: http://www.snemovna.cz/forms/tmp_sqw/67630048.doc), by which the new wording of Section 119(1) was amended by an indication that is applies only to the criminal proceedings.

[35] President of the Republic did so on 12 January 2004. In his opinion, (see Release of the Chamber of Deputies No. 284/4: http://www.snemovna.cz/cgi-bin/win/docs/tisky/tmp/t028404.pdf), he stated that he considers allowing retrial before the Constitutional Court only in criminal matters as problematic ("discriminatory") because *"such right should be available to anyone whose human right or fundamental freedom has been breached, irrespective of the kind of process in which this happened.*" Spoken generally, such refusal to sign an act can be fully endorsed.

bodies have the power to rule in individual cases of breach of an obligation under international law – even though such power and international legal obligation is contained in those international treaties that are parts of Czech law. On the contrary, President of the Republic voiced in the reasons for refusal of the amendment his concern that the definition of the term "international court" is so broad that it includes any other body or institution under a treaty that has been concluded only by the government or by a ministry. Pursuant to Article 10 of the Constitution of the Czech Republic, a treaty signed by the government or a ministry is not a part of Czech law, because such ministerial or government treaties are not subject to the approval by the Parliament and to the ratification by the President of the Republic and are published as such in the Collection of International Treaties (formerly in the Collection of Laws) solely for information.

An attempt to improve the legislation relating to remedies of excessive length of court proceedings (which was criticized by the above referenced judgment in the matter of *Hartman v. the Czech Republic*) was only partially successful. The amendment of the Act on Courts and Judges, which introduced the possibility to file a motion for determination of a time limit for the performance of a procedural act, improved preventive remedies, which might help expediting the court proceedings. However, the issue of compensational remedies, under which it would be possible to obtain compensation for moral detriment caused by excessive length of the court process, is still outstanding.

It will be desirable to resolve in the near future not only the issue of implementation of the Court rulings in other than criminal matters, but also the issue of implementing decisions of non-court supervisory bodies in individual cases. In this second instance, it will be necessary to consider, inter alia, also the extent within which the state is to be bound by a decision that does not have a legally binding nature stipulated in the wording of the treaty.

3.4. PHARE Projects

The office of the Government Council for Roma Community Affairs prepared in 2003 a Phare project (the so-called Twinning Light) *Social Exclusion of Roma Communities*. The project was approved by the European Commission. A contract with a selected Spanish partner Fundación Secretariado General Gitano was signed in January 2004. The project is focused on the exchange of experience relating to successful processes of integration of members of Roma communities on the local level.

The twinning project[36] named "Improvement of Public Institutional Mechanism for the Introduction, Implementation and Monitoring of Equal Treatment with Men and Women", which was a part of the PHARE programme and lasted from August 2002 to July 2003, was intended to enhance the existing support mechanisms for women and to further enhance and improve the institutional mechanism safeguarding the implementation of the policy of equal opportunities for men and women[37]. The current output of the project is a recommendation to

[36] The twinning project concerning equal opportunities for men and women, which was a part of a PHARE programme, was started in August 2002.

[37] The project included gender equality training, including gender mainstreaming, of more than 400 participants (officials of regional offices, social partners, employees of various ministries charged with the policy of equal opportunities for men and women, journalists, politicians). A *Guide for the Way Towards Gender Equality* (a brochure offering an introduction to gender issues to general public), which has been published, is currently distributed to employment offices and other organizations, as well as a guide to incorporation of gender equality into the projects of the European Structural Funds. Another publication is an information flyer for men

improve the institutional safeguards[38]. The current organizational structure is considered as satisfactory[39]; however, further short- and long-term measures have been proposed for the improvement and enhancement of the existing organizational structure. At the same time, it is proposed to charge both elected representatives and public service employees with the implementation of the policy of equal opportunities for men and women with the aim of creating equal opportunities at the regional and municipal level.

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and women returning to the labour market after parental leave (which also distributed to employment offices). Another publication issued as a part of the twinning project is the brochure named *Why and How to Prepare a Gender Equality Plan* and a brochure on gender issues in collective bargaining. Another result of the project is a recommendation to enhance institutional structure for increasing gender equality. Results are published on www.mpsv.cz.

[38] 9 seminars and two conferences were held in the course of the project and Swedish experts participated as panel members in other events. The total number of participants trained during these events was about 500. A number of publications were issued: *Guide for the Way towards Gender Equality, Why and How to Prepare a Gender Equality Plan, European Structural Funds – Gender Equality in Project Applications, Are You at the Parental Leave?* – a flyer for employment offices, and a brochure *Men and Women in Data – A Gender Statistics.*

[39] The relevant specialized department of the Ministry of Labour and Social Affairs, specialized employees at all ministries, Government Council for Equal Opportunities of Men and Women as an advisory body of the government, the programme document of the government for promotion of gender equality.

II. Special part

1. Fundamental rights

1.1. Relation between the population register and the fulfilment of conditions for the exercise of rights

The amendment[40] of the Population Register Act[41], the preparation of which started as early as by the end of 2002, has introduced a more practical procedure for the determination of the place of permanent residence in certain cases. The place of permanent residence of Czech citizens returning usually after a long-term stay abroad is deemed to be the seat of the municipal office of the place of their last permanent residence or, if such place cannot be identified, the seat of the municipal office in the jurisdiction of which the citizen was born. The place of permanent residence of foreigners who have been awarded Czech citizenship is deemed to be the place where they were registered for permanent residence either under the Asylum Act[42] (in the case of asylum seekers), or under the Foreigners' Act[43] in the case of other foreigners.

The practical application of the rule concerning formal transfer of permanent residence to the seat of the municipal office in the case of citizens whose residence was officially cancelled is problematic. This is mostly due to the fact that the property designated for housing in which such citizen used to live has ceased to exist or because of the withdrawal of consent by those authorized to withdraw the consent with registration for permanent registration. Since the permanent residence is transferred by the law to the seat of the municipal office at the moment of cancellation of the existing permanent residence, it is not necessary that such act is accompanied, for instance, by the citizen's application for change of registration.[44] The factual cancellation of permanent residence has serious consequences in daily life with respect to all instances in which it is necessary formally document permanent residence in order to exercise a specific right, and citizens whose permanent residence has been officially cancelled do not know that they should state as their permanent residence the seat of the municipal office. This concerns not only fundamental or political rights but to a significant extent also economic and social rights.

1.2. Property rights

1.2.1. The duty to report persons registered for permanent residence to owners of properties designated for housing

The amendment of the Population Register Act imposes on those local authorities that are points of registration of permanent residence a new duty to report to owners of properties

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[40] Act No. 53/2004 of Coll., Amending Certain Laws Relating to the Population Register (handled as the Release of the Chamber of Deputies No. 259 (http://www.snemovna.cz/forms/tmp_sqw/6763004d.doc)

[41] Act No. 133/2000 of Coll., on the Population Register and Birth index numbers, as amended

[42] Act No. 325/1999 of Coll., on Asylum, as amended

[43] Act No. 326/1999 of Coll., on the Stay of Foreigners in the Territory of the Czech Republic, as amended

[44] The second sentence of Section 10(5) of the Population Register Act reads as follows: *"If the information about the place of permanent residence has been officially cancelled (Section 12), the place of permanent residence is deemed to be the seat of the reporting point in whose jurisdiction the permanent residence of the citizen has been officially cancelled.*"

designated for housing the number of persons registered for permanent residence. Thus, the points of registration for permanent residence are obligated to report to the owners of properties designated for housing, within fifteen days of the registration of a change, the number of persons registered for permanent residence. This duty resulted from the criticism of owners of properties designated for housing, who criticized the rules of reporting registration, because they had no possibility to know the number of persons registered for residence at a specific property or the tenants with whom a person registered for permanent residence. This caused problems to property owners not only in respect of assertion of their ownership rights, but namely in the fulfilment of their duties, like collection of relevant charges relating to the price of services which depend on the number of persons using the services (water and sewage charges and also charges for collection of household waste or payment for supply of electricity).[45]

The points of registration shall be also obligated to report to the owners of properties designated for housing the name(s), surnames(s) and date(s) of birth of persons authorized to grant consent with the performance of a specific change of the place of permanent residence, who have granted such consent.

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

The 2001 Report was the first one to deal with the possibility of restriction or extinction of an ownership right in the public interest.[46] This issue concerns in particular drawing a line between the protection of interests of individual owners and the possibility of effective promotion of the interests of the society. Therefore, a legislative intent of the Expropriation Act[47] was prepared as early as in 2002. A group of deputies prepared a bill on construction of highways and speedways act[48] with the aim of declaring the construction of expressly mentioned parts of communications as being in public interest. In addition to its impact on the ownership rights of identifiable owners of specific lands, such legislation would also result in an interference in procedural rights.

Those who voiced reservations towards this bill included the government who noted in its standpoint[49] that "*it does not consider it as appropriate that a law which should have a general character and should regulate a specific kind of social relations regulates terms of construction of a specific part of highway or speedway*". With a view to human rights protection, the government believed that the adoption of such law could "lead, in its consequences, to the breach of the constitutional requirement of equal rights and duties (Articles 1 and 3 of the Charter)", because *"the restriction of the suspensive effect of an appeal, the shortening of time limits for filing a motion for a court review of administrative decisions and the restriction of the suspensive effect of these complaints would result in a*

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[45] The amendment to the Population Register Act will further enable the Office for Nuclear Safety to fulfil its duties during monitoring of the situation of the population after nuclear emergencies.

[46] see Chapter II/1.1.1. of the 2001 Report

[47] Government Resolution of 3 April 2002 No. 327 concerning the proposed legislative intent of Act on Expropriation of Rights to Lands and Buildings (http://racek.vlada.cz/usneseni/)

[48] See Release of the Chamber of Deputies No. 373 (http://www.snemovna.cz/forms/tmp_sqw/39380024.doc)

[49] Government Resolution of 21 July 2003 No. 744 concerning the bill of the deputies on the construction of highways and speedways and on the amendment of certain laws (Release of the Chamber of Deputies No. 373) (http://racek.vlada.cz/usneseni/)

serious restriction of legal certainties of individuals and legal entities, and the shortening of the planning proceedings could result in a reduction of the protection of public interests stipulated in other laws, ... and the time limits proposed for the completion of the building proceedings are not realistic and do not make room for the issue of an administrative decision that would comply with the law, would be correct in merits and would protect the rights of parties to the building proceedings."

The definition of structures that are in the public interest should not thus have the form of a list of specific structures. This was supported indirectly by the government in the concept of legislative intent of the Expropriation Act, referring at the same time to the necessity of expediting the construction process of line structures.

1.3. Protection of personal data

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

The 2002 Report[50] criticized the amendment to the Banking Act[51], which excludes the collection and handling of personal data of bank clients, including the sensitive ones, from the regime of the Act on Protection of Personal Data[52]. The Ministry of Informatics prepared in cooperation with the Office for Protection of Personal Data (hereinafter only "OPPD") a draft amendment[53] to the Act on Protection of Personal Data, which deletes this exception from the Banking Act. In respect of human rights protection, the amendment of the Banking Act should thus reinstate the compliance of Czech law namely with the Convention of the European Council for the Protection of Individuals with Regard to Automatic Processing of Personal Data (ETS 108).

1.3.2. Unauthorized handling of the birth index number[54]

The birth index number represents a so-called national indicator, which clearly indicated an individual. A number of registers and databases in the CR which contain information about private and family lives of individuals are kept on the basis of birth index numbers. Modern computer and telecommunications technology makes it possible to search for information with the knowledge of the birth index number, thus creating serious risks of interference in the private life of individuals.

A new problem that arose in increased numbers in 2003 is the so-called identity theft i.e. criminal activity committed on the basis of knowledge and unauthorized use of identification data of individuals. The identity theft is becoming an increasingly serious problem worldwide and an increase of this type of crime can be also expected in the CR.

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50 See Chapter II./1.3.2. of 2002 Report

51 Act No. 21/1992 of Coll., on Banks, as amended

52 Act No. 101/2000 of Coll., on Protection of Personal Data, as amended

53 See Government Resolution of 5 November 2003 No. 1086 concerning the bill amending Act No. 101/2000 of Coll., on Protection of Personal Data and Amendments to Certain Laws, as amended (http://racek.vlada.cz/usneseni/). The bill is reviewed by the Chamber of Deputies as the Release of the Chamber of Deputies No. 508 (http://www.snemovna.cz/forms/tmp_sqw/67630051.doc)

54 This Chapter has been prepared on the basis of an opinion – legal analysis prepared by OPPD upon request.

Unauthorized requests for the birth index number and other identification data without any legal support or interest still exist in practice. Personal data are collected and processed in many public building in excess of the stipulated purpose. There are cases of unauthorized copying of personal documents, which further increases the risk of identity theft described above and its use in crime.

The scope of collected data varies.[55] However, keeping of a register of visitors represents collection of personal data under the Act on Protection of Personal Data.[56] Thus, each operator of a building is in a position of a data administrator or processor and must undertake measures preventing any unauthorized or incidental access to, change, destruction or loss, unauthorized transfer, processing or other misuse of personal data. This duty must be also complied with after the completion of the processing of personal data, particularly during further handling and keeping of visitor logbooks also in electronic form. Given the relatively high demands on the duties of the administrator/processor of personal data, each operator of a public building should consider, in the light of his own specific terms, the necessity of requesting personal data from the visitors of the building and possible alternative solutions.[57]

Collection of personal data requires defining the purpose of their processing. The Act on Protection of Personal Data also imposes other restriction – the scope necessary for the implementation of the purpose of data collection. This purpose is represented by subsequent identification of the visitor in the case of an emergency occurring during his stay in the building or thereafter. Such event should be usually investigated by the Police of the Czech Republic, which needs for the identification of and search for an individual only the name and surname in combination with the number of his/her identity card or other document by which the visitor proves his affiliation to the entity that has sent him to the building (employee cards).

At the same time, the Act prohibits further processing of the obtained personal data without the consent of the visitors, but refers to exceptions from this general prohibition. Those are a) the processing of personal data or performance of duties under a special law[58] b) protection of rights of the administrator/processor or important interests of the data subject; c) processing of personal data carried out by legal entities of non-profit nature. However, in the case that the processing of personal data is not stipulated directly by the Act, the evaluation of the possibility to apply the above

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55 This varies generally from a simple notification of the name of the visitor and the visited person, without the visitor having to prove his identity up to a request to submit the identity card or another proof of identity with copying down not only the name and surname of the visitor and the identification number of the document, but also other data like the date of birth, the birth index number and the permanent residence address. In many instances, this information is used during repeated visits when the visitor usually states his name, which is then searched for in the register. This information is checked against the name, date of birth or other information that has already been input in the register.

56 Act No. 101/2000 of Coll., on Protection of Personal Data, as amended

57 In certain cases it is not only possible but also appropriate to establish a visitor lobby at the entrance of the building, to appoint an employee to accompany the visitor, etc.

58 An example of a duty to not only request an identity card but also to keep a visitor register as prescribed by the law can be found in Section 36 of Act No. 202/1990 of Coll., on Lotteries and Other Similar Games of Chance, as amended, which reads as follows*: "(1) Visitors are obligated to present at the entrance to the casino a document proving their identity. No person below the age of eighteen years or anyone who does not have access in accordance with the visitor rules may be allowed entry into the casino. (2) The casino shall keep a daily log of visitor names, which shall include the name, surname, date of birth and birth index number and the number of the travel document and nationality in the case of foreigners.*"

exceptions depends on specific conditions and such possibility has to be considered on a case-by-case basis.

The existing practice and the foregoing indicates that the collection and processing of personal data goes in some cases beyond its purpose and some administrators /processors ask for documents that exceed the purpose of the visit to verify the accuracy of the personal data. Therefore, an amendment to the Population Register Act seems as most appropriate. At the same time, it will be necessary to also consider a legislation concerning handling the birth index number and identity documents.

1.3.3. Medical registers

A separate issue is the existence of medical registers containing sensitive data. The threat to the legal operation of these registers was finally resolved by the Ministry of Health in accordance with the requirement of the Office for Protection of Personal Data by a draft legislation, i.e. not only by a decree as it had been originally intended. At the same time, the information provided by the Ministry itself indicates that it has kept, until now, without the consent of the relevant persons e.g. *individual* data on ethnic origin, which can be considered as unacceptable. It would be highly appropriate to provide guarantees that nothing of that kind shall be possible in the newly operated registers. Moreover, this fact is in contrast with the absence of bulk statistics about ethnicity. Thus, the CR currently handles individual registers with sensitive date, but does not possess general statistics about, for instance, the average length of life and other health indicators of the Roma community, which would be not only fully legitimate, but also highly desirable.

1.3.4. Flight arrival cards

In the first months of 2003, there appeared in Asia a new acute serious respiratory disease - SARS. As it is a highly contagious disease with an approximately 10-day incubation period, its occurrence affected, as regards the speed of its spreading, particularly air transport, which could contribute to its spreading as a means of fast individual transport between destinations tens of thousands of kilometres apart. According to the Act on Protection of Public Health[59], the director of the Hygienic Station of the Capital City of Prague issued an emergency measure against transmission of the infectious disease SARS from abroad, which was designated for passengers, crew and Česká správa letišť, s.p. (Czech Airport Administration). At the same time, the director of the Hygienic Station of the Capital City of Prague issued an *Information for Passengers Concerning the Serious Respiration Syndrome*[60], which contained information about symptoms and progress of the disease in the case a passenger showed such symptoms.

The Ministry of Health responded to the continuing spreading of the disease in the world by an emergency measure,[61] imposing upon all passengers arriving in the CR the duty to fill, within 20 days of arrival, a flight arrival card,[62] i.e. to specify the name and surname,

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[59] Act No. 258/2000 of Coll., on Protection of Public Health, as amended

[60] The wording of the Information of the Hygienist of the Capital City of Prague is available on the website of the Ministry of Health: http://www.mzcr.cz/data/c630/lib/yearsiste.rtf.

[61] The wording of the emergency measure of the Ministry of Health is available on the website of the Ministry of Health http://www.mzcr.cz/data/c716/lib/SARS_opatreni.doc.

[62] Specimen of the flight arrival card:

flight number, the start date of the flight, the passport number, the destination in the CR and the planned date of departure. The Ministry of Health coordinated the following mechanism of cooperation with other subjects: Česká správa letišť, s.p. was charged with the distribution of flight arrival cards to all airline companies, whose staff distributed them to passengers on board of all aircraft landing in the CR. The passengers then returned the filled cards at the clearance (in the case of transit) or to the police. A passenger who failed to fill in the flight arrival card could be subject to a fine in administrative proceedings (if a Czech citizen) or could be denied entry into the CR (if a foreigner). The collected flight arrival cards were daily submitted by the police to the employees of the Hygienic Station of the Capital City of Prague who stored them in sealed boxes in a locked room, which could accessed only by an authorized person. Such stored cards were taken over in working days under a protocol by the North-West Branch of the Hygienic Station of the Capital City of Prague. Following the expiry of double the incubation period, the cards were officially liquidated in the presence of an employee of the hygienic station and a record of liquidation was elaborated.. This system was supposed to serve as a means of search for persons who came during their journey to the CR into contact with a person suspected of having SARS or with a person who subsequently fell ill of SARS and could infect fellow passengers during travel. The duty to fill in and submit the flight arrival card was cancelled by the Ministry of Health beginning with 1 July 2003.

The number of passengers who arrived in the CR through the Prague Ruzyně Airport in May and June 2003 reached more than 1.3 million. If it had been necessary to find all fellow passengers and other passengers who might have come into contact with a person suspected of having SARS, it would have been necessary to inspect, in average, more than thirty thousand flight arrival cards per one day.[63] As the flight arrival cards were officially incinerated, it is no longer possible to verify the claim arising during the effective period of the measure that some passengers allegedly surrendered the cards partly completed or not completed at all. These facts indicate that the identification of all potentially threatened passengers could have lasted even longer than one day and that the group of persons who came into contact with the threatened passenger could have further grown. Therefore, we can ask whether this large-scale measure could have met its purpose. However, it is the opinion of the Ministry of Health that the purpose of the introduction of flight arrival cards had been met.

The Office for Protection of Personal Data expressed its principal disapproval with the method of collection of personal data under the emergency measure. According to it, the Ministry of Health failed to abide by the conclusions of the inter-ministerial discussions about the introduction of the flight arrival cards and did not initiate consultations about the protection of personal data as it had been ordered to do. EU member states, which showed much more respect to individual rights to protection of privacy, did not introduce any such register, even though they were not less threatened by the SARS infection than the CR.[64] The attitude of all those states can be illustrated by a report of the UK government prepared for the Parliament, which states that no new powers or information systems in the preparation for the global SARS threat. According to the British government, fast communication, involvement

SARSkarta.pdf

[63] According to the data published by the Ministry of Transportation, the number of persons arriving from abroad through the Prague-Ruzyně Airport in May and June 2003 reached 604,364 respectively 722, 062 persons. The emergency measure of the Ministry of Health lasted 43 days – from 19 May until 30 June 2003.

[64] For comparison purposes, we can say that the United Kingdom recorded six suspicious cases in contrast with one case in the CR. However, none of these suspicious cases was confirmed.

of the patient public and alertness of the health care staff are a much better way than a strategy based on bureaucratic practices or authoritarian methods.

If any similar situation occurs in future, the CR shall abide by the WHO recommendations and shall coordinate its steps with the steps taken by EU member states in accordance with measures adopted by the European Commission.[65] *At the same time, it will be appropriate to consider the methods by means of which it is possible not only to prevent blanket collection of personal data but also to ensure in the case of necessity higher effectiveness of the system of retrieval of passengers who could come into contact with a passenger suspected of suffering from SARS and other persons.*

1.4. Personal rights

1.4.1. Monitoring electronic mail by the employer[66]

One of the practical issues that have become the subject of a more general discussion is the control of electronic mail, particularly of employee mail, by the employer. Substantive arguments of both employees and employers are relatively sound, naturally from the viewpoint of each of these groups. Thus, it would be appropriate to take into account the following aspects in the search for the best solution: (1) the protection of right to privacy, (2) the employer's right to monitor the compliance with and use of the working time and (3) the protection of personal data during the monitoring of electronic mail of the employees by the employer.

Electronic mail enjoys protection not only under the principle of privacy of correspondence, but also in connection with the right to protection of privacy and not only on the legal but also on he constitutional and international level. The Charter protects not only the form but also the content, because it protects, apart from the letters and records, also messages transmitted by telephone, telegraph or other device (Article 10(2) and Article 13).[67] With regard to the case law of the European Court for Human Rights concerning the right to privacy (Article 8), the employee is entitled to expect that the right to protection of his privacy shall be adequately protected and that thus right, like other rights, shall be respected by the employer. The European Court for Human Rights has repeatedly ruled that the right to privacy also applies to correspondence relating to one's occupation.[68]

However, employee rights have to be balanced with legitimate rights and interest of the employer, particularly with right of the employer to monitor the compliance with and use of the working hours by his employees. On the other hand, the employer is not entitled to exercise this right by monitoring and processing the content of the correspondence of its employees. The employer might only monitor the number of

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[65] The meetings of the EC expert group for SARS, which were held four times in 2003, concluded that a unified format of flight arrival cards would be introduced if necessary.

[66] This Chapter was prepared with the use of OPPD's opinion published in ASPI as follows: UO01/2003 Comments of the Office for Protection of Personal Data on Practical Issues - No. 1/2003: Monitoring of electronic mail and protection of employee privacy and personal data.

[67] Electronic mail can be undoubtedly considered as correspondence in the electronic form pursuant to Section 40 of the Civil Code (Act No. 40/1964 of Coll.).

[68] See e.g. the legal conclusion quoted in ECHR's judgment in the matter of Campbell v. the United Kingdom: *"The Court has never admitted a possibility that Article 8 would not be applicable due to the professional nature of the correspondence."*

incoming and outgoing messages of his employees and ask them to limit the settlement of their private matters during working hours at the workplace to the minimum necessary extent, because even the labour law relationship does not remove the right of employees to adequate privacy. Employee and employer rights must thus be applied in accordance with the principle of maximum harmony between the rights and obligations of both parties.

An interesting aspect is the protection of personal data in cases in which the employee's electronic address is established by the employer and is publicly accessible. An electronic address can be a personal information only if it contains the name and surname of the employee. In order to promote its activities, the employer has undoubtedly a possibility to prescribe to each and every employee the form and method of communication with other subjects, particularly if the employees are charged, in respect of their job description, with the performance of the employer's activities which also require electronic communication. In such case, the employer cannot be definitely denied the right not only to establish such electronic addresses and to allocate them to employees for the performance of their work duties, but also to ensure that such addresses are publicly accessible. A different matter is if the employer decides to publish electronic addresses of all his employees, including those who, as results from their job description, do not represent the employer toward third parties, or only of certain employees, although such employees are not specifically authorized to represent the employer towards third parties. In such case, the employer could publish his employee's electronic address only with the employee's consent.

There should be general rules of monitoring the frequency of correspondence laid down for both the employer and the employee, which should clearly indicate that the mail content is protected and that the privacy of correspondence and protection of personal data are being respected. The employer should notify his employees in advance, preferably at the beginning of the employment relationship, of his intention or practice of monitoring the frequency of incoming and outgoing e-mail messages. At the same time, it would be appropriate to disclose electronic addresses established by the employer for the performance of the employee's work tasks only in cases in which the employee generally acts in the name of the employer.

1.4.2. The right to access official medical documentation

The issue regarding provision of information about the health condition of a patient and the right to access to medical documentation is still pending. The question regarding the form in which the patient should have a possibility to access his own medical documentation,[69] i.e. whether he is entitled to inspect his own medical documents, even though such right is not expressly stipulated[70] in the Public Health Care Act[71], or only the right to be acquainted with information contained in the medical documentation. Thus, some health care facilities use in their practice administrative procedures restricting the right to inspect medical documentation.

It is a well known practice that a health care facility only allows the patient to inspect his medical documents but he is not allowed to make copies at the facility even if he is willing

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69 Section 67b(12) of Act No. 20/1966 of Coll.

70 Section 67b(10) of Act No. 20/1966 of Coll.

71 Act No. 20/1966 of Coll., on Public Health Care, as amended

to cover the related costs. In other cases, health care facility employees allege that they can present the medical documentation to the patient only in the presence of qualified medical staff, which would mean an excessive burden. However, the patient's right to inspect his own medical documents can be derived from the right to personal protection.[72]

Even more complicated is the access to medical documentation of detained or imprisoned persons. Certain provision of the guidance sheet of the Director of Medical Services Department of the General Directorate of the Prison Service concerning the procedures to be applied by the Prison Service employees towards persons who wish to inspect medical documentation or to receive information on the health condition of a patient. The guidance sheet stipulates that the defence attorneys shall not be provided with any information about the health condition of their imprisoned clients or with photocopies of their medical documents, even with the consent of the client, because defence attorneys are not bodies involved in criminal proceedings.[73] Similarly, no information of the health condition of a patient – a foreigner placed in a medical facility of the Prison Service shall be sent abroad, unless requested by foreign judicial authorities.[74]

A refusal to provide information about the health condition of a patient with his consent to a third party is in conflict with the Public Health Care Act, under which the health care professionals are absolved of the obligation of confidentiality that is imposed upon them, inter alia, in cases in which these facts are disclosed with the consent of the person undergoing treatment.[75] Moreover, the obligation of confidentiality has been imposed in the patient's interest, and referring to it against the patient's will is evidently in conflict with the patient's interest.

The guidance sheet further stipulates that the procedure applied in respect of a request for information from medical documents of a deceased person is based on the standpoint of the Ministry of Health, according to which the subject authorized to grant consent ceased to exist by death and this right ceases to exist upon the person's death and does not pass to heirs.[76]

As regards providing information to survivors, it is necessary to distinguish, according to the Ministry of Health, between the inspection of medical documentation of a patient and provision of information about the cause of a patient's death. The Ministry of Health allows providing to the relatives of the deceased patient only information about his death and recommends physicians to ask the patient to deliver at his admission to his physician a written notice naming persons who are to be informed about his health condition.

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72 Section 11 of Act No. 40/1964 of Coll., the Civil Code, as amended

73 *"Since the defence attorneys are not bodies involved in criminal proceedings, no information on the health conditions of imprisoned persons or photocopies of their medical documentation requested by them shall be provided to them, even if a written consent of the patient is attached to such request."* (Guidance Sheet No. 21 of the Director of the Medical Services Department of the General Directorate of the Prison Service of the Czech Republic, Article 15(d)

74 *"No information about the health condition of a patient who is a foreigner and is treated in a health care facility of the Prison Service, which is requested from abroad, shall be provided unless requested by foreign judicial authorities ..."* (Guidance Sheet No. 21 of the Director of the Medical Services Department of the General Directorate of the Prison Service of the Czech Republic [74], Article 15(f)

75 Section 55(2)(d) of the Public Health Care Act.

76 Guidance Sheet No. 21 of the Director of the Medical Services Department of the General Directorate of the Prison Service of the Czech Republic, Article 16

Although there is still no legislation regulating expressly this matter, the unlawful nature of the above provision can be deduced from the general regulation of personal rights in the Civil Code. If a person dies, the persons entitled to exercise his personal rights (specifically the right to protection of life and health) are his/her spouse and children and if there are none, his/her parents.[77] *The procedure set out in this guidance sheet also does not respect the government resolution concerning the notice of the Ombudsman in the matter of Stojkovič.*[78]

The right of an individual to dispose of data relating to his/her health condition contained in his/her health documentation and the right to make these data available with his/her consent to third parties has to be considered as a part of personal rights guaranteed by Article 10 of the Charter and by the European Convention on Human Rights and Fundamental Freedoms and cannot be restricted by any legal act, years alone by an internal bylaw. This ambiguity of the legislation regulating access to medical documentation should be resolved in a new health care legislation and should introduce a unified legal system applying to all persons about whose medical documents are kept by a health care facility. It has to be noted that the resolution of this problems in the new health care law that is currently under preparation is quite satisfactory.

1.5. Developments of the legislation of the registered partnership of persons of the same sex

Like in the previous years, the priority of activists of this minority continued to be in 2003 the bill on registered partnership. When the Chamber of Deputies returned this bill to the Ministry of Justice "for finalization", the Ministry of Justice prepared a new, compromise version. The later edition of this version was so curtailed that it was rejected even by the representatives of the minority whose legal position it was supposed to improve. The most criticized element of this compromise bill was the fact that the conclusion of the registered partnership would not give rise to joint lease of flats and that persons entering into this partnership would be prohibited under the law not only to adopt but also to assume any kind of custody of a child. This would actually worsen their legal position in comparison with the current state, when they can be granted child custody. It can be also deduced that homosexually oriented persons entering partnership would have less rights relating than those who will not conclude such partnership (even if they lead a promiscuous life). Thus the state would offer this new institute to this minority but would deter them at the same time from the acceptance of this offer.[79]

The aim of any rational proposal should be: (1) to regulate the rights and obligations in relation to the partner in a manner making them as close as possible to the rights and obligations existing between spouses, (2) as regards children, such law should not introduce any new rights but should not reduce at the same time the standard of the right below the level of single persons.

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77 Section 11 of Act No. 40/1964 of Coll., the Civil Code, as amended

78 Government Resolution of 13 January 2003 No. 61 concerning the notice of the Ombudsman pursuant to Act No. 349/1999 of Coll., on Public Defender of Rights, as amended, in the matter of Stojkovič (http://racek.vlada.cz/usneseni/)

79 Even such significantly reduced bill was rejected in February 2004 by the government due to the disapproval of members of the government representing KDU-ČSL. Therefore, we can expect another attempt to submit such proposal in the form of a petition of the deputies.

2. Political rights

2.1. Re-enactment of election law

The Ministry of Interior prepared a legislative intent of the Election Code, which should regulate, in the form of a single act, all kinds of elections, including direct election of the president and the regulation of public referendum. The new Election Code should resolve not only some problems of the existing law, including the removal of unsubstantiated differences between various types of elections, but also to introduce, for instance, totally new institutes like voting by mail or deposition, or to reflect the ratio of elected women and men in the amount of contribution to cover the election expenses incurred by the respective political party or movement per each submitted valid vote.

Even though the legislative intent of the Election Code provides in a number of aspects better comfort to voters, some issues would deserve more attention in subsequent process. What is particularly desirable is to grant the right to vote and to be elected in municipal and regional assemblies to foreigners holding permanent residence permits, and such right should not be limited to citizens of EU member states. The obligation to grant to foreigners full right to vote and be elected to the local bodies is also set forth in the European Convention on the Participation of Foreigners in Public Life at Local Level (ETS 144), which was signed by the CR in 2000. Upon its signature, the CR voiced a reservation by announcing that it will not accept the obligation to grant foreigners the right to vote and be elected and the right to create advisory bodies. At the same time, the Ministry of Interior was to prepare until the end of 2001 the conditions for the foreigners to exercise of the right to vote and be elected at the local level.[80] As not such amendment of the Act on Municipal Elections has been prepared[81], it would be appropriate to resolve such minimum standard of the right to vote and be elected which should be granted to foreigners in the re-enactment of election law which is currently under preparation.

Another area which should be taken into account is the significance and number of preferential votes in all elections (except for elections in the Senate and presidential elections). In the past, a voter could assert up to four preferential votes in elections to the Chamber of Deputies without setting their order, whilst the current Act on Elections to the Parliament of the Czech Republic gives to a voter a possibility to use two preferential votes. Although the legislative intention of the Election Code also counts on two referential votes, it would be possible to consider not only an increase of this number but also to enhance voter preferences by a possibility to determine the order of candidates to which the voter gives his preferential votes.

2.2. 2003 elections and preparation of elections to the European Parliament

2.2.1. Preparation of elections to the European Parliament

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[80] See paragraph V/3/b) of the Government Resolution of 29 March 2000 No. 311 concerning the signature and ratification of the Convention on the Participation of Foreigners in Public Life on Local Level (http://racek.vlada.cz/usneseni/); see also Chapter II./2.1.3. of the 2002 Report

[81] Act No. 491/2001 of Coll., on Elections to Municipal Assemblies, as amended

The Parliament of the Czech Republic passed in the beginning of the year an Act on Elections to the European Parliament[82], the essential meaning of which was to regulate the specifics of the elections into this representative assembly as compared to the elections into the Chamber of Deputies of the Parliament of the Czech Republic, i.e. particularly the conditions of the right of foreigners who are citizens of EU member states to vote and to be elected. The right to vote and to be elected is granted to every citizen of an EU member state who has a formal residence permit in the CR for at least 45 days and is registered in the population register. This period ensues from the organization of the elections, particularly from the registration in electoral lists and the control of such lists, which should prevent, in particular, a possibility of multiple exercise of the right to vote.

Since the elections will take place in June 2004 and the CR will enter into the EU on 1 May 2004, it is also necessary to ensure at the same time that the electoral authorities can perform tasks relating to the organization of elections into the European Parliament before the entry into the EU. This is expressly remembered in the Act, because the time from the entry of the CR to the EU is equal to approximately one half of the period for the preparation and course of the elections. Thus, the electoral bodies proceed as if the CR had already been a member of the EU.

The Act on Elections to the European Parliament amended the Act on Elections to the Parliament of the Czech Republic[83] by making it possible to seek court protection against errors and deficiencies in a special electoral lists, i.e. in those kept by embassies.

2.2.2. By-election into the Senate of the Parliament of the Czech Republic

Two by-elections into the Senate were held in 2003 because both the relevant senators were appointed judges of the Constitutional Court and gave up their mandate in the Senate. Such By-election takes place solely in the territory of the CR and those Czech citizens who reside abroad can take part in these elections only if they apply to the embassy for the issue of a voter card and present such card at any electoral point in the CR. By-elections were held in two electoral districts, i.e. in Strakonice (electoral district no. 12) and in the electoral district of the City of Brno (no. 58).[84]

Under the Constitutional Court Act[85], the office of judge of the Constitutional Court is incompatible, *inter alia*, with another paid office; therefore both newly appointed judges gave up their senator mandate. Had they failed to do so, their mandate would have expired in accordance with the Constitution of the Czech Republic (Article 22(1)) as of the date of their assumption of the office of the judge, which is incompatible, without further differentiation, with the senator mandate. Although this incompatibility is embodied in the Constitution, it is

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82 Act No. 62/2003 of Coll., on Elections to the European Parliament and on the Amendment of Certain Laws. The Ministry of Interior prepared the bill in 2001; in 2002, it was received by he Chamber of Deputies, which reviewed it as the Release of the Chamber of Deputies No. 51 (http://www.snemovna.cz/forms/tmp_sqw/63940068.doc). The Senate returned the bill to the Chamber of Deputies, which passed it on 18 February 2003.

83 Act No. 247/1995 of Coll., on the Elections into the Parliament of the Czech Republic, as amended

84 The by-elections in the electoral district of Strakonice were held on 31 October and 1 November 2003 (the 1st round) and on 7 and 8 November 2003 (the 2nd round). The by-elections in the electoral district of the City of Brno were held on 7 and 8 November 2003 (the 1st round) and on 14 and 15 November 2003 (the 2nd round).

85 Act No. 182/1993 of Coll., on the Constitutional Court, as amended

repeated by reference in the Rules of Procedure of the Senate as a reason for extinction of a mandate.[86]

The re-enactment of the legislative law that is currently under preparation resolves the issue of incompatibility of a deputy's or a senator's mandate by considering as incompatible such office or activity which will be or can be designated as such in the law which regulates this office or activity. Therefore, it would be worth considering whether the new Electoral Code should also contain a general rule concerning the incompatibility of a mandate and a public office, either in general or in the case of a paid public office.

Employees of the Ministry of Interior who were seconded to the Secretariat of the State Electoral Commission carried out during the elections into the Senate controls[87] of the compliance with the principles of the Act on Elections into the Parliament of the Czech Republic as regards voting and equipment of electoral points. According to the Ministry of Interior, no principal defects were found and the processing of the results of both elections did not encounter was also smooth.

One of eight applications for registration in the district of the City of Brno (no. 58) did not fulfil the particulars of the Act on Elections into the Parliament of the Czech Republic, because the independent candidate failed to submit a petition with a minimum of one thousand signatures of authorized voters in the electoral district where the candidate stood as Senator (Section 61(2)(d)). The candidate failed to remove this defect even after the notice of the registration office; therefore, his application for registration was rejected. The candidate appealed this rejection with the administrative court (the Regional Court in Brno). By his action, he sought from the court to order to the registration office to register his application of an independent candidate in the by-elections. By ruling dated 24 October 2003[88], the court dismissed his claim because the candidate failed to submit the above petition even though he was called to do so. The application of registration was effectively rejected and the information about this candidate was no longer stated.[89] As the Ministry of Interior is not a registration office, it receives only court rulings on invalidity of voting or on invalidity of elections. The Ministry of Interior did not receive any such ruling in connection with the by-elections into the Senate.

2.3. Referendum on the entry of the Czech Republic into the EU

International treaties recognize the right to participate in the administration of public affairs not only through elected representatives but also directly. However, the Czech legal system did not contain a sufficiently detailed legislation which would grant the right to directly decide on public affairs. This was changed by the adoption of the Act on the Referendum[90] and of the subsequent Act on the Organization of the Referendum[91], which

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86 Act No. 107/1999 of Coll., on the Rules of Procedure of the Senate, as amended

87 The Ministry of Interior is an electoral body for the elections into the Senate, which provides guidance to the organization, technical preparation, course and implementation of By-election and which also controls the voting.

88 Ruling issued under file no. 31 Ca 33/2003

89 The information published on the website of the Czech Statistical Office about the electoral district of the City of Brno (No. 58) also referred to only seven candidates.

90 The Constitutional Act No. 515/2002 of Coll., on the Referendum on the Accession of the Czech Republic to the EU and on the Amendment of the Constitutional Act No. 1/1993 of Coll., Constitution of the Czech Republic, as amended by later constitutional acts

stipulated the conditions for the exercise of voting right in the referendum on the accession of the Czech Republic in the EU and details relating to the proposal and announcement of its result. By his decision dated 28 April 2003, the president of the republic announced that the referendum would be held on 13 and 14 June 2003.[92]

A total of 2474 Czech citizens residing outside the CR were registered in specialist lists of authorized voters kept by the embassies of the Czech Republic for the purpose of voting in the referendum.[93] 205 of these voters applied for the issue of a voter card with which they could exercise their voting right in the territory of the Czech Republic. Most of these cards were issued by the embassy in Bratislava (76) and in Vienna (36).

Czech law still lacks a general legislation relating to referendum; however, the re-enactment of the election law also regulates a general referendum.

2.3.1. The information campaign

The basic objective of the communication strategy prior to the referendum was to inform all Czech citizens who have the right to vote on the impacts of the entry into the EU, to achieve the maximum participation in the decision to hold the referendum and to persuade the population on the benefits of the entry to the EU for our country.[94] The primary target group of the communication strategy implemented before the referendum consisted of all Czech citizens who have the right to vote and to be elected. Secondary target groups were represented by young and undecided voters, seniors and housewives.[95]

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[91] Act No. 114/2003 of Coll., on the Organization of the Referendum on the Accession of the Czech Republic to the EU and on the Amendment of Certain Laws (Act on the Organization of the Referendum)

[92] The president declared the referendum in accordance with the Constitutional Act on the Referendum and with the Act on the Organization of the Referendum by a decision published under No. 116/2003 of Coll.

[93] This group of voters was informed by the embassy by means of paid advertisements in foreign periodicals, by publication in magazines issued by associations of Czechs living abroad, by posting the information on the date of the referendum and the prerequisites for the exercise of voting right on the website and billboards of the embassies, honorary consulates and Czech Centres, by the distribution of flyers and other written information by mail or during personal meetings. The Ministry of Foreign Affairs also placed the necessary information about the referendum on its website and arranged for the publication of a notice of the referendum in an issue of a magazine for Czechs living abroad *České listy*.

[94] The basic tasks of the communication strategy prior to the referendum were defined in a programme declaration of the government of 2002. The government determined as one of its priorities the entry of the CR into the EU in 2004: *"The preparation will put major demands on communication with the public also with respect to the fact that the government deems it necessary to create legislative conditions for the decision on the accession of our country to the European Union in a referendum. We will use all efforts to persuade our citizens that it is in the paramount interest of all of use to become members of the European Union on the occasion of its nearest enlargement.*"

[95] The citizens of the CR could be divided before the entry into the EU into six groups: 1. decided active supporters of the EU – 42 %, 2. opponents of the EU – 17 %, 3. uncertain hesitant voters interested in the EU – 16 %, 4. hesitant supporters EU – 9 %, 5. uncertain procrastinators not interested in the EU – 9 % and 6. undecided participants of the referendum – 7 %. The communication strategy focused on the first group (decided active supporters), in whose case it was necessary to keep the interest in the topics relating to the entry into the EU and to provide sufficient information and arguments for the entire period before the referendum, and on the third group (uncertain hesitant voters interested in the EU), in whose case the campaign focused on attracting new supporters of the entry into the EU. The fourth and the sixth group, i.e. hesitant supporters and undecided participants in the referendum, were addressed by the media, particularly within six weeks before the referendum The remaining groups, i.e. the opponents and uncertain hesitant voters not interested in the EU were not targeted by an addressed communication because their numbers were not so significant that it would be effective to address them and their addressing would have had to be so specific that it would have been counterproductive towards the main target groups.

2.3.2. The course and results of the referendum

The share of opponents, which was rising in the past years, was stabilized at 18 to 22 %. The number of undecided voters was falling in proportion to the increase of the supporters of the entry. The Ministry of Foreign Affairs provided and distributed about 1300 CDs with the wording of the accession agreement to 205 municipalities with extended competencies and to 57 offices of the city parts of the Capital City of Prague. Each municipality with extended competencies received the CDs for all civil registers offices in its jurisdiction. More than forty civil registers offices which did not have the relevant technical equipment received in addition to such CD a printed selection of essential chapters of the agreement.

The number of voters who voted in the referendum was 4,457,206. The total number of YES votes was 3,446,758, while the total number of those who voted NO was 1,010,448. The accession of the CR to the EU was approved in the referendum. The result was the more satisfactory in the light of the opinion polls organized before the referendum which showed that the CR had the highest number of undecided voters, which was interpreted as a circumstance that cast doubts on the expected result of the referendum. The president result of announced the result of the referendum on 14 July 2003 by notice dated 9 July 2003 which was published in the Collection of Laws under No. 206/2003 of Coll.

The voting and counting of votes was supervised by the Ministry of Interior as a body that provided guidance for the organization, technical preparation, course and execution of the referendum. Employees of the Ministry of Interior who were delegated to the Secretariat of the State Electoral Commission carried out during days of referendum controls 69 districts throughout the CR. Those controls were focused on the compliance with the provisions of the Act on the Execution of the Referendum. No serious defects were found and minor errors (e.g. missing large state symbol in the electoral point, a not sealed portable ballot box, a missing completed specimen of the ballot) were removed immediately on the spot. Employees of the Ministry of Interior registered during their controls comments of authorized voters, most of who noted that the Act on the Execution of the Referendum does not stipulate the minimum number of authorized voters necessary for the validity of the referendum. Other found the boxes on the lines beside each answer too small and asked whether it was necessary to insert the ballot into an official envelope. No complaints were raised by members of the district commissions.

2.3.3. The court protection of the referendum – proceedings on the failure to declare a referendum and on the legality of procedures applied in the referendum proceedings in matters relating to the maintenance of a permanent list of authorized voters

The Act on Execution of the Referendum entrusts the court protection of the referendum in matters of the court review of the decision of the president not to declare a referendum and of the court review of the legality of procedures applied during the referendum to the Constitutional Court.[96] The court protection in matters relating to the

[96] Section 35 of the Act on Execution of the Referendum refers to Act No. 182/1993 of Coll., on the Constitutional Court, as amended and concurrently amends this act by inserting a new Division Ten – Proceedings in Matters Relating to Referendum on the Accession of the CR to the EU (Section 125a - Section 125f).

maintenance of a permanent list of authorized voters is identical with the court protection during elections, i.e. is governed by the Administrative Procedure Code.

The Constitutional Court received in connection with the referendum on the entry of the CR into the EU a total of 32 petitions against the illegality of procedures applied during the referendum (Section 125d). 13 of these petitions were discontinued by assistant's notice (Section 41), because they could not be considered, due to their contents, as statements of claim. The remaining 19 petitions were dismissed due, for instance, to the failure of the petitioner to remove the defects of his petition during the stipulated time limit, or to the fact that the petition was filed after the expiry of the prescribed time limit or by an unauthorized person or due to incompetence of the Constitutional Court (Section 43(1)).

Some petitions were filed by opponents of the membership in the EU, who challenged the lack of objectivity of the referendum campaign, arguing that the Czech Television and the Czech Radio influenced the voters by broadcasting false continuous and preliminary results. The opponents also challenged the composition of voting commissions and alleged that the Act on Execution of the Referendum was not validly adopted and only a minority of the Czech citizens votes for the entry into the EU. Other petitions for invalidity of the referendum challenged, for instance, the fact that the ballot paper did not include an impression but only a reproduction of the stamp of the Ministry of Interior or that the Agreement was only available in Czech translation. However, all petitions for court review were judged unsubstantiated by the Constitutional Court.

3. Judiciary, court and other forms of protection of rights

3.1. Free legal aid

3.1.1. Preparation of an act on provision of free legal aid

The Report for 2001 describes the unsatisfactory situation in the provision of legal aid.[97] An attempt to unify and thus organize the legislation concerning the provision of legal aid was made in 2002 by the preparation of a legislative intent of an act on the so-called free legal aid.[98] Provisions concerning legal aid paid for by the state to destitute persons currently exist in various laws regulating court process, namely in:

- the Civil Procedure Code[99], which apply particularly to parties to the proceedings who are exempt from court fees and who were appointed an attorney to protect their interests;
- the Administrative Procedure Code[100], which apply to petitioners exempt from court fees who document that they do not have sufficient funds if an attorney has been appointed to them to protect their rights, provided the petition is not evidently unsuccessful;
- the Criminal Procedure Code[101], which apply to the accused who documents that he does not have sufficient funds, to enable them to cover the costs of defence, and to

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97 See Chapter II./3.3. of the Report for 2001

98 Government Resolution of 4 June 2003 No. 543 concerning the proposed legislative intent of the act on provision of free legal aid (http://racek.vlada.cz/usneseni/)

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

100 Act No. 150/2002 of Coll., the Administrative Procedure Code, as amended

101 Act No. 141/1961 of Coll., the Criminal Procedure Code, as amended

injured parties who document lack of funds to cover the costs of an representative of the injuried;

- the Constitutional Court Act[102], if justified by the personal situation and assets of the petitioner, particularly if the petitioner does not have sufficient funds to cover the costs of an attorney, provided that the constitutional complaint has not been dismissed.

The problem of this regulation is its fragmentation in several laws and the lack of more specific procedure for evaluation of the entitlement to its free provision (or of sufficient criteria for the evaluation of social and material situation of the applicant). The prerequisites for and the procedure to be applied in the provision of legal aid in court proceedings, particularly the appointment of certain objective criteria for the assessment of social and material condition of the applicants are not regulated by a law but only by an instruction issued by the Ministry of Justice exercising state administration of the courts. In practice, the courts mostly use a printed form prescribed by such instruction.

In addition to the unification of the laws regulating the provision of free legal aid, the act should primarily remove the situation in which skilled legal professionals can provide their services out of court for a reduced fee or for free only if they so agree directly with the client to whom they provide such service or if it is imposed upon them by their professional organizations. The approved legislative intent of the act on free legal aid should stipulate who will decide on the provision of the legal aid covered from public budget, the conditions under which such legal aid is to be provided, and the conditions under which it will be required to make at least a partial refund of the costs of legal aid.

While the Charter acknowledges everyone's right to legal aid in proceedings before the court, state or public administration bodies from the very outset (Article 37(2)), the legislative intent of the act presumes that the free legal aid will be provided solely in proceedings for the court and based on an application, when the judge will assess whether the party meets the prerequisites for the provision of the relevant legal service by the appropriate legal profession, or for the covering of the costs of such service from public budget.

Another problematic issue is the fact that free legal aid would be provided solely to individuals, because the right to legal aid stipulated in the Charter corresponds to the right to fair of fair trial embodied in the European Convention on Human Rights and Fundamental Freedoms (hereinafter only the "ECHR")[103], in which the case law of European Court for Human Rights (referred to in this section only as the "Court") also includes access to justice. As the right to fair trial and access to justice as its part are rights that do not depend on the essence of an individual, free legal aid should be also granted to legal entities. The Court grants the rights protected by ECHR not only to individuals but also to legal entities in all cases in which it is not excluded by the nature of the right or freedom. This ensues not only from the right of non-governmental organizations or groups of individuals to file an individual complaints (Article 34)[104], but also from the case law of the Court, in which the Court usually accepts and rules on complaints concerning breach of right to privacy, right to fair trial[105], the right to freedom of expression or right to undisturbed use of assets of legal entities. This is the same spirit in which the constitutional complaints are decided by the Constitutional Court, which recognizes legal rights of legal entities in all cases where it is not excluded by the

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102 Act No. 182/1993 of Coll., on the Constitutional Court, as amended

103 No. 209/1992 of Coll.

104 I.e. other forms of legal existence, even those not having legal personality

105 See Complaint No. 29010/95, Kreditní a průmyslová banka, a.s. *v.* the CR

nature of the relevant right.[106] The selected concept of provision of free legal aid solely to individuals can theoretically collide in future with criminal liability of legal entities that would meet the prerequisites for appointing an *ex offo* attorney to an accused.

While preparing the act on provision of free legal aid, it would be therefore appropriate to consider not only the expansion of the provision of this service paid by the state to also cover legal entities but also to other than judicial proceedings.

3.1.2. The provision of legal aid to municipalities in court proceedings by the Office for Representation of the State in Property Matters

Within the privatisation process which took place in the 1990s, the state property was transferred to private subjects and to municipalities and regions. Ownership title to real property is currently being claimed against the municipalities by private subjects, who seek the enforcement of their alleged claims even before the court. Some municipalities were not able to adequately cope with the court proceedings. Therefore, the Ministry of Finance prepared an amendment to the Act on the Office for Representation of the State in Property Matters.[107], which was to introduce a possibility to provide free legal aid to municipalities by the Office for Representation of the State, which would represent the municipalities before the court in all actions against them for surrender of property transferred to them by the state. The Ministry of Finance adopted this approach mainly because spending funds in lawsuits, particularly if unsuccessful, affects not only the municipalities and their inhabitants, but has also a negative impact on public budgets.

Reservations against the proposed amendment can ensue from two conceptual reasons. First of these reasons is the fact that the legal aid provided in the form of representation in lawsuits is designated solely for certain public corporations as legal entities.

As noted above, the approved legislative intent on the provision of free legal aid is conceived in such manner that the legal aid covered by the state budget is to be provided solely to individuals. However, at the moment when a Czech court is to decide on the ownership of the relevant subject, it will be necessary to assess the compliance of the proposed provision of legal aid with the principle of equal weapons embodied in the right to fair trial (Article 6(1) of ECHR), i.e. that *"… each party in the process must have the same opportunity to defend its interests and none of them may have a substantial advantage over*

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106 Complaints to the Constitutional Court are also filed by legal entities without being rejected for not being filed by an unauthorized subject who cannot be generally endowed with human rights. Act No. 182/1993 of Coll., on the Constitutional Court, as amended, expressly grants the right to file a constitutional complaint to a legal entity *"... which claims that a final effective ruling issued in a proceeding of which it was party, a measure or interference of an executive public authority (hereinafter only the "interference of an executive public authority ") has breached its fundamental right or freedom guaranteed by a constitutional law (hereinafter only the "fundamental right or freedom guaranteed by the Constitution ") ….* If the Charter or ECHR were to protect only rights of individuals, this provision of the Constitutional Court Act would be totally without effect, because the Constitution Court would have to dismiss all complaints of legal entities due to lack of authority of the petitioner (Section 43(1)(c) or (e).

107 Government Resolution of 12 November 2003 No. 1117 concerning the bill amending Act No. 201/2002 of Coll., on the Office of Representation of the State in Property Matters, Act No. 99/1963 of Coll., the Civil Procedure Code, as amended, and Act No. 182/1993 of Coll., on the Constitutional Court, as amended (http://racek.vlada.cz/usneseni/). It is reviewed by the Chamber of Deputies as Release of the Chamber of Deputies No. 526 (http://www.snemovna.cz/forms/tmp_sqw/3a190006.doc).

the counterparty."[108] The Court also ruled that the exercise of the right to fair trial may also require active measures from the part of the state, i.e. the introduction of a system respecting the principle of equal weapons. The Court noted that the absence of such systemic provision of adequate means for protection of rights can lead in specific cases to a breach of this right.[109]

Due to the fact that a general system of free legal aid is currently in the making, the introduction of a possibility to provide legal aid solely to public legal entities would result in an unequal approach of the state to all private law entities in this type of property disputes. This would represent an interference into the principle of equal standing of parties to the proceeding, guaranteed by the Charter (Article 37(3)), because the municipalities would be legally supported in adversary proceedings by the state through the Office for Representation of the State, while the other private persons, who could also be counterparties, would not receive such professional legal aid and at the same time also financial support from the part of the state and would have to rely upon their own capabilities and resources.

The second conceptual deficiency is the fact that the legal aid provided in the form of representation in court proceedings is designated solely to municipalities as public corporations and in a specific kind of disputes, i.e. that these entities are provided, as owners, a higher level of protection of their ownership right from the part of the state. The cumulative conditions that have to be met by the recipient of the legal aid provided by the state (the legal form – public legal entity, the type of dispute – civil litigation regarding property and other aspects – the legal interest are so specific that the submitted proposal gives an indisputable priority to the protection of a specific kind of ownership of specific entities. Thus, it creates unequal standing of owners not only in respect of the form of their legal existence but also of the kind of the owned thing depending on its acquisition. Such concept of provision of legal aid does not thus comply with the principle of identical content of ownership right and the protection enjoyed by such right under the Charter (Article 11(1)).

It is most likely that such specifically focused legal aid provided on the account of the state, which also conditional upon an uncertain consequence (possible endangering of legal certainty of third parties) will not be an appropriate systemic measure for the solution of problems of application of a right, which arose more than 50 years ago, when the legal aspects of property transfers were not resolved for a long time thereafter and the possibility of their solution appeared only at present. The proposed method of provision of free legal aid seems very problematic from the viewpoint of international human rights treaties that are parts of the Czech legal system and should be applied instead of the laws that regulate the same thing differently.

3.2. Criminal justice in the matters of youth

The Act on Justice in Matters of Youth, which was adopted in 2003[110], regulates the conditions relating to liability of children younger than 15 years of age and of minors for unlawful acts specified in the Criminal Code[111], measures imposed for such unlawful acts and the applied procedure. Under this Act, a child younger than 15 years still has no criminal

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108 see reasoning of the ruling in Complaint No. 2689/65, Delcourt *v*. Belgium

109 see e.g. ruling in Complaint No. 6289/73, *Airey v. Ireland*

110 Act No. 218/2003 of Coll., on Liability of Youth for Unlawful Acts and on Justice in Matters of Youth and on the Amendment to Certain Law

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

liability; however, the Act on Justice in Matters of Youth permits the state to respond to the delinquency of children by imposing various educational measures in civil litigation. The new Act increases the protection of minors during criminal process. For instance, no one may publish information which would include the name of a minor or contain data allowing to identify him. Also the trial is not public and can be public only if so proposed by the minor.

Thus, the new Act brings about a number of improvements, like specialization of courts (judges), expansion of the scale and differentiation of possible measures imposed as sanctions. An emphasis is put on education and the Act also expands the possibilities of educational influence on minors through probation programmes and provides more possibilities of application of the Probation and Mediation Service. A necessary prerequisite of a really effective practical operation of this Act will be the proper training of all persons involved in its application, i.e. judges, state attorneys, employees of mediation and probation service, etc. According to the information of the Supreme State Attorney's Office, the training of these employees has not yet taken place and their work experience, particularly with children younger than 15 years of age, is insufficient.

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

4.1. Imprisonment and detention

4.1.1. The general situation in the prison system in 2003

The decrease of the number of prisoners that occurred in 2002 made it possible to recalculate the standard accommodating capacities of prisons and detention centres as of 1 January 2003 in such manner that the minimum living area per prisoner was increased to 4.5 m^2.Such accommodating capacity was exceeded as of 1 January 2003 by 3.1%. However, the new increase of the number of prisoners in the second half of 2003 resulted in the accommodating capacity being exceeded as of 31 December 2003 by 12.1%. As a result of the increase of the number of prisoners, the living area per prisoner was reduced by approximately 10%. The increase of the number of prisoners also affected their employment.[112]

The changes affecting the accused, whose number nearly stagnated, were negligible. According to a projection of the Prison Service, a decline in the number of prisoners cannot be expected in the nearest future and the number of imprisoned persons is very likely to increase.[113] The development of the number of imprisoned persons in 2003 is shown in the following table:

Balance as of	1 January 2003			31 December 2003		
	men	women	total	men	women	total

[112] The number of the employed accused ranged in 2003 between 5,143 accused in January and 5,709 accused in October. 5,601 accused were employed in December 2003. This means that the number of employed accused increased in comparison with 2002, when the number of employed accused ranged between 5,028 in June and 5,478 in October. Due to the increase of the number of accused, the number of unemployed accused was higher in the second half of 2003 than in the same period of 2002.

[113] Report on the Performance of Systemic Measures in Prisons and Criminal Policy from the Viewpoint of the Prison Reform (state as of 30 June 2003), Government Resolution of 13 October 2003 No. 1015 concerning the Report on the Performance of Systemic Measures in Prisons and Criminal Policy from the Viewpoint of the Prison Reform (http://racek.vlada.cz/usneseni/).

Accused	3,222	162	3,384	3,244	165	3,409
Sentenced	12,321	508	12,829	13,298	570	13,868
Total	15,543	670	**16,213**	16,542	735	**17,277**

The officially determined minimum living area per one imprisoned person, which amounts to 4 m^2, which complies with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter only the ″CPT″), will be introduced effective from 1 July 2004.[114] Under the programme called ″The Development and Renovation of Material and Technical Base of Prisons″, it is prepared to create 450 new accommodating places with the standard area of 6.0 m^2, adhering at the same time to the requirement of individual accommodation of prisoners.[115]

No significant change in the number of detained persons occurred in 2003. The average length of detention decreased from 150 to 133 days, which can be considered as a continuation of a positive tendency, although the achieved result cannot be certainly considered as satisfactory.

The number of imprisoned persons should be decreased in future due to the adoption new laws, which will supersede the current Criminal Code and Criminal Procedure Code and which will expand the possibilities of imposing alternative sentences. This should be reflected in future in the decrease of the number of imposed prison sentences. The new Act on Liability of Youth for Unlawful Acts and on Justice in Matters of Youth,[116] which came into effect on 1 January 2004, should generally contribute to the decrease of the number of imprisoned minors (see the chapter Criminal Justice in Matters of Youth).

4.1.2. Amendment of the Act on Imprisonment

The preparations of an amendment of the Act on Imprisonment continued in 2003 as well.[117] The amendment was approved by both chambers of the Parliament and was signed by the president of the republic on 30 January 2004. With regard to the course of the legislative process, the effective date of the act was set at 1 July 2004. One of the reasons for the submission of the amendment was the decrease in the number of imprisoned persons, which made it possible to systematically resolve the critical comments of CPT.[118] The preparation of the amendment was significantly enhanced by the suggestions of the Council for Human Rights.

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[114] A draft amendment to the Decree of the Ministry of Justice No. 109/1999 of Coll., publishing the Rules of Detention, as amended by the Decree of the Ministry of Justice No. 345/1999 of Coll., publishing the Rules of Imprisonment, stipulates that a living area in an accommodating space designated for more persons must be at least 4.0 m^2 per person and that bedrooms with the living area of less than 6.0 m^2 cannot be used for accommodation.

[115] The documentation to the Programme No. 236 210 *"The Development and Renovation of the Material and Technical Base of Prisons"* was approved by the Ministry of Finance in May 2003.

[116] Act No. 218/2003 of Coll., on the Liability of Youth for Unlawful Acts and on the Justice in Matters of Youth and on the Amendment to Certain Laws (Act on Justice in Matters of Youth)

[117] The bill amending Act No. 169/1999 of Coll., on Imprisonment and on the Amendment to Certain Related Laws, as amended, and some other laws, see Release of the Chamber of Deputies No. 353 (http://www.psp.cz/forms/tmp_sqw/1ddc0013.doc)

[118] The number of imprisoned persons decreased as of 29 January 2003 by 32 % in comparison with their number existing as of 22 March 2000 o 32%. The second half of 2003 witnessed a new increase – see Chapter II./3.1. of the Report for the Year 2003.

The amendment further expands the list of cases in which the sentenced persons are exempt from the obligation to cover the costs of their imprisonment. Those are, for instance, the sentenced persons who are unable to work, without their fault, during their imprisonment and who have no other income or cash, the sentenced persons younger than 18 years of age, the sentenced persons placed in educational or therapeutic programmes with the period of training or therapy of at least 21 hours per week and the sentenced persons who participate in court proceedings as witnesses or injured parties.[119] The amendment to the Act should thus contribute to a significant improvement of the conditions of imprisoned persons.

The amendment further specifies the existing regulation of the right to receive a visit of close persons by clearly stipulating the right to receive such persons for a total of three hours per one calendar month, or five hours per one calendar month for minors. Despite CPT′s recommendation, it will not be still possible to receive without serious reasons visits of other than close persons. Another change responds to the recommendation to permit contact visits of sentenced persons.[120] Moreover, the amendment expands the possibility of visits of the sentenced persons without visual and auditory control by members of the Prison Service. The Prison Service will not be allowed to monitor the content of telephone conversations of the sentenced persons with persons with whom the sentenced person may speak without the presence of a third party.

The existing legislation which did not allow the use of money sent to prison for purchase in prison shops did not prove its merits in practice.[121] Therefore, every sentenced person who has not provided compensation for damage caused by his offence, or has not settled his liabilities incurred in connection with the criminal proceedings and has not compensated the damage caused to the Prison Service during his imprisonment, has a possibility to use one half of such amount sent to him for the purchase or for payment of a higher standard of health care. The above liabilities will be covered from the second part of such money.

The amendment will further make it possible to establish a department for prisoners awaiting release and to place the sentenced persons in all types of prisons, not only in security or increase security prisons, as applied now, in treatment programmes preparing the sentenced persons for independent life style after their release from prison.

Another change set forth in the amendment is the change of the understanding of the purpose of imprisonment of persons sentenced to life in prison. The amendment repealed the legislation that required strict separation of persons with life sentences from other sentenced persons.[122]

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[119] The amendment further concerns the regulation of social pocket money, costs of imprisonment and compensation for damage caused by the accused to the property of the state, which is managed by the Prison Service, and the disciplinary punishment regarding the receipt of a parcel, which is imposed upon a minor.

[120] The amendment is to ensure that no-contact visits could be received only in justified cases following individual assessment of security risks.

[121] The temporary practice allowing visitors to make purchases for the sentenced persons in prison shops put at a disadvantage those sentenced persons who had no visitors and circumvented the restricting provision regarding parcels and disposing with the money of the sentenced persons. Therefore, this practice was later abandoned (see Chapter II./4.2.3 of the 2002 Report).

[122] This change can be made now due to the amendment of the Criminal Code (No. 265/2001 of Coll.), which has come into effect and which has expanded the possibilities of imposing life sentences by applying alternatively the conditions specified in Section 29(3)(b). The possibility of separation shall be kept on a case-by-case basis. On the other hand, a new provision will permit, in justified cases and for the sake of protection of the society, the separation of imprisoned foreigners holding high positions in the hierarchy of organized crime.

4.1.3. Amendment to the Act on Detention[123]

The CPT expressed repeatedly in its reports its dissatisfaction with the absence of adequate programmes of activities with the accused and recommended to Czech authorities to prepare and start implementing, in the prison system as a whole, adequate programmes of activities with the accused. Due to the fact that the accused cannot be forced in any way to participate in these programmes, the amendment to the Act on Detention stipulates that the Prison Service is obligated to offer to the accused the participation in such programmes.

The amendment further expands the right of the accused persons to receive visitors in the same scope as the sentenced persons, i.e. three hours per month. However, visits of persons other than the relatives without serious reason will continue to be prohibited. A new provision will also ensure that visits across-the-board will be exceptional and only in cases in which there exist security reasons for such procedures. The amendment to the law will permit the detained persons to have access to the telephone like the sentenced persons, but not to have contact with other than a related person, unless there is a serious reason for such contact.

The power to restrict or cancel the exercise will be delegated to the general director of the Prison Service or an employee authorized by him so that the prison directors cannot restrict the exercise period to less than one hour per day in other than necessary cases.[124]

After being reviewed by the Senate, the draft amendment to the Act was supplemented[125] by the obligation of the prison to ensure compulsory school attendance to a detained minor and by a possibility to permit imprisoned mothers to have minor children with them.[126]

The new provision regarding the obligation of the detention facility to ensure to a minor compulsory school attendance resolved the existing absence of a legislation regulating detention and approximates is to the imprisonment, which allows minors compulsory school attendance.

A similar approximation between the provisions applying to detention and those applying to imprisonment is reflected in the provision about the imprisonment of mothers with minor children, which has not been embodied until now in the law. This deficiency was criticized in the past years by the Ombudsman and by the Government Council for Human

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123 The amendment to the Act on Detention is a part of Act No. 52/2004 of Coll. amending Act No. 169/1999 of Coll., on Imprisonment and on the Amendment to Certain Related Laws, as amended, and of some other laws.

124 Like the Act on Imprisonment, the Act on Detention will include new provisions concerning the exercise of the religious service, the issue of compensation for damage and certain other provisions unifying the regulation of detention and of the prison sentence. The change of the legislation regulating expulsion custody is described in the next chapter.

125 See modifying motions in the Release of the Chamber of Deputies No. 353 (http://www.psp.cz/forms/tmp_sqw/1dd1000d.doc)

126 The bill was approved by the Chamber of Deputies in this form. The President of the Republic signed the bill on 30 January 2004.

Rights.[127] The Ministry of Justice presumes that these persons will be imprisoned in the prison facility in Světlá nad Sázavou.

4.1.4. Amendment to the Act on the Prison Service and Judiciary Guards of the Czech Republic

The amendment to the Act on the Prison Service and Judiciary Guards of the CR was passed in December 2003 effective from 1 January 2004.[128] The performance of tasks arising from CPT's recommendations is to be supported by a new authorization of the Ministry to control the compliance with the laws and internal regulations applying to the duties of the members and civil employees of the Prison Service in handling the accused and sentenced persons.

The amendment expanded the list of coercive means used by the Prison Service by the so-called expansive weapons, which will be included in the equipment of the relevant units for the purpose of intervention under unified command. The quoted advantage of expansive weapons is the fact that their use does not represent a threat to life and health of persons or of property damage. Moreover, the amendment allows the use of chains, handcuffs or manacles even if the basic legal conditions for the use of coercive means have not been met[129] in the case of the accused and of all sentenced persons irrespective of the type of prison in which they serve their prison sentence if there exists, with regard to their previous conduct, a justified fear that they may become violent.[130]

An important change is the new authority of the authorized bodies of the Prison Service to use in Prison Service facilities supporting operative and investigative means like those used by the Police of the Czech Republic. Such means may be used not only in proceedings concerning crimes committed by members of the Prison Service,[131] but also during the prevention and detection of intentional criminal activity of detained and imprisoned persons placed in Prison Service facilities. Granting to authorized bodies of the Prison Service the authority to use supporting operative and investigative means was substantiated by unfavourable situation in prison, caused particularly by criminal structures from among citizens of the states of the former Soviet Union, which results in a real danger of further criminal activities that are difficult to detect. The draft amendment pointed to the flaws and discrepancies in the existing legislation regulating the use of operative and investigative means and of operative techniques in prisons. However, some experts objected that the

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127 A motion for change of the legislation relating to reasons for detention of people suffering from an illness, pregnant women and women with small children and to certain conditions of detention was approved by the Government Council for Human Rights on 28 May 2002.

128 Act No. 436/2003 of Coll. amending Act No. 555/1992 of Coll., on the Prison Service and Judiciary Guard of the Czech Republic, as amended, and some other laws

129 *"If it is necessary for ensuring order and safety, a member may use during the performance of his tasks coercive means against persons threatening life or health, intentionally damaging property or trying to frustrate by violent means the purpose of detention or imprisonment or disturbing order at the premises of the Prison Service, in a prison facility designated for the exercise of the prison sentence, in court buildings and in other places where the courts perform their activities, in offices of state attorneys or of the ministry and in the immediate vicinity of guarded facilities."* (Section 17(1) of Act No. 555/1992 of Coll., on the Prison Service and Judiciary Guard of the Czech Republic, as amended)

130 Section 17(5) of Act No. 555/1992 of Coll., on the Prison Service and Judiciary Guard of the Czech Republic, as amended

131 Section 12(2) and Section 158b of Act No. 141/1961 of Coll., on Criminal Judicial Proceedings (the Criminal Procedure Code), as amended

adoption of this amendment would lead to an undesirable shift in the role of the Prison Service, would worsen the chances for educational influence and would spread corruption in prisons.

Only the first two of the three originally proposed operative means – the security technology (which is necessary particularly for the detection of hidden mobile telephones in prison), the use of an informant and special financial funds – were approved in the end.[132] The originally proposed provision, which granted to the members of the Prison Service a new authority to take biological material for identification or future identification purposes, was not approved.[133]

4.1.5. Special regime

The Supreme State Attorney's Office noted a problem resulting from the placement of very dangerous prisoners involved in organized crime under a special regime of measures of detention and of the prison sentence. Such special regime was introduced in connection with a large-scale preventive action ″Alcatraz″, during which the Prison Service of the CR successfully prevented a large-scale prison rebellion. The persons placed under the special regime were solely the citizens from states of the former Soviet Union. According to the information of the Supreme State Attorney's Office, there occurred cases of unjustified breach of equality of rights of persons imprisoned under the special regime with the rights of the other sentenced persons, and of illegal use of coercive means against such persons.[134] The legality of the special regime was also reviewed by the Inspection of the Minister of Interior and theOmbudsman.

References to the application of internal regulations of the special regime[135] were used e.g. to justify breach of the right of the sentenced person to a meeting with his lawyer without the presence of third parties. There also occurred a case of unsubstantiated isolation and tying up of a prisoner and restricting his participation in cultural and sports activities. The authorized state attorneys responded to such breach of the law by orders issued in individual prisons. Discriminatory provisions were contained even in an internal directive – the Guidance Sheet No. 18/2002 (e.g. an article which prohibited accommodating persons subject to a special regime with foreigners from the same state and for the purpose of which all states constituted after the dissolution of the former Soviet Union or of the former Yugoslavia were considered as one state). Therefore, this Guidance Sheet was replaced in May 2003 under an incentive undertaken by the Higher State Attorney's Office in Prague in cooperation with the

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[132] During its review of the draft, the Chamber of Deputies approved a modifying proposal of the deputy S. Karásek – see Release of the Chamber of Deputies No. 351 (http://www.psp.cz/forms/tmp_sqw/1dd1000f.doc).

[133] During its review of the draft, the Chamber of Deputies approved a modifying proposal of the deputy T. Kladívko – see Release of the Chamber of Deputies No. 351 (http://www.psp.cz/forms/tmp_sqw/1dd1000f.doc).

[134] Section 15 a Section 17 of Act No. 169/1999 of Coll., on Imprisonment and on the Amendment to Certain Related Laws, as amended

[135] The special regime was introduced under a Regulation of the General Manager of the Prison Service of the CR No. 44/2002 concerning placement of the accused and sentenced persons under the regime of measures ensuring detention and imprisonment of very dangerous prisoners involved in organized crime, which was issued on 25 September 2002 and under the Guidance Sheet No. 18/2002 issued by the Director of the Department of Detention and Imprisonment of the General Directorate of the Prison Service of the CR, which unifies the method of ensuring detention and imprisonment of very dangerous prisoners involved in organized crime, dated 25 September 2002.

Supreme State Attorney's Office by a new guidance sheet which no longer includes such provisions. Since then, the authorized state attorneys have been regularly checking the compliance with the rights of imprisoned foreigners.[136]

The authorized state attorneys further found that persons placed under the special regime were being rotated in two-month intervals among various prisons without any specific reason which would justify such practices. Such relocations were in conflict with fundamental principles of imprisonment and deprived the prisoner of the possibility to fulfil the treatment programme and to create for himself conditions for replacement to a less strict prison category or for probationary release.[137] The state attorneys considered also as illegal the fact that the decision on the placement under the special regime was not subject to review (see the chapter Disciplinary Proceeding).

The special regime was dealt with by an Inter-ministerial Analytical Group for Ensuring Proper Execution of Detention and Imprisonment.[138] Its activities resulted in a change of internal directives regulating the special regime.[139]

Especially dangerous persons placed in a high-security prison have been serving their prison sentence since mid-2003 in a special ward with reinforced structural safeguards in the prison in Stráž pod Ralskem, which makes possible the service of the prison sentence by especially dangerous prisoners without the Prison Service having to adopt special security measures.[140]

4.1.6. Imprisonment of mothers with minor children

Since 2002, imprisoned mothers with children have been serving their prison sentence in the Prison in Světlá nad Sázavou. The experience attained to date is very good. The conditions created in this prison correspond to the needs of mothers and their children.[141]

4.1.7. Relocation of prisoners[142]

The most frequent requests to the Ombudsman raised by prisoners are requests for help with relocation to another prison, which is closer to their families and place of residence.

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136 The scope of the competencies of authorized state attorneys is currently set in manner allowing an intervention in prisons and not in relation to the General Directorate of the Prison Service of the CR.

137 Section 2 of Act No. 169/1999 of Coll., on Imprisonment and on the Amendment to Certain Related Laws, as amended

138 The Inter-ministerial Analytical Group for Ensuring Proper Detention and Imprisonment was established by the incentive of the Supreme State Attorney. The reason for its establishment was the information that the prisons in the CR are controlled by Russian-speaking mafias. The activities of the Group were terminated in September 2003.

139 Regulation of the General Director of the Prison Service of the CR No. 44/2002 was amended by the Regulation of the General Director of the Prison Service of the CR No. 32/2003. The Guidance Sheet of the Director of the Department of Detention and Imprisonment of the General Directorate of the Prison Sentence of the CR No. 18/2002 was amended by the Guidance Sheet of the Director of the Department of Detention and Imprisonment of the General Directorate of the Prison Sentence of the CR No. 9/2003.

140 The Prison Sentence plans to continue in 2004 the construction or to start building further two wards.

141 The conditions of imprisonment of mothers with minor children in the Prison Světlá nad Sázavou were personally inspected by the Ombudsman and members of the Committee of the Government Council for Human Rights Against Torture, Inhuman or Degrading Treatment or Punishment.

142 This section is based on the experience of the Ombudsman.

In their petitions, the prisoners complain that the prison management rejected or did not respond to their application for relocation. The most frequently cited reason of rejection of the application is lack of space. Most prisoners apply for relocation to Moravia, where there are less prisons or accommodating places than in Bohemia.

With regard to the experience attained during the settlement of this type of petitions, it can be said that the entire system would benefit from the preparation of the relevant electronic register of sentenced persons applying for relocation to be used by the General Directorate of the Prison Service of the Czech Republic and by individual prisons. The register would process input data on the sentenced person, would compare them with input replacement criteria, which would result in the compilation of a "waiting list" about which the sentenced would be informed. This would simplify the prison administration necessary for the settlement of applications and would satisfy the applications of those who need it most.

4.1.8. Medical care in prisons

Provision of medical care in prisons attracts attention of state and international authorities (see e.g. the report from CPT′s visit in 2002). Issues that are discussed include the increase of medical staff in prisons, sufficient medical care funding, provision of medical care to prisoners in civil facilities and application of restrictive means and measures.

4.1.9. Disciplinary proceedings

Although the issue of disciplinary proceedings against prisoners is regulated by a directive and is paid attention during specialised methodological training of employees of prison and detention facilities who have disciplinary powers, the Supreme State Attorney's Office noted during its supervisory activities certain deficiencies in disciplinary proceedings.[143] The fundamental flaw of a major part of reviewed disciplinary proceedings was the absence of proper clarification of basic facts of the relevant disciplinary transgression, which was due to a vague description of the facts of the case in a record made on the prescribed pre-printed form and continuing inconsistency in the method of substantiation and gathering of evidence. The conclusions of the Supreme State Attorney's Office indicated that some decisions in disciplinary proceedings may be and in practice are unlawful.

Under the existing legislation regulating the prison sentence, disciplinary proceedings are not regulated by the Administrative Procedure Code.[144] Thus, final effective disciplinary rulings are excluded from court review. Even the supervising state attorney has no authority to file appeals.[145] The fact that final effective disciplinary rulings issued in breach of applicable laws or on the basis of incorrect supporting materials cannot be changed is in conflict with the requirement of legality and a possibility to review decisions of an administrative authority. This has to be particularly emphasised because disciplinary sentences are issued in social

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143 Section 58 of Decree No. 345/1999 of Coll., issuing the Rules of Imprisonment and Section 65 of Decree No. 109/1994 of Coll., issuing the Rules of Detention, as amended

144 Act No. 71/1967 of Coll., on Administrative Proceedings (the Administrative Procedure Code), as amended

145 The punished person may file a complaint against a disciplinary sentence that has not come into effect. Such complaint is decided by the Prison Service bodies. The only disciplinary sentences in the case of which a punished person may seek court review are sentences regarding forfeiture or seizure of a thing (Section 52(4) of Act No. 169/1999 of Coll., on Imprisonment and on the Amendment to Certain Related Laws, as amended).

organizational relations characterized by distinct inequality. Thus, the existing model does not provide sufficient space for remediation of defective disciplinary rulings.

Another flaw is the very form of these proceedings and their outputs, particularly the supporting materials used as the basis of such decisions. Proper file materials are replaced in disciplinary proceedings by pre-printed forms.

It appears as more appropriate to select the classical form of administrative procedure, including an administrative file and written substantiation of each piece of evidence. A decision on disciplinary punishment should be issued in the form of an administrative ruling, which will rule on guilt and punishment with being properly substantiated and with being evident who has issued such ruling.[146]

4.1.10. Expulsion custody and execution of the expulsion sentence

Due to the dissatisfactory situation concerning expulsion custody and execution of the expulsion sentence, which was noted in the Reports for the years 2002 and 2001, the Ombudsman decided to exercise his right to submit recommendations for amendments of legislation turned to the government of the CR with a recommendation of amendment of the Criminal Procedure Code and the Act on Detention.[147] The amendment that was expressly proposed as appropriate was an amendment of the procedure and execution of expulsion custody that would comply with the purpose of this form of restriction of personal freedom. At the same time, the government was notified of the necessity to ensure a better inter-ministerial cooperation and coordination of involved authorities and of setting more specified internal regulations concerning the procedure applied in the execution of the expulsion sentence.

Based on the recommendation of the Ombudsman, the government adopted a resolution,[148] accepting the proposal amending the execution of the expulsion custody.[149] The amendment stipulates separate accommodation of persons in expulsion custody and their mandatory placemen in a ward specialized for the expulsion custody with a more lenient regime.[150] Although the Ombudsman requested that his recommendations are reflected in a partial amendment of the existing Criminal Procedure Code, the government ordered the Minister of Justice to reconsider the remaining recommendation and to reflect them in the re-enactment of the Criminal Procedure Code that is currently under preparation.

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146 The rationale of a ruling on a disciplinary punishment should be followed by an assessment f the transgression committed by the sentenced person and the circumstances under which such disciplinary transgression was committed, what provisions have been breached by the sentenced person, an assessment of the conduct of the sentenced person during imprisonment and if the sentenced person denied that he has committed such transgression, the evidence which refutes his defence and the assessment of such evidence.

147 Act No. 141/1961 of Coll., Act No. 169/1999 of Coll., on Imprisonment and on the Amendment to Certain Related Laws, as amended

148 Government Resolution of 30 June 2003 No. 646 concerning recommendations of the Ombudsman made pursuant to Section 22 of Act No. 349/1999 of Coll., on the Public Defender of Rights, as amended, in the matter of regulation of expulsion custody and the execution of expulsion sentence (http://racek.vlada.cz/usneseni/)

149 These provisions were proposed in the government draft of the Act amending Act No. 169/1999 of Coll., on Imprisonment and on the Amendment to Certain Related Laws, as amended, and in certain other laws (Release of the Chamber of Deputies No. 353; Release of the Senate No. 227); see the previous chapter.

150 Only one third of persons held in expulsion custody are held in wards with more lenient regime.

Based on the conclusions of the Ombudsman, the Supreme Court adopted in 2003 two unifying opinions on the decision-making activities of the courts in matters concerning expulsion custody and the execution of the expulsion sentence. The first of these opinions[151] concerns the collision of asylum proceedings with the execution of the expulsion sentence. In this respect, the Supreme Court concluded that pending asylum proceedings do not prevent the execution of the expulsion sentence.

The second opinion[152] deals with the maximum legal length of the expulsion custody and with the interrogation of the sentenced person when it is being decided to take him into expulsion custody. The Supreme Court concluded that the sentenced person must be interrogated before the ruling on expulsion custody and the that length of the expulsion custody may not be shortened by one third pursuant to Section 71(9) of the Criminal Procedure Code.[153] At the same time, the Constitutional Court stated in its finding[154] that the sentenced person must be interrogated pursuant to the Criminal Procedure Code at all times before ruling on the expulsion custody, even through a court that is asked to carry out such interrogation.

4.1.11. Ruling on the length of the expulsion custody

The Constitutional Court stated[155] that the fundamental rights of the complainant guaranteed by Article 8(2) and (5) of the Charter of Fundamental Rights and Freedoms and by Article 5(1) of the Convention on the Protection of Human Rights and Fundamental Freedoms were breached by the inactivity of the court, which decided on further continuation of the complainant's custody during the three-month time limit stipulated by the law[156] solely on the basis of the complainant's application for release from custody.[157] Neither the ruling on the complainant's application for release from custody nor a ruling on a complaint filed against such decision can substitute a ruling on keeping the accused in custody, as contemplated by Section 71(6)(4) of the Criminal Procedure Code. While the court only examines in its decision on the application for release of the accused from custody whether the reasons for custody still exist, it must also conclude in connection with its decision to keep the accused in custody whether certain other cumulatively construed conditions have been met. These include the impossibility to end the criminal prosecution within the three-month time limit due to the complicated nature of the matter or to other serious reasons and the existence of a risk that the achievement of the purpose of the criminal prosecution can be frustrated or substantially complicated by the release of the accused.[158]

4.2. Deprivation of freedom by police authorities

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151 File No.: Tpjn 310/2003 of 17 April 2003

152 File No.: Tpjn 303/2003 of 5 November 2003

153 Cf R 37/2001

154 Finding of the Constitutional Court No. II. ÚS 142/03 of 2 October 2003

155 Finding of the Constitutional Court No. IV. ÚS 157/03 of 24 September 2003

156 Section 71(4) and (6) of Act No. 141/1961 of Coll., on Criminal Proceedings (the Criminal Procedure Code), as amended

157 Section 72(3 of Act No. 141/1961 of Coll., on Criminal Proceedings (the Criminal Procedure Code), as amended

158 Due to procedural economy, it is of course possible that the court rules concurrently pursuant to Section 72(3) and Section 71(4) and (6) of the Criminal Procedure Code; however, this has to be evident not only from the reasons but also from the verdict of the ruling.

4.2.1. Rights of persons deprived of freedom

The Czech Republic has been repeatedly criticised by international bodies for flaws of the legislation concerning fundamental rights of persons who were deprived of their freedom for any reason by the police authorities. A formal guaranteeing of these rights is considered as a basic safeguard against mistreatment of these persons.

- The right to legal aid from the very beginning of the deprivation of freedom: the Act on the Police of the Czech Republic[159] (hereinafter only the "Police Act") does not guarantee the right of the arrested person and of the person apprehended for identification. The right to legal counsel in the case of arrest and placement in a police cell will be stipulated in a new internal directive on police cells.[160] *Due to the importance of the right to legal aid, it is desirable that such regulation is included in the law.*

- The right of persons placed in police cells to be examined or treated by a physician of their own choice after being deprived of freedom is not guaranteed by the law.[161] In its draft health care act, the Ministry of Health places police cells on the same level as detention and imprisonment, thus depriving the person placed in a police cell of the right to free choice of a physician.

- The right of persons placed in police cells to inform a close or another person of their choice from the very outset of the deprivation of freedom: the Police Act stipulates that the police officer is obligated to inform, upon request of the arrested person, a close person or another selected person.[162] Thus, the Act guarantees the right of the arrested person to inform a third party only indirectly, through the police officer. Moreover, the right to select other than a close person is granted to the police officer, not to the arrested person. The right of the other persons to inform a third party of their choice from the very outset of the restriction of freedom is not formally regulated by the law.

4.2.2. Written instruction on rights

Every person who is deprived of freedom or whose freedom has been restricted by the police (whether for a short or for a long time) should be instructed in writing of his/her rights. The form containing such instruction in the language which the relevant person understands should be submitted to these persons at the very beginning of the restriction of their freedom.

The procedure applied by the police in practice is to provide a verbal instruction to the person before the start of the interrogation, which the interrogated person confirms by his/her signature. A copy of the interrogation record is handed to the interrogated person only at his/her request. However, the requirement of instructing the person from the very beginning of his/her deprivation of freedom is not met if the interrogation does not start immediately after the deprivation of freedom.

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

160 Binding instruction of the Police President No. 126 on police cells, dated 14 October 2003 and effective from 1 January 2004

161 See Chapter II./5.8.of the 2001 Report

162 Section 14(4) of Act No. 283/1991 of Coll., on the Police of the Czech Republic, as amended

In the cases of persons who do not speak Czech, the record contains an instruction of rights in a foreign language. Forms in most frequently used European languages[163], which contain written instruction on rights are currently used in all units of the Police of the Czech Republic, but only in cases of persons deprived of freedom under the Criminal Procedure Code. Persons (most frequently foreigners) who do not speak any of the languages in which the form is available, are interrogated in the presence of an interpreter into the language of their choice.

The written instruction on rights presented at the very beginning of the restriction of freedom appears to be an appropriate resolution not only for persons who speak only a foreign language but also for Czech-speaking persons. The written form should be used for instruction on rights not only in cases of deprivation or restriction of freedom under the Criminal Procedure Code but also in cases of persons deprived of freedom or whose freedom is restricted by the application of institutes of the Police Act, i.e. of arrest and apprehension for identification purposes. The instruction provided consistently by presenting a written form will ensure hat it is provided at the very beginning of the deprivation or restriction of freedom even if it is not immediately followed by an interrogation.

4.2.3. Police cells and cells for apprehended persons

In its report from the 2002 visit, CPT noted that some cells at the visited police stations do not comply with the conditions for dignified treatment of persons whose freedom has been restricted who have been placed there. The criticism focused on the stipulated capacity and area[164] of these cells and on the fact that some of them were not furnished with mattresses and blankets in the case that the detained person is placed there at night.

According to the Ministry of Interior, these are not cells established under the Police Act (Section 26)[165] (even though they are equipped with bars) but premises in which it is possible to locate apprehended, arrested or detained persons only for a period necessary for the performance of the service acts. Due to their nature, these rooms for apprehended persons cannot be furnished with beds, mattresses and blankets. If it is necessary to further restrict the freedom of those persons, they are transferred to police cells.

The status of these rooms is not currently regulated by any law. Therefore, the Ministry of Interior considers making an amendment to the Police Act which would regulate the conditions of use of these rooms.

An amendment of the Police Act in this sense can be deemed necessary because this represents restriction of freedom by the police in a manner not prescribed by any law. Even in the case of a short-term restriction of personal freedom, it is necessary to set conditions for placement of persons in the room, their rights, maximum length of stay and the obligation of the police to keep records of the use of such room. The capacity of these rooms should be reassessed even if they serve only for short-term restriction of freedom. If such short-term restriction of freedom occurs at night, the existing capacity standards can be judged as unacceptable.

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163 The forms are available in English and German and a Russian version is currently under preparation.

164 E. g. 3.5 m^2/ 4 persons, 7 m^2/6 persons

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

The internal directive of the Police of the Czech Republic concerning police cells established under Section 26 of the Police Act, which will expire by the end of 2003,[166] *was replaced by the Binding Instruction of the Police President No. 126 of 14 October 2003 concerning police cells, which will come into effect on 1 January 2004. The purpose in the regulation of changes relating in particular to the amendments of the Criminal Procedure Code and the Police Act, which have set some new time limits, the right to the defence of a person against whom the criminal proceedings are conducted and the release of the person from the police cell.*

4.3. Facilities for detention of foreigners

The conditions in facilities for detention of foreigners designated for accommodation of foreigners for the purpose of administrative expulsion or extradition under an international treaty (the so-called readmission agreements) were in the past years a subject of review and persistent criticism of non-governmental organizations, the Ombudsman, the Committee for the Rights of the Child, CPT and the Human Rights Commissioner of the Council of Europe. Although the overall situation cannot be considered as satisfactory, we can summarize that the entire system slowly becomes more humanized.[167] The specific improvements can be described as follows:

- Mandatory placement of a foreigner whose identity cannot be verified in the part of the facility with strict regime is no longer possible since 1 January 2004.[168] Due to this change, the existing facilities were rebuilt in the end of 2003 with the aim of expanding the capacities with the more lenient regime as compared with the strict regime so that the parts with more lenient detention regime represent about 80% of the capacity of all facilities. Depending the foregoing, the interior layout of the facility is also being changed so as to restrict free movement of persons in designated spaces only in the minimum extend.
- Detained foreigners are no longer forced to wear the clothes provided by the facility if their own clothes meet the required hygienic and aesthetic conditions. The hygienic and aesthetic flawlessness of the foreigner's clothes, underwear and shoes is assessed by the medical staff of the facility, who prepare a record on he result of such assessment, which is put on the foreigner's file.
- The foreigner police has prepared an "Information for Foreigners" in several language versions,[169] which advises foreigners of the possibility of court review of the legality of their detention, of the possibility to file an application for release from detection and of the possibility of making an asylum statement at the foreigner detention

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166 Regulation of the Ministry of Interior No. 25/1994 on police cells

167 The issue of care for children not accompanied by legal guardians who seek asylum in the CR and detention of children not accompanied by legal guardians in detention centres for foreigners is described in Chapter II./11.3 of the Report.

168 The change was made under Act No. 222/2003 of Coll. amending Act No. 326/1999 of Coll., on Stay of Foreigners in the Territory of the Czech Republic and on the Amendment to Other Acts, as amended, and under some other laws effective from 1 January 2004. Clause (e) of Section 132(2) of the Aliens Act regarding mandatory placement of foreigners whose identity could nit be verified in the ward with strict regime was deleted.

169 The "Information for Foreigners" was prepared in English, French, German, Russian, Spanish, Chinese, Georgian, Albanian, Ukrainian, Vietnamese, Armenian, Tamil and Arabic.

facility.[170] This flyer contributed to better information of foreigners about their procedural rights.

- The camera systems in rooms or cells for the detained foreigners have not yet been disassembled due to excessive costs of such measure. The cameras installed in these rooms are not used (does not have any recording technology or is covered with a non-transparent foil). The camera system is used solely in corridors and outdoor areas.
- With regard to the recommendation of the Ombudsman, the management of the Directorate of the Foreigner and Border Police and the Economic Administration of the Police Presidium of the Czech Republic adopted measures aiming at consistent compliance to take into account wherever possible the habits arising from the foreigner's religious beliefs in the selection of food.[171] Contract organizations submit to the management of the detention facility the proposed menu for detained foreigners one week in advance to enable the management to respond to any changes arising from the religious structure of the detained foreigners, the religious beliefs and cultural habits.
- A detention facility for foreigners in Bělá-Jezová, designated for mothers or families with small children has been in operation since 10 June 2002.
- According to the Ministry of Interior, measures applied in some facilities which restricted the access of foreigners to sanitary facilities have been removed and all detained foreigners currently have uninterrupted access to sanitary facilities.

Further humanization of detention facilities for foreigners is to be brought about by an amendment of the Aliens Act, regulating the conditions in detention facilities for foreigners (Chapter XII).[172]

The internal rules of detention facilities for foreigners should be comparable with receiving centres of asylum facilities, with the only difference that the detained foreigners will not be allowed to leave such facility during detention, except for reasons stipulated by the law. It will be possible to place a foreigner in a ward with a strict regime solely for the necessary period and only in justified cases (e.g. if the detained foreigner behaves aggressively to other detainees or the facility staff, does not fulfil the duties imposed by the internal rules).

In the interest of humanization of these facilities, it has been proposed that these facilities are established and operated instead of the Police of the Czech Republic by the Ministry of Interior, specifically by the Administration of Refugee facilities. The authority and competencies of the Police of the Czech Republic in respect of the facilities and the foreigners detained therein shall be defined by the Aliens Act and by other generally binding laws. This should establish a "civil" regime in these facilities and further improve the rules of accommodation of detained foreigners in such facilities. The Police of the Czech Republic

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[170] Section 126(b) and Section 124(3) of Act No. 326/1999 of Coll., Section 3b of Act No. 325/1999 of Coll., on Asylum, as amended

[171] Section 139 of the Aliens Act

[172] The preparatory works started in 2003. The submission of the bill for comments was postponed due to financial restrictions that would significantly affect the possibility to finance the reconstruction of the facilities in a manner corresponding with the amendment to the Act. From this viewpoint, it was necessary to reassess the financial impact of the prepared amendment in order to minimize the costs only to those necessary to ensure the operation of the facility under the new circumstances. Another factor that delayed the preparation of the final amendment to the Act was the necessity to implement new EU regulations, which concern, for instance, travelling of minors, issue of replacement documents for documents that were lost or stolen during the stay of the person abroad and a regulation concerning unification of families.

will further ensure the outside security of the facilities and will perform activities prescribed to it in the administrative expulsion proceedings.

The amendment further resolves the following issues:

- The internal rules should include, inter alia, psychological and social care; increased emphasis shall be put on leisure activities and on exercise. The movement around a facility with a lenient regime should be restricted only in the minimum extent;
- Children younger than 15 years of age shall be provided five times per day food corresponding with sound nutritional principles;
- Children younger than 15 years of age staying in the facility with their legal guardian will be allowed to leave the facility for the purpose of compulsory school attendance unless it is provided for at the facility;
- The issue of detention of children between 15 and 18 years of age will be regulated as a totally exceptional measure;
- The amendment will allow foreigners wear mostly their own clothes;
- The frequency of visits will increase from the current one visit every three weeks to once per week and it is anticipated to cancel the restriction regarding the number of visitors.

One of the main problems in this area, which was also mentioned in the report of the Deputy Ombudsman about the situation in detention facilities for foreigners (December 2002) is the detention of asylum seekers in these facilities. This fact was also criticized by the Human Rights Commissioner of the Council of Europe Alvaro Gil-Robles, who visited the CR in February 2003.

Another persistent problem is the manner (form) of decision on the placement of a foreigner into the ward with strict regime. Such decision is not issued in writing and the foreigner is not notified of the reasons leading to such decision. This problem should be resolved by the amendment to the Aliens Act that is mentioned above, under which the verdict on the placement under the strict regime should be a part of a written decision on detention, including the reasons for the application of such procedure.[173] If there occurs during the detention a reason for placement under the strict regime, the Ministry of Interior will issue a separate substantiated decision which will be delivered to the foreigner. The decision will come into effect upon delivery and the foreigner will be entitled to file a motion for its court review, like in the case of decision on detention.

Although the foreigner police allows uninhibited access of employees of non-governmental organizations[174] to the facilities for the purpose of provision of legal aid to detained foreigners, some non-governmental organizations perceive as problematic the manner in which their contacts are organized, particularly with foreigners detained in facilities with strict regime.[175] The access of foreigners to legal aid is thus significantly restricted. Most of the detained foreigners are released from the facility upon the expiry of 180 from the moment of restriction of their personal freedom, i.e. after the expiry of the maximum

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[173] The Police of the CR issues decisions on detention in accordance with Section 124 of the Aliens Act. The foreigner may appeal such decision by a petition to commence proceedings under Section 200o et seq. of the Civil Procedure Code, during which the court shall decide on the continuation of the detention shall order the release if the reasons for detentions have ceased. The foreigner can file such petition at any time during detention and even repeatedly.

[174] Advisory Bureau for Refugees, Organization for Assistance to Refugees

[175] For instance, contacts of foreigners with representatives of non-governmental organization are mediated solely by the in-house psychologist of the facility.

admissible length of detention under the law, which is based, according to the Ministry of Interior, particularly on objective circumstances – the lengthy process of verification of identity and issue of a replacement travel document.

4.4. Disciplinary prison sentences in the Army of the Czech Republic

One of the methods of restriction of freedom is a disciplinary prison sentence that can be imposed by military commanders on soldiers in compulsory or substitute military service for a maximum of 14 days. The execution of this sentence is regulated by the Prison Rules (Annex to the Basic Rules of the Army of the CR), which was issued by the President of the Czech Republic. Following the assessment of regular controls of military prisons by the Inspection of the Minister of Defence, the Minister of Defence decided to reduce the number of prisons from 25 to 11. Due to such measure, all prisons corresponded to the predetermined structural and technical conditions for the execution of disciplinary prison sentence and it was possible to start comprehensive training and control of bodies responsible for the operation of these prisons. This was clearly reflected in the minimizing of defects identified during controls as compared with the previous years.

The Council of the Government of the Czech Republic for Human Rights approved on 24 June 2003 a motion in which it recommended to the Minister of Defence removing certain discrepancies between the conditions of disciplinary imprisonment and generally accepted conditions of persons whose freedom has been restricted.[176] The motion did not presume any amendment of the law, because the Council took into account the abolishment of the basic military service as of 31 December 2004.

Based on the motion of the Council, the Chief of Staff of the Army of the Czech Republic issued an order[177] which regulated provisionally the disciplinary imprisonment, and prepared at the same time a draft change of the Prison Rules (see the General Part above). A meeting of prison commanders was organized to clarify these changes, which further specified them and determined the necessary scope of adjustments to be done in prisons. Inspections of the Chiefs of Staff and the Inspection of the Minister of Defence confirmed that the conditions of disciplinary imprisonment had been adjusted.

A total of 549 disciplinary prison sentences with the average length of 2.7 days were imposed in 2003, which represented a 71% decline in comparison with 2002 and a reduction of the average length of the sentence.

4.4.1. Bullying

Despite the adoption of individual and systemic measures, the ″veteran″ tradition and the related bullying still persists in soldier collectives. Most frequent manifestations of bullying are represented by the performance of auxiliary (cleaning) work only by the youngest soldiers. The manifestations that are perceived most negatively even by the soldiers

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[176] Imprisoned soldiers did not have uninterrupted access to running drinking water and toilets; no system was in place to ensure them the purchase of personal effects which are not provided for by their superiors and no measures were taken to release them from prison at the time when they had the right to participate in elections or referendum.

[177] The order of the Chief of Staff of the Army of the Czech Republic amending disciplinary imprisonment in military prisons, dated 2 October 2003

themselves include so-called economic bullying, when older soldiers demand from soldiers who joined the service at a later date cash, cigarettes, alcohol or outfit components in exchange for promotion to the veteran status. Cases of physical assault occurring in relation to bullying have been exceptional in the last years.[178]

The Open Line of the Army, which exists at the General Headquarters of the Army of the Czech Republic, also operates as a consulting and crisis centre for cases of bullying. Its employees registered in 2003 8413 telephone inquiries, only 14 of which related to bullying. This means a decline to 0.16% in comparison with the previous years, when about 2 % of inquiries concerned bullying. Seven of the 14 inquiries originated directly from conscripts and the remaining seven from their family members.

The Military Police investigated during the period in question 83 cases of suspected criminal offence of breach of rights and protected interests of soldiers under Section 279a and 279b of the Criminal Code, i.e. 30 cases less than in 2002. No cases concerning relations among professional soldiers were found and no racially motivated act was registered in the army in 2003.

4.5. Rights of mentally handicapped persons

4.5.1. Procedural rights of mentally handicapped persons

No principal change of rights of mentally handicapped persons, which had been criticized in the previous Reports and which evokes growing criticism from the part of the professional public (both legal and medical), of mass media of communication and of the slowly developing movement of users of care and their families, has been achieved even in 2003. The relevant ministries – not only the Ministry of Health as the guarantor of the Health Care Act and other medical regulations, but also the Ministry of Justice as the guarantor of fundamental civil law regulations – did not show for a long time nearly any incentive of their own and also their responses to the incentives of the Human Rights Council or of the general and professional public were very hesitant. The unsatisfactory regulation of procedural rights of people in proceedings concerning capability of legal acts and on the admissibility of placement or holding in medical care facilities (Sections 186 to 191 of the Civil Procedure Code, hereinafter only the ″CPC″). The draft amendment to this legislation had been approved by the Council as early as in 2000, when the Council addressed the amendment to the Ministry of Justice. Despite the promises of the Ministry of Justice, these paragraphs were not included in the amendment enacted in 2001. This amendment was edited in 2002 by the Committee for Human Rights and Biomedicine and the Ministry of Justice promised to include it in the amendment prepared in 2003.

However, the proposed amendment to the CPC, which was submitted by the Ministry of Justice to the ministries for comments, was rather weakened in comparison with the proposals of the Human Rights Council. Thus, the Human Rights Commissioner finally agreed with the withdrawal of this part from the amendment. A working group for the resolution of this issue, consisting of representatives of the judiciary and of the professional

[178] A matter that attracted attention in 2003 was the suicide of a soldier committed at the place of his residence during his basic military service term. The suicide was clearly linked by the soldier's family with the bullying to which he was submitted by the ″veterans″. However, no such links were found by the authorities active in criminal proceedings.

public represented in one of the Committees of the Government Council for Human Rights – the Committee for Human Rights and Biomedicine. Due to insufficient incentive of the Ministry of Justice, the existence of this working group remained only formal until the end of 2003. Thus, the task of changing this amendment has been postponed to the next year, with the presumption that it will be included in the amendment of the CPC, which is prepared for the first half of 2004[179]. The amendment will newly regulate the representation in the proceeding by a guardian from among attorneys at law in both types of proceedings, i.e. in the proceedings on the capability to make legal acts and in the so-called detention proceedings, and will also remove some other apparent shortcomings of the current legislation. The amendment will not represent in any case a final solution, which can arise from a new substantive legislation.

One of the issues that cannot be resolved in the prepared amendment to the CPC is the indication for involuntary hospitalisation. Experts and the general public warn that the current system can fail paradoxically in both directions. On the one hand, an individual who threatens himself and his surroundings can be deprived of freedom too easily and for an excessively long time[180]. On the other hand, waiting for direct physical threat of a person or its surroundings seems as preposterous in the case of many patients. In a number of cases, the patient's condition deteriorates progressively before the very eyes of his family. However, due to his illness, the patient is not aware of his condition and refuses treatment and involuntary hospitalisation may occur only at the time when it is stated that he "threatens" himself or his surroundings. If the legal possibilities of involuntary hospitalisation are to be expanded, such change should be accompanied by an enhancement of procedural guarantees, i.e. by having the court decide as quickly as possible and on the basis of opinions of experts independent on his physician.

In its report from the visit of 2002, the CPT noted an inadmissible practice applied in connection with the proceedings on the determination of admissibility of holding the person in a medical institution, where the psychiatric facilities exceed the three-month time limit for the issue of a judgment on admissibility of further confinement of the person in a medical facility, counted from the verdict on the admissibility of admission,[181]. This happens in cases in which the expert fails to submit his opinion in time or in which a new guardian has to be appointed and the proceedings cannot continue. The Ministry of Health responded by distributing at the beginning of January 2004 a letter to directors of psychiatric facilities in which it warned of the consequences of failure to comply with the three-month time limit.[182]

The World Health Organization (WHO) and the Council of Europe paid in 2003 increased attention to rights of mentally handicapped persons. This was connected, inter alia, with discussions on the preparation of an international convention on the rights of the handicapped, among which the mentally handicapped people represent an especially endangered group. The Human Rights Commissioner of the Council of Europe Alvaro Gil-

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179 The group actually commenced its work as late as in January 2004.

180 E.g. the involuntary hospitalisation of the non-governmental activist D. D. in the Psychiatric Facility in Šternberk arose critical attention of the media, particularly of the weekly Respekt.

181 Section 191d(4) of Act No. 99/1963 of Coll.

182 "*The failure to comply with the three-month time limit for the issue of a judgment under Section 191d(4) of Act No. 99/1963 of Coll., counted from the issue of the court ruling on the admissibility of transfer of the person into the medical facility, due to which the person in question will still be restricted in his/her contacts with the outside world, i.e. will be held in the facility, represents restriction of the freedoms of such person without legal reasons, i.e. the ground for the criminal offence of restriction of personal freedom pursuant to Section 231 of Act No. 140/1961of Coll., the Criminal Code, as amended.*" (an excerpt from the letter of the general counsel of the Ministry of Health to directors of psychiatric facilities, dated 9 January 2004)

Robles emphasised at an international conference held in February 2003 in Copenhagen and thereafter in his report on the visit of the Czech Republic his concern about the current practice of appointing directors of medical facilities as permanent guardians, which still survives in the CR and in other countries of the former Soviet block and which represents an apparent conflict of interests. The necessity of a change in the substantive legislation concerning the guardianship (specification of duties of the guardians, more precise differentiation between various forms of representation by guardians, establishment of a supervisory body over guardians) and specific rights of mentally handicapped persons was also noted by other observers, both domestic and foreign. The new health care bill prepared by the Ministry of Health remains relatively incomplete and reflects only to a small extent the requirements of a more detailed regulation, which would reflect the significant differences between mentally handicapped people and other groups of patients.

It would be appropriate to introduce a system of regular controls not only in relation to the treatment of persons in institutional care and of the conditions of their stay in these facilities, but also in relation to the fact whether the reasons for placement of the person in institutional care still exist in the case of protective treatment and involuntary confinement in a medical facility.

4.5.2. Results of APEL's study

A study prepared by APEL (Audit práv a etiky léčby – Audit of Treatment Rights and Ethics), which was carried out from November 2002 until February 2003 in four facilities on the basis of an incentive of the Government Commissioner for Human Rights, should become another impulse for the improvement of conditions of institutional care, specifically in inpatient psychiatric facilities. The study found greater or smaller shortcomings in virtually all aspects of rights of hospitalised persons, whether in relation to the use of restrictive means and recording of their use, keeping privacy, dignified conditions, possibility of communication with the outside world and existence of internal control mechanisms. At the same time, it is evident that the facilities that took part in the study are by far not the worst ones, because they manifested by their voluntary participation in this pilot project its endeavour to reflect and gradually resolve their problems.

The international non-governmental organization Mental Disability Advocacy Center initiated in the second half of 2003 extensive discussions by the publication of its study on the use of cage beds in psychiatric facilities and social care institutions in four countries (the CR, Slovakia, Hungary, Slovenia). The organization called the use of these beds as a breach of human rights and called upon all these four states where these beds are still currently used, to immediately and completely remove them as inhuman forms of restriction. In its response, the Ministry of Labour and Social Affairs admitted a problems of "excessive use" of the cage beds and prepared a methodology for limitation of their use.[183] The Ministry of Health currently prepares in cooperation with the Czech Psychiatric Society standards for the use of cage beds within its sector.

Institutional care providers object that the use of cage beds cannot be seen outside the context of the general issue of restrictive measures taken against restless patients. They fear

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[183] A more expedient response came from the Senate of the Parliament of the Czech Republic, which organized on 24 November 2003 under the auspices of its Chairman a seminar on rights of mentally handicapped persons, which was focused particularly on the issue of cage beds.

that an immediate ban on the use of these beds would lead to more frequent use of other more damaging forms of restriction (pharmacological subduing and tying up). In their opinion, the reduction of the use of all these restrictive means requires financial funds for the increase of the numbers of skilled staff, which are not available, and so there is currently no alternative for the use of restrictions. At the same time, they allege that the use of cage beds can be considered as a smaller interference in the patient's rights than the pharmacological subduing or tying up. This argumentation should be taken into account but cannot be accepted in its entirety because it can lead to nihilism and passive acceptance of the current *status quo*, whose unsatisfactory character is generally admitted by the institutional care providers themselves. However, an apparently more rational alternative of an immediate and blanket prohibition of cage beds is the promotion of the following priorities:

- To maintain exact records with the substantiation of every use of the cage bed, thus minimizing their use to the shortest possible time in case of psychotic patient in psychiatric care.
- To strive for complete elimination of their use for mentally handicapped people in social care facilities and for seniors suffering from cognitive disorders (delirious states, dementia), in whose case a restriction of mobility represents not only an interference into the rights but also a direct threat to the life of such person.
- To also reduce the use of other restrictive means and to monitor whether the limitation or elimination of cage beds is not compensated by increased use of other forms of physical or pharmacological restriction.
- To develop alternatives to the use of bed cages in accordance with the contemporary practice of advanced countries (not all of which require increased staff numbers), and by staff education.
- To create conditions for the development of non-institutional (outpatient, community) care, heading towards significant reduction of these facilities as such, which can contribute to the improvement of staffing of the institutional care.

The last mentioned strategy is significant namely as such, not only in connection with cage beds, which remain a *de facto* partial problem in the context of rights of mentally handicapped people.

4.6. Amendment to the Act on Public Defender of Rights – establishment of a supervisory body for the supervision over detention

The proposed amendment expands the material and personal competencies of the Ombudsman to include systematic preventive visits at places which hold or may hold persons whose freedom has been restricted by public authority or as a result of their dependence on the care provided to them. During these visits, the Ombudsman will control the treatment of these persons.[184] The authority to carry out these visits is to apply not only to facilities operated by the state, but also to facilities operated by non-state subject, because the commitment of the state to prevent torture and inhuman or degrading treatment or punishment

[184] Based on Government Resolution of 26 June 2002 No. 679, by which the government took note of the motion of the Government Council for Human Rights for the establishment of a supervisory body supervising the detention, the government adopted on 4 June 2003 its Resolution No. 542 (http://racek.vlada.cz/usneseni/), by which it approved the legislative intent of an act amending the Act on Public Defender of Rights, and ordered to the Deputy Minister for Research and Development, Human Rights and Human Resources to prepare the relevant bill and to submit to the government until 30 November 2003 (see Chapter II./4.8. of the 2002 Report).

is not limited solely to the state/public sphere. The aim of the proposed amendment is to strengthen the protection of persons held in these facilities against ill treatment.

The rights of the Ombudsman exercised during these visits will include, inter alia, the right to talk to persons placed in these facilities without the presence of other parties. The proposal stipulates as the sanction mechanism (which has already been included in the existing competencies of the Ombudsman) the right to address requests for help to other authorities, to the founders of the facility or to the government and finally also to the Chamber of Deputies, together with the entitlement to turn to the public and to exert pressure through the media on a resistant facility. The proposed amendment stipulates that these visits can be attended, beside the Ombudsman or the employees of his Office, also by independent experts specially delegated by the Ombudsman for this purpose. The amendment is expected to come into effect since 1 January 2005.

The amendment to the Act on Public Defender of Rights should also meet the requirements of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which binds the states parties to establish at the national level an independent regular controlling system at places holding persons whose freedom is restricted.[185]

The establishment of a system of an outside independent systematic and preventive control of places that hold or may hold people whose freedom has been restricted is a significant step towards the improvement of treatment of these persons. However, the legislative regulation of rights and obligations of persons whose freedom has been de facto restricted, e.g. in social care or in psychiatric facilities, including the right to independent review of their complaints, and the regulation of conditions and standards of care provided in these facilities remains unsatisfactory. This is related to the necessity of the staff training in the area of patient rights and on the information of the patients about their rights. Therefore, it seems appropriate that individual ministries consider amendments of applicable laws.

5. Economic, social and cultural rights

5.1. Labour law relationships

5.1.1. Amendment to the Labour Code

The amendment to the Labour Code[186] adopted in 2003 expanded the protection against discrimination[187] and prohibited repeated conclusion of temporary employment contracts between the same parties, i.e. the creation of series of subsequent employments, which was not effectively prevented by the previous Labour Code. This was completely inappropriate, because certain groups of employees (e.g. teachers) who are employed repeatedly for a 10-month period and dismissed for the period of holidays suffer also from other disadvantages, for instance in the access to mortgage loans, because they have not stable employment income. The maximum overall period of two subsequent temporary employments has been newly determined for two years. With regard to specific needs arising

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185 Cf. Chapter I./ 3.3.1. and chapters 4.7 a 4.8 of the 2002 Report

186 Act No. 46/2004 of Coll. amending Act No. 65/1965 of Coll., the Labour Code, as amended, and Act No. 312/2002 of Coll., on Officials of Territorial Self-government Entities and on the Amendment to Certain Laws

187 See Chapter II./7. of the Report

from the conditions and character of work with certain employees and to individual requirements of some employees, it is possible to agree on or to repeatedly renew employment in exceptional cases where there exists a serious substantive reason for doing so. Such reason must be set in the employment contract so that it may be reviewed by the court and cannot be subsequently changed.

Although the existing regulation of labour law relationships included in the Labour Code can be considered as quite corresponding to the basic purpose of labour law, it is evident that the existing concept of the Labour Code needs a change. The existing Labour Code insufficiently defines its subject, lacks definition of the nature of the so-called dependent work, which would be resolved solely by labour law regulations. This leads in practice to frequent circumventing of the Labour Code and to the conclusion of legal relations the subject of which is the performance of dependent work in accordance with the provisions of the Civil Code or the Commercial Code. The subject for which the work is being performed is then relieved of a number of its duties determined by labour law provisions, while the individual who performs work is deprived of protection and placed in an equal standing with the subject for which he/she performs the work. This leads to duplicity in the regulation of general legal institutes and to a deviation from the principles of civil law.

The nature of the Labour Law, which does not allow to parties to the legal relations to deviate from the stipulated rights and obligations, persists despite its amendments enacted in the last year and becomes in many cases a serious obstacle for further development of labour law relations. The above flaws should be removed by the new Labour Code that is currently under preparation.

5.1.2. Binding effect of higher-level collective bargaining agreements

Based on a petition of a group of deputies of the Chamber of Deputies of the Parliament of the CR, the Constitutional Court cancelled by its finding[188] of 11 June 2003 the authority of the Ministry of Labour and Social Affairs by Section 7 of the Collective Bargaining Act[189], i.e. its right to determine by a legislation that a higher-level collective bargaining agreement is also binding for employers who are not members of the organization of employers that has concluded such agreement. The existing legislation allowed that a higher-level collective bargaining agreement is binding also for employers carrying on similar activities and with similar economic and social conditions. The nature of these agreements was partly normative (in relation to employee entitlements arising from the employment) and partly mandatory (determining mutual obligations of its parties)[190].

However, the Constitutional Court did not deny in its finding the institute of expansion of the binding effect of collective agreements and postponed the effective date

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188 File No. Pl. ÚS 40/02

189 Act No. 2/1991 of Coll., on Collective Bargaining, as amended

190 The issue of expansion if the binding effect of collective agreements to other employers is not expressly regulated by the law of the European Communities or by the international treaties that are binding for the Czech Republic. The expansion of the binding effect of collective agreements to other employers is considered as a measure taken by the state to support collective bargaining pursuant to Article 4 of the Convention of the International Labour Organization No. 98 on the Implementation of Principles of the Right to Be Organized and to Collective Bargaining (No. 470/1990 of Coll.) and the Recommendation of the International Labour Organization No. 91.

of its finding by which it cancelled such defined authority until 31 March 2004 to make room for the enactment of a legislation that would comply with the Constitution. At the same time, the Constitutional Court established certain principles for the legal regulation of collective bargaining.

In response to this finding, the Ministry of Labour and Social Affairs prepared a draft amendment of the Collective Bargaining Act[191], which contains a new regulation of the institute of expansion of the binding effect of collective agreements to other employers. According to the draft amendment, the parties to a higher-level collective agreement may jointly propose to the Ministry of Labour and Social Affairs to publish a notice in the Collection of Laws that such agreement is binding to other employers in the industry. According to the presenters, this institute will be used in particular for the removal of unequal economic position of employers operating in the same economic sector and of an unjustified competitive advantage on the market, which is enjoyed by certain employers due to lower labour costs in cases in which they satisfy labour, wage and social requirements of their employees at a substantially lower level than the standard and common level used by the other employers operating in the same sector.

5.1.3. The right to be organized in trade unions and to collective bargaining

Cases in which some employers openly or secretly try to prevent the establishment of trade union organizations or to secure the dissolution of the existing ones were recorded repeatedly also in 2003. Such conduct ranges from direct notices to the effect that they do not wish to have trade unions in their enterprise, through forcing the employees to declare that they are not members of trade unions, restriction of social benefits to trade union members, etc. to non-renewal of temporary employment contracts to trade union officials. This conduct is typical namely for supra-national corporation and newly established employer organizations. There also appear attempts to prevent the legal effect of collective agreements. For instance, if more than one trade union is represented at the workplace, the employer signs the collective agreement only with one of them, although the existing law requires signing the agreement with all trade unions in the enterprise. Some employers do not even pay trade union officers their wages or refuse to grant to the trade union representative of their employees leave with wage compensation for training in work safety and health at the workplace, although the entitlement to this leave is embodied in the Labour Code.

The trade union membership in the Czech Republic is thus in decline. This trend is further enhanced by the negativist approach of the media, including the public law ones, to the information about events organized by trade unions and by the attitude of some representatives of public administration.

5.2. Social security

5.2.1. Amendment to the Act on State Social Support

The amendment to the Act on State Social Support[192], which shortens the period for which social allowances can be paid retroactively from one year to three months, represent an

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191 The draft amendment is currently reviewed by the government.

192 Act No. 125/2003 of Coll. amending Act No. 117/1995 of Coll., on State Social Support, as amended.

important change, which will prevent, according to the Ministry of Labour and Social Affairs, the use of state social allowances in the manner contradictory to their purpose. Until now, there have occurred cases of applicants requesting retroactive payment of state social allowances to which they were entitled, which led to the accumulation of individual payments. These allowances were paid to them within the one-year preclusive period.[193] By these allowances, the state participates primarily in the covering of costs of alimentation and other basic personal needs of children and families. Retroactive applications for state social allowances is therefore contrary to their purpose. The newly stipulated three-month time limit applies to all state social support allowances, including the single ones.

5.2.2. Assessment of the conditions of occupational disability under the Pension Insurance Act by the Constitutional Court

The Constitutional Court ruled on a petition of the Regional Court in Brno in which the petitioner sought the cancellation of an exception stipulated in Section 78 of the Pension Insurance Act[194], because such exception breaches the principle of the necessity of compliance with the Charter (Article 1 of the Charter). This petition was based on the action for review of a decision of the Czech Social Security Administration.[195] The Regional Court indicated that based on such exception, the disability of coal miners who reached as of 31 December 1995 an age that is by 10 or less years lower than their retirement age is assessed under the laws applying before 1 January 1996, although other groups of insureds were not granted such benefits.

The legislation applying[196] before the adoption of the Pension Insurance Act defined the so-called occupational invalidity which made it possible to admit disability of persons who have retained their ability of systematic performance of gainful activities, but only in occupations that were considered as totally inadequate to their previous capability and social significance of their previous occupation.[197] The Pension Insurance Act has not assumed this

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193 This change is based on another measure adopted within the system of the state social support allowances in 200, when the possibility of retroactive claiming of allowances was shortened from three years to the current one year (as of 1 October 2001). Even this time limit proved to be too long. It is also worth mentioning the context of its shortening at the relevant time, i.e. the discussion concerning retroactive payment of state social allowances by unsuccessful asylum seekers abroad. It remains disputable whether and to what extent the possibility of retroactive payment of these allowances represented a motivation element in the so-called asylum migration. Most asylum seekers evidently attempted to stay in the host country as long as possible or for good and therefore they did not actually use this possibility.

194 Section 78 of the Pension Insurance Act, the cancellation of which is sought by the petitioner, reads as follows: *"The full disability pension granted before 1 January 1996 to a recipient who reached as of 31 December 1995 an age that is at least ten years less than his retirement age determined under this Act [Section 32, 74, 76 and Section 94(a)], can be cut off no sooner than from the payment due in January 1997 and solely under the conditions stipulated by laws applying before 1 January 1996, provided that such full disability pension was granted in respect of disability caused by long-term adverse health condition due to which the recipient of this pension could consistently perform only a job that was totally inadequate to his previous capabilities and social importance of his previous occupation."*

195 of 5 August 1998 conducted before the Regional Court in Brno under file no. 32 Ca 196/98

196 Section 25(3)(c) of Act No. 121/1975 of Coll., on Social Security and Section 29(2)(c) of Act No. 100/1988 of Coll., on Social Security, as amended

197 Section 19(3) of the Implementing Decree No. 128/1975 of Coll. to Act No. 121/1975 of Coll. defined the totally inadequate occupation as an occupation *"which is totally foreign and remote from the existing employment and which does not sufficiently use the previous capabilities enjoyed by the citizen before the long-term worsening of his health condition"*. Therefore, such citizen was not required from the viewpoint of the interests of the society to perform such inadequate employment. The content of the notion of inadequate

exception but granted the exception to the group of former occupational pensioners[198], who reached as of 31 December 1995 an age that at least 10 years less than their retirement age. Thus, their entitlements are judged under the laws which applied before the effective date of the Pension Insurance Act. The increase of the retirement age does not apply to employees in the mining industry whose retirement age reached under the laws applying before 1 January 1996 55 years and at least 50 years. This Act thus provides preferential treatment to employees in the mining industry in comparison with the other groups of insureds.[199] Therefore, such preferential treatment applies only to a narrow oldest age category of former occupational pensioners, in whose case it was hardly socially bearable, with regard to the different definition of full disability and to their age, to fully apply the new legislation, which is based on other principles than the former legislation.

The Constitutional Court did not believe that certain preferential treatment of these employees in comparison with other categories of insureds was a manifestation of the legislator's arbitrariness. It is a legitimate attempt of the legislator at the compensation of actual disadvantage of this group, based on objective and sound reasons and attitudes. According to the established case law of the Constitutional Court, the means of preferential treatment are not principally in conflict with the legal principles of equality and prohibition of discrimination, provided that they are implemented in order to remove factual discrimination between these subjects. *"A legislation that provides preferential treatment to one group or category of persons against the other ones cannot be designated by itself as breach of the principle of equality. The legislator has a certain space for consideration whether to incorporate such preferential treatment. At the same time, the legislator must ensure that such preferential approach is based on objective and sound reasons and that the means to achieve is aim are adequate to it."* In order to asses *"whether a certain legislation is or is not discriminatory, the compared persons must hold the same or analogical position. The groups of recipients of occupational disability pensions and physically handicapped persons do not hold such comparable position, because their disability ensues from different causes and characteristics of their (in)ability to perform a systematic gainful activity."*

The Constitutional Court came to the conclusion that the challenged exception stipulated in Section 78 of the Pension Insurance Act regulates by itself or in conjunction with the other provisions of this Act such preferential treatment of older recipients of occupational disability pensions that may be considered as legitimate and adequate, and does not thus breach the constitutional principle of equality.[200]

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employment was defined analogically in Section 18(2) of the Implementing Decree No. 149/1988 of Coll. to Act No. 100/1988 of Coll.

198 The complementary condition for granting the occupational disability existing in the period between 1 October 1988 and 31 July 1991 was also the decrease of earnings for at least one half in comparison with the earnings of such persons in his previous job. The Pension Insurance Act which newly regulated this area did not take over this institute and determined that the disability criteria stipulated by the Pension Insurance Act apply since 1 January 1996 also to former recipients of occupational disability pension.

199 Sections 74 and 76 of Act No. 155/1995 of Coll. fix the retirement age of miners who worked for the determined period in the so-called preferred work categories to 55 years, or to 50 years (according to the Regulation of the Government of the Czech and Slovak Federal Republic No. 557/1990 of Coll., on Extraordinary Provision of Old Age Pension to Certain Miners). At the same time, the general retirement age of men reached as of 31 December 1995 60 years for men and 53 to 57 years for women. Effective from 1 January 1996, this age has been extended by two months for every calendar year in the case of man and by four months for every calendar year in the case of women and will thus reach after 31 December 2006 62 years for men and 57 to 61 years for women (subject to the number of children brought up).

200 Finding of the Constitutional Court No. 40/2003 of Coll., on the petition of the Regional Court in Brno for repeal of Section 78 of Act No. 155/1995 of Coll.

5.3. Health Care

5.3.1. Health care bill

The Ministry of Health has prepared a new Health Care Act, which should replace the very outlived Public Health Care Act.[201] The process of preparation of this act, which has been elaborated for a number of years, was very lengthy and complicated. The bill approved by the government contains, in comparison with the existing law, certain improvements pertaining to patient rights:

- It ensures access to information about health condition and medical documentation and resolves rationally the access of close persons to information and documents relating to the deceased, which is based on the premise that the close persons are entitled to receive such information if not expressly prohibited by the deceased during his life.
- The bill regulates in detail the institute of informed consent and defines in a better than the current way the possibility of treatment without consent (e.g. in cases of self-inflicted damage threatening with death or permanent damage to health).[202]
- The bill guarantees the patient's right to stipulate that his body is not dissected after death.

The bill contains a large number of partial improvements in comparison with the current legislation and their detailed enumeration exceeds the possibilities of this Report, like the enumeration of the areas whose resolution can be still considered as disputable. The presented bill is considered by the patient organizations and human rights experts as a compromise between the old paternalistic approach and contemporary European pr world trends, which emphasise the role of the patients as active subjects. It is possible to randomly refer to the fact that many acts are conceived as mechanical procedures applied by medical facilities which do not take into account the requirements of the patient (i.e. the medical facility acts and the patient submits himself to these acts); that the bill pays little attention to specific rights of mentally handicapped people; that it regulates in a fragmentary and insufficient manner the issue of assisted reproduction, etc. Nevertheless, with regard to the quality of the current legislation, it will be possible to consider the adoption of the new act as an indisputable benefit.

5.3.2. Provision of health care and services that are not paid from public health insurance funds

Section 11(1)(d) of the Public Health Care Act[203] stipulates that the insured is entitled to health care without having to make direct payments if such health care was provided to him under this Act. The physician or other health care expert or expert working in a health care facility may not accept from the insured any payment for such health care or in connection with its provision.

Based on a petition of a group of deputies, the Constitutional Court decided on the repeal of a part of the wording of Section 11(1)(d) of the Public Health Insurance Act, i.e. the

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201 Act No. 20/1966 of Coll., on Public Health Care, as amended

202 This includes, for instance, the terminal life-threatening phases of hunger strike –in the light of Article 3 of the European Convention on Human Rights, it appears as an attempt to avoid personal responsibility to argue in such situation with the "free will" of an individual and his right to life should prevail.

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

phrase "also not in connection with the provision of such care". The petitioners based their petition on the fact that beside the health care that is fully covered from public health insurance, there exists a number of interventions, means, preparations and services that are not covered at all or are covered only partly or subject to the fulfilment of conditions stipulated by the law[204]. The petitioners believes that such formulation is so general that it includes virtually all health care including the types that are not covered. This will lead, in their opinion, to the situation in which the health care facilities, in order to avoid suspicion of breached of the principle of free provision of health care, will avoid the performance of such interventions, use of such means and provisions of such services that do not fall within the definition of free health care. Thus, the challenged provision fully excludes the provision of health care and services that are not paid out of the public health insurance funds, which breaches the freedom of entrepreneurship (Article 26(1) of the Charter) and the right of everyone to protection of health (Article 31 of the Charter), because the insured does not have the right to decide on the manner by which he will take care of his health only because the method selected by him is not fully paid out of the public health insurance funds.

The petition for repeal of the challenged provision was dismissed by the Constitutional Court.[205] According to the Constitutional Court, the challenged provision evidently refers to interventions that are mutually connected within the framework of free health care, i.e. the interventions which fall, according to the introductory part of Section 11(1)(d), within the framework of health care provided without direct payment, if such health care has been provided within the scope and under the terms stipulated by this Act. The prohibition of acceptance of direct payment refers above all to the execution of free health care, i.e. the health care provided without direct payment and none other. At the same time, it ensues from the wording of the Act that nothing prevents the collection of direct payments from the insureds for health care provided in excess of the terms applying to free health care. In the opinion of the Constitutional Court, the challenged provision only emphasises the protection of the sphere of free health care from attempts to breach its integrity and to narrow its contents.

The Constitutional Court did not also find any conflict between the challenged provision and the right to entrepreneurship (Article 26(1) of the Charter), because the challenged provision does not exclude the operation of medical facilities that do not have a contract with a health insurance company. The Constitutional Court stated that the meaning of the challenged provision is to put a stop to illegal collection of money for services that are paid out of the mandatory general health insurance. The insured's claim for free health care arising from the Public Health Insurance Act applies quite naturally to the care provided I such medical facility that has a contract with a health insurance company.[206]

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[204] Section 13 et seq. of Act No. 48/1997 of Coll. defines the health care that is paid and the heath care that is not paid out of the health insurance. Annex 1 to the Act includes a list of medical intervention that are nit paid out of the health insurance or that are paid only under certain circumstances.

[205] Finding of the Constitutional Court No. 207/2003 of Coll., on the repeal of a part of the second sentence of Section 11(1)(d) of Act No. 48/1997 of Coll., on Public Health Insurance, as amended, expressed in the words "also not in connection with the provision of such care".

[206] The Constitutional Court is of the opinion that *"the orientation of the development of the heath care services is not based on the transference of "better" health care intervention from free care to the sphere that is directly paid by the insureds, but on the improvement of interventions provided out of public health insurance on the basis of equal standing of all insureds. The difference between standard and non-standard care may not lie n in the difference of the appropriateness and effect of the cure. The law does not stipulate the kind of health care that can be provided by a physician or a medical facility but the care that must be provided in the general interest so that all insureds will be entitled to the same extent to such treatment and cures that correspond to the objectively identified needs and requirements of appropriate level and medical ethics. Rec (2001)13 of the*

5.4. The education of Roma children

A not quite satisfactory situation regarding the education of Roma children, which was the subject of a more extensive analysis in the 2002 Report and which caused a vivid polemic in the media, did not undergo any distinct change in 2003 as well. The legislative changes that were to become a promise of future systemic improvements and were described in detail in the 2002 Report did not take place.

The form of new draft of the school legislation (bill on primary education), which is to cancel *de iure* the special schools, which was approved by the government, offers an opportunity to improve the integration of Roma children in the mainstream education. This bill makes a more sensitive difference between educational needs of mentally handicapped children in the right sense of the word and children with educational disorders. The possibility of attending the last year of the kindergarten free of charge can be considered as an indisputable improvement. It is the fact that the Roma children do not mostly attend kindergarten that contributes to the lack of readiness and absence of an appropriate socialization at the time of registration in the primary school.

The fact that a not identified (but according to the general consensus very high) percentage of the Roma children attends special schools was designated again in 2003 as a concern by a number of international authorities, including the Committee for Elimination of Racial Discrimination[207], the Human Rights Commissioner of the Council of Europe Alvaro Gil-Robles and by the European Commission Against Racism and Intolerance (ECRI) during its second visit to the CR. It must be noted, however, that foreign observers frequently view this problems from only one side – as if the bad situation concerning education of the Roma children was caused solely by the special schools and as if the excessive presence of Roma children in special schools was caused solely by racial discrimination, while it is evident that this problem cannot be overcome by mere transfer of Roma children from special to primary schools, because many of them need a thorough preschool preparation and individual assistance at the primary school.

A positive phenomenon of the year 2003 is the significant increase of high school graduates among the Roma community. On the contrary, a persistent negative phenomenon is the small interest of self-government authorities as founders of schools in programmes ensuring the preparation of Roma children for primary school and their transfer from special to primary schools.

5.5. Housing

5.5.1. Housing policy of municipalities

Municipalities as the owners often adjust the conditions of allocation of municipal apartments by the so-called rules. Applications for the allocation of a municipal apartment are thus evaluated under a system of points, which gives preference to people with guaranteed

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Committee of Ministers to the member states of the Council of Europe, which was approved on 10 October 2001, the Committee of the Ministers emphasised that Article 3 of the Convention on Human Rights and Biomedicine (ETS) requires that subject concluding contracts for health care ensure equal availability of health care of the appropriate quality."

[207] See Chapter II./3.1.2. of the Report

income over a person who shared an apartment in the past with a person who failed to pay the rent, even if such person was a minor at such time. Although the determination of rules for allocation of municipal housing falls within the independent competencies of municipalities, these rules should include conditions that often bear hidden discriminatory elements.

There are also cases in which the application for lease of a municipal apartment was not only disregarded but also not accepted, even though the Act on Municipalities[208] stipulates that everyone is entitled to a review of a matter falling with the independent competence of a municipality. Although the legislation does not know the institute of ″fictitious″ residence, applications for an apartment are frequently not accepted with justification that the given person has only a fictitious residence in the municipality.[209] The right to the review of the matter by the bodies of the municipality can be considered, however, as indisputable and every application for lease of a municipal apartment should be reviewed and no such application should be refused in the phase when it is filed.

Such procedures result in the increase of the effect of social exclusion of socially vulnerable groups of population, which leads to situations in which children are taken away from parents and transferred to foster homes due to their inappropriate housing situation. After coming of age, or reaching 19 years of age, these children have to leave the foster homes while their housing situation is not resolved. This is undoubtedly one of the reasons of the increasing number of homeless people in low age categories. Such practice of the municipalities means dropping their tasks in the area of social care and assistance, which are a part of the so-called delegated competencies of the municipalities. The municipality, as the basic territorial self-government community and public corporation, cannot even potentially give a blanket priority to certain groups of people over others.

Although the practice described above is very problematic, it is sanctioned by the Act on Municipalities and the municipalities rightly argue with the right of self-administration as regards the management of the municipal property. Despite the fact that the state bears responsibility for such conduct on the international level[210], it has failed to create effective mechanisms to avoid or prevent socially insensitive practices of the cities and municipalities in guaranteeing housing needs. Moreover, the amendment of the Act on Municipalities, which came into effect on 1 January 2003, excluded civil law matters from the supervision over the implementation of independent municipal competencies.[211] Thus, the regional offices carrying out their supervisory activities then broadly interpret this provision in the sense that the practices applied by the municipalities in the conclusion of lease agreements, including rules

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208 Act No. 128/2000 of Coll., on Municipalities (the Municipal System), as amended

209 One of the conditions for the acceptance of an application for municipal housing is the registered permanent residence in the municipality. Pursuant to Act No. 133/2000 of Coll., on the Population Register and Birth Index Numbers and on the Amendment to Certain Laws (the Population Register Act), as amended, the registered permanent residence in the municipality is one of the conditions of an application for a municipal flat.

210 This can be documented, for instance, by the case of Margita Červeňáková et al. *v.* the Czech Republic, which was reviewed by the European Court for Human Rights and which ended by a compromise on 29 July 2003.http://194.213.41.20/justice/ms.nsf/0/1426E53F93CE0F87C1256D8D00297C2B/$File

211 Section 124a(1) of Act No. 313/2002 of Coll. amending the Act on Municipalities stipulates that if a resolution, decision or measure issued by a municipal authority within the independent competence in conflict with the law or other regulation, the regional office shall call upon the municipality to remedy such conflict. If the municipality fails to do so, the regional office shall propose to the Ministry of Interior suspension of the effect of such resolution, decision or measure of the municipal authority issued within its independent competence. Thereafter, the matter is referred to the Constitutional Court, which shall either revoke such resolution, decision or other measure of the municipal authority or shall dismiss the petition for revocation and the decision of the Ministry of Interior to suspend the execution of such resolution, decision or measure. These provisions shall not apply to a breach of civil, commercial and labour laws.

for allocation of municipal apartments, cannot be supervised. This means that the supervision exercised by the regional offices or by the Ministry of Interior in the areas falling within the independent competencies of the municipalities is limited virtually to mere examination of the fact whether the municipality acted in conflict with the law or other regulation.

5.5.2. The programme of building of subsidised apartments

Due to shortage of funds, a new programme of subsidies – *the Programme of Building of Subsidised Apartments*, which is addressed to a large scale of persons who are disadvantaged in their access to housing, was launched by the Ministry for Regional Development only in 2003. The conditions of this programme bind the municipalities as recipients to ensure for this target group in the apartments built with the state subsidy, in addition to housing, also the provision of social services which will support the integration o people threatened with social exclusion.[212]

The total number of apartments whose construction was subsidised in 2003 reached 456, 418 of which were protected apartments and 38 were halfway and starter apartments. The majority of applications for subsidies filed in the first year of the implementation of the new programme was focused on the construction of protected apartments. The Ministry for Regional Development presumes that these numbers will increase in 2004.

In the opinion of the author of this Report, it is necessary to define in future the content and to legislatively regulate social housing including links to the housing policy of the state and the municipalities and to harmonize with this type of housing the legislative and material aspect of an optimum social support, including the clarification of mechanisms of supervision over the exercise of rights and performance of duties by the parties to these relations.

Another solution of the current situation that can be applied beside a potential amendment of the Act on the State Housing Development Fund[213] is the adoption of an act on housing companies, which would make it possible to establish non-profit organizations providing non-profit rental housing services. This act would define the public benefit apartment and to whom such apartment is designated and would set indisputable rules for allocation of social apartments and determine for whom and how such apartments can be disposed. These companies would be obligated to reinvest the collected rent into the housing fund or infrastructure. Such act would determine a clear statute to social housing, which can be administered solely by the municipal assembly. The housing fund of municipalities would be divided into social apartments and apartments not needed by the municipality, which would be designated for privatisation.

Even the Ministry for Regional Development, which has the competence over this matter, believes that it is necessary to strive to establish a non-profit rental sector, the providers of which will be legal entities aiding by the rules of public benefit. However, the

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[212] The programme is designated for people with reduced self-subsistence caused by their health condition or old age. Halfway and starter apartments are designated particularly for people threatened with social exclusion, which can be caused by various social handicaps, like the absence of a family background in the case of children leaving institutional care, a conflicting way of life, membership in a minority, etc.

[213] Act No. 211/2000 of Coll., on the State Housing Development Fund and on the Amendment to Act No. 171/1991 of Coll., on the Competencies of the Authorities of the Czech Republic in the Matters of Transfer of the State Property to Other Persons and on the National Property Fund of the Czech Republic, as amended

ministry emphasises that the legal framework of this non-profit rental housing can be created only connected with the amendment to the Commercial Code and the Civil Code."

5.5.3. Regulation of apartment rents

A law that would respond to the findings of the Constitutional Court concerning the regulation of apartment rents was not adopted even in 2003. Thus, the Czech Republic still lacks a law that would regulate this area. The existing decrees of the Ministry of Finance, which tried to resolve this issue, were cancelled one by one by the.[214] The last of these measures was the government regulation[215], which imposed a three-month price moratorium on apartment rents but which was also cancelled by the Constitutional Court on 19 March 2003.[216]

Like in the previous instances, the apartment rent was regulated again by a subsidiary regulations issued outside the framework of legal authority. The Constitutional Court stated that this last government regulation is also in conflict with the constitutional order and international obligations of the CR.[217]

The adoption of a new act on rent or another systemic /systematic regulations this remains one of the most urgent tasks of the political representation not only because it is a prerequisite for the establishment of a functioning housing market but particularly because the overall situation relating to the regulation of rents results in an evident conflict with the Constitutional Court, whose findings are virtually circumvented.

5.6. Rights of the disabled

Like on the international and regional level, there appears in the Czech Republic a significant shift in the approach to the disabled. The problems of the disabled gave become an human rights issue. In contrast to uninformed comments, this does not mean any specific

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214 The Decree of the Ministry of Finance No.176/1993 of Coll., on Apartment Rent and Payments for Performance Provided with the Use of the Apartment, as amended, was cancelled by the finding of the Constitutional Court on 31 December 2001. Thereafter, the government submitted to the Chamber of Deputies a bill that did not adhere to the constitutional order and the above finding of the Constitutional Court and which was rejected by the Chamber of Deputies. The Ministry of Finance subsequently issued the Price Assessment No. 01/2002, issuing a list of goods with regulated prices; this assessment came into effect on 1 January 2002 and the rent was regulated in it as of k 31 December 2001 by a maximum price in a manner that was nearly identical with the cancelled Decree No. 176/1993 of Coll. Before the Constitutional Court started its review of the motion of the Ombudsman for the cancellation of the above assessment together with a similar motion of a group of senators, the Ministry of Finance cancelled on 15 January 2002 the challenged part of Assessment No. 01/2002 and issued Assessment No. 06/2002 amending Assessment No. 01/2002. This way, the ministry tried to avoid a constitutional review of the challenged regulation. The Constitutional Court immediately cancelled the Assessment of the Ministry of Finance No. 06/2002. Upon the publication of its finding, the existing method of regulation of apartment rents ceased to exist and this situation that is in conflict with the constitution and that had existed for several years became temporarily preserved by the issue of a new regulation on 19 December 2002, which keeps the same level of rent which existed before the publication of the above finding and prohibits the increase of the prices above the level effective as of 17 December 2002.

215 Government Regulation No. 567/2002 of Coll., determining a price moratorium over the apartment rent

216 Finding of the Constitutional Court No. 84/2003 of Coll., on the cancellation of Government Regulation No. 567/2002 of Coll.

217 According to the finding of the Constitutional Court, this regulation breached Article 2(2) of the Charter and Article 2(3) of the Constitution in conjunction with Article 1, Article 4(3) and (4) and Article 11(1) of the Charter and Article 1 of the Additional Protocol to ECHR in conjunction with Article 14 of ECHR.

human rights of the disabled, but guaranteeing equal and effective exercise of all human rights of these people, based on the principle of non-discrimination.

A necessary prerequisite for the full implementation of fundamental human rights and freedoms of the disabled is the establishment of the necessary legal environment guaranteeing and protecting all their rights and freedoms. This means, in consequence, incorporating in the relevant legislation all necessary, i.e. also the anti-discriminatory measures, which will result in the equality of opportunities with non-disabled citizens.

Under the current state of the legislation, it has been impossible to adopt the new provision of Article 15 of the revised European Social Charter, which concern the right of the disabled to independent life style, integration and involvement of the life of the society. The legislative measures that have to be considered as necessary in this respect include the adoption of a new law concerning legal means of protection against discrimination and on equal treatment (an anti-discriminatory law – see Chapter II./6.1.). Disability was included in the anti-discriminatory bill as one of the reasons of discrimination. For these purposes, the bill includes a proposed definition of the term "disability", which is so universal that it allows protection of all the disabled without exception.

It seems also necessary to adopt a legislation concerning comprehensive rehabilitation of the disabled and an act on social services. An important step toward the implementation of the first of these objectives is the adoption of the Theses of Comprehensive Rehabilitation of the Disabled, which were prepared by the Ministry of Labour and Social Affairs[218].

The principal purpose of the approved theses is the definition of the comprehensive rehabilitation system and those rehabilitation activities, which will lead to an optimum health condition of the disabled and to the stabilisation of this condition, to the maximum self-subsistence and independence of the disabled and, if possible, to their preparation for suitable vocation. The system will contribute to the creation of conditions for the fastest return of the disabled into ordinary life, i.e. to their social inclusion. The draft regulation presumes, inter alia, the stipulation of the right of the disabled to rehabilitation, a definition of the category of the entitled persons, defines material, personal and technical standards of each component of the rehabilitation and orders all subjects involved in it to cooperate. This cooperation is one of the conditions that should ensure the proper timing, consistency, coordination, effectiveness, availability and individual approach to this rehabilitation.

As noted above (I./3.3.1.), the U.N. currently prepares a new international convention on the rights of the disabled. The draft wording that has been prepared by a working group established for this purpose, regulates in great detail the civil, political, economic, social and cultural rights of the disabled. Although this wording will undergo certain (in some instances essential) changes in future phases of its preparation, it can be said that no serious difficulties in the application of this convention should arise to the Czech Republic in respect of the implementation of this convention in its national laws and of its future commitments, save for several issues.

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[218] Government Resolution of 4 June 2003 No. 547 (http://racek.vlada.cz/usneseni/); the co-presenters were the Ministry of Health and the Ministry of Education, Youth and Sports. The Government ordered the ministers of the relevant ministries to reflect this resolution in the relevant draft legislation. In line with the implementation of this resolution, the government incorporated into its legislative agenda for the year 2004 a task to submit to the government by 31 March 2004 a draft legislative intent of the act on comprehensive rehabilitation of the disabled, which is presumed to come into effect on 1 January 2006.

6. Discrimination

6.1. Implemented and prepared changes in the law

As regards labour law, the amendment to the Labour Code[219] and the new Act on Service of Members of Security Corps[220] (hereinafter only the "Service Act") adopted in 2003 further enhanced the protection against discrimination. Both the amendment to the Labour Code and the Service Act define terms relating to discrimination – direct and indirect discrimination, harassment and sexual harassment. The amendment to the Labour Code expands the possibility to seek court protection against any discrimination, not only in the case o breach of right to equal treatment of men and women, as it has been until now. The Service Act also embodies the right of a victim of discrimination to seek court protection, i.e. to request refraining from discrimination, removal of its consequences and adequate satisfaction.

The government approved[221] in 2003 a legislative intent of the act on guaranteeing equal treatment and protection from discrimination (hereinafter only the "Anti-discriminatory Act"). This act shall regulate the right to equal treatment and protection against discrimination due to race, origin, sex, sexual orientation, age, disability, religion or belief or persons without religious denomination, due to language, political or other creed, nationality, membership or involvement in political parties or political movements, in trade unions and other associations, social origin, property, family origin, marital and family status, duties towards the family or other status.

The obligation to ensure equal treatment and protection against discrimination will apply to areas stipulated in Article 3 of the Directive No. 2000/43/EC, i.e. to the right to employment and access to employment, access to occupation, business and other independent gainful activities, employment, service and other similar relationship, including remuneration, membership and involvement in trade unions or employer organizations, membership or involvement in professional chambers and benefits provided by these organizations to its members, social security and social benefits, health care, education and access to and provision of publicly available goods and services, including housing. The act further stipulates exceptions under which the different treatment is legal, sets the legal framework for application of affirmative measures and entitlements that may be sought by victims of discrimination.

As regards the institutional guarantee of equal treatment, the bill contains two variants. The first variant counts on the establishment of a new authority – a Centre for Equal Treatment, which will specialize in the issues of equal treatment and discrimination and will operate as a consulting, informative and educational body in this area. According to the second variant, the agenda relating to equal treatment and protection against discrimination will be entrusted to the Ombudsman.

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219 Act No. 46/2003 of Coll., on Calling Up Soldiers of the Army of the Czech Republic to Fulfil Tasks on the Police of the Czech Republic

220 Act No. 361/2003 of Coll., on Service Relationship of Members of Security Corps

221 Government Resolution of 22 September 2003 No. 931 concerning the legislative intent of the Act on Equal Treatment and Protection Against Discrimination (http://racek.vlada.cz/usneseni/)

Amendments to some laws will be adopted in conjunction with the adoption of the Act on Equal Treatment in order to prevent duplicity of law and to determine the same standard of protection in the entire equal treatment sphere.

6.2. Implementing the law and examples of discrimination in practice

6.2.1. Discrimination in employment

Although in employment legislation, protection against discrimination is relatively better than in other areas, the practice shows that there still occur various form of discrimination against certain groups of people, particularly the Roma, the disabled, seniors, women or mothers with children. This is also confirmed by an opinion poll conducted in spring 2003 by the non-governmental organization Advisory Bureau for Citizenship, Citizens' and Human Rights among a selected set[222] of 28 employment offices, which were asked to provide information about discriminatory practices on the labour market and methods of their elimination with the aim of finding how the employment authorities perceive discrimination on the labour market and evaluate the adequacy of means used in this respect. The questions concerned potential occurrence of discrimination phenomena, the methods of their resolution and assessment of their effects. Seven of the polled employment offices consider the attention paid to the issues of protection against discrimination as insufficient. Another 18 of them believe that the attention devoted to these questions is sufficient and one office stated that there is not discrimination.

Employment offices generally encounter attempts to prefer certain sex for a certain job, mistrust towards Roma job seekers (whose serious interest in work is being doubted),[223] with continuing discrimination against older people (sometimes against those older than 40 years) and with low willingness to employ mothers with small children and men before joining the basic military service. Generally spoken, all sectors witness discrimination against women in management posts and mothers with small children, preference of young attractive women in the service sector, failure to adapt the workplace to the needs of both sexes, particularly as regards sanitary facilities. As regards selection procedures, the employment offices mentioned specifically the frequent absence of predetermined criteria of selection of an employee for the offered job, in which case it is often the subjective opinion of the human resources officer or of the entrepreneur that decides on the selection. The most frequent discriminatory requirements that appear in job advertising are the age and sex.

6.2.2. Discrimination in the service sector

Discrimination in the service sector virtually does not appear in the statistics of the Czech Trade Inspection (hereinafter only the ″CTI″). Controls focusing on racial discrimination take place in the presence of Roman inspectors. Only two of these inspectors

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[222] The employment offices were selected in a manner ensuring representation of all regions of the CR and covering places with various unemployment rates. Questionnaires were sent to a total of 28 employment offices selected randomly in all regions. Some employment offices responded only to a part of the questions, stating that they do not have sufficient information for the answer of the other ones. Despite the foregoing, the evaluation of the questionnaires provided information that has an evidential value as regards specific manifestations of discrimination on the labour market and the extent of their ascertainment by employment authorities.

[223] Employers often allege that customers refuse to be provided services and goods by employees of Roma origin.

are employed by the CTI, one of them at the inspectorate in Ústí nad Labem and the other one in Ostrava. These Roma inspectors performed in 2003 a total of 695 controls and did not find any discrimination. Discrimination was ascertained in only one of eight controls performed upon complaints of individuals and civic incentives. CTI's control focused on racial discrimination were directed in 2003 mostly into retail stores and hospitality services.

A very small number of complaints and a smaller number of ascertained cases of discrimination in the service sector is shown in the following chronological summary of complaints, a more detailed information for the year 2003 and in the description of the resolution of each case of racial discrimination:

	1996	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**
Number of complaints against racial discrimination	11	11	16	21	12	16	14	8
Ascertained as partly justified	0	0	0	1	0	0	0	0
Ascertained as justified	1	0	3	1	1	2	2	1

Practical experience shows, however, that the discrimination of minorities, particularly the Roma, is still routine and goes unreported by those affected by it (whether due to lack of knowledge of legal procedures or of trust to state institutions). The testing carried out by the Advisory Bureau for Citizenship, Citizens' and Human Rights in 2003 ascertained twelve cases of consumer discrimination (eight cases of refusal of service in restaurants or of admission to a discotheque, four cases of refusal of accommodation). Seven lawsuits initiated by discriminated persons who seek their rights for protection of personality under the Civil Code are currently pending. Final rulings in favour of victims of discrimination were issued last year in three cases (refusal of admission to a discotheque and to cases of refusal of service in a restaurant)**.**

Another form of discrimination against consumers, in this case usually foreigners, are the double prices for the same services or products. Checking double prices is a mandatory task of every control of accommodation facilities. This type of discrimination was found in four out of a total of 76 such controls that were carried out in 2003.

6.3. Criminal activity motivated by racial intolerance

6.3.1. Overall development of criminal activity motivated by racial intolerance

According to the Ministry of Justice, the courts in the Czech Republic convicted in 2003 150 people of criminal acts motivated by racial intolerance.

Grounds of the criminal offence	Number of convicted men/women	Female victims[224]
Section 260	17/1	1
Section 261	81/2	1
Section 196	64/3	32
Section 198	24/5	15
Section 198a	1/0	1
Section 221	7/0	26
Section 222	14/0	1
Section 202	2/0	2
Section 238	6/0	6

[224] Statistics of male victims are not maintained.

Section 155	3/0	-
Section 247	0/0	-
Total	230	-

Although no racially motivated assault resulting in death was committed in 2003, a number of serious violent criminal acts were recorded, which were committed particularly by members of Nazi-oriented skinhead movement. Like in the past, these acts targeted mostly the Roman but also foreigners, particularly Africans and other persons with darker complexion.

6.3.2. The National Strategy for the Work of the Police Force of the CR relating to Nationalities and Ethnic Minorities

The basic conceptual material concerning relations between minorities and the Police of the Czech Republic is the National Strategy for the Work of the Police Force of the CR relating to Nationalities and Ethnic Minorities[225] (hereinafter only the ″Strategy″), which promotes principles of modern police work in a multicultural society and establishes an institutional framework of preventive police activities that would represent, in respect to this issue, an equivalent of the repressive concept of the police work. The Strategy applies to national minorities in the CR and to foreigners under all residence regimes defined by the law.

Some tasks set out by the Strategy have already been fulfilled. The following tasks have been fulfilled in the field of continuing education of the police officers and employees in issues of national and ethnic minorities:

- Training courses were organized for members of Public Order Police Service and of the Preventive Information Team, for members of the team of detection of extremist crime and for middle and higher-level management in problem regions.
- A pilot training project for the public order police named Multicultural Education – Extremism – Racism was started at the Police Training Centre in Červený Hrádek.
- A special training was organized for members of the foreigner and border police service operating in the detention facility for foreigners of the Ministry of Interior of the CR.
- Cases studies of errors committed by the police that resulted from the course on integrity and ethic and from the subsequent elaboration of methods of comprehensive understanding of the issue of corruption have been included since September 2003 in the syllabuses of all subjects taught in the secondary police schools.
- The Secondary Police School in Brno continues to organize preparatory courses for members of national and ethnic minorities for the admission to service in the Police of the Czech Republic.
- The publication named *To protect and to serve* has been translated and published in cooperation with the International Red Cross for the needs of the Police of the Czech Republic. The Secondary Police School in Prague published a brochure named *The Police in a Multicultural Society.*

Two liaison officers for minorities were appointed at two regional administrations of the Police of the Czech Republic.

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[225] Government Resolution of 22 January 2003 No. 85 concerning the National Strategy for the Work of the Police Force of the CR relating to Nationalities and Ethnic Minorities (http://racek.vlada.cz/usneseni/)

It is also worth mentioning in this respect the pilot project *Assistant of the Police of the Czech Republic for Combating Usury in Socially Excluded Roma Communities*, which was implemented at the regional police administration of the Region of Northern Moravia in close connection with the working group of the police for combating usury. The aim of the project was to ensure active involvement of Roma community members in the cooperation with the police and to also generally increase mutual understanding between the Roma and the police officers. A brief evaluation of this project is included in the Report on the Results of Activities of the Work Team for Combating Usury in Socially Excluded Roma Communities.[226]

7. The rights of women

7.1. Equal opportunities

7.1.1. Development of updates of Government Priorities and Procedures to Ensure Equality between Men and Women

In its programme called Government Priorities and Procedures to Ensure Equality between Men and Women,[227] the government set new tasks concerning equality of men and women for the year 2003. These priorities include, for instance, measures ordering all ministers to adopt on an ongoing basis specific measures to achieve a balanced representation of men and women at the management posts and in work teams. Most ministries state that the criteria applied in the selection for the management posts are those relating to qualification and professional knowledge and capabilities and not the gender aspects. This indicates persistent reluctance to introduce any affirmative measures. More than one half of the ministries has not adopted any specific measures to achieve a balanced representation of men and women at the management posts and in work teams, as set forth by this task. Another measure is to include in the priorities of each ministry in relation to the promotion of gender equality specific media policy measures. The media activities of the ministries are different. While some ministries have not yet published on their websites their own Priorities and Procedures to Ensure Equality between Men and Women, other ministries frequently publish in professional media, organize press conferences and educational events in the entire spheres of their competences, etc.

In relation to ensuring equality between men and women in the access to economic activity, the government ordered the Minister of Labour and Social Affairs and the Minister of Education, Youth and Sports to devote until the end of 2003 special attention to the specific status of women living in the rural areas. These ministries failed to pay sufficient attention (or any attention at all) to women living in rural areas with respect to the support of the offer qualification and re-training programmes facilitating search for adequate jobs.

Last but not least, all ministries were ordered to include results of gender analyses until the end of 2003 in conceptual materials covered by their respective competences. The fulfilment of this task has a different level. While some ministries (the Ministry of

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[226] Resolution of the Government of the CR of 10 March 2004 No. 218. concerning the Report on the Results of Activities of the Work Team for Combating Usury in Socially Excluded Roma Communities (http://racek.vlada.cz/usneseni/)

[227] Government Resolution of 7 May 2003 No 435 concerning the Summary Report on the Implementation of the Government Priorities and Procedures to Ensure Equality between Men and Women (http://racek.vlada.cz/usneseni)

Transportation, the Ministry of Environment, the Ministry for Regional Development, the Ministry of Foreign Affairs and the Ministry of Culture) failed to prepare a gender analysis as a basis for the performance of this task, some other ministries (namely the Ministry of Labour and Social Affairs) have included results of gender analyses prepared by them into its various competencies.

7.1.2. Work remuneration

The Ministry of Labour and Social Affairs carried out in 2003 two analyses[228] to identify the causes of differences in the system of remuneration of men and women in the public sector, which is based on the placement into individual wage categories graded under a so-called gender-neutral job evaluation[229]. These analyses indicate that the elimination of a significant statistics difference in work income of men and women is a long-term task, which presumes in particular the change of the traditional view and perception of the society as regards the division of the family work between men and women in favour of their mutual substitution. The difference between work income of men and women is affected by a number of factors, including both objective causes and established customs and social standards.[230] The developments in the years 2001-2003 are shown in the following table.

The share of average wages of women in the average wages of men by completed level of education (in %)

Education/year[231]	2001	2002
Total	74.4	76.5
Primary	74.9	71.3
Vocational training and secondary without final exams	70.8	x
Completed secondary education with final exams	74.5	76.7
University	65.4	65.1
High vocational school and bachelor	73.5	72.2

Source: Ministry of Labour and Social Affairs

The inequality between work income of men and women is also transferred to other areas. One of them is unemployment benefit. Due to the fact that the average wages of women are lower than the average wages of men and that the unemployment benefits are determined on the basis of demonstrable income in the last employment, women receive lower

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228 The Research Institute of Labour and Social Affairs prepared an Analysis of Differences between the Amount of Work Income Between Women and Men and Proposed Model Procedure in Identification of Share f Discrimination in Those Differences. The main objective of this study was to respond to the following questions: whether there are any differences between average income of men and woman and to what extent, whether this difference is caused by gender discrimination and whether the scope, amount and causes of this difference are stable or change in time. Other interesting results were provided by an analysis prepared by Trexima. This was an analysis of average hourly wages attained in the 4th quarter by more than 1.2 million of persons employed in the CR, which was based on source data collected during the statistical investigation of the Ministry of Labour and Social Affairs. It ensues from the conclusions of this study that the remaining percentage difference attributable to the discrimination in wages of employees of the same employer, placed in the same tariff class and performing the same work is substantially lower than the overall statistical value and ranges around 2%.

229 The works are graded according to complexity, responsibilities and workload and sorted by work type.

230 An analysis of wage differences on the basis of available statistical data can provide only a part of the explanations by the analysis of certain objective criteria (time worked, complexity and work load, responsibility), but limited as to the grasp of the variables affecting these relation. Thus, it is appropriate to use in the approach to this issue a combination of economic analyses and sociological research.

231 The 2003 data are not yet available.

unemployment benefits. This represents a transposed consequence of inequality in remuneration.

7.1.3. Disbursement of parental allowance

Although both parents have identical rights to their children and it is up to them to decide who will take care of the child after his/her birth, inequality in taking parental allowance still persisted until 2003. Pursuant to the Act on State Social Support,[232] the parent who cared personally and properly for the whole day of at least one child younger than four years of age[233] was entitled to receive parental allowance. While the parents could alternate in the care and in taking the allowance, the conditions applying to men are different from those applying to women[234]. The mother or father take parental allowance that is equal to 1.1 multiple of the subsistence minimum to cover alimentation and all basic personal needs of the parent, i.e. 2,552 CZK per month[235]. But while the mother has been allowed to earn up to 3,486 CZK per month without risking the loss of the allowance, the father could earn extra money only in exceptional cases, i.e. if he was considered as single under the existing laws, e.g. if the mother died or if her health condition rendered her incapable of taking care of the child. The existing form of the parental allowance thus did not definitely correspond to equal sharing of parental duties by both partners.

This inequality has been removed by the amendment to the Act on State Social Support,[236] which came into effect on 1 January 2004. The original restrictive condition applying to the entitlement to parental allowance – the possibility respectively impossibility to earn extra money – was cancelled. This means that a parent who is entitled to the parental allowance can earn extra money to improve the social situation of the family, because his/her income will not be monitored. However, the parent who takes the parental allowance will be obligated to ensure the care for the child by another mature person during the entire period of his gainful activities.

7.1.4. Taking care of a sick child

Parents cannot freely alternate during the care for a sick child as the parent who has started to take the allowance has to draw it, according to the principle applied in this respect, for the entire duration of his/ entitlement. This situation contributes to the disadvantage suffered by women on the labour market, because most of the employers presume that it is the mother who takes care of a sick child and many of them prefer men among job seekers.

Although the legislative intent of a new sickness insurance act will bring certain improvements, it does not resolve some shortcomings of the current legislation. Thus, it will be allowed that the women who have given birth to a child alternates in taking childbirth allowance with her husband or with the father of the child. However, the bill

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232 Act No. 117/1995 of Coll., on the State Social Support, as amended

233 or until seven years of age if the child suffers from a long-term disability or from a long-term severe disability

234 This condition relating to the entitlement was applied from mid-1990s until 31 December 2003.

235 Only parents who are themselves dependent children (students) are entitled to an higher amount of parental allowance – 2,695 CZK.

236 The parental allowance has been increased since June 2004 to 3500 CZK.

that is currently under preparation will not enable parents to alternatively care for a sick child as agreed between them, and the principle under which the parent who has started taking the allowance shall take it for the entire duration of the entitlement shall be preserved. This will continue to worsen the situation of women on the labour market.

As regards maternity leave granted after taking a child into permanent care substituting mother care, the bill does not differentiate between the sex of the persons who have taken over the child. The sole significant inequality which is assumed by the new legislation from the existing law is the fact that men are not entitled to one of the sickness insurance allowances (the equalizing contribution), even though they pay social security premiums under the same rate.

It would be therefore most appropriate to change the existing law by allowing both parent to participate in the care for a sick child so that they can alternate in the care as needed, even though the proposed legislative intent of the Sickness Insurance Act[237] that is currently under preparation does not count on this regulation.

7.1.5. Public attitudes towards the issue of equal opportunities

In order to find out what are the attitudes of the public to the issue of equal opportunities, the Ministry of Labour and Social Affairs assigned to Taylor Nelson Sofres Factum in 2003 two opinion polls.

The first opinion poll named *Trends of Social and Political Mechanisms Affecting Gender Relations* indicated a greater extent of awareness among men of the unfavourable situation of women in finding adequate work and adequate remuneration, while the attitudes of women towards the concept of equal opportunities is more reserved than in the previous year.[238] Thus, it can be concluded that the public opinion has not changed much since 2002, when the first opinion poll with the same topic was carried out.[239]

The other opinion poll named *The Picture of Woman in Media and Advertising and Its Influence on the Public Opinion Regarding Equality Between Men and Women* showed that the women's issue is not presented in the media in the same way as the men's issue. The stereotyped presentation of women in their so-called traditional roles, which are deemed to be the roles of a mother, person taking care of children or other dependent family members and of the household appears persistently in media contributions made not only by male, but also by female authors. The so-called traditional female roles are also used in advertising. However, the manner in which the media depict women who decided to get involved in public and political life can be considered as comparable with the picture of male representatives of the Czech political stage in the media.[240]

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237 The government approved the legislative intent of the Sickness Insurance Act by its Resolution of 4 February 2004 No. 104 concerning the legislative intent of the Sickness Insurance Act (http://racek.vlada.cz/usneseni/).

238 A similar opinion poll carried out in 2002 found out that also the Czech society has generally a positive attitude toward equality between men and women (no gender discrimination should occur), it does not show in specific situations much willingness to change the established roles and has an absolutely negative attitude to any affirmative actions (e.g. affirmative measures or quotas) to support the disadvantaged gender, particularly in employment and politics. The opinion poll will be repeated in 2004 to reflect the developments of the public opinion.

239 More detailed information about the opinion poll is published on www.mpsv.cz

240 More detailed information about the opinion poll is published on www.mpsv.cz

Although the general belief that prevails in the Czech society favours absolute equality between sexes, the issue of equality between men and women is, according to both opinion polls, still considered mostly as a women's problem. Moreover, the interest of the majority of the Czech public in the status of women in the society cannot be considered as too intensive.

The results of the *opinion poll on the status of women on the labour market*, carried out by the Sociological Institute of the Academy of Science of the Czech Republic indicated that the work is the second most important value in life after the family for 84 % of women and for 86% of men. It is interesting that women do not significantly differ from most men in the importance attributed to work. The vast majority of the population is aware of the disadvantaged status of women in comparison with men not only as to the access to employment but namely in the career promotion and in the increase of remuneration. The majority of the population considers as the principal causes of the disadvantaged status of women, beside the household and child care, the set-up of the conditions and environment on the labour market, which prefers men. According to this opinion poll, the major part of parents (both women and men) are interested in such forms of employment that allow harmonizing family and work duties. Their absence often means that all household and child care is assumed by the woman to enable the man to cope with his work load.[241]

The Sociological Institute of the Academy of Science of the Czech Republic also carried out an opinion poll under the name *Support for Use of Parental Leave by Men*[242]. This opinion poll is to ensue in a comprehensive analysis of social mechanisms affecting the professional and private life of men and women with an emphasis on changes in the content of the traditional roles of men and women. The aim of this study is to identify attitudes of men themselves to the use of a possibility to take care of children up to four years of age and to find out whether there has been any change in public attitudes to the possibility of use of parental leave by men or of alternating with the woman in the care for the child[243]. These conclusions will become the basis for proposed measures in support of the use of parental leave by men.[244].

7.2. Domestic violence

7.2.1. Developments in the protection under criminal law

The most important success achieved in this area in 2003 is the adoption of the draft amendment of the Criminal Code[245] prepared by the Senate, which introduced the grounds for abuse of persons living in common dwelling (Section 215a)[246]. This offence shall be punished

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241 More detailed information about the opinion poll is published on www.mpsv.cz

242 More detailed information about the opinion poll is published on www.mpsv.cz

243 A total of 42 % of men and 39% of women disagreed in 1994 (opinion poll "Family 1994")

244 The study was divided into two parts – quantitative and qualitative. Te quantitative part focused on the analysis of the trend of use of parental leave by men, using the database of the Ministry of Labour and Social Affairs and subject if the study were men taking parental allowance. At the same time, the quantitative part analysed the public attitude to the possibility of use of parental leave by fathers. The qualitative part was implemented by the technique of semi-structured interview with men who had taken care some time after 1990 or who currently take care of a small child. A total of 18 interviews with men of various ages were made with men of various ages, education, socio-economic and marital status from the whole CR.

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

246 The standpoint of the government is published in the Annex to Government Resolution of 19 May 2003 No. 471 concerning the Senate draft of the Act amending Act No. 140/1961 of Coll., the Criminal Code, as

by one to three years of imprisonment.[247] These separate grounds are to express the specific feature of this criminal offence, i.e. certain mutual dependence between the perpetrator and the victim, who are not only close persons but also live n the common dwelling, due to which it is difficult for them to leave such common dwelling. Repeated and particularly brutal conduct or violence directed against more persons can be punished by imprisonment for up to eight years.[248]

The new term "common dwelling" applies not only to apartments but all spaces designated for living of people.[249] It does not emphasise keeping common household, but only the actual state of common living, whether based on joint ownership of the real property, lease or sublease or actual cohabitation based on family or other relations. The definition of the criminal offence does not require the occurrence of damage to health, but such offence must be represented by a conduct that is felt by the abused person, due to its cruelty, ruthlessness or painful nature as a serious detriment. *In spite of the foregoing, it is possible to conclude that, due to its nature, domestic violence should be regulated as a separate criminal offence, because even the abuse of person living in common dwelling does not reflect all aspects of this problem.*

There are still problems with criminal prosecution of most frequent offences occurring in connection with domestic violence[250], because the prosecution of some of them still depends on the consent of the injured party. The following table shows a statistical overview of the number of cases of criminal prosecution of offences connected with domestic violence that was discontinued in 2003 because the injured party refused to grant consent with criminal prosecution under the Criminal Procedure Code[251].

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amended (http://racek.vlada.cz/usneseni/). The Act was promulgated on 3 March 2004 under No. 91/2004 of Coll.

247 The sanctions are essentially the same as in the case of ill treatment of entrusted person under Section 215 of the Criminal Code, except for the bottom limit of the sentence set out in paragraph 1 of the new Section 215a of the Criminal Code, which expresses the fact that the dependence resulting from living in a common dwelling can be much freer and less intensive than the relation of a mistreated person, which is in the perpetrator's care or custody pursuant to Section of the Criminal Code.

248 Actual consumption is possible in the case of concurrence of ill treatment of a person living in a common dwelling under Section 215a of the Criminal Code and the injury to health under Section 221(1) of the Criminal Code (cf. R 18/1963). This applies likewise in the case of concurrence with the negligent criminal offence of injury to health under Section 223 of the Criminal Code. If the perpetrator's conduct results in an injury to health, it is usually a secondary and less serious consequence of the main criminal act represented by the ill treatment of a person. Due to this, the assessment of an act as a more serious crime under Section 215a of the Criminal Code usually actually overrides its assessment as a less serious crime of injury to health under Section 221(1) or Section 223 of the Criminal Code. However, if the ill treatment results in a serious detriment to the health or to the death of the ill treated person, this has to be considered as a concurrence of the ill treatment of a person living in common dwelling under Section 215a of the Criminal Code and of injury to health under Section 221(1), (2)(c) or (3) of the Criminal Code, or under Section 222 or Section 224 of the Criminal Code, or even of murder under Section 219 of the Criminal Code. This approach should be based on the consideration that the qualification of a conduct resulting in a more serious injury without the use of concurrence of criminal would not fully reflect the nature of the crime cf. R 11/1984, p. 84 to 85).

249 These dwellings thus include family homes, residential summerhouses, hotel-type buildings, lodging houses, university hostels, etc.

250 These are namely the following offences: violence against a group of people and against an individual (Section 197a), injury to health (Sections 221, 223 and 224), restriction of personal freedom (Section 231(1)), extortion (Section 235(1)) and rape (Section 241(1)). The consent of the injured party with criminal prosecution for any of the offences set forth in Section 163(1) of the Criminal Procedure Code is not required if such offence results in death, or the injured party is unable to give consent due to mental illness or disorder due to which he/she was deprived of the capability to undertake legal acts, or due to which his/her ability to undertake legal acts was restricted, if the injured party is younger than 15 years of age, and if it is evident from the circumstances that the consent was not given or has been withdrawn under duress caused by threats, pressure, dependence or subordination.

251 Act No. 141/1961 of Coll., on Criminal Proceedings (the Criminal Procedure Code), as amended

The number of cases of discontinued criminal prosecution due to refusal of consent (2003):

Offence	Started	Stayed	Prosecuted/ of which women	Accused/of which women	Discontinued	Sentenced/ of which women
Violence against a group of person and an individual 197a	2768	912	1498/78	1202/59	282	379/20
Injury to health 221	6134	1268	4697/286	4152/244	511	173/141
Restriction of personal freedom 231	623	172	413/30	341/29	64	108/4
Extortion 235	2142	295	1809/91	1619/82	161	764/40
Breach of house freedom 238	8725	1326	6473/411	5916/365	475	3825/275
Rape 241	486	68	416/1	342/1	66	158/0
Unauthorized infringement on the right to a house, apartment or non-residential premises 249a	940	171	662/209	548/170	105	320/110

The principal problem in this area is still the insufficient protection of victim of domestic violence. If the violent partner is not taken into custody or takes up the prison sentence it is impossible to force him under the existing legislation to leave the common housing. The protection of victims of domestic violence would be facilitated by the introduction of restrain orders in the Criminal Procedure Code and in the Act on the Police of the CR[252], which prohibit the aggressor to contact the victim for a certain time, or to come close to the victim, e.g. to enter the house where the victim lives, or which evict the aggressor from the common dwelling, etc. Furthermore, it is necessary to change the general notions and stereotypes in the application of criminal law, which hinder the application of the existing tools in the elimination of domestic violence.

7.2.2. Further development of interdisciplinary procedures

A Model Inter-disciplinary Project to Create a Legal Framework and Methodological Procedures to Introduce Inter-disciplinary Teams Combining Medical, Social and Police Assistance in Revealing and Prosecuting Cases of Domestic Violence (the "round tables") was started in 2002 under the guidance of the Ministry of Interior. This project continued until the beginning of 2004 with the participation of public administration experts and non-governmental organisations involved in helping victims of domestic violence. The project's findings will include proposals for practical measures and strategies intended to provide a comprehensive solution to the problem of domestic violence in the Czech Republic. The round tables came at its sessions to the following conclusions:

- It is necessary to provide unambiguous support to a broader definition of gross breach of human rights in private, which means that the round tables supported the broad definition of the "violence in the family".[253] In the solution of this problem, it is necessary to pay attention not to the perpetrator, but to the victim, his/her personality and roles.

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

253 This includes all forms of violence occurring inside private relationships or between persons sharing the commonly used dwelling, i.e. violence between adult partners – spouses, common law spouses or former spouses (the domestic violence) and violence committed by family members against children (ill treatment and abuse of children in the family) and also violence committed by family members against seniors.

- While working on the new system of protection of victims of domestic violence, it will be necessary to draw inspiration from existing European laws on protection against domestic violence, of which the Austrian model is considered as the best one, rather than conceiving a totally new legislation.
- It was proposed that all of the relevant ministries prepare an action plan of education concerning the first contact with victims of domestic violence. Places offering assistance and other services to victims of domestic violence should establish mutual ties. It will be appropriate to initiate the establishment of regional coordination centres or intervention centrals for victims of domestic violence and to temporarily institutionalise a coordination and methodological centre for resolution of cases of domestic violence, and to also create specialized therapeutic programmes for aggressors.

7.2.3. Campaign on unacceptability of domestic violence

The Campaign on Unacceptability of Domestic Violence[254] was organized in 2003 as a part of the implementation of the 2002 Priorities. An ad hoc working group was established under the leadership of the Government Commissioner for Human Rights, which consisted of representatives of the Ministry of Labour and Social Affairs, the Ministry of Interior, the Ministry of Education, Youth and Sports and representatives of non-governmental organizations involved in the problems of domestic violence –Open Society Fund Prague, Gender Studies, Czech Union of Women, Rosa, Profem, Advisory Bureau for Women in distress, Bílý kruh bezpečí (White Circle of Safety) and Nesehnutí Brno. At its meetings, the working group selected the strategy of the campaign, which was based on available funding and on the fact that a campaign concerning the same issue was also organized in 2003 by 11 non-profit organizations from various regions in the CR, which are involved as part of their activities in the resolution of issues of domestic violence against women.[255] It was decided that the campaign would be addressed particularly to young people between 15 and 25 years of age, who should learn from the campaign basic facts on domestic violence and to recognize its symptoms at its initial phase. At the same time, they should be told that it is best to terminate as soon as possible any relation where one of the partners has inclinations toward domestic violence.

The media component of the campaign included an information flyer – a folder, information leaflets placed in transport means throughout the CR, a radio spot broadcast in local radio stations throughout the CR, banners, ″boomerang″ cards, a game in CD inserts of computer game magazines, an information clip broadcast on a musical TV station, the website www.domacinasili.cz, placement of a game on websites of game portals.

The media shape of the campaign (graphic design, spots etc.) was ensured by the Ministry of Labour and Social Affairs. The Government Commissioner for Human Rights then organized his own part of the campaign, i.e. the production and distribution of promotional and information materials and other advertising events. All materials created in connection with the campaign were placed in the web domain www.domacinasili.cz with a

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254 Government Resolution of 15 May 2002 No. 486 to the Summary Report on the Implementation of Government Priorities and Procedures in Promotion of Equality Between Men and Women in 2001 (http://racek.vlada.cz/usneseni)

255 ROSA (coordinator of the campaign), Acorus, Český svaz žen (Czech Women's Union), Magdalenium, Most k životu (Bridge to Life), NESEHNUTÍ Brno, Pansophie, Advisory Bureau for Women in Duress, proFem, Slezská diakonie - ELPIS Advisory Bureau and Ženy bez násilí (Women Without Violence)

reference to separate website of the Office of the Government. With regard to the age of the target group, a somehow less traditional form was selected beside the ordinary campaign forms – an educative computer game in which young people can experience domestic violence in a virtual relation and to learn to adequately respond to such situation.

7.3. Problems of victims of trafficking in human beings

7.3.1. Project of prevention, suppression and punishment of trafficking in human beings, particularly in women and children

A project of prevention, suppression and punishment of trafficking in human beings, particularly in women and children has been implemented in the Czech Republic since 2002.[256] The aim of this programme is to collect, inter alia, information about human trafficking in the CR, to evaluate the effectiveness of adopted measures and to assess at the same time the level of institutional cooperation in the countries of origin, transit and target countries. The U.N. project will terminate by the end of May 2004. Based on collected information, a proposal of an effective system of protection of victims/witnesses of human trafficking in the CR (see II./7.3.2.), the application of which is supposed to increase the quality of prevention, investigation and prosecution of this type of crime.[257]

The project encompassed an analysis and comparison of the Protocol with the existing national legislation and the preparation of an evaluating report on the readiness of the Czech Republic for ratification of the Prevention Protocol. These activities took place at the beginning of 2003. According to the Ministry of Interior, it is possible to say, after the completion of the analysis and comparison of the existing legislation with the Protocol, that the Czech Republic can easily comply with the obligations ensuing from it.

The new information system is intended to permit gathering information about persons, firms, vehicles, weapons and groups and using such information for statistic outputs and operative and investigative field activities. It is planned to create a reliable, safe and user friendly database of persons suspected of human trafficking, child abuse and trafficking in human organs. A comments round is currently going at the Police Presidium of the Czech Republic concerning a draft binding instruction of the police president which will regulate the use of the information system ″Victim″. The system is expected to be launched into operation in mid- 2004.

The Institute for Criminology and Social Prevention (ICSP) performed in 2003-2004 a survey of trafficking in women as part of the international project ″Response of Criminal Justice to Trafficking in Women″, which was, in its turn, a part of one of the global U.N. programmes – Global Programme against Trafficking in Human Beings.[258]

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[256] The programme was proposed by the Centre for International Prevention of Crime of the U.N. Office for Drug Control and Crime Prevention for the Czech Republic and Poland as a part of the Global Programme against Trafficking in Human Beings. The guarantor of the project for the CR is the Ministry of Interior.

[257] Employees of the following offices and institutions participated in the implementation of the project in the Czech Republic: Police of the Czech Republic – units of the Police of the Czech Republic, of the Unit for Detection of Organized Crime of the Service of the Criminal Police and Investigation of the Police of the Czech Republic, Police Academy and Czech embassies abroad, the state attorney's office and courts. The non-governmental organizations participating in the project were La Strada, IOM, Sdružení České katolické charity a Diecézní charity České Budějovice.

[258] The demo project of the *Global Programme against Trafficking in Human Beings examines* the possibility of implementation of the requirements set from in the Protocol on Prevention, Suppression and

Experimental testing of a ″Model of Support and Protection of Victims of Trafficking with Human Beings″ is carried out from March 2003 to May 2004 within the U.N. project. This model was created as a part of the National Strategy of Combat Against Trafficking in Human Beings for the Purpose of Sexual Exploitation in the Czech Republic[259], a document that is the first comprehensive material on human trafficking adopted by the government[260]. The model has been applied until the present to 8 victims.[261]

This project also includes training courses devoted to the prevention of human trafficking and investigation of this crime, which is being prepared for authorities involved in criminal proceedings, for non-governmental organizations participating in the implementation of the model of support and protection of victims of human trafficking in the CR and for the police (particularly for criminal, foreigner and public order police).[262] The last phase of the project is to include the establishment of cooperation between authorities involved in criminal proceedings and non-governmental organizations in countries of origin and in transit and target countries. Following the completion of the programme, it is presumed to expand the number of non-governmental organizations providing support to victims within the framework of the model.

7.3.2. Legal status of victims of human trafficking

The government of the Czech Republic approved[263] the National Strategy of Combat Against Trafficking in Human Beings for the Purpose of Sexual Exploitation in the Czech Republic. This document that is the first comprehensive material on human trafficking adopted by the government and contains a report on the situation in human trafficking in the Czech Republic and a list of measures that are to be taken by the government in this respect.

Punishment of Trafficking in Human Being, Particularly in Women and Children, which supplements the U.N. Convention Against Supra-national Organized Crime. The guarantor of the entire project is ODCCP/CICP (U.N. Office for Drug Control and Crime Prevention and the U.N. Centre for International Crime Prevention). Te methodological guarantor of the project is UNICRI (U.N. Interregional Crime Research Institute).

259 The government approved it by Resolution of 3 September 2003 No. 849 (http://racek.vlada.cz/usneseni). Beside the model of support and protection of victims, the material includes the "Report on Trafficking in Human Beings for the Purpose of Sexual Exploitation in the Czech Republic" and annexes, i.e. the Action Plan for the Implementation of the National Strategy of Combat Against Trafficking in Human Beings for the Purpose of Sexual Exploitation in the Czech Republic".

260 Includes a report on the situation in human trafficking in the Czech Republic, a list of measures that should be implemented by the government in this respect and also the above model of protection of victims of human trafficking.

261 A training for 50 participants from among police officers, state attorneys, judges, employees of involved ministries, representatives of international and non-governmental organization and foreign guests was held on 11 – 12 March 2004 for the purpose of evaluation of the functioning of the model. The purpose of this training was to assess and update the model and to discuss possibilities of its promotion in the media. Another training held within the U.N. project on 25 – 26 March 2004 was designated for 60 police officers from the Czech Republic and Poland. The purpose of this training was to acquaint criminal and border police officers with the problems of identification of victims, effective investigation methods and ethics of work with victims. The training was attended by tutors from Belgium, the Netherlands and Italy. Five police officers were selected from among the participants to attend training in these issues abroad.

262 Two trainings were held in March 2003: "Model of Support and Protection of Victims of Trafficking with Human Beings" and Prevention of Trafficking in Human Beings and Investigation Techniques".

263 Government Resolution of 3 September 2003 No. 849 concerning the National Strategy of Combat Against Trafficking in Human Beings for the Purpose of Sexual Exploitation in the Czech Republic (http://racek.vlada.cz/usneseni/)

The project also includes the programme called *Model of Support and Protection of Victims of Trafficking with Human Beings*, which is being experimentally tested from March 2003 until May 2004 as part of the Project. The access to the model is open to female victims, who will document that they have become victims of human trafficking for the purpose of sexual exploitation. The organization of the model is divided by target groups into Czech and foreign citizens. The model applying to victims of human trafficking who are foreigners consists of three phases. Following the admission into the programme, the victim will be provided a 30-day crisis intervention and psychological and social assistance. A foreigner residing illegally in the Czech Republic will have to apply for a 40-day exit visa to be admitted into the programme. During the 30-day crisis intervention, the victim will decide whether she will cooperate with authorities involved in criminal proceedings or whether it will desire to return home. If the victim decides to cooperate, the Police of the Czech Republic will have another 10 days to check whether the victim meets the prerequisites for granting visa for the purpose of toleration of stay. A victim who will decide against cooperation will be offered a programme of voluntary return home. The victim who decides to cooperate will apply in he second phase after completing the one-month crisis intervention for a 3-month visa for the purpose of toleration of stay, which can be repeatedly renewed in connection with the pending criminal proceedings. After the termination of criminal proceedings, the will be offered voluntary return home. Within the third phase of the model, the victim may be granted upon request in cases meriting special consideration permanent residence for humanitarian reasons. Victims who are Czech citizens are also offered a one-month crisis intervention during the first phase. During the second phase, these victims are provided assistance in their reintegration into the society.

Social security for victims of human trafficking has not been resolved yet. Procedures applied in the case of persons who were granted visa on the basis of sufferance and do not have funds to pay for health care are the same as those applied to persons who were granted visa for the purpose of temporary protection. Thus, the health care for these persons in paid out of funds of the Ministry of Interior. The Ministry of Labour and Social Affairs had to propose until 31 December 2003 a measure to provide adequate social care and social allowances for female victims of human trafficking who are foreigners and to include until 1 June 2006 the assistance to victims of human trafficking for the purpose of sexual exploitation in a legislation regulating the issues of material deprivation and social exclusion. The information provided by the Ministry of Labour and Social Affairs indicates that the assistance to victims of trafficking has been included in the priorities of the subsidy proceedings for the year 2004.

8. The rights of children

8.1. Institutional or protective care

8.1.1. New legislation for institutional and protective care and its results

The Act on Institutional or Protective Care[264], which was adopted in 2002, introduced a new institute of the ″contractual family″, whose principal purpose is to reduce the number of children in institutional care. As it is a new institute, which has not been sufficiently regulated

[264] Act No. 109/2002 of Coll., on the Execution of Institutional or Protective Care in School Facilities and on Preventive Educational Care in School Facilities

by the legislation[265], the President of the Republic filed on 4 September 2002 a constitutional complaint for the repeal of the provisions of the Act on Institutional or Protective Care which concern this institute. The complaint has not yet been resolved by the Constitutional Court. Due to this reason, the Ministry of Labour and Social Affairs has not issued a decree determining the details of selection and preparation of contractual families, details regarding method of cooperation with and control of these contract families by the diagnostic institute. The Ministry of Education, Youth and Sports decided to resolve this situation and prepared a draft amendment of the Act on Institutional and Protective Care, which regulates in detail the procedures and activities of contractual families.

Based on the authorization of the Act on Institutional or Protective Care, the Ministry of Education, Youth and Sports issued in 2003 a decree[266] regulating details of the organization and provision of educational activities in school facilities designated for institutional or protective care (e.g. the necessary premises, interior furnishings, material conditions, meals), details of organizational procedures applied by the diagnostic institute with respect to admission, placement, relocation and release of children and of the organization of placement and stay of children who are not citizens of the CR.

Despite the new legislation, there are still some practical shortcomings. For instance, it has not been resolved whether children under protective care could leave for temporary visits to their parents (on weekends or holidays), because there is no legislation stipulating who can approve such stay. While such consent could be previously granted by the director, the new Act on Institutional or Protective Care does not endow him with such authority. This situation causes tension and undesirable behaviour in the institutional facilities (aggressive conduct, apathy, escapes), because children placed under protective care are not allowed to leave for temporary visits to their families. Directors of educational facilities are also dissatisfied with such situation, because it is important for them to know the current results of re-education and to adapt to them their re-education programme. In connection with insufficient legislation, there occurred some alarming cases of children placed under protective care who fled from the educational facility to their parents by which they committed a criminal offence of frustration of the execution of official decision and were subsequently punished by imprisonment. In one of these cases, a boy fled after futile wait for the court ruling.

This situation could be resolved by an amendment to Act No. 109/2002 of Coll., which would allow directors of educational facilities granting consent to a temporary stay with parents to children who are placed under protective care.

8.1.2. The practical implementation of the regime of institutional or protective care facilities[267]

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[265] **The Ministry of Education, Youth and Sports issued in 2002 a Methodological Instruction No. 25 200/02-24 concerning placement of children with ordered institutional care or imposed protective care in contractual families.**

[266] Decree No. 334/2003 of Coll., regulating the details of institutional care and protective care in school facilities

[267] This section has been prepared with the use of materials of the Ombudsman.

The activities of the sole facility with protective regime existing in the Czech Republic were terminated in 2003. During his investigation of the facility, the Ombudsman **found serious violations of human rights, like illegal deprivation of personal freedom, breach of the right to education (the instruction took two hours a day in the form of self-study, and only one teacher was available) and degrading treatment (periodic personal searches during which the children had to completely undress, inspection of sexual organs and rectum). The facility was surrounded by a high solid fence with concertina wire and bars with barbed wire were also mounted on the windows. Matted lights were on at night in boys′ bedrooms and the inside parts of the doors had no handles which meant that it was necessary to ring the bell to the warden when leaving the room. After receiving the report of the** Ombudsman**, the Minister of Education, Youth and Sports carried out her own investigation in the facility and ordered the termination of its activities and the return of the boys back to their original facilities.**

The Ministry of Education, Youth and Sports was involved in 2003 in a dispute with the Ombudsman about the installation of audio visual monitoring systems in institutional care or protective care facilities[268]. In addition to the Ombudsman, the disagreement with the installation of cameras in these facilities was also expressed by the Czech School Inspection and some non-governmental organizations, like the Human Rights League and the Czech Helsinki Committee. The requirement concerning protection of children and wardens against potential manifestations of violence of bullying clashes in this issue with the right to privacy, while the key question is whether such interference into privacy is adequate to the purpose that is to be achieved by it.

An indisputably positive feature of this dispute was the gradual approximation of standpoints, which were totally different at the beginning. The Ministry relied originally on the opinion of the Institute of State and Law of the Academy of Science of the Czech Republic, which indicated that the installation of these devices is not in conflict with the Charter. According to this opinion, these institutional facilities are public school facilities like schools, prisons or army barracks, and not housing facilities. Therefore, there are allegedly not governed by Article 12 of the Charter on inviolability of a dwelling. Based on the foregoing, the Institute of State and Law inferred that it is possible to monitor and record there by audio visual means the behaviour of other persons, because this is not regulate by the law with the sole exception of tapping of telephone calls[269].

While this problem was being resolved, the ministry turned away from this opinion and took up the opinion of the Supreme State Attorney's Office of 25 July 2003 on the unification of interpretation of laws and other regulations concerning the legality of placement of audio-visual means in school facilities.[270] This opinion states that the installation of this equipment in school facilities without a legal basis is in conflict with international treaties on human rights and with the Charter. The opinion further notes that this equipment may be installed solely at places allowing uncontrollable movement of persons who are not

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[268] The opinion of 21 January 2003 notes, inter alia, the following: ″The law thus does not see any difference between monitoring a passenger on an underground escalator and of a child at an educational facility. In neither of these cases, the monitoring does not interfere, as such, in his dwelling or privacy …" In the end, the opinion concludes that, from the viewpoint of the laws, there is no difference between monitoring corridors, the dining room, etc. on the one side and of bedrooms, rooms and washrooms on the other side.

[269] This opinion of the Institute of the State and Law was received with considerable surprise by a number of representatives of the civic and professional public.

[270] Serial No. 10/2003

employees of the facility, which is justified by the safety of the children. The Ministry of Education, Youth and Sports finally recommended to directors of these facilities to remove cameras from premises where the children's privacy should not be disturbed (bedrooms and sanitary facilities); according to the ministry, the other premises (e.g. corridors) do not have the nature of living space.

While bedrooms and sanitary facilities are thus undoubtedly placed into the living space category where the right to privacy would be breached, the partial dispute about the interpretation of the opinion of the Supreme State Attorney's Office, respectively about the status of the other spaces, i.e. corridors and meeting rooms. In the opinion of the ministry, the protection of privacy does not apply to these spaces, while the Ombudsman is of the opinion that privacy should be protected in these interior spaces, because they can be only hardly considered as spaces allowing "uncontrollable movement of persons". The opinion of the Supreme State Attorney's Office is also interpreted likewise in the motions of individual committees submitted to the Human Rights Council[271].

Practical experience indicates that only a minority of directors of institutional or protective care facilities consider the use of audio-visual technology as necessary. Moreover, some facilities that used this technology have decided to abandon their use. It seems that the differences between facilities which use these means and those which do not use them result from subjectively felt needs (i.e. from differences in opinions of the management of individual facilities) rather than from objective necessity and actual differences between the situation in various facilities.

8.1.3. Detention of children escaping from institutional facilities

A long-term problem is the participation of the police in the search for and subsequent transfer of escaped children placed under institutional care back to the care of the institutional care facility or to the nearest children's diagnostic institute. The current practice is as follows: if the police finds an escaped child whose escape has been reported by the relevant institutional care facility, it will identify the child and release him thereafter without notifying the nearest diagnostic institute and transferring the child in this institute, with reference to lack of authority to detain the child. The police argues that the child was not caught while committing a crime and his behaviour did not represent an immediate threat to his own or other persons' life and health or to property.

This practice of the police is in conflict with Section 13(4) and (5) of the Police Act, which stipulates the duty to surrender the child to the relevant authority and not to release him if prevented by legal reasons. Such legal reasons certainly include the existence of a court ruling imposing institutional care. The practice of the police is also in conflict with the Regulation of the Ministry of Interior dated 25 March 2002, regulating the procedure applied in search for persons and things. The existing procedures of the police result in further endangering of children who have escaped from an institutional facility. These children who

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[271] The Council for Human Rights discussed the motions of its Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and of the Committee for the Rights of the Child as late as on 23 February 2004, and submitted to the government a draft resolution which would order the Minister of Education to remove in line with the opinion of the Supreme State Attorney's Office the audio visual technology from all spaces where uncontrollable movement of persons (strangers) is not allowed, and to seek other means to ensure the safety of the children.

are mostly without any means, are exposed to high risk of getting involved in child prostitution or other pathological social phenomena.

8.2. Social and legal protection of children

8.2.1. The impact of the public administration reform on social and legal protection of children

Although the public administration reform did not result in any significant change of the total number of employees responsible for social and legal protection, the transfer of the tasks of social and legal protection from district offices to municipalities with extended competencies the extinction or suppression of specializations necessary for its provision. A social and legal protection department or a social prevention department with social workers specialized in protection of children with educational problems or involved in criminal activities, who require increased attention, should exist at each municipal office of a municipality with extended competences. The specialization should further concern ensuring substitute family care, work with children with educational problems who are involved in crime and with mistreated and abused children. Besides the foregoing, it is necessary to ensure sufficient staffing for the exercise of guardianship and field social work.

The information acquired from the investigation performed by the Ministry of Labour and Social Affairs in autumn 2003, which was focused on the impact of the public administration reform[272] on the exercise of social and legal protection indicates that the requirements for socialization of individual social workers are not met in practice, because nearly one half of municipal offices had not more than four employees involved in social and legal protection of children. This problem is resolved in practice by accumulation of exercise of various tasks of social and legal protection or in other areas which are unrelated as to their content to the social and legal protection. The current performance of multiple tasks imposes unfortunately high demands on the employees, who cannot systematically develop their activities in a single area and to increase their specializations, which is indirectly reflected in the results of their activity, the nature of which is transformed into rescuing and resolution of the most urgent cases.

It is evident that the numbers of employees of municipal offices have to be increased because in the case of failure to do so would jeopardise the exercise of delegated competencies entrusted by the Act on Social and Legal Protection of Children[273] by some municipalities. The necessity to increase the number of these employees is further supported by the fact that the numbers of families that needed some form of assistance or intervention kept growing since 1991 and increased until 2001 by approximately 30%.

The insufficient number of social workers limits their possibilities in the performance of intensive field social work with families and in the implementation of preventive measures. A considerable time consuming problem is also the attendance of social workers at court proceedings in matters of minor children. The employees of the municipalities must attend the

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[272] Act No. 518/2002 of Coll., amending Act No. 359/1999 of Coll., on Social and Legal Protection of Children, as amended, Act No. 114/1988 of Coll., on the Competencies of the Organs of the Czech Republic Concerning Social Security, as amended, Act No. 582/1991 of Coll., on the Organization and Implementation of Social Security, as amended, and Act No. 320/2002 of Coll., on the Amendment and Repealing of Certain Laws in Connection with the Termination of Activities of District Offices, as amended by Act No. 426/2002 of Coll.

[273] Act No. 359/1999 of Coll., on Social and Legal Protection of Children, as amended

court hearings held at the seat of former district offices and such hearings are not effectively scheduled to suit the time dispositions of municipal offices. Also the approximation of the activities of the offices to the population, which is an argument for the implementation of the public administration reform, has a rather negative impact on the activities of social workers. People living in small municipalities may hesitate to ask for help or present a notice to social workers our of fear of public disclosure of their problems or breach of neighbour ties. Moreover, some municipal representatives underestimate the demands complexity and importance of social and legal protection of children, which is perceived by them as marginal.

8.2.2. Cooperation between authorities responsible for social and legal protection with institutional and protective care facilities

The information attained by the Ministry of Labour and Social Affairs on the basis of questionnaire survey showed large gaps in the cooperation between bodies responsible for social and legal protection of children and institutional and protective care facilities. The institutional care facilities perceive very negatively particularly the cooperation in the provision of advice and assistance to children in search of jobs and housing before his release from an institutional care facility.[274] Whole 61% of institutional care facilities evaluated the method of this cooperation as totally insufficient.

Other identified shortcomings include insufficient systematic work with families, including the period after the placement of the child in the facility and provision of regular information about his results, more active cooperation in the procurement of consent of parents as legal guardians with various acts. This mostly concerns the procurement of the notarised consent of a parent with the application for issue of a travel document to a child younger than 15 years[275] or procurement of the consent of the court in lieu of the parents' consent, or provision of assistance in ascertaining of the financial situation of the parents, the knowledge of which is necessary for the determination of the amount of contribution to cover the costs of the care provided to children in the facility.

An increased incentive of bodies responsible for social and legal protection of children appears desirable in relation to the provision of information about the child's family or other facts relating to the child or of information about a change of the social worker responsible for a specific child. Other suggestions raised by the institutional facilities included the acceleration of the process of granting consent by the body responsible for social and legal protection of children with temporary stay of the child outside the facilities, particularly by more extensive use of fax and electronic communication.

8.2.3. Remediation of the family

The number of children that are placed into institutional care facilities in the Czech Republic is still relatively high. The institutional education is frequently selected also in cases in which it would be possible to seek other alternative solutions, like an attempt at the remediation of the family.

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274 pursuant to Section 33 of Act in Institutional or Protective Care

275 Section 17(4) of Act No. 329/1999 of Coll., on Travel Documents, as amended

The attention devoted to families with children whose parents are unable to ensure proper care or education to their children is still insufficient. Those are particularly cases of mentally ill parents or parents who cannot manage some social skills necessary to ensure the needs of the child. There are only very few establishments that would provide specialized advice and assistance to these parents and supervision by specially trained social workers directly in the homes of these families or that would assist them in their contacts with the child. Those projects are mostly implemented by non-governmental organizations.

Children from these families are usually placed in institutional care. These children are very frequently unable to visit their parents or go for walks outside the visitor rooms of the facility, because the parents are unable to ensure proper care or safety of the child. Despite the foregoing, there are very strong emotional ties between the children and their parents, which have been violently cut. These children are unable to understand without professional assistance the specifics of their parents' behaviour, which results very frequently in their being ashamed for their parents. Their uncertainty can even lead to aggressive behaviour or to the rejection of their parents. Institutional care facilities offer these children, as being suitable for adoption, to the placement into substitute foster family care, but the foster parents often refuse to allow the children maintain contacts with so handicapped parents, thus separating the children definitely from their parents.

The protection of children has failed for a long-time also in cases in which the parents lose their housing, whether or not by their own fault. The parents then live in various hostels or become homeless and the children are placed in an institution. The loss of housing thus mostly results in the disintegration of the family, which could further function with active assistance of the state or municipalities in seeking solutions of these problems.

8.3. The rights of the child to regular and personal contact with both parents

The right of the child to regular personal contact with both parents is still being breached. The available legal means to guarantee this right of the child, like joint or alternate care, reprimand of the parent or decision on the change of the educational environment in cases in which an entitled parent is prevented from contacting the child, etc. are still insufficiently used. Certain recent cases that have been publicized in the media have shown that the relevant employees are mostly insufficiently trained to ensure the maximum possible protection of the rights of the child during the enforcement of the above rights and the child was not further traumatized. Thus, it is not only the inconsistent approach of the state authorities and courts but also the inability and unwillingness of one or both parents to agree on the care for the child and on the regulation of contacts with him that contribute to the breach of the right of the child to the maintenance of regular personal contact with both parents.

Hindering the contacts between the entitled parent and the child or setting the child against the other parent often results in the occurrence or worsening of the rejected parent syndrome. This form of violence against children, which is definitely represented by the rejected parent syndrome, has not bee sufficiently dealt with by the state. The Czech Republic still lacks a reintegration centre which would be involved in diagnostic and therapy of the rejected parent syndrome and would mediate at the same time the reinstatement of contacts between parents and children suffering from this syndrome.

The granting "contact rights" to one parent means a totally insufficient determination of the framework of his/her educational potential, as regard proper education, and these contacts are usually limited to weekends. Fathers are often allocated the role of "weekend daddies", which denies to the father and the children the right to build mutual relations in daily life, when they can learn together etc. The children then get accustomed to unhealthy schemes under which they can spend only weekends with their fathers and cannot live with them during weekdays.

What could certainly contribute to the resolution of these problems in a short time horizon would be a large-scale and practical training of specialized workers, like court executors and police officers, with the aim to execute the judicial rulings in matters of children in a manner minimizing the traumatic effects on the child. It would also be appropriate to train social workers to provide to them detailed knowledge about the rejected parent syndrome and with the procedures to prevent this syndrome. As to the future, it is desirable to create conditions for family mediation within such scope that would allow the court to order the family mediation in the case of dispute between parents.[276] *These steps are the focus of a motion of one of the specialized committees of the Council for Human Rights – the Committee for the Rights of the Child, which was prepared in the second half of 2003*[277].

8.4. Child abuse

8.4.1. General aspects of sexual abuse of children

A total of 889 cases of sexual abuse of children were reported in the Czech Republic in 2003. Out of this number, 819 (i.e. 92.12 %) cases were resolved.[278]

Crimes pursuant to Section 242, Section 243 and Section 204 of the Criminal Code- offences + perpetrator

Grounds of offence	Total occurrence	Of which resolved	Youth			Prosecuted persons - **perpetrators**				
			0–15 years	15–18 years	Total	Total	Children 0–15 years	Youth 15–18 years	Of which	
									M	F
Section 242	778	708	106	159	262	622	99	161	583	39
Section243	111	111	0	0	0	78	0	0	76	2
Total	**889**	**819**	**106**	**159**	**262**	**700**	**99**	**161**	**659**	**41**
Section 204	101	99	0	4	4	103	0	6	66	37

[276] E.g. in Italy it is quite common that the father is granted contact rights every weekday, even for only two hours in the afternoon. This maintains normal ties between parents and children, which are the most similar to a healthy family.

[277] The final version of the motion was approved by the Council for Human Rights only on 23 February 2004.

[278] A total of 1011 cases of sexual abuse were reported in 2002, of which 917 cases (90.70 %) were resolved.

Crimes pursuant to Sections 242, 243 and 204 of the Criminal Code - victims

Section 204 offence	109	673 Youth – groups of victims			706	Crimes against individuals 0 – 18 years		
	0 – 15 years		15 – 18 years		Total 0 – 18 years		Youth	Youth total 0 – 18 years
	M	**F**	**M**	**F**	**M**	**F**	0 – 15 years	15 – 18 years	
Section 242	109	607	4	18	24	81	749	24	771
Section243	20	66	4	15	113	625	91	19	110

Most cases of sexual abuse are recorded in families where, for instance, stepfathers or common law husbands abuse their partner's children. Perpetrators include fathers of their own minor children. There are also cases of abuse of girls and boys by pedagogues at various camps, sports events, clubs, etc. As shown in the table, these offences are also committed by persons who are still children or adolescents.

8.4.2. Commercial sexual abuse of children

Cathrin Schauer's Report "Children in Street Prostitution", which was published in November 2003, includes drastic allegations about commercial sexual abuse of children in the Czech-German border regions, which is frequented by "sexual tourists" from Germany. According to her, a very well organized trafficking with sexual abuse of children has developed in this region, particularly in the region of Cheb. Workers involved in the project KARO[279] have allegedly registered since 1996 about 500 girls and boys earning their living by prostitution.[280] Similar allegations were also contained in the publication issued by the German branch of UNICEF on 28 October 2003 under the title *Kinder auf dem Strich – Bericht von der deutsch – tschechischen Grenze,* which was prepared based on the experience and information of the workers of the German non-governmental organization KARO. Both the Ministry of Interior of the Czech Republic and the ministry of the interior of the Federal Republic of Germany consider the information stated in these publications as exaggerated, far-fetched and not corresponding to reality. The ministry referred, inter alia, to the fact that the author of the study had never documented to the state authorities of the CR any concrete case of commercial sexual abuse. Allegations about large scale and organized commercial sexual abuse of children in the region of Cheb has not been proven by subsequent field investigation. Nevertheless, the report gained enormous publicity and due to its dramatic staging in Germany also an interstate dimension, even though it seems that it did not affect in the end the Czech-German relations.

Despite evident exaggeration of the allegations contained in the above publication, it would be wrong to underestimate the problem of commercial sexual abuse of children, because such phenomenon can be very difficult to detect. Statistics of the Ministry of Interior recorded in 2003 only five cases of commercial sexual abuse of children in the whole CR (see

[279] A social project in which Cathrin Schauer participated and which was focused on the issue of commercial sexual abuse of children in Czech-German border regions.

[280] Source: website of the Czech Committee for UNICEF (http://www.unicef.cz/aktuality/text_III.html)

below).[281] It would be certainly overly optimistic to infer from these statistics that such activities are really scarce. On the contrary, it can be feared that this is a reflection of insufficient interception of this particularly dangerous criminal activity.

Statistics of commercial sexual abuse of children (source: the Ministry of Interior):

Grounds of the offence	Occurrence	Resolved	Persons prosecuted			Children		Adolescents	
			Total	Of which					
				Male	Female	Male	Female	Male	Female
Section 243	1	1	1	1	0	0	1	0	0
Section 242	4	2	2	1	1	3	1	0	0
Total	5	3	3	2	1	3	2	0	0

The government approved as early as in 2000 the National Plan of Combating Commercial Sexual Abuse of Children[282] as a conceptual framework for coordinated activities of all ministries and other central state administration authorities, focusing on the prevention and suppression of this phenomenon. Current tasks of the *National Plan of Combating Commercial Sexual Abuse of Children*, which was updated in July 2002,[283] focusing on specific target groups, on the prevention and detection of child pornography on the Internet and on prevention of commercial sexual abuse of unaccompanied minor asylum seekers staying in the CR with a special focus on individuals who are accommodated in private facilities or who have left the asylum facilities. The next evaluation and update of the National Plan will be presented to the government by the end of the first half of 2004.

8.5. Protection of children at work

The government approved in November 2003 the Employment Bill.[284] This new legislation, which is currently being reviewed by the Chamber of Deputies[285], should bring about general prohibition of work of children younger than 15 years, with the only exception of involvement of children in artistic, cultural, sports and advertising activities. The aim of the new legislation is to provide adequate protection to children involved in artistic, cultural, sports and advertising activities and to determine more detailed conditions in this respect. The current legislation does not ensure sufficient protection to children, because artistic and sports activities of children are carried out under innominate contracts (if any), concluded pursuant to Section 51 of the Civil Code.

The bill suggests that the performance of artistic, cultural, sports or advertising activities of children should be subject to a permit issued by the relevant employment office. Such permit will be issued only if such activity is adequate to the age of the child, will not be dangerous for him, will not hinder his education or school attendance or participation in

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[281] Four of which in Prague and one in the Southern Moravian Region, i.e. none of them in the Cheb region.

[282] http://www.mvcr.cz/, crime prevention, documents

[283] Resolution of 10 July 2002 No. 716 concerning the Report on the Implementation of the National Plan of Combating Commercial Sexual Abuse of Children (2000-2002) and the update of this plan for the next period

[284] Resolution of 12 November 2003 No. 1113 concerning the Employment Bill and the bill amending certain laws in connection with the adoption of the Employment Act (http://racek.vlada.cz/usneseni/)

[285] See Release of the Chamber of Deputies No. 527 (http://www.psp.cz/forms/tmp_sqw/6e17001e.doc)

instruction programmes and will not damage his health, physical, moral or social development.

It would be appropriate if the Czech law appropriately resolves the occurrence of children's work outside the above areas. Children younger than 15 years often perform various works outside labour law relations, which circumvents the prohibition to employ children before completing their compulsory school attendance. These children do not enjoy any protection comparable with juvenile employees (15 to 18 years). The object of their work is most frequently represented by distribution of advertising flyers or sale of newspapers. Children often perform various works in family firms and in agriculture. This issue can be resolved by permitting children older than 13 years to perform some "light work" subject to certain strict conditions and to a limited extent. The performance of work by children in the age of 13 to 15 years under strict terms can be considered as positive with respect to their upbringing and for future self-realisation. The possibility to enact such legislation ensues from the relevant EU directive and other international documents[286], and such legislation was adopted by states whose legal systems are close to the Czech legal system, like Austria and Hungary.

9. Foreigners

9.1. Overall development of migration in 2003 and the relevant legal framework

The year 2003 did not witness any principal turn in migration trends. The number of foreigners with permanent residence permits has been growing continually since the formation of the Czech Republic. The number of foreigners with a temporary stay in the CR under a residence visa over 90 days declined significantly in 2000 after the effective date of Act No. 326/1999 of Coll., on the Stay of Foreigners in the Territory of the Czech Republic and on the Amendment to Certain Laws, but started growing again thereafter. The number of foreigners with residence registered in the Czech Republic as of 31 December 2003 reached 240,421, of whom 80,844 held permanent residence permits and 159,577 foreigners held residence visa over 90 days.

Like the two previous years, the year 2003 was characterized by a year-to-year decline of the detected illegal migration across the borders of the CR, even though such decline was not so significant. Detected illegal migration across the borders of the CR has been declining without conspicuous fluctuations since mid-2001. An increase was registered from May to August 2003, which was due in particular to a significant increase of the number of citizens of the Russian Federation, namely from Chechnya, among the detected illegal migrants. The growth of the number of illegal Chinese migrants was recorded in the statistics for June 2003. The border protection authorities registered in 2003 a total of 13,206 persons who crossed or demonstrably attempted to cross illegally the state border the CR. Out of this number, 2,081 persons were Czech citizens and 11,125 were foreigners.

The adoption of the Act on Temporary Protection of Foreigners[287] was accompanied by the adoption of an act amending certain other laws that regulate the status of foreigners.[288]

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[286] Council Directive No. 94/33/EC on the Protection of Adolescent Workers, European Social Charter of the Convention of the International Labour Organization No. 138 concerning the minimum age when employment is admissible

[287] No. 221/2003 of Coll., on Temporary Protection of Foreigners; see Chapter II./10.5

This act came into effect as of 1 January 2004 and some of its provisions will come into effect later, upon the entry of the Czech Republic into the EU or upon the accession to the Schengen system., and has brought about the following important changes:

- a new amendment of the temporary residence regime based upon long-term bias has been changed by allowing foreigners to stay in the territory of the CR for not more than one year. Any longer residence will require a long-term residence permit. The conditions of stay in the Czech territory have not been changed.
- Tolerated stay of foreigners will not be regulated as a separate institute, but as a stay on the basis on a visa over 90 days and as long-term specific-purpose residence of foreigners.
- The act also determines the procedures to be applied by the police in cases in which a foreigner who has applied for asylum while in the transit premises of an international airport is not granted asylum and the relevant administrative authority stipulates in its decision that the exists an impediment to departure under the Asylum Act.
- The amendment also stipulates the obligation of the courts to inform the police about all final effective sentences against foreigners. This measure is necessary to ensure the cancellation of visa and possible withdrawal of permanent residence permit.

9.2. Measures concerning integration of immigrants

The implementation of measures set forth in the Policy of Integration of Foreigners in the Territory of the Czech Republic continued in 2003 in compliance with further resolutions of the government issued in 1999 - 2002. The chief documents prepared in 2003 include a preliminary *Analysis of the Situation and Status of Foreigners with Long-term Residence in the Territory of the Czech Republic, Plans of Integration Policies of the Ministers for the year 2004 – 2006* and *Proposed Legislative and Practical Measures of the Ministries*. Although the preliminary analysis indicates that the essential framework of the integration policy was established in 1999 – 2003, there is still no comprehensive integration strategy on the level of all participating ministries. Some measures do not reach the local level, which is crucial for the integration of immigrants.[289] Attention was focused in 2003 particularly on projects of non-state non-profit organizations supporting the integration of immigrants. A total of 22 million CZK were allocated in the state budget for the implementation of these programmes.

A turning point in further implementation of integration measures is the transfer of the integration agenda from the Ministry of Interior to the Ministry of Labour and Social Affairs.[290] It will be necessary to establish in future much stronger links between integration and the migration policies, particularly the so-called active immigration policy and the naturalization policy. It can be considered as a positive tendency in the society that

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[288] Act No. 222/2003 of Coll. amending Act No. 326/1999 of Coll., on the Stay of Foreigners in the Territory of the Czech Republic and on the Amendment to Certain Laws, as amended (the Aliens Act), Act No. 359/1999 of Coll., on Social and Legal Protection of Children, as amended (Act on Social and Legal Protection of Children), Act No. 325/1999 of Coll., on Asylum and on the Amendment to Act No. 283/1991 of Coll., on the Police of the Czech Republic, as amended (the Asylum Act) and Act No. 48/1997 of Coll., on Public Health Insurance and on the Amendment to Certain Related Laws, as amended (the Public Health Insurance Act)

[289] The planned transformation of former district advisory bodies for issues of integration of foreigners to similar commissions on the regional level in relation to the termination of the activities of district offices was not successful.

[290] **The transfer of the coordinating task was approved by Government Resolution of 10 December 2003 No. 1252 concerning the transfer of the agenda connected with the coordination of the implementation of the Policy of Integration of Foreigners in the Territory of the Czech Republic from the Ministry of Interior to the Ministry of Labour and Social Affairs (http://racek.vlada.cz/usneseni/).**

immigration is no longer being discussed not as a problem but as a chance that has to be used as much as possible for the benefit of the Czech society. This new approach, which is a part of a liberal turn in the attitude to immigration of highly skilled foreigners occurring in a number of European countries, represents at least to some extent a compensation for the withdrawn and intolerant attitudes toward immigrants that still prevail in a part of the public.

The foregoing shift, which appeared at least in discussions in the media, was significantly enhanced by an information and publicity campaign carried out by the Ministry of Labour and Social Affairs at the start of the implementation of the pilot project named "Active Selection of Skilled Foreign Workers" in mid-2003. This project represents the first positive step toward the establishment of a generally applicable immigration programme. (This programme was limited in 2003 only to citizens of three countries: Bulgaria, Croatia and Kazakhstan.) On the other hand, the substantial reduction of waiting periods for permanent residence permits of one group of immigrants (two years) raises a question whether such long "waiting period" is justified.

10. Refugees and other persons in need of international protection

10.1 Legislative changes and case law relating to the status of asylum seekers and refugees

10.1.1. Shortening the time limit for filing an application for permanent residence of rejected asylum seekers

The legislation amending certain other laws on the status of foreigners, which permits foreigners staying in the territory after the end of the asylum proceedings on the basis of the temporary stay permit (i.e. under exit visa or visa issued on the basis of sufferance) to apply for permanent residence, came into effect as of 1 August 2003. These foreigners may file such application if they have stayed in the territory of the Czech Republic on the basis of a long-term visa or long-term residence permit and had been for at least five years in the position of asylum seekers or of applicants for granting refugee status or in another similar position. At the same time, they must not be citizens of a state that is designated as secure country of origin under a special law (Section 69a). With regards to the specific character of such cases, the proceedings in these matters were entrusted to Asylum and Migration Policy Department of the Ministry of Interior.

According to the explanation of the Ministry of Interior, the foreigners to whom this rule applies are presumed to have been integrated to a certain extent in the society. Such change can be welcomed as a form of assistance to foreigners in very difficult situations. On the other hand, it gives additional emphasis to the issue of the long-term "waiting period"[291] applying to foreigners who are not rejected asylum seekers (e.g. those who have been working for five years in the CR) and in whose case there is no reason to presume that they have achieved a lower level of integration. Thus, it appears as highly desirable for the sake of harmonization of the entire system to reduce the period of stay in the territory that is required for granting permanent residence permit also for other categories of foreigners.

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[291] The EU adopted the Council Directive 2003/109/EC concerning the status of citizens from third countries with a long-term stay. Its implementation in the national law will require re-consideration of the "waiting period" for permanent residence permit.

10.1.2. Amendment to the Asylum Act

The amendment to the Asylum Act was also amended.[292] This amendment[293] strengthened the status of unsuccessful asylum seekers during the period designated for filing an action with the regional court against the decision of the Ministry of Interior to Reject the Asylum. Unsuccessful asylum seekers are entitled to receive within such period the necessary health care, accommodation, meals and hygienic effects.

On the other hand, the act also stipulated that the administrative authority – in this care the Ministry of Interior – is no longer obligated to offer to the parties to these proceedings a possibility to make before the issue of the relevant decision a statement concerning the basis of such decision and method of its ascertainment, or to propose its supplementing.[294] This regulation was criticized by non-governmental organization and by the Office of the High Commissioner of the UN for Refugees (hereinafter only the "UNHCR") and by the Ombudsman, who used for the first time his right and recommended at a session of the Chamber of Deputies[295] not to impair the procedural status of asylum seekers and to preserve the right to make a statement regarding the basis of a ruling issued in asylum proceedings, because the withdrawal of this right means a significant reduction of procedural rights of asylum seekers and Czech knows no such limitation of procedural rights in administrative, court or similar proceedings. Such limitation may result, in its consequences, in the restriction of the right to fair trial (Article 38(2) of the Charter). However, according to the standpoint of the Ministry of Interior regarding this objection, which concerns the exclusion of application of Section 33(2) of the Administrative Procedure Code,[296] the right to inspect the file stipulated in Section 23 of the Administrative Procedure Code, which has been preserved, is sufficient to ensure the implementation of the requirements the Charter and to guarantee the right to fair trial.

Asylum seekers are a very vulnerable group and it is therefore impossible to consider as substantiated their significantly unequal status towards the administrative authority, i.e. the Ministry of Interior. At the same time, the amendment does not seem to be justified by serious security reasons, because even the previous legislation provided a sufficient opportunity to restrict the access of asylum seekers to some parts of their respective files, including secret facts (Section 87(1)).

Asylum seekers have been provided a new opportunity to apply for voluntary repatriation (Section 54a of the Asylum Act). Such application can be filed during the time limit designated for challenging by an action the decision of the ministry. This amendment is a positive shift in comparison with the previous situation which was criticized in the 2002 Report.[297]

Based on the information provided by the Ombudsman, the Supreme Court adopted in 2003 two unifying opinions on court rulings in matters relating to expulsion custody and execution of the expulsion sentence.[298] The first opinion concerns the conflict of the asylum proceedings with the execution of the expulsion sentence. In this respect, the Supreme Court

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292 Act No. 325/1999 of Coll., on Asylum, as amended
293 Act No. 222/2003 of Coll.
294 Section 33(2) of Act No. 71/1967 of Coll., the Administrative Procedure Code, as amended
295 Section 24(3) of Act No. 349/1999 of Coll., on the Public Defender of Rights, as amended
296 Act No. 71/1967 of Coll., the Administrative Procedure Code, as amended
297 See Chapter II/11.1.1. of the 2002 Report
298 See also II./4.1.10

adopted a conclusion that pending asylum proceedings do not prevent the execution of the expulsion sentence. The impacts of this opinion are problematic particularly with regard to the requirements ensuing from applicable EU standards and principles, with that are sufficiently informed about the countries of origin.[299] Thus, even the established court practice is marginal with regard to Article 33 of the Convention on Legal Status of Refugees, which constitutes the *non-refoulement* principle.

10.2. Asylum practice in 2003

10.2.1. Overall situation in asylum proceedings

In 2003, 11,396 foreigners applied for asylum in the CR. This represents a significant (34.3%) increase in comparison with the previous year. Most of those applicants were citizens of the Russian Federation, the number of who increased from 628 (416 of which were Chechen nationals) to 4,851 in 2003, 4,515 of whom (i.e. 93.1%) declared that they were Chechen nationals. Thus, the number of applicants from the Russian Federation increased nearly seven times in 2003 (by 672.5%) and the citizens of the Russian Federation moved from the sixth most numerous position in 2002 to the first place in 2003. Their share in the total number of applicants has thus grown from 7.4% to 42.6%. Further most numerous nationalities of the asylum applicants in the CR in 2003 are the citizens of Ukraine (with a 17.9% share in the total number of asylum seekers), Slovakia (9,3%) and China.

208 foreigners were granted asylum in 2003, which is by 101.9% more than in the previous year and represents the highest increase since 1993. Most of those granted asylum in 2003 were the citizens of the Russian Federation (62), Afghanistan (30), Armenia (26) and Byelorussia (20). Impediments to departure were granted in 2003 in 51 cases (in comparison with 27 cases in 2002 – i.e. a 88.9% increase). 47% of those granted this form of protection were the citizens the Russian Federation.

A total of 12,235 actions against the decision of the Ministry of Interior were filed with the regional court in 2003 and the regional court issued in the same period a total of 5,643 rulings (46.5%). The remaining 6,492 actions (53.5%) are still pending. The proceedings were stayed in more than one half of these cases (58%); one third of these actions (31.2%) were dismissed and 9.2% of them were rejected by the court. Only 1.5% (87) of these decisions were cancelled by the court and returned to the Ministry of Interior for further review. A total of 720 asylum seekers filed in 2003 an appeal to the Supreme Administrative Court against the decision of the regional courts. 72 (i.e. 92.3%)of the total of 78 rulings issued by the Supreme Administrative Court dismissed the appeals and 6 rulings of the regional courts were revoked.

A positive tendency that appeared in 2003 is the shortening of time limits in which the Ministry of Interior processes asylum applications. The average length of asylum proceedings (solely at the Ministry of Interior) is 75 days.

Some cases that occurred in 2003 drew attention to problems in asylum proceedings that do not result from an incidental failure of the system but rather raise a question whether the system has been correctly and fairly set up. At the same time, it is evident that many of

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[299] The applicable Resolution on Minimum Standards for Asylum Proceedings of 20 June 1995 (O. J.C 274, 19/09/1996) and the related proposal of minimum standards for proceedings on granting and withdrawal of the refugee status (COM(2000) final).

those problems arise from the existence of dilemmas between the effectiveness and consequently the integrity of the asylum system on the one hand and the maximum protection of refugees on the other hand. The following chapter contains a description of some of these problems which give rise to serious doubts as to whether the current legislation is not restrictive to an extent that could consequently threaten some asylum seekers.

10.2.2. Concurrence of administrative expulsion proceedings and asylum proceedings

An issue that attracted public attention in 2003 was the case of foreigner A. Y., to whom the authorities allegedly mediated contacts with the embassy of his country of origin, although he was an asylum seeker. According to the Ministry of Interior, this contact occurred before he applied for asylum.

Such isolated case, in which it cannot be definitely said whether it was an error, caused an extensive discussion on the concurrence of administrative expulsion proceedings and asylum proceedings. In this discussion, the Ministry of Interior stated that the concurrence of the administrative expulsion proceedings and asylum proceedings is supported by the law and a contact of a foreign embassy is an integral and irreplaceable part of the verification of the identity of the detained person and of the preparation of an application for issue of a replacement travel document. Moreover, the foreigner police does not inform the embassy in its application for verification of identity that the foreigner in question is an asylum seeker. The Ministry of Interior believes that this represents sufficient protection of the rights of the asylum seeker.

In the opinion of the Government Commissioner for Human Rights, which relies on the opinion of UNHCR, this procedure does not sufficiently protect the rights of the asylum seeker. It may be inferred from the general principles of protection of asylum seekers that no information about individual applicants should be provided to the authorities of the country of origin, i.e. not only information about the fact that the person has applied for asylum. If the authorities of the country of origin learn about the applicant's identity or about the reasons of his application, it can significantly increase the threat to his safety or to the safety of his family or friends who have stayed in the country of origin. Moreover, such threat may exist in states that breach human rights also in the cases that the application for asylum has been dismissed, because even the departure from the territory of such state and illegal stay in another country may cause repression. Therefore, the authorities of the asylum country are not authorized to communicate with the home country of the applicant or as country are not authorized to communicate with the home country of the applicant or asylum seeker even to verify the identity and to issue a travel document. The only possible exception are the negotiations on voluntary return of the rejected applicant to his country of origin. Therefore the current practice should be considered as unacceptable with regard to the protection of rights of the asylum applicants and has to be quickly changed.

Furthermore, the non-governmental authorities informed in 2003 about some cases of rejected asylum seekers who were expelled from the territory of the CR promptly after the service of the first-instance decision without being given a chance to contest such decision by an action filed within the regular time limit (see also the case described in v II./10.2.3.). The decision on granting or rejection of asylum issued by the Ministry of Interior comes into

effect upon the acceptance of service. This procedure should be revoked by the new legislation effective as of 1 January 2004.[300]

Due to the sane reasons, the exclusion of suspensive effect of an appeal against the decision of the foreigner office on administrative expulsion also appears problematic, because it results either in actual expulsion or forces the foreigner to leave the territory of the CR during the time limit designated for departure, although the law stipulates that filing an action with the court has a suspensive effect on the execution of a decision.[301] If the expelled foreigner is denied pursuant to Section 171(c) of the Aliens Act[302] the right to court review of such decision and if it is decided at the same time to exclude the suspensive effect of an appeal, such procedure cannot be considered as sufficient protection before possible *refoulement.*

10.2.3. Asylum proceedings in the transit premises of an international airport

Serious problems arise in connection with asylum proceedings in the transit premises of an international airport in Prague. Even from the practical viewpoint, the premises of the asylum centre cannot be considered as appropriate. The issue of access of representatives of international and non-governmental organizations to the transit premises to provide legal or social advice to asylum seekers is not consistently resolved. Although visits to these premises are not excluded, the visitors must take into account certain security procedures that they have to suffer. The administration of refugee facilities intends to resolve this problem by the construction of a reception centre with separate entrance or with the relocation of such centre into a newly built facility, which is to be completed in mid-2005.

A much publicized issue was the case of the Palestinian I. Z.[303], who stayed since August 2003 in the transit area of the Ruzyně Airport and the authorities did not succeed in resolving his situation until the end of 2003. It was an extremely complicated and atypical case, which was further complicated a number of circumstances, including the refusal of the foreigner to cooperate in his identification. It is, however, indisputable that this was one of the

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300 Effective from 1 January 2004, the decision on administrative expulsion of the foreigner who applied for asylum in the CR shall be executable only after the dismissal of his asylum application or the decision to stay the proceedings in the matter of this application come into legal effect, subject to futile lapse of the time limit for filing an action against the decision of the Ministry of Interior on the asylum.

301 The suspensive effect of an appeal against the decision on administrative expulsion is excluded under Section 55(2) of Act No. 71/1967 of Coll., on Administrative Proceedings (the Administrative Procedure Code), due to compelling public interest. This procedure is generally used in the case of administrative expulsion of a foreigner who stays without authorization in the territory of the CR. Foreigner and border police units are obligated to examine during the proceedings on administrative expulsion whether there exist any impediments to departure pursuant to Section 179 of Act No. 326/1999 of Coll. If such impediment occurs after the end of the proceeding, the foreigner can be issued visa on the basis of sufferance under Section 35(1)(b) of Act No. 326/1999 of Coll. despite the existence of an executable decision on administrative expulsion.

302 Act No. 326/1999 of Coll., on the Stay of Foreigners in the Territory of the CR the CR, as amended. Under Section 171(c), the decisions on administrative expulsions are excluded from court review if the foreigner stayed before the commencement of these proceedings without authorization in the territory or in the transit area of the international airport.

303 This foreigner applied for asylum under the name A. H. and his own declaration issued at the time of check in the transit area of the Prague-Ruzyně Airport immediately after his arrival from Istanbul, where he denied that the birth certificate found in his possession and issued in the name of I. Z is genuine. After his return to the Prague-Ruzyně Airport when he was refused entry into the territory of Turkey, he refused to suffer the acts that would prove his identity. Thus, the information regarding his identity, which were found particularly by way of the Office of the UN High Commissioner for Refugees, could not be confirmed.

cases of execution of the decision on administrative expulsion immediately after the service of the decision rejecting asylum[304]. Therefore, the applicant was *de facto* unable to use the chance of independent review of the decision of the Ministry of Interior.[305] Moreover, many new facts appeared after the date when the administrative authority refused his first asylum application (namely verification of his identity and other facts relating to his health condition). Even though the UNHCR proposed that the Ministry of Interior permits the applicant to file anew application or that the relevant authorities provide for a more detailed medication examination of the applicant, these proposals were not implemented and the Czech authorities were unable to find another solution.

I. Z.'s case was also reviewed by the Ombudsman, acting in his own incentive. The conclusions of his investigation indicate an error by the relevant state administration authorities due to which the foreigner remained for several month in the transit area of the Ruzyně Airport in conditions degrading human dignity. The Police of the CR erred in premature execution of the decision on administrative expulsion (before the expiry of the time limit for filing an action against the decision of the Ministry of Interior in the matter of asylum). According to the Ombudsman, the Ministry of Interior erred by not reviewing the asylum application of I. Z., although new facts regarding his health condition of the applicant and his new identity (and the defective designation of his person in the decision on rejecting the asylum) constituted sufficient grounds for such revision. Despite the foregoing, the Ombudsman came to the conclusion that it is not appropriate to initiate further process pursuant to Section 18 of the Act on the Public Defender of Rights, because this matter is currently being reviewed in an administrative proceeding held before the Municipal Court in Prague and the issue of premature execution of a decision on administrative expulsion of a foreigner who as applied to the CR for protection in the form of asylum has already been resolved by legislation (see II./10.2.2).

10.2.4. Other problematic aspects of asylum practice

Serious problems relating to the exercise of the right to asylum are caused by the provision of the Asylum Act,[306] under which a foreigner who has already applied for asylum in the CR may file another asylum application no sooner than two years after the final effective date of termination of the previous proceedings. Even though it is definitely necessary to apply certain protective mechanisms against misuse of asylum proceedings, which includes, inter alia, repeated filing of applications, the fact that the Ministry of Interior may grant an exception from this rule in justified cases does not represent a sufficient guarantee of proper asylum process. In UNHCR's opinion, the application of this provision may result in *refoulement* in the case of an application whose application has been finally dismissed without being ever reviewed as to its merits. For the same reason, Austrian authorities came repeatedly to the conclusion that the CR cannot be considered as safe third country.

The Ministry of Interior stayed in 2003 a number of asylum proceedings on formal grounds[307] without reviewing the merits of the application. This also applied to Chechen

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304 The applicant was returned from Turkey because he did not possess valid documents. His stay at the Ruzyně Airport ended only at the beginning of 2004, when he was permitted entry in the territory of the CR.

305 In the opinion of the Ministry of Interior, this measure was taken in compliance with applicable laws, because the decision on asylum comes into legal effect by its service and appeals may be filed from abroad.

306 Section 10(3) of Asylum Act

307 pursuant to Section 25(h) of the Asylum Act

applicants who were returned to the CR under a readmission agreement with Austria due to illegal crossing of the border. As regards the stay of proceedings of Chechen applicant on formal grounds, specifically on ground set in Section 25(h) of the Asylum Act, it has to be also said that it is entirely at the discretion of the foreigner whether he will wait for the decision on the merits of the case.

The amendment of the Act on State Social Support[308], which came into effect on 1 January 2004, further complicated the conditions of asylum seekers (particularly families with children) living outside the asylum facilities of the Ministry of Interior, because it excluded the asylum seekers from the group of persons entitled to state social allowances. The advertised intent of this amendment was to prevent accumulation of social benefits o the asylum seekers, although no such accumulation existed under the current legislation. The payment of state social allowances and the concurrent use of the services connection with the stay in the asylum facilities (accommodation, meals, pocket money and other) was impossible and the total period of provision of a financial allowance to an applicant with registered residence outside the facility did not exceed three months.

Another problem is the imperfect regulation of unification of families of asylum seekers. The principles of unification of families of asylum seekers and of asylum for the purpose of unification of the family are provided for in the Asylum Act (Section 13). This Act, however, does not provide for practical unification of the families and does not resolve problems connected with the entry of the family members in the territory of the CR. If the family members of an asylum seeker live abroad, the family has to be unified under the Act on the Stay of Foreigners. However, the stay of these persons has a specific purpose, i.e. the unification of the family with a member of a nuclear family[309] who has been granted by the CR international protection in the form of asylum. Therefore, it would be appropriate to determine clear and evident procedural rules and processes to fulfil the principle of family unity. It is not possible to apply in future the existing *ad hoc* resolution of problems connected with unification of families of recognized refugees. In connection with the expected entry of the CR to the EU, it is necessary to note that the Council of Europe has already prepared and approved a directive on the right to unification of the family.[310] Therefore, the Ministry of Interior is preparing an amendment to the Act on the Stay of Foreigners, which will also resolve these problems.

10.3. Children not accompanied by legal guardians as asylum seekers

The total number of 11,346people who applied for asylum in the CR in 2003 included 194 children not accompanied by legal guardians. Two of them were granted asylum in 2003, in both cases for humanitarian reasons. The number of arrivals of children has been declining continuously during the last four years. A total of 89 minors who applied for asylum under standard terms n the reception centres, 12 of them at the international airport Prague- Ruzyně. 105 minors (i.e. about 55% of the total number of arrivals) entered asylum proceedings in detention facilities for foreigners. The age of most of these minors ranged at the entry into asylum proceedings between 16 and 17 years. Cases of minors younger than 15 years are still unique. The highest numbers of minors by nationality came from China, India, Russia (Chechnya), Slovakia and Vietnam. The Ministry of Education, Youth and Sports has not yet

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308 Act No. 117/1995 of Coll., on State Social Support, as amended

309 The so-called close (nuclear) family means the husband or wife of the asylum seekers and their minor children, or parents of minor asylum seekers.

310 Council Directive 2003/86/EC on Unification of Families, dated 22 September 2003

succeeded to fulfil the task assigned to in 2002[311] and to put into operation a facility for unaccompanied minors.

10.4. Integration of asylum seekers in 2003

The implementation of the national integration programme for asylum seekers continued in 2003 as well. Municipalities received budget funds for integration in the amount of 6,660,000 CZK to implement 18 offers for construction of "integration apartments" for 39 refugees. Due to insufficient number of offers from municipalities and the growing number of asylums granted in 2003, the Ministry of Interior prepared to the government a new proposal of support of rental housing for asylum seekers, consisting in the provision of a rent allowance. The new system is to support active involvement of asylum seekers in the search for a home at the place selected by him where he can eventually find a job. The system should this increase the mobility of asylum seekers, which is, like in the case of other people, a starting points of successful adaptation.

While the existing state support of integration is concentrated on two areas (language and housing), the practice and foreign experience indicates that it is necessary to create a more comprehensive strategy, which would put more emphasis on jobs, including the recognition of achieved level of education, social security, particularly pensions, attainment of Czech citizenship, unification of families of recognized refugees, etc..

10.5. Temporary protection and persons in need of other international protection

In order to harmonize Czech law with the EU law, the Ministry of Interior prepared a new bill on temporary protection of foreigners,.[312] a part of which will come into effect as of 1 January 2004 and the rest as of the date of entry of the Czech Republic into the EU. The temporary protection of foreigners shall be declared after the entry of the Czech Republic into the EU by a resolution of the Council, and it will be no longer possible for the CR to proceed independently, as it was the case of temporary protection of citizens of the Russian Federation. On the other hand, the CR will have an opportunity to initiate in the relevant working group of the European Commission negotiations on the declaration of temporary protection.

While there currently exists comprehensive regulation of temporary protection, nothing has changed in 2003 in the dissatisfactory legal regulation of the situation of persons who need supplementary forms of protection. Beside the above possibility to grant permanent residence to unsuccessful asylum applicants who have met the prerequisites regarding the previous length of stay (see II./10.1.1 above), which represents, however, only a partial solution, the Ministry of Labour and Social Affairs prepared in 2003 a new employment bill,[313] which also regulates employment of foreigners who were granted visa or long-term residence permit on the basis of sufferance. At the same time, there have appeared even now

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311 Government Resolution of 17 April 2002 No. 395 concerning the policy of placement, education and upbringing of children with a language barrier, including unaccompanied asylum applicants, in institutional care facilities (http://racek.vlada.cz/usneseni/)

312 See Chapter II./11.2.2. of the 2002 Report

313 Section 97 of the government draft of the Employment Act, Release of the Chamber of Deputies 527

new outcomes, includes in the EU directive that regulates these issues[314] and that is currently under preparation. New systemic and flexible solution of the status of people who are not refugees but still need international protection is very urgent even in the absence of a mass influx, particularly with regard to the situation of those coming from the Russian Federation (Chechnya).

[314] Draft Council Directive on minimum standards for recognitions of citizens of third countries or persons without citizenship as refugees or persons in need of international protection, and on their status (COM/2001/0510 final)

III. Conclusion

In 2004, the Czech Republic will enter the EU; however, many aspects – particularly the actual level of rights of weakened and vulnerable groups, like children, mentally handicapped people and patients in general, all categories of persons placed in institutional care, some ethnic groups and immigrants – still do not reach quality standards existing in most of the existing member countries.

In the last years before the entry, the EU, as a reference system, has gradually overshadowed, from the viewpoint of politician, public servants, the media and the general public, all other organizations, be it the Council of Europe, the UN or the Organization for Security and Cooperation in Europe. At the same time, the political and economic topics prevailed in the EU agenda over human rights issues which have been until not the domain of the Council of Europe, although they have also been reflected in regular evaluation reports of the European Commission. Following the entry into the EU, the dominance of the EU over other reference systems will be even more prominent; on the other hand, the EU itself will attain a much more prominent "human rights" dimension in connection with the process of adoption of its constitution and charter of rights. The entry into the EU will be directly reflected in the human rights area only by the mandatory adoption of the anti-discriminatory act. It is, however, likely that EU membership will bring in the next few years new dynamic in other areas referred to above, particularly due to more intensive direct communication between institutions and to the growing number of students educated in other member states.

As regards medium-term goals, we can refer to previous reports and particularly to their summary in the 2002 Report. In 2003, the Czech Republic managed to get very close to the implementation of two of these objectives, the adoption and effective implementation of integrated anti-discriminatory legislation and systematic supervision of places that hold people who have been deprived of their freedom; the material aspects of relevant legislation has already been prepared and they await "only" their approval. Other principal problems, like a new approach to the issue of citizenship, are still waiting for resolution. As already noted in the 2002 Report, the Czech Republic will have to seek more and more, together with other member states of the European Union, such solutions of current problems, like the development of biotechnologies (including assisted reproduction), personal data protection in hastily developing information society and effective defence against terrorism without excessive interference with civil freedoms, that will comply with human rights.

Beside new issues raised by the technical progress, another issue of growing importance is the immigration and the refugee problem in the globalisation context. The gap between the North and the South is definitely not only economic; it is also a growing gap in the quality of right between advanced democracies on the one side and dictatorships or collapsed states suffering from civil war on the other side. These conditions naturally result in new migration trends, and the EU member states face several paradoxes: the more they restrict active migration, the more migrants resort to asylum proceedings thus clogging the mechanisms that have been established to assist real refugees. The more restrictive is the regulation of entry into a country or group of countries, intended to prevent entry of people from "problematic″ states, the more likely it becomes that a real refugee will be unable to enter such country or group of countries by other than an illegal way. And the higher is the standard of rights granted to refugees or immigrants, the more attractive such country become to other newcomers, which results in further appeals for restriction. These are global problems, which do not have an easy solution. Therefore, the search for a policy that will be able to harmonize pragmatic viewpoints with requirements of human rights in this area

appears to be one of the most difficult tasks of the EU, into which the Czech Republic is just entering.

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