Report on the State of Human Rights in the Czech Republic in 2009

This Report was approved by a Government Resolution No 460 of 14 June 2010.

I. GENERAL PART

1. INTRODUCTION

The Report on the State of Human Rights in the Czech Republic (the "Report")[1] has been prepared every year by specialist staff at the Government Council for Human Rights (the "Council") since 1998. The main purpose of the Report is to provide the Government with the information required to make decisions on priorities related to the protection of human rights. In this respect, the Report does not repeat general statements regarding fundamental democratic freedoms in the Czech Republic or the list of rights guaranteed by the Charter of Fundamental Rights and Freedoms (the "Charter");[2] instead, it primarily addresses the progress achieved over the past year in areas which have been disparaged in the past and also discusses deficiencies which have not yet been resolved. **Nor does the Report offer a rundown of individual ministerial programmes focusing on support for human rights projects.** The Report does not describe in detail all the activities carried out by ministries to promote human rights and education in the field of human rights.[3]

The progress achieved in the past year and unresolved deficiencies are evaluated predominantly in the light of international treaties on human rights of which the Czech Republic is a signatory. For this purpose, the Report usually contains an evaluation made by the bodies controlling compliance with these treaties, which are in a position to assess whether or not states are generally respecting their international covenants. These supervisory bodies are independent in their evaluation; their evaluations are based on a wide range of information which they obtain from the governments of individual states as well as from nongovernmental human rights organizations.

The content of this Report is therefore based primarily on the principal international human rights conventions. In this respect, it builds on Reports from past years and, with regard to current developments in 2009, pays greater attention to those areas where more significant events and changes have taken place. The Report also draws on themes which the Council and its committees have addressed in the past year, and on legislative proposals on which have they commented via the Government Commissioner for Human Rights or the Minister for Human Rights.[4] Numerous entities have made contributions to the Report. Individual ministries shed light on factual events from the perspective of the current and proposed legislation, NGOs and members of the Council and its committees who represent civil society emphasize the shortcomings of legislation from the point of view of human rights protection and highlight case studies. In this regard, the Report seeks to be a comprehensive document encompassing all these views and, taking into account the case law of the Supreme Court and the Constitutional Court, attempts to propose recommendations for the future. ***Passages containing evaluations and recommendations that express the author's standpoint on given issues or propose changes are presented in italics.***

[1] The term "Report" used throughout the document refers to all Reports on the Human Rights Situation, complemented with a specification of the year concerned except where the reference is to the present Report.

[2] Resolution of the Presidium of the Czech National Council No 2/1993 on the Charter of Fundamental Rights and Freedoms.

[3] E.g. the activities of the Ministry of Education, Youth and Sports which are of primary importance for education (the preparation of an intercultural education strategy, action plans for timely care, etc.).

[4] The Government Commissioner for Human Rights is the Chairperson of the Government Council for Human Rights.

The Report does not discuss in any detail racism, xenophobia and extremism, gender equality or the status of national minorities, including the Roma minority. The Report only marginally maps the situation faced by certain groups of people for whom separate conceptual documents are produced (especially foreign nationals and the elderly).[5]

[5] These areas are covered by separate reports, e.g. the Report on the Situation of Roma Communities, the Report on the Situation of National Minorities, Government Priorities and Procedures in Promoting Gender Equality, the National Ageing Preparation Programme for 2008 -2012, etc.

2. INSTITUTIONAL SAFEGUARDING OF HUMAN RIGHTS PROTECTION

Besides the courts,[6] institutions providing human rights protection on a conceptual level include the Government's advisory and working bodies, while individual complaints are handled by the Ombudsman. The Agency for Social Inclusion in Roma Localities is a specific mechanism established by the Government to further social inclusion.

The Ombudsman focuses on the protection of rights and warranted interests in relation to state administration authorities. The Ombudsman pays systematic visits to facilities where people are or could be deprived of their freedom. Since 1 September 2009, the Ombudsman has also been responsible for the promotion of equal treatment (see Section II.6.1).

2.1. Minister for Human Rights and Government advisory bodies

Since 2007, the Government has assigned one of its members to deal exclusively with human rights and minority protection.[7] In 2009, the Minister for Human Rights worked closely with the Government's advisory and working bodies engaged in activities related to human rights. These advisory and working bodies prepare conceptual materials for Government meetings and, through their activities, help raise the level of human rights protection.

In 2009, the main achievement of the Government Council for Human Rights[8] was the Government's expression of regret regarding the unlawful sterilization of women (see Section II.5.3). The Government also approved the Council's initiative seeking more precise regulation of camera and other surveillance systems (see Section II.1.2.1). Last year, the Secretariat of the Council waged a "Stop violence against children" campaign,[9] involving the general public in a discussion on the unacceptability of violence against children and resulting in the release of numerous specialist publications (see Section II.7.6).

In 2009, the Government Council for National Minorities achieved an amendment to Act No 84/1990 on the right of assembly.[10] The Council pushed for the release of CZK 315,000 from the national budget as special-purpose grants to Dobré Pole and Nový Přerov to build and lay out memorials to Moravian Croats in remembrance of the forcible displacement of the Croatian minority from these villages after 1948. The Council submitted to the Government the Third Periodic Report on the Implementation of Principles under the Framework Convention for the Protection of National Minorities.[11] The Council also submitted to the Government the Comments of the Czech Republic on the Report of the Committee of Experts of the European Charter for Regional or Minority Languages on the fulfilment of the Czech Republic's covenants under this Convention.[12] The Council submitted to the Government the Action Plan for the Alliance of Civilizations in the Czech Republic for 2009–2010.[13]

In 2009, the Government Council for Roma Affairs discussed the conceptual materials prepared by the Office of the Council, expressed comments on the research project "Long-

[6] Article 4 of the Constitution of the Czech Republic
[7] Organizationally, its apparatus is part of the Office of the Government, Human Rights Section.
[8] http://www.vlada.cz/cz/pracovni-a-poradni-organy-vlady/rlp/rlp-uvod-17537/
[9] www.stopnasilinadetech.cz
[10] See also Section II.1.4.
[11] Duly taken note of by the Government under Resolution No 459 of 20 April 2009.
[12] The Government took due note of the document under Resolution No 1060 of 26 August 2009.
[13] Government Resolution No 1235 of 29 September 2009.

term monitoring of the situation of Roma communities in the Czech Republic", discussed the treatment the places of remembrance in Lety u Písku and Hodonín u Kunštátu, and addressed current cases such as the Chomutov enforcement orders on benefits, the situation in the Litvínov housing estate of Janov, and the departure of Roma from the Czech Republic to Canada, where they sought political asylum. In 2009, the Office of the Council produced a Report on the Roma Community Situation in the Czech Republic for 2008 and a Concept of Roma Integration for 2010–2013. It participated in the international initiative Decade of Roma Inclusion 2005–2015. During the year, it prepared a draft amendment to the Statutes of the Council which resulted in a name change, the appointment of the Prime Minister as the Council chairman, and the naming of Ministers as members.[14] The Council chairman, the Minister for Human Rights Michael Kocáb, engaged in issues within the Government affecting the everyday life of the Roma and interpersonal co-existence, and prepared or participated in systemic and legislative changes.[15] He was also actively involved in addressing current problems and cases. In 2009, for example, he engaged in intensive negotiations with representatives of the City of Most and Litvínov to address the situation in Janov housing estate and in Chomutov, where a problem arose when enforcement orders affected the social benefits of the Roma population. In connection with these cases, the Minister initiated situational analyses exploring the root of current problems in the town and presenting draft recommendations intended to resolve, or at least mitigate, the effects of these current issues. The Minister made a significant contribution to efforts for a dignified tribute in remembrance of the Roma Holocaust. His initiative secured the investment needed to adapt the places of remembrance at Lety u Písku and Hodonín u Kunštátu.[16]

In 2009, the Government Council for Equal Opportunities for Women and Men established three new committees: the Committee on the Balanced Representation of Women and Men in Politics, the Committee on the Institutional Safeguarding of Equal Opportunities for Women and Men, and the Committee on the Reconciliation of Professional, Private and Family Life.[17] *These committees, together with the previously established Committee on the Prevention of Domestic Violence, should help drive forward the active promotion of gender equality in legislation and policy documents.* This Council's most significant act in 2009 was to promote the balanced representation of women in electoral lists for the elections to representative bodies (see Section II.6.3.1).

In 2009, the Government Council for Seniors and Population Ageing was responsible, among other things, for an Analysis of Social Service Inspections prepared by the Czech Association of Social Service Providers, the issue of long-term care and geriatrics, the use of ICT in services for seniors and people with disabilities, and housing for the elderly. The Council adopted a Recommendation on the Adoption of Measures to Support the Development and Implementation of Assistive Technology for a Healthy and Independent Life, and provided the initiative for the production of several other documents: the Proposal for the Grant Programme "Support of Publicly Beneficial Activities by National Senior Organizations" and the Proposal of a Grant Programme for Municipalities to Reconcile Differences in Available Rental Housing for Seniors Living in Rental Housing with Deregulated Rent.

[14] Government Resolution No 254 of 29 March 2010.
[15] See also Section II.1.4.
[16] Government Resolution No 589 of 4 May 2009.
[17] For more details on the Council's activities, see the 2009 Activity Report of the Government Council for Equal Opportunities for Women and Men.

In 2009, the Government Board for People with Disabilities[18] started working on a new National Plan for the Creation of Equal Opportunities for Persons with Disabilities for the period 2010–2014. Under the National Mobility for All Development Programme, two calls for projects for wheelchair accessible routes in towns and villages were held in 2009. The grant programme "Support of the Publicly Beneficial Activities of Disabled Civic Associations" financially supported 77 projects with funds totalling CZK 24 million in 2009.

The activities of all the Government's advisory bodies are described in detail in annual reports submitted annually to the Government.

2.2. Agency for Social Integration in Roma Localities

The Agency for Social Inclusion in Roma Localities (the "Agency")[19] is a Government instrument designed to provide assistance to communities in the process of social integration.[20] Its mission is to interconnect local entities so that they cooperate in social inclusion. It promotes a supra-departmental approach and the interlinking of public administration and the non-profit sector. In 2009, 13 localities (towns and regions) were involved in the project, where the Agency was active and gradually standardized its operations.[21] The Agency provides design consultancy, helping partners to write and prepare projects for submission. The basic output of local partnership work is the local social inclusion strategy.[22] In September 2009, the Agency published a Social Integration Guide. This is a brief but comprehensive guide to the implementation of local inclusion policies, setting out key measures and their financing.[23]

Especially during spring and summer of 2009, when extremists held dozens of events in Czech towns, the Agency offered systematic assistance to municipal leaders to ensure the safety of inhabitants of excluded localities and legal support for decisions on the dissolution of events.[24] In 2009, the Agency systematically provided social inclusion training to police officers, especially national minority liaison officers and police officers operating in the vicinity of excluded communities.

The Agency is currently a supra-departmental body responsible for transferring knowledge from field work to national level and striving for synergy and cooperation between ministries. The Agency is also a vehicle for the vertical coordination on social inclusion, i.e. the Government, regions and municipalities. It provides practical support to municipalities from the Government. However, it lacks adequate powers in this area. The Agency is currently seeking such competence in negotiations with ministries involved in the drafting of a law on the Agency, and in efforts to secure funding for its continued operation.

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[18] For more details see http://www.vlada.cz/cs/rvk/default.html

[19] Government Resolution No 85 of 23 January 2008.

[20] The Agency's key pillars are drawn up in writing – Basic Agency Document for Community Work (a clear description of the Agency's objectives and measures in communities) and the Standard of a Local Consultant's Community Work. To finance its actions in communities, the Agency opted for a basic strategy of the efficient use of resources from the Structural Funds.

[21] In the coming years, an additional 20 towns will be included (10 as of 1 April 2010 and another 10 as of 1 January 2011).

[22] Strategic plans are ready for Šluknovsko, Most and Cheb; strategic plans for Broumov and Jesenicko are being finalized. Strategic social inclusion plans will be completed for all sites by the end of April 2010.

[23] This document is a guide for municipalities and was distributed mainly to mayors and other key employees of municipalities. See www.socialni-zaclenovani.cz.

[24] With the Agency's assistance, a rally of right-wing extremists in Jihlava was dissolved and the organizer of the Workers' Party meeting in Přerov was summonsed.

3. INTERNATIONAL HUMAN RIGHTS DIMENSION

3.1. UN

In 2009, the Czech Republic completed the process of ratifying the Convention on the Rights of Persons with Disabilities.[25] The Czech Parliament gave its assent to the Convention and the President of the Republic subsequently ratified it. The instrument of ratification of the Czech Republic was deposited with the Secretary General of the United Nations, the Convention depositary, on 28 September 2009. It entered into force for the Czech Republic on 28 October 2009 and was published in the Collection of International Treaties under number 10/2010. The Convention recognizes the dignity and equality of persons with disabilities and their right to autonomy and independence and to free determination, and supports the involvement of persons with disabilities in all policies affecting them. For the Convention, it is vital to ensure disabled access to the physical, economic, social and cultural environment, as well as to education, rehabilitation, information and communication.

3.1.1 Human Rights Committee[26] – notifications concerning the Czech Republic

In 2009, the UN Human Rights Committee (the "Committee") issued two opinions criticizing the existence of the restitution requirement of citizenship (*Slezák and Slezáková, Amundson*). Five notifications, largely devoted to criticism of restitution, were declared unacceptable *(Šroub, Aster, Brychta, Dvořák, Kudrna).* In 2009, ten new notifications were communicated to the Government, nine of which criticize the restitution requirement of citizenship; the other concerns discrimination on the grounds of social and economic status and, indirectly, by reason of ethnic origin.

3.1.2 Human Rights Council[27] and Universal Periodic Review[28]

By virtue of its Presidency of the EU Council, in the first half of 2009 the Czech Republic prepared and negotiated resolutions on human rights in the Democratic People's Republic of Korea, Burma/Myanmar, the Democratic Republic of Congo, Somalia, Sudan and, together with a group of Latin American countries, a Resolution on the Rights of the Child for meetings of the Human Rights Council (HRC). The Czech Republic also coordinated the EU position on the situation in the Palestinian territories, both during regular sessions of the HRC and in the course of its two special sessions. During the Durban Review Conference, the Czech Republic, on behalf of the EU, coordinated the EU's contributions and positions on the final document, and negotiated the final text thereof. The Czech Republic walked out of the conference itself on the first day in protest against the unacceptable speech by the Iranian President. In a tight vote at its 11th session,[29] the HRC adopted a resolution extending the

[25] The Convention and its Optional Protocol were approved by the UN General Assembly on 13 December 2006 and entered into force on 3 May 2008. The Convention was signed on behalf of the Czech Republic in New York on 30 March 2007.

[26] The Human Rights Committee is a supervisory body established under the International Covenant on Civil and Political Rights.

[27] The Human Rights Council is an intergovernmental body set up by the UN General Assembly. The HRC is composed of 47 Member States and aims to respond to violations of human rights throughout the world and make recommendations on such incidents.

[28] The Universal Periodic Review is a mechanism to assess the human rights situation in all 192 UN Member States.

[29] 2–9 June 2009.

mandate of the special mechanism for the human rights situation in Sudan by one year. *This extension was an unexpected success by the EU, under the leadership of Czech Republic, in long-term efforts to preserve the existence and function of the special rapporteurs for individual countries.* In June, on the initiative of the EU a special HRC session was convened to discuss the situation in Sri Lanka. At the 12th Ordinary Session of the HRC,[30] the Czech Republic actively helped to define the common position of the EU, by now under the Swedish Presidency. In the view of the Czech Republic, problematic areas were (1) the resolution submitted by the Russian Federation on traditional values in relation to elements of cultural relativism and the invalidation of the universality of human rights and (2) a resolution on freedom of speech (submitted by Egypt and the USA) containing the wording "racial and religious stereotyping", which, in context, makes groups rather than individuals the holders of human rights; this is contrary to the fundamental principles of international human rights law.

From the outset, the Czech Republic has had a strong profile in the Universal Periodic Review, established at the UN Human Rights Council. Three rounds of the Review were held in 2009. The Czech Republic, as the country holding the EU Presidency, worked with the Council Secretariat and with the European Commission to prepare themes, in the fourth and fifth rounds, which, from the perspective of the EU, should be discussed in dialogues with the countries under review, and arranged for the exchange of information between Member States which do not otherwise coordinate their output within this vehicle and act on a strictly national basis. The Czech Republic sent preliminary written questions to all the countries under review. It subsequently entered into interactive dialogue with two thirds of them, focusing on issues of cooperation with international human rights mechanisms, freedom of expression, protection from torture and inhuman treatment, the elimination of discrimination, the combating of violence against women and children and the protection of vulnerable groups, particularly human rights defenders.

3.1.3 UN General Assembly – Third Committee[31]

The Czech Republic voted in favour of the adoption of numerous resolutions on human rights; it co-sponsored, among others, the resolution on the rights of the child and the resolution on torture and other cruel inhuman or degrading treatment or punishment. It also supported resolutions referring to human rights abuses in North Korea, Iran and Burma/Myanmar; it worked actively against their exclusion from the agenda for procedural reasons (no-action motion). In addition, it supported resolutions on the rights of persons with disabilities and against religious discrimination. It represented the EU in negotiations on a resolution on the inadmissibility of practices conducive to the development of contemporary forms of racism, racial discrimination, xenophobia and related intolerance. It voted against resolutions on activities planned on the basis of the Durban Conference against Racism; the main reason for this was provisions, in contravention of international standards on human rights, aim at the restriction of freedom of expression and the disregard for the compromise reached during the Czech EU Presidency in the Final Document of the Durban Review Conference in April 2009. The Czech Republic also co-hosted, with the Swedish EU Presidency, a companion event on the rights of the child and, in collaboration with the Burma Fund, a traditional event on the human rights situation in Burma/Myanmar, this time with regard to the upcoming elections in 2010. The Czech Republic's delegation appeared twice in interactive dialogues: (1) with the

[30] 14 September 2009 – 2 October 2009.

[31] The official name of this committee is the "Committee on Social, Humanitarian and Cultural Affairs". It is one of six UN General Assembly committees. This committee, inter alia, reviews certain human rights issues, especially reports and special procedures from the Human Rights Council.

chairman of the Subcommittee on Prevention of Torture (in line with its long-standing human rights priorities and in light of the fact that one of the members of the Subcommittee is Z. Hájek, nominated by the Czech Republic; and (2) in discussion with the Special Rapporteur on the human rights situation in Burma/Myanmar.

3.2. Council of Europe

3.2.1 Complaints against the Czech Republic at the European Court of Human Rights

The Registry of the European Court of Human Rights (the "Court" or the "ECHR") reported a total of 726 complaints lodged against the Czech Republic in 2009.[32] The Court asked the Czech Government for its observations on the admissibility and on the merits of 15 new complaints.[33]

In 2009, the Court issued three judgments, in which it concluded that at least in certain respects of the cases submitted to it there had been breaches of the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention"). The Czech Republic was condemned for breach of the right to liberty and security of person under Article 5 of the Convention in relation to detention in criminal proceedings (*Krejčíř*), the right to a fair trial under Article 6(1) of the Convention in the context of a judicial review of the decision of a public limited company to squeeze out minority shareholders (*Kohlhofer and Minarik*) and the right to peaceful enjoyment of possessions under Article 1 of Protocol No 1 to the Convention in relation to liable persons in restitution proceedings (*Pešková*). More detailed information about these judgments and about other complaints pending in the reference period, as well as the remedial measures taken, can be found in the 2009 Report on the Handling of Complaints Filed against the Czech Republic to the European Court of Human Rights, prepared by the Government's plenipotentiary representing the Czech Republic before the European Court of Human Rights.[34]

3.2.2. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

On 21–23 October 2009, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the "CPT") carried out an ad hoc visit to the Czech Republic. This visit was undertaken to clarify some of the issues encountered in the previous ad hoc visit to the Czech Republic in 2008[35] which had not been adequately handled in the

[32] Specifically, this is the number of complaints assigned by the Court's decision-making formations (to a three-member committee or seven-member chamber) for a decision. Data on the total number of complaints contested (i.e. including those eventually settled only administratively by the Office of the Court, e.g. because the complainants failed to remove defects from their original submission, rendering any discussion of their complaint impossible) have not been maintained by the Court in its statistics since 2007. This figure is still preliminary and may be subsequently revised (Court statistics are available on its website at www.echr.coe.int – see Reports/Rapports).

[33] The numbers of complaints sent by the Court to the defendant governments for a response account for only a few per cent of the total number of complaints; the rest are rejected by the Court as unacceptable on the basis of information and documents provided by the complainants.

[34] Item 6, disclosure of information, of the Agenda of the Government Meeting held on 10 May 2010.

[35] The CPT delegation's ad hoc visit to the Czech Republic in 2008 took place between 25 March and 2 April 2008. Its findings were discussed in Section 3.1.2 of the Report on the Human Rights Situation in the Czech Republic for 2008. The CPT's 2008 Report and the Government Response to the Report are also available at http://www.vlada.cz/cz/pracovni-a-poradni-organy-vlady/rlp/dokumenty/zpravy-plneni-mezin-

Government's response to the CPT report on that visit. The first matter of concern was the issue of CPT members' access to medical records without patient consent and, in this respect, the requirement to implement Article 8(2)(d) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereafter also referred to in this chapter as the "Convention").[36] The second point concerned the CPT's request for an end to the practice of surgical castration in the treatment of sex offenders. According to the CPT, surgical castration in the treatment of sex offenders amounts to degrading treatment.

The CPT delegation visited only one facility, the Pankrác Prison Hospital. However, the visit had to be broken off before it could be completed.[37] During its ad hoc visit to the Czech Republic, the delegation met and held talks with the Minister for Health, the Minister for Human Rights and senior officials from the Ministry of Foreign Affairs and the Prison Service. Based on its findings, the CPT prepared a Report for the Czech Government on its visit. The level of cooperation with the Czech Republic was rated as undermined by the restrictions imposed by the Ministry of Health regarding the CPT delegation's access to medical records. Nevertheless, the CPT stressed the excellent cooperation with the Minister for Human Rights and his staff, as well as with officials from the Ministry of Foreign Affairs, received by CPT members during their visit.

The CPT Report addresses the two points outlined above. The CPT's position on castration and the Czech Government's response are discussed in a separate section on castration.[38]

The first recommendation mentioned by the CPT in its Report is the requirement to resolve the problematic issue of CPT members' access to medical records without patient consent.

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (forming the basis for the CPT's mandate) and the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the basis for the SPT's mandate) are presidential-type international conventions taking precedence over the law pursuant to the Article 10 of the Constitution. The committees carry out their activities on the basis of these conventions; parties to the conventions, under the principle of cooperation, are required to provide these committees with full assistance in the exercise of their mandate, and in particular to provide them with any information required for the performance of their duties.[39]

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[36] Published by Ministry of Foreign Affairs under No 9/1996 Coll.

[37] The main reason for this interruption and the premature termination of the visit to Pankrác Prison Hospital was the fact that the CPT members had not succeeded in gaining access to the medical records of prisoners without their consent. The delegation noted that the Director General of the Prison Service had sent all the prison directors a guideline stating that, by reference to an interpretation of Article 8(2)(e) of the Convention, as viewed by the Ministry of Health, CPT members have access to the medical records of patients only after obtaining the prior written consent of the prisoner concerned. The CPT observed that in these circumstances it was impossible for CPT members to properly carry out their mandate under the Convention and so decided to terminate the visit.

[38] Section II, point 5.5.5.

[39] This requirement is laid down in Article 8(2)(d) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Under this article, the CPT shall have regard to applicable rules of national law and professional ethics. International conventions should be interpreted in the light of mutual cooperation and in accordance with the rules of international law, which provide that a treaty cannot be interpreted in a way which would conflict with its object and purpose (Vienna Convention on the Law of Treaties, Article 18(1). Under Article 14(1)(b) of the Optional Protocol, the SPT enjoys an even stronger

After the CPT's visit, the issue of access to medical records was then subjected to a thorough interdepartmental analysis also taking into account the status of international treaties in Czech law. With regard to Article 10 of the Convention, as well as principles for the interpretation of international law, the Government concluded that Article 8(2) of the Convention could be interpreted in a manner allowing the Committee access to medical records without patient consent. The Committee, in accordance with the Convention and its rules of procedure, strictly maintains the confidentiality of patient information.

The Government recognizes that the current wording of the law has led to different interpretations by different executive authorities, depending on the extent to which they are familiar with the international aspects of a complex legal issue. On subsequent visits by the Committee, the Government will ensure that facilities are properly informed of the duty to grant the Committee unrestricted access to medical records.

The Government also remains committed to the implementation of legislative amendments designed to clarify existing legislation and to avoid the risk that legitimate concerns about the privacy of patients could be an obstacle to the exercise of the Committee's mandate. To this end, a draft amendment to Act No 20/1966 on human health care classifying the Committee among entities entitled to access medical records without patient consent has entered interdepartmental comment procedure. Once its final form has been settled, it will be submitted to the Government for approval. The new Parliament formed after the elections in May 2010 will be in a position to debate the draft amendment. In view of legislative time limits, the amendment, if adopted, can be expected to enter into force in 2011.

3.2.3 European Commission against Racism and Intolerance (ECRI)

On 15 September 2009, the European Commission against Racism and Intolerance (ECRI), an independent monitoring body for the Council of Europe, published its Fourth Report on the Czech Republic covering the period from December 2003 to April 2009. In its report, the ECRI commends the progress made by the Czech Republic, e.g. regarding the implementation of criminal provisions against racism and the access of asylum seekers' children to education. Nevertheless, it criticizes certain aspects that need improving in the areas falling within the scope of the ECRI. The ECRI's proposals relate primarily to three areas: 1) the ECRI calls on the Czech Republic to create a coherent system of social housing[40] including a clear definition of social housing and social criteria for the entitlement to such housing; 2) the ECRI urges the Czech Republic to take further action to improve Roma integration, especially in education. The Czech Republic should establish an annual goal for the integration of Roma children into mainstream schools and establish a Government body to monitor the implementation of these goals. Special schools should be reserved for children with severe mental disabilities; and 3) the ECRI calls on the Czech Republic to finalize preparations for the law on legal aid. Among other issues, the ECRI draws attention to the criminal justice system in the Czech Republic, which does not provide adequate protection against racially motivated acts, and draws attention to police violence against "visible" minorities.

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status because, under this article, the parties undertake to ensure unrestricted access to all information relating to the treatment of those persons and the conditions in which they are held. In this respect the Optional Protocol sets no limits, and therefore interpretations of the text of this article cannot result in any interpretative problems.

[40] See Section II.4.3. of the Report.

3.3 National implementation of the decisions of international supervisory bodies

The largest group of judgments awaiting implementation continues to comprise cases of the excessively long duration of judicial proceedings.

More attention will have to be paid to the enforcement of the judgments in *Wallová and Walla* and *Havelka and Others*, issued by the ECHR in previous years. These involve the undesirable practice of the often insufficiently substantiated removal of children from the care of their biological parents and their placement in institutional care. The Council of Europe's Committee of Ministers considers the violations found in the judgments in question to be endemic, i.e. recurring in an undisclosed number of cases. In the first half of 2009, inter-ministerial preparations were made for the National Action Plan to Transform and Unify the System of Care for Vulnerable Children in 2009–2011, approved by the Government in July 2009.[41] *This document, in its general concept, cannot be regarded as an action plan for the enforcement of the two judgments of the Court, and will not pay special attention to the problem of enforcement.*[42]

The group of judgments concerning violations of the right to family life in the mutual disputes of parents (*Reslová*, *Fiala*, *Kříž*, *Mezl*, *Zavřel*, *Koudelka*, *Andělová*) remains under investigation by the Committee of Ministers, which is particularly interested in the effectiveness of the changes adopted in civil procedure in practice. The situation is similar regarding judgments in *Smatana* and *Fešar*, concerning, inter alia, the inordinate length of time it takes to hear complaints at the Constitutional Court and the right to compensation for unlawful deprivation of liberty; here, too, the Committee of Ministers took note of the measures taken and is keen to ensure that they are effective in practice.

In March 2009, the Government adopted a report on general arrangements for the enforcement of the ECHR judgment in *DH and Others*;[43] this report was submitted to the Committee of Ministers in April 2009 and the enforcement of the judgment was discussed – with a positive outcome – at the June meeting of this body. The Committee of Ministers expects the envisaged measures to be implemented and planned follow-up reports to be submitted (a research report, presented to the Government for its information, was submitted to the Committee of Ministers in early July 2009)[44] while taking into account relevant documents of the Council of Europe, as well as statistics on the impact of the new Schools Act on the education of Roma children in practice and information about how the competent authorities have been made aware of the Court's legal opinion. *In addition, it would be more advisable to explore the issue of legal safeguards against the arbitrary placement of children in "practical schools" (praktické školy – special-needs schools) and educational programmes on a par with those used in former "special schools" (zvláštní školy). It should be noted that*

[41] Government Resolution No 883 of 13 July 2009. See also Section II.7.1.

[42] A working group was set up at the Ministry of Labour and Social Affairs to deal with the enforcement of these judgments.

[43] The judgment concerned discrimination against Roma children in the Czech education system. Government Resolution No 303 of 16 March 2009 concerning the Report on General Measures to Enforce European Court of Human Rights Judgment No 57325/00 – DH and Others v the Czech Republic. For more details, see Section II.4.4.1.

[44] Government meeting of 8 June 2009.

the enforcement of this judgment is also closely monitored by NGOs, which also inform the Committee of Ministers of their evaluations of the steps taken by the Czech Republic.

3.4 EU

3.4.1 Czech Presidency of the EU Council

During the Czech Republic's Presidency, the EU Council Working Party on Human Rights (COHOM) completed a review and update of eight sets of *EU Guidelines on Human Rights*.[45] In the field of violence and discrimination against women, situation analyses of individual countries were conducted and recommendations for EU policy, including groups of appropriate cooperation projects, were drawn up. A discussion was held on further ways to support human rights defenders and promote the cooperation of EU Member States in the provision of refuge to activists in danger. In March 2009 the Czech Presidency organized a conference on "Building Consensus about EU Policies on Democracy Support", which recommended the consolidation of relevant EU external policy instruments in order to pursue to one of the key objectives – the support of democracy in the world – more effectively. The principles of the EU's approach to this issue, as formulated by the Czech Presidency, became the basis for the Conclusions subsequently adopted by the Council in November. The Czech Presidency engaged in numerous negotiations within the scope of dialogues and consultations on human rights with third countries, including China and Russia. It initiated dialogue with Georgia and Belarus.

The Czech Republic as the presiding country was actively involved in the handling of 69 cases of human rights violations, which overall concerned 145 people, human rights defenders from different countries. Eleven declarations were issued on behalf of the EU or the Presidency, intervention in the form of demarches was used three times, certain individual cases (about 15) were mentioned directly during formal human rights dialogue between the EU and the country concerned. Numerous other cases have been dealt with by means of silent diplomacy. Some cases were raised by missions; often the initial impetus was a report by a reputable international nongovernmental organization specializing in human rights. EU cooperation with these organizations is based on long-term, strategic partnership. The Czech Presidency confirmed and deepened this partnership.

In June, Prague and Terezín hosted a Conference on Holocaust Era Assets, which was also devoted to social programmes for survivors and the promotion of education. The conference endorsed the Terezín Declaration. The Declaration of the Czech EU Presidency and the European Commission on support for programmes and the reconstruction of historic monuments was also signed. The conference also resulted in the establishment of the European Shoa Legacy Institute in Terezín.[46]

[45] These guidelines were re-published and publicly presented. Progress in their implementation, with an emphasis on the ombudsman for human rights, torture and capital punishment, has continued. http://www.consilium.europa.eu/showPage.aspx?id=1681&lang=EN

[46] The institute's tasks will include preparing reports on social programmes for Nazi victims in different countries, promoting cooperation and the sharing of experiences and best practices at international and European level, making recommendations in this area to national governments and the European Commission, and implementing projects aimed at improving the social situation of Nazi victims and at supporting educational activities and provenance research.

Equal opportunities for women and men are another important EU agenda. During the Czech Presidency, for example, the High Level Group on Gender Mainstreaming held a meeting in Prague in January 2009. On 2–13 March 2009, a Czech Presidency delegation, led by the Minister Michael Kocáb, successfully represented the European Union at a meeting of the UN Commission on the Status of Women (New York). The subject of this meeting was the equal sharing of responsibilities between men and women and the equal participation of women in decision-making. On 27 May 2009, Prague hosted the Czech Presidency's "European Conference on New Ways to Overcome Gender Stereotypes". Member States presented their innovative practices, instruments and methods capable, in a European context, of putting a stop to the prejudice and stereotypes that prevent women and men from free decision-making. The Czech Presidency prepared the draft EU Council Conclusions on "Equal opportunities for women and men: active and dignified ageing", which were approved on 8 June 2009 by the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO).

3.4.2. Proposal for a Council Directive prohibiting discrimination outside employment

In 2009, the EU Council[47] continued its consultations on a proposal for a Council Directive implementing the principle of the equal treatment of persons irrespective of their religion or belief, disability, age or sexual orientation. The Czech Presidency focused on disability (Article 4 of the proposal), making every effort to ensure that the draft Directive was consistent with the UN Convention on the Rights of Persons with Disabilities. *These efforts were viewed positively by other Member States.* The equal treatment of persons with disabilities is one of the key issues of the proposal. *In particular, it is necessary to assess the real, financial and practical implications of the proposed measures and to ensure legal certainty, particularly with regard to the specific obligations which are to be imposed on the competent bodies under the Directive. It is equally important to set adequate implementation deadlines in ensuring accessibility for persons with disabilities.*

One of the fundamental issues in the consultations is the definition of the competence of the EU and its Member States. Member States require a clearer and more precise wording (the issues of access to goods within the scope of the directive and the organization of the provision of such goods, which are fully within the competence of the MS). The balance between the right to equal treatment and contractual or other freedoms of individuals and issues of differential treatment not regarded as discrimination are also being discussed. The legal certainty of the addressees of the draft Directive (i.e. Member States and their citizens, who must have clearly and precisely defined rights and duties) is emphasized. *The new Directive should build on existing discrimination Directives while maintaining proportionality and minimizing potential financial and administrative burdens.*

The Czech Republic's position on the draft Directive did not change in 2009.

3.4.3 Activities of the EU Fundamental Rights Agency

In the third year of its existence, the European Union Fundamental Rights Agency (the "FRA") published a number of reports on various areas of human rights. In June, the annual (summary) annual report on the organization's activities in 2008 was published. On 9 December 2009, the FRA published the results of its investigation into minorities and discrimination in the EU (EU-MIDIS). The published results are a summary and collation of

[47] Social Questions Working Party.

data gathered from individual EU-MIDIS inquiries over the previous year. The relevant FRA Report for the purposes of assessing the Czech Republic is "Focus on Data 1 / Roma", which was published on 22 April 2009. The investigation focuses on seven EU Member States, including the Czech Republic. The other minorities monitored in the EU-MIDIS investigation were Muslim immigrants and immigrants from northern and sub-Saharan Africa. The FRA also published a report on the situation of the EU's Roma citizens who move and settle in other EU Member States and a comparative report on the housing conditions of Roma and travellers in the EU. In addition, the Agency publishes data on incidents in the EU motivated by anti-Semitism.

3.5. Promotion of human rights and democracy in the world – transformation policy

The transformation policy is a concept designed to encourage democratization processes in transition countries and in undemocratic regimes, leading to long-term stability and prosperity, and to promote the emancipation and development of civil society as a key player in sustainable democratic change. The financial vehicle of the transformation policy is the TRANSITION Transformation Cooperation Programme, set up to support the foreign projects of Czech nongovernmental organizations and institutions (within the scope of the governmental grant policy). Transformation cooperation focuses on the creation and reinforcement of democratic institutions, the rule of law, civil society and good governance. It is implemented primarily via education projects, the dissemination of information, views and experiences of non-violent resistance to the totalitarian system, and the process of social transformation, as witnessed in the Czech Republic in the 1990s.[48]

In 2009, the Transformation Cooperation Programme again focused on countries of priority interest to Czech foreign policy, where conditions also exist for the transfer of Czech experience and a tradition of mutual contact has been established (Belarus, Bosnia and Herzegovina, Georgia, Iraq, Kosovo, Cuba, Moldova, Burma/Myanmar, Serbia and Ukraine). In total, the Transformation Cooperation Programme funded 47 projects by Czech nongovernmental organizations and institutions, carried out in collaboration with their partners in the recipient countries, as well as individual activities by the Ministry of Foreign Affairs carried out mainly through missions. Overall, approximately CZK 48.6 million was spent on projects, scholarships and transformation cooperation activities in 2009.

[48] Transformation cooperation is characterized by systematic cooperation with civil society groups and NGOs and the support thereof; contact with government authorities in the recipient country may be deliberately excluded.

II. SPECIFIC PART

1. FUNDAMENTAL CIVIL AND POLITICAL RIGHTS

1.1 Right of property and protection thereof

1.1.1 Privately-owned flats and rent regulation

Complaints lodged by owners of houses and flats regarding rent regulation remain pending before the European Court of Human Rights.[49] In May 2009, the ECHR asked the parties to the proceedings additional questions concerning the existence and functioning of remedies which can be used by landlords to increase rents retrospectively. The Government responded to the questions on 30 June 2009, and informed the Court in particular of the content of the opinion of the plenum of the Constitutional Court, No Pl. ÚS-st 27/09 of 28 April 2009, which addressed the possibility of claims by landlords to increase rents from tenants and to seek compensation from the State.

In that opinion, the Constitutional Court concluded that landlords may legally demand rent increases up to a level normal for the place and time only in the period from the bringing of the action until 31 December 2006, i.e. until the Act on Unilateral Increases in Residential Rents[50] entered into effect; this legislation introduced a special regime for rent increases in which judicial decisions are unable to intervene. The courts cannot increase rent for the period prior to the bringing of an action because a decision to increase rent is a constitutive decision that forms new rights and obligations and therefore cannot have retrospective effect. Landlords may also seek compensation from the State for restrictions on their right of property as a result of the inactivity of the State as legislator in dealing with rent regulation; the general courts are required to hear such claims.[51] This gives landlords a chance to claim damages for the period prior to the bringing of the action; regarding the period after they have brought an action, they may seek compensation for damage not covered by the increase in rent to a level normal for the time and place.

At present, issues associated with regulated rent are being handled in the form of gradual increases in accordance with Act No 107/2006. This law will allow landlords to increase rents unilaterally, based on set formulae, for the last time in 2010, with the exception of Prague, most regional cities and certain municipalities in Central Bohemia[52] (the region of Středočeský kraj), where rents can be increased in accordance with modified formulae until the end of 2012, allowing increases to progress at a slower rate so that tenants can adapt to the situation.[53] *One solution to the problem could be a draft government amendment to the Civil Code enabling landlords and tenants, in cases where rent is not set by agreement (this is the case with regulated rent) and the rent is not consistent with the rent normal for the place and time, to apply to a court for an increase or decrease, as set out in the case law of the*

[49] At present a selected pilot hearing in Jan Vomočil v the Czech Republic (No 38817/04) and Art 38, a.s. v the Czech Republic (No 1458/07).

[50] Act No 107/2006 on unilateral increases in housing rent and amending Act No 40/1964 Civil Code, as amended, as amended by Act No 150/2009.

[51] This is a claim under Act No 82/1998 on liability for damage caused in the exercise of public authority by a decision or incorrect official procedure, as amended.

[52] Towns and municipalities in which unilaterally increased rents in 2009 stood at more than CZK 40 per m2.

[53] Act No 150/2009 amending Act No 107/2006 on unilateral increases in housing rent and amending Act No 40/1964 Civil Code, as amended.

Constitutional Court. This proposal is currently being discussed by the Chamber of Deputies.[54]

1.1.2 Enforcement issues

In 2009, 678,049 writs of execution were issued; in total, over one million final execution proceedings are in progress. According to data from the Executors Chamber of the Czech Republic, the number of debtors is estimated at between four and five per cent of the Czech population; there is a rising incidence of multiple executions.

On 1 November 2009, a "medium-term amendment" to the Enforcement Procedure[55] entered into effect which, in keeping with the European trend towards the humanization of enforcement law, should help speed up enforcement proceedings and reinforce the protection of the parties' rights. The amendment requires the executor to proceed quickly and efficiently during execution, while ensuring the protection of the rights of the parties to the proceedings and others affected by the executor's actions. The amendment also clarifies the procedure to be followed by the court and the executor in relation to the parties to the proceedings. Liable parties may avoid execution by consigning the amount owed by the executor or, with the executor's consent, by liquidating their assets and paying the debt and execution costs within 15 days of service of the writ of execution. The executor may also decide whether to accept a liable party's request for the deferral or suspension of enforcement. This facilitates prompt decisions on uncontested matters. If the executor opposes such a request, it is submitted to a court for a decision. A party to the proceedings may lodge an appeal against most of the decisions with the regional court.

A new feature is the establishment of the requirement of the proportionality of execution, which means that the executor proceeds in the most appropriate way in the case at hand while interfering with the rights of the parties to the proceeding as little as possible. In the case of a monetary claim, the executor must first order the amount to be debited from an account or deductions from income, and only after this comes the sale of movable and immovable property possible. *As a result, there should no longer be situations where debtors are at risk of losing their home, for example, if their arrears are small amounts.* The owner of a registered item which does not belong to the liable party may ask the executor to remove it from the inventory register. The executor must comply with this request if it becomes clear during the enforcement proceedings that the item does not or cannot belong to the liable party.

In 2009, the system in place for the supervision of executors was also amended.[56] Supervision is now entrusted to the president of the district court in whose district the executor has his registered office. The Ministry of Justice also has supervisory powers over the Executors Chamber and may annul any unlawful acts of the chamber, apart from professional rules.

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[54] Parliamentary Press No 805/0.

[55] Act No 286/2009 amending Act No 120/2001 on executors and enforcement (Enforcement Procedure) and amending other laws, as amended, Act No 119/2001 laying down rules for cases of the parallel performance enforcement of decisions, Act No 262/2006, the Labour Code, as amended, Act No 99/1963, the Rules of Civil Procedure, as amended, Act No 265/1992, on the registration of ownership titles and other rights in rem attached to immovable property, as amended, Act No 7/2002 on proceedings in cases relating to judges and public prosecutors, as amended, and Act No on public prosecution, as amended.

[56] Act No 183/2009 amending Act No 120/2001 on executors and enforcement (Enforcement Procedure) and amending certain related laws, as amended, and Act No 121/2008 on the public prosecutor's clerks and senior officers, and amending related laws, as amended by Act No 7/2009.

Ececutors cannot rely on confidentiality in relation to the supervisory authorities and must grant supervisory and investigating authorities access to their files.

The Ministry of Justice continues to exercise State supervision, verifying the legality of the procedure followed by executors and the fluency and the length of enforcement proceedings. In 2009, the Ministry of Justice conducted controls at 12 executors; two disciplinary actions were brought for delays in proceedings and one disciplinary action was brought for illegal procedure. Executors were criticized for minor misconduct and remedies were recommended. In addition to inspections, the Ministry of Justice carries out State supervision on the basis of complaints received from private persons. In 2009, the Ministry received 499 such complaints, on the basis of which five disciplinary actions were brought for illegal procedure and three disciplinary actions were brought for delays in proceedings. There were 41 cases of minor misconduct.

1.2 Right to privacy and personal data protection

In 2009, the Supreme Administrative Court[57] addressed the processing of personal data by the Czech Police. The basic limitation applicable to the processing of any information (including personal data) by the police is that it must be essential for the performance of police tasks, and may only be carried out to the extent absolutely necessary. Furthermore, personal data may be processed only in the performance of police tasks related to criminal proceedings. Therefore, the police authority deciding on a request for the disposal or correction of false or inaccurate personal data must always address the fulfilment of these requirements ex officio. There are only two reasons why a police authority can deny a request for the disposal or correction of false or inaccurate personal data. The first is the existence of processed data of the type described above where further processing is justified by legitimate reasons (there is a threat to the performance of police tasks in connection with criminal proceedings or a threat to the legitimate interests of third parties); the second reason is the processing of data which cannot be considered false or inaccurate. However, in both cases the negative decision must be justified with regard to the individual aspects of a particular case; it is not sufficient merely to refer to the provisions of the law which permit such a procedure.

In 2009, the State Institute for Drug Control established a Central Repository of Electronic Prescriptions. Supervision by the Office for Personal Data Protection found that the issue of electronic prescriptions, the introduction of which prompted the establishment of the central repository, had not yet been initiated; nonetheless, the central repository had processed personal data collected from pharmacies by means of reports on medicinal products dispensed on the basis of written prescriptions and on the dispensing of over-the-counter medicinal products subject to restrictions on the amount of active substance that can be issued to a single person.[58] This supervisory activity found that the State Institute for Drug Control had no statutory authority to collect personal data and thus was not permitted to gather any further data; the persona data it had collected had to be discarded. At the same time, the electronic prescription database was to be separated from the records of persons to whom restricted medicinal products had been dispensed.

[57] Judgment of the Supreme Administrative Court No 7 As 60/2007-6357 of 29 May 2009, available from www.nssoud.cz.

[58] Eg. preparations containing ephedrine and pseudoephedrine in accordance with Act No 167/1998 on addictive substances and amending certain laws, as amended by Act No 141/2009.

The Ministry of Health responded to this criticism by submitting an amendment to the Act on Pharmaceuticals,[59] which is now pending in the Chamber of Deputies.[60] The amendment proposes the establishment of a central register to collect not only electronic prescriptions, but also other data "on medicinal preparations dispensed on prescription or over the counter subject to restriction".[61] According to the explanatory memorandum, the aim is for the central repository to fulfil its role "*also in relation to paper prescriptions and other related and follow-up data provided to the Institute by pharmacists and other operators authorized to dispense medicinal preparations...*". Therefore, the central repository will not only provide summaries of the dispense of restricted over-the-counter medicaments, such as medicaments with ephedrine and pseudoephedrine, but also other prescribed medicaments, in order to "*monitor the adverse effects of medicinal preparations, maintain data on the consumption and use of* medicaments*, provide information leading to an increase in the efficiency of prescribing, including a restriction on duplicative prescribing, reduce errors in the dispensing of medicinal preparations, reduce the forgery of prescriptions, and ensure that patients are informed about medicinal preparations prescribed and dispensed to them.*"[62]

In this context, the main question is whether the collection of data on medicaments used by individuals, classified as sensitive data[63] (in light of the fact that this is information on personal health status) under the Personal Data Protection Act, is genuinely justified in all the situations proposed. Although the Personal Data Protection Act permits the processing of sensitive data for purposes of health care, public health protection, health insurance and State administration in the health sector,[64] the processor must still respect general constitutional rules in these cases. If the processing of sensitive personal data constitutes interference with the fundamental right to privacy under Article 10 of the Charter of Fundamental Rights and Freedoms, such interference must be justified by the protection of another fundamental right of equal or greater value. Where data on restricted over-the-counter medicines are processed to prevent excessive acquisition for purposes of illicit drug production, interference with the right to the protection of personal data is acceptable in the interests of protecting society against drugs. In other cases (a simple register of data about prescription medicaments) there are doubts as to whether the objectives pursued[65] truly require the processing of sensitive personal data and whether such objectives can be achieved without such processing (e.g. by using anonymous data).[66]

The handling of personal data in banking also appears to be problematic. The Czech National Bank receives banking details, information identifying account holders, and

[59] Act No 378/2007 Pharmaceuticals and related legal changes (Act on Pharmaceuticals), as amended.
[60] Parliamentary Press No 1056.
[61] See Section 81(1)(h) of the draft.
[62] See Section 13(2)(n) of the draft.
[63] Section 4(b) of Act No 101/2000 on the protection of personal data and amending certain laws, as amended.
[64] Section 9(b) of the Act.
[65] I.e. monitoring the side effects of medicinal products, maintaining data about the consumption and use of drugs, and providing information leading to an increase in the efficiency of prescribing, including restrictions on duplicate prescriptions, and a reduction in errors in the dispensing of medicinal products, a clampdown on forged prescriptions, and patient awareness about prescribed and dispensed medicinal products.
[66] The Governmental Legislative Council expressed its opinion on the draft as follows: "The Governmental Legislative Council, with regard to the contents of the bill, assessed the issue of proportionality between the interest in protecting sensitive personal data and the interest in protecting the health of the individual from a constitutional perspective. It found that personal data contained in a central repository are protected and their degree of possible abuse is not exceeded.".

information indicating the solvency and credibility of clients from other banks,[67] and uses this information to create a register to which other banks are granted access. Yet the law does not define what specific information can be collected. Moreover, the data stored in the database does not concern only problem clients, but also other clients or even persons who have not even become bank clients, either by refusal or choice. In these cases, the condition under which personal data can be processed is not met because such personal data are intended solely to fulfil a bank's obligation to proceed prudently in its business operations.[68] The details of people who do not pose any particular risk to banks do not satisfy this condition. Data from these official banking records may also be accessed by non-banking entities, such as credit companies, because the banks, in their contracts, demand client consent for those entities to access the records. This information is then stored in the registers of the non-bank entities, who share these details which each other. *While this processing may take place with the consent of the subject of the data, given the adhesive nature of the contract, which the subject is unable to alter, there are doubts as to whether consent is given entirely freely. It would be better for consent to be formulated separately from the contract so that customers can decide whether to grant consent to further disclosure of their personal data or not.*

1.2.1 Surveillance systems

The ubiquity, immediacy and digitization of information on the movement of persons, as a result of modern digitization techniques and data transfer, is an extremely serious intrusion into the constitutionally guaranteed rights of persons with major potential for the misuse of such data generated en masse. CCTV surveillance, if the images acquired are recorded, constitutes personal data processing and is covered by the Personal Data Protection Act and subject to the corresponding rights and obligations; however, this general law is not always able to respond to the specific issue of surveillance systems. If camera systems are used which do not make recordings, general rules on the protection of the individual, as referred to in Sections 11 to 16 of the Civil Code, apply. Issues related to camera systems have been addressed by the Office for Personal Data Protection consistently since 2006 within the scope of oversight and consultations.[69]

It is therefore advisable to establish rules for the operation of surveillance systems to ensure that society and individuals are protected against threats to health, life, property or public safety, and that the privacy of individuals is protected, and to ensure that invasions of privacy occur only when a stated objective cannot be achieved by other means not intruding on the privacy of the persons monitored. Surveillance systems identifying specific persons should be used primarily for the selective identification of those who violate statutory rules (i.e. who damage property, commit an offence or a crime, etc.). If persons who do not meet those conditions, i.e. persons who have not broken the law, come within reach of such systems, either they should not be recorded at all or records containing their personal data should be deleted within a minimal time limit. These systems may not be used for other, socially less important purposes, such as traffic regulation, where other technical solutions not intervening in fundamental human rights need to be found.[70] This is also the aim of the modification to the use of surveillance systems which, based on the initiative of the Government Council for Human Rights, is to be submitted to the Government by the Minister for Human Rights in

[67] Section 38a(2) of Act No 21/1992 on banks, as amended.
[68] Section 38a(1) of Act No 21/1992 on banks, as amended.
[69] http://uoou.cz/uoou.aspx?loc=382
[70] Prepared from a contribution provided by Otevřená společnost, o.p.s. (Open Society).

cooperation with the Minister of the Interior and other relevant Ministers; the Office for Personal Data Protection is also collaborating in this matter.[71]

In terms of privacy, there should be a cautious approach to time-over-distance vehicle speed measurements. In 2009, the Office for Personal Data Protection undertook an investigation in which it was found that the cameras used for these measurements have HDTV resolution, providing high picture quality. The Office imposed remedial measures aimed at ensuring that only data relating to persons who have committed a traffic violation are documented. In this respect, the system administrator was ordered to remove all images of passengers. *Nevertheless, there remains a problem in that the surveillance system, designed to detect drivers exceeding the speed limit, records (albeit for a limited time) data on persons who do not exceed it, which is not justified.*

In 2009, a law was adopted which, as of 1 January 2011, introduces motorway toll collection using electronic vignettes.[72] The system is being organized on the principle of the individual identification of the specific route taken by a vehicle in time. *Unfortunately, the law failed to set out sufficient technical details or to provide protection against unauthorized collection and processing of personal data and other intrusions on privacy. Tolling is possible without such individual monitoring.*

Surveillance issues are not limited to technology operated by the public sector. In 2009, the Office for Personal Data Protection also examined Google Street View, a service offering panoramic 360-degree shots of streets. The provision of this service processes the personal data of people present at the time images are taken. The Personal Data Protection Act does not essentially prevent the operation of a service of this nature. However, it is necessary to comply with all conditions set out by the Act in relation to processing; in particular, the collection of personal data must be minimized and registration and notification requirements must be met. Negotiations are still in progress aimed at making the operator take organizational and technical measures to minimize possible interference with the rights of the individuals recorded (e.g. by means of the camera selected for imaging, restricted views of private land, and limited zoom options) in accordance with the principle of proportionality.

1.3. Right to freedom of information

Applicants may submit requests for information to obliged entities who are obliged to provide information within the scope of their competence. The Supreme Administrative Court has identified, inter alia, the public limited company ČEZ as an obliged entity by virtue of its status of a public institution managing public funds and established by the State, where the constitution of its bodies is under the dominant influence of the State, and where its business objects are a strategic, security and existential interest of the Czech Republic.[73] ČEZ filed a constitutional complaint against this judgment; no decision has yet been reached. In the meantime, it has denied access to information.

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[71] See Government Resolution No 1454 of 30 November 2009.

[72] Act No 347/2009 amending Act No 13/1997 roads, as amended, Act No 104/2000 on the State Transport Infrastructure Fund and amending Act No 171/1991 on the competence of bodies of the Czech Republic in matters concerning transfers of State assets to other persons and on the National Property Fund of the Czech Republic, as amended, as amended, and Act No 56/2001 on conditions for the operation of vehicles on roads and amending Act No 168/1999 on motor third party liability and amending certain related laws (the Motor Third Party Liability Act), as amended by Act No 307/1999, as amended.

[73] Judgment of the Supreme Administrative Court No 2 Ans 4/2009-93 of 6 October 2009, www.nssoud.cz. .

The Act on Free Access to Information[74] (the "Information Act") also excludes the provision of information about the decision-making of the courts, with the exception of final judgments.[75] The Supreme Administrative Court also heard the case of an applicant seeking, under the Information Act, the dispatch of certain judgments, both final and pending, with the argument that this provision of the Information Act does not apply to the content of decisions already rendered, but protects only court activities leading to the decision, not the outcome of those activities. The Supreme Administrative Court disagreed with the complainant's view.[76] According to the court, "decision-making activity of the courts" should encompass not only the procedure followed by the courts in proceedings and the steps taken to determine the facts of the case and to conduct a legal assessment thereof, but also the actual decisions of the courts, or decisions on the merits, i.e. both final and pending judgments. The cited provision of the Information Act clearly prohibits statutory entities from disclosing any information about the decision-making activity of the courts (except for information in the form of final judgments). The conclusion on the non-disclosure of information in the form of pending judgments is logical not only on the grounds that these judgments may, in some cases, undergo substantial change following a review, but also on the grounds that parties to the proceedings may have an eminent interest in not having information disclosed about judicial proceedings which are still not definitively closed, or an interest in non-intrusion during the proceedings (with a view to ensuring the objectivity and impartiality of the assessment of each case) in the court's decision-making activity.

In addition, obliged entities do not provide information on ongoing criminal proceedings[77] (Section 11(4)(a) of the Information Act). Nor do obliged entities provide information which has emerged outside the sphere of criminal proceedings, but which, at a certain point in time, is linked and related to ongoing criminal proceedings.[78] Only information that does not relate to and cannot influence criminal proceedings should be disclosed. According to the Supreme Administrative Court, this exemption relates to public interest in the having criminal proceedings serve their purpose, i.e. the proper investigation of an act which qualifies as a criminal offence. In this case, the complainant was being prosecuted in criminal proceedings associated with the information being sought by the complainant, and therefore the refusal to provide the requested information was entirely appropriate. The complainant, as a party to criminal proceedings, may find the information sought by perusing the case file in accordance with Section 65 of the Rules of Criminal Procedure.[79]

According to information from NGOs,[80] there is an increasing number of cases where statutory entities wrongfully refuse to disclose relevant information about the use of public funds or their activities. These include the civic association OC FIS NORDIC WSC 2009 o.s., established by the State and public authorities and the organizer of the World Skiing Championship, which has withheld information about its activities, and České dráhy, a.s. (Czech Railways), which refuses to provide information on the basis that it is not an obliged entity, despite the fact that it is a public institution under the law in which the full participating interest is held by the State. Furthermore, the Czech Trade Inspectorate repeatedly refused to disclose which service stations it penalized for selling poor quality

[74] Act No 106/1999 on freedom of information, as amended.
[75] Section 11(4)(b) of Act No 106/1999 on freedom of information, as amended
[76] Judgment of the Supreme Administrative Court No 8 As 50/2008-75 of 29 April 2009, www.nssoud.cz.
[77] Section 11(4)(a) of Act No 106/1999 on freedom of information, as amended.
[78] Judgment of the Supreme Administrative Court No 6 As 18/2009-63 of 14 September 2009, www.nssoud.cz.
[79] Act No 141/1961, as amended.
[80] Information from Otevřená společnost, o.p.s.

petrol, despite expert opinions and the Ombudsman's opinion[81] to the contrary. The Ministry of the Interior refused to provide an overview of personal data databases operated and managed by the Ministry of the Interior and the Czech Police. There are also examples of improvements and rectification of previous wrongful denial of information: the Ministry of Finance provided a contract between Karbon Invest and the National Property Fund on the sale of OKD shares and extensive housing stock, which it had previously withheld.

Problems persist in local and regional government. In some local authorities, opposition councillors are de facto denied the right to information and access to official documents such as minutes and records of assembly meetings or contracts entered into by a municipality for purposes of public procurement. *This minimizes the supervisory role of assemblies and means that transparency and protection against corruption are often non-existent. Other problems include violations of citizens' rights during meetings of municipal and regional assemblies. The illegal practice still prevails where citizens are denied their legal right to express their observations regarding each item on the agenda at assembly meetings in accordance with the rules of procedure.*[82]

1.3.1 Conflict between privacy and the right to information

In 2009, an amendment to the Rules of Criminal Procedure entered into force which significantly restricts the media's opportunity to report on criminal investigations.[83] The amendment prohibits any disclosure of information about the suspects, victims, or witnesses at the trial stage. The only exceptions where disclosure is permitted are alerts issued for the quest of persons and the attainment of the objective of criminal proceedings (i.e. the proper detection of crime and the punishment of the offenders under the law). The amendment prohibited the disclosure of information about the victims of certain crimes during judicial proceedings. It also prohibited the disclosure of any information obtained via police interception or operative and investigative techniques.[84] Violations of this prohibition are penalized with relatively high fines.

The aim of the amendment was to resolve a conflict between two fundamental rights – the freedom of expression and the right to information on the one hand[85] and the right of individuals to the protection of their privacy and person on the other.[86] Under constitutional architecture and international documents, these rights are equal[87] and therefore any conflict between them must be resolved primarily through the courts, based on the facts of individual cases, and not a priori by the law.[88] In this respect, the law favours the right to privacy, which

[81] See The Ombudsman's Summary Report for 2009. http://www.ochrance.cz/index.php?id=101435, http://www.ochrance.cz/index.php?id=101436

[82] Prepared from a contribution provided by Otevřená společnost, o.p.s.

[83] Act No 52/2009 amending Act No 141/1961, on criminal procedure (Rules of Criminal Procedure), as amended, and certain other laws.

[84] The solution for outputs from secret police surveillance or interception is more or less a red herring because the primary problem lies in the leakage of such information from the law enforcement agencies themselves.

[85] Article 17 of the Charter of Fundamental Rights and Freedoms, Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 11 of the EU Charter of Fundamental Rights, Article 19 of the International Covenant on Civil and Political Rights.

[86] Article 10 of the Charter of Fundamental Rights and Freedoms, Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Articles 7 and 8 of the EU Charter of Fundamental Rights, Articles 16 and 17 of the International Covenant on Civil and Political Rights.

[87] See, e.g., Judgement of the Constitutional Court II. ÚS 357/96.

[88] According to the case law of the Constitutional Court, a fundamental right under Article 17 of the Charter is essentially equal to a fundamental right under Article 10 of the Charter (Judgement II. ÚS 357/96); it is

virtually denies freedom of expression and the right to information. The law allows people to engage in freedom of expression and disseminate information while protecting individuals from unlawful interference with their privacy rights through the dissemination of certain information. It follows that not all information about a particular person constitutes unlawful interference with his or her personality. In this regard, the law distinguishes true, factual, neutral and reliable information from false, fabricated and tendentious information, and makes a distinction between value judgments within the limits of social respectability and beyond those limits. Information and value judgments that are truthful, factually based and within the limits of social respectability enjoy protection as manifestations of the freedom of expression, while others do not (and could therefore constitute interference with privacy rights).[89] In criminal proceedings, there is the additional need to preserve the presumption of innocence.[90] If the information meets these conditions, it is protected by freedom of expression and may be disseminated provided that, according to the constitutional order, there is no need to prevent dissemination in a democratic society in order to protect the rights and freedoms of others, national security, public safety, public health and public decency.[91] However, the disclosure of any information about certain defined persons, regardless of its nature, is prohibited under this amendment.

Another problematic issue is the exercise of the right to information on matters of public interest, i.e. those that touch on questions of the functioning of the State and the conduct of persons responsible for or associated with the functioning of the State. Here, the law also distinguishes publicly active persons, in respect of whom it sets less stringent limits on unlawful interference with privacy rights because it respects the public's right to know the circumstances surrounding the functioning of public authority and the conduct of persons exercising this authority which could have an impact on its functioning.[92] *In relation to such persons, however, it is particularly important for the public to be informed about their behaviour, so that the public can then consciously take decisions in democratic processes to determine who will exercise this authority, and so that it can be involved in protecting the proper exercise of that authority, complying, of course, with the rules on the presumption of innocence and the right to a fair trial. Yet even the new law does not allow this to be taken into account.*

The Chamber of Deputies is currently debating two draft amendments that facilitate the disclosure of protected information in cases where such publication would be in a public interest outweighing any interest in the protection of the privacy of the person concerned. These drafts are now in their second reading.[93] A group of senators has filed a petition with

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"primarily the responsibility of ordinary courts, having regard to the circumstances each case consider, whether one right has been arbitrarily given priority over another right" (Judgement IV. ÚS 154/96).

[89] See, e.g., Findings of the Constitutional Court I. ÚS 156/99, I. ÚS 453/03, I. ÚS 367/03, and III. ÚS 346/06.

[90] Linked to this is the right of reply and additional communication under the Press Law (Sections 10-15 of Act No 46/2000, as amended) and the Radio and Television Broadcasting Act (Sections 35-41 of Act No 231/2001, as amended).

[91] Under case law of the European Court of Human Rights, however, this exception must be narrowly construed, again with regard to the specific situation. See, e.g., Sunday Times v United Kingdom (Complaint No 6583/74) and Observer and Guardian v United Kingdom (Complaint No 13585/88).

[92] See, e.g., Findings of the Constitutional Court IV. ÚS 146/04 and IV. ÚS 23/05, and Judgments of the European Court of Human Rights in Wingrove v United Kingdom (Complaint No 17419/90) Lingens v Austria (Complaint No 9815/82), Castells v Spain (Complaint No 11798/85), Thorgeir Thorgeirson v Iceland (Complaint No 13778/88), Bladet Tromso and Stensaas v Norway [GC] (Complaint No 21980/93), Monnat v Switzerland (Complaint No 73604/01).

[93] Parliamentary Press No 905 (Government proposal for the promulgation of an Act amending Act No 141/1961 on criminal procedure (Rules of Criminal Procedure), as amended, Act No 40/2009, the Criminal Code, and

the Constitutional Court for the annulment of certain provisions of the new Act. No decision has been reached on this complaint.[94]

1.4 Freedom of assembly

The Minister for Human Rights, in cooperation with the Minister of the Interior, prepared an amendment to the Act on the Right of Assembly, which entered into effect in 2009.[95] The amendment extends the deadline for municipal authorities to assess the convocation of an assembly from three calendar days to three working days, so that this time limit does not run when the authorities are not operational. *The authorities will therefore be in a better position to evaluate more carefully whether a notified assembly would disturb other fundamental rights and public interest and whether there is a reason to prohibit it under the Act. The longer time limit will also allow the authorities to gain a better insight into the organizers of the assembly and their activities, so that they are ready to dissolve the assembly if it deviates from the notified purpose and begins to break the law. However, it still holds true that this must be a measure necessary in a democratic society within the meaning of the constitutional architecture and international treaties.*

The Ministry of the Interior has prepared a "Manual for Municipalities on the Act on the Freedom of Assembly" (*Manuál pro obce k zákonu o právu shromažďovacím*).[96] The Minister for Human Rights published "Uninvited guests. A collection of texts for municipalities that intend to actively defend themselves against assemblies born of hatred" (*Nezvaní hosté. Sborník textů pro města a obce, které se zamýšlejí nad možností aktivně bránit shromážděním z nenávisti).* This publication focuses on practical examples of good governance and is intended not only for local government authorities, but also as a means to inform the public about the problems of extremism.[97]

Both of the above documents can provide guidance to municipalities on how to proceed when they receive notification of an assembly, how to decide whether to ban an assembly, and how to proceed in accordance with the law during the event and when resolving any conflicts. Municipalities must not forget that freedom of assembly is a fundamental right protected by the constitutional order and that in it may be interfered with only in accordance with the law for the protection of other fundamental rights or values and only to the extent necessary. Municipalities must bear in mind that if they restrict this right in any way, they bear the burden of proving the legality and constitutionality of such a restriction, and must therefore show that this restriction was in accordance with both the law and the constitutional order, as

Act No 101/2000 on the protection of personal data and amending certain laws, as amended, and Parliamentary Press No 815 (Proposal of the Deputies Kateřina Jacques, František Bublan, František Laudát and others to promulgate an Act amending Act No 141/1961 on the criminal procedure (Rules of Criminal Procedure), as amended).

[94] The Complaint is recorded under file number Pl. ÚS 10/09.

[95] Act No 294/2009 amending Act No 84/1990 on the right of assembly, as amended.

[96] The manual was distributed to all regional authorities, municipalities and the Union of Towns and Municipalities of the Czech Republic. An electronic version of the manual is available on the websites of the Ministry of the Interior and the Union of Towns and Municipalities. http://www.mvcr.cz/clanek/extremismus-manual-pro-obce-k-zakonu-o-pravu-shromazdovacim.aspx

[97] http://www.smocr.cz/dulezite-informace/manual-pro-obce-k-zakonu-o-pravu-shromazdovacim--mv-cr-.aspx, http://clovekvtisni.cz/download/pdf/206.pdf, http://www.vlada.cz/assets/clenove-vlady/ministri-pri-uradu-vlady/michael-kocab/tz/Nezvani-hoste.pdf

is clear from the case law of the Supreme Administrative Court and the Constitutional Court.[98]

The Supreme Administrative Court accepted the possibility that the administrative authorities might ban a public assembly if the true purpose differs from the notified purpose and if, at the same time, there is a threat to rights protected by the Act on the Freedom of Assembly and the constitutional order of the Czech Republic.[99] The handling of a conflict between the freedom of assembly and another fundamental human right cannot be generalized and must always depend on the specific circumstances, while taking into account the principle of proportionality. The administrative authority may prohibit an assembly only if it is able to clearly demonstrate that the purpose of the assembly justifies the ban. It must justify its conclusions in a detailed and reviewable manner. The basic arguments must not be merely copied, and their authenticity must be verified. The grounds of the decision must sufficiently set out the administrative authority's factual and legal considerations, and its opinion must adequately justify why another fundamental right prevails at the expense of the freedom of assembly (if applicable).[100]

1.5 Right of association

1.5.1 Motions for the dissolution of problem entities

In 2009, the Supreme Administrative Court considered a Government motion to dissolve the Workers' Party (Dělnická strana).[101] In its decision, it defined the requirements for the exercise of the right of association and under what conditions it is possible to intervene in the exercise of this right, and made reference to the case law of the Constitutional Court and the European Court of Human Rights. The right to associate in political parties and movements is a basic way of ensuring public participation in the political life of society, particularly in the formation of legislative bodies and local government authorities. Political parties are indispensable intermediary facilitating public involvement in political power. In this capacity, and in the formation of political will in the State, political parties contribute to the formation of State authorities. The establishment of democratic State authorities must be preceded by free competition among political parties independent of the State, through which the political contours and proportions of the State are shaped. The Constitution is based on the principle of a representative democracy; the political system is based on the free and voluntary formation and on the free competition of political parties respecting basic democratic principles.

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[98] See, for example, the Judgment of the Supreme Administrative Court No 8 As 51/2007-67 of 5 November 2007, Judgment of the Supreme Administrative Court No 5 As 26/2007-86 of 4 September 2007, Judgment of the Supreme Administrative Court No 2 As 17/2008-77 of 21 February 2008, Judgment of the Supreme Administrative Court No 8 As 7/2008-116 of 31 August 2009 – available at www.nssoud.cz, Judgement of the Constitutional Court II. ÚS 459/04 of 18 August 2005, available at http://nalus.usoud.cz..

[99] Judgment of the Supreme Administrative Court No 8 As 7/2008-116 of 31 August 2009, www.nssoud.cz. In the legal community, however, there is some doubt about how far the judicial completion of value gaps in the law can go against the direct text of the Act. According to Section 10(1) of Act No 84/1990 on the right of assembly, as amended, the authority may prohibit a notified gathering only if the notified purpose conflicts with other fundamental rights. The text of the Act therefore does not give the administrative authority the possibility of assessing anything other than the notified purpose of the assembly. If, subsequently, during the assembly, it becomes evident that it has significantly deviated from the notified purpose (i.e. that the notified purpose was only a screen for the actual purpose) and circumstances come to light that would justify its ban, the assembly may be dissolved in accordance with Section 12(5) of the Act.

[100] Judgment of the Supreme Administrative Court No 1 As 30/2009-70 of 15 April 2009, www.nssoud.cz.

[101] Judgment of the Supreme Administrative Court No Pst 1/2008-66 of 4 March 2009, www.nssoud.cz.

According to the Supreme Administrative Court, the Constitution places two fundamental demands on political parties: respect for basic democratic principles and the rejection of violence to promote their interests. A political party may seek to change the legal and constitutional order provided that peaceful, legitimate and democratic means are (or are intended to be) used, and provided that the targeted change is, in itself, compatible with the fundamental principles of democratic rule of law. The democratic rule of law, on the other hand, has the right and obligation to actively defend its democratic system against parties that do not comply with these constraints. A political party that advocates violence, whose political project does not respect the rules of democracy and seeks their destruction, or aims to violate recognized rights and freedoms, does not enjoy constitutional protection. Abuse of the law is also unacceptable. Nobody, not even a political party, whose activities genuinely threaten or violate fundamental rights and freedoms of others, can effectively rely, to the corresponding extent, on the protection of their own fundamental rights and freedoms. The Charter of Fundamental Rights and Freedoms and the Convention for the Protection of Human Rights and Fundamental Freedoms permit restrictions on the right of association, including the right to associate in political parties, in the cases provided for by law if this is necessary in a democratic society for national security, the protection of public safety and public order, the prevention of crime or the protection of the rights and freedoms of others. Exceptions facilitating State interference with the freedom of association must be construed narrowly. Therefore, only convincing and compelling reasons may justify restrictions on the freedom of association in political parties.

According to the Supreme Administrative Court, a political party may be dissolved only if four cumulative conditions are met:
1) the observed behaviour of the political party is illegal – the party violates the Constitution and laws, aims to demolish the democratic foundations of the State, seeks to usurp and hold on to power preventing other parties and movements from competing for power by constitutional means, seeks to suppress the equality of citizens, or pursues a programme or activities undermining morality, public order or the rights and freedoms of citizens,
2) the observed behaviour is attributable to the political party per se and does not merely reflect the excesses of some of its supporters or members,
3) poses, through its activities, a sufficiently imminent threat to the democratic rule of law in the future,
4) the intended intervention is proportionate to the aim pursued, i.e. it does not distort the principle of proportionality between the restriction of the right to associate in political parties and the interest of society in the protection of other values. These values include, in particular, an interest in national security, public safety and public order, crime prevention and the protection of the rights and freedoms of others. Any intervention must therefore be necessary to guarantee the protection of these values.

Based on the motion brought by the Czech Government, the Supreme Administrative Court found that, in this case, the conditions for the dissolution of the Workers' Party had not been met and therefore dismissed the motion. Nevertheless, the subsequent activities of the Workers' Party (e.g. its activities in Janov in November 2008) gave cause for the preparation and filing of a new motion for its dissolution.[102] The Supreme Administrative Court upheld this motion on 17 February 2010.[103]

[102] Proposal prepared by the Ministry of the Interior in collaboration with independent experts. The Government decided on the submission of this proposal to the Supreme Administrative Court on 16 September 2009.
[103] See Judgment Pst. 1/2009 – 348, www.nssoud.cz.

1.6. Right to vote – elections and complaints about the course of elections

In 2009, elections to the European Parliament took place in the Czech Republic (on 5 and 6 June 2009). The Supreme Administrative Court received seven applications for judicial review of the election; four applications were refused, two applications were dismissed, and one application was refused in one part and dismissed in its other part.

The Supreme Administrative Court, addressed, for example, an issue related to an election campaign while voting was in progress.[104] The applicant complained that the ban on electioneering near polling stations during the elections had been infringed because, as the applicant entered the school building hosting the polling station, an electoral van, painted with the name of a candidate, drove by slowly, and its loudspeakers could be heard far and wide calling on voters to vote for the candidate concerned. It could even be heard in the hallway outside the polling station. According to the Supreme Administrative Court, it is impossible to rule out all attempts to sway voters in the vicinity of buildings where polling stations are located. The purpose of the Act[105] is not to prevent voters, at all costs, from encountering any election messages or information on their way to the building where the polling station is located; rather, the aim is to prohibit forms and locations of electioneering techniques which would directly affect the free will of voters when they enter the polling station or the building in which it is located. According to the court, this means that there is a ban on electioneering which is directly focused on the immediate vicinity of polling stations, is not a one-off or even random incident, and is intensive enough that, ultimately, it could genuinely affect the behaviour of voters who, immediately before arriving at the polling station, were already decided to vote in a certain way. This was not the case here, even though the Supreme Administrative Court found this form of campaign "on the boundaries of the law".

[104] Order of the Supreme Administrative Court No Vol 7/2008-13 of 19 November 2008, www.nssoud.cz. .
[105] Section 16(6) of Act No 247/1995, on elections to the Chamber of Deputies, as amended.

2. JUDICIARY, RIGHT TO JUDICIAL AND OTHER PROTECTION

2.1 Legislative changes – comprehensive amendment to the Rules of Civil Procedure

Effective from 1 July 2009, there has been a comprehensive amendment to the Rules of Civil Procedure.[106] A major change is the new provisions on the system of service. The basis of the new system of service is the address for service communicated to the court by the relevant party. The party to the proceedings is thus required to take the initiative in notifying the court of the address where he or she can be reached and where, for the purposes of judicial proceedings, he/she will collect post. The party may notify the court of his/her address for the purposes of a single procedure, or may have a special address for service registered in the population register in addition to his permanent residential address, if he or she does not live at the place of permanent residence. The court then considers service to the notified address to be valid. It is now possible, with the consent or at the request of a party, to use a public data network, a data box, or e-mail address for purposes of service provided that the party submits a qualified certificate to verify his or her identity and the authenticity of his/her electronic signature, or provided that he/she specifies the accredited certification service provider who issued the qualified certificate, keeps a record of it, and is able to produce it. If an addressee chooses none of the above options, the address for service is the address of permanent residence entered in the central population register in the case of a natural person, the address of the place of business in the case of a natural person engaged in business, or the address provided in the relevant register in the case of a legal person.

If the addressee is not reached at the place of service, the document is kept at the post office or at the court for 10 days, after which it is deemed to have been served. This fiction of service is excluded only for certain documents served directly to the addressee to the exclusion of alternative service. However, a party may propose to the court that the fiction of service be declared ineffective if neither he/she nor his/her legal representative is able to become acquainted with a served document for an excusable reason; such a proposal must be made within 15 days of learning or having the opportunity to learn of the fictive service of the document. A party may avert any adverse effects of the fiction of service in this way.

Another new development is the establishment of protocols in the form of audio and audio-visual recordings. This is considered more secure, more conclusive and less laborious. If a recording cannot be made, or in cases provided by law, minutes of meetings are taken. A transcript of the recording or part thereof is made where the court so decides on the basis of compelling reasons. A transcript is made in all cases where a normal appeal or an appeal on a point of law is lodged. A party or his/her representative may have the audio or audio-visual recording of the proceedings played back or may make a copy thereof. Other persons with a legal interest may make such a request to the president of the chamber.

A positive new development is the possibility for a court to execute itself all procedural steps which the applicant claims have been delayed, within 30 days of service of an application to determine a time limit; the court can therefore remedy such a situation in this way. The amendment also removes the obstacle of submitting complaints about delays in proceedings before the submission of an application to determine a time limit for the execution of a procedural step.

[106] Act No 7/2009 amending Act No 99/1963, the Rules of Civil Procedure, as amended, and other related laws.

2.2 Systemic safeguarding of the availability of legal assistance

In 2009, the Ministry of Justice was meant to submit to the Government the draft subject matter of the Free Legal Assistance Act,[107] as also recommended by an initiative of the Government Council for Human Rights.[108] The Minister for Justice requested the cancellation of this legislative task due to the significant financial implications of the proposed law on the national budget and major conceptual problems in the provision of legal assistance which could not be satisfactorily resolved at the present time without burdening the national budget.[109] At the same time, the Ministry of Justice conducted an analysis showing that the existing legal framework for the provision of legal assistance was adequate and complied with the Czech Republic's international commitments, even though it was not included in a separate law, but was fragmented among individual procedural rules in particular. The Government approved the cancellation of this task.[110]

Access to free legal assistance, especially in civil cases, remains problematic. Under procedural rules, courts may waive court fees and other costs of proceedings on social grounds, and may assign a representative (including a lawyer) at the expense of the State. Furthermore, an applicant may request the Czech Bar Association for the free allocation of a lawyer. The Czech Bar Association also provides free legal advice in the buildings of regional courts and elsewhere in certain towns in the Czech Republic (especially the regional capitals). *In practice, legal assistance is also provided by many NGOs. Court assignment of assistance depends on the actual initiation of proceedings and is a matter of discretion for the court, which takes into account not only the social situation of the applicant, but also the nature of the dispute and the applicant's chances of success.* Under the Rules of Civil Procedure, exemptions from court fees should not be granted only in cases of the arbitrary or obviously unsuccessful exercise or hindrance of a right.[111] *In practice, this situation may be difficult to gaugeassess?, and there are no minimum criteria for assessing applications (documentation of social circumstances etc.).*

A greater emphasis should therefore be placed on the provision of legal assistance prior to or alongside any litigation. The legal advice centres of the Czech Bar Association and NGOs, which are dependent on funding, play an important role. The system is very fragile and, in the absence of funding, NGOs are forced to stop providing legal assistance. This places severe restrictions on access to legal assistance; furthermore, the network of advice centres is very uneven and, apart from very basic legal issues, it is virtually confined to the largest cities (Prague, Brno, Ostrava). Limited funds also dictate the quality of legal assistance. At the same time, it can be reasonably assumed that quality, accessible legal assistance and advice is capable of preventing many disputes handled by the courts and could ultimately not only relieve the courts of some of their burden, but also save costs in court fees and State-covered representation before the courts.

2.3 Right to have a case heard without undue delay

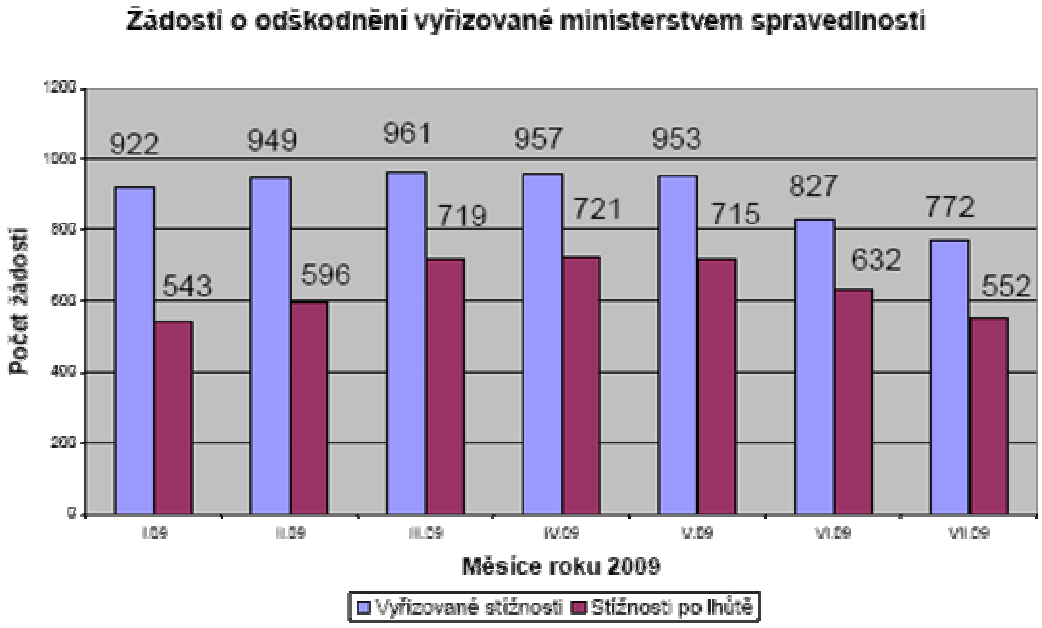
[107] According to the Government Plan of Legislative Work for 2009.
[108] The initiative was approved by the Council on 21 February 2008.
[109] However, it follows from the general principle originally submitted by the Ministry that most of the proposed options would, in fact, be financially less demanding than the current system.
[110] Government Resolution No 1216 of 21 September 2009.
[111] See Section 138(1) of the Rules of Civil Procedure.

The Ministry of Justice, within the scope of its competence as the body for the State administration of courts, regularly monitors and assesses the state of court agendas and screens court files to determine whether proceedings are subject to unnecessary delays.[112] In 2009, there was an extensive review focusing on pending cases older than five years at all district courts within the jurisdiction of the Regional Court in Ústí nad Labem. This review resulted in punitive sanctions, and numerous organizational measures were imposed on the management of the courts. Further special-focus screening was carried out on the handling of bankruptcy cases at the Municipal Court in Prague and the Regional Court in Hradec Králové, and on decisions concerning child custody arrangements and labour-law cases at selected district courts.[113] The management of courts was ordered to continue to keep track of trends in the speed at which older unfinished work was handled with a view to minimizing the number of old outstanding cases and thus the number of complaints lodged with the European Court of Human Rights on grounds of infringement of the right to have a case heard within a reasonable time.

Unfortunately, there are still delays in indemnification procedure under the Act on State Liability for Damage Caused by the Exercise of Public Authority.[114] Currently, an injured party who wishes to claim compensation must first file a claim with the Ministry of Justice, which examines the issue at a preliminary hearing. Only if the Ministry does not uphold the clam in full can the injured party then go to court.[115] *Although this mechanism was mainly designed so that a decision on compensation could be taken before any judicial proceedings, thus reducing the burden on the courts, it has become evident that in practice hearings at the Ministry of Justice tend to protract the proceedings because the Ministry must request the files from the proceedings and is often deluged with complaints, and applicants then turn to the courts anyway.* According to the European Court of Human Rights, one of the attributes that an effective remedy must meet is the sufficiently speedy redress of delays. In its case law, the court expresses the concern that splitting proceedings into multiple stages could be a cause of delay.[116] This is shown, inter alia, by the Ministry of Justice graph below, which depicts how many applications for compensation on grounds of delay are processed by the Ministry after the statutory time limit of six months.

[112] See Section 123(2) of Act No 6/2002 on courts and judges, as amended.
[113] Special-focus screening of decision-making on child custody arrangements at selected district courts was then reinstated in the plan of the main tasks of the Supervisory Department at the Ministry of Justice for 2010.
[114] Act No 82/1998 on liability for damage caused in the exercise of public authority by a decision or incorrect official procedure and amending Act of the Czech National Council No 358/1992 on notaries and their activities (Notarial Rules), as amended.
[115] Sections 14 and 15 of Act No 82/1998.
[116] Decision in Vokurka v the Czech Republic of 16 October 2007 (Complaint No 40552/02).

Table No. 1: Applications for compensation handled by the Ministry of Justice
Vertically: Number of applications (blue: complaints handled, red: overdue complaints)
Horizontally: months in 2009



Proceedings before a court slow down the compensation procedure further. The average length of proceedings in disputes under Act No 82/1998 is 747 days.[117] This is mainly due to the fact that the only court dealing with compensation claims is the Praha 2 District Court, which is the court of local jurisdiction of the Ministry of Justice, as the defendant in the proceedings, which acts on behalf of the State in matters of compensation on grounds of delay in judicial proceedings.

An essential step in accelerating the compensation process should be a thorough analysis of the effectiveness of the preliminary hearings of claims – whether this method is effective, whether the introduction of preliminary hearings has relieved the burden of the courts, or whether it has simply duplicated the proceedings. Regarding the congestion at the Praha 2 District Court, the way forward could be an increase in the number of judges or a change in local jurisdiction for compensation cases.

Another problem may be that the current wording of Act No 82/1998 does not allow the injured party to seek the costs of representation incurred in the preliminary hearing as part of the overall costs of proceedings. Although the preliminary proceedings could be considered less legally challenging, as they consist almost entirely of the submission of the application, in practice legal representation is often needed to prepare the application. There are no statistics on how many injured parties are represented in preliminary hearings. Information from the

[117] According to the 2009 statistical summary prepared by the Ministry of Justice. http://portal.justice.cz/justice2/soubor.aspx?id=81721 The average length applies to all compensation proceedings under this Act.

Ministry of Justice makes it clear that the vast majority of applicants are legally represented in the preliminary hearing. *Current legislation is therefore very unfavourable to the injured party.* Moreover, in its case law the Constitutional Court has pointed out that part of the damage for which the State may be liable is actual expenses incurred by the parties, regardless of the reason why they are incurred. *Therefore, if the State is liable for damage caused in the exercise of public authority and the party, through his/her lawyer, contacts the competent authority and lodges a claim, which is his/her duty under the law, this party should also be able to seek the costs incurred directly in connection with the claim.*[118]

2.4 Mediation and alternative dispute resolution

The Ministry of Justice submitted a Bill on Mediation in non-criminal matters to the Government. Mediation means the procedure for resolving a private dispute with the participation of a mediator, who encourages communication between the persons involved in the dispute in order to help them reach an amicable solution. Mediation is a voluntary procedure which is initiated by the will of the parties. Mediation is terminated by the conclusion of a mediation agreement governing mutual rights and obligations. The mediation agreement itself is not an enforceable title; it forms the basis for the subsequent production of a notarial deed or executor's record containing consent to enforceability, or can be approved by a court as an amicable settlement. During mediation, and even after the conclusion of the mediation agreement, it is possible to proceed with judicial proceedings; the judicial protection of the rights of the persons involved is therefore preserved in all cases. A significance consequence is the fact that, during mediation, the limitation period and the period for the lapse of a right in relation to the subject of medication are suspended. As such, the parties are not exposed to the danger that a right will be statute-barred or precluded during mediation.

The bill does not cover all medication activities in civil and non-criminal actions, but only governs mediation conducted by registered mediators. Therefore, the bill does not exclude mediation by unregistered mediators outside the bounds of the bill. However, such mediation does not have the consequences set out in the bill, including, in particular, the above-mentioned suspension of limitation and preclusion periods.

2.5 New Criminal Code

The new Criminal Code[119] entered into effect on 1 January 2010. It introduces the formal concept of a criminal act, i.e. a criminal act is an act described as such in the Criminal Code, albeit in conjunction with a certain material corrective, according to which the criminal liability of the offender and criminal consequences associated with such liability can be invoked only in socially harmful cases where liability under other laws would be insufficient (the "ultima ratio" principle). The enshrinement of the principle of the subsidiarity of criminal repression and the resulting "ultima ratio" principle in the Criminal Code also carries importance for interpretation purposes because the elements of a crime should be interpreted so that only a socially harmful act is regarded as a criminal act. The principle of the subsidiarity of criminal repression requires that the State invoke criminal law resources with restraint, i.e. especially where other remedies have failed or are not effective.

[118] Drawn up based on information from the Human Rights League.
[119] Act No 40/2009, the Criminal Code, as amended by Act No 306/2009.

Building on this concept of a criminal act, the Criminal Code provides for the categorization of new criminal acts as crimes (*zločiny*) and misdemeanours (*přečiny*). Misdemeanours are all negligent criminal acts and those intentional criminal acts for which the law stipulates imprisonment of up to five years. Crimes are all other intentional criminal acts. This change is also reflected in criminal proceedings. Standard criminal proceedings will be held for crimes; for misdemeanours, simplified forms of proceedings, diversions and alternatives, including the widespread use of probation and mediation, will prevail. One of the main philosophical approaches of the Criminal Code is that, where the nature of the act permits, a custodial sentence is replaced by alternative types of punishment (e.g. community work, a fine imposed in the form of daily rates, disqualification and, in a new development, house arrest).

The new Criminal Code is much better than the previous Criminal Act at differentiating and individualizing criminal penalties for various types of criminal acts among different groups of offenders - on the one hand, the custodial sentences for genuinely serious criminal acts have been made much stricter, and on the other hand, there are more possibilities in the form of alternatives to unconditional imprisonment or for extreme reductions in the punishments imposed. Conceptually, then, the new legislation revises the seriousness or severity of an act based on its type, and reduces tariffs for economic crime while increasing penalties for serious crime.

Two new punishments have been introduced – up to two years' house arrest and a ban on attending sports, cultural and other social events for up to 10 years. In many cases, the prison sentence of the accused can be reduced significantly (if the offender hinders the criminal act, cooperates in the detection thereof, commits an act while averting imminent danger, etc.). Conversely, the punishment may be increased in cases of particularly serious crimes, where, in view of a repeat offence or other circumstances of the case, the act in question is very serious or the possibility of atonement by the offender is unlikely.

3. PERSONS DEPRIVED OF THEIR LIBERTY

3.1 Legislation

A new concept to be introduced into Czech law is an agreement on guilt and punishment.[120] This concept is expected to speed up, simplify and streamline criminal proceedings. As a result, the courts will have more opportunity to hear serious crimes.[121] The agreement on guilt and punishment is contained in the draft amendment to the Rules of Criminal Procedure. It introduces the possibility for the prosecutor to strike a deal with the accused in pre-trial proceedings on this agreement, which is subsequently approved by the court. The draft anticipates that it will be possible to reach an agreement in relation to all offences where the law provides for imprisonment of a maximum of five years.

Although it has been voiced in some quarters that it would be preferable to enshrine such legislation in the recodification process for the new Rules of Criminal Procedure, in terms of accelerating the proceedings, hearing cases before a court and relieving the courts so that they have more room to adjudicate on serious offences, it seems appropriate for this arrangement to be introduced in the existing Rules of Criminal Procedure. In this respect, it is worth noting that no projected timeframe for the recodification of procedural criminal law has been set. Therefore, this could have resulted in a situation where apt and effective provisions covering the agreement on guilt and punishment are constantly put back, depending on the fate of the new Rules of Criminal Procedure.

In 2009, the Ministry of Justice took steps[122] to improve the activities of the existing advisory bodies of prison directors. They are to be renamed advisory committees and, besides prisons, will also be introduced in remand prisons, where this arrangement has so far been lacking. The amendment will clearly enshrine the concept of independent reviews in the prison system. The main objective, through the advisory committees, is to arrange for independent external controls, thereby helping to strengthen and improve the functioning of the prison system and the rights and privileges of both remand and sentenced prisoners. Committee members should be able to monitor the treatment of sentenced prisoners and other activities in prisons and remand prisons, and, on the basis of inspections, suggestions, requests and complaints, to take action to perform tasks so that the problem areas that have arisen can be addressed and remedied publicly and expertly. The draft also sets out the conditions and method for the establishment of these committees, including their membership and term of office. In April 2010, the Chamber of Deputies decided not to debate the bill and too leave this problem for the new formation of the Chamber of Deputies after the general election.

3.2 Case law

In terms of the case law of the European Court of Human Rights and its concept of Article 3 of the European Convention on Human Rights governing absolute prohibition of torture and

[120] Bill amending Act No 141/1961 Coll. on Criminal Procedure (Rules of Criminal Procedure), as amended, and Act No 218/2003 Coll. on Juvenile Liability for Unlawful Acts and on Juvenile Justice and amending certain acts (the Juvenile Justice Act), as amended – Parliamentary Press 574.

[121] At the time of preparation of this Report, the bill is subject to discussion by the Chamber of Deputies, which is to debate it in the third reading.

[122] Bill amending Act No 169/1993 Coll. on Imprisonment and amending certain related laws, as amended, and Act No 293/1993 Coll. on Custody, as amended – Parliamentary Press 664.

other inhuman or degrading treatment or punishment, a significant judgment was delivered in *Opuz v Turkey*[123] in 2009. The court unanimously ruled that the State had breached fundamental human rights guaranteed by the Convention because it had failed to protect sufficiently the complainant and her mother from domestic violence by the complainant's husband. This ruling is considered a landmark particularly in terms of the way torture is viewed, because in this case the Court held that such conduct breached not only the right to life guaranteed in Article 2 of the Convention, but also Article 3 guaranteeing the absolute prohibition of torture and other inhuman or degrading treatment or punishment and, ultimately, the rights arising from Article 14 on protection against discrimination on grounds of gender. The court ruled that the violence against the complainant by her husband, in the form of serious physical injury and psychological coercion, was so serious that it amounted to ill-treatment falling within Article 3 of the Convention. By not providing the complainant with sufficient protection against such interference in her physical and mental integrity, the State authorities failed in their duty to protect stemming from the positive obligations of the State directly set out under Article 3 of the Convention.[124]

We can thus conclude that the judgment extends the concept of torture into the sphere of domestic violence, since, up to the delivery of this decision, cases of State liability for domestic violence were viewed by the European Court of Human Rights as a violation of Article 8 of the Convention guaranteeing the protection of family and private life.[125] *The judgment in Opuz v Turkey adds to the gravity of this form of violence because it views it as treatment which, by its intensity and severity, constitutes torture or inhuman or degrading treatment or punishment.*

In 2009, the Constitutional Court dealt with several cases where complainants claimed an infringement of personal liberty in criminal proceedings because a decision was taken to extend detention in custody without hearing the accused.[126] The Constitutional Court reiterated its legal opinion previously expressed in Judgement Pl. ÚS 45/04[127] that "*the accused must be heard by a court prior to a ruling on his/her complaint against the prosecutor's order of further detention pending trial*." It noted, however, that there was no automatic obligation for an general court to hear the accused in custody matters; nevertheless, the accused must be heard in all cases before the court decides on his/her complaint against the prosecutor's order for further detention pending trial. In these rulings, the Constitutional Court pointed out that general courts which do not reflect the constitutional interpretations of procedural rules for decisions on complaints lodged by persons in custody against prosecutors' orders are in breach of the Constitution, which stipulates that the enforceable decisions of the Constitutional Court are binding on all agencies and individuals.[128]

In another ruling of the Constitutional Court,[129] we can identify reinforced rights of persons against whom criminal proceedings are held, especially in the exercise of the right of defence. In the particular case concerned, the general court denied an application from the defence

[123] Judgment of the European Court of Human Rights No 33401/02 of 9 June 2009 in Opuz v Turkey.
[124] Judgment of the European Court of Human Rights No 33401/02 of 9 June 2009 in Opuz v Turkey, para. 161-176.
[125] See, e.g., Judgment of the European Court of Human Rights No 71127/02 of 12 June 2008 in Bevacqua and S. v Bulgaria, para 64-84.
[126] E.g. Judgement of the Constitutional Court III. ÚS 2198/09 of 22 October 2009 and I. ÚS 455/09 of 17 August 2009.
[127] Published under number 239/2005.
[128] Article 89(2) of the Constitution.
[129] Finding of the Constitutional Court II. ÚS 2448/08 of 30 April 2009.

counsel and the accused seeking an adjournment of the trial because the defence counsel had to be present at another court hearing in another case. Although the court acknowledged that applications for an adjournment of the trial could, in some cases, be obstructive in nature (to avoid an action or decision, the deliberate protraction of the time required to adopt a decision), in those instances where the request for adjournment is entirely legitimate it should be accepted by the court because the right of defence includes the right to seek the adjournment of a particular act in criminal proceedings, including the trial, on the grounds that the defence counsel is impeded because the accused requests that his/her appointed defence counsel be present for the act. The Constitutional Court thus found that the right of defence includes the right of the accused to have an application for an adjournment granted in cases where he/she proves that there are compelling reasons. In addition, in the court's opinion law enforcement agencies are also required to allow the defence counsel to duly discharge his statutory powers and duties.

In connection with a claim for damages against the State in the case of an acquittal, in 2009 the Constitutional Court issued Judgement I. ÚS 3026/07.[130] In this judgement, the court upheld the complaint of an infringement of the right to a fair trial under Article 36(1) and the right to compensation for damage caused by an unlawful decision of the State under Article 36(3) of the Charter, and annulled the impugned judgments of the general courts. In particular, the Constitutional Court disagreed with the general courts' arguments that the action seeking damages could not be upheld because the complainant had not exhausted all means of recourse against the unlawful decision, specifically a complaint against the Czech Police Force's order to initiate criminal prosecution. The Constitutional Court stressed that the specific circumstances are key to the assessment of the case. Assuming that a complaint was filed against this order by one of the co-accused, in this case the principle of beneficia cohaesionis applies, the essence of which is a change in the decision in favour of a person who did not lodge an appeal if that person benefits from a reason for which a decision has been changed in favour of a person who did file an appeal. The Constitutional Court stressed that *the general courts, by insisting on a formal appeal, had interpreted sub-constitutional law in extreme contravention of the principle of equity. In the application of the law, they applied precise formalism, thereby violating the complainant's fundamental right to a fair trial under Article 36(1) and violating the complainant's fundamental right to compensation for damage caused by an unlawful State decision according to Article 36(3) of the Charter*.

In the field of foreigner issues, it is worth noting Constitutional Court Judgement Pl. ÚS 10/08. Here, the Constitutional Court addressed the constitutionality of legislation to detain foreign nationals with a view to their administrative expulsion. The Supreme Administrative Court submitted[131] a proposal seeking a declaration of the unconstitutionality of Section 124(1) of the Act on the Residence of Foreign Nationals[132] in connection with a review of a decision to detain the complainant in proceedings on an appeal on a point of law. The essence of the applicant's argument was that the contested provision does not hold water in the light of the principle of equality, because, in similar cases, particularly regarding custody, placement and holding in an inpatient medical facility, the legislature amended the restriction on freedom in a manner more advantageous for the person concerned. In its judgement in procedure seeking the repeal of acts and other legislation, the Constitutional Court, in Plenum, rejected the application seeking a declaration of the unconstitutionality of the above provision

[130] Judgement of the Constitutional Court I. ÚS 3026/07 of 3 March 2009.
[131] Under Article 95(2) of the Constitution.
[132] Act No 326/1999 Coll. on the Residence of Foreign Nationals in the Czech Republic and amending certain laws, as amended by Act No 217/2002.

of the Act. The Constitutional Court rejected the applicant's argument alleging a contradiction with the principle of equality under Article 1 of the Constitution because this principle may be applied solely to the rights and obligations of persons in comparable situations, but not to a comparison of the legislation on two or more legal concepts. In terms of the principle of equality, it is significant that all foreign nationals enjoy the same legal conditions as regards their stay in the Czech Republic, i.e. they have the same rights and obligations regardless of their sex, race, colour, language, faith and religion, political or other opinion, national or social origin, membership of a national or ethnic minority, property, birth or other similar status. It pointed out the conclusions of the European Court of Human Rights, according to which detention under the article in question may be justified only by pending expulsion or extradition proceedings, which must be conducted with due diligence; all substantive and procedural rules of national law must be respected. However, unlike the concept of custody, for example, deprivation of liberty is not essential.

In 2009, the Supreme Administrative Court held[133] that, with regard to the detention of foreign nationals, "*a prerequisite for the decision to detain a foreign national is the consideration by the administrative body as to whether it is possible to decide on the administrative expulsion of the foreign national and to enforce that decision. A decision on an action brought against a decision to detain a foreign national must be taken as a matter of priority and urgency. If the court decides on such an action only after the statutory 180-day time limit for the detention of a foreign national has expired, the requirements of the priority and expeditious handling are not generally met.*[134] *It is also necessary to proceed as a matter of priority and urgency in the submission to the Supreme Administrative Court, for a decision, of a file with an appeal on a point of law lodged by a foreign national.*[135] *In proceedings to hear an action against a decision to detain a foreign national, the court must not impose excessively long periods for acts, the execution of which is sought by the parties. Here, it is necessary to find a suitable compromise and to balance, on the one hand, the procedural rights of the parties to the proceedings and, on the other hand, the right to personal freedom or the right of the detained foreign national to have the court decide, as quickly as possible, whether he/she is being detained in accordance with the law*."[136] This case law has helped to reinforce the procedural rights of foreign nationals with regard to interventions by administrative procedure in their private lives.

3.3 Remand and imprisonment

3.3.1 Trends in remand and imprisonment

At the beginning of 2009, the number of people on whom a prison sentence had been imposed but who had not yet entered prison stagnated. In mid-2009, the number of such persons was 7,426.

In practice, life prisoners continue to be housed separately from other prisoners merely by virtue of the nature of their punishment.[137] The Government, acting on a CPT recommendation, promised that in 2009 to amend legislation on life sentences in accordance

[133] Section 124(1) of Act No 326/1999 Coll. on the Residence of Foreign Nationals in the Czech Republic.
[134] Section 125(1) of Act No 326/1999 Coll. on the Residence of Foreign Nationals in the Czech Republic.
[135] Judgment No 1 As 12/2009-61, No 1850/2009 of 15 April 2009, SAC.
[136] Judgment No Aprk 12/2009-28, No 1850/2009 of 1 December 2009, SAC.
[137] Section 71(4) of Act No 169/1999 Coll. on Imprisonment, as amended, provides that the life prisoners are usually accommodated in isolation.

with CPT requirements, to ensure the complete elimination of segregation of life-sentenced prisoners from the rest of the prison population. This promise was not kept last year. Nevertheless, in 2010 the Ministry of Justice plans to submit an amendment to the Imprisonment Act in order to comply with the above requirement.

In the course of 2009, plans for sufficient suitable work for prisoners and reduced periods when prisoners are locked in their cells were not realised. With a view to the prevention of the ill-treatment of convicted persons, Regulation of the Director General of the Prison Service No 82/2006 on the prevention and early detection of violence among remand prisoners and among convicted prisoners was amended to include a provision under which the placement of a prisoner in a cell where he/she is at risk of physical or sexual abuse will be regarded as inhuman and degrading treatment, irrespective of whether such placement was deliberate or because staff should have been aware of the risk.

In April 2009, the Government acknowledged an initiative of the Government Council for Human Rights regarding the prison system.[138] The aim of the initiative was to implement legislative and other changes placing the Prison Service in a better position to comply with the purpose of imprisonment and to make a better contribution to the protection of the human dignity of people in prison. *However, tasks for members of the Government aimed at meeting this objective were not approved by the Government; the initiative has thus remained an informative, referral document.*[139]

Despite this, the Ministry of Justice has tried to realize several of the points set out in the initiative. These include, in particular, the requirement to amend the Regulation of the Director General of the Prison Service on the prevention and early detection of violence among remand prisoners and among convicted prisoners.[140] This regulation will be complemented by the obligation of the governors of prisons and remand centres to report serious cases of violence among remand prisoners and among convicted prisoners to the prosecutor responsible for supervision. The Brno Remand Centre and Security Detention Institution, in cooperation with Masaryk University in Brno, managed to arrange controlled Internet access for convicted prisoners studying for degrees within the scope of their treatment programme. The Health Service Department of the Directorate General of the Prison Service is also drafting effective instruments to motivate doctors to work in the prison system. The Prison Service management is also striving to employ at least one chaplain in every prison and to draft an amendment to the Imprisonment Act based on an evaluation of a pilot project to extend the telephoning privileges of prisoners.

There continues to be a persistent lack of funds for Prison Service operations and an insufficient number of employees working in prisons, particularly employees working in the education sphere. In 2009, a draft amendment to legislation on life sentences was discussed which had been recommended by the European Committee on the Prevention of Torture and Other Inhuman and Degrading Treatment or Punishment and which the Government had committed itself to making.

[138] Government Resolution No 458 of 20 April 2009.
[139] For the initiative, see also the 2008 Report. The whole text of the initiative is available at http://www.vlada.cz/cz/pracovni-a-poradni-organy-vlady/rlp/cinnost-rady/zasedani-rady/zasedani-rady-dne-18--zari-2008-45288/.
[140] Regulation of the Director General of the Prison Service No 82/2006.

3.3.2 Number of prisoners and crowdedness of prisons and remand prisons[141]

In 2009, the number of prisoners rose by 1,232 to 21,734. The number of remand prisoners fell by 42, while the number of convicted prisoners increased by 1,274. The number of convicted prisoners is at its highest since 1990.

Table No 2: Prisoner population in the past six years based on figures maintained by the Ministry of Justice:

31 December	2004	2005	2006	2007	2008	2009
remand prisoners	3,269	2,860	2,399	2,254	2,402	2,360
convicted prisoners	15,074	16,077	16,179	16,647	18,100	19,374
total	18,343	18,937	18,578	18,901	20,502	21,734

As at 31 December 2007, the accommodation capacity of prisons and remand prisons (excluding prison hospitals) was 19,110. For remand prisoners, 2,520 places were set aside, the rate of use of which was 92.9%. The rate of use of the 16,590 places for convicted prisoners was 116.3%. At the end of 2009, the Prison Service was lacking 2,624 places, i.e. 1,287 more than at the end of 2008. The accommodation capacity of prisons and remand centres fell by 55 places in 2009; in view of the increasing number of prisoners, this is a parlous state of affairs. The root cause of this situation is the State's limited financial resources.

The problem of prison overcrowding, which, if the thousands of convicted persons evading imprisonment were to report to prison, could reach unmanageable proportions, deepened further in 2009. In 2009, it was necessary to apply an exemption from the minimum accommodation space per convicted prisoner, for which the Czech Republic has been repeatedly criticized by the CPT (most recently during its last planned visit in 2006).

The problem of prison overcrowding has been singled out on a regular basis by the Ombudsman in his reports. In his 2009 report, the Ombudsman mentions another problem closely related to the insufficient capacity and overcrowding of prisons – the cuts in the number of Prison Service staff. In the words of the Ombudsman, all this together could have a negative impact on the actual objective of the punishment. He adds that "*in a situation where the number of convicted prisoners per civilian worker exceeds several personnel standards several times over, effective work with convicted prisoners is very difficult, if not impossible*."

Table No 3: Prisoner population and average rate of use of accommodation capacities in 2009 based on figures maintained by the Ministry of Justice:

date	remand prisoners				convicted prisoners				total prisoners
	men	women	total	use of capacity	men	women	total	use of capacity	
1. 1. 2009	2,214	188	2,402	90.5	17,209	891	18,100	109.1	20,502
1. 4. 2009	2,334	167	2,501	96.3	18,029	969	18,998	114.6	21,499
1. 7. 2009	2,232	169	2,401	92.4	18,581	1,015	19,596	118.2	21,997
1. 10. 2009	2,269	157	2,426	93.5	18,532	1,042	19,574	117.5	22,000
31.12.2009	2,209	151	2,360	92.9	18,367	1,007	19,374	116.3	21,734

[141] Data provided by the Ministry of Justice.

The introduction of the new punishment of house arrest (home confinement) under the new Criminal Code, as an alternative penalty to imprisonment, should relieve the burden on prisons and provide a partial solution to prison overcrowding. The courts have been able to impose this punishment since 1 January 2010, when the new Criminal Code entered into effect. Therefore, it is far too early and realistically impossible to say whether capacity in prisons has been freed up due to the imposition of house arrest. An objective evaluation of changes in the number of prisoners and a summary of the use of accommodation capacities in prisons, as well as an overview of the number of persons placed under house arrest, will be provided by the statistics for 2010.

3.3.3 Range of treatment programmes and prisoner employment

In view of the trend in prisoner numbers, in 2009 it was once again impossible to set aside space from the accommodation capacity to be used as areas for the implementation of treatment programmes with remand prisoners and convicted prisoners. Compared to 2008, in 2009 there was an increase in the number of convicted persons in prison, not only in standard units, but also in specialized units, drug-free zones and pre-release units. As the number of convicted prisoners rises and is not accompanied by an adequate increase in staff to handle them, greater emphasis is being placed on ensuring the basic rights of the prisoners rather than providing them with treatment programmes.

In 2009, on average eleven remand prisoners were employed while in custody (remand prisoners may be employed at their request over the duration of their detention), i.e. 15 fewer than in 2008. In contrast, convicted prisoners are required to work by law if work is assigned to them, unless they are temporarily incapacitated or, over their custodial sentence, they are declared medically unfit for work. In 2009, 8,525 convicted prisoners from a total of 14,701 entered in the employment register were employed (all forms of employment, including training programmes). Compared to the previous year, the number of employed convicted prisoners increased by 292 persons. The annual average employment rate in real terms fell from 60.1% in 2008 to 58.0% in 2009. The average monthly work remuneration paid to convicted prisoners in 2009 was CZK 3,615, i.e. CZK 287 less than in 2008. Work proposals for convicted and remand prisoners who have a statutory obligation to pay maintenance for dependent children or who want to voluntarily pay damages to the victims of their crimes are processed as a matter of priority.[142]

In 2009, the Senior Director for Penology at the Directorate General of the Prison Service issued guidelines to reduce the risk of suicidal behaviour among inmates and guidelines for detention and imprisonment in overcrowded prisons and remand prisons. In these guidelines, prisons and remand prisons are ordered to "*Maintain the existing planned scope of activities under inmate treatment programme as far as the conditions at the facility allow, and:*

a) ensure the diversity of activities under inmate treatment programmes,
b) place an emphasis on the fitness activities of inmates, ensure maximum utilization of sports facilities,
c) expand the work activities of inmates,

[142] Regulation of the Director General of the Prison Service No 40/2006 concerning the selection and classification of convicted and remand prisoners for guarded workplaces and convicted prisoners for unguarded workplaces, on the granting of free movement in the performance of work tasks for convicted prisoners and on collaboration between certain departments of prisons and remand centres of the Prison Service in the performance of work tasks by convicted and remand prisoners.

d) on days off work and public holidays, do not reduce the number of activities compared to other days of the week,
e) where desirable, allow greater NGO involvement in the implementation of activities under inmate treatment programmes."

In their treatment of convicted prisoners, prisons and remand prisons should strive to increase the employment rate among prisoners, use special educational methods aimed at reducing mental tension and minimizing stress, and expand the range of extramural[143] activities.

3.3.4 Health care in the prison system

A fundamental long-term problem faced by the Prison Service is a lack of health professionals. Pursuing a profession in the prison environment is not appealing because the demands of the job are not adequately appreciated, either in terms of society's system of values or from the perspective of pay, especially in comparison with the private sector. Due to problems obtaining new health workers, health care is provided by older health professionals (especially doctors) who have often reached retirement age. A related reason is the lack of primary care physicians in the Czech Republic.

The Ombudsman received complaints from prisoners regarding the provision of medical care during detention or imprisonment. He observes that, in 2009, prisoners contacted him with reservations about the care provided to them. Prisoners were not prescribed the drugs, medical devices or diet they required, and were not provided with specialized medical care.

Most of the deficiencies relating to the provision of health care in the prison system were addressed by draft healthcare legislation which the Government withdrew from parliamentary debate (see Section II.5.1 for more details).

Health care provided to insured convicted or remand prisoners is covered by public health insurance in accordance with the Public Health Insurance Act.[144] Following an amendment to the Act requiring payment of regulatory charges for health care and greater financial contributions from the patient,[145] the Prison Service faces challenges related to the unwillingness or inability of prisoners (sometimes due to a real lack of funds) to pay costs associated with the necessary medical care.

In 2009, one complaint about the DNA sampling method was recorded from a convicted prisoner at Valdice Prison. This prisoner has complained repeatedly about the approach and conduct of Prison Service staff. However, the complaint was eventually found to be unsubstantiated.

[143] These are activities that are performed outside the walls of prisons and are offered to prisoners under a treatment programme. These activities are intended to help prepare prisoners for a smooth transition to civilian life. However, the prison director does not permit each prisoner to engage in this activity. The prison director decides whether to permit a specific activity on a case-by-case basis, especially by reference to the length of the sentence, the type of crime, the behaviour of the convicted prisoner in the prison, etc., there is no legal title thereto.

[144] Act No 48/1997 Coll. on Public Health Insurance, as amended.

[145] This was Act No 261/2007 Coll. on the Stabilization of Public Budgets, which occurred by means of an amendment to Act No 48/1997 Coll. on Public Health Insurance and amending certain related Acts, as amended.

Nevertheless, in 2009, the first action was brought by a prisoner claiming that the DNA sampling method used on him in 2007 was unlawful. A general court ruled on this action in March 2010, finding that the DNA sampling conducted by the police on the applicant, as part of a nationwide policy, was illegal. *This judgment, though still not yet effective, is considered a breakthrough and could trigger a wave of further claims from prisoners for similar reasons. The Ministry of the Interior intends to appeal against this decision.*

3.4. Independent inspections of the police and security forces

From 1 January 2009, the Inspectorate of the Minister for the Interior was replaced by the Inspectorate of the Czech Police Force. This injected a greater degree of independence into inspections of police activities. Although the Police Inspectorate remains a service of the Ministry of the Interior, its director is no longer appointed by the Minister for the Interior, as was the case with the original inspectorate, but directly by the Government after consultation by the competent parliamentary committee. In addition, the competence of the Police Inspectorate has been expanded to encompass activities geared towards the detection and screening of crimes perpetrated not just by police officers, but by all staff of the Czech Police Force. Investigations into criminal activity by police officers should be objective and free from influence by the employer (superiors, colleagues). The Police Inspectorate continues to have the status of a police authority under the Rules of Criminal Procedure and has powers similar to those of the Czech Police Force. Officers working for the Inspectorate are in a "service relationship".[146] However, they are not subject to the jurisdiction of any Czech Police Force official or the Chief of Police. This guarantees independence and objectivity in investigations into crimes committed by police officers. The independence of investigations is also guaranteed by the fact that the criminal activities of police officers are investigated by commissioned prosecutors. They also supervise the activities of the police authority of the Police Inspectorate in pre-trial proceedings.

In 2009, the police faced allegations of excessive and violent interventions and actions against certain groups of people. In particular, this concerned a gathering held in September in support of squatters in Prague, where, according to the Human Rights League (Liga lidských práv), during the crackdown on gathering participants the police used violence and other undue means of intervention.[147] The Human Rights League states that, although the complaints centred on the procedure followed by the police, they were investigated by the same police official who ordered the intervention. It is not surprising, then, that the complaints were found to be unsubstantiated.

Another sticking point, according to the Human Rights League, is the police practice of demanding proof of identity from persons beyond the exhaustive framework set out in the Act on the Czech Police Force.[148] In these cases, the police tend to demand proof of identity from persons "who are of unconventional or 'alternative' appearance or are participants in

[146] Under Act No 361/2003 Coll. on the Service of Members of the Security Corps, as amended.

[147] As the Human Rights League notes, in connection with this intervention the police unreasonably restricted personal freedom, forced people to lie down outside on the cold ground or stand head to the wall with their hands braced on the wall for several hours; these people were handcuffed without reason, and vulgarisms were used against the detainees during body searches, which were filmed on video camera without the consent of the individuals concerned. These persons were denied the right to inform their close relatives, they were denied food and they had limited opportunity to handle their basic needs.

[148] Section 63(2) of Act No 273/2008 Coll. on the Police Force of the Czech Republic provides an exhaustive list of persons whom the police are authorized to identify.

various events and gatherings." In view of that the Police Act lays down precise conditions under which a police officer may demand proof of identity; such interventions can be viewed as unauthorized interference with the privacy of the individual.[149]

In March 2009, the Government approved the Bill on the General Inspectorate of Security Forces.[150] This bill was submitted to the Chamber of Deputies[151] in April and referred to the Security Committee for consultation. To date, however, no consultation has been held. The Bill on the General Inspectorate of Security Forces is another step forward in safeguarding independent inspections of the police and other security forces – the Czech Police Force, the Czech Customs Administration, the Czech Prison Service and the General Inspectorate itself. This body is intended to be completely independent of the Ministries and is to be headed by a director appointed by the Government after consulting the competent parliamentary committee.

At the beginning of 2010, the Ministry of the Interior submitted a proposal to withdraw this legislation from further consideration in Parliament. The reasons put forward were the delays in debating this bill in the Chamber of Deputies and the argument that the bill had been submitted by the previous Government. Although the bill was repeatedly placed on the agenda of the Chamber of Deputies, it was never really discussed. However, the Government did not approve the proposal for withdrawal as reasoned above. It should therefore continue to be addressed by the Chamber of Deputies. In view of the end of the term of the Chamber of Deputies, the fate of the proposed law is very uncertain.

3.5. Security detention

When the new Criminal Code[152] entered into force, the possibility of imposing security detention[153] was extended to drug abusing offenders.[154] As such, the new Criminal Code extends the range of discretionary use of security detention. The existing possibilities for the discretionary imposition of security detention[155] have been joined by cases where an offender

[149] In this respect, the Human Rights League provides an example of a dissolved assembly of anarchists in Otrokovice which took place on 28 October 2009, when all participants in the assembly were forced, for no lawful reason, to prove their identity in a non-standard manner consisting of the obligation to have themselves photographed with their ID card. If anyone complained about this practice, the police registered them separately.

[150] Government Resolution No 325 of 23 March 2009.

[151] Parliamentary Press No 794.

[152] Act No 40/2009 Coll., the Criminal Code, effect 1 January 2010.

[153] Act No 129/2008 Coll. on Security Detention and amending certain related laws. Security detention is a protective measure intended primarily to protect society from perpetrators of crimes (or other acts other than crimes) who, because of their mental state, are very socially disruptive, and in respect of whom there is a strong likelihood that they will perpetrate a serious dangerous conduct in the future, and it can be assumed that the imposition of protective treatment would not lead to the adequate protection of society. Security detention is a protective measure which is subsidiary in relation to protective treatment. The court, therefore, should only impose it in cases where it is not possible to ensure the protection of society against individual perpetrators through the imposition of protective treatment. Where necessary, security detention may be replaced by inpatient protective treatment and vice versa. Unlike protective treatment, security detention is not limited in time. It lasts for as long as it is required for the protection of society. At least once every twelve months, and for juveniles once every six months, a court shall examine whether grounds exist for the continuation of such security detention. A court may impose security detention in conjunction with a punishment or upon refraining to impose a punishment.

[154] Section 100(2)(b) of Act No 40/2009 Coll.

[155] Cases where the offender commits a crime in a state induced by mental illness, allowing him to remain at large would be dangerous, and, given the nature of his mental disorder and the possible effects on the

who indulges in the abuse of an addictive substance commits another particularly serious crime, even though he/she has already served a custodial sentence for at least two years for a particularly serious crime committed under the influence of an addictive substance or in connection with the abuse thereof, and it is not expected that society will be adequately protected if protective treatment is ordered in view of the stance taken by the offender towards protective treatment. The compulsory imposition of security detention has been lifted from the original Criminal Act without any significant changes.[156]

In 2009, a 48-bed security detention facility started operating within the Remand Centre and Security Detention Facility in Brno. Internal security here is provided by Prison Service officers in the capacity of detention supervisors. During 2009, The prison in Krnovská Street, Opava, was transformed into a security detention facility. Due to the minimum number of inmates, the restored building is being used temporarily for the imprisonment of convicted male inmates serving custodial sentences in a "supervised prison".

At the end of 2009, there were three security detention inmates. In 2009, Regulation of the Director General of the Prison Service of the Czech Republic No 15 establishing the details of security detention was issued. This Regulation defines, inter alia, the roles and responsibilities of security detention facility staff and procedures for ensuring the provision of security detention; it also governs disciplinary proceedings with inmates.

3.6. Protective treatment

Protective treatment is another type of protective measure which the court may impose under the Criminal Code.[157] The new Criminal Code uses provisions on protective treatment from existing legislation.[158]

However, current legislation regarding the enforcement of court-ordered protective treatment is inadequate and does not correspond to the needs of this type of health care or the conditions in which the Prison Service operates. Problems encountered by the Prison Service in the provision of this health care are a lack of specialized health professionals and the fact that the courts impose inpatient protective treatment with regard to the definition of inpatient care[159] and the related limitations on the payment thereof. Nevertheless, the Prison Service can, with the right staffing, provide or arrange for the provision of the relevant health care in an outpatient regime, which, considering the conditions of imprisonment, meets the

perpetrator, any protective treatment that is ordered cannot be expected to provide society with adequate protection.

[156] A court shall order security detention where the perpetrator of an act that would otherwise be a criminal act with the constitutive elements of a particularly serious crime is not criminally responsible on grounds of insanity, allowing him to remain at large would be dangerous, and, given the nature of his mental disorder and the possible effects on the perpetrator, any protective treatment that is ordered cannot be expected to provide society with adequate protection – Section 100(1) of Act No 40/2009 Coll.

[157] Protective treatment may be imposed on an offender either alone or in addition to a prison sentence. Depending on the nature of the disease and the treatment options, a court shall order inpatient or outpatient protective treatment. A court may also decide to change inpatient treatment into outpatient treatment and vice versa during the treatment. For more on the principles on the imposition of protective treatment, see also Section 99 of Act No 40/2009 Coll.

[158] Therefore the provision remains that protective treatment may last up to two years; it is possible to take a decision (repeatedly) to extend the treatment (at the proposal of the public prosecutor or a healthcare facility), but for no more than a further two years. Release from protective treatment is subject to a court decision.

[159] Care provided per bed of a healthcare facility.

requirement of the protection of society against the potentially hazardous behaviour of those who have been ordered to undergo this treatment.

Most of the shortcomings related to protective treatment were addressed within the framework of proposed health care legislation by the Act on Specific Health Services. However, health care reform was not ultimately implemented, and therefore the inadequate legislation remains in force.

Protective treatment entails serious interference with the rights and freedoms of the individual. Therefore, it should be regulated directly by a law in order to fulfil the requirement under Article 4 of the Charter of Fundamental Rights and Freedoms specifying that restrictions and obligations may be imposed only by virtue of and within the limits of the law. In this respect, in late 2009, at the initiative of the Minister for Human Rights in comment procedure for the Government Plan of Legislative Work for 2010, it was requested that this plan include the preparation of a separate Protective Treatment Act. The Minister for Health then asked the Prime Minister for the additional inclusion of this task in the Government Plan of Legislative Work for 2010 with a deadline for submission to the Government by the end of May 2010. However, this task was not included in the Government Plan of Legislative Work for 2010.

3.7. Inpatient healthcare facilities and social service facilities

3.7.1 Inpatient healthcare facilities

Proceedings on the admissibility of admitting a person to or holding a person in a healthcare institution are regulated by the Rules of Civil Procedure.[160] The legal basis for a court to decide on admission to a healthcare institution is the Human Health Care Act.[161] A court decides on such admission in cases where the person concerned "*exhibits signs of mental disorder or intoxication and is a threat to him-/herself or to others*." The hospitalization of a patient without his/her written consent must be reported by the healthcare facility within 24 hours to the court in whose district it is situated.[162] In 2009, the ordinary courts ruled that admission had taken place for legitimate reasons in 9,332 cases, and that persons had been unlawfully deprived of their freedom in only six cases. *However, data on the number of appeals lodged against orders on the lawfulness of admission are disturbing. According to the statistics of ordinary courts, of the 9,332 decisions issued, an appeal was lodged against the order on the lawfulness of admission in only 110 cases.[163] To some extent, this is indicative of the formality of the representation of those subject to these proceedings; in most cases, the person concerned is appointed a guardian (lawyer) in the proceedings directly by the court because he/she is unable to select a guardian himself.*

In 2009, the civil and commercial advisory board of the Supreme Court issued a significant opinion[164] concerning persons held in healthcare institutions. This opinion gives the missing guidance for district courts on how to proceed properly in proceedings on the lawfulness of

[160] Section 191a et seq. of Act No 99/1963 Coll., as amended.
[161] Section 23(4) of Act No 20/1966 Coll. on Human Health Care.
[162] Section 24 of Act No 20/1966 Coll. on Human Health Care.
[163] Statistics provided by the Human Rights League
[164] Opinion of the Supreme Court No Cpjn 29/2006 of 14 January 2009 in matters of procedure on the admissibility of accepting or holding a person in a healthcare institution.

admission to or holding in a healthcare institution and removes any remaining ambiguities in the interpretation of the relevant provisions of the Rules of Civil Procedure.[165]

In this opinion, the Supreme Court notes that, although proceedings on the lawfulness of admission to or holding in a healthcare institution are highly challenging in respect of courts' organizational skills, and although the courts try to comply with statutory requirements and deadlines, they are not always successful. Deficiencies can mainly be found in the interaction between the courts and various healthcare institutions, the inadequate awareness of healthcare facilities of the facts relevant to the proceedings and concerning the person to be placed there, the non-observance of the statutory 24-hour time limit for notification of hospitalization, and the insufficient adducing of evidence necessary for the proceedings.[166]

Although this opinion can be viewed in a very positive light in terms of the enhanced protection and safeguarding of the rights of parties to the proceedings, some aspects of the detention proceedings have still not been resolved. Problem areas are the suspension of detention proceedings further to the State authority's obligation to review the legality of any deprivation of liberty, regardless of its duration,[167] the non-service of orders and their effects in relation to the person concerned, the requirement of proper legal representation in proceedings and the associated lack of controls on court-appointed representatives for the persons to be placed in a facility, the taking of evidence simply by questioning the attending physician, and the failure to comply with the court's obligation to hear the person concerned in all cases, as required directly by the law.[168]

3.7.2 Social service facilities

The risks of the ill-treatment of users of social services and the way they live in substandard conditions are highlighted not only by NGOs, but also by individual regions, where members of staff from regional authorities focus on the prevention of ill-treatment primarily in connection with the agenda of social service inspectorates. At these facilities, it is necessary to improve the living conditions of clients and to make continuous improvements of in the quality of service, while preserving and respecting their rights.[169]

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[165] These include an institute's obligation to inform a court within 24 hours of the admission of a person without his consent; the timeliness of such notice; the conditions for initiating and discontinuing detention proceedings; the court duty, in all cases, to rule on the legality of restrictions on personal freedom; the court obligation to the court to take evidence at least at the legal minimum specified range in the form of an examination of the patient and the attending physician; the service of an order and the effects thereof, the three-month time limit for a judgment on the admissibility of further holding in the institution.

[166] See Part IV. of the Opinion

[167] This follows from Article 8(6) of the Charter of Fundamental Rights and Freedoms, also from Article 5(4) of the Convention for the Protection of Human Rights and Fundamental Freedoms, and from the case law of the European Court of Human Rights.

[168] Section 191b(3) of Act No 99/1963 Coll.

[169] For example, the Vysočina Region states it was responding to a call from the Ombudsman for regions to strive for a special approach to clients with autism or suffering from dementia. Therefore, it financially supports the coverage of the increased costs of specialized care for this group. At the same time, conditions are created for the implementation of investment projects. Recently, the Vysočina Region has started work on the establishment and gradual development of specialized care for persons with disabilities, for whom care cannot be arranged in a normal home for persons with disabilities. The Zlín Region states that it plans to establish a special department for persons requiring specialized care, which will ensure the rights of those persons in such a way as to enable them to enjoy their full and dignified.

In connection with the implementation of Article 19 of the Convention on the Rights of Persons with Disabilities, which requires that people with disabilities have the opportunity to choose where and with whom they live and are not obliged to live in a particular living arrangement, residential social services need to be overhauled.

The Government Council for Human Rights has provided the initiative for an important positive shift forward in the use of restraints in social services. The Government-approved initiative of the Government Council for Human Rights concerning the use of restraints in the provision of social services,[170] which clarifies the statutory conditions for the use of restrictive measures, formed the basis for an amendment to the Social Services Act.[171] The group of persons who need to be informed about the use of restraints has been expanded so that even persons who do not have full legal capacity but are the subject of restraining measures are protected against possible misuse of such measures.

The range of data that are entered in the records of use of restraints was expanded and clarified in the amendment to include the obligation to specify the particular type of restraint used. The specification of the type of measure used is necessary for accurate identification of whether the procedure followed by the provider in the use of the restraint complied with the requirements of the Act.[172] Further information includes an accurate description of the situation before, during and after the use of the restraint; this is necessary to define the mechanisms triggering risky behaviour, the appropriate procedure for resolving the situation, and an evaluation of the whole situation. The group of persons entitled to inspect the records on the use of restraints was expanded.

Transparency in the provision of social services is guaranteed by the right of social service users or their authorized representatives to examine their records. This information is used by the Social Service Inspectorate to check the quality of the social services provided. The expansion in the registering authority's supervision of the use of measures that may impede the free movement of users requires that social service providers who, in a calendar half-year, use such measures report the number and type of measures used over the past calendar half-year.

The treatment of vulnerable persons placed in various facilities was addressed in great detail by the Ombudsman, who, in 2009, conducted dozens of visits to these establishments and focused primarily on homes for people with disabilities and privately run homes for the elderly. The Ombudsman made follow-up visits to selected psychiatric hospitals which he had previously visited in 2008 in order to ascertain whether they had heeded the recommendations published by the Ombudsman in his 2008 report on these visits.

Based on the reports prepared by the Ombudsman following these visits,[173] it can be summarized that, in the Ombudsman's view, the most serious problems include the particularly high incidence of barriers that prevent the free movement of clients in facilities, the excessive and often unwarranted use of restraints on patients and the lack of records of

[170] Government Resolution No 1302 of 21 November 2007.

[171] Act No 206/2009 Coll. amending Act No 108/2006 Coll. on Social Services, as amended, and several other laws, which entered into effect on 1 August 2009.

[172] Restraints which are most commonly used include the placement of a person in a secure room, the administration of medications in case of unrest, the use of side rails, locking in a room, or the restriction of a person to part of the facility.

[173] The reports on visits to these establishments are published on the Ombudsman's website: http://www.ochrance.cz

such use, a lack of staff in facilities and related issues of care quality, a lack of respect for the privacy of clients both in the rooms occupied by clients and in the provision of hygiene, the existence of barriers to the implementation of the requirement of the social inclusion of clients, and problems with the inadequate training of personnel. Although the Ombudsman appreciates the level of care provided in facilities for persons with disabilities, he suggested some improvements which should be made by the facilities.

The Ombudsman also criticized the practice where, in the vast majority of cases in which clients who have deprived/restricted legal capacity, the facility or a facility employee is appointed as the guardian. The Ombudsman considers this to be a conflict of interest. Therefore, he calls on the Ministry of Justice, in connection with the adoption of the Convention on the Rights of Persons with Disabilities, to begin training in preparation for a system of guardianship or supported decision-making.

In 2009, staff treatment of the elderly in nursing homes was also examined by the Committee against Torture and Other Inhuman, Cruel and Degrading Treatment of the Government Council for Human Rights because it had received complaints of the ill-treatment of users of these facilities. The Committee singled out and visited certain facilities to see how the elderly were treated there. *The visits showed that it many cases the nursing homes for the elderly needed renovating and improvements in the level of service provided. NGOs have repeatedly referred to this problem and emphasize that, for several years now, residential health, social, and socio-health services*[174] *have been accompanied by demeaning conduct towards elderly clients by carers, mental and physical abuse, and neglect.*[175]

According to the civic association Život 90 (Life 90) there are several reasons for this phenomenon. The civic association states that *Czech society is generally very ageist*[176] *against the elderly, and that laws and legislative and ethical standards are frequently ignored. Other problems are the lack of inspections in social services and the general institutional failure of these facilities. The staff often exploits the ignorance, fragility, and low social status of patients, and the victims are unable or afraid to adequately defend themselves. A starting point would appear to be a change in legislation related to long-term care for the elderly and the enshrinement of greater safeguards for the protection of these individuals directly through legislation. Employees and employers should be far more motivated to provide proper care for the elderly, and should be forced to respect the integrity, dignity and honour of their clients. A greater emphasis should be placed on supporting the training of experts, accompanied by the systematic development of palliative care. Support for caring professions, as well as support for the concept of a lifelong home and learning for nursing staff and the elderly alike, the social integration of the elderly into society and the promotion of community life, including a complete change of attitude towards old age, should all help improve the treatment of the elderly and guarantee that even the end period of their life will be dignified.*

In 2009, these issues were also addressed by the Government Council for seniors and Population Ageing, but no results have been forthcoming; it has not submitted any initiatives

[174] Hospitals, clinics for long-term patients, after-care healthcare institutions, homes for the elderly.
[175] This particular issue is highlighted by the civic association Life 90 (Život 90), which focuses on improving and promoting the quality of life among the elderly.
[176] Ageism is defined as age discrimination, particularly affecting the elderly. It may lead to age segregation, i.e. exclusion from society.

to the Government attempting to deal with any proposed issues.[177] In mid-2009, the Minister for Health and the Minister for Labour and Social Affairs established an Expert Panel on Social and Health Care, which serves to improve the coherence of social and health services for the elderly. The basic objectives of the Expert Panel are to prepare a concept for the development of health and social services in a long-term care model, to produce an explanatory report for an amendment to legislation reflecting the increasing interdependence of health and social care, and to propose a new method for the financing of the long-term model of care in social and health services.[178]

3.8. Facilities for the detention of foreign nationals

As at 31 December 2009, the Refugee Facilities Administration was operating two detention facilities for foreign nationals, one in Poštorná (South Moravia) and the other in Bělá pod Bezdězem (Central Bohemia), where foreign nationals are required to stay under a detention decision. The aggregate capacity of these establishments as at the same date was 458 beds. Statistics maintained by the Refugee Facilities Administration show that, in the year under review, 1,193 foreign nationals were placed in detention facilities for foreign nationals and 1,075 were released from these facilities. In terms of nationality, in the year under review the largest proportion of those placed in detention facilities for foreign nationals came from Ukraine (367 persons, 30.8% of the total number of foreign nationals placed in facilities in 2009), Vietnam (216, 18.1%) and Russia (139 persons, 11.7%).

The statistics of the Department of Asylum and Migration Policy of the Ministry of the Interior indicate that, in detention facilities for foreign nationals, 177 foreign nationals applied for international protection;[179] this was 14.1% of the total number of foreign nationals who sought international protection in the Czech Republic in 2009. These applicants were primarily nationals of Ukraine (49 persons), Mongolia (27), and China (12).

[177] The Government Council for Seniors and Population Ageing seeks to create conditions for healthy, active and dignified ageing and old age in the Czech Republic and the active involvement of older persons in economic and social development in the context of demographic trends.

[178] Source: http://www.mpsv.cz/files/clanky/6776/10042009.pdf.

[179] Foreign nationals detained in a facility have the option to make an application for international protection within seven days from being advised of this possibility and of the consequences associated with the end of this period (with the exception of foreign nationals detained for surrender or transit under an international treaty or law of the European Communities). Even if foreign nationals submit an application, they remain at the facility until a final decision is reached regarding their asylum or until the end of the statutory period for detention.

4. SOCIAL, ECONOMIC AND CULTURAL RIGHTS

4.1 Employment: jobseekers and job agencies

In 2009, there were significant changes in the labour market which saw a major rise in the number of jobseekers registered at public employment offices, a dramatic reduction in the number of vacancies, and a general change in the structure and nature of unemployment. The main problem now is to adapt the labour market in light of the impacts of the economic crisis in 2009. This crisis has resulted in mass redundancies at numerous companies, including those which had previously operated successfully on the market. Entrepreneurs and employers have retained their highly skilled workforce, but demand for unskilled manual labour is dwindling.

In this difficult economic situation, symptoms of social exclusion are on the rise and access to the labour market is becoming more difficult. The crisis hit low-skilled workers, agency workers and foreign nationals the hardest. There was a significant increase in the number of unemployed persons. As at 31 December 2009, 539,136 people were registered as jobseekers with employment offices. On the same date, the unemployment rate was 9.2%. From 1 January 2009, an amendment to the Employment Act[180] entered into force which introduced the obligation for employment offices to draw up an "Individual Action Plan" with all jobseekers registered with them for more than five months. By the end of the year, these plans were in place with approximately 85% of such jobseekers. The content of individual action plans currently mainly comprises intensive mediation, individual forms of guidance, and, where appropriate, relevant retraining.

In 2009, the district labour inspectorates carried out targeted inspections of job agencies with foreign employees. District labour inspectorates conducted 85 controls on job agencies and, at the same time, inspected 72 clients where agency staff worked. A preliminary assessment shows that 58 (i.e. 68%) of the job agencies checked had violated labour laws. Sections 308 and 309 of the Labour Code, relating solely to agency employment, were the most commonly violated legal provisions (51 cases). Job agencies draw up agreements with users that do not contain the essentials required under the Labour Code; in other cases, agreements are not dressed at all. The inspections also found that job agencies provide wages late, do not pay allowances for work at night or on a Saturday or Sunday, and do not pay extra or grant compensatory leave for those working on public holidays (46 violations).[181]

4.2 Social security

4.2.1 Assistance in material need

The main new development in 2009 from the perspective of assistance in material need was the introduction of "public service", designed to reward those who take active steps to resolve their difficult social situation. Conversely, those who are inactive and, for objective reasons,

[180] Act No 382/2008 amending Act No 435/2004 on employment, as amended, Act No 326/1999 on the residence of foreign nationals in the Czech Republic and amending certain laws, as amended, and other related laws.

[181] In 2009, agency work was subject to 16 fines totalling CZK 1,790,000.

do not enjoy the exemption set out in the law may see the amount provided for their means of subsistence fall to the minimum subsistence level.[182]

Unfortunately, this provision is incoherent in that it ignores whether the applicant is inactive on his/her own initiative or for objective reasons. It has a particularly hard impact on people with disabilities as it fails to take into account that often, on the grounds of their disability, they are unable to be active in their approach to public service. The situation is at its worst among disabled persons who are classified as stage III but are not entitled to disability benefit because they have not achieved the required period of insurance.[183] Unfortunately, these people are not included among the categories of persons who, when the subsistence allowance is set, are not subject under the law to an examination of whether they are in a position to increase their income on their own initiative (although these persons are often de facto unable to increase their income, the law does not take this into account). As a result, the amount determined as their living requirement is at the minimum subsistence level, i.e. CZK 2,020 per month, and the subsistence allowance is granted to them only to achieve this level of income. These people also often lose the right to an increase in their subsistence amount (e.g. for diet reasons).[184] This could seriously threaten their health, despite the constitutionally guaranteed right to assistance in material need under Article 30(2) of the Charter of Fundamental Rights and Freedoms.[185]

In response to this problem, a group of MPs submitted a draft amendment to the Act on Assistance in Material Need which would restore the possibility of increasing a disabled person's subsistence amount to cover dietary requirements and would reclassify persons registered with a stage III disability with no entitlement to disability benefit among those who, for the purposes of the granting of an allowance, are not examined to see whether they are capable of increasing their income by their own means or whether they receive a disability benefit.[186]

In 2009, there was an improvement in the social status of persons receiving residential social services in homes for people with disabilities, rest homes for the elderly, homes with special arrangements or sheltered housing, and persons receiving residential social services in an inpatient healthcare facility for more than three calendar months. These groups will no longer be among those who are not regarded as persons in material need, i.e. if they satisfy the relevant criteria they may be granted benefits in the form of assistance in material need.[187]

[182] Act No 382/2008 amending Act No 435/2004 on employment, as amended, Act No 326/1999 on the residence of foreign nationals in the Czech Republic and amending certain laws, as amended, and other related laws.

[183] These may be persons who became invalids at an age when they could not have achieved the required period of insurance.

[184] Section 29 of Act No 111/2006 on assistance in material need, as amended.

[185] Although, under Article 41 of the Charter, this right may be exercised only within the limits of implementing regulations, with legislators given plenty of room for the actual form and amount of aid, in practice this assistance was virtually negated by the fact that even after it had been awarded the person remained in material need.

[186] Parliamentary Press No 1033. This proposal was promulgated in the Collection of Laws under No 141/2010 on 1 June 2010.

[187] Act No 206/2009 amending Act No 108/2006 on social services, as amended, and certain other laws

4.2.2 Sickness insurance

In 2009, sickness insurance benefits were granted under the Sickness Insurance Act,[188] which entered into effect on 1 January 2009. This law specifies that the sickness benefit is paid as of the fifteenth calendar day of temporary incapacity and is payable for calendar days. For the first 14 calendar days, employees in an employment relationship establishing participation in the sickness insurance scheme are paid compensation in lieu of wages by their employer in accordance with the Labour Code for working days commencing on the fourth working day (or in cases of quarantine as of the first working day). With regard to maternity benefit, the law now permits the mother and father of a child to alternate their child care on the basis of a written agreement; each of them is entitled to maternity benefit for the care of the child for the period and under the conditions laid down by law. If childcare rotation is used, the payment of the maternity allowance to the mother is stopped, and payment of this benefit is then started for the father from his sickness insurance, provided that he meets the conditions for entitlement to the payment, and vice versa.

4.3 Housing and protection of the socially vulnerable and disadvantaged

In 2009, the Act on Unilateral Housing Rent Increases was amended. In selected locations (the City of Prague, the regional capitals except Ostrava and Ústí nad Labem, municipalities with a population of more than 10,000 in Central Bohemia), the period to achieve the target rent was extended until 2012. The aim is to allow for slower rises in previously regulated rent, thus facilitating a more reasonable increase in the overall housing expenditure of households living in homes with this type of rent. The actual adjustment of the rent should primarily be based on an agreement between the landlord (private owners or the relevant municipality or borough) and the tenant. The owner may unilaterally increase the rent by reference to the "target values" of the monthly rent, which are published annually in a communication by the Ministry for Regional Development, only if no agreement is reached.

One of the Government's goals, as set forth in its 2007 policy statement, was the legislative regulation of social housing.[189] The original plan for legislation was eventually abandoned and the Ministry for Regional Development prepared a Government regulation.[190] This regulation allows anyone, including non-profit organizations and private owners, to apply for a grant from the State Housing Development Fund to build "social rental housing" for persons meeting the requirements of social neediness, defined by an income ceiling.[191]

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[188] Act No 187/2006 on sickness insurance, as amended.

[189] "Specification of the definition of social housing, the definition of social housing support and the extension of the financial support of municipalities in social housing, with an emphasis on the responsibility of municipalities" in the "Policy Statement of the Government of the Czech Republic 2007".

[190] Government Regulation No 333/2009 on the conditions for the use of resources from the State Housing Development Fund to cover part of the costs connected with the construction of social housing in the form of grants to legal entities and natural persons.

[191] These are persons who prove that their average monthly income during the 12 calendar months before the conclusion of the lease did not exceed 0.4 times the average monthly wage. The multiples increase depending on the number of household members, or if, besides low income, a person demonstrates reduced self-sufficiency on account of old age or a medical condition.

4.4 Right to education

The Ministry of Education, Youth and Sports has prepared a National Action Plan for Inclusive Education.[192] This scheme involves the introduction of measures necessary to end the lingering practice of segregation in Czech schools and to prevent any discriminatory effects. The basic objective of the plan is to increase the level of the inclusive concept of education in the Czech educational system. The ultimate goal is to act preventively against the social exclusion of individuals and social groups.

The methodical recommendation relating to the education of socially disadvantaged pupils, prepared in 2009, contains recommendations for the formation of an environment conducive to compensatory measures so that social disadvantages are not a barrier to achieving good results at school among such children and pupils. At the same time, the methodical recommendation includes procedures for the diagnosis of these pupils in order for them to be schooled in mainstream education.

In 2009, the Ministry of Education, Youth and Sports drafted new decrees on the provision of consulting services in schools and educational guidance facilities, and on the education of children, pupils and students with special educational needs and exceptionally gifted children, pupils and students, to replace existing legislation.[193] These decrees should establish a system of individual compensatory measures as support for disabled and socially disadvantaged pupils, taking into account the specific needs of each pupil. The aim is to compensate for their initial disadvantages so that these pupils can successfully learn according to a regular school curriculum. The draft decrees describe in greater detail the term "socially disadvantaged pupil" in relation to educational needs. The draft decrees, together with guidelines, specify what support socially disadvantaged pupils can expect from schools and educational guidance facilities. Unlike previous legal provisions, the decree defines the activities of teaching assistants, the standard activities of special education centres and school special educators, and sets out the obligation to inform applicants for a service (usually the parents) about the rights and obligations in relation to the provision of the consulting service.[194] In 2009, a development programme was announced for the support of schools providing inclusive education and education for children and pupils from a socio-culturally disadvantaged background.[195]

4.4.1 ECHR judgment in *D.H. v Czech Republic*, and the Czech Republic's response[196]

Following this judgment, sociological research was carried out which focused on an analysis of the form and causes of the segregation of children and young people from disadvantaged

[192] The Government approved the preparatory phase on 15 March 2010.

[193] Decree of the Ministry of Education, Youth and Sports No 72/2005 on the provision of consulting services in schools and educational guidance facilities, as amended
Decree of the Ministry of Education, Youth and Sports No 73/2005 on the education of children, pupils and students with special educational needs and exceptionally gifted children, pupils and students, as amended.

[194] Comment procedure on the decrees was in progress as at the date of processing of the Report. In 2009, the Ministry of Education financially supported 430 assistants in schools founded by regions, municipalities, private organizations and the church. Under this development programme, 80-85% of the requirements of schools were covered.

[195] The funds were used to pay for teachers achieving long-term quality results in the inclusive education of socially disadvantaged children and pupils, regardless of their number of years of teaching experience. The development programme supported a total of 81 nursery schools and primary schools with approximately CZK 46,817,885.

[196] See also Section I.3-3.

backgrounds in 99 primary schools in the vicinity of socially excluded sites and sites at risk of social exclusion. The aim of the inquiry was to obtain sound information and statistics about the education of these pupils, especially in primary schools, to make a comparison with the education of pupils from majority society, and to identify factors that determine disparities in the area. In addition, an analysis was conducted of teachers' individual approach to pupils with special educational needs, which included the acquisition of data on the education of Roma pupils in 90 primary and secondary schools. The data obtained will help assess the level of support needed to incorporate pupils from these schools into mainstream education and to evaluate their opportunities; the data will also provide information necessary for a subsequent evaluation of the effectiveness of follow-up measures. Another objective was to map the current situation in primary and secondary schools, i.e. how teachers cope with the need to apply appropriate approaches to pupils with special educational needs. The research results were submitted to the Ministry in March 2009.[197]

The study found that there are significant differences between schools in the degree to which pupils with special educational needs are integrated. These differences are determined by the capacities of the schools to provide special care and guidance, the financial capacity of the schools, and whether they are staffed with experienced teachers and teaching assistants. The systemic support of schools in order to integrate pupils with special educational needs is inadequate. Fixed ideas about the problems of educating certain children with special educational needs (especially socially disadvantaged children) and related efforts to reduce their numbers in mainstream education also play a role. Therefore, the integration and reintegration of pupils with special educational needs remains a matter of individual initiative among schools; they have shown that in the current situation children with special educational needs can be integrated successfully. Measures already implemented in schools have delivered results mainly by including children with special educational needs whose inclusion is less demanding organizationally. With time, supporting measures now being launched, which, compared to the past, are more focused on keeping children with special educational needs in mainstream education, can also be expected to yield results. In cases of social deprivation, educational measures need to be interlinked with measures aimed at social work with children and their families outside of school.

4.4.2. Measures to support the education of socially disadvantaged children

Progress was made by a coalition of Czech and international NGOs called "Together to School",[198] established to promote improvements in Roma children's access to education. The coalition aims to sensitize society to the relationship between mainstream society and the Roma minority, to change the practice of placing Roma children in framework curricula for children with mild mental disabilities, and develop a code of ethics for psychological counselling centres. Research by the Institute for Information on Education concerning the number and ethnicity of pupils educated according to mainstream curricula and curricula for pupils with learning disabilities revealed that special schools were attended by 2.17% of non-Roma children, corresponding to an approximately three-per-cent incidence of mental disability in the population, but by 27% of Roma children.[199] The Ministry of Education,

[197] The full text of both studies is available on the website of the Ministry of Education at: http://www.msmt.cz/strukturalni-fondy/manazerske-vystupy-z-provedenych-studii-a-analyz-v-ramci-ophttp://www.msmt.cz/strukturalni-fondy/analyza-individualniho-pristupu-pedagogu-k-zakum-se

[198] www.spolecnedoskoly.cz

[199] Regarding the research results, see, for example http://spolecnedoskoly.cz/ustav-pro-informace-ve-vzdelavani-potvrzuje-nerovne-sance-romskych-deti/.

Youth and Sports is cooperating with the coalition, for example, on a code of ethics for staff at guidance facilities.

An ongoing problem is the inadequate transformation of former special schools and the lack of sound, individualized diagnosis of pupils by educational guidance facilities. The coalition also identifies problems in access to education among other groups of children, primarily children with a mental disability or mental illness. Compared to foreign educational systems, in the Czech educational system too many children with disabilities are educated outside normal primary schools, even though it clearly follows from the Schools Act and related regulations that the education of children with special needs must take the form of individual integration in primary school, where appropriate by way of group integration, as a matter of priority.

Numerous shortcomings were identified in the process of admitting pupils into the special educational system by the Ministry of Education, Youth and Sports, the Czech Schools Inspectorate, and non-profit organizations.[200] The Czech Schools Inspectorate's findings indicate that in many cases proof of parental consent to the placement of children in this type of school is missing. Parental consent must be informed, i.e. the school is responsible for providing parents with genuinely sufficient information about the differences in education between the primary school curriculum and the special school curriculum. The Czech Schools Inspectorate's report also shows that in numerous cases the head masters decided to accept children at their school without an explicit recommendation from a pedagogical-psychological advice centre or a special education centre, and in several cases the recommendations are not based on a clear diagnosis of mental disability. The Ministry of Education, Youth and Sports undertook four studies on this issue. The Czech Schools Inspectorate conducted investigative inspections at schools set up separately for children with mild mental disabilities; the results, which can be generalized for the education system in this area, also point to some of the above problems.[201] Based on the results of the studies, report and recommendations of the Inspectorate, the Ministry draws up and implements steps and measures for the integration of children with special health needs.

4.5 Right to a favourable environment

People increasingly link the right to a healthy environment and a favourable environment with their own personal freedom. In 2009, this development was perhaps most noticeable in the growing number of complaints from people about their neighbours in villages and towns who had contaminated their neighbourhood with dangerous and hazardous substances from local domestic heating units in which solid fuel of low quality is not properly incinerated or in which waste and other unauthorized fuels are unlawfully burned. The share of household heating units in total emissions of hazardous airborne dust was as high as 40%, and in terms of hazardous emissions was even greater. Similar risks are posed by outdated, imperfect domestic boilers, in which are low-quality solid fuels are not properly incinerated. In 2008, the Constitutional Court allowed municipalities to include, in their local ordinances, a ban on the incineration of materials which are not designed to be used as a heating medium in order to protect the air in the municipality; this is not a restriction on natural and legal persons beyond the extent provided by law, and in this respect municipalities do not transgress their

[200] Of the non-profit organizations, the main body was the Human Rights League.
[201] The Czech School Inspectorate Report from this investigation and the related opinion of the Ombudsman are available at http://www.csicr.cz/cz/85126-zprava-z-kontrolni-cinnosti-v-byvalych-zvlastnich-skolach.

constitutional powers from the aspect of their autonomous competence.[202] This case law of the Constitutional Court significantly expanded the possibilities for municipalities to regulate environmental protection through regulations at local level. The Clean Air Act prohibits the burning of substances in air pollution sources which are not fuels designated by manufacturers for their equipment. Municipal authorities have the duty to monitor compliance with the law and to punish any violations. *However, municipalities have been slow to act.*

Other problems are excessive and annoying noise from cars and, above all, emissions of high-risk mutagenic and carcinogenic substances exhaled from diesel engines.[203] In many other cases, the monitoring of threats to the right to a favourable environment is more complicated. In many sites in the Czech Republic, noise limits and air pollution limits are exceeded (especially airborne dust). Most hazardous substances are undetectable by sight but are dangerous or threatening mutagenic and carcinogenic substances, such as aromatic hydrocarbons, toxic metals, dioxins, persistent organic compounds, phosgene, etc.

Since November 2009, there has been an expansion in the range of information disclosed in accordance with the Act on the Right to Environmental Information.[204] Henceforth it will be possible to provide spatial environmental data. To this end, the National INSPIRE Geo-portal will be created to provide access to spatial data for the Czech Republic; those spatial data will be disclosed to public and private entities under clearly defined conditions.

[202] See Judgement of the Constitutional Court Pl. ÚS 6/08. Under Section 50(3) of Act No 86/2002 on air protection, as amended, municipalities may prohibit the combustion of certain fuels for small combustion sources of pollution (e.g. domestic boilers). According to Section 3(2), fuel cannot be used to heat waste in accordance with Act No 185/2001 on waste and amending some certain other Acts, as amended. It follows, therefore, that municipalities may prohibit the burning of "materials not intended as a heating medium for heat". Under Section 10(c) of the Municipal Order, municipalities may impose, within the separate competence laid down by a generally binding decree, the obligation to protect the environment, including air protection.

[203] Expert estimates suggest that up to seven times the population will die prematurely for reasons of traffic emissions in comparison to the number of fatalities from traffic accidents.

[204] Act No 123/1998 on the right to environmental information.

5. HUMAN RIGHTS AND BIOMEDICINE

5.1 Legislation

Since the planned healthcare reform did not take place in 2009, the existing legislation which was to be replaced by new health laws has remained in force. This legislation includes Human Health Care Act, the Act on Health Care in Non-state Healthcare Facilities, the Act on Public Non-profit Inpatient Healthcare Facilities, the Act on the Donation, Removal and Transplantation of Tissues and Organs, the Medicinal Products Act, and the Medical Devices Act.[205]

Healthcare reform was meant to be carried out in 2009 by means of a set of new health laws. The reform was expected to result in far-reaching changes in the health system.[206] In April 2009, the Government, in a resolution,[207] approved proposals for the withdrawal of those laws from further consideration in the Chamber of Deputies. The Chamber of Deputies subsequently decided to withdraw them the first reading was completed. The withdrawal was prompted by a change in the political arena.[208] The Government has not yet decided on the re-submission of these laws.

The amendment to the Decree on Expert Committees,[209] which entered into effect on 1 January 2010, can be viewed in a positive light. An expert committee assesses cases "*where doubts have arisen as to whether correct procedure has been followed in the provision of health care or whether bodily injury has been inflicted*" (Section 1). Where necessary in order to assess the case, in contrast to the original legislation the expert committee may now invite the person who submitted the proposal for the consideration of the case. Where this person directly requests the opportunity to submit information, he/she must be invited by the committee. A committee can now invite the health professional whose alleged misconduct the committee is assessing, or a senior employee from the healthcare facility where the alleged misconduct occurred.

[205] Act No 20/1966 Coll. on Human Health Care, as amended, Act No 160/1992 Coll. on Health Care in Non-state Healthcare Facilities, as amended, Act No 245/2006 Coll. on Public Non-profit Impatient Healthcare Facilities and amending certain laws, as amended, Act No 285/2002 Coll. on Gifts, Donations and Transplantation of Tissues and Organs and amending certain laws (the Transplantation Act), as amended, Act No 378/2007 Coll. on Medicinal Products and amending certain related acts (the Medicinal Products Act), as amended, Act No 123/2000 Coll. on Medical Devices and amending certain related Acts, as amended.

[206] These reform bills included the Government bill on health services and conditions for their provision (the Health Services Act, Parliamentary Press No 688), the Act on Specific Health Services (Parliamentary Press No 689) and the Act amending Act No 48/1997 on public health insurance and amending certain related Acts, as amended, and certain other Acts (Parliamentary Press No 692).

[207] Government Resolution No 449 of 20 April 2009.

[208] At its meeting on 26 March 2009, the Government noted the need to reflect the current situation in relation to the debating of Government bills in the Chamber of Deputies, as well as the need to assess possible impacts on the Government's upcoming legislative proposals. Therefore, a document was prepared which, in addition to an overview of Government bills pending in the Chamber of Deputies, also included a summary of bills being prepared by the ministries in respect of which members of the Government considered it necessary to expedite the legislative process. Members of the Government also submitted proposals to the Minister Responsible for Legislation seeking the withdrawal of the bills from further consideration in the Chamber of Deputies. Among these withdrawal proposals was healthcare reform legislation.

[209] Decree of the Ministry of Health No 221/1995 Coll. on Expert Committees.

5.2 Case law

In 2009, there was an increasing tendency for patients to bring actions for a variety of reasons comprising bodily injury accompanied, in particular, by insufficient respect for the principle of informed consent. There has also been a gradual increase in compensation awarded to the victims of such operations.[210]

Last year, the Constitutional Court adjudicated on two constitutional complaints about alleged unauthorized sterilization. In the first case,[211] the court described the constitutional complaint as manifestly unfounded and rejected it. The complainant was seeking the annulment of the orders of law enforcement agencies, under which it was decided to defer the complaint of the criminal offence of bodily injury by the doctors who performed surgical sterilization on the complainant without her free and informed consent. The Constitutional Court ruled that the procedure of law enforcement agencies in the evaluation of complaints and their consequential decisions could not in any way interfere with the constitutionally protected fundamental rights of complainants and injured parties. Although injured parties may be a party to criminal proceedings if they file a claim properly and in good time, but they are not entitled to demand that a law enforcement agency initiate the proceedings or adjudicate in a requested manner. Based on the principle of officiality, legality and the accusatorial principle, it is entirely up to law enforcement agencies whether or not to assess a complaint as warranted and initiate criminal proceedings. As not even the injured party has a legal title to such a decision, there is no possibility of a violation of a fundamental right.[212] Therefore, the complainant's complaint was not upheld.

Although, in the second constitutional complaint[213] concerning sterilization, the Constitutional Court also refused to grant compensation to the complainant, a certain shift can be noted compared to the first complaint. Here, too, the Constitutional Court rejected the constitutional complaint on the grounds that it was manifestly unfounded; however, the cause was the argument that the general courts, when adjudicating on an action for the protection of the individual, had not erred and had decided in accordance with the law. The Constitutional Court thus upheld the decisions of the general court, which did not grant the complainant the right to compensation because of the expiry of the three-year limitation period for claiming the right of privacy; it did, however, confirm the legal opinion of the general courts that the facility in question must apologize to the complainant for illegal sterilization. A shift can be seen in the evaluation by the Constitutional Court, which, in its order, recognized that the sterilization of the complainant had been illegal.

An interesting decision by the Constitutional Court was its Judgement No I ÚS 557/09 concerning the general courts' adjudication of the restoration of full legal capacity.[214] Here, it

[210] As the Human Rights League observes, in 2009 the court awarded the applicant CZK 80,000 in a privacy action as compensation for an operation entailing the removal of ovaries without consent; the court of appeal raised this compensation to CZK 150,000. In the case of wrongful sterilization, the court also decided to grant compensation for non-economic loss of CZK 200,000.

[211] Resolution of the Constitutional Court II. ÚS 59/09 of 5 February 2009.

[212] The Constitutional Court, in its order, added that "an order to adjourn a case is not a decision in criminal prosecution. It does not constitute or establish the ne bis in idem principle. If reasons for documentation subsequently cease to exist or new facts are established, a criminal prosecution may be automatically initiated. A resolution on postponement thus automatically becomes ineffective without a formal withdrawal."

[213] Order of the Constitutional Court II. ÚS 1407/09 of 7 October 2009.

[214] Judgement of the Constitutional Court II. ÚS 557/09 of 18 August 2009.

was accepted that the courts had violated the complainant's rights guaranteed by the Charter of Fundamental Rights and Freedoms, specifically the right of legal capacity and the right to human dignity, personal honour, reputation and the protection of her name.[215] The Constitutional Court upheld the complaints in their entirety and annulled the impugned decision of the general courts. In its judgement, it held that the complainant's rights were violated in several respects.[216] *This decision can be seen as very important in terms of strengthening the position of persons having deprived/restricted legal capacity, particularly in relation to proceedings to decide on such capacity. Particularly important is the judgement of the Constitutional Court that, in proceedings on legal capacity, the court "must secure full and reliable findings on the personal circumstances of the restricted party, i.e. how he/she expresses him-/herself in social contact with members of civil society, how he/she takes care of his/her and his/her family's needs, how he/she manages his funds, how he/she expresses himself at work, etc. In such proceedings, an expert opinion is significant evidence, but must not be the sole evidence and cannot be a substitute for a lack of facts.*" In their adjudication of the restriction/deprivation of legal capacity, the courts refer in particular to an expert opinion, which in many cases is the only evidence, based on which the court reaches a decision on the restriction/deprivation. *In this regard, we can view the Supreme Court's ruling as a significant milestone in the general courts' decision-making in new cases, which will have to respect the legal opinion of the Constitutional Court as expressed in this judgement.*

5.3 Sterilization in contravention of the law

A certain degree of progress has been paid on the issue of illegal sterilization. The Czech Government adopted a resolution[217] further to an initiative by the Minister for Human Rights and the Government Council for Human Rights[218] in which it expressed regret at the individual errors identified in the sterilization of women in contravention of a Ministry of Health directive from 1971.

In the preparations for the Government resolution, however, no agreement was reached on financial compensation for the victims or on the issue of a decree on sterilization superseding the current directive. The initiative acknowledged by the Government does not contain such proposals.

The Government, in its resolution, enjoined the Minister for Health to take action making it easier to detect the practice of illegal sterilization and prevent a recurrence of similar cases in the future. This mainly concerned information about the implementation of measures proposed by the advisory body in relation to illegal sterilization and their effectiveness, the incorporation of the sterilization issue into the agenda of the Professional Forum, and the contacting of directly managed organizations and, via regional authorities, medical facilities

[215] Article 5 and 10 (1) of the Charter of Fundamental Rights and Freedoms.

[216] First, the Constitutional Court takes the view that the ordinary courts, in their decision-making on the recovery of legal capacity, did not take account of all relevant factors, did not take into account the circumstances in which the person was deprived of legal capacity, if such procedure was carried out ex officio, quickly and easily, the complainant was subsequently involuntarily placed in an institution... The courts did not take any evidence by hearing an expert who, in his expert report, came to different conclusions from an expert appointed by the court and took no account of the person's own opinion.

[217] Government Resolution No 1424 of 23 November 2009.

[218] This initiative proposes certain measures that should help clarify the practice of illegal sterilization and prevent a recurrence of similar cases. In addition to keeping the Government informed, a further aim of the initiative was an expression of Government regret for individuals identified in relation to sterilizations contrary to a directive of the Ministry of Health.

in the Czech Republic which provide care in the field of gynaecology and obstetrics in order to verify compliance with legal regulations in cases of sterilization.

The Minister for Health subsequently informed the Government of the implementation of these measures.[219] In this statement, the Ministry of Health itself admits that the sterilization directive is outdated and obsolete, but due to the withdrawal of the Act on Specific Health Services, which, inter alia, was meant to address the treatment of sterilization surgery, no change in legislation has been forthcoming. *The efforts by the Ministry of Health to improve public awareness through its website and through the brochure "Patient's Adviser" (Rádce pacienta), which was published in the first quarter of 2010 and is still being distributed, should be viewed in a positive light.*[220] The Minister for Health also addressed the relevant healthcare facilities, doctors and medical students to raise awareness of the emphasis on compliance with applicable laws and ethical principles in health care and of the possibilities of further training.

The Minister for Health, in accordance with the duties imposed under the Government resolution, identified current practices in healthcare facilities. Healthcare facilities use informed consent as proposed under a recommendation of the Advisory Body, which acquaints patients with the anatomy and physiology of the internal genitalia, the surgical procedure, and the consequences for future fertility. A specimen informed consent was published in the Journal of the Ministry for Health, Volume 8/2007; some healthcare facilities use a more detailed informed consent. The problem is the continued absence of legal provisions on the time limit for the submission of qualified information (a statutory period) concerning the operation and for the patient's consent or opposition to the operation on the basis of that information. This problem should also have been resolved by the Government's bill on specific health services, which, inter alia, defined a statutory period of 14 days between the granting of consent and the operation.

The most serious problem is the persistent lack of comprehensive legislation on sterilization, because current legislation is outdated and very austere.[221] *In this regard, it is necessary to promote the adoption of new legislation that would actually meet the requirements arising from current developments in the law and medicine.*

5.4 Access to medical records by international human rights organizations

On 18 October 2009, the Government Council for Human Rights approved an initiative by the Committee against Torture and Other Inhuman, Cruel and Degrading Treatment and Punishment, proposing a legislative change to the Human Health Care Act[222] which would allow members of the CPT and SPT[223] to inspect medical records without the consent of

[219] Information was provided to the Government meeting of 25 January 2010.
[220] The Patient Adviser brochure is also available on the website of the Ministry of Health: http://www.mzcr.cz/dokumenty/ministerstvo-zdravotnictvi-vydava-publikaci-radce-pacienta-ktera-prispeje-k-lepsi-orientaci-pacientu-pri-kontaktu-se-zdravotnimi-sluzbami_3478_1.html
[221] Directive of the Ministry of Health of Czechoslovakia LP-252.3-19.110.1971 of 17 December 1971 on the implementation of sterilization.
[222] Act No 20/1966 Coll. on Human Health Care, as amended.
[223] The CPT European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, established by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, published by the Ministry of Foreign Affairs under No 9/1996 Coll.

patients to the extent required to fulfil a specific task within their competence. Following this initiative, the Minister for Human Rights and, subsequently, the Ministry of Health prepared a draft amendment to the Human Health Care Act which, in Section 67b(10), added these bodies among subjects authorized to access medical records without patient consent.

The two drafts have different interpretations of Article 8(2)(d) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The controversial interpretations lies in the way the article is construed, i.e. whether the wording directly grants CPT members the right to inspect the medical records of patients without their consent. In the view of the Minister for Human Rights, the Convention grants members of the CPT this right; the Ministry of Health takes the opposite view and restricts access to medical records to medical professionals who are members of committees or are delegated by committees. Nor did the draft prepared by the Ministry of Health accept the stronger status of the SPT compared to the CPT under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in respect of which no other interpretation is possible because Article 14(1)(b) provides that *States Parties undertake to grant unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention.* In this respect, the interpretation of the Optional Protocol is clear and leaves no room for different interpretations.

In the current situation, the priority appears to be to find a single interpretation of Article 8(2)(d) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. If a unified interpretation is not reached, it will continue to be very difficult (if not impossible) for the CPT to gain access to patients' medical records without their consent because the individual facilities will continue to deny CPT members access to the data required. The amendment to the Human Health Care Act placing the CPT and SPT in the list of subjects authorized to access medical records without patient consent should have a unifying character only in the interpretation of the status of committee members and their powers, and should not be of a nature of conditio sine qua non.

5.5 Surgical castration

There were no changes in the situation regarding surgical castrations in 2009. The system in place for this procedure continues to be governed solely by the Human Health Care Act.[224] However, the Ministry of Health, in collaboration with the Sexology Society of the J.E. Purkyně, Czech Medical Association, has drafted recommended procedure for surgical castration in relation to sexual offences motivated by paraphilias, which was published in the Journal of the Ministry of Health No 1/2010 at the beginning of 2010. The introduction of the recommended procedure defines what is meant by the term "castration", and provides information about the purpose of surgical castration and about the conditions under which it takes place. It also describes the possible contra-indications of this operation and situations in which the procedure will not be performed on the patient. In addition, it mentions possible alternatives to this procedure, i.e. medication (anti-androgens or gonadoliberin analogues), as

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The SPT, a UN Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading treatment or Punishment under the UN Committee against Torture, established under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, published by the Ministry of Foreign Affairs under No 78/2006 Coll.

[224] Act No 20/1966 Coll. on Human Health Care, as amended. The detailed treatment of surgical castration was regulated in the Bill on Specific Health Services, which was withdrawn from further consideration in the Chamber of Deputies in 2009.

well as the side effects of castration. The method for the performance of castration is set out (it takes place at the request of the patient and after approval by an expert committee), along with the content of a request and a definition of who can be members of the expert committee. The recommended procedure also establishes the obligation to inform patients about the performance of castration, its consequences, and the risk associated with it, and takes into account those cases where a patient is deprived of legal capacity. Under this recommendation, the healthcare facility should keep records of applications for castration and of the castrations performed. Records should also be kept of whether a patient has been deprived of legal capacity.

The recommended procedure can be viewed as a positive effort to regulate the surgical castration of sex offenders. Nevertheless, this procedure does not have the status of a law and is therefore merely an internal regulation which is not generally legally binding. Surgical castration is undoubtedly a very serious intervention in the physical and mental integrity of a person, and such an intervention, in accordance with Article 7(1) of the Charter of Fundamental Rights and Freedoms, may only be undertaken pursuant to the law. In this respect, an internal regulation of the Ministry of Health is not a satisfactory solution. According to figures provided by the Ministry of Health, however, the Ministry envisages that these legal provisions will be included in new legislation in the pipeline.

Surgical castration in the treatment sex offenders was repeatedly criticized in 2009 by the CPT during its ad hoc visit to the Czech Republic in October.[225] The CPT considers the surgical castration of sex offenders to be degrading treatment and, in its report, called on the Czech Republic to immediately end this practice. Until a complete ban is pronounced, the Czech Republic should immediately introduce a moratorium on surgical castration. The CPT also criticizes the fact that, although the Czech authorities remain convinced that surgical castration is the best way to reduce recidivism rates among sex offenders, no thorough scientific study has been carried out to pinpoint the rate of recidivism among surgically castrated sex offenders.

The Czech Republic still refuses to accept that it is degrading treatment. In the 1980s a specialists drew up studies covering the issue of surgical castration and including, among other things, data on persons who had undergone this surgery.[226] *As these studies are almost twenty years old, a new study needs to be carried out that will respond to current medical, legal, and social developments and will therefore be able to provide a true picture of how this treatment is provided at present.*

Besides the medical, ethical and legal aspects, the study should also include a part on the possible alternative methods in the treatment of sex offenders, a comparison of the pros and cons, and a part describing the methods used to treat sex offenders in other countries. This

[225] For more details, see Section 3.3.2. dealing with the CPT's ad hoc visit to the Czech Republic in October 2009.

[226] These studies include: Weiss, P., Zimanová, J., Fuka, J.: K problémům dobrovolné kastrace sexuálních delikventů [Problems with the voluntary castration of sex offenders]. Čs. Krimin. 20, 1987, 162-167;
Zimanová, J., Fuka, J., Weiss, P., Hubálek, S.: Některé současné názory na terapeutickou kastraci sexuálních delikventů a naše zkušenosti [Certain current views on the therapeutic castration of sex offenders and out experience]. Čs. Psychiat. 84, 1988, 173-180;
Štěpán, J., Lachman, M., Zvěřina, J. et al.: Castrated Men Exhibit Bone Loss. J. Clin. Endocrinol. Metab. 68: 523-527,1989;
Zvěřina, J., Hampl, R., Stárka, L.: Hormonal Status and sex behaviour of 16 men after surgical castration. Arch. Ital.Urol.Nefrol., Androl. 62:55-58, 1990.

study should contain statistics on the number of past surgical castrations, with an indication of whether the patients were being detained or not at the time, and the exact percentage of relapses among offenders who had undergone surgical castration. It should also help identify arguments for or against the CPT's allegation that this treatment is degrading treatment. The CPT does not specify which opinions and conclusions it used as its basis. As such, the study could produce different results.

5.6 Compliance with the principle of informed consent

5.6.1 Compulsory vaccination

The regulation of compulsory vaccination in the Czech Republic remains unchanged. Under the Public Health Protection Act, vaccinations against selected infectious diseases are compulsory and a vaccination calendar is set out in an implementing regulation.[227] *This system does not meet human rights requirements and may not comply with the Convention on Human Rights and Biomedicine, as the current system does not allow for a sufficiently individual approach to each case, and therefore parents often incur penalties (mostly in the form of fines, but in some cases they may even be prosecuted for a criminal offence). The system of compulsory vaccination does not take into account possible different views on children's health care by parents who do not want to have their children vaccinated. The Convention on Human Rights and Biomedicine, however, allows parents to decide on their children's health care in a free and informed manner. On the other hand, the abolition of compulsory vaccination could conflict with the State's duty to protect public health, which is a priority State interest and must be safeguarded fully and effectively by the State.*[228] *The link between compulsory vaccination, the abolition thereof, and the protection of the child's interests, which must safeguarded ensured in every situation, needs to be explored.*

At present, if parents refuse to have their children immunized, their decision could be construed under applicable legislation as a misdemeanour or, in particularly serious cases, as a crime endangering the child's upbringing or the spread of infectious human disease. Although there is no strict procedure for doctors to follow in such cases, as a rule they report decisions to refuse compulsory vaccination to the competent health authority or childcare body, which then decides whether the parents breached their duty.

The Human Rights League reports that in 2009 it was contacted by dozens of parents who are dissatisfied with the system of compulsory vaccination, which does not allow for an adequately individual approach. It cites specific cases of the compulsory vaccination of infants against tuberculosis, which has been disapproved by the professional public.[229] The argument against this immunization is that the incidence of tuberculosis in the Czech Republic is one of the lowest in Europe and that the vaccine is not very effective; indeed, it could prompt many health complications. The World Health Organization (WHO) recommends that tuberculosis vaccinations should not be administered across the board;

[227] Decree No 537/2006 Coll. on Vaccination Against Infectious Diseases.

[228] This is covered, inter alia, by Article 26(1) of the Convention on Human Rights and Biomedicine, which provides that "No restrictions shall be placed on the exercise of the rights and protective provisions contained in this Convention other than such as are prescribed by law and are necessary in a democratic society in the interest of public safety, for the prevention of crime, for the protection of public health or for the protection of the rights and freedoms of others."

[229] http://www.ferovanemocnice.cz/data/Text_pro_media_TBC.pdf.

instead, only high-risk groups need to be immunized. Nevertheless, in the Czech Republic a decree[230] requires parents to have their child vaccinated against tuberculosis within six weeks of age. Most children are vaccinated before they leave the maternity ward.[231] An expert debate on compulsory tuberculosis vaccinations is under way.

In connection with the swine flu, proposals have been made by both the lay and the professional medical community to introduce "informed dissent", where parents, once properly informed, can reject compulsory immunization. Importance here is attached to doctor's individual approach to specific patients; parents must receive sufficient professional and understandable information about the purpose of vaccination, the possible consequences and risks, as well as the consequences associated with delay or complete refusal of immunization. Penalties should only be imposed for manifestly unreasonable disregard of obligations by parents thus threatening the life and health of the child. The system of compulsory vaccination, its continuation or abolition and replacement with voluntary vaccination, or a reduction in the list of diseases against which it is necessary to have compulsory vaccination, will evidently be a subject of further professional and in-depth discussion.

5.6.2 Obstetrics

In the field of obstetrics, some pregnant women continue to express an interest in giving birth outside healthcare facilities (alternative delivery). This is often accompanied by the healthcare facility's refusal to carry out of basic examinations. *Healthcare facilities should respect patients' freedom of choice. Cases where patients refuse health care in a particular healthcare facility can be resolved with patient refusal.*[232]

Alternative deliveries are also hampered by administrative obstacles placed in the way of midwives. These obstacles mainly comprise very strict requirements set out in the Journal of the Ministry of Health on the activities of a midwife, which are almost impossible to fulfil.[233] In practice, midwives are required, in particular, to have the same equipment at their disposal as they would have at a maternity hospital, and a doctor must also be available.

The obstacles to alternative delivery have also been investigated by the Ombudsman, who criticizes the lack of legislation in this area and the argument put forward by the Ministry of Health that the Act on Paramedical Professions[234] does not allow for a midwife to carry out a

[230] Decree No 537/2006 Coll. on Vaccination Against Infectious Diseases.

[231] The Ministry of Health took the first step in fulfilling the WHO requirement by abolishing, in March 2009, the obligation of re-vaccination against tuberculosis at eleven years of age. Although, according to the Human Rights League, the requirement of basic immunization, which in numerous countries is not carried out in a blanket manner, should also be abolished, unfortunately the Ministry of Health does not take this opinion into consideration in practice, with reference to the disapproval of the Czech Pneumology and Phtiseology Society at the JEP Czech Medical Association.

[232] The region of South Moravia also states that in this case it is necessary to require all particulars of an entry in medical records – a written patient declaration of the refusal of treatment or the preparation of a record of such refusal. If the patient refuses to sign the declaration, that refusal should also be part of the entry, including a written declaration by a witness attesting to the refusal. The patient's written consent to an examination, treatment or other health action should be required for each health action separately.

[233] According to the Human Rights League, what is specifically at issue here is that bodies deciding on the registration of a midwife as a private healthcare facility require compliance with the conditions set out in Journal No 2/2007 of the Ministry of Health (a specification of the basic obstetrics department) and other conditions.

[234] Act No 96/2004 Coll. on Paramedical Professions, as amended.

delivery outside a healthcare facility in those cases where it is impossible to give birth naturally (physiological childbirth). The law, in the understanding of the Ministry of Health, only allows a midwife to manage a delivery in cases of physiological childbirth.[235] *The problem lies in the requirement for physiological, or natural, childbirth, because whether or not a birth has taken place in a natural way can only be decided afterwards. On this basis, the Ministry of Health concludes that it is impossible to practice midwifery in isolation because there is never any advance guarantee of a physiological birth. The Ombudsman adds: "I believe this interpretation is unsystematic, logically contradictory, even absurd, because such an interpretation of the term in question would render the application of the law virtually impossible."*[236]

In these issues, the relationship between traditional and alternative medicine in the approach to obstetrics and midwifery needs to be resolved. This is in keeping with the requirement to establish rules for the implementation of these interventions, both medically and legally.

The Ministry of Health is preparing a draft of a new decree on material and technical equipment required of healthcare facilities.[237] This draft also sets out requirements regarding the equipment in the midwife's workplace. These requirements are set on the basis of whether or not physiological births will be delivered at the workplace. The decree will supersede the current Decree No 49/1993 Coll. on the technical and material requirements regarding the equipment of healthcare facilities, which does not cover the equipment required in a midwife's workplace. The Ministry of Health believes it is essential to provide care ensuring the maximum possible protection of life and health for mothers and newborns. The Ministry of Health deems it unacceptable for childbirth to take place in substandard conditions without the adequate and timely guarantee of medical intervention in case of complications which, in extreme cases, could lead to injury or loss of life.[238]

The possibility for mothers to discharge themselves just a few hours after birth remains a sticking point in obstetrics. The mothers are often threatened with the removal of their child. Healthcare facilities draw on guidance from the Ministry of Health[239] which requires them to release mothers with a newborn only after 72 hours have passed since the birth. Although this guidance does not explicitly obligate healthcare facilities to comply strictly with this requirement, they do interpret and apply it as an obligation.

In cases where a woman suffers no postpartum complications and the child is also healthy and without complications, there should be nothing to stop the new mother from leaving the hospital sooner should she so wish. Although the guidance imposes certain obligations on the healthcare facility, it cannot place any requirements on the parents – it cannot order or force them to behave in a certain way because it does not carry the weight of a law. This is a basic requirement under the Charter of Fundamental Rights and Freedoms, which provides that

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[235] Section 6(3) of Act No 96/2004 Coll.

[236] See also the Report on an investigation into the procedure followed by regional authorities when deciding whether to grant registration to operate a private healthcare facility where deliveries could take place with the assistance of midwives, Ref. No 2481/2009/VOP/MP of 4 November 2009, also published on the website of the Ombudsman at http://www.ochrance.cz/stanoviska-ochrance/zasadni-stanoviska/stanoviska-2010/stanovisko-registrace-nestat-porodnickych-zarizeni-2322010/

[237] The bill has already passed through the comment procedure, in which all the comments raised were duly considered.

[238] It is expected that the decree will enter into force by the end of 2010.

[239] The procedure followed by a healthcare facility upon the discharge of newborns for home care is published in Part 7/2005 of the Journal of the Ministry of Health.

restrictions and obligations can be imposed only by and within the limits of the law. Therefore, the measure concerned is ineffective against individuals.

5.7 Use of restraints in health care

Czech law continues to lack provisions on the use of means of restraints in health care, which from the perspective of the protection of human rights and freedoms is a matter for concern. Whenever they are used, restraints are a serious encroachment on human rights and freedoms,[240] so it is essential for such restrictive action to be governed by law. The Charter of Fundamental Rights and Freedoms explicitly states that these freedoms can be limited only as specified by law. Yet no law provides for the use of restraints on patients in the current situation. *Although the Ministry of Health has covered this issue in its journals,[241] this means of regulation is not in compliance with requirements imposed by the Charter of Fundamental Rights and Freedoms as it does not carry the force of a law.*

The use of patient restraints in healthcare facilities in the Czech Republic, as published in Part 7/2009 of the Journal of the Ministry of Health, regulates the conditions under which it is possible to restrict the free movement of patients. Applying these restraints must be considered as a last resort when it is necessary to sedate a patient whose behaviour is a threat to himself or others. The Journal also regulates which means of restraint may be used to restrict the free movement of a patient in the provision of health care. It also regulates the period over which a restraint may be used, the method used to decide on this action, and the requirement to record any use of restraints in the patient's medical records. In addition, it contains recommendations on how to use restraints on a patient who is a minor or is deprived of legal capacity. The procedure includes the recommendation to keep records on the use of restraints. This is part of the medical records.

The recommended procedure can be considered a cooperative effort to regulate restraint use in health care. It encompasses many concepts setting out accurate and clear conditions under which it is possible to use means of restraint. Although the recommended procedure has been executed very well, it does not carry the force of a law and is therefore not legally binding. The transposition of this procedure from the Journal into a law would be welcomed. This would fulfil the requirement under Article 4 of the Charter of Fundamental Rights and Freedoms.

Government Council for Human Rights followed up on its initial initiative from 2007[242] and approved a new initiative addressing the use of patient restraints in health care. The aim of the

[240] The use of restraints is a serious intervention in personal liberty, freedom of movement, and other fundamental rights provided for in Articles 7, 8, 10(2) and 14(1) and (3) of the Charter of Fundamental Rights and Freedoms. In particular, it concerns Article 4, which provides that obligations and restrictions may be imposed only by and within the limits of the law.

[241] In Journal of the Ministry of Health No 1/2005, the Guideline on the use of restraints on patients in psychiatric hospitals in the Czech Republic was published; in Journal of the Ministry of Health No 7/2009, principles for the use of restraints in healthcare facilities in the Czech Republic were subsequently published in the form of a recommended procedure. The recommended procedure from 2009 also supersedes the guideline from 2005.

[242] This initiative was approved by the Government Council for Human Rights on 9 October 2007. The Government took note of it under Resolution No 290 of 26 March 2008 and ordered the Minister for Health to incorporate this initiative into a bill regulating the issue of health services and conditions of their provision. Although the Minister for Health enshrined these provisions in the Act on Health Service Provision, this bill was withdrawn, and therefore the original initiative of the Government Council for Human Rights was not implemented.

initiative is for the Minister for Health to prepare draft legal provisions complying with the CPT recommendations contained in its reports of 2002 and 2006.[243] Apart from the requirement to establish control mechanisms, the initiative also proposes that rules on the use of patient restraints should clearly stipulate that initial attempts to sedate agitated or violent patients must be non-contact measures and that only arms should be used in cases where physical sedation is necessary. Physical restraint should be used only in exceptional cases and under the express orders or consent of a doctor. The use of restraints must end as soon as possible; restraints must not be used as a form of punishment. Another requirement is to record each case of physical restraint of a patient in a special log kept for this purpose and in the patient's medical records. The initiative also sets out the particulars of such entries. The initiative is to be discussed by the Government in 2010.

5.8 Deprivation and restriction of legal capacity

Problems concerning the deprivation and restriction of legal capacity have been discussed in the Human Rights Report for 2008. The draft of the new Civil Code was planned to resolve many of these issues. The concept of the deprivation of legal capacity was to be removed entirely from Czech law, and other means of supporting those with disabilities were to be enshrined in the law. This is fully in keeping with the requirements arising from the Convention on the Rights of Persons with Disabilities, discussed in the introductory chapters of this Report. However, the new Civil Code remains only in the form of a Government bill and is unlikely to be adopted in the near future.

While current legislation remains in effect, legal capacity may be deprived or restricted by a court decision in civil proceedings. *Depriving or restricting legal capacity is a serious intervention in the rights and freedoms of the individual.* This often occurs in proceedings solely by virtue of medical opinions drawn up by doctors/psychiatrists, frequently without even hearing the person whose legal capacity is in question. This person's procedural rights are severely restricted in proceedings. The quality of medical opinions is often criticized, as is the fact that current legislation allows anyone eligible to be a party to the proceedings[244] to submit a proposal for the initiation of proceedings on the deprivation/restriction of legal capacity (the issue of expert opinions is addressed by the Constitutional Court in Judgement I US 557/09 of 18 August 2009, as mentioned above). The set of persons entitled to initiate proceedings is therefore entirely unlimited. *Provisions on guardianship proceedings in relation to the person who is to be appointed a guardian also appear to be inadequate.* The court appoints a guardian regardless of any opinion expressed by the person whose legal capacity is restricted/deprived.

This situation could be resolved by an amendment to the current Civil Code in matters of legal capacity and support measures, as set out in the draft of the new Civil Code. The Rules of Civil Procedure should also be amended further to changes in substantive law. Besides proper arrangements for the concept of legal capacity, the Czech Republic lacks proper provisions governing the rights of the mentally ill and the rights of patients. These standards are considered normal in developed countries throughout Europe, where they are covered in great detail, most commonly in the form of separate laws.

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[243] For individual reports, see http://www.vlada.cz/cz/pracovni-a-poradni-organy-vlady/rlp/dokumenty/zpravy-plneni-mezin-umluv/evropska-umluva-o-zabraneni-muceni-a-nelidskemu-nebo-ponizujicimu-zachazeni-nebo-trestani-17701/.

[244] Section 19 of Act No 99/1963 Coll., the Rules of Civil Procedure, as amended.

6. DISCRIMINATION AND THE STATUS OF MINORITIES

6.1. Mechanisms of protection against discrimination

In June 2009, the Act on Equal Treatment and Legal Means of Protection against Discrimination (the Antidiscrimination Act)[245] was approved after almost two years of consultations. At its 59th session on 17 June 2009, the Chamber of Deputies outvoted the veto of the President of the Republic; the Act was promulgated in the Collection of Laws on 29 June 2009. The Act entered into partial force on 1 September 2009; on 1 December 2009 that part of the Act conferring powers of protection against discrimination on the Ombudsman entered into force.

As of 1 December 2009, the Ombudsman has provided methodological assistance to victims of discrimination in the pursuit of their complaints about discrimination. The Ombudsman's other duties under the Antidiscrimination Act include research, the publication of reports and recommendations on issues related to discrimination, and the exchange of available information with the relevant European bodies.[246]

In 2009, the Ombudsman delivered an opinion on certain procedural aspects of the Antidiscrimination Act.[247] For victims of discrimination, it is important to know that an action for protection against discrimination needs to be submitted to a district court.[248] The Ombudsman clarified the principle of the shared burden of proof,[249] in respect of which the general public and professionals still harbour many uncertainties.[250] Here, the Ombudsman explicitly makes the following observation: "*Persons who believe that they have been discriminated against must not only allege the relevant facts, but also, to some extent, prove them. The plaintiff, i.e. the potential victim of discrimination, must prove, in particular, that he or she has been treated less favourably than another person in a comparable situation on discriminatory grounds. Regarding the alleged discriminatory grounds, however, the plaintiff does not have the burden of proof. If the plaintiff bears the burden of persuasion and the burden of proof, the burden of proof passes to the defendant, who must then assert and prove that discrimination did not occur, that the conduct which led to the alleged discrimination had a legitimate reason and objective, and that this objective was achieved by reasonable means. If the defendant bears the burden of proof, the court cannot find that discrimination has occurred*."

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[245] Act No 198/2009 Coll.

[246] Institutions ensuring equal treatment in European Union countries are grouped together into the Equinet. The Ombudsman, as another of these "equality bodies", has become a member of this network.

[247] The following text is based on the Ombudsman's Annual Activity Report for 2009.

[248] Besides administration-law actions, where, according to Section 7 of Act No 150/2002, the Rules of Administrative Procedure, as amended, the physical jurisdiction of the regional court is established. However, an administrative action can only repeal a discriminatory decision. The satisfaction of a claim to adequate reparation requires a civil action at a district court.

[249] Section 133a of Act No 99/1963 Coll., the Rules of Civil Procedure, as amended. The interpretation of this provision was also clarified by Decision of the Constitutional Court Pl. ÚS 37/04 of 26 April 2006.

[250] See, for example, Senate Resolution No 485 from the 16th Session on 18 September 2009: "The Senate... disagrees with the introduction of the burden of proof to the detriment of the defendant in litigation relating to purely private law...". Although the resolution relates to the proposal for the Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, the principle of the shared burden of proof contained in the draft directive is similar to Czech legislation already in force.

In one case, the Ombudsman identified indirectly discriminatory rules applied by a municipality to the lease of municipal flats (on grounds of sex). Specifically, there was a provision excluding from the bidding any person whose sole source of income is maternity or parental benefit. As the vast majority of such people are women, the Ombudsman held this rule to be indirectly discriminatory. He also noted that this rule cannot be justified by legitimate demands such as an interest in the proper payment of rent, because it disregards the fact that the persons in question may have other sources of income. In terms of access to housing, the Ombudsman also encountered a discriminatory distinction between Czech nationals and EU citizens. Although, in this case, this is not a situation covered by the Antidiscrimination Act, it is not possible to make a distinction between nationals of other EU Member States and citizens of the Czech Republic in access to housing as this is inconsistent with directly applicable EU legislation on the free movement of persons.[251]

In 2009, there was also a tightening of sanctions for discriminatory treatment under legislation on administrative offences. Penalties in the Misdemeanours Act were increased from CZK 5,000 to CZK 20,000.[252]

6.2 Equal treatment in employment and business

In June 2009, the Government Council for Human Rights endorsed an initiative by the Committee against Discrimination concerning the requirement of being without criminal records in the Trade Licensing Act.[253] The Council proposed amending Section 6(2)(a) of the Trade Licensing Act so that this provision complies with Constitutional Court Judgement Pl. ÚS 35/08 of 7 April 2009.[254] The Constitutional Court held that the right to engage in business must not be unduly restricted unless absolutely necessary and the objective cannot be achieved otherwise.[255] It follows that legislation limiting the ability to engage in business among those who have committed a criminal offence for which they could serve a prison sentence of at least one year would have to be rationally justified somehow. Here the court, after an analysis of legislation on activities not covered by the Trade Licensing Act, such as local police officers, lawyers, etc., arrived at the conclusion that the blanket requirement of no criminal records regardless of the specific nature of the crime committed is unreasonable because all these special provisions prohibited the activity concerned only in relation to persons convicted of crimes related to that particular activity, not across the board. The Constitutional Court therefore ruled that provisions on the blanket requirement of no criminal records in order to obtain or maintain a trade certificate were inconsistent with the Charter of Fundamental Rights and Freedoms, as they unduly restrict the right to engage in business.[256]

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[251] Article 49 of the Treaty on the Functioning of the European Union, Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community.

[252] Act No 306/2009 Coll.

[253] Act No 455/1991 Coll., , the Trade Licensing Act, as amended.

[254] According to a decision of the Constitutional Court, provisions on the requirement of integrity in order to obtain or maintain a trade certificate in Section 6(2)(a) of Act No 455/1991 on licensed trading (the Trade Licensing Act), as amended by Act No 167/2004, contravened Article 26(1) and (2) and Article 4(4) of the Charter of Fundamental Rights and Freedoms.

[255] This is despite the fact that the right to engage in business under Article 41(1) of the Charter is exercised only within the limits of the implementing legislation, i.e. the State may determine the specific form in which these rights are to be exercised. See Judgement Pl. ÚS 24/99 of 23 May 2000 (published under No 167/2000).

[256] However, the Constitutional Court was unable to repeal the contested provision of the Trade Licensing Act because during the procedure this was amended by Act No 130/2008 Coll., amending Act No 455/1991 Coll., on licensed trading (the Trade Licensing Act), as amended, and other related law, with effect from 1 July 2008. Nevertheless, the Constitutional Court declared that Section 6(2)(a) of Act No 455/1991 Coll., as

In 2009, the Ombudsman, inter alia, focused on labour inspectorates' controls of the compliance with the principle of equal treatment in the workplace. The Ombudsman concluded that the work carried out by labour inspectorates in this field is inadequate, the controls are not conducted rigorously, and the labour inspectorates do not make enough use of the capacities placed at their disposal by the law. *According to the Ombudsman, the labour inspectorates insufficiently inform the complainants of the results of their investigations, even though a victim of discrimination has a right to know whether the subject of the control was discrimination and whether it was proven. In addition, labour inspectorates should consider whether it is essential for the employer to be notified of a control in advance.*

According to the State Labour Inspection Authority, in 2009 labour inspectorates imposed five fines totalling CZK 160,000 for violation of labour laws on equal treatment. In the performance of their controls, inspectors study the documents submitted by the employer and examine all available data and documents that may clarify the situation. In all cases, it is necessary to compare a large sample of employees and, in addition to the documents controls, such as records of working hours, remuneration and compliance with pay periods, orders declared, and controls on the performance and quality of work by employers, other factors to take into consideration are the length of time that the complainant has worked for the employer, the work procedures and the position held. Comparisons should focus not only on the complainant's base pay and bonuses for work done and any work overtime, but also on employees in similar positions and the employer's economic situation. All these factors may indicate undesirable conduct by the employer or a direct violation of the Labour Code. In justified cases, the employees have been interviewed and anonymous questionnaires have been trialled. *According to the State Labour Inspection Authority, however, the results are inadequate – the employees interviewed generally feel that they are at risk of losing their job and are unwilling to testify, or distort the information to paint the employer in a better light. As a result, labour-law violations cannot be proven if the evidence is not conclusive. Inspectors have no option but to classify these circumstances as unproven. The employee then has the opportunity to go to court with an individual dispute.*

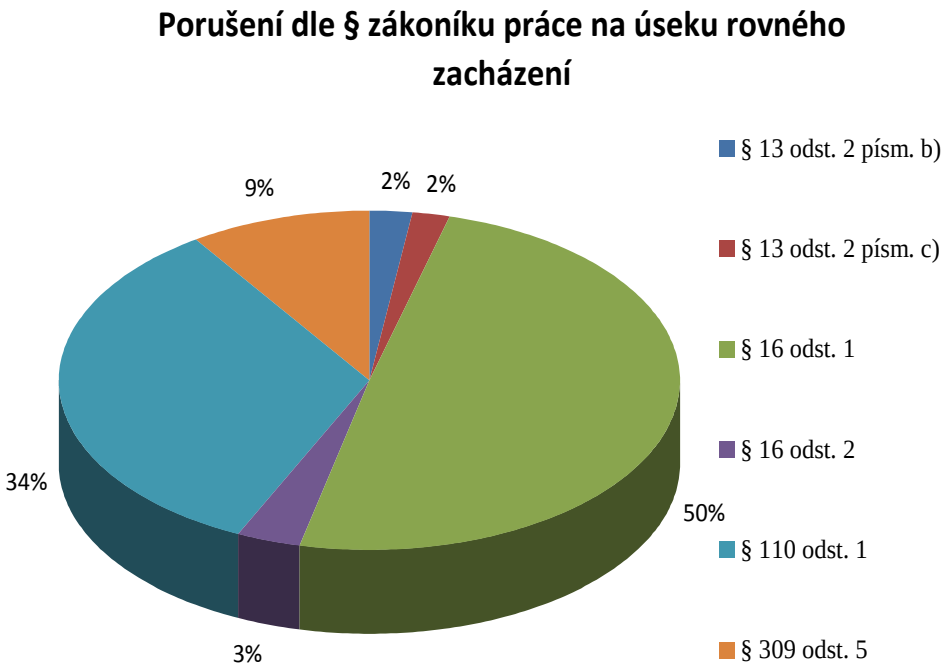
Table 4: Summary of equal treatment violations by sector for all labour inspectorates in 2009:

Sector	Number of controls
retail trade, except motor vehicles	10
catering, hospitality, accommodation, manufacture of food products	13
employment agencies	10
land transport and transport via pipelines	5
wholesale, except motor vehicles	5
metal manufacturing, manufacture of electrical equipment and machinery	7
specialized construction activities, construction of buildings, activities related to buildings	8
manufacture of clothing	2
manufacture of basic pharmaceutical products	1
forestry and logging, manufacture of furniture	2
manufacture of computers, computer repair, information technology service activities	4
other manufacturing	1
electricity generation and distribution	1
activity in real estate, accounting, consulting, advertising, security and intelligence, education, social welfare, art	13

Source: State Labour Inspection Authority

amended by Act No 167/2004 Coll., contravened Article 26(1) and (2) and Article 4(4) of the Charter of Fundamental Rights and Freedoms.

Chart 1: Statistics on Labour Code violations concerning equal treatment



Source: State Labour Inspection Authority

Key:

- Section 13(2)(b): the employer shall guarantee equal treatment for all employees and shall comply with the prohibition of any discrimination thereof;
- Section 13(2)(c): the employer shall observe the principle of providing an equal wage or salary and other cash considerations, in-kind considerations and bonuses pay for equal work and for work of equal value;
- Section 16(1): employers shall ensure the equal treatment of all employees with regard to their working conditions, compensation for work and other cash considerations or considerations in kind, training and the opportunity to achieve promotion or other professional advancement;
- Section 16(2): prohibition of any discrimination in labour-law relations;
- Section 110(1): all the employees of an employer shall be entitled to an equal wage, salary or compensation specified in an agreement for the same work or work of equal value;
- Section 309(5): a principle of equal treatment between agency workers and comparable employees in terms of working and wage conditions.

Employment office statistics also show violations of the Employment Act[257] occurring before the employment relationship is entered into. Fines in the Czech Republic as a whole totalled almost CZK 1 million in 2009.

[257] Act No 435/2004 on employment, as amended.

6.3 Equal opportunities for men and women and discrimination on grounds of sex

Comprehensive information on the situation of gender equality is set out in the Summary Report on the Implementation of Government Priorities and Procedures of the Government in Promoting Equal Opportunities for Women and Men, which is submitted to the Government every year.[258] *The unequal status of women and men in the Czech Republic remains prevalent in many areas of public and private life (the share of women in decision-making and executive positions, unequal pay, the vertical and horizontal segregation of the labour market, education, science and research, the reconciliation of work, private and family life, and persistent prejudices and stereotypes about gender roles in society).* Key gender equality events in 2009 focused on the issue of the political representation of women, activities associated with the Czech Republic's Presidency of the EU Council[259] and the production of an updated version of the Government Priorities and Procedures in Promoting Equal Opportunities for Women and Men.[260] Institutionally, within the Government the body responsible for pursuing these issues is the Government Council for Equal Opportunities for Women and Men.[261]

In September 2009, Factum Invenio conducted a survey on equal opportunities among men and women.[262] In 2009, the survey, which has been conducted for eight years, noted a record number of claims that women have less opportunity than men to receive equal pay for equal work; almost three quarters of the population agree that this is the case. The majority of the Czech population also believes that both men and women should be represented in management and decision-making bodies and councils established by the State, the Chamber of Deputies or the Senate. Men and women should make equal contributions to the bringing-up and care of their children; housework should be divided so that men and women have the same amount of free time for leisure and relaxation. Most of the public believes that the Government would work better if it had more women.[263]

In a survey which set out to identify the situation faced by mothers of children up to ten years old (605 respondents), 54% of respondents reported that they had personally encountered discrimination based on their parenthood or motherhood, and 70% of respondents knew of someone within their social circle who had personally experienced or been exposed to discrimination on account of their parenthood. In relation to potential employers, most commonly women are asked in job interviews about the number of children they have and their childminding arrangements (63%), they are not recruited on account of their parenthood

[258] See http://www.vlada.cz/cz/clenove-vlady/ministri-pri-uradu-vlady/michael-kocab/rovne-prilezitosti-zen-a-muzu/dokumenty/souhrnne-zpravy-o-plneni-priorit-a-postupu-vlady-pri-prosazovani-rovnych-prilezitosti-zen-a-muzu-1998---2007-39251/

[259] See Section I.3.4.1.

[260] These activities stem from the document "Government Priorities and Procedures in Promoting Equal Opportunities for Women and Men for 2009", which is updated annually. See Government Resolution No 964 of 20 July 2009.

[261] See Section I.2.

[262] Survey commissioned by the Office of the Government for the Government Council for Equal Opportunities for Women and Men.

[263] Prepared according to information from the Government Council on Equal Opportunities for Women and Men.

(actual or potential) (43%) and they are not permitted anything less than full-time hours (35%).[264]

Experience of legal assistance provided by NGOs indicates that, in practice, multiple discrimination is common, particularly the combination of discrimination on grounds of sex and age (women in the 50+ age group). Discrimination on grounds of sex has also been experienced in this age group by men - often, however, the reasons leading to discrimination are different.[265]

In 2009, the results of a Charles University survey on sexual harassment in universities were published.[266] This research pointed out the dangers of sexual harassment, which has severe negative consequences for those who are targeted. At universities, sexual harassment is not perceived as a problem (it is "invisible"). Yet the research showed that the victims number hundreds of students (78% of students reported that they had experienced various types of behaviour which could be characterized as sexual harassment). The survey's conclusions include a challenge to universities to begin actively rejecting sexual harassment and taking concrete measures to reduce its incidence. A guide was published for the management of universities and for teaching staff which gives instructions on how to recognize sexual harassment, the situations in which it occurs and the options available to schools to prevent or address them.[267]

6.3.1 Political representation of women

The share of women in the Chamber of Deputies currently stands at 18.5%, with 17% in the Senate and 17.5% in regional assemblies. In terms of female representation in the legislature, the Czech Republic is now ranked 78th in the world. These figures fail entirely to reflect the number of women in society and are also inconsistent with the numbers of women registered in political parties' membership bases.

Further to an initiative of the Government Council for Equal Opportunities for Women and Men, the Government imposed on the Ministry of the Interior to draw up draft legislative changes that would ensure a minimum 30% share of both women and men in electoral lists for elections to the Chamber of Deputies, regional assemblies and the Prague City Assembly. The draft changes are planned for discussion by the Government in 2010.

According to a public opinion poll carried out in 2009 by the Public Opinion Research Centre (CVVM), increasing numbers are convinced of the usefulness of female involvement in public life; 90% of respondents expressed this belief in 2009, as opposed to just a quarter in 2004. There has also been a steady rise in support for the introduction of quotas for political parties' electoral lists (58% in 2009, as opposed to 35% in 2006).[268]

[264] The research by Ipsos – Tambor was commissioned by Gender Studies.
[265] Prepared from information provided by Gender Studies, o.p.s.
[266] The research took place in 2008–2009. It entailed a questionnaire survey involving more than 800 people and in-depth interviews with 40 students.
[267] This guide includes specimen measures which could be taken by universities to prevent and address sexual harassment, and a model sexual harassment complaint.
[268] The survey was commissioned by the NGO Forum 50%.

6.3.2 Case law

Since the Antidiscrimination Act entered into force (1 September 2009), no information has yet been forthcoming about any judicial decisions concerning discrimination on grounds of sex assessed under the provisions of the Antidiscrimination Act.

In 2006, the Czech courts heard the first case of discrimination on grounds of sex under employment law. In March 2006, Mrs. M.C. brought an action against Pražská teplárenská for alleged discrimination during the selection process for the position of financial director. In September 2006, the court of first instance dismissed the action; this ruling was upheld by the court of appeal in 2007.

The applicant, M.C., then lodged an appeal on a point of law with the Supreme Court. The court heard the case in 2009, and on 11 November 2009 found[269] that there had been an error of law because the lower courts erred in the matter of the equal treatment of the candidates. The Supreme Court takes the view that, compared to the other candidates, the applicant had been disadvantaged in her access to the work of the financial director and therefore (applying Section 133a(1) of the Rules of Civil Procedure) it was up to the defendant (Pražská teplárenská) to prove that it had made the distinction for reasons other than prohibited discrimination. The lower court had not addressed this issue, and, in this respect, its conclusions that the action was unfounded could not have been upheld in the Supreme Court's opinion. The appeal court's ruling was annulled and the case was referred back to the municipal court for completion.

6.4 Sexual orientation

In May 2009, the CVVM[270] conducted another survey on public attitudes to the rights of gay couples.[271] Tolerance of those with a different sexual orientation was examined by asking respondents for their opinion about their surroundings.[272] The survey found that more than half of respondents (55%) did not think that their surroundings were particularly tolerant, and accepted that "coming out" could lead to certain difficulties. On the other hand, just over a third of people considered their surroundings to be tolerant (35%).

Almost three quarters of people think that gays and lesbians should have the right to enter into registered partnerships (73%). Less than half of the population believes that they should also have the right to marry (47%). Support is lowest for their right to adopt children (27%). While support for registered partnerships has grown over the years, support for marriage, after a slight decline, has more or less returned to the state in 2005 (a slight 5% higher than then). Support for the adoption of children remains low, with a two-year slump in 2007 and 2008. On the other hand, the data indicate an approximately 10% decrease in the number of people who totally reject gay and lesbian adoption. This suggests a rise in the number of those who are undecided. Factors which, to some extent, influence the attitudes of the Czech public include age, living standards and personal experience of gays and lesbians. The rate of disagreement with such rights increases with age and declining living standards. People who

[269] Judgment No 21Cdo 246/2008.
[270] Public Opinion Research Centre, Institute of Sociology, Academy of Sciences.
[271] The sample studied comprised 1,038 Czech inhabitants aged at least 15 years. The research instrument was a standardized questionnaire.
[272] "Imagine if someone in your town or village admits to his homosexuality. Do you think that it will or will not cause him problems to live side-by-side with other people in your town or village?"

personally know members of sexual minorities are more likely to declare their support for those rights.

TABLE No 5: Selected rights of gays and lesbians ("Homosexual women and men should have the right...") - comparison over time (%)
Note: The remainder taking the tally up to 100% for the individual items in each year is "don't know".

	2005 yes/no	2007 yes/no	2008 yes/no	2009 yes/no
to enter into registered partnerships	62/30	69/24	75/19	73/23
to enter into marriage	42/58	36/57	38/55	47/46
to adopt children	28/72	22/67	23/65	27/63

(source: CVVM, 2009)

In 2009, 202 couples entered into a registered partnership.[273] The Brno-střed Borough Authority, especially its registry, as the body responsible for keeping records of Czech nationals' registry events (births, marriages, deaths and, more recently, registered partnerships) abroad, recorded five registered partnerships entered into by a Czech national abroad in 2009.

6.4.1 Uneven situation in the Registered Partnership Act when waiving documents for recognized refugees and beneficiaries of subsidiary protection

In 2009, the Committee on Sexual Minorities of the Government Council for Human Rights drew attention to Section 25(5) of the Registered Partnership Act.[274] Section 25 sets out which documents are needed to enter into a partnership. The registry office may waive some of these documents, if there are severe obstacles to overcome in procuring them (Section 25(5)). However, the waiver of documents does not cover those who have been granted subsidiary protection and those who are in the asylum procedure.[275] This means that the possibility of seeking a waiver of documents required for entry into a registered partnership is open only to those who have been granted international protection in the form of asylum. Persons who have been granted international protection in the form of subsidiary protection are not entitled to seek the waiver of documents required for a registered partnership. *Nevertheless, beneficiaries of subsidiary protection, like recognized refugees, are unable to submit the necessary documents. This places them in an irresolvable stalemate that prevents them from entering into a registered partnership. Although these cases are rare in practice, according to NGOs they have already occurred.[276] In this light, this flaw in the law needs to be remedied with the addition of the concept of subsidiary protection or with the replacement of the term "asylum" with the term "international protection".*

[273] For comparison: from 1 July 2006 to 31 December 2006, 235 couples entered into registered partnerships, in 2007 there were 252 couples and in 2008 there were 227 couples. Data from the Ministry of the Interior.
[274] Act No 115/2006 on registered partnership and amending certain related laws, as amended.
[275] Section 25(5) of the Registered Partnership Act reads: "The competent registry office may, at the request of a person who wishes to enter into a partnership and has been granted asylum, waive the submission of the documents listed in paragraph (1)(a) to (f) if the procurement thereof would pose severe obstacles difficult to overcome."
[276] At a meeting of the Committee on Sexual Minorities, the UNCHR representative referred to this fact.

6.4.2 Prohibition of adoption by registered partners in the Registered Partnership Act

In June 2009, the Government Council for Human Rights (the "Council") approved an initiative of the Committee on Sexual Minorities proposing the repeal of Section 13(2) of the Registered Partnership Act,[277] under which a registered partner cannot adopt a child. *The Council believes that a ban on individual adoption for those living in a registered partnership is in conflict with the constitutional order of the Czech Republic because it constitutes prohibited discrimination on grounds of sexual orientation.* The Registered Partnership Act establishes unequal treatment between those who enter into a registered partnership and other persons (i.e. persons living outside a partnership or marriage and persons living in marriage).[278] The Council proposes that the Government adopt a resolution enjoining the Minister for Justice to prepare an amendment to the Registered Partnership Act, the Families Act, and other related laws. This amendment would allow individual adoption by persons living in registered partnerships.

Under the Families Act, anyone may become an individual adoptive parent regardless of their sexual orientation. In spite of this, entry into a registered partnership automatically precludes adoption without examining the ability of an individual to raise a child. *If registered partners are the only group of people excluded from access to individual adoption, sexual orientation is obviously a distinguishing criterion here. Registered partnership is an institute intended for persons of the same sex and, although, when persons enter into a partnership, their sexual orientation is not investigated, there is every reason to presume that in the vast majority of cases these persons are of a homosexual or bisexual orientation.*

The Council's initiative does not challenge the fact that the primary consideration in any procedure relating to the adoption of children must always be the protection of the best interests of the child in accordance with Article 3(1) of the Convention on the Rights of the Child. Adoption is a legal concept of "alternative family care" which is primarily intended to fulfil the need for the proper raising of children who cannot be raised within their own family. The prerequisite for adoption is that the adoption must be for the benefit of the child and must create conditions for the all-round emotional, intellectual, physical and moral development of the child. The preference is fundamentally for joint adoption by a married couple and the integration of the child into a complete family. By contrast, an individual adoption of a child (by a single adoptive parent) is legally permitted only exceptionally in specific cases.

6.4.3 Prevention of blood donations by gay men

In 2009, the Committee on Sexual Minorities highlighted the fact that the rules governing blood donations exclude, from the range of potential donors, "men who have sex with men" ("MSM"). Advice for Blood Donors ("Advice"), which every potential donor is required to read, includes risky sexual behaviour among the factors increasing the risk of diseases transmitted by blood. The Advice classifies sex between men as a risky type of sexual

[277] Act No 115/2006 Coll., on Registered Partnership, as amended. Section 13(2) of the Act reads: "A partnership, while in existence, shall preclude adoption of a child by either of the partners."

[278] This legal opinion is based on an analysis prepared by a legal theorist at the Law Faculty of Charles University, Jan Wintr, based on a commission from the NGO Genderstudies o.p.s. The analysis concluded, that Section 13(2) of the Registered Partnership Act, under which a registered partner cannot adopt a child, is manifestly in contradiction to the European Convention on Human Rights and Fundamental Freedoms and to the constitutional order of the Czech Republic because it constitutes prohibited discrimination on grounds of sexual orientation in relation to the right to the protection of family and private life. See http://www.feminismus.cz/download/analyza_adopce_final.pdf.

behaviour (other types of risky sexual behaviour include sexual intercourse with a person engaged in prostitution or with a person who uses intravenous drugs). Blood donors belonging to any group classified as risky by the Advice are required to indicate this fact in the Questionnaire for Blood Donors (this questionnaire is completed by all potential blood donors). Self-classification in a risk group logically leads to the exclusion of the donor. Both of these documents, i.e. the Advice and the Questionnaire, are issued by the Transfusion Medicine Society of the Jan Evangelista Purkyně Czech Medical Association.[279]

Treatment with blood and blood components, including the donating of blood, is governed by directives of the European Union, Council of Europe documents and national legislation.[280] These regulations require that blood products be manufactured exclusively from blood obtained from safe blood donors. Under the law, the transfusion service is responsible for the final acceptance or rejection of a blood donor, based on a risk assessment drawing on regularly updated epidemiological data. The transfusion services set parameters minimizing the risk of the transmission of infectious diseases. These parameters include risky behaviour leading to an increased risk of the transmission of, for example, HIV/AIDS – inter alia, frequently swapping random sexual partners, sexual intercourse with a person engaged in prostitution and sex between men. Homosexual behaviour in men is listed here because of the high proportion of HIV transmission through homosexual intercourse between men.[281]

The need to ensure the highest possible quality of blood is not disputed, but a blanket safety measure excluding all gays, including those who do not behave in a risky way and who live in a stable partnership, is problematic. This measure indirectly supports one of the prevailing stereotypes about sexual minorities, i.e. increased promiscuity in the gay community. Therefore, an amendment to the Advice needs to be considered, in consultation with doctors and experts, in order to target risky behaviour and risky practices more.

6.4.4 March for the rights of LGBT persons

The second march for the rights of LGBT persons in the modern history of the LGBT movement took place on 20 June 2009 in Tábor, and went by the name of Queer Parade.[282] The march, which passed through the town of Tabor, was attended by about 350 people.

The assembly attracted the attention of the Workers' Party,[283] whose supporters held their own parallel meeting elsewhere in Tábor. Both events were policed, thus preventing clashes and fights. *The work by the Czech Police Force and anti-conflict teams here was flawless.*

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[279] http://www.transfuznispolecnost.cz/index.php

[280] Directive No 2004/33/EC of 22 March 2004 implementing Directive No 2002/98/EC of the European Parliament and of the Council as regards certain technical requirements for blood and blood components, Resolution CM/Res (2008)5 on donor responsibility and on limitation to donation of blood and blood components, adopted by the Committee of Ministers on 12 March 2008 at the 1021st meeting of the Committee of Ministers, Act No 378/2007 Coll., on medicinal products and amending certain related laws, secondary legislation such as Decree of the Ministry of Health No 143/2008 of 15 April 2008 laying down more detailed requirements for ensuring the quality and safety of human blood and components thereof (the Human Blood Decree).

[281] In the Czech Republic as at 31 December 2009, there were 1,315 cases of HIV positive persons, of whom 1,047 were men. HIV transmission occurred in 55.8% of cases by homosexual intercourse, in 30.4% of cases by heterosexual intercourse.

[282] The event organizer was CESTA, which collaborated with the NGOs Jihočeská Lambda and eLnadruhou.

[283] The chairman of the Workers' Party went so far as to describe the event in the media as a "manifestation of homosexuals in public" - see www.lidovky.cz.

Based on the level of media coverage and the smaller attendance, the march in Tábor received less attention than the Rainbow Wave organized in Brno in 2008. It was the organizers themselves who came up with the idea of the progressive advocacy of LGBT persons in smaller towns – the first of which was Tábor. The question is whether, in the future, this event should be exploited as an opportunity to raise public awareness of the continuing shortcomings in the legal status of the gay, lesbian and transgender minority.

6.5 Discrimination of grounds of race or ethnic origin

In 2009, the Czech Trade Inspectorate investigated 10 complaints of suspected racial, ethnic or national discrimination. Of these, five cases involved the refusal to sell goods, the restricted sale of goods, or the refusal to serve the complainant, and two cases concerned the application of dual pricing. Only one case concerned the alleged discrimination of Roma. In none of these 10 cases was the suspected breach of law established or confirmed.

Specific actions by individual members of the Government in combating extremism are explained in more detail in the Strategy to Combat Extremism.[284] Significant activities in the fight against racism are carried out the Office of the Minister for Human Rights. Among other things, the Minister initiated an agreement between constitutional officials (members of the Government and Parliament) on a common position against rightwing extremism, where politicians pledged not to abuse populist themes in the pre-election campaigning and to support activities leading to the suppression of racist and extremist attitudes. The agreement was signed, inter alia, by the former President Václav Havel.[285]

6.5.1 Case law

The Supreme Court annulled a judgment by the High Court in Olomouc in a case concerning "club cards" and referred it back to that court for further proceedings. The litigation (an action for the protection of privacy under the Civil Code) arose from a visit to the defendant's establishment.[286] The applicant, together with other acquaintances, all Roma, visited the hospitality facility operated by defendant at night-time. However, the establishment's staff refused to serve them on the grounds that they had no club card and that admission was restricted to club members only. After a while, a group of "white" people arrived at the establishment who also did not have club cards, but the staff in the establishment served them without asking for such cards. Police subsequently discovered that the other guests present did not have club cards either. In 2005, the Regional Court in Ostrava ruled that the defendant had committed prohibited discrimination on grounds of race. This decision was upheld by the High Court in Olomouc in 2007, but the amount of financial compensation for non-pecuniary damage was reduced from the originally awarded CZK 50,000 to CZK 5,000. The applicants lodged an appeal against this on a point of law, where they referred in particular to the "staged" circumstances in which the discriminatory act occurred.[287] According to the applicants, "*a testing person is not obliged to steel himself against anticipated interference with his right to human dignity, which is true even where the applicants, based on previous experience, knew it would be highly improbable that they would be served by the*

[284] Government Resolution No 572 of 4 May 2009.
[285] Other activities specifically related to the Roma minority are contained in reports on the situation of Roma communities in the report on the activities of the Agency for Social Integration.
[286] Judgment No 30 Cdo 4431/2007.
[287] This was situational testing, i.e. the applicants voluntarily subjected themselves to discriminatory conduct.

establishment in question. The principle that should be respected here is that nobody is obliged to retreat before or steer clear of unlawful conduct." The Supreme Court stated that, in its opinion, "*in the present case there was essentially no reason to take into account any personal motive on the part of the individuals if they themselves were exposed to potential discriminatory conduct. Indeed, the fact is that not even these circumstances compromise the right to the protection of personality, and or negate the unlawfulness of any interference with the personal integrity of such a person.*"[288] However, the Supreme Court's decision (along with the preceding judgment of the High Court in Olomouc) was annulled by the Constitutional Court in 2010.[289]

The Supreme Court also re-examined the "case of the baseball bat". It refused an appeal on a point of law lodged against a decision of the Municipal Court in Prague under which that court had dismissed an action brought by the applicant seeking his right of privacy. According to the applicant, the interference with this right, and thus the impairment of his dignity, occurred in a restaurant he had visited as, at the time, a statue of a figure holding a baseball bat with the inscription "For Gypsies..." was on display in a public area. In the proceedings before the general courts, it was concluded that the statue had not been installed in the restaurant with the intent to cause harm or loss, but was intended as a joke (indeed, the evidence taken showed that this was how it was perceived by the public). Therefore, there could not have been unlawful interference with privacy rights. The applicant's subjective feeling that the sign in question had defamed and humiliated him was irrelevant in respect of the protection of privacy according to the general courts. The Supreme Court held that the reasons pleaded in the appeal on a point of law had not occurred, and added that the impugned judgment could not be characterized as a decision of fundamental legal significance in terms of the merits of the case.

6.5.2 Crimes motivated by racial hatred

Of the 332,829 crimes recorded in the Czech Republic in 2009, 265 had an extremist subtext. Since 2005, the Police Presidium of the Czech Republic has also processed statistics on crimes with anti-Semitic overtones. In 2009, 48 crimes with anti-Semitic overtones were registered, a rise of about 78% compared to 2008 (2008: 27 crimes). These crimes accounted for 18.1% of all crime with an extremist subtext.

In 2009, the extremist scene was characterized mainly by public gatherings of supporters of extremism from the left-wing and right-wing spectrum. Most gatherings involved right-wing extremists. The right-wing extremist scene is mainly characterized by a structure of "leaderless resistance", which was demonstrated at some right-wing meetings where the convenors of the events, belonging to one grouping, subsequently invited supporters of other right-wing factions to their events. Another trend in 2009 was for the right-wing extremists of neighbouring countries to take part in gatherings.[290]

The public appearances by right-wing extremists can be characterized as an effort to raise their profile in the political arena in order to increase membership and enter the formal political scene. In 2009, the Workers' Party (Dělnická strana) was perceived as the only

[288] The same issues are also addressed by the Constitutional Court in the above-cited Decision Pl. ÚS 37/04 of 26 April 2006.
[289] II. ÚS 1174/09 of 13 January 2010.
[290] The persons concerned were leaders of right-wing extremism in Germany, Austria, the Slovak Republic and Sweden.

officially registered body on the right-wing scene. In 2009, this political party's rallies were also attended by supporters and members of the extremist scene from the ranks of National Resistance (Národní odpor) and the Autonomous Nationalists (Autonomní nacionalisté).

A general phenomenon among right-wing extremists is their efforts to cooperate on common goals. In 2009, right-wing extremists continued their attitude towards the security forces, particularly the Czech Police Force, as resistance against the system. In terms of new forms of extremism, there has been an important migration in extremist ideas to online social networks, represented primarily by www.facebook.com, www.lide.cz and others, where the personal characteristics and opinions of supporters of the far right have been presented. This phenomenon is the result of interest in extremist ideas among ever younger generations viewing the Internet as an integral part of their lifestyle.

One of the most serious cases of extremist crime committed in 2009 was the arson attack on the house of a Roma family in Vítkov. The offenders were caught and criminal proceedings are under way.

In the context of the elections to the European Parliament in 2009, representatives of the National Party (Národní strana) were prosecuted for a pre-election spot intended for broadcasting on Czech Television. Furthermore, criminal proceedings in connection with the baptism of the book "A Final Solution to the Gypsy Question" (Konečné řešení otázky cikánské) in Lety u Písku, on the site of a former internment camp for Roma in the Second World War, prepared by a National Party representative, are progressing.

6.5.3 Neo-Nazi concerts

In 2009, 18 White Power Music (WPM) concerts were held. Compared with 2008, the number of such concerts declined (2008: 34 WPM concerts). It should also be pointed out that most of these events (17 concerts) took place in the first half of 2009 (up to the end of May 2009). The nationwide implementation of the "POWER" operations by the Organized Crime Service hit the right-wing extremist and neo-Nazi scene hard, arresting right-wing extremists and conducting house searches. These operations incapacitated the organization of concerts. In the second half of 2009, only one WPM concert was held (on 25 July 2009 in Plzeň) which was halted by the Czech Police Force as soon as it began. By the end of 2009, several smaller events were planned to include performances by WPM bands; all these events took place without live performances by these groups.

Another trend has emerged in the organization of WPM concerts in recent years – the assistance of a hired legal representative at the concert venue to draw up various event-related contracts during the preparation of the concert. These contracts were prepared to ensure significant financial compensation for the organizing movement in case the event was cancelled by the party hiring out the premises or by other parties who had nothing to do with the movement. The legal adviser at the site of the concert site was also tasked with guaranteeing the legality of the event and protection against entry by the Czech Police Force to the event premises. The presence of a legal representative was also to guarantee to attract higher numbers of participants to the event. The operations undertaken by the Organized Crime Service against concert organizers showed that the legal representative did not, or was unable to, evaluate the texts played during the concerts, and therefore not even the presence of the legal representative could prevent public expressions of support for a movement seeking to suppress human rights and freedoms.

Another trend is the organization of such concerts abroad in places with excellent access for Czech participants. Such venues were found in Poland and the Slovak Republic.[291] With a few exceptions, these concerts were organized directly by Czech neo-Nazis, in many cases without the participation of local neo-Nazis. As these concerts were organized without the knowledge and presence of local police, they were much more radical. At more recent concerts, a public collection was held for those accused of attacking the Roma family in Vítkov, and their act was given prominence at these concerts. A specific foreign venue for a WPM concert of Czech neo-Nazis was Ireland, to which the Czech band Conflict 88 was invited.

In 2009, there was also considerable interest in mass participation at the foreign WPM concerts traditionally held in Italy and Hungary in particular. Attendance at Italian concerts organized by the neo-Nazi organization "Veneto Fronte Skinheads" was compounded by performances by the Czech WPM band Vlajka and the Slovak band Juden Mord. These concerts were an opportunity for the Czech company Hate core shop to distribute CDs, DVDs and clothing. However, international police cooperation prevented such distribution, thus heavily stemming cash flow to neo-Nazi organizations.

6.6 Discrimination on grounds of age and status and the rights of the elderly[292]

The elderly remain one of the most vulnerable groups. Many of them are objectively in a situation where, as a result of their advanced age and, frequently, health problems, they suffer from feelings of helplessness and irritability. Many are unable to keep up with modern society and therefore suffer from inadequate and flawed information.

Problems occur in areas such as legal representation and proceedings before courts. In the vast majority of cases, in court the elderly are ignorant of current legislation, have naive approaches and ideas, and are under stress and scared; this is accompanied by common ailments such as deafness, poor eyesight, and physical difficulties.

The particular situation faced by the elderly is unfortunately not always reflected in the approach taken by some judges to this group. *It would therefore be advisable for the Ministry of Justice, and where appropriate the Judges' Union, to warn the courts of the need for a more sensible and sensitive approach to the elderly. In this regard, it is also possible to communicate with nongovernmental organizations that are dedicated to the rights of older people, and where appropriate with the Government Council for Seniors and Population Ageing.*

A similar problem was found among lawyers who represent the elderly ex-officio. *Choice of lawyers providing services to the elderly should be conducted with the utmost attention and taking into account the above specific characteristics of the elderly. Ministry of Justice and the Czech Bar Association should assess the quality of legal services provided free of charge also from the perspective of the rights of the elderly.*

Domestic violence against the elderly is of incidence consistent with previous years. The slight increase in the number of cases could be due to the increased awareness of older people.

[291] Krzanowice 24 January 2009, Rajcza 28 February 2009, Grodzany 30 May 2009, Bratislava 13 June 2009, Ustron 19 September 2009 and Visla 26 September 2009.
[292] Prepared with information from the NGO Život 90.

They are better at identifying this phenomenon and they know where to turn for help or advice. The most common cases concerned intergenerational abuse; here there was also a rise in the opposite direction: in 2009, the level of violence perpetrated by the elderly against children was three times the figure reported for 2008.

Another problematic aspect of the status of the elderly was identified in residential healthcare and social facilities. For more details, see Section II.3.7.

6.7 Persons with disabilities

6.7.1 Barriers

For persons with disabilities one of the biggest problems remains barriers in buildings and how to overcome them. This makes it difficult for these persons, for example, to access courts, because most of the buildings where courts are housed are not wheelchair-friendly and are historical buildings protected under the National Heritage Act. The accessibility of the court buildings is currently being reviewed by the Czech National Disability Council in cooperation with the Ministry of Justice. Technical issues should subsequently be addressed to make courthouses more accessible (at least in part – the chamber, entrance and lavatories).

Certain disabled-access problems persist in the housing sector. This is mainly governed by the "Barrier-free Decree".[293] Access to residential buildings should be improved in particular by the following aspects:

- blocks of flats should always be equipped with a lift (it is currently obligatory to install a lift from the third floor of these buildings)
- the building layout should allow for the use of all common areas by persons with reduced mobility and orientation (today this requirement is limited to the building entrance. Dryers, bin areas, basements, etc., need not be accessible)
- the layout of a dwelling should be designed to allow the free passage of a wheelchair, at least to a minimum extent.

The improved accessibility of dwellings and blocks of flats would clearly have a positive economic and social impact. There would be no need to build "special" types of expensive adapted housing, and people would not have to move and sever social contact with familiar surroundings at a time of poor health, due either to worsening disease or post-traumatic stress.

6.7.2 Employment and industrial relations

Persons with disabilities have significantly less chance of getting a job than other population groups. This clearly documented by statistical data. While there are dozens of applicants per vacancy in the most depressed areas, among applicants with disabilities the figure ranges from a hundred to a thousand candidates, in some cases over a thousand.

The current situation in the employment of this target group highlights the need for an overall review of the employment support system, including an evaluation of the impacts of related systems. For these reasons, in 2009 the Ministry of Labour and Social Affairs established an expert panel to address, gradually and conceptually, the inclusion of persons with disabilities

[293] Decree of the Ministry for Regional Development No 398/2009 on general technical requirements ensuring the barrier-free use of structures.

in the labour market; it dealt with issues such as definition the difference between social therapy and work, disability classification, the potential use of supported employment, and instruments to support the employment of persons with disabilities under the Employment Act. A comprehensive solution for the employment of people with disabilities will be addressed by the systemic project "Increase in the effectiveness of the employment support system for persons with disabilities in the Czech Republic".[294]

Information provided by the Czech National Disability Council showed that many employers where more than 50% of the headcount comprises employees with disabilities "found" a way of reporting "actually incurred labour cost of an employee who is a person with a disability" on a monthly basis in mandatory documentation submitted to the public employment office, but using a different method[295] for the labour costs incurred in relation to the actual payment of monthly wages. Highly specific labour relations were found among employers claiming a disabled employee allowance under Section 78 of the Employment Act.[296]

Two basic models of employer behaviour towards employees with disabilities can be identified which "circumvents" the Employment Act in some way. One is the conclusion of "agreements" in which the employee, for various purposes, provides the employer with part of his/her monthly wage. The second is the payment of part of the monthly wage to the employee in the form of non-monetary consideration (in kind).

In this system of agreements on labour-law relationships, the employer enumerates the base pay in the employee's wage assessment. The wage assessment does not normally exceed CZK 8,000 per month. Arguably, this is done in connection with the fact that an allowance of CZK 8,000 per month may be paid to employers who meet the statutory conditions.[297] In a second document of the "agreement", an employee with disabilities "voluntarily" surrenders part of his/her monthly wages to the employer. Under the agreement, the employer receives, for example, CZK 2,000 as a "*financial donation towards the running costs of a disabled training project or sheltered workshop social services*".

[294] This project will include analytical work, draft methodology, the preparation of systemic changes and educational materials. The aim is to improve the integration of people with disabilities into the labour market and ensure the highest possible level of effective assistance by individual institutions, in particular labour offices.

[295] Section 78(2) of the Employment Act reads: "(2) An allowance shall be payable to the employer monthly in the amount of actually incurred payroll costs in respect of an employee who is a person with a disability, including insurance and social security, the contribution to the national employment policy and public health insurance contributions made by the employer from the employee's assessment basis, up to a maximum of CZK 8,000.".

[296] Act No 435/2004, as amended. The State financial allowance to support the employment of persons with disabilities is an allowance which may be claimed by employers where more than half of the headcount comprises persons with disabilities. Persons with disabilities, in respect of whom employees may seek a financial allowance under Section 78 of the Employment Act, are persons recognized by a social security body as persons classified with Level Three, Level Two or Level One disability and persons recognized as health impaired.

[297] Employers wishing to receive the allowance under Section 78 of the Employment Act submit to the competent authority all relevant documents regarding employees for whom an allowance of CZK 8,000 is sought. Employees receive "actually incurred payroll costs in relation to an employee who is a person with a disability".

Other documented cases of employer-employee "agreements" are training agreements.[298] The Czech National Disability Council has identified a number of circumstances suggesting that this training is fictitious and serves an ulterior motive:
- the conclusion of the employment contract is conditional on the conclusion of a training agreement,
- the courses must be taken only by employees who are registered as persons with disabilities,
- courses do not differ depending on the existing expertise or qualifications of the employee,
- the courses are not accredited; certificates are not awarded at the end,
- the course duration coincides with the length of employment,
- the employer does not run controls on whether an employee actually attends training.

Another type of "agreement" is an agreement covering the extra costs of creating conditions for work by disabled persons. Employees with disabilities make a financial contribution of a set proportion of expenditure to cover the extra costs of creating conditions conducive to the performance of work by employees with disabilities.

The second model in the unconventional formation of labour relations between employers and employees with disabilities is the payment of part of the monthly wage in a standard cash form and another part of the monthly wage in kind. It should be noted that the Labour Code allows this method of payment.[299] However, the Czech National Disability Council discovered that employees were paying for services out of their monthly wages which they were unable to use. Another problematic aspect of this practice is that services used by employees would be paid for by the employer only on completion thereof. Thus, if employees do not use vouchers for services, the employer logically need not pay the value of the vouchers to the contractor.

In the above-described employment relationships, employees with disabilities find themselves in a situation where they are open to abuse by the employer because their status of persons with disabilities enables the employer to obtain state financial aid and because they tend to work for supported employers (i.e. operators of sheltered workshops). Ultimately, employees with disabilities are paid a monthly wage of half to one third less than that declared in the employment contract between the employer and employee.

These problems are addressed by a partial amendment to the Employment Act, prepared by the Ministry of Labour and Social Affairs, with particular restrictions on the opportunity to exploit the allowance for the support of the employment of people with disabilities. Under the proposal, the allowance is to be reduced by, inter alia, in-kind wages and wage deductions intended to satisfy the employer's outlay in cases where they are beyond the realm of public decency. This means that these costs will no longer be covered by the employer contribution; only wages actually paid, along with the mandatory statutory charges, will be reimbursed to the employer. It can therefore be assumed that employers will seek the maximum available amount of contribution and will use this full amount for the actual wages of employees with disabilities.[300]

[298] Employees are required to cover the cost of training courses, e.g. computer courses, language courses, legal courses, etc., from their wages every month.
[299] Section 119 of Act No 262/2006, the Labour Code, as amended.
[300] As at the date of preparation of this Report, the draft is undergoing interdepartmental comment procedure.

6.7.3 Education

Heads of schools across all educational levels are responsible for deciding whether to set up the positions of teaching assistant and personal assistant.[301] In many cases, the Czech National Disability Council found that school heads demand financial supplements from pupils' parents to increase the hours worked by the teaching assistant. A teaching assistant is an educational worker as defined by law and in a school employee under the Labour Code. Payroll costs should therefore be fully borne by the school or the local education authority as the employer. Nevertheless, if a school fails to secure sufficient funds, it often turns to the parents of children with disabilities to contribute to these costs (for example, so that an assistant can be employed full time rather than just part time). This transfers the onus to parents to fund their children's education in a free public (state) school and to take over the Government's task of ensuring that their children have equal access to education. In addition, parents cannot the finance the wages of teaching assistants by drawing on a care allowance as this is intended to cover social services, and neither the school nor the employed assistance is classified as a social service provider.

If the parents of pupils with special educational needs are somehow forced to pay for personal assistance in the teaching of pupils, throughout the primary education system, their status is unequal to that of parents who do not have children with disabilities. A solution would be to increase the motivation of schools to use other sources of financing (a subsidy from the Ministry of Education etc.).

[301] Heads of nursery, primary, special primary, secondary vocational and post-secondary vocational schools can set up the position of teaching assistant for pupils with special educational needs in accordance with Section 16(9) of Act No 561/2004, the Schools Act: "(9) The head teacher of a nursery school, primary school, special primary school, secondary school, conservatory or post-secondary vocational school may set up the position of teaching assistant in a classroom or study group in which a child, pupil or student with special educational needs is educated. For children, pupils and students with disabilities and handicaps, an opinion from the educational guidance facility is necessary."

7. CHILDREN'S RIGHTS

7.1. Vulnerable children

In 2009, the transformation of the system of care for vulnerable children continued.[302] A vulnerable child is a child whose basic needs are not adequately met. The level of need is assessed on a case-by-case basis in accordance with fundamental principles of the Convention on the Rights of the Child. CAN[303] and CSEC[304] syndromes are part of the new social morbidity – child maltreatment. Social determinants of children's health and rights play a further role. It could be contended that every child is, more or less, potentially vulnerable. There are no hard-and-fast boundaries; risk factors are many, and their intensity and development is broad. Attention therefore needs to focus on the potential risks.

The origins of children's vulnerability lie mainly in their family background. This is one of the reasons why the transformation of care for vulnerable children will focus not only on the children themselves, but also, and especially, on families which do not fulfil their basic functions. Both the general public and experts point out that a major deficiency in the agenda of care for vulnerable children is its vertical and horizontal fragmentation among several ministries (the Ministries of Labour and Social Affairs, Health, Education, and the Interior).

In the Czech Republic, approximately 22,000 children live in children's homes, social care homes, childcare institutions, and diagnostic and young offenders' institutions.[305] Of the above number, around 8,000 children are placed into a care facility by court order; the other children are placed into care at the request of their legal guardians. In the Czech Republic, approximately 580,000 children are being brought up in single-parent families.

Child protection agencies are not subordinate vertically, to a competent authority, but horizontally, to the management of local authorities. *As such, the practices of these agencies often differ from one region to another, and procedures are followed which are inconsistent with the interests of the child. In this context, there are no clear work standards for state social care or for the prevention of burnout syndrome.* Standards governing the quality of work with vulnerable children and families are currently being prepared by a working group

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[302] See Government Resolution No 293 of 26 March 2008.

[303] Child Abuse and Neglect

[304] Commercial Sexual Exploitation of Children

[305] According to Section 42(1) of Act No 359/1999 on child protection, as amended, facilities for children in need of immediate assistance provide protection and assistance to children who have found themselves without any care or whose life or positive development is seriously compromised, if those children are physically or mentally ill-treated or abused, or if those children have found themselves in an environment or situation where their fundamental rights are seriously endangered. Child protection and assistance consists of satisfying basic living needs, including housing, and arranging for medical care by a healthcare facility, psychological and other similar necessary care.
According to Section 46 of the Family Act (Act No 94/1963, as amended), a court may, under certain conditions, order the institutional care of a child or entrust a child to a facility for children in need of immediate assistance. Under the above provision, before ordering institutional care the court must examine whether "alternative family care" (foster care) or "family care" can be arranged for the child in a facility for children in need of immediate assistance; this takes precedence over institutional care. If, subsequent to the order of institutional care, the reasons for ordering such care cease to exist, or if foster care can be arranged for the child, the court cancels the institutional care. This provision is quite clear – family care in facilities for children in need of immediate assistance takes precedence over institutional care, regardless of the child's age.

established in November 2009 at the Ministry of Labour and Social Affairs. The activities of the coordination group focus on further strengthening interdepartmental cooperation.[306] One of the reasons the group was formed was the fact that individual ministries' activities, although aimed at optimizing the care of vulnerable children, are often based on differing priorities, methodologies and legislation, and draw on different human and financial resources. *In these circumstances, children find themselves thrust into a system which is good in individual areas, but fragmented and uncoordinated as a whole. The Czech Republic has been repeatedly criticized for this fragmentation by experts and the general public.* Based on the priorities set by the working group, changes need to be made, especially as regards the structure of services, financing, management and coordination, legislation, quality control and maintenance, human resources and data collection. The whole process of planning and implementing transition measures should be accompanied by a policy of openness to experts and the general public and the involvement of the children themselves.

The above-mentioned coordination group, established by the Minister of Labour and Social Affairs, is responsible for processing draft measures for the transformation and unification of the system of care for vulnerable children.[307] The main task of the interdepartmental coordination group in 2009, in the first stage of transforming the system of care for vulnerable children , was to find common principles[308] that are binding on all parties carrying some form of responsibility for the care of vulnerable children.

The core Government document prepared in this field in 2009 was the "National Action Plan to Transform and Unify the System of Care for Vulnerable Children in 2009–2011" (the "Action Plan").[309] The basic objective of the Action Plan is to promote a clear preference for the care of children in a family environment rather than institutional care, and thus reduce the number of children in institutional facilities. The Action Plan aims to enhance preventive work with vulnerable families and reduce the number of children removed from the custody of their parents, to intensify an individual approach and multidisciplinary work at ground level, and to ensure the more active involvement of the children and their families in tackling their situation. It is important to channel more human and financial resources into child protection at municipal offices, which will play a key coordinating role in the coordination of all authorities, agencies and facilities providing assistance to vulnerable families. Finally, legislation, guidance documents and practices at all ministries involved in the system of care for vulnerable children should be harmonized.

The Action Plan also includes an analysis of the current state of play in this field. This analysis will encompass a sub-analysis of the regional network of services for vulnerable children and families: the quantitative and qualitative coverage of services, financial and

[306] In recent years, several guidelines on standards for the care of vulnerable children have been published in the Journal of the Ministry of Health. For example, the guideline on "Activities of childcare institutions and children's homes for children under three years of age" (Journal No 9/2005).

[307] The working group was established on the basis of the document "Analysis of the current situation of institutional care for vulnerable children". The group is composed of representatives of the Ministry of Labour and Social Affairs, the Ministry of the Interior, the Ministry of Education, Youth and Sports, the Ministry of Health, the Ministry of Justice, the Association of Regions of the Czech Republic and the Association of Towns and Municipalities.

[308] "Proposal of measures to transform and unify the system of care for vulnerable children – basic principles" a document prepared in December 2008 by an interdepartmental coordination group, approved by the Government Resolution No 75 of 5 January 2009.

[309] Government Resolution No 883 of 13 July 2009. The Action Plan builds on the Concept of Care for Vulnerable Children and Children Living Outside their own families from 2006 and is the next stage in the transition process initiated by this Concept.

personnel management, quality management and network planning according to the changing needs of the region. The Ministry of Labour and Social Affairs, as the coordinator of the whole process, is currently developing cooperation with individual regions because a number of measures under the Action Plan require the pilot testing of the planned changes, methodologies, standards related to the quality of work and care for vulnerable foster children and families, and steps to transform the system of care for vulnerable children at regional level.

In 2009, progress continued in implementing the Ministry of the Interior project "Early Intervention System for At-risk and Vulnerable Children".[310] The project aims to create optimal conditions for socially corrective intervention by state and public administration and other bodies in situations where children and young people come into conflict with the law or manifest signs of risky phenomena. The project "Transformation and Unification of the System of Care for Vulnerable Children" and the Action Plan dwell on the observations and mechanisms of the Early Intervention System, particularly in terms of the teamwork setup at municipalities with extended powers and the informational interconnection of all institutions and bodies contributing to the care of vulnerable children.

One topic of expert discussion is the concerns raised by the NGO The Fund for Children in Need (Fond ohrožených dětí – FOD), according to which the *future care of vulnerable children will require a sufficient range of social services and professional counselling services specializing in advice on mutual relations between parents and their children, the care of disabled children, children experimenting with drugs, children with behavioural disorders, etc. A long-term problem complicating child protection is the lack of a legislative definition of deadlines for dealing with child-related matters, such as child custody in divorce disputes, the setting of maintenance payments, the tackling of child neglect by parents, the placing of children into foster care, etc., as the absence of time limits leads to unacceptable delays which hurts children in particular. A major foster-care issue is the lack of people interested in foster care and the low number of applicants willing to take on a child of another ethnicity. Future foster parents are mainly concerned about contact with the biological parents.*

In practice, children at risk of abuse or neglect are generally identified with the help of the people who live around them. A particular problem is abuse of children who are still too young for anyone to notice their suffering because, on account of their age, they do not attend any collective facility. In cases where a newborn child is killed or abandoned straight after birth, the mother is very hard to track down. According to the FOD, *the situation evidently needs to be addressed in the future by creating a system to identify vulnerable children via a central information sharing system. The FOD notes that almost every woman visits her doctor at least once during her pregnancy and that a record of her pregnancy therefore exists. Abused children could be traced on the basis of certain recurring diagnoses recorded by doctors; if these diagnoses are recorded on multiple occasions for the same child, even in several healthcare facilities, this pattern should be flagged in the data analysis.*[311]

[310] In 2009, project implementation in eight towns was supported with CZK 7,589,000.

[311] Prepared with information from the civic association The Fund for Children in Need (Fond ohrožených dětí o.s.) intended for the production of the 2009 Report on the Human Rights Situation.

7.2 Ombudsman for children

In 2009, the ministries and advisory bodies of the Government held talks on the establishment of the position of an ombudsman for children's rights ("children's ombudsman"). The establishment of a children's ombudsman is recommended to the Czech Republic by the UN Committee on the Rights of the Child[312] with a view to strengthening the rights of children and to providing better safeguards for the observance of such rights. The Minister for Human Rights prepared a document for the Government which essentially proposes two options on how to strengthen children's rights.

The first of these is the establishment of an independent authority – the ombudsman for children's rights – and provisions governing his/her activities in a special law. This variant envisages the establishment of the autonomous office of ombudsman for children's rights, or ombudsman for children. *The main advantage of this solution is that an entirely new authority could be set up, the functioning and architecture of which can be configured from the outset to ensure that it is accessible to those it is intended to serve – to children*. This "child-friendly" institution should have an insight into children's needs and views and should pay special consideration to them. In order to learn about these opinions, it should take active steps to establish direct contact with children, with children's organizations, and with organizations that defend children's rights. It is also important to explain to children, in a way they can understand, about when and how the ombudsman can help them; a special emphasis must be placed on the needs of very young children, children at risk, children with disabilities and children of limited freedom. Likewise, the mechanism for submitting initiatives and complaints must be adapted to children's needs. *However, the emergence of a new institution would be problematic; there is likely to be duplication and overlapping with the powers and competencies of existing Government authorities. These issues would have to be resolved at the time the new institution is formed; a significant drawback of this option is the high financial cost.*

The second potential way of meeting the UN Committee's recommendation is to establish the children's ombudsman as a dedicated representative of the "general" Ombudsman whose activities will be regulated by an amendment to Act No 349/1999 on the Ombudsman. Members of staff at the Office of the Ombudsman have dealt with children's rights since inception of this authority; a certain number of people here are delegated to specialize in children's rights. The activity report submitted annually to the Chamber of Deputies of the Czech Parliament shows that the Ombudsman addresses children's rights in great detail, particularly in the context of family relationships. *There are still a number of rights which are guaranteed to children by the Convention on the Rights of the Child but which are not systematically monitored to ensure their implementation; the second option should resolve this by extending the Ombudsman's powers.* In order to comply with the recommendations of the UN Committee on the Rights of the Child, it would therefore be necessary to define new powers for the Ombudsman, including the supervision of compliance with the Convention on the Rights of the Child, child advocacy, and the raising of awareness about children's rights. This scope of powers should then be applied to specially listed entities. *The disadvantage of this option is that it does not secure the extra funding associated with an extension to the Ombudsman's powers. Furthermore, an autonomous authority designated solely to monitor*

[312] Recommendation No 17 of the UN Committee on the Rights of the Child concerning the Second Periodic Report of the Czech Republic, recommending that the Czech Republic set up an independent body to oversee and implement the Convention on the Rights of the Child with a mandate to investigate individual complaints by children.

compliance with the rights of children would not be formed; instead, only the competence and staffing of the Office of the Ombudsman would be increased.

No solution was reached on the way forward in establishing the children's ombudsman in 2009. The ministries failed to agree on the particular form of the children's ombudsman from a legal perspective and the powers he/she should wield.

7.3. Child care

In early 2009, the Government approved the recommendation of the Government Council for Equal Opportunities for Women and Men to place collective day care facilities for pre-school children (crèches and nursery schools) in the competence of a single ministry.[313] Following up on this document, the Ministry of Education, Youth and Sports prepared "Opportunities for a Systemic Solution to the Pre-school Children Day Care Agenda" ("Možnosti systémového řešení agendy denní péče o děti do zahájení povinné školní docházky"), approved by the Government at the end of 2009. This document analyses the current state of provision of care for preschool children up to three years and the ways it can be tackled. The comment procedure resulted in a Government-approved task for the ministers concerned[314] to conduct a more detailed economic, social and legal analysis.

In the first half of 2009, the Bill on the Support of Families with Children was submitted to the Chamber of Deputies; this draft legislation contains measures at reconciling professional and family life and at foster care.[315] The proposals include, for example, the provision of child care by a registered provider in his or her own home for a limited fee.[316] Another suggested measure is to support childcare services in the field of a licensed trade in order to expand the range of these types of services provided on an individual basis. A new concept is "mini-schools" – childcare facilities for working parents.[317] A tax-related proposal is the opportunity to classify expenditure on the provision of care for the children of employees as a tax-deductible expense for the employer. [318]

7.4 "Unlawful adoption"

In October 2009, the Government Council for Human Rights endorsed an initiative by the Committee on the Rights of the Child concerning unlawful adoption. This initiative essentially views two situations as unlawful adoption. The first is where adoption is mediated

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[313] See Government Resolution No 223/2009 Coll., of 2 March 2009.

[314] Minister for Education, Youth and Sports, Minister for Health, Minister of Labour and Social Affairs, Minister for Human Rights and Minister for Finance.

[315] A proposal by the Deputies P. Nečas and M. Šojdrová (Press 863). In its first reading in the Chamber of Deputies as at the date of preparation of this Report. Originally this was the Government's proposal for a "pro-family package" - see Government Resolution No 1451 of 19 November 2008. It contained seven measures to support families with children, particularly in reconciling professional and family life and foster care. However, in its opinion the Government expressed its disagreement with the proposal of a group of deputies dealing with the same issue, particularly with regard to the unfavourable economic situation and the impact of the proposed measures on national budget income and expenditure. Nevertheless, the Government conceded that the proposal contains some beneficial measures, especially the concept of "mini-schools" and mutual parental assistance.

[316] This is family-type care provided on an individual basis.

[317] This mini-schools service should be provided in most cases by the employer at the parent's workplace, or by non-profit organizations, municipalities, regions and church bodies.

[318] I.e. operating expenses: operation of healthcare facilities – day nurseries, facilities for education and training, mini-schools, employer contributions to the provision of care for employees' children via an entity other than the employer.

by an entity not legally authorized to do so – this is already punishable under the Criminal Act.[319]

The initiative also discusses cases where the reporting obligation is infringed by a healthcare facility when a newborn is released into care.[320] When releasing newborns into care, healthcare facilities are required to notify the municipal authority of a municipality with extended powers that the mother, after giving birth, abandoned the child in the healthcare facility. Similarly, state authorities, responsible persons, schools, educational establishments and healthcare facilities[321] also fail in their duty to notify the municipal authority of a municipality with extended powers of cases indicating that children require protection under social legal protection.[322] Such negligence can have very serious consequences for the children themselves, yet under applicable law it is classified merely as an administrative offence[323] with a penalty of up to CZK 50,000. *In this respect, the initiative proposes assessing such conduct and its severity in such a way that prevents these specific cases, where the child often ends up in the care of others.*

The second instance of unlawful adoption entails the abuse of the "second presumption of paternity".[324] This is where the parents issue a joint declaration on the determination of a child's paternity, leading to the registration of the male declarant in the child's birth certificate as the father, for an ulterior motive ("fictional fatherhood"). The Government Council for Human Rights is therefore seeking to adopt non-legislative measures which should increase awareness of these violations of children's rights and place more demands on the professionalism of experts working with children and helping families in crisis. The public should also be informed about how to deal with the difficult life situations in which expectant parents and mothers with dependent child might find themselves. The initiative aims to increase demands on the professionalism and ethical approach of experts assisting parents with children in a state of crisis. The initiative is due to be discussed by the Government in 2010.

7.5. Disputes between parents and children, residential care

A long-term problem identified by numerous non-profit organizations[325] is court orders concerning children which do not take into account the best interest of the child within the meaning of Article 3 of the Convention on the Rights of the Child. *Children, especially in disputes between divorced parents, are often placed by forcible execution of a ruling in a "neutral" – usually institutional – environment, are forced into contact with the other parent, or are transferred to the other parent further to a change in the way they are to be raised pursuant to a court order, even if they refuse contact with that other parent. The enforcement of court orders is often extremely traumatic for children and is an experience which could negatively affect their entire lives.* The method of placing children outside a family environment is also considered problematic by the Committee on the Rights of the Child, which is trying to find means of observing children's rights in situations where a child is

[319] Section 169 of Act No 40/2009 Coll.
[320] Sections 10(4) or Section 10a(1) of Act No 359/1999 Coll., on child protection, as amended.
[321] Where applicable, other facilities intended for children.
[322] Section 6(1) of Act No 359/1999 Coll., on child protection, as amended.
[323] See Sections 59 to 59l(1) of Act No 359/1999 Coll., on child protection, as amended.
[324] Section 52(1) of Act No 94/1963 Coll, on the family, as amended: "In other respects, the man whose paternity has been determined by an affirmative statement made by the parents before the registry office or a court shall be regarded as the father."
[325] E.g. Human Rights League, Vulnerable Children Fund.

taken from its family. According to the FOD, *orders placing children in institutional care sever relations not only between parents and the children; children are often placed in very distant institutions, siblings continue to be split up because institutions for children under three years old are in the competence of the Ministry of Health, while institutions for older children are controlled by the Ministry of Education or the Ministry of Labour and Social Affairs.*

There are many reasons why a high number of children are placed in institutional care. The FOD notes that *children continue to be removed from their families* because of the family's material distress; a significant factor here is whether this poverty is associated directly with a threat to the upbringing or positive development of the child. *The court of first instance must decide on an interim measure on the placement of a child, as a matter of principle, without delay, in some cases within seven days of the submission of an application.*[326] *Often, however, the court takes a decision without properly establishing the facts; appeals against such a decision are frequently heard by the appeal court only after a disproportionately long time (often several months).* Under Section 218b of the Rules of Civil Procedure, the appeal court must decide on an appeal against an interim measure concerning childcare arrangements within 15 days of referral.
There is no right of special appeal[327] *against final decisions on the care of a child; therefore, no settled case law exists on a national scale, and flawed final decisions in matters of child custody cannot be changed.*[328]

7.6. Violence against children

The new Criminal Code[329] sets out a number of factual matters relating to the protection of children's rights. It defines a child, for the purposes of the criminal-law protection of victims of crime, as a person younger than 18 years, which fully corresponds with the definition of the concept of the child in Article 1 of the Convention on the Rights of the Child. The Code raises the standard of the criminal-law protection of children against abuse, exploitation, neglect and child trafficking. In the regulation of crimes against the family and children, the criminal penalty for the abuse of a person in one's care[330] has been stiffened, and the constituent elements of this crime have been expanded to include cases where child abuse causes grievous bodily injury or death. The penalty for the neglect of mandatory maintenance[331] has also been increased. The newly formulated constitutive elements of the crime now include endangering a child's upbringing.[332] The constituent elements expressly incorporated a penalty for any act or omission where the offender seriously breaches his/her obligation to

[326] Section 75c of Act No 99/1963 Coll., Rules of Civil Procedure, as amended.
[327] Section 237(2)(b) of Act No 99/1963, Rules of Civil Procedure, as amended: an appeal on a point of law shall be inadmissible in matters covered by the Family Act, except for a judgment on the restriction of deprivation of parental responsibility, or the suspension of the performance thereof, on the determination (denial) of parenthood, or on irrevocable adoption
[328] Section 237(2)(b) of Act No 99/1963, Rules of Civil Procedure, as amended: *an appeal on a point of law shall be inadmissible in matters covered by the Family Act, except for a judgment on the restriction of deprivation of parental responsibility, or the suspension of the performance thereof, on the determination (denial) of parenthood, or on irrevocable adoption*
[329] The Criminal Code (Act No 40/2009) entered into effect on 1 January 2010. See also Section II.2.3.
[330] Section 198 of Act No 40/2009 Coll.
[331] Section 196 of Act No 40/2009 Coll.
[332] Section 201 of Act No 40/2009 Coll. This fact has been linked to threats to "the intellectual, emotional or moral development of the child", using the terminology of the Convention on the Rights of the Child and the Family Act. Cases where this crime is re-perpetrated may now be punished more harshly than before on the basis of the qualified constitutive facts.

care for a child or any other important obligation related to parental responsibility. A new constituent criminal element is prostitution threatening the moral development of children,[333] committed by a person who operates or organizes prostitution in the vicinity of schools, educational establishments or other similar facilities or places reserved or designated for the stay of children or for visits by children. The set of qualified constituent elements for the crime of entrusting the care of a child to another has also been expanded.[334]

The level of protection of the right of children to legal protection against arbitrary interference with their private and family life, as guaranteed in Article 16 of the Convention on the Rights of the Child, has been significantly enhanced by an amendment to the Rules of Criminal Procedure.[335] When disclosing information about criminal proceedings, law enforcement authorities must take particular care to protect the personal data and privacy of persons under 18. Nobody, in connection with a crime committed against a victim, is permitted in any way to disclose information making it possible to identify a victim who is under 18. It is also prohibited to publish visual images, video and audio recordings or other information about a trial or public hearing that would facilitate identification of a victim under 18. Exemptions from these prohibitions are permitted only if the publication of a victim under 18 years is necessary in the search for persons or to achieve the purpose of criminal proceedings, or if the minor victim and his/her legal guardian[336] grants prior written consent to such publication. The Office for Personal Data Protection currently monitors compliance with the ban on publishing information about a victim younger than 18 years, and supervises observance of the prohibition of disclosing information about juvenile offenders over 15 years of age who commit a crime or about a child under the age of 15 years who commits what would otherwise be classified as a crime.[337]

Czech Republic has a substantial number of abused children. *In many cases, television broadcasts and commercials continue to flout the law because, even between six o'clock in the morning and ten o'clock at night, they include elements that morally and psychologically threaten young people.* The Council for Radio and Television Broadcasting may penalize advertisements only if it receives a complaint from someone; however, the general public appears to be very apathetic to these phenomena. An impetus for change in this area could be brought about by the activities of the Committee on the Rights of the Child in connection with the protection of children from the risks associated with the use of alcohol and tobacco. In 2009, the Committee prepared a draft which is now being discussed by the Government Council for Human Rights.

In 2009, the "National Action Plan of the Strategy to Prevent Violence against Children for 2009–2010"[338] was implemented, the concept of which builds on the Council of Europe Programme "Building a Europe for and with Children". In essence, this cross-cutting strategy

[333] Section 190 of Act No 40/2009 Coll.
[334] Section 169 of Act No 40/2009 Coll.
[335] Act No 141/1961, Rules of Criminal Procedure, amended by Act No 52/2009 with effect from 1 April 2009.
[336] Sections 8a, 8b of Act No 141/1961 Coll., as amended
[337] Sections 53 and 92 of Act No 218/2003 on the judiciary in cases involving juveniles. Upon violation of those prohibitions, whereby the child is subjected to unlawful interference with privacy rights, a natural person shall have committed a misdemeanour and a legal person an administrative offence for which the Office for Personal Data Protection may impose a fine of up to CZK 1 million. Where a misdemeanour or administrative offence is committed by the press, film, radio, television, publicly accessible computer network or other similarly effective manner, a fine of up to CZK 5 million may be imposed. For other aspects of this amendment, see also Section II.1.3.1.
[338] The National Action Plan was approved under Government Resolution No 936 of 20 July 2009.

document maps out all activities which are carried out to protect children from violence in all areas and which are part of various concepts, strategies and policies of the Government. The strategy identifies key objectives for all social environments in which children may be at risk of violence.

Under this strategy, in 2009 a Government campaign called "Stop violence against children" took place, under the auspices of the Minister for Human Rights.[339] Before the start of the campaign, sociological research was carried out to gauge public awareness of the existence of violence against children. The campaign was accompanied by the symbolism of the Primer on Violence against Children (Slabikář násilí na dětech). This primer is posted on the website and offers an animated discussion on the most serious forms of this socially undesirable phenomenon. During the campaign, a number of seminars were held with the participation of specialists, Government authorities and NGOs throughout the country. A number of publications on violence against children and its specific forms (e.g. safe use of the Internet by children) were produced. Teaching material on positive parenting ("The path to positive parenting") was filmed. In late 2009, the campaign was expanded to the media (television and radio spots, billboards).

During the Czech Republic's Presidency of the EU, an international seminar was held on child injury prevention – the prevention of violence against children and the promotion of mental health – under the auspices of the WHO, the Minister for Health, the Minister for Human Rights, Všeobecná zdravotní pojišťovna a.s.) [the country's largest health insurer], and Motol University Hospital.

7.7. Commercial sexual exploitation of children

Children on the run from a care institution and children from a socially pathological environment are most frequently exposed to commercial sexual exploitation, with their closest relatives often involved.

In 2009, the Ministry of the Interior followed up on the "Programme to Establish Special Interrogation Rooms for Child Victims and Witnesses" from 2007, which resulted in the establishment and reconstruction of 14 special interrogation rooms for child victims and witnesses throughout the Czech Republic. In 2009, it was also decided to set up an expert coordination group to prepare a plan and the content of training for police officers working with children. The Ministry distributed a poster on child sexual abuse. It focuses on children in the age group of approximately 8–16 years and alerts children to the fact that they have somewhere to contact and seek help from.

The National Coordination Mechanism for Missing Children Searches is designed for serious cases of missing children where the life or health of the child is at risk and is based on the rapid transmission of information about a missing child from the police to the public. The project is planned for launch in the first quarter of 2010. The project launch will be accompanied by a campaign aimed at the general public. The campaign will aim to increase public sensitivity towards the issue of missing children, highlight the existence of the National Coordination Mechanism for Missing Children Searches, and involve the public in cooperation with the Czech Police Force in tracing missing children. The campaign is also

[339] www.stopnasilinadetech.cz. The Government Minister for Human Rights was tasked with the campaign under Government Resolution No 1139 of 3 September 2008 on a national strategy to prevent violence against children in the Czech Republic for the period 2008–2018.

designed to educate the public about the need for family members to report missing children to the police early on.

8. HUMAN TRAFFICKING, FORCED LABOUR AND DOMESTIC VIOLENCE

8.1. Human trafficking and forced labour

Human trafficking, which is also sometimes called modern-day slavery, is considered one of the gravest violations of the human rights of victims and one of the most profitable forms of organized crime. The Ministry of the Interior publishes an annual Report on Human Trafficking in the Czech Republic, where this issue is discussed in detail and provides statistical data.

In 2009, 10 criminal acts of trafficking[340] were identified; seven offences were committed for the purpose of sexual exploitation and three were committed for the purpose of forced labour and other forms of exploitation. The number of persons investigated and prosecuted for human trafficking is also interesting. There was a sharp rise from 22 persons prosecuted and investigated in 2008 to 32 persons prosecuted and investigated in 2009; of these, 12 were repeat offenders.[341]

There was a positive trend in the border regions, where the number of erotic night clubs is steadily decreasing and only a handful with strong capital behind them is prospering. In contrast, the quantity of paid sexual services provided in private homes remained the same or increased slightly. The reasons for this trend were obvious in the context of the global economic crisis. Prices for services in private homes were significantly lower than in erotic night clubs.

The Czech Republic is a destination country for persons from the former USSR, Romania, Bulgaria, Vietnam, India, China, Mongolia and other Asian countries. Under the pretext of jobs returning good earnings, people are recruited to work in the Czech Republic through organized groups that arrange for them to enter the Czech Republic legally. Upon arrival in the Czech Republic, their passports are taken from them and they must perform menial and generally physically demanding work for little or no pay. In 2009, the above pattern was confirmed in several cases and the perpetrators are being prosecuted for the crime of human trafficking. All cases involved an organized group of criminals mainly operating in several states. Information was discovered linking criminal groups to state authorities in a deal to secure legal residence in the Czech Republic and produce relevant work documents.

The priorities of the Czech Presidency included the fight against organized crime (particularly human trafficking) and the fortified collection and exchange of data on human trafficking in the Czech Republic and in the EU. In June 2009, an international scientific conference was held which focused on the issue of sexual exploitation with a view to reducing the demand for sexual services.[342] In March 2009, Prague hosted a conference of national EU rapporteurs on trafficking in human beings. At the end of the CZ PRES, the Council conclusions on the creation of an informal network of national rapporteurs and equivalent mechanisms were adopted as one of the follow-up outputs of the March conference. The CZ PRES also created a dedicated website as a basic tool for cooperation between EU Member States; this website comprises a map containing information on the operations of the national rapporteurs in the

[340] Section 232a of Act No 140/1961, the Criminal Code, as amended (the old Criminal Code effective in 2009).
[341] Sixteen persons were Czech nationals; sixteen were foreign nationals.
[342] Outputs and the experts' presentations are available at www.mvcr.cz.

various countries, their contact details and relevant national documents (reports, research, analyses, etc.).[343]

In 2009, the successful operation of the national Programme to Promote and Protect Victims of Trafficking was continued.[344] The programme offers help to trafficking victims and motivates them to cooperate with law enforcement agencies so that they contribute to the punishment of perpetrators. The programme is implemented through a national reference mechanism involving state, intergovernmental and nongovernmental organizations. They offer trafficked persons emergency psycho-social and health care, housing, support for their integration into normal life, etc. Arrangements are made to provide foreigners illegally in the country with residential status. The programme is designed for victims trafficked in particular for sexual and labour exploitation, offering them legal, social and medical assistance, accommodation and a dignified return to their country of origin. Besides the humanitarian aspect, the aim of the programme is to obtain relevant information about the criminal environment which could lead to the detection, conviction and punishment of the criminals behind these actions.

In 2009, 13 victims of human trafficking (nine women and four men) were placed in the programme. The average age of the victims was 35 years. The youngest trafficking victim was 22 years old; the oldest was 54 years old. At the end of 2009, 19 victims remained in the programme, including 15 foreign nationals and four citizens of the Czech Republic and Slovakia. Long-term residence was granted to 12 victims of human trafficking; visas for tolerated stays were granted to three trafficking victims participating in the programme. The Ministry of the Interior continues to coordinate and pay for the voluntary repatriation of trafficking victims in a scheme which allows human trafficking victims to return to their country of origin with dignity, safely and free of charge. In 2009, there were two voluntary repatriations – one to a country of origin (Thailand) and one back to the Czech Republic.

In 2009, the implementation of the "Trafficked Person Information System" project plan continued. A database was created which will contain an overview of the items according to which victims of trafficking should be registered in the programme. The aim of the information system is to collate information on victims of trafficking who are included in the programme, or who have been given the opportunity to return voluntarily to their country of origin. The register should be able to provide output and sorting based on various filters, along with the processing of data in the form of statistical summary outputs.

Assistance to trafficked and exploited persons is provided by the NGOs La Strada,[345] the Archdiocese Caritas Prague (Arcidiecézní charita Praha),[346] the Organization for Aid to

[343] www.national-rapporteurs.eu

[344] Guideline of the First Deputy Minister for the Interior of 26 October 2007 on the functioning of the Programme to Promote and Protect Victims of Trafficking and the institutional safeguarding thereof. This programme is a continuation of the 2003 pilot project of the UN Office on Drugs and Crime "Model of support and protection for victims of trafficking for sexual exploitation".

[345] In 2009, La Strada provided outpatient and residential social services to 55 trafficked and exploited persons. It also worked in the field to search for trafficked persons, with a focus on Vietnamese, Mongolian and the Russian-speaking groups of immigrants.

[346] The Project "Magdala – Help and support for trafficked persons and their children" consisted of providing social assistance (e.g. medical, psychological assistance, legal counselling, sheltered housing) to trafficked persons and their children. A Magdala telephone helpline was in operation, providing comprehensive information on the issue of trafficking and domestic violence. Between 1 January 2009 and 31 December 2009, the helpline received 701 calls. Thirty calls were made to the "Say it for her" line from 1 January 2009 to 31 December 2009.

Refugees (Organizace pro pomoc uprchlíkům)[347] and Pleasure without Risk (Rozkoš bez Rizika).[348]
In connection with the new Criminal Code,[349] La Strada, in cooperation with other NGOs, drew attention to the practical problems raised by the obligation to report the crime of human trafficking and deprivation of liberty[350] (i.e. giving rise to the failure to report a crime and failure to obstruct a crime).[351] *According to La Strada, the legislation could have a significant negative impact on the practical implementation of the policy to prevent and combat human trafficking and to assist victims of this crime, particularly in terms of identifying the persons trafficked. The identification of potentially trafficked persons is an important pillar of the strategy to combat this serious crime. The new legislation also establishes circumstances which are inconsistent with the possibilities of trafficked persons to exercise their rights, will be an obstacle in establishing contact with trafficked persons, will place the staff and workers of nongovernmental organizations providing social services at risk of their safety and at risk of prosecution, will hinder the implementation of preventive activities aimed at human trafficking or at health and social prevention for persons providing paid sexual services, and will result in the re-victimization of trafficked persons in criminal proceedings for failure to report the crime of human trafficking or deprivation of liberty.*

8.2 Domestic violence

In 2009, the Committee for the Prevention of Domestic Violence of the Government Council for Equal Opportunities for Women and Men dealt primarily with the preparation of a National Action Plan for the Prevention of Domestic Violence. This is a conceptual solution to the problem of domestic violence. It encompasses tasks aimed at key steps in prevention, education, research, coordinated assistance for those at risk of domestic violence, the practical provision of therapeutic programmes for perpetrators of domestic violence and improvements in the legislative framework of this whole issue. The prime objective of the National Action Plan for the Prevention of Domestic Violence is to create a fundamental basis for continuing activities in each of these areas. The draft of the Action Plan will be discussed further in 2010.

The new Police Act[352] views temporary eviction as the implementation of a police officer's informal authorization, i.e. it is not a decision issued in administrative proceedings and is perceived as a de facto act. This simplifies the procedure considerably for the police.

In 2009, the Rules of Civil Procedure was amended[353] in order to supplement and clarify provisions on protection from domestic violence, i.e. in particular, it specified in more detail the individual concepts of domestic violence and eliminated problems associated with the interpretation of some provisions which had arisen when this concept was applied in practice. Basic areas changed by the legislation include a specification of the particulars of an application for a preliminary domestic-violence-related injunction, an extension to the indicative list of opportunities for a court to impose more duties in an injunction on the party

[347] Expert advice was provided and focused on assistance to foreign nationals residing illegally in the Czech Republic, foreign nationals working in the Czech Republic within the scope of a client system, and foreign nationals not able to extend their stay in the country.
[348] The organization provided expert advice and preventive activities in the field of human trafficking. Fieldwork focused on the search for trafficked persons, in particular the monitoring of the prostitution scene.
[349] Act No 40/2009, the Criminal Code.
[350] Sections 168 and 170 of Act No 40/2009, the Criminal Code.
[351] Sections 367, 368 of Act No 40/2009, the Criminal Code.
[352] Act No 273/2008 on the Police Force of the Czech Republic entered into effect on 1 January 2009.
[353] Act No 99/1963, Rules of Civil Procedure, was amended by Act No 218/2009.

to the proceedings party against whom the application is filed, a specification of the particulars of an application to extend an injunction, and the possibility of re-imposing an injunction if the injunction is breached by the liable party (re-imposition is subject to an application from the beneficiary). Furthermore, the amendment reduces the security payable for an injunction application under Section 75 of the Rules of Civil Procedure from CZK 100,000 to CZK 50,000 in commercial matters and from CZK 50,000 to CZK 10,000 in other matters.

The new Criminal Code[354] modified the provisions on the crime of the abuse of a person living in a jointly occupied flat or house (now referred to as the new crime of "abuse of a person living in a shared household"). The method of abuse is reflected significantly in the possibilities available to punish a perpetrator of domestic violence. The new legislation provides protection to a potentially wider range of persons who have been subjected to violence because a "joint household" does not just mean flats or houses, but also residential cottages, hotel buildings, hostels, halls of residence, etc., i.e. all premises used for housing. In this context, the prison sentences have also been tightened.

The prevention of violence against women is currently largely focused on victims of violence. *Greater attention to prevention should include activities anticipating violence, partly eliminating violence or providing a clear indication that society will not tolerate violent conduct in families.*

Particular areas of shortcomings in the decision-making process of infringement commissions and courts are the non-recognition of domestic violence as a phenomenon, ignorance and disrespect of its specifics, confusion of violence with ordinary partner arguments, the disparagement of violence against women in general, and the non-acceptance of violence when deciding on child custody.[355] Judgments are unpredictable and there is no case law for the lower courts to rely on; there have been ridiculous decisions where, for example, a mother/victim was ordered to arrange for the collection of her child by her partner in front of the shelter, at a secret address, where she was hiding to escape his violence after an attempt on her life. Underestimating the danger posed by perpetrators of domestic violence could be fatal for the victim. The situation can be changed by promoting the need for the comprehensive training and awareness of judges and court officials regarding the factors specific to domestic violence, along with changes in the system of expert witnesses. Another area of preventive work geared towards greater awareness and sensitivity is continuous informative and training activities for social workers.[356]

Interdisciplinary teams trying to harmonize the non-uniform approach of government authorities and seeking to create uniform procedures for working with victims of violence, even within the scope of prevention, have been a step forward.[357] So far, the most systematic training has focused on the police; police officer guidance is currently the most coherent form of training in the prevention system.

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[354] Section 199.

[355] See also Section 7.1.

[356] Department of Social Welfare and Health, Prague City Hall, Documentation for the Report on the Human Rights Situation in the Czech Republic in 2009, Basic Problem Areas in the Prevention of Violence against Women, page 5.

[357] An example is the interdisciplinary team in Praha 4 (the social worker in this area, paramedics, police officers, lawyers and ROSA – centre for victims of domestic violence), which published a manual for other boroughs in Prague on how to set up such teams, with additional observations and examples from abroad provided by WAVE, the international network of organizations working to combat violence against women.

9. FOREIGN NATIONALS

9.1. Basic migration trends, including illegal immigration, in 2009

There major changes in migration in 2009 in terms of development trends and from the perspective of system-wide changes and actions. The global economic crisis has affected economic development and the labour market situation in the Czech Republic, and has had an impact on foreign nationals here. In particular, the previous leaping rises in the numbers of foreign nationals granted residence[358] here have come to a halt, and the number of foreign nationals legally residing in the Czech Republic declined year on year.[359] Conversely, the number of foreign nationals found to be illegal immigrants in the Czech Republic went up.[360] Detailed statistics on the numbers of foreign nationals in the Czech Republic are set out every year in bilingual publication produced by the Czech Statistical Office, entitled "Foreigners in the Czech Republic". The impacts of the economic crisis have been felt particularly acutely in the employment of foreign workers, whose numbers declined sharply in 2009 (mainly citizens of Ukraine, Vietnam and Mongolia).

In view of the potential risks associated with the impact of the economic crisis on the situation faced by foreign nationals, several immigration policy measures in 2009 focused on preventing, or at least minimizing, those effects. The Government adopted a comprehensive paper entitled "Ensuring the security situation in the Czech Republic in connection with the dismissal of foreign workers due to the economic crisis",[361] which contains proposals for a series of urgent and long-term measures, the overall goal of which is to prevent a rise in the number of foreign nationals in the Czech Republic could find themselves in an adverse situation. In particular, the restrictions have been placed on arrivals of new foreign workers. From 1 April 2009, the most visa exposed Czech missions abroad suspended applications for long-stay visas associated with the pursuit of economic activities. On 21 September 2009, this across-the-board suspension was lifted, but numerical limitations on incoming long-stay visa applications remain in place. The limited acceptance of applications for long-stay visas applies to nationals from Mongolia, Moldova, Ukraine, Uzbekistan and Vietnam. In the document concerned, the Government also aims to introduce stricter measures in employment broking has set the task for legislative measures to be prepared that will increase employers' responsibility for foreign nationals who have been provided with employment in the Czech Republic but have lost their jobs through no fault of their own. The aim here is to prevent other workers from finding themselves in a situation where they are exploited by intermediaries.

However, this material was criticized by NGOs because of the stricter conditions for residence and employment, which *may increase the number of foreign nationals who decide*

[358] A decline by 4,996 persons.

[359] This decline particularly concerned citizens of the European Union; the number of third-country nationals stagnated in 2009.

[360] From 1 January to 31 December 2009, the Czech Police Force discovered 4,457 illegal immigrants in the Czech Republic. This was a 16.4% rise (+628 persons) on the same period of 2008. Forged travel documents were found on 312 persons (i.e. 6.6% of the total number of illegal immigrants identified). This was a rise by 96 persons (44.4%) on the same period of 2008. The largest group of illegal immigrants discovered in the Czech Republic was Ukrainians (1,552 persons, i.e. 34.1% of the total number). They are followed, after a large gap, by Vietnamese (402 persons, i.e. 9.0%), Russians (377 persons, i.e. 8.5%) and Mongolians (256 persons, i.e. 5.7%).

[361] See Government Resolution No 171 of 9 February 2009.

to stay in the Czech Republic without permission. First and foremost, it is necessary to penalize intermediaries and employers, as proposed by the EU directive establishing minimum standards for sanctions and measures against employers of illegally residing foreign nationals from third countries, approved in May this year. In contrast, foreign nationals themselves must be the target of preventive measures, with a system in place that prevents foreign nationals from being pushed into exploitative structures (e.g. the threat that job loss will also mean the loss of their legality to reside in the Czech Republic).[362]

The NGO Counselling Centre for Citizenship, Civil and Human Rights (Poradna pro občanství/ občanská a lidská práva) also referred to *certain cases where the Aliens Police retrospectively monitored compliance with foreign nationals' stated purpose of stay and concluded that foreign nationals had failed to comply with the purpose of their stay for a certain period in the past (i.e. in those cases they were temporarily unemployed), and attempted to cancel or not to renew their residence permit, despite the fact that they demonstrably complied with the purpose of their residence at the time of the police inspection. This practice was criticized on the grounds that, if it were permissible to cancel or not to renew a residence permit for reasons occurring in the past, this would give room for discretionary decisions by the administrative authority, specifically the police in this case.*

9.2 Access of third-country nationals to employment and economic activity, green cards

According to available data, during 2009 there was a decline in the number of foreign nationals in the labour market by approximately 43,000.[363] The number of foreign nationals employed fell by 53,800, and, conversely, the number of foreign nationals engaged in business increased by 10,600. In the initial phase of the downturn, employers initially terminated cooperation with agency staff.

A much-discussed problem last year was the preference for immigrants to adjust their stay in the Czech Republic to cover a new reason to stay, i.e. in order to engage in business or to participate in a legal person (i.e. not for reasons of employment). The downward trend in the employment of foreign nationals can thus be partly explained by the fact that some foreign nationals (employees) changed the purpose of their residence so as to avoid further dependence on the acquisition of a work permit. There was a surge in the numbers of people with a residence permit for business purposes, i.e. due to membership of a company or cooperative, or to pursue a trade. The share of trade authorization holders noticeably grew in the category of third-country immigrants (by nearly 30%).[364] A side-effect of this new phenomenon was that traders and cooperative members continued to operate in the form of disguised employment, and that, as self-employed persons, they continued to work for their current employer, who was now no longer obliged to pay various mandatory expenses for employee (such as social and health insurance). The above situation and trends clearly indicate that a large number of foreign nationals tackled the economic crisis and current legislation by entering into various structures of the informal economy. In many cases, this was a disguised employment relationship, where foreign nationals are provided with

[362] The full text of the Declaration by the group of nongovernmental and intergovernmental organizations dealing with foreign nationals, entitled "The exploitation of foreign nationals is not impeded by the state", can be found at http://www.migration4media.net/node/179 (launched on 4 February 2010).

[363] Source: Czech Statistical Office, http://www.czso.cz/csu/cizinci.nsf/kapitola/ciz_zamestnanost.

[364] The largest groups of foreigners in the entrepreneurship sector comprised Vietnamese (40.6%), Ukrainians (29.9%) and Slovaks (11.2%).

practically no protection and rights because, compared with ordinary employees, they are not protected by the Labour Code, despite the fact that this form of work is unlawful.[365]

The seriousness of the situation regarding the worsening circumstances of some communities of foreign nationals is illustrated, for example, by an open letter from representatives of the Vietnamese community[366] to the Prime Minister, selected ministers and the Ombudsman. In it, the Vietnamese community highlights the critical situation, triggered in particular by the economic crisis, in which many foreign nationals in the Czech Republic had found themselves since autumn 2008. At the same time, it begs for assistance and for a solution to be found to this unbearable situation, and calls for improvements in Czech immigration policy.

A significant systemic measure of immigration policy, which began to be implemented in 2009 with regard to labour migration, was the launch of a system of green cards[367] as a dual permit incorporating both a work permit and a residence permit.[368] The usefulness of the concept of green cards was limited during 2009 due to the economic crisis, which significantly reduced employer interest in foreign workers.[369] For this reason, the group of countries whose nationals can apply for a green card was limited to 12 countries.[370]

A major NGO initiative was a statement signed by 11 representatives of NGOs called "*The exploitation of foreign nationals is not impeded by the State*" (Vykořisťování cizinců stát neklade překážky), and was addressed to the Prime Minister of the Czech Republic, the Minister of the Interior, Minister of Labour and Social Affairs and the Minister for Human Rights. The statement declares, inter alia, that: "*the current crisis is a good opportunity to re-configure immigration legislation. Foreign nationals must be given more rights so that they can defend themselves against abusive employers, intermediaries and manipulative interpreters and various consultants. If the responsible ministries come to the view that the arrival of more labour immigrants is not currently advisable, in the spirit of the principle of 'more stringent entry, more liberal stay', the more stringent visa granting procedure should be coupled by an increase in the legal status of those foreign nationals who already reside in our country (e.g. by reducing the dependence of foreign nationals on their employers and landlords).*" This statement was followed up by a dialogue currently conducted between the signatories and the representatives of competent authorities in the field of the employment of foreign nationals.

9.3 Problems regarding the health insurance of certain categories of third-country nationals residing long term in the Czech Republic

[365] See Section 2(4) of Act No 262/2006, the Labour Code.

[366] The Vietnamese community's open letter is available at http://www.migraceonline.cz/vietnamskakomunita/. Many Czech NGOs supported the letter.

[367] Green cards are covered in particular by Act No 435/2004 on employment, as amended, and Act No 326/1999 on the residence of foreign nationals in the Czech Republic; the amendments entered into effect on 1 January 2009.

[368] Three types of green cards (A, B and C) can be distinguished, depending on the qualifications required for employment in the given position. The card type determines the length of the permit issued.

[369] The Ministry of Labour and Social Affairs keeps a Central Register of Job Vacancies filled by holders of green cards. A vacancy is not published in the register of jobs suitable for green cards if this could jeopardize the situation in the labour market. These decisions are taken by the Ministry of Labour and Social Affairs based on the initiative and due reasoning prepared by an employment office. Vacancies suitable for green-card holders include those positions designated as jobs for key workers by the Ministry of Industry and Trade.

[370] The USA, Canada, Australia, New Zealand, Japan, South Korea, Ukraine, Serbia, Montenegro, Macedonia, Croatia, Bosnia and Herzegovina. Overall, 53 green cards were issued between 1 January 2009 and 31 January 2009, of which 11 were for key workers.

A significant change in the regulation[371] of health insurance for foreign nationals occurred in 2009 and concerned the concept of travel health insurance and its different definitions depending on a foreign national's length of stay in the Czech Republic. Now, for a stay of longer than 3 months, a foreign national must take out travel health insurance exclusively with an insurance company which, under the Insurance Act, is authorized to operate such insurance in the Czech Republic (this requirement does not apply only if a foreign national is insured under a public health insurance scheme or if healthcare costs are covered by an international treaty).

According to the Ministry of the Interior, however, in some cases these provisions may be an impediment for foreign nationals applying for a long-term residence permit through a mission because travel health insurance with an insurance company authorized under the Insurance Act to operate such insurance in the Czech Republic must be taken out before a foreign national enters the territory of the Czech Republic. In this respect, the Ministry of the Interior prepared an amendment to the Act on the Residence of Foreign Nationals which would allow foreign nationals to accompany an application for a residence permit of longer than three months, submitted at a mission abroad, with a document proving travel health insurance contracted with an insurance company authorized to operate in the state of the travel document held by the foreign national, or in another state where the foreign national has permission to reside.[372]

In 2009, the Government Council for Human Rights adopted an initiative for the inclusion of selected categories of foreign nationals residing in the Czech Republic temporarily in the public health insurance system. The aim was to expand the range of persons covered by the concept of public health insurance.[373] The initiative contains proposals for regulating the health insurance of certain categories of foreign nationals similar to the legislative proposals of the Ministry of Health contained in the "healthcare package" drawn up in 2007; however, these Government reforms were not approved in the legislative process. The initiative seeks primarily to address the deficits in relation to the public health insurance of the category of foreign nationals who are not nationals of the Czech Republic/EU for the first 5 years of residence in the Czech Republic and offers solutions to the unwarranted differences in relation to public health insurance among family members (third-country citizens) of Czech citizens compared to the family members of other EU citizens residing in the Czech Republic.[374] Under the Government-approved Concept for the Integration of Foreign Nationals,[375] the Minister for Health has been ordered to address this matter.

9.4. Administrative expulsion and related problems

The situation in the field of illegal migration reflects the trend in the number of foreign nationals served an administrative expulsion order by the Aliens Police. The statistics on the

[371] Act No 278/2009 amending laws relating to the adoption of the Insurance Act.
[372] As at the date of preparation of this Report, the draft has been submitted to the Government.
[373] Section 2 of Act No 48/1997 on public health insurance and amending certain related laws.
[374] The complaint was heard by an inter-ministerial platform in May 2009; due to ongoing conflicts between the Ministry of Health and the Ministry of Finance, it has not yet been submitted to the Government for consideration.
[375] See Government Resolution No 183 of 16 February 2009 on the Report on the Implementation of the Concept for the Integration of Foreign Nationals in 2008.

number of foreign nationals served an administrative expulsion order in 2009 reported a slight increase on the previous year (3,064 persons; +155 persons).[376]

Administrative expulsion is an action leading to the termination of the residence of foreigners in the Czech Republic, which is associated with the setting of a time limit for them to leave the country and a period during which such foreigners are barred from entering the country. Although it is not part of criminal law, it is inherently a specific measure to control immigration. It is imposed by the Alien Police Service, in the form of an administrative decision, for the sole purpose of ensuring that a foreign national residing in the Czech Republic in contravention of national law leaves the country. Concerning the possibility for foreign nationals to leave the Czech Republic, in its decision-making the Alien Police Service is bound by a binding opinion of the Ministry of the Interior issued for each individual case. Enforcement of an administrative expulsion order is precluded by law not only if impediments to exit are discovered, but also in other cases specified by law. If the reasons for the imposition of administrative expulsion cease to exist, at the request of the foreign national, it is possible under the law to eliminate the harshness of the administrative expulsion by revoking it. According to applicable case law, circumstances affecting the police decision in such a case include changes in a foreigner's private and family life occurring after the decision on administrative expulsion.

In this respect, NGOs[377] point out numerous cases where foreign nationals have developed a private and family life and yet have been subject to administrative expulsion in the past, usually because they have been present in the country without a residence permit. In many cases these are foreign nationals who applied unsuccessfully in the Czech Republic for international protection. The Act on the Residence of Foreign Nationals enables[378] the effect of administrative expulsion to be revoked in these cases if new facts come to light which prevent the foreign national from exiting the country. In such cases, the competent inspectorate of the Alien Police Service, where grounds are discovered by the Ministry of the Interior preventing the foreign national's exit, must issue a new decision stating that the existence of such barriers has been found.

If an administrative authority finds that it is not possible for a foreign national to exit the country, the competent inspectorate of the Alien Police Service must provide the foreign national with a visa tolerating his/her stay or, subsequently, with long-term residence for a tolerated stay. In these cases, it is clear that the foreign national intends to live permanently in the Czech Republic since he/she has a developed family and private life here. However, foreign nationals with this type of visa have to deal with many obstructions. They cannot leave the country for either business or pleasure because they are entered in the Register of Undesirable Persons and therefore there is no guarantee that they will be able to return to their families in the Czech Republic, and they cannot obtain a driving licence, a loan, a mortgage, etc. On this point, the Ombudsman observes that "*... if a reason is found in respect of a family member preventing exit from the country, the Act on the Residence of Foreign Nationals should enable such a person to benefit from the right of free movement of family members of*

[376] The largest groups of foreign nationals served a final decision on administrative expulsion were Ukrainians (1,155 persons; -168 persons), representing 37.7% of the total. Well behind the Ukrainians were the Vietnamese (363 persons; +107 persons); the largest absolute growth was recorded in this group compared to 2008. In third place were the Mongolians (224 persons; +40 persons).

[377] Association for Integration and Migration, Counselling Centre for Citizenship, Civil and Human Rights, and the Advice Centre for Refugees.

[378] Sections 120a(2) of Act No 326/1999 on the residence of foreign nationals in the Czech Republic.

EU citizens.[379] *For other foreign nationals, the Act on the Residence of Foreign Nationals should facilitate the revocation of expulsion even in cases of residence for visa purposes or long-term residence for purposes of a tolerated stay.*[380] The situation described above should be remedied by an amendment currently being prepared to the Act on the Residence of Foreign Nationals in 2010.

9.5 Integration of foreign nationals

An important systemic measure in the integration of foreign nationals, which started to be applied in 2009, was the obligation to demonstrate knowledge of the Czech language as one of the conditions for obtaining a permanent residence permit. According to figures at the disposal of the Ministry of the Interior, the introduction of a mandatory test in the Czech language resulted in a slight decrease in the number of applicants for permanent residence (especially among third-country nationals).

At the turn of 2008 and 2009, a guidance recommendation was produced for child protection agencies concerning minor foreign nationals unaccompanied by a legal guardian, which set out the procedures to be followed when working with this group of children.[381]

The economic crisis has seen a rise in social-integration problems related to a risk of social exclusion among certain groups of foreign nationals, especially in areas with a higher proportion of foreign nationals or in areas where groups of foreign nationals with a significantly different culture live. There was an expansion in the target group of integration measures, which continued to be addressed to foreign newcomers from third countries. Integration policy focused strongly on children and young people. Regional Foreigner Integration Support Centres in the regions of South Moravia, Ústí nad Labem, Plzeň, Moravia-Silesia, Zlín and Pardubice became a regional vehicle for integration.[382]
With the assistance of the Foreigner Integration Support Centres, emergent projects were implemented to address the crisis in selected cities with high numbers of foreign nationals, where there has been a surge in the numbers of foreign nationals and, ultimately, a rise in the number of unemployed foreigners, and where inadequate infrastructure capacity and other side-effects have led to rising tensions between foreign nationals and other city dwellers. These projects were aimed at the integration of entire families, particularly women, children and young people, with an emphasis on preventing the emergence of closed communities.[383]

Comprehensive arrangements for free Czech lessons at primary schools are currently only available for EU children. In 2009, courses for the children of other foreign nationals were provided to some extent under the programme to promote the integration of foreign nationals.[384] An example of good practice is www.cestinaprocizince.cz , which includes

[379] See ECJ Judgment C-127/08 Metock of 25 July 2008
[380] Ombudsman's Summary Report for 2009, p. 80.
[381] See Government Resolution No 183 of 16 February 2009 on the Report on the Implementation of the Concept for the Integration of Foreign Nationals in 2008.
[382] Integration centres are regional centres of integration activities and provide information, advice, and courses and social and cultural customs in Czech society; they promote the development of civil society in collaboration with NGOs and other entities in the region.
[383] Integration activities were aimed at providing information and advice, Czech lessons, tutoring, and increased intercultural and professional competence, along with more intensive monitoring and the ad hoc exchange of data and information.
[384] The programme is run by the Ministry of Education, Youth and Sports with funds from the Ministry of the Interior. The programme has been in place for several years and also supports multicultural education projects aimed at third-country nationals.

guaranteed information on schools which teach Czech as a foreign language and where it is possible to perform the test for permanent residence.[385] Another example of good practice in the field of education, not only for foreign nationals, is the website on inclusive education for pedagogues and the public at www.czechkid.cz ,[386] which is regularly updated to include new issues in multicultural education, religion, tolerance, etc., in a form suitable for the younger generation. Part of the site is designed for teachers. Another website is www.inkluzivniskola.cz, which focuses on foreign nationals.[387]

9.6 Projects for the voluntary repatriation of third-country nationals

During 2009, voluntary repatriation projects were implemented for foreign nationals regardless of whether they were in the Czech Republic legally[388] or illegally.[389] These projects were emergency measures to mitigate the impact of the economic crisis on foreign nationals who had lost their jobs and work prospects in the Czech Republic. *According to the Ministry of the Interior, these projects had proved to be effective as a flexible tool providing a quick response in addressing current trends in migration.*

A project for the voluntary repatriation of legally resident foreign nationals was launched in February 2009, with 2,000 people enrolled in the initial stage. In view of the continuing interest in the project, a second stage was launched; as such, the total number of people exiting the Czech Republic was 2,089.[390] The aim of the project was to economically support foreign nationals seeking to return to their country of origin who had come to the Czech Republic as an in-demand, mostly unskilled workforce, but were laid off due to the economic crisis, often with the immediate loss of not only their employment but also housing, which was provided as part of their employment package.

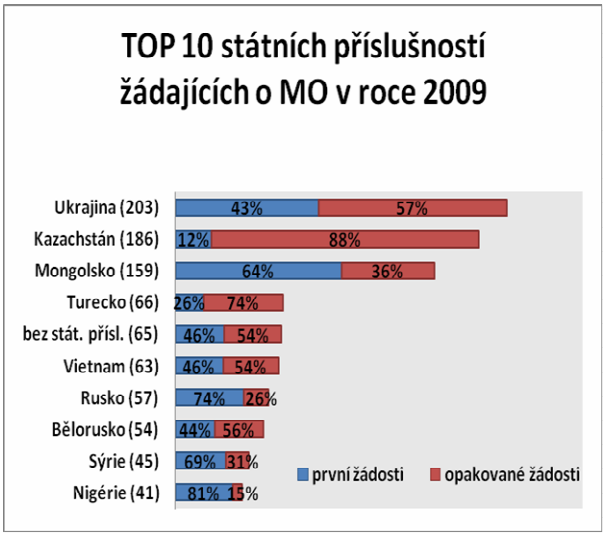
A project for the voluntary repatriation of illegal immigrants[391] was launched on the basis of experience gained from the above project for the voluntary repatriation of legally resident foreign nationals, and was aimed at foreign nationals who, in the economic crisis, had lost their job and could not afford the cost of exiting the country, resulting in a situation where they were considered illegal and were de facto unable to resolve their circumstances themselves.[392] The project essentially entailed economic support for the repatriation of illegal foreign nationals to their country of origin, and was open to all foreign nationals who were in the Czech Republic without a valid residence permit and had expressed an interest in voluntary repatriation. In view of the fact that the project included the administrative expulsion of all the participants, a number of non-profit organizations, including the Association for Integration and Migration (Sdružení pro integraci a migraci), expressed reservations; they claimed that the relatively low number of participants in this project could be *attributed to the administrative expulsion*. Part of the motivation for the repatriation of illegal foreign nationals was that those foreign nationals who paid the costs themselves were

[385] Information is provided in several languages, methods for teaching Czech as a foreign language and other practical information for foreign nationals can be found here.
[386] Supported by the Ministry of Education, Youth and Sports under the grant scheme "Support of education in the languages of national minorities and multicultural education".
[387] Contributions to the preparations for the Inclusive School and Czechkid portal were made by the Ministry of Education, Youth and Sports, the META NGO, the British Council and the Faculty of Humanities at Charles University in Prague.
[388] The total number of people who exited the country under these projects was nearly 2,300.
[389] See Government Resolution No 171 of 9 February 2009.
[390] The implementation of the second stage of this project was approved under Government Resolution No 588 of 4 May 2009.
[391] See Government Resolution No 587 of 4 May 2009.
[392] The project was implemented from 15 September to 15 December 2009. It had 169 participants.

served an administrative expulsion order for their previous unlawful residence in the Czech Republic with a shorter period banning from re-entry into the Czech Republic. *The fact that foreign nationals who signed up to the project knew the exact length of time for which they would not be allowed to re-enter the Czech Republic can be viewed in a positive light.*

10. REFUGEES AND OTHER PERSONS

10.1. General situation and trends in asylum and the granting of protection in 2009



In 2009, the number of incoming applications for international protection[393] continued to decline in the Czech Republic. In 2009, the Ministry of the Interior issued 1,030 decisions in international protection proceedings. International protection in the form of asylum[394] or subsidiary protection[395] was granted in 103 cases. The dominant asylum trend was the high level of repeat applications. 2009 was the second year when, further to the transposition of the EU Procedural Directive[396] into the Asylum Act, the former mandatory period of a two-year interval[397] before applications for international protection could be re-submitted was no longer valid. This means that foreign nationals can submit a new application immediately after a final international protection decision is issued under a previous application.[398]

Chart 2: Top ten nationalities seeking international protection in 2009. Blue column: first application; red column: repeated application.

As of 31 December 2009, the Vyšní Lhoty Reception Centre was closed on the grounds that its high accommodation capacity (approximately 600 persons) and the declining number of applicants for international protection made it economically unviable. As of 1 November 2009, it was replaced by a new, smaller reception centre in Zastávka u Brna (for 200 people), which had previously been an accommodation centre.

10.2. Outline of certain problems arising in practice in the provision of international protection

In 2009, the State Integration Programme for Recognized Refugees and Beneficiaries of Subsidiary Protection was continued.[399] *In certain regions in particular (Karlovy Vary) the availability of housing for refugees remains a problem. Although the means to help recognized refugees find housing are continually broadening and becoming more flexible, demand for integration flats remains higher than supply, especially in Prague and some major cities.*

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[393] In total, 1,258 applications for international protection were registered, i.e. a 24% decrease.
[394] Asylum was granted in 75 cases, mostly for reasons set out in the Geneva Convention (28).
[395] Subsidiary protection was granted in 28 cases in 2009.
[396] Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status
[397] The two-year time limit began on the date on which the decision on the refusal to grant international protection entered into effect.
[398] In 2009, 625 repeat applications for international protection (49.7%) were registered.
[399] In accordance with the Principles for the Award of Grants from the National Budget to Municipalities. See Government Resolution No 543 of 14 May 2008.

The Supreme Administrative Court (SAC) delivered a judgment[400] confirming that the definition of a refugee in the Convention on the Status of Refugees cannot automatically infer the direct protection of those who leave their country of origin because of armed conflicts between states. A different situation arose with the introduction of subsidiary protection, which envisages a loss posed by a "serious threat to life or human dignity by reason of indiscriminate violence in situations of international or internal armed conflict".[401] The existence of such threat is not conditional on the production of evidence by the applicant concerning his/her person as a target of such threat due to his/her personal circumstances. In exceptional cases, such a threat may be a situation where the degree of spreading violence in an armed conflict is recognized by competent national authorities/courts prior to the applicant's application for subsidiary protection and is so serious that the mere presence of the applicant in the territory of such a state or region constitutes such a threat.

The Organization for Aid to Refugees (OAR) points out the problematic nature of surrendering citizens of countries with which the Czech Republic or the EC has concluded readmission agreements.[402] In practice, these citizens are mainly from Vietnam, the Russian Federation, Moldova, and as of mid-2009, Ukraine. International readmission treaties stipulate that their provisions do not prejudice other international obligations of the Czech Republic (EC). According to the OAR, *the police principally consider whether the surrender of persons would violate any such obligation (or any subjective right of a foreign national based on that obligation)*. The possible existence of conflicts with other international obligations need not be investigated by the police; even in cases where foreign nationals are detained so that they can be surrendered (a detention order is issued in cases of detention). *The OAR takes the view that, for constitutional and international legal reasons, this situation is highly problematic.*[403] In current conditions, the police are required by the Act on the

[400] Judgment No 978/2006 of 3 August 2006, SAC.

[401] See Section 14a(2)(c) of the Asylum Act. This situation was addressed by the SAC in Judgment 5 Azs 28/2008-68 – SAC Judgment No 1840/2009 of 13 March 2009, following up on and further developing the risk assessment criteria contained in the EC Court of Justice Judgment in Elgafaji – Judgment of 17 February 2009 (C-465/07, not yet published in the ECR).

[402] In international public law, a readmission agreement establishes the obligation of the States Parties to accept the admission of their own nationals and third-country nationals who have illegally crossed the borders of the States Parties or are illegally residing in their territory. It is an important tool to combat illegal migration.

[403] The Czech Republic, as a party to the Convention, has undertaken to guarantee certain rights and benefits to all persons meeting the definition of a refugee. A refugee is any person who meets the definition of the Convention regardless of whether the State grants that person such a status. However, it is clear that an official declaration of refugee status (by the designated national authority) is required. In the Czech Republic, there is only one way a person can be officially declared a refugee and that is in proceedings for an application for international protection (in accordance with the Asylum Act). Section 3a(4) of the Asylum Act makes it impossible to grant refugee status to persons detained for readmission. Nevertheless, the Convention does not allow a certain group of persons to be excluded from the possibility of being granted refugee status (besides the "exclusive clause" and where appropriate Palestinian refugees). According to the legal opinions voiced by some NGOs (e.g. the OAR), Section 3a(4) *in fine* contravenes the Czech Republic's international covenant. These excluded persons also have the opportunity to apply for international protection as soon as they enter the country.
European legislation interlinks the Convention primarily with Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Qualification Directive). Article 13 of the Directive lays down that Member States shall grant refugee status to all who qualify (substantiated fear of persecution) and exclude from refugee status only persons who fall within the said exclusive clause (Article 12 of the Directive). The Directives goes beyond the scope of the Convention by obliging Member States to grant subsidiary protection status to all those that fulfil the conditions (Article 18). There is no need to explain that the status of subsidiary protection is granted only

Residence of Foreign Nationals in the Czech Republic[404] to monitor whether the grounds for detention continue to exist throughout such detention. This means they must examine whether persons have sought international protection in another Member State, and whether they are subject to Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. Foreign nationals themselves may bring an action against a detention order and an expulsion order.

Many NGOs[405] are, again, critical of the method used for the detention of unaccompanied minor foreign nationals and families with minor children. *Placing minor foreign nationals for up to 90 days in detention centres for foreign nationals, where their freedom is limited and all-round personality development is severely restricted, can be considered a breach of international commitments binding upon the Czech Republic. The deprivation of the liberty (detention) of a minor foreign national because of a minor offence is clearly an extreme measure that should be used only in exceptional cases. The 90-day maximum detention period cannot be regarded as the shortest necessary period under the Convention on the Rights of the Child.*[406] The Act also contains other conditions on the detention of children aged 15-18 years, residing in the Czech Republic, who are unaccompanied by a legal guardian.[407] *In practice, however, their application is problematic. Although the police are required to appoint a guardian for a detained minor, the law does not impose any deadline by which they must do so. As a result, there have been cases where the police appointed a guardian for a minor only after weeks or months of detention. Another shortcoming under existing legislation is that the police are only obliged to appoint a guardian when a foreign national is detained, not when administrative expulsion proceedings are initiated or an order is issued. At the time significant documents are delivered to such a minor (the detention order and administrative expulsion order), he/she has no representation; when an administrative expulsion order is served on a minor he/she also signs a waiver of the right to appeal against the order.* This situation could be improved by a forthcoming amendment to the Act on the Residence of Foreign Nationals.

In this regard, unaccompanied minor foreign nationals detained for surrender under an international treaty are in a particularly critical situation.[408] In these cases, the law also prevents a minor foreign national from applying for international protection.[409] Where foreign nationals are detained for administrative expulsion, their detention is terminated a maximum of 90 days after the commencement of detention, and, further to a court order on an interim measure, they are placed in the care of a Facility for Children – Foreign Nationals.[410] These children are then detained for up to 180 days, *which is contrary to the Convention on the*

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once in proceedings on international protection, from which Section 3a(4) of the Asylum Act excludes a large group of people.

[404] Section 126 of Act No 326/1999 on the residence of foreign nationals in the Czech Republic and amending certain laws, as amended.

[405] For example, the Association for Integration and Migration, the Czech Helsinki Committee, and the OAR.

[406] Article 37(b) reads: "*The* arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."

[407] Section 124(125) and Section 125(1) and (2) of Act No 326/1999 on the residence of foreign nationals.

[408] Section 129 of Act No 326/1999 on the residence of foreign nationals.

[409] Section 3a of Act No 325/1999 on asylum.

[410] According to the current interpretation of the Directorate of the Aliens Police, unaccompanied minor foreign nationals (detained under Section 129) are not covered by the 90-day reduced time limit for detention, and may be detained for up to 180 days. In the opinion of the Aliens Police, the reduced 90-day time limit applies only to minor foreign nationals detained under Section 124.

Rights of the Child.[411] Minors from countries with which the Czech Republic (EU) has concluded readmission agreements[412] are not subject to the specific conditions for juveniles introduced by an amendment to the Act on the Residence of Foreign Nationals.[413]

The detention of families with minor children in detention facilities for foreign nationals, where they can spend up to 180 days, is another major problem. *The holding of minor children accompanying their mothers in detention facilities, the detention of minors in the unacceptable conditions of an establishment designed for adults, under the same conditions as adults, without adapting the centre to their extreme vulnerability,[414] is unacceptable. In the future, the Czech Republic should not detain families with minor children under any circumstances.*

In terms of the rights of refugees and applicants for international protection, the international protection proceedings should be recalled. *Although the Czech Republic has consistently reported declining numbers of applicants each year, in 2009 the OAR continued to note instances where the international protection proceedings (heard in the first instance by the Ministry of the Interior) were disproportionately long (longer than a year, compared with the statutory intended standard of 90 days).[415]*
With regard to interviews in international protection proceedings, the OAR handled complaints that invitation to appear for interview were not delivered in time. At the reception centre in Ruzyně, there were complaints about the practices of the persons authorized by the Ministry of the Interior during the proceedings. *Although the interview was meant to be conducted by a duly qualified officer, cases were noted where the interview was not adapted to the applicant's specific situation.[416] The Ministry of the Interior should proceed in such a manner that the undeniable facts[417] of the case are identified; the OAR recorded cases where the applicants were asked leading and suggestive questions,[418] and questions entirely unrelated to the applicant.*

[411] One boy from Vietnam actually found himself in a situation where he was not released from detention after 90 days, and the police took steps to transfer him to Vietnam. The detention came to an end only by an order of a court which had been petitioned by the minor's guardian.
[412] E.g. Vietnam, Russia, Ukraine, Sri Lanka.
[413] Act No 428/2005
[414] ECHR Judgment in Muskhadzhiyeva and Others v Belgium of 19 January 2010.
[415] The OAR carries out long-term monitoring of at least twenty cases where applicants have been waiting for an initial decision for over a year (in approximately ten of the cases, the process has lasted for several years).
[416] For example, torture of the applicant or next of kin, violent death of next of kin, war experiences, etc.
[417] Under SAC Judgment 5 Azs 66/2008 – 70, "Certain procedural activity is required, however, on the part of the defendant, who should determine, by means of judicious questioning during the interview, whether the facts alleged by the applicant are relevant to the granting of asylum or subsidiary protection, and should classify the applicant's allegations accordingly. It also follows from this that the defendant should refrain from suggestive or leading questions during the interview."
[418] The OAR considers leading and inappropriate questions to be those claiming that the applicant's answers are inconsistent with his previous testimony (without precisely wording his previous testimony), even though there is no such inconsistency. Also, in addition to suggesting inconsistencies, there are also attempts to show the applicant's "incorrect intentions", e.g. "Why, in your application, did you conceal the fact that you were a member of the Baath Party?" – the application form only has the question "Are you or a family member..." and at the time of the application he was not a member, so his reply was quite correct and concealed nothing.
Or "That means you left Sri Lanka five days after you get out of detention?"
or "Am I to understand that you joined the party when you were 18?"

III. PROGRESS REPORT

This section is a summary of the most important aspects of developments in human rights described in the Special Part of the Report.

Right to privacy and right to information

The issue of privacy in an era of modern information systems affects every individual every day. The processing of personal data by various entities and institutions is growing in scale; in the health sector and banking in the past year, for example, certain shortcomings arose which had to be addressed by the Office for Personal Data Protection. There is still no uniform legislation on **camera and surveillance systems** establishing clear rules for their use. These systems should be operated so as to ensure the protection of society against threats for example of health, and to avoid unnecessary interference with the privacy of individuals.

In the last year, an amendment to the Penal Code known as the "**Muzzling Law**" has received widespread attention. Restrictions on the reporting of information from criminal proceedings provoked a storm of protest from the journalistic community and triggered legislative activity which should better balance the two rights clashing in this case – the right to publish information and the right of parties to criminal proceedings to privacy.

Right to judicial and other legal protection, enforcement issues

A new **code** entered into force in **criminal law** on 1 January. From the perspective of human rights, there is significant expansion in alternatives to imprisonment, such as community service, financial penalties, disqualification and the introduction of the new punishment of house arrest. In the future, criminal proceedings should witness the entry into effect of the new concept of agreements on guilt and penalties, proposed by the Government in the past year and debated by Parliament in 2009. The Government also proposed reinforcing controls on the treatment of convicted and remand prisoners via the advisory committees of prison governors.

Access to **free legal assistance** remains problematic. The preparation of a separate law to regulate this issue uniformly was abandoned in 2009 .

In **compensation proceedings** under the Act on State Liability for Damage Caused in the Exercise of Public Authority, unfortunately, there are still delays, caused partly by the preliminary consultation of claims at the Ministry of Justice, and partly by the congestion at Praha 2 District Court, which is the court of local jurisdiction for the Ministry of Justice as the defendant acting on behalf of the State in matters of compensation on grounds of delay in judicial proceedings.

An amendment to the **Enforcement Procedure** will contribute to more humane enforcement and to better protection of the rights of parties to enforcement proceedings. As a result, there should no longer be situations where debtors are at risk of losing their home, for example, if their arrears are small amounts.

Rights of persons deprived of liberty

In 2009, the **Police Inspectorate** was formed and introduced a greater degree of independence into controls on police operations. Investigations into police crime should be more objective. Other security forces (the customs administration, the prison service) should also be subject to independent scrutiny. This was meant to be provided by the Bill on the **General Inspectorate of Security Forces**, which was approved by the Government but has yet to be debated by the Chamber of Deputies.

Unfortunately, many problems persist in the prison system. In particular, the **prisons are overcrowded** and consequently there is a lack of space for the implementation of prisoner treatment programmes as set out in the Rules of Confinement. The prison system generally suffers from inadequate financial and human resources (especially health workers and teaching staff in prisons).

The Government Council for Human Rights has provided the initiative for an important positive shift forward in the use of **restraints in social services**. An amendment to the Social Services Act, setting out the use of these measures in detail, was adopted. Nevertheless, the use of restraints in the **health sector** is yet not regulated by law. Nor does the law regulate the provision of **protective treatment**, which entails serious interference with the rights and freedoms of the individual.

There is a problem with the treatment of the **elderly** in some rest homes; the quality of service provided here needs to be improved.

Biomedicine

A number of specific medical procedures (sterilization, castration) are not yet sufficiently regulated by law because **health legislation has not yet been reformed**. Furthermore, the Human Health Care Act does not classify international control bodies responsible for protection against inhuman treatment as persons authorized to **inspect medical records**; this the subject of legal disputes. The Czech Republic has been criticized abroad for not allowing the bodies of the Council of Europe and the United Nations to examine medical records. Moreover, these committees regard **surgical castration** performed on sex offenders as degrading treatment, and has called on the Czech Republic to end this practice (in preference of other methods for the treatment of sex offenders).

A major achievement has been the **Government's expression of regret** that misconduct in the performance of **sterilization** in the past. On the initiative of the Minister for Human Rights, the Government finally adopted a position on this very sensitive issue for which the Czech Republic has long been the target of criticism abroad.

The concept of the **deprivation of legal capacity** continues to be used. The draft of the new Civil Code envisaged the full deletion of this concept and its replacement by other means of supporting persons with disabilities. The most severe restriction should be a restriction of legal capacity; this will also be fully consistent with the requirements arising from the Convention on the Rights of Persons with Disabilities. However, the new Civil Code remains only in the form of a Government bill and is unlikely to be adopted in the near future. Depriving or restricting legal capacity is a serious intervention in the rights and freedoms of the individual. This often occurs solely by virtue of medical opinions drawn up by

doctors/psychiatrists, without even hearing the person whose legal capacity is in question. In the future, other means of supporting persons with disabilities should be legally enshrined.

Discrimination, extremism and the status of minorities

Finally, in 2009, the **Antidiscrimination Act** was adopted, allowing those subjected to discriminatory conduct to seek redress effectively. Ombudsman should provide them with guidance; for example, he can also make recommendations on certain specific issues of discrimination.

Government activities, which in 2010 resulted in the **dissolution of the Workers' Party** by the Supreme Administrative Court, helped reduce the avenues available for the promotion of extremist views in society. Specific actions by individual members of the Government in combating extremism are explained in more detail in the **Strategy to Combat Extremism**. In 2009, there was a radical reduction in the number of neo-Nazi concerts, which is undoubtedly a positive step. An important policy document is the **Agreement of Constitutional Officials on a Common Position against Right-wing Extremism**, initiated by the Minister for Human Rights, where politicians pledged to support activities to suppress racist and extremist attitudes. The **Agency for Social Inclusion** has successfully developed its activities in Roma communities, which it is the supra-departmental body for the coordination of integration policies.

The unequal status of **women and men** in the Czech Republic remains prevalent in many areas of public and private life (the share of women in decision-making and executive positions, unequal pay, the vertical and horizontal segregation of the labour market, education, science and research, the reconciliation of work, private and family life, and persistent prejudices and stereotypes about gender roles in society). An important step in the past year has been work on draft legislative amendments where at least 30% of the candidates in electoral lists for elections to the Chamber of Deputies, regional assemblies and the Prague City Assembly would be women (and at least 30% men).

A proposal to repeal the provisions in the Registered Partnership Act prohibiting partners from adopting a child unleashed a debate on the **raising of children by gay and lesbian couples**. The Committee on Sexual Minorities and the Council for Human Rights believe that this ban is unconstitutional.

There are still numerous physical barriers for **persons with disabilities** that can hinder their access to buildings. This is one of the groups that suffer most from unemployment. Moreover, there are cases of employers who are trying to circumvent the law in order to gain undue advantage from the employment of persons with disabilities. Schools also lack incentives to employ the assistants essential for many disabled persons.

Regrettably, in the field of material need disabled persons saw their **living standards** deteriorate in 2009 as they had not paid insurance contributions for the relevant period to be granted disability benefits and, because of their medical condition, are unable to increase their income of their own accord. These persons' designated "living requirement" is at the minimum subsistence level. Fortunately, this problem was resolved as of 1 June 2010 with the adoption of Act No 141/2010 amending Act No 111/2006 on assistance in material need, as amended, which allows the living requirement of disabled persons to be increased in view of their dietary needs.

Children's rights

The Czech Republic is a country where a very **high number** of children live in **residential care** facilities; despite long-term efforts, this situation has not changed. In 2009, the Ministry of Labour and Social Affairs initiated the transformation of the system of care for vulnerable children, setting the clear priority of having children raised in a family environment. The work of child protection agencies and work with vulnerable families need to be improved.

In 2009, there was a discussion on the establishment of the position of an **ombudsman for children's rights** ("children's ombudsman"). This debate has been shelved for the time being because of the financial cost of setting up the new institution.

A long-term problem is court orders concerning children which do not take into account the best interest of the child within the meaning of the Convention on the Rights of the Child. Children are still being **removed from their families** on grounds of the family's dire financial situation.

In 2009, a Government campaign called "**Stop violence against children**" under the auspices of the Minister for Human Rights was run. The campaign drew attention to a number of forms of violence against children and unequivocally expressed opposition to this phenomenon. The campaign included the Government's Strategy to Prevent Violence against Children.

Foreign nationals and refugees

The economic crisis of 2009 put a stop to the previously rising numbers of foreign nationals residing in the Czech Republic legally. Conversely, **illegal immigration** increased. The Government adopted a comprehensive strategy for limiting the entry of new foreign workers and implemented a programme of voluntary repatriation for those foreign nationals who had lost their jobs in the Czech Republic.

The number of foreign employees shrank, but there was a rise in the number of foreign nationals holding trade certificates. However, in most cases these "entrepreneurs" continued to work as illegal employees, but without adequate labour-law protection. The economic crisis thus revealed numerous cases of the **exploitation of foreign workers**.

Problems persist in the **health insurance of foreign nationals**. In 2009, the Government Council for Human Rights proposed including selected categories of foreign nationals residing in the Czech Republic temporarily in the public health insurance system. This proposal ran up against more complex issues of public health insurance in the Czech Republic and the unrealized reform of health legislation.

In the administrative expulsion of foreign nationals, the situation regarding the **detention of unaccompanied minor foreign nationals** and families with minor children remains critical. Conditions in detention centres for foreign nationals are not suitable for minors, and the average length of their detention in such establishments is inconsistent with the Convention on the Rights of the Child. Another problem is the delay in the appointment of a guardian for minor foreign nationals, because, for a certain period of the administrative expulsion proceedings, they have no means of effectively exercising their rights. Unaccompanied

foreign nationals over the age of 15 years execute legal acts (often associated with documents drawn up in Czech) themselves.