

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

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

IN 2005

submitted to the Network by **Professor Pavel STURMA***

on 15 December 2005

Reference: CFR-CDF/CZ/2005



The E.U. Network of Independent Experts on Fundamental Rights has been set up by the European Commission upon request of the European Parliament. It monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. It issues reports on the situation of fundamental rights in the Member States and in the Union, as well as opinions on specific issues related to the protection of fundamental rights in the Union

* This report was prepared within the Department of International Law, Charles University in Prague, Faculty of Law, by Prof. Dr. Pavel Šturma with collaboration of Dr. Mgr. Veronika Bílková, E.MA, Mgr. Věra Honusková and Dr. Ing. Jan Kratochvíl.

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Le Réseau UE d'Experts indépendants en matière de droits fondamentaux a été mis sur pied par la Commission européenne (DG Justice, liberté et sécurité), 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 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 (suppléant Birgitte Kofod-Olsen) (Danemark), Henri Labayle (France), Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), François Moyse (Luxembourg), Bruno Nascimbene (Italie), Manfred Nowak (Autriche), Marek Antoni Nowicki (Pologne), Donncha O'Connell (Irlande), Ilvija Puce (Lettonie), Ian Refalo (Malte), Martin Scheinin (suppléant Tuomas Ojanen) (Finlande), Linos Alexandre Sicilianos (Grèce), Pavel Sturma (Rép. Tchèque), Edita Ziobiene (Lituanie). Le Réseau est coordonné par O. De Schutter, assisté par V. Van Goethem.

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, Freedom and Security), 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.

The EU Network of Independent Experts on Fundamental Rights is composed of Florence Benoît-Rohmer (France), Martin Buzinger (Slovak Republic), Achilleas Demetriades (Cyprus), Olivier De Schutter (Belgium), Maja Eriksson (Sweden), Teresa Freixes (Spain), Gabor Halmai (Hungary), Wolfgang Heyde (Germany), Morten Kjaerum (substitute Birgitte Kofod-Olsen) (Denmark), Henri Labayle (France), Rick Lawson (the Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), François Moyse (Luxembourg), Bruno Nascimbene (Italy), Manfred Nowak (Austria), Marek Antoni Nowicki (Poland), Donncha O'Connell (Ireland), Ilvija Puce (Latvia), Ian Refalo (Malta), Martin Scheinin (substitute Tuomas Ojanen) (Finland), Linos Alexandre Sicilianos (Greece), Pavel Sturma (Czech Republic), and Edita Ziobiene (Lithuania). The Network is coordinated by O. De Schutter, with the assistance of V. Van Goethem.

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CHAPTER I. DIGNITY

Article 1. Human dignity

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

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

Article 2. Right to life

Since November 2004, the Czech Republic has been bound by the Protocol to the European Convention on Human Rights, providing for the abolition of the death penalty in all circumstances.

Euthanasia

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny, the Assembly of Deputies of the Parliament has passed the new Penal code which includes, *inter alia*, a new, special definition of crime „*killing on request*“. 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 (up to six years of imprisonment), in comparison with crime of murder. Act of euthanasia presumed in the above said Code covers cases of requested voluntary euthanasia. It does not distinguish between active and passive euthanasia. The new Code does not cover cases of medical treatment when there is no consent of the patient. If approved by the Senate and signed by the President of Republic, the new Penal Code will enter into force in 2007.

Domestic violence

Legislative initiatives, national case law and practices of national authorities

The amendment to the Penal Code (by Act No. 91/2004 Coll.) introduced a new Sec. 215a, making a special punishable offence „maltreatment of a person living in common with a perpetrator in an apartment or house“. Since this amendment, there is no significant development. In November 2005, however, amendments to several laws have been under discussion in the Chamber of Deputies of the Parliament. The main proposal aims at granting the police a new power to expel a perpetrator of domestic violence from a common apartment in order to protect a victim against a menace of continuing maltreatment.

Article 3. Right to the integrity of the person

Breaches of the right to the integrity of the person

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

During the period under scrutiny, the Czech Republic has signed but not yet ratified the 2005 Protocol on Biomedical Research, additional to the Convention on Human Rights and Biomedicine.

Legislative initiatives, national case law and practices of national authorities

The Transplantation Act¹ has been amended by the Act No. 228/2005 Coll.,² which introduced, *inter alia*, a system of licensing by the Ministry of Health for the export and import of human organs and tissues.

Other relevant developments*Legislative initiatives, national case law and practices of national authorities*

The Chamber of Deputies of the Parliament adopted a draft Act concerning research on human embryonic stem cells. This new Act regulates conditions of scientific research on human embryonic stem cells. It does not allow to the creation of human embryos for research purposes. The Act only makes it possible for the licensed research centres, accredited by the Ministry of Education, to use stem cells taken from the redundant embryos produced in the medical centres of assisted reproduction in the Czech Republic.

Article 4. Prohibition of torture and inhuman or degrading treatment or punishmentConditions of detention and external supervision of the places of detention*Penal institutions and institutions for the detention of persons with a mental disability**International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up*

During the period under scrutiny, the Czech Republic has not been found to be in a violation by the European Court of Human Rights of Article 3 of the ECHR or by any other international organ of violation of prohibition of torture, inhuman or degrading treatment or punishment.

However as was stated in the last year report the Committee against Torture considered the third periodic report of the Czech Republic and adopted several conclusions and recommendations (CAT/C/CR/32/2) in 2004 and also the report of the Committee for the Prevention of Torture, which visited the Czech Republic from 21 to 30 April 2002, was published (CPT/Inf (2004) 4). A follow-up response of the Government of the Czech Republic to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was published on 14 April 2005 (CPT/Inf (2005) 5).

In its follow-up report the Czech Republic further commented on some of the recommendations of the CPT.

No improvement during the period under scrutiny was made in the area of safeguards against ill-treatment at police establishments. The Czech legislation does not stipulate the basic safeguards against ill-treatment proposed by CPT for all persons deprived of their liberty: access to lawyer, access to doctor of own choice and notification of a third person. There was no development in this matter during the period under scrutiny. In the follow-up report the Government outright refused the idea of access to a doctor of own choice: "However, under the new Health Care Bill prepared by the Ministry

¹ Zákon č. 285/2002 Sb., o darování, odběrech a transplantacích tkání a orgánů [Act No. 285/2002 Coll., on Donation, Taking and Transplantation of Tissues and Organs].

² Zákon č. 228/2005 Sb., o kontrole obchodu s výrobky, jejichž držení se v České republice omezuje z bezpečnostních důvodů, a změně některých zákonů [Act No. 228/2005 Coll., concerning Control of Trade in Goods Restricted in the Czech Republic for Security Reasons, and amending some Acts].

of Health not even a person detained in a police cell would have the right to a free choice of doctor. The Ministry of the Interior supports this proposal.”³

As regards establishments for persons with a mental disability, the CPT, among others, recommended that: “The CPT is of the opinion that net- and cage-beds are not an appropriate means of dealing with patients/residents in a state of agitation. It recommends that cage-beds be immediately withdrawn from service and that net-beds cease to be used as a tool for managing such persons as soon as possible.” The Czech Government has only partially observed this recommendation. There was no legislative development in the institutions under the Ministry of Health during the period under scrutiny, as the use of cage-beds has been already banned, use of net-beds restricted. However, the Ministry of Health has issued the Methodical Instruction concerning the use of means of restraint in psychiatric institutions of the Czech Republic.⁴ In the institutions under the Ministry of Labour and Social Affairs the use of the cage-beds and net-beds has not been banned. However, a new law was enacted that regulates their use (see below).

Legislative initiatives, national case law and practices of national authorities

In the preparation of ratification of the Optional Protocol to the Convention against Torture (OPCAT) the Czech Republic passed an Act amending Law No. 349/1999 Coll. on the Public Protector of Rights⁵. The act was promulgated on 1 October 2005 and comes into effect on 1 January 2006.⁶ Under this amendment the Czech Ombudsman should be able to carry out random inspections of all places where freedom of persons is restricted by public order. That explicitly includes, but is not limited to, prisons, police cells, centres for the detention of foreigners, centres for asylum seekers, establishments for persons with mental disability etc. The powers of the ombudsman in carrying this task are drawn similarly to the powers of the CPT, or Subcommittee on Prevention of Torture that will be established under the OPCAT and his powers correspond to the requirements of the national preventive mechanism as stipulated in the OPCAT. To carry out this tasks Ombudsman’s Office will have additional twenty employees.

An amendment to the Act on Social Security⁷ was promulgated on 3 June 2005 and took effect on 1 October 2005.⁸ It regulates the use of means of restraints in social care institutions, which previously was not regulated by law despite the fact that all means including cage-beds were used in practice. The Amendment was criticised by many human rights NGOs including Mental Disability Advocacy Center. They argued that the amendment legalises the use of cage-beds and does not stipulate enough safeguards for misuse of means of restraint and does not encourage alternative means.

The new Sec. 89a of the Act purports to regulate restraint use in all social care institutions. Over 17,000 Czech adults and children with mental health problems, intellectual disabilities or substance abuse problems live in social care institutions. However, the law regulates the use of restraints inadequately, not taking into account the recommendations set up by the CPT on its last visit. The law legalizes the use of any sorts of restraint (including cage-beds), allows employees of social care homes (rather than doctors) to decide on restraint use, does not oblige staff to attempt less restrictive measures before using restraints. Other shortcomings of the law include that it mandates no supervision of an individual being restrained and contains no mechanism for victims to complain against restraint use.

³ CPT/Inf (2005) 5, pp.4.

⁴ Cf. Bulletin of the Ministry of the Czech Republic No. 1/2005.

⁵ Zákon č. 349/1999 Sb. o veřejném ochránci práv. [Act No. 349/1999 Coll., on Public Protector of Rights]

⁶ Zákon č. 381/2005 Sb., kterým se mění zákon č. 349/1999 Sb., o veřejném ochránci práv, ve znění pozdějších předpisů, a některé další zákony [Act No. 381/2005 Coll., amending Act No. 349/1999 Coll., on Public Protector of Rights, as amended by later acts]

⁷ Zákon č. 100/1988 Sb., o sociálním zabezpečení [Act No. 100/1988 Coll., on Social Security].

⁸ Zákon č. 218/2005 Sb. [Act No. 218/2005 Coll., amending Act No. 100/1988 Coll., on Social Security].

The provision of the Act should be replaced by a new text incorporated in the new Act on Social Services. The proposed text in the draft Act on Social Services contains some of the above mentioned safeguards that the current legislation lacks. The draft is currently considered by the Parliament.

Legislative initiatives, national case law and practices of national authorities

Positive aspects

The amendment to the Law on the Public Protector of rights established fully independent preventive mechanism against ill-treatment in places of detention that fulfils all the international criteria. However if the system will be effective in practice cannot be evaluated yet as the amendment enters into force on 1 January 2006.

An amendment to the Civil Procedure Code was promulgated on 27 May 2005 and took effect on 1 August 2005.⁹ It amended the provisions dealing with the procedure when the court decides on mental capability of a person. During the proceedings a court can decide, in order to obtain evidence, to place the person for a period of maximum three months into a health care institution where his/her mental capability will be studied. By the amendment the period is shortened to 6 weeks.

A decision was taken to build two new prisons with a capacity of app. 600 inmates. That could reduce the problem of overcrowding and they should conform with hygienic standards that some of the older prisons do not.

Following to the critiques from international control bodies and the Czech Public Protector of Rights (ombudsman), the Parliament has adopted an amendment to the Act on Social Security.¹⁰ The amendment (Sec. 89a) has limited the use of cage-beds in the establishments of social care only to situations that pose an immediate danger to life of persons and only for a period strictly necessary. In addition, the amendment has provided for an immediate information on and following up cases of the use of cage-beds and similar means of restrain. Although this amendment has provided for a necessary legal framework for the use of means of restrain, it was criticised by human rights NGOs (see above).

Good practices

The Ministry of Health has issued the Methodical Instruction concerning the use of means of restraint in psychiatric institutions of the Czech Republic.¹¹ It applies not only to the use of net-beds but also to other means of restraint. They may be used only as an exceptional, last-resort measure, where the risk arising from the behaviour of a patient is too high. Their use must be proportionate, the least severe and the most appropriate means shall be used in respect of each patient. A decision on the use of such means is up to the medical doctor. In case of adults admitted to the institution with their consent, the use of means of restraint shall imply the information to the court, unless the consent of the patient with the restraint would be given. In other cases, the information to and the consent of the legal representative of the patient has to be sought.

Reasons for concern

The amendment to the Act on Social Security does not fully correspond to the human rights standards concerning the use of means of restraints on persons with a mental disability as argued above.

⁹ Zákon č. 205/2005 Sb.

¹⁰ Zákon č. 218/2005 Sb., kterým se mění zákon č. 100/1998 Sb., o sociálním zabezpečení. [Law No. 218/2005 Coll., amending Law No. 100/1998 Coll., on Social Security]

¹¹ Cf. Bulletin of the Ministry of the Czech Republic No. 1/2005.

Overcrowding continues to be a problem throughout the Czech prison system. According to Regulation No. 345/1999 Coll. on the Rules of serving imprisonment sentences¹² it is a rule that there must be a minimum of 4 m² of space per prisoner. The prison service does not publish data on overcrowding. However, according to the Czech Helsinki Committee estimates if the figure 4 m² per prisoner should be met then Czech prisons are filled up to 130 %. The total number of prisoners rose from app 15.000 at the beginning of year 2005 to app 16.200 at the end of August 2005.

Most of the prisons have as a standard accommodation large-scale dormitory-style cells for 8-15 people (exceptionally even 20).

High rate of unemployment amongst prisoners. Slightly less than half prisoners are employed. There is no incentive for private enterprises to employ prisoners. The Czech Helsinki Committee suggested that the Government might consider tax advantages for enterprises employing prisoners or advantages in access to public procurements.

According to the Czech Helsinki Committee there is a lack of specialised personnel (wardens, pedagogical assistants) that come into direct educational contact with inmates in standard prisons and their number is even being reduced. That results in poor organisation of regime activities in such establishments. That in connection with high unemployment and overcrowding is likely to have detrimental effect on behaviour of prisoners and violence and/or bullying can flourish.

Hygienic conditions in some prisons are unsatisfactory. There is no legislation regulating hygienic conditions in prisons. Czech Helsinki Committee reports cases where toilets are directly in prison cells, sometimes behind a curtain sometimes even not, and a drinking water tap is right above the toilet bowl.

Centres for the detention of foreigners

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The Czech Government reacted to concerns of the CPT on the situation in centres for the detention of foreigners and also to criticism of human rights organization and the Czech Ombudsman and prepared an Amendment to the Foreigners Act¹³ which completely amends the Chapter about detention centres of foreigners. The Act was promulgated on 25 October 2005 and came into effect 30 days after promulgation.¹⁴

The Act generally improves the conditions of detention. The main changes include change of the facility operator. Authorization to set up and run facilities transferred from the police to the Ministry of the Interior; the role of operator will be entrusted by the Ministry to an organizational component of the State [*the State's agency*] established for this purpose. This move will restrict the presence of police officers in such facilities to a minimum (they will only be required to carry out essential action and tasks), and all staff will be civilians.

¹² Vyhláška Ministerstva spravedlnosti č. 345/1999 Sb., kterou se vydává řád výkonu trestu odnětí svobody, ve znění pozdějších předpisů. [Regulation of the Ministry of Justice No. 345/1999 Coll., on the Rules of serving imprisonment sentences].

¹³ Zákon č. 326/1999 Sb., o pobytu cizinců na území České republiky a o změně některých zákonů [Act No 326/1999 Coll., on the residence of foreigners on the territory of the Czech Republic and on an amendment to certain laws].

¹⁴ Zákon č. 428/2005 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, a některé další zákony [Act No. 428/2005 Coll., amending Act No. 326/1999 Coll.]

The Act retained the division of facilities into a section with a lenient detention regime and a section with a strict detention regime. However the reasons for placement into strict detention regime are narrower. A foreigner can be placed into the strict regime only if he/she a) is aggressive or requires increased supervision for other serious reasons (e.g. requires increased supervision because he has manifested suicidal or self-harm tendencies), b) the foreigner repeatedly and seriously breaches the internal rules of the facility, or c) the foreigner repeatedly and seriously breaches an obligation or prohibition under the Foreigners Act (e.g. harbours and consumes alcoholic beverages or narcotic substances). Detention in the section with the strict regime will be possible from the beginning of detention or in the course of detention in the lenient regime. Placement in the strict regime may last for a maximum of 30 days; in warranted cases this form of detention may be extended for a maximum of 30 days. The police unit which decides to place a foreigner in the section with the strict regime will be obliged to keep checking, throughout the duration of the foreigner's placement in this strict regime, whether the reasons for the placement in this section of the facility still exist; if the grounds for such placement no longer exist, the police will be obliged to relocate the foreigner to the section with the lenient regime without undue delay. These much stricter conditions for placement into the stricter regime correspond to the recommendation of the CPT with the exception that no written decision is issued on the placement of a foreign detainee in the strict regime as the CPT required.

The amendment also improved information delivered to the foreigners. It contains a provision where the facility operator is obliged to inform detained foreigners, when they are placed in the facility (or without any delay after this placement), of their rights and obligations related to their stay in the facility and of the internal rules of the facility. The facility operator shall provide this information to foreigners in their native language or in a language they are able to understand. The facility's internal rules will be published in Czech, English, French, German, Russian, Spanish, Chinese, Arabic, Vietnamese, Hindi, and other languages if required to provide detainees with the necessary information.

The Act also guarantees a minimum of one hour of outdoor exercise per day for all detainees (including those in the strict regime) as recommended by the CPT.

The Act also amended the practice concerning clothing of foreign nationals and stipulates that during their stay at a facility foreigners will use their civilian clothes as was recommended by the CPT and in no way will institutional uniform be introduced.

The CPT also recommended that the religious requirements and dietary habits of foreign nationals held at Bálková centre be taken fully into account. The amendment to the Foreigners Act lays down that detained foreigners will be provided with food corresponding to the principles of correct nutrition and the state of health of foreigners. Wherever possible, the selection of food will take account of practices related to the religious beliefs of detained foreigners.

CPT recommendation that the visit entitlement for foreign nationals be significantly increased has been also addressed by the amendment. Currently foreigners are entitled to receive a one-hour visit, comprising a maximum of four persons present at any one time, once a week as opposed to two persons every three weeks to a maximum of 30 minutes under the old legislation. In warranted cases, the facility manager or his deputy may, subject to agreement with the police, permit visits at intervals of less than one week and for a period of more than one hour. Where the capacity of visiting rooms allows, a larger number of visitors may also be permitted. No restrictions apply to visits of persons providing foreigners with legal assistance.

Fight against the impunity of persons guilty of acts of torture

Legislative initiatives, national case law and practices of national authorities

At the end of July a techno party with between 5,000 to 10,000 participants was organized (so called Czechtek 2005). The police decided to take action against the participants who found themselves on

private lands, partly without the consent of owners. However there are extensive reports that the police used excessive force during the action against predominantly peaceful participants. Human rights NGOs (League of Human Rights, Iuridicum Remedium) documented dozens of cases that could amount to inhuman or degrading treatment (kicking and beating persons lying on the ground, using pepper spray right into person's eyes when the person asked a policeman about something). Dozens of criminal complaints on policeman and some civil actions were taken by the participants. The criminal complaints are under investigation by the Inspection of the Minister of Interior which is the body that investigates criminal complaints on police behaviour.

The fact that in the Czech Republic there is no independent mechanism of police oversight and investigation of complaints on police has been criticised by many international human rights bodies as was stated in the last year report. In connection with the police action on Czechtek 2005 it was again addressed by many NGOs. Amnesty International headquarters in London issued a statement that: "AI is particularly concerned by the fact there is no impartial mechanism for investigating complaints about police conduct that would be independent on the Ministry of Interior."¹⁵

Reasons for concern

There continues to be no external control of the police and complaints about ill-treatment by police continue to be investigated by either internal inspection within the police or by the Inspection of the Minister of Interior. A fact that has been disapproved of by many international human rights bodies as has been stated in the last year report. Moreover no official public debate, despite attempts by the civil society on a prospective change has started due to opposition of government officials and police itself.

Article 5. Prohibition of slavery and forced labor

Fight against the prostitution of others

Legislative initiatives, national case law and practices of national authorities

The Ministry of Interior has prepared a draft law on the regulation of prostitution (as an independent profession under certain conditions). This proposal has been approved within the legislative bodies of the Government and by the Government. It has been under discussion in the Chamber of Deputies of the Parliament. In order to ensure compatibility between the new act and international obligations, the Czech Republic should denounce or withdraw from the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others. This remains to be a controversial issue.

Trafficking in human beings

Legislative initiatives, national case law and practices of national authorities

According to Sec. 232a of the Penal Code, trafficking in human beings is a punishable offense. It covers all forms of criminal participation which aim at using a person under 18 years of age for the purpose of sexual intercourse or other forms of sexual abuse, slavery or servitude, forced labour or other forms of exploitation. During the period under scrutiny there has not been any significant development in this area.

¹⁵ <http://www.amnesty.cz/main.php?sec=3&art=176&from=0>

Protection of the child

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny there has not been any significant development in this area. Already in 2004, criminal law protection of the child has been reinforced by amendment to Penal Code (new sec. 232a on Trafficking in human beings). Additionally, Law No. 436/2004¹⁶ has amended Sec. 11 (2) of the Labour Code, according to which labour of natural persons until the age 15 years or from 15 years of age up to the completion of compulsory school education shall be forbidden. The prohibition also includes child work in the family business. Such persons may only exercise artistic, cultural, advertising or sport activities under certain conditions.

Exploitation of undocumented workers

Legislative initiatives, national case law and practices of national authorities

Already the Act No. 436/2004¹⁷ has amended Law on the Stay of Foreigners to the effect that Labour offices shall be obliged to notify immediately the police of employment of foreign workers without a permission to stay or in other irregular situations. In the exercise of control over stay of foreigners, police, acting in cooperation with labour offices, is entitled to enter the premises of the employers. During the period under scrutiny there has not been any significant development in this area.

There are no official numbers of undocumented or illegally residing workers. Most of them are nationals of Ukraine and other East European countries. The risk of exploitation of such undocumented workers is high.

¹⁶ Zákon č. 436/2004 Sb., kterým se mění některé zákony v souvislosti s přijetím zákona o zaměstnanosti [Law No. 436/2004 Coll., amending certain acts in connection with adoption of the Law on Employment]

¹⁷ Ibid.

CHAPTER II. FREEDOMS**Article 6. Right to liberty and security**Pre-trial detention.

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The Czech Republic was found to be in violation of Article 5, par. 4 of ECHR in case *Vejmola*.¹⁸ The applicant in a pre-trial detention challenged the lawfulness of his detention. However, the Regional court in Ostrava failed to decide speedily the proceedings initiated by the applicant against his continuing detention.

Legislative initiatives, national case law and practices of national authorities

The Constitutional Court has decided to cancel the provision of Sec. 242, par. 2 of the Criminal Procedure Code, concerning the non-public sitting of tribunals, as under Art. 5, par. 4 ECHR, an accused person has the right to hearing before the judicial decision on lawfulness of his continuing detention.¹⁹

Deprivation of liberty for juvenile offenders

Legislative initiatives, national case law and practices of national authorities

An amendment to the Act on Execution of Institutional Care²⁰ was passed.²¹ The amendment was criticized by NGOs dealing with rights of a child, as it allows the placement of children who have been found guilty of acts that would normally constitute a crime, and were sentenced to so-called protective care, to the same establishments as children in a so-called institutional care. Children are placed to institutional care for variety reasons – they are orphans, for social situation of their families etc. However by placing children under institutional care in the same institution with young delinquents under protective care might result in their pathological development.

Deprivation of liberty for foreigners

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Czech Republic was found to be in violation of Art. 5 ECHR in case of *Singh v. the Czech Republic*.²² The case concerned two non-Czech nationals who were found guilty of crime of helping other people to unlawful crossing of the national border and sentenced to extradition. Subsequently they were held in detention before their extradition could be executed as they did not possess passports. Their

¹⁸ Eur. Ct. H.R. (2nd Chamber), *Vejmola v. the Czech Republic* (Appl. No. 57246/00), judgment of 25 October 2005.

¹⁹ Constitutional Court, Judgment of 22 March 2005, published under No. 239/2005 Coll.

²⁰ Zákon č. 109/2002 Sb., o výkonu ústavní výchovy nebo ochranné výchovy ve školských zařízeních a o preventivně výchovné péči ve školských zařízeních a o změně dalších zákonů [Act No. 109/2002 Coll., on Execution of Institutional Care or Protective Care].

²¹ Zákon č. 383/2005 Sb., kterým se mění zákon č. 109/2002 Sb., o výkonu ústavní výchovy nebo ochranné výchovy ve školských zařízeních a o preventivně výchovné péči ve školských zařízeních a o změně dalších zákonů, ve znění pozdějších předpisů a další související zákony [Act No. 383/2005 Coll., amending the Act No. 109/2002 Coll.].

²² Eur. Ct. H.R. (2nd Chamber), *Singh v. The Czech Republic* (Appl. n° 60538/00) judgment of 25 January 2005.

detention lasted for two years and a half before they were released. The Eur. Ct. H.R. found this period to be excessive and said that the responsible authorities should have been more active in obtaining travel documents for the applicants. Thus the Eur. Ct. H.R. found a violation of Article 5 § 1 f) of the ECHR.

Legislative initiatives, national case law and practices of national authorities

An Amendment to the Foreigners Act²³ was passed, which amended provisions about detention of foreigners about who proceedings about their removal have started. The Bill was promulgated on 25 October 2005 and came into effect 30 days after promulgation.²⁴

Under these provisions foreigners can be detained if there is a danger that they might threaten national security, seriously disturb public order or thwart or hinder the execution of the removal. The amendment stated that only foreigners older than 15 years can be detained. And foreigners from the age of 15 to 18 can be detained only up to 90 days in comparison to 180 days of adult foreigners. These amendments according to government reasoning should better fulfil the obligations arising from Article 37 (b) of the Convention on the Rights of the Child.

Other relevant developments

Reasons for concern

There continue to be provisions in the Law No 283/1991 Coll., on the Police Force of the Czech Republic²⁵ that allow policemen to apprehend a person for up to 24 hours without any possibility of a review by a state attorney or a judge. Reasons for such an apprehension are listed in Sec. 14 of the Act. The reasons are too broad and some of them do not correspond to Article 5 of the ECHR and therefore there can be cases when a person's right to liberty is violated. Frequent are cases when the police apprehend a person under Sec. 14 letter d)²⁶ of the Law but there is no intention of bringing the person before a competent authority. Such a practice may amount, under certain circumstances, to a violation of Article 5 of the ECHR according to the established case-law of the Eur. Ct. H.R.

Article 7. Respect for private and family life

Private life

Criminal investigations and the use of special or particular methods of inquiry or research

Legislative initiatives, national case law and practices of national authorities

The draft Criminal Code (recodification of the Criminal law) has been discussed and eventually adopted in the Chamber of Deputies of the Parliament. The Draft recognizes a new crime: Breach of confidentiality of oral manifestation or other manifestation of personal nature, which might criminalize also the use of hidden camera.²⁷ Similar conduct was added into the Draft Law which changes laws according to the new Criminal Code, this conduct would be embodied into the Civil

²³ Zákon č. 326/1999 Sb., o pobytu cizinců na území České republiky a o změně některých zákonů [Act No 326/1999 Coll., on the residence of foreigners on the territory of the Czech Republic and on an amendment to certain laws]

²⁴ Zákon č. 428/2005 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, a některé další zákony [Act No. 428/2005 Coll., amending Act No. 326/1999 Coll., on the residence of foreigners on the territory of the Czech Republic].

²⁵ Zákon č. 283/1991 Sb. o Policii České republiky [Law No. 283/1991 Coll., on the Police Force of the Czech Republic].

²⁶ If a person is caught while committing a misdemeanour and there is a well-founded concern that he/she will continue in the wrongdoing or will thwart the investigation.

²⁷ Legislative Draft No. 744 (the draft was delivered to the Parliament already in the last year): Sec. 159.

Code. An approval of a person would be needed even in case of making a record by a hidden manner. A public discussion about this is held now, because this conduct was used by investigative journalists and helped to discover corruption affairs.

The current legislation endures Police to use *supportive operational-search instruments* for prevention of crimes or in connection with the criminal investigation. These instruments are listed in the Law on Police as (1) cover documents, (2) conspirational means, (3) preventive techniques, (4) special financial means and (5) use of an informant.²⁸ The Criminal Procedure Code considers provisions on operational-search instruments, which are listed as (1) spurious transfer of a thing, (2) discrete observation and (3) use of an agent.²⁹ These instruments can be used in special circumstances and an authorization from superior authority is required. The Criminal Procedure Code also contains provisions on taping and recording of telecommunications; this instrument can be used only under very special circumstances and there is a special inspection authority for this instrument created by Parliament.³⁰

Voluntary termination of pregnancy

Legislative initiatives, national case law and practices of national authorities

The draft Criminal Code was discussed in the Parliament. The Draft recognizes four crimes against pregnancy: (1) Unlawful termination of pregnancy without permission of pregnant woman, (2) Unlawful termination of pregnancy with permission of pregnant woman, (3) Aiding to pregnant woman to termination of pregnancy, (4) Subordination of pregnant woman to termination of pregnancy. The woman, who terminates pregnancy herself or ask a person or allows a person to terminate pregnancy would not be punishable.³¹

The legislation makes voluntary termination possible in the Czech Republic under the Law on voluntary termination of pregnancy.³²

The current Criminal Code recognizes prohibition of termination of pregnancy; (1) a person, who terminate pregnancy with approval of the woman by an unlawful manner, or (2) a person who aids or subordinates woman to terminate pregnancy herself shall be punished. The Criminal Code punishes also preparation, attempt to commit a crime, organizing of a crime, instigating/abetting and aiding a crime. The woman, who terminates pregnancy herself or ask a person or allows a person to terminate pregnancy is not punishable.³³

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The issue of coercive sterilization was brought before courts and a decision is expected by the end of the year (see above under Art. 4).

²⁸ Zákon č. 283/1991 S., o policii (Act No. 283/1991 Coll., on Police): Sec. 23a – 23 f.

²⁹ Zákon č. 141/1961 Sb., trestní řád (Act No. 141/1961 Coll., Criminal Procedure Code): Sec. 158b - 158f.

³⁰ See Sec. 88, 88a Criminal Procedure Code, and Sec. 53a, Act on Police.

³¹ Legislative Draft No. 744 (the draft was delivered to the Parliament already in the last year): Sec. 132 - 136.

³² Zákon ČNR č. 66/1986 Sb, o umělém přerušení těhotenství (Act of the Czech National Council No. 66/1986 Coll., on voluntary termination of pregnancy.)

³³ See Sec. 227, 228 of the Criminal Code (Act No. 140/1961 Coll.).

Family life

Protection of family life

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The Czech Republic has not been found by the Eur. Ct. H.R. to be in violation of Article 8 ECHR during the period under scrutiny.

Legislative initiatives, national case law and practices of national authorities

As of September 2005, the Convention on Access to Children has entered into force for the Czech Republic. It aims at improving, in accordance with the principle of best interest of child, regular personal relations and direct access of both parents to their child.

The right to a family life is addressed in the Constitution (Charter of Basic Right and Freedoms) and at the statutory level the Family Act exists.³⁴ There were no fundamental changes on this matter during the period under scrutiny. Some changes are mentioned below.

Removal of child from the family

Legislative initiatives, national case law and practices of national authorities

Law on Institutional custody or protective custody in school facilities was amended.³⁵ The amendment aimed *inter alia* to part off the protective custody and the institutional custody, to regulate the supply towards the cost of the custody and to specify some terms which were not clear. The amendment also contains provision on the possibility to use the audiovisual systems to control the surroundings of the facilities or corridors of the facilities.

Reasons for concern

A NGO, the League of Human Rights claims, that the amendment may not help with the part off of the protective custody and the institutional custody and that the separating will depend on the founder of the school facilities. The League also refuses the possibility to use the audiovisual systems to control the surroundings of the facilities or corridors of the facilities.

Right to family reunification

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny there have been one amendment approved to the Aliens Act; the amendment implemented the Council Directive 2003/86/EC on Family Reunification.³⁶ The amendment introduced *inter alia* long term residence permit for the purpose of family reunification for the spouse of the foreigner who was given long term residence permit. The Aliens Act already contains possibility of family reunification (these provisions are for the TCN), when the foreigner is granted permanent residence permit; and also the visas for the spouses of those foreigners, who stays

³⁴ Zákon č. 94/1963 Sb., o rodině [Law No. 94/1963 Coll., Family Act].

³⁵ Zákon č. 383/2005 Sb., kterým se mění zákon č. 109/2002 Sb., o výkonu ústavní výchovy nebo ochranné výchovy ve školských zařízeních a o preventivně výchovné péči ve školských zařízeních [Act No. 383/2005 Coll., which changes the Act No. 109/2002 Coll., on Institutional custody or protective custody in school facilities]

³⁶ Zákon č. 428/2005 Sb., kterým se mění zákon č. 326/1999 Sb., o pobytu cizinců na území České republiky [Act No. 428/2005 Coll., amending Law No. 326/1999 Coll., Aliens Act].

on the territory of the Czech Republic on visas, were in practice given, only not explicitly mentioned by the law. The law also contains preferable regime for EU nationals and their family members.³⁷ The family members of an EU national can apply (apart from the *long term visa*, for which every foreigner can ask for the purposes of e.g. employment or study etc.) for the *permanent residence permit* if the EU citizen already stays in the Czech Republic on the basis of a permanent residence permit or he/she has applied for such permit.³⁸ For the purposes of this regulation, a family member of EU citizen is a spouse, a child under 21 years of age or without any limitation on age if it is dependent on the EU national, or a dependent direct relative in ascending or descending line or such relative of the spouse of the EU national. If the purpose for stay in the Czech Republic is study, then only a spouse and a dependent child are considered as a family member.³⁹

During the period under scrutiny, the Parliament has adopted Act No. 57/2005,⁴⁰ amending the Act on Asylum and Act No. 359/1999, on Social-Legal Protection of children. According to the amendment, the Authority for International Legal Protection of Children shall assist in searching for family members of the unaccompanied child who has been on the territory of the Czech Republic and lodged an application for asylum.

Sec. 13, par. 4 of the amended Act on Asylum excludes the possibility of granting asylum for the purpose of family reunification in case of polygamic marriage where the asylee has already a partner living with him on the territory of the Czech Republic.

Private – and family life in the context of the expulsion of foreigners

Legislative initiatives, national case law and practices of national authorities

During the scrutiny period there has been one legislative change in this area. A risk of removal of a foreigner to a country where he/she faces a real and serious risk of being killed or being subjected to torture or to other cruel, inhuman and degrading treatments shall be considered during the administrative procedure on expulsion according to the Sec. 120a (1),⁴¹ the consideration of that fact was not explicitly mentioned in the previous provisions of the law, although the prohibition of removal in such cases existed.

There is administrative procedure regarding expulsion stipulated (according to the provisions of the Administrative Procedure Code); the procedure is held by the Aliens Police, which issues the administrative decision on expulsion. The decision must not be issued, if the interference with the private and family life of the foreigner would be inadequate.

The Act on Aliens provides specific rules for expulsion of the EU nationals and their family members.⁴² The expulsion of EU nationals and their family members is possible only under very serious circumstances; the administrative decision of expulsion of EU national or of his family member, to whom the permanent or temporary residence permit was granted, may be issued only in case, that the person endangers security of the state or seriously violates a public order, and at the same time the penalty of withdrawal of the permanent or temporary residence permit is not enough considering the seriousness of his conduct.

³⁷ See Sec. 87a – 87u Aliens Act.

³⁸ The act stipulates two grounds for stay of EU nationals, the temporary residence permit and permanent residence permit.

³⁹ See Sec. 15a Aliens Act.

⁴⁰ Zákon č. 57/2005 Sb., kterým se mění zákon č. 325/1999 Sb., o azylu, a zákon č. 359/1999 Sb., o sociálně-právní ochraně dětí [Act No. 57/2005 Coll., amending Act No. 325/1999 Coll., on Asylum, and Act No. 359/1999 Coll., on Social Legal Protection of Children].

⁴¹ Zákon č. 428/2005 Sb., kterým se mění zákon č. 326/1999 Sb., o pobytu cizinců na území České republiky (Law No. 428/2005 Sb., which changes the Law No. 326/1999 Coll., Aliens Act).

⁴² See Sec.120 Aliens Act.

Article 8. Protection of personal data

Independent control authority

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

During the period under scrutiny, the Czech Republic was not found to be in violation of its international commitments by the Eur. Ct. H. R. (Article 8 of the ECHR) or by other international human rights body.

Protection of personal data

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

During the period under scrutiny, the Czech Republic was not found to be in violation of its international commitments by the Eur. Ct. H. R. (Article 8 of the ECHR) or by other international human rights body.

Legislative initiatives, national case law and practices of national authorities

The Act No. 559/2004 Coll.,⁴³ which has entered into effect as of January 2005, has amended laws on identity cards and on travel documents. It prohibited copying of identity cards, respectively travel documents, by any means, without a consent of the ID or travel document holder. The amendment also provided more precise rules concerning the treatment with personal data in the basis available to the Ministry of Interior and local authorities.

The amendment to the Act on Special Protection of Witness⁴⁴ has introduced in Sec. 10a the power of the Police, in cases where there is a reason to believe that the protected person does not comply with obligations under this Act and to the extent strictly necessary, to use methods of intelligence and technical means of audio and video surveillance, including monitoring of telecommunication. The application of these methods is subject to a prior authorisation by a judge of the territorially competent High Court. Similarly, the new Sec. 21a has provided that the Police could grant, after a prior consent of the Minister of Interior, a special protection and assistance to another person on request of a foreign state authority or a judicial organ. A condition for such a special protection is a consent of the protected person concerning the manner of the protection and the processing of his/her personal data.

Reasons for concern

The Public Protector of Rights (the Czech ombudsman) raised a issue of the personal (birth) numbers in the petitions. According to Act No. 424/1991 on association in political parties a movements, citizens have to state their names, surnames, residence but also their personal numbers in the petitions in support of registration of political parties and movements. On the basis of a complaint, the Public Protector found this obligation was not in conformity with the protection of personal data. He examined the problem in a broader context and discovered that the personal number was obligatory also in the petitions in support of an independent candidate to the Senate and in the petitions for

⁴³ Zákon č. 559/2004 Sb., kterým se mění zákon č. 328/1999 Sb., o občanských průkazech, zákon č. 329/1999 Sb., o cestovních dokladech, ve znění pozdějších předpisů, a o změně dalších zákonů [Act No. 559/2004 Coll., amending Act No. 328/1999 Coll., on Identity Cards, Act No. 329/1999 Coll., on Travel Documents, as amended by later acts, and on amendment of other laws].

⁴⁴ Zákon č. 349/2005 Sb., kterým se mění zákon č. 137/2001 Sb., o zvláštní ochraně svědka a dalších osob v souvislosti s trestním řízením [Act No. 349/2005 Coll., amending Act No. 137/2001 Coll., on Special Protection of Witness and Other Persons in Connexion with Criminal Proceedings].

registration of a church or a religious associations. The Public Protector recommended to the Government an amendment to the relevant laws to the effect to replace the personal numbers by the date of birth. During the period under scrutiny, however, such amendments have not yet been adopted.

Protection of the private life of workers

Reasons for concern

It was reported in the Czech media that all pilots, stewards and ground personnel of the air companies (namely the Czech Airlines) were subject to security screening by the National Security Authority. Although the information collected through the personal questionnaire and the inquiry by members of the NSA is based on the law, the extent of required information seems to be disproportionate. The Act No. 412/2005, on Protection of secret information and security competence, is compatible with the EU and NATO standards. However, its application seems to be too large and generalised on all workers irrespective of their position and actual security risks.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The new Act on Protection of Secret Information and Security Competence has been adopted.⁴⁵ Having replace the earlier legislation in this field, the new Act regulates principles for qualification of information as secret, conditions for access to and protection of such information, principles for establishment of sensitive activities and conditions for their exercise as well as for the exercise of State administration. The secret information is an information in any form registered on any medium classified according to this Act, disclosure or abuse of which may cause harm or disadvantage to the Czech Republic, and entered in the list of secret information. The Act distinguishes four level of secrecy and corresponding levels of protection. It also provides for criteria of personal security reliability and procedure for issuance of the respective certificates.

The usage of video surveillance in public fora has not been regulated in the Czech Republic in a satisfactory way, although the number of video surveillance devices has substantially increased. They appear in streets, shops, schools, boarding houses, at workplace, etc. and some cases of their misuse have come to light already. The installation of camera monitoring systems at public places and making recordings of these places for the purposes of police tasks is regulated in the Act on the Police of the Czech Republic⁴⁶ and in the Act on the Municipal Police.⁴⁷

The Office for Personal Data Protection points out that the Act on the Protection of Personal Data applies to recordings containing faces and other identification features of people and that collecting and processing of such data must therefore comply with the Act.⁴⁸

Positive aspects

The new Act on Protection of Secret Information and Security Competence has provided for a rather detailed procedural rules on the security proceedings (a special kind of administrative proceedings) before the National Security Authority. Natural and juridical persons have an administrative remedy against the decision on their security certificates (appeal to the Director of the NSA). Moreover, the

⁴⁵ Zákon č. 412/2005 Sb., o ochraně utajovaných skutečností a o bezpečnostní způsobilosti [Act No. 412/2005 Coll., on Protection of Secret Information and Security Competence].

⁴⁶ Zákon č. 283/1991 Sb., o Policii České republiky, v platném znění.[Law No. 283/1991 Coll., on the Police of the Czech Republic, as amended], § 42f.

⁴⁷ Zákon č. 553/1991 Sb., o obecní policii, v platném znění [Law No. 553/1991 Coll., on the Municipal Police, as amended], § 24b.

⁴⁸ Information Bulletin No. 2/2004, p. 8, available at www.uoou.cz.

decision of the Director is subject to a judicial review, through an action to the administrative court. The proceedings shall be governed by the Administrative Procedure Code⁴⁹ to the extent that the submission of evidence ensures the protection of secret information.

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

Marriage and control of marriages suspected of being simulated

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

During the period under scrutiny there have not been any significant developments in this area. Czech Republic has not been found by any international court or other organ to be violating the right to marry and found a family.

Legislative initiatives, national case law and practices of national authorities

At the constitutional level, the family issue is addressed by Art. 32 of the Charter of Fundamental Rights and Freedoms.⁵⁰ Parenthood and family are under protection of the law, women are guaranteed special care during pregnancy, the care of children and their upbringing is the right of their parents, and parents who are raising children are entitled to assistance from the state.

Council Directive 2003/86/EC on Family Reunification was implemented by an amendment to the Aliens Act.⁵¹

The control of marriages suspected of being simulated was explicitly formulated by the amendment to the Aliens Act. The provisions now stipulate that the Police shall cancel a long term residence permit or permanent residence permit if it establishes that the alien entered into marriage with the aim of obtaining a residence permit. The residence permit shall not be canceled if a child was born from the marriage or a child was irrevocably adopted.⁵² There is administrative procedure held according to the Administrative Code for granting and canceling of the long term residence permit or permanent residence permit. The applicant and his/her spouse might be asked questions from the Aliens Police during the procedure.

Legal recognition of same-sex partnerships and recognition of the right to marry for transsexuals

Legislative initiatives, national case law and practices of national authorities

Marriage of same-sex persons is not allowed. There have been several initiatives (governmental initiatives as well as initiatives of the members of Parliament) taken for the recognition of same-sex partnerships. One proposal on *registered partnership* submitted by a group of deputies in 2004 was refused in February 2005; another draft law (already sixth attempt) was submitted⁵³ by a group of deputies to the Chamber of Deputies of the Czech Parliament. This draft, which has been just adopted in the Chamber of Deputies, is to regulate relations between two persons of the same sex; at least one of them must be a citizen of the Czech Republic. The act specifies the process of establishing and

⁴⁹ Zákon č. 150/2002 Sb., soudní řád správní [Act No. 150/2002 Coll., Administrative Procedure Code].

⁵⁰ Úst. zák. č. 2/1993 Sb., Listina základních práv a svobod (Const. Law. No. 2/1993 Coll. of Laws, Charter of Fundamental Rights and Freedoms)

⁵¹ Zákon č. 428/2005 Sb., kterým se mění zákon č. 326/1999 Sb., o pobytu cizinců na území České republiky (Law No. 428/2005 Sb., which changes the Law No. 326/1999 Coll., Aliens Act).

⁵² See Sec. 46a (2) and Sec 80 (1) Aliens Act.

⁵³ Sněmovní tisk č. 969/0 (Draft No. 969), www.psp.cz

dissolving the partnership, describes the rights and duties of the partners, and stipulates the successory rights. The act does not provide for adoption of children.

Transsexuals are recognized the right to marry a person of their previous sex. Their legal status is counted according to their new sex.

Positive aspects

Cooperation between MPs and NGOs, so that the law can reflect the real needs of the community, although NGOs (e.g. Gay and Lesbian League) claim, that it still is a compromise.

Good practices

Representatives of NGOs, namely, the Gay and Lesbian League and Gay Initiative, have actively participated in drafting the above Act on registered partnership.

Article 10. Freedom of thought, conscience and religion

Incentives and reasonable accommodations provided in order to ensure the freedom of religion, including the right to conscientious objection

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

During the period under scrutiny the Czech Republic was not found in violation of Article 9 ECHR, Article 18 ICCPR or Article 13 of the Convention on the Rights of the Child.

Article 11. Freedom of expression and of information

Freedom of expression and of information

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

During the period under scrutiny, the Czech Republic was not found in violation of the freedom of expression and of information by the Eur. Ct. H.R. or other international control bodies.

Media pluralism and fair treatment of the information by the media

Legislative initiatives, national case law and practices of national authorities

The Parliament has adopted the Act on Electronic Communications⁵⁴ which governs in conformity with EC law conditions for the conduct of a business and for the exercise of the public administration, including market regulation, in the field of electronic communications. The Act does not prejudice to the media plurality, cultural diversity and consumer protection.

⁵⁴ Zákon č. 127/2005 Sb., o elektronických komunikacích a změně některých souvisejících zákonů [Act No. 127/2005 Coll., on electronic communications and amendment to some related acts]

Secrecy of journalistic sources

Legislative initiatives, national case law and practices of national authorities

There was no significant development during the period under scrutiny. Although the right to secrecy of journalistic sources is not recognised by law, it is respected in practice.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Act on Right to Environmental Information has been amended by Act No. 8/2005,⁵⁵ that provided for a wider access of the public to information, including their active publication, *inter alia*, through electronic databasis.

Article 12. Freedom of assembly and of association

Freedom of peaceful assembly

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

During the period under scrutiny, the Czech Republic was not found in violation of the freedom of assembly and of association by the Eur. Ct. H.R. or other international control bodies.

Legislative initiatives, national case law and practices of national authorities

At the end of July a techno party with between 5,000 to 10,000 participants was organized (so called CzechTek 2005). The police decided to take action against the participants who found themselves on private lands, partly without the consent of owners. However there are extensive reports that the police used excessive force during the action against predominantly peaceful participants. Dozens of criminal complaints on policeman and some civil actions were taken by the participants. The criminal complaints are under investigation by the Inspection of the Minister of Interior which is the body that investigates criminal complaints on police behaviour.

The Public Protector of Rights used his right of inquiry in respect of the CzechTek party. Moreover, he sent his comments on the draft act on conditions of some assemblies, prepared by the Ministry of Interior. He questioned the necessity of such special legislation, as the Czech legal order had already necessary instruments of legal regulation.

Article 13. Freedom of the arts and sciences

Freedom of research and academic freedom

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny, the Parliament has adopted the Act on Public Research Institutions.⁵⁶ Accordingly, by 2007, all research establishments which belong to or depend of other institutions than

⁵⁵ Zákon č. 6/2005 Sb., kterým se mění zákon č. 123/1998 Sb., o právu na informace o životním prostředí [Act No. 6/2005 Coll., on Right to Environmental Information].

⁵⁶ Zákon č. 341/2005 Sb., o veřejných výzkumných institucích [Act No. 341/2005 Coll., on Public Research Institutions].

universities, shall transform into new public research institutions which have to ensure scientific research supported from public resources in conformity with the conditions of public subsidies set by EC law. Public Research Institutions are juridical persons able to possess their own property but they rank among non-profit organisations.

The Czech Parliament adopted a draft Act concerning research on human embryonic stem cells. This new Act regulates conditions of scientific research on human embryonic stem cells. It does not allow to the creation of human embryos for research purposes. The Act only makes it possible for the licensed research centres, accredited by the Ministry of Education, to use stem cells taken from the redundant embryos produced in the medical centres of assisted reproduction in the Czech Republic.

Article 14. Right to education

Access to education

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

During the period under scrutiny, the Czech Republic has not been found by any international court or other organ to be violating the right to education.

Legislative initiatives, national case law and practices of national authorities

There was no significant development during the period under scrutiny. Not only primary and secondary education is provided free of charges, but also the public universities do not collect any tuition fees for education in Czech language. This applies both to Czech and foreign nationals.

Ministry of Education made it possible, on the basis of its Rules, for private universities with the state accreditation, which had acted earlier as higher professional schools within the network of school institutions, to apply for and to receive a subsidy from the State budget, provided that the applicant ensures a study program (curriculum) in public interest.⁵⁷

The Government has adopted an amendment to its Regulation on conditions and way of granting subsidies from the State budget for activities of members of national minorities and in support of integration of the Roma community.⁵⁸ It provides for a more flexible ways of supporting multicultural education, including a state subsidy for projects realised with a financial support from the European social fund or other EU funds.

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

The right to engage in work and the right for nationals from other member States to seek an employment, to establish themselves or to provide services

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny there was no significant development. The most important instrument in force is the Employment Act⁵⁹ which has been adopted and has entered into force in October 2004. Nationals of other EU member States shall have the equal conditions as Czech citizens.

⁵⁷ Pravidla pro poskytování dotací soukromým vysokým školám, Věstník MŠMT č. 6/2005 [Rules for granting subsidies to private universities, Bulletin of the Ministry of Education, No. 6/2005].

⁵⁸ Nařízení vlády č. 262/2005 Sb., kterým se mění nařízení vlády č. 98/2002 Sb. [Governmental Regulation No. 262/2005 Coll., amending Regulation No. 98/2002 Coll.].

⁵⁹ Zák. č. 435/2004 Sb., o zaměstnanosti [Law No. 435/2004 Coll., Employment Act]

The prohibition of any form of discrimination in access to employment

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

On 2 July 2004 The Advisory Committee of the Framework Convention for the Protection of National Minorities received a second report submitted by the Czech Republic⁶⁰. The Committee adopted its opinion on 24 February 2005 and was published on 26 October 2005.⁶¹

The Committee noted especially the high rate of unemployment among Roma community „with estimates ranging from over 50% to 70%, and even 90% in certain cases”⁶².

Positive aspects

The amendment⁶³ to the Law on Public Health Insurance Contributions⁶⁴ mentioned in the last year report was passed and has entered into effect. According to the amendment employers that have filled over 50% of their job places with persons with disabilities have a special regime and pay lower contributions to health insurance scheme for employees with disability as would be the case with ordinary employees. That means that employing persons with disabilities is for the employers cheaper than before the amendment.

Access to employment for asylum seekers

Legislative initiatives, national case law and practices of national authorities

The Employment Act⁶⁵ has provided for the access to employment without a work permit for the asylee (Sec. 98). The asylum seekers may get work permits under preferential conditions after 12 months from their application for asylum (Sec. 97).

Access to employment in public administrations

Legislative initiatives, national case law and practices of national authorities

According to the Act on Civil Service,⁶⁶ access to employment in State public administrations has been conditioned by the Czech nationality. However, the regime of the State civil service has not been yet implemented, as the entry into effect of the Act was postponed until 2007.

⁶⁰ ACFC/SR/II(2004)007

⁶¹ ACFC/INF/OP/II(2005)002

⁶² Para. 51 of the Opinion.

⁶³ Zákon č. 123/2005 Sb. [Act No. 123/2005 Coll., amending the Act No. 592/1992 Coll.]

⁶⁴ Zákon č. 592/1992 Sb., o pojistném na všeobecné zdravotní pojištění [Act No. 592/1992 Coll., on Public Health Insurance Contributions]

⁶⁵ Zákon č. 435/2004 Sb., o zaměstnanosti, ve znění pozdějších předpisů [Act No. 435/2004 Coll., Employment Act, as amended by later laws].

⁶⁶ Zákon č. 218/2002 Sb., o službě státních zaměstnanců ve správních úřadech, ve znění pozdějších předpisů [Act No. 218/2002 Coll., on Service of State Civil Servants in Administrative Authorities, as amended by later laws].

Article 16. Freedom to conduct a businessFreedom to conduct a business*Legislative initiatives, national case law and practices of national authorities*

The Act No. 428/2005 has amended, *inter alia*, the Tradesmen Act in a sense of enlargement of freedom to conduct a business for foreigners. Newly, a long term visa for the purpose of family reunification is considered as a permission to stay for the purpose of a business.⁶⁷

During the period under scrutiny, it has been published the decision of the Constitutional Court of 2004, where the Court decided in favour of the freedom to conduct a business.⁶⁸ It has cancelled the judgment of the Regional Court in Usti nad Labem, confirming the decision of the Finance Directorate in a matter of taxation. The issue was that a business contract, giving a self-employed accountant the mandate to book-keeping in a company on a regular basis and within its premises, was qualified as a cover for labour relationship. According to the Constitutional Court, the law does not provide how detailed the description of the activities to be performed must be. The object of business may be realised by a single performance as well as by repeated or permanent activities (such as carrying out all legal matters, book-keeping or economic consultancy). The modern economy is based on the outsourcing of activities which are not part of the core activities of the company. The fact that certain services are provided by a self-employed person instead of another company with a number of employees does not justify *ipso facto* discrimination and qualification of such business contract as a labour one.

Article 17. Right to propertyThe right to property and the restrictions to this right*International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up*

During the period under scrutiny, the Czech Republic has not been found by Eur. Ct. H.R. to be in violation of Article 1 of the First Additional Protocol, although a number of applications in restitution matters lodged by present or former Czech nationals against the State was discussed. However, the Eur. Ct. H.R. declared all these applications, on the basis of its case law (in particular Gratzinger and Gratzingerova v. CR, decision [GC], no. 39794/98, ECHR 2002-VII), inadmissible under Article 1 of the First Additional Protocol.

Legislative initiatives, national case law and practices of national authorities

The Czech Constitutional Court has adopted its ruling by which it declared unconstitutional and cancelled Sec. 36, par. 2 of the Act on Forced Public Auctions, allowing for some creditors to sell a debtor's property in a public auction without a judicial decision. The provision at stake was found contrary to the principles of equality and non-discrimination as well as to Art. 1 of the First Additional Protocol to the ECHR.⁶⁹

The Constitutional Court has also adopted its ruling by which it declared unconstitutional and cancelled Sec. 11, par. 5 of the Act on Land and Other Agricultural Property, excluding a real estate,

⁶⁷ Zákon č. 428/2005 Sb., kterým se mění zákon č. 326/1999 Sb., o pobytu cizinců na území České republiky, a některé další zákony [Act No. 428/2005 Coll., amending Act No. 326/1999 Coll., on Stay of Aliens in the Territory of the Czech Republic, and some other laws].

⁶⁸ Constitutional Court, case No. II US 69/03, judgment of 31 August 2004.

⁶⁹ Constitutional Court, case published under No. 181/2005 Coll., judgment of 8 March 2005.

which had been declared a National cultural monument, from the possibility of restitution until the time when laws on protection of cultural monuments would be adopted. Since the Parliament failed to adopt a new act, the Court found unconstitutional this restriction which discriminates against some groups of persons (former owners) as to their access to property.⁷⁰

The Constitutional Court has adopted an important plenary Opinion⁷¹ concerning the concurrent application of actions for determination of ownership (or other ownership actions, e.g. *rei vindicatio* action) and of actions under special restitution laws adopted in the early 1990s. The Constitutional Court held that restitution legislation set up the conditions and limits for mitigation or remedy of the past injuries and ruled out the applicability of actions for determination of ownership under the Civil Code. According to this Court's Opinion:

I. An assertion of the ownership right, in particular that which needs a record in the Register of real estates, does not fulfil, in case of the lack of legitimate expectations of the claimant, a preventive function of the action for determination of ownership, therefore there is no urgent legal interest (*locus standi*) for its lodging.

II. An action for determination of ownership may not evade the object and purpose of the restitution legislation. It is not even allowed to claim effectively a protection of the ownership which became extinct before 25 February 1948 and a special restitution act did not provide a way of mitigation or remedy of such a property loss.

The opinion of the Constitutional Court seems to prefer the legal certainty and stability of property relations. If the democratic legislator after 1990 decided that only some losses and injuries from the communist period should be mitigated and clearly excluded a remedy in respect of injuries from a more distant periods, including injuries suffered by citizens of German and Hungarian nationality,⁷² it acted in the full discretion, without any legal obligation to retribute or compensate. Consequently, the Constitutional Court ruled in favour of the protection of existing possessions (against claims of non-owners hoping in a restoration of property relations from the remote past), which is in conformity with the case law of the Eur. Ct. H.R.⁷³

Positive aspects

The Public Protector of Rights reported to the Chamber of Deputies of the Parliament that there were outstanding problems with the settlement of property rights to lands under the highways and other routes in the property of the State and regions. Since the rights of the owners of lands were not protected in conformity with the constitutional rights and Art. 1 of the First Additional Protocol to the ECHR, the Chamber of Deputies took note of the Public Protector's report and obliged the Government to present a proposal of solution until the end of June 2005.

Reasons for concern

The Parliament has adopted an amendment to the Commercial Code⁷⁴ which provided for the possibility of squeeze-out of the minority shareholders by the main shareholder who acquired at least 90% of equity securities. Although the mere right of squeeze-out of the main share-holder (and

⁷⁰ Constitutional Court, case published under No. 272/2005 Coll., judgment of 17 May 2005.

⁷¹ Constitutional Court [plenary], case No. Pl. US-st. 21/05, Opinion of 1st November 2005.

⁷² Zákon č. 87/1991 Sb., o mimosoudní rehabilitaci, ve znění pozdějších předpisů [Act No. 87/1991 Coll., on Extra-judicial rehabilitation, as amended by later laws].

⁷³ Cf. e.g. Eur. Ct. H.R., case *Malhous v. the Czech Republic*, 2000 ; *Gratzinger and Gratzingerova v. the Czech Republic*, 2002 ; *Jantner v. the Slovak Republic*, 2003 ; *Broniowski v. Poland*, 2004 ; *Von Maltzan and others v. Germany*, 2005.

⁷⁴ Zákon č. 216/2005 Sb., kterým se mění zákon č. 513/1991 Sb., obchodní zákoník, ve znění pozdějších předpisů [Act No. 216/2005 Coll., amending Act No. 513/1991 Coll., Commercial Code, as amended by later laws]

corresponding obligation of minority shareholders to sell their securities) may be justified by the general interest in an effective control of companies and limiting fragmentation of ownership interests, the adopted regulation gives rise to a certain concern. First, the main shareholder acquires the ownership of securities in one month after the entry of the resolution of the company's general assembly into the Register of companies, but the expropriated person may receive compensation only *a posteriori*. Second, the amount of compensation is set by the main shareholder on the basis of an opinion of the expert, appointed by the main shareholder, certifying a value of the securities in question. Third, a judicial review is limited in time (prescriptive period of one month) and courts may only control the adequacy of compensation.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In the end of the period under scrutiny, the Chamber of Deputies of the Parliament has discussed and eventually passed a draft law on the rent. If approved also by the Senate and signed by the President of the Republic, the act will enable a progressive deregulation of the rent in apartments which are subject to the State regulation. From January 2007, the rent should raise during four years to reach a level usual in a given locality. The act supposes an average increase 14,2 % per annum.

Article 18. Right to asylum

Asylum proceedings

Legislative initiatives, national case law and practices of national authorities

The Czech Republic ratified the Geneva Convention relating to the Status of Refugees in 1991. The right to asylum is also formulated on the constitutional level in Art. 43 of the Charter of Fundamental Rights and Freedoms, which stipulates that, "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 contrary to fundamental human rights and freedoms". At the statutory level, both the Geneva Convention and the Charter of Fundamental Rights have been implemented by the Asylum Act⁷⁵, which regulates the conditions for providing asylum, the asylum procedure, the rights and duties of asylum seekers and the rights and duties of recognized refugees (persons who were granted of asylum). The Asylum Act is complemented by the provisions stated in the Act on the Stay of Aliens, which regulates one of the forms of subsidiary protection.

During the period under scrutiny there have been two amendments approved to the Asylum Act. The first amendment implements the Council Directive 2003/9/EC, laying down minimum standards for the reception of asylum seekers, and the Council Regulation (EC) 343/2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II) and the Protocol on Asylum for nationals of member states of the European Union. The second amendment mainly changes the application of a suspensive effect of the complaint to the courts against the Ministry of Interior decision and the mechanism of extraordinary remedy, a possibility for asylum seeker to lodge a cassation complaint (see below in detail).

⁷⁵ Zákon č. 325/1999 Sb. o azylu a o změně zákona č. 283/1991 Sb., o Policii České republiky, ve znění pozdějších předpisů, (zákon o azylu) (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 (Asylum Act).

The first amendment⁷⁶ redefined the term *asylum seeker*, gave a definition of the unaccompanied minor asylum seeker, and in certain cases abolished the two-year period during which asylum seekers could not re-apply for asylum in the Czech Republic (if the procedure was terminated because the asylum seeker had withdrawn the asylum application or the asylum seeker during the asylum procedure illegally entered the territory of another state or attempted to illegally enter the territory of another state). If an application is terminated according to Dublin II, the asylum seeker does not have the option of leaving the reception/residential asylum centre until his transfer to the Member State responsible for examining his case. The amendment presented a new mechanism, *inadmissibility of the asylum application*, applicable for a citizen of an EU Member State who applies for asylum, the application will be terminated. There is the possibility to limit the territorial validity of an asylum visa under some circumstances (interests of protecting state security, maintaining public order, protecting public health, or in the interest of complying with an international agreement).

The second amendment⁷⁷ changed some parts of the asylum procedure. The asylum procedure is stipulated by the Asylum Act and can be either accelerated or standard one. The Ministry of Interior decides at the first level, the law establishes a remedy, appeal against decisions of the Ministry of Interior to the regional court. There is a right to an oral hearing and subject matter review of the claim before the regional court, however, the court cannot grant refugee status. At present, a complaint to a court has a suspensive effect, but the amendment presented an exception for a complaint against the decision of the termination of the procedure and the decision when the application is found manifestly unfounded because the asylum seeker comes from a safe third country or a safe country of origin or when the asylum seeker could have asked the protection by another state of his citizenship. The court can also terminate the proceedings, e.g. if the asylum seeker dies, his place of residence can not be found, he illegally entered the territory of another state, was given the Czech citizenship. Courts do not have power to grant asylum status, they may only cancel decisions of administrative bodies. There is also the possibility of an extraordinary remedy, a *cassation* complaint to the Supreme Administrative Court against a judgment of the regional court, which has a suspensive effect. A large number of cassation complaints have been made by former asylum seekers; many of them were not well-founded. The system of the cassation complaints was reviewed by the amendment which presented a new possibility for the Supreme Administrative Court to decide (refuse) on *inadmissibility* of the complaint if the it does not considerably overreach individual claimants' interests.⁷⁸

Asylum seekers stay in refugee camps or private accommodation. An asylum seeker can be detained if he/she is issued a decision on administrative expulsion or is in the process of such expulsion, e.g., if he/she has crossed the border illegally or has a falsified passport, the detention can last up to 6 months. Basic medical care is guaranteed for all asylum seekers.

The number of asylum seekers has lowered to 3,054 (September 2005), there was 1 000 pending cases at the end of September 2005. One refugee camp has been closed and others are planned to be closed.

Positive aspects

Definition of the unaccompanied minor asylum seeker and abolishing of the two-year period during which asylum seekers could not have re-applied for asylum in the Czech Republic. The previous sections might have led in practise to a breach of the international obligations.

⁷⁶ Zákon č. 57/2005 Sb, kterým se mění zákon č. 325/1999 Sb. , o azylu a o změně zákona č. 283/1991 Sb. , o Policii České republiky, ve znění pozdějších předpisů, (zákon o azylu), ve znění pozdějších předpisů, a zákon č. 359/1999 Sb. , o sociálně-právní ochraně dětí, ve znění pozdějších předpisů, (Law No. 57/2005 Coll., which changes the Asylum Act).

⁷⁷ Zákon č. 350/2005 Sb., kterým se mění zákon č. 325/1999 Sb. , o azylu a o změně zákona č. 283/1991 Sb. , o Policii České republiky, ve znění pozdějších předpisů, (zákon o azylu), ve znění pozdějších předpisů, a některé další zákony (Law No. 350/2005 Coll., which changes the Asylum Act).

⁷⁸ See Sec 104a Administrative Proceedings Code.

Good practices

NGOs claim, that the procedure (not the procedure for manifestly unfounded cases) is better than in previous years, the quality of decisions improved.

Reasons for concern

The law does not require the administrative body to grant asylum status on the basis of family reunification, it only indicates this as a possibility. This causes problems in connection with the Aliens Act, e.g., when relatives ask for visas to the CR, etc.

Regional courts do not have power to grant asylum status, they may only cancel decisions of administrative bodies.

A NGO (Organization for Aid to Refugees) claims, that the asylum procedure in the detention centres and in the reception centre at the Airport Ruzyně tends to be quick, which might harm the quality of the decision.

Recognition of the status of refugee*Legislative initiatives, national case law and practices of national authorities*

The steps toward implementation of the Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals, “*qualification directive*” have been taken; the directive will be implemented by an amendment to the Asylum Act in the 2006.

There have been no changes in the definition of a refugee in the national legislation, one of the amendments only presented a change for a possibility of granting asylum on a family reunification basis (in case of polygamy marriage, the asylum will not be granted to another spouse of an recognized refugee). The content of the definition of a refugee as stated in the Geneva Convention has been embodied in Sec. 12 (b) of the Asylum Act. The Law states possibility to provide asylum also for other reasons, such as family reunification (Sec. 13) or humanitarian reasons (Sec. 14).

As of 30 September 2005 refugee status was granted to 170 foreigners during 2004; most of them (62) were from the Russian Federation (mostly Chechnya), and 31 from Belarus.⁷⁹ Ministry of Interior stated, that as of 31 October 2005, 61 foreigners were granted a subsidiary form of protection, mostly to foreigners from the Russian Federation (41).

According to the information of Ministry of Interior, the exclusion clauses of Article 1(F) of the Geneva Convention were applied in 3 or 4 cases.

Several judgments of the Supreme Administrative Courts were issued. The Court decided on specification of what may be considered as the reasons for granting asylum, the Court stated, that the pure fact of existence the Islamic legal system in Islamic countries (or in parts of the countries) does not (without other facts) create a well-founded fear of being persecuted for the reasons of religion for a person of other religion;⁸⁰ or that environmental disaster does not constitute the well-founded claim for asylum (according to the Sec. 12 of Asylum Act, which states the reasons for granting asylum according to the Geneva Convention and the reason of persecution for exercise of political rights and freedoms).⁸¹

⁷⁹ source: Czech statistical office, <http://www.czso.cz/>

⁸⁰ Nejvyšší správní soud (Supreme Administrative Court), Decision No. 422 (422-447), 25 January 2005, in Sbirka rozhodnutí Nejvyššího správního soudu č. 1/2005.

⁸¹ Nejvyšší správní soud (Supreme Administrative Court), Decision No. 591 (575-602), 25 July 2005, in Sbirka rozhodnutí Nejvyššího správního soudu č. 7/2005.

Reasons for concern

The Organization for Aid to Refugees claims, that foreigners, who want to ask for asylum and came illegally or stay illegally on the territory, are sometimes subjected to expulsion by the Aliens Police before they are allowed to ask for asylum. This may harm Art. 31 of the Geneva Convention.

Unaccompanied minors seeking asylum*Legislative initiatives, national case law and practices of national authorities*

A definition of the unaccompanied minor asylum seeker was given by an amendment to the Asylum Act.⁸² The Asylum Act stipulates that an application by an unaccompanied minor cannot be dismissed as manifestly unfounded, that he/she must be provided with a guardian, or if a country that is willing to accept the unaccompanied minor is not able to provide him with conditions suitable to the age and self-development of the minor, this stipulates that it should be decided, in favour of the minor, on an obstacle to leaving the territory of the Czech Republic.⁸³

A centre for children the Home for the Children of Foreigners – a pedagogical care centre, was built in 2004 and children – asylum seekers are now mostly placed there.

Article 19. Protection in the event of removal, expulsion or extraditionCollective expulsions*Legislative initiatives, national case law and practices of national authorities*

There were no changes on this matter during the period under scrutiny. The Aliens Act forbids collective administrative expulsion.⁸⁴ Collective penal expulsion is impossible as penal expulsion is the result of a judicial penal procedure in which the decision is taken at the individual level. No collective expulsion took place during the period under scrutiny.

Subsidiary protection and prohibition of removals of foreigners to countries where they face a real and serious risk of being killed or being subjected to torture or to other cruel, inhuman and degrading treatments*International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up*

During the period under scrutiny, the Czech Republic has not been found by any international court or other organ to be violating the prohibition of removals of foreigners in the above-mentioned cases.

Legislative initiatives, national case law and practices of national authorities

During the scrutiny period there has been one legislative change in this area. A risk of removal of a foreigner to a country where he/she faces a real and serious risk of being killed or being subjected to torture or to other cruel, inhuman and degrading treatments shall be considered during the

⁸² Zákon č. 57/2005 Sb., kterým se mění zákon č. 325/2005 Sb., o azylu (...) [Act No. 57/2005 Coll., which changes the Law No. 325/1999 Coll., Asylum Act]

⁸³ See Sec. 16 (4), 89 (1) and 91 of Asylum Act

⁸⁴ Zák. č. 326/1999 Sb., o pobytu cizinců na území České republiky a o změně některých zákonů (Law No. 326/1999 Coll., on the Stay of Aliens on the Territory of the Czech Republic and on Change of Other Laws). See Sec. 118 (3): Collective expulsion of foreigners on the basis of one decision is forbidden.

administrative procedure on expulsion according to the Sec. 120a (1),⁸⁵ the consideration of that fact was not explicitly mentioned in the previous provisions of the law, although the prohibition of removal in such cases existed.

Czech law prohibits removal of foreigners to countries where they face a real and serious risk of being killed or subjected to torture or to cruel, inhuman and degrading treatment. Protection is incorporated on the constitutional level into Article 14 (5) of the Charter of Fundamental Rights and Freedoms. There are two forms of expulsion at the statutory level: penal expulsion regulated by the Penal Code,⁸⁶ used as a form of penal punishment, and administrative expulsion regulated by the Aliens Act.⁸⁷

Protection from removal to the above-mentioned countries is regularized by the Act on the Stay of Aliens, the Asylum Act, and the Penal Code. The administrative expulsion decision cannot be enforced if an alien would be forced to enter or has been expelled to a country where his life or freedom are in danger for reasons of race, religion, nationality, membership of a particular social group or political opinion; a country where he is in danger of torture, inhuman or degrading treatment or punishment, or where his life is in danger as a result of a war; or to a state which is requesting his extradition due to a crime which carries the death penalty according to the laws of that state; or if such execution is contrary to the international obligations of the Czech Republic.⁸⁸ Consideration (examination) of the existence of a danger for the foreigner in the case of removal is obligatory during the administrative procedure on expulsion held by Aliens Police. Those foreigners are then granted a form of subsidiary protection, called a *tolerance visa*.

The Czech Republic recognizes several forms of subsidiary protection. The *temporary protection*⁸⁹, if we count it as a subsidiary form of protection, must be determined either by government decree or by a decision from the Council of the EU; it was not applied during the scrutiny period.

The Asylum Act gives the Ministry of Interior the possibility to grant another form of subsidiary protection, *obstacles to travel*⁹⁰. The subsidiary form of protection was granted to 61 foreigners, mostly to foreigners from Russian Federation (41). Obstacles to travel are followed by the granting of a *tolerance visa* (this status allows foreigners to stay on the territory of the Czech Republic) granted by the Aliens Police⁹¹.

The Aliens Police also has the possibility of granting a subsidiary protection, with the same name as the protection given by the Ministry of Interior, the *obstacle to travel* (according to the Aliens Act), which is automatically followed by the granting of the same *tolerance visa*.

The steps toward implementation of the Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals, "*qualification directive*", which contains framework regarding subsidiary protection have been taken; the directive will be implemented by an amendment to the Asylum Act in the 2006.

⁸⁵ Zákon č. 428/2005 Sb., kterým se mění zákon č. 326/1999 Sb., o pobytu cizinců na území České republiky (Act No. 428/2005 Sb., which changes the Act No. 326/1999 Coll., Aliens Act).

⁸⁶ Zák. č. 140/1961 Sb., trestní zákon (Law No. 140/1961 Coll., Penal Code): see Sec. 57

⁸⁷ Zák. č. 326/1999 Sb., o pobytu cizinců na území České republiky a o změně některých zákonů (Law No. 326/1999 Coll., on the Stay of Aliens on the Territory of the Czech Republic and on Change of Other Laws). See: Sec. 118

⁸⁸ See: Sec. 179 (1) Aliens Act.

⁸⁹ Zák. č. 221/2003 Sb., o dočasné ochraně cizinců (Law No. 221/2003 Coll., on Temporary Protection of Aliens)

⁹⁰ See Sec. 91 Asylum Act

⁹¹ See Sec. 32 (2) Law on Stay of Aliens

Foreigners under a life-saving medical treatment

Legislative initiatives, national case law and practices of national authorities

Foreigners undergoing a life-saving medical treatment can be given a short/long term visa for the purpose of medical treatment or a tolerance visa. However, the possibility to ask for a short/long term visa for the purpose of medical treatment is not expressly mentioned in the Aliens Act.

Reasons for concern

The protection of foreigners whom the tolerance visa was granted is still very low. There is no accommodation provided for the foreigners with the tolerance visa. They can not claim the state social support immediately. Also the question of family reunification in those cases is not solved.

Legal remedies and procedural guarantees regarding the removal of foreigners

Legislative initiatives, national case law and practices of national authorities

There is administrative procedure regarding expulsion stipulated (according to the provisions of the Administrative Procedure Code); the procedure is held by the Aliens Police, which issues the administrative decision on expulsion. The expulsion can be issued only if the Aliens Act stipulates it. A remedy against the decision is possible – appeal to the court can be made against the administrative decision. The decision must not be issued, if the interference with the private and family life of the foreigner would be inadequate.

CHAPTER III. EQUALITY**Article 20. Equality before the law****Article 21. Non-discrimination**Protection against discrimination

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

A question of violation of Article 26 ICCPR was raised in the case of *Czernin v. the Czech Republic*⁹² before the Human Rights Committee. The author claimed that he was a victim of unequal application of the law in violation of Article 26. The alleged discrimination arose from the authorities' failure to issue a decision on author's case. The author claimed that those who had their case decided have a remedy available, whereas he has no such remedy. The case in question concerned the issue of citizenship of his father who lost Czechoslovak citizenship in the second world war as he was of German nationality but applied for retention of the Czechoslovak citizenship after the war under the Benes decree No. 33/1945 of 2 August 1945, which under requirements of faithfulness to the Czechoslovak Republic allowed for retention of Czechoslovak citizenship. The Human Rights Committee declared this part of the communication admissible. However while considering the merits the HRC was of the view that the facts before it disclosed a violation of Article 14, paragraph 1, of the Covenant and with regard to this finding, the Committee considered that it was not necessary to examine the claim under Article 26 of the Covenant.

On the other hand, the Human Rights Committee examined and decided two other cases, *Marik v. the Czech Republic*⁹³ and *Kříž v. the Czech Republic*.⁹⁴ In both cases, the authors of the communications, former Czechoslovak citizens who had left Czechoslovakia in 1968-1969 and acquired a U.S. citizenship, applied in 1990s for a restitution of their confiscated property under the Act No. 87/1991 on Extra-Judicial Rehabilitation. However, their claims were not successful because they did not meet the requirement of the Czech citizenship. In its views the Committee concluded that the facts before it disclosed a violation of Article 26 of the Covenant.

European Committee of Social Rights published its conclusions on the 2nd periodic report of the Czech Republic on the period of 2001-2002 concerning "non-hard core" provisions.⁹⁵ It found non-conformity among others with the Article 1 of the Additional Protocol on two grounds: "- Czech legislation does not award victims of sex discrimination sufficient compensation;

- Czech legislation does not permit pay comparisons to determine equal work or work of equal value beyond a single employer."

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny there has not been any significant development in this area. The proposed Anti-Discrimination Act that should fully implement to the Czech legal system all the EU anti-discrimination directives, in particular Directives 2000/43/EC, 2000/78/EC and 76/207 EEC as amended by the Directive 2002/73/EC is still being considered by the Parliament.

⁹² Communication No. 823/1998, views of the HRC of 25 May 2005 (CCPR/C/83/D/823/1998).

⁹³ Communication No. 945/2000, Views of the HRC of 4 August 2005 (CCPR/C/84/D/945/2000).

⁹⁴ Communication No. 1054/2002, Views of the HRC of 18 November 2005 (CCPR/C/85/D/1054/2002).

⁹⁵ European Committee of Social Rights, Conclusions XVII-2 (Czech Republic)

Fight against incitement to racial, ethnic, national or religious discrimination

Legislative initiatives, national case law and practices of national authorities

Czech Republic has signed the Convention on Cybercrime of the Council of Europe on 9 February 2005 but has not ratified it yet. The reason is that the current Czech legislation is not fully in conformity with the Convention and needs to be amended before ratification can take place. There is currently a new Criminal Code being considered by the Parliament that should solve some of the incompatibilities. Another thing that needs to be introduced is criminal liability of legal persons that does not currently exist in the Czech legal system. Therefore as regards the Additional protocol to the Convention its ratification is not possible at the moment. However the draft Criminal Code takes the Amendment into account. It was already adopted by the Chamber of Deputies of the Parliament.

NGOs still report reluctance of official authorities to vigorously pursue acts of alleged racially induced violence. In case from May 2003 where three persons (out of duty policemen) entered a flat of Roma family at night and attacked the occupants of the flat, despite allegations of racial insults during the attack the authorities did not investigate a possible racial motivation for the attack. Consequently, the alleged racial motivation was not raised before criminal court and could not be determined. The perpetrators were found guilty of the crime of Forcible entry into a dwelling.

Such a conduct of investigative and prosecuting bodies is an example of a behaviour that was raised before the European Court of Human Rights in case of *Nachova v. Bulgaria*⁹⁶, where the Court, in Article 160 of the judgment, reiterated the obligation of state parties expressed by the Chamber: “[W]hen investigating violent incidents and, ..., State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events.” If Czech authorities will take account of this decision of the Court and consequently their obligation arising from the Article 14 of the Convention remains to be seen in the near future.

Remedies available to the victims of discrimination

Legislative initiatives, national case law and practices of national authorities

A case of the NGO the League of Human Rights was reported where a Roma victim of racial violence successfully sued the attackers for non-pecuniary damages at a civil court. After the attackers were sentenced by a criminal court and ordered to pay the victim pecuniary damages he brought an action based on Art. 11 and 13 of the Civil Code under which persons can claim just satisfaction if their right to protection of personality was substantially violated. The Municipal Court in Prague upheld the claim while saying that „...a racially motivated attack means undoubtedly substantial violation of one’s right to protection of personality ...“. According to this judgment victims of racial violence can claim apology and non-pecuniary damages at civil courts irrespective of any punishment given out in criminal courts or even order to pay pecuniary damages at any court. Another aspect of the judgment is that racially motivated violence violates human dignity and is accordingly a substantial violation of a right to protection of personality. A substantial violation is a condition for claiming non-pecuniary damages according to the Czech Civil Code. However the judgment is subject to a review by a higher court to which the defendants appealed.

⁹⁶ Eur. Ct. H.R. (Grand Chamber), *Nachova and others v. Bulgaria* (Appl. n° 43577/98 and 43579/98) judgment of 6 July 2005.

Protection of Gypsies / Roms*Legislative initiatives, national case law and practices of national authorities*

The Czech government adopted a revised (4th) Strategy of Roma Integration by Resolution No 532 from 4 May 2005. The strategy is a main document of the government policy. The main aim of the strategy is to “improve situation of Roma in all spheres of life of society, where ill-founded and unacceptable differences exist to the disadvantage of Roma”. To achieve this aim the main declared priorities are: elimination of discrimination, elimination of handicap in education, decreasing unemployment, improving housing, improving health situation, put an end to emergence of Roma ghettos, securing the development of Roma culture and language, safeguarding the security of Roms.

The strategy also acknowledges that Roms regularly encounter discrimination in access to employment, housing and services. The Government plans to fight the discrimination by influencing public opinion to refuse racial intolerance. The strategy mentions the global campaign against racism. However, according to information from NGOs and public surveys,⁹⁷ racism in general is rare in the Czech society compared to intolerance against Roms. Roms have traditionally very bad reputation among Czech society and most people have prejudices just against Roms. Therefore a special campaign to improve the notion of Roma community among the Czech society could be much more effective in fighting discrimination against Roms.

The strategy also mentions the importance of positive actions in combating long-term handicap. The strategy refuses the system of quotas for Roms in certain occupations or education and favours targeted assistance services. The main means of the assistance are to increase the number of Roma children that attend kindergarten, introduce head-start classes and increase the number of assistant teachers in kindergartens and basic schools that have Roma children. The assistant should help children to accommodate in the school and to facilitate the communication of teachers with these pupils and their parents. However in year 2004 the number of pedagogical assistants decreased to 332 from 366 in year 2003.⁹⁸ Moreover no concrete measures are mentioned in regard to higher and university education of Roma children.

Jakub Steiner of the prestigious CERGE Institute of Economics published a paper on the Economics of Social Exclusion, which describes the problem of most Roms.⁹⁹ By using neoclassical economic models and economical theories of family he describes the social exclusion of Roms as closed causal circuit with no clear beginning. In the circle poverty leads to big solidary nets (large families) that lead to ineffective behaviour of Roms that lead to their discrimination and that lead to poverty. The large solidary families in which Roms live mean that there are no incentives for individuals to work or study as the labour is on the individual but every member of the larger family benefits from it. The paper mentions some reasons of living in the large solidary families. Poor enforceability of law within the Roma community is mentioned as one of the most important reasons. Roms do not trust the police so much that they almost never approach police with their problems. The paper proposes a couple of measures to break the circle: better foreseeability and simplification of social benefits; improvement of the relation of Roms and the Police, by employing Roma police officers, vigorously combating racism within the police force etc.; encouraging Roms to pursue secondary education by means of scholarships; not establishing Roma ghettos and eradicating the current ones.

The Public Protector of Rights (Ombudsman) examines over 80 complaints of victims of involuntary sterilisation. Overwhelming majority of them are Roma women. The Ombudsman has drawn a report concerning every case and a comprehensive report on sterilizations. These reports are not yet public as the Ministry of Health must first respond to them. So far the Ombudsman referred about twenty of the

⁹⁷ See Zpráva o stavu romských komunit v České republice, 2004.

⁹⁸ Zpráva o stavu romských komunit v České republice, 2004.

⁹⁹ Published in: Marek Jakoubek, Tomáš Hirt ed.: Romové: Kulturologické etudy. Plzeň, 2004.

complaints to police for criminal investigation. Yet, up to now the police have not started a prosecution in any case.

Following discussions in late 2004, the Czech Ministry of Health established a panel to review files of alleged victims and provide answers to questions submitted by the Ombudsman. The panel also referred a few cases to the police for investigation. Lawyers of the victims are currently taking civil actions against the hospitals that performed the sterilizations.

Article 22. Cultural, religious and linguistic diversity

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

On 2 July 2004 The Advisory Committee of the Framework Convention for the Protection of National Minorities received a second report submitted by the Czech Republic¹⁰⁰. The Committee adopted its opinion on 24 February 2005 and was published on 26 October 2005.¹⁰¹

The Committee stressed the persisting problem of discrimination against Roma and also the problem of implementation of parts of the relevant legislation:

„Difficulties persist, however, in the implementation of certain parts of the relevant legislation, notably at the local level. In addition to the unsatisfactory involvement of local authorities, there are reported difficulties with regard to the identification of the geographical areas concerned by such measures, as well as shortcomings in terms of participation of minority representatives. Further efforts should also be taken to strengthen prevention of, and fight against, intolerance and discrimination.

The situation of the Roma, which continues to be a matter of concern, requires more resolute action by the authorities. Priority should be given in this action to the considerable difficulties faced by the Roma in fields such as housing and employment, as well as to the educational situation of Roma children, and to the allegations of sterilisation of Roma women without their prior free and informed consent.“

The Committee noted especially the high rate of unemployment among Roma community „with estimates ranging from over 50% to 70%, and even 90% in certain cases“.¹⁰²

The Committee among others recommended to the Government to:

„- Speed up the adoption of an anti-discrimination law and ensure its rapid implementation, notably regarding the establishment of the Centre for Equal Treatment; ensure more effective monitoring of the situation in this sphere, using more varied means of data collection.

- Provide more appropriate solutions to the difficulties encountered by Roma in a number of fields, in consultation with them. As a matter of priority, take the necessary steps to eradicate the practice of isolation of Roma children within the education system and to ensure the proper handling, by the competent authorities, of allegations and complaints of cases of sterilisation of Roma women without their prior free and informed consent.

- Pursue the efforts to combat intolerant or hostile police attitudes towards Roma and other vulnerable persons by developing more appropriate training and awareness-raising measures and ensuring more

¹⁰⁰ ACFC/SR/II(2004)007

¹⁰¹ ACFC/INF/OP/II(2005)002

¹⁰² Para. 51 of the Opinion.

effective, impartial, independent monitoring of police activities. Take additional awareness-raising measures targeting the media, the judiciary and local authorities.¹⁰³

Article 23. Equality between man and women

Gender discrimination in work and employment

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

During the period under scrutiny, the Czech Republic has not been found to be in a violation by the European Court of Human Rights of Article 14 of the ECHR or by any other international organ of prohibition of discrimination.

Legislative initiatives, national case law and practices of national authorities

The Czech Republic is a party to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The Labour Code and the Employment Act differentiate between direct and indirect discrimination and prohibits it.¹⁰⁴ The Labour Code stipulates e.g., that direct and indirect discrimination in the labour relations for the reasons of gender, sexual orientation, race or ethnic origin, nationality, citizenship, social origin, language, health, age, religion or faith, means, family status, membership in labour unions etc. is forbidden. Also harassment for the reasons of gender, sexual orientation, race or ethnic origin, handicap, age and religion or faith is considered as discrimination. Sexual harassment is considered as a form of discrimination under Labour Code.¹⁰⁵

A group of experts analyzed existence of sexual harassment on the workplaces in the project *Sexual harassment in the Czech system of labour relations*.¹⁰⁶ The analysis was ordered by Ministry of Labour and Social Affairs. The report says that the sexual harassment is not rare. One quarter of the Czech population have encountered sexual harassment in their workplaces; mostly women (28 % - 13 % of them in person, in 15 % was the target somebody else). The sexual harassment to women is often met in the field, where men dominate. The most used forms are verbal assaults, allusion to sexual life, sexual anecdotes. The senior executive was an initiator of this conduct in 15 to 23 % cases, which is very alarming, as the victims' position is very hard because of the fear from losing the job. The problem connected to the victims' position is that according to this report, the tolerance of these conducts in the society is high.

The draft law on equal treatment and on legal instruments of protection against discrimination (Antidiscrimination Act) was submitted¹⁰⁷ by a group of deputies to the Chamber of Deputies of the Czech Parliament in January 2005. The law was still discussed in the Chamber of Deputies in October 2005. This draft implements part of *acquis* focused on equal treatment. The draft contains provisions on the position of ombudsman in the issue of discrimination.

Also gender pay gap remains a problem in Czech Republic (gender pay gap is 19.1 %).

Good practices

Cooperation of the Ministry of Labour and Social Affairs with NGOs, which are very active in this issue.

¹⁰³ Para. 195 of the Opinion.

¹⁰⁴ See Sec. 1 (4) Labour Code and Sec. 4 (6) Employment Act.

¹⁰⁵ See Sec. 1 (10) Labour Code.

¹⁰⁶ See <http://www.mpsv.cz/cs/1698>.

¹⁰⁷ Sněmovní tisk č. 866/0 (Draft No. 866), www.psp.cz

Reasons for concern

The society does not see the issue of discrimination as priority.

Positive actions seeking to promote the professional integration of women*Legislative initiatives, national case law and practices of national authorities*

At the governmental level the Ministry of Labour and Social Affairs is entrusted with a special authority to coordinate state policy that concerns a state of women in the society. The Government adopts every year the National Program of Action called Priorities and way of the Government in enforcing equality between men and women. Under this program members of the Government are required to promote the principle of equality between men and women. The report about fulfilment of the 2004 National Program of Action was adopted by the government on 4 May 2005 (the report for 2005 is not available yet).¹⁰⁸ The report states e.g. that the basic legal framework has been established in the last years, but the legislative is not fully realized in practice. Main problems may be seen in the fact, that this issue is not counted as priority in the society.

Ministry of Labour and Social Affairs also created a website which addresses the issue of equality between men and women.¹⁰⁹ This website provides information about the issue and contains basic documents. The Ministry closely cooperates with NGOs.

The Government plans a Campaign on the equal opportunities in the 2006.

Gender discrimination in the access to goods and services*Legislative initiatives, national case law and practices of national authorities*

If claimant claims, that he/she was discriminated in the access to goods or services, the court is satisfied with that. The burden of proof is not on the claimant (see below).

Remedies available to the victim of gender discrimination*Legislative initiatives, national case law and practices of national authorities*

Victims can appeal to courts (civil or administrative) and can also complain to Labour Offices. The burden of proof in discriminatory cases is extraordinarily not on the victim, but on the defendant in these cases.¹¹⁰

Organisations, which have the issue of protection against discrimination in their statutes, can stand for the victims in the courts (in civil and also in administrative proceedings).¹¹¹

Participation of women in political life*Legislative initiatives, national case law and practices of national authorities*

The participation of women in political life in the Czech Republic is not proportionate. There is 25 % women (out of the Czech deputies) in the European Parliament, 17 % of women in the Parliament – Chamber of Deputies in the, 10 % in the Parliament – Senate, 11 % in the Government and 10 % in the local politics.

¹⁰⁸ Usnesení vlády č. 533 ze dne 4. května 2005 [Resolution of the Government No. 533 of 4 May 2005].

¹⁰⁹ See <http://www.mpsv.cz/cs/228>.

¹¹⁰ See Sec. 133a Civil Procedure Code.

¹¹¹ See Sec. 26 (3) Civil Procedure Code and Sec. 35 (4) Administrative Procedure Code.

There are no quotas required by the law. Only some political parties have the “zip” system for formation of slates (Green Party, European Democrats) and some political parties have quotas to the internal authorities (Social Democrats).

The planned Campaign on the equal opportunities will also be focused on the problem of political participation of women.

Article 24. The rights of the child

Possibility for the child to be heard, to act and to be represented in judicial proceedings

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

During the period under scrutiny there has not been any significant development in this area. The situation in the Czech Republic was studied in the last year report.

Reasons for concern

An amendment to the Act on Execution of Institutional Care¹¹² was passed.¹¹³ The amendment was criticized by NGOs dealing with rights of a child. There are two particularly problematic aspects of the amendment. Firstly, it allows the placement of children who have been found guilty of acts that would normally constitute a crime, and were sentenced to so-called protective care, to the same establishments as children in a so-called institutional care. Children are placed to institutional care for variety reasons – they are orphans, for social situation of their families etc. However by placing children under institutional care in the same institution with young delinquents under protective care might result in their pathological development. Secondly, the Amendment introduced a possibility of installing cameras and means to prevent escape of children from these institutions (e.g. grids). That becomes again problematic when it is applied to institutions where also children under institutional care are placed. A previous report of the Public Protector of Rights (Ombudsman) said that camera system in these institutions negatively affects the psychological development of children. The amendment allows the use of cameras in the corridors and surroundings of the institution. The possibility of placing cameras in the corridors was itself disapproved of by the Government Commissioner for Human Rights, the Ombudsman and NGOs.

Article 25. The rights of the elderly

The possibility for the elderly to stay in their usual life environment

Legislative initiatives, national case law and practices of national authorities

According to the data of Ministry of Labour and Social Affairs at the end of year 2004 there lived altogether 51 718 elderly people in various institutions for elderly people (homes for pensioners). There are app. 1.9 mil. people who are entitled to old age pensions. It follows that app. 2.7 percent of elderly live in various institutional homes.

¹¹² Zákon č. 109/2002 Sb., o výkonu ústavní výchovy nebo ochranné výchovy ve školských zařízeních a o preventivně výchovné péči ve školských zařízeních a o změně dalších zákonů [Act No. 109/2002 Coll., on Execution of Institutional Care or Protective Care].

¹¹³ Zákon č. 383/2005 Sb., kterým se mění zákon č. 109/2002 Sb., o výkonu ústavní výchovy nebo ochranné výchovy ve školských zařízeních a o preventivně výchovné péči ve školských zařízeních a o změně dalších zákonů, ve znění pozdějších předpisů a další související zákony [Act No. 383/2005 Coll., amending the Act No. 109/2002 Coll.].

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Committee of Social Rights deferred its conclusion on Article 15 of the Charter and requested additional information especially concerning the draft Social Services Act.¹¹⁴

The draft Act has been currently considered by the Parliament and proposed to take effect on 1 January 2007. The Act among others regulates the social services with the aim of promoting social inclusion and social coherence of the society. The Act contains provisions that regulate the providers of social services to ensure their high quality and accessibility. It also introduces monthly allowance for persons that need assistance. The height of the allowance depends on the scope of ability of person to care for him/her. The full impact of the Act will be assessed once it is passed and enters into force.

Article 26. Integration of persons with disabilities

Professional integration of persons with disabilities: positive actions and employment quotas

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Committee of Social Rights deferred¹¹⁵ its conclusion on Article 15 of the Charter and requested additional information on, among others, why the number of jobs suitable for persons with disabilities is relatively low and any measures designed at ameliorating this situation and on the conditions of employment in sheltered workshops and to which extent trade unions are involved in this respect.

Positive aspects

The amendment¹¹⁶ to the Law on Public Health Insurance Contributions¹¹⁷ mentioned in the last year report was passed and has entered into effect. According to the amendment employers that have filled over 50% of their job places with persons with disabilities have a special regime and pay lower contributions to health insurance scheme for employees with disability as would be the case with ordinary employees. That means that employing persons with disabilities is for the employers cheaper than before the amendment.

¹¹⁴ Conclusions XVII-2 (Czech Republic).

¹¹⁵ Conclusions XVII-2 (Czech Republic).

¹¹⁶ Zákon č. 123/2005 Sb. [Act No. 123/2005 Coll., amending the Act No. 592/1992 Coll.]

¹¹⁷ Zákon č. 592/1992 Sb., o pojistném na všeobecné zdravotní pojištění [Act No. 592/1992 Coll., on Public Health Insurance Contributions]

CHAPTER IV. SOLIDARITY**Article 27. Worker's right to information and consultation within the undertaking**Workers' information on the economic and financial situation of the undertaking

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The Czech Republic has not so far ratified the Revised European Social Charter, which it signed in 2000. It has, on the contrary, ratified the Additional Protocol (1988) to the European Social Charter, in the framework of which it declared itself bound, *inter alia*, by Article 2 granting the right to information and consultation.

Legislative initiatives, national case law and practices of national authorities

The workers' right to information and consultation within the undertaking is granted by the Law 65/1965 Coll., Labour Code,¹¹⁸ as amended by the Law 155/2000 Coll.¹¹⁹ Under the Labour Code, the workers' right to information and consultation may be exercised either via workers' representatives, for instance trade unions, or – when there are no trade unions – directly by individual workers. The regulation applies to all undertakings/ establishments, regardless of the number of their employees and of whether they are private or public. Moreover, the Labour Code also grants the workers the right to access to supranational information and consultation (Sec. 25d), concerning the employers acting on the territory of the European Union. Disputes concerning the right to information and consultation can be brought before the labour office, which serves as an inspection body.

The newly adopted Act on Labour Inspection¹²⁰ has established as administrative offences, *inter alia*, the violation of certain obligations of employers to inform the representatives of workers regarding the safety at work, the economic and social situation of the undertaking, collective dismissals as well as in case of a change of the employer (under Sec. 18, 18a and 25c, 52 and 250 of the Labour Code). The supervision is ensured and sanctions are applied by the Labour Inspectorates (i.e. the State Authority of Labour Inspection and regional Labour Inspectorates), which are administrative bodies under the control of the Ministry of Labour and Social Affairs.

The Act No. 627/2004 on European Society (*Societas europea*)¹²¹ has also provided (Sec. 61 and 62) for the workers' right to information and consultation.

During the period under scrutiny, the Governmental draft new Labour Code has been discussed and eventually passed in the Chamber of Deputies of the Parliament. In spite of the controversial discussion, the new Code seems to keep fundamental achievements in the field of individual and collective workers' rights. If adopted also by the Senate, the new Labour Code will be subject to detailed information in the next Report.

¹¹⁸ Zákon č. 65/1965 Sb., zákoník práce [Law No. 65/1965 Coll., Labour Code].

¹¹⁹ Zákon č. 155/2000 Sb., kterým se mění zákon č. 65/1965 Sb., zákoník práce, ve znění pozdějších předpisů, a některé další zákony [Act 155/2000 Coll., which changes the Act 65/1965 Coll., Labour Code, with later amendments, and some other Acts].

¹²⁰ Zákon č. 251/2005 Sb., o inspekci práce [Act No. 251/2005 Coll., on Labour Inspection].

¹²¹ Zákon č. 627/2004 Sb., o evropské společnosti [Act No. 627/2004 Coll., on European Society (SE)].

Article 28. Right of collective bargaining and action

Social dialogue

Legislative initiatives, national case law and practices of national authorities

In response to the judgment of the Constitutional Court,¹²² which had canceled the provision of sec. 7 of the Act No. 2/1991 on Collective Bargaining, and entered into effect on 31 March 2004, the Parliament has adopted the amendment to the above law.¹²³ The new Act No. 255/2005 has provided for more precise conditions of representativity (legitimacy) of employers. Under these conditions the scope of application of general (sector-wide) collective labour agreements may be extended to other employers with the prevailing activity in the same sector who did not take part in collective bargaining. The extension of the scope of application shall be done by notification of the Ministry of Labour and Social Affairs.

Article 29. Right of access to placement services

Access to placement services

Legislative initiatives, national case law and practices of national authorities

The situation in the Czech Republic was studied in the last year report, as the Act on Employment was adopted in 2004.

During the period under scrutiny the Act No. 382/2005 has only slightly amended the Act on Employment.¹²⁴ In particular, it provided for a flexibility in the treatment of long term unemployed persons (registered during a period longer than 1 year). They may be offered an employment (considered as appropriate employment) even if it is a short term job or a part-time job in the amount of at least 50% of regular weekly work time. The amendment has also improved conditions for a requalification of enemployed persons and for the state subsidy towards a salary and other costs related to new jobs, in particular for disabled persons, young persons (under 25), persons graduated from universities (up to 2 years from the graduation) and elderly persons (over 50).

Article 30. Protection in the event of unjustified dismissal

Reasons for dismissals

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The Czech Republic is bound neither by the ILO Convention No. 158 concerning the Termination of Employment at the Initiative of the Employer, adopted in 1982, nor by the Revised European Social Charter.

¹²² Constitutional Court of the Czech Republic, judgment, Pl. US 40/02, 11 June 2003, published under No. 199/2003 Coll.

¹²³ Zákon č. 255/2005 Sb., kterým se mění zákon č. 2/1991 Sb., o kolektivním vyjednávání [Act No. 255/2005 Coll., amending Act No. 2/1991 Coll., on Collective Bargaining].

¹²⁴ Zákon č. 382/2005 Sb., kterým se mění zákon č. 435/2004 Sb., o zaměstnanosti [Act No. 382/2005 Coll., amending Act No. 435/2004 Coll., on Employment].

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny there has not been any significant development in this area. The situation in the Czech Republic was studied in the last year report.

The Governmental draft new Labour Code has been discussed and eventually passed in the Chamber of Deputies of the Parliament. In spite of the controversial discussion (e.g. proposals from the opposition parties to introduce more flexible ways of dismissal, including a dismissal without legal reasons), the new Code seems to keep fundamental achievements in the field of individual and collective workers' rights. If adopted also by the Senate, the new Labour Code will be subject to detailed information in the next Report.

Remedies against the decision of dismissal and compensation due in the event of an unjustified dismissal*Legislative initiatives, national case law and practices of national authorities*

During the period under scrutiny there has not been any significant development in this area. The situation in the Czech Republic was studied in the last year report.

Article 31. Fair and just working conditionsHealth and safety at work*Legislative initiatives, national case law and practices of national authorities*

During the period under scrutiny, the Parliament has adopted the Act No. 251/2005 on Labour Inspection.¹²⁵ It provides for the establishment and competences of the authorities of labour inspection as control bodies in the field of the protection of working relations and working conditions. The State Authority of Labour Inspection and regional Inspectorates have been set up in order to control compliance with legal regulations concerning rights and obligations in labour relations, including the right to equal opportunities and treatment and to fair remuneration, regulations of working time and rest periods, regulations on health and safety at work, regulations concerning employed women and young persons, as well as persons with family responsibilities or with long-time care of children or disabled persons. The Act also provides for a dissuading administrative sanctions, including financial sanctions.

Article 32. Prohibition of child labour and protection of young people at workProtection of minors at work and monitoring of the protection*Legislative initiatives, national case law and practices of national authorities*

During the period under scrutiny there has not been any significant development in this area. The situation in the Czech Republic was studied in the last year report.

¹²⁵ Zákon č. 251/2005 Sb., o inspekci práce [Act No. 251/2005 Coll., on Labour Inspection]

Article 33. Family and professional lifeParental leaves and initiatives to facilitate the conciliation of family and professional life

Legislative initiatives, national case law and practices of national authorities

Act No. 169/2005 has amended the Labour Code to the effect to enable the persons who took over a child in a foster care to use the parental leave even in extension of three years of age.

Protection against dismissal on grounds related to the exercise of family responsibilities

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny there has not been any significant development in this area. The situation in the Czech Republic was studied in the last year report.

Article 34. Social security and social assistanceSocial assistance and fight against social exclusion

Legislative initiatives, national case law and practices of national authorities

The situation in the Czech Republic in this area was studied in the last year report.

During the period under scrutiny the Parliament has adopted the amendmend to the Act on State Social Assistance.¹²⁶ The Act introduced a higher reward of foster parents in special cases.

Reasons for concern

The Public Prosecutor has identified the problematic situation of handicapped persons who were recognised invalid according to the Act on pension insurance,¹²⁷ but were not granted the full invalid pension because they did not meet the condition of the necessary period of insurance. Such persons cannot be included into the list of employment seekers under the Act on employment.¹²⁸ Therefore they are not entitled to any benefits of social assistance according to the Act on social necessity.¹²⁹

Article 35. Health careAccess to health care

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny there has not been any significant development in this area. The situation in the Czech Republic was studied in the last year report.

Basic medical care is guaranteed for all asylum seekers.

¹²⁶ Zákon č. 168/2005 Sb., kterým se mění zákon č. 117/1995 Sb., o státní sociální podpoře, ve znění pozdějších předpisů [Act No. 168/2005 Coll., on State Social Assistance, as amended by later laws].

¹²⁷ Zákon č. 155/1995 Sb., o důchodovém pojištění [Act No. 155/1995 Coll., on pension insurance]

¹²⁸ Zákon č. 435/2004 Sb., o zaměstnanosti [Act No. 435/2004 Coll., on employment]

¹²⁹ Zákon č. 482/1991 Sb., o sociální potřebnosti [Act No. 482/1991 Coll., on social necessity]

Act No. 428/2005 amending the Act on Stay of Aliens¹³⁰ has provided for the alien during his/her detention on the Czech territory the access to urgent health care and to health care in connection with a measure for protection of public health. The costs of such a care are covered by the State.

Drugs

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny the Parliament has adopted the Act on Protection from Harm Causing by Tobacco Products, Alcohol and other Drugs.¹³¹ The act provides for measures which aim at preventing health harms caused by tobacco, alcohol and other drugs, measures on supply and access reduction of tobacco products and alcohol (in particular for young people), prohibition of smoking in some public places and competences of administrative and local self-governance bodies in implementation of programs of prevention, diagnostic and therapeutic treatment, detoxication, substitutive treatment, after-care, consultations, street work, rehabilitation and social reintegration.

Article 36. Access to services of general economic interest

Access to services of general economic interest in the economy of networks: transports, posts and telecommunications, water-gas-electricity

Legislative initiatives, national case law and practices of national authorities

The new Act on Electronic Communications¹³² has provided, *inter alia*, the obligation for a provider of universal service of electronic communications to ensure accessibility of services to the final users, in particular the access to the public telephone network. The access to this service, including to public phones, has to be made possible also for disabled users. The re regulation authority may also impose to the operator of public communication network the obligation to broadcast radio and television program in a public interest.

The Act No. 95/2005 has amended Act on Postal Services.¹³³ The operator of postal services is obliged to conclude a contract with any customer according to the Postal conditions, approved by the State regulation authority. The holder of the postal license has to fulfil its obligations and to offer at least basic postal services to public and must not discriminate against some persons interested in these services.

The Act No. 458/2000 has amended Energy Act¹³⁴ in order to provide more precise rules for business and public regulation in the energy sector. The protected (final) customer has the right to connection to a distribution network and to supply of electric energy for regulated prices and to information on fuel used and environmental impact.

¹³⁰ Zákon č. 428/2005 Sb., kterým se mění zákon č. 326/1999 Sb., o pobytu cizinců na území České republiky, a některé další zákony [Act No. 428/2005 Coll., amending Act No. 326/1999 Coll., on Stay of Aliens in the Territory of the Czech Republic, and some other laws].

¹³¹ Zákon č. 379/2005 Sb., o opatřeních k ochraně před škodami působenými tabákovými výrobky, alkoholem a jinými návykovými látkami [Act on Protection from Harm Causing by Tobacco Products, Alcohol and other Drugs].

¹³² Zákon č. 127/2005 Sb., o elektronických komunikacích a o změně některých souvisejících zákonů [Act No. 127/2005 Coll., on Electronic Communications and amendment of some related laws].

¹³³ Zákon č. 95/2005 Sb., kterým se mění zákon č. 29/2000 Sb., o poštovních službách, ve znění pozdějších zákonů [Act No. 95/2005 Coll., amending Act No. 29/2000 Coll., on Postal Services, as amended by later laws].

¹³⁴ Zákon č. 670/2004 Sb., kterým se mění zákon č. 458/2000 Sb., o podmínkách podnikání a výkonu státní správy v energetických odvětvích (energetický zákon) [Act No. 670/2004 Coll., amending Act No. 458/2000 Coll., on Conditions of Business and Exercise of State Administration in Energy Sectors (Energy Act)].

Article 37. Environmental protection

Right to a healthy environment

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny there has not been any significant development in this area. The situation in the Czech Republic was studied in the last year report.

The Czech Republic has ratified and became party to the Kyoto Protocol to the UN Framework Convention on Climate Change (1997). During the period under scrutiny the Parliament has adopted Act No. 695/2004 on Conditions of Trading in Emission Licenses of Greenhouse Gas.¹³⁵

The right to access to information in environmental matters

Legislative initiatives, national case law and practices of national authorities

The Czech Republic has become party to the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998).¹³⁶

In order to ensure compatibility of Czech law with the above Convention and EC law, the Parliament has adopted Act No. 6/2005 amending Act on Right to Environmental Information.¹³⁷ The amendment has introduced in particular the obligation of public authorities to disseminate actively environmental information and the right of individuals to judicial review, after exhaustion of administrative remedies, in case of the denial of access to information.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Constitutional Court has decided in case concerning the development of the Labe (Elbe) waterway.¹³⁸ The application lodged by the group of 18 senators aimed at cancelling Sec. 3a of the Act on Inland Navigation, which declared a development and modernisation of the above waterway, including a construction of weirs and other facilities, to be in a public interest. This provision was attacked on various grounds, namely to be in violation of the Constitution (principles of the democratic State based on law and of the division of powers) and the constitutional Charter of Fundamental Rights and Freedoms (right to property, right to a healthy environment and right to a judicial review), Art. 1 of the Additional Protocol No. 1 to ECHR, as well as the Bern Convention on the Conservation of European Wildlife and Natural Habitats. The Constitutional Court has cancelled the provision of Sec. 3a of the Act because it found this provision incompatible with the rule of law and the principle of the division of powers. Therefore, it had no need to examine other grounds of the application.

¹³⁵ Zákon č. 695/2004 Sb., o podmínkách obchodování s povolenkami na emise skleníkových plynů a o změně některých zákonů [Act No. 695/2004 on Conditions of Trading in Emission Licenses of Greenhouse Gas and amendments to some laws].

¹³⁶ Sdělení MZV č. 124/2004 Sb.m.s. [Notice of the Ministry of Foreign Affairs No. 124/2004 Coll. Int.Treaties].

¹³⁷ Zákon č. 6/2005 Sb., kterým se mění zákon č. 123/1998 Sb., o právu na informace o životním prostředí [Act No. 6/2005 Coll., amending Act on Right to Environmental Information].

¹³⁸ Constitutional Court (plenary), judgment of 28 June 2005, published under No. 327/2005 Coll.

Article 38. Consumer protection

Protection of the consumer in contract law and information of the consumer

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny there has not been any significant development in this area. The situation in the Czech Republic was studied in the last year report.

Act No. 392/2005¹³⁹ has improved the protection of consumers in the field of alimentary safety and public health.

The State Inspectorate of Commerce has strengthened its control activities in the chains of supermarkets because of complaints concerning poor quality of certain goods, including the repeatedly reported offer for sale of expired or otherwise dangerous alimentary goods.

¹³⁹ Zákon č. 392/2005 Sb., kterým se mění zákon č. 258/2000 Sb., o ochraně veřejného zdraví, a některé další zákony [Act No. 392/2005 Coll., amending Act No. 258/2000 Coll., on Protection of Public Health, and some other laws].

CHAPTER.V. CITIZENS' RIGHTS**Article 39. Right to vote and to stand as a candidate at elections to the European Parliament**Right to vote and to stand as a candidate at elections to the European Parliament*Legislative initiatives, national case law and practices of national authorities*

The right to vote and to stand as a candidate at elections to the European Parliament is regulated by the Act No. 62/2003 Coll., *on Elections to the European Parliament and on Amendments to Certain Acts*¹⁴⁰ adopted in 2003, which transposes the Council Directive 93/109/EC *laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals*.

a) Right to vote and to stand as a candidate for the Czech citizens

The active voting right is granted to all citizens of the Czech Republic having attained the age of 18 on the second day of elections at the latest. The passive voting right covers all citizens of the Czech Republic having attained the age of 21 on the second day of elections at the latest and having been registered, for a minimum period of 45 days, in the population register on the territory of the Czech Republic. The registration is regulated by the Act No. 133/2000 Coll., *on the Population Register and Birth Certificate Numbers and on Amendments to Certain Acts*.¹⁴¹

b) Right to vote and stand as a candidate for the citizens of other EU Member States

The Act No. 62/2003 Coll. grants both the active and passive voting right (with the age limits corresponding to those applicable to the Czech nationals, that means 18 and 21 years) to all citizens of other EU Member States, who are residents on the territory of the Czech Republic, i.e. who have been registered, for a minimum period of 45 days, in the population register. Citizens of other EU Member States are registered in the population register, if they have a residence permit in the Czech Republic.

c) Electoral roll for the elections to the European Parliament

Citizens of the Czech Republic are included in the electoral roll for the elections to the European Parliament on the basis of their registration in the permanent electoral roll. This roll is created on the basis of the Act 491/2001 Coll., *on Municipal Elections and on Amendments to Certain Acts*.¹⁴² Citizens of other Member States may be included in the electoral roll for the elections to the European Parliament, if they dispose of the active voting right and submit a request to be included into the roll not later than 40 days before the polling day. The request has to be submitted to the municipal office, in whose territorial jurisdiction the citizens have been registered in the population register.

d) Restrictions on the right to vote and to stand as a candidate for the elections to the European Parliament

The right to vote to the European Parliament is denied to persons who:

- have been deprived of their legal capacity (Par. 10 and 855 of the *Civil Code*); or

¹⁴⁰ Zákon č. 62/2003 Sb., *o volbách do Evropského parlamentu a o změně některých zákonů* [Act No. 62/2003 Coll., *on Elections to the European Parliament and on Amendments to Certain Acts*].

¹⁴¹ Zákon č. 133/2000 Sb., *o evidenci obyvatel a rodných číslech a o změně některých zákonů* [Act No. 133/2000 Coll., *on the Population Register and Birth Certificate Numbers and on Amendments to Certain Acts*].

¹⁴² Zákon č. 491/2001 Sb., *o volbách do zastupitelstev obcí a o změně některých zákonů* [Act 491/2001 Coll., *on Municipal Elections and on Amendments to Certain Acts*].

- have been imposed lawful restriction on personal freedom for reasons of protection of public health (Par. 9 of the Act 20/1966 Coll., *on Health of People Care*).

The right to stand as a candidate to the European Parliament is denied to persons who:

- have been deprived of their legal capacity (Par. 10 and 855 of the *Civil Code*).

The non-nationals, in addition, may not vote/stand as a candidate, if they have been deprived of their legal capacity or of the right to vote/stand as a candidate for the elections to the European Parliament in the Member State of which they are nationals. The Czech Republic does not know the institution of the deprivation of the voting rights through the criminal law decision as previewed in Art. 7 of the Directive 93/109/EC.

Practices of national authorities

In the period under scrutiny, no elections to the European Parliament have taken place in Europe.

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

Participation of foreigners in public life at local level

Legislative initiatives, national case law and practices of national authorities

The Czech Republic has not so far ratified the Council of Europe *Convention on the Participation of Foreigners in Public Life at Local Level* (ETS, n° 144) that it signed on 7 June 2000. The ratification is still dependent on the adoption of amendments to the *Act 83/1990 Coll. on Association of Citizens*.¹⁴³ This act, in its current wording, does not grant the right of association to non-nationals and is therefore incompatible with Chapter A of the Part I of the Convention. The Czech Republic plans to make the declaration previewed by Article 1, par. 1 of the Convention, reserving the right not to apply the provisions of Chapter B and Chapter C of the Part I of the document.

Right to vote and to stand as a candidate for EU citizens non nationals of the member State

Legislative initiatives

a) Municipal Elections (municipalities)

Municipal elections in the Czech Republic are regulated by the Act 128/2000 Coll., *on Municipalities*,¹⁴⁴ the Act 491/2001 Coll., *on Elections to the Representations of Municipalities and on Amendments to Certain Act*,¹⁴⁵ and the Government Ordinance 59/2002 Coll., *on the implementation of certain provisions of the Act 491/2001 Coll.*¹⁴⁶ These documents grant the rights to vote and to stand as a candidate at municipal elections not only to Czech citizens, but also to citizens of other states having attained the age of 18 on the second day of elections at the latest and having been registered in the population register on that day, providing that an international treaty binding upon the Czech Republic grants such a right. The Treaty of Accession to the European Union is considered to represent such an international treaty. Therefore, the citizens of other EU Member States do have the right to vote and to stand as candidate at municipal elections in the Czech Republic.

¹⁴³ Zákon č. 83/1990 Sb., *o sdružování občanů* [Act 83/1990 Coll., *on Association of Citizens*].

¹⁴⁴ Zákon č. 128/2000 Sb., *o obcích* [Act 128/2000 Coll., *on Municipalities*].

¹⁴⁵ Zákon č. 491/2001 Sb., *o volbách do zastupitelstev obcí a o změně některých zákonů* [Act 491/2001 Coll., *on Elections to the Representations of Municipalities and on Amendments to Certain Act*].

¹⁴⁶ Vyhláška č. 59/2002 Sb., *o provedení některých ustanovení zákona č. 491/2001 Sb., o volbách do zastupitelstev obcí a o změně některých zákonů* [Government Ordinance 59/2002 Coll., *on the implementation of certain provisions of the Act 491/2001 Coll. on Elections to the Representations of Municipalities and on Amendments to Certain Act*].

b) Regional Elections (municipalities)

Regional elections in the Czech Republic are regulated by the Act 130/2000 Coll., *on Elections to the Representations of Regions and on Amendments to Certain Act*.¹⁴⁷ This Act grants the right to vote and to stand as a candidate at regional elections to Czech citizens exclusively. However, as regional elections are not covered by Art. 40 of the EU Charter of Fundamental Rights, the Czech regulation is not incompatible with the EU legislation.

Practices of national authorities

In 2005, no general municipal elections took place in the Czech Republic. There were “*new elections*” (previewed for the situations, where a new municipality is created, the number of representatives in a municipality drops under a certain limit or the representation of a municipality is disbanded) held in several municipalities. Information available does not indicate that there would have been any non-nationals taking part (as voters or candidates) in these new elections.

Right to vote and to stand as a candidate to municipal elections for third country nationals*Legislative initiatives, national case law and practices of national authorities*

Third country nationals do not have the right to vote and to stand as candidates at municipal elections in the Czech Republic. There does not seem to be a prospect for a change in the nearest future.

Article 41. Right to good administration

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 42. Right of access to documents

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 43. Ombudsman

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union..

Article 44. Right to petition

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

¹⁴⁷ Zákon č. 130/2000 Sb., *o volbách do zastupitelstev krajů a o změně některých zákonů* [Act 130/2000 Coll., *on Elections to the Representations of Regions and on Amendments to Certain Act*].

Article 45. Freedom of movement and of residenceRight to social assistance for the persons who have exercised their freedom of movement*Legislative initiatives, national case law and practices of national authorities*

The provision of the social assistance is regulated by the Act 117/1995 Coll., *on State Social Support*,¹⁴⁸ and a set of other acts and government ordinances relating to the social care.¹⁴⁹

The benefits of the state *social support*, which can be attributed to all natural persons having the permanent residence on the territory of the Czech Republic, include:

- income-related benefits (granted in dependence of the income) = child allowance, social benefit, dwelling allowance and transportation allowance;
- income-unrelated benefits (granted independently of the income) = family allowance, establishment allowance, foster care allowance, birth allowance, funeral allowance).

The benefits of the *social care*, which are reserved to Czech citizens, include:

- Allowance of the social necessity (Act 282/1991 Coll., *on Social Necessity*);
- Allowances for handicapped and old citizens (Government Ordinance 182/1991 Coll.);
- Allowances for families with children (Government Ordinance 182/1991 Coll.);
- Other Allowances (Government Ordinance 182/1991 Coll.).

Prohibition to enter certain zones or portions of the national territory during particular eventsa) General legal regulation of the restriction to the freedom of movement and residence

The freedom of movement and residence is granted to everyone (not only Czech citizens) by the Bill of Fundamental Rights and Freedoms¹⁵⁰ (Article 14). The same document allows the subjection of this freedom to such restrictions, which are provided by law and are necessary to protect national security, public order, public health or the rights and freedoms of others, and, in determined territories, environment. There are several laws, which preview the possibility of such restrictions, for instance:

- Act 20/1966 Coll., *on Health of People Care*, which allows to limit or prohibit movement or residence in certain territories for the reasons of the occurrence of contagious diseases or epidemics;
- Act 114/1992 Coll., *on Protection of Nature and Countryside*, which previews the creation of several categories of protected zones, on the territory of which the freedom of movement and residence may be restricted;
- Act 110/1998 Coll., *on the Security of the State*, as changed by Act 222/1999 Coll., which allows to limit the freedom of movement or residence as well as the right of assembly in the period, when the State is threatened or is at war. The concrete scope and extent of the restrictions should be specified in a government ordinance.

b) Prohibition to enter certain zones or portions of the national territory during particular events

There is no general regulation in the Czech Republic that would relate to the prohibition to enter certain zones of the national territory during particular events such as international summits and meetings or large sport event. In this context, the laws mentioned above (mainly the Act 110/1998 Coll., *on the Security of the State*) can be used. Furthermore, several municipalities have issued, on the basis of Par. 14, par. 1i) and Par. 36, par. 1f) of the Act 128/2000 Coll., *on Municipalities*,¹⁵¹ specific

¹⁴⁸ Zákon č. 117/1995 Sb., *o státní sociální podpoře* [Act 117/1995 Coll., *on State Social Support*].

¹⁴⁹ Zákon č. 100/1988 Sb., *o sociálním zabezpečení* [Act 100/1988 Coll., *on Social Security*]; zákon č. 482/1991 Sb., *o sociální potřebnosti* [Act 428/1991 Coll., *on Social Necessity*]; etc.

¹⁵⁰ Ústavní zákon č. 2/1993 Sb., *o vyhlášení Listiny základních práv a svobod jako součásti ústavního pořádku České republiky* [Constitutional Law 2/1993, *on the Promulgation of the Charter of Fundamental Rights and Freedoms as a Part of the Constitutional Order of the Czech Republic*].

¹⁵¹ Zákon č. 128/2000 Sb., *o obcích* [Act 128/2000 Coll., *on Municipalities*].

local laws on the insurance of the public order. For instance, the town Ostrava adopted such a local law in 1999,¹⁵² forbidding in it the entrance to spaces reserved for players, referees, performers and organizers in the time before, during and after public sport actions. Finally, the entrance to and the residence in certain areas may be banned, in individual cases, by a penal court decision, in the framework of the punishment of the prohibition of residence (Par. 57a of the Penal Code).

Other relevant developments

Convention of 19 June 1990 implementing Schengen Agreement of 14 June 1985 on the Gradual Abolition of Checks at the Common Borders

The Czech Republic is not yet party to the 1990 Convention and it therefore could not make so far use of Article 2 (2) thereof. Nevertheless, in the period under scrutiny, certain citizens of the Czech Republic have faced problems caused by an erroneous inclusion of their names and personal data into the Schengen Information System (mainly in the list of persons being refused entry into the Schengen space on the basis of Article 96 of the Convention).

Reasons for concern

The procedures previewed in the Convention for the access to information (Article 108), the correction or deletion of inaccurate data (Article 110) and the right to compensation (Article 111) have turned out to be insufficient and inadequate, limiting seriously the factual possibility of individuals to have their rights protected.

Article 46. Diplomatic and consular protection

Protection of EU citizens by diplomatic and consular representations abroad

Legislative initiatives, national case law and practices of national authorities

Legislative initiatives

The Directive 95/553/CE of 19 December 1995 *regarding the protection for citizens of the European Union by diplomatic and consular representations*, is reflected in the internal directive of the Ministry of Foreign Affairs *on Consular Protection of the Citizens of the EU Member States*, issued in 2004.¹⁵³ As in the previous year, the Ministry of Foreign Affairs has again organized, in 2005, a series of courses relating to the implementation of the EC Directive, for the heads of consular sections of the diplomatic and consular representations of the Czech Republic in the framework of regular regional meetings.

Practices of national authorities

According to information provided for by the Consular Department of the Ministry of Foreign Affairs of the Czech Republic, no cases of non-Czech EU citizens demanding the protection at the diplomatic and consular representations of the Czech Republic abroad was recorded during the year 2005.

¹⁵² Obecně závazná vyhláška města Ostravy č. 8/1999 *k zabezpečení místních záležitostí veřejného pořádku na území města Ostravy* [Local Law of the Town Ostrava No. 8/1999 for the Regulation of the Local Public Order in the Territory of the Town Ostrava].

¹⁵³ Interní směrnice MZV o konzulární ochraně občanů členských států EU, čj. 300574/2004-KO/5 [Internal Directive of the Ministry of Foreign Affairs on Consular Protection of the Citizens of EU Member States, No. 300574/2004-KO/5].

Decision 96/409/CSFP of 25 June 1996 on the establishment of an emergency travel document*Legislative initiatives*

The Decision 96/409/CFSP of 25 June 1996 on the establishment of an emergency travel document, was fully transposed to the Czech legal order by the *Act 328/1999 Coll., on identity Cards*,¹⁵⁴ as amended by the Act 559/2004 Coll. The Act entitles the Czech representations abroad to issue an EU emergency travel document to “*any citizen of the EU, whose travel document was lost, stolen, destroyed or is temporarily unavailable, if the state whose national the applicant is, has not – in the state where the applicant stays – a permanent diplomatic or consular representation, is not otherwise represented or its representation is not reachable*” (Par. 115a). The document can be issued for the purposes stated in Art. 1 of the Annex I of the Decision 96/409/CFSP and the State, whose national the applicant is, has to give its consent to the issuance.

Practices of national authorities

According to information provided for by the Consular Department of the Ministry of Foreign Affairs of the Czech Republic, no practice related to the use of emergency travel documents was recorded during the year 2005.

¹⁵⁴ Zákon č. 328/1999 Sb., o občanských průkazech, ve znění pozdějších předpisů, [Act 328/1999 Coll., *on Identity Cards*, with later amendments].

CHAPTER VI. JUSTICE**Article 47. Right to an effective remedy and to a fair trial**Access to a court and, in particular, the right to legal aid / judicial assistance

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

During the period under scrutiny the Eur. Ct. H.R. found the Czech Republic to have violated Article 6(1) in 20 cases.¹⁵⁵ However, in most cases the issue was just a violation of a reasonable delay in judicial proceedings.

Legislative initiatives, national case law and practices of national authorities

The Constitutional Court has adopted its ruling by which it canceled the provision of sec. 77k, par. 6 of the Act on Protection of Secret Facts.¹⁵⁶ This provision had excluded from the judicial review decisions of the Collegium of State Attorneys (Prosecutors) examining a recourse against the decision of the National Security Authority in cases of personal security screening. However, the Collegium did not meet the formal and material criteria of an independent and impartial tribunal. The Court held that the lack of hearing by an independent and impartial tribunal violated the right to access to a court (Art. 6, par. 1 ECHR, Art. 36, par. 2 of the constitutional Charter of Fundamental Rights and Freedoms).¹⁵⁷

During the period under scrutiny, there have been an amendment approved to the Asylum Act, which allowed juridical persons – NGOs, which have legal aid to the asylum seekers stated in their statutes, to act before the courts and tribunals on behalf of the applicant – asylum seeker.¹⁵⁸

The right to access to legal aid is guaranteed on the constitutional level¹⁵⁹ and also provided in various laws, in Civil Procedure Code¹⁶⁰, Administrative Procedure Code¹⁶¹ or Criminal Procedure Code¹⁶². Also the Constitutional Court may grant legal aid according to the Law on the Constitutional Court¹⁶³ under certain conditions (for complaints which have not been declared inadmissible). The counsel or defence lawyer is appointed by the competent court or tribunal, which does not decide *ex officio*, but upon a request of the interested person (except in the criminal proceeding where under certain circumstances a defendant must have a defence lawyer). The right to a state legal aid is guaranteed only in court proceedings (with some exceptions mentioned) and it does not cover pre-litigation advice. There are no specific criteria for granting legal aid and as so, it is at the discretion of a judge.

¹⁵⁵ e.g. Eur.Ct.H.R., Faber v. Czech Republic (Appl. No. 35883/02), judgment of 17 May 2005,

Eur.Ct.H.R., Milatova and others v. Czech Republic (Appl. No. 61811/00), judgment of 21 June 2005

¹⁵⁶ Zákon č. 148/1998 Sb., o ochraně utajovaných skutečností, ve znění pozdějších předpisů [Act No. 148/1998 Coll., on Protection of Secret Facts, as amended by later acts].

¹⁵⁷ Constitutional Court (plenary), Judgment of 26 April 2005, published under No. 220/2005.

¹⁵⁸ Zákon č. 350/2005 Sb., kterým se mění zákon č. 325/1999 Sb., o azylu a o změně zákona č. 283/1991 Sb., o Policii České republiky, ve znění pozdějších předpisů, (zákon o azylu), ve znění pozdějších předpisů, a některé další zákony [Act No. 350/2005 Coll., amending the Asylum Act].

¹⁵⁹ Úst. zák. č. 2/1993 Sb., Listina základních práv a svobod, čl. 37 (1, 2). (Const. Law. No. 2/1993 Coll. of Laws, Charter of Fundamental Rights and Freedoms), See: Art. 37 (1, 2).

¹⁶⁰ Zákon č. 99/1963 Sb., občanský soudní řád, §§ 26 (3), 30 (1,2), 138, (Law No. 99/1963 Coll. of Laws, Civil Procedure Code, See Secs. 26 (3), 30 (1,2), 138).

¹⁶¹ Zák. č. 150/2002 Sb., soudní řád správní, §§ 35 (7), 36 (3), (Law No. 150/2002 Coll. of Laws, Administrative Procedure Code, See: Secs 35 (7), 36 (3)).

¹⁶² Zák. č. 141/1961 Sb., o trestním řízení soudním (trestní řád), §§ 33 (2, 3, 4), 51a, (Law No. 141/1961 Coll. of Laws, Criminal Procedure Code, See: Sec. 33 (2, 3, 4), 51a,

¹⁶³ Zák. č. 182/1993 Sb., o Ústavním soudu, § 83 (Law No. 182/1993 Coll. of Laws, on Constitutional Court), See Sec. 83

As a consequence, different criteria are applied by different judges. A person who is granted the state legal aid does not have an opportunity to ask for the attorney of his/her choice. The state legal aid may be granted on the basis of proven unfavourable property and social situation. 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.

The Czech legal order allows any natural person, which the applicant chooses, to act in favour of the applicant before courts or tribunals in civil and administrative proceedings (with the exception of the Supreme Court, Supreme Administrative Court and Constitutional Court). The laws also allow juridical persons – NGOs, which have protection against discrimination or help in the asylum procedure stated in their statutes as one of their fields of activity, to act before the courts and tribunals on behalf of the asylum seeker or of the applicant in cases of discrimination.¹⁶⁴

Another form of free legal aid is ensured under the Law on the Legal Profession (Advocacy), which is not covered by state finances.¹⁶⁵ However, this regulation has been criticised by individual lawyers as well as by the Czech Bar Association, as the State has shifted its financial burden to private persons exercising legal profession.

Also a lot of NGOs offer free legal aid; NGOs are often used for the aid in procedure prior to the commencement of proceedings before courts.

Independence and impartiality

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There were no fundamental changes on this matter during the period under scrutiny.

Judges are independent. The judge can be exempted from the hearing if there are doubts about his/her impartiality.¹⁶⁶

Publicity of the hearings and of the pronouncement of the decision

Legislative initiatives, national case law and practices of national authorities

There were no fundamental changes on this matter during the period under scrutiny.

The hearings and pronouncement of the decisions are public. Public can be suspended only if the confidentiality of classified information, business secret, important interest of participants or decency would be endangered. The court can enable individual natural persons to be present at the hearing; the persons must be instructed in the duty of secrecy. The court can also deny entrance to those persons who might disturb the hearing.¹⁶⁷

Reasonable delay in judicial proceedings

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During the period under scrutiny the delays in the judicial proceedings have remained the most frequent problem that the Czech Republic has to face in cases put before the European Court of Human Rights. Several cases were brought before the Eur. Ct. H.R.; in most of them the Czech Republic was found to be violating Art. 6 (1).

¹⁶⁴ Administrative Procedure Code, See Sec. 35 (4), Civil Procedure Code, See Sec. 26 (3).

¹⁶⁵ Zák. č. 85/1996 Sb., o advokacii (Act No. 85/1996 Coll. of Laws, On the Legal Profession), See Sec. 18 (2)

¹⁶⁶ See Sec. 8 Administrative Proceeding Code,

¹⁶⁷ See Sec. 116 Civil Procedure Code and Sec. 49 Administrative Proceeding Code.

The legal order contains only one remedy guaranteed to the individual against unreasonable delays in judicial proceedings. Under Sec. 174a of the Act on Tribunals and Judges¹⁶⁸ an individual is entitled to ask the superior court to appoint a date until which a certain procedural act must be finished if his/her complaint against unreasonable delays was not properly addressed.

Yet there is no provision in the Czech legal order that would stipulate a right to reparation from the State for the damage caused by the delay (except for the material damage clearly linked to the wrongful act). Therefore the Eur. Ct. H.R. does not consider it as an effective domestic remedy which enables the applicants to lodge their applications concerning the excess of reasonable delay without the exhaustion of domestic legal remedies. This is one of the reasons of relatively high number of admissible cases and judgments on violation of Art. 6 (1) against the Czech Republic. Consequently, the Ministry of Justice has sent to the Chamber of Deputies an amendment to the Act on Liability for Damage caused by Exercise of Public Power,¹⁶⁹ which would make it possible for the applicants to receive a financial compensation from the Ministry for moral damage due to the unreasonable delays in judicial proceedings.

Right to the enforcement of judicial decisions

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The Czech Constitutional Court has adopted its ruling by which it declared unconstitutional and cancelled Sec. 36, par. 2 of the Act on Forced Public Auctions, allowing for some creditors to sell a debtor's property in a public auction without a judicial decision. The provision at stake was found contrary to the principles of equality and non-discrimination as well as to Art. 1 of the First Additional Protocol to the ECHR.¹⁷⁰

Article 48. Presumption of innocence and right of defence

Presumption of innocence

Legislative initiatives, national case law and practices of national authorities

There was no significant legislative development during the period under scrutiny.

The Constitutional Court adopted the ruling in case III. US 224/04, published in 2005,¹⁷¹ where it found violation of fundamental rights. It pointed out that in case, where the court had before it contradictory statements of the victim and one witness on one hand and those of the accused and another witness on the other hand, it should accept the description of facts in favour of the accused, in conformity with the principle *in dubio pro reo* and the presumption of innocence.

¹⁶⁸ Zák. č. 192/2003 Sb., kterým se mění zákon č. 6/2002 Sb., o soudech a soudcích, (Law No. 192/2003 Coll. of Laws, which changes the Law No. 141/1961 Coll. of Laws, On Tribunals and Judges), See Sec. 174a

¹⁶⁹ Zák. č. 82/1998 Sb., o odpovědnosti za škodu způsobenou při výkonu veřejné moci rozhodnutím nebo nesprávným úředním postupem [Act No. 82/1998 Coll., on Liability for Damage caused by Exercise of Public Power].

¹⁷⁰ Constitutional Court, case published under No. 181/2005 Coll., judgment of 8 March 2005.

¹⁷¹ Constitutional Court, judgment of 19 August 2004, No. III. US 224/04, published under No. 116/2004 on 6 June 2005.

The right to freely choose one's defence counsel and the right to an interpreter

Legislative initiatives, national case law and practices of national authorities

(see above under Art. 47)

The Constitutional Court has pointed out, in its judgment of 26 April 2005,¹⁷² that the purpose of criminal proceedings is only such conviction which resulted from a fair trial, where the role of defence counsels was vital. From the constitutional point of view, the State guarantee for the costs of defence counsel, appointed to the accused in the interest of fair trial, has to be considered as a creation of necessary material conditions for a full implementation of the one's right to judicial assistance.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

Act No. 344/2005 has amended Act on Measures against Money Laundering.¹⁷³ It has made express exemption from the obligations to report unusual transactions for lawyers representing clients in judicial proceedings and in particular defence counsels in criminal proceedings.

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

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

Right not to be tried or punished twice

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The Czech Republic was not found in violation of the relevant articles by Eur. Ct. H.R. or other international human rights bodies. It is not party to the 1990 Convention implementing the Schengen Agreement.

Legislative initiatives, national case law and practices of national authorities

There was no significant development during the period under scrutiny.

¹⁷² Constitutional Court, case No. IV.US 167/05, judgment of 26 April 2005.

¹⁷³ Zákon č. 344/2005 Sb., kterým se mění zákon č. 61/1996 Sb., o některých opatřeních proti legalizaci výnosů z trestné činnosti, ve znění pozdějších předpisů [Act No. 344/2005 Coll., amending Act No. 61/1996 Coll., on Certain Measures against Legalisation of Proceeds from Crime, as amended by later laws].