FUNDAMENTAL RIGHTS SERIES

E.U. NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS
(CFR-CDF)
RÉSEAU U.E. D'EXPERTS INDÉPENDANTS EN MATIÈRE DE DROITS FONDAMENTAUX

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN THE CZECH REPUBLIC IN 2003

January 2004

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* submitted to the Network by Professor Dr. Pavel Šturma with collaboration of his assistants Dr. Dagmar Černá and Dr. Lucia Fulmeková within the Department of International Law of the Charles University in Prague – Faculty of Law.

Le **Réseau UE d'Experts indépendants en matière de droits fondamentaux** a été mis sur pied par la Commission européenne (DG Justice et affaires intérieures), à la demande du Parlement européen. Depuis 2002, il assure le suivi de la situation des droits fondamentaux dans les Etats membres et dans l'Union, sur la base de la Charte des droits fondamentaux de l'Union européenne. Chaque Etat membre fait l'objet d'un rapport établi par un expert sous sa propre responsabilité, selon un canevas commun qui facilite la comparaison des données recueillies sur les différents Etats membres. Les activités des institutions de l'Union européenne font l'objet d'un rapport distinct, établi par le coordinateur. Sur la base de l'ensemble de ces (26) rapports, les membres du Réseau identifient les principales conclusions et recommandations qui se dégagent de l'année écoulée. Ces conclusions et recommandation sont réunies dans un Rapport de synthèse, qui est remis aux institutions européennes. Le contenu du rapport n'engage en aucune manière l'institution qui en est le commanditaire.

Le Réseau UE d'Experts indépendants en matière de droits fondamentaux se compose de Elvira Baltutyte (Lituanie), Florence Benoît-Rohmer (France), Martin Buzinger (Rép. Slovaque), Achilleas Demetriades (Chypre), Olivier De Schutter (Belgique), Maja Eriksson (Suède), Teresa Freixes (Espagne), Gabor Halmai (Hongrie), Wolfgang Heyde (Allemagne), Morten Kjaerum (Danemark), Henri Labayle (France), Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), Bruno Nascimbene (Italie), Manfred Nowak (Autriche), Marek Antoni Nowicki (Pologne), Donncha O'Connell (Irlande), Ian Refalo (Malte), Martin Scheinin (suppléant Tuomas Ojanen) (Finlande), Linos Alexandre Sicilianos (Grèce), Dean Spielmann (Luxembourg), Pavel Sturma (Rép. Tchèque), Ineta Ziemele (Lettonie). Le Réseau est coordonné par Olivier De Schutter, assisté par Valérie Verbruggen.
Les documents du Réseau peuvent être consultés via :
http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_fr.htm

The **EU Network of Independent Experts on Fundamental Rights** has been set up by the European Commission (DG Justice and Home Affairs), upon request of the European Parliament. Since 2002, it monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. A Report is prepared on each Member State, by a Member of the Network, under his/her own responsibility. The activities of the institutions of the European Union are evaluated in a separated report, prepared for the Network by the coordinator. On the basis of these (26) Reports, the members of the Network prepare a Synthesis Report, which identifies the main areas of concern and makes certain recommendations. The conclusions and recommendations are submitted to the institutions of the Union. The content of the Report is not binding on the institutions.

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PRELIMINARY REMARKS

This contribution on the Czech Republic covers in principle the situation between 1 December 2002 and 1 December 2003, including however some continuing evolutions before or after those dates.

CHAPTER I : DIGNITY

Article 1. Human dignity

International case law and concluding observation of international organs

The Czech Republic proclaims respect of human dignity on the constitutional level in Art. 10 Section 1 of the Charter of Fundamental Rights and Freedoms[1] which states, „*Everybody is entitled to protection of his or her human dignity, personal integrity, good reputation, and his or her name"*.

Questions attaching respect of human dignity encounter also right to protection of integrity of human body after death of a person. Protection of physical integrity of a person during and after the termination of life of a person is on a expressed in the above mentioned Art. 10 Section 1of the Charter of Fundamental Rights and Freedoms. The Czech Republic has become a party of international instruments on this subject matter, among *others Convention for the protection of Human Rights and dignity of the human being with regard to the application of biology and medicine: Convention on Human Rights and Biomedicine, as well as Additional Protocol on the Prohibition of Cloning Human Beings* which both were ratified on 22 June 2001 and entered into force for the Czech Republic on 1 October 2001. In the framework of Art 10 of the Constitution of the Czech Republic the Convention and the Protocol have priority over the laws.

No international body on the protection of human rights issued negative observation on the Czech Republic as to the insufficient protection of human dignity.

National legislation, regulation and case law

Recently some legislative changes have taken place in the Czech Republic on the subject – matter of respect of human dignity in relation with integrity of human body after termination of person's life. On 1 September 2002 (and partly on 1 March 2003) a new *Law on Donation, Take off and Transplantation of Tissues and Organs and on the Change of Some Other Laws (Transplantation Law)*[2] entered in force. This newly approved law complexly regulates legal conditions for take off and transplantation of tissues and organs not only from living persons but also *from persons whose life terminated*. This legal regulation supplemented and completed previous legal regulation[3] which encountered only provisions for transplantation of Tissues and organs from living donors. Transplantation from dead donors was until the approval of the new Law encountered only in legal instruments of less than statutory force.

The new legal regulation is based on principle of presumed consent of the donor who can, however, during his life expressly declare his will not to be subject to a take off and transplantation of his or her organs or tissues. In case of a minor or a person deprived of his legal capacity, the explicit disapproval can be made by its legal representative or tutor. The Transplantation Law created a register of persons who expressed their will not to be subject to transplantation after their death. The Law also explicitly states that the take off of tissues and

[1] Úst. zákon č. 2/ 1993 Sb. Listina základných práv a svobod (Const. Law No. 2/ 1993 Coll. of Laws, Charter of Fundamental Rights and Freedoms)

[2] Zák. č. 285/ 2002 Sb. o darování, odběrech a transplantacích tkání a orgánů a o změně některých zákonů (Law No. 285/ 2002 Coll. of Laws on donation, take off and transplantation of tissues and organs and on change of some other laws)

[3] Zák. č. 20/ 1966 Sb. V platném znění Zákon o péči o zdraví lidu (Law No. 2/1966 Coll. of Laws on Public Health Care including amendments)

organs from dead persons and the dissection of bodies shall be carried out with respect to human body and in a way that it could be, if possible, arranged to previous form.[4]

The new Law also amended the Penal Code of the Czech Republic[5] where new Sec. 209a was added. Within the meaning of this paragraph a take off and transplantation of tissues and organ from a body of dead person, carried out in contradiction with specialised legal regulation[6] constitutes a criminal act with all following consequences of possible punishment.

During the scrutiny period there have not been observed any significant cases taking as legal bases respect of human dignity of a person.

Article 2. Right to life

International case law and concluding observation of international organs

During the period under scrutiny the Czech Republic has not been found in violation with Art. 2 of the European Convention on Human Rights and Fundamental Freedoms (further ECHR) neither has the UN Committee on Human Rights raised negative observations due to lack of respect of Art. 6 of the International Covenant on Civil and Political Rights. No other international body on the protection of human rights issued negative concluding on the Czech Republic as to the insufficient protection of right to life.

National legislation, regulation and case law

The legal order of the Czech Republic provides protection of right to life at the constitutional as well as statutory level. At the constitutional level, Art. 6 Section 1 of the Charter of Fundamental Rights and Freedoms [7] stipulates: „E*verybody has right to life. Human life deserves to be protected already before birth"*. Sections 2 - 4 of the article provide for protection of right to life in accordance with Art. 2 of the ECHR and with Art. 2 of the Protocol No. 6 to the ECHR. Section 4 of this article forms constitutional basis for acts, which constitute deprivation of life, but are not in contravention with right to life as protected by the article. On the statutory level, Articles 13 (legitimate, necessary defence) and 15 (legitimate use of weapon) of the Penal Code of the Czech Republic constitutes regulation of acts of deprivation of life which do not inflict a breach of right of life as protected by Art. 6 of CFRF.

Euthanasia:

Regarding the present legal order of the Czech Republic, euthanasia is considered as a criminal act and, depending on the circumstances of case, it could either constitute elements of Assisted suicide (Sec. 230 of the Penal Code of the Czech Republic), Murder (Sec. 219 of the Penal Code of the Czech Republic) or Failure of providing relief (Sec. 207 of the Penal Code of the Czech Republic). In the framework of prepared re-codification of the penal law of the Czech Republic, the draft new penal code includes definition of crime „*killing on request"*. The proposed draft of the new penal code does not exempt euthanasia from punishment, it only provides for privileged penalisation of killing a person on his or her own request, in comparison with crime of murder. Act of euthanasia presumed in the above said prepared draft covers cases of requested voluntary euthanasia. It does not distinguish between

[4] See: Art. 14 of the Transplantation Law
[5] Zák. č. 140/ 1961 Sb. v platném znění Trestní zákon (Law No. 140/ 1961 Coll. of Laws, Penal Code)
[6] Zák. č. 285/ 2002 Sb. o darování, odběrech a transplantacích tkání a orgánů a o změně některých zákonů (Law. No. 285/ 2002 Coll. of Laws on donation, take off and transplantation of fibres and organs and on change of some other laws)
[7] Listina základných práv a svobod, úst. Zákon č. 2/ 1993 Sb.(Charter of Fundamental Rights and Freedoms, Const. Law No. 2/ 1993 Coll. of Laws)

active and passive euthanasia. The prepared draft does not cover cases of medical treatment when there is no consent of the patient. Issue of lifesaving in cases when a person does provide the doctor with his or her consent with the continuance of medical treatment is regulated by the Law on Public Health Care[8], which in its Sec. 23 (2) stipulates: „M*edical examinations and treatment shall be carried out within (informed) content of the patient, or if such content is presumed. If a patient despite of proper explanation by a doctor, refuses medical care needed, doctor shall request a written proclamation of the patient about the refusal (reverse)"*. Cases in which the doctor can carry out medical examinations and treatment without consent of a patient are explicitly stated in Sec. 23 (4) of the Law. These also cover situations when „*due to state of health of the patient it is impossible to request a consent of the patient and the medical treatment is necessary for lifesaving or health-improvement of the patient"*. In general, according to legal regulation present in the Czech Republic a patient has right to refuse any medical treatment and his/ her decision must be respected by the doctor.

Proposed explicit incorporation of act of euthanasia into draft penal code does not cover situations when a doctor gives a patient suffering from incurable disease an increasing amount of drugs against pain, that however shorten patients life. Such treatment is legal required and does not fall under scope of euthanasia. Such acts of a doctor are considered to be performed *lege artis.*

Use of firearms by security forces:

Use of weapons including firearms is in the Czech Republic regulated by provisions of laws regulating specific types of security forces such as the Army of the Czech republic[9], Police of the Czech Republic[10], municipal police[11], Prison and Judicial Guard of the Czech Republic[12] and Security Information Service of the Czech Republic[13]. These laws lay down conditions of legal use of weapons (firearms) for each specific type of security force. If the conditions laid down in the specific laws are fulfilled, use of weapon does not constitute a crime under Penal Code of the Czech Republic (Sec. 15).[14]

Illegal crossing of borders:

On 1 January 2003 a new Law on the Protection of State Borders of the Czech Republic and on Change of Some Other Laws (Law on the Protection of State Borders) came into force.[15] This law regulates placing security means on state borders. According to a press report of the Directorate of Foreigner and Border Police these means are not of a character that could endanger person's life. They are means of preventing from car-crossing of the border at places other than official border crossings.

[8] Zák. č. 20/ 1966 Sb v platném znění o péči o zdraví lidu (Law No. 2/1966 Coll.of Laws on Public Health Care including amendments)
[9] Zák. č.219/1999 Sb. O ozbrojených silách České Republiky (Law No. 219/ 1999 Coll. of Laws, Law on the Army of the Czech Republic)
[10] Zák. č. 283/1991 Sb. O Policii České republiky (Law No. 283/ 1991 Coll. of Laws, Law on the Police of the Czech Republic)
[11] Zák. č. 553/ 1991 Sb. O obecní policii (Law No. 553/ 1991 Coll. of Laws, Law on the Municipal Police)
[12] Zák. č. 555/ 1991 o vězeňské a justiční stráži České republiky (Law No. 555/ 1991 Coll. of Laws, Law on Prison and Judicial Guard of the Czech Republic)
[13] Zákon č. 154/ 1994 Sb. O Bezpečností informační službě ČR (Law No. 154/ 1994 Coll. of Laws, Law on Security Information Service of the Czech Republic)
[14] Zák. č. 140/ 1961 Sb. v platném znění Trestní zákon (Law No 140/ 1961 Coll. of Laws including amendments Penal Code
[15] Zák. č. 216/ 2002 Sb. O ochraně státních hranic České Republiky a o změně některých zákonú (Zákon o ochraně státních hranic) Law No. 216/ 2002 Coll of Laws on the Protection of State Borders of the Czech Republic and on Change of Some Other Laws (Law on the Protection of State Borders)

Domestic violence:

In the year 2003 there have not been examined cases of deaths of persons caused by domestic violence. In the present Czech legislature there is no explicit protection of persons, from domestic violence, however, acts of domestic violence are penalised under provisions of Czech Penal Law by criminalising acts against person's life and health[16]. There are however present practical problems of investigation and substantiation of such cases.

Practice of national authorities

According to the information of Inspection of Ministry of Interior of the Czech Republic there has been observed one case of death of a person caused by use of firearm by a member of the Police of the Czech Republic in the year of 2003. The case was investigated by the Regional Group of Control and Complaints of the Police of the Czech Republic which found the use of firearm well-founded and conducted in accordance with Law on the Police of the Czech Republic and therefore legitimate. As a result of the examination there were no criminal charges raised with respect to the policeman.

Article 3. Right to the integrity of the person

No significant developments to be reported.

Article 4. Prohibition of torture and inhuman or degrading treatment or punishment

International case law and concluding observation of international organs

During the period under scrutiny, the Czech Republic has not been found to be in a violation by the European Court of Human Rights (Article 3 of the ECHR) or by any other international control bodies. As a matter of fact, Art. 3 was invoked, along with Art. 6 and Art. 8 of the ECHR, in the case *Červeňáková and Others v. the Czech Republic*, but the applicants and the defending State have reached a friendly settlement, approved by the European Court on 29 July 2003.[17]

According to information available, the 3rd periodical report on the implementation of the 1984 Convention against Torture by the Czech Rep. will be discussed in the Committee against Torture in the second half of 2003. As a result of the second visit of the European Committee for Prevention of Torture (CPT) in 2002 and recommendations resulting from its Report (December 2002), the Czech authorities have already improved the situation of foreigners detained in the admission centre at the Airport Prague - Ruzyně (concerning the possibility of outings during detention). Nevertheless, living conditions of foreigners without a legal status to remain in the territory of the State (often asylum seekers without valid identity and travel documents), detained in centres for detention of foreigners under administration of Immigration police, especially in the Centre in Bálková, near Plzeň (Pilsen), have been criticized even during 2003 by the Organization for Aid to Refugees, a Czech NGO with a special expertise in asylum matters.[18] Such persons (including children) may be detained for the purpose of administrative detention up to six months under conditions which could be considered as degrading (restricted access to toilets and showers, etc.).

[16] See. Head VII of the Law No 140/ 1961 Coll. of Law Penal Code, Crimes against life and health
[17] Eur. Ct. H.R., *Čeveňáková v. the Czech Republic* (dec.), No. 40226/98, 29 July 2003.
[18] Cf. Jak se žije uprchlíkům v ČR [How live refugees in the Czech Rep.], by M. Rozumek, director of the Organization for Aid to Refugees, in: newspaper *MF Dnes*, 9 August 2003, p. A/6.

As far as concerns other problems criticized by CTP, namely an insufficient protection of rights of persons detained in the psychiatric institution in Opava and in the institute of social care in Ostravice, an extreme isolation of persons sentenced to life imprisonment, or a lack of free-time activities for persons in pre-trial detention and foreigners in detention centres, the Czech authorities currently (in 2003) prepare measures for implementation of the recommendations from CPT.[19]

National legislation, regulation and case law

At the constitutional level, the prohibition of torture and inhuman or degrading treatment or punishment is incorporated in Art. 7 par. 2 of the Charter of Fundamental Rights and Freedoms.[20] The Czech Republic has ratified the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (on 7 July 1988)[21] and the 1987 European Convention on the Prevention of Torture and inhuman or degrading treatment or punishment (on 7 September 1995).[22] The constitutional and international principles have been implemented by the 1993 Amendment to the Penal Code,[23] adding the new Sec. 259a on the criminal offense of punishment and other inhuman and cruel treatment.

Concerning the rights of persons subject to imprisonment, Sec. 23 par. 2 of the Penal Code provides expressly that the execution of punishment must not be detrimental to the human dignity. In details, the rights and duties of prisoners are covered by the Law on punishment[24] Moreover, the protection of person detained after criminal conviction against any illicit force and acts affecting human dignity is provided specifically in Sec. 35 of the Rules of serving prison sentences, issued in a form of Decree of the Ministry of Justice.[25]

The legal protection against torture and similar ill-treatment covers not only persons subject to imprisonment, but also other vulnerable categories of persons. Sec. 215 of the Penal Code provides for criminal sanctions in cases of maltreatment of persons under special care. This means minors but also certain adults depending on the care of other persons for some reasons (e.g. illness, age, disability, mental illness, etc.). The perpetrators may be parents, teachers, trainers, nurses, doctors, but also other persons. The legal term of maltreatment includes both physical and mental sufferings.

Practice of national authorities

Of great importance is the existence of control mechanisms which aim at preventing ill-treatment in cases of deprivation or restriction of freedom in any institutions. These institutions are within a competence of six departments (ministries) of the Government (Justice, Education, Defense, Home affairs, Health care and Labour and Social affairs). Since the Czech Republic has not yet have an independent body for systematic and preventive control in all places where are persons whose personal freedom is restricted, the Government presented (in May 2003) the principles of new legislation. The proposed amendment to the

[19] Cf. Report on the state of human rights in the Czech Republic for 2002, presented by the Human Rights Commissioner of the Czech Government.
[20] Listina základních práv a svobod, úst. zákon č. 2/1993 Sb. [Charter of Fundamental Rights and Freedoms, Const. Law No. 2/1993 Coll. of Laws]
[21] No. 143/1988 Coll. of Laws.
[22] No. 9/1996 Coll. of Laws.
[23] Law No. 290/1993 Coll. of Laws.
[24] Zákon č. 169/1999 Sb., o výkonu trestu odnětí svobody a o změně některých souvisejících zákonů; ve znění zákona č. 359/1999 Sb.; ve znění zákona č. 3/2002 Sb.; zákona č. 320/2002 Sb. [Law No. 169/1999 Coll. of Laws, on the execution of penalty of imprisonment, as amended by the laws No. 359/1999 Coll., No. 3/2002 Coll. and 320/2002 Coll.]
[25] Vyhláška Ministerstva spravedlnosti č. 345/1999 Sb., kterou se vydává řád výkonu trestu odnětí svobody [Decree of the Ministry of Justice No. 345/1999 Coll., promulgating the Rules of serving prison sentences]

Law on Public Protector of Rights[26] consists in extending the scope of competence *ratione materiae* and *ratione personae* of the Public Protector (i.e. the Czech Ombudsman). He should be able to carry out random inspections of all places of detention or *de facto* restriction of freedom.

Article 5. Prohibition of slavery and forced labor

International case law and concluding observation of international organs

During the period under scrutiny, the Czech Republic has not been found to be in a violation by the Eur. Ct. H.R. (Art. 4 of the ECHR) or by any other international control bodies.

National legislation, regulation and case law

At the constitutional level the prohibition of slavery and forced labour has been provided in Art. 9 of the Charter of Fundamental Rights and Freedoms. The Czech Republic is also bound by the ILO Convention No. 29 on Forced and Compulsory Labour,[27] the ILO Convention No. 105 on the Elimination of Forced Labour,[28] the 1926 Convention on Slavery[29] and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, as well as the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others.[30]

The lastly quoted Convention has been implemented in the Penal Code, namely in Sec. 204 (exploitation of the prostitution of others) and Sec. 246. Unlike the former wording of this section which covered only trafficking in women, which had to involve the transfer of the victim abroad, the amended Sec. 246 introduced the concept of „trafficking in persons for the purpose of sexual intercourse“, regardless the quality of victims (women, men or children). The new definition includes not only trafficking of victim from the Czech Rep. abroad, but also from abroad to the Czech Rep.[31] Nevertheless, even the new definition is not broad enough, as it does not cover trafficking in persons internally (within the state territory) and trafficking for other than sexual abuse (e.g. force labour in shops, restaurants, household services, etc.).

At the level of national legislation, the amendment to the Penal Code brought an improved definition of the child pornography, made distribution, publication, production, import, transit or export of the child pornography a criminal offense. The Law also provided for more severe penalties for persons who make public the child pornography through the means of mass communication or as members of organized group.[32] However, detention of the child pornography for personal use remains out of regulation by penal law and therefore exempt from punishment.

Further to explanations on the trafficking of human beings – women and children – for the purpose of prostitution, it is to be mentioned that the Law No. 218/2003 [33] brought with it also an amendment to Penal Code. The newly inserted Sec. 217a on Attempt (seduction) to sexual intercourse made it punishable offense where one offers, promises or gives to a person under

[26] Zákon č. 349/1999 Sb., o Veřejném ochránci práv, ve znění pozdějších předpisů [Law No. 349/1999 Coll., on Public Protector of Rights, as amended by later laws]
[27] No. 506/1990 Coll.
[28] Ratified in 1957 but not yet promulgated in Coll.
[29] No. 165/1930 Coll.
[30] Ratified in 1958 but not yet promulgated in Coll.
[31] Law No. 134/2002 Coll.
[32] Law No. 134/2002 Coll.
[33] Zákon č. 218/2003 Sb., o soudnictví ve věcech mládeže [Law No. 218/2003 Coll., on juvenile judiciary]

18 years a payment or other advantage for a sexual intercourse, his/her masturbation, striping or other similar behavior. On balance, according to Sec. 217b, a person under 18 years, who asks or accepts payment or advantage for such acts, is not subject to punishment. Sexual intercourse with a person under 15 years (under any circumstances, including his/her free consent) has always been a punishable offense. This is an additional legislative measure which aims at improving protection of children and young women (between 15 and 18 years) against trafficking for prostitution.

Child labour does not present a very serious problem in the Czech Republic. However, there are some attempts to evade the legal prohibition of employment of children under 15 years (the end of compulsory education) through works done by children outside labour law relations, for ex. distribution of advertising publications, newspapers, or labour in family businesses. A new legislation, which is now under preparation (Labour Code and Law on employment), should ban any child labour until 15 years, except of artistic, advertising and sport activities under special conditions and subject to permission.

As to the compulsory labour after a criminal conviction by the court, Sec. 45 and 45a of the Penal Code enables the court to impose the penalty of works to public benefit. Concerning the compulsory labour in prisons, the above mentioned Law No. 169/1999, on the execution of penalty of imprisonment, provides the obligation of prisoners to work (Sec. 29), provided that the State is able to offer a labour opportunity in the prison or otherwise. The prison authority shall take into account the health condition, qualification and skills of prisoners. In case of the employment of the prisoner in a non-state enterprise, his or her written consent is obligatory (Sec. 30).

Another exception from the general prohibition of the forced and compulsory labour is stipulated in the Law on military service and the Law on conditions of military civil national service.[34]

Practice of national authorities

Fighting against the traffic in persons, especially women and children belongs to the priorities of the Czech government. The Czech Republic takes part in the Global Programme for the Struggle against the Traffic in Persons, organized by the Centre for International Crime Prevention (CICP) of the UN Office for Drug Control and Crime Prevention (ODCCP). At the same time, there is a clear intention to improve the situation of women involved in prostitution on consensual basis. The Ministry of Interior is currently preparing a draft law on the regulation of prostitution which aims at separating the legalized exercise of prostitution (as an independent profession under certain conditions) from the zone under the control of organized crime (forced prostitution, trafficking in women). However, the draft law may not be in conformity with Articles 1, 2, 3, 4 and 6 of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others. It has not yet been decided whether the Czech Republic should denounce of or withdraw from the above Convention. Anyhow, this would not happen before the ratification of the new Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000).[35]

[34] Law No. 218/1999 Coll. and Law No. 220/1999 Coll.
[35] UN Doc. A/55/383 (2 November 2000).

CHAPTER II : FREEDOMS

Article 6. Right to liberty and security

International case law and concluding observation of international organs

During the period under scrutiny, the Czech Republic has not been found to be in violation by the Eur. Ct. H.R. (Art. 5 of the ECHR).

National legislation, regulation and case law

At the constitutional level, right to liberty and security is protected by Art. 8 of the Charter of Fundamental Rights and Freedoms. Deprivation of liberty is allowed only on the grounds and by means provided by law. There is a strict judiciary control of the arrest and detention (*habeas corpus*); the arrested person must be brought before a judge within 48 hours, the judge has to decide on detention or to release him/her within 24 hours. This guarantees concern also a person against whom an action is being taken with a view to deportation or extradition. Detail provisions are embodied in the Criminal Procedure Code (Sec. 67 to 70a and 75 to 77). The amendment to this Code (in force from 2002)[36] has improved criminal procedure also from the point of view of the length of detention (formerly criticized by international human rights control bodies). The new trend of decrease of the number of detained persons and of the length of detention, started in 2002, seems to continue in 2003.

The main achievement during the period under scrutiny is adoption of the Law on juvenile judiciary (passed by the Chamber of Deputies in May 2003).[37] This is a new, comprehensive law dealing with all aspects of treatment of child and/or juvenile delinquents (those who breached the provisions of Penal Code). Their cases will be tried before specialized tribunals for youth which should give priority to prevention and rehabilitation. In the most serious offenses the tribunal has a possibility, as a last resort, to impose repressive measures, i.e. placement of a juvenile delinquent in an educational institution or a prison-like institution. A juvenile delinquent may be placed under custody only if the purpose can not be achieved by other measures. The length of the custody is limited as a rule to 2 months, in the most serious cases up to 6 month. The delay may be prolonged exceptionally by a specialized judge up to the same time limits, but only once at the investigation stage and once at the trial stage. An arrested person under 18 years of age must be detained separately from adults.

A slightly different provision covers detention of persons suffering from mental insanity or unsound mind, intoxication or detention for preventing of infectious diseases. Such measures have to be notified to a court within 24 hours; it shall decide on legality of the detention within 7 days. Detail provisions on the judicial control are in Sec. 191a to 191g of the Civil Procedure Code. Substantive law provisions, however, remain to be included in the old Law on National Health.[38]

Practice of national authorities

The current legal regulation is not fully satisfactory. The procedural rights of ill persons detained in a psychiatric or other health care institution are weaker in comparison with persons subject to criminal prosecution. The rights and duties of such persons are not provided in adequate extent by law or by-laws, but are regulated only by internal rules of various institutions. The representation of these persons in a detention procedure is rather

[36] Law No. 265/2001 Coll., amending Law No. 141/1961 Coll. (Criminal Procedure Code).
[37] Cf. zákon č. 218/2003 Sb., o soudnictví ve věcech mládeže [Law No. 218/2003 Coll., on juvenile judiciary]
[38] Law No. 20/1966 Coll. as amended by later laws.

formal, as the representatives of persons under custody are often appointed directors of the above institutions. Court decisions are issued in a longer delay from the moment of detention and are based only on an opinion of one medical doctor (without consultation of an independent expert). The situation has been criticized by Report of the Human Rights Commissioner of the Czech Government, by NGOs, etc.[39]

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

This situation is not substantially affected by the fact that the powers of the Public Protector of Rights apply to the prison service, custody facilities, prisons, protective or institutional education facilities and protective cure facilities. The Public Protector of Rights deals with those matters namely on the basis of specific complaints. The concept of the Act on Public Protector of Rights[40] and particularly the capacity of his office do not allow him to ensure comprehensive and systematic supervision.

Reasons for concern

Another issue which may be a source of concern is detention of foreigners and detention before expulsion. There are special institutions for the detention of foreigners for the purpose of administrative expulsion or transfer according to readmission agreements, operated by police on the basis of Foreigners Law.[41] Although the detention before administrative expulsion is not a sanction measure, these institutions are similar to prisons. The restrictions to the liberty should be therefore proportionate to the aims of such measures. There is a legislative proposal of the amendment to the Foreigners Law which aims at improving the situation of detained foreigners.

As far as the penalty of expulsion concerns, this is a sanction based on the Penal Code (Sec. 57) and enforced through the judicial decision according to Criminal Procedure Code. Some remaining problems concern mainly three points. There is no guarantee of the hearing before a judge prior to decision on detention before expulsion. The court practice is far from being uniform in this respect. There is no uniform interpretation of the time limits for detention before expulsion and the actual length of detention differs even in cases of foreigners convicted for the offenses of similar gravity. The convicted foreigners facing to expulsion are placed in the same (strict) conditions of detention as indicted persons before trial, which is not justified by the purpose of detention before expulsion. The question whether the application for asylum from a convicted foreigner bans an expulsion has not yet been clarified by the authoritative interpretation by the Supreme Court, which is however expected in a near future.

[39] For ex. at the seminar Human rights of persons suffering mental illness, organized by the Commissioner for Human Rights of the Council of Europe with participation of WHO, Copenhagen (5-7 February 2003); cf. Report on the state of human rights, op. cit., p. 45.
[40] Zákon č. /..., o veřejném ochránci práv
[41] Law No. 326/1999 Coll., as amended by later laws.

Article 7. Respect for private and family life

International case law and concluding observation of international organs

During the period under scrutiny, the Czech Republic has not been found to be in a violation by the European Court of H.R. or other international control bodies. However, the violation of Article 8 (along with Articles 3, 6, 13 and 14) of the ECHR was invoked in case *Červeňáková and Others v. Czech Republic*. The applicants, six Czech nationals living in Ústí nad Labem, submitted that in February 1993 the police had gone into their flats and emptied them of their contents. They stated that they had been told that as a result of the division of Czechoslovakia they were required to return to Slovakia, where they would obtain housing, work and welfare benefits. The applicants had gone to Slovakia, where they were informed by the local authorities that they would not receive any welfare benefits or housing. After living on the premises of Prešov train station for one month, the applicants returned to the Czech Republic. From April to November 1993, when the local mayor made substitute flats available, they lived in Ústí nad Labem in a park and later in a garage. The applicants alleged that they had been victims of violation of Articles 3 and 8 of the ECHR in that they had had to live in unacceptable conditions, being unable to gain access to their homes. The case has been struck out following a friendly settlement in which the applicants are to receive an aggregate award of 900,000 Czech korunas (aprox. 30,000 EUR) for any damage sustained and for costs and expenses.[42]

National legislation, regulation and case law

At the national level, right to respect for private and family life is protected by Art. 10 of the constitutional Charter of Fundamental Rights and Freedoms and Sec. 11 to 16 of the Civil Code.[43] The most important legislative development affecting the right to private and family life in the context of asylum and immigration, adopted during the period under scrutiny, has been the Law on Temporary Protection of Foreigners.[44] This law shall be applied in cases where the temporary protection was declared by a regulation of the Government or by the decision of the Council of the EU.[45] The right to family reunification is ensured by Sec. 51 of the law.

Practice of national authorities

In spite of the general legal guarantees, in practice there are some problems concerning the denial of access to the medical documentation for next of kin of the deceased. Similarly, their right to disposal of the deceased body is not satisfactorily protected by the current Law on transplants[46] and Law on funerals.[47] In particular, a health care facility may transfer the body to another institution without any consent of the relatives, there is no guarantee of independent autopsy or rules for settlement of disputes between next of kin of the deceased and the health care facility.

Another matter of concern could be the implementation of Law on protection of secrete information.[48] The refusal of security clearance, necessary for many functions and jobs in civil

[42] Eur. Ct. H.R., *Čeveňáková v. the Czech Republic* (dec.), No. 40226/98, 29 July 2003.
[43] Law No. 40/1964 Coll. as amended by later laws.
[44] Zákon c. 221/2003 Sb., o docasné ochrane cizincu [Law No. 221/2003 Coll., on Temporary Protection of Foreigners]
[45] In the implementation of the Council directive 2001/55/ES (20 July 2002).
[46] Zákon č. 285/2002 Sb., o darování, odběrech a transplantacích tkání a orgánů [Law No. 285/2002 Coll., on gift, removal and transplants of tissues and organs]
[47] Zákon č. 256/2001 Sb., o pohřebnictví [Law No. 256/2001 Coll., on funerals]
[48] Zákon č. 148/1998 Sb., o ochraně utajovaných skutečností, ve znění pozdějších předpisů [Law No. 148/1998 Coll., on Protection of Secrete Information, as amended by later laws]

and military service, by the National Security Authority may only be challenged through a complaint to the Panel (Collegium) of state attorneys from the Attorney-General Office. There is no possibility of appeal to an independent and impartial tribunal.

Article 8. Protection of personal data

International case law and concluding observation of international organs

During the period under scrutiny, the State has not been found to be in a violation by the Eur. Ct. H.R. (Article 8 of the ECHR) or by other international human rights organs.

National legislation, regulation and case law

At the national level the protection against an unauthorized collection, publication or other misuse of personal data is guaranteed by Art. 10, par. 3 of the Charter of Fundamental Rights and Freedoms. This protection is specified in the Law on Protection of Personal Data.[49] This Law established the Office for the Protection of Personal Data as an independent authority.

A problem was identified in the fact that the municipal police had operated so-called public camera systems for monitoring of public order without any legal ground. As of 1st January 2003, the amendment to the Law on Municipal Police has entered into force and brought an explicit power for the police to do so.[50]

Practice of national authorities

During the period under scrutiny, the powers of the independent control authority has been neither enlarged, nor restricted. However, as of 1st January 2003, some residual tasks (in the matter of electronic signature) has been given to the newly established Ministry of Information Technologies.[51]

The protection of individuals concerning the right to their personal data seems to work relatively well in general. However, there are remaining problems in some areas. The first one concerns the register of client information which includes the collection of personal data by private banks for the purpose of limiting risks of bank transactions. On the basis of the amendment[52] to the Law on Banks,[53] banks are under obligation of collecting and processing personal data, including sensitive data on natural persons, which are needed in order to enable the realization a bank transaction without disproportionate legal and material risks for the bank. This legislation, by derogation from the general regime of the Law on Protection of Personal Data, enables the banks to refuse the access to data for clients free of costs, to provide personal data of clients for abroad and to transfer information on clients, which are subject of bank secrecy, in connection with business of the bank on the territory of another state even without consent of the client if this is required by legislation of the latter state. This is not in conformity with the Council of Europe Convention on the Protection of the individual with respect to the automatic processing of personal data (1981).[54]

[49] Zákon č. 101/2000 Sb., o ochraně osobních údajů, ve znění pozdějších předpisů [Law No. 101/2000 Coll., on Protection of Personal Data, as amended by later laws]
[50] Law No. 311/2002 Coll.
[51] Law No. 517/2002 Coll.
[52] Law No. 126/2002 Coll.
[53] Zákon č. 21/1992 Sb., o bankách, ve znění pozdějších předpisů [Law No. 21/1992 Coll., on Banks, as amended by later laws]
[54] ETS No. 108, promulgated in the Czech Rep. under No. 115/2001 Coll. of international treaties

Reasons for concern

A possible source of concern may be found in the National Health Registers, provided for in the Law No. 260/2001 Coll., which could include also sensitive personal data, relating to health and sexual life. The details on collecting and processing of such data for the registers are to be prescribed by regulations of the Ministry of Health Care. The content of the draft regulation has been subject of debate from the point of view of conformity with the Law on Protection of Personal Data and the Convention No. 108.

There are some remaining controversies over the so-called Lustration Law[55] which bar access to certain public functions and employment for persons who were before 1989 (under communist regime) members of the secret services, their agents and collaborators, high ranking officials of the Communist Party of Czechoslovakia, students at the police schools in the former USSR and some other categories of persons. Although this law had to be in force only until the end of 2000, the amendment adopted by the Parliament in 2000 has prolonged its validity without any time limit.[56] In Spring 2003, the Chamber of Deputies of the Parliament refused again a proposal to cancel the validity of the Lustration Law. The process of *lustration*, i.e. an issuance of a certificate that a certain individual was or was not collaborator of the former secrete police or another case of non-reliable persons according to the Law, has been based on the data basis established by the former communist secrete police. Although an individual has a right to challenge the certificate by a law suit against the Ministry of Interior, the court judgment may only deny a validity of the certificate but cannot ensure a deletion of the name from the list (data basis). In spite of the prohibition to publish any data from the certificate or related materials without a consent of the concerned person in Sec. 19 of the Law 451/1991 Coll., the breach of this provision does not entail any sanction.

Another problem concerns the access to and publication of the files established by the former State security (secrete police). At the beginning of 1990s, individuals had no access to the files even if they concerned their persons. Later, the Law on Access to files established by the former State security[57] made it possible but under certain restrictions. In principle, a Czech citizen was able to reach access only to his/her own file. The 2002 amendment to this Law[58] enlarged the access to all files, except of files of foreign nationals. Finally, as of 20 March 2003, according to Sec. 7 of the amended Law the Ministry of Interior has published by print and on web sides the list of files, including the names and categories of persons registered as collaborators of the former State security. Concerning the protection of personal data, Sec. 10a of the above Law provides that before the access to the file the Ministry shall make unreadable personal data of other persons than the collaborator or member of the secrete services. If the natural person registered in the file hands over his/her comments on the content of file or the fact of registration to the Ministry, the latter is obliged to include it as an integral part of the file. However, it is questionable whether this provision amounts to the right of the person to have incorrect data rectified. Taking into account the volume of information contained in the files, it is almost inevitable that there may be some errors. The Ministry currently tries to improve the accuracy and reliability of the data basis.

[55] Zákon 451/1991 Sb., kterým se stanoví některé další předpoklady pro výkon některých funkcí ve státních orgánech a organizacích, ve znění pozdějších předpisů [Law No. 451/1991 Coll., on some additional conditions for exercise of certain functions in state organs and organizations, as amended by later laws]
[56] Law No. 422/2000 Coll.
[57] Zákon č. 140/1996 Sb., o zpřístupnění svazků bývalé Státní bezpečnosti [Law No. 140/1996 Coll., on Access to the files of the former State security]
[58] Law No. 107/2002 Coll.

Article 9. Right to marry and right to found a family

International case law and concluding observation of international organs

During the period under scrutiny, the Czech republic has not been found by any international court or other organ to be in violation for breaches of the individual's right to marry and to found a family.

National legislation, regulation and case law

At the constitutional level, the family problematic is contained in Art. 32 of the Charter of Fundamental Rights and Freedoms[59]. Parenthood and the family are under protection of the law (Art. 32, par. 1). During pregnancy women are guaranteed special care (Art. 32, par. 2). Care of children and their upbringing are the right of their parents (Art. 32, par. 4). Parents who are raising children are entitled to assistance from the State (Art. 32, par. 5).

During the period under scrutiny, the Parliament has discussed several proposals concerning the family problematic: Draft Amendment of the Law No. 301/2000 Coll. of Laws, on Registry Offices, Name and Surname[60], Draft Amendment of the Law No. 117/1995 Coll. of Laws, on Social Support from State[61], and Draft Statute on Support of the Family[62], which reflects following social phenomena: lower birth-rate (130 564 births in 1990 compared to 92 786 births in 2002), higher rate of children born out of wedlock (8,6 % of all children in 1990 compared to 25,2 % in 2002), long-term high rate of divorces etc.

The Parliament is now discussing a very controversial legislative initiative too, which aims to repeal the Law No. 66/1986 Coll. of Laws, on Artificial Abortion, and to allow abortion only in direct context with a medical intervention if the mother's life is endangered. In accordance with the proposed regulation, in all other cases the person who performs the abortion or helps with it commits a crime (Draft Amendment of the Penal Code[63], Sec. 227, 228, 229, 89, par. 7). The mother is not punishable. If someone artificially interrupts the pregnancy of a woman, which was caused by rape, the court stops from punishing him or her.

There have been taken some initiatives for the recognition of same-sex partnerships. After a refusal of similar projects in the passed years the Government has prepared a new draft law, but it has not been discussed in the Parliament yet.

The transsexuals are recognized the right to marry a person from their previous sex. This is fully compatible with the European Convention on Human Rights.

Practice of national authorities

There have not been adopted any significant decisions concerning the right to marry or to found a family by national courts.

[59] Listina základních práv a svobod, úst. zákon č. 2/1993 Sb. (Charter of Fundamental Rights and Freedoms, Const. Law No. 2/1993 Coll. of Laws)
[60] Návrh zákona, kterým se mění zákon č. 301/2000 Sb., o matrikách, jménu a příjmení a o změně některých souvisejících zákonů, ve znění pozdějších předpisů (Proposal of Law, which amends the Law No. 301/2000 Coll. of Laws, on Registry Offices, Name and Surname and on Changes of Other Relevant Laws, as amended by later laws)
[61] Návrh zákona, kterým se mění zákon č. 117/1995 Sb., o státní sociální podpoře, ve znění pozdějších předpisů, a zákon č. 359/1999 Sb., o sociálně-právní ochraně dětí, ve znění pozdějších předpisů (Proposal of Law, which amends the Law No. 117/1995 Coll. of Laws, on Social Support from State, as amended by later laws, and the Law No. 359/1999 Coll. of Laws, on the Social-legislative Protection of Children, as amended by later laws)
[62] Návrh zákona o podpoře rodiny [draft law on the support of family]
[63] Zákon č. 140/1961 Sb., trestní zákon, ve znění pozdějších předpisů (Law No. 140/1961 Coll. of Laws, Penal Code, as amended by later laws)

Reasons for concern

The Parliament is now discussing the amendment of the Law on Family[64] and of the Civil Procedure Code[65] relating to adoption of a child. The aim of this proposal is to accelerate the adoption procedure. See more under Article 24.

With the proposed regulation of adoption has a near connection the draft amendment of the Law on Public Health Care[66], which governs „anonymous childbearing" and aims to pull down the abortion-rates and the number of cases when mother kills her child. The proposed Sec. 67b par. 20 of the Law on Public Health Care provides that a woman who gave birth to a child in a medical centre and requested that her identity would be concealed has right to protection of her personal data. However, this proposed regulation can lead to facilitating of trafficking in children, and there is another problematic question: the right of the child's father or husband of the mother, who is presumed to be father of the child, if there is not given a contrary-evidence[67], to his child.

Article 10. Freedom of thought, conscience and religion

International case law and concluding observation of international organs

During the period under scrutiny the Czech Republic has not been found in violation of individual's freedom of thought, conscience and religion either by the European Court of Human Rights (further ECHR) or by any other international quasi – judiciary organ. Neither there are any cases pending at the ECHR. No international organ has raised a concern or recommendation on this issue.

National legislation, regulation and case law

Right of thought, freedom and religion is on the constitutional level stated in Charter of Fundamental Rights and Freedoms, Art 15 and 16 of which guarantee right of free performance of religion or faith alone or in a group, privately or publicly. Art. 16 section 2 also provides churches and religious associations with freedom of administration of their internal organisation and affairs independently of organs of the State. Rights of active performance of the worship and the above said rights of churches and religious associations can be restricted by law if it is necessary for the protection of public security and public order, health and morals or rights and freedoms of others in a democratic society.

On 7 January 2002 a new *Law on Churches and Religious Associations*[68] entered en force. A draft of this Law was criticised by representatives of small religions because they believed it was prejudicial against smaller religions. It was also criticised by representatives of the Catholic Church for restriction of use of profits from church-owned enterprises only for religious activities. On 13 February 2002 several members of Senate raised an objection to the Constitutional Court of the Czech Republic of the accordance of this law as a whole or of its specific provisions with the Charter of Fundamental Rights and Freedoms of the Czech

[64] Sec. 68a of the Family Law (zákon č. 94/1963 Sb., o rodině, ve znění pozdějších předpisů)
[65] Návrh zákona, kterým se mění zákon č. 94/1963 Sb., o rodině, ve znění pozdějších předpisů, a zákon č. 99/1963 Sb., občanský soudní řád, ve znění pozdějších předpisů
[66] Návrh zákona, kterým se mění zákon č. 20/1966 Sb., o péči o zdraví lidu, ve znění pozdějších předpisů, a předpisů souvisejících (Draft Amendment of the Law No. 20/1966 Coll. of Laws, on the Public Health Care, as amended by later laws, and relevant laws)
[67] Law No 94/1963 Coll. of Laws, as amended by later laws, Sec. 51
[68] Zák. č. 3/ 2002 Sb. o svobodě náboženského vyznání a postavení církví a náboženských společností a o změně některých zákonů (zákon o církvích a náboženských společnostech) (Law No. 3/ 2002 Coll. of Laws on Freedom of Religion and on Legal Statute of Churches and Religious Associations and on Change of Some Other Laws (Law on Churches and Religious Associations)

Republic[69] (Art. 4 section 4, Art. 15 and Art 16), with Art. 18 of the International Pact on Civil and Political Rights, with Art 9 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (further ECHR) and with Art. 1 of the Constitution of the Czech Republic[70]. They claimed that the Law as whole or, if not the whole Law, its specific provisions are abolished. The Constitutional Court of the Czech Republic delivered its decision in this case on 27 November 2002 and it was published in the Coll. of Laws under No. 4/2003. The Constitutional Court did not declare the whole law unconstitutional in its decision as there were not enough arguments presented by the claimants of the unconstitutionality of the Law. However the Constitutional Court declared several provisions of the Law unconstitutional. Concretely, it was provision of Sec. 6 (2) of the Law which requested evidence *of institutions* established by and within certain registered churches and religious associations *as legal persons in accordance with the Law*, for the purpose of organisation, practice and spread of religious belief. The Constitutional Court found the element of following up (*evidence*) in the sense of Sec. 6 (2) of the Law to be a *de facto* request for *registration* of these inter-church institutions, due to which they could in fact be established only *as a result of a decision of state, taken in the registration process*. This provision was according to the opinion of Constitutional Court in violation with Art. 16 section 2 of the Charter of Fundamental Rights and Freedoms of the Czech Republic, which stipulates: *„Churches and religious societies administer their own affairs, in particular appoint their organs and their priests, and establish religious orders and other church institutions, independently of the organs of the State*". Violation of the same provision the Constitutional Court found in the meaning of Sec. 28 (5) of the Law, which stipulated a possibility of dissolution of registered religious inter-church institutions.

According to paragraph 7 section 1 of the Law registered churches and religious associations can perform special rights (activities) such as carry out services at special places such as prisons and youth correction centres, perform weddings, establish religious schools or have right to be financed by the state, due to a special legal act[71]. Due to Sec. 7 (3) of the Law the church or religious association performing above said special rights and activities shall publish an annual report on these activities. Provision of Sec. 21(1)(b) of the Law states that the Ministry of Culture shall begin a procedure of repeal of a registered church or religious community if it does not fulfill its legal duty to publish an annual report on its special activities. The Constitutional Court found the provision of Sec. 21(1)(b) to be in contrary with constitutional principles, concretely with principle of proportionality.

The Constitutional Court had also declared second sentence of Sec. 27 (5) of the Law unconstitutional. It stipulates that running enterprise and other profit making activities of a church and religious association can form only supplementary profit making of a church and the profit acquired from such activities can be used only at fulfilling the goals[72] of the church and religious association. In opinion of the Constitutional Court, churches and religious associations represent private corporations, that can basically do everything that is not explicitly forbidden by law. Performance of their rights can be restricted only if necessary under provisions of Charted of Fundamental Rights and Freedoms of the Czech Republic. The Constitutional Court found the above said provision in contradiction with Art. 11 section 1 of the Charter of Fundamental Rights and Freedoms[73] and with Art. 4 section 4 of the Charter[74].

[69] Listina základních práv a svobod, úst. Zákon č. 2/ 1993 Sb.(Charter of Fundamental Rights and Freedoms, Cons. Law No. 2/ 1993 Coll. of Laws

[70] Úst. Zák. č. 1/ 1993 Sb. v platném znění, Ústava České republiky (Law No 1/ 1993 Coll. of Laws, including amendments, Constitution of the Czech Republic)

[71] Zákon č. 218/ 1949 Sb. ve znění pozdějších předpisů o hospodářském zabezpečení církví a náboženských společností státem, (Law No 218/ 1949 Coll. of Laws on Economic Assurance of Churches and Religious Associations)

[72] Goals of churches and religious associations are stated in par. 3 letter a/ of the Law on churches and religious associations and they encounter prossing religious belief in public or privately and with such professing conected association, worships, lecturing and clerical services

[73] Art 11 section 1 of the Charter of Fundamental rights and freedoms - Right to own property

Those provisions of the Law on Churches and Religious Associations that were found in contradiction with constitutional order of the Czech Republic were abolished with effect on the date of publishing the decision of the Constitutional Court in Collection of Laws of the Czech Republic.

Sects:

A distinction between a sect and a religion can be on the legal level derived form provision of Sec. 5 of the Czech Law on Churches and religious associations. It sets conditions for establishment and performance of activities of churches and religious associations in the Czech Republic. According to the provision a church or religious association can not be established and perform its activities if *„…its teaching endangers rights, freedoms and equality of citizens and their associations, including other churches and religious associations….“ and „…. is in contradiction with the protection of public morals, public order, public health, principles of humanity tolerance and security of citizens…“* or *„restricts personal freedom of persons, especially by making use of mental and physical pressure, with purpose of creating dependence which leads to physical, mental or economic damages of such persons and their family members, to damaging their social ties, including restricting of psychological development of minors and limiting their right of education, forbids minors to accept medical help necessary due to their medical needs…“*. A church or religious association which would fulfill any of these criteria could not legally perform its activities in the Czech Republic. However there are not any legal measures adopted to forbid a membership of a person in such an illegal religious group. Only if activities of illegal religious groups, including sects, form elements of a crime or minor offence, they could be criminalised and penalised.

There is not explicit legal protection of religious minorities from harassment, but generally acts of harassment are criminalised and can be penalised in the framework of the Penal Code of the Czech Republic, mainly under Sections 196 – 198a (crimes of Violence against a group of residents or an individual; Defamation of nation, ethnic group, race and conviction; Incitement to hatred of a group of persons or to restriction of their rights and freedoms).

Military service:

There is a compulsory military service in the Czech Republic performed under the Law on Defence.[75] However freedom of conscience and religion of a person is respected in this sense and Czech legal order provides for an alternative civil service[76] for those persons who for reasons of their religion of belief refuse to participate in military service.

Practice of religion in special public facilities:

Law provides a possibility of performing of religion by worship and use of religious services also for those persons who are in performance of prison sentence[77] and also those in the detention centres[78].

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[74] Art 4 section 4 os the Charter of Fundamental rights and freedoms stipulates that provisions placing resstrictions on fundamental rights anf freedoms must be used in a way that the substance and meaning of the right and freedom is preserved. Such restrictions shall not be misused for other purpouses than those for which stated.

[75] See: Zákon č. 218/ 1999 Sb. Branný zákon (Law No. 218/ 1999 Coll. of Laws - Law on Defence)

[76] See: Zákon č. 18/ 1992 Sb. O civilní službě v platném znění (Law No. 18/ 1992 Coll. of Laws - Law on the Civil Service)

[77] See: Zákon č. 169/ 1999 Sb. o výkonu trestu odnětí svobody a o změně některých souvisejících zákonů (Law No. 169/1999 Coll. of Laws. Law on Performance of Prison Sentence and on Change of Some Other Relative Rights)

[78] Zák. č. 293/ 1993 Sb. o výkonu vazby v platném znění (Law No. 293/ 1993 Coll. of Laws – Law on Performance of Detention)

Practice of national authorities

The Czech government has observed and protected freedom of thought, conscience and religion, during the period under scrutiny. The registration principle of churches is applied under the Law on Churches on Religious Associations, however the registration is not of constitutive character[79]. Registered churches and religious associations are entitled, under conditions set out in the law, to perform special rights such as to teach religion at public schools, establish private religious schools, perform religious activities in prisons and detention facilities or carry out weddings. They are also entitled to state funding according to Law on Economical Assistance of Churches and Religious Associations Provided by State.[80] During the year 2003 there has been only one application for registration as a church in the Czech Republic, by a Greek-Catholic Church of Ukraine. Due to information provided by Ministry of Culture, which is responsible for the registration, until the date of entry of the 3rd annual report, the process of registration has not ended.

Generally, it can be observed that during the period under scrutiny government policy and practice contributed to free practice of religion. There are no religious prisoners or detainees in the Czech Republic. The relationship among religions and society is generally amicable, what contributes to religious freedom.

Factual performance of religion in prisons and detention facilities is permitted.[81] Churches and religious associations perform their religious activities in prisons and detention facilities under Law on Churches. There has not been observed any prejudice of churches in this question. Persons performing prison sentence or those in detention have right of worship, confession, right to attend religious services and right to perform religious activities in groups.

According to the provisions of the Law on Churches and Religious Associations, religion is thought at public schools as an optional subject. All registered Churches can perform teaching of religion at public schools.

Article 11. Freedom of expression and of information

International case law and concluding observation of international organs

During the period under scrutiny neither the Eur. Ct. H.R., nor the Human Rights Committee have raised any concern in respect of the Czech Republic.

National legislation, regulation and case law

At the constitutional level the right to freedom of expression and information is guaranteed in Art. 17 of the Charter of Fundamental Rights and Freedoms. Freedom and pluralism of the media is ensured by a relatively recent Law on Broadcasting.[82] Its Sec. 31 ensures a free and independent expression, requires objective and balanced information without preferences for some political parties or movements. The broadcaster is obliged to offer a balanced programme for all inhabitants without discrimination and to ensure that the broadcasting does not encourage war, cruel or other inhuman acts, national, racial or religious hate or incite to

[79] Decision of the Constitutional Court of the Czech Republic, No. 4/2003 Coll. of Laws, from 27 November 2002
[80] Zák. č. 218/ 1949 Sb. o hospodářském zabezpečení církví a náboženských společností státem v platném znění (Law. No. 218/ 1949 Coll. of Laws – Law on Emonomical Assistance of Churches and Religious Associations Provided by State)
[81] See. Report of the Czech Helsinky Committee on Prison service in Czech Republic in the year 2002,
[82] Zákon č. 231/2001 Sb., o provozování rozhlasového a televizního vysílání (Law No. 231/2001 Coll., on Broadcasting)

discrimination. The freedom of expression of the media is also limited in order to protect minors. Law 274/2003 brought only a little amendment to the obligation of broadcasters to provide public authorities with a possibility of important and urgent announcements also in case for the protection of public health. Law on Press[83] has not been amended during the period under scrutiny.

Article 12. Freedom of assembly and of association

National legislation, regulation and case law

At the constitutional level the right to peaceful assembly and freedom of association is guaranteed in Articles 19 and 20 of the Charter of Fundamental Rights and Freedoms. As a consequence of experiences taken from protests during international meetings, Law 252/2002 has amended the Law on the Right of Assembly[84] in a sense that participants of an assembly must not cover their faces to obstruct the identification if and where the Police of the Czech Republic intervene against the assembly.

At the statutory level, the Czech legal order makes distinction between the association in political parties and movements and other forms of association. Law on the Association in Political Parties and Movements[85] has not been amended during the period under scrutiny. Political parties and movements must act in accordance with democratic principles under secs. 1 to 5 of the Law. Otherwise the Supreme Administrative Court may decide on dissolution or suspension of a political party or movement, but such a case did not take place. Financing of political parties is mainly ensured from public funds (contributions from the State budget which depends on the results in elections to the Chamber of Deputies and on the number of mandates in both chambers of the Parliament and regional assemblies). A failure to file an annual financial report in due time or an action for dissolution or suspension of the political party entails a suspension of the State contribution.

Freedom of association in other forms of associations, including trade unions, is regulated in Law on Association of citizens[86] which has not been amended during the period under scrutiny.

Article 13. Freedom of the arts and sciences

National legislation, regulation and case law

At the constitutional level freedom of the arts ands sciences is guaranteed in Art. 15 par. 2 of the Charter of Fundamental Rights and Freedoms. During the period under scrutiny no legislative acts have affected this right. Only under Law No. 206/2000 on Protection of Biotechnological Inventions, an exclusion from patent protection applies on the inventions which commercial use would be contrary to the public order or morality, in particular cloning of human beings. Law No. 130/2002 provides rules on support of research from public founds.

[83] Zákon č. 46/2000 Sb., o právech a povinnostech při vydávání periodického tisku (Law No. 46/2000 Coll., on Rights and obligations in publishing periodic press)
[84] Zákon č. 84/1990 Sb., o právu shromažďovacím ve znění pozdějších předpisů (Law No. 84/1990 Coll., as amended by later laws)
[85] Zákon č. 424/1991 Sb., o sdružování v politických stranách a politických hnutích ve znění pozdějších předpisů (Law No. 424/1991 Coll., on Association in Political Parties and Movements, as amended)
[86] Zákon č. 83/1990 Sb., o sdružování občanů ve znění pozdějších předpisů (Law No. 83/1990 Coll., on Association of Citizens, as amended)

Article 14. Right to education

National legislation, regulation and case law

Right to education is at the constitutional level embodied in Charter of Fundamental Rights and Freedoms, Art. 33 of which guarantees this right to everybody. The Czech citizens have the right to free education in primary and secondary schools and, subject to one's abilities and resources of the society, in tertiary (university) schools too. Other than public schools may be established under conditions set by law; such schools may provide education for tuition fees. Tuition fees are allowed to be collected only by schools established by private persons and churches and, among public schools, only by higher professional fees. Despite a frequent and lively public debate, there are no tuition fees at the level of university education if provided in Czech language.

Law No. 182/2003 confirmed the freedom of churches and religious associations to establish and operate their primary, artistic, special, secondary and higher professional schools.[87]

New legislation on elementary schools (under preparation) supposes a replacement of special schools by elementary schools with a differentiation of education, taking into consideration special needs of some disadvantaged pupils.[88]

Practice of national authorities

Because of the critique by international control bodies, education of Roma children has became a matter of priority in all efforts of the Government to improve the social situation and integration of Roma. It is not possible to set a percentage of pupils from the Roma community who are placed in special schools (aimed at handicapped children and pupils with difficulties in education). Although the placement of a pupil to such schools is subject to a proposal of the school director with consent of parents or a proposal by parents, as well as a recommendation of psychological advisors or a special pedagogic centre, the high percentage of Roma pupils in these schools is disproportionate to their number in a population. Obviously, this is not a problem of governmental policy or even discrimination against Roma, but rather a consequence of different, less stimulating family environment, which seems to a feature of all socially disadvantaged groups anywhere in the world. Therefore the Ministry of Education has organized various programmes of affirmative action, such as special preparatory classes for disadvantaged children, reintegration of Roma pupils from special schools to elementary schools, participation of pedagogic assistants from Roma community, etc.

Article 15. Freedom to choose an occupation and right to engage in work

National legislation, regulation and case law

Freedom to choose an occupation is at the constitutional level embodied in Charter of Fundamental Rights and Freedoms, Art. 26. Conditions and restrictions for exercise of certain occupations or activities may be provided by law. A law may prescribe a different regulation for aliens.

[87] Zákon č. 182/2003 Sb., kterým se mění zákon o soustavě základních škol, středních škol a vyšších odborných škol (Law No. 182/2003 Coll. of Laws, amending the Law on system of primary, secondary and higher professional schools)

[88] In details cf. the Strategy of Roma integration, approved by Government Resolution No. 87, dated 23 January 2002.

During the period under scrutiny the legislator did not introduce any new professional prohibitions or conditions of access to certain occupations. Professional associations have not modified conditions of access to liberal professions.

Law No. 221/2003 granted to foreigners enjoying temporary protection the same access to employment as to the persons with permanent residence permit in the Czech Republic.[89] The same treatment applies for persons who were granted asylum.

Article 16. Freedom to conduct a business

National legislation, regulation and case law

Freedom to conduct a business is at the constitutional level embodied in Charter of Fundamental Rights and Freedoms, Art. 26, which guarantees the right to conduct a business and other economic activity.

The legislator has pursued the process of harmonization of national legislation with the EC law, including with some conditions and restrictions of the general principle of the freedom to conduct business, e.g. by Law No. 131/2003 amending Law on veterinary care.

The Czech Constitutional Court adopted its plenary judgment which declared unconstitutional and canceled several provisions of the Governmental Decree No. 114/2001, on Production quotas of sugar, because of violation of Art. 26 of the constitutional Charter (corresponding to Art. 16 of CFR).[90] The Court found unconstitutional not the system of production quotas as such but the unjustified differentiation between various producers of sugar. Following to this decision, during the period under scrutiny the Government passed a number of decrees,[91] amending the Decree No. 114/2001, in order to comply with the decision and to maintain production quotas of sugar compatible with freedom to conduct a business.

Article 17. Right to property

International case law and concluding observation of international organs

On the one hand, Eur. Ct. H.R. has already decided in several cases related to restitutions that the Czech Republic violated Article 6, par. 1 ECHR because of unreasonable delays in the respective civil proceedings. During the period under scrutiny, the State has been found to be in a violation of this article by the Eur. Ct. H.R. in three cases. Two of these cases related to delays in restitution matters: *Hartman v. Czech Republic*[92] and *Schmidtová v. Czech Republic*.[93] Obviously, there are some other similar cases pending before the Eur. Ct. H.R.

On the other hand, no case against the Czech Republic, concerning not satisfied restitution claims, has been qualified as violation of Article 1 of Protocol No. 1 to ECHR. Following to decisions of the former Eur. Comm. H.R., the new European Court has kept to refuse as inadmissible applications concerning the alleged violation of Article 1, Protocol No. 1, where applicants have had only restitution claims. Since Article 1 is applicable only to protection of „existing possessions", the restitution cases are incompatible *ratione materiae* with the

[89] Zákon č. 221/2003 Sb., o dočasné ochraně cizinců (Law No. 221/2003 Coll. of Laws, on Temporary protection of foreigners)
[90] Constitutional Court of the Czech Republic, 30 October 2002, No. 499/2002 Coll. of Laws, 29 November 2002.
[91] Nařízení vlády č. 15/2003 Sb., 97/2003 Sb. a 319/2003 Sb., kterým se mění nařízení vlády č. 114/2001 Sb., o produkčních kvótách cukru
[92] Eur. Ct. H.R., *Hartman v. Czech Republic*, judgment of 10 July 2003.
[93] Eur. Ct. H.R., *Schmidtová v. Czech Republic*, judgment of 22 July 2003.

provisions of ECHR. The landmark decision in this respect was made by the Grand Chamber of Eur. Ct. H.R. in two almost identical cases: *Polacek and Polackova v. Czech Republic*[94] and *Gratzinger and Gratzingerova v. Czech Republic*.[95] According to the Court's decisions on inadmissibility, the action did not concern „existing possessions" and the applicants did not have the status of owners but were merely claimants. In spite of their judicial rehabilitation in 1990, their former property was still in possession of natural persons who had acquired it under the communist regime and who had been entered in the land register as the owners. The applicants did not have even a „legitimate expectation" either. They did not meet conditions provided by the Law No. 87/1991 (on Extrajudicial Rehabilitation). According to ECHR, the belief that the law then in force would be changed to the applicant's advantage cannot be regarded as a form of legitimate expectation for the purpose of Article 1, Protocol No. 1. From this point of view, the problem seems to settled, unless the Grand Chamber of Eur. Ct. H.R. changes its case law, which is not very likely.

As a matter of example, during the period under scrutiny, the Eur. Ct. H.R. declared inadmissible the application by *Des Fours Walderode v. Czech Republic*, where the applicant complained under Article 1, Protocol No. 1 that he has been deprived of his alleged property, which had once belonged to his family and were confiscated as *hereditas iacens* under Presidential Decree No. 12/1945.[96]

National legislation, regulation and case law

It is possible to conclude that the solutions which have been given to the question of the restitution of confiscated property („denationalisation") in the Czech Republic are unique by their large scale and generosity towards the former owner of property nationalized or confiscated under Communist regime. After the end of the Communist era, the Czechoslovak (until 1992, later Czech) Parliament passed a series of restitution laws to alleviate the wrongs of collectivisation of property in the period between 1948 and 1990. There are as follows: Law No. 403/1990, Law No. 87/1991, Law No. 229/1991.[97] The main aim of the laws was to remedy some of the effects of the Communist policy of collectivisation and arbitrary expropriation decisions taken on ideological grounds against individual proprietors. This limitation is in itself reasonable and does not conflict with any international human rights obligations and EU/EC law.

Beside the above-mentioned restitution laws, there were or still are several other instruments available aimed at solving some specific situations: (1) International compensation agreements signed by the former ČSSR with a number of countries in the 1970s and 1980s, providing lump-sums to the counterpart States to compensate their citizens; (2) An Endowment Fund for Victims of the Holocaust, established in 1998, to compensate persons whose property had been expropriated by the Nazis and who had missed the deadlines to claim the property under post-war restitution legislation; there is no citizenship requirement for compensation from this fund. (3) The most recent is Law No. 212/2000 on the restitution of objects of art to the victims of the Holocaust, also without any citizenship requirement, with a deadline of 2006.

[94] Eur. Ct. H.R., *Polacek and Polackova* (dec.), No. 38645/97, 10 July 2002.
[95] Eur. Ct. H.R., *Gratzinger and Gratzingerova* (dec.), No. 39794/98, 10 July 2002.
[96] Eur. Ct. H.R., *Des Fours Walderode v. Czech Republic* (dec.), No. 40057/98, 4 March 2003.
[97] Zákon č. 403/1990 Sb., o zmírnění následků některých majetkových křivd [Law No. 403/1990 Coll., on alleviation of consequences of certain property injuries], zákon č. 87/1991 Sb., o mimosoudních rehabilitacích [Law No. 87/1991 Coll., concerning extrajudicial rehabilitations], zákon č. 229/1992 Sb., o úpravě vlastnických vztahů k půdě a jinému zemědělskému majetku [Law No. 229/1991 Coll., to regulate the ownership of land and other agricultural property].

Except of the lastly mentioned law, in all other restitution laws the deadlines for claims have already expired, mostly between 1992 and 1996.[98] Therefore, no new claims under restitution laws can be introduced anymore. However, there are still some remaining problems and it is possible to anticipate their continuation within future years because of a number of cases pending before courts. This is a real problem due to the complexity of many cases.

Another problem may arise from the uncertainty of the legal solutions applicable on the relationship between claims under restitution laws and action for restitution of property (*rei vindicatio*) under the Civil Code. Case law of the Czech courts is uniform in the most cases covered by restitution laws, as they are considered to be *leges speciales* and as such have priority over general law (Civil Code). However, a certain ambiguity can be seen in case law which is far from being uniform in cases where the former property of claimant was confiscated *de facto* (without any legal ground) or taken over by the State on the basis of null and void act. In such cases some doubts remain about the shift of ownership from claimants to the State and, therefore, about their possibility to claim restitution - as owners - under the Civil Code. That is why the Czech Supreme Court has recently decided in the judgment of its Grand Chamber that a person whose real estates were taken over by the State between 25 February 1948 and 1st January 1990 without legal ground is not able to claim a protection of ownership under general law (in particular under Sec. 126 (1) of the Civil Code), or even to initiate an action to determine right to property (under Sec. 80(c) of the Civil Procedure Code.[99] In other words, a failure to present claims under *lex specialis* prevents a claimant from invoking and courts from applying general law.

Concerning restrictions of the freedom of landlord to fix the rental prices, there is significant decision of the Constitutional Court adopted during the period under scrutiny. The Court canceled the Governmental Decree No. 567/2002 on the price moratorium on the rent for flats.[100] This decision did not refuse any regulation of the rental prices, but it found the Decree to be in violation of the Constitution (because of the lack of legal basis in an act of Parliament) and of the right to property guaranteed by Art. 1 of the Additional Protocol to ECHR.

Article 18. Right to asylum

National legislation, regulation and case law

Right to asylum is expressly formulated the legal order of the Czech Republic on the constitutional level in Art. 43 of the Charter of Fundamental Rights and Freedoms[101], which stipulates that the „*Czech republic shall grant asylum to citizens of other countries, persecuted for asserting political rights and freedoms. Asylum may be denied to a person who acted to fundamental human rights and freedoms"*.

On the statutory level, Law on Asylum[102] regulates the conditions for providing asylum, the asylum procedure and the rights and duties of asylum seekers and rights and duties of asylum

[98] As an exception, the deadline for claims aiming at restituting properties of the Nazi victims in cases where, in the post-war period, this restitution should have taken place under the relevant provisions of Decree No. 5/1945 or Law No. 128/1946, expired only on 30 June 2001.
[99] Nejvyšší soud ČR (Supreme Court), judgment of Grand Chamber, 11 September 2003, No. 31 Cdo 1222/ 2001.
[100] Ústavní soud ČR (Constitutional Court), judgment, 19 March 2003, No. 84/2003 Coll. of Laws.
[101] Listina základných práv a svobod, úst. Zákon č. 2/ 1993 Sb.(Charter of Fundamental Rights and Freedoms, Cons. Law No. 2/ 1993 Coll. of Laws.

[102] Zákon č. 325/ 1999 Sb. o azylu a o změně zákona č. 238/ 1991 Sb. O Policii České republiky (Law No. 325/ 1999 Coll. of Laws on Asylum and on the Change of Law No. 238/ 1991 Coll. Of Laws on the Police of the Czech Republic.)

seekers and persons provided asylum. It is complemented by norms stated in the Law on the Stay of Aliens[103] which among other things regulates forms of supplementary protection of aliens (see Paragraph. 35 of the Law).

During the period under scrutiny there has been one legal amendment of the Law on Asylum, attaching the asylum procedure, concretely institute of judicial remedies against the decision on the asylum application. The Law No. 519/2002 Coll. of Laws, which entered en force on January 1st 2003, amended secs. 32 and 33 of the Law on Asylum. Due to the amendment, the competence in cases of judicial remedies against legitimate decisions of the Ministry of Interior was transferred from the High Court of Prague to regional courts. Jurisdiction of the courts is determined according to the place (location) where the person applying for asylum is lawfully staying. Claims against legitimate asylum decisions of the Ministry of Interior shall be, according to the amendment, held by specialized single-judges or senates. This amendment of the Law on Asylum was introduced together with new Judicial Code of Administrative Procedure of the Czech Republic.[104] The aim of the new Code as well as the amendment of the Law on Asylum was to solve a difficult practical situation in cases of judicial review of the legitimate decisions of the Ministry of Interior. Since February 1st 2002, when the „Euro-amendment" of the Asylum Law entered in force[105], which also established subject-matter judicial review of the legitimate decisions of the Ministry of Interior, all cases of filed judicial remedies (claims) were decided by the High Court of Prague. The latest amendment of the Law on Asylum split the burden of cases form the High Court of Prague to regional courts of the Czech Republic. However due to the jurisdiction of the courts stated in the amendment[106], mainly courts within which area there are the asylum centres located will decide asylum claims. The asylum seeker who has been denied granting asylum can file a claim to a regional court under which jurisdiction he or she falls. According to Sec. 49 of Judicial Code of the Administrative Procedure (JCAP) there is a right to a public oral hearing and a subject–matter review of the claim. Under the new Judicial Code on the Administrative procedure there is a possibility of an extraordinary remedy – cassation complaint against a legitimate judgement of the regional court. The cassation complaint can be raised for reasons explicitly stated in Sec. 103 of the JCAP. The cassation complaints shall be decided by the Supreme Court of Administration[107]. Within the procedure of deciding cassation complaints the asylum case shall however not be reviewed on subject-matter bases. Only the legality of the decision and the procedure held within regional courts shall be examined.

During the scrutiny period there have also been legislative changes in the Law on Stay of Foreigners[108]. This Law has been amended by Law No. 217/ 2002 Coll. of Laws and Law No. 222/ 2003 Coll. of Laws. Both of these legal acts are aimed to adapt provisions of the Law on Stay of Aliens to the situation existing after the accession of the Czech Republic to the European Union. The effect of most of the provisions of these Laws is, for this reason, postponed to the date of entry of the Treaty of the Accession of the Czech Republic into the European Union into force. Few provisions of Law No. 217/ 2002 have however entered into force on January 1st 2003. These changes had not have any impact on the asylum matter. On the other hand, on July 31st 2003 several provisions of Law No. 222/ 2003 entered into force,

[103]Zák. č. 326/ 1999 Sb. O pobytu cizinců na území České republiky a o změně některých zákonů (Law No. 326/1999 Coll. of Laws on the Stay of Foreigners on the Territory of the Czech Republic and on Change of Other Laws)
[104] Zák. č. 150/2002 Sb. Soudní řád správní (Law No. 150/ 2002 Coll. of Laws, Judicial Code on Amdinistrative Procedure)
[105] Law No. 2/ 2002 Coll. of Laws
[106] See: Art. I Section 1 of the Law No. 519/ 2002 Coll. of Laws
[107] Law No. 150/ 2002 Coll. of Laws Judicial Code on Administrative procedure created Supreme Court of Administration of the Czech Republic, the highest judiciary administrative organ exercising its powers within this Code, with a competence (except others) to decide on cassation complaints.
[108] Zák. č. 326/ 1999 Sb. O pobytu cizinců na území České republiky a o změně některých zákonů (Law No. 326/1999 Coll. of Laws on the Stay of Aliens on the Territory of the Czech Republic and on Change of Other Laws)

covering also amendment of Part 2 of the Law Stay of Aliens (Permanent residence at the territory on basis of residence permit), where secs. 69a and 69b were added. Sec. 69a stipulates that an alien who has stayed at the territory (of the Czech Republic) on basis of temporary stay in a position of asylum seeker or a person requesting granting status of refugee for period of more than 5 years can, after the end of an asylum procedure apply for a residence permit if the applicant is not a citizen of a state which is considered to be a safe country of origin. Ministry of Interior has the competence of deciding cases of granting residence permit. It shall make the decision within 30 days. This newly introduced institute shall give an asylum seeker who has not gained a final decision about his or her application within a period of 5 years an opportunity to stay at the territory of the Czech Republic on basis of the decision on residence permit. According to a report of the Ministry of Interior from 31 July 2003[109] this institute cannot be considered as a complementary form of protection. It is mainly a reparation of the fact that a person was (by fault of a state) for five years held in an uncertain position of a asylum seeker. It is presumed that after this period of time, an alien whose application was denied has difficult possibility of return to his country of origin as in fact most of the relations in this country have perished. On the other hand the alien has built new relations at the territory of the Czech Republic during this period, which enable him/her for a non-problematic integration in the society.

Changes in the interpretation of the definition of refugee:

The content of the definition of refugee as stated in Article 1A (2) of the Geneva Convention was basically embodied in Sec. 12 (b) of the Law on Asylum. The Law itself provides also for other reasons as qualifying for granting asylum. Sec. 13 of the Law on Asylum considers as such reason family unification. Sec. 14 stipulates that asylum can be granted also on bases oh humanitarian reasons. In the year 2003 there have not been changes in the interpretation of the definition of refugee according to the Article 1A (2) of the Geneva Convention in the practice of the Ministry of interior. According to information provided from Office of the UNHCR, during the scrutiny period it has monitored *one case* when the Ministry of Interior *granted asylum due to a membership of a particular social group* when the applicant from Syria reasoned her application with fear of domestic violence and well-founded fear of criminal charges for kidnapping of her children as she fled the country of origin with her children, without permission of their father.

During the period under scrutiny out of approximately 182 cases of granted asylum, 43 were granted due to humanitarian reasons[110]. In most of the cases the reasons for granting asylum encountered bad health conditions of the applicant, in relation with the level of health care provided in the country of origin and age of an applicant (mostly over 60 years of age). It these cases asylum was granted mostly if the applicant had relatives in the Czech Republic. In one case the asylum was granted for humanitarian reasons to an applicant suffering from a post-traumatic stress due to events he outlived during the conflict in the former Yugoslavia. In 88 decisions the asylum was granted for reasons of family unification[111].

Unaccompanied minors as asylum seekers:

Protection of this special group of asylum seekers is guaranteed by legislature. For example sec. 16 (3) of the Law on Asylum stipulates that an application of an unaccompanied minor cannot be dismissed as manifestly ill founded. Due to Sec. 89 of the Law on asylum an asylum seeker under age of 18 who is at the territory of the Czech Republic without a legal representative has to be provided with a guardian. Under the asylum legislation if a country

[109] See: Report of the Ministry of Interior on the permission of stay according to provision 69a of Law on Stay of Aliens at the Territory od the Czech Republic and on Chenge of Other Laws, source: www.mvcr.cz
[110] See: Sec. 14 of Law on Asylum
[111] See: Sec. 13 of Law on Asylum

that is willing to accept the unaccompanied minor is not able to provide him or her an acceptation suitable to the age and self-development of the minor, this stipulates an *obstruction of leaving the territory* of the Czech Republic. The situation of unaccompanied minors in the position of asylum seekers is difficult in practice. According to the information delivered by the Council for Human Rights of the Government of the Czech Republic, in case of no other alternative the unaccompanied minors under age of 15 are for the period of asylum procedure placed in correction or tutor facilities for children and youth, because asylum centres can constitute a danger for a correct and healthy development of minors. However correction or tutor facilities also do not form a prefect choice for placing minors with a language barrier, who may, in many cases, be influenced by stressful experience leading to psychological problems. For this reason such applicants should be placed in a friendly environment, with attendance of specialized staff and with presence of psychologist. The recent system of tutor facilities does not provide for such special type of facilities for unaccompanied minor asylum seekers. But existing tutor facilities for children with specialized educational programs and methodology can be a good place for these minors. Other alternative could be placing these minors in facilities for children requiring immediate help.[112] Problems arise due to lack of these facilities, insufficient equipment and lack of trained stuff. Most of the tutor facilities are under competence of Ministry of Education, other under competence of Ministry of Health and Ministry of Labour and Social Issues. Solving the issue of placing unaccompanied minors for the period of asylum procedure calls for an inter-resort co-operation in these ministries. During the period under scrutiny there have not been noticed any significant changes or improvements in this issue.

Training of staff dealing with asylum applications:

According to information of the Ministry of Interior there is a continuous process of training of the officials dealing with asylum cases, working at the Department of Asylum and Migration Policy of the Ministry of Interior throughout the year. Personal occupation and financial sources are adequate to the needs of Department and of the Czech Republic.

Complementary forms of protection an temporary protection in situations of mass influx of asylum seekers:

Complementary protection is not regularized by a special legal instrument in the Czech Republic. The legislative basis is formed mainly by institute of *visa on purpose of countenance*[113] and institute of obstructions of leaving the territory of the Czech Republic[114].

On 26 July 2003 the Czech legislator approved a Law on Temporary Protection of Aliens[115]. The Law shall regulates conditions for entry and stay of aliens at the territory of the Czech Republic for the purpose of temporary protection; procedure of granting and privation of temporary protection; legal status of a person seeking temporary protection and of a person to whom the temporary protection was grated. Under the Law on Temporary Protection the Czech Republic shall grant protection to aliens in situations of mass influx to the territory[116]. The Law was approved in the framework of harmonization of the Czech legal order with the Acquis Communitaire of the European Union, concretely with *Directive 2001/55/EC of the Council of the European Union* (further Council) *on minimum standards for giving temporary protection in the event of mass influx of displaced persons and on measures promoting a*

[112] See: § 42 Zák. č. 359/ 1999Sb v platném znění o sociálně-právní ochraně dětí (Sec. 42 of the Law No. 359/1999 on Social and Legal Protection of Children
[113] See Sec. 35 and followig of the Law on Stay of Aliens
[114] See Sec. 91 of the Law on Asylum
[115] Zák. č. 221/ 2003 Sb. O dočasné ochraně cizinců (Law No 221/ 203 Coll. of Laws on Temporary Protection of Aliens)
[116] About the purpose of the Law on Temporary Protection of Aliens see more: Reasoning report delivered on 4 February 2003

balance of efforts between Member States in receiving such persons and bearing of consequence thereof. Due to the provisions of the Law, question of weather there is a situation of mass influx shall be determined by a government decree and after the entry of the Czech Republic to the European Union by a decision of the Council[117]. Following this decision, the Czech Republic will decide how many persons it is able to provide with temporary protection. The decision-making in cases of temporary protection shall fall under competence of Ministry of Interior. The Law also provides for a judicial remedy of the decision[118]. The whole decision-making procedure is similar to the one regularized in the Law on Asylum. Most of provisions of the Law shall enter in force on 1 January 2004. Those provisions which are attached or follow decision of the Council shall enter in force on the date of entry of the Czech Republic in the European Union. At the entry into force of the newly approved Law on Temporary Protection, provisions of the Law on Stay of Aliens dealing with institute of *visa on purpose of temporary protection*[119] shall cease their validity.

Protection of personal data of asylum seekers:

According to information provided by Office of the UNHCR in the Czech Republic, during the period under scrutiny there has been monitored one case of arranging a contact of Iranian asylum seeker who was staying in the acceptation centre at the Ruzyně airport with consular officer of his country of origin. This contact was arranged in the framework of preparation for the execution of administrative expulsion decision and there was no information provided on the matter of asylum application of the person. The asylum case is now at the Supreme Administrative Court, that is to decide upon cassation complaint of the asylum seeker. Ministry of Interior, Department on Asylum and Migration denies any breach of law in the issue of reveal of information. Neither other non–governmental organisations have information on how the contact with officers of country of origin was arranged. At the time of turning in of the 3rd annual report, there has not been further information available on this case. There is also information available from non–governmental organisations of other cases of aliens in the process of administrative expulsion, who are as well asylum seekers, when the Czech alien's police contacts consular organs of the country of origin of the applicant. Such action can endanger the asylum procedure.

Reasons for concern

Special reasons of concern have been communicated, during the scrutiny period, by a Association of Citizens Dealing with Emigrants (SOZE)[120] in a *„Position on several aspects of judicature of district courts in cases of claims in asylum cases raised under paragraph 32 section 1 of the Law on Asylum"*. The *„Position"* deals with problems arising from changed jurisdiction of judicial remedies against legitimate decisions of Ministry of Interior in asylum cases. The position criticizes recent case law of regional courts and their procedure in cases when deciding claims of asylum seekers, members of one family, whose cases are related on procedural as well as on subject-matter level. These claims are decided by separate judges or senates of judges, what leads to following problems:

1) There is a great possibility that the final decision in case of one family member made earlier that in cases of others. An alien whose claim was finally denied by a decision of a regional court usually receives a leaving visa, according to which he or she shall has to leave the territory of the Czech Republic within a short period of time (usually 14 days). This could lead to separation of families. The only possibility of such a foreigner (who received a leaving

[117] See Sec. 1 (4) of the Law on Temporary protection of Aliens
[118] See Sec. 17 of Law No 221/ 2003 Coll. of Laws on Temporary Protection of Aliens
[119] See Sec. 40 and following of the Law on Stay of Aliens
[120] SOZE - Sdružení občanů zabývajících se emigranty (Association of Citizents Dealing with Emigrants) is a non–governmental organisation dealing with problems of aliens, including asylum seekers and the persons who were granted asylum in the Czech Republic, providing also legal advisory services.

visa) is than to apply for *visa on purpose of countenance*. There is however not a legal entitlement for according this type of visa. Even if the visa on purpose of countenance is accorded, legal and social position of such an alien in the country greatly aggravates.

2) This practice could lead to increase of unaccompanied minor asylum seekers (if their parents are under the above mentioned condition forced to leave the territory without their children).

3) In many cases the reasons for granting asylum are connected with only one member of the family and reasons which the other members of the family state in their applications are derived from the statements of the aforementioned family member. This leads to question how can the judge responsibly examine and decide the case, when at the same time he or she does not decide related cases of the other family members. That means that at the point of making a decision the judge does not have at disposition a complete file-material.

SOZE states that this way of decision-making is in contravention with Art. 3, par. 1 and 2, Art. 9, par. 1 of the Convention on Rights of a Child, and with Art. 8 of the European Convention on the protection of Human Rights and Fundamental freedoms as well as with the judicature of the European Court of Human Rights on this article. Last but not least this type of decision-making is not in accordance with the case law of the High Court of Prague that was deciding the claims raised against legitimate decisions of Ministry of Interior until 1 January 2003.[121]

Article 19. Protection in the event of removal, expulsion or extradition

International case law and concluding observation of international organs

During the Scrutiny period there have not been observed any decisions or judgments of international judiciary or non-judiciary institutions on violation of the right protected by this article. There has been found neither violation of Article 4 of Protocol 4 of the ECHR and of Art. 2, 3 and 13 of the ECHR, nor violation of Articles 7 and 13 of the ICCPR.

There has been however expressed a concern and a warranty by Commissioner for Human Rights of the Council of Europe[122] on the situation and conditions in detention centres for aliens in the process of removal[123]. Mr. Alvaro Gil - Robles expressed his concern mainly about the living conditions of aliens who are held under the *strict regime* of detention. He also criticized provision of Sec. 132 (2) letter e/ of the Law on Stay of Aliens according to which a fact that an alien can not be identified is a reason for placing him or her under strict regime of detention. He called for a repeal of this statutory provision. He also criticized the factual

[121] See: Rozsudek ze dne 24. 7. 2002, č.j. 5A 734/ 2001- 23 (Judgement of 24 July 2002, No. 5A 734/ 2001 – 23) „…in question of an obstruction of leaving the territory, stated by the Law, in the relation to this case, article 8 of the European Convention on Human Rihts is crucial in a sense of right to respect of family life and article 8 and 9 of the Convention on Rihts of a Child in a sense of respect of right of a child and its parents not to be separated, right of a child separated from one or both of its parents to keep ragular personal contact with both parents and right that the request of a child or parents for entrance to the territory of a state or for leavig the state shall be concidered in a positive, human and rapid manner….„
Aslo see: Rozsudek Vrchního soudu v Praze ze dne 17. 11. 1995, č.j. 7A 536/94-31 (Judgement of the High Court of Prague of 17. 11. 1995, No. 7A 536/94-31) according to which „…applicantion for grantin a status of refugee shall not be denied when an applican derives his or her status……from a status of a spouse, if, at the time of decision-making, it has not been decided on the application of this spouse….„

[122] See: Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights on his visit to the Czech Republic from 24 to 26 February 2003, Srasbourg, 15 October 2003

[123] Detention of aliens during the procedure of administrative expulsion is regularized in secs. 124 –151 of the Law on Aliens. According to sec. 124 (1) police can detain an alien to whom a decision of the begining of the procedure of administrative expulsion was delivered and he constitutes a danger for the security of the state or to public order, or shall obstruct or interfere with the sentence of administrative expulsion.

situation in which aliens who have applied for asylum in the Czech Republic in the detention centre, continue to stay in the detention. The maximum period of stay, according to Sec. 125 (1) of Law on Stay of Aliens is 180 days. Due to the length of the asylum procedure, aliens who applied for asylum in the detention centre remain there for maximum time, before they are transferred to an asylum centres. Because of the fact that detention of aliens in many cases does not achieve its real goal, which is securing the execution of the deportation, he concluded that the detention is, at this point, *„...perceived as a mere coercive measure intended to discourage asylum requests in the Czech Republic"*[124].

A critical report on situation in detention centres for aliens in the process of administrative expulsion was also presented by European Committee for the Prevention of Torture from its visit to Czech Republic dated on 21 – 30 April 2002. The Committee criticized existence of several negative factors in this type of facilities such as atmosphere of tension, prison-like environment, absolute lack of activities, no regular walkouts, insufficient medical/psychiatric treatment, relative isolation of facilities from outer world, language barrier and lack of information provided to aliens about their legal situation. These negatives lead to cases of self-mutilation, hunger strikes, escapes, attempts of suicide, vandalism and violence. CPT recommended the Czech Republic to make better consideration of what types of persons are placed in the strict regime of detention. They suggested that recent way of dressing of alien (into prison-type uniforms) is revised and that those alien who enter the facility in clean and proper clothes and shoes have right to wear these throughout their stay in the facility and have a chance ho have it cleaned and repaired. The CPT advised to abolish the rule under which aliens had to move unstoppably during their walkouts and to enable them use the walkouts according to their free will and their best relax. The aliens shall be provided at least one-hour walkout a day. According to observations of the CTP it is also necessary to provide aliens with free access to toilets, during the night. The CTP observed that dietary needs of detained aliens of Muslim and Hindu religion are not respected and pork and beef meat are regular part of provided menu. As a result of this some of the aliens refused to eat and loss of their weight was examined. Due to this situation CTP recommended that the religious and other dietary requests of aliens are fulfilled. The CTP also observed great lack of activities of aliens in detention centres and called for urgent measures in order to provide a wide scale of activities for aliens, especially for children. The CTP also criticized lack of psychological and psychiatric aid to aliens, number of who suffered from depression, sleep disturbances, or in some cases showed psychiatric symptoms. It expressed its concern about the fact that women and children cannot regularly attend gynaecologist and paediatrician. The staffs in facilities (mostly members of police) were not specially trained and had insufficient knowledge of foreign languages, what led to barriers in communication. For this reason the CPT appealed the Czech authorities to provide regular presence of translators in detention centres. Due to observed lack of information of foreigners about their situation, the CTP requested that all aliens placed in detention centres are informed about the nature and stage of their legal procedure and about their procedural and other rights. The Committee observed insufficiency of number of visits of aliens allowed in the detention centre[125] which is even lower than number of visits prisoners can accept. It recommended that the number of allowed visits in detention centres for aliens is greatly extended.

The steps taken in order to fulfill recommendations the CTP are described below, in part dealing with practice of national authorities.

[124] In: Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights on his visit to the Czech Republic from 24 to 26 February 2003, Srasbourg, 15 October 2003, p. 9, § 28.

[125] Acoording to Sec. 142 (1) of the Law on Stay of Aliens an alien placed in detention ceter has right to accept visits constisting of at most two 2 persons, once in three weeks, for time of 30 minutes. In justified cases, the head of detention center can allow acceptancte of visits in shorter period than three weeks and for time longer that 30 minutes.

National legislation, regulation and case law

Protection from arbitrary expulsion of aliens is incorporated into Czech legal order on a constitutional level in Article 14 (5) of the Charter of Fundamental Rights and Freedoms in a very general form[126]. On statutory level the Czech legal order recognizes two forms of expulsion: *penal expulsion* as a form of penal punishment, regularized by Penal Code of the Czech Republic[127] and *administrative expulsion* regularized by Law on Stay of Aliens[128]. During the scrutiny period there have not been examined any major legislative changes in the legal order which would create a risk of a collective expulsion of aliens. The provision of Sec. 118 (3) of the Law on Stay of Aliens that explicitly prohibits collective expulsion of aliens still remains valid. In case of penal expulsion it is in fact impossible to expel aliens on collective matter, as this expulsion is a result of judicial penal procedure in which the decision is always taken on individual level.

Effective execution of forcible removal of aliens is ensured by institute of detention of aliens who enter procedure of administrative expulsion. Law on Stay of Aliens (secs. 124 – 151) provides legal bases for the detention. Police of the Czech Republic carries out the execution itself. Use of force or any physical constraint as well as armaments by the police is specifically regularized by Law on the Police of the Czech Republic[129]. During the scrutiny period there have not been examined legislative changes in this area.

Protection from refoulement:

During the scrutiny period there have also not been introduced any legislative changes or approved or proposed any legislative measures that would lead to a risk of a possible infringement of prohibition of refoulement. The institute of *safe third country* and *safe country of origin* was introduced in legal order of the Czech Republic last year by an amendment to the Law on Asylum, also called the „euro-amendment“[130] that came into force on 1 February 2002[131].

Principle of non–refoulement is explicitly stated or implicitly derives from several legal documents. According to Sec. 179 (1) of the Law on Stay of Aliens a decision of administrative expulsion can not be executed if the alien was to leave to a state, where his/her life or freedom is endangered for reasons of race, religion, nationality, membership to a particular social group or political conviction; to a state where he/she is in danger of torture or inhuman or degrading treatment or punishment or his/her life is endangered due to a war conflict; or to state where he/she would face death penalty in accordance with a law valid in the particular state, as a result of a crime committed; or if such an execution was in contravention with obligations of the Czech Republic derived from international treaties. Similar protection constructs a content of paragraph 91 section 1 of the Law on Asylum titled „*Obstructions of removal“*. The principle is also incorporated in institute of penal

[126] Listina základních práv a svobod, Úst. zákon č. 2/ 1993 Sb.(Charter of Fundamental Rights and Freedoms, Cons. Law No. 2/ 1993 Coll.
[127] Zák. č. 140/ 1961 Sb., trestní zákon (Law No. 140/ 1961 Coll.; Penal Code) see: § 57 Penal Code
[128] Zák. č. 326/ 1999 Sb. O pobytu cizinců na území České republiky a o změně některých zákonů (Law No. 326/1999 Coll. of Laws on the Stay of Foreigners on the Territory of the Czech Republic and on Change of Other Laws).
[129] Zák. č. 283/ 1991 Sb. o Policii České republiky v platném znění (Law No. 283/ 1991 Coll. of Laws on The Police of the Czech Republic including amendments)
[130] Zák. č. 2/ 2002 Sb. (Law. No. 2/2002 Collof Laws)
[131] This amendment has been greatly critisized some of its restrictive provisions by czhech govermental or non-govermental organizations or by internaional institutions for the protection of human rights. See: Report of Commissioner for Human Rights of Council of Europe on his visit to the Czech Republic from 24 to 26 February 2003; Final Report of Protector of Public of the Czech Republic 2002; Note of the Czech Helsinky Committee on the amendment.

expulsion[132], which states that court shall not impose a penalty of expulsion if, in the state where expelled, the criminal faces a danger of persecution for reasons of race, nationality, membership of certain social group, political or religious conviction, or if the penalty of expulsion would lead to a danger of torture or inhuman or degrading treatment or punishment.

Extradition of aliens was exercised in accordance with provisions of Penal Procedure Code[133] and also in accordance with European Convention on Extradition, which form a part of legal order of the Czech Republic[134].

Practice of national authorities

As stated above, practice of national authorities, concretely of Police of the Czech Republic, which administers detention centres for aliens who are in administrative expulsion procedure was greatly criticized not only by international but also by domestic institutions[135]. The Report of the Office of Public Protector of Rights from 9 December 2002 stated in its conclusion that *„Placing aliens into detention centres for aliens in not a measure of sanction but a security measure and its performance should respond to the goal this restriction of personal freedom of an alien. .... Detention centres for aliens however in many aspects do not respond to the goal for which they were established, detention is performed under very restrictive conditions, which are in some aspect worse than conditions in penitentiary facilities".* On behalf of these reports national authorities made some progressive improvements in detention facilities for aliens.

1) Aliens are not forced to wear detention uniforms and can wear their own clothes and shoes if they fulfill certain hygienic and aesthetic conditions.

2) Foreigner police elaborated „Information sheet for aliens" in several languages. Aliens are also being repeatedly informed on the questions related with their procedure, especially about their procedural rights.

3) Foreigner police allows unlimited legal aid provided by non-governmental organisations in detention facilities.

4) Camera system placed in cells of aliens is not utilised any more, and cameras are covered by opaque plastic.

5) Dietary structure changed in detention centres. Centres are provided with menu one week in advance and the menu is checked and changed according to the structure of aliens detained and their religious and cultural customs.

6) Time of walkouts of detained aliens was extended according to technical and personal possibilities of individual detention facilities.

An amendment to Law on Stay of Aliens, Law No 222/2003, some provisions of which will enter in force on 1 January 2004, will repeal the provision letter e) of this section, according to which all aliens who can not be identified are placed in the detention with the strict regime.

[132] See: paragraph 57 section 3 letter d/ of Penal Code of the Czech Republic
[133] Zák. č. 141/ 1961 Sb., v platném znění Trestní řád, par. 379 - 383 (Law No. 141/ 1961 Coll. of Laws incuding amendments, paragraphs 379 – 383)
[134] Sdělení federálního ministerstva zahraničních věcí č. 549/ 1992 Sb. (Notice of Federal Ministry of Foreign Affairs No. 549/ 1992 Coll of Laws)
[135] See: Report of the Office of Public Protector of Rights (Ombudsman) from 9 December 2002, Sp. Zn. 2654/2002/VOP/VK.

According to information provided by Ministry of Interior as well as the Office of UNHCR and other non-governmental organisations, no collective repatriations have taken place in the Czech Republic during the scrutiny period. All expulsion cases are being examined individually. Neither cases of breach of principle of non-refoulement were examined.

CHAPTER III : EQUALITY

Article 20. Equality before the law

National legislation, regulation and case law

At the constitutional level, Art. 1 of the Charter of Fundamental Rights and Freedoms provides this principle as follows: „Human beings are free and equal in dignity and rights." The principle of equality is further specified in Art. 4 par. 3, according to which „legal restrictions of fundamental rights and freedoms must apply equally for all cases meeting the prescribed conditions".

In general, anti-discrimination clauses can be found in various pieces of national legislation, but these are scattered and not comprehensive. The Government has prepared a draft law on Equal Treatment and Protection against Discrimination. (see more under Article 21) It is not yet clear if and when this particular draft will be submitted to the Parliament. NGOs widely support the adoption of anti-discrimination law and the enforcement of equality principles and have cooperated on the discussion on its content.

Article 21. Non-discrimination

International case law and concluding observation of international organs

During the period under scrutiny, the Committee on the Elimination of Racial Discrimination considered the fifth periodic report of the Czech Republic (CERD/C/419/Add.1), which was due on 1 January 2002, at its 1590th, 1591st and 1592nd meetings (CERD/C/SR.1590-1592), held on 7 and 8 August 2003. At its 1603rd meeting (CERD/C/SR.1603), held on 18 August 2003, it adopted the following concluding observations.

While noting the efforts of the Government to elaborate a comprehensive anti-discrimination law, the Committee is concerned about the difficulties faced during this process. The Committee encourages the State party to complete its efforts with regard to the comprehensive anti-discrimination law promptly and subsequently to ensure its effective enforcement. While noting the efforts undertaken by the State party to counter racially motivated violence and discrimination, the Committee remains concerned at the continuance of acts of racially motivated violence and incitement to hatred and the persistence of intolerance and de facto discrimination, in particular with regard to the Roma minority. The Committee is concerned about allegations of racially motivated ill-treatment, ineffective protection and discrimination against the Roma by law enforcement officials, especially the police. Furthermore, it has been suggested that allegations of abuse by law enforcement officials are not always promptly and impartially investigated. While noting the many initiatives taken in the field of training and education of the police, the Committee stresses that prompt and impartial investigations are paramount in countering discriminatory attitudes and practices.

The Committee notes the efforts under way to facilitate access to the labour market by individuals experiencing difficulties in finding employment, including the Roma, asylum

applicants and other marginalized groups. However, the unemployment rate among the Roma remains disproportionately high and continues to be an issue of concern for the Committee. This concern is compounded by the information relating to the practice of usury and its negative economic and social consequences for the Roma.

National legislation, regulation and case law

Certain aspects of protection against discrimination have been already regulated by Article 3 of the constitutional Charter of Fundamental Rights and Freedoms and several laws, in particular in the area of labour legislation.

The prohibition of discrimination has been incorporated not only into the Labour Code, but also into the new Law on Civil Service.[136] The most important achievement has been done by the 2002 amendment to the Civil Procedure Code,[137] which has extended the shift of burden of proof in labour law cases for all discrimination grounds, i.e. not only a gender but also racial or ethnic origin, religion, belief, opinion, health disability, age or sexual orientation. Despite this progressive legislation, harmonized with EU/EC law, some problems of discrimination against Roma but also elderly and handicapped people are reported. It is the most often a refusal of the employer to hire an employment seeker who belongs to such a minority or social group. However, it is very difficult to prove that the job (position) in question had not been already occupied at the moment when the unsuccessful seeker came to the enterprise.[138]

However, a general law on non-discrimination is still missing. That is why the Government has prepared a draft law on equal treatment and protection against discrimination. The new law should apply to the matters of labour, including remuneration, right to work and access to employment, access to profession and independent business, membership in and benefits of professional associations, membership in trade unions and organizations of employers, social security and benefits, health care, education and access to goods and services, including housing. The law should bring definition of direct and indirect discrimination, discrimination grounds and allowed exceptions from principle of equal treatment, incl. affirmative measures. The envisaged legislation will provide for legal remedies in cases of discrimination. It should also establish a Centre for equal treatment as an independent public body competent to ensure mediation, to assist in providing legal services in the matters of protection against discrimination, to issue recommendations and position papers, to do independent research and to inform the public about the problems of equal opportunities and its activities.

Reasons for concern

The draft law, which was supposed to enter into force in May 2004, fully implements Article 21 of the Charter, directive 76/207/EEC as amended by directive 2002/73/EC, directives 75/117/EEC, 79/7/EEC, 86/378/EEC (as amended by 96/97/EC), 86/613/EEC, 97/80/EC, 2000/43/EC and 2000/78/EC, as well as ECRI General Policy Recommendation No. 7. However, due to some problems during legislative process, it is very likely that this law, if passed by the Parliament, will not become effective as early as it was scheduled.

[136] Zákon č. 218/2002 Sb., o službě státních zaměstnanců ve správních úřadech a o odměňování těchto zaměstnanců a ostatních zaměstnanců ve správních úřadech [Law No. 218/2002 Coll., on service of State servants in administrative offices and salaries of these servants and other employees in administrative offices]
[137] Law No. 151/2002 Coll.
[138] Cf. Report on the state of human rights, op. cit., p. 67.

Article 22. Cultural, religious and linguistic diversity

International case law and concluding observation of international organs

During the period under scrutiny, the Committee on the Elimination of Racial Discrimination considered the fifth periodic report of the Czech Republic and adopted the concluding observations. The Committee was encouraged by the legislative efforts of the State party to give effect to the provisions of the Convention, in particular in the field of protection of national minorities, as well as the amendment to the Criminal Code adopted in 2002 and the amendments to the Civil Procedure Code reversing the burden of proof from the victim to the alleged offender. Furthermore, the Committee welcomed the existence of a number of advisory bodies of the Government dealing with human rights and specifically the rights of national minorities, which work in cooperation with civil society. It notes in particular the Council of the Government of the Czech Republic for the Affairs of the Roma Community, the Human Rights Council of the Government of the Czech Republic and the Government Council for National Minorities.

While appreciating the complexity of the problem of special schooling and noting the accompanying measures taken by the Government with a view to promoting adequate support to Roma children, the Committee remains concerned, as does the Committee on the Rights of the Child (see CRC/C/15/Add.201, para. 54), at the continued placement of a disproportionately high number of Roma children in "special schools". Recalling its general recommendation XXVII, the Committee urges the Government to continue and intensify the efforts to improve the educational situation of the Roma through, inter alia, enrolment in mainstream schools, recruitment of school personnel from among members of Roma communities, and sensitization of teachers and other education professionals to the social fabric and world views of Roma children and those with apparent learning difficulties.

National legislation, regulation and case law

The protection of rights of national minorities in the Czech law is ensured in Article 3 (general prohibition of discrimination) and in Chapter Three of the Charter of Fundamental Rights and Freedoms, in particular Art. 24 (specific prohibition to discriminate against national or ethnic minority) and Art. 25 (individual and collective minority rights). The Czech Republic is also a party to the Council of Europe Framework Convention on National Minorities (1995)[139] Consequently, its provisions have been implemented by Law on Rights of Persons belonging to National Minorities.[140] This law empowered the Government to adopt its Regulation on subsidies for minority activities and integration of Roma community.[141]

The above Law is a *lex generalis* dealing with general aspects of minority rights, the details of which are implemented by special laws. The law grants to the national minorities that have been living traditionally and for a long time on the territory of the Czech Republic special language rights (to the dissemination and receipt of information in the language of the national minorities, to the use of the language of the national minority in official contacts and before the courts and the education in the language of the national minority), the right to the development of the culture of the national minority, and the right to resolve by themselves the matters concerning them.

[139] ETS No. 157; in Czech promulgated under No. 96/1998 Coll.

[140] Zákon č. 273/2001 Sb., o právech příslušníků národnostních menšin, ve znění pozdějších předpisů [Law No. 273/2001 Coll., on Rights of persons belonging to national minorities, as amended by later laws]

[141] Nařízení vlády č. 98/2002 Sb., kterým se stanoví podmínky a způsob poskytování dotací ze státního rozpočtu na aktivity příslušníků národnostních menšin a na podporu integrace příslušníků romské komunity [Government Regulation No. 98/2002 Coll., to set conditions a manner of granting subsidies from the State budget for activities of persons belonging to national minorities and for promotion of persons belonging to Roma community]

Practice of national authorities

From the institutional point of view, on the basis of this Law the Government Council for National Minorities has been established as an advisory body to present incentives in matters relating to national minorities and their members at the central level. It is chaired by a member of the Government. At present the chairman is the Deputy Prime Minister for Research, Human Rights and Human Resources. The Council has a total of 29 members – representatives of eleven national minorities that have been traditionally living on the territory of the Czech Republic. Those include the representatives of national minorities (Bulgarian, Croatian, Hungarian, German, Polish, Romany, Ruthenian, Russian, Greek, Slovak and Ukrainian – a total of 18 members) and of public authorities (representatives of the Ministry of Finance, Ministry of Culture, Ministry of Education, Youth and Physical Education, Ministry of Labour and Social Affairs, Ministry of Interior, Ministry of Justice and Ministry of Foreign Affairs at the level of deputy ministers, the representative of the Office of the President of the Republic, of the Office of Public Protector of Rights and the Government Commissioner of Human Rights – a total of 11 members). One of the deputy chairmen is a representative of a public authority (Government Commissioner for Human Rights), the other one is appointed from among the representatives of national minorities.

Another advisory body, focused on the situation of Roma, the Inter-ministerial Commission for Roma Community Affairs underwent a process of rationalisation of advisory bodies of the government. Upon the approval of the new statute,[142] the Inter-ministerial Commission was transformed into a Government Council presided over by a cabinet member, currently the Deputy Prime Minister for Research, Human Rights and Human Resources. This was one of the requests that had been raised a long time ago by the representatives of the Roma community. The first deputy chairman of the Government Council is the Government Commissioner for Human Rights (who represents 14 of its members – representatives of public authorities); the other deputy chairman will be appointed from among the 14 Roma civic representatives (each of whom represents one higher-level political sub-division).

At the level of local and regional self-government, there are committees for national minorities. The Law No. 273/2001 decreased the percentage quota of persons belonging to national minorities necessary for establishing such committees.

In practice, the Regulation on subsidies has created legal conditions for systematic (instead of earlier *ad hoc*) financing of minority activities. The Regulation covers not only financing of the activities of national minorities for maintenance and development of their culture, but also the integration of Roma communities. In respect of Roma, the objective is not only to subsidy regular programmes of minority activities, but also to support programmes aiming at prevention and elimination of social exclusion of the Roma communities. In spite of the effort of the Government to improve the situation of Roma, some problems still remain in several areas: education, employment, housing and criminality.

Concerning the access to housing, some problems due to the shortage of municipal flats (at regulated rents) continue to exist, which may cause difficulties for socially disadvantaged families. Rents of flats available on free market as well as on unofficial (shadow) market are very expensive. Moreover, the owners, both private and municipalities, tend to exercise and enforce, if necessary, their rights in a stricter way than in the past. Consequently, the forcible enforcement of judicial decisions to leave the flat are more frequent against those who did not pay rent for a long period, very often the persons belonging to the Roma community. They are removed to some municipal hostels or very simple social flats with a minimum equipment, located usually at the outskirts of towns. Nevertheless, it is difficult to prove any

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

discrimination against the Roma because such measures are applied against persons who do not pay rent or disturb the public order, irrespective of their national or ethnic origin. Therefore, one can not speak about a policy of segregation or desegregation. As a result of the regulated (not flexible) market of flats, the social stratification and „segregation" in housing in the Czech Republic is much slower and weaker than in other countries. In particular, the most Czech towns do not have yet clearly identified suburbs inhabited only by persons belonging to the lowest social class, minorities and immigrants.

The problem of criminal acts against Roma motivated by racial intolerance is under special scrutiny of law enforcement organs. There are not yet statistic data for 2003. In 2002, the Czech courts pronounced final convictions of 150 persons for offenses related to racial intolerance.[143] The Czech Ministry of Interior is aware of the fact how it is important to prepare members of the Police for work in an open, multiethnic society. Therefore the Ministry presented and the Government approved the National strategy for work of the Police in relation to national and ethnic minorities.[144] The Strategy focuses on both Czech citizens belonging to national minorities (in particular the Roma) and various categories of foreigners living in the Czech Republic. The document proposes mechanisms and measures for communication with the minorities, on the one hand, and seeks ways how to involve persons belonging to national minorities in police work, on the other hand.

Article 23. Equality between man and women

International case law and concluding observation of international organs

During the period under scrutiny the State has not been found by any international court to be in violation of the rule of equality between men and women. The Czech Republic is party to all relevant international conventions, including the Optional Protocol to the UN Convention on the elimination of all forms of discrimination against women.[145]

National legislation, regulation and case law

The most important achievement has been done by the 2002 amendment to the Civil Procedure Code,[146] which has extended the shift of burden of proof in labour law cases for all discrimination grounds, i.e. not only a gender discrimination.

The Parliament is now discussing a very important regulation concerning the domestic violence and violence directed at certain groups of persons, which are in a weak position, e.g. at women. The Draft Amendment of Penal Code[147] regulates a new element of crime (Sec. 215a) that reacts on a serious problem of each society: domestic violence committed upon adult persons.

Practice of national authorities

At the governmental level, the Ministry of Labour and Social Affairs has prepared and updated every year a National Program of Action called „Priorities and ways of the Government in enforcing equality between men and women". Each member of the Government has been obliged to single out the priorities within the competence of its ministry

[143] Cf. Report on the state of human rights, op. cit., p. 68.
[144] Usnesení vlády č. 85 ze dne 22.ledna 2003 k Národní strategii pro práci Policie ČR ve vztahu k národnostním a etnickým menšinám [Governmental Resolution No. 85, dated 22 January 2003, on the National strategy for work of the Police in relation to national and ethnic minorities]
[145] Published under No. 57/2001 Coll. of Int'l Treaties.
[146] Law No. 151/2002 Coll.
[147] Návrh zákona, kterým se mění zákon č. 140/1961, trestní zákon, ve znění pozdějších předpisů

and to implement an analysis of the current situation in the field of equality between men and women.

Article 24. The rights of the child

International case law and concluding observation of international organs

The Czech Republic is bound by the Convention on the Rights of the Child[148]. The Committee on the Rights of the Child considered the second periodic report of the Czech Republic (CRC/C/83/Add.4) at its 852nd and 853rd meetings, held on 24 January 2003, and at its 862nd meeting, held on 31 January 2003, welcomes amendments to existing legislation and the enactment of new legislation, regarding strengthening the protection against trafficking and commercial sexual exploitation of children and the integration of children with special needs in regular schools. The Committee notes the very good maternal protection, including satisfactory maternity leave, and the excellent health indicators, including infant mortality, under-5 mortality and vaccination intake. However, the Committee regrets that some of its previous recommendations (CRC/C/15/Add.81) have been insufficiently addressed, *inter alia*, the Czech Republic has not withdrawn the reservation to article 7, par. 1 of the Convention on the Rights of the Child yet. The civil registration of irreversible adoption does not necessarily mean that the adopted child has no possibility of knowing his or her (biological) parents. Another critic is related to development of a comprehensive policy on children and development of awareness-raising campaigns aimed at reducing discriminatory practices against the Roma population, which are by the Committee found insufficient, and to comprehensive reform of the system of juvenile justice. To solve this problem, the Parliament has adopted a new law in 2003. The Committee urges the Czech Republic to retain the present age of criminal responsibility of 15 years.

The Committee notes that many positive steps have been taken to bring legislation into conformity with the Convention, but remains concerned at the length process of legislative reform necessary to make the laws fully compatible with the Convention. It also recommends that the Czech Republic establish or appoint a single permanent body, which is adequately mandated and resourced, to coordinate implementation of he Convention at the national level, including by effective coordination activities between central and local authorities and cooperating with NGOs and other sectors of civil society. The Committee also recommends that the Czech government take full account of the Committee's General Commend No. 2 on the role of national human rights institutions and establish an independent body to monitor the implementation of the Convention, including the investigation of individual complaints by children in a child-sensitive manner. This may be done by broadening the mandate of the Public Defender and providing him with the necessary human and other resources, or by establishing a separate independent children's commissioner or ombudsperson. The Committee expresses its concern that data collection made by the various ministries is not sufficiently developed and disaggregated for all areas covered by the Convention (e.g. vulnerable and disadvantaged groups).

The Committee is encouraged by the decline in infant mortality rates, but remains concerned at the high rate of accidents including injuries, poisoning and traffic accidents. Furthermore, it is concerned that the suicide rate is relatively high despite the declining trend. The Committee is concerned that there is no legislation explicitly prohibiting corporal punishment, and that it is practised in the family, in schools and other public institutions, including alternative care contexts, and recommends many measures against this problem, and is also concerned at the insufficient assistance and guidance given to parents in their child-rearing responsibilities for

[148] 104/1991 Sb. (No. 104/1991 Coll. of Laws), the Czech Republic as a successor of Czechoslovakia is bound from 1 January 2003

the upbringing and development of the child (Art. 18), resulting in numerous cases of custody procedures or in alternative care in institutions. The Committee is further concerned that preventive efforts and family counselling are inadequate and that placement in an institution may be a solution to social problems and crisis situations in the family.

The Committee is further concerned that Roma children continue to be over-represented in so-called „special schools" and at the discrimination in access to education of illegal migrants and refugees who are denied asylum. The Committee remains concerned at reports of increased instances of sexual abuse of children and the low rate of reporting such crimes, the lack of a comprehensive system of protection and assistance by qualified professionals to all child victims of sexual abuse and of commercial sexual exploitation and the failure to date to ratify the Optional Protocol to the Convention of the Rights of the Child on the sale of children, child prostitution and child pornography. The Committee welcomes that Czech Republic ratified the Optional Protocol to the Convention of the Rights of the Child on the involvement of children in armed conflict. The Committee is concerned that there is a growing number of children living on the street in urban areas vulnerable to, *inter alia*, sexual abuse, violence, including from the police, exploitation, lack of access to education, substance abuse, sexually transmitted diseases, HIV/AIDS and malnutrition. Furthermore, the Committee notes that the primary response to the situation of these children, as described by the Czech Republic in its report, is institutionalization (placement in an institution).

National legislation, regulation and case law

At the constitutional level, protection of the child is provided for in Art. 32 of the Charter of Fundamental Rights and Freedoms[149]. Special protection of children and adolescents is guaranteed (Art. 32, par. 1). Children born in as well as out of wedlock have equal rights (Art. 32, par. 3). Children and their upbringing are the right of their parents; children are entitled to parental upbringing and care. Parental rights may be limited and minor children may be taken away from their parents against the latter's will only by judicial decision on the basis of law (Art. 32, par. 4).

The most significant law related to children or minors that has been adopted in 2003 and that reflects the Committee report is perhaps the Law on Responsibility of Juvenile for Criminal Offences and Juvenile Justice[150], which regulates conditions of juvenile responsibility for offences under the penal law and juvenile justice. During the period under scrutiny, there has also been adopted Law No. 222/2003 Coll. of Laws, which has amended Law No. 326/1999 Coll. of Laws on the Residence of Foreigners in Czech Republic and also Law No. 359/1999 Coll. of Laws on the Social-legislative Protection of Children and other laws[151].

The Parliament is now discussing the amendment of the Law on Family[152] and of the Civil Procedure Code[153] relating to adoption of a child. The aim of this proposal is to accelerate the adoption procedure. According to it, the parents are given a possibility to express their consent to the adoption without relation to certain adopting parents not only before court or before the relevant organ of the social-legislative protection of children as nowadays but also before the entrusted staff of this organ in the medical centre where the child was born. Under

[149] Listina základních práv a svobod, úst. zákon č. 2/1993 Sb. (Charter of Fundamental Rights and Freedoms, Const. Law No. 2/1993 Coll. of Laws)
[150] Zákon č. 218/2003 Sb., o odpovědnosti mládeže za protiprávní činy a o soudnictví ve věcech mládeže a o změně některých zákonů (zákon o soudnictví ve věcech mládeže)
[151] Zákon č. 222/2003 Sb., kterým se mění zákon č. 326/1999 Sb., o pobytu cizinců na území České republiky a o změně některých zákonů, ve znění pozdějších předpisů, zákon č. 359/1999 Sb., o sociálně-právní ochraně dětí, ve znění pozdějších předpisů a další předpisy
[152] Sec. 68a of the Family Act (zákon č. 94/1963 Sb., o rodině, ve znění pozdějších předpisů)
[153] Návrh zákona, kterým se mění zákon č. 94/1963 Sb., o rodině, ve znění pozdějších předpisů, a zákon č. 99/1963 Sb., občanský soudní řád, ve znění pozdějších předpisů

regulation in force, it is forbidden to parents to grant their consent to adoption earlier than six weeks after the child is born. This is fully compatible with the 1967 European Convention on the Adoption of Children[154]. The new proposal enables this possibility, but the consent becomes effective the first day following the expiration of the six-weeks term. There has never been a possibility to express consent to adoption before the birth of the child on the territory of the Czech Republic yet. The withdrawal of the consent is possible until the child is installed, upon judicial decision, into custody of future adoptive parents. This provision remains without changes. The amendment of Sec. 180a of the Civil Procedure Code also seeks to accelerate the adoption procedure. The court is given a term of three month to decide whether the consent of parents is necessary to the adoption of a child and a six-months term in especially difficult cases. This provision has connection with provisions of the Law on Family related to special situations where the parental consent to adoption is not necessary.

The Draft Amendment of the Health-Care Act[155], which governs „anonymous childbearing", aims to pull down the abortion-rates and the number of cases when mother kills her child. The proposed Sec. 67b par. 20 of the Health-Care Act states that a woman who gave birth to a child in a medical centre and requested that her identity would be concealed has right to protection of her personal data. However, this proposed regulation can lead to facilitating of trafficking in children. And, in accordance with the Convention on the Rights of a Child and under the Czech Family Act, the child also has, as far as possible, the right to know and be cared for by his or her parents[156]. The present Czech law does not know the institute of renunciation of parenthood, which this proposed regulation would lead to. It can also be doubtful, if this proposed regulation really leads to a lower abortion-rate and fewer cases of killing a newborn child by his or her own mother.

Another legislative proposal concerning the children care problematic (foster care and tutors) is the Draft Amendment of the Law No. 359/1999 Coll. of Laws on the Social-legislative Protection of Children and other relating laws[157].

The Parliament is now discussing a very important regulation concerning the domestic violence and violence directed at certain groups of persons, which are in a weak position, e.g. at children. The Draft Amendment of Penal Code[158] regulates a new element of crime (Sec. 215a) that reacts on a serious problem of each society: domestic violence committed upon adult persons (protection of children against domestic violence is already contained in Sec. 215). In these cases children are indirect victims of violence committed in their family. Their psychical state is influenced in a very negative way. This new regulation shall also amend Sec. 167 and 168 of Penal Code. According to this proposal, in general aggravating circumstances (Sec. 34) should be included the circumstance that the crime is committed upon a close person, a person younger 18 years, a pregnant woman, an ill or disabled person or a person of higher age.

[154] ratified by the Czech Republic on 8 September 2000 with legal effects from 9 December 2000, according to Article 5, par. 4 of this Convention: A mother´s consent to the adoption of her child shall not be accepted unless it is given at such time after the birth of the child, not being less than six weeks, as may be prescribed by law, or, if no such time, has been prescribed, at such time as, in the opinion of the competent authority, will have enabled her to recover sufficiently form the effects of giving birth to the child.

[155] Návrh zákona, kterým se mění zákon č. 20/1966 Sb., o péči o zdraví lidu, ve znění pozdějších předpisů, a předpisů souvisejících (The Proposal of the Amendment of the Law No. 20/1966 Coll. of Laws, on the Public Health-Care, as amended by later laws, and relevant laws)

[156] The Convention on the Rights of the Child, Art. 7; Family Act, Law. No 94/1963 Coll. of Laws, as amended by later laws, Sec. 31, 32, 33, 34

[157] Návrh zákona, kterým se mění zákon č. 359/1999 Sb., o sociálně-právní ochraně dětí, ve znění pozdějších předpisů, a zákon č. 117/1995 o státní sociální podpoře, ve znění pozdějších předpisů (Proposal of Law which changes Law No. 359/1999 Coll. of Laws, on the Social-legislative Protection of Children, as amended by later laws, and Law No. 117/1995 Coll. of Laws, on Social Support from State, as amended by later laws)

[158] Návrh zákona, kterým se mění zákon č. 140/1961, trestní zákon, ve znění pozdějších předpisů

In the end of 2003, the Parliament has just granted the approval on the Convention on contact concerning children (the Contact Convention), which was adopted on 3 May 2002 in Vilnius[159], Lithuania, by the Committee of Ministers of the Council of Europe. This convention aims at reinforcing the fundamental right of children and their parents and other persons having family ties with the child to maintain contact on a regular basis.

Practice of national authorities

The League for Human Rights has held a conference and translated the Concluding Observations of the Committee on the Rights of the Child in Czech. The Czech government has empowered the commissioner for human rights with making an analysis on the state of implementation of the Convention. And there has been created a group of experts under aegis of the Governmental Council for Human Rights and Ministry of Foreign Affairs that shall elaborate an analysis too.

Reasons for concern

There are several non-governmental organisations that are concerned with the children problematic. Very important are the activities of association STØEP that aims at reintegration of families, whereas the official bodies and most of other non-governmental organisations stress rather the institutional care of children from problematic backgrounds or their adoption. The administrative reform has invoked many problems in the area of social care of children. This activity was in competence of former district offices and now according to Law No. 320/2002 comes into the competence of municipal offices of communities with extended scope of activities. Many of these new bodies have not qualified staff with experiences.

Another serious problem, which also the Committee noted, is the lack of statistic data concerning children out of family. In the last ten years, 305 children disappeared.

Article 25. The rights of the elderly

International case law and concluding observation of international organs

During the period under scrutiny, the Czech Republic has not been found to offer insufficient or inadequate the protection to ensure the rights of the elderly to lead a life of dignity, an independent life and to participate in social and cultural life.

National legislation, regulation and case law

As of January 1st, 2003, the new Law on volunteer's service[160] has entered into force, which provides, *inter alia*, for assistance to the elderly and thus completes the system of state social assistance.

[159] Návrh, kterým se předkládá Parlamentu České republiky k vyslovení souhlasu Úmluva o styku s dětmi, přijatá ve Vilniusu dne 3. května 2002
[160] Zákon č. 198/2002 Sb., o dobrovolnické službě (Law No. 198/2002 Coll., on Volunteer's Service)

Article 26. Integration of persons with disabilities

International case law and concluding observation of international organs

During the period under scrutiny, the Czech Republic has not been found by any international court to have failed to adopted measures to improve the integration of persons with disabilities. However, the Eur.Ct.H.R. did not use an opportunity to change its case law in the case of *Zehnalová & Zehnal v. the Czech Republic*. This was a case, concerning access of physically disabled persons (on wheelchair) to public buildings. This time the inaccessibility, due to the architectural barriers, concerned the public buildings and other buildings for public use in the town Prerov, where the couple had the permanent residence. In spite of the different factual circumstances, however, the Court did not use this occasion to overrule the decision in *Botta*. Instead, the Court in its decision on admissibility of 14 May 2002 refused, by majority of votes, the application as incompatible *ratione materiae* with Article 8 and, therefore, also with Articles 13 and 14 of the Convention. According to this view, Article 8 should not apply in general and always, where the daily life of the applicant was at stake, but only in the exceptional cases where the lack of access to public buildings would prevent her from living in a way to develop her personality and entertain contacts with other persons.[161]

National legislation, regulation and case law

The Government has prepared a draft law on social services which provides standards of social services and enables more active participation of disabled persons in deciding on their life. The subsidy for care should promote the development of alternative methods of care, other than a placement of the person with disabilities in institutions of social care. However, it is vital to set up standards of care and to guarantee them by law in order to avoid a deterioration of care.

Practice of national authorities

Nevertheless, the mere fact of the discussion of this case before the Eur. Ct. H.R. helped to bring the situation of persons with disabilities to the attention of the State authorities, local government and media. The state of architectural barriers has improved considerably at the local level (in the town in question) but still remains inadequate in other parts of the Czech Republic. Accessibility standards have been adopted in regulations governing building constructions. New construction projects are required to meet standards securing disabled access to new buildings, and approval of buildings permits is contingent on meeting such requirements. These regulations also apply to any new reconstruction projects on older buildings, but do not require existing buildings that are not undergoing reconstruction to provide such access.

CHAPTER IV : SOLIDARITY

Article 27. Worker's right to information and consultation within the undertaking

National legislation, regulation and case law

During the period under scrutiny there have not been any significant legislative initiatives in this area. Already Law No. 155/2000 amended the Labour Code[162] in a sense to ensure the workers' right to information and consultation which may be realized directly or through the

[161] Eur. Ct. H.R., *Jitka Zehnalová et Otto Zehnal v. Czech Republic* (dec.), no. 38621/97, 14 May 2002, p. 13.
[162] Zákon č. 155/2000 Sb., kterým se mění zákon č. 65/1965 Sb., zákoník práce ve znění pozdějších předpisů (Law No. 155/2000 Coll., amending Law No. 65/1965 Coll., Labour Code, as amended by later laws)

workers' representatives, including trade union, councils of employees or the European council of employees.

Article 28. Right of collective bargaining and action

National legislation, regulation and case law

At the constitutional level, freedom of association in trade unions and other organisations aiming at protection of economic and social interests as well as the right to strike are guaranteed in Art. 27 of the Charter of Fundamental Rights and Freedoms.

During the period under scrutiny the Constitutional Court decided to cancel Sec. 7 of the Law No. 2/1991, on Collective Bargaining. The provision in question provided that „The Ministry of Labour and Social Affairs may extend by legal regulation binding effects of a collective agreement of higher degree also for the employers who are not members of the organisation of employers which concluded this agreement." Such a extension of the collective agreement was possible only in respect of the employers with a like activity and like economic-social conditions, having the seat on the territory of the Czech Republic and not bound by a collective agreement of higher degree. Although the Constitutional Court admitted in principle an extension of binding effects of the collective agreement, it sought to find a balance between measures for protection of social peace in a society and freedom of enterprise and right to property. The Court found that the canceled provision did not meet the principle of proportionality and completeness of laws, because it lacked to provide a condition of representative participation in collective bargaining.[163]

Article 29. Right of access to placement services

National legislation, regulation and case law

During the period under scrutiny there have not been any significant legislative initiatives in this area. Law on Employment[164] ensures right of access to free placement services and prohibits direct and indirect discrimination.

Article 30. Protection in the event of unjustified dismissal

National legislation, regulation and case law

During the period under scrutiny there have not been any significant legislative initiatives in this area. The protection of the employees of an indolvent employer has been ensured by Law No. 118/2000.[165]

Article 31. Fair and just working conditions

National legislation, regulation and case law

[163] Ústavní soud ČR (Constitutional Court), judgment, 11 June 2003, No. 199/2003 Coll. of Laws.
[164] Zákon č. 1/1991 Sb., o zaměstnanosti, ve znění pozdějších předpisů (Law No. 1/1991 Coll., on Employment, as amended by later laws).
[165] Zákon č. 118/2000 Sb., o ochraně zaměstnanců při platební neschopnosti zaměstnavatele (Law No. 118/2000 Coll., on Protection of Employees in case of Insolvency of the Employer)

During the period under scrutiny there have not been any significant legislative initiatives in this area.

Article 32. Prohibition of child labor and protection of young people at work

International case law and concluding observation of international organs

The Committee on the Rights of the Child considered the second periodic report of the Czech Republic (CRC/C/83/Add.4) at its 852nd and 853rd meetings, held on 24 January 2003, and at its 862nd meeting, held on 31 January 2003, welcomes the ratification of the Hague Convention of 1993 on the Protection of Children and Cooperation in Respect of Intercountry Adoption and ILO Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

National legislation, regulation and case law

Very significant is the proposal of new Employment Act, provisions of which pertain, among other topics, to the conditions of performance of artistic or cultural activities by children, their participation in advertising and in sports. The proposed regulation is compatible with the European law (e.g. with the Council Directive 94/33/EC of 22 June 1994 on the Protection of Young People at Work). In connection with this proposal there are discussed amendments of several acts, e.g. Labour Code[166] etc.

Article 33. Family and professional life

National legislation, regulation and case law

During the period under scrutiny there have not been any significant legislative initiatives in this area.

Article 34. Social security and social assistance

National legislation, regulation and case law

In the end of 2003 the Parliament has passed the first part of the governmental financial and social reform. In this context the age limit for the right to pension raised up to 63 years.

Article 35. Health care

National legislation, regulation and case law

During the period under scrutiny, Law No. 222/2003 has amended, *inter alia*, Law on Public Health Insurance,[167] Sec. 7, according to which the State ensures payments from the State budget for insurance of certain groups of people lacking enough resources. The Law newly

[166] Návrh zákona, kterým se mění některé zákony v souvislosti s přijetím zákona o zaměstnanosti (Proposal of Act which changes several acts in connection with the adoption of Employment Act)
[167] Zákon č. 48/1997 Sb., o veřejném zdravotním pojištění, ve znění pozdějších předpisů (Law No. 48/1997 Coll., on Public Health Insurance, as amended by later laws)

extended this benefit also to aliens who were granted a permit to stay on the territory of the Czech Republic for the purpose of temporary protection.

Article 36. Access to services of general economic interest

National legislation, regulation and case law

During the period under scrutiny there have not been any significant legislative initiatives which would affect the access to certain minimum services. Legislation in force, adopted with a view to enable progressive liberalisation of the markets in energy (electricity, gas) or in postal services, provides an obligation to conclude contracts with the protected customers or to provide basic services. The regulation authority is also able to impose to one or more operators an obligation to provide universal minimum services in telecommunications on the entire territory of the State. The same is true for the obligation of owners of railways to ensure necessary transportation services on the national or regional levels.

Article 37. Environmental protection

International case law and concluding observation of international organs

During the period under scrutiny, the Czech Republic has not been found to be in violation of any provisions of the European Convention on Human Rights regarding protection of the individual against environmental pollution (Articles 2 and 8 ECHR) by the European Court of Human Rights or by any other international control bodies. There also have not been adopted any significant judgments concerning the right of an individual to healthy environment by national courts.

National legislation, regulation and case law

At the constitutional level, environmental protection is incorporated in Art. 35 of the Charter of Fundamental Rights and Freedoms[168]. It provides for the right of an individual to a favourable environment. Everyone is entitled to obtain timely and complete information about the state of environment and natural resources. Detailed provisions are embodied in the Law No. 123/1998 Coll. of Laws, on the Right of Information about Environment, as amended by the Law No. 132/2000 Coll. of Laws[169], and in the Law No. 106/1999 Coll. of Laws, on Free Access to Information, as amended by the Laws No. 101/2000, 159/2000 and 39/2001 Coll. of Laws[170]. Under Article 35 par. 3 of the Charter of Fundamental Rights and Freedoms, nobody may endanger environment, natural resources, the variety of natural species, and cultural monuments, or cause damage to them in exercising his or her rights beyond limits set by law. Elements of crimes against environment and sanctions are contained in the Penal Code, Sec. 181a, 181b, 181c, 181d, 181e, 181f, 181g and 181h[171].

During the period under scrutiny, there have been adopted several laws concerning the environmental protection: the Law No. 148/2003 Coll. of Laws, on Genetic Resources of

[168] Listina základních práv a svobod, úst. zákon č. 2/1993 Sb. (Charter of Fundamental Rights and Freedoms, Const. Law No. 2/1993 Coll. of Laws).
[169] Zákon č. 123/1998 Sb., o právu na informace o životním prostředí, ve znění zákona č. 132/2000 Sb.
[170] Zákon č. 106/1999 Sb., o svobodném přístupu k informacím, ve znění pozdějších předpisů
[171] Trestní zákon, č. 140/1961 Sb., ve znění pozdějších předpisů, zejména zákon č. 134/2002 (Penal Code, Law No. 140/1961 Coll. of Laws, as amended mainly by Law No. 134/2002 Coll. of Laws)

Plants and Microbes[172], the Law No. 149/2003 Coll. of Laws, on the Trade in Reproduction Wood Material[173], the Law No. 162/2003 Coll. of Laws, on Zoological Gardens[174], which is compatible with the European Council Directive 1999/22/EC on Keeping Wild Animals in Zoos, and Council (EC) Regulation No 338/97 of 9 December 1996 on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein and the Convention on Biological Diversity[175]. This law regulates granting licences and supervision over the zoos, which are responsible for the maintenance of biological diversity. In the year 2003, there has also been enacted Law No. 276/2003 Coll. of Laws, on Antarctica[176]. The aim of this law is to ensure compliance with respect for international obligations set by the Antarctic Treaty (promulgated as Law No. 76/1962 Coll. of Laws[177]) and the 1991 Madrid Protocol to the Antarctic Treaty, on the Protection of Environment. During the period under scrutiny, the Parliament of the Czech Republic also passed the Law No. 356/2003 Coll. of Laws, on Chemical Substances and Materials[178], which is fully compatible with law of the European Communities.

The Parliament has just passed the amendment of the Law on Waters[179], implementing the European Council directives 75/440/ECC, 76/160/ECC, 76/464/ECC, 78/659/ECC, 80/68/ECC, as amended by the directives 90/656/ECC and 91/692/ECC, 91/271/ ECC, 91/676/ECC, 96/61/EC and the European Parliament and European Council Directive 2000/60/EC. Several proposals of acts concerning environmental protection are discussed in the Parliament during these days. The Draft Statute on Trade in Endangered Species[180] is in accordance with the Convention on the International Trade in Endangered Species[181] and the European Council Regulation (EC) 338/97 of 9 December 1996, Regulation (ECC) 348/81 of 20 January 1981, Regulation (ECC) 3254/91 of 4 November 1991 and the European Council Directive 83/129/ECC. The European Parliament and European Council Directive 2001/18/EC on the Deliberate Release into the Environment of Genetically Modified Organism and Repealing Council Directive 90/220/EEC is considered in the Draft Statute on Dealing with Genetic Modified Organisms and Genetic Products[182]. The Draft Statute on Fisheries[183] is also fully compatible with law of the European Union. The Draft Amendment of the Law on Fertilisers, No. 156/1998 Coll. of Laws[184], which shall implement the Council Directive No. 76/116/ECC relating to fertilisers, as amended by later directives, is now undergoing a discussion in the Parliament too, among with amendments of the Law on Air

[172] Zákon č. 148/2003 Sb., o konzervaci a využívání genetických zdrojů rostlin a mikroorganismů významných pro výživu a zemědělství a o změně zákona č. 368/1992 Sb., o správních poplatcích, ve znění pozdějších předpisů (zákon o genetických zdrojích rostlin a mikroorganismů)

[173] Zákon č. 149/2003 Sb., o uvádění do oběhu reprodukčního materiálu lesních dřevin lesnicky významných druhů a umělých kříženců, určeného k obnově lesa a k zalesňování, a o změně některých souvisejících zákonů (zákon o obchodu s reprodukčním materiálem lesních dřevin)

[174] Zákon č. 162/2003 Sb., o podmínkách provozování zoologických zahrad a o změně některých zákonů (zákon o zoologických zahradách)

[175] Úmluva o biologické rozmanitosti, zákon č. 134/1999 Sb. (Convention on Biological Diversity, Law No. 134/1999 Coll. of Laws)

[176] Zákon č. 276/2003 Sb., o Antarktidě

[177] Smlouva o Antarktidě, publikovaná pod č. 76/1962 Sb.

[178] Zákon č. 356/2003 Sb., o chemických látkách a chemických přípravcích a o změně některých zákonů

[179] Návrh zákona, kterým se mění zákon č. 254/2001 Sb., o vodách a o změně některých zákonů (vodní zákon), ve znění pozdějších předpisů, a zákon č. 239/2000 Sb., o integrovaném záchranném systému a o změně některých zákonů, ve znění pozdějších předpisů (Draft Amendment of the Law No. 254/2001 Coll. of Laws, and Law No. 239/2000 Coll. of Laws)

[180] Návrh zákona o ochraně volně žijících živočichů a planě rostoucích rostlin regulováním obchodu s nimi a dalších opatřeních k ochraně těchto druhů a o změně některých zákonů (zákon o obchodování s ohroženými druhy)

[181] Úmluva o mezinárodním obchodu ohroženými druhy volně žijících živočichů a planě rostoucích rostlin, vyhlášená pod č. 572/1992 Sb. (Law No. 572/1992 Coll. of Laws)

[182] Návrh zákona o nakládání s geneticky modifikovanými organismy a genetickými produkty

[183] Návrh zákona o rybníkářství, výkonu rybářského práva, rybářské stráži, ochraně mořských rybolovných zdrojů a o změně některých zákonů (zákon o rybářství)

[184] Zákon č. 156/1998 Sb., o hnojivech, pomocných půdních látkách, pomocných rostlinných přípravcích a substrátech a o agrochemickém zkoušení zemědělských půd (zákon o hnojivech)

Protection[185], implementing the European Council directives 91/692/ECC, 94/67/EC, 96/62/EC, 99/13/EC, 2000/76/EC and European Parliament and European Council Regulation 2037/2000 EC; the amendment of the Law on Protection of Nature and Landscape[186]; the amendment of the Law on Packages[187]; the amendment of the Law on Wastes[188] implementing many European Council directives (e. g. 75/442/ECC, 91/156/ECC, 75/439/ECC, 87/101/ECC, 78/176/ECC, 80/68/ECC, 86/278/ECC, 87/217/ECC); the amendment of the Law on Protection of Hops[189], implementing several European Council regulations (e.g. 1784/77, 1696/71, 1098/98) and European Commission regulations (e.g. 890/78, 3076/78 etc.); the amendment of the Law on Prevention of Serious Accidents Caused by Selected Dangerous Chemical Substances and Materials[190] implementing the European Council Directive 96/82/EC on the Control of Major-accident Hazards Involving Dangerous Substances; the amendment of the Law on the Environmental Impact Assessment[191] implementing the European Council directives 85/337/ECC, 97/11/EC and the European Parliament and European Council Directive 2001/42/EC; the amendment of the Law on Medical Care of Plants[192] implementing the European Council Directive 2001/18/EC, which foresees not only the horizontal regulation of GMOs but also the vertical one in several acts. This amendment provides the Ministry of Environment with some powers pertaining to the registration of GMOs. The amendment of the Law on Protection of Animals Against Ill-treatment[193] reflects law of the European Union, as well. The Parliament is discussing the approval on these treaties, too: the 1999 Protocol to Abate Acidification, Eutrophication and Ground-level Ozone to the 1979 Convention on Long-range Transboundary Air Pollution[194], the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters[195], and the Protocol to the Antarctic Treaty, on the Environmental Protection.

Article 38. Consumer protection

National legislation, regulation and case law

[185] Návrh zákona, kterým se mění zákon č. 86/2002 Sb., o ochraně ovzduší a o změně některých dalších zákonů (zákon o ochraně ovzduší), ve znění zákona č. 521/2002 Sb. (Draft Amendment of the Law No. 86/2002 Coll. of Laws, as amended by Law No. 521/2002 Coll. of Laws)

[186] Návrh zákona, kterým se mění zákon č. 114/1992, o ochraně přírody a krajiny, ve znění pozdějších předpisů

[187] Návrh zákona, kterým se mění zákon č. 477/2001 Sb., o obalech a o změně některých zákonů (zákon o obalech) (Draft Amendment of the Law No. 477/2001 Coll. of Laws)

[188] Návrh zákona, kterým se mění zákon č. 185/2001 Sb., o odpadech a o změně některých dalších zákonů, ve znění pozdějších předpisů

[189] Návrh zákona, kterým se mění zákon č. 97/1996 Sb., o ochraně chmele, ve znění pozdějších předpisů

[190] Návrh zákona, kterým se mění zákon č. 353/1999 Sb., o prevenci závažných havárií způsobených vybranými nebezpečnými chemickými látkami a chemickými přípravky, ve znění pozdějších předpisů, a související předpisy (Draft Amendment of the Law No. 353/1999 Coll. of Laws, and other relating laws)

[191] Návrh zákona, kterým se mění zákon č. 100/2001 Sb., o posuzování vlivů na životní prostředí a o změně některých souvisejících zákonů (zákon o posuzování vlivů na životní prostředí) (Draft Amendment of the Law No. 100/2001 Coll. of Laws, and other relating laws)

[192] Návrh zákona, kterým se mění zákon č. 147/1996 Sb., o rostlinolékařské péči a změnách některých souvisejících zákonů, ve znění pozdějších předpisů (Draft Amendment of the Law No. 147/1996 Coll. of Laws, and other relating laws)

[193] Návrh zákona, kterým se mění zákon č. 246/1992 Sb., na ochranu zvířat proti týrání, ve znění pozdějších předpisů (Draft Amendment of the Law No. 246/1992 Coll. of Laws, as amended by later laws)

[194] Vládní návrh, kterým se předkládá Parlamentu České republiky k vyslovení souhlasu Protokol k Úmluvě o dálkovém znečišťování ovzduší přesahujícím hranice států z roku 1979 k omezování acidifikace, eutrofizace a přízemního ozonu, podepsaný v Göteborgu dne 1. prosince 1999

[195] Vládní návrh, kterým se předkládá Parlamentu České republiky k vyslovení souhlasu Úmluva o přístupu k informacím, účasti veřejnosti na rozhodování a přístupu k právní ochraně v záležitostech životního prostředí (Aarhuská úmluva)

The strongest protection against discrimination can be found in relation to accesss to goods and services. Law on the Consumer Protection[196] in its Sec. 6 expressly prohibits any discrimination. Violation of this obligation is subject to severe financial sanctions.

As of January 1st, 2003, Law No. 115/2002, amending the Law on Consumer Protection, provided the right of consumer associations to initiate a collective action before courts for protection of consumer rights.

CHAPTER V : CITIZEN'S RIGHTS

Article 39. Right to vote and to stand as a candidate at elections to the European Parliament

During the period under scrutiny the Czech Parliament passed the Law on elections to the European Parliament.[197]

Article 40. Right to vote and to stand as a candidate at municipal elections

National legislation, regulation and case law

The Czech Republic is still preparing for ratification of the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144), this task being entrusted by the resolution of the Government to the Ministers of Home Affairs, Culture and Local Development. The Law on Municipalities[198] provides in Sec. 17 that the rights belonging to citizens of the municipality, including right to vote and to stand as a candidate at municipal elections, may have also foreign natural person (older than 18) with domicile in the municipality if this is provided by an international treaty binding on the Czech Republic. During the period under scrutiny there is no development in the area.

Article 41. Right to good administration

No significant developments to be reported.

Article 42. Right of access to documents

No significant developments to be reported.

Article 43. Ombudsman

No significant developments to be reported.

[196] Zákon č. 634/1992 Sb., ve znění pozdějších předpisů (Law no. 634/1992 Coll., as amended by later laws)
[197] Zákon č. 62/2003 Sb., o volbách do Evropského parlamentu (Law No. 62/2003 Coll., on Elections to the European Parliament)
[198] Zákon č. 128/2000 Sb., o obcích (obecní zřízení), ve znění pozdějších předpisů (Law no. 128/2000 Coll., as amended by later laws)

Article 44. Right to petition

No significant developments to be reported.

Article 45. Freedom of movement and of residence

National legislation, regulation and case law

At the constitutional level, freedom of movement and of residence is guaranteed in Art. 14 of the Charter of Fundamental Rights and Freedoms.

Law No. 222/2003 has amended several laws, in particular Law on the stay of foreigners on the territory of the Czech Republic, in conformity with the EU law.

Concerning the protection in case of extradition or expulsion, during the scrutiny period there have not been examined legislative changes in this area.

Article 46. Diplomatic and consular protection

National legislation, regulation and case law

Under Czech law there is no piece of legislation which would provide a subjective right of the Czech citizens or the EU citizens to diplomatic and consular protection.

CHAPTER VI : JUSTICE

Article 47. Right to an effective remedy and to a fair trial

International case law and concluding observation of international organs

During the period under scrutiny the Eur. Ct. H.R. found the Czech Republic to have violated Articles 6(1) or 13 ECHR in four cases. The first one was the case *Bořánková v. Czech Republic*.[199] The applicant, divorced in 1985, sought to achieve the division of the possessions belonging to the community of husbands. The proceedings started on 11 December 1985 and terminated on 1st February 2000 by the decision of the Constitutional Court. They lasted in total more 14 years and one month. However, in conformity with its case law, the Eur. Ct. H.R. took into consideration only the period after 18 March 1992 when the ECHR entered into force for Czechoslovakia; the delay then amounted to 7 years and 10 months. Although the case was of certain complexity, the Court found that the judicial proceedings had exceeded the reasonable time prescribed by Article 6(1) ECHR and afforded to the applicant the just satisfaction of 10.000 EUR for material loss and 5.000 EUR for moral injury.

The second and probably the most important case is *Hartman v. Czech Republic*.[200] The applicants, Mr. Jan Hartman and Mr. Jiří Hartman left the former Czechoslovakia in 1948 and their property was confiscated. After 1989, they sought for restitution of their former possessions in Želízy (near Mělník) and Prague. The proceedings initiated by the first applicant lasted from 1992 to 2002 when his claim was refused with the effect of *res iudicata*. The proceedings initiated by the second applicant in 1995 lasted until 2000 (before the

[199] Eur. Ct. H.R., *Bořánková v. Czech Republic*, judgment of 7 January 2003.
[200] Eur. Ct. H.R., *Hartman v. Czech Republic*, judgment of 10 July 2003.

tribunal in Mělník) and 2002 (before the tribunal in Prague). Before the Eur. Ct. H.R. the applicants invoked the alleged violation of Articles 6(1) and 13 ECHR. The Court decided that the delay of the three proceedings, taking into consideration the complexity of case and the age and health condition of the applicants, did not satisfy „reasonable delay". Of particular interest, however, is rather the decision of the Court concerning the violation of Article 13. Following to its judgment *Kudla v. Poland*,[201] the Court decided that neither the hierarchical complaint (to the President of the respective tribunal and the Ministry of Justice), nor the complaint to the Constitutional Court was an effective remedy against unreasonable delays. In particular, the Constitutional Court is only able to issue an injunction against the delays in proceedings, but there is no sanction in case where the tribunal does not obey to it. Moreover, the Constitutional Court is not competent to afford any compensation for the delays. This lacuna is not remedied by a possibility of action against the State under the Law No. 82/1998.[202] This law does not make possible indemnity for moral injury, which is the usual damage in cases of unreasonable delays in judicial proceedings. That is why the Court decided that Article 13 had also been violated and the Czech Rep. must pay a just satisfaction for moral injury.

The third case *Schmidtová v. Czech Republic*[203] is of lesser interest. The applicant, a widow of the former owner of large land property in Brno, confiscated in 1945 under the decree No. 15/1945 and nationalized in 1956. The civil proceedings in the restitution case according to Law No. 229/1991 and Law No. 243/1992 started before the Land Office in Brno in December 1992. Taking into account the moment when the administrative procedure had to be completed (February 1993), the delay amounted to 10 years and 3 months at the date of judgment, while the civil proceedings were still pending. Therefore, the Court decided that Article 6(1) ECHR had been violated and refused the alleged violation of Article 1 of the Protocol No. 1 because of non-exhaustion of internal remedies.

The fourth case *Kreditní a průmyslová banka v. Czech Republic* is more interesting.[204] The applicants were the above mentioned bank with the registered seat in Prague and Mr. Antonín Moravec, president of the board of directors and majority share-holder of the bank. The application of Mr. Moravec was declared inadmissible by the Eur. Comm. H.R. already in May 1998. As to the application of the bank, the Eur. Ct. H.R. decided that the administrative decision of the Czech National Bank to impose and to maintain compulsory administration in the bank had impact on its right to dispose of its property and therefore was within the scope of application of Art. 6 ECHR. It is violation of a right to fair trial if only the compulsory administrator would be able to challenge the imposition of compulsory administration before a court. The Eur. Ct. H.R. found violation of Article 6(1), declaration of which was considered to be a sufficient just satisfaction for moral injury, and afforded to the applicant the sum of 10.000 EUR for expenses.

National legislation, regulation and case law

It seems that delays in judicial proceedings remain the most frequent problem to which the Czech Republic has to face in cases before the Eur. Ct. H.R. Until the recent amendment to the Law on Tribunals and Judges[205] there have not been an effective remedy guaranteed to the individual against unreasonable delays in judicial proceedings. This conclusion was confirmed by the Eur. Ct. H.R. in the case *Hartman* (see above). The 2003 amendment to the

[201] Eur. Ct. H.R., *Kudla v. Poland* [GC] judgment of 26 October 2000, CEDH 2000-XI, §§ 156-158.
[202] Zákon č. 82/1998 Sb., o odpovědnosti za škodu způsobenou při výkonu veřejné moci rozhodnutím nebo nesprávným úředním postupem [Law No. 82/1998 Coll., on State responsibility for damage caused in exercise of public power by decision or incorrect official procedure]
[203] Eur. Ct. H.R., *Schmidtová v. Czech Republic*, judgment of 22 July 2003.
[204] Eur. Ct. H.R., *Kreditní a průmyslová banka v. Czech Republic*, judgment of 21 October 2003.
[205] Zákon č. 6/2002 Sb., o soudech a soudcích, ve znění pozdějších předpisů [Law No. 6/2002 Coll., on Tribunals and Judges, as amended by later laws]

Law[206] brought the new Sec. 174a concerning a proposal to set a specific delay for a procedural act. This provision is common to all judicial proceedings (i.e. in civil, administrative and criminal matters). The applicant will be able to require the tribunal to set a delay for a certain procedural act. The inactive tribunal of lower instance shall transmit the application within five working days to the tribunal of higher instance competent to decide in the matter. The competent tribunal shall take decision within 20 working days and the fixed delay shall be binding on the lower tribunal.

However, a finding that judicial proceedings have exceeded the reasonable time prescribed by Article 6(1) ECHR, even in the form of judgment of the Eur. Ct. H.R., does not entail a right to reparation from the State for the damage caused by the delay (except of material damage clearly linked to the wrongful act). It is not possible to initiate a revision of criminal proceedings either.

Another problem is the right to legal aid. At present, this right is provided in a dispersed way in various laws, in particular in Secs. 30, 31, 138, 140(2), 149(2) of the Civil Procedure Code, Secs. 35(7) and 36(3) of the Administrative Procedure Code and Secs. 33(2),(3) and 51a of the Criminal Procedure Code. Under certain conditions (only for complaints which have not been declared inadmissible) also the Constitutional Court may grant a legal aid according to the Law on the Constitutional Court, but only at a later stage and not from the beginning of proceedings.[207] To sum up the legislation in force, the individual has no choice of legal counsel as he or she is not able to pay the fees and, as a consequence, to conclude a contract with a lawyer. The counsel (or defense lawyer) is always appointed by the competent court or tribunal, which does not decide *ex officio* but on request of the interested person. Legal aid may be granted on the basis of unfavourable property and social situation, in respect of which the person seeking the aid has a burden of proof. In civil and administrative matters is the possibility of legal aid strictly linked to conditions prescribed for a waiver of judicial fees. The main problem is a too broad margin of appreciation of judges, especially in civil and administrative justice. Therefore, a claimant can hardly foresee whether the required legal aid will or will not be granted. The legislation applies only to legal representation in proceedings before courts and tribunals but not before administrative organs where there is no right to legal aid at all. This lacuna may be sensitive *inter alia* for asylum seekers and undocumented aliens facing to administrative expulsion or taking part in other administrative proceedings. The situation is partly remedied by legal aid from NGOs acting in this area (for ex. Czech Helsinki Committee, Organization for Aid to Refugees, etc.).

Yet another form of legal aid is ensured under Law on Czech Bar Association.[208] According to Sec. 18, an individual, who is not able to get legal services under this law, may ask the Czech Bar Association which will appoint a lawyer. If the Bar decides that the appointed lawyer is obliged to provide legal services for free or for reduced fees, the lawyer must do so. Neither the client, nor the State pays for it.

As the current situation has not been fully satisfactory, the Government approved (in Spring 2003) principles of new legislation on legal aid and charged the Minister of Justice to present a draft law until the end of 2003. According to the above principles, the new law should apply on all proceedings before courts and tribunals, at all stages, incl. cases where an application is lodged through a lawyer. Legal aid will be granted to any natural person who meets criteria of property and social situation (and also to juridical persons under certain circumstances). A burden of proof will be on the applicant, but the law shall specify a model application form for legal aid and information relevant for assessment of property and social situation. Legal

[206] Law No. 192/2003 Coll.
[207] Zákon č. 182/1993 Sb., o Ústavním soudu [Law No. 182/1993 Coll., on Constitutional Court], § 83.
[208] Zákon č. 85/1996 Sb., o advokacii, ve znění pozdějších předpisů [Law No. 85/1996 Coll., on the Bar, as amended by later laws]

aid should be granted, in principle, by lawyers admitted to the Bar, whose fees would be paid by the State.

Article 48. Presumption of innocence and right of defence

International case law and concluding observation of international organs

During the period under scrutiny the Czech Republic was not found by the Eur. Ct. H.R. to have committed violations of Art. 6(2) or 6(3) ECHR. Other international organs did not find similar violations of the conventions within their competence.

National legislation, regulation and case law

During the period under scrutiny no significant changes in legislation, in particular in Criminal Procedure Code, have been adopted.

Article 49. Principles of legality and proportionality of criminal offences and penalties

International case law and concluding observation of international organs

During the period under scrutiny neither the Eur. Ct. H.R., nor the Human Rights Committee found violations of relevant articles (Art. 7 ECHR, Art. 15 ICCPR).

National legislation, regulation and case law

During the period under scrutiny no significant changes in legislation, in particular in Penal Code, have been adopted. In the framework of prepared re-codification of the penal law of the Czech Republic, the draft new penal code has been presented by the Ministry of Justice to the Government. The draft penal code is based on the following fundamental principles:
- subsidiary role of penal law as *ultima ratio* of the protection of individuals and the society;
- nullum crimen/nulla poena sine lege;
- prohibition of retroactive effects of more severe law;
- prohibition of analogy *in malam partem*;
- individual criminal responsibility of natural persons which does not preclude criminal responsibility of juridical persons under conditions set in special law;
- criminal responsibility based on fault;
- application and enforcement of sanctions must respect proportionality of penalties in relation to the serious nature of the offence and the personality of the offender.

Article 50. Right not to be tried or punished twice in criminal proceedings for the same criminal offence

International case law and concluding observation of international organs

During the period under scrutiny neither the Eur. Ct. H.R., nor the Human Rights Committee found violations of relevant articles (Art. 4 of Protocol 7 ECHR, Art. 14 par. 7 ICCPR).