Report on the State of Human Rights in the Czech Republic in 2004

C o n t e n t s

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I. General part

1. Introduction

Every year since 1998 the Government Commissioner for Human Rights has prepared a Report on the State of Human Rights in the Czech Republic (hereinafter only "CR"). The 2004 Report on the State of Human Rights is thus the seventh of its kind. Like previous reports, it is primarily an update and is chiefly intended for the Government of the CR to help it in making decisions on the priorities in the area of human rights protection. As such, it does not repeat the general statements on the fundamental democratic freedoms in the CR nor the list of rights guaranteed by the Charter of Fundamental Rights and Freedoms (hereinafter only the "Charter")[1] but is devoted in particular to the progress achieved in the past year in the areas which were criticised in the past and to ongoing deficiencies.

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

As in the Reports on the State of Human Rights in the Czech Republic for the previous years,[2] the layout of this Report represents a compromise between the systematic and content interpretation of human rights, as contained in a whole series of international human rights treaties and in the Charter. Many parts of the Report include references to its other parts, thus preserving the links between the content of individual rights and the issues that pertain to them. Besides this internal linking of its various parts, the Report contains references to other documents in general, i.e. materials compiled by the Government, both of conceptual or a legislative nature, which are directly or indirectly related to issues of human rights protection in the CR. The Report does not look in depth at the issues of racism, xenophobia, extremism or the status of minorities, including the Roma minority, as these issues are regularly dealt with by separate reports.[3]

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

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

2 As the name of the report is relatively long, reports on the state of human rights in CR are referred to in the entire text of this Report by an abbreviation "Report for the Calendar Year". The word "Report" means this 2004 Report.

3 The Ministry of the Interior produces yearly reports on extremism; these are available on the Ministry's website at (http://www.mvcr.cz – presentation – documents – extremism). Reports on the state of national minorities and the integration of the Roma community are available on the Government website (http://www.vlada.cz – Government working and advisory bodies – Government Council for National Minorities – Documents – Council documents and http://www.vlada.cz - Government working and advisory bodies – Government Council for Roma Community Affairs – Documents – Roma integration plan.

2. Institutional safeguards

Of those institutions that could unequivocally be viewed as national bodies for human rights, probably only the position of the Public Defender of Rights meets international criteria for such bodies. In addition, there exist rafts of Government advisory bodies that address human rights questions with differing degrees of intensity and in various contexts. The following Government advisory bodies are unquestionably most closely linked to the issue of human rights:

- Government Council for Human Rights
- Government Council for National Minorities
- Government Council for Roma Community Affairs
- Government Council for Equal Opportunities for Men and Women.[4]

Although not directly involved in human rights, the Public Defender of Rights plays an important role in protecting the rights of individuals in relation to public administration. As well as resolving individual complaints, the Public Defender of Rights is authorised to submit advice to the Government on specific matters. The advice generally also contains a proposal for rectification. The Public Defender of Rights also makes an annual report on his activities to the Chamber of Deputies.[5]

3. The international dimension of human rights

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

3.1.1. Third periodic report on measures adopted for the performance of obligations ensuing from the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the "Convention") for 1998 – 2001

The report was considered by the Committee against Torture (hereinafter the "Committee") on 4 and 5 May 2004. In relation to the prison system, the Committee looked chiefly at the conditions of detention and life sentences, violence between prisoners, the provision of health services in prisons and prisoners' obligation to pay the costs of imprisonment.

The Committee also looked at the system for investigating complaints of ill-treatment, minor offences and crimes committed by police officers and other public officials. The Committee was informed of the result of the investigations into complaints concerning the excessive use of force by the police at demonstrations during the International Monetary Fund and World Bank meetings in September 2000, the numbers of persons prosecuted and convicted of torture, and compensation for the victims of torture.

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[4] All Government advisory bodies, regardless of which area they work in, are, with the exception of the National Security Council, obliged to prepare and publish yearly reports on the activities of the Government's individual advisory and working bodies (see Government Resolution of 20 February 2002 no. 175 on the Analysis of Government advisory and working bodies (http://racek.vlada.cz/usneseni/). Since 2003, reports on the activities of other Government advisory bodies have been published on the website of the Government Office, in the section Government Advisory and Working Bodies (http://wtd.vlada.cz/vrk/vrk.htm).

[5] The report on the activities of the Public Defender of Rights is available on his Office website at (www.ochrance.cz).

With regard to issues concerning foreigners, the Committee looked at asylum proceedings, conditions in detention facilities for foreigners and the suitability of the maximum permissible length of stay in them. The Committee also addressed the stipulation of the maximum length of expulsion custody and the need to hear sentenced persons when it is being decided to take them into expulsion custody.

Other issues discussed included legal safeguards for persons deprived of freedom (right to legal representation and right to inform relatives), the provision of free legal aid, the length of judicial proceedings, the amendment to the Act on Institutional or Protective Care[6] and complaints concerning involuntary sterilizations.

In its Conclusions and Recommendations[7] the Committee welcomed the legislative efforts to implement the Convention's provisions, particularly regarding the conditions for prisoners, asylum proceedings and investigation of crimes committed by police officers, as well as the adoption of the Act on Probation and Mediation Service[8], the Act on Special Protection for Witnesses[9] and the introduction of the National Strategy to Combat Trafficking in human beings in 2003. The Committee also assessed the CR's goal of ratifying the Optional Protocol to the Convention in 2005 and of adopting the relevant change to the Act on the Public Defender of Rights,[10] which expands his powers so that he can perform the role of a national preventive mechanism according to the Optional Protocol.

The Committee presented the CR with a wide range of recommendations, including those to:

- Exert additional efforts to combat racial intolerance and xenophobia;
- strengthen existing efforts to reduce the occurrences of ill-treatment by the police and other public officials and to adopt measures to establish an effective, reliable and independent system to investigate charges of ill-treatment or torture on the part of the police or public officials;
- review the independence and effectiveness of the investigation into complaints of excessive use of force related to the International Monetary Fund /World Bank meetings demonstrations of September 2000, with a view to bringing those responsible to justice and providing compensation to the victims;
- strengthen safeguards against ill-treatment and torture and ensure that, in law as well as in practice, all persons deprived of their liberty be guaranteed and systematically informed of the right to a lawyer and the right to notify next of kin;
- consider ways to arrange additional activities for all detained persons with a view to encouraging them to occupy themselves thus reducing the amount of time spent in idleness;

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[6] Act No. 109/2002 Coll., on Institutional Care or Protective Care in School Facilities and on Preventive Care in School Facilities, as amended

[7] see Government Resolution of 24 November 2004 No. 1171 on the final recommendation of the CAT – the supervisory body of the Convention against Torture and other Cruel, Inhuman or Humiliating Treatment or Punishment (http://racek.vlada.cz/usneseni/); the Czech translation of the final recommendations is contained in Annex no. 2 to the Government Resolution; the wording of the document CAT/C/CR/32/2 of 3 June 2004 in English is available on the website of the UN High Commissioner for Human Rights www.uhnchr.ch. (http://www.unhchr.ch/tbs/doc.nsf/0/07e43067e0d9c794c1256eb000510a0d?Opendocument).

[8] Act No. 257/2000 Coll., on the Probation and Mediation Service

[9] Act No. 137/2001 Coll., on Special Protection for Witnesses and Other Persons in Relation to Criminal Proceedings and on the amendment to Act No. 99/1963 Coll., the Civil Procedure Code, as amended

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

- ensure that medical examinations in prisons are confidential and to consider the possibility of transferring medical services from the Ministry of Justice to the Ministry of Health;
- reconsider the provision requiring prisoners to pay part of their expenses with a view to abolishing this requirement completely;
- review the strict regime of detention of illegal immigrants with a view to its repeal and ensure that all children held in the detention centres are transferred with their parents to family reception centres;
- investigate claims of involuntary sterilisations.

3.2. The 2004 Report on the implementation of recommendations of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (hereinafter only the "CPT"), which resulted from the CPT's visit to the CR in 2002

The CPT's second regular visit to the Czech Republic took place between 21-30 April 2002.[11] The final report from the visit, which was submitted to the CR in December 2002, summarises the CPT delegation's findings from its visit and contains recommendations that should be adhered to by the Czech Republic in its efforts to ensure sufficient protection for persons deprived of freedom, as well as comments on the current situation and requests for information.

The report on the implementation of the CPT's recommendations in 2004 was prepared by the Secretariat of the Government Council for Human Rights with the use of materials provided by the Ministry of Interior, the Ministry of Justice, the Ministry of Health, the Ministry of Labour and Social Affairs, the president of the Region of Moravia and Silesia and by the Public Defender of Rights. The report on the implementation of the CPT's recommendations in 2004[12] responds to the requests for information, recommendations and comments contained in the final report from the CPT visit in 2002 and links up with the report on the implementation of CPT recommendations in 2003[13] by containing only new data describing developments in the relevant areas that occurred in 2004.

3.3. Contractual foundation

3.3.1. Adoption of new international legal commitments

In 2004, the CR ratified or acceded to the following international treaties:
● The European Convention on State Citizenship, which represents a modern legal instrument for the regional protection of human rights.[14]
● The Convention on the Legal Status of Persons without State Citizenship,[15] which has limited significance due to the CR's declaration when presenting its document of its approach,

[11] see chapter I/3.2. of the 2002 report
[12] Government Resolution of 2 March 2005 no. 247 on the Report on the implementation of the CPT's recommendations in 2004, resulting from the Committee's visit to the CR in 2002 (http://racek.vlada.cz/usneseni/)
[13] Government Resolution of 21 January 2004 no. 79 on the Report on the implementation of the CPT's recommendations (http://racek.vlada.cz/usneseni/)
[14] no. 76/2004 Coll.m.s.; the Treaty came into force 1 July 2004.

according to which the Convention only applies to persons without state citizenship who have been granted permanent residence in the CR.

● Protocol no. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms,[16] which contains an absolute abolition of the death penalty.

● The Second Optional Protocol to the International Covenant on Civil and Political Rights,[17] which lays down a universal abolition of the death penalty. Unlike Protocol No. 13 to the ECHR, this protocol allows for an exception in relation to perpetrators of especially serious criminal offences committed during a time of war.

The commitments contained in the aforementioned protocols did not require any amendments to Czech law. The CR's ratification of or accession to both international treaties has resulted in increased powers for supervisory mechanisms, i.e. of the European Court of Human Rights and the Human Rights Committee, including with regard to these protocols' provisions.

The CR has signed the following international treaties and their ratification is pending:

● The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment[18] (hereinafter the "Optional Protocol"), whose adoption by the CR chiefly requires it to establish an independent supervisory body to supervise places where people are held whose freedom has been restricted *de iure* or in connection with the provision of care, since the Optional Protocol creates a two-tier system for the prevention of torture and other cruel, inhuman or degrading treatment or punishment. The Optional Protocol thus binds the signatory states to also set up one or more similar mechanisms also at a national level. As such commitment concerning the existence of such national mechanism has to be reflected in the national legislation before the ratification of the Optional Protocol, an amendment[19] has been proposed to the Act on the Public Defender of Rights[20] in order to entrust the Public Defender of Rights with the supervisory body's agenda over places of detention of persons whose freedom has been restricted by decision of a public authority or in connection with the provision of care. The Public Defender of Rights, furnished with the proposed authority, shall fulfil all criteria concerning national prevention mechanisms imposed by the Optional Protocol, and it will thus not be necessary to take any further steps towards the implementation of this Protocol. At an international level, visits to such facilities will be made by the Sub-Committee for the Prevention of Torture and other Inhuman or Degrading Treatment or Punishment set up as part of the Committee against Torture – the aforementioned Convention's international supervisory body.

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15 no. 108/2004 Coll.m.s., the Treaty came into force 17 October 2004.

16 no. 114/2004 Coll..m.s.; The Government approved the proposal for the signature and ratification of this international treaty of 17 April 2002 no. 405 (http://racek.vlada.cz/usneseni/). The CR signed the protocol without ratifying it in May 2002; the Chamber of Deputies gave its consent to ratification 17 December 2003 - see Parliamentary press no. 251 (http://www.snemovna.cz/cgi-bin/win/docs/tisky/tmp/t025100.pdf). The Senate did so 8 April 2004.

17 no. 100/2004 Coll.m.s.; the Government approved the proposal for access to this international treaty by Resolution of 17 April 2002 no. 404 (http://racek.vlada.cz/usneseni/). The Chamber of Deputies gave its consent to ratification 17 December 2003 - see Parliamentary press no. 247 (http://www.snemovna.cz/cgi-bin/win/docs/tisky/tmp/t024700.pdf). The Senate did so 8 April 2004.

18 no. 143/1988 Coll.

19 The Government approved the Government bill for an amendment to Act No. 349/1999 as of 30 July 2004 by Resolution no. 660 (http://racek.vlada.cz/usneseni/). Although the Chamber of Deputies obtained the bill 27 July 2004 the amendment received its first reading in February 2005 – see Parliamentary press no. 751 (http://www.snemovna.cz/forms/tmp_sqw/32d20007.doc). The amendment's content is described in detail in chapter II/4.6. of the 2003 report.

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

● Protocol no. 12 to the European Convention on the Protection of Human Rights and Fundamental Freedoms, which contains a general prohibition of discrimination. In September 2004 the Minister for Foreign Affairs asked the Prime Minister[21] to postpone the date for the Twelfth Protocol's submission to Parliament to approve its ratification. The Minister requested the postponement due to the instrument's incompatibility with certain Czech laws.
● Preparation of the Convention on the Rights of People with Disabilities: 2004 saw the UN General Assembly's Ad hoc Committee continue its work in preparing the convention on the rights of people with disabilities.[22] The Convention should supplement the existing six basic UN conventions on human rights. Its objective is to ensure the effective realisation of human rights for people with disabilities on a basis of equality with other people and to support their active involvement in society. Informal consultations are being held to discuss the specific draft of the text emanating from the working group's results at the beginning of 2004. As an EU member country, the CR delegation takes part in the material business of meetings held to coordinate EU preparations, through which it plays a role in forming all EU representations EU. In doing so it seeks the clear, strong, unambiguous and effective anchoring of the principles of non-discrimination, equality of opportunity, support for maximum autonomy in deciding a person's lifestyle, participation in society and people's full inclusion in society, as opposed to their exclusion.

3.3.2. Complaints against the CR before the European Court of Human Rights[23]

The Office of the European Court of Human Rights (hereinafter only the "Court") records a total of 1 370 874 complaints filed against the CR for 2004. Of this number, the Court communicated 86 complaints to the CR. As the Court office does not make any statistical evaluation of all filed complaints, their composition (unlike the composition of communicated complaints) is not known.

In 2004 the Court issued 27 guilty judgements against the CR. The following is a brief description of some of those where the Court found that the CR had breached complainants' rights:[24]
● The judgement of the Second Section of the Court issued on 20 April 2004 in the matter of *František Bulena vs. the CR* concerned the right of access to the court (article 6 (1)). The Court mentioned the Constitutional Court's overly formal approach in indicating the judgement against which the constitutional complaint had been made.[25] The Court pronounced that reference to the right's breach in the judgement was sufficient satisfaction for any moral detriment suffered by the complainant. As compensation for the costs of the proceedings it awarded the complainant 1,300 EUR.

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[21] The Prime Minister approved the postponement until 30 July 2007.
[22] Reports from the meetings of the Ad hoc committee are available at http://www.un.org/esa/socdev/enable.
[23] The Ministry of Justice prepares its own reports on complaints against the CR at the Court. In March 2005, a report was compiled for the last quarter of 2004. Documents are accessible on the Ministry's website at (http://portal.justice.cz).
[24] This part was compiled from Ministry of Justice press releases on the Court's judgements concerning complaints against the CR; these are published on (http://portal.justice.cz).
[25] The complainant formulated the constitutional complaint as a "*Complaint to the Constitutional Court of the Czech Republic against the judgement of the Municipal Court in Prague of 28.6.1999, which the High Court in Prague confirmed by its decision of 21.10.1999.*" According to the European Court of Human Rights, the Constitutional Court could have taken this into account because it did not neglect to mention the last judgement, and a copy of the High Court's judgement had been attached to the constitutional complaint in accordance with Act No. 182/1993 Coll., on the Constitutional Court, as amended.

● The judgement of the Senate of the Second Section in the matter of *Vladimír Dostál vs. the CR* of 25 May concerned a breach of the right to hear a matter within an adequate period (article 6 (1)) and the right to an effective national means of remedying the excessive length of judicial proceedings (article 13). The complaint concerned the length of eight civil proceedings that the complainant had brought before the district and regional court in Ostrava. The shortest of these lasted five and a quarter years, the longest eight and a quarter years. In the case of three proceedings, the European Court of Human Rights stated that, although their length had to a degree been influenced by the complainant's behaviour, their total duration exceeded any reasonable limit. For the remaining five proceedings the Court stated that it was significantly influenced by the fact that the Czech courts had been forced to deal with a large variety of procedural submissions on the part of the complainant (complaints, applications, objections of prejudice, remedial measures) which were often unclear or lacked justification. The European Court of Human Rights adjudged the moral detriment for the first three proceedings to be 6,000 EUR.
● Two judgements of the Court in the matter of *Jarmila Houfová vs. the CR* of 15 June 2004 concerned the excessive length (article 6 (1)) of two proceedings held before national bodies on the release of real estate under the Act on Extra-judicial Rehabilitation. In the case of the first proceedings, the Court took into account the fact that the complainant was partly responsible for the length of proceedings, although it still found several periods of inactivity on the part of national courts in both proceedings. Against the complainant's request for more than 7 million Czech crowns, the Court awarded her compensation for moral detriment of 2,000 EUR in the first case, 2,500 EUR in the second case, and 900 EUR as compensation for costs.
● The Court's final judgement in the matter of *Dagmar Horčíková vs. the CR* of 8 June 2004 concerned the excessive length of the judicial proceedings between 1998 and 2001. The Court stated that although the proceedings had been held before only one instance of jurisdiction, although in two phases (judgement and executory), the relevant dispute was not complex and did not need to be speeded up; indeed the complainant had been partly responsible for the length of the proceedings, nevertheless, despite a certain delay in the activity of the court executor, the proceedings had passed in a normal rhythm. The European Court of Human Rights thus concluded that the complaint should be declared inadmissible for being manifestly unsubstantiated.
● The judgement of the Senate of the Second Section in the matter of *Radka Paterová vs. the CR* of 14 September 2004 concerned the length of two judicial proceedings (article 6 (1)), one on the arrangement of relations to a son below the age of majority, which began in 1989, and the other on divorce which began in 1991. The Court stated that the case had not been complicated at the beginning, but that it had become complicated by the ever more stressful relations between the parents, which repeatedly resulted in prosecutions. The Court further mentioned that the length of proceedings affected the complainant's family and private life and also affected the interest of the child. As justifiable satisfaction the complainant requested an amount exceeding one million Czech crowns. The Court awarded the complainant 9,000 EUR as compensation for moral detriment and 1,500 EUR as compensation for costs.
● In its judgement on the matter of *Bečvář and Bečvářová vs. the CR* the Court stated that there had been a breach of the complainants' rights to judicial proceedings within a reasonable period (article 6 (1)), although it declared part of their complaint concerning the breach of the right to protection of property (article 1 (1) of the Additional Protocol) to be manifestly unsubstantiated. The complainants were the competent subjects for the release of real estate under the Act on Extra-Judicial Rehabilitation, and therefore judicial proceedings began in 1999 on compensation for damage suffered as a result of a breach of rights in concluding the contract for sale from 1986. The Court allowed that the proceedings could

have been complex and that the complainants had also partly contributed to their length. Nevertheless, the proceedings had suffered several delays which could be ascribed to the Czech courts, and the subject matter of the proceedings was extremely important for the complainants. As compensation for loss and the proceedings' costs the complainants asked for more than three million Czech crowns; the Court awarded them 2,500 EUR for loss and 900 EUR for costs.

● In its judgement on the matter of *Škodáková vs. the CR* the Court stated there had been a breach of the right to hear the matter in a reasonable period (article 6 (1)) in proceedings on the division of co-ownership between 1998 and 2001. The Court awarded the complainant 8,000 EUR for moral detriment and 400 EUR for costs.

● In its judgement on the matter of *The Centre of Civil Engineering, Corp. (Centrum stavebního inženýrství, a. s). vs. the CR* the Court stated that the judicial proceedings on compensation had been excessively long (article 6 (1)) and awarded the complainant compensation for moral detriment of 2,800 EUR.

As is the case with other Council of Europe member states that acknowledge the jurisdiction of the European Court of Human Rights, the CR is facing an ever increasing number of complaints concerning the abuse of the right to fair process.

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

In 2004, the Human Rights Committee[26] did not adopt any opinion on an individual notice filed against the CR, nor did it communicate to the CR in 2004 any individual notice.

3.3.4. Implementation of decisions of international supervisory bodies by the state

The amendment[27] to the Act on the Constitutional Court[28] allows the Court to reopen proceedings decided by the Constitutional Court, i.e. for retrial before the Constitutional Court on the basis of a decision by an international court. The amendment does not, however, apply generally, but only to criminal cases. It thus excludes the possibility of retrial in administrative justice or civil proceedings.

Since the vast majority of complaints against the CR (like those against other states that acknowledge the Court's jurisdiction) concern the length of judicial proceedings, the Ministry of Justice prepared an amendment to the Act on Liability for Damage Caused in the Performance of Public Authority by Decision or Incorrect Official Procedure.[29] At present, the Act only regulates for compensation for moral detriment. The amendment should make it possible to receive compensation for moral detriment due, for example, to the excessive length of judicial proceedings.[30]

In the near future it will be desirable to settle not only the question of implementing Court judgements in non-criminal cases, but also the matter of implementing the decisions of non-judicial international supervisory bodies in individual cases. In this second instance, it

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[26] This is an international control body which oversees the fulfilment of commitments contained in the International Covenent on Civil and Political Rights (No. 120/1976 Coll. and No. 169/1991 Coll.).

[27] Act No. 83/2004 Coll., amending the Act on the Constitutional Court

[28] Act No. 182/1993 Coll., on the Constitutional Court, as amended

[29] Act No. 82/1998 Coll., on Liability for Damage caused in the exercise of public authority by decision or incorrect official procedure, as amended

[30] The bill for the amendment to the Act was discussed by the Government Legislative Council from March 2005.

will be necessary to consider, inter alia, also the extent within which the state is to be bound by a decision that does not have a legally binding nature stipulated in the wording of the treaty.

4. The European Union

The EU is not only an economic community but also a community that shares common values. It is founded on the principles of freedom, democracy, the rule of law and respect for human rights and fundamental freedoms, i.e. principles that are common to the member states. Particularly in recent years, the sphere of human rights in the EU has increased in importance. Proof of this can be found in the adoption of the *EU Charter of Fundamental Rights*, which was declared by European institutions, the Council Commission and Parliament in December 2000. The Charter's aim is to improve the protection of human rights in the light of changes in society, social advances and technological development and to raise the profile of human rights in the EU.

The importance that EU bodies place on human rights is also reflected in the annually adopted reports on the state of human rights. Specifically, in 2004 the EU Council adopted the sixth *EU Annual Report on Human Rights*.[31] The report covers the period from 1 July 2003 to 30 June 2004 and addresses all aspects of human rights, i.e. both the internal and international dimensions. It points to the following areas as meriting the EU's special interest: human rights and terrorism, racism, xenophobia and anti-Semitism, asylum and migration, the status of people belonging to minorities, human trafficking, the rights of the child, women's rights and relations between human rights and the business sphere.

A new development in the EU is the creation of a network of independent experts for questions of fundamental rights, which was set up by the European Commission at the request of the European Parliament in 2002. The CR is represented in this network by Prof. JUDr. Pavel Šturma, DrSc. Every year (since 2002), the network prepares an extensive *annual report on fundamental rights in the EU*.[32] The reports are far wider in scope than the Council reports as they cover not only human rights in relation to the activity of European institutions but also the overall development in EU member countries, including relevant judicatures. The reports are always accompanied by a so-called aggregate report, which contains conclusions and recommendations on the human rights situation in the EU and its member countries.

In December 2003, the European Council decided at its summit in Brussels to change the *European Monitoring Centre on Racism and Xenophobia (EUMC)*[33]*,* based in Vienna, into a human rights agency. In 2004, the European Commission began the preparatory work, including consultation with the public by means of a public consultation document published in autumn of 2004. The draft for the relevant order to establish the agency, which is being

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[31] Council of the European Union: *Annual Report on Human Rights. 2004*. Luxembourg: Office for Official Publications of the European Communities, 2004. (132 pages)

[32] The most recent adopted report is the report for 2003: E.U. Network of Independent Experts on Fundamental Rights: *Report on the situation of fundamental rights in the European Union in 2003*. (2004) a E.U. Network of Independent Experts on Fundamental Rights: *Synthesis Report: Conclusions and Recommendations on the situation of fundamental rights in the European Union and its Member States in 2003*. (2004). Luxembourg: Office for Official Publications of the European Communities, 2004. (170 pages and 118 pages)

[33] The European Monitoring Centre on Racism and Xenophobia (EUMC) is one of more than twenty EU agencies.

prepared by the EU commissioner for freedom, security and justice, should be ready in May 2005. The agency should begin its activities as of 1 January 2007.

At present, 25 National Focal Points (NFP) operate in the EUMC. These provide the EUMC with data on the situation in individual countries. The Czech NFP is represented by a group of non-government non-profit organisations (*Tolerance a občanská společnost, Bejt Praha, Centrum pro integraci cizinců and the Department of Social and Cultural Anthropology at the Philosophy Faculty at the University of West Bohemia*) under the auspices of *Člověk v tísni, o.p.s.*[34] The former Government commissioner for human rights Peter Uhl, was appointed to the EUMC's administrative committee in 2004.[35]

It is evident that the issue of human rights in the EU is gradually becoming a permanent part of its activities and that this development also requires the creation of institutional support. The importance of human rights in the EU is underlined by the draft *Treaty on a Constitution for Europe*, which also includes the EU Charter of Fundamental Rights.

[34] The Czech NFC is now submitting the first report on the situation in the CR in areas monitored by the EUMC.

[35] The director of the Government Office's human rights department, Andrea Bar_ová, is the relevant official for contacts between the EUMC and state administration in the CR. .

II. Special part

1. Fundamental rights

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

1.1.1. Cancellation of the lower penalty limit for so-called less serious breaches of obligation under the Construction Act (Section 106 (2) of the Construction Act)

At the suggestion of the Regional Court in Ústí nad Labem, the Constitutional Court cancelled the lower penalty limit for so-called less serious breaches of obligation under the Construction Act.[36] In doing so it proceeded from its decision of 2002, when it cancelled the lower penalty limit for so-called less serious breaches of obligation under the said Act.

The case concerned a children's Fund (hereinafter the "Fund") which received a fine in administrative proceedings for failing to complete safety work on a building by partly stabilising its roof and enclosures. The building's roof subsequently collapsed. In proceedings before the regional court the Fund had already defended itself by arguing "*that it had carried out work within the limits of its possibilities, and that the collapse of part of the roof was due to exceptionally bad weather. It pointed out that as a state organisation in liquidation it did not have the money for new investment.*"

Just as it cancelled the lower limit for penalties for so-called more serious offences, so the Constitutional Court cancelled the lower limit of the punishment for so-called less serious offences. It stated that even a minimum fine could result in the liquidation of the penalised body, i.e. thereby failing to meet the condition of a proportionate penalty, and could thus mean an infringement of the protection of ownership (article 11 (1) of the Charter) and property rights (article 1 of the Additional Protocol to the European Convention on the Protection of Human Rights and Fundamental Freedoms[37] – hereinafter the "ECHR").

Nevertheless, the Constitutional Court also emphasised that the regulation of obligations " … *under regulations ensuring important public interests ... must also be interpreted in such a way that it allows the said obligations to be fulfilled…"*, and that "*argumentation consisting in the adoption of the opinion that a legal entity in liquidation has a lower degree of liability for the condition and administration of property of which it is the owner could cause factual disparity between the content of the ownership right of individual owners as a result of instantaneous property and organisation situation.*"

1.2. Right to privacy and its protection

1.2.1. Protection of personal data

In 2004, information from the Office for the Protection of Personal Data (hereinafter the "OPPD") derived from the ever-increasing number of individual complainants. These alert the OPPD to a variety of areas, customs or procedures where breaches of the right to respect

[36] Act No. 50/1976 Coll., on Teritorial Planning and Construction Rules (the Construction Act), as amended

[37] No. 209/1992 Coll.

for private and family life occur through the unauthorised collection and processing of personal data. They concern chiefly the following types of examples:

- the extent of personal data processed in banking, chiefly the means of obtaining the consent of clients and other persons to the processing of personal data, including the subsequent means of protecting the data,
- the widespread practice of copying personal identification documents,
- the protection of sensitive personal data in the health service in relation to the problem of a secure form of health book,
- storing data in police databases,
- plans for the further gathering and processing of personal data in public administration (e.g. the formation of a central register of bank accounts, health registers),
- the lack of legal regulations and rules for the surveillance of individuals by camera systems in public accessible places,[38]
- the unwillingness on the part of certain bodies of public administration and self-administration when providing information under the Act on Free Access to Information[39] to protect personal data,[40]
- the growing practice of private security services to assume rights that don't belong to them by law, e.g. they check people's identity, maintain databases of alleged thieves, debtors, payment dodgers etc.
- the practical consequences of the Act on Access to the Files on the Activities of the Former State Security, and the Act on Archives.

The OPPD anticipates a host of other problems relating to the application of modern technology in practical life. These include the processing of biometric data, where many problems can be expected in issuing travel documents with their holders' biometric data, and the use of radio frequency identification (RFID). According to the OPPD, the abuse identification documents and identity theft in general can be expected to rise.

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[38] In chapter II/1.3.3. the 2002 report dealt with public camera systems in relation to the use of cameras as a means of improving public order. The amendment (Act No. 311/2002 Coll.) to Act No. 553/1991 Coll., on Municipal Police, as amended thus introduced legal powers for municipal police "*to acquire sound, pictorial or other records from publicly accessible places …"* on condition that, if *"…permanent automatic technical systems are in place...to acquire records the municipal police are obliged to publish information on the installation of such systems in an appropriate manner*." However, a solution has yet to be found for the problem of handling records from other camera systems used to monitor publicly accessible spaces, not only external but also internal.

[39] Act No. 106/1999 Coll., on Free Access to Information, as amended

[40] In its annual report for 2003, the OPPD stated that for many of the offences it handles a public administrative body is responsible for unlawful behaviour. According to OPPD information, this situation did not change in 2004, and the OPPD thus continues to punish these bodies. Probably the largest group registering certain common features is the municipalities. In 2004, several proceedings were held concerning the exercising of independent powers by municipalities, which, as administrators of personal information unjustifiably published personal data, for example in the local press or on their websites. The vast majority of these proceedings concerned the publication of personal data from meetings of the municipal assemblies and councils. In January 2004, the OPPD issued statement No. 2/2004 – Accessing and publication of personal data from meetings of municipal and regional assemblies and councils – the aim of which is chiefly to eliminate different interpretations and approaches to the interpretation of the Act on Freedom of Access to Information, and the Act on the Protection of Personal Data in the Performance of Local Government. It nevertheless proved impossible to develop and implement approaches to a higher level of protection of privacy for the individual against the so-called public interest of the municipality as promoted by its bodies.

1.2.2. Anonymous births[41]

Since September 2004 the possibility of confidential births[42] has also existed in the CR. These are intended to enable pregnant women to give birth without having to state personal data.[43] The complexity of this matter, and its relation to other rights and aspects, is reflected in the opinions concerning this possibility.[44] Supporters emphasise the right of women to give birth secretly as an alternative to abortion, while opponents argue the right of the child to know its parents[45] or the unequal status of married and unmarried women, where only unmarried women can give birth secretly. The child's right is not absolute and even the Convention on the Rights of the Child admits that it should be exercised in accordance with the other international commitments of the treaty parties. In this respect, the major factor is the right to privacy under the ECHR, where according to the case law of the European Court of Human Rights, the right to privacy (article 8), which also includes information on the identity of close relatives, is not infringed if the child or parent learn of each other's existence with the consent of the second party.[46]

Only a woman who isn't married can ask for a confidential birth, and the father of her child is thus not automatically considered to be the father under the Act on the Family[47]. If this were the case, the child's father would be deprived of his parental rights and the child would be deprived of its right to be brought up by its parents. A confidential birth is recorded in the sealed medical documentation of the woman who gave birth to the child, because „ ... *without this personal data it would be practically impossible to obtain important information of a medical nature which could be extremely important in protecting the child's health*." The health facility informs the registry office of the child's birth so that it can be entered in the birth register and be given a birth index number, or registry document. This will not, however, contain personal data of the parents, and the mother's data remains in the sealed medical

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41 This chapter is prepared using the substantiation report to parliament press note 414 – parliamentary proposal to change the Act on Public Health Care (No. 20/1966 Coll.), the Act on the Registration of Births, Deaths and Marriage (No. 301/2000 Coll.) and the Act on Public Health Insurance (No. 48/1997 Coll.) (http://www.snemovna.cz/forms/tmp_sqw/50b100b5.doc).

42 Act No. 422/2004 Coll., which amends Act No. 20/1966 Coll., on Public Health Care, as amended, Act No. 301/2000 Coll., on the Registration of Births, Deaths and Marriages, as amended, and Act No. 48/1997 Coll., on Public Health Insurance, as amended

43 The material difference between an anonymous birth and concealment of the identity of the woman who gave birth to the child is that in the case of an anonymous birth the mother of the child is not known and the child is a foundling.

44 In her article Anonymous Birth?, A. Flídrová chiefly looks at the legal aspects of anonymous/confidential births and existing models (Jurisprudence No. 4/2004, pp. 10 – 14).

45 see Article 7 (1) of the Convention on the Rights of the Child (No. 104/1991 Coll.): "*Each child is registered immediately after birth and from birth has the right to a name, the right to state citizenship and, if possible, the right to know its parents and the right to their care.*"

46 see decision of the European Court of Human Rights on complaint No. 42326/98 in the matter of *Odiévre v. France*; The complainant objected that the French authorities, by withholding information that would help identify her biological mother, violated her right to a private and family life. The court interpreted the situation as a mixture of competing rights, in which it was necessary to abide by the principle of proportionality between the infringement and protection of the rights of the child and mother. The court assessed the French model of anonymous births as a system that respects this proportionality and expressly stated that in such cases the safeguarding of rights is fully within the powers of individual signatory states.

47 Section 51)1) of Act No. 94/1963 Coll., on the Family, as amended: "*If a child is born in the period from the close of a marriage until expiry of the day of separation following dissolution of the marriage or following its declaration as invalid, the wife's husband shall be considered the child's father.*"

documentation.[48] Medical and other professions are not authorised to inspect the sealed documentation as access to personal data must always be decided by a court.

New legislation on confidential births is not systematic as it only affects the administrative sphere. It entirely neglects questions of status by failing to introduce an amendment to the Act on the Family, and the child's mother thus formally remains its legal representative. The anti-constitutional nature of confidential births is further evidence of this shortcoming.

1.3. Freedom of assembly

The Act on Assembly[49] was amended in 2002. Among other things, the amendment legislates in greater detail on the conditions for notified assembly in publicly accessible places. In such cases, the convenor is obliged to submit, together with notification of the assembly, the consent of the owner or user of the land on which the assembly is to take place. Also amended was the Act on Terrestrial Communications,[50] which cancelled the licensing principle for assemblies on terrestrial communications and introduced the notification principle. For assemblies that are a manifestation of a constitutional right it is thus sufficient for the convenors to inform the communications administrator. In all other cases, for example cultural and sporting assemblies, consent to the holding of the event is still a requirement.

As in the previous ten years, 2004 saw the staging of the event known as CzechTech. As in the case of other so-called techno-parties, the amendment to the Act on Assembly made it easier to predict this type of assembly, as in the last two years the actual convenors negotiated either with the user or the owner of the land on which they intended to hold the assembly, and subsequently talked with the local authorities, if they announced the assembly. Situations occur, however, where the owners/users of the land retract their consent, or during the assembly it becomes clear that it is not adequately organised (e.g. hygiene). In the first instance, it would most probably be necessary to find out if the owner/user had been misled, which could result in a further breach of conditions for the announcing of an assembly, with the requirement that it be terminated or dissolved. The second example could lead directly to the termination or dissolution of the assembly.

The question of whether this type of public musical event can anyway be considered as an assembly under the law on the right to assembly has been addressed by the Public Defender of Rights in reference to the techno-party held at Kopidlno in 2003. In his report on the matter, he stated that the organisation of a public musical event is not regulated by the law as it is not a political event. Under the Act on Municipalities,[51] public order is the responsibility of the municipality, which can issue a binding decree imposing obligations for the organisation, course and completion of public sports and cultural events, including dancing and discotheques, giving binding conditions in the scope necessary to ensure public order.[52] The organisation of techno-parties may be regulated in this manner. Consideration of

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48 The procedure of medical facilities in providing health care relating to anonymous births is regulated in the Ministry of Health Bulletin (issued in January 2005), which also stipulates the method of paying for this care from public health insurance.

49 Act No. 259/2002 Coll., which amends Act No. 84/1990 Coll., on the Right to Assembly, as amended

50 Act No. 13/1997 Coll., on Terrestrial Communications, as amended

51 Act No. 128/2000 Coll., on Municipalities, as amended

52 see Section 10 b) of the Act on Municipalities: "*The municipality may not in any way normatively regulate the enforcement of this "*constitutional" *right, but acts with transferred competence where necessary in*

this question has significance for the procedure in restoring public order, the procedure of the relevant authorities – the municipality and the Police.

Due to the fact that this concerns assembly in the broad sense of the word, attended by five to twenty thousand people, special procedures are required on the part of the Police, whose assistance in terminating or dissolving such events is forms one of its basic functions – the protection of property and safeguarding of public order.

2. Political rights

2.1. Elections to the European Parliament

2.1.1. The course and results of elections to the European Parliament

The historic first elections to the European Parliament were held 11 and 12 June 2004. In the elections the CR disposed of 24 mandates. Altogether, 806 candidates contested the elections, representing 31 political entities. Voter turnout was 28.32 % of registered voters, i.e. including citizens of other EU states with residence in the CR. The CR mandates were shared as follows:

political parties	***% of votes gained***	***number of mandates/of which won by women***
ODS	30.04	9/1
ČSSD	8.78	2/0
Independent	8.18	2/1
KSČM	20.26	6/1
SNK- ED	11.02	3/1
KDU – ČSL	9.57	2/1

Inspections were held in April and May 2004 of Ministry of the Interior staff in local authorities with responsibility for keeping lists of voters for European Parliamentary elections. No material shortcomings were found during these inspections.

During voting and vote counting the Ministry of the Interior conducted random inspections at polling stations in seven regions. No major shortcomings were found during these inspections, including in relation to the time at which counting of votes began, which unlike other elections was specific. Unlike other elections, the district electoral commissions could begin counting votes at the moment the last polling station in the EU closed, i.e. on Sunday 13 June 2004 at 22.00 hours CET.[53] This was in order to prevent the results of voting in one member state influencing voting in another EU state where voting was still continuing.

The diversity of the elections to the European Parliament brought much information that in the future could be used to make the elections more attractive. Voting lists were compiled well in advance, which meant that they contained several voters who had died in the meantime. In the case of voting lists that were sent by medical facilities up to 20 days before

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the form of individual administrative acts." Judgement of the Constitutional Court Ref. No. Pl. ÚS 40/95 of 17 April 1996

[53] Section 40 (1) of Act No. 62/2003 Coll., on Elections to the European Parliament proceeds from EU legal regulations, specifically article 9 of the 1976 Act on the Election of Members of the European Parliament in direct general elections and Decision 2002/772.

the elections were held, situations occurred where no account was taken as to whether the patient would be hospitalised on the date of the elections.[54]

2.1.2. Judicial protection of elections to the European Parliament

The Supreme Administrative Court is responsible for the judicial protection of elections to the European Parliament. The Court received four petitions concerning six candidates for a judicial review of the decision by the Ministry of the Interior to remove a candidate from the candidate list for elections to the European Parliament (Section 89 (1)b of the Administrative Procedure Code[55]). It also received one petition for the invalidity of the election of a candidate (Section 90 (1) of the Administrative Procedure Code) and two petitions for the invalidity of elections to the European Parliament, which the Supreme Administrative Court considered to be a petition for the invalidity of the election of all candidates.

The petitioners of all petitions for a judicial review of the decision to remove a candidate from the candidate list did not agree with the decision of the Ministry of the Interior to remove a candidate from the candidate list. In making its decision, the Ministry proceeded from the fact that a certified document of state citizenship,[56] as required by the Act on Elections to the European Parliament[57] (Section 22 (2)), had not been attached to the candidate list. In place of a document on state citizenship only an unverified copy of identity cards or documents for the granting of Czech citizenship had been attached to the candidate list.

In three cases[58] the Supreme Administrative Court rejected the petition for a judicial review of the decision to remove a candidate from the candidate list[59] due to the fact that the petition had been submitted to the Court following the expiry of the two-day limit stipulated by the Act on Elections to the European Parliament (Section 56). The petition was therefore late.

In one case,[60] concerning the decision to remove three candidates from the candidate list of the coalition For the Interests of Moravia in the United Europe (*Za zájmy Moravy ve sjednocené Evropě*) the Supreme Administrative Court rejected the petition because it concluded that the Ministry of the Interior had proceeded in accordance with the law by first asking the coalition to remedy defects in the candidate list and only afterwards, when some of these defects had still not been remedied, despite its request, deciding to remove the relevant candidates from the candidate list. According to the Supreme Administrative Court, the Ministry of the Interior had, in an exhaustive fashion, instructed the coalition in the possibilities of state citizenship for the relevant candidates, and the failure to make use of the

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54 information from the Ústí region

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

56 see Section 20 (1) of Act No. 40/1993 Coll., on the Attainment and Loss of State Citizenship of the CR, as amended: *"State citizenship of the Czech Republic is proven a) by identity card, b) passport, c) certificate, or confirmation of state citizenship of the Czech Republic, d) certification of legal competence to get married, if this contains reference to state citizenship of the Czech Republic.*"

57 Act No. 62/2003 Coll., on Elections to the European Parliament

58 The petitions were heard under Ref. No. Vol 3/2004-9, Vol 2/2004-7 and Vol 4/2004-8.

59 Here the Supreme Administrative Court decided by court ruling.

60 The petition was heard under Ref. No. Vol 1/2004-46.

possibilities for certifying state citizenship was due to carelessness and error on the side of the coalition, or its candidates, and not the Ministry of the Interior.

The Supreme Administrative Court rejected two petitions[61] for the invalidity of the elections, or petitions for the invalidity of the election of all elected candidates as it judged one of them to be late and one premature – the petitioners failed to abide by the time-limit of ten days from the declaration of the election results by the State Electoral Commission (Section 57 (1) of the Act on Elections to the European Parliament).

The Supreme Administrative Court dealt with the petition for the invalidity of the election of a candidate[62] on its merits. The petitioners objected that, from the results of the elections to the European Parliament published on the internet page www.volby.cz, it was evident that, in the electoral district in which they had voted, no priority vote had been recorded for candidates, despite the petitioners having given a priority vote to the relevant candidates. They thus suspected unlawful manipulation and a threat to the rectitude of all the elections. In its investigation, the Supreme Administrative Court concluded that a mistake had indeed occurred in the district electoral commission's processing of the election results. Although the district electoral commission had rightly stated in its record that the relevant political entity had won three valid votes, it had failed to state that voters had granted the candidates priority votes. The Supreme Administrative Court rejected the petition on the grounds that it was a marginal breach of the Electoral Code which is of only statistical importance. Its non-inclusion in the record could not in any way have affected the legality of the election of any of the candidates.

2.2. Elections to the Senate

2.2.1. By-elections to the Senate

2.2.1.1. The course and results of by-elections to the Senate

In relation to the termination of the mandates of Senator doc. Ing. Josef Zieleniec, CSc.[63] and Senator PhDr. Vladimír Železný,[64] the President of the Republic announced 9 July 2004[65] by-elections to the Senate, to be held on 8 and 9 October in each electoral district. The second round of voting took place on 15 and 16 October 2004.

The course and results of the by-elections are given in the following table:

electoral district	***number of candidates***	***voter participation (%)***	***Progress to 2nd round – votes won in %***	***elected – percentage of votes***
Prague 4 (no. 20)	7	20.0 (1st round) 15.21 (2nd round)	37.82 (ODS candidate) 20.13 (ČSSD candidate)	60.12 (ODS candidate
Znojmo (no. 54)	5	19.5 (1st round) 14.01 (2nd round)	29.32 (ODS candidate) 28.37 (KDU – ČSL candidate)	53.31 (KDU – ČSL candidate)

61 The petitions were heard under Ref. No. Vol 5/2004-8 and Vol 7/2004-5.
62 The petition was heard under Ref. No. Vol 6/2004-12.
63 Electoral district no. 20 registered in Prague 4, hereinafter "electoral district Prague 4"
64 electoral district no. 54 registered in Znojmo, hereinafter "electoral district Znojmo"
65 decision published in the Collection of Laws under No. 415/2004 Coll.

Members of the State Electoral Commission's secretariat performed an inspection in nine polling stations in the electoral district of Znojmo during the first round, and in seven polling stations in the electoral district of Prague 4 during the second round. The inspection focused on compliance with the voting rules and the equipment used in the polling stations. The inspections found no serious shortcomings and minor shortcomings were remedied on the spot. Among other things, these related to the absence of the Act on Elections to the Parliament,[66] and a ballot box which was not secured with a seal (so that it couldn't be opened) but only a lock.

2.2.1.2. Judicial protection of by-elections to the Senate

Only one petition was submitted to the Supreme Administrative Court during these by-elections. This was for the election of candidate MUDr. Milan Špaček in the electoral district of Znojmo (Section 87 (2 and 5) of the Act on Elections to the Parliament) to be declared invalid. The petitioner stated that the elected candidate had been wrongly identified on the ballot paper as a member of KDU-ČSL, although he was no longer a member of that party. This misled voters in both rounds in a way that could have profoundly influenced the outcome of voting and thereby the election of the said candidate. The Supreme Administrative Court concluded that the designation of party membership did not result in a breach of the Act on Elections to the Parliament, and therefore rejected the petition for the candidate's election to be declared invalid.[67]

2.2.2. Ordinary elections to the Senate

2.2.2.1. The course and results of ordinary elections to the Senate

On 30 July 2004, the President of the Republic announced ordinary elections to one-third of the Senate,[68] to be held 5 and 6 November 2004. The second round was held 12 and 13 November 2004. A total of 197 candidates, including independents, from 34 political entities, contested the election. Altogether, 28.97 % of registered voters took part in the first round, and 18.41 % in the second one.

Members of the State Electoral Commission's secretariat performed inspections in 65 polling stations during both rounds of the election. No serious shortcomings were detected, while minor defects were immediately remedied on the spot. No complaints were submitted by members of the district electoral commissions.

2.2.2.2. Judicial protection of elections to the Senate

During the elections to the Senate, the Regional Court in Ostrava declined two petitions[69] concerning the protection of registration for elections to the Senate as late, due to the fact that they were delivered to the Court following expiry of the two-day limit for

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66 Act No. 247/1995 Coll., on Elections to the Parliament of the CR, as amended

67 The Supreme Administrative Court decides according to Section 90 of Act No. 150/2002 Coll. without ordering hearings by a judgement (see Ref. No. Vol 8/2004 – 35).

68 Decision published in the Collection of Laws under No. 449/2004 Coll.

69 Ref. No. 22Ca 451/2004 and Ref. No. 22Ca 429/2004

claiming judicial protection. The Supreme Administrative Court received a total of five petitions for the elections to be declared invalid, one in combination with a petition for the invalid election of a candidate, or candidates (Section 87 (2) of the Act on Elections to the Parliament). The Court found one petition to be substantiated and rejected the other four.

In reaching its judgement on the first petition, the Supreme Administrative Court considered the alleged conflict between some provisions in the Act on Elections to the Parliament and the Act on the Protection of Personal Data.[70] According to the petitioner, the law does not guarantee candidates equal access to Senate elections as independent candidates can only seek election to the Senate if they attach to their registration a petition with at least a thousand signatures of registered voters supporting their candidature. The petition must also include voters' birth index number. This may conflict with the Act on the Protection of Personal Data, as each citizen enjoys the right to protection of personal data. Candidates from political parties are not obliged to submit a petition of this type. The Supreme Administrative Court found this petition to be unsubstantiated because the petitioner did not state a breach of the Act on Elections to the Parliament, or any of its provisions, as a reasons for the elections' invalidity, but only stated that the reason for the elections' invalidity was the unequal access of individual candidates to the right to be elected. It therefore rejected the petition.[71]

In judging the other petition for the invalidity of the elections in electoral district no. 19 – Prague 11 (hereinafter "Prague 11 electoral district"), the Supreme Administrative Court assessed the course and management of the election campaign. The petitioner claimed that the Act on Elections to the Parliament had been breached by the fact that the election campaign preceding the elections had been unfair and incorrect and that untruthful information had been repeatedly published about a candidate in the local and regional press. The petitioner expressed his belief that the printed matter and the confrontational information it contained had been published in order to damage him as a candidate for the Senate in the entire electoral district no. 19. The Supreme Administrative Court concluded that, under the Act on Elections to the Parliament, there had been a breach of the defined manner of holding an election campaign (Section 16 (1) and (2)), and that a certain relation existed between the described breach of the Act and the election, or non-election of the candidate. It therefore ruled that the elections to the Senate in the Prague 11 electoral district were invalid.

On the basis of this decision, the President of the Republic announced[72] 18 December 2004 that there would be new elections to the Senate in the Prague 11 electoral district on 18 and 19 February 2005 (1st round).

As of 13 December 2004, however, the originally elected candidate submitted a petition to the Constitutional Court for the overturning of the Supreme Administrative Court's

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

71 The petition was heard under Ref. No. Vol 9/2004–9. The Supreme Administrative Court added that, due to the nature of the matter, it had not applied article 95 (2) of the Constitution, under which, if the court concludes that the law which is to be applied in resolving a matter is in conflict with constitutional order it shall submit the matter to the Constitutional Court. The Court thus did not find that the said laws were in conflict with constitutional order. It added that an analogous condition – at least one thousand signatures for a petition (Section 61 (2)d) – is contained in the Act on association in political parties and political movements (Section 6 (2)a, under which it is a condition of registration for a political party/movement that the application for registration is accompanied by a petition from at least one thousand citizens supporting the creation of the party/movement. Citizens must attach their name and surname, birth index number and residence to their signature.

72 Decision published in the Collection of Laws under No. 653/2004 Coll.

decision. On 26 January 2005, the Constitutional Court ruled[73] that the aligned party to the proceedings had been duly elected Senator in the elections to the Senate. It stated that no objective or potential causal relation had been established between the content of the printed matter and its dissemination among voters, which, according to the petitioner, contained false statements about him. The Constitutional Court also stated that, in comparison with other countries, legislation for the electoral process, electoral misdemeanours and election campaign rules in the CR are incomplete. It went on to say that legislators must consider whether the electoral culture of voters, candidates and public officials is of such as to render legislation on these matters irrelevant, or whether it can channel electoral behaviour down a path along prescribed rules that create a state of legal certainty for people involved in the electoral process.

A petition for the invalidity of elections to the Senate in electoral district no. 28 in Mělník (hereinafter the "electoral district Mělník"), related to the petition for invalidity of the election of the candidates Radim Uzel and Jiří Nedoma in the same electoral district, was submitted primarily by representatives of the political movement *Independent (Nezávislí)*. The petitioners referred to the fact that, in the electoral district Mělník the political party *Voter's Self-defence* (*Sebeobrana voličů)* made an application for registration which did not contain the name of the candidate as of the date on which it was submitted, and that it did not pay the deposit of CZK 20,000. The party only remedied these shortcomings in the aforesaid electoral district, within the time-limit for remedying shortcomings in applications. The party also submitted other incomplete applications for registration in other electoral districts in the Central Bohemia region, and also failed to pay the election deposit, with the result that registration of these applications was rejected. The petitioners thus assumed that *Voter's Self-defence* (*Sebeobrana voličů)*, from the beginning, only intended to campaign in one electoral district, and that the reason for delaying the decision as to which electoral district this would be was due to the attempt better to determine the district in which to place its sole candidate by finding out information on other candidates. In the opinion of the petitioners, by its actions *Voter's Self-defence* (*Sebeobrana voličů)* did not respect the rules stipulated for registration applications[74] and was therefore in breach of the Act on Elections to the Parliament. The Supreme Administrative Court rejected the petition because the petitioner did not apply for a judicial review of registrations[75] in order to challenge the candidate's registration. It added that because, in areas of doubt, laws are to be interpreted in favour of preserving rights, the interpretation should be allowed that an application for registration may be blank at the time it is submitted.

In his petition for the invalidity of the elections in the municipality of Ostroměř[76] the petitioner proceeded from the requirement to inform voters of the place and time that the

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[73] see the Constitutional Court's judgement Ref. Pl. ÚS 73/04; the judgement cancelled the Supreme Administrative Court's ruling of 3 December 2004 (Ref. No. Vol 10/2004-24), the resolution of the Senate Mandate and Immunity Committee no. 19, which states that this Committee could not verify the mandate for electoral district no. 11 in Prague due to the fact that the Supreme Administrative court decided that the elections for this district are invalid, resolution of Parliamentary Senate from the 1st meeting held 15 December 2004, by which the Senate takes into account point II of the Mandate and Immunity Committee's report on the result of the verification of validity of the senator's election and the decision of the President of the Republic No. 653/2004 Coll., on the declaration of new elections to the Senate.

[74] Section 61 (1) of the Act on Elections to Parliament, chiefly a) and c) and paragraph 2 chiefly e): "*An application for registration contains …the candidate's name and surname, age, occupation, municipality in which he has permanent residence, … number and seat of the electoral district in which he is a candidate, … .The candidate shall attach confirmation of a deposit of CZK 20,000 to the application for registration …* ."

[75] The petition was heard under Ref. No. Vol 11/2004-36.

[76] The Ostroměř municipality falls under electoral district no. 37.

second round of Senate elections is to be held. The petition stated that voters were not informed either by official notice or by announcement on local radio. The municipality's mayor stated that voters had been informed of the second round of elections in both such ways. The Supreme Administrative Court rejected the petition on the grounds that the Act on Elections to the Parliament only covers the obligation to inform voters of the time and place of elections in a general manner, without further specification for the second round of Senate elections. Due to the fact that the law currently requires mayors of municipalities to make an announcement at least fifteen days before elections are held, and the second round must take place on the sixth day after the end of the first round, it would not be possible to respect this general obligation on the timing of such announcements before the second round of Senate elections. "*The obligation to inform voters is therefore fulfilled by publication within the stipulated time-limit; in the event of elections over two rounds this shall be before the first such round in the manner customary to the place.*"[77]

The final petition submitted to the Supreme Administrative Court was a petition for the invalidity of elections to the Senate in electoral district no. 31 registered in Ústí nad Labem (hereinafter the "electoral district Ústí nad Labem"). The petitioner was the political party *The Communist Party of Bohemia and Moravia (KSČM)*. The party based its petition on the allegation that during elections in at least electoral district no. 71,[78] the members of the district electoral commission had only given voters one ballot paper, keeping the others for themselves or holding back the envelope with ballot paper, and had explained their behaviour by saying that they themselves would place them inside the ballot box instead of the voters. The petitioner saw the most serious breach of the Act on Elections to the Parliament in the arbitrary decision by members of the electoral commission to open a provisional polling station in an institution for the elderly. A substantial number of its inhabitants voted in this polling station, and not only those who for health reasons were unable to go to vote in the designated electoral district no. 71. According to the petitioner, this breached the principle of secret elections. The petitioner considered that the breach of the Act on Elections to the Parliament was such that it could have influenced the outcome of the elections and proposed that the Court decide that the second round of Senate elections be declared null and void.

The Supreme Administrative Court ordered hearings in the case[79] because the allegations contained in the petition depended on information provided by the inhabitants of the institution for the elderly. The course of the elections was described chiefly by personal testimony of those who had participated in them, i.e. members of the electoral commission or staff from the institution for the elderly. The Court found that the Act on Elections to the Parliament had been breached by a failure to ensure secret voting and by the failure on the part of the district electoral commission to ensure that voters took both ballot papers. The breach was not, however, responsible for the non-election of Jaroslav Doubrava, and the gravity of the breach was small enough not to influence the outcome of the elections. The Court found that the freedom to exercise election rights had been preserved because the inhabitants of the institution for the elderly had in no way been compelled to take part in the election, and they had been free to choose whether they voted or not. Neither were those inhabitants who decided to vote forced to do so in the room in the institution for the elderly where the temporary ballot box had been placed. Instead, they could have exercised their right

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77 From the substantiation of the rejection of the petition under Ref. No. Vol 12/2004/17

78 The petition concerned the course of elections in the institution for the elderly in Ústí nad Labem, Rozcestí 9. According to the petitioner, similar behaviour occurred in other social facilities in the electoral district of Ústí nad Labem.

79 The petition was heard under Ref. No. Vol 13/2004-105.

to vote in the polling station in the nearby elementary school, which some did indeed chose to do.[80] The Court based its decision largely on the fact that voters were always able to choose the ballot paper for the candidate for whom they wished to vote. Although in the second round some voters only took one ballot paper, this was always the ballot paper for the candidate they wanted to support, and this ballot paper was subsequently counted. The Court concluded that there was no relation between the breach of the Act on Elections to the Parliament and the candidate's election, and therefore rejected the petition.

2.3. Elections to regional assemblies

2.3.1. The course and results of elections to regional assemblies

Elections to regional assemblies were held 5 and 6 November 2004, i.e. concurrently with the first round of ordinary elections to the Senate. The members of the State Electoral Commission's secretariat thus inspected both elections at the same time. A total of 8,309 candidates, representing 45 political entities, contested the elections. Turnout for the elections was 29.62 % of registered voters. The political entities contesting the election won the 675 mandates as follows:

Political entity	***Votes won in %***	***No. of mandates won/of which won by women***
ODS	36.35	291/45
KSČM	19.68	157/26
ČSSD	14.03	105/13
KDU – ČSL	10.67	72/9
Koalice pro Pardubický kraj	1.38	12/1
SNK sdružení nezávislých	3.28	11/2
Strana pro otevřenou společnost	0.79	7/2
Koalice pro Středočeský kraj	0.86	4/1
SNK sdružení nezávislých a Evropští demokraté	0.66	3/0
Zelená pro Moravu	0.64	3/1
Evropští demokraté	1.06	3/0
Evropští demokraté a Nezávislí starostové pro kraj	0.38	3/1
Koalice pro Karlovarský kraj	0.14	2/1
ED, VPM, SOS – Volba pro kraj	0.33	2/0

2.3.2. Judicial protection of elections to regional assemblies

In relation to the elections to regional assemblies, one petition was submitted for the judicial review of the decision by the Karlovy Vary regional authority to reject the candidate

[80] The Supreme Administrative Court also remarked that many voters who did not vote in the official polling station, but in the old persons' home, did so not because of health or other serious reasons but because it was more convenient for them, which is also the testimony of witnesses. According to the Supreme Administrative Court, such behaviour on the part of the district electoral commission cannot be regarded as a breach of the Act on Elections to the Parliament (Section 19 (7)) but rather as a sort of extra service and an attempt to meet voters' needs; the district electoral committee cannot realistically check whether the health of each voter is sufficient to allow him to go to the official polling station. If the district electoral committee thus deprived voters of the chance to vote in a temporary polling station because it had wrongly judged the state of his health it would justifiably face the criticism that it had violated the freedom of voters by preventing people from voting.

list put forward by US-DEU, and a further petition was submitted by the Opava II Union Service of Silesia-Moravia in the Moravian-Silesian region.[81]

The political party US-DEU submitted a petition for the judicial review of the decision by the Karlovy Vary regional authority to reject the candidate list put forward by US-DEU. The US-DEU representative submitted the US-DEU candidate list at the reception office of the Directorate of Roads and Highways (Karlovy Vary administration), which is next to the regional authority's reception office. As a result, the candidate list was not submitted within the stipulated time-limit and the regional authority rejected it. The Regional Court in Pilsen declined the US-DEU petition for a judicial review of the decision to reject the candidate list as premature. The US-DEU then submitted a constitutional complaint against the court's decision to the Constitutional Court, which returned the matter to the Regional Court for its reconsideration on the grounds that the petition for a judicial review should not have been declined on formal grounds. The Regional Court then heard the matter[82] on its merits and rejected the petition on the grounds that the Act on Elections to the Regional Assemblies[83] stipulates a precise time-limit and place for the submission of candidate lists, and if a candidate list is not submitted within the prescribed time and at the relevant regional authority it is not submitted in time. Regardless of any subjective reasons for missing this deadline, in the Regional Court's opinion it was the regional authority's duty to reject the candidate list (Section 20 (3) and Section 22 (3)b of the Act on Elections to the Regional Assemblies).

3. Judiciary, right to judicial and other protection

3.1. Repeal of the Supreme Court's option not to substantiate judgements not permitting appellate reviews in civil proceedings (Section 243c (2) of the Civil Procedure Code)

Under the Civil Procedure Code[84] the Supreme Court was not forced to substantiate its decision when rejecting an appellate review as an extraordinary legal remedy. Although one of the reasons for this rule was to eliminate delays in judicial proceedings,[85] the Constitutional Court decided to address the question of whether this possibility in the Supreme Court's procedure " *... adequately eliminates arbitrariness in the application of the law...*" and whether the limitation of the appellant's right to know the reasons for his appellate review's rejection actually serve the stated objective, which is to speed up judicial proceedings. The matter thus rested on an assessment of the requirement for speed in judicial proceedings relative to the restriction of the participant's rights, and the substantiation for such procedure.

Among the arguments supporting the opinion that this does not infringe the participant's rights, we should mention the material argument that the Supreme Court " *...always reaches a preliminary conclusion as to whether the matter is of real importance in legal terms for the court of appeal, and thus is important for the decision-making activity of courts in general, and not only for a specific case...".* Among its systemic arguments the Supreme Court stated, for example, that it concerned proceedings not about an ordinary, but

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81 In the case (ref. no. 22 Ca 474/2004) it was found at the Regional Court in Ostrava that the Opava II Union Service of Silesia-Moravia had submitted an appeal. The matter was therefore submitted to the High Court in Olomouc, which has yet to give its ruling. As a result, the court's decision is not yet available.

82 Ref. No. 57C and 29/2004

83 Act No. 130/2000 Coll., on Elections to the Regional Assemblies, as amended

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

85 see the statement of both chambers of the Parliament and the Ministry of Justice stated in the substantiation for the Constitutional Court's judgement

an extraordinary legal remedy, and that a two-instance judicial system is considered adequate – appellate review proceedings thus take place before a court of third instance.

According to the Constitutional Court, the limitation of the appellant's right on grounds of the speed of judicial proceedings in deciding on the appellate review is inadequate because the appellate review's rejection is only substantiated by reference to the provision of the Civil Procedure Code (Section 243c (2)) which allows the Supreme Court not to justify its rejection of an appellate review. The appellant thus is not able to learn why the Supreme Court did not consider the matter to be of real legal importance. If the matter is submitted to the Constitutional Court or European Court for Human Rights the Supreme Court then finds itself in a position where it has to justify its decision to reject the appellate review after the event. The Constitutional Court also drew attention to the fact that this is only the case in civil proceedings, and that with regard both to decisions on appellate reviews in criminal proceedings under the Criminal Procedure Code,[86] and proceedings on cassation complaints at the Supreme Administrative Court, under the Administrative Procedure Code[87] the court must always justify its decision. This means that parties to proceedings are treated differently according to the type of judicial proceeding. As the Constitutional Court did not find any grounds for this difference in procedure it repealing the Supreme Court's option not to justify a rejection of an appellate review in civil proceedings.

3.2. Constitutional Court's decision of the question of the need for defence counsel in criminal proceedings with National Security Office certification for contact with confidential matters (Section 42 (1) of the Act on the Protection of Confidential Matters)

At the suggestion of the District Court in Přerov, which in criminal proceedings heard the case of a former employee of the intelligence services, the Constitutional Court dealt with a petition for the cancellation of the obligation for defence counsels to undergo a National Security Office (NSO) security check and to have certification to handle confidential matters when providing legal services in criminal proceedings which involve confidential matters.

According to the District Court, this obligation is in conflict with the principle of equality for all parties to proceedings, regardless of the type of proceedings (article 37 (3) of the Charter), with the basic principles of equitable procedure – public proceedings, hearing without unnecessary delays and the right to be present at the hearing and to be heard (article 38 (2) of the Charter), the provision of time for the accused to prepare a defence and to choose, or allocate an advocate, if required in criminal proceedings (article 40 (2) of the Charter). In this context the obligation is also in conflict with the right to a defence under the ECHR (article 6 (3)c). "*The accused are entitled to have their chosen defence counsels participate in acts performed as part of the criminal proceedings, particularly in substantiation conducted during the main hearing. The cited Act, however, does not allow for the implementation of this constitutional right for the accused.*"

The District Court drew attention to the fact that among current advocates " ... *no-one had undergone a security check as thus far no-one had been forced to do so. Moreover, it cannot be ignored that no legal regulation makes it possible to compel advocates to undergo a security check; this may lead to a situation where, if advocates refuse to voluntarily undergo a security check, there will be no certified advocate who can provide legal aid in*

[86] Act No. 141/1961 Coll., the Criminal Procedure Code, as amended
[87] Act No. 150/2002 Coll., the Administrative Procedure Code, as amended

cases involving confidential matters." This would lead to a situation in which not only could the accused not choose an advocate, but the court would also be unable to appoint a defence counsel in necessary defence cases. The District Court also referred to the fact that the advocate's obligation to have certification in order to handle confidential matters also infringes on one of the fundamental principles of advocacy, which is the advocate's independence from the State. The District Court sees the infringement in the fact that, by decision of a state body (the NSO), an advocate can effectively be penalised by the State, for example for his prior approach in providing legal services to a client. "*The State would thus acquire the possibility to de facto decide on who will act against it in a case."*

The Constitutional Court asked to the NSO to provide a statement on the question of the requirement for a defence counsel to successfully undergo a security check. The NSO stated that, in addition to international legal human rights commitments, the CR also has international legal security commitments. The NSO thus indirectly referred to the hierarchy in international legal commitments, which form part of the CR's system of law, regardless of whether these by international commitments in general, or whether they relate specifically to the CR's membership in the EU. In relation to the infringement of the right to the free choice of occupation, the NSO stated that in the case of advocates it was their decision whether they chose to acquire certification to handle confidential matters, and thus whether they would act as defence counsel in criminal proceedings in which the participants come into contact with confidential matters. On the other hand, the NSO emphasised that if advocates in criminal proceedings were not required to hold certification for contact with confidential matters this would result in an imbalance in the conditions for parties, as public prosecutors must hold certification in order to handle confidential matters.

In addressing the constitutionality of the issue, the Constitutional Court focused on the relation between the suitability of the means chosen to protect public assets – state security and the degree to which they infringe a whole range of rights and legal principles. The Constitutional Court concluded that security checks on advocates in criminal proceedings only is not a proportionate means, as " *... in criminal proceedings the given objective can be reached by a range of specific instruments – instruction by the court, the obligation of confidentiality under the Act on Advocacy etc.- which do not affect and in no way limit the fundamental right to a defence, to parity of arms and the right to comment on all evidence which in the relevant context stand in conflict with the public asset (state security).*" The Constitutional Court also referred to the judicature of the European Court of Human Rights,[88] under which, cases where the advocate must have access to confidential information concerning state security and is bound to confidentiality towards the client under national law do not conform to the legal principles for judicial proceedings according to the ECHR.[89]

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[88] see the decision of the ECHR in the matter of Chazal v. the United Kingdom mentioned in the substantiation for this judgement

[89] see article 6 (1) of the ECHR: "*Everyone is entitled to have his matter heard justly, publicly and within a reasonable time by an independent and impartial court ... which shall decide ... on the justness of any charge against him. The judgement must be announcement publicly, although the press and public may be excluded either for the whole or part of the procedure in the interest of morals, public order or national security in a democratic society, ...*". Article 38 (2) of the Charter corresponds approximately to this provision of the ECHR: "*Everyone is entitled to have his matter heard in public, without unnecessary delays and in his presence, and is entitled to comment on all evidence presented. The public may only be excluded in cases stipulated by the law*" in conjunction with article 4 (4) of the Charter: "*When using provisions on the limits of basic rights and freedoms their essence and sense must be retained. ...*".

The Constitutional Court also performed an analysis of the legal situation governing an advocate's participation in judicial proceedings, regardless of whether these be civil, administrative or criminal proceedings. In so doing, the Court had to deal not only with the question of whether the Code of Criminal Procedure or Act on the Protection of Confidential Matters applies to advocates in criminal proceedings, but also with the legislation concerning the protection of confidential matters in judicial proceedings generally. Despite the relatively broad scope for interpretation, the Constitutional Court concluded that the protection of confidential matters in criminal proceedings is a specific situation which proceeds according to the Code of Criminal Procedure as a special act, and not the Act on the Protection of Confidential Matters as a general act. If the reverse was the case the situation would arise where " *... in order to familiarise an advocate with evidence in criminal proceedings which contain confidential matters the advocate would be required to undergo a security check; in civil or administrative proceedings, however, such requirement would not be applied to the same advocate acting as a participant to the proceedings, even though the evidence would be identical and contain the identical confidential matters. ... If the Act on Confidential Matters regulated the obligation of advocates who come into contact with confidential matter in the role of defence counsel in criminal proceedings to undergo a security check, the consequences of this regulation would have to be included in special grounds of the case constituting grounds to exclude the selected defence counsel ...* (Section 37a of the Code of Criminal Procedure) *... and to discharge the stipulated defence counsel from defending the accused ...* (Section 40a of the Code of Criminal Procedure)." Under the law of the CR, an advocate acting as defence counsel in criminal proceedings cannot be asked for certification for contact with confidential matters, and neither therefore can he be required to pass a security check.

The Constitutional Court thus rejected the petition for the cancellation of the defence counsel's obligation to have certification for contact with confidential matters because this matter does not concern the Act on the Protection of Confidential Matters but the Code of Criminal Procedure. The District Court in Přerov, however, also asked the Constitutional Court for a legal opinion on a matter concerning security checks for advocates. The Constitutional Court stated that the provisions contained in the Act on the Protection of Confidential Matters was anti-constitutional and in conflict with the CR's international commitments.[90]

4. Persons whose freedom has been restricted

4.1. Detention and imprisonment

4.1.1. Prison numbers and prison capacity

In 2004, the rising trend in the number of prisoners, which began in the middle of 2003, continued. The increase in numbers often led to the norms for prisons' accommodation capacity (stipulated at 4.5 m^2 per person) being exceeded by as much as 20 to 30 %. As of 1

[90] The Constitutional Court stated this as follows: *"Vetting defence counsels in criminal proceedings for contact with confidential matters by means of NSO security check is in conflict with article 37 (3), article 38 (2), article 40 (3) of the Charter of Fundamental Rights and Freedoms and article 6 (3)c of the Convention on the Protection of Human Rights and Fundamental Freedoms".*

July 2004, amendments to the Rules of Detention and the Rules of Imprisonment came into effect,[91] which required a minimum living area of 4 m^2 per prisoner.[92]

Even after converting accommodation capacity norms in all prisons to 4 m^2 per person, which took place on 1 November 2004, the regulations for the minimum living area per person remained unfulfilled.[93] Although total prison accommodation capacity theoretically increased after reducing the minimum living area from 4.5 m^2 to 4 m^2 actual total accommodation capacity fell due to the cancellation of detention sections in four prisons.[94]

The numbers of accused in detention fell slightly during the year, with the average length of detention ranging from 133 to 147 days. The number of sentenced prisoners, however, continued to rise, with a slight fall at the end of the year. The total number of prisoners rose. The following table shows the development in the number of prisoners in 2004:

	1. 1. 2004			29. 12. 2004		
	Men	Women	Total	Men	Women	Total
Accused	3 244	165	3409	3 078	184	3 262
Sentenced	13 298	570	13 868	14 423	640	15 063
Total	16 542	735	**17 277**	17 501	824	**18 325**

In 2004, the Prison Service of the CR tried to alleviate overcrowding in prisons by reconstructing existing accommodation buildings in some prisons. This introduced a further 264 spaces. In 2004 special sections were set up with heightened technical security in five prisons[95] with total capacity of 200 places, and capacity in the women's prison of Světlá nad Sázavou was raised to 455 places. The overall number of prisoners and the anticipated further increase means that these changes in accommodation capacity are still not sufficient.[96]

Overcrowding in individual prisons and the failure to meet binding requirements for minimum living areas is a problem that must be solved systematically. The automatic use of an exception from the stipulated minimum living area under the Rules of Imprisonment and Rules of Detention is not a satisfactory solution as the nature of the matter means that such a measure should be used rarely. A systematic response must therefore be sought, including closer cooperation between the Prison Service and the Probation and Mediation Service and the courts in applying parole, alternative sentencing and diversions in criminal proceedings.

4.1.2. Relocating prisoners and the Prison Information System

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91 Decree No. 377/2004 Coll., which amends Decree No. 109/1994 Coll., which issues the Rules of Detention, as amended by Decree No. 292/2001 Coll. and Decree No. 378/2004 Coll., which amends Decree No. 345/1999 Coll., which issues the Rules of Imprisonment

92 The Decrees allow an exception to this rule in cases where the total number of prisoners serving sentences in prisons of the same basic type in the Republic, or the total number of accused within the circuit of the Supreme Court, exceeds the capacity for prisoners stipulated so that each prisoner/accused has at least 4 m^2 of living area; c.f. also chapter II/4.1.3. of the 2004 Report.

93 At the beginning of 2005, the accommodation capacity of 4 m^2 per person had been exceeded in almost all standard prisons by 5 to 10 %. In some remand prisons (e.g. Ostrava and Prague-Ruzyne), accommodation capacity was exceeded by 20 to 30 %.

94 the prisons Jiřice, Karviná, Opava and Znojmo

95 the prisons Brno, Horní Slavkov, Ostrava, R_novice and Strá_ pod Ralskem

96 For the period 2005 to 2008 the Prison Service is preparing to expand prison accommodation capacity by a further 666 places.

The problem of relocating prisoners was not solved in 2004. The system for assessing relocation applications is based on statistical data relating only to the time at which the application is submitted. It thus happens that prison directors or the Prison Service General Directorate, who decide on relocation, reject applications on grounds of capacity when in fact these could be passed if they had access to and regularly monitored current information on the capacity of other prisons.[97]

In addition to the capacity of specific prisons, decisions on relocation applications must also observe the Rules of Imprisonment.[98] According to the Rules, when deciding on prisoner relocation the Prison Service General Directorate must where possible seek to ensure that prisoners serve their sentence as close as possible to the homes of their relatives.

The launch of the Prison Service Information System should help to solve this problem. In 2004, a Prison Service network was set up which connects all prisons and their workplaces. The project will continue to develop between 2005 and 2007 with the addition of new software. The system should include an electronic register of prisoners which should, among other things, make possible the regular monitoring and assessment of prison capacity possibilities and the effective adjudication of registration applications.

If the relevant provision from the Decree is not to become a merely formal text an effective mechanism, such as the information system, must be developed in order to implement it. This will help ensure contact between relatives, particularly parents and children and to resocialise prisoners.

4.1.3. Imprisonment

The amendment to the Act on Imprisonment[99] came into effect on 1 July 2004. Among other things this expanded the range of cases in which sentenced persons are exempted from having to pay the costs of their imprisonment, further specified the existing regulation of the right to receive visits, enabled prisoners to receive visits of a non-contact nature as a matter of principle, enabled prisoners to use up to half of the money sent to them in prison and to pay for above-average health care, and substantially altered the understanding of the purpose and conditions of life sentences.[100]

The amendment to the Act was accompanied by an amendment to the Rules of Imprisonment,[101] which also changed some of the conditions for life sentences. The Rules of Imprisonment now state that prisoners serving life sentences should be incarcerated in high security sections, that on excursions they should only be handcuffed in justifiable circumstances and that their visits should generally take place in a contact manner.[102]

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97 When settling complaints, the Public Defender of Rights often encountered prisoners who claimed that their applications had not been satisfied despite their being aware that prisoners from prisons they are interested in have applied for relocation to prisons they are currently housed in. In this regard, the argument on the full capacity of prisons doesn't hold up, as the relocation of one prisoner for another would not affect the statistics.

98 Section 7 (1) of Decree No. 345/1999 Coll., which issues the Rules of Imprisonment, as amended by Decree No. 378/2004 Coll.

99 Act No. 52/2004 Coll., which amends Act No. 169/1999 Coll., on Imprisonment, as amended, and certain other acts

100 The amendment's content has already been described in detail in the 2003 report in chapter II/4.1.2.

101 Decree No. 378/2004 Coll., which amends Decree No. 345/1999 Coll., which issues the Rules of Imprisonment

102 Section 95, Section 96 and Section 97 of Decree No. 345/1999 Coll., which issues the Rules of Imprisonment, as amended by Decree No. 378/2004 Coll.

Although both the Act on Imprisonment[103] and the Rules of Imprisonment currently allow for non-contact visits for all prisoners on an extraordinary and decision-by-decision basis only, an internal Prison Service regulation[104] states that visits for prisoners serving life sentences who are in the third category of internal differentiation shall always be non-contact, and for prisoners serving life sentences who are in the second category of internal differentiation shall usually be non-contact. *Since these provisions from the methodological rules are in conflict with the Act on Imprisonment and the Decree issuing the Rules of Imprisonment, it is essential to alter the methodological rules in this respect.*

The Rules of Imprisonment also newly state the minimum living space of 4 m^2 per prisoner in an accommodation unit designed to accommodate several people. Cells or bedrooms with a living area of less than 6 m^2 can not be used to accommodate prisoners at all. The Rules of Imprisonment do, however, allow an exception to this rule in cases where the total number of prisoners serving sentences in prisons of the same basic type exceeds prison capacity based on a living space of at least 4 m^2 per prisoner.[105] Analogous provisions also apply for detention.[106]

The amendment to the Rules of Imprisonment has also expanded the list of items that prisoners can possess, has permitted prisoners to make more frequent purchases and has broadened prisoners' possibility to leave the prison temporarily under guard in order to make a visit or as part of a prison-organised event. Changes to the Rules on Imprisonment also affect the conditions for female prisoners who are mothers of small children, the classification of prisoners in internal differentiation categories, the use of electrical appliances and accommodation in high security sections.

4.1.4. Obligation to pay the costs of imprisonment

The amendment to the Act on Imprisonment expanded the list of cases where prisoners are exempted from the obligation to pay for the costs of their imprisonment.[107] This covers, for example, prisoners who for no fault of their own are unable to work during their sentence, unless they have other income or cash, as well as prisoners under the age of 18, prisoners in educational or therapeutic programs running more than 21 hours a week, and prisoners who are taking part in judicial proceedings as a witness or injured party. A further change is the ending of the state's requirement for interest on overdue payment of receivable costs of imprisonment.[108]

The Public Defender of Rights has found that the exemption from the obligation to pay costs of imprisonment for prisoners who have not been included in work programs for no fault of their own, and who had no other income or cash during the calendar month,[109] may be

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103 Section 19 (6) of Act No. 169/1999 Coll., on Imprisonment, as amended by Act No. 52/2004 Coll.

104 methodological document of the director of the department for detention and sentencing of the General Directorate of the Prison Service No. 13 from 2001, which streamlines the method of imprisonment for persons sentenced to life imprisonment and other prisoners who are diagnosed as needing increased detention

105 Section 17 (6) of Decree No. 345/1999 Coll., which issues the Rules of Imprisonment, as amended by Decree no. 378/2004 Coll.

106 Section 15 of Decree No. 109/1994 Coll., which issues the Rules of Imprisonment, as amended by Decree no. 377/2004 Coll.

107 Section 35 (2) of Act No. 169/1999 Coll., on Imprisonment, as amended by Act No. 52/2004 Coll.

108 Section 35 (5) of Act No. 169/1999 Coll., on Imprisonment, as amended

109 Section 35 (2)a of Act No. 169/1999 Coll., on Imprisonment, as amended by Act No. 52/2004 Coll.

a demotivating factor for other prisoners. Some working prisoners, who are remunerated on an achievement basis, for example, may find that their earnings for the calendar month are lower than the imprisonment costs for the same period. A prisoner who is to be placed in a workplace and who knows that he may not even earn his imprisonment costs will rather seek to avoid working. A working prisoner is also disadvantaged in comparison with non-working prisoners as the difference between the amount which is left him after deducting costs for imprisonment, and the so-called social pocket money for non-working prisoners (about CZK 100 a month) will be minimal.

The real size of imprisonment costs and the negative consequences of the obligation to pay imprisonment costs on prisoner resocialisation mean that it is necessary to review the measure's effectiveness. The amount of CZK 45 that prisoners are obliged to payfor each calendar day of imprisonment of the relevant calendar month[110] is only a fraction of the actual costs for imprisonment. Its payment may, however, actually impede the prisoner's resocialisation following his release, and the costs involved in recovering the amounts owed can exceed the sums actually recovered.

The obligation to pay costs of imprisonment was also addressed by the Committee against Torture when discussing the CR's Third Periodic Report on the fulfilment of Commitments under the Convention against Torture and other Cruel, Inhuman or Humiliating Treatment or Punishment. In its conclusions, the Committee included this question among those problems that caused concern, and recommended that the CR reconsider the provision requiring prisoners to pay part of their costs with a view to abolishing this requirement completely.

4.1.5. Visitor purchases in prison shops and the possibility of using money sent to prisoners to make purchases in prison shops

By allowing prisoners to use up to half the sums of money sent them in prison to purchase and pay for above-standard health care, the amendment to the Act on Imprisonment definitively terminated the practice, which had been in place since 2002, whereby prisoners' visitors were allowed to buy goods for prisoners from prison shops. The measure brought protests from prisoners in some prisons and sometimes led to hunger strikes and mass demonstrations.[111]

The practice whereby visitors were allowed to make purchases in prison shops had been introduced due to the fact that legislation effective up to 30 June 2004 had not allowed money sent to prisoners to be used to purchase items in prison shops, with the exception of basic hygiene products. In the opinion of public prosecutors, however, this practice disadvantaged those prisoners who did not receive visitors and to the evasion of the regulation limiting parcels. In order to resolve this situation a change was introduced to the Act, which now states that a prisoner who has not compensated the damage caused by his crime, liabilities owing from criminal proceedings and damage that he has caused the Prison Service

[110] Section 3 (1) of Decree No. 10/2000 Coll., on deductions from prisoners' remuneration, on implementing a judgement through deductions from the remuneration of prisoners and inmates of special care facilities and on the compensation of other costs, as amended by Decree No. 94/2001 Coll.

[111] A mass protest occurred on 13 July 2004 in the Vinařice prison, where 729 prisoners refused to take away their food. Their actions were motivated by their disagreement with the new amendment to the Act on Imprisonment and the lack of work opportunities. The situation was resolved by a show of force on the part of the Prison Service and a general inspection of the prison. For preventive security reasons, 25 of the ringleaders were transferred to other prisons.

during his imprisonment, may use half of the amount sent to purchase and pay for above-average health care. The aforementioned debts are paid for from the other half.[112]

For those prisoners who regularly receive visits and who are obliged to pay the aforementioned debts the situation has indeed worsened, although it has improved for those prisoners who do not receive visits. The withdrawal of the right to purchase evidently does not affect those prisoners who are not obliged to pay the aforementioned liabilities and who can therefore use the whole amount sent to them without limitation.

To sum up, the amendment to the Act on Imprisonment, together with new practices, is bringing practice into line with the law and is giving equal rights to all prisoners. It is, however, necessary to point out that the Rules of Imprisonment still permit the prison director or Prison Service employee authorised by him to allow items to be passed to the prisoner during a visit if there are special grounds for doing so. These must however be items that relate to education, treatment programs or the prisoner's hobby activities, including electrical appliances.[113]

4.1.6. Detention

The amendment to the Act on Detention, which came into effect on 1 July 2004, has already been described in the 2003 report.[114] The legislative changes chiefly concerned the scope of the accused's right to receive visits, his right to make telephone calls and decisions on the restriction or cancellation of visits. It became obligatory for prisons to offer the accused the chance to participate in treatment programs and for detention facilities to ensure that juveniles attend school. The amendment makes possible the detention of mothers with small children. A decree amending the Rules of Detention[115] was issued in order to implement the Act's amended provisions.

The Act's provision requiring a prison where possible to offer the accused the chance to take part in preventive educational, training, hobby and sports programs during the term of detention, and to create the necessary conditions for treatment programs,[116] now allows the accused to spend more time outside his cell and to dedicate himself to various free-time activities. In practice, not all detention facilities have the optimal conditions to implement such programs, and the provision's fulfilment continues to falter on a lack of space for use by the accused, a lack of specialist employees and a lack of material equipment.

The Rules of Detention and internal Prison Service regulations stipulate the details concerning a prison's obligation to ensure that juvenile accused complete their compulsory school attendance.[117]. In doing so, the Prison Service works with schools and state administrative bodies and local government.[118] Upon agreement between the prison and the

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112 Section 25 (4) of Act No. 169/1999 Coll., on Inprisonment, as amended by Act No. 52/2004 Coll.

113 Section 30 of Decree No. 345/1999 Coll., which issues the Rules of Imprisonment, as amended by Decree No. 378/2004 Coll.

114 Act No. 52/2004 Coll., which amends Act No. 169/1999 Coll., on Detention, as amended, and certain other acts; see chapter II/4.1.3. of the 2003 report

115 Decree No. 377/2004 Coll., which amends Decree no. 109/1994 Coll., which issue the Rules of Detention, as amended

116 Section 4a of Decree No. 109/1994 Coll., which issues the Rules of Detention, as amended by Decree No. 377/2004 Coll.

117 Section 26 (8) of Act No. 293/1993 Coll., on Detention, as amended

118 Section 73 (3) of Decree No. 109/1994 Coll., which issues the Rules of Detention, as amended

local school, the accused is given a personal study plan and teaching takes place several times a week in the prison with an external teacher, by means of self-study and in consultation with a prison specialist employee. The requirement for school attendance is nevertheless fulfilled differently according to region. In some regions it has not yet proved possible to arrange teaching on a contractual basis, as teachers from local schools are unwilling to work in a prison environment. The Prison Service regards the effectiveness of arranging school attendance as highly debatable with regard to the financial costs and effort involved.

If a school fails to agree to individual forms of teaching, the Prison Service may, in accordance with the Education Act,[119] set up its own elementary school for persons in detention and classes in prisons containing minors.

The amendment to the Act on Detention and the amendment to the Rules on Detention now permit the detention of mothers with small children.[120] A specialised section for the detention of mothers with small children with capacity for 11 mothers was built in the Světlá nad Sázavou prison. The section's capacity has not yet been fully used.

4.2. Constitutional Court judgements on detention decisions

4.2.1. Right to be heard in proceedings on further detention

In an important judgement[121] the Constitutional Court stated that the violation of the accused's right to be heard at proceedings to decide whether he remains in detention represented an unjustifiable deprivation of personal freedom, which is in conflict with the right not to be prosecuted or deprived of freedom other than for reasons and in a manner stipulated by law (article 8 (2) of the Charter), and with the right to a judicial review of the legality of the deprivation of freedom (article 5 (4) ECHR). The accused's right to be heard in contradictory proceedings, in which the legality of his further detention is reviewed, is one of the basic institutional guarantees of the justice of proceedings on the continuation or termination of restrictions of personal freedom. If the accused is not allowed to be heard in such proceedings, his further detention represents a constitutionally unjustifiable restriction of freedom.[122]

The principle of precedence of international treaties over domestic law means that the isolated interpretation of the Criminal Procedure Code given by the ordinary courts, which doesn't allow space for the accused to be heard in proceedings on whether he should remain in detention, does not conform with the Constitution. It is therefore necessary for the ordinary courts to change their approach and adopt the consistent and unequivocal interpretation of the

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[119] Section 172 (3) of Act No. 561/2004 Coll., on pre-school, elementary, middle, higher applied and other education (the Education Act)

[120] Section 28a of Act No. 293/1993 Coll., on Detention, as amended by Act No. 52/2004 Coll.; Section 78a of Decree No. 109/1994 Coll., which issues the Rules of Detention, as amended by Decree No. 377/2004 Coll.

[121] Constitutional Court judgement No. I. ÚS 573/02 of 23 March 2004

[122] The Constitutional Court had already concluded before that in deciding whether a person should remain in detention everything that applies in deciding on detention itself must apply equally – see judgement published under No. 214/1994 Coll.

right to a judicial review of the legality of deprivation of freedom (article 5 (4) of the ECHR) offered by the European Court of Human Rights.[123]

The Constitutional Court also found that the decision in the sense of article 5 (4) of the ECHR is only a decision of the court (i.e. court decision on a complaint against a decision by the public prosecutor on whether the accused should remain in detention) and not the decision of the public prosecutor (i.e. decision by the public prosecutor on whether the accused should remain in detention). In accordance with the judicature of the European Court of Human Rights the public prosecutor is not a judicial body and does not have the same institutional features as a court (i.e. impartiality and independence), either in its personal status or its procedural status in criminal proceedings. For this reason, even requests for a judicial review of the legality of the deprivation of freedom under article 5 (4) of the ECHR can only be requested in proceedings before a court. The court's ruling on a complaint against the decision by the public prosecutor should therefore be considered a ruling of first instance.

4.2.2. Grounds for detention if the accused continues to commit crimes for which he is prosecuted

The Constitutional Court considered the interpretation of Section 68 (3)e of the Criminal Procedure Code, under which the restrictions contained in the provision on the minimum upper sentencing limit facing the accused in the event that he continues to commit offences for which he is prosecuted, do not apply in deciding whether to place the accused in detention. The Constitutional Court concluded[124] that, since the relevant provision requires that only criminal activity which occurs after the prosecution has begun be taken into account when deciding on detention, the accused's previous behaviour, for which he has already been found guilty, cannot be considered. According to the provision, grounds for detention cannot therefore apply to prosecutions that have already begun against an accused who has previously been convicted of the same crime. In the opinion of the Constitutional Court, the opposite interpretation would be too extensive as the legal grounds for restricting freedom should always be interpreted restrictively.

4.3. Deprivation of freedom by police authorities

4.3.1. Rights of persons deprived of freedom

The 2003 report draws attention to shortcomings in the formal safeguarding of the rights of persons deprived of freedom by police authorities to have legal aid from the beginning of the deprivation of freedom, to notify relatives or other persons, and to be examined or treated by a physician of their choice. Although the Ministry of the Interior declared its aim of including the right to legal representation for a person held in a police cell in a binding instruction on police cells issued by the Police President in 2003,[125] this internal directive does not stipulate the right of a person held in a police cell to have a lawyer, and

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123 see e.g. the decision in the case of *Garcia Alva v. Germany*, *Nikolova v. Bulgaria*, *Kampanis v. Greece;* The Constitutional Court's views on this issue are not however entirely uniform – see for example Constitutional Court judgement No. III. ÚS 544/03 of 19 February 2004.

124 Judgement of the Constitutional Court no. II ÚS 198/04 of 20 May 2004 and judgement of the Constitutional Court no. II ÚS 317/04 of 31 August 2004

125 police president binding instruction no. 126 of 14 October 2003 on police cells (effective from 1 January 2004)

neither does the new binding instruction by the Police President on police cells from 2004.[126] Neither were there any changes to formal legislation of other rights in legal regulations and internal directives during 2004.

Although the implementation of these rights in practice would not significantly complicate the police's work, without their formal incorporation we cannot realistically expect these rights to be consistently respected. This conclusion is underlined by the fact that persons deprived of freedom by the police are not properly informed of their rights, including in writing.

4.3.2. Conditions for holding people in police cells and so-called separate waiting rooms

As of 1 January 2004, the Police President binding instruction on police cells of 14 October 2003 came into effect. The instruction regulates procedure in setting up and closing cells, placing people in cells, the regime in cells and guarding of people detained in cells, the release and transfer of people from cells to the relevant authorities and the rules for providing and paying for people's food in police cells. The instruction's annex also states the basic rules for building police cells, including the technical requirements, fittings and items that a person in a police cell receives at his request.

In 2004, some Police departments continued to use so-called separate waiting rooms or so-called rooms for apprehended persons for the short-term deprivation of a person's freedom. These areas do not meet the formal technical requirements stipulated in the binding instruction on police cells from 2003, and police officers did not therefore regard them as police cells under the Police Act.[127] The status of separate waiting rooms is also not defined by regulation or internal normative directive. This led to a situation where the reasons for placing people in separate waiting rooms and the conditions for their stay there were not adequately understood, neither by the police or the people detained in these rooms. Under the Police Act, however, the separate waiting rooms have to be regarded as police cells, regardless of whether they meet the technical parameters stipulated by the internal normative directive.

The situation should be resolved by the new police president binding instruction on police cells of 29 December 2004, which, with effect from 1 January 2005, creates two categories of police cell – "short-term" police cells for the detention of people for an essential period, but not for more than six hours in total, and "longer-term" cells. Markedly different technical requirements apply to the two types of cell.

The requirements for fitting and equipping short-term cells have been shown to be inadequate in view of the fact that people detained there may have to stay over night (up to 6 hours). It would also be more appropriate to regulate the basic questions concerning people's detention in police cells and the conditions for their stay in them under the law.[128]

4.4. Facilities for the detention of foreigners

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[126] police president binding instruction No. 158 of 29 December 2004 on police cells (effective from 1 January 2005)

[127] Section 26 et seq. of Act No. 283/1991 Coll., on the Police of the CR, as amended

[128] This concerns, for example, counting time-limits and other conditions stipulated for stays in police cells if a person is to be relocated from a "short-term" cell to a "longer-term" cell etc.

Conditions in facilities for the detention of foreigners should be significantly improved by the draft amendment to the Act on the Stay of Foreigners[129], which was described in the 2003 report.[130] The draft amendment proceeds from the assumption that the restriction of rights and freedoms of detained foreigners should not go beyond the level necessary to achieve the purpose of the detention. In addition to freedom of movement for foreigners within the facilities, changes to the system for receiving visitors, the provision of psychological and social care, regulation of the grounds on which foreigners are placed in a strict detention regime and other measures designed to humanise the facilities, authorisation for the setting up and running of facilities for the detention of foreigners should pass to the Refugee Facilities Administration – an organisational branch of the state set up by the Ministry of the Interior. The presence of the police in facilities for the detention of foreigners as a repressive arm of the state should thus be limited to cases of absolute necessity, with the Refugee Facilities Administration being responsible for the rest. This body manages asylum facilities and has employees with the specialist skills needed for daily contact with foreigners.

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

The 2003 report outlined the reasons for the adoption of a motion by the Council of the Government of the Czech Republic for Human Rights of 24 June 2003, in which it recommended that the Minister of Defence remove certain discrepancies between the conditions of disciplinary imprisonment and generally accepted conditions of persons whose freedom has been restricted. In 2004, measures were taken which incorporated the changes approved temporarily on 2 October 2003 by the Chief of Staff of the Army of the CR in the text of the Prison Rules issued by the President of the Republic. On 24 February 2004, the President approved the first supplement to the Basic Rules of the Armed Forces of the CR, of which the Prison Rules form an annex. The changes regulated the conditions for disciplinary imprisonment, particularly with regard to receiving visits, obtaining items of personal need, submitting complaints and applications and the technical arrangement of prisons. Before the supplement was published, the Inspection of the Ministry of Defence visited all military prisons in January 2004, and checked that the order of 2 October 2003 had been implemented in full.

With regard to the decision to cancel military basic service and to reduce the number of regular soldiers, the number of disciplinary prison sentences fell in 2004.[131] This led to the closure of military prisons, with their number falling from six at the beginning of 2004 to just one at the year's end, this being at the training centre in Vyškov. Since the Armed Forces Act[132] came into effect on 1 January 2005, the disciplinary punishment of imprisonment is only possible for recruits to the professional army during the period of so-called basic training, and for members of the active reserves summoned for military training. As there has been no amendment to the Act on Regular Soldiers,[133] the Act on Basic or Substitute Service and Certain Legal Relations for Soldiers in the Reserve is used temporarily until the amendment's adoption.[134] Due to this fact, disciplinary imprisonment after 1 January 2005 is only theoretical.

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129 Act No. 326/1999 Coll., on the Stay of Foreigners in the CR, as amended

130 see chapter II/4.3. of the 2003 Report

131 The number of disciplinary imprisonments imposed in 2004 fell by 75 % against 2003 to 136 sentences with an average length of 2.06 days.

132 Act No. 585/2004 Coll., on the Armed Forces (the Armed Forces Act)

133 Act No. 221/1999 Coll., on Regular Soldiers, as amended

134 Act No. 220/1999 Coll., on Basic or Substitute Service and Certain Legal Relations for Soldiers in the Reserve, as amended by Act No. 128/2002 Coll.

4.5.1. Bullying in the Army

The fall in the number of soldiers performing basic (substitute) military service led to a major fall in the number of violations of mutual relations between soldiers – „bullying". The Military Police investigated a total of 20 cases of suspected violation of the rights and protected interests of soldiers,[135] which was a third less than the previous year. In none of the cases did bullying involve a serious threat to health. No case was recorded of violating the relations between soldiers in regular units.

4.6. Protective institutional treatment and so-called security detention

One of the protective measures that a court can impose in criminal proceedings is protective treatment, which is performed in either ambulatory or institutional form. Whereas in ambulatory treatment the person undergoing protective treatment remains at liberty, institutional protective treatment is performed in a psychiatric hospital, or in a prison if it has been ordered together with a prison sentence.[136]

According to the draft of the Criminal Code,[137] a new form of protective treatment – so called security detention[138] – should be developed in line with foreign legislation. Security detention should take place in detention institutions with special security. The conditions for imposing and performing protective institutional treatment and security detention are, or will be, regulated by the Criminal Code with the procedural rules for the protective measures being regulated by the Code of Criminal Procedure. At present, however, there is no legal norm to regulate conditions of protective institutional treatment and security detention. The law should stipulate the rights and obligations of the people affected, the status of facility employees, and other relevant persons, and supervision of these protective measures.

Due to the fact that the affected persons are or will be deprived of their personal freedom by both of the aforesaid regimes, and will be subjected to a significant restriction of other rights and freedoms, it is desirable that the conditions for both forms of the above mentioned protective measures be regulated by the law, as is the case in other forms of restriction of personal freedom.[139] The absence of legislation in this area threatens not only the rights and freedoms of persons who undergo protective treatment but also restricts the staff of the facilities concerned as they face significant legal uncertainty as to how far they can interfere with the rights of people placed in such facilities.[140]

This unsatisfactory situation should be partially resolved by the Act on Security Detention, which the Government decided should be prepared and submitted by the end of

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135 Sections 279a and 279b of Act No. 140/1961 Coll., the Criminal Code, as amended

136 Section 72 of Act No. 140/1961 Coll., the Criminal Code, as amended

137 see Parliamentary press no. 744 (http://www.psp.cz/forms/tmp_sqw/06bc0008.doc)

138 The reasons are primarily difficulties associated with protective treatment for a certain type of non-adaptable prisoners (e.g. sexual sadists).

139 Conditions for detention, imprisonment, institutional care, protective care, and conditions for the stay of persons in facilities for the detention of foreigners are regulated by the law.

140 For more details see the concluding report of the Citizen's Advice Bureau, citizens' and human rights for the project Protective Sexological Treatment in the CR (project number KAP/02/53) (http://www.poradna-prava.cz/dokumenty/ochranna_lecba_sexuologicka.doc); Zeman, P., Přesličková, H., Tomášek, J.: Security Detention, Institute for Criminology and Social Prevention, Prague 2004

May 2005.[141] Legislation should be prepared by the Minister of Justice in conjunction with the Minster of Health. The Government also approved the proposal for the setting up an institute for security detention. *It will also be essential to develop an act on institutional protective treatment.*[142] *In addition to the above reasons there is the fact that, under the law and by decision of the courts, the two forms of detention will not be mutually exclusive, and legislation should therefore be comprehensive and connected. Confusion in the conditions for protective treatment during a prison sentence also complicates the implementation of treatment and therapeutic programs in prisons.*[143]

4.7. Institutional and protective care

The Ministry of Education, Youth and Sport developed an amendment to the Act on Institutional Care or Protective Care,[144] which is designed to respond chiefly to experience gained during the life of the act. One of the amendment's major objectives is the clearer separation of institutional and protection education by listing the rights and obligations of children with imposed protective care and children with institutional care.[145] The accompanying draft amendment to the Act on Justice in Matters of Youth[146] aims to define the difference between the two forms of imposed education at the stage of judicial rulings. The changes will make it easier to differentiate individual types of facility and consequently contribute to the more effective care of the children involved.

In order to distinguish institutional from protective care it is essential that courts find common positions on ordering institutional care and imposing protective care so that protective care is not imposed too strictly, and equally that institutional care does not prove inadequate in relation to the nature of the unlawful activity, or repeated activity. Currently, courts rarely use the possibility of imposing protective care, even in justified cases.

The amendment to the Act on Institutional Care or Protective Care provides a list specifying how the administrative procedure code relates to decision-making under the law, which is important for children's legal representatives in the event that they disagree with the decisions. The amendment also expands the public prosecutor's powers in supervising the right to speak with children without the presence of other people, the right to demand the relevant explanations from facility staff and other persons caring for the children, and the right to issue instructions for the adoption of measures designed to remedy situations that are inconsistent with the legal regulations, similar to the public prosecutor's procedure in supervising other places where personal freedom is restricted.[147]

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141 Government Resolution of 19 January 2005 no. 78 on the proposal for the establishment of security detention (http://racek.vlada.cz/usneseni/)

142 The act is being prepared by, among others, the Government Council for Human Rights (Committee against Torture and other Inhuman, Cruel and Humiliating Treatment and Punishment), the Public Defender of Rights, The Bureau for Citizenship, Civil and Human Rights, the members of the Ministry of Health's Protective Treatment Committee (1999 - 2003), and the Institute for Criminology and Social Prevention.

143 Section 35 (2)d of Act No. 169/1999 Coll., on Imprisonment, as amended

144 Act No. 109/2002 Coll., on Institutional or Protective Care in School Facilities and on Preventive Care in School Facilities, as amended; see Parliamentary press no. 822 (http://www.psp.cz/forms/tmp_sqw/50b10039.doc)

145 For example, visits and excursions should newly be considered as a form of reward for children in protective care, and will be permitted under conditions stipulated by the Act.

146 Act No. 218/2003 Coll., on the Liability of Youth for Unlawful Acts and on Justice in Matters of Youth (Act on Justice in Matters of Youth)

147 Act No. 293/1993 Coll., on Detention, as amended; Act No. 169/1999 Coll., on Imprisonment, as amended

The flaw in current legislation, which does not allow children in protective care to stay for short periods with their parents, or persons responsible for their upbringing, should be remedied by the amendment in granting facility's director greater powers to permit short-term stays outside the facility for children in protective care. Other conditions are stipulated by the amendment to the Act on the Social and Legal Protection of Children.[148]

The dispute continued in 2004 over those areas in facilities for institutional or protective care in which audio-visual technology for monitoring children can be used.[149] Despite the Chief Public Prosecutor issuing a statement on this matter in 2003 to harmonise the interpretation of laws and other regulations,[150] an inconsistency remains in the interpretation of the term "areas where the uncontrolled movement of foreign persons is not permitted". The Government Council for Human Rights thus submitted a proposal to Government in order for it to reach a clear decision on this matter. The Government took the proposal into account.[151]

In its deliberations over the amendment to the Act on Institutional or Protective Care, the Government's Legislative Council responded to the absence of legislation allowing interference in children's right to privacy by recommending that the Ministry of Education, Youth and Sport incorporate specific powers to use audio-visual systems in the amendment.

The proposed provision allows audio-visual systems to be used upon the director's decision only in facilities containing children with imposed protective care; defines those areas where audio-visual systems can be used; and stipulates the director's duty to inform children and employees in advance of the audio-visual technology's installation and use, in accordance with the Act on the Protection of Personal Data.[152] The proposed provision, which allows the use of audio-visual systems, is a further reason for the distinction between institutional and protective care to be consistently observed.

4.8. Restrictive measures in psychiatric hospitals and social services facilities

In 2004, debate continued in the media and among professionals from the disciplines of psychiatry and the social services over the methods used to restrict movement, in particular cage-beds and net-beds, in psychiatric hospitals and social services facilities.[153] These methods are used in psychiatric hospitals under the authority of the Ministry of Health and in social care institutions or other social services facilities run by the Ministry of Labour and Social Services.

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148 Act No. 359/1999 Coll., on the Social and Legal Protection of Children, as amended

149 see chapter II/8.1.2. of the 2003 report

150 Chief Public Prosecutor statement no. 10/2003 of 25 July 2003 on streamlining the interpretation of acts and other legal regulations on the lawfulness of placing audio-visual devices in school facilities being used for institutional care, protective care, or preventive care, or in other facilities where children are housed under the relevant legal measure.

151 Government Resolution No 1164 of 24 November 2004 to the motion of the Government Council for Human Rights concerning the use of cameras and listening devices in school facilities for institutional or protective care.
(http://racek.vlada.cz/usneseni/)

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

153 The writer J. K. Rowling brought the issue much media coverage by sending the Czech Prime Minister and President a letter in which she responded to the report published 13 July 2004 in The Sunday Times on conditions in social care institutions in Ráby and Slatinany.

As of 13 July 2004, former Minister of Health Jozef Kubinyi issued an instruction to all directors of medical facilities run directly by the Ministry to "*prohibit with immediate effect the use of cage-beds in their medical facility and to order their destruction"* and also demanded "*the gradual opening of rooms specially fitted to prevent possible injury to distressed patients with a view to phasing out the use of net-beds in their medical facility by the end of 2004"*. The instruction led to all cage-beds being removed from medical facilities and an overall reduction in the number of net-beds.[154] Medical facilities should base their use of net-beds upon the instructions of the Minister of Health with regard to their financial and staff possibilities.

In January 2005, the Ministry of Health issued a methodological measure on the use of methods to restrain patients in psychiatric hospitals.[155] The draft methodological measure was prepared on the basis of discussions by members of the Czech Psychiatry Society[156] and was discussed by the Ministry's committee for the implementation of the concept for the discipline of psychiatry. The methodological measure stipulates that the use of restraining methods should be considered an extreme solution in cases essential to protect the patient, other patients, items in their proximity and facility personnel, and only if other possibilities have been exhausted. The use of restraining methods is the decision of the doctor, and in the case of voluntary patients requires their consent or the consent of their legal representative issued within 24 hours; otherwise, the use of restraining methods shall be grounds for notifying the courts under the Act on Health Care.[157] The methodological measure also contains a list of permissible restraining methods, the procedure for their use and record-keeping.

In June 2004, the Ministry of Labour and Social Affairs issued a methodological measure on procedure in the extraordinary use of cage-beds in social services facilities.[158] The measure prohibits the use of cage-beds and stipulates that net-beds may only be used for a period essential in extraordinary situations representing a threat to the life or health of the client or other persons. A proposal for the bed's use must always be approved by a doctor. If the client has a legal representative his consent shall also be required. The methodological measure also stipulates the content of mandatory records on the bed's use. If the bed is used repeatedly for a particular client, an independent expert shall be asked to give an assessment of the procedure's suitability.

In September 2004, the Government submitted to the Parliament the draft of an amendment to the Act on Social Security.[159] The draft contains a provision specifying binding rules for the extraordinary use of any method to restrain the movement of a social services user. It forbids the use of measures to restrain a person's movement during the provision of social care, and only permits it in extraordinary circumstances where there is a direct threat to the life and health of the user or other persons, and then only for a period absolutely essential. The draft also contains rules on keeping records of measures used to restrain movement and

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154 According to the Ministry of Health, in 2004 a total of 175 net-beds were used out of 9601 beds in psychiatric hospitals in the CR.

155 Ministry of Health methodological measure of 6 January 2005 for the use of restrictive methods for patients in psychiatric hospitals in the CR

156 Czech psychiatric society of the Czech medical society Jan Evangelista Purkyne

157 Section 24 of Act No. 20/1966 Coll., on Health Care, as amended.

158 Ministry of Labour and Social Affairs methodological measure of 28 June 2004 on procedure in the extraordinary use of cage beds with nets in social services facilities

159 see Parliamentary record no. 786 - draft act amending Act No. 100/1988 Coll., on social security, as amended (http://www.snemovna.cz/forms/tmp_sqw/45480063.doc)

requires that a doctor provide an opinion on each use of such measures.[160] It would also be appropriate for the Ministry of Health to develop legislation on the use of restrictive measures.

In 2004, the Ministry of Labour and Social Affairs began training future good practice guides in the matter of restraining the movement of a social services user.[161] For 2005 the Ministry is also preparing to announce an innovative grant program to support providers in the removal of restraining methods from social services facilities.[162]

5. Economic and social rights

5.1. Amendment to the Act on Social Need[163]

In 2004, two important amendments to the Act on Social Need came into effect. They constitute some of the most comprehensive and significant amendments to the Act, which among other things, provided stricter conditions for the payment of social benefits.

The amendment to the Act on Social Need specifies cases when applicants cannot be considered in social need.[164] It also makes the payment of some social benefits dependent on the applicant enforcing legitimate entitlements and payments, and on his seeking to increase his income through his own efforts. This concerns first and foremost the entitlement to certain social benefits.[165] The amendment also defines the type of property that does not need to be sold or otherwise used in order to increase income.[166] Enforcement of legitimate entitlements and payments are not required if it is evident that this would not be proportionate to the profit achieved thereby, or if this cannot justifiably be expected. The amendment broadened the

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160 In future, the prepared Social Services Act and implementing regulation should regulate the use of restrictive measures.

161 An essential part of the training is the passing on of experience from specialists from Northern Ireland and Holland in resolving situations that could lead to the use of restrictive methods. Training graduates receive information on preventing situations that may lead to the use of restrictive methods, on procedures for restricting movement in order to protect the life and health of a social securities user or other person, and on the subsequent assessment of specific situations for further practice. Together with the management of institutional social care facilities (the Ministry, regions, municipalities) the good practice guides will train staff directly in the social care facilities.

162 This grant program will focus on the technical fittings of the facility's environment, staff training and improving individual care for users with problematic behaviour

163 Act No. 482/1991 Coll., on Social Need, as amended.

164 This concerns the following cases: (1) the citizen's earnings do not meet the basic subsistence level but overall assets mean that he can satisfy his basic living needs, (2) a job seeker registered at the relevant employment office who does not try hard enough to increase his income through his own work will not subsequently be considered as in social need, (3) a parent (legal representative) of an unprovided-for child, which for the purposes of social need is assessed jointly, does not fulfil his obligations and does not ensure due school attendance, (4) a job seeker registered as such for more than one year, if he for no good reason refuses to perform publicly beneficial work or short-term employment corresponding to his state of health and transport possibilities.

165 These are health insurance (care) benefits, pension insurance (security) benefits, state social support benefits, maintenance and payment of some costs for unmarried mothers under the Act on the Family. There follows enforcement of entitlements from labour or similar relations, including wage entitlement. The final possibility of increasing income by one's own actions is to sell or otherwise make us of one's own property.

166 This mostly concerns movable assets which are not subject to the decision under the civil procedure code (Section 321 and 322), and which are essential for the person to satisfy his and his family's material needs or to fulfil work tasks, as well as other items whose sale would be inconsistent with moral rules.

range of people for whom the possibility of increasing their income through their own work is not reviewed as part of the assessment of social need.[167]

The basic impediment in constructing the obligation to enforce all entitlements is the legal confusion of the term to enforce all entitlements in relation to the regulations under family law. A theoretical problem is the assessment whether the authorised person should or should not have applied. Before the court reaches a decision it is impossible to state whether a entitlement exists or not precisely because its existence is the subject of court proceedings. In order to assess whether an existing entitlement has been enforced it is therefore impossible to reach the relevant conclusion before the court decides after the entitlement has been enforced. In administrative proceedings it would be considered a preliminary question, which cannot be answered precisely because of the circumstance for which it has been reviewed. There is no other option, therefore, than to proceed from legal fictions. The entitlement should be enforced so that already fragile family relations are not overly affected and in such a way that satisfies the purpose of the Act. In practice, however, cases currently occur where some administrative bodies consider a petition to determine paternity to be such a step. Information from practice tells us that some administrative bodies act in this way even if such an approach is inconsistent with the official opinion of the Ministry of Labour and Social Affairs.

An applicant for social care benefit and a recipient of social care benefit must also newly provide evidence of the fact decisive for the entitlement to benefit, its amount or payment[168], and must provide written consent to the verification of these facts. *Written consent to the verification of these facts is required because the administrative authority is generally not authorised to verify such data. An applicant who declines to give such consent shall find himself in a situation where the benefit does not have to be paid. This means that the administrative authority is entitled to verify facts that previously have been certified by affidavit or registration in a protocol.*

5.2. Changes to the Labour Code

Two important amendments to the Labour Code were adopted in 2004.[169] The so-called second Euro amendment[170] incorporated the newly approved EU directives, particularly those prohibiting discrimination (see also 6.1.3.), preventing the abuse of fixed-term employment contracts, working hours and work breaks.

Since the legislation restricting the conclusion of temporary employment contracts failed to prevent so-called chain temporary employment contracts[171], the amendment stipulates a maximum period of two years for consecutive temporary employment contracts. The same parties will only be able to conclude another employment contract six months after

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167 This concerns citizens who personally, every day and properly care for a relative or other person who is mostly or fully incapacitated, or is older than 80 and is partly incapacitated, which in practice means chiefly the recipient of a contribution towards care.

168 So far, this obligation has derived from the general provisions of Act No. 100/1988, on Social Security, as amended.

169 Act No. 46/2004 Coll., came into effect 1 March 2004 and on 1 October 2004 a so-called accompanying act to the new Employment Act (no. 436/2004) came into effect.

170 Act No. 46/2004 Coll., which amends Act No. 65/1965 Coll., the Labour Code, as amended, and Act No. 312/2002 Coll., on officials of territorial self-governing units and on a change to some acts.

171 Misuse of employment relations for a definite period through the groundless repeated conclusion or extension of employment relations between the same parties.

the expiry of the previous employment contract. There are, however, exceptions to the general rule limiting the conclusion of fixed-term employment contracts.[172]

The Labour Code also newly stipulates that the exercise of rights and obligations under labour-law relations may not infringe the rights and justified interests of the parties without legal grounds and may not conflict with good morals. Conflict with good morals means, for example, mobbing, which consists of the systematic psychological persecution or bullying of an employee, generally resulting in the employee terminating his employment relationship, as well as penalizing or discriminating the employee for claiming on his own or with the help of other employees his rights under the employment relationship.

5.2.1. Unemployment benefit, partial unemployment

The law specifies and makes stricter the conditions for including and maintaining job seekers in records. The condition that a job seeker shall have worked at least twelve months in the previous three years in order to be eligible for unemployment benefit shall also newly apply to school leavers. The conditions for removing people from labour office records are also made stricter. People who refuse to undergo medical examinations in stipulated cases will also be removed from the records. People of pensionable age will also be entitled to receive unemployment benefit if they fulfil the relevant conditions and are not also receiving an old age pension. While receiving unemployment benefit job seekers are also for the first time allowed to earn money, although only up to a certain amount.

5.3. Amendment to the Act on State Social Support

In 2004, there were several important amendments to the Act on State Social Support. The biggest changes under the amendment to the Act on State Social Support in 2004 concerned parental allowance (see also 6.2.8.).[173] The amendment specified the conditions of personal daily and due care for a child aged up to 4 (or seven) in order to be entitled to parental allowance. The care must be provided by a parent throughout the full calendar month. The Act states five situations in which the condition of care for a full calendar month is considered to be fulfilled. The condition of limited earning activity was also cancelled. From now on a parent may be gainfully employed and still be entitled to parental allowance, and his income will not be monitored. The amendment to the Act on State Social Support, which changed the rules for the decisive income,[174] was intended to limit speculative behaviour by those beneficiaries of state social support who recorded low or zero income from self-employment. However, for people who are self-employed only in order to add extra earnings to their full-time employment, the relevant amount generally affects the decisive income to such an extent that they find themselves ineligible for state social support provided

[172] In cases stipulated by special legal regulation, or where a special legal regulation stipulated the conclusion of an employment relation for a fixed period as a condition for other entitlements /e.g. for working pensioners), or to replace a temporarily absent employee (e.g. long-term illness, maternity and parental leave). A further exception is serious operational reasons on the part of the employer or the special nature of the work the employee has to perform. If an employee fails to notify the employer that he insists on being employed following expiry of the originally agreed period, his employment relation will end with the expiry of the agreed period.

[173] see the 2003 report chapter II/ 7.1.3.

[174] Instead of the subsistence minimum the lowest income for person who have earnings from business and other self-employment is an amount corresponding to 50 % of the average monthly wage in the national economy. At present this is 8 400. The principle of fictive income of 50 % of the average wage in the national economy was also enforced in order to stipulate the minimum income tax, calculate the minimum premium for social security and contribution to employment policy, health insurance and to assess entitlement to state social support and social care benefits due to social need.

in relation to the size of a person's income. *Although the new measures are intended to motivate, the result for this category of people may be the opposite.*

5.4. Constitutional Court judgement – procedure for adopting legal regulations and differences in premium sums

A group of senators (hereinafter the „petitioner") submitted a petition to rescind a regulation[175] that changes the rates of an employer's liability insurance for damage in the case of a work injury or occupational disease. The regulation lowers the amount of so-called administrative overheads[176] from the total volume of the premium paid by the employer in the relevant calendar year, and changes the amount of the rates for the premium in certain categories, although in differing degrees. The petitioner believes that not only was the regulation's adoption in breach of the constitutionally accepted method, but also that its content is in conflict with constitutional order and constitutional principles of equality and proportionality. The Constitutional Court rejected the petition on the grounds stated hereunder.

In the petitioner's opinion, the decree had not been adopted in accordance with the Government's legislative rules[177] as the Ministry of Finance had failed to send it to all union organisations for comments. In the petitioner's opinion, organisations that have sufficiently representative status in relation to the types of economic activity they perform should be regarded as union organisations. Moreover, the petitioner objected that even in the case of those union organisations that were represented the draft decree was not discussed in accordance with the law. On this point the Constitutional Court agreed with the petitioner's opinion that the process of adopting the regulation had not been in accordance with legislative rules as it had not been discussed with all relevant union organisations. It also concurred that the selection of commentary locations had not been representative, The Constitutional court described the course of commentary proceedings as formal or formalistic, although it also stated that although the fulfilment of legal obligations without fulfilment of their purpose could be regarded as a breach of *„political correctness"*, this in itself does not constitute a breach of the constitutionally stipulated procedure for adopting and issuing another legal regulation. *"The obligation to discuss draft laws and other legal regulations concerning important interests of employees with the relevant central union bodies and relevant employer organisations is thus not a norm-setting power of the said union and employer organisations."*

In the petitioner's opinion the content of the regulation is in conflict with constitutional order and the constitutional principles of equality and proportionality because differences in the premium amount are not materially founded, e.g. by a demonstrably higher level of risk. The petitioner's believe that the legislation burdens some employers far more than others without this reflecting a greater probability of work injury or occupational disease. The Constitutional Court had already stated that *"the equality of citizens cannot be understood as an abstract category but as relative equality"*.[178] It examined whether the evaluated classification of the premium amount is in rational relation to the act's purpose, i.e. can it in

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175 Ministry of Finance Regulation No. 487/2001 Coll.

176 from 25 % to 13.5 %

177 Under article 16 (1) of the Government's legislative rules, the body that prepares the draft decree sends it to specific state bodies, as well as other commentary points specified by the body that prepared the draft if it regards this as necessary. The Government's legislative rules are not a legal regulation but an internal normative act binding on the Government and its members, as well as the bodies managed by it.

178 Ref. No. Pl. ÚS 36/93

some way influence the achievement of this purpose. It concluded that insurance events are most unfavourable in certain sectors, and that to differentiate premium rates may thus satisfy the Act's purpose in relation to the structure of insurance events. This classification of the premium amount can thus not be regarded as anti-constitutional inequality.

6. Discrimination and equal opportunities

6.1. Discrimination

6.1.1. Anti-discrimination law

In December 2004, the Government approved the draft anti-discrimination act,[179] which among other things implements the EU directive concerning equal treatment and protection against discrimination.[180] The act streamlines legislation on protection against discrimination and remedies flaws in Czech law arising chiefly from the fact that Czech law, with the exception of the Labour Code and the Employment Act, does not clearly define what discrimination is, the forms that it takes and how an individual should proceed who believes he has been discriminated against. Moreover, it is impossible to use existing procedures, or these are ineffective in reality, because they are designed for other purposes. The draft anti-discrimination act designates the Public Defender of Rights as the entity that will systematically address the issue of equal treatment and provide assistance to victims of discrimination.

6.1.2. Third regular report of the European Commission against Racism and Intolerance (ECRI)

At the end of 2003, the European Commission against Racism and Intolerance[181] (ECRI), a body specialising in human rights on the issue of racism and intolerance, prepared its third regular report on the CR, in which it analyses the situation in this area in the individual member states of the Council of Europe and submits proposals and recommendations on how to resolve the problems mentioned.[182]

6.1.3. Second Euro amendment to the Labour Code, Employment Act

The so-called second Euro amendment to the Labour Code[183] incorporated the newly adopted EU directives in the Labour Code, particularly those concerning the prohibition on discrimination and sexual harassment (see also 5.2.). For the first time, the Labour Code strictly prohibits direct and indirect discrimination, with discrimination also covering incitement, instigation or pressure leading to discrimination.[184] The amendment specifies the

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179 Government Resolution of 1 December 2004 No. 1193 (http://racek.vlada.cz/usneseni/)

180 Act on Equal Treatment and on Legal Instruments for Protection Against Discrimination (Anti-discrimination Act)

181 The European Commission against Racism and Intolerance is not a supervisory body established by international treaty (treaty-based body), but a special agenda of the Council of Europe.

182 Cf. Guidelines for the third round of ECRI´s country by country work adopted by ECRI on 14 December 2001 - see http://www.diskriminace.info/dt-svet/3e_rapport_r_e9publique_tch_e8que_tch_e8que.pdf

183 Act No. 46/2004 Coll., which amends Act No. 65/1965 Coll., the Labour Code, as amended, and Act No. 312/2002 Coll., on Officials of Territorial Self-governing Units and on Amendments to Some Acts.

184 The Act defines direct and indirect discrimination, harassment and sexual harassment; harassment on grounds of sex, sexual orientation, racial or ethnic origin, disability, age, religion or belief and sexual harassment are regarded as discrimination.

exceptions to the general principle of equal treatment for all of an employer's employees. These exceptions may derive from the Labour Code or a special legal regulation, or for reasons specific to the nature of the work that the employee has to perform and which is essential for the performance of such work.[185]

Like the Labour Code, the new Employment Act[186] also contains more detailed provisions concerning discrimination. A violation of the prohibition on discrimination is an offence (or administrative delict) for which a fine can be imposed of up to CZK 1,000,000. The Act newly contains provisions on rights to judicial protection for persons who have been discriminated against, and whose right to equal treatment in access to employment has been breached. It prohibits offers of work that are discriminatory in character or which defy good morals; the employer may not demand personal information unless these are required by his obligations under special regulations.[187]

6.1.4. Status of men and women caring for children in the pension insurance system

Current legislation stating the retirement age in relation to the number of children reared differs for men and women and derives from the pension insurance system's historical development in a certain social environment. It thus does not help to remove the continuing stereotype that children should chiefly be cared for by women. Motherhood should not automatically mean being disadvantaged in the labour market as being a woman is not an automatic qualification for parenthood, and being a man is likewise not automatically a disqualification.

6.1.4.1. Care for children under 15

The Labour Code contains legislation that advantages women caring for children in comparison with men in the same position. If a woman caring for a child younger than 15 asks for reduced working hours or other appropriate change to the weekly working hours the employer, unless serious operating reasons prevent him from doing so, is obliged to satisfy her request. This provision[188] reflects an ongoing stereotype and creates a situation where, when parents decide which of them should care for the child, the more advantageous conditions compel the woman to take on this part of the joint parental responsibilities.

The draft of the new Labour Code eliminates this inequality. Now, men who care for children under the age of 15 can also request different working hours.

6.1.4.2.Condition for participation in pension insurance

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185 Only by this definition can an employer justify different treatment for individual employees or groups of employees, as concerns their work conditions, including remuneration for work and other payments, specialist training and the opportunity for promotion.

186 Act No. 435/2004 Coll., on Employment

187 The Act prohibits direct and indirect discrimination in exercising the right to employment on grounds of sex, sexual orientation, race or ethnic origin, nationality, state citizenship, social origin, family origin, language, health, religion or belief, property, marital and family status, age or responsibility for the family, political or other persuasion, membership and activity in political parties or political movements, in union organisations or employers' organisations. If in exercising the right to employment there is a breach of the principle of equal treatment, the person affected may seek to ensure that such behaviour be removed, that the results of such behaviour be remedied and that he receive adequate satisfaction, or is entitled to financial compensation for non-material loss, the amount to be decided by a court.

188 Section 156 of the Labour Code

In comparison with women, the Act on Pension Insurance[189] places a further condition of participation in pension insurance for men caring for a child up to four years of age.[190] For a man to be considered a person caring for the child he must, unlike women, submit an application for participation in the pension system within two years of finishing the care for the child. If he fails to do so he shall not be regarded as having been insured for the period that he cared for a child under the age of four. Women, on the other hand, only have to submit the child's birth registration with their pension application to prove the time spent caring for the child that is counted in the insurance period. Unlike men, women do not have to apply for pension insurance during the period they care for the child. This is another instance where the law automatically assumes that it is primarily the woman who remains at home and cares for the child.

Given that the number of men who play an equal role in parental responsibilities, i.e. who decide to care for children under four, can be expected to rise, it would be sensible to consider dropping the condition that states that men should only be regarded as the insured person if he submits an application for participation in pension insurance within two years of finishing the care, or to introduce an obligation for both men and women to apply for insurance. This obligation should, however, remain for persons caring for a child under 18 who is severely disabled and requires special care. It does not breach the principle of equality because it doesn't distinguish between men and women in the conditions applied to acknowledge the care period for participation in pension insurance.

6.1.4.3. Stipulation of retirement age

Unlike men, women are entitled to old age pension if they personally care or have cared for a child up to the age of majority for a period of at least ten years. If, however, the woman began bringing up the child after the age of eight the condition is regarded as fulfilled if the woman personally cares or has cared for the child for at least five years up to the age of majority. Current legislation does not reduce the retirement age for a man bringing up a child.

The retirement age is stipulated differently for men and women in that the retirement age for women is also reduced according to the number of children reared, even though the retirement age in 2012 should be the same for men and women (63). Yet even after 2012 the reduced retirement age will differ for men and women in relation to the number of children reared.[191]

Community law currently allows an exception regarding different retirement ages for men and women's entitlement to old age pension[192] by expressly not stipulating a retirement

189 Act No. 155/1995 Coll., on Pension Insurance, as amended

190 Pension insurance distinguishes insurance periods for which premiums are paid from substitute insurance periods, for which no premium is paid. Substitute insurance periods are assessed as pension periods (with variations stipulated by law) for their inclusion in the total insurance period, to establish pension entitlement. A child care period as a substitute period is only assessed for the parents of the child, or person entrusted with the child's foster care, or care ordered by the relevant body. The pension insurance period for a carer must be at least one year, and this cannot be gained before the child care period.

191 Act on Pension Insurance, which came into effect 1 January 1996, has gradually raised the retirement age for entitlement for an old age pension. For women the rate of increase is quicker due to the gradual streamlining of men and women's retirement age. Under current legislation, the raising of retirement age should continue until the age of 63 is reached for men and childless women, with the age being staggered from 59 to 62 for other women according to the number of children they have reared (2012).

192 article 7 of Council Directive 79/7 (EEC) on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security.

age. This is due to the fact that different retirement ages still exist in the pension systems of EU member states. However, the retirement age can be expected to be gradually streamlined upwards, and EU states are therefore required to periodically to examine matters currently excluded from EU legislation and to assess the justification for their continued exclusion.

New legislation, or changes to existing legislation, as part of further pension reform can be expected to strengthen the principle of equal treatment, i.e. the enforcement of the same rules for men and women. These rules will be incorporated in a new pension insurance act. The act's adoption depends, however, on all political parties reaching agreement on the new form of our pension system.

6.1.5. Ascertaining discriminatory behaviour

Protection against discrimination is offered not only by the courts and the Public Defender of Rights, but also by the Czech Trade Inspection (hereinafter the „CTI"). This supervises the observance of conditions (including the prohibition on discrimination) stipulated by special regulations or other binding measures for the operation or provision of activities concerning the sale or supply of goods and products or the provision of services. In the employment sphere, the Ministry of Labour and Social Affairs and the Labour offices perform inspections under the Employment Act. Inspections focus on the observance of labour-law regulations, including the prohibition on discrimination.

6.1.5.1. Discrimination in the service sector

The CTI and partner organisations are introducing targeted inspections in response to the falling number of direct complaints of racial discrimination made directly to the CBI or via the authorities.

Complaints received and settled:

	1999	2000	2001	2002	2003	2004
Number of complaints against racial discrimination	21	12	16	14	8	3
Ascertained as partly justified	1	0	0	0	0	0
Ascertained as justified	1	1	2	2	1	1

As the data in the table make clear, the number of complaints of racial discrimination is falling. Since this trend most probably does not reflect the actual fall in these actions and behaviour, public debate and a public awareness campaign are needed in order to raise people's awareness of what is considered discriminatory behaviour and how to combat it.

6.1.5.2. Complaints addressed to Labour offices

According to the Ministry of Labour and Social Affairs, the number of complaints submitted and investigated by the Labour offices does not adequately illustrate the actual situation concerning discrimination in labour-law relations. The table below contains information on breaches of labour-law regulations, including discrimination, ascertained by the Labour offices.[193]

[193] These are breaches of labour-law regulations concerning discrimination from 2002 to Q3 2004. Since detailed breakdowns of discrimination grounds have been available since Q3 2004, the data are processed into

Breaches of labour-law regulations ascertained during Labour office inspections into discrimination.	2002	2003	1st half 2004	Data only for Q3 2004
Denial of right to employment (Section 1 (1) of Act No. 1/1991 Coll., on Employment)	228	39	18	0
Discriminatory employment ad (Section 1 (2) of Act No. 1/1991 Coll., on Employment)		37	13	1
Equal treatment (Section 1 (3) of Act No. 65/1965 Coll., the Labour Code)	76	110	69	55
Discrimination on grounds of sex, sexual orientation, racial or ethnic origin, nationality etc. (Section 1 (4) of Act No. 65/1965 Coll., the Labour Code)				4
Sexual harassment (Section 1 (9) of Act No. 65/1965 Coll., the Labour Code)				0
Victimisation of an employee for trying to enforce his rights and entitlements (Section 7 of Act No. 65/1965 Coll., the Labour Code)	117	97	221	16
Wage conditions must be the same for men and women (Section 4a (1) of Act No. 1/1992 Coll., on Wages)	57	89	97	31

Breakdown of discrimination reasons for the report on the supervisory activity of the Labour offices for Q3 2004

	Discrimination on grounds of:	Total no. of cases	Of which			
			direct	Indirect	men	women
Section 1 (1) of Act No. 1/1991 Coll.	Race	-				
	Colour of skin	-				
	Sex	-				
	Sexual orientation	-				
	Language	-				
	Belief or religion	-				
	Political or other orientation	-				
	Membership of or involvement in union or other associations	-				
	Nationality, ethnic or social origin	-				
	Property	-				
	Family origin	-				
	Health	-				
	Age	-				
	Marital and family status or duties towards the family	-				
	Total	0				
Section 1 (2) of Act	Race					
	Colour of skin					

two tables, whose categorisation reflects the ever more detailed monitoring of discrimination grounds. It also reflects the change in the Labour Code effective from 1 April 2004.

No. 1/1991 Coll.	Sex	1	1	-	-	1
	Sexual orientation					
	Language					
	Belief or religion					
	Political or other orientation					
	Membership or involvement in union or other association					
	Nationality, ethnic or social origin					
	Property					
	Family origin					
	Health					
	Age					
	Marital and family status or duties towards the family					
	Total	**1**	**1**	**-**	**-**	**1**
	Total – Employment Act	**1**	**1**			**1**
Section 1 (3) of Act No. 65/1965 Coll.	Unequal work conditions	4	1	3	3	1
	Unequal remuneration for work of the same value	51	19	32	12	39
	Unequal access to vocational training					
	Unequal access to management or senior posts					
	Total	**55**	**20**	**35**	**15**	**40**
Section 1 (4) of Act No. 65/1965 Coll.	Race	1	-	1	-	1
	Colour of skin					
	Sex	2	1	1	-	2
	Sexual orientation					
	Language					
	Belief or religion					
	Political or other orientation					
	Membership of or activity in union or other associations	1	1	-	-	1
	Nationality, ethnic or social origin					
	Property					
	Family origin					
	Health					
	Age					
	Marital and family status or duties towards the family					
	Total	**4**	**2**	**2**	**-**	**4**
Section 1 (9) of Act No. 65/1965 Coll.	Sexual harassment	-				
Section 7 (3) of Act No. 65/1965 Coll.	persecuting an employee who seeks to enforce his rights	16		16	9	7
	Total – Labour Code	**75**	**22**	**53**	**24**	**51**
Section 4a (1) of Act No. 1/1992 Coll.	Unequal remuneration conditions	31	20	11	9	22

6.2. Equal opportunities for men and women

6.2.1. Council directive implementing the principle of equal treatment for men and women in access to and supply of goods and services[194]

The directive's adoption was preceded by intense discussion among the member states. As in other EU states, in the CR the debate focused mainly on insurance and financial services. In the draft directive, the European Commission (hereinafter the „EC") asked for gender to be omitted as a mathematical factor in calculating premiums and benefits in private pension insurance on grounds that it was discriminatory.[195] The EC argued that the dominant factor affecting length of life was not gender but lifestyle. The practice of insurers in using gender as a determining factor in assessing risk is based rather on its simplicity rather than any actual value that could indicate the average life span. Women, who live longer than men, pay the same amount as men in insurance companies or funds but draw lower private pensions from the same amount. To some degree this results in the further feminisation of poverty, as women already have lower state pensions due to the unequal remuneration of men and women (women receive 75 % of men's earnings). The lower value of "private pensions" exacerbates this situation.

As the CR supported the draft directive and approved the EC's arguments, it should enforce these principles in stipulating the rules for calculating „state pensions" (see also 6.1.3.).

6.2.2. Using surnames in the masculine form[196]

The Registry Office can now waive verification of foreign documents used for registration if there are serious obstacles to obtaining them, and enter these details in the register of births, marriages and deaths. In addition to surnames created in accordance with Czech grammar (i.e. according to gender), women can also use surnames in the male form if they are foreign, a citizen of the CR who has or will have permanent residence abroad, a citizen of the CR whose husband is a foreigner or a citizen of the CR who does not have Czech nationality. For the registration of new-born children it is now also possible, at the parents' request, to give a female child the male form of the surname in the same cases that apply to women.

6.2.3. Conceptual changes to fulfilment of military service during peacetime

The new Armed Forces Act[197] establishes a professional army. It also introduces a change with regard to the equal status of men and women by not distinguishing potential recruits on the basis of gender. All citizens of the CR from the age of 18 to 60 have a military duty. The changes for women are not, however, as groundbreaking as might appear to be the case at first glance. As all obligations specified by the new act as part of military duty apply to all citizens to the same degree that the previous act[198] applied only to women, these should be

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194 2004/113/EU of 13 December 2004

195 The Government finally supported the draft directive on equal access for men and women to services in its full extent, including insurance and financial services, and approved the draft framework position in this sense - see Government Resolution of 16 June 2004 no. 598 (http://racek.vlada.cz/usneseni/)

196 Act No. 165/2004 Coll., which amends Act No. 301/2000 Coll., on the Registers, Names and Surnames, and on Amendment to Some Related Acts.

197 Act No. 585/2004 Coll., on Military Service

198 Act No. 218/1999 Coll., on the Scope of Military Service and Military Administrative Bodies, as amended.

placed in conflict chiefly as health workers. The new act thus imposes the same obligations on men and women in fulfilling military duties and no longer refers to tasks specifically reserved for women. If a conflict arose that required the use of the armed forces the first to engage would be professional soldiers, followed by active volunteer reserves and then other reserves. Only then would drafts be declared. These would be taken from specific categories of the population, i.e. both men and women, and would always be based on the Army's needs. Drafts will not include pregnant women or single women and men caring for a child.[199]

6.2.4. Gender budgeting[200]

In conjunction with the Ministry of Labour and Social Affairs, the Ministry of Finance published information methodology on gender budgeting which is intended for all employees and representatives involved in the creation and implementation of public budgets. Its goal is a balanced budget with regard to gender and an improvement in decision-making procedures with regard to equality for men and women.[201]

6.2.5. Change to the Government's Legislative Rules and Rules of Procedure

In 2004, a change was made to the Government's Legislative Rules and Rules of Procedure,[202] whereby legislative proposals and accompany reports must, if the main subject of the proposed legislation covers the status of private individuals, newly contain an assessment of the current situation and the impact of the proposed legislation on equality for men and women, including an explanation of the reasons for any differences, expected impacts or anticipated development by using statistical and other data classified by gender, where such data is available.

In practice, this will mean that all documents for Government discussion or the information of its members, as well as materials used to prepare legal regulations, shall include in the information on the impact on the state budget (in addition to statistical and other data) any changes the proposal might introduce to the status of men and women. Reasons should be given for any differences in the impact on men and women.

6.2.6. Shadow report on equal treatment and equal opportunities for men and women[203]

The shadow report emerged as a joint project by a team of authors from the non-governmental sector and the academic sphere. The authors have long experience in issues of gender equality and seek to promote the principle of equal treatment and equal opportunities for men and women. The report is an alternative to the document "Government Priorities and Procedures in Promoting Equality for Men and Women", which the Government has prepared and published annually since 1998. It identifies weaknesses in the Government reports and

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199 As at 31 December 2004, women made up 12 % of all regular soldiers. The Army currently does not have any position of regular soldier or civilian employee that would be intended solely for men or women.

200 Gender budgeting is an approach to budgets that demands the fairer distribution of funds according to equal access for men and women to the use of funds created by society. More at http://www.mvcr.cz/2003/casopisy/vs/0432/pril_info.html nebo http://www.mpsv.cz/files/clanky/10/budget.pdf

201 Informative methodology was developed at the recommendation of the Government Council for equal treatment for men and women that the Ministry of Finance prepare informative methodology for budgeting and publish it. The Government approved the recommendation with Resolution No. 896 of 10 September 2003 (http://racek.vlada.cz/usneseni/).

202 Government resolution of 3 November 2004 no. 1072(http://racek.vlada.cz/usneseni/)

203 http://www.feminismus.cz/download/GS_stin.pdf

offers an alternative approach to the reporting of several selected areas of the Priorities. Its purpose is not to criticise Government activities but to supplement and broaden the Government's perspective and to draw attention to differently interpreted facts. The shadow report focuses chiefly on issues that relate to the overall concept for promoting gender equality and on areas in which authors' non-governmental organisations re active.

6.2.7. Child care

6.2.7.1. Parental allowance

Only one parent may draw parental allowance (see also 5.3.)[204] if both are caring for a child. Entitlement to the parental allowance is now no longer dependent on limited gainful employment and the parent's income is not monitored. On the other hand, the parent who draws the allowance must duly care for a child up to 4 (or 7) on a daily basis and for the whole calendar month. During hours of gainful employment, however, the parent drawing the parental allowance must entrust the child's care to another adult. Restrictions relating to the child's placement in pre-school and similar facilities still apply.

This measure is a positive step towards the equal sharing of parental responsibilities. The cancellation of the restriction on gainful employment for the beneficiary and the introduction of the condition for the entrustment of child care to another adult means that almost the sole beneficiaries of the parental allowance – mothers on parental leave – can work, contribute financially to the family's living standard, and thereby reduce their economic dependence on their partner. The condition that child care be arranged during the hours the mother is gainfully employed also means that fathers could become more involved in caring for the child.

The possibility of unlimited additional earnings does not affect a person caring for a disabled person and drawing an "allowance for the care of a relative or other person". For them, an income ceiling still applies which severely disadvantages families with disabled family members in comparison with families whose members are not disabled.

6.2.7.2. Maternity allowance

If a woman is paid maternity allowance,[205] the father cannot also draw the parental contribution if he helps her care for the child. If the woman decides to return to work as soon as possible and passes the child care to the child's father, the father will be able to draw the parental contribution but not financial aid (a benefit that corresponds to financial aid during maternity). In the vast majority of cases, the parental allowance is far lower than financial aid during maternity. The child's father is entitled to an allowance corresponding to financial aid during maternity only in extraordinary cases.[206] This discrepancy should be remedied by the new act on health insurance.

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[204] The parental allowance is a benefit under state social support (Act No. 117/1995 Coll., on State Social Support, as amended)

[205] Maternity allowance is a benefit under health insurance provided under a different system. It is provided under Act No. 88/1968 Coll., on the Extension of Maternity Leave, on Maternity Benefits and on Child Benefits under Health Insurance, as amended, which in Section 12 defines the conditions for the provision of financial assistance to employees.

[206] This refers to an unmarried, widowed, divorced or otherwise single employee who doesn't live with a partner, if he cares for a child under the decision of the relevant body, or to a child whose mother has died, or in

6.2.8. Caring for a sick child

Health insurance provides support in caring for a family member for the first nine calendar days that care is required, unless the policyholder is single. The benefit's purpose is to make up the policyholder's loss in earnings from caring for the family member at the beginning of the care period, until such time as the situation can be resolved by some other means. For this reason the benefit does not apply for the entire period of care but only for the stated period, which always commences at the beginning of the need for care. The benefit can only be provided once and to one person in any one case of care.

The draft amendment to the Act on Health Insurance moderates this limiting condition somewhat by making the benefit payable to two persons during the first nine days of care. This means that these persons can alternate the care once and remain entitled to the benefit.

During the commentary period on the draft amendment to the health insurance act the Government Commissioner for Human Rights stated that although the measure undoubtedly helped harmonise men's and women's family and professional lives, the draft was insufficient. The proposed legislation does not allow parents maximum flexibility in caring for the child, meaning that parents could alternate care for a child according to the needs of their employers, including more than once. An appropriate solution would be to allow parents caring for a sick child to exercise their right to the benefit only for certain, non-consecutive days. On other days another person could be responsible for the child's care. The Ministry of Labour and Social Affairs does not agree with this proposal, saying that at present such a change is practically impossible to implement if benefit abuse has to be controlled at the same time. It also stated that it would result in an enormous increase in administration for employers, district social security administrations and doctors, and would increase health insurance costs.

If employees can exercise their right to the benefit in the aforementioned manner, they (and particularly female employees) will find it easier to be available when the employer needs them. Such an arrangement would certainly help reduce employers' concerns about employing mothers with small children, and thereby lessen employers' unwillingness to employ young women or mothers with children. It also strengthens the principle of the equal sharing of parental responsibility in cases where parents have not been deprived of or restricted in their parental rights. It moderates discrimination on the labour market against mothers of small children in particular by allowing parents to alternate in child care so that the mother's absence from work does not harm the employer nd by establishing favourable conditions for employed parents of small children.

6.2.9. Human trafficking

The amendment to the criminal code[207] in 2004 introduced new grounds for the crime of human trafficking. Unlike the original legislation, the definition for this crime now covers not only cross-border trafficking (from abroad or to abroad), but also applies to trafficking people inside the state. It also broadened the definition of human trafficking. It covers sexual

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the event that the employee cares for a child if his wife (not partner) does not receive a maternity allowance and on her own cannot or is not allowed under doctor's order to care for the child due to serious, long-term illness.

[207] Act No. 537/2004 Coll., which amends Act No. 140/1961 Coll., the Criminal Code, as amended; Section 246 has been replaced by Section 232a.

exploitation, forced labour, slavery and bondage. The original legislation only referred to trafficking with people for the purpose of sexual relations.

These changes facilitate the far more effective prosecution of „human traffickers". On the other hand, it must be said that the issue of human trafficking is far more complex and it is not enough to focus solely on the repressive criminal-legal aspect. Just as important as punishment is the help and support given to the trafficked person. This, however, is connected to the victim's cooperation in criminal proceedings, which in practice often means just a delay in deportation (in the interest of the State in the criminal prosecution of offenders). Since cooperating with bodies active in criminal proceedings does not constitute the right to be granted permission of residence, after the proceedings have ended some trafficked persons may, despite having given evidence, find themselves being returned to the country of origin, where they may be endangered precisely due to the fact that they gave evidence. That is why the overall situation of trafficked persons must always be carefully considered.[208]

6.2.10. Domestic violence

Up to now, individual cases of so-called domestic violence have been classified under specific crimes (or offences, depending on the intensity of the attack) such as breach of the peace, violence against a person, bodily injury, attempted murder etc. The need for change in the criminal prosecution of perpetrators of domestic violence led to a change in the criminal code, which, as of 1 June 2004, introduced the crime of battering a person living in a jointly inhabited flat or house as separate grounds of a crime.[209]

Thus far, legislation has allowed perpetrators of domestic violence to be charged with bodily injury, although only if the victim was off work ill for at least seven days following the attack. Now, the grounds for this type of crime will also be provided by behaviour towards a partner or other people living with him in the same flat or house that can be described as battering, i.e. also less intensive physical, psychological or economic pressure. The key innovation is the fact that the victim's consent will no longer be required to prosecute the aggressor under the new legislation.

7. Children's rights

7.1. Parental alienation syndrome

The number of cases continues to rise where a child's parent, who has been entrusted with the child's care, does not allow the second parent to have contact with the child, or conversely, where the parent does not return the child to the parent entrusted with its upbringing. The situation is complicated by the fact that the problem involves inter-personal relations which, without voluntary family therapy, no state body can effectively resolve in the child's interest instead of the parents. Moreover, in such situations many relevant bodies do not proceed efficiently and consistently. The chief problem is the inconsistent approach of state bodies and courts in enforcing judicial decisions concerning parents' contact with the child. The parents' behaviour is psychologically damaging not only for the parent who has been separated from the child but above all for the child itself, which in most cases is emotionally bound to the parent. One of the gravest socio-pathological aspects accompanying

[208] The program "Model for assisting and protecting victims of human trafficking" (for more see 2003 Report).

[209] Section 215a of the Criminal Code

family break-ups is the parental alienation syndrome which many children experience as a result of antagonism towards one of the parents. This often results in a breach of the child's right to regular personal contact with both parents. A major obstacle in finding a solution that would take into account the child's rights and parent's rights to contact is the inability of parents to agree on the child's upbringing and how contact should be arranged. These problems don't only apply to the parents' separation or divorce but also to cases where the child is placed in the care of another person, foster parent or institution. On the other hand, it should also be emphasised that the enforcement of the child's right to personal contact with both parents should not interfere with school activities or the pedagogic process.

The execution of judgements on the upbringing of minors, especially court preliminary rulings ordering the child's removal from the family,[210] still represents a pressing problem. The execution of judicial decisions, which usually involve extremely painful interference in the emotional and social ties between family members, is the responsibility of court executors, who act together with employees from the relevant authority for the social and legal protection of children. According to information from the Public Defender of Rights, in practice it often happens that the court executors don't know how to behave in such situations, which are completely different from property executions. Their approach thus does not correspond with that of the social workers present and does not contribute to the professional settlement of these sensitive situations.

The problem concerning the right of a child separated from one or both parents to have regular contact with both parents has been addressed by the Government Council for Human Rights, which recommended that the Government adopt a series of measures in order to improve the situation.[211]

Every child obviously has the right to have contact with both parents, and this right must be respected and protected. Although the effective implementation of the measures proposed by the Government Council for Human rights should ameliorate the situation, the specific rights of the child and parents cannot be regarded as absolute. In cases where the child has witnessed domestic violence it should be acknowledged that its negative attitude towards one of the parents – the perpetrator – is not the result of this syndrome but a natural reaction to the behaviour of the violent parent. The authorities that implement the decisions should therefore always take into consideration whether the parent that has not been entrusted with the child's care is in fact the perpetrator of domestic violence. An extremely sensitive approach is thus required when executing a decision to place the child in a person's care and in regulating contact. A child should not be forced against its will to have contact with the second parent. In such cases, it would be better to have recourse to psychotherapy and to arrange the child's contact with the parent when the child is willing and prepared to do so. Regular contact between the child and both parents following their divorce or separation is obviously desirable in normal situations. A relationship or marriage that has ended due to violence clearly does not fulfil this condition.[212] In many cases, violent parents regard the care of the child following divorce as another field of operation in the defunct relationship.

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[210] Section 76 (1) b, Section 76a of Act No. 99/1963 Coll., the Civil Procedure Code, as amended

[211] The Government approved the recommendation through resolution no 1108 of 10 November 2004 on the Recommendation of the Government Council for Human Rights that a child separated from one or both parent have the right to regular personal contact with both parents (http://racek.vlada.cz/usneseni/).

[212] The World Health Organisation (WHO) says that just the child's presence at acts of violence towards one of the parents - usually women-mothers - is a form of child abuse. The psychological effects are very similar.

The problem thus lies in the fact that court executors are not trained for this type of execution, a fact which can be seen as a systemic shortcoming in the functioning of the judiciary. There is still no network of specialised facilities that would help prevent the emergence of the so-called parental alienation syndrome. The syndrome generally arises through the attempts of one parent to prevent the second parent from having contact with the child in families that are breaking up. In such cases, the task of authorities responsible for the social and legal protection of children is to use all means to encourage parents to respect the rights of the second parent and not to prevent the child from having contact with that parent.

7.2. Social and legal protection of children

Public administration reform has resulted in an ongoing reduction in the number of employees responsible for the social and legal protection of children. Municipalities and regional authorities are currently reducing staff numbers, sometimes on the basis of audits by entities that are not able to consider the demanding nature of the work performed by social workers and the need for prevention or social street-work.

The specialisation needed to ensure the social and legal protection of children continues to be undermined. A social and legal protection department or a social prevention department with social workers specialised in protection of children with educational problems or involved in criminal activities, who require increased attention, should exist at each municipal office of a municipality with extended competence. The specialisation should further ensure substitute family care, work with children with educational problems who are involved in crime and with mistreated and abused children. In addition, it is necessary to ensure sufficient staffing for the exercise of guardianship and social street-work. Inadequate prevention in the social and legal protection of children is manifested in the rising number of children being placed in institutional care, for which the CR is frequently criticised. The funds that municipalities "save" by reducing staff numbers and the often unsystematic merging of functions are far lower than the finances society has to spend on institutional child care, primarily through regional budgets.

Neither regional authorities nor the Ministry of Labour and Social Affairs can force municipalities that fail to meet their obligations in social and legal protection to remedy their approach; neither can they affect the number of employees involved in the social and legal protection of children in a specific municipal authority. The deteriorating situation begs the question whether the State, which is responsible for guaranteeing the social and legal protection of children, shouldn't assume the implementation of social and legal protection.

7.3. Repeal of the "family contract" provision by the Constitutional Court

The Act on Institutional Care or Protective Care[213] introduced the term "contractual family" (Section 5 (1), Section 8 (4) and Section 41 (2)), although it failed to define it in more detail and its provisions were thus vague. The Act was thus unable to define its content and did not state the rights and obligations of members of the contractual family and the child or the relations between the contractual family, diagnostic institution and the child's legal representatives. The provision's aim was to place the child in a contractual family, if this is in the child's interest, on the basis of a contract between the diagnostic institute and the contractual family. In September 2002, the President of the Republic lodged a constitutional

[213] Act No. 109/2002 Coll., on Institutional Care or Protective Care in school facilities and on preventive care in school facilities, as amended

complaint in which he asked for the provision to be omitted from the Act due to concerns about the possibility of the legislation's abuse to the detriment of the child. The contested act thus made it possible for the diagnostic institute to place a child in a contractual family despite the institute assuming responsibility for all the child's care on the basis of a court ruling. The Constitutional Court, which upheld the President's complaint, considered the placing of a child in a contractual family without adequate and full legislation, including judicial control, to be an infringement of the child's basic rights and freedoms (article 4 of the Constitution) and a breach of the principle whereby a child can only be removed from a family on the basis of a court ruling under the law (article 32 (1) and (4) of the Charter). The Constitutional Court thus cancelled those sections of the act on institutional care or protective care dealing with the contractual family.

8. Foreigners

8.1. EU developments in 2004 and changes to legal regulations

Migration and asylum have a special status in respect of the fundamental concepts underpinning human rights. They form one of the basic pillars of community law, and at EU level there is an attempt to harmonise legal regulations and other measures of member states governing asylum and migration questions. The Report cannot supply exhaustive information on legislative and political developments in the EU, although it should be pointed out that European development is of profound importance for the legal and institutional protection of foreigners and refugees in the CR.[214]

In 2004, the EU adopted the following directive on the migration issue. *Directive 2004/38/EU on the right of EU citizens and their family members to move freely and reside in member states*[215] comprehensively regulates the free movement of persons in the EU and replaces the existing piecemeal legislation. *Directive 2004/81/EU on the issue of residence permits to members of third countries who have become victims of human trafficking or actions facilitating illegal migration, and who cooperate with the relevant authorities*[216] permits the affected people to be granted temporary right of residence and *Directive 2004/114/EU on conditions for receiving nationals for the purpose of study, student exchange visits, unpaid training or voluntary service.*[217]

In 2004, the EU Commission also developed the first *draft directive on minimum standards in the event of return*, which increases the legal protection for people who are forced to return to their country of origin.[218]

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214 Developments in the EU from 1 July 2003 to 30 June 2004 are summarised in section 3.1.3 (Asylum and Migration) of the EU Annual Report on Human Rights. (Council of the European Union: *EU Annual Report on Human Rights*. (2004). Luxemburg: Office for Official Publications of the European Communities, 2004)

215 The deadline for implementation of directive 2004/38/EU in the legislation of EU member states is 30 June 2006.

216 The deadline for implementation of directive 2004/81/EU in the legislation of EU member states is 6 August 2006.

217 The deadline for implementation of directive 2004/114/EU in the legislation of EU member states is 12 January 2007.

218 The basic elements of the draft directive are: provision of legal guarantees against a decision on return/expulsio, (written decision, possibility to submit a legal remedy, decision's translation into relevant language), introduction of two-phase procedure comprising (1) decision on return and time-limit for voluntary return, (2) decision on expulsion in the event voluntary return does not take place (both decisions may be contained in the same document, the implementation of the decision on expulsion would thus be conditional on voluntary return not taking place within the stipulated time-limit), the prinicple of proportionality when detaining

A change in national legislation had important ramifications for the protection of human rights. With effect from 1 January 2004 the detention of foreigners in a strict regime was changed so that failure to prove identity was no longer a reason to be detained in this regime. The measure was welcomed by representatives of the non-governmental sector and the Public Defender of Rights as a step towards creating a system that respects the principle that the restriction of rights and freedoms should not go beyond a level essential for the purpose of detention. This principle is also the inspiration for new legislation in chapter XII of the Act on the Stay of Foreigners,[219] which, among other things, proposes transferring authorisation for establishing and running detention facilities for foreigners to the Ministry of the Interior, and specifically to the Refugee Facilities Administration (see also 4.4), a step which would be an important humanising factor. The amendment also focused on strengthening legal certainties for detained foreigners aged 15 to 18 who are unaccompanied.[220]

8.2. Integration of foreigners

The CR is among the countries that have experienced a rapid rise in immigrants. Over the ten years to 2002, the increase in foreigners in the CR was the highest for all OECD. This emerges from the regular OECD report mapping the social situation in member countries. Between 1993 and 2002, the number of foreigners in the CR rose by 18.2 %. This makes the issue of integrating immigrants in Czech society ever more pressing.[221]

With effect from 1 January 2004, responsibility for the coordination of integration policy passed from the Ministry of the Interior to the Ministry of Labour and Social Affairs. The *Concept for the Integration of Foreigner* from 2000 continued to be implemented (hereinafter the "Concept"), receiving CZK 20 million in support in 2004.[222] In the first year following the transfer of responsibilities an evaluation was run on the period since 1999, when the Government included the issue of integration of foreigners in state policy, and there was an attempt to define the basic problems that need to be addressed. These include the question of whether it is suitable to continue implementing integration without a legislative basis. In the opinion of the Ministry of Labour and Social Affairs "*the experience of many EU member countries shows that the question of the integration of foreigners is considered a priority that requires a consistent approach and, in particular, a legal definition of rights and obligations both on the part of the State and on the part of immigrants"*.[223] The current version of the Concept does not sufficiently support people seeking to integrate in Czech

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foreigners and applying coercive measures, expanding the mutual acknowledgement of the decision (now regulated by directive 2001/40/EU) to all types of decision on return and decision on expulsion.

[219] Act No. 326/1999 Coll., on the Stay of Foreigners in the CR, as amended

[220] The chapter change is part of the broader amendment of Act No. 326/1999 Coll. As of 26 October 2004, the amendment was passed to Government for discussion and its submission to the parliamentary legislative process. Changes also affect freedom of movement of foreigners detained in facilities, changes in the system for receiving foreigners, provision of psychological and social care, moving foreigners to a stricter regime. The amendment should come into effect 1 May 2005.

[221] The cited data come from the regular OECD report on trends in international migration, which will be published 22 March 2005. Source: CTK/reports on EU countries, EU and NATO. Date: 09-mar-2005 14:56. Title: In OECD largest increase of foreigners in CR, large increase in Slovakia. See also http://www.oecd.org/document/56/0,2340,en_2649_201185_34594104_1_1_1_1,00.html

[222] Government Resolution of 5 January 2005 no. 5 on the Implementation of the Concept for the Integration of Foreigners by the end of 2004, and its further development in 2005. http://cizinci.mpsv.cz/soubory/2e33592ff4e62e3fbf6636c62f2ea142/Usnesen__5_2005.pdf

[223] Ibid. part IV., point IV.3.

society. State policy should therefore define foreigners‘ rights in relation to the level of integration achieved.

The question of integrating immigrants is also addressed by several non-governmental, non-profit organisations (e.g. Slovo 21, the Centre for the Integration of Foreigners), although most focus on helping refugees and asylum applicants.

8.3. Status of foreigners living long-term in the CR

In 2004, the Ministry of Labour and Social Affairs hired the independent consulting firm Ivan Gabal - Analysis & Consulting[224] to produce an *Analysis of the Status of Foreigners Living Long-Term in the CR*. The analysis is not an official document and the relevance of its conclusions will be assessed by ministers in the first half of 2005, in keeping with Government resolution no 5 on the Implementation of the Concept for the Integration of Foreigners up to the end of 2004 and its further development in 2005.

As its basic material for “diagnosing” the current situation, the study drew on statements from a variety of groups with direct experience of the system for regulating and deciding on the residence of foreigners, and the legislative, legal and institutional dimension. Specifically, these were (i) communities of foreigners, (ii) organisations that represent them, (iii) Czech authorities that come into contact with foreigners and (iv) legal experts at a governmental, non-governmental and academic level. Although the study can be criticised for frequent inaccuracies and distortions, in its way it represents a unique source of information on how foreigners see the Czech situation. It thus represents a useful contribution to understanding a reflection of reality in the consciousness of interested parties and may encourage a wider debate of the issue in society as a whole.

According to the Analysis, the Aliens Act has a restrictive character and places foreigners in an uncertain legal position, inferior to the foreigner police, to which however it gives space to the foreigner police to make independent administrative decisions. Time-limits for settling applications are long. (According to information from the Ministry of the Interior, applications are usually handled within 60 days.) The agenda is institutionally grounded in a repressive element of state power – the foreigner police. This is not adequately equipped linguistically[225] and is not trained to deal with foreigners as clients with legitimate needs. Access to work permits is administratively demanding, whereas access to trading certificates (and residence based thereon) is relatively easy. Foreigners are also deterred from legal participation in the labour market by high social insurance with minimal social benefits for the payer.[226] The integration of foreigners in society is undermined by long periods of

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[224] Ivan Gabal – Analysis & Consulting: *An Analysis of the Status of Foreigners Living Long-Term in the CR and Recommended Optimisation Measures.* Submitted to Government as annex to document ref. no. 1817/04, to which relates Government Resolution of 5 January no. 5. See also http://www.mpsv.cz/files/clanky/642/postaveni_cizincu.pdf

[225] Section 169 of the Aliens Act states that proceedings under the Act should be held in Czech, although according to the Ministry of the Interior, the foreigner police department always has staff who have a command of at least one foreign language. Foreigners are not always able to settle their problems with the member of staff who speaks their mother tongue. Staff also receive internal training in foreign languages and the situation continues to improve in this regard.

[226] Premiums for social security and the contribution to state employment policy must be paid by all persons economically active in the CR regardless of whether they are Czech citizens, foreigners or asylum seekers. Under the premium, foreigners receive pension and health insurance in the same way as all other economically active persons in the CR. In the case of a work accident causing full disability, the person is entitled to full disability pension, regardless of the length of the insurance period. A person is entitled to full or

uncertainty – the ten-year annual renewal of long-term residence in order to get permanent residence. Foreigners have difficult access to accommodation and no voting rights. They are not motivated to learn Czech. The law does not provide suitable conditions for establishing a family – it takes a long time to obtain permanent residence, children cannot enjoy the benefits of public health insurance. The path to receiving citizenship is also long, there is no real possibility of gaining Czech citizenship as second citizenship or the accelerated naturalisation of second and third-generation immigrants.

The study considers one of the most serious problems to be the emergence of „*parallel societies, the majority society and beside it a marginal closed enclave that does not interact with the majority population and means a deterioration in the cohesion of society.*" According to the study, the low degree of integration of foreigners in the majority society and the mutual separation represent a double risk: on the one hand, marginal or parallel worlds of immigrants are fertile ground for extremism and the fostering of aggression towards the "host" country, with low levels of identification with its values, rules, law and culture. On the other hand, the marginalisation of foreigners causes the majority culture to reject non-integrated immigrants and their segregated and closed communities, which may in turn result in higher levels of support for right-wing extremist parties and movements."[227]

8.4. Children of foreigners born in the CR and health insurance for foreigners

So far, it has not been possible to resolve a fundamental flaw in the system – the lack of generally accessible health insurance for the children of foreigners from third countries. Health insurance companies do not commercially insure the children of foreigners from third countries who are born in the CR if they are seriously ill. The children's parents thus get into insoluble debt. This leaves hospitals and other facilities that treat the children to pay the remainder. The situation was addressed by the Government's draft Act on the Health Insurance of Children of Foreigners, which the Ministry of Health prepared at the instigation of the Government Council for Human Rights. The Government submitted the bill to the Chamber of Deputies on 27 September 2003, although the Chamber subsequently rejected it in its second reading in May 2004.[228] Its rejection was recommended by the Committee for Social Policy and Health. The then minister of health Jozef Kubinyi said in the debate that *"if you adopt the recommendation of the Committee for Social Policy and Health and reject the bill this will not mean a solution to the problem."*.[229] In relation to foreigners from third countries this is not an adequate description of the real situation – the problem of health insurance for these children remains.

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partial disability pension if in the last ten years prior to full (partial) disability the insured party has gained at least five years of insurance. The period up to attaining retirement age is calculated as the substitute period in determining the size of the pension. Old-age pension requires a minimum waiting period of 25 years insurance upon reaching the relevant retirement age. Upon attaining the retirement age of 65 a minimum waiting period of 15 years is required. The social insurance system is uniform for all economically active people in the CR and is financed on an ongoing basis. Premiums are not returned if the payer does not become entitled to any of the pension insurance benefits. Taking into account the above, the Ministry of Labour and Social Affairs therefore believes it is incorrect to state that over the course of ten years the insured party cannot draw any pension insurance benefit. He can, for example, draw benefits conditional upon long-term ill-health, or a bereaved can draw the inherited benefit transferred therefrom.

[227] Ibid. point 3.14.

[228] See parliamentary record no. 417 (http://www.psp.cz/sqw/historie.sqw?o=4&T=417)

[229] see minutes from the session of the Chamber of Deputies of 4 May 2005 (http://www.psp.cz/eknih/2002ps/stenprot/031schuz/s031015.htm#r2)

In addition to health insurance for children – foreigners, there is also a problem concerning health insurance for immigrants – elderly people. General health insurance refuses to insure immigrants over the age of 70 and mothers in the event of birth. These are subsequently forced to pay sums charged by hospitals or other facilities without any regulation of the amounts. This situation does not provide families with legal certainty and negatively affects the stability of foreign families. As concerns the further treatment of the children of foreigners, there is a specific problem of discriminatory treatment regarding the placement of foreigners' children in nurseries and kindergartens. The fees charged by these establishments are set by their management and are usually several times more expensive for foreigners than for Czech citizens.

8.5. Other problems[230]

According to the Public Defender of Rights, in addition to the frequent problems faced by foreigners in staying in and leaving the CR, there has recently been a recurrence of problems for foreigners in entering the CR. In the majority of cases this concerned the refusal of a visa, request for unnecessary documents to be submitted with a visa application, and an unhelpful approach by staff of the CR's representations abroad.

In the opinion of the Public Defender of Rights, there should be a reduction in the sum designated to prove sufficient means to reside in the CR, both in Section 13 of the Aliens Act and in its other related provisions. The sums, given in multiples of the basic means of subsistence, are disproportionately high and cause foreigners serious problems.

8.6. Granting Czech citizenship[231]

The grounds on which applications for Czech citizenship are rejected remain a subject of controversy. The conditions for granting Czech citizenship are stipulated by law, although their fulfilment does not constitute a legal entitlement to the granting of citizenship. This does not mean, however, that the administrative bodies responsible can act arbitrarily. In the opinion of the Public Defender of Rights, it is thus necessary to object to the repeated absence of substantiation in decisions issued by the Ministry of the Interior, or the Minister of the Interior, in relation to Section 10 (3) of the Act on State Citizenship of the Czech Republic,[232] which stipulates the obligation to take into account state security when assessing an application for Czech citizenship.[233] In substantiating their decisions, the Ministry of the Interior and the Minister of the Interior repeatedly fail to explain how the citizenship application was assessed with regard to state security. In the opinion of the Public Defender of Rights, this practice should be criticised on the basis of one of the fundamental principles of the rule of law, i.e. observance of the principle of the predictability of the law and the removal of space for arbitrary behaviour on the part of the executive authority. Although the legitimate public interest in the protection of confidential matters needs to be taken into account, this does not mean that the assessed security aspect can be entirely neglected in the decision's substantiation. The assessment of a citizenship application with regard to state security should be concisely and generally substantiated in the decision so as not to endanger the important

230 This section derives from the experience of the Public Defender of Rights

231 This section derives from the experience of the Public Defender of Rights.

232 Act No. 40/1993 Coll., on the Acquisition and Loss of Czech Citizenship, as amended.

233 Section 10 (3) of Act No. 40/1993 Coll., on the Acquisition and Loss of Czech Citizenship, as amended, reads: *"The Ministry is obliged to assess a citizenship application from the perspective of state security, and in doing so may ask for statements from the Police and intelligence services. If these statements contain information that falls under a special act it shall not form part of the record.":*

interests of the State or third parties, but it should also be clear and comprehensible. The current situation, where the State's security interests are assessed, but not substantiated, as part of administrative proceedings, significantly undermines the legal certainty of applicants for citizenship and negatively affects the transparency of administrative proceedings as a whole.

In the opinion of the Ministry of the Interior, however, the procedure cannot be criticised. The cited provision (Section 10 (3) of the Act on State Citizenship of the CR) states that the Ministry of the Interior may request a statement from the Police and intelligence services concerning state security, and if this contains matters deemed confidential under the Act on the Protection of Confidential Matters,[234] these shall not form part of the record. It they are not part of the record, however, they cannot appear in the substantiation to the decision of the Ministry of the Interior, or the Minister of the Interior.

The Ministry also refers to the European Convention on State Citizenship, which came into force for the CR on 1 July 2004 and in relation to which the Council of Europe approved an explanatory report which, under point 86 to article 11 of the Convention concerning decision-making in proceedings relating state citizenship, states that all decisions concerning state citizenship must contain written substantiation. This must include legal and factual grounds for the decision. The explanatory report also states that for decisions relating to national security the least information necessary must be provided. This means that the decisions of the Ministry of the Interior or Minister of the Interior concerning state citizenship and their substantiation with regard to state security are not in conflict with the European Convention on State Citizenship.

Due to the fact that other countries also have to resolve the stated problem with regard to the granting of state citizenship, it would be proper for an independent study to be performed on the situation in other countries.

9. Refugees and other persons requiring international protection

9.1. Overall situation with regard to asylum

As a result of the CR's accession to the EU and its integration in the Dublin system, 2004 saw a sharp fall in the number of asylum seekers and a change in the character of migration for certain categories of foreigner, such as those from the Russian Federation – Chechen. In 2004, 5 459 people asked for asylum in the CR, a fall of 52.1 % (from 11 396 asylum seekers) against 2003. The majority of asylum seekers in 2004 came from the Ukraine (29.3 % of the total), which has long been one of the major source countries for asylum seekers in the CR.

In 2004, the Ministry of the Interior issued 7,876 decisions in asylum proceedings. Asylum was granted to a total of 142 foreigners. The largest number of successful applicants were from the Russian Federation (45) and Belorus (29). Under the Asylum Act, obstacles to deportation were granted in 42 cases in 2004.[235]

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234 Act No. 148/1998 Coll., on the Protection of Confidential Matters, as amended

235 More detailed information can be obtained from the annual *Report on Migration in the CR*, compiled by the Ministry of the Interior.

In 2004, there was a marked shortening of the time-limits in which administrative bodies handle asylum applications. The UN High Commissioner for Refugees, or its Prague office (hereinafter the "UNHCR") nevertheless repeatedly alerted the Ministry of the Interior to individual cases where asylum applicants had waited more than one year for a decision.

9.2. Developing a common EU asylum policy

The European summit in Tampere in 1999 agreed to develop a common European asylum system. The European Council agreed on a two-phase approach. Under article 63 of the Amsterdam Treaty the legal instruments were adopted to build the core of a common European asylum system. The instruments include:

- *Council Regulation no. 343/2003 of 18 February 2003, stipulating the criteria and procedures to designate the appropriate member state to assess an asylum application submitted by a citizen of a third country in one of the member states (so-called Dublin II)*.[236] The regulation's aim is to hold only one set of asylum proceedings within the EU and to prevent so-called asylum shopping. The regulation also prevents so-called refugees in orbit, where member states hand on the asylum seeker from one member state to another without any one of them taking responsibility for reviewing his application, by speeding up the process of determining which member state is responsible for assessing the asylum application and thereby guaranteeing an efficient approach in deciding the refugee's status.
- *Council Directive 2003/9/*EU *of 27 January 2003, which stipulates the minimum norms for accepting asylum seekers.*[237] The requirements respect the basic rights and abide by the principles set out in, above all, the EU Charter of Fundamental Rights. The Directive regulates the material conditions for the acceptance of asylum seekers (basic health care, accommodation, food, education, access to the labour market etc.).
- *Council Directive 2004/83/EU of 29 April 2004 on the minimum requirements for the criteria and status of nationals from third countries or persons without nationality such as refugees or persons who for some other reason need international protection and on the content of the protection provided ("Qualification Directive")*.[238] The Directive addresses the substantive legal aspects, harmonises the definition of the term refugee and regulates the conditions that the asylum must meet in order to be granted the status of refugee, and regulates the rights connected with such status. It also defines the reasons for granting *subsidiary protection*.
- *Draft Council Directive on minimum standards for proceedings on the granting and withdrawal of refugee status ("Procedural Directive").* The Directive resolves the procedural legal questions of granting and withdrawing refugee status. It relates to all persons who request asylum at the borders of or in EU member states. Political agreement has been reached for the directive and its adoption is expected in the spring of 2005.

In the longer term, EU regulations will be prepared which go beyond the minimum level for the harmonisation of standards and will be designed to develop a single asylum

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[236] Since the CR's accession to the EU on 1 May 2004, the CR has been directly bound by the regulation. The regulation is a directly applicable norm which does not need to be transposed into Czech law. It has nevertheless been verified that Czech law does not place any obstacles before its direct application and on this basis the amendment to the Asylum Act No. 57/2005 was adopted, which establishes the conditions for the regulation's smooth incorporation in the existing legal and institutional system.

[237] The time-limit for implementing Council Directive 2003/9/EU of 27 January 2003, which states the minimum norms for accepting asylum seekers, was 6 February 2005. Council Directive 2003/9/EU was implemented in the amendment to the Act on Asylum No. 57/2005 Coll., which came into effect 4 February 2005.

[238] The time-limit for the Directive's implementation is 10 October 2006.

procedure within the EU and common status for those who have been granted asylum valid with the entire European Union.

9.3. Changes to the legal framework for the stay of foreigners in the CR

The above developments in the EU have resulted in frequent amendments to the Asylum Act and related regulations.

The amendment[239] to the Asylum Act came into effect 1 January 2004. The amendment, which is minor in scope, broadened the provision of health care, accommodation, meals and essential hygiene needs for asylum seekers and foreigners during the time-limit set aside for filing an action at the Regional Court.

Other amendments to the Asylum Act were adopted in 2004 through Act No. 539/2004 Coll., (with effect from 1 November 2004) and Act No. 501/2004 Coll. (with effect from 1 January 2006). The first of the amendments, implemented as part of the amendment to the Code of Criminal Procedure, concerns Section 16 (1)k of the Asylum Act and takes into account changes to the Code of Criminal Procedure that react to the transfer of persons between the CR and EU member states under the European arrest warrant. As of 1 January 2006, the second of the amendments adopted in 2004 will change the Asylum Act in relation to the adoption of the new Code of Administrative Procedure.

A further two amendments to the Asylum Act were prepared during 2004. The first[240] responds to the EU directives adopted thus far.[241] The amendment also reacts to the *Protocol on the Provision of Asylum to Nationals of EU Member States* by virtually excluding EU citizens from the ranks of asylum seekers. Asylum proceedings on the basis of an application submitted in the CR will be suspended due to the inadmissibility of the application. An action contesting the decision on the application's inadmissibility does not have suspensory effect, unless the court decides this in accordance with Section 73 of the Civil Procedure Code[242]. After the decision on the asylum application's inadmissibility on grounds that the CR is not the member state responsible for its evaluation the asylum seeker is obliged to remain in a residential or reception centre until he is transported to the EU member state responsible for evaluating his application. The introduction of the Dublin rules has led to the systematic restriction of freedom for foreigners, who continue to be *de facto* asylum seekers.[243]

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239 Implemented by Act No. 222/2003 Coll.

240 The proposed amendment was approved as Act No. 57/2005 Coll., and came into effect 4 February 2005.

241 The original intention was to alter Czech asylum law contained chiefly in the Asylum Act after publication of all the basic EU measures concerning asylum, as anticipated in article 63 of the EU Founding Charter, but this is not possible due to the deadline for the transposition of the norms already published as the process of adopting the remaining regulations has been postponed. The said amendment has incorporated *Directive 2003/9/EU stating the minimum requirements for receiving asylum seekers*, and *Directive 2003/86/EU, on the right to bring members of a family together*.

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

243 If the proceedings are ended because another EU member state is responsible for handling the asylum application, the asylum seeker shall have the status of a foreigner. The decision does not however assess the application on its merits and the relevant foreigner thus continues to have the features of an asylum seeker. For more on this problem see also Baršová, Andrea. Dublin II and the limitation of freedom of asylum seekers. *Seminar on systemic problems of asylum and foreigner legislation in the CR and impacts of EU accession* . 23. 8.2004. Brno, p. 39-62 (see http://www.migraceonline.cz/clanky_f.shtml?x=208133).

The second of the prepared amendments proposes changes required by application practice. It is expected to come into effect 1 July 2005.[244]

9.4. EU common asylum policy questions that are problematic with reagard to the protection of human rights

Recent years have seen a debate within the EU on the question of establishing sorting camps for asylum seekers outside the EU. This is a fundamental problem with regard to the protection of rights for refugees.

The establishment of EU camps to process asylum applications is dealt with by the *European Commission Communication of July 2004* entitled *Improving the approach to a permanent solution (COM 2004 410 final)*. This responds to the European Council's summit in Solun in June 2003. The Commission was asked to assess all parameters in order to ensure the more effective and managed entry to the EU of people who require international protection, and to study the methods by which the protective capacity of regions of origin could be improved.

The establishment of sorting camps for illegal migrants in North Africa was suggested by the German and Italian Ministers of the Interior. The sorting camps are designed to separate refugees who are entitled to protection from economic migrants. This idea, which is extremely risky with regard to the likely impact on the protection of human rights, has not yet received significant support.[245] The CR does not support the establishment of sorting camps. In its view, the objective problems that gave rise to the suggestion are best solved by improving cooperation with the nearest geographical neighbours of the expanded EU. According to the CR, cooperation should be achieved by broadening dialogue and helping these countries build or improve their own asylum and immigration infrastructure.

9.5. Non-governmental organisations' activity in helping refugees

The non-governmental sector traditionally plays a very important role in providing services to asylum seekers and refugees. In recent years this sector has become more professional and has sought to introduce more systematic procedures. In 2004, non-governmental organisations were among those responsible for several important expert studies on the asylum issue. These include the wide-ranging study by Pavel Pořízek from the SOZE non-governmental, non-profit organisation entitled *A comprehensive study of the asylum system in the CR, including proposed legislative measures to make it more effective*[246]

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[244] The Government submitted the bill to the Chamber of Deputies 27 January 2005. The Chamber of Deputies is discussing it under record no. 882 (http://www.snemovna.cz/forms/tmp_sqw/444f007d.doc).

[245] In October 2004, a meeting was held between the Ministers of the Interior of five EU countries - Great Britain, France, Germany, Italy and Spain (so-called G5) at which they settled the issue of how to stop illegal immigration and discussed the German and Italian proposal for the establishment of detention camps in North Africa. They ultimately failed to agree on the German proposal to house illegal immigrants in these camps before they set out on the risky journey across the sea to the coast of southern Europe. During the meeting Italy withdrew its support for the plan to set up camps in North Africa and stated that such plan must form part of a broader policy within the EU. Great Britain would welcome discussion on the setting up of camps in North Africa. Other G5 countries are strongly against the plan.

[246] Pořízek, Pavel: *Comprehensive analysis of the asylum system in the CR, including proposals for legislative measures to improve it*. Brno 2004, 204 p.

and the study by Ivana Janů and Martin Rozumek from the Organisation for Refugee Aid entitled *EU asylum law – Perspective and role of non-governmental organisations.*[247]

Czech non-governmental organisations have also responded to the CR's membership of the EU by establishing ever closer ties with so-called European network organisations (e.g. ECRE), which are able to address representatives of executive power in Brussels and legislative power in the capital cities of member states.

The improved status and professionalism of non-governmental organisations should be assisted by the proposed change to the Administrative Procedure Code,[248] which seeks to ensure that a non-governmental, non-profit organisation can represent persons claiming judicial protection in asylum cases. The organisation would act through an employee or member who has a university education in law, which, according to legal regulations, is required for advocacy. The proposed change is part of the amendment to the Asylum Act.[249]

9.6. Problems of asylum practice

9.6.1. Concurrence of administrative expulsion proceedings and asylum proceedings and concurrence and implementation of court-imposed sentence of expulsion and asylum proceedings

One of the problems referred to by the 2003 Report was the concurrence of administrative expulsion proceedings and asylum proceedings.[250] The problem affects foreigners who are living in the CR without authorisation during the administrative expulsion proceedings. According to the UNHCR, neither during the proceedings nor in actual expulsion in cases where the foreigner has been detained, do the foreigner police investigate whether the expelled foreigner faces the risks described in Section 179 (1) of the Aliens Act. According to the UNHCR, decisions where the administrative body only considers the possible effect expulsion may have on a person's private and family life[251] may be in conflict with article 33 (1) of the Convention on the Legal Status of Refugees. According to the Ministry of the Interior, however, investigations are held into the existence of impediments to deportation under Section 179 of the Aliens Act. This investigation is not, however, included in administrative proceedings. The amendment to the Aliens Act, which is currently being discussed by Government, resolves this matter and makes an investigation into the existence of an impediment to deportation a mandatory part of administrative expulsion proceedings and decisions in these cases, which can therefore be subject to review.

As mentioned in the 2003 Report, the practice of excluding the suspensory effect of an appeal against the decision of the foreigner police also seems problematic.[252] The Report also stated that the practice needs to be quickly changed whereby representatives of authorities from the asylum seeker's country of origin are contacted during the asylum proceedings. The

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247 Janů, Ivana and Rozumek, Martin: *EU Asylum Law - Perspective and Role of Non-Governmental Organisations.* Prague: Organisations for the assistance of refugees , 2004, p. 144.

248 Act No. 150/2002 Coll., as amended

249 Parliamentary record 882 (http://www.psp.cz/sqw/historie.sqw?o=4&T=882)

250 2003 Report, point II/10.2.2.

251 Section 119 (4) or Section 120 (2) of Act No. 326/1999 Coll.

252 If an administrative expulsion order is issued for a foreigner who is a party to asylum proceedings, an appeal against this decision shall always have suspensory effect. The decision states the time-limit for deportation following the end of asylum proceedings.

2003 Report stated that such practice should be considered unacceptable with regard to the protection of human rights. No remedial measures were taken, however.[253]

The Ministry of the Interior has so far been unsuccessful in its attempts to resolve the concurrence of asylum and executory proceedings by means of legislation (the last attempt was the preparation of a material intent for the Code of Criminal Procedure). The sentence of expulsion (this obviously also applies for the extradition of a foreigner to face prosecution abroad if he has asked the CR for protection in the form of asylum and no final decision has been reached on the application) can be executed after the decision on asylum comes into force. This requirement is a response to problems in application practice, where cases have occurred of a foreigner is sentenced to be expelled and then applies for international protection in the form of asylum. In keeping with the CR's international commitments and EU law, the Ministry of the Interior still holds the opinion that the commencement of proceedings prevents the ordering and execution of expulsion, despite the different view of the Supreme Court's sentencing council of 17 April issued under ref. no. Tejn 310/2001.

9.6.2. Asylum proceedings in the transit areas of an international airport

The 2003 Report looked in depth at the problem of asylum proceedings in the transit areas of an international airport.[254] The preparation of new premises for an asylum centre is a welcome development as the existing centre was not satisfactory. Nevertheless, problems with these types of proceedings continued to occur in 2004. The UNHCR, for example, recorded the case of a Palestinian asylum seeker who spend a total of 17 days in facilities in the transit area of Prague-Ruzyne airport (from the commencement of asylum proceedings to the delivery of the Ministry of the Interior's decision to reject his application). Although the Ministry of the Interior issued a decision within the time-limit of five days (Section 73 of the Asylum Act), the applicant waited in the centre for another two weeks until the decision was delivered.[255] The situation also needs to be resolved regarding access of international organisations to the transit areas in the event that employees from these organisations want to provide applicants with legal or social counselling.

9.6.3. The problem of Section 10 (3) of the Asylum Act

The problem still remains of Section 10 (3) of the Asylum Act, according to which a *"foreigner who has already applied for asylum in the CR is authorised to submit an application for asylum no sooner than 2 years after the end of the previous proceedings."* The fact that the Ministry of the Interior can allow an exception to this rule in individual cases cannot be considered a sufficient guarantee.

9.6.4. Judicial decisions

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253 In cases where administrative expulsion proceedings and asylum proceedings run concurrently the relevant foreign representation, according to the foreigner's nationality, is asked to run a check on his identity and the issue of his travel documents. While this happens the foreigner is housed in detention facilities for foreigners in readiness for his expulsion from the CR. The foreigner police does not inform the foreign representation of the asylum proceedings underway or of the place of detention, and throughout the asylum proceedings staff of the foreign representation are not permitted any contact with foreigners detained in facilities for the detention of foreigners.

254 2003 Report, point. II/10.2.2.

255 under the Asylum Act the Ministry is obliged to *issue*, and not *deliver*, the decision within 5 days. The delivery of decision is often hindered by administrative and technical factors, which the administrative body cannot influence (e.g. lack of interpreters for a given language, etc.)

In 2004, the Supreme Administrative Court issued a decision against the decision of the Municipal Court in Prague in the case of Mr. Y.A.[256] In the decision, the court comments on the means by which the administrative body is to decide where there is failure of evidence: *"In these situations account must be taken of the character of the asylum seeker's country of origin, the manner in which state power is exercised there, the possibility of enforcing political rights and other fact that influence the grounds for granting asylum. If it is known that the human rights situation in the country of origin is poor, that citizens are denied the right to change their government, that there are unlawful executions, that people disappear and torture frequently used, then the administrative body must take these facts into account in situations where there is a failure of evidence, and must do so in favour of the asylum seeker. On the other hand, if the asylum seeker's country of origin is a legal state with a democratic system it is up to the asylum seeker to prove that he is really victimised in the country."*

The following is a selection of other important decisions demonstrating decision-making practice.

Constitutional Court ruling ref. no. IV. ÚS 12/04 of 15 March 2004 or Supreme Administrative Court decision ref. no. 5 Azs 225/2004 of 24 February 2005

"Asylum is an extraordinary provision designed to provide protection for a person who for reasons stipulated in law feels reasonable fear of persecution in the state of which he is a citizen. As a legal provision, asylum is not (and never has been) a universal instrument for providing protection against injustice, however cruel, gross, and injurious to individuals or whole groups of the population. The legal grounds for providing are defined relatively narrowly and do not cover the entire range of violations of human rights and freedoms acknowledged in international and national law. Asylum is applicable in limited scope, and only for persecution under legally acknowledged grounds where the very existence of a human being and related rights and freedoms are protected, although other cases of serious violation of other human rights are so serious that they may also be viewed as persecution. The breach of economic, social and cultural rights, the enjoyment of which is to a large degree dependent on the relevant country's level of economic development, does not therefore make the relevant person a refugee in the sense of the Convention on the Legal Status of Refugees of 1951, by which the CR is bound, and is therefore not a reason for asylum to be granted under Section 12 of the Asylum Act, even if the living conditions in such country were extremely burdensome, unless the economic measures that unfavourably affect the relevant person's living standard are secretly directed at a certain nationality, racial or political group; in this case, according to the circumstances, fulfilment of the conditions for asylum to be granted would have to be considered."

From the ruling of the Supreme Administrative Court ref. no. 5 Azs 297/2004 of 24 February 2005

"Fulfilment of conditions for rejecting an asylum application as manifestly unsubstantiated under Section 16 of the Asylum Act excludes the evaluation of the application under Section 12 of the same Act. If the proceedings reveal an indisputable fact listed in Section 16 (1)k of the Act, the administrative body is right to reject the application as manifestly unsubstantiated without investigating the other grounds for granting asylum. In such case, the administrative body decides with final effect without determining the existence

[256] Judgement ref. no. Azs 50/2003-89 of 24 February 2004.

of the other reasons for granting asylum under Sections 12, 13 or 14 of the Asylum Act. Due to the fact that the decisive factor in judging whether to grant asylum under Section 13 or 14 of the Act is the conclusion on the non-existence of grounds for the granting of asylum under Section 12, and these grounds are not ascertained during the procedure under Section 16, the administrative body may not evaluate the fulfilment of grounds for the granting of asylum under Section 14."

From the ruling of the Supreme Administrative Court ref. no. 7 Azs 229/2004 of 24 February 2005

"An administrative body does not act incorrectly if, in the relevant matter, it does not decide on obstacles to deportation under Section 91 of the Asylum Act, for the Act's wording makes it plain that a statement on whether an obstacle to deportation applies to the foreigner is only given in the decision if the administrative body decides not to grant asylum, or to withdraw it. In this case, it was decided to suspend the proceedings, from which it is clear that the complainant neither had his asylum withdrawn not his application turned down".

From the ruling of the Supreme Administrative Court ref. no. 5 Azs 50/2003 of 26 February 2004 and ref. no. 5 Azs 225/2004 of 24 February 2005

"From the aforementioned provisions of the Act one can infer that an administrative body is obliged to determine the facts decisive in order to grant asylum under Section 12 of the said Act if the asylum seeker states that grounds exist that are included in the provision, or if he doesn't state only economic grounds. If this is not the case, it shall reject the application as clearly unsubstantiated. If the application is not rejected as clearly unsubstantiated within 30 days of the commencement of administrative proceedings, it shall issue a decision under Section 12 with other accessory rulings. This obviously does not mean, and cannot be inferred from any provisions of the law, that the administrative body in such situation is obliged itself to present the relevant legal reasons for granting asylum that the applicant has failed to use, nor should it have to establish the relevant grounds for these reasons. The obligation to determine the grounds of the case under Section 32 of Act No. 71/1967 belongs to the administrative body only in the scope of the reasons that the application actually states during the administrative proceedings."

9.6.5. Financial allowance for asylum seekers registered outside asylum facilities

During asylum proceedings a financial allowance is provided for at least three months (Section 43 of the Asylum Act). In the view of many interested non-governmental organisations and the Public Defender of Rights, it would be better, however, to return to the legislation before the amendment to the Asylum Act under Act No. 2/2002 Coll., i.e. to the possibility of providing a financial allowance for an unlimited period, or at least to extend the period to one year. During the first year of asylum proceedings, asylum seekers living outside asylum facilities do not have access to the labour market, and, as a result of changes to the Act on State Social Support[257] were excluded from the ranks of people authorised to receive state social support benefits.[258] Their earning possibilities are thus limited and lead either to unlawful employment or a return to the accommodation centre. All this in a situation where housing an asylum seeker in asylum facilities is more costly for the State than if he lives outside the facilities (privately), even if a financial allowance is provided.

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257 Act No. 117/1995 Coll., on State Social Support, as amended

258 see also the 2003 Report, point II/10.2.4.

February 2005 saw the approval of the amendment to the Act on State Social Support,[259] according to which, of the 365 days needed to fulfil a foreigner's condition of stay in order to be entitled to state social support benefits, only that period will be excluded when the asylum seeker is housed in a Ministry of the Interior accommodation centre. If the foreigner - asylum seeker is housed outside such centre this period, up to 365 days, will be included. This represents a slight improvement in relation to asylum seekers.

9.6.6. Case of the "electric socket"

In 2004, media and public attention was drawn to the case of the "electric socket" in refugee facilities. At a time when consideration was being given to the setting up of asylum camps outside the EU, the entire case might seem barely comprehensible to the outside observer. The case does not illustrate the approach of the Ministry of the Interior's Refugee Facilities Administration (RFA). This institution provides asylum seekers in difficult circumstances with the appropriate services, its activities have won it respect and a good reputation. The fact that RFA decided to gradually remove electric sockets from some buildings, including from rooms used to house asylum seekers in the first phase of their proceedings led to censure from many non-governmental organisations, as well as the Public Defender of Rights. The situation was also addressed by the Government Council for human Rights, which adopted a resolution in the matter.[260] Thus far, however, no consensus opinion has been reached on the matter.

9.6.7. Child asylum seekers unaccompanied by legal representatives in 2004

The numbers of asylum applications submitted by child foreigners unaccompanied by legal representatives continues to fall year on year. This was also the case in 2004, when a total of 95 foreigners from the said category entered asylum proceedings, representing approximately 49 % of the total number of child arrivals in 2003.[261] On 15 June, 2004, the "Facilities for Child Foreigners" began operations, bringing together the "Diagnostic Institute", "Children's Home with School", the "Care Institute", the "Special Elementary School" and the "Practical School".

There still remains the problem, however, of harmonising state policy towards unaccompanied child foreigners who are housed in special school facilities for the children of foreigners. Administrative expulsion was decided for many of these children as a result of their crossing the state border without valid travel documents. Although after institutional care those children who have reached the age of majority can apply for permanent residence, the existence of the previous administrative expulsion creates a serious obstacle. This problem should be addressed in the planned amendment to the Aliens Act.

9.6.8. Integration of asylum seekers

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[259] Parliamentary record no. 806 (see http://www.psp.cz/sqw/historie.sqw?o=4&T=806). The Act was passed to the President for his signature 7 March 2004

[260] Resolution of the Government Council for Human Rights of 25 January 2005.

[261] The most frequent asylum seekers were foreigners from China (approx. 37 % of all arrivals) and from Vietnam (approx. 16 %). The majority (61 %) of child foreigners entered the asylum procedure after being apprehended and detained in Police facilities for the detention of foreigners; 39 % of foreigners applied in standard reception centres. Of the total number of arrivals, 47 % of foreigners were aged 17, 32 % 16, while younger foreigners were generally received individually with one of their family members, The rate of applications by gender was 25 % girls and 75 % boys.

The year 2004 also saw the implementation of the state integration program for asylum seekers, which includes language teaching,[262] and assistance in finding accommodation. For this purpose, the municipalities were given budget funds of CZK 14,816,250 via the regional authorities. Thirty-eight offers of integration apartments were realised and 115 asylum seekers received aid in this way.

In cooperation with the Ministry for Local Development, the Ministry of the Interior developed a program to support accommodation for 2005. This expands the offer of rental apartments for asylum seekers. The program's implementation and the first integration apartments could be ready in 2007.[263] This is a welcome system measure which incorporates accommodation for asylum seekers in the wider framework of support for accommodation for the whole population.[264]

According to the UNHCR and non-governmental organisations, however, in 2004 certain systemic problems remained in this area. Although the Concept for 2004 expanded the possibility of supported accommodation for asylum seekers by introducing the so-called variant II (grant to municipalities for net rent), in practice this hasn't brought about a significant improvement for asylum seekers (in 2004, only three new contracts were concluded under this variant, one of which was terminated the same year). Integration policy should also cover other spheres of life - e.g. employment.

For this reason, in 2004 the Ministry of Labour and Social Affairs introduced an internal methodological instruction [265] ensuring that all asylum seekers registered at the employment office as job seekers have access to the preparation of an individual action plan. This is a new instrument in the active employment policy, which is designed to place greater focus on asylum seekers' efforts to find employment by means of longer-term individual assistance by the employment offices when the asylum seeker enters the labour market.

In 2004, the Ministry of Labour and Social Affairs, in conjunction with the Ministry of Education, Youth and Sport and the Ministry for Local Development prepared a system of introductory courses for asylum seekers. This is designed to be introduced in the next few years. The measure is the State's response to the not wholly adequate assistance given in the State integration program and thus lays the ground for more comprehensive integration assistance, which should include increased hours of Czech tuition taking into account the target group's specific features, and programs to aid social and cultural orientation in society.

9.7. Temporary protection

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[262] In 2004, the non-governmental organisation the Association of Citizens Involved with Immigrants (SOZE) worked to integrate asylum seekers by giving them a knowledge of the Czech language on the basis of a contract with the Ministry of Education, Youth and Sport.

[263] This measure was approved by Government Resolution of 26 January 2005 no. 104 on the integration of asylum seekers. The program „Supporting the construction of rental apartments for 2005" was announced with a condition for the expansion of the offer of rental apartments for asylum seekers. Municipalities that receive a grant to construct rental apartment are obliged to offer some of the apartments built from the state grant to asylum seekers to rent. These apartments are known as integration apartments.

[264] The number of legally offered integration apartments depends on the number of apartments for which the grant is provided per investment project: this is one integration apartment for an investment project of from 20 to 39 integration units, and one further apartment for every further 20 apartment units.

[265] Notice for employment offices no. 32/2004, which came into effect 1 October 2004.

The Act on Temporary Protection[266] came into effect 1 January 2004. As a legal norm it meets EU requirements for respecting humanitarian considerations and the protection of human rights. The temporary protection of foreigners has been declared by decision of the EU Council since the CR's entry into the EU. The temporary protection mechanism was not used in 2004.

[266] Act No. 221/2003 Coll., on Temporary Protection. Some of the Act's provisions came into effect upon entry into the EU.

III. Conclusion

The year 2004 was significant for the whole of Czech society in that the CR became a member state of the EU, which is not only an economic zone but also a community sharing common values. It is based on the principles of freedom, democracy, the rule of law and respect for human rights and fundamental freedoms, i.e. principles that are common to the member states. EU entry is thus of profound significance for the question of human rights. The 2003 report drew attention to the fact that following EU entry its reference system would increasingly dominate over other reference systems. This is partly reflected in the submitted report, which in some places (primarily those describing areas where there has been a substantial shift in powers from the national to the European level – e.g. discrimination, migration and asylum) also outlines developments within the EU. The EU's approach to human rights is ever more intensive and systematic, both at a reflexive and assessment level, as shown, for example, in the creation of the new network of EU independent experts for questions of fundamental rights. In the future, it will be worth considering adapting the Report's format so that it complements the report by the independent experts.

EU developments, however, do not overshadow the importance of other international mechanisms for the protection of human rights. On the contrary, the tendency is towards synergy. An example is the so-called national institutions for human rights. These institutions have traditionally been established and supported by the UN. The last time that states were asked to set up national institutions for human rights was in the so-called *Paris Principles*, which were adopted by Resolution of the UN's General Assembly No. 48/134 of 20 December 1993. The European Commission is now arguing that it wants to use this UN document in order to judge whether the anti-discriminatory bodies that are to be set up by member states to implement EU anti-discrimination legislation actually meet the requirements of independence in exercising the powers entrusted to them. Long-term planning in the field of human rights is also coming to the fore in the shape of the "national action plan", the adoption of which was proposed by the Vienna Human Rights Conference in 1993. The development of a human rights action plan, which would include both national and international political aspects, is thus a matter that also needs to be discussed.

This report is the seventh in a row (the first report for 1998 was published in 1999). Like previous reports it is derived primarily from documents made available by the ministries or other central state administrative bodies. The downside of this approach is that the report provides information chiefly on measures that have been adopted to improve the situation. It is far more difficult to offer an objective appraisal of the actual state of human rights. Whereas the findings of the Public Defender of Rights, which form an annual contribution to the report, are objective and authoritative, the critical stances of non-government, non-profit organisations active in the field of human rights are sometimes regarded by the relevant state bodies as overly critical or biased. As in previous years, the report's authors have sought to assess these opinions and where possible to find a consensual position on the urgent problems. Nevertheless, the CR lacks a developed independent research sector in the human rights field which is not purely academic in outlook and whose findings and information can be relied upon. The CR clearly lacks an institution such as the German *Human Rights Institute* (set up in 2001 at the recommendation of the German Federal Assembly) or independent research centres for human rights such as those that exist in some northern countries (e.g. Norway, Denmark).

The report seeks on the one hand to describe developments in all sectors in 2004, and on the other to point out areas that we could refer to as priorities. The medium-term goals described in the 2003 report's conclusions remain topical. They are the problems of anti-discrimination and equal opportunities, systemic supervision of the prevention of ill-treatment of persons deprived of freedom, the modernisation of citizenship legislation in response to growing migration, the problem of human rights and the development of bio-technology, and the protection of personal data in the face of a developing information society. To these issue we can add the problem of human trafficking. A major challenge is the search for a balance between defending society against terrorism and excessive infringements of civil liberties. In this context, it's important to adapt to the cultural diversity of society. It's necessary to prevent the formation of an environment that, on the one hand, encourages disoriented young people to turn to various forms of radicalism, extremism and terrorism, and on the other hand leads to racism, xenophobia, anti-Semitism and Islamophobia among the majority population.

By their nature, human rights are relevant to mankind as human beings, and have a global dimension. This global dimension is, however, shared by some of the very factors that threaten human rights. Cooperation with other EU states and international communities is therefore essential when seeking answers to contemporary challenges.

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